

The Social History of Crime and Punishment in America

AN ENCYCLOPEDIA



Wilbur R. Miller ■ EDITOR

The Social History of
Crime and Punishment
in America



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Rape, Sociology of
Religion and Crime, Contemporary
Religion and Crime, History of
Religion and Crime, Sociology of
Riots
Robbery, Contemporary
Robbery, History of
Robbery, Sociology of
Serial and Mass Killers
Sex Offenders
Sexual Harassment
Smuggling
Sodomy
Tax Crimes
Terrorism

Theories of Crime
Traffic Crimes
Vagrancy
Victimless Crime
Violent Crimes
White-Collar Crime, Contemporary
White-Collar Crime, History of
White-Collar Crime, Sociology of
Women Criminals, Contemporary
Women Criminals, History of
Women Criminals, Sociology of

Criminals

Anarchists
Bakker, Jim
Berkowitz, David
Billy the Kid
Bodine, Polly
Boles, Charles
Bonnie and Clyde
Booth, John Wilkes
Borden, Lizzie
Brocius, William
Bundy, Ted
Capone, Al
Chapman, Mark David
Cunningham, Emma
Czolgosz, Leon
Dahmer, Jeffrey
DeSalvo, Albert
Dillinger, John
Everleigh Sisters
Ferguson, Colin
Floyd, Charles Arthur
Gacy, John Wayne
Genovese, Vito
Gotti, John
Guiteau, Charles
Hauptmann, Bruno
James, Jesse
Kaczynski, Ted
Kevorkian, Jack
Klebold, Dylan, and Eric Harris
Leopold and Loeb
Luciano, "Lucky"
Manson, Charles
McVeigh, Timonthy
Menendez, Lyle and Erik
Mudgett, Herman
Muhammad, John Allen

Nelson, "Baby Face"
Nitti, Frank
Oswald, Lee Harvey
Peterson, Scott
Rader, Dennis
Ramirez, Richard
Ray, James Earl
Rothstein, Arnold
Sacco and Vanzetti
Schultz, "Dutch"
Sheppard, Sam
Simpson, O. J.
Sirhan Sirhan
Smith, Susan
Torrio, John
Wuornos, Aileen
Yates, Andrea
Zodiac Killer

Documents and Acts Shaping the American System of Criminal Justice

Alien and Sedition Acts of 1798
Anti-Federalist Papers
Articles of Confederation
Aviation and Transportation Security Act of 2001
Bail Reform Act
Bible
Bill of Rights
Bodie of Liberties
Book of the General Lawes & Libertyes
Chinese Exclusion Act of 1882
Civil Rights Act of 1866
Civil Rights Act of 1875
Clayton Anti-Trust Act of 1914
Colonial Charters and Grants
Constitution of the United States of America
Crimes Act
Declaration of Independence
Dyer Act
Elkins Act of 1903
Emergency Quota Act of 1921
Enforcement Acts of 1870–1871
English Charter of Liberties of 1100
Espionage Act of 1917
Ethics in Government Act of 1978
Federalist Papers
Federal Rules of Criminal Procedure
Freedom of Information Act of 1966
Fugitive Slave Act of 1793

Fugitive Slave Act of 1850
Habeas Corpus Act of 1679
Habeas Corpus Act of 1863
Harrison Act of 1914
Homestead Act of 1862
Independent Treasury Act
Indian Civil Rights Act
Indian Removal Act
Internal Security Act of 1950
Interstate Commerce Act of 1887
Intolerable Acts of 1774
Judiciary Act of 1789
Landrum-Griffin Act of 1959
Law Enforcement Assistance Act
Laws and Liberties of Massachusetts
Lindbergh Law
Magna Carta
Mann Act
Maryland Toleration Act of 1649
Mayflower Compact
National Security Act of 1947
Northwest Ordinance of 1787
Omnibus Crime Control and Safe Streets Act
of 1968
Pendleton Act of 1883
Presidential Proclamations
Proclamation for Suppressing Rebellion and
Sedition of 1775
Pure Food and Drug Act of 1906
Reports on Prison Conditions
Sedition Act of 1918
Selective Service Act of 1967
Sherman Anti-Trust Act of 1890
Smith Act
Stamp Act of 1765
State Blue Laws
State Slave Codes
Tea Act of 1773
Townshend Acts of 1767
USA PATRIOT Act of 2001
Vice Commission
Violence Against Women Act of 1994
Volstead Act

Historical Cities in Crime and Punishment

Boston, Massachusetts
Chicago, Illinois
Las Vegas, Nevada
Los Angeles, California
Miami, Florida

New York City
Newark, New Jersey
Pittsburgh, Pennsylvania
San Francisco, California

History of Crime and Punishment by State

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
Florida
Georgia
Hawai'i
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah

Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming

History of the American Criminal Justice System

American Revolution and Criminal Justice
Court of Common Pleas
Court of Oyer and Terminer
Court of Quarter Sessions
Courts of Indian Offenses
Coverture, doctrine of
Equality, Concept of
Great Depression
History of Crime and Punishment in America:
 Colonial
History of Crime and Punishment in America:
 1783–1850
History of Crime and Punishment in America:
 1850–1900
History of Crime and Punishment in America:
 1900–1950
History of Crime and Punishment in America:
 1950–1970
History of Crime and Punishment in America:
 1970–Present
Homeland Security
Prohibition
Puritans
Salem Witch Trials
Victorian Compromise

Juvenile Crime and Justice

Child Abuse, Contemporary
Child Abuse, History of
Child Abuse, Sociology of
Child Murderers, History of
Children, Abandoned
Children's Rights
Convention on Rights of the Child
Juvenile Corrections, Contemporary
Juvenile Corrections, History of
Juvenile Corrections, Sociology of
Juvenile Courts, Contemporary
Juvenile Courts, History of
Juvenile Delinquency, History of
Juvenile Delinquency, Sociology of

Juvenile Justice, History of
Juvenile Offenders, Prevention
 and Education
Juvenile Offenders in Adult Courts
School Shootings
Lindsey, Ben

Most Dangerous Cities

Atlanta, Georgia
Baltimore, Maryland
Birmingham, Alabama
Camden, New Jersey
Cincinnati, Ohio
Cleveland, Ohio
Compton, California
Dayton, Ohio
Detroit, Michigan
Jackson, Mississippi
Kansas City, Missouri
Memphis, Tennessee
New Orleans, Louisiana
Oakland, California
St. Louis, Missouri
Washington, D.C.

Organizations and Commissions

American Bar Association
American Civil Liberties Union
International Association of
 Chiefs of Police
Knapp Commission
Ku Klux Klan
Law Enforcement Assistance
 Administration
Lawyers Guild
National Association for the Advancement of
 Colored People
National Commission on Law Observance
 and Enforcement
National Congress on Penitentiary and
 Reformatory Discipline
National Organization for Women
National Prison Association
Penitentiary Study Commission
President's Commission on Law Enforcement
 and the Administration of Justice
Securities and Exchange Commission
Students for a Democratic Society and
 the Weathermen
Wickersham Commission

Police and Law Enforcement

Automobile and the Police
 Ballistics
 Bertillon System
 Border Patrol
 Bounty Hunters
 Bureau of Alcohol, Tobacco, Firearms
 and Explosives
 Code of Silence
 Community Policing and Relations
 Corruption, Contemporary
 Corruption, History of
 Corruption, Sociology of
 Crime Prevention
 Crime Scene Investigation
 Customs Service as Police
 Detection and Detectives
 Drug Enforcement Administration
 Federal Bureau of Investigation
 Federal Policing
 Forensic Science
 Incapacitation, Theory of
 Internal Revenue Service
 Interrogation Practices
 Military Police
Miranda v. Arizona
 M'Naghten Test
 Mug Shots
 Narcotics Laws
National Police Gazette
 Native American Tribal Police
 Police, Women as
 Police Abuse
 Political Policing
 Poses
 Private Detectives
 Private Police
 Private Security Services
 Professionalization of Police
 Reform, Police and Enforcement
 Rural Police
 Secret Service
 Sheriffs
 State Police
 Strikes
 Technology, Police
 Texas Rangers
 Training Police
 Uniform Crime Reporting
 Program

Vice Reformers
 Vigilantism

Presidential Administrations and Crime and Punishment

Adams, John (Administration of)
 Adams, John Quincy (Administration of)
 Arthur, Chester (Administration of)
 Buchanan, James (Administration of)
 Buren, Martin Van (Administration of)
 Bush, George H. W. (Administration of)
 Bush, George W. (Administration of)
 Carter, Jimmy (Administration of)
 Cleveland, Grover (Administration of)
 Clinton, William (Administration of)
 Coolidge, Calvin (Administration of)
 Eisenhower, Dwight D. (Administration of)
 Fillmore, Millard (Administration of)
 Ford, Gerald (Administration of)
 Grant, Ulysses S. (Administration of)
 Harding, Warren G. (Administration of)
 Harrison, Benjamin (Administration of)
 Hayes, Rutherford B. (Administration of)
 Hoover, Herbert (Administration of)
 Jackson, Andrew (Administration of)
 Jefferson, Thomas (Administration of)
 Johnson, Andrew (Administration of)
 Johnson, Lyndon B. (Administration of)
 Kennedy, John F. (Administration of)
 Lincoln, Abraham (Administration of)
 Madison, James (Administration of)
 McKinley, William (Administration of)
 Monroe, James (Administration of)
 Nixon, Richard (Administration of)
 Obama, Barack (Administration of)
 Pierce, Franklin (Administration of)
 Polk, James K. (Administration of)
 Reagan, Ronald (Administration of)
 Roosevelt, Franklin D. (Administration of)
 Roosevelt, Theodore (Administration of)
 Taft, William Howard (Administration of)
 Taylor, Zachary (Administration of)
 Truman, Harry S. (Administration of)
 Tyler, John (Administration of)
 Washington, George (Administration of)
 Wilson, Woodrow (Administration of)

Socioeconomic, Political, and Religious Issues

African Americans
 Chinese Americans

Civil Disobedience
Civil Rights Laws
Codification of Laws
Criminalization and Decriminalization
Fear of Crime
Gun Control
Hispanic Americans
Insanity Defense
Irish Americans
Italian Americans
Japanese Americans
Jewish Americans
Libertarianism
Morality
Native Americans
Obscenity Laws
Political Dissidents
Quakers
Racism
Sin
Slavery
Urbanization
Xenophobia

State and Federal Court Cases

Ableman v. Booth
Abrams v. United States
Adair v. United States
Barron v. Mayor of Baltimore
Bowers v. Hardwick
Brandenburg v. Ohio
Brown v. Board of Education
Brown v. Mississippi
Buck v. Bell
Caminetti v. United States
Chandler v. Florida
Chisholm v. Georgia
Cohens v. Virginia
Coker v. Georgia
Crabtree v. State
Davis v. State
Dennis v. United States
Dillard v. the State of Georgia
Dred Scott v. Sandford
Duren v. Missouri
Eisenstadt v. Baird
Estes v. Texas
Fletcher v. Peck
Frontiero v. Richardson
Furman v. Georgia

Gates v. Collier
Gibbons v. Ogden
Gideon v. Wainwright
Glidewell v. State
Gregg v. Georgia
Griffin v. California
Griswold v. Connecticut
Grutter v. Bollinger
Holden v. Hardy
Holt v. Sarver
Hurtado v. California
Johnson v. Avery
Korematsu v. United States
Lochner v. New York
Loving v. Virginia
Mapp v. Ohio
Marbury v. Madison
Martin v. Hunter's Lessee
McCleskey v. Kemp
McCulloch v. Maryland
McNabb v. United States
Minor v. Happersett
Miranda v. Arizona
Mississippi v. Johnson
Muller v. Oregon
Munn v. Illinois
Olmstead v. United States
Padilla v. Kentucky
People v. Pinnell
People v. Superior Court of Santa Clara County
Plessy v. Ferguson
Procunier v. Martinez
Reynolds v. United States
Ricci v. DeStefano
Roberts v. Louisiana
Roe v. Wade
Romer v. Evans
Roth v. United State
Santobello v. New York
Schenck v. United States
Sheppard v. Maxwell
Standard Oil Co. of New Jersey v. United States
State v. Heitman
Strauder v. West Virginia
Taylor v. State
Terry v. Ohio
Texas v. White
Twining v. New Jersey
United States v. Ballard
United States v. E. C. Knight Company

United States v. Hudson and Goodwin
United States v. Nixon
United States v. One Book Called Ulysses
Webb v. United States

Weeks v. United States
Whitney v. California
Wolf v. Colorado
Yates v. United States

About the Editor

Wilbur R. Miller is professor of history at the State University of New York at Stony Brook, where he has taught for 36 years. His interest in police history developed while he was an undergraduate at the University of California, Berkeley, during the Free Speech Movement years. He completed his dissertation at Columbia University, a comparison of the New York and London police 1830–1870. This became his first book, *Cops and Bobbies*. He then developed an interest in the post–Civil War reconstruction of the south, which in the face of determined southern resistance became a national policing problem. He soon learned that this topic was well covered, but realized that federal policing in the 19th century was a new realm of investigation.

Research led him to federal efforts to suppress moonshining in the mountain south in the later 19th century, a subject that had not been

treated by historians in any depth. *Revenuers and Moonshiners*, his second book, was a result of this work. Since then he has been occupied with several administrative positions: department chair, adviser to the university's multidisciplinary program and faculty director of the Honors College. He is currently undergraduate program director.

During this period he has been developing an interest in the interdependence of public policing with private policing, the extent to which the state has openly or tacitly supported various private police and corrections, including vigilantes, antivice and antiradical groups, private detective agencies, and the more recent development of private security services and prisons. Miller has been developing this theme in papers presented at the Social Science History Association and European Social Science History Conference.



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Introduction

The history of crime and criminal justice is almost by definition social history. It is the history of social and antisocial behavior and social institutions. However, social history is not only a matter of content but also of method or approach to history. The tumult of the 1960s was the background for development of “new social history,” which went beyond the old method of describing interesting social details to analyze social trends in institutions and behavior.

The history of crime and criminal justice was part of this trend, heightened by the Presidential Commission reports on “Law Enforcement and the Administration of Justice” (1965–69) and “The Causes and Prevention of Violence” (1968). This was also the era of the Warren Supreme Court decisions protecting the rights of criminal suspects, defendants, and prisoners. The 1960s and 1970s were a period when crime and punishment were central to political debates about the direction of American society. Popular, legal, sociological, and historical writers explored many facets of crime, policing, punishment, and legal developments.

In academia social history’s earlier form was “social science history,” the use of social science methods and theories to elucidate events and institutions of the past. This approach was the first to treat the history of crime and criminal justice beyond description and chronology. There

had been popular histories of criminals like Herbert Asbury’s *The Gangs of New York* (1929) or celebratory histories of individual police forces going back to the 19th century (e.g., Augustine E. Costello’s *Our Police Protectors*, 1885, about the New York City police). A pair of early works that brought the comparative perspective to bear was Raymond Fosdick’s *European Police Systems* (1913) and *American Police Systems* (1920), written from the viewpoint of a Progressive Era reformer.

The modern analytical approach to policing was pioneered by Roger Lane, *Policing the City: Boston 1820–1865* (1967), and James D. Richardson, *The New York Police: Colonial Times to 1900* (1975). In addition to police, prisons, reformers, and other aspects of the criminal justice system received new attention during an era marked by sharply increasing crime rates, ghetto riots, and scrutiny of the entire spectrum of crime and punishment.

Historians could draw from the work of sociologists and criminologists who had long been interested in the motivations of crime and the operations of police, judicial, and correctional institutions. Criminal motivation was probably the earliest area of sociological investigation, pioneered by Richard Dugdale’s *The Jukes* in 1877 and H. V. Redfield’s *Homicide North and South* in 1880. Beginning in the 1870s, the Italian “criminal anthropologist”

Cesare Lombroso's investigation of convicts' physical indications of criminality was very influential in the later 19th century, although later researchers rejected his views. The fields of criminology and penology developed in this period, usually emphasizing social reform (unfortunately, including eugenics). In the 1920s and 1930s appeared the first systematic sociological studies of street gangs, pioneered by Frederick Thrasher in 1927. By the 1970s, when social histories of criminal justice institutions appeared, deviance and social control were well-established fields in social science.

Social science history took two paths: the use of sociological theory to place institutional development in context (e.g., W. R. Miller's *Cops and Bobbies*, 1977) and quantitative social science methodology, pioneered by Eric Monkkonen's *The Dangerous Class* (1975). In both theoretical and quantitative studies social control was the leading conceptual argument, influencing histories of prisons (David Rothman, *The Discovery of the Asylum*, 1971), moral reform movements (Anthony Platt, *The Child Savers*, 1969), hospitals, and public education.

History of the Inarticulate

Conceptual social science history was joined by another form of social history, a more empirical "history from the bottom up" or "history of the inarticulate." This approach, inspired by European historians E. P. Thompson and George Rude, encouraged historians to focus on criminals and ordinary people and their interactions with the criminal justice system. Although earlier work has often discussed responses of different groups of people to institutions, they were more focused on development of the institutions themselves.

Probably the first members of the underworld to attract attention were prostitutes (Ruth Rosen, *The Lost Sisterhood*, 1982). Drawing from and analyzing George Appo's autobiography, Timothy Gilfoyle traced this late-19th-century pickpocket's life and its meaning in *A Pickpocket's Tale* (2006). Allen Steinberg's *The Transformation of Criminal Justice* (1989) was an innovative study of how ordinary Philadelphians used local courts to resolve neighborhood disputes. People involved with institutions of criminal justice emerged from obscurity.

In the 1980s, cultural history, with its emphasis on interpretation of texts and the influence of French theorists, seemed on the way to dominating the study of American history generally. Michel Foucault's *Discipline and Punish* (first published in English in 1975) was a major influence in criminal justice history.

Focusing on prisons, Foucault used the change from corporal punishment to incarceration to argue that the whole society has become one in which the state can reach into all aspects of citizens' lives. Governmental power permeates all social activity, much of it indirect through self-policing of behavior. Historians have criticized Foucault as more a philosopher than an archival researcher. He tends to make power too far-reaching, not allowing for various forms of opposition, particularly passive resistance. Even before Americans embraced Foucault, social control theory was meeting similar criticisms.

Representations of crime and punishment were important in Foucault's work, and this aspect has encouraged many scholars to explore the social and cultural context of specific crimes. For example, there are Amy Gilman Srebnick (*The Mysterious Death of Mary Rogers*, 1995), Patricia Cline Cohen (*The Murder of Helen Jewett*, 1999), and Mary Ting Yi Lui (*The Chinatown Trunk Mystery*, 2005). These studies developed media representation of crime and criminal justice as an aspect of American culture, exploring not only the crime but its meanings to different groups.

The violent 1960s launched a long-continuing trend, the study of the history of homicide and other forms of violence. Historians have sought to answer the question of why the United States has the highest homicide rates in the Western world.

Highest Homicide Rates

The academic response included a documentary collection compiled by Richard Hofstadter and Michael Wallace, *American Violence* (1970). More recent studies are Richard M. Brown's *No Duty to Retreat: Violence and Values in American History and Society* (1991) and Roger Lane's *Murder in America: A History* (1997). These studies were narrative histories interwoven with arguments about the meaning of events and trends.

Within the last decade the study of violence has developed as a marriage of quantitative analysis

and sociological argument. The old issue of the unreliability of crime statistics has been carefully addressed, as in Eric Monkkonen's *Homicide in New York City* (2001). Monkkonen, Andrew Roth, and others over many years compiled a violence database from scattered statistics. They have sought systematic methods to elucidate the causes of American murderous violence. This quantitative approach reveals fluctuating rates, important regional differences, and some unsuspected aspects of American homicide, such as its ups and downs over the years but overall a decline until the 1960s and the familiar further decline in the late 1990s.

In a recent discussion, Roth and Douglas Ekberg point out that declines in homicide may well be due to modern medical techniques, much more efficient at saving lives than in the past, as well as possible cultural shifts. An assault is now less likely to result in death than 150 years ago, or even 50 years ago, because of developments in traumatic wound treatment. Roth points to a correlation between national homicide rates and perceptions of government legitimacy: murders are up when legitimacy is down. The databases have allowed historians to see trends much more clearly and to develop arguments that reflect the data.

Explanations for American violence remain disputed, the main disagreement being between Roth and European historians who emphasize Norbert Elias's theory of "the civilizing process" defined by Stephen Mennell as "changes in people's ordinary behavior ... [due] to the formation of states with relatively effective monopolies of violence and to changes in the balances of power between social groups within states."

In short, American homicide rates and violence generally remain higher than in Europe because of a number of physical, cultural, and ideological factors that have limited state power compared to Europe. Pieter Spierenburg, perhaps the leading champion of Elias, argues that in the United States democracy came before development of an effective state. In short, cultures of localism, small government, and gun toting developed in a context of a weak state whose authority continues to

be contested not only by criminals but by respectable voters.

The social history of crime and criminal justice, inspired by the violence of an era of conflict in the 1960s, has continued to grow in our relatively less violent era. It has built on its earliest work to become a major contributor to understanding our nation's past and present.

The editors of *The Social History of Crime and Punishment in America: An Encyclopedia* have aimed for comprehensive coverage of the field from the colonial era to the present. Crime, policing, courts and law, imprisonment, theoretical and philosophical issues all have their place. Articles range from large conceptual approaches (e.g., "Murder, Sociology of") and thorough historical treatments (e.g., "Murder, History of") to smaller articles on individuals (police leaders, criminals, mystery writers, reformers, etc.) or specific crimes (e.g., the Lizzie Borden murder case).

Individual laws, official reports, calls for reform are among the documents important in history that are analyzed in articles. The role of media in representing crime and criminal justice receives full attention. Unique features are the history of crime and criminal justice in individual states (an area not fully researched for all states) and treatment of crime and criminal justice under different presidential administrations.

The fifth volume of the encyclopedia contains some 150 primary documents, along with introductory headnotes, and 10 chronological essays as background.

We seek a wide audience for *The Social History of Crime and Punishment in America: An Encyclopedia*. Historians, of course, and other social scientists, teachers at all levels developing courses, students writing papers, lawyers interested in famous cases and development of criminal law, and last but by no means least, the citizen seeking understanding of issues that have been of concern since the first colonists landed.

Wilbur R. Miller
Editor



Chronology

1275: The Statute of Westminster in England regulates the legal procedure of bail, a matter that had previously been left to the discretion of local authorities.

1619: Slavery begins in the geographical region that will become the United States as 20 captive slaves are sold at Jamestown, Virginia.

1627: The English parliament passes the Petition of Right, which specifies that people cannot be imprisoned without hearing the charges against them and must be allowed bail.

1640: John Punch, an African American servant, becomes the first person in the American colonies documented to be sentenced to a life of servitude. He receives this sentence as punishment for running away from his employer.

1641: Massachusetts prohibits imprisonment of an accused person before sentencing, other than in capital cases or cases where the defendant had shown disrespect for the court, if the person could provide a guarantee that they would appear for trial.

1646: Massachusetts passes the first law in the American colonies banning gambling in public houses.

1652: Rhode Island passes a law forbidding a person from being enslaved for more than 10 years.

1662: Virginia establishes that the children of slave mothers are slaves even if their father was a free white man, based on the legal principle of *partus sequitur ventrem*.

1679: In England, the Habeas Corpus Act specifies that a person must be brought before a judge within a specified number of days following a receipt of habeas corpus and must be released on bail within a specified number of days if the offense is bailable.

1692: Nineteen men and women are put to death during the Salem witch trials.

1705: Virginia passes a series of laws, many of which were adopted by other slaveholding colonies, legislating that all African, mulatto, and Native American servants brought to Virginia were slaves who could be held in permanent bondage, used in commercial trade, punished for infractions, and had no legal standing in the courts.

1740: South Carolina passes a comprehensive Negro Act legalizing execution of rebellious slaves and prohibiting slaves from, among other

things, assembling in groups, raising food, earning money, and learning to read English.

1763: Cesare Beccaria publishes the pamphlet *On Crimes and Punishments*, which argues against the usefulness of the death penalty.

1765: William Blackstone begins publication of *Commentaries on the Laws of England*, an influential work in the development of both the English and American legal systems.

1786: Pennsylvania adopts the Wheelbarrow Law, which requires convicts to perform public labor while chained to a cannon ball (to prevent escape) and while wearing unattractive clothing, thus requiring them to work and also to be exposed to public ridicule. The experiment is copied by several other states but ultimately proves a failure as some convicts escape while others get into fights with each other or with passersby.

1789: In the United States, the Judiciary Act of 1789 specifies which crimes are bailable and sets guidelines for establishing bail.

1793: The Fugitive Slave Act makes it illegal to assist escaped slaves. It also authorizes agents to seize alleged slaves and petition for their removal to their alleged home state, encouraging the industry of “slave catching,” which sometimes also captured free blacks and sold them into slavery.

1793: William Godwin publishes *Enquiry Concerning Political Justice and Its Influence on Modern Morals and Manners*, now seen as a fundamental text in the growth of anarchist thought.

1794: A Pennsylvania law creates the category of first-degree murder, meaning murder that was planned or particularly heinous, and makes it the only crime eligible for capital punishment (those convicted of second-degree murder would be sentenced to imprisonment).

1798: The Alien and Sedition Acts are passed by the U.S. Congress. These four acts permit the president to deport noncitizens, increase to 14 years the time of residence necessary for an immigrant

to obtain citizenship, and criminalize the publication of writings that criticize the government or government officials.

1821: Connecticut becomes the first U.S. state to pass a law regulating abortion.

1821: With *Cohens v. Virginia*, the U.S. Supreme Court asserts its power of judicial review over state supreme court decisions.

1830: President Andrew Jackson signs the Indian Removal Act into law. This results in the migration (theoretically voluntary, but in fact often coerced or forced) of Native Americans from the southeastern United States to the so-called Indian Territory in what is now Oklahoma.

1831: Gustave de Beaumont and Alexis de Tocqueville travel to the United States to study the prison system.

1833: In *Barron v. Mayor of Baltimore*, the U.S. Supreme Court rules that the Bill of Rights only applied to actions of the federal government and did not limit the action of state governments. The case in question involves a wharf operator in Baltimore who sued the city for damages, claiming that they had redirected the natural course of several streams, which made the water near his wharf too shallow for use.

1835: In England, Henry Goddard is the first to successfully use ballistic characteristics to establish guilt in a court case. He is able to match a blemish on a bullet taken from a shooting victim with that found on an imperfect bullet mold found in the home of the suspected shooter.

1841: John Augustus, a shoemaker from Massachusetts, invents the system of probation by convincing a court to release an indigent man, charged with drunkenness, to be released into his care. Reportedly, by 1858 Augustus assists almost 2,000 men and women as well as about 30 children in this way.

1845: The *National Police Gazette*, a popular magazine specializing in lurid coverage (including illustrations) of crime, begins publication.

1850: The Fugitive Slave Act, passed by Congress as part of the Compromise of 1850, requires federal marshals to assist in the recovery of escaped slaves in free states (those that had abolished slavery) and establishes special commissioners to enforce the law.

1859: The case of *Ableman v. Booth* determines that the federal judiciary is the final authority, superior to state courts, on matters concerning the Constitution and laws of the United States.

1862: President Abraham Lincoln signs the Morrill Anti-Bigamy Act.

1864: The International Working Man's Association, a global cooperative sometimes called the First International, is founded by anarchists, trade union organizers, and members of left-wing political parties.

1865: President Abraham Lincoln is assassinated by John Wilkes Booth.

1865: The Thirteenth Amendment to the U.S. Constitution prohibits slavery and involuntary servitude.

1865: The Ku Klux Klan (KKK) is founded in Pulaski, Tennessee, as a vigilante organization with the goal of maintaining control over newly freed slaves (i.e., returning them to a state similar to slavery) through violence and intimidation. It also directs violence toward Union sympathizers and carpetbaggers.

1868: The Fourteenth Amendment to the U.S. Constitution overrules the 1857 *Dred Scott v. Sandford* decision and establishes that persons born or naturalized in the United States, regardless of race, are citizens and entitled to equal protection under the law.

1873: The federal Comstock Law prohibits the importation, mailing, or interstate transportation of information regarding contraception and abortion in the United States.

1875: San Francisco is the first city in the country to pass an ordinance prohibiting opium dens.

1876: The Jesse James/Cole Younger gang attempts to rob the First National Bank of Northfield, Minnesota, but the townspeople successfully resist and most of the gang members are killed or arrested (but both James brothers escape).

1878: Massachusetts creates a state system of probation with paid officers to supervise those released into the system.

1881: President James Garfield is shot by Charles Guiteau; Garfield dies 11 weeks later from infections related to his injuries.

1882: Congress passes the Chinese Exclusion Act that prohibits Chinese laborers from immigrating to the United States. Originally meant to be in place for 10 years, it was amended but remained largely in place until the 1943 Magnuson Act.

1886: A public rally in Chicago on May 4, organized to support trade unions and the eight-hour day, is disrupted by a bombing that injures a number of people. This becomes known as the Haymarket bombing (the rally was held at Haymarket Square) and Albert Parsons, head of the International Working Man's Association, is tried for conspiracy to commit murder alongside seven anarchists: August Spies, Samuel Fielden, George Engel, Adolph Fisher, Louis Lingg, Oscar Neebe, and Michael Schwab.

1887: Major Robert W. McClaughry, then warden of the Illinois State Penitentiary, adopts the Bertillon system of recordkeeping (developed in France) and advocates its adoption across North America.

1887: The Interstate Commerce Act is created in response to the 1886 Supreme Court decision in *Wabash, St. Louis & Pacific Railway Company v. Illinois*, which established that states have no authority to regulate interstate commerce.

1890: William Kemmler, a convicted murderer, becomes the first person to be executed using the electric chair.

1892: A strike at the Carnegie Steel Company in Homestead, Pennsylvania, becomes violent: After

members of the Amalgamated Association of Iron and Steel Workers defeat 300 Pinkerton agents, the factory is retaken by 6,000 state militia troops and the union is broken.

1896: With the decision in *Plessy v. Ferguson*, the U.S. Supreme Court rules that segregation is legal in the United States and establishes the doctrine of “separate but equal.”

1898: The Erdman Act prohibits railway companies from prohibiting employees from joining labor unions and provides for arbitration in the case of unions and railway companies.

1899: Cook County (Chicago), Illinois, passes the first juvenile justice law in the country, based on the principle that children and adolescents should be treated as children in need of help rather than hardened criminals.

1901: President William McKinley is shot by the anarchist Leon Czolgosz and dies eight days later. After McKinley’s assassination, the Secret Service is charged with providing security protection for U.S. presidents.

1903: The New York State prison system begins the first systematic use of fingerprints to identify criminals.

1905: California becomes the first U.S. state to require registration of automobiles and, shortly thereafter, to require drivers to hold a license.

1907: The military fort on Alcatraz Island in San Francisco Bay ceases to operate as a fort and becomes a military prison.

1908: The Bureau of Investigation, the forerunner of the FBI (Federal Bureau of Investigation), is founded to investigate interstate crime.

1908: The U.S. Supreme Court, in *Adair v. United States*, rules that employers have the right to prohibit employees from joining labor unions, thus legalizing so-called yellow-dog contracts.

1909: The U.S. Congress passes the Opium Exclusion Act, the first federal law governing opiates,

forbidding the importation, possession, or use of smoking opium.

1910: The Mann Act, or White Slave Traffic Act, intended to combat human trafficking and prostitution, forbids taking women across state lines for “immoral purposes.”

1914: The U.S. Supreme Court rules in *Weeks v. United States* that items seized during search of a private residence without a search warrant have been illegally obtained and cannot be used as evidence in federal trials.

1914: The Harrison Narcotics Act, intended to curb the abuse of opiates, requires registration of all those who prescribe opiates, including physicians and pharmacists. This law is also the first to place cocaine in the same category as heroin.

1915: In *Coppage v. Kansas*, the U.S. Supreme Court rules that yellow-dog contracts, which allow employers to prohibit their employees from joining unions, are legal, thus striking down 13 state statutes outlawing discrimination in hiring on the basis of union membership.

1917: The Espionage Act prohibits interference with military recruitment or operations, lending support to U.S. enemies during wartime, or promotion of insubordination in the armed forces.

1919: The Dyer Act (also known as the National Motor Vehicle Theft Act) makes it illegal to drive a stolen vehicle across state lines or to deal in stolen vehicles that had crossed state lines.

1920s: American police forces adopt the use of the automobile, increasing the area one man or team can patrol and also increasing the speed by which they can respond to calls for help.

1920: Crystal Eastman, Roger Baldwin, and Walter Nelles found the American Civil Liberties Union (ACLU), a private voluntary organization dedicated to defending the freedoms guaranteed in the Bill of Rights.

1922: The U.S. Congress passes the Narcotic Drugs Import and Export Act (the Jones-Miller

Act) providing stiff fines and prison sentences for those importing illegal narcotics.

1923: The American Law Institute is founded in response to dissatisfaction with the uncertainty and complexity of American law, with the goal of improving and clarifying the law and also supporting legal scholarship and education.

1923: In *Frye v. United States*, a court case involving the admissibility of the results of a polygraph test as evidence, the U.S. Supreme Court establishes rules for expert testimony in the courtroom.

1923: The United States bans all narcotics sales.

1924: J. Edgar Hoover becomes the head of the Bureau of Investigation and serves 48 years with the organization (later renamed the Department of Investigation and then the Federal Bureau of Investigation).

1925: The Bureau of Forensic Ballistics, a private firm, is established in New York to provide firearms identification services and remains in business until 1929.

1925: Theodore Dreiser publishes the novel *An American Tragedy*, whose plot is based on a much-publicized 1906 case in which Chester Gillette was convicted of murdering Grace Brown (he claimed her death was accidental) by drowning her in a lake.

1926: New York becomes the first state to make drunk driving a felony.

1927: Italian immigrants Ferdinando Nicola Sacco and Bartolomeo Vanzetti are executed following their conviction for murder; the case is controversial and many believe the men did not receive a fair trial due to their political views.

1928: Ruth Snyder, convicted of the murder of her husband, is executed; a photograph of her in the electric chair is published in the *New York Daily News*.

1928: The Straus totalisator is invented, a machine enabling rapid calculation of the odds that a bet

will pay off, greatly speeding the adoption of pari-mutuel betting at horse tracks.

1929: Following riots, Clinton Prison in New York State institutes rehabilitation programs including mandatory educational instruction.

1930: The Federal Bureau of Prisons is created in the Department of Justice and has responsibility for managing and regulating federal prisons.

1930: The first UCR (Uniform Crime Report) is issued, reporting on the incidence of various types of crimes in the United States, aggregated at the city, state, and other levels.

1931: Casino gambling is legalized in Nevada.

1932: The Norris-La Guardia Act bans yellow-dog contracts (which allowed employers to stipulate that employees could not join unions), bars federal courts from interfering with nonviolent labor disputes, and states that employers may not interfere with the right of employees to consider joining a trade union.

1932: The infant child of aviator Charles Lindbergh is kidnapped. The case is highly publicized and Congress reacts by passing the Lindbergh Act, the first federal kidnapping law; the death penalty for kidnapping is added in 1934.

1933: The U.S. Bureau of Immigration merges with the Bureau of Naturalization to form the Immigration and Naturalization Service (INS).

1933–34: Clyde Barrow and Bonnie Parker commit a series of robberies in the midwest and south; they become nationally known and are immortalized in the popular media, most notably in Arthur Penn's film *Bonnie and Clyde* (1967).

1934: A high-profile federal prison is established on Alcatraz Island in San Francisco Bay, designed to house dangerous and notorious criminals or those who had escaped from other facilities. Among those who are housed at Alcatraz are the gangsters Al Capone and George Kelly Barnes ("Machine Gun" Kelly) and the murderer Robert Stroud, known as "the Birdman of Alcatraz."

Alcatraz is operated as a federal prison until 1963 and serves as a model for other high-security prisons across the United States. Since 1973 it is operated by the National Park Service as a wildlife sanctuary and museum.

1935: With *Norris v. Alabama*, the U.S. Supreme Court overturns the convictions of the Scottsboro Boys, nine African American teenagers, on the grounds that they had been denied equal protection under the law because African Americans had been systematically excluded from the juries that heard their cases.

1941: President Franklin Roosevelt establishes the Fair Employment Practices Commission with Executive Order 8802, banning discrimination in the defense industry on the basis of race, color, religion, or national origin.

1942: In response to the attack on Pearl Harbor by Japan, President Franklin Roosevelt authorizes the removal of over 100,000 Japanese and persons of Japanese descent from their homes in the western United States to internment camps. The constitutionality of the executive order authorizing this removal is upheld by the Supreme Court in 1944.

1948: President Harry S. Truman, with Executive Order 9981, orders that the U.S. armed forces become racially integrated.

1950: The FBI begins issuing a Ten Most Wanted Fugitives list.

1950: Ford produces the first custom police car.

1950: William Parker becomes chief of police for Los Angeles, taking charge of a notoriously corrupt department and implementing selection and training of officers using methods adapted from military peacekeeping. However, Parker is also charged with fostering animosity among non-white residents of Los Angeles and of creating a police force that was disconnected from the communities it patrolled.

1950–51: The Kefauver Committee (United States Special Committee to Investigate Crime in Inter-

state Commerce) conducts an investigation into the extent of organized crime in the country and the corruption of police forces across the nation.

1953: Julius and Ethel Rosenberg, convicted of espionage, are executed in New York.

1954: With the *Brown v. Board of Education* decision the U.S. Supreme Court overturns the “separate but equal” standard for schools and requires that they be integrated “with all deliberate speed.”

1955: A 14-year-old African American, Emmett Till, is murdered in Mississippi, allegedly for flirting with a white woman; his mother insists on an open-casket funeral, and the image of his mutilated body is published in many newspapers and magazines, focusing intense scrutiny on the justice system in Mississippi.

1956: The Federal Bureau of Investigation begins a counterintelligence program, known as COINTELPRO, which is aimed at infiltrating and disrupting domestic social and political organizations, including many involved in the civil rights movement. COINTELPRO continues until 1971.

1958: The Planned Parenthood Federation of America requests that the American Law Institute draft a model abortion statute. The resulting statute supports abortion if the pregnancy resulted from rape or incest, if the baby is believed to have a severe physical or mental handicap, or if carrying the pregnancy to term is likely to cause the woman several physical or mental damage.

1960: The U.S. Supreme Court, in *Boynton v. Virginia*, rules that segregation in public interstate transportation facilities (such as bus or train stations) violates the Interstate Commerce Act.

1961: In *Mapp v. Ohio*, the U.S. Supreme Court rules that evidence seized from a person’s home without a search warrant is inadmissible in state courts, thus extending the principles established in *Weeks v. United States* (1914) that prohibit the use of such evidence in federal courts.

1962: Television personality Sherri Finkbine is refused an abortion in her home state of Arizona despite the fact that she took thalidomide, a drug associated with severe birth defects, during pregnancy. This case galvanizes public support for abortion in specific circumstances.

1962–65: An epidemic of German measles (rubella) sweeps the United States. Because exposure to rubella during pregnancy is associated with a greatly increased rate of birth defects, this epidemic increases public support for abortion in specific circumstances.

1963: On September 15, the 16th Street Baptist Church in Birmingham, Alabama, is bombed, killing four girls and drawing attention to the need for increased legislation protecting civil rights in the United States.

1963: President John F. Kennedy is shot and killed by Lee Harvey Oswald. An investigation by the Warren Commission in 1963–64 concludes that Oswald acted alone, yet several conspiracy theories linger for decades.

1963: The U.S. Supreme Court establishes, in the case *Gideon v. Wainwright*, that indigent defendants are entitled to legal counsel, which must be provided by the state if the defendants cannot pay for it.

1964: The Civil Rights Act of 1964 is signed into law by U.S. president Lyndon Johnson. This act prohibits discrimination based on race, color, religion, sex, or national origin in employment and public accommodations and overrules all state and local laws mandating such discrimination.

1964: New Hampshire becomes the first state to offer a lottery; New York follows three years later and New Jersey begins a lottery in 1970.

1964: A student demonstration at the University of California, Berkeley explodes into violence that results in over 700 arrests.

1964: In *Cooper v. Pate* the U.S. Supreme Court rules that prison inmates may sue for grievances under the Civil Rights Act of 1871.

1964: In *Heart of Atlanta Motel v. United States* the U.S. Supreme Court rules that a motel owner did not have the right to refuse to allow African American guests because such a prohibition interfered with interstate commerce.

1965: African American activist Malcolm X is assassinated in New York City.

1965: A riot in Watts, an African American neighborhood in Los Angeles, requires over 16,000 policemen, highway patrolmen, and National Guard troops to restore order. This highlights problems of institutional racism and poor relations between the police and the local community.

1965: President Lyndon Johnson signs the Voting Rights Act of 1965 that prohibits impediments such as poll taxes and literacy tests, which had been used to prevent African Americans from voting.

1965: *Griswold v. Connecticut*, a U.S. Supreme Court decision, strikes down a Connecticut law prohibiting the use of contraceptives and establishes a “right to marital privacy.”

1966: In *Miranda v. Arizona*, the U.S. Supreme Court rules that a defendant must be informed of his/her right to refrain from self-incrimination (the Miranda warning) and his/her right to legal counsel. The decision also states that a statement of self-incrimination is not admissible as evidence unless the defendant has been informed of these two rights before making the statement.

1966: The Black Panther Party is founded by Bobby Seale and Huey Newton, advocating economic and civic empowerment in the African American community as well as black nationalism.

1966: The Bail Reform Act of 1966 increases the access of accused persons to bail by providing a list of circumstances judges could consider and allows case review and resetting of bail for those individuals who could not make bail as originally specified.

1967: Richard Speck is convicted of the death of eight student nurses in Chicago; he is sentenced to

death, but the sentence is later commuted to life in prison.

1967: California becomes the first U.S. state to legalize abortion in the case of a severely deformed fetus or to preserve the mother's mental health.

1968: Civil rights leader Martin Luther King, Jr., is assassinated in Memphis, Tennessee. James Earl Ray is convicted of the murder in 1969.

1968: U.S. senator and presidential candidate Robert F. Kennedy is shot and killed in California. Sirhan Sirhan is sentenced to death for the crime, a sentence later reduced to life imprisonment.

1968–69: The Zodiac Killer kills at least seven people in northern California; the killer, whose identity remains unknown, sends letters to the local media, signed "Zodiac," that contain non-public details about the crimes and sometimes cryptograms.

1970: The Controlled Substances Act is passed by the U.S. Congress. It creates five schedules or classifications of drugs based on factors such as potential for abuse and approved medical uses, with penalties and regulations based on the schedule of a given drug.

1971: The U.S. Supreme Court, in *United States v. Vuitch*, holds that abortion is a surgical procedure and physicians have the authority to determine if it is necessary to protect a woman's health.

1971: A highly publicized riot at the Attica Correctional Facility in New York State focuses attention on conditions within the prison as well as the civil rights of prisoners.

1972: In *Gates v. Collier*, the U.S. Fifth Circuit Court of Appeals places limits on the types of corporal punishment that can be administered in prisons. It also outlaws the "trustee system" in place at the state prison in Parchman, Mississippi, in which certain inmates were granted the power to control and punish other inmates.

1972: *Furman v. Georgia*, a decision of the U.S. Supreme Court, determines that the application of

the death penalty in an arbitrary manner constitutes cruel and unusual punishment and is unconstitutional. Of particular concern was the perceived racial bias in many states, where African American prisoners were far more likely than white prisoners to be executed although their crimes might be quite similar.

1972: The National Crime Victimization Survey (NCVS), a method of determining the incidence of crime in the United States through sampling and surveys of crime victims, begins in response to dissatisfaction with the Uniform Crime Report (UCR).

1973: President Richard Nixon creates the Drug Enforcement Administration (DEA) to consolidate federal powers of drug enforcement within a single Justice Department agency.

1973: The U.S. Supreme Court, in *Roe v. Wade*, strikes down a restrictive Texas law regarding abortions and greatly expands access to abortions in the country, particularly during the first trimester (12 weeks).

1973: The Kansas City Preventative Patrol Experiment, by George Kelling and colleagues, challenges the conventional wisdom that motorized police patrols reduce crime. Kelling's conclusions were challenged on methodological and other grounds but also led to further research about the effectiveness of many other standard police tactics.

1973: *Doe v. Bolton*, a U.S. Supreme Court decision, strikes down a Georgia state law that requires approval of two consulting physicians and a hospital committee before an abortion can be legally performed.

1973: Governor Nelson Rockefeller of New York signs a bill containing a series of harsh penalties for those convicted of the possession and sale of narcotics, which come to be known as the Rockefeller Drug Laws.

1976: *Gregg v. Georgia* and several other cases end the unofficial moratorium on capital punishment in the United States, which began in 1972.

1976: The Hyde Amendment prohibits the use of federal funding, primarily that provided for Medicaid, to pay for abortions. This has the effect of restricting the ability of low-income women to obtain an abortion.

1976: New Jersey legalizes casino gambling in Atlantic City and two years later opens the first legal casino on the East Coast.

1976: In *Planned Parenthood of Central Missouri v. Danforth* the U.S. Supreme Court rules that a husband does not have veto power over his wife's choice to have an abortion but that a minor seeking an abortion could be required to have parental consent for the procedure.

1976–77: David Berkowitz, the Son of Sam killer, commits a series of murders in New York City.

1977–78: The Hillside Strangler, later revealed to be two men, Kenneth Bianchi and Angelo Buono, Jr., rapes, tortures, and kills at least 10 women in the hills surrounding Los Angeles.

1980: With the decision in *Harris v. McRae* the U.S. Supreme Court establishes that states are not required to provide funding for medically necessary abortions.

1981: President Ronald Reagan is shot by John Hinckley, Jr.; three others are wounded in the attack, most seriously Press Secretary James Brady, who is partially paralyzed as a result.

1982: Charles Brooks, convicted of murder in Texas, becomes the first person in the United States to be executed by lethal injection.

1982: James Q. Wilson and George L. Kelling publish an article introducing the “broken windows” theory, which claims that small social problems (e.g., litter allowed to accumulate on the street or graffiti on public buildings) create an environment that encourages more serious crime.

1984: The Bail Reform Act of 1984 addresses bail for immigration and material witness cases, provides a wide range of alternatives to financial bail,

and prevents a judge from setting bail so high that a person cannot meet it (although detention is allowed if an accused person is considered a threat to the community).

1984: Serial killer Velma Barfield is executed in North Carolina; she is the first woman to be executed in the United States since 1962.

1986: The U.S. Congress passes the Immigration Reform and Control Act of 1986 that requires employers to ascertain that new employees have the legal right to work in the United States, while at the same time granting amnesty to illegal immigrants who had lived continuously in the country since January 1, 1982.

1987: With *McCleskey v. Kemp* the U.S. Supreme Court determines that the fact that the death penalty is disproportionately applied to African Americans, or to people who kill white versus African American victims, is not sufficient grounds to make capital punishment unconstitutional.

1990: Congress passes the Americans with Disabilities Act of 1990 that prohibits discrimination based on disability in several areas, including employment, public accommodation, and telecommunications.

1992: The U.S. Supreme Court affirms in *Parent- hood of Southeastern Pennsylvania v. Casey* that medical clinics could require a 24-hour waiting period before performing an abortion and that states could require that women seeking abortions be informed of alternatives and fetal development.

1992: Congress passes the Professional and Amateur Sports Protection Act forbidding states from authorizing new sports betting, leaving Nevada the only state with legal betting on sporting events.

1993: Dr. David Gunn, an obstetrician/gynecologist who performed abortions, is killed in Pensacola, Florida, by Michael F. Griffin. This was the first known assassination in the United States of a physician by an antiabortion activist.

1994: New Jersey passes a law requiring local communities to be warned of sex offenders living

in the area; the law is dubbed Megan's Law after Megan Kanka, a seven-year-old killed by a known child molester living on her block.

1994: The U.S. Supreme Court, in *National Organization for Women v. Scheidler*, rules that federal racketeering law may be used to prosecute violent antiabortion protesters.

1995: Former football star O. J. Simpson is acquitted in the murder of his wife Nicole Brown Simpson and companion Ronald Goldman, after a highly publicized trial broadcast on U.S. television.

1996: Theodore Kaczynski, known as the Unabomber, is arrested in Montana, after a lengthy FBI investigation. A former professor of mathematics, Kaczynski sent homemade bombs through the mail, many to university professors and graduate students.

1996: The U.S. Congress passes a law requiring every state to develop a procedure for notifying the public when a sex offender moves into a community, similar to the law enacted in New Jersey in 1994.

1996: Lyle and Erik Menendez are convicted of the murder of their parents after a highly publicized trial broadcast on Court TV.

1999: With *City of Chicago v. Morales*, the U.S. Supreme Court strikes down a Chicago ordinance against loitering, intended to prevent gang activity, as impossibly vague.

1999: During the Columbine High School massacre, two students, Eric Harris and Dylan Klebold, kill 12 students and a teacher before killing themselves. The case opens a national debate on school bullying, because Harris and Klebold had reportedly been bullied for years.

2000: Physician Joseph Michael Swango pleads guilty to poisoning three patients; the actual number of victims is believed to be much higher.

2001: On September 11, a series of coordinated attacks by Al Qaeda terrorists on the World Trade Center in New York City and the Pentagon

in Arlington, Virginia, kill almost 3,000 people and result in heightened security measures for air travel as well as other legal changes.

2001: In November, the U.S. Congress passes the Airport Federalization Action and the Aviation and Transportation Security Act to standardize passenger and luggage screening for air travel and make them the responsibility of the federal government.

2002: Aileen Wuornos, a prostitute and serial killer, is executed for the murder of six men in 1989 and 1990.

2005: Dennis Rader is sentenced to 10 consecutive life terms for the murder of 10 children and adults in Wichita, Kansas. He is dubbed the BTK Killer (Bind, Torture, Kill) because he sent letters to news outlets and the police signed with those initials.

2006: Megan Meier, a teenager in Missouri, commits suicide after being subjected to cyberbullying by an adult neighbor. The case led Missouri to enlarge the scope of its harassment law to include text messages, e-mail, and other electronic communications.

2007: Michael Vick, a quarterback in the National Football League, is arrested and pleads guilty to federal felony charges relating to his participation in a dogfighting ring. This highly publicized case highlights differing attitudes regarding blood sports such as dogfighting, which is illegal but still practiced.

2007: Seung-Hui Cho, a student at Virginia Tech, shoots and kills 32 people on the Tech campus before killing himself. The case motivates many American universities to create explicit procedures to notify students on campus of the presence of immediate threats.

2008: The U.S. Supreme Court rules that execution by lethal injection, as practiced in Kentucky, is not unconstitutional.

2010: President Barack Obama signs the Fair Sentencing Act, which narrows the disparity in

punishment for possession of crack versus powder cocaine, from 100-to-1 to 18-to-1. This addresses a long-observed phenomenon that African Americans are more likely to use crack rather than powder cocaine and that sentencing disparities contributed to a disproportionate share of African Americans jailed for drug use.

2010: Rodney Alcala, dubbed the Dating Game Killer because he appeared on the television game show *The Dating Game* in the 1970s, is convicted and sentenced to death for the murder of five girls and women.

2010: Arizona passes the Support Our Law Enforcement and Safe Neighborhoods Act, a law intended to prevent and punish illegal immigration. Among its measures are the requirement that aliens carry identification at all times, a provision that makes it a crime to aid illegal immigrants, and a prohibition against state or local officials restricting enforcement of federal immigration laws. A federal court issues an injunction against the law taking effect due to concerns about its constitutionality and violations of civil liberties.

2011: Conrad Murray, a physician who treated pop singer Michael Jackson, is convicted of manslaughter in the singer's death, which was caused by an overdose of the anaesthetic propofol.

2011: Oscar Ortega-Hernandez shoots at the White House, with two bullets actually striking the building; he is charged with attempted assassination of President Barack Obama, although Obama was in Hawai'i at the time.

2011: Representative Gabrielle Giffords is shot by Jared Lee Loughner during an outdoor public meeting near Tucson, Arizona; 18 other people are shot and six die.

2011: Former Illinois governor Rod Blagojevich is convicted on 17 federal corruption charges and is sentenced to 14 years in prison.

2011: Whitey Bulger, a noted organized crime figure from Boston who had been a fugitive for many years, is arrested in California.

2011: Ingmar Guandique is convicted of the murder of Chandra Levy, an intern working at the Federal Bureau of Prisons at the time of her disappearance in 2001.

2011: Brian David Mitchell is sentenced to life in prison for the kidnapping and rape of Elizabeth Smart, 14 years old, from her Salt Lake City home in 2002.

2012: In several U.S. states, including Alabama, Tennessee, South Carolina, and Georgia, a law takes effect requiring employers to use a federal program called e-Verify to confirm that their employees are eligible to work in the United States. In California, a state law takes effect that prohibits private employers from being required to use e-Verify unless its use is mandated by federal law.

2012: Laws in Delaware and Hawai'i allow same-sex couples to enter into civil unions, a status that carries the same rights and benefits enjoyed by married couples.

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Ableman v. Booth

Resulting in a major ruling in which the U.S. Supreme Court determined that state courts cannot issue orders that contradict or circumvent the holdings of federal courts, *Ableman v. Booth*, 62 U.S. 506 (1859) stands as a landmark case that determined the supremacy of federal law. Although *Ableman* dealt with the authority of the Fugitive Slave Act, its holding set a precedent that state courts must recognize the supremacy of the U.S. Supreme Court in determining cases arising pursuant to the U.S. Constitution and laws of the United States. The *Ableman* holding has had significant ramifications for prosecutors, defense attorneys, and defendants.

The *Ableman* case involved a dispute that arose in Wisconsin in 1854 regarding the custody of a fugitive slave. At that time, Wisconsin was a center for abolitionism and its constitution had outlawed slavery. In 1850, however, the U.S. Congress had passed the Fugitive Slave Act as a part of the Compromise of 1850. The Compromise of 1850 had defused four years of controversy between slaveholding southern states and the free states of the North. The Fugitive Slave Act was intended to allay Southern concerns that abolitionists in the North were assisting escaped slaves. To remedy these concerns, the Fugitive Slave Act required federal marshals to assist slave catchers

in capturing fugitive slaves present in states that had abolished slavery (free states).

The Fugitive Slave Act established special commissioners who had concurrent jurisdiction with the U.S. district courts in enforcing the law. The special commissioners were empowered to assist in the return of runaway slaves to their masters. Any federal marshal who refused to assist in the return of a slave was subject to a \$1,000 fine, and rewards were provided to those who assisted in the apprehension of runaways. At an ex parte hearing before the special commissioner, a claimant's sworn testimony regarding ownership of a suspected runaway was sufficient to establish fugitive status, and suspected slaves could not request a jury trial or testify on their own behalf.

Sherman Booth, an abolitionist, was the editor of the *Milwaukee Free Democrat*. When Booth became aware that Joshua Glover, a runaway slave from Missouri, was being held in a jail in Milwaukee, he gathered a group of over 100 men, who attempted to have the U.S. marshal holding Glover arrested. When this attempt was unsuccessful, Booth led a raid on the jail, freeing Glover. Glover was able to escape to Canada, but Booth was arrested for violating the Fugitive Slave Act. Booth appealed to the Wisconsin Supreme Court, which granted him a writ of habeas corpus and declared the Fugitive Slave Act unconstitutional. Federal officials appealed the Wisconsin Supreme

Court ruling, and the U.S. Supreme Court ruled the supremacy of federal law meant that Booth must stand trial. After being tried and convicted in the U.S. District Court for Wisconsin, Booth again appealed to the Wisconsin Supreme Court, which again ruled the Fugitive Slave Act was unconstitutional and overturned his conviction. The case moved between state and federal court for four years, until in 1859 the U.S. Supreme Court ruled that the supremacy clause of the U.S. Constitution made the Constitution, federal laws passed in accordance thereof, and treaties the supreme law of the land. These bound state judges, regardless of state constitutions or statutes to the contrary. The Wisconsin legislature issued a Declaration of Defiance, but Booth returned to jail until he was pardoned by President James Buchanan shortly before he left office in 1861.

Ableman was significant because it held that the U.S. Constitution grants the federal judiciary final authority with regard to matters involving the Constitution and laws of the United States. Because of this, state courts are unable to review or interfere with judgments issued by federal courts in matters involving the U.S. Constitution or federal laws. The U.S. Constitution thus restricts and limits the powers of the states, depriving their courts of the authority to annul the judgments of federal courts or to hold federal laws unconstitutional because of inconsistencies with their state constitutions. The holding has prevented state authorities from interfering with federal authorities when the federal authorities are carrying out duties pursuant to U.S. law.

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See Also: Buchanan, James (Administration of); Constitution of the United States of America; *Dred Scott v. Sandford*; Fugitive Slave Act of 1850; Judiciary Act of 1789; Slave Patrols; Slavery, Law of; Supreme Court, U.S.

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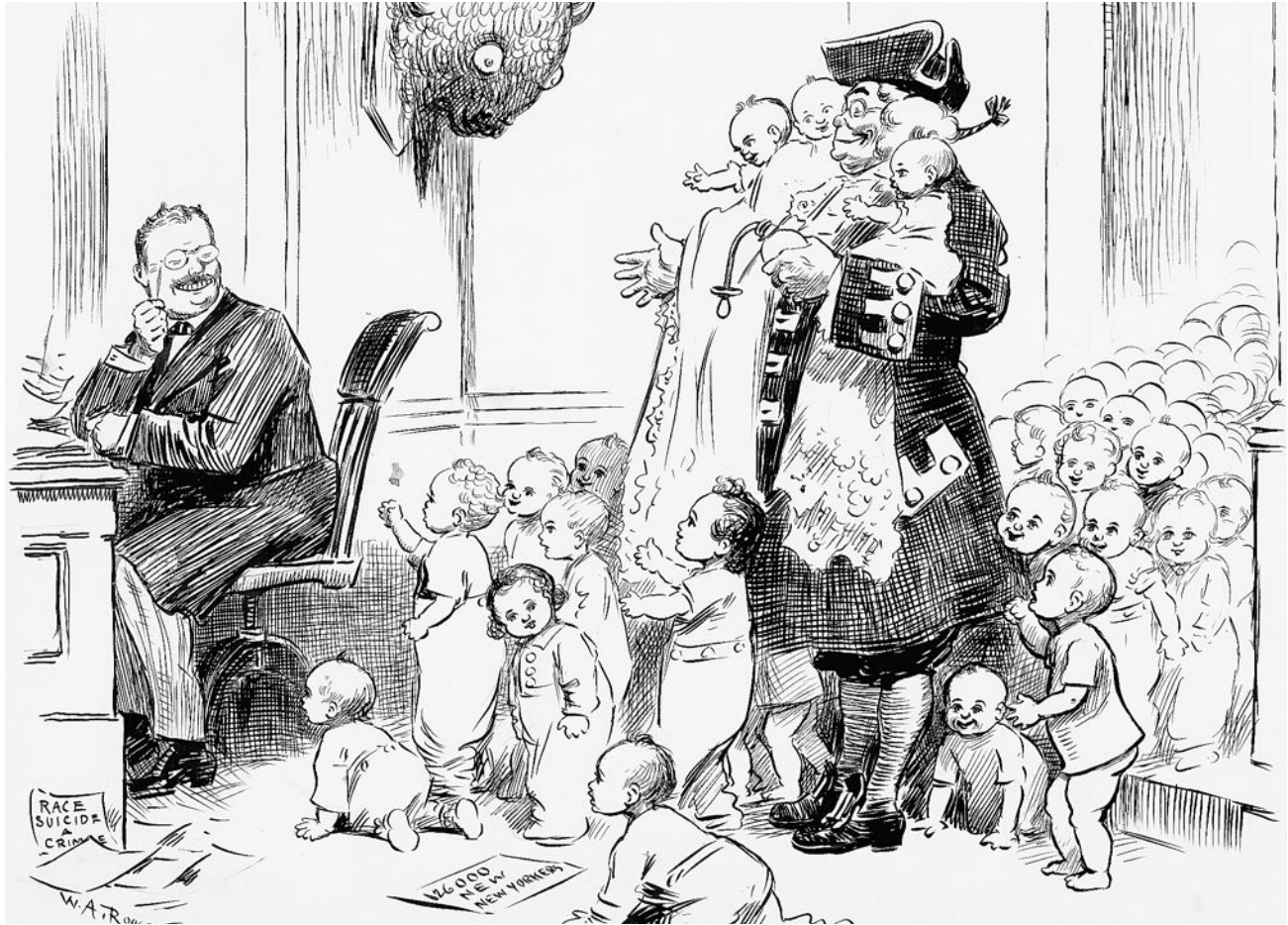
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Abortion

During the colonial period, control over reproduction, similar to most family matters, remained a private concern. No laws prohibited abortion or the use of contraception. Most Americans did not consider abortion legally or morally wrong as long as it occurred prior to quickening, or the mother's first perception of fetal movement.

States passed the first wave of abortion laws in the 1820s and 1830s. Connecticut was the first state to enact a law in 1821, followed by Missouri, Illinois, and New York. By 1840, 10 more states had passed statutes. These laws did not intend to ban abortion but to make it safer through regulation. Legislators were concerned that women sometimes faced death or serious injuries from poison potions or dangerous instruments. Legislation generally made abortion illegal only after quickening and punished the abortionist, not the woman seeking the abortion.

A second wave of state laws resulted from an active campaign to criminalize abortion. Numerous factors influenced this drive. First, antiabortion champions harked upon race suicide notions, pointing to a perceived imbalance in fertility rates between the "best" women—wealthy, white, Anglo-Saxon Protestants—and the "inferior stock"—Irish and later southeastern European immigrants who were primarily Catholic or Jewish. Banning abortion, according to these campaigners, would force the "best" women to cease visiting abortionists such as Madame Restell and to fulfill their maternal and patriotic duty to bear "proper" children. Second, the American Medical Association (AMA), founded in 1847, was desperate to monopolize medical services. To this point, women controlled abortion; female relatives or midwives provided abortion information and services. Male doctors endeavored to redefine



This cartoon from between 1900 and 1912 points out the potential effects of Theodore Roosevelt's fear of the idea of "race suicide." A character called "Father Knickerbocker," representing New York City, arrives with a crowd of babies in Roosevelt's office, where newspapers on the floor announce "race suicide a crime" and "126,000 new New Yorkers." The caption asks, "Will this do?"

abortion as a dangerous procedure only licensed physicians could perform. As nearly all medical schools only permitted men, abortion would be controlled by male doctors. Third, state legislators continued to be concerned with women's safety. Abortions, similar to other surgeries in the pre-antibiotic era, could endanger women's health. The much-publicized death of Mary Rogers from abortion in 1841 led New York to strengthen its abortion law. Fourth, medical advances by mid-century led many doctors to agree that quickening was not a magic moment at which the fetus came to life; instead, life began at conception.

Despite the anti-abortion movement organized by the AMA and spearheaded by Dr. Horatio Storer of Massachusetts in 1860, not all doctors agreed. Some remained sympathetic to the plight

of women facing unwanted pregnancies and continued to perform abortions. Some physicians maintained the priority of the mother's health while others began to value the life of the fetus over that of women. Anti-abortion doctors gained allies from social purity crusaders concerned with sexual morality and moral corruption. Many feminists also opposed abortion because it allowed men to exploit women sexually: male demands for sex led to undesired reproduction.

Thus abortion was not necessarily a sign of autonomy for women but a procedure to which they resorted because of male sexual aggression both inside and outside marriage. The federal government joined the crusade with the Comstock Law of 1873, which was named after moral reformer Anthony Comstock. This act forbade

the importation, mailing, and interstate transportation of articles and literature concerning contraception and abortion. By 1880, 40 states had antiabortion statutes; 13 were new laws while 27 broadened existing measures. The great majority of these laws allowed abortion only if performed by a physician to save a woman's life.

Abortion During Criminalization

Criminalizing abortion at the state and federal level did not lead to its disappearance. Veiled advertisements for abortifacients continued to appear in newspapers and magazines, leading to a flourishing black market trade. Midwives, unlicensed doctors, and laypeople performed abortions, usually for working-class or indigent women. Licensed sympathetic physicians could stretch the definition of "lifesaving" in the law to perform legal abortions, generally for women of economic means. Many cities had several trusted abortionists, and most towns had a least one. Numerous doctors who did not perform the procedure considered the abortionist an important colleague to whom they could refer their patients. Abortion rates held steady through the period of criminalization: approximately 20 percent of all pregnancies for single and married women alike ended in abortion. Some noted increases occurred during the dire straits of the Great Depression and during World War II, as the nation relied heavily on female labor to sustain the industrial war effort. Officials often accepted cash payments from abortion providers to look the other way.

Postwar reassertions of traditional maternal roles for women led to a clampdown on abortion. Hospitals formed committees of five to seven doctors to decide if abortion was necessary to save a woman's life, reducing the power of an individual sympathetic doctor to perform legal abortions. Despite this closing of the legal loophole, doctors willing to risk their license and face jail time performed about one-third of abortions in the 1950s. Wealthy women could fly to other countries for the procedure while middle- and working-class women could use numerous underground services that functioned in urban areas. Indigent women often faced self-induced or "back-alley" abortions.

Calls for abortion reform began in the 1950s. Psychiatrists were the first professional group to question restrictive abortion laws because they

dealt with the psychological damage women experienced from unwanted pregnancies. The American Public Health Association also promoted change: Mary Calderon, medical director of Planned Parenthood Federation of America (PPFA), wrote articles and delivered speeches about the public health concerns posed by illegal abortions. Some medical doctors joined the appeal because abortion laws undermined medical authority; in 1958, they, along with PPFA, requested that the American Law Institute (ALI) investigate state laws and draft a model abortion statute. The ALI draft endorsed abortion in three instances: if pregnancy would likely cause the woman serious physical or mental damage, if birth would result in a physically or mentally handicapped baby, and if the pregnancy resulted from rape or incest.

Events in the 1960s brought public notice to the demand for reform. In 1962, television personality Sherri Finkbine took thalidomide, which was touted as a cure for morning sickness in Europe where her husband had obtained the drug, while pregnant. Dr. Helen Brooke Taussig of the Food and Drug Administration (FDA) found that thalidomide caused fetal malformations, and Finkbine subsequently petitioned to be allowed to have an abortion. Her home state of Arizona denied her request. The American public sympathized with this middle-class mother of four who loved her children but simply did not want to carry this specific pregnancy to term. Similarly, an epidemic of German measles swept the nation from 1962 until 1965. Pregnant women who contracted the disease faced a 50 percent chance of fetal deformity. Some doctors ignored laws and performed abortions; when the state prosecuted them, a public outcry erupted. Other aspects also led to increased public awareness of the abortion debate, including concern over the environment and population growth; an increased openness about sexual matters, marital problems, and contraception; and technological advancements in new, simple, and safe abortion procedures.

The Quest for Legality

States began to respond to the pressure for change. In 1967, California became the first state to pass a bill that allowed doctors to perform abortions for a severely deformed fetus or to protect the mental

health of the woman. The latter aspect gave physicians much greater latitude to perform legal abortions than the earlier stipulation to save the mother's life. Governor Ronald Reagan signed the bill into law. The same year, Colorado passed a new statute based on the ALI model. Between 1967 and 1970, 12 states liberalized abortion. In 1970, New York, Alaska, Hawai'i, and Washington legalized abortion on demand. By 1973, 16 states had liberalized their abortion laws.

While feminists welcomed reform, their impact on legislators was minimal. Feminists remained relatively quiet on the issue until Betty Friedan linked women's ability to control their reproductive life to their ability to participate fully and equally in the economic and political realm. The National Organization for Women, cofounded by Friedan, was the first group to argue for abortion in feminist and civil libertarian terms: Women have the right to control their reproductive lives. These contributions were important but not pivotal to liberalizing laws. Feminists admit that they often downplayed their arguments for abortion because it alienated big donors who supported reform for different reasons such as population control, welfare savings, environmental concerns, and medical autonomy.

The issue came before the Supreme Court in the early 1970s. In *United States v. Vuitch* (1971), the court held that abortion was a surgical procedure; as such, physicians should determine when it was necessary to protect a woman's health. Two years later, *Roe v. Wade* (1973) confirmed this medical jurisdiction. The court struck down a Texas law that deemed abortion illegal unless performed by a physician to save the woman's life. Justice Harry Blackmun wrote for the majority: Medical autonomy was paramount, but he also included abortion in the privacy rights established in *Griswold v. Connecticut* (1965). *Doe v. Bolton* (1973), the companion case to *Roe*, invalidated a Georgia law that required the approval of a hospital staff committee and two consulting physicians to perform an abortion; the court found that the approval of the woman's physician was sufficient. *Doe* also rejected state residency requirements for women to obtain abortions. While these cases invalidated the state's traditional power to criminalize abortion, they did not remove all restrictions. After the first trimester, the state may regulate abortions to

preserve the woman's health; after fetal viability, usually the end of the second trimester, the state may prohibit abortion unless the mother's life is at stake.

Abortion After *Roe*

These Supreme Court decisions galvanized groups on both sides of the issue. Before 1973, pro-choice activists had devoted their time and effort to legalizing abortion. After *Roe*, they worked to keep abortion legal. They also expanded their agenda to guarantee access to all reproductive choices, including abortion, birth control, birthing healthy babies, and bringing up children in homes above the poverty line. The change in organizational title from the National Abortion Rights Action League to the National Abortion and Reproductive Rights Action League in 1994 reflected this inclusive agenda. Activists called on the government to devise programs that empower women to make the reproductive choice that is in their best interest.

The "pro-life" movement in the wake of *Roe* was a coalition of the Catholic Church, the New Right, and the Republican Party. They lobbied the government to ban abortion, sex education in schools, and teen access to contraceptives. By the 1980s and 1990s, they had been joined by a radical antiabortion fringe that used violence and shock tactics such as bombings, murders, shootings, obstruction of clinics, threats, and harassment.

Efforts to overturn *Roe* failed, but numerous limits have been placed on abortion. When abortion became legal, fiscal conservatives touted it as a cost-saving measure: Public funding of an abortion was much cheaper than funding childbirth and child rearing for recipients of Aids to Families with Dependent Children. Such arguments influenced state and federal governments to pay for abortions among indigent women until the pro-life lobby effectively eliminated federal money for the procedure with the Hyde Amendment of 1976. The Supreme Court upheld such funding restrictions: *Beal v. Doe* (1973) and *Maier v. Roe* (1973) asserted that the Fourteenth Amendment does not compel states to pay for abortions if they pay for childbirth; *Poelker v. Doe* (1973) sustained public hospitals' rights to refuse to perform abortions; and *Harris v. McRae* (1980) decided that neither the federal nor state government must pay

for abortions because they paid for live births. With these decisions, the court asserted that the government cannot place obstacles to free choice but it is not required to remove those obstacles that are not of its own making, including poverty. The court also upheld the Hyde Amendment, barring states from using Medicaid funds for abortions unless the woman's life was at stake.

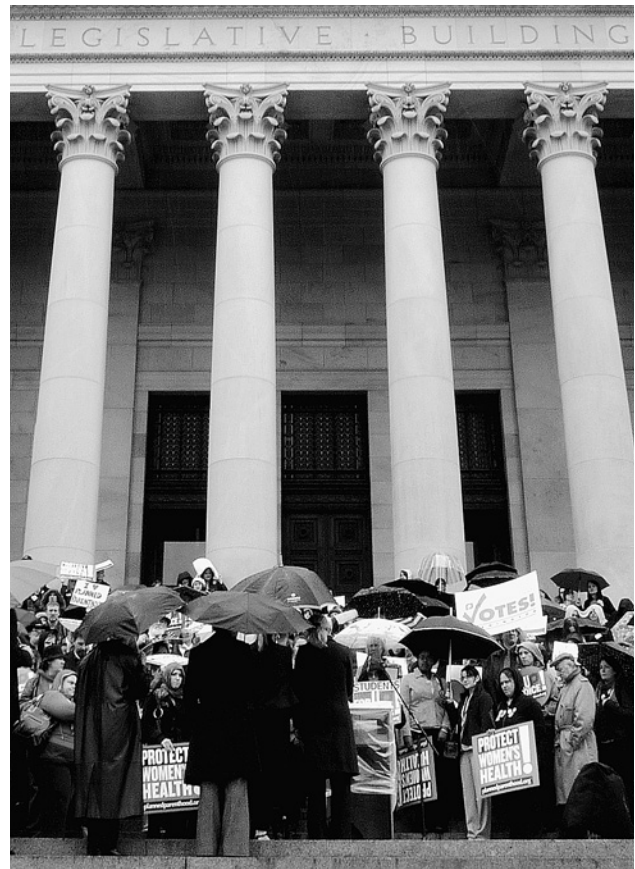
In addition to funding, the court heard cases dealing with third-party consent to abortion. *Planned Parenthood of Central Missouri v. Danforth* (1976) allowed a patient's informed consent to the procedure but rejected the husband's veto power over his wife's decision. The justices also asserted that parents did not have an absolute veto over a minor's decision to abort. *Belotti v. Baird* (1979) affirmed *Danforth*, clarifying that parental consent for minors was allowable if an alternative procedure such as a judge's approval was in place, and *H. L. Matheson* (1981) upheld a Utah law requiring doctors notify "if possible" parents of an immature dependent minor prior to performing an abortion.

Akron v. Akron Center for Reproductive Health (1983) affirmed that minors need not have parental permission if minors can demonstrate to the court that they are mature enough to make the decision themselves. *Hodgson v. Minnesota* (1990) allowed states to require pregnant minors to inform both parents, and *Ohio v. Akron Center for Reproductive Health* (1990) required the notification of one parent of a minor before obtaining an abortion if states allowed judicial bypass. *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992) again upheld parental consent with judicial exemption and rejected husband notification.

The court has also restricted aspects of abortion. *Webster v. Reproductive Health Services* (1989) allowed states to prohibit abortion in public hospitals and to prohibit publicly employed doctors from performing the procedure, as well as to mandate viability testing in women over 20 weeks pregnant. *Rust v. Sullivan* (1991) upheld the gag rule passed during the Reagan administration whereby clinics receiving federal funds under Title X of the Public Health Service Act could not discuss abortion with patients as a medical option. President Bill Clinton suspended the gag rule in 1993. *Planned Parenthood of Southeastern Pennsylvania v. Casey*

(1992) upheld 24-hour waiting periods and state mandates that doctors inform women about fetal development and alternatives to abortion.

Yet justices protected abortion in other court cases. *Akron v. Akron Center for Reproductive Health* (1983) and *Planned Parenthood of Kansas City v. Ashcroft* (1983) invalidated state laws that required second-trimester abortions take place in hospitals rather than clinics. *National Organization for Women v. Scheidler* (1994) ruled that clinics can invoke the 1970 federal racketeering law to sue violent antiabortion protest groups for triple damages, and *Hill v. Colorado* (2000) upheld state laws that protect abortion patients and doctors by prohibiting protesters within 100 feet of clinics. *Stenberg v. Carhart* (2000) struck down bans on partial-birth abortions because they lacked exemptions to save the mother's life.



A crowd backing Planned Parenthood and NARAL gathers in the rain on the steps of the legislative building in Olympia, Washington, for a rally in support of abortion rights in 2009.

The most recent trend has been toward restriction. In 2007, the court decided in *Gonzales v. Carhart* that states could prohibit a rarely used late-term technique called intact dilation and evacuation (better known as partial-birth abortion), even though no exemption for the woman's life existed, but left intact the more common technique of regular dilation and evacuation (D&E). Justice Ruth Ginsburg, the only woman on the court, dissented, arguing that this decision undermined both women's health and physicians' discretion.

New abortion techniques provide women with more options. President Clinton in 1993 allowed FDA testing of RU-486, or mifepristone, which gained FDA approval in 2000. This pill blocks progesterone, causing a medical miscarriage in 98 percent of cases. This option is especially beneficial to women who live in rural areas where access to clinics is minimal: More than 80 percent of counties in the United States have no abortion services. Mifepristone is safer than many abortion procedures because it can be used early in pregnancy. Another pill, misoprostol, causes miscarriages in 85 percent of cases. While not as effective as mifepristone, it is easily accessible because its original use was to cure ulcers.

These abortion pills can be obtained from a doctor's office, thereby allowing women to avoid violent clinic blockades. Such blockades, launched by Randall Terry and Operation Rescue among others, attempt to isolate doctors who provide surgical abortions and to terrorize them and their families. Beginning in 1993 with the murder of Dr. David Gunn in Pensacola, Florida, avowed pro-life militants killed seven other physicians who provided this medical procedure.

Since 1990, abortion rates have been falling for all ages and races. In 1990, the overall abortion rate was 27.4 per 1000; it fell to 19.4 in 2005. Women of color have much higher rates of abortion. In 1990, the black rate was 63.9, the Hispanic rate was 35.1, and the white rate was 21.5. By 2005, these rates had fallen to 49.3, 26.5, and 13.6, respectively. Part of this decline can be attributed to effective contraceptives such as the birth control pill, increased use of condoms in the face of AIDS, and the indistinguishable nature of medical versus natural miscarriage. Violence at clinics also played a role in the decline: Fewer practitioners offered abortion services out of fear for their lives.

The isolation of abortion providers from mainstream medicine since *Roe v. Wade* led to changes in services. Eighty percent of abortions in 1973 took place in hospitals, but obstetrician/gynecologists (OB-GYNs) began to move away from the procedure due to the controversy surrounding it. By the mid-1990s, only 12 percent of OB-GYN residencies offered abortion training. Clinics run mostly by women stepped into the vacuum; 90 percent of abortions occurred there in 1996. While clinics were more cost efficient with a more specialized and highly trained medical staff, they were also more easily targeted by pro-life fanatics than hospitals or doctors' offices.

Ongoing Debate

The 21st century has witnessed efforts to reverse this trend. A new generation of doctors led by Jody Steinauer and Medical Students for Choice has worked to reintegrate abortion into normal medical care. By 2010, 50 percent of OB-GYN programs required abortion training and 40 percent offered it as an elective. Advances in first-trimester abortion allow the procedure to be completed in five minutes, making it very low risk and allowing doctors to incorporate it into their regular practice where they conduct other minor procedures.

At the state level, a flood of legislation to restrict abortion access passed in 2011. Driven partly by the centrality of abortion in the healthcare debates and by Republican gains at the polls in 2010, these laws introduced technological issues not present in 1973, such as mandating that women undergo an ultrasound and/or listen to fetal heartbeats. Anti-abortion activists hope these measures will reach the Supreme Court to overturn *Roe v. Wade*.

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See Also: 1851 to 1900 Primary Documents; Buntline, Ned; Comstock Law; Criminalization and Decriminalization; *Griswold v. Connecticut*; National Organization for Women; *Roe v. Wade*; Supreme Court, U.S.; Terrorism; *Wolf v. Colorado*.

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Abrams v. United States

In *Abrams v. United States*, the government prosecuted five people for violating the Espionage Act of 1917. The government claimed the people, including Jacob Abrams, distributed pamphlets in New York condemning the actions taken by the U.S. government in World War I. Having been found guilty at trial, the defendants appealed their case to the U.S. Supreme Court. Although their convictions were upheld by the Supreme Court, the case became a landmark Supreme Court decision because Justice Oliver Wendell Holmes wrote a dissenting opinion that eventually formed the basis for future First Amendment decisions.

During 1918 and 1919, the U.S. government found itself in the midst of World War I and the Red Scare. The U.S. entry in the war brought strong internal dissent. Socialists and anarchists were some of the most vocal opponents. Having seen these opposition groups overthrow the Russian czar, the United States feared a similar fate from socialists and anarchists in the country, particularly from those of Russian descent. This small but vocal group of supporters began printing pamphlets for distribution in New York City. In August 1918, a joint raid by the Justice Department, War Department, and New York police yielded Abrams, his codefendants, and hundreds of pamphlets. All five suspects were Russian by birth and had not become U.S. citizens despite having lived in the country for 10 years.

Following their arrest, the defendants were indicted for multiple violations of the Espionage Act. The violations involved publishing disloyal

and abusive language about the form of the U.S. government, language that would bring the government of the United States into contempt, and language that would provoke resistance to the war. The final count was for being involved in a conspiracy to publish the allegedly disloyal and subversive documents. Each defendant admitted the facts but they collectively argued that the Espionage Act violated their free speech rights guaranteed by the First Amendment.

Clear and Present Danger

In the fall of 1919, the case was argued before the U.S. Supreme Court. Earlier that year, the Supreme Court had upheld the constitutionality of the Espionage Act. Justice Holmes had delivered the unanimous decision of the Supreme Court in those cases. In doing so, he articulated that the First Amendment did not protect speech that gave rise to a specific and imminent harm to the United States. Holmes used the term *clear and present danger* to define the limits of the First Amendment. The *Abrams* case was the first case to come before the court regarding the First Amendment since those initial rulings.

Three weeks after hearing arguments on *Abrams*, the Supreme Court announced its decision upholding the convictions and holding that the Espionage Act did not violate the First Amendment. While the outcome did not surprise, the dissenting opinion issued by Justice Holmes did. Holmes claimed that the Espionage Act, as applied to the defendants, violated their First Amendment rights because there was no clear and present danger that the harm promoted by the speech would come to fruition. Instead, he found the content of the speech to be so unworthy of consideration that it would not persuade anyone to do anything.

Holmes's dissent was the result of conversations he had with New York Federal Judge Learned Hand and Harvard law professor Zechariah Chafee. Both informed Holmes about the lack of guidance his initial enunciation of the clear and present danger test provided. They were concerned that he had adopted the common law of sedition as the limit of the First Amendment. If this was the case, they argued, the First Amendment would only extend to the right to publish and would not protect people from prosecution based on the content of their speech.



Women marching for peace on Fifth Avenue in New York City on August 29, 1914, in response to the recent start of World War I. Jacob Abrams and his codefendants, who opposed U.S. involvement in the war a few years later, were arrested in August 1918 and eventually appealed their case to the U.S. Supreme Court.

Holmes took these comments and incorporated them into his dissent by linking the intent of the publication with the likelihood of its occurrence. He stated that the defendants had no intent to jeopardize the war effort. They could not have believed their publication would actually impair the government's ability to produce munitions for the war or cause resistance to the draft.

While Holmes's dissent pleased those favoring greater freedom of expression, his approach was not adopted by the court for nearly 20 more years. Today, it serves as a key piece of the foundation for First Amendment jurisprudence.

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See Also: Bill of Rights; Espionage Act of 1917; Holmes, Oliver Wendell, Jr.; Political Dissidents; Sedition Act of 1918; Supreme Court, U.S.

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Adair v. United States

Adair v. United States, 208 U.S. 161 (1908), is one of four cases chronicling the saga of "yellow-dog contracts," so named by labor stalwarts depicting those who signed them as equivalent to

the lowest breed of mongrel dog. These contracts were characterized by terms prohibiting current and potential employees from joining or retaining membership in labor unions and came into increasing use as labor unions began to expand their influence in the early 20th century.

Pressured by unions, Congress enacted the Erdman Act (1908), in part criminalizing the discrimination, dismissal, and blacklisting of current or potential railroad employees because of union membership. *Adair* struck down Erdman as violating the Fifth Amendment due process clause and as an improper exercise of the interstate commerce clause. Citing *Adair* as precedent, the court in *Coppage v. Kansas*, 236 U.S. 1 (1915), invalidated 13 state statutes criminalizing discrimination in hiring on the basis of union membership, grounding its decision in the Fourteenth Amendment freedom of contract doctrine.

Court support for yellow-dog contracts climaxed in *Hitchman Coal & Coke Co. v. Mitchell*, 245 U.S. 229 (1917), wherein the court upheld the constitutionality of injunctions barring union organizers from soliciting union memberships and initiating strikes, again invoking *Adair* and opining that employers enjoyed a property interest in their workers. The demise of yellow dog contracts came in response to the changing political climate following the Great Depression. The Norris-La Guardia Act (1932) banned yellow-dog contracts, barred federal courts from issuing injunctions against nonviolent labor disputes, and established the right of employees to be free of employer interference when considering trade union membership. The Supreme Court upheld Norris-La Guardia in *Lauf v. E. G. Shiner & Co.*, 303 U.S. 323 (1938).

Significance

Adair is significant in the social history of crime as it illustrates three fundamental social dynamics operative in the development of criminal justice policy. First, it illustrates how particular behaviors come to be taken as either criminal or anodyne in particular historical socioeconomic and sociopolitical contexts. Second, it illustrates how particularizing issues—for example, focusing narrowly on the particular parties' freedom to contract—neglects the impact of changing socioeconomic

and sociopolitical structures on a society's code of conduct and criminal law. Finally, *Adair* illustrates how criminal acts are often protests against the social code and social structure as expressed in criminal law.

Many labor-oriented scholars, for example, concede that the decriminalization worked by *Adair* may be perceived as justifiable under the Fifth Amendment in the context of that amendment's enactment. Both slavery and involuntary servitude were socially, politically, and constitutionally sanctioned at that time, and the presumption of equal bargaining power between an employer and an employee could be considered fairly sound. Yellow-dog contracts in such a context might be considered commensurate with social, political, and economic norms and so not the proper subjects of criminalization.

Yellow-dog contracting combined with blacklisting in the context of ever increasing unemployment from the depression of 1920–23 through the Great Depression altered the socioeconomic context significantly. The increasing competition for jobs, in concert with the changes in social structure wrought by the Industrial Revolution, including the concentration of wealth and political power in corporations, banks, and the securities industry, also transformed the sociopolitical context. Freedom in general was now perceived as under threat by private economic power. Constraints on the freedom to contract that could not have been anticipated at the founding were taken as one important example, and these changed perceptions mobilized social movements, undermining the legitimacy of established norms.

These changes in perception, sociopolitical context, and socioeconomic structure generated spiraling violence, engaged in by labor and capital alike, closing factories, disrupting commerce, and posing escalating threats to life, liberty, and the rule of law. Governing entities at all levels became convinced that the costs of not criminalizing behaviors like those at issue in *Adair* outweighed the costs of criminalizing them and restricting the individual liberty to contract. The Supreme Court's failure to focus upon the changing structural and normative landscape frustrated the nation's capacity to deal positively with the very phenomena that courts and criminal policy are intended to control.

Finally, *Adair* illustrates the emotional attractions of crime, regardless of material benefit and the threat of punishment. Both sides of the dispute over criminal justice policy as reflected in *Adair* were focused not on the instrumental benefits of one policy over the other alone but on the moral righteousness of their positions. The criminal acts of each were in this sense laced with moral condemnation of extant policy.

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See Also: Criminalization and Decriminalization; Equality, Concept of; LaGuardia, Fiorello; Strikes.

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Adams, John (Administration of)

Although John Adams served a single term as president of the United States, as a lawyer, political theorist, and statesman, he played a major role in shaping American views of crime and punishment. Adams's career as an attorney made him a strong believer in the rights of criminal defendants and in the importance that any accused individual receive adequate counsel. As president, Adams's support for the Federalist legislation that became

known as the Alien and Sedition Acts opened him to tremendous criticism by contemporaries, and later historians, as infringing on the constitutional rights of citizens opposed to government policies.

Born on October 30, 1735, Adams entered Harvard College at the age of 16, initially intending to become a minister. After graduating in 1755, Adams trained to become a lawyer after several years' service as a schoolteacher, gaining admittance to the bar in 1758. A prominent opponent of the Stamp Act of 1765, Adams drafted instructions that the residents of Braintree, Massachusetts, sent to their representatives in the legislature regarding objections to the Stamp Act, focusing partly on the rights of all English citizens to be tried only by a jury of one's peers. Adams also gained a reputation as a staunch advocate for legal representation for those accused of criminal charges. Adams agreed to represent eight British soldiers who were charged with killing five civilians during the events that became known as the Boston Massacre. Although the British soldiers had experienced difficulty finding legal representation, Adams worked as their defense counsel even though he feared this would harm his reputation. Although paid only a nominal amount for his work, Adams obtained acquittals for six of the soldiers tried, with the two who had fired shots being convicted of manslaughter rather than murder. As an elected member of the Massachusetts General Court, the colony's legislative body, Adams authored a pamphlet, *Thoughts on Government*, which advocated for the separation of powers between the executive, legislative, and judicial branches of government. This work was tremendously influential and later influenced many state constitutions, as well as James Madison when he wrote the U.S. Constitution.

A member of the committee charged with writing the Declaration of Independence, Adams and the rest of the group left this task primarily to Thomas Jefferson. Jefferson later credited Adams as the individual chiefly responsible for garnering the declaration's passage on the floor of the Continental Congress. Sent twice by Congress to Europe to negotiate with Britain and France, Adams also wrote the Massachusetts constitution of 1780, again emphasizing his strong belief in the value of independent executive, legislative, and judicial branches of government. Adams

served two terms as George Washington's vice president, joining the Federalist Party, although uneasiness with that entity's leader, Alexander Hamilton, kept him from enjoying complete trust from that group's partisans. Despite this, Adams was elected to succeed Washington as the United States' second president in 1796, defeating Jefferson, who became his vice president.

As president, Adams maintained Washington's cabinet and sponsored little new legislation. Of the initiatives that dealt with criminal law that passed during his administration, perhaps the most controversial were four separate acts, popularly known as the Alien and Sedition Acts. Passed by Congress in 1798, the four acts were intended to suppress opposition to the Federalists from the Democratic-Republicans, led by Jefferson. Collectively, the Alien and Sedition Acts extended the period of residence necessary before an immigrant could obtain U.S. citizenship to 14 years, permitted the president to deport any noncitizens he deemed dangerous to the nation, and made it a crime to publish writings that criticized the government or its officials. The Alien and Sedition Acts were severely criticized by the Democratic-Republicans. Jefferson secretly wrote resolutions passed by the Kentucky and Virginia legislatures condemning the legislation as a violation of the First and Tenth Amendments of the U.S. Constitution, insofar that they abrogated rights of free speech and asserted powers not assigned to the federal government. Although the acts were never appealed to the U.S. Supreme Court, at least 10 individuals were convicted of violating them and others were alleged to have left the United States to avoid prosecution or deportation.

The Democratic-Republicans used opposition to the Alien and Sedition Acts to build support for Jefferson in the presidential election of 1800, where he defeated Adams by a narrow margin. Before leaving office, Adams signed the Judiciary Act of 1801, which enabled the Federalists to make a series of appointments to the bench, a group known collectively as the "Midnight Judges," before Jefferson assumed the presidency. Although many of these judges lost their positions when the Judiciary Act of 1802 reconfigured the courts, perhaps Adams's greatest accomplishment was the last-minute appointment of John Marshall as the chief justice of the U.S. Supreme

Court. Marshall, who served until 1835, was influential in establishing the federal judiciary as a branch of government equal to that of the executive and legislative.

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See Also: Adams, John Quincy (Administration of); Articles of Confederation; Declaration of Independence; Jefferson, Thomas (Administration of); Washington, George (Administration of).

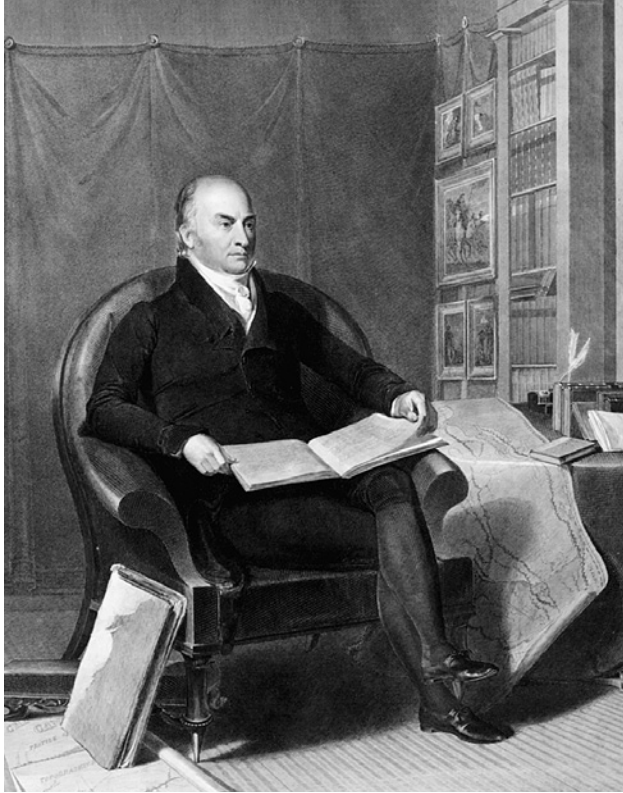
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Adams, John Quincy (Administration of)

John Quincy Adams, the sixth president of the United States (1825–29), was also the eldest son of John Adams, the second president (1797–1801). His public service to his country was as a senator, diplomat, congressman, secretary of state, and president. John Quincy Adams was born in Braintree, now known as Quincy, Massachusetts, to John Adams and Abigail Adams. He was named after his mother's grandfather, John Quincy, who was a member of the Massachusetts legislature for many years.

Adams spent much of his youth in Europe, accompanying his father, who served as the U.S. minister to France (1778–79) and to the Netherlands (1780–82). In 1781, at the age of 14, he accompanied Francis Dana to St. Petersburg, Russia, as his private secretary on a mission to negotiate for the recognition of the new United States. Also in 1782, he went to Paris with his father as an additional secretary to the commissioners del-



An 1826 engraving of President John Quincy Adams, who opposed slavery in the United States and led a successful fight to force Congress to receive antislavery petitions.

egated to negotiate the peace treaty that formalized the conclusion of the American Revolution.

Adams studied law at Harvard College and graduated in 1787. Upon graduation, he apprenticed as a lawyer with Theophilus Parsons in Newburyport, Massachusetts (1787–89). In 1791, he was admitted to the Massachusetts bar and began the practice of law in Boston. In 1794, President Washington appointed him minister to the Netherlands, a post he filled until 1797, when he became minister to Prussia during his father's presidency. On a diplomatic mission to London in 1795, Adams met Louisa Catherine Johnson, and they married in 1797. The couple had three sons, George Washington Adams, John Adams, and Charles Francis Adams. They also had a daughter, Louisa, who died in infancy.

Political Career

Adams returned to the United States from his foreign service in 1801 and was elected to the

Massachusetts state senate in 1802. In 1803, he was elected by the Federalist state legislature as one of the U.S. senators from Massachusetts. As an independent political thinker, he outraged the Federalist base when he supported Jeffersonian policies in the Louisiana Purchase and also in the embargo on American shipping, the Embargo Act of 1807.

Adams resigned from the senate in 1808 under removal threat from the Massachusetts Federalist legislature. President James Madison appointed Adams as the first U.S. minister to Russia, a position he held from 1809 to 1814. While there, he helped end the War of 1812 by serving as one of the five American commissioners and as the chief negotiator to draw up the Treaty of Ghent in 1814. Thereafter, he served as minister to Great Britain from 1815 until 1817, a position that his father previously first held. Adams served as the secretary of state in President James Monroe's administration from 1817 until 1825. He was regarded as one of America's greatest secretaries of state for his role in the peaceful acquisition of Florida from Spain and arranging with England to jointly occupy the Oregon Territory. He was instrumental in devising and developing the Monroe Doctrine, which was designed to limit European nations' involvement in the affairs of the Western Hemisphere.

During the 1824 presidential election, the candidacies of John Quincy Adams, Andrew Jackson, and Henry Clay all failed to receive a majority in the electoral college. Consequently, the election was decided in the House of Representatives in favor of Adams. Before his presidency, Adams was respected for his singular intelligence, enormous experience, indisputable integrity, and his love for his country. His administration (1825–29), nevertheless, was ineffective and ended without any major legislative, diplomatic, military, or administrative accomplishment, despite his efforts to establish a broad program of domestic improvements. The failure of his presidency is often chalked up to the venomous opposition of the Jacksonian Democrats and an uncooperative Congress.

Adams retired to Quincy after his presidency and was elected to the U.S. House of Representatives in 1830, a position he held for 17 years. As a leading opponent of slavery, one of his greatest

accomplishments, perhaps, was to end the House gag rule on debate about slavery by leading the fight to force Congress to receive antislavery petitions. On February 21, 1848, Adams suffered a massive cerebral hemorrhage and collapsed on the House floor. He was carried to the Speaker's Room, where he died two days later, with his wife, Louisa, and son at his side.

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See Also: 1777 to 1800 Primary Documents; Adams, John (Administration of); Madison, James (Administration of); Massachusetts; Monroe, James (Administration of).

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Adultery

Adultery is often defined as any act of a sexual nature with another person while you are in a marital relationship. There are a wide variety of punishments for adultery based on the culture, religion, and power status of women in different regions. In most advanced democracies today, adultery is not a crime but the act may be used against the adulterer if he or she is going through a divorce. In the United States, there are still laws on the books against adultery but it is rarely prosecuted. However, adultery in the military is a potential court-martial offense.

In the Kinsey Reports, *Sexual Behavior in the Human Male* (1948) and *Sexual Behavior in the Human Female* (1953), it was estimated that as much as 50 percent of the population had committed adultery. Other studies have put the number at about 25 percent for males and 10 percent for females. In *The Monogamy Myth*, Peggy Vaughan puts the estimate between 50 percent and 65 percent for males and 40 percent to 55 percent for

females. There are wide variations on the statistics for adultery. This may be because adultery is very underreported in surveys because of the stigma that is attached to it. While adultery is practiced frequently in the United States, most surveys show that Americans highly disapprove of adultery, with as much as 80 percent disapproving of the act of adultery itself. While the public highly disapproves of the act of adultery, most people feel that it should not become a crime, according to a CNN/Time poll conducted in 2008.

Many people who commit adultery tend to be younger, with younger women being as likely as younger men to engage in adulterous behavior. There is some evidence that adultery is more of a phenomenon among middle-class families than upper- or lower-class families. There seems to be very little to no variation between races as far as adulterous acts. People who have very little education or people with a master's degree or higher seem to commit adulterous acts at higher levels than other educational groups. Adultery is the cause or partial cause of 17 percent of all divorces in the United States; according to a study cited by David Buss in his book the *Evolution of Desire*, adultery is also the number one reason for spousal abuse or murder. Couples who rate their marriage as not too happy also have higher infidelity rates than those who are happy with their marriage.

History of Punishment

In ancient Greece and Rome, punishment for adultery was only prescribed against women. Under Napoleonic Code, a man could ask to divorce his wife if she committed adultery but a wife could not divorce her husband. In the code of Hammurabi, punishment for adultery was by drowning. Wealth and power have also freed many from the rules that govern the rest of society. Louis XIV was known to have many mistresses while ruling France. Many British monarchs also had numerous affairs outside their marriages, with little or no public rebuke for their actions. In the United States during colonization, adultery was punishable by death although there is no evidence that death was ever imposed. Severe punishments included fines, public whippings, floggings, or brandings.

Most religions widely condemn adultery but the punishments vary. In many Islamic countries

such as Iran, Somalia, and Afghanistan under the Taliban, if a woman commits adultery, it is punishable by death via stoning. Some countries have had exemptions from punishments for so-called honor killings. These punishments are either partial exemptions or full exemptions in such countries as Argentina, Ecuador, Jordan, Syria, Egypt, Guatemala, Iran, Israel, Peru, and Venezuela. In many societies, because those of lower economic classes also tend to be more religious than those in upper classes (especially contemporarily), the punishment and rebuke may be larger toward the lower-class adulterer among his friends and colleagues than toward a person from an upper-class background.

Besides religion, another reason adultery is condemned so harshly is because family is often seen as a primary component of society. Many consider the family to be the most important institution in society. Therefore, anything that violates the institution of marriage could be punished harshly, according to the view of many within society. Before contraception was common, the practice of adultery often resulted in pregnancy. Therefore, a husband could raise a child not of his own genes or be forced to split time between two families. Before the advent of paternity testing, men could deny that a child was theirs, leaving the parenting to the mother's family.

Lawrence Friedman argues that punishment for adultery and other acts against god and religion started changing in the United States after the Revolutionary War. He notes that in Middlesex County, Massachusetts, in 1793, three divorces were granted on the grounds of adultery but the offenders were not criminally punished. After 1793, divorce for adultery was a regular occurrence but Friedman notes only one case in which the accused was criminally punished from 1793 to 1810. Similar patterns were also noted by William Edward Nelson in Georgia. While criminal prosecutions for adultery declined after the passage of the Constitution, they were still on the books in most states, and many states still prosecuted offenders.

In the United States, 25 states still have laws regarding adultery. However, these laws are rarely enforced. In 1969, California under the governorship of Ronald Reagan passed the Family Law Act. This law dramatically changed divorce in

the United States. No longer did a person need to prove fault in divorce; the married couple could simply cite irreconcilable differences. This is what has become known as no-fault divorce. Through no-fault divorce there was no longer a need to prove adulterous acts. With the passage of a no-fault divorce measure in New York in 2010, all 50 states now offer a no-fault divorce option. While there has not been as of 2012 a constitutional challenge to adultery laws, *Griswold v. Connecticut* (1965) established a right to privacy in the United States and *Lawrence v. Texas* (2003) overturned sodomy laws on the books in many states.

The passage of the constitution in the 1790s and the liberalization of divorce laws in the late 1960s marked a decrease in the cases prosecuted for adultery and the punishment handed out to the offender. These events also reflected changes that were occurring in society with regard to the separation of church and state in the 1790s and the



Henry Ward Beecher, a prominent 19th-century preacher, became the subject of a national scandal and was tried for adultery in 1875 for an alleged affair with a friend's wife.

feminist and civil rights movements of the 1960s. Many feminists felt that the divorce laws were too burdensome and caused women to remain in bad marriages. Through no-fault divorce reform, a person no longer had to prove violence or adultery to get out of a marriage.

Reasons for Adultery

Many psychologists and sociologists argue that adultery results from other underlying problems within the marriage that can range from psychological or physical abuse to lack of companionship or time together. There are also some who argue that monogamy is not part of our instinctual makeup as human beings. In her book *Adultery*, Louise DeSalvo argues that adultery may make evolutionary sense as a way of guaranteeing the survival of the human species. Sigmund Freud argues that it is natural for humans to have sexual needs and desires. Some argue that the purpose of marriage is to control sexual partnering, but that humans are not wired to have these controls; therefore, adultery in many marriages may be inevitable.

Whether adultery is a biological or a social phenomenon is a matter of wide debate. Adultery, like most other human relations, is a complex phenomenon that cannot be easily explained. Reasons for adultery can be entirely different based on the individuals involved. In order to understand the reasons somebody commits adultery, one must first understand the relationships of the individuals who commit the acts.

Most marriages in which an adulterous relationship occurs end in divorce. However, divorce does not have to be the only option. If a couple works with counselors and the person who committed the adulterous act seeks to regain the trust of the other spouse, then it may be possible for the marriage to be saved. Underlying issues within the marriage must first be resolved in the relationship for the marriages to be reconciled. Contrary to popular belief, most people who have an adulterous affair and get divorced do not go on to marry their lover; in cases where this does happen, there is an extremely high divorce rate. According to Frank Pittman, this is often because of underlying issues from the affair such as distrust, guilt, distrust of marriage, and the intervention of reality. Affairs fall into three different types, according to A. Thompson: sexual only, emotional only, and

sexual and emotional combined. There is some evidence, according to S. Glass and T. Wright, that men are more likely to have sexual-only affairs whereas women are more likely to have emotional-only affairs; however, the authors of this article caution that more research is needed.

Adultery in Cyberspace and the Workplace

With the creation and widespread use of the Internet, adultery has come to mean different things to different people. Is having an affair online considered adultery? Is looking at porn online considered adultery? These are questions that some families deal with each day. Adultery is not just about the physical act of sex but also the emotional acts of bonding that bind relationships. One reason online relationships and cybersex have become common is the ubiquity of online sexual chat rooms. There is some evidence of a correlation between people who engage in cyber affairs and those who engage in real affairs. The Internet is easy to access, and sexual Websites and chat rooms are easy to find. K. Young et al. define an online affair as a relationship that begins with online contact but continues with further contact through e-mails and chat rooms and possibly even meeting in person.

One of the most common places for adulterous relationships to occur is the workplace. Spouses often spend more time with coworkers than with each other. Therefore, the probability that a relationship will occur in the workplace is likely greater than anywhere else. Many companies have policies that strictly forbid workplace romances but the allure of the romance leads some people to take the risk. Similar to online affairs, affairs in the workplace are common because they are convenient and easy. There is some evidence they may be easier to hide than other affairs.

Conclusion

Adultery is a major issue in many families, and the punishments for adultery have varied across societies and history. While adultery is often viewed as a simple act, it has complex ramifications for the people involved. The individual emotions that are involved with adultery not only affect immediate family members but children and other relatives who learn about the affair. There may also be ramifications for the adulterer in the workplace, community, church, and other organizations. Adultery

is not merely a social phenomenon; it also can become a social stigma because the act itself violates the norms of a large segment of society.

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See Also: 1600 to 1776 Primary Documents; 1921 to 1940 Primary Documents; 1981 to 2000 Primary Documents; Fornication Laws; *Griswold v. Connecticut*; *Lawrence v. Texas*; Sin; Sodomy.

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inquisitorial system of justice, political system of justice, and theological system of justice. The United States of America has an adversarial system of justice. However, for comparative purposes, a brief review of the other types of systems of justice will be presented.

Theological, Political, and Inquisitorial Systems of Justice

A theological system of justice is one based on religion. Such systems of justice are usually associated with a theocracy, which is a political system based on religion. A modern example of such a political system would be one based on Islamic law, or shari'a. Islam is most widely practiced in the Middle East, Africa, and Asia. Under a theological system of justice, the primary source of law is religion, divine texts, or revelation, with the primary purpose of the legal system being the advancement of the purposes of that religion. For example, if the worship and idolization of a particular god were the focus of the religion in question, then whether a person were actually guilty of a crime would not be paramount. If the acquittal of a person would bring discredit to that religion or god, then a finding of guilt would be the likely result of a trial. A historical example of a religious system of justice is the Inquisition of the Catholic Church in the Middle Ages. The purpose of the Inquisition was to extinguish heresy, and the guilt or innocence of the suspects was irrelevant to the accomplishment of this purpose. In a religious system of justice, the primary qualification of a judge is that judge's religiosity.

A political system of justice is based on the political goal of maintaining that particular political view. Under a truly political system of justice, the primary purpose of the legal system is not justice, per se, but to advance the political philosophy of that society. Although it would appear that all legal systems would necessarily be political systems of justice, this is not the case. For a historical example, under traditional communist or fascist political systems such as Italy in the 1930s through the 1940s and the Soviet Union for most of the 20th century, proving actual guilt or innocence was not the ultimate goal. Advancing the goals of communism or fascism was paramount. The courts were required to help educate the people and compel them to accept the values

Adversarial Justice

There are several different types of legal systems. The major types are adversarial system of justice,

of the political system. Under such legal systems, a factually innocent person would likely be found guilty of a crime if an acquittal would damage the political standing of the state or its officials, or if a finding of guilt would help educate the general populace. In a political system of justice, the primary qualification of a judge is that judge's political ideology.

An inquisitorial system of justice is a system where the judge is an active participant in not only the trial of the suspect but even in the investigation of the crime. In an inquisitorial system of justice, the judge is not a neutral arbiter of the dispute. The judge will take part in the investigation and may even direct certain portions of it. But the judge's purpose is not to ensure a guilty finding but to gather all the facts, both inculpatory and exculpatory. An inquisitorial system of justice does not differ from adversarial systems of justice concerning the substantive law. The criminal laws of both systems are frequently quite similar. Murder in an inquisitorial system of justice is murder in an adversarial system of justice. Thus, the primary difference is procedural. A modern example of an inquisitorial system of justice is France. It could be argued, however, that the system in France is not purely inquisitorial because guilt or innocence is still determined by a jury for criminal charges.

History of the Adversarial System of Justice

The United States has an adversarial system of justice. The basic principles of the adversarial system of justice are that the fact finder, either a judge or a jury, is a neutral (at least in theory) arbiter of the dispute, with the prosecution and the defense presenting opposing testimony, evidence, and arguments as to the truth of what actually occurred. In many criminal trials, the judge is not the fact finder, which is a duty performed by the jury. The judge is merely an overseer to ensure that the proper procedures are followed during the course of the trial. The underlying philosophy of the adversarial system of justice is that the truth can best be determined when each side presents its perspective of what happened.

The American philosophy of justice has its roots in the English common law. When America was founded, the English settlers brought with them the English system of law. The adversarial system of justice began in England. There are

no definable stages in its development. Rather, it developed slowly as a matter of custom.

In the Middle Ages, obtaining justice from feudal lords or from the king was problematic. The modern idea of a right to a fair trial with the right to present witnesses and evidence and to cross-examine witnesses simply did not exist. Frequently, justice was reserved for the more powerful party. However, justice did have a religious perspective, as God was considered the ultimate judge. From these two traditions of justice for the powerful and justice as a function of religion, the idea of trial by combat evolved. A person charged with a crime could demand trial by combat, where the accuser and the defendant would do battle, with the victor being found to be the just party, partly on the theory that God would not let evil prevail. On some occasions, parties to the dispute could select a champion to fight for them. As the era of knights began to wane, so did the practice of trial by combat. Thus, it can be argued that the adversarial system of justice started with the trial by combat. This was the beginning of the adversarial system of justice in Anglo-American law, although the concept was present in the ancient systems of law found in Rome and Greece.

Subsequently, courts were developed to hear cases, as the kings and the feudal lords did not have the time or inclination to sit in judgment over each and every case. As a general matter, until the late 1600s, trials were not very structured. The accused and the accuser would just engage in an ongoing back-and-forth argument. Further, criminal defendants were prohibited from having attorneys, from calling witnesses, and from cross-examination. Moreover, juries were frequently instructed by the judge concerning the evidence and the guilt or innocence of the defendant. At this point, the justice system was fully adversarial, but it was not fair and was heavily biased against the defendant.

Over the next 100 years, through the 1700s, significant changes happened. Defendants were allowed to have attorneys represent them, partially in response to the practice of the English Crown's use of attorneys to prosecute people. There was sharp division between the presentation of the accuser's testimony and the presentation of the defendant's testimony. A presumption of innocence was established. During this time

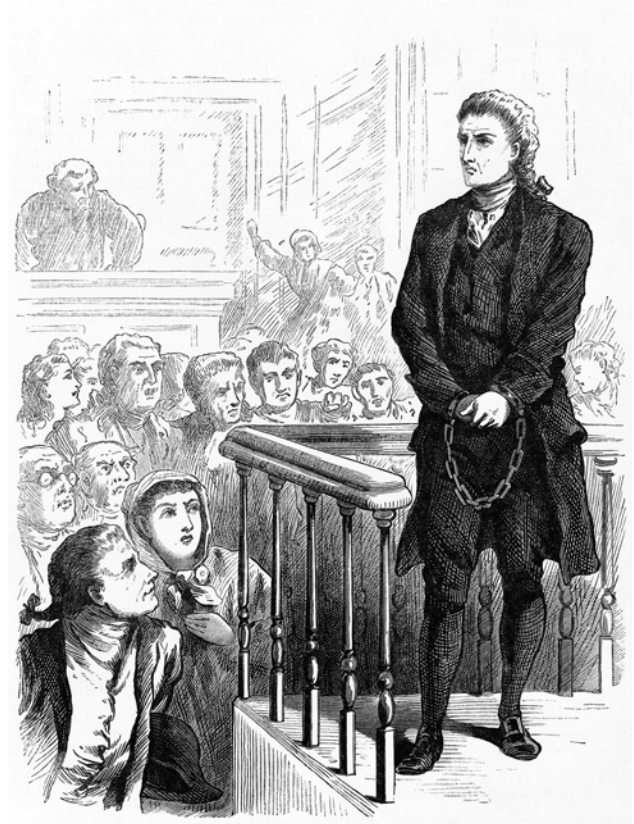
period, defendants were allowed to remain silent. This right was not codified but was recognized in a few decisions, which eventually became universally recognized.

With the founding of the United States and the enactment of the Constitution and the Bill of Rights, which formalized and added many rights for criminal defendants, the adversarial system of justice began to take shape. This burgeoning system had certain protections built into the system to help ensure fairness.

The Modern Adversarial System of Justice

A U.S. criminal trial is highly structured, requiring a number of steps before a suspect can be found guilty of a crime. Although the process is adversarial, there are a number of protections built into the system to balance the overwhelming power of the state to help ensure fairness and ensure that the trial process is not one in which individual defendants are crushed by the resources of the state and the machinery of justice. These protections include being informed of the charges, having the right to an attorney, having the right to confront one's accusers, having the right to present witnesses and evidence, having the right to cross-examine witnesses, having the right to compel witnesses to attend trial, having the right to a trial by jury, having the right to an impartial and independent judge, being given the presumption of innocence, and having the right to appeal. These rights are frequently referred to as due process rights. With these protections, a criminal jury is, at least in theory, a fair contest between the state and the suspect. However, as any person in the criminal justice system knows, the state has an enormous advantage in resources, which all too often results in innocent people being convicted of crimes they did not commit.

Although most Americans would say that the American adversarial system of justice is the best in the world, it does have its flaws. There are numerous criticisms of the adversarial system of justice from both sides of the system: prosecution and defense. One of the most common criticisms is that of delay. The courts in the American criminal justice system have become crowded to the extent that it might take years before a matter comes to trial. Many people charge that the adversarial system of justice is to blame for this



Up to the late 1600s, trials were often unstructured and quite biased against defendants. Minister George Burroughs, above, was hanged in 1692 during the hysteria of the Salem witch trials.

delay, as the various steps in the process lengthen the time to try a suspect and that lawyers, who control the litigation, frequently file motions that serve no purpose except delay. The response to this criticism is that to limit the number of steps and to quicken trials would result in many more innocent people being convicted of crimes they did not commit.

The adversarial system of justice has also been criticized for being responsible for allowing otherwise guilty people to escape punishment by acquittal on technical points of law. However, this criticism fails to acknowledge the countervailing consideration that it is better to let five guilty people go free rather than to convict one innocent person. Indeed, without the procedural protections of the adversarial system, that system of law would quickly degenerate into a political system of justice, which would raise even more issues as to fairness and justice.

Another criticism of the adversary system of justice is that the search for truth is not valued and is subordinate to the idea of winning at all costs. This particular criticism is most potent against prosecutors who want to have a high conviction rate to help ensure reelection to office or promotion. The work of Project Innocence has highlighted the fact that many people in jail and on death row for crimes they did not commit are there because of prosecutorial misconduct and the hiding of exculpatory evidence. Too many prosecutors forget that they are ministers of justice whose job is to ensure that only guilty people are convicted, not to ensure that they convict and incarcerate as many people as possible.

This situation leads to a fourth criticism of the adversarial system: that it encourages people to lie. To operate properly as it is philosophically intended to function, the adversarial system requires that the lawyers and the parties tell the truth. Defendants, having the right to remain silent and the presumption of innocence, are protected from the need to lie. However, as is commonly accepted in the United States, a number of attorneys, both prosecution and defense, engage in some form of deceit or misrepresentation, at least on occasion, to prevail.

Despite the failings of the adversary system of justice, it has many supporters and is still the law of the land for resolving the issue of guilt or innocence in response to a criminal charge. When compared to the other types of legal systems, the criticisms of the adversarial system of justice seem to wither and fade.

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See Also: Bill of Rights; Colonial Courts; Constitution of the United States of America; Courts; Defendant's Rights; Due Process; Legal Counsel; Suspect's Rights; Trials.

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African Americans

Perhaps no other racial or ethnic group in history has had its human identity and social history so constructed and determined by legislation, judicial pronouncement, and assessments of criminality and punishment than Africans in America. The early operation of American law was aimed at protecting the human trafficking and enslavement of people of African descent. The United States also broadly criminalized a number of acts that aided African Americans, up to and including educating them. Moreover, the massive legal machinery of the United States worked nearly incessantly from the ratification of the Constitution until the middle of the 20th century, with a brief interruption during and after the Civil War, to curtail African American access to civil society, civil rights, and the protections of the law, while imprisoning and otherwise punishing African Americans who resisted.

The middle- and late-20th-century civil rights movements helped alter the legal environment for African Americans and others but also eventually increased the numbers of African Americans represented within the broader political process, including the law. Although late-20th- and early-21st-century American law and criminal justice can be said to have been tremendously altered from previous periods, scholars, activists, jurists, legislators, and the general public still decry remaining inequities in criminal prosecutions, civil judgments, jury selection, policing, constitutional protections, sentencing and incarceration rates, and state and federal legislation.

Early History

By the time the first African slaves landed in 1619 in the British colonial territory, slavery in the Americas was already well established in Spanish

colonies, including Florida. Yet these captives, like many others, black and white, entered into bondage under the established system of indentured servitude. This system contractually bound people in labor to others for a fixed period of time, was not race linked, was governed by British law, and dated in the British system at least back to the 13th century. However, by the 17th century, wealthy plantation owners desired a more steady and dependable workforce, and chattel slavery emerged in Virginia as an American signature institution.

In 1654, John Casor, an African born in Africa, ran away from his master Anthony Johnson (also African) when Johnson failed to release him at the end of his contract indenture. The Northampton County, Virginia, courts ruled against Casor, determining that he had contracted into life slavery. This case marked a historic turn in that it allowed other Christians to be enslaved. Also, Casor was not considered an English citizen and therefore had no protection under English common law. Other cases were more favorably adjudicated when Africans could prove they were British subjects. After a number of cases like that of Elizabeth Key, who proved her British citizenship through her white father, Virginia introduced the link to slavery through the mother. The 1662 law derived from civil law the doctrine of *partus sequitur ventrem*, the condition of a child would derive from that of the mother, regardless of mixed race and particularly the race of the father. This legal construct provided the foundation for perpetuating generational and race-linked chattel slavery and empowering white men to engage in the wholesale sexual exploitation of black women for economic and private purposes. In both cases, centuries of literature and scholarship have been devoted to calculating the immensity of the cataclysm.

In 1676, Bacon's Rebellion erupted, and a large number of indentured servants, both black and white, joined the rebellion. One of the causes of the rebellion was the desire of certain colonists to see Native Americans driven out beyond the frontier. When the ruling class in Virginia refused to take a hard line against the Native Americans, a substantial number of frontiersmen, indentured servants, and other aggrieved Virginians revolted. It is reasonable to imagine that the dangers of the

indentured servants and slaves revolting alarmed Virginia's gentry and prompted tighter control of servant classes. In 1705, Virginia instituted slave codes that further solidified slavery as a race-based institution. These codes indicated that all servants brought to Virginia who were African, mulatto, or Native American were considered slaves or personal property. They could be held in permanent bondage, punished for infractions, and used in commercial trade. Moreover, they could travel away from plantations only with permission and had no legal standing in the courts. These codes became the model for the rest of the developing American slaveholding colonies.

By the time of the American Revolution, the slave population was substantial enough to be a military asset, and as rowdy colonists became rebels, the alarmed British offered liberty to any slaves of American revolutionaries who would join royal forces. General George Washington, allegedly after a long visit from African American poet Phillis Wheatley, changed his mind to accept blacks into the Continental army with the promise of freedom for service. At the close of the Revolutionary War, the retreating British resettled tens of thousands of African Americans in their remaining territories. However, American blacks fared much worse. Many blacks were returned to slavery, and with the advent of large-scale cotton production and with substantive legal support, chattel slavery expanded.

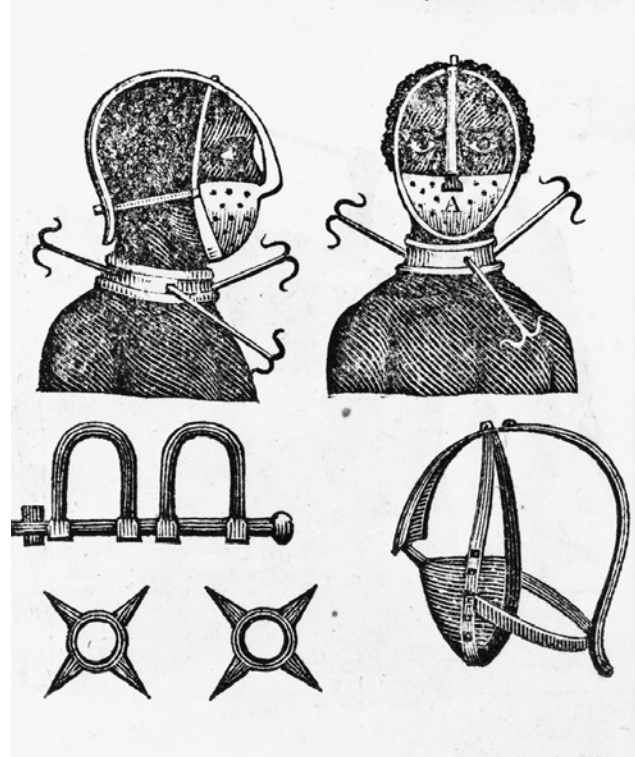
Early Legal Status

The U.S. Constitution emerged with the Three-Fifths Compromise intact, which counted slaves as three-fifths of a person for the purpose of determining legislative apportionment. This created an inflated political influence of southern states that persisted until the Civil War. The Constitution also established a timetable for ending the lawful importation of slaves. Notably, Article 4, Section 2 of the Constitution separately provided that those held as slaves in one state could not be freed in other states but had to be returned to lawful slaveholders. However, this section of the Constitution did not provide an enforcement mechanism. The Fugitive Slave Act of 1793 gave slaveholders a functioning mechanism for recovering slaves. The act criminalized assistance to escaped slaves and other fugitives. It also imposed a \$500

fine for aiding an escaped slave and authorized agents and attorneys of the slaveholder to seize alleged slaves and petition the courts for removal to the home state. This act gave birth to the bustling industry of slave catching, and manhunters roamed the young nation, seizing fugitive blacks and reportedly dragging many free men and women into slavery. The case of Solomon Northup, an educated New York free man who was enticed to travel with men who drugged him and sold him into slavery in Louisiana, is very instructive. His attempt to sue the men who abducted him is a celebrated New York case.

The 19th century saw substantial legal activity affecting African Americans, almost entirely related to the conflict over slavery. Scholarly, legal, and literary works all indicate that the slave system reached maximum development in the 19th century, as did the mechanisms for legally managing the system. The Fugitive Slave Act was in full force, and on plantations, slaveholders had full authority to punish, imprison, and in most cases kill slaves. In South Carolina, aiding an escaped slave carried the death penalty. The Supreme Court case of *Prigg v. Pennsylvania* (1842) affirmed the supremacy of the act over state laws. Prigg had attempted to seize Margaret Morgan, a Maryland slave who had never been emancipated, and ran afoul of 1788 and 1826 Pennsylvania laws that protected escaped slaves and regulated the action of slave catchers. Although *Prigg* upheld the Fugitive Slave Act, it gave states a loophole through which they could leave enforcement of the act to federal officials. However, such small victories were largely overshadowed by the strengthened Fugitive Slave Act of 1850 and legal decisions like *Dred Scott v. Sandford* (1857), which rejected African American claims to relief in the courts and affirmed their role as property that could not be seized without due process. African Americans and white abolitionists were forced to resort to direct action to resist slave catchers, resulting in regular attempts to free blacks ensnared by the fugitive slave apparatus.

In the 1851 “Jerry Rescue,” William “Jerry” Henry was arrested in Syracuse, New York, under the Fugitive Slave Act. Word of the arrest under the unpopular act spread to the Liberty Party convention, and hundreds of abolitionists converged on the city jail and released Henry. Joshua Glover,



This 1807 woodcut made in New York shows an iron mask and collar, leg shackles, and spurs, which were all examples of instruments American slaveholders used to restrain slaves.

a slave from Missouri was similarly sprung from jail, after being arrested in Racine, Wisconsin. Glover escaped to Canada via the Underground Railroad, which grew in participants and strength with the outrage over the 1850 act. The failed Thomas Sims (1851) and Anthony Burns (1854) and the successful Shadrack Minkins rescue in 1851 were among many celebrated cases that illustrate the divisiveness of the Fugitive Slave Act.

The era of controversy produced a hardening of positions in the north and the south. Within the slave system proper, the regulation of slaves reached an unprecedented level of brutality. A notorious North Carolina Supreme Court case, *State v. Mann* (1830), which held that slaveholders could not be prosecuted for assaults on slaves, illustrated the logic of slavery perfectly: “[T]he power of the master must be absolute to render the submission of the slave perfect.” With a free hand to control slaves as property, punishment was regular and varied and was carried out by slaveholders and their agents. The most

celebrated tool of punishment was the whip, but accounts of escaped and freed slaves indicated a variety of methods to control slaves. Heavy cudgels, sticks of wood, switches and whips, iron collars and chains, yokes, suspension by limbs, hanging, tarring and feathering, commitment to stocks, burning, amputation, branding, castration, rape, starvation, separation from children and other family, sale to more brutal owners, and firearms were all reportedly in use. Solomon Northup, Harriet Jacobs, William Wells Brown, Frederick Douglass, and others recorded these methods of punishment, in addition to the sexual exploitation suffered by slave women.

Rape was a regular part of slavery, both as a matter of private lusts and as a cynical economic move. Reproduction via rape increased the property holdings of male slaveholders, even as it produced disruptions in family relationships. Solomon Northup reports being asked to carry out the murder of a slave by a slaveholder's jealous wife. In addition, a brisk trade in attractive women—mulatto, quadroon, octoroon—bustled in some southern cities like New Orleans, and many women were kept by men of means. Far more women were simply savaged by men, with no legal protections to rely upon. Slave marriages and lines of descent were also largely ignored at law in southern states.

Legal status in other areas was limited as well. Slaves for certain and even free blacks in most cases could not give evidence against white men, and contract protections were nonexistent in most cases in law or practice. In Virginia, Kentucky, Arkansas, and Louisiana, slaves existed as real estate for a time, but they were ultimately recognized as chattel and could be bought, sold, or leased, as well as inherited, used as collateral, or otherwise disposed of as property. They could legally be policed by slave patrols, which enforced pass requirements for blacks in transit anywhere outside the immediate control of a slaveholder. They also hunted and returned fugitive slaves with the protection of the law, and in some cases, laws compelled citizens to assist patrols.

The legal fiction of reducing a human to property did conflict with the fact of will and volition and other elements of humanity that could not conveniently be denied. Slaves could not be held responsible for their acts if they did not have free

will, yet almost universally, state codes held that slaves could be punished by masters and at law for offenses. In *Ford v. Ford* (1846), Tennessee Supreme Court justice Nathan Green famously observed while ruling in favor of a slave's freedom via a will that "a slave is not in the condition of a horse or an ox." Similar concessions to conditional humanity were usually not so beneficial to slaves. The Georgia slave codes (1848) made insurrection or conspiracy, rape or attempted rape on a free white woman, murder of a free white person or free person of color, and poisoning of a human punishable by death when committed by a slave or a free person of color. Other offenses were punishable by death at the discretion of the court, including striking or maiming a free white person, burglary, and arson. Notably, slaves could be totally excused if the violence against a white person was at the command of a slaveholder or overseer or other person in charge of the slave. In that case, the white owner was held responsible.

Legal Complications

Additional complications arose from the general legal principle that slaves could not testify against whites. Evidentiary problems also arose when slave testimony was excluded in total because slaves could not testify as even the witnesses to crimes committed by other slaves, provided that slave defendant actually made it to trial alive. Holding a slave as fit to be sworn also presented a problem because a slave had to be presumed to have the conviction, understanding, and belief in the Christian God. By the 19th century, slaves could testify for the purposes of convicting other slaves, although evidence rarely came solely from slaves. Alleged free confessions of slaves were always admitted into evidence.

Criminal brutality against slaves presented a particularly difficult problem. In the 18th century, some colonies and states prosecuted slaveholders for excess brutality. The 1713–14 case of Frances Wilson, who allegedly beat to death one of her husband's slaves, caused a stir in Virginia. The long case included a ruling that a slave was at once the property of a master and the king's subject. The British Crown could bring to trial anyone who destroyed the life of a subject. However, the prevailing mood was that the public was unwilling

to deal with killings or heavy abuses of slaves by white colonists or state citizens. Statutes existed in many states, including South Carolina and Louisiana, that barred punishments such as removing limbs or burning or removing tongues and eyes but left even deadly whipping largely untouched. But in *State v. Maner* (1834), a South Carolina court ruled that criminal assault and battery could not be committed at law against a slave. Driving many public and political decisions on punishment were fears of rebellion and resistance. Many states made unauthorized gatherings, leaving the plantation without permission, and a variety of infractions seen as insubordination or insolence grounds for punishment. This often included attending religious services or attempting to attain education. In addition, many states made educating slaves a serious offense. The threat of rebellion was not an imagined danger. More than 250 slave revolts of varying success occurred during the period of American slavery. Stono's Rebellion, Prosser's Rebellion, and Nat Turner's Rebellion are some of the more famous. John Brown's raid on Harper's Ferry, intended to inspire a slave revolt, stands on its own as a precursor to the Civil War.

In the early 19th century, a variety of laws governing African Americans came into being, generally classified as Black Codes. These Black Codes existed in the north as well as in the south, where they covered free blacks who remained outside the slave codes. As the abolitionist movement developed, some northern states sought to control black migration and settlement. Combined with antimiscegenation statutes, these rules formed the foundation for what would eventually become the more complex Jim Crow system. Indiana and Illinois instituted formidable Black Codes in their constitutions of the mid-19th century, and eventually both barred black settlement. Pennsylvania provides a unique example of African Americans within the context of criminal justice, both because of its abolitionist history and for figuring prominently in one of the earliest scholarly examinations of African American life in the north, including criminal activity, W. E. B. Du Bois's *The Philadelphia Negro*. African American crime in the north, as observed by Du Bois, manifested itself in purported rowdy conduct by slaves in the early to mid-18th century and was largely handled by local ordinances. Later in the 18th century

and early 19th century, free men and immigrants produced a rash of reported petty thefts, assaults, and murders. Popular concern over the growing Negro population, particularly in the wake of the Nat Turner Rebellion, prompted the Pennsylvania legislature to disenfranchise blacks in 1837. The Eastern Penitentiary opened in 1829 in Pennsylvania, and between 1829 and 1834, 29 percent of prisoner commitments were African Americans. Between 1836 and 1845, the percentage of blacks in the prisoner population was 48.29 percent, decreasing to 32.01 percent from 1846 to 1855. As Du Bois noted in his study, the activities of the criminal class in Philadelphia caused African American churches and broader black society to band together against its own criminal element. While crime statistics stabilized in the 1860s, crime in Philadelphia and other urban areas of the north rose steadily among African Americans with the advent of postwar migration.

Civil War

The Civil War and its immediate aftermath brought revolutionary changes to African American legal circumstances, albeit briefly. The 1865 Thirteenth Amendment to the U.S. Constitution ended slavery and involuntary servitude, except as punishment for a crime. The Fourteenth Amendment (1868) contained a three-pronged remedy for African American civil exclusion. It dismantled the *Dred Scott* decision by extending citizenship to African Americans and extended due process protections, which eventually resulted in the Bill of Rights applying more broadly. It also extended equal protection guarantees, which became the foundation for the civil rights era rollback of Jim Crow rules generally described as segregation. Notably, the Three-Fifths Compromise met its end with the Fourteenth Amendment. The Fifteenth Amendment (1870) guaranteed the right to vote to citizens regardless of race, color, or having previously been a slave.

These amendments would seem to have introduced African Americans to full citizenship, except that the end of Reconstruction saw a massive retrenchment and tireless campaign of southern states and some northern states to intimidate and newly disenfranchise former slaves. The federal government did not abandon postwar gains immediately. Deploying Attorney General Amos

T. Akerman and Solicitor General Benjamin H. Bristow, President Ulysses S. Grant attempted to quell the violence against Republicans and African Americans in the south. Federal policy was to prosecute crimes vigorously. However, no modern federal investigative force existed, and limited funds were at hand in the postwar period. Administration of cases was difficult, with judges literally riding the circuit and expanding court dockets, producing numbers of untried cases in the thousands. Moreover, southern partisans mounted spirited defenses of accused Ku Klux Klan militants, often producing large sums for defense expenses and procuring top attorneys. At the local level, federal officials were under threat in their homes when living in the communities where crimes were committed or where sympathies ran with the mob. With militants often occupying respected positions in the white community, the situation was even more difficult. These problems, coupled with dwindling national support for Reconstruction, doomed government efforts.

Jim Crow Era

With the expiration of Reconstruction, a series of revived Black Codes or Jim Crow statutes emerged, with every southern state eventually enacting some barrier to black suffrage. The most well-known strategies were the poll tax, the grandfather clause, and literacy tests. A steady procession of states revised statutes to bar interracial marriage as well. West Virginia, for instance, invalidated the marriages and imposed a fine of \$100 and imprisonment for up to one year on participants and a fine of as much as \$200 for officiants. In addition, the Supreme Court invalidated the 1875 Civil Rights Act, which barred segregation in many public accommodations. Through the end of the 19th century, states around the country proceeded to separate blacks and whites in almost all public venues, including schools. In 1896, the Supreme Court validated segregation and Jim Crow rules in *Plessy v. Ferguson*.

In addition to the legislative and judicial retreat from civil rights, a process using the criminal justice system to return large portions of the black population to unpaid labor emerged in some southern states as the convict lease system. With blacks disenfranchised and removed from the roll of eligible voters, they were also in many jurisdictions no

longer eligible for jury duty. In other jurisdictions, they were simply excluded. This created local and state judicial systems where blacks were excluded from political office, barred from voting, excluded from juries, and variously blocked from the practice of law. Within this system, all-white prosecutors, judges, and juries sentenced African Americans to long prison terms and then sold their labor to private contractors who maintained labor camps, complete with armed guards. The states pocketed part of the income from the unpaid prison workers and had ample reason to incarcerate African Americans at a disproportionate rate. Additionally, within the prison system, the state had broad ability to punish workers with brutality largely unseen by the public.

However, the south was not the exclusive theater for African American crime and punishment during this period. Monroe Work's pioneering study of African American crime in 1897 Chicago notes that blacks made up 29.49 percent of prisoners in the United States in 1890. Moreover, in



A portrait of an unidentified African American man from between 1860 and 1870. Jim Crow statutes such as the poll tax and literacy tests soon cut into many postwar advances.

proportion to their population, more blacks were in prison in the north than in the south. In Chicago, a full quarter of blacks inhabited slum areas, and this group committed a substantial number of crimes—largely of larceny, burglary, and robbery. Similar to what Du Bois found of Philadelphia, Chicago crime showed an increase over a 25-year period to 1897 correlating with migration from the south and with prisoners from southern states disproportionately represented in the population.

Where the law and incarceration were inefficient or simply insufficient to satisfy the mob, public violence and intimidation substituted for legal sanction. Lynching became a regular feature of African American life, especially in the American south, where it was a chilling method of social control—a reminder to surrender any remaining protected civil rights and submit to white hegemony. Lynching itself is not confined to hanging but refers to an entire class of brutality, including maiming, burning at the stake, castration, shooting, and various types of amputation or dismemberment. Reasons for lynching were suspected crimes of theft, attempting to register to vote, insolence or conflicts with whites, and insults to whites otherwise undefined. In truth, no substantive reason was actually necessary; lynching served as a tool of terror. One particular crime for which black men could be regularly accused was rooted in the white political assertion and social mythology of black men's insatiable urge to rape white women. Rape included a range of imagined offenses against white womanhood, and the rhetoric of rape and miscegenation punctuated the speech of white terror groups of the era as well as political discussions of "the Negro Question." Estimates of the number of African Americans lynched between 1882 and 1950 range from a conservative estimate of approximately 3,400 to some estimates of well over 5,000.

What have often been termed *race riots* of the 19th and early 20th centuries are more accurately described as mass murders, mass lynchings, or political coups. Unbearable conditions in the south, which included the Black Codes, lynchings, disenfranchisement, and economic re-enslavement in the penal or sharecropping systems led to large-scale black migration to the northeast and west. In addition, World War I produced a body of black veterans who were less inclined to accept

the racism in America after having seen the more liberal operation of race in Europe. In the case of the Wilmington, North Carolina, Riots of 1898, the riot was sparked by white resistance to black political participation in the city and the resulting stolen election, which included a campaign of intimidation and violence. In 1919, similar "riots" resulted in large numbers of black deaths in more than 25 conflicts across the south, midwest, and Texas. The so-called riots were, in fact, acts of mob violence by disgruntled whites against black communities for some imagined slight, purported threat or evidence of blacks failing to submit to white authority, or evidence that blacks' civil rights were being honored. Riots in Memphis, Tennessee, in 1866; Wilmington, North Carolina, in 1898 (and spawning Charles Chesnutt's *The Marrow of Tradition*); Atlanta, Georgia, in 1906; Springfield, Illinois, in 1908; Tulsa, Oklahoma, in 1921; and Columbia, Tennessee, in 1946 are representative cases. The first modern race riot that characteristically involves destruction of property within African American communities is generally believed to have been the 1935 Harlem Riot, which occurred after a Puerto Rican youth was inaccurately reported to have been beaten to death in a Kress Five-and-Ten store.

Early to Mid-Twentieth Century

In the midst of the lynchings and massacres of this period, some Supreme Court decisions of note emerged. In *Powell v. Alabama* (1932), eight of nine African American men, the Scottsboro Boys, who had been accused of raping two white women, had been rapidly sentenced to death in one-day trials. They had seen their attorneys just before the trials and had no opportunity to construct an adequate defense and appealed on that basis. The Alabama Supreme Court rejected the appeal, but the U.S. Supreme Court ruled that in capital cases, to satisfy due process requirements, a defendant had to be given access to his attorney when requested. According to the court, the defendants had not received a fair and impartial trial, nor had they been adequately afforded the right to counsel. The court recognized that they had been tried by juries from which blacks had been excluded. In *Norris v. Alabama* (1935), Scottsboro convictions were overturned yet again because African Americans had been excluded from the jury pool.

The period of World War II had a marked effect on African Americans, partly because the dissatisfaction with stateside discrimination that had been feared from World War I veterans was greatly multiplied in returning World War II soldiers, who had seen the workings of race elsewhere, had fought bravely against white men, and had earned rank and accolades. African American soldiers had faced discrimination in the military, including the excessive use of “blue discharges,” a dishonorable discharge from the military disproportionately used on blacks that also stripped them of many military benefits. Still, substantive desegregation in the United States came early in the armed forces, when a 1948 order by President Harry Truman integrated the military, including military posts and bases and living areas—base housing, schools, and amenities. This period also saw increasing attention to the causes of African American crime, especially in urban areas that would see a second wave of black migration to the northeast. In *Juvenile Delinquency and Urban Areas* (1942), C. R. Shaw and Henry McKay linked delinquency and crime to the health of communities and the effects of segregation and economic status. These observations recalled Du Bois’s observations about immigration, slum-dwelling, and crime in Philadelphia and Chicago, and looked ahead to scholarly studies of unemployment, black family disintegration, and juvenile violence in the late 20th century.

Civil Rights Movement

The era of the American civil rights movement was characterized by grassroots nonviolent protests and civil disobedience involving students, activists, and a large contingent of participants in African American religious culture. These protests and acts of civil disobedience regularly targeted exemplary forms of racial discrimination. Sit-ins at segregated venues like the Greensboro, North Carolina, sit-ins (1960), and boycotts like the Montgomery, Alabama, Bus Boycott (1955–56) directly challenged legal segregation, bringing national and global attention to the civil inequities. This group faced substantive opposition from local and state law enforcement agencies in the American south, as well as political and judicial elements. Violence, murder, and intimidation, combined with prosecution and imprisonment, were deployed against the movement participants.

In 1954, the Supreme Court handed down its decision in *Brown v. Board of Education*, declaring segregated schools unconstitutional and later ordering the system of segregation dismantled “with all deliberate speed.” Subsequent challenges to the Montgomery bus system (1955–56, ending with *Browder v. Gayle*), the segregated Central High School in Little Rock, Arkansas (1957–58, ending with *Cooper v. Aaron*), and others marked the progress of the movement. However, a campaign to take nonviolent action into the heart of the segregated south resulted in escalating violence. Freedom Rides in 1961 in South Carolina, Alabama, and Mississippi were particularly brutal. A bus was firebombed, and police allowed members of the Ku Klux Klan to attack another group. A substantial number of Freedom Riders were arrested and imprisoned, and still more were beaten by mobs. In addition to Freedom Rides, various organizations within the movement organized and advanced a voter registration project, harnessing the black voter strength long reduced by white intimidation. The response from the southern opponents was brutal and violent, including murder. The Civil Rights Act of 1964, given a burst of public support by shock over the murder of three civil rights activists in Mississippi, made the premier components of racial discrimination illegal, including barriers to voter registration and barriers to equal access to public accommodations. In addition, the Voting Rights Act of 1965 more finely combed the list of barriers to suffrage and also required states with a history of discrimination in voting rights to clear any proposed change to voting requirements with the federal government.

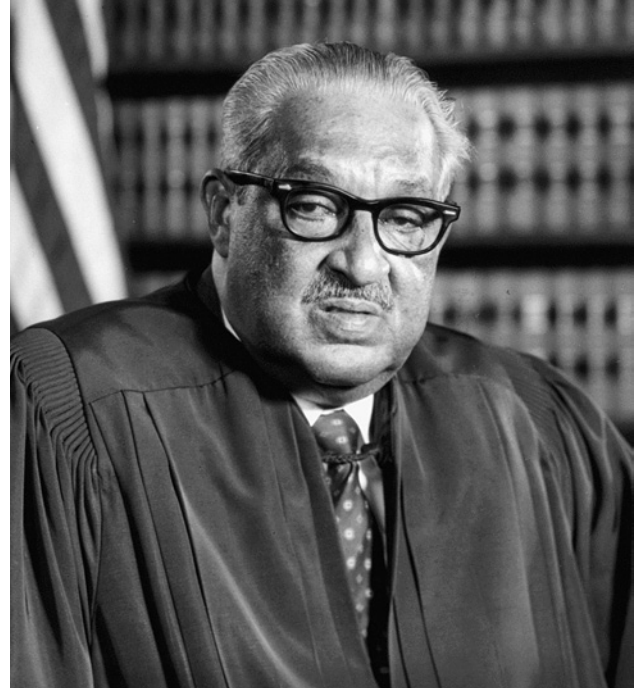
African Americans in the Law

Along with civil rights advances, the 20th century saw increasing numbers of African Americans in the ranks of law enforcement, legal practice, and the judiciary. As early as 1865, John Swett Rock became the first African American admitted to Supreme Court practice, and Jonathan J. Wright sat on the South Carolina Supreme Court until 1877. Robert H. Terrell served as the District of Columbia municipal judge from 1909 until 1925, and in 1911, William H. Lewis became the first black assistant attorney general at the Department of Justice. William Hastie became the first

black U.S. District Court judge in 1937, after being appointed by Franklin Roosevelt. Thurgood Marshall became the first African American justice of the U.S. Supreme Court in 1967. During the Carter administration, 28 African Americans were appointed to U.S. District Court judge positions. The Reagan and George H. W. Bush administrations continued a more limited appointment trend, and Clarence Thomas became the second black Supreme Court justice when he was confirmed to replace Thurgood Marshall in 1991.

The later 20th and 21st centuries saw continuing service by African Americans, including examples of judicial leadership like the ascension of Leah Ward Sears to chief justice of the Georgia Supreme Court in 2005. African American attorneys followed a similar course of growth and service, in public and private practice and in legal academe. However, progress in the profession is small in comparison to overall population, with African Americans making up only 3.9 percent of attorneys. Numbers of black law students fell to 6.6 percent by 2004, from 7.4 percent in 2002. In law enforcement, African Americans have become a more substantial part of police and other law enforcement arms in the nation, and organizations like the National Black Police Association (1972) have developed to support African Americans in law enforcement and improve relationships between minority communities and law enforcement. Interestingly, African American police officers have been entangled both in long-standing conflicts over policing of African Americans, especially in urban areas, and their own struggles for racial equity within law enforcement. K. Bolton and J. Feagin's *Black in Blue* (2004) chronicles this complex balancing act.

Part of the impetus for the increase in African Americans as regular participants in the judicial and law enforcement hierarchy was that the mid- to late 20th century saw critiques of substantive economic deprivation and direct challenges to the racial makeup of law enforcement and the application of criminal prosecution. The long-term effects of the educational, economic, and civil disenfranchisement revealed by earlier academic studies were increasingly visible to the large population, and especially in the urban spaces of America, African Americans acutely felt the impact of economic weakness, crime, and



Justice Thurgood Marshall's official Supreme Court portrait from January 1976. He became the first African American justice of the U.S. Supreme Court in 1967.

conflict with largely white representatives of law enforcement and the legal system. Civil unrest in the Watts section of Los Angeles in 1965 was one of many violent community reactions to violence and inequities in policing by white police officers, combined with structural changes in the U.S. economy that reduced industrial jobs and exacerbated existing economic stress. Regular civil unrest plagued major urban areas throughout the 1960s and 1970s and recurred in the 1980s and 1990s. Although urban police forces became more diverse in the latter part of the 20th century, concerns about policing and prosecution echoed concerns of African Americans in earlier eras. Notable events include the 1991 car pursuit and beating of Rodney King by Los Angeles Police Department officers, which was captured on videotape. The advent of widespread personal video recording made this case particularly volatile, and when the officers involved were acquitted of charges, public anger sparked the Los Angeles Riots of 1992. In 1997, Abner Louima was sexually assaulted with a broom handle by New York Police Department (NYPD) officers and left bleeding from the rec-

tum. Two years later, Amadou Diallo was killed by NYPD officers who claimed the unarmed man had reached for a gun. Officers fired 41 rounds of ammunition at Diallo.

Into the Twenty-First Century

Concern about gang activity also sparked a series of city ordinances that were widely believed to target African Americans and other ethnic minorities in an attempt to deprive them of the ability to move about or congregate in urban spaces. In *City of Chicago v. Morales* (1999), the Supreme Court ruled that Chicago's Gang Congregation Ordinance was impermissibly vague and an unconstitutional restriction on personal liberties. Late-20th-century drug enforcement regimes also proved a flashpoint for racial concerns about crime and punishment. The Anti-Drug Abuse Acts of 1986 and 1988, tools in what was termed a federal war on drugs, helped create a 100 to 1 sentencing disparity for comparative convictions for the sale of crack versus powder cocaine. Crack, a smoked form of cocaine, was more prevalent in urban communities and among minority populations, especially African Americans. Combined with concerns about targeted policing and racial profiling, the sentencing disparities appear to have been a great contributor to the disproportionate number of African Americans in U.S. prisons for drug offenses, estimated at one point to have been 74 percent of all Americans sentenced to prison for drug offenses. In 2010, Congress passed the Fair Sentencing Act, which responded to growing concern that the sentencing disparity was intolerably high. The current act sets the disparity at 18:1.

The late 20th century and early 21st century have also been periods of introspection and scholarly debate about race, crime, and what scholars like Michael Tonry have termed *moral panics*, which drive periods of excessive public, law enforcement, and political, legislative, and judicial responses to imagined crises of crime. These moral panics disproportionately affect ethnic minorities, including African Americans, but they and the criminal hoax phenomenon may also entangle majority populations. High-profile hoaxes involving alleged African American perpetrators—carjackings, white child/white woman kidnappings, and rapes—punctuated the turn-of-the-century period, but hoaxes like the Tawanna

Brawley episode and the Duke lacrosse team case illustrated the manipulations of race that made African Americans victims and perpetrators of race stereotypes and emphasized the complicated legacy of race in criminal justice.

Conclusion

The history of African American engagement with crime, punishment, and the legal system in the United States is one inextricably linked to the nation's long and tumultuous struggle to escape the legacy of slavery, racism, and exclusions from broad rights and legal protections. The contemporary landscape of African American engagement with the field is marked by an increased black presence within law enforcement, the judiciary, and the legal profession. The presence of African Americans among legislators is greater as well, and the broader expansion of civil rights and access to ethnic minorities and women has combined with longstanding African American strides toward equality to suggest a future marked by both resistance to lingering elements of discrimination in criminal law and punishment and substantive contributions to the construction and execution of the law.

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See Also: 1600 to 1776 Primary Documents; 1777 to 1800 Primary Documents; 1801 to 1850 Primary Documents; 1961 to 1980 Primary Documents; Black Panthers; *Brown v. Board of Education*; Civil Rights Act of 1866; Civil Rights Act of 1875; Civil Rights Laws; *Dred Scott v. Sandford*; Fugitive Slave Act of 1793; Fugitive Slave Act of 1850; King, Martin Luther, Jr.; King, Rodney; Ku Klux Klan; Lynchings; Malcolm X; *Plessy v. Ferguson*; Police Abuse; Racism; Riots; Segregation Laws; Slave Patrols; Slavery; Slavery, Law of.

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Alabama

Originally part of the Mississippi Territory, Alabama was admitted to the union as a separate state in 1819 and developed an economy around its large cotton plantations. At the time, the state lacked a prison system, and in fact the general public opposed one: Even the spartan prisons of the 19th century consumed more tax revenue than punishments like flogging, branding, and hanging. Further, without a state prison system, a greater share of punitive power rested at the county level, and in Alabama—still considered the frontier at the time—county officials like sheriffs were not perceived as bureaucrats or politicians in the same way as state officials. It took nearly a decade of effort by governors and legislators to finally begin a state prison system. Alabama’s first state prison, Wetumpka State Penitentiary, was created in 1839 when the state legislature

passed a criminal code authorizing it. Construction of the prison was completed in 1841, and the first prisoner arrived the following year. Though the public was promised that prison industries would pay for prison expenses, the revenue from those industries, like the manual manufacture of rope and shoes, fell far short of paying for prison expenses. Originally for both sexes, Wetumpka was reclassified as a women’s prison in 1922, and closed 20 years later.

Alabama was one of the states to secede from the Union and form the Confederate States of America, and was subject to the changes of Reconstruction in the aftermath of the Civil War. The numerous Ku Klux Klan chapters that opened in Alabama in the mid- to late 19th century were a reaction against Alabama’s loss of face and power after the war. Institutionalized white supremacy was restored with the passage of Jim Crow laws that limited the rights of blacks and established racial segregation in public facilities and the new public school system.

The right for a defendant to be provided with counsel as part of due process, which is today one of the important rights included under Miranda law, was established in the Supreme Court’s 1932 decision of *Powell v. Alabama*. The Powell ruling led to an ongoing debate about whether court-appointed attorneys needed to be provided in non-capital cases—Powell had been accused of rape and faced a death sentence—which was ultimately decided by the 1963 *Gideon v. Wainwright* decision establishing that the Sixth Amendment requires defendants to be provided with attorneys if they cannot afford their own. To this day, Alabama does not have a statewide public defender system; court-appointed attorneys are hired by and compensated by the court, typically at a lower hourly rate than they would otherwise earn.

Moonshine was big business in Alabama both before and after Prohibition. While bootlegging—the smuggling of alcohol illegally—was a going concern throughout the nation under Prohibition, the moonshine business profited not only from subverting a ban on alcohol but also from an opportunity to make money from Alabama’s agricultural resources. Grain, typically corn, could be mashed, fermented, distilled, and sold for a much greater profit than the corn would have been worth on its own. The principle legal issue

with moonshine was that amateur distillers did not pay the tax collected from legal professional distillers—though in the course of a moonshine enterprise, many other laws may have also been broken, in order to keep the enterprise viable.

In 1935, the Alabama legislature attempted to pass a bill that would sterilize by surgical procedure or castration “those suffering from perversions, constitutional psychopathic personalities or marked depatures from normal mentality,” which included inmates of prisons and asylums who were considered “sexual perverts, sadists, masochists, homosexualists, or sodomists.” Sodomy in Alabama included not only homosexual sex but also oral sex. The law was struck down by the Alabama Supreme Court as unconstitutional, and Governor Bibb Graves vetoed a subsequent bill modified to accommodate some of the court’s objections. Alabama’s sodomy laws, effectively criminalizing nonprocreational sexual acts, were ruled unconstitutional by the Alabama Supreme Court in 1973’s *Horn v. State*—but the 1977 Alabama Criminal Code included a “sexual misconduct” law explicitly outlawing oral and anal sex between persons not married to each other. The sale, but not possession, of sex toys was outlawed in a 1998 law, which was upheld upon its challenge in federal court.

Alabama is a state that practices capital punishment. From 1927 to 2002, its executions were carried out by “Yellow Mama,” the state’s sole electric chair, built by a British inmate and installed at Kilby State Prison in Montgomery. It was retired—and is now stored in an attic at Holman Correctional Facility in Atmore—after legislation that allowed lethal injection as a means of execution. Yellow Mama was the means used to execute James Coburn (b. 1926) in 1964, the last defendant executed in the United States for a crime other than murder. Coburn had been sentenced to death for robbery. In 1972, the Supreme Court’s ruling in the *Furman v. Georgia* case found that extant death penalty statutes were unconstitutional. When the subsequent Supreme Court case *Gregg v. Georgia* found death penalties feasibly constitutional in 1976, Alabama passed a new capital punishment law and resumed its executions. Prior to the new law, capital crimes included rape, arson, and robbery; most convicts executed for rape were black men. The death penalty system in Alabama,

both pre- and post-*Furman*, has been criticized for providing insufficient legal support to defendants, for the racial imbalance of its convictions, and in some cases a lack of sufficient evidence to establish guilt. Black jazz musician Jeremiah Reeves, whose appeals were twice rejected by the Supreme Court, but who was seen by many civil rights workers as a victim of institutionalized racism, claimed that he was forced to sit in Yellow Mama overnight to encourage him to confess, before he was executed for rape in 1956.

Alabama was the site of much of the civil rights movement’s activity, as activists worked to fight segregation laws and enroll black voters. A turning point for the civil rights movement nationwide was the 1963 bombing of the 16th Street Baptist Church, a black church in Birmingham. The church had been a prominent meeting place for activists and became the target of members of the United Klans of America, the most violent Ku Klux Klan group of its time. The explosion injured 22 people and killed four girls aged 11 and 14. The case remained unsolved until the late 1970s, when newly elected Attorney General Bill Baxley reopened the investigation, leading to the conviction of one bomber, Klansman Robert Chambliss. The remaining bombers—Herman Cash, Thomas Blanton, and Bobby Cherry—were not identified until 2000. All four bombers had been considered serious suspects by the Federal Bureau of Investigation (FBI) in 1965, but witnesses had been reluctant to talk. By 2000, Cash was dead, Blanton was tried and sentenced to life in prison, and Cherry was ruled mentally incompetent by a court-ordered psychiatric evaluation.

Crime

Since the 1960s, Alabama has been a home to the Dixie Mafia, an organized crime group based in nearby Biloxi, Mississippi. Dealing mostly in robbery, gambling, loan sharking, strip clubs, and prostitution, the Dixie Mafia was also known for its contract killings during its rise to power in the 1970s and 1980s. At one point, it had strong ties to the Chicago Outfit and the State Line Mob, the latter a group of criminals mainly from Phenix City, Alabama, but operating along the Mississippi–Tennessee state line. The mob was formed in response to the declaration of martial law in Phenix City in the 1950s, when the National Guard



Part of an exhibit on the Ku Klux Klan at the Birmingham Civil Rights Institute in Birmingham, Alabama, in March 2010. Alabama was the site of much activity during the civil rights movement and Birmingham was a target for the United Klans of America, the most violent Ku Klux Klan group of the time. The Birmingham Civil Rights Institute was dedicated in 1992.

was brought in to clean up the gambling dens, brothels, and moonshine joints.

The earliest police departments in Alabama were formed shortly after statehood, county sheriffs having been the primary law enforcement in the territorial years. The Montgomery Police Department was established in 1820, the year after Alabama was admitted as a state. As in many states, Alabama's state police agency—the Department of Public Safety—began with the need for an agency to enforce law on the highways, and the Alabama Highway Patrol was founded accordingly in 1935. It was funded with fees paid for driver's licenses, mandated in the state for the first time that year. In 1939, the Highway Patrol became the Department of Public Safety, and today includes a Bureau of Investigation as well as the highway troopers. Haleyville, Alabama, was the site of the first 911-call system in the United States. Congress had called for a universal emergency number in 1958,

but implementation was long delayed over arguments about which institution (police, fire department, a local hospital, or others) should answer calls, as well as technical issues in establishing the emergency number. The Alabama Telephone Company was the first to implement a 911-system, converting equipment in Haleyville over to the new system in 1968, 10 years after the congressional decision, when many were still skeptical that the plan was practical. Emergency 911 calls were forwarded to a dispatcher at the Haleyville police station, who determined which personnel should respond on a case-by-case basis.

Later adoption of the modern touchtone system made implementation of 911 calls easier. In 1977, after a rise in violent crime, theft, and drug crime since World War II, Alabama passed the Habitual Felony Offender Law, one of the strictest in the country. Habitual offender laws, which assign enhanced penalties for those who

repeatedly commit the same kind of crime, date back to at least the 19th century. Modern habitual offender laws, which are typically restricted to violent crimes or drug offenses, often enhance the penalty beyond the normal maximum sentence for the crime, essentially treating recidivism as an aggravating circumstance. Alabama's law, though, predates the wave of "three strikes" laws enacted in the 1990s and is more of a "one strike" law, mandating a longer sentence for any offender with a prior felony conviction—regardless of whether the crime is of the same type—and making no allowances for the amount of time between convictions.

In the over 30 years since the Habitual Felony Offender Law was enacted, such laws have been the focus of numerous studies by sociologists and criminologists, most of which have failed to show that habitual offender laws fail to reduce crime rates. Proponents of Alabama's law have countered that the correlation between high crime rates and habitual offender laws may be explained not by the failure of the latter to reduce the former, but rather from the presence of high crime rates motivating the enactment of the habitual offender law. In other words, without the law, the crime rate would be even worse. Others argue that when criminals know that the court will not be lenient, they become more desperate to avoid capture, which can turn robberies and assaults into homicides. Either claim is difficult to prove without coming to agreement about fair and useful ways to compare crime rates between different communities.

In 2003, the Supreme Court ruled in *Ewing v. California* that contrary to opponents' arguments, habitual offender laws do not violate the Eighth Amendment prohibition against cruel and unusual punishment.

As in other jurisdictions, the habitual offender law led to prison overcrowding. The courts were also busied by the number of convicts arguing in their appeals against the constitutionality of the habitual offender law. In 2000, the Alabama legislature passed a bill sponsored by Speaker Pro Tem Demetrius Newton to allow parole for four-time offenders whose fourth offense was a Class A felony, provided it was their first Class A, and in 2001 Newton introduced further legislation making that qualification retroactive for nonviolent offenders, which opened the door for

many inmates to begin petitioning for parole. The provisions were slowly implemented, though, and in 2005, one-third of Alabama inmates had been convicted as habitual offenders.

Further bruising the claims of efficacy made by the law's advocates was the 2005 Brenda Kennedy case, in which a mother guilty of neglect successfully appealed her conviction under the habitual offender law because the Alabama criminal code did not set high enough penalties for child abuse and neglect for child abuse to be considered a serious enough crime to be relevant under the habitual offender act.

Violent crimes in Alabama climbed steadily in the 20th century. When the habitual offender law was passed in 1977, the state experienced 414.4 violent crimes per 100,000 inhabitants; this peaked in 1992 at a rate of 871.7 crimes per 100,000 inhabitants, more than doubling in 25 years. The crime rate then began to steadily fall, reaching 377.8 crimes per 100,000 inhabitants in 2010. Though posting one of the worst crime rates in the country in many years, the general trend followed that of most of the nation. Not all crimes fell or rose at equal rates; the murder rate actually began falling in 1977, and by 2010 was one-third of its 1977 level, while larceny peaked in the late 1990s and has fallen only about 10 percent since.

Recently, Alabama has made the news by enacting a historic abortion ban. Originally designed to ban all abortions, and then rewritten to ban all surgical and many chemical abortions, the bill as passed by the House of Representatives was the Pain-Capable Unborn Child Protection Act. Mirroring similar legislation in Idaho, Kansas, and Oklahoma, the bill banned abortions of any fetuses capable of feeling pain.

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See Also: Abortion; African Americans; Birmingham, Alabama; Capital Punishment; Civil Rights Laws; Due Process; Electric Chair, History of; Ku Klux Klan; Lynchings; Moonshine; Sodomy.

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Alaska

The largest state in the United States—its coastline is longer than the rest of the U.S. coastline combined, with more than twice as much land as Texas—Alaska was purchased from Russia in 1867 and remained a territory until 1959. It is the least densely populated state. Known for its remoteness, Alaska is far north and west of the rest of the country, with many of its settlements on islands accessed by ferry or plane; even the capital, Juneau, is not connected to the North American highway system.

Crime

Remote rural living is a defining feature of Alaskan life and of Alaskan crime. The state has the highest rate of sexual assault in the nation, thanks to a staggeringly high rate of acquaintance rape and nonconsensual incest: In about 80 percent of rape cases, the rapist is a relative or acquaintance. The average age of reported rape victims is 16. Domestic abuse and assault are both very high; though many rural communities in Alaska are dry, alcoholism is common and fuels violent crimes.

Alaska's alcohol laws have gone through many changes. Prior to the creation of the first civil government in Alaska in 1884, beer and wine were permitted by the Treasury Department (which had regulatory authority over the territory), but not spirits. The civil government banned alcohol entirely, except for medicinal, industrial, scientific, and sacramental purposes. But it did almost nothing to enforce this ban, and alcohol was widely available in the cities of Juneau and Sitka, where breweries openly operated saloons, and throughout much of the territory, pharmacies sold alcoholic beverages without a prescription. Liquor sales were legalized in 1899, but an expensive license and tax system (under which it is illegal

to sell alcohol without a license and without paying a tax) led to the number of saloons decreasing by at least 80 percent. Liquor revenue helped to fund town governments at the turn of the century, as well as the state school system. Today, under the most recent (1979, amended in 1986) version of the state's alcohol laws, the permitting or banning of alcohol is left to local communities to decide, and there are both wet and dry communities throughout the state. Smuggling alcohol to dry towns, many of which are remote villages, is extremely profitable, often commanding a 1,500 percent markup.

The crime rate in Alaska has followed the general national trend of increasing gradually after World War II, peaking in the 1990s, and falling since then. Violent crimes peaked at 766.3 per 100,000 Alaskans in 1994, falling to 565.4 in 2002. Since 2002, crime rates have risen overall, though crime has been on the decline (638.8 in 2010) since the onset of the recession in 2008. Burglary has seen the greatest decline since the 1990s peak; rape rates remain high.

Police

Law enforcement in Alaska is principally handled by the state's Department of Public Safety, which consists of the divisions of Administrative Services, Alaska State Troopers, Fire and Life Safety, Statewide Services, and Alaska Wildlife Troopers, and which administers the state's Police Standards Council, Fire Standards Council, Alcohol Beverage Control Board, Council on Domestic Violence and Sexual Assault, and Scientific Crime Detection Laboratory. Many rural towns and villages lack local police departments and have to rely on public safety officers, who aren't issued firearms. Before the official organization of the Alaska State Troopers (AST) in 1941, most law enforcement in the state was handled by federal authorities; the AST subsequently assumed that role.

One reason for this unique arrangement is that Alaska's extremely low population density means that the state has no counties—and thus no county sheriff's departments. There is a borough system, but it lacks a real police force except in the North Slope Borough. Outside of that borough, jurisdictions in Alaska are state and local—and local jurisdictions more often than not lack the resources for effective law enforcement.

In Alaska's territorial days, the discovery of gold made the federal government's involvement in law enforcement necessary because gold rush towns had tremendous crime rates. The U.S. Marshals Service deployed a number of its deputy marshals to the territory in 1884 and maintained a presence until the middle of the 20th century. The AST began as the Alaska Highway Patrol (AHP), created by the territorial legislature. Originally commissioned to enforce traffic laws on the state's highways, officers were soon deputized as special U.S. marshals in order to alleviate the burden of law enforcement from the federal government. The legislature resisted making the change in the AHP's duties official until 1953, when additional personnel were hired directly from the ranks of the marshals and the new agency was renamed the Alaska Territorial Police, which became the Alaska State Police in 1959. The current name was adopted in 1967.

Five detachments of the AST—A, B, C, D, and E—are responsible for specific geographic areas of Alaska. Additionally, the AST includes the Highway Patrol Bureau; the Alaska Bureau of Investigation, which provides detectives and investigative support to areas without local police; the State Fire Marshal office; the Bureau of Judicial Services; and the Alaska Bureau of Alcohol and Drug Enforcement (ABADE). ABADE's duties are more wide-reaching than its name indicates, as it investigates an assortment of drug and vice offenses, including gambling, prostitution, human trafficking, and the sexual exploitation of children. ABADE typically coordinates with local and federal agencies and assigns task forces and undercover agents to cases throughout the state.

Initiated in the 1970s, the Village Public Safety Officer (PSO) program provides the public safety officers in towns and villages without their own police departments and without a local AST post. Public safety officers are trained by the state through an eight-week training course at the Department of Public Safety Academy but are not fully credentialed and do not carry firearms. AST troopers in the area supervise public safety officers in their region. PSOs are primarily first responders to emergencies and work to preserve crime scenes and issue citations for misdemeanors and violations. They are empowered to make misdemeanor arrests, but in the case of felonies,

they merely detain suspects before turning them over to the AST.

During World War II, the Highway Patrol assisted federal authorities by patrolling Alaskan transportation infrastructure and watching for Japanese invaders (two of the outer Aleutian islands were invaded and occupied and became the only part of the United States to be occupied during the war). In the aftermath of September 11, these special duties have been revived, with the AST coordinating with the Department of Homeland Security to safeguard against terrorist activity. A 2009 joint project between the Alaska Bureau of Investigation (ABI) and Federal Bureau of Investigation (FBI) led to the arrest of two Islamic converts planning a terrorist attack.

Punishment

From 2009 to 2011, Alaska's prison population rose by 10 percent and was projected to increase by another 4 percent by 2012. Anticipating an overcrowding crisis, in February 2011, Governor Sean Parnell requested supplemental funding. The funding request for the prison system accounted for nearly a 20 percent of the supplemental funding request from the general fund for the year, causing some to call for prison reforms in order to reduce the incarceration rates and periods for inmates convicted of minor offenses, and to find other ways to deal with the mentally ill and with drug addicts who weren't convicted of violent crimes.

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See Also: 1981 to 2000 Primary Documents; Bootlegging; Border Patrol; Frontier Crime; Rape, Contemporary.

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Alcatraz Island Prison

The U.S. penitentiary on Alcatraz Island is perhaps the most famous of all American prisons. Located on the 12-acre island in San Francisco Bay, California, it stands as a reminder of the public's desire to shield itself from dangerous offenders. Originally a military fort that protected the San Francisco seaport, it eventually evolved into a disciplinary barracks for military prisoners. In 1907, Alcatraz ceased operations as a fort and was designated a U.S. military prison. It operated as a military prison until 1933. The soaring costs associated with its upkeep eventually convinced military officials to close the facility and withdraw from the island.

Shortly after the military abandoned the island, the Department of Justice acquired it and turned it into a federal prison. Alcatraz operated under the auspices of the Federal Bureau of Prisons from August 1934 until 1963 and was one of only 11 federal prisons in existence during the early 20th century. The bureau intended for Alcatraz to serve as a high-profile prison that would deter rising crime rates. Prohibition, the Great Depression, and the advent of organized crime led citizens and politicians alike to demand a prison that could securely house dangerous and notorious crime figures.

Upon arriving at Alcatraz, inmates were housed in single-occupancy cells. It was initially operated as a silent institution, but this approach proved unpopular and was eventually abandoned. All movement within the facility was strictly controlled to ensure that horseplay, violent confrontation, and escape attempts were minimized. In addition to its housing units, Alcatraz also had a hospital, sanitation department, auditorium, kitchen, and library for recreational reading and legal research. The development and progressive use of inmate



A former Alcatraz prison guard stands by an empty cellblock. The last inmates were transferred in 1963, and 10 years later the island became a museum and wildlife sanctuary.

grievance procedures helped ensure that its prisoner population had an avenue available to resolve complaints without resorting to violence. Institutional and industrial work assignments were available to those inmates who wanted to earn a wage. Many of these industrial assignments were initially geared toward the war effort. At its highest capacity, Alcatraz housed more than 300 inmates, with its average population being closer to 200.

Over the course of its history, Alcatraz served as the prison of choice for those inmates who were particularly dangerous, disruptive, or skilled at escape. Most inmates were sent to Alcatraz directly from lower-security facilities. Alcatraz housed such infamous criminals as gangster Al "Scarface" Capone and George "Machine Gun Kelly" Barnes. Known as "The Rock" or "Devil's Island," Alcatraz became the prototype for maximum-security prisons in the decades following its closing.

Escape Attempts

Because Alcatraz was remote and physically isolated, it was billed as an inescapable institution. Therefore, all escape attempts were viewed with great public interest. Over the course of its history, there were 15 documented escape attempts involving a total of 30 inmates. Every inmate who attempted an escape is thought to have drowned in the frigid and turbulent waters of the San Francisco Bay, was shot by guards, or was recaptured. In one of these escape attempts that occurred in May 1946, a small number of inmates took six guards hostage and were able to gain control of their cellblock. When their escape attempt failed, they refused to surrender and unsuccessfully sought to enlist the support of other inmates in the ensuing insurrection. After nearly two days, officials entered the cellblock and confronted the six inmates—three of whom were immediately killed. Two guards also lost their lives. The remaining three inmates were captured, and two of them were later executed for their participation.

Perhaps the most celebrated escape attempt involved just three inmates, two of whom were brothers. Frank Morris and John and Frank Anglin were able to gain access to the rooftop of their cellblock in June 1962. Once outside, they attempted to float their way to the mainland onboard makeshift rafts. The papier-mâché heads used to dupe guards into believing that they were asleep in their bunks can be viewed today during the daily tours given at the prison. Evidence suggests that all three men drowned.

Conclusion

Alcatraz was plagued with ongoing deterioration caused by the harsh sea environment, and with the high costs associated with its upkeep, officials increasingly began to seek an alternative to the continued use of Alcatraz Island. A new prison was sought to serve as the nation's highest-security institution. Envisioned as the new Alcatraz, United States Penitentiary Marion, in Illinois, was specifically designed and built to house the most dangerous offenders in America. While Marion was still under construction, Alcatraz began to transfer inmates to facilities throughout the United States—eventually transferring the last of its inmates in March 1963. In 1973, the National

Park Service acquired Alcatraz Island and turned it into a museum and wildlife sanctuary. Tourists to Alcatraz occasionally encounter former inmates and guards eager to speak about their unique experiences with this prison.

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See Also: Capone, Al; Federal Prisons; Film, Crime in; Film, Punishment in; Native Americans; Penitentiaries; Prison Riots; San Francisco, California.

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Alien and Sedition Acts of 1798

The last half of the 18th century was a time of social upheaval in North America after the successful American Revolution, which lasted from 1775 to 1783, and the ratification of the Constitution in 1787. After a long and occasionally bitter debate, the Bill of Rights was adopted in 1791. The adoption of the Bill of Rights was problematic. There was a dispute between the Federalists, who did not want a Bill of Rights, and the Anti-Federalists, led by Thomas Jefferson, who wanted a Bill of Rights. The Constitution was adopted only after the Federalists agreed to enact the Bill of Rights. The founding of the United States of America was based on preserving individual rights and liberty that had been denied under the English Crown. However, it did not take long before these rights were forgotten.

After George Washington, John Adams was elected to the presidency. Adams was a Federalist and believed in a strong central government. The Democratic-Republican Party, led by Thomas Jefferson, opposed the Federalist Party. The Democratic-Republicans were considered the progeny of the Anti-Federalists, who were not organized into a political party. A number of people, including the Democratic-Republicans, were critical of the Adams presidency and applauded the French Revolution that began in 1789, which caused the Federalists much concern because it threatened to impose “mob rule” and depose men of property from political domination. A number of French immigrants had recently come to America. Adams was worried that these immigrants and the French Revolution might threaten the existing political and economic order.

In response to the French Revolution and the criticism of the Democratic-Republicans, Adams and the Federalist-controlled Congress enacted the Alien and Sedition Acts of 1798. There were four parts to the acts. The Naturalization Act increased the residency requirement to become a citizen and to vote from five to 14 years. The Alien Act gave the president the power to deport any alien that the president deemed to be dangerous to the security of the United States. The Alien Enemies Act gave the president the authority to restrict the freedom of enemy aliens or have them deported. The Sedition Act made it illegal for American citizens to oppose the laws of the federal government and made it illegal to publish criticism of the American government. The Sedition Act expired on the day before Adams’s term as president ended, which only highlighted the political basis for the act.

The result was pandemonium. Thomas Jefferson, who was vice president at the time, denounced them as unconstitutional and claimed that they violated the First Amendment. Several states passed resolutions against them. The Democratic-Republicans accused the Federalists of creating a tyranny just like that of the English Crown, which the colonists had defeated. Petitions were presented to Adams to repeal the Alien and Sedition Acts, which Adams ignored. The Federalists were quick to enforce the new laws. A number of Democratic-Republican newspaper publishers were arrested, and 10

people were convicted of sedition before Federalist judges. One of the convictions highlights how ridiculous the enforcement of the law was. When a bystander stated that they were firing at Adams’s ass when he was saluted by the firing of a cannon, another bystander was convicted for saying that he did not care if they fired through his ass. No appeals of the convictions were made to the U.S. Supreme Court, as the judges were Federalists. No Federalists were indicted for similar attacks against the Democratic-Republicans.

In the next election, the Democratic-Republicans lambasted the Federalists for the Alien and Sedition Acts. The election was an unparalleled success for the Democratic-Republicans, who defeated the Federalists in almost all of the elections. Upon assuming the presidency, Jefferson pardoned all of those persons who had been convicted under the Sedition Act. In 1832, the House Judiciary Committee authorized a refund of all fines under the Sedition Act. As Justice William O. Douglas stated in his concurring opinion in the decision of *Watts v. United States* (1969): “The Alien and Sedition Laws constituted one of our sorriest chapters; and I had thought we had done with them forever.”

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See Also: Adams, John (Administration of); Anti-Federalist Papers; Bill of Rights; Civil Disobedience; Civil Rights Laws; Deportation; Federalist Papers; Immigration Crimes; Jefferson, Thomas (Administration of); Political Crimes, History of.

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American Bar Association

The American Bar Association (ABA) was established in 1878. It is a voluntary professional association for legal professionals and law students unaffiliated with any jurisdiction, unlike state or local bar associations. It is the largest voluntary professional association in the world. With more than 400,000 members, the ABA provides law school accreditation, continuing legal education, information about the law, programs to assist lawyers and judges in their work, initiatives to improve the legal system for the public, and educational resources for teaching the public about the legal system and the role of law in society. The ABA is headquartered in Chicago, Illinois, maintains a second office in Washington, D.C., and manages rule-of-law initiatives around the world.

Mission and Activities

The mission of the ABA is “to serve equally our members, our profession, and the public by defending liberty and delivering justice as the national representative of the legal profession.” To fulfill its mission, the association works toward four goals: serving members, serving the profession, eliminating bias and enhancing diversity, and advancing the rule of law. The ABA is governed, for the most part, by members who have actively served the public and the profession for many years. These members comprise the ABA House of Delegates and Board of Governors, the policy-making bodies of the association. Elected ABA officers include the president, whose term lasts for one year, the president-elect, the chair, the secretary, and the treasurer of the House of Delegates. The association’s executive director is the chief operating officer of the organization. The association is comprised of more than 2,200 individual entities, which address specific legal areas and issues, provide continuing education opportunities for lawyers, publish materials, and educate the public about the law. The ABA maintains a code of ethical standards for lawyers, which has been adopted in 49 states and in the District of Columbia. The association also accredits law schools. In most U.S. jurisdictions, graduation from an ABA-accredited law school is expressly required to sit for that state’s bar exam or for existing lawyers to be admitted to the bar of another state. Finally, the

association acts as a voice for the legal profession by issuing policy resolutions regarding important issues relevant to the legal community or general rule of law. Resolutions have addressed such issues as civil rights, civic education in schools and communities, capital punishment, affirmative action, gun control, nuclear nonproliferation, and same-sex marriages.

The ABA has faced accusations of elitism, as critics claim membership favors white male corporate lawyers. Critics also suggest that the ABA’s law school accreditation requirements are outdated and expensive. Others believe that ABA positions on public policy issues favor liberal attitudes and are beyond the organization’s mission. Most recently, the ABA has faced criticism for failing to stop law schools from publishing misleading data regarding employment and salary prospects and the actual cost of law school.

Criminal Justice

The Criminal Justice Section of the ABA was founded in 1920 and is responsible for the association’s work on issues related to criminal law, as well as criminal and juvenile justice. The section has been party to numerous resolutions related to many aspects of the criminal trial process and criminal justice system. In 1997 the section was party to an ABA resolution that called upon jurisdictions to impose a moratorium on capital punishment until they could ensure that all death penalty cases were administered fairly and impartially, thus minimizing the risk that an innocent person may be executed. More recently, the section has addressed issues such as microstamping technology in semiautomatic weapons, simplified Miranda rights for juveniles, communications between incarcerated parents and their children, and arrests of homeless persons for otherwise non-criminal acts. Since 1968, the section has issued Criminal Justice Standards, which guide policy makers and criminal justice practitioners. Then Chief Justice Warren Burger described the project as the “single most comprehensive and probably the most monumental undertaking in the field of criminal justice ever attempted by the American legal profession in our national history.”

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See Also: Capital Punishment; Chicago, Illinois; Lawyers Guild; Reform Movements in Justice; Washington, D.C.

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American Civil Liberties Union

The history of the American Civil Liberties Union (ACLU) is the story of free speech and the protection of civil liberties in American life. Over the past 90 years, the ACLU has played a major role in the evolution and growth of modern constitutional law. The ACLU has been involved in more than 80 percent of court cases listed as proverbial "landmark" cases in any constitutional law textbook, and in several critical cases, the Supreme Court's opinion was drawn directly from the ACLU brief. The ACLU was founded in 1920 by Crystal Eastman, Roger Baldwin, and Walter Nelles and was the successor organization to the National Civil Liberties Bureau founded during World War I to defend free speech. The ACLU is essentially a private voluntary organization dedicated to defending the Bill of Rights.

For over 90 years, the ACLU has worked to defend rights such as freedom of speech, freedom of religion, and the right to privacy. According to the ACLU Website, its mission is to preserve and protect American constitutional rights and freedoms as set forth in the U.S. Constitution and its amendments. The ACLU works in three basic areas: freedom of expressions, conscience, and association; due process of law; and equality under the law. The ACLU also works to enhance and extend these rights to those U.S. citizens who have historically been denied their rights. Such groups include people of color, lesbians,

homosexuals, bisexuals, transgendered people, women, mental health patients, prisoners, people with disabilities, and the poor.

The ACLU reported more than 500,000 members in 2010, and in addition to a national office in New York and large legislative office in Washington D.C., it maintains 54 locally based affiliate offices from which the majority of the ACLU's cases originate and are handled. The ACLU has staffed offices in all 50 states, Puerto Rico, and Washington, D.C. These affiliates or state organizations are the fundamental units of the ACLU framework and are constantly involved in litigation, lobbying, and public education. The ACLU often refers to itself as "the nation's largest law firm." The ACLU is involved in an estimated 6,000 court cases a year and appears before the Supreme Court more than any other organization aside from the federal government.

The fundamental, and most controversial, facet of the ACLU is its professed commitment to the nonpartisan defense of the Bill of Rights. The ACLU holds an absolutist approach to liberties and rights, and it defends all people whose rights have been violated, even if their behaviors and/or beliefs are wholly unpopular. This means defending the civil liberties of everyone, including the free speech rights of Communists, Nazis, NAMBLA (North American Man/Boy Love Association), and Ku Klux Klan members. It means defending the due process rights of even the most contemptible criminals. Defense of the detested has always been the ACLU's standard and the basis of the most virulent attacks on it. According to the ACLU, it is not a political organization, as its doctrines and ideology do not adhere to the manifesto of any political party. However, because of the ACLU's defense of the powerless and those on the fringes of mainstream society, most ACLU members have historically been liberals or people with leftist sympathies.

Key issues identified by the ACLU are firmly within the realm of crime and punishment. Such issues include a repeal of the death penalty through advocacy and education; drug law reform, especially in the realm of the decriminalization of all drugs; the protection of the rights of prisoners by fighting unconstitutional conditions of confinement; protection of the rights of immigrants and people of color; and



The ACLU of Southern California distributed these information sheets about torture as part of an event called Torture Awareness Day on June 25, 2010. The boxes represent the space needed to store some of the 150,000 pages of declassified documents on the U.S. government's use of torture during interrogations that the ACLU acquired through a Freedom of Information Act request.

ensuring that the United States complies with universal human rights principles. However, even with a strong emphasis in the field of crime and punishment, given the law and order mood that dominates U.S. politics and the Supreme Court, this area is where the ACLU has suffered its most consistent defeats. Historically, the Supreme Court has been unsympathetic to the rights of offenders, the war on drugs has eroded Fourth Amendment rights and sent incarceration rates soaring, and the public consistently supports the death penalty in the United States. The ACLU has faced consistent defeat in its call for the full and complete decriminalization of the use, possession, manufacture, and distribution of all drugs.

Landmark Cases

A brief list of landmark cases named by the ACLU in the realm of crime and punishment can be found below. A landmark case, according to

the ACLU, is one that establishes a precedent that either substantially changes the interpretation of the law or that simply establishes new case law on a particular issue.

1. *Mapp v. Ohio* (1961): The Supreme Court ruled in this case that the Fourth Amendment's exclusionary rule, first applied to federal law enforcement officers in 1914, applied to state and local police as well.
2. *Gideon v. Wainwright* (1963): An indigent drifter from Florida made history when, in a handwritten petition, he persuaded the court that poor people had the right to a state-appointed lawyer in criminal cases.
3. *Escobedo v. Illinois* (1964): Invoking the Sixth Amendment right to counsel, the court threw out the confession of a man whose repeated requests to see his lawyer were ignored throughout many hours of police interrogation.

4. *Miranda v. Arizona* (1966): This famous decision established the Miranda warnings, a requirement that the police, before interrogating suspects, must inform them of their rights. The court embraced the ACLU's amicus argument that a suspect in custody has both a Sixth Amendment right to counsel and a Fifth Amendment right against self-incrimination.
5. *Indianapolis v. Edmond* (2001): Indianapolis's checkpoint programs violated the Fourth Amendment because their primary purpose was indistinguishable from general interest in crime control and did not fit into the established exceptions to individualized suspicion.
6. *Virginia v. Hicks* (2003): The Richmond Redevelopment and Housing Authority policy authorizing the police to serve notice or arrest any person lacking "a legitimate business or social purpose" in the low-income housing development was not overbroad and did not violate the First Amendment because it targeted all trespassers equally.

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See Also: Bill of Rights; Civil Rights Laws; Constitution of the United States of America; Defendant's Rights; Prisoner's Rights; Supreme Court, U.S.; Suspect's Rights.

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American Law Institute

The American Law Institute is the leading independent U.S. organization that is dedicated to

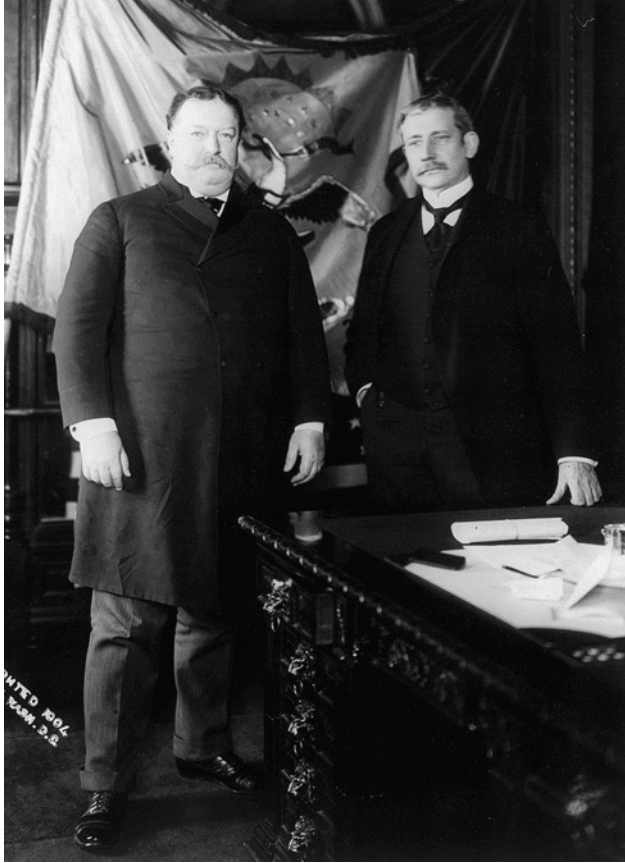
clarifying and improving the law. The American Law Institute is influential not only with U.S. courts and legislatures but also internationally, as well as being a leader in the areas of legal scholarship and education. The American Law Institute is a 501(c)(3) nonprofit organization that is incorporated in Washington, D.C.

The American Law Institute was created in 1923 after a review by the Committee on the Establishment of a Permanent Organization determined that there was a general dissatisfaction with the administration of justice in America largely caused by the uncertainty and complexity of U.S. law. There was reportedly a lack of precision in the use of legal terms and a voluminous amount of recorded legal decisions, most of which did not benefit from systematic development. The founding members of the institute included Chief Justice of the Supreme Court and former President William Howard Taft, future Chief Justice Charles Evans Hughes, and former Secretary of State Elihu Root. These three individuals were the first to sign the certificate of incorporation of the American Law Institute on February 23, 1923. Since its inception, the institute has served as an instrument for the dissemination of new innovative perspectives in American jurisprudence.

Structure and Function

Membership in the American Law Institute is restricted to 3,000 elected members; after 25 years, elected members are eligible to become life members. New members must be nominated by a current member, who submits a letter of recommendation, and seconded by two other members. A membership committee reviews the prospective members and makes the final selection. Members are lawyers, judges, and legal educators with demonstrated professional achievement and interest in improving the law. Ex officio members include chief justices and associate justices of the U.S. Supreme Court, chief judges of each U.S. Court of Appeals, U.S. attorneys general, U.S. solicitors general, chief justices/judges of each state, deans of law schools, and presidents of the American Bar Association, among members of other prominent legal organizations.

The American Law Institute, in collaboration with the National Conference of Commissioners



William Howard Taft (left) and Elihu Root in 1904. On February 23, 1923, they helped found the American Law Institute along with Charles Evans Hughes.

on Uniform State Laws (now known as the Uniform Laws Commission), developed and monitors the Uniform Commercial Code (UCC). The UCC is a comprehensive code that covers most areas of U.S. commercial law applicable to every phase of any business transaction, including sales, bills of lading, commercial paper, vendor security, and so forth. Other model statutory projects have included the Federal Judicial Code Revision, the Federal Securities Code, the Model Code of Evidence, the Model Code of Pre-Arrest Procedure, the Model Land Development Code, and the Model Penal Code. Another joint venture of the American Law Institute was with the International Institute for the Unification of Private Law, which collectively promulgated the Principles of Transnational Civil Procedure in 2004. The institute has helped transform jurisprudence through these types of initiatives.

The organization has a reputation for impartial and thoughtful analysis of legal issues. For instance, an early project of the institute was the drafting of its Statement of Essential Human Rights; this was used by the United Nations in the preparation of its Universal Declaration of Human Rights, which was adopted by the UN General Assembly on December 10, 1948. Publications of the institute are produced through a careful and deliberative process; active members of the institute are expected to submit comments on drafts of publications. These vehicles have helped the institute forge a modernist jurisprudence perspective.

The American Law Institute publishes an array of resources catalogued under topics such as restatements of the law, principles of law, and codifications and studies, as well as various special publications. In 1987, the third series of Restatements was begun with a new Restatement of the Foreign Relations Law of the United States; other Restatements Third include those on Agency, Apportionment of Liability, Property, Restitution and Unjust Enrichment, Torts, and Unfair Competition. Restatements of law describe law as it is; principles of law are directed to courts, legislatures, and governmental agencies and endeavor to express what the law should be. The organization also publishes several legal periodicals, including the *CLE Journal*, the *Practical Lawyer*, and the *Practical Litigator*.

The American Law Institute, in collaboration since 1947 with the American Bar Association, also offers an array of continuing professional education opportunities, including traditional classes on an array of legal topics, as well as course materials such as audio and videotapes, satellite broadcasts, and offerings in other media. The American Law Institute–American Bar Association Committee on Continuing Professional Education telecasts training seminars nationally via satellite on its American Law Network. The two organizations also jointly sponsor the American Institute for Law Training within the Office (AILTO).

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See Also: American Bar Association; Codification of Laws; Lawyers Guild; Reform Movements in Justice.

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American Revolution and Criminal Justice

The American Revolution greatly shaped the criminal justice system in what would become the United States. The criminal justice systems in place before this time had been imported from Europe. Each of the thirteen colonies, an independent entity with a separate charter from the monarch, had its own criminal justice system, traditions, and set of laws and precedents. While influences of the criminal justice systems of France, the Netherlands, and Spain could be found in the North American colonies, certainly the English common law system was the dominant model. Experiences that occurred during the American Revolution, as well as increasingly more cosmopolitan and inter-related interactions, created a need for revisions to traditional notions of criminal justice.

Virginia was the earliest of the colonies to adopt the English criminal justice system and practices, doing so in the early 17th century. Virginia established a system of county courts mirroring the English system, with Admiralty, General, and Chancery courts being established. Traditional English practices and procedures such as arrest, indictment, bail, trial, juries, judgment, and execution were adopted, although with some changes. Beginning in 1623, the House of Burgesses also established a five-member appellate court to hear appeals from lower courts, which was also known as the Quarter Court as it met four times per year. These practices and procedures spread to the other 12 colonies, so that by the eve of the American Revolution, all colonies had a judicial system. Certain English

constitutional guarantees, such as the Charter of Liberties and the Magna Carta, were known and embraced by the colonists, as was the common law system of legal precedent. Certainly, the American system tended to be more democratic than that of England, with a wider spectrum of the population serving on juries, for example. Other differences existed as well. In the Massachusetts Bay Colony, for example, Puritan magistrates heard pleas, and if they were satisfied that charges were grounded, suspects were handed over to a superior court, which then called a grand jury.

Many colonies also moved toward a more liberal and humane imposition of punishments, as the number of capital crimes was reduced and defendants were provided with greater legal rights. In New Holland, for example, the Dutch West India Company had given certain stockholders, called "patroons," large tracts of land, as well as manorial rights and privileges that permitted them to set up civil and criminal courts and to appoint judges. Although New Holland, which existed from 1614 until 1674, permitted slavery, slaves were allowed to sign legal documents, could bring legal actions against whites, and were allowed to testify in court. Despite these changes, the criminal justice system was rudimentary and was tied strongly to the past. Trained peace officers did not exist, and if local authorities were faced with a serious emergency, they were forced to call in the militia to deal with it. No penitentiary system existed; prisoners were housed indiscriminately in local jails or other emergency settings. Indeed, it was not until the 1790s, when the Pennsylvania legislature ordered construction of a cell house in the yard of Philadelphia's Walnut Street Jail, that serious thought went into what was needed for a penitentiary system.

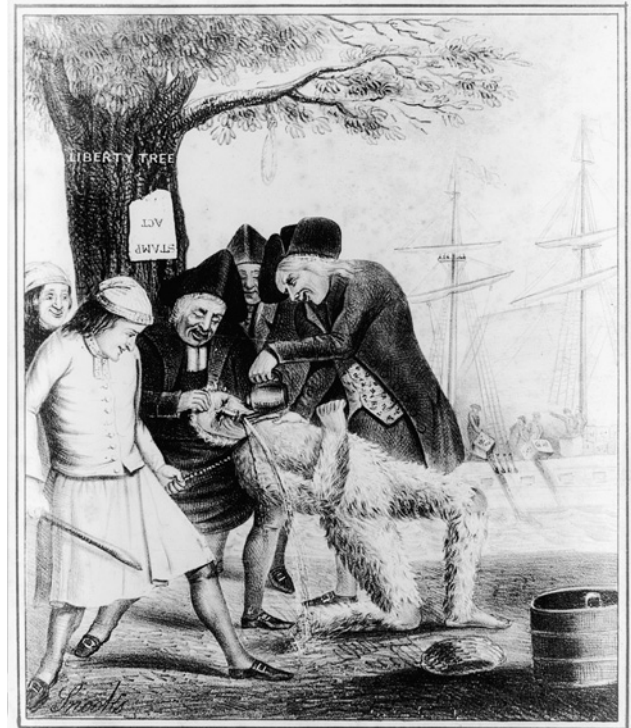
With War Comes Change

Certain actions that exacerbated the American Revolution also played a role in changing attitudes toward the criminal justice system. The Royal Proclamation of 1763, for example, sought to regulate trade, settlement, and land purchases on the then western frontier. This was unpopular with certain colonists who wished to settle in the areas covered by the Royal Proclamation and caused an increase in behaviors that disregarded the law. The Stamp Act of 1765, which imposed a

direct tax on many materials printed in the colonies, was hugely unpopular and caused a surge of opposition, law breaking, and civil disobedience. The Stamp Act provided jurisdiction for trying violators to the courts of admiralty, which further enraged colonists as these courts lacked a jury and were seen as a violation of natural and constitutional rights. Although the Stamp Act was repealed in 1766, it set the stage for later upheaval as well as an assertion of certain fundamental rights when dealing with taxation and the criminal justice system. Finally, the “Intolerable Acts” (e.g., the Tea Act of 1773, the Boston Port Act of 1774, the Massachusetts Government Act of 1774, the Administration of Justice Act of 1774, the Quartering Act of 1774, and the Quebec Act of 1774) were a series of laws that triggered outrage and resistance in the thirteen colonies. Collectively, the Intolerable Acts imposed penalties for resistance to the Tea Act, including closing the Port of Boston, bringing the Massachusetts government under the control of the Crown, allowed government officials to be tried in Great Britain rather than in the colonies and allowed British troops to be housed in private homes. This series of acts stoked sympathy for the radicals in Massachusetts and increased interest across the colonies in their constitutional and natural rights and their colonial charters. These acts were seen as a threat to the liberties of all and helped to spur the formation of the First Continental Congress.

John Adams, although a well-known patriot, greatly promoted the rights of defendants when he agreed to represent eight British soldiers charged with murder for deaths that arose out of what became known as the Boston Massacre. While devoted to the patriot cause, Adams believed that all criminal defendants deserved a fair trial, even though he knew his choice of clients might harm his future political aspirations. Adams mounted a vigorous defense, arguing that because the soldiers feared for their lives and had been threatened by the crowd, they had acted in self-defense. The jury that heard the case acquitted six of the defendants and gave the remaining two reduced sentences that resulted in their thumbs being branded. Adams’s actions helped to solidify support for the rule of law, in Massachusetts and elsewhere.

The American Revolutionary War began in 1775. At that time, pursuant to the Proclamation



THE BOSTONIANS PAYING THE EXCISEMAN, OR TARRING AND FEATHERING.

Bostonians forcing tea on a tarred-and-feathered British loyalist in a 1774 print. Loyalists, who were often subject to threats and persecution, made up about 15 to 20 percent of the population.

for Suppressing Rebellion and Sedition of 1775, George III of Great Britain had declared all members of the American armed forces to be traitors rather than prisoners of war (POWs). Pursuant to normal practices of the time, this would have meant that all captured American troops would have been tried and, if found guilty, executed. British officials declined to pursue these charges, however, in an attempt to preserve whatever public sympathy the British enjoyed in the colonies. While the patriots were critical of British practices regarding POWs, their treatment of Tories loyal to the Crown was also suspect. Tories, who are estimated to have represented 15 percent to 20 percent of the population, were subject to confiscation of their property by patriots and often threatened with physical harm, including being covered with tar and feathers.

Conclusion

American experiences throughout the Revolutionary War and the period immediately preceding

it resulted in tremendous interest in the rights of those charged with criminal offenses. Such interests were memorialized in the Articles of Confederation, the U.S. Constitution, and the Bill of Rights. After American independence, and even before, citizens became much more ready to disregard English legal precedents and rules in an effort to improve the implementation of the criminal justice system. Improvements in the efficiency and equity of the judicial system, the perceived need for peace officers, and the growth of penitentiaries were all responses to these experiences.

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See Also: Articles of Confederation; Bill of Rights; Colonial Courts; Common Law Origins of Criminal Law; Constitution of the United States of America; Declaration of Independence; Intolerable Acts of 1774; Proclamation for Suppressing Rebellion and Sedition of 1775; Stamp Act of 1765; Tea Act of 1773.

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An American Tragedy

Theodore Dreiser, often considered the foremost naturalist writer of his day, gave his readers descriptive tales of human survival and the abuses of forces beyond their control. One of his most famous works, *Sister Carrie* (1901), gives the grim tale of a young girl working in a Chicago shoe factory. She works for wages that do not cover the

bills, she has a loveless marriage, and her body aches from the work, pain, and sorrow of her life. Her story, like Upton Sinclair's *The Jungle*, captured the laborer's life. Yet, Dreiser wrote about more than the sorrows of the working class in the factory. *An American Tragedy* (1925) also showcases the life of the poor, but this time Dreiser honed in on the rise of crime.

The plot of *An American Tragedy* rests on Clyde, a poor boy raised by religious parents in Kansas City. He dreams of better things, shiny cars and new clothes. Quickly, he takes a job as a bellboy where his coworkers appear more sophisticated than him. Their speech and dress are more refined, and when they introduce Clyde to prostitution and alcohol he has little power to resist. He sees these lures as part of higher society, mainly because he has the funds to obtain them. All the while, Clyde is desperately seeking the eye of Hortense Briggs. These attempts run short when Clyde accidentally kills a child while driving a stolen car. He flees, briefly stopping in Chicago and ending up in upstate New York with a distant uncle.

Secretly, Clyde views his uncle as the type of family he never had. He is wealthy, sophisticated, and established in society. Unfortunately, his uncle only provides him a job in his factory. He quickly promotes Clyde to a position of power. Still wounded and confused about the turn of events in Kansas City, and attempting to look strong and proud for his uncle's approval, Clyde begins his New York life eschewing women. Very quickly, this mindset changes when he catches the eye of Roberta Alden. Roberta, fitting the stereotype of the female factory worker, is a poor farm girl working for him at the plant. Clyde, evolving from the young and naïve poor boy in Kansas City love-struck by an unapproachable female, turns the tables with Roberta. She is desperately in love with him, and he convinces her to sleep with him. He thrives on the thrill of the forbidden relationship—as he is her boss—and he has no intention of marrying her. He clearly views himself above Roberta, even though they come from similar backgrounds.

While sleeping with Roberta, Clyde begins to court Sondra Finchley, the beautiful daughter of a wealthy businessman. Her father is also friends with his uncle, and as the months go by Clyde's uncle begins to introduce him to his society

friends. Roberta finds herself pregnant and Clyde fails to procure an abortion for her. Instead, he is still making plans with Sondra. All the while, Clyde is making plans to kill Roberta in a way that looks accidental. He takes her for a canoe ride on Big Bittern Lake, and during a conversation about ending their relationship she moves toward him. He, seeming startled, strikes her in the face with his camera. The boat flips, and he swims ashore unwilling to save her. Even though no clear evidence shows that Clyde intended to kill the girl or that it was an accident, a sensational trial unfolds. His uncle's money cannot buy him an acquittal, and manufactured evidence helps convict him to death.

The story line of *An American Tragedy* showcases the working poor in America, and Clyde's hostile jury epitomizes middle and upper class loathing for the lower classes. More so, Clyde's ascension to a position of power in the plant and his dating a wealthy girl assaults domestic ideals of place and stature in society. Dreiser's tale also was based in reality. In July 1906, Grace Brown was found dead in Big Moose Lake in upstate New York. Her boyfriend, Chester Gillette, was convicted of killing her, even though he claimed it was an accident. His love letters to her were read in court, and he was electrocuted in 1908. The trial drew international attention, and Dreiser studied the case for years before writing his novel. Dreiser, basing his novels on remnants of reality and showcasing a well-covered trial, only reinforces the rise of crime dramas and fiction in popular culture during a time of rising gang violence, corporate espionage, and stressed legal divisions as law-like prohibition tested law enforcement's might.

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See Also: 1600 to 1776 Primary Documents; 1777 to 1800 Primary Documents; Capital Punishment; Literature and Theater, Crime in; Murder, Sociology of.

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Anarchists

Anarchists hold that hierarchical institutional authority is inherently detrimental to human beings. A key difference between what can be termed *classical* and *contemporary* anarchism is the latter's increasingly fractured nature, which arguably reflects the culturally and politically diverse nature of contemporary American society. Anarchists follow the political philosophy of anarchy. The term *anarchy* comes from the ancient Greek, meaning "without ruler." Anarchists hold that society should consist of a free association of its members. Anarchists argue that there should be no formal institutionalized state government enacting prescriptive laws to police human behavior and social interaction. This does not imply that there should be no ethics, rules, or social order. Rather, it should be interpreted as meaning the rejection of any hierarchical secular, religious, or cultural authority in favor of a more creative and spontaneous order of individuals living in autonomous like-minded communities on a voluntary basis.

Anarchists emphasize free will and self-determination, arguing that ethics are a highly personal and individual matter. They focus on personal responsibility rather than the blind following of laws imposed by a social, cultural, or religious authority. For anarchists, such authorities are paternalistic and dehumanize people by demanding conformity and making them compliant and overly reliant on other people when making personal decisions. However, this should not be taken to mean that the wants and needs of other people are to be ignored. Anarchists hold that personal action should be based upon concern for the welfare of other human beings. Forms of oppression based upon sex, gender, race, disability, or class are frowned upon and argued to be a direct consequence of inequalities fostered by economic, social, cultural, and religious elites. Likewise, nationalism and the promotion of patriotism are similarly seen to be bound up with the promotion of the interests of elites to the detriment of the poor and socially excluded, and therefore are held to perpetuate social inequality.

Although they share a rejection of the hierarchical state, anarchists disagree over some key aspects of their political philosophy. Some argue for the

need to use violent action to enforce social change and create a more humane system, while others argue for the need to engage in peaceful protest and action. Additionally, anarchists disagree in their focus on the individual and the collective, particularly in relationship to the organization of the economic system in an anarchist society. Individualist anarchists value individual freedom above all else. Some individualist anarchists—sometimes called “free-market anarchists”—argue for changes to be made to the free-market capitalist systems that dominate contemporary Western democracies so that they can operate on a more voluntary basis without the involvement of states. In contrast, anarcho-communists and anarcho-syndicalists focus more on how the action of the individual can benefit the social group. The key difference between the former and the latter is that anarcho-communists wish to replace democracy with communism and common ownership, while anarcho-syndicalists tend to (but do not always) wish to establish a collectively oriented socioeconomic system that nevertheless respects some element of private property ownership. Both anarcho-communists and anarcho-syndicalists argue against free-market economics and hold that in the ideal anarchist society, the needs of the collective can be met without affecting an individual’s creativity and sense of self-agency.

Early History

Anarchism emerged as a political philosophy in the late 18th century. It came into being during a time when far-reaching social change was occurring in Western civilizations as the Enlightenment, birth of modern science, growing industrialization, and rapid urbanization increasingly led to the free exchange of ideas and goods across national borders with the result that notions of personal freedom and self-determination based upon political and economic self-rule began to influence both creative intellectual thought and collective social action. This state of affairs led to the English Civil War, the French Revolution, and the American Revolutionary War. A key founding figure of what can be called classical anarchism was William Godwin. In his *Enquiry Concerning Political Justice and Its Influence on Modern Morals and Manners* (1793), Godwin engaged in a wide-ranging critique of elitism and organized



The photo shows anarchist writer Alexander Berkman addressing a large crowd in New York City's Union Square on July 11, 1914. Berkman was the author of *Prison Memoirs of an Anarchist*.

government as he argued that property monopoly, marriage, and monarchy stopped human beings from achieving their full potential.

Godwin's ideas influenced a number of important 19th-century European intellectuals, including Karl Marx, Pierre-Joseph Proudhon, and Mikhail Bakunin. However, unlike Godwin, these intellectuals advocated a form of anarchism focused upon collective action, trade unionism, and community ownership rather than individualism and personal property rights; this resulted in the creation of anarcho-communism and anarcho-syndicalism. These ideas spread from Europe to the United States, influencing notable early American anarchists such as William Greene, Ezra Heywood, and Josiah Warren, who were all members of the International Working Man's Association (IWMA). The IWMA (sometimes called the First

International) was a global cooperative established in 1864. It focused on engaging in public protest and collective action to create socialist government. It was made up of anarchists, left-wing political parties, and trade union organizations engaged in class politics and worker rights. Tensions existed within the IWMA in regard to whether violent or nonviolent action should be used. Differences also existed in the emphasis placed on the collective over the individual by anarcho-communist and anarcho-syndicalist members, which contrasted with the views of writers such as Henry David Thoreau who advocated a more individualist form of anarchism. The IWMA in Europe played an important role in supporting the Russian Revolution of 1917. However, Russian anarchists were persecuted along with a number of other social groups, such as the mentally ill, after the Bolsheviks seized power. During the 1920s, the emergence of the nationalistic tendencies of fascism led to anarchists engaging in direct armed conflict with Spanish and Italian fascists.

Haymarket Riot

An important historical point in the American anarchist movement was the Haymarket bombing. This occurred on May 6, 1886. On May 1, a worker strike was organized by trade unions and the IWMA with the goal of reducing working hours to a maximum of eight hours per day. The city of Chicago played a central role in the organization of the strike. On May 4 at a public rally in Chicago organized to galvanize support for the strike, someone threw a bomb at a group of police officers. It killed eight people and wounded more than 60 others. In response, the police attacked the crowd, injuring more than 200 people. The anarchists August Spies, Samuel Fielden, George Engel, Adolph Fisher, Louis Lingg, Oscar Neebe, and Michael Schwab were put on trial for the bombing alongside Albert Parsons, who was the head of the IWMA in Chicago. Although a number of witnesses were presented to prove that none of the accused threw the bomb, the prosecution used speeches and articles written by Spies and Parsons in particular to charge the group with conspiracy to commit murder on the grounds that they had publicly argued for the need to engage in violent protest and therefore had incited the unknown person to throw the

bomb. All of the men were found guilty. Spies, Parsons, Fisher, Lingg, and Engel were given the death penalty. Neebe, Fielden, and Schwab were sentenced to life imprisonment.

The Haymarket bombing had a far-reaching impact on the anarchist movement in America (and, indeed, worldwide). Although there was initial public sympathy for the aims of the trade union movement and the individuals convicted of the Haymarket bombing, union leaders nevertheless became reluctant to use mass strikes to achieve political ends. The bombing also helped propagate a populist image of anarchism as a violent political philosophy. Emma Goldman, a renowned feminist and anarchist, was inspired by the political aftermath of Haymarket bombing to write a defense of the movement in her classic work *Anarchism and Other Essays* (1910). Goldman believed that targeted violence could be effective in achieving a greater good, although in her later writings she was heavily critical of the violence used by the Bolsheviks during the Russian Revolution. In 1892, Goldman and the writer Alexander Berkman planned and failed to assassinate the industrialist and financier Henry Clay Frick, which they had hoped would be an act of “propaganda by the deed.” Both Goldman and Berkman were imprisoned for their assassination attempt. In prison, Berkman wrote the key anarchist tract *Prison Memoirs of an Anarchist* (1910), in which he argued that it was the capitalist free-market system, not human nature, that created “man’s inhumanity to man.” On their release, Goldman and Berkman continued to be vocal members of the anarchist movement, with the result that they were subsequently deported from the United States to Russia in 1919.

Propaganda by deed promotes targeted physical violence against political enemies as a way of inspiring the masses and catalyzing revolution. It was first advocated Luigi Galleani, an Italian anarchist active in the United States in the early 20th century until his deportation in 1919. Leon Czolgosz, who assassinated President William McKinley in 1901, claimed to be a member of the anarchist movement and to be inspired by the ideas of Goldman and Galleani. This was strongly denied by Goldman and other key members of the anarchist movement. Between 1914 and 1932, Galleani’s followers (known as Galleanists) carried out



In the aftermath of the suspected anarchist Wall Street bombing of 1920, policemen and soldiers attempted to control a crowd in front of the Morgan Bank. Body bags in the foreground hold some of the bombing's 38 victims. "Propaganda by deed" promoted targeted physical violence against political enemies, but the bombing eventually led to mainstream rejection of anarchism.

a series of bombings and assassination attempts against institutions and persons. Notable Galleanists included Nicola Sacco and Bartolomeo Vanzetti, who were executed in 1927 for the murder of two men during an armed robbery. It is suspected that Galleanists were behind the Wall Street bombing of 1920, which resulted in the death of 38 people. The anarchist movement's alleged involvement with the Wall Street bombing was never proven but its continued advocacy of public disorder and targeted violence undoubtedly led to the gradual public rejection of anarchism from mainstream American politics during the first half of the 20th century.

Modern Anarchism

Anarchism reemerged in America as part of the 1960s counterculture and civil rights movements and continued to grow within modern punk, urban dance, modern art, and the alternative cul-

ture scenes. Anarchism's focus on free thought and individual agency chimes with the shared existentialist concern with personal freedom from traditional forms of familial, interpersonal, and sexual relationships of these diverse groups. Feminist and green movement forms of anarchism also emerged during the 1960s, reflecting a growing concern with promoting female equality and the impact of human behavior on the natural environment. Contemporary forms of anarchism argue against capitalism and free-market economics, although some do wish to maintain individual property rights and global trade. For example, anarcho-capitalism (which is sometimes called libertarian anarchism or free-market anarchism) argues that voluntary trade of private property and services is necessary to maximize personal liberty and prosperity. The varied nature of anarchism today arguably reflects the diverse nature of modern American society. Notable contemporary American anarchists

include Noam Chomsky, Paul Goodman, Murray Bookchin, and John Zerzan.

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See Also: 1777 to 1800 Primary Documents; 1901 to 1920 Primary Documents; Czolgosz, Leon; Kaczynski, Ted; Libertarianism; Political Dissidents; Riots; Sacco and Vanzetti; Strikes; Terrorism; Xenophobia.

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Anti-Federalist Papers

After the American Revolution, when the thirteen colonies revolted from the oppression of English rule, the founding fathers wrote the Constitution in an effort to create a more fair and equitable form of government than the monarchies that were prevalent in Europe. However, when the founding fathers wrote the Constitution, there was not unanimous agreement among the states as to whether it should be ratified. The primary opponents to the original Constitution were the Anti-Federalists.

At that time, there were two main factions among the founding fathers: the Federalists and the Anti-Federalists. Essentially, the Federalists advocated a strong central government and were led by Alexander Hamilton. The Anti-Federalists favored a less centralized government and were led by Patrick Henry and Thomas Jefferson. Jefferson generally favored a more agrarian type of society. The Anti-Federalists were concerned

about the power vested in the president and the Congress and thought that the states would have to cede too much of their sovereignty. One of the other major differences between the Federalists and the Anti-Federalists was that the Anti-Federalists wanted a Bill of Rights added to the Constitution and the Federalists did not. The reason for this disagreement was that the Federalists thought that if a written document were created listing the rights of the people, then the government would likely recognize only those written rights, whereas the Anti-Federalists wanted a written list of rights, otherwise they thought that the government would not allow the people any rights. Given these differences, ratification of the Constitution was uncertain.

As a matter of philosophical perspective, the Anti-Federalists held a strong conception of justice that was centered on individual rights that would prevent a strong central government from oppressing citizens. It can be rationally argued that the ultimate evil for the Anti-Federalists was a strong, oppressive, and tyrannical government. Thus, a Bill of Rights that guaranteed and protected fundamental individual rights was an absolute necessity.

Constitutional Critiques

After the proposed Constitution was written at the Constitutional Convention, the Anti-Federalists began to publish a series of articles critical of the proposed Constitution in an attempt to defeat its ratification. Essentially, the Anti-Federalists wanted a federal government that was more akin to the defunct Articles of Confederation, which had a very weak central government. Regardless, many of the objections raised by the Anti-Federalist were valid, and the Federalists, in response, began their own organized campaign of publications to counter the Anti-Federalists.

The Anti-Federalists, at least initially, used pseudonyms when publishing their critiques of the proposed Constitution. Some of the more frequent pseudonyms used were the Federal Farmer, Cato, and Brutus. It is thought that the use of these names was to inspire the populace against the Constitution. For example, Brutus was well-known in history as opposing the tyranny of Caesar, who was a strong individual leader (i.e., dictator) of ancient Rome. Cato was a famed Roman soldier

and statesman who was a man of agriculture. Interestingly, when the Federalists started to publish their responses to the Anti-Federalist critiques and their defenses of the proposed Constitution, now known as the Federalist Papers, they used the pseudonym Publius, likely in an effort to counter the public recognition and identification with Brutus as a resister to tyranny, given that the people had just successfully revolted from the tyranny of the English monarchy.

The Anti-Federalists were not as well organized as the Federalists. Accordingly, it was not until much later, many years after the adoption of the Constitution and the Bill of Rights, that the Anti-Federalist Papers were compiled into a single work. However, this does not detract from the influence that the Anti-Federalists had on the American criminal justice system.

Resistance to the proposed Constitution was strong. The opposition of the Anti-Federalists almost derailed the ratification of the Constitution. The ratification vote in a number of the states was close. Although the Anti-Federalists were not successful in defeating the ratification of the proposed Constitution, they were very successful in that their efforts forced the adoption of a written Bill of Rights shortly after the Constitution was ratified. It has been recognized that without the adoption of a Bill of Rights, the proposed Constitution might have very well failed and gone the way of the Articles of Confederation.

Conclusion

Historically, in the context of crime and punishment in the United States, it is relatively certain that the Anti-Federalists and their opposition to the Federalists through the Anti-Federalist Papers were the quintessential proponents in the ultimate adoption of the Bill of Rights, which had a profound effect on crime and punishment in America. This is especially true when considering that the Fourth, Fifth, Sixth, and Eighth Amendments, which provide a series of constitutional protections for persons accused of crimes, would likely not have otherwise been adopted or present in the American criminal justice system today.

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See Also: American Revolution and Criminal Justice; Federalist Papers; Jefferson, Thomas; Political Dissidents.

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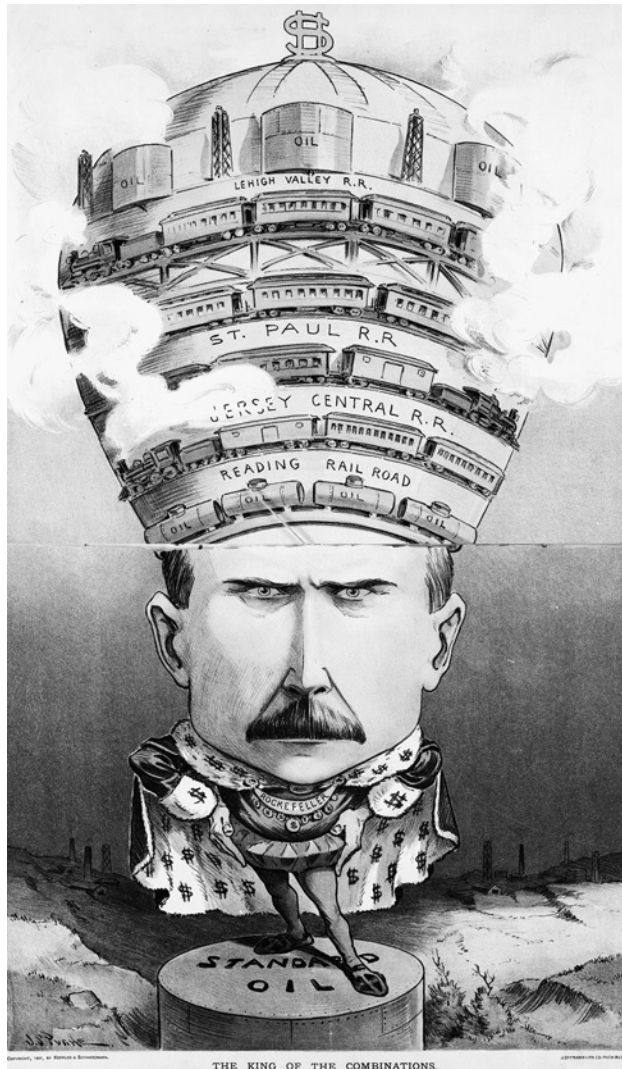
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Antitrust Law

Illegal trusts are formed by any practice that restrains trade or commerce unduly. During the late 1800s and early 1900s, a small number of corporations and individuals exploited their dominant position in the tobacco, railroad, and steel industries to fix prices, control output, eliminate competitors, and manipulate labor markets. Perceiving a threat to democracy and free trade from companies employing their great wealth and power in these ways, Congress outlawed conspiracies and monopolies that restrain interstate or foreign commerce unreasonably with the Sherman Antitrust Act. Generally speaking, in concert with subsequent legislation, Congress prohibited agreements among competitors to fix prices, restrict output, allocate markets, apportion customers, rig bids, interlock directorates, merge or engage in joint ventures, or engage in any other kind of conspiratorial or monopolistic behavior that interferes with the ordinary, usual, and competitive system of the open market.

History

The Sherman Antitrust Act favored the ideal of economic competition among small businesses and came into direct conflict with financial and



This cartoon from February 27, 1901, comments on the vast reach of John D. Rockefeller's business empire, depicting him as a king with a crown topped with railroad cars and oil tanks.

business pressures militating toward large-scale enterprise during the last decade of the 18th century and the first decade of the 19th century. During the 1890s, these competing forces resulted in a political policy of lackadaisical enforcement and inattention to the enlarging gap between the economic ideal and the corporate reality. As the gap grew ever wider in the 20th century, public pressure grew to employ the legislation more vigorously. Politically, the problem came to be viewed by the executive branch as one of employing the Sherman Antitrust Act to promote competition through adequate regulation without damaging

the economies of scale attendant to large-scale corporate enterprises. The pursuit of policies by the executive branch calculated to these ends brought down the ire of all concerned, and calls for repeal or amendment of the act grew. However, as the interests advocating change were at odds themselves, no unified opposition resulted, and attempts by various groups to introduce and pass counterlegislation soon disintegrated.

In response to this failure, corporate interests merged, uniting into a single company rather than engaging in practices or agreements with a view to controlling prices, demand, and supply. These practices established the groundwork for the Clayton Act and the Federal Trade Commission Act of 1914, which together regulated mergers and created a federal agency with the power to oversee businesses' practices and halt mergers that threatened competition substantially or tended to create a monopoly.

A change in public attitudes during the 1920s, occasioned by the economic boom following World War I, encouraged cooperation among businesses as this seemed to create new wealth. This, in turn, resulted in less rigorous enforcement of antitrust legislation, a trend that continued following the stock market crash in 1929. Continued economic decline refocused attention on preventing monopolies and vigorous enforcement of antitrust legislation. Vigorous enforcement peaked and wavered sporadically thereafter until the 1980s, when significant cuts were made to the budgets of the Federal Trade Commission and the Justice Department, curtailing enforcement efforts. Thereupon, state efforts took up the slack. Recessions during the 1990s reinvigorated federal enforcement efforts.

Antitrust Law Today

Federal law is complemented in every state except Pennsylvania by state antitrust statutes. Some track the language of the Sherman Antitrust Act, while others prohibit specific violations, and still others contain broad language permitting considerable flexibility in their application. In most cases, both civil and criminal penalties are provided, and civil actions may be brought by private parties.

The federal statutes also provide both civil and criminal penalties, and certain organizations and practices are exempt. These include patent

ownership, certain activities within the scope of the Securities and Exchange Act, public utilities, labor unions, hospitals, public transit systems, public water systems, and companies supplying military equipment. In addition, some state policies, state legislation, and state regulatory programs are exempt from federal antitrust liability provided they are clearly articulated as state policy and are actively supervised by the state.

Federal antitrust legislation is enforced primarily by the Antitrust Division of the U.S. Department of Justice and the Federal Trade Commission, though private parties may bring suit as well. Only the Department of Justice prosecutes violations criminally. Antitrust violations may be either “per se” or contrary to the rule of reason. “Per se” violations are practices considered inherently detrimental to free trade and so require no further inquiry into their actual effect (e.g., price fixing). Practices contrary to the rule of reason produce anticompetitive effects whose impact on trade can be evaluated only by considering the facts distinctive to the business in question, the historical impact of the restraint, and the motivation behind the practice.

Two theories of antitrust enforcement contend for dominance in American jurisprudence. Many argue that consumer welfare measured in narrowly economic terms should direct the courts in their case-by-case applications of the rule of reason. Others argue that economic impacts ought to be only one consideration in antitrust analysis. Deeply held social and political values ought to be considered as well, along with how antitrust policy might help solve serious social problems. The former theory dominates currently.

In criminal antitrust prosecutions, the government must establish that a conspiratorial or monopolistic combination or conspiracy occurred, that the agreement restrained trade or commerce unreasonably, that the defendant intended the restraint, and that the trade or commerce was interstate or international in nature. Conspiracy is established when at least two competitors have reached a meeting of the minds regardless of any subsequent actions they may take or whether the endeavor was successful ultimately. Restraint of trade or commerce may be established by a showing that an essential part of the challenged practice directly or indirectly restrains a substantial volume of trade or commerce as a practical matter.

A majority of courts require that the interstate or international nexus be established by a relationship between the challenged activity and interstate or international commerce, while a minority hold that the required nexus is established if the nature of the defendant’s general business activities affects interstate or international commerce. Criminal intent is assumed whenever per se analysis is appropriate but is an essential element of proof in rule of reason cases.

From a sociological perspective, given the difficulties in detecting trusts, antitrust legislation stresses control and deterrence theory, the reinforcing convictions that legal sanctions and social barriers to criminal behavior may be made sufficiently rigorous to dissuade potential wrongdoers and to regulate human behavior to conformity and compliance. Accordingly, the penalties of the Sherman and Clayton Acts were supplemented, under congressional pressure in the 1950s and 1980s, by voluntary corporate compliance programs establishing written procedures and codes of ethical conduct, including obligations to report misconduct to government authorities and to ensure public accountability for implementation and enforcement of their principles. These requirements, addressed to altering the corporate culture and engaging the general public, take notice of social ecology theories, subcultural theories, and structured action theories, all grounded in the idea that the desire for positive social, political, and economic relationships will moderate inducements to criminal behavior.

Conclusion

Historically and empirically, there is at best modest support for the effectiveness of these policies. The culture of any organization is remarkably difficult to change or to direct from outside. Acceptable behavior by and within companies is gleaned by corporate decision makers from the established social structure of opportunities available for attaining professional success within a company and from ingrained attitudes, values, and beliefs communicated from influential others and reinforced tacitly. Arguably, deviance may develop as executives share problems that require solutions not permitted by law or societal norms, or when anticipated failure to achieve valued goals is frustrated. Junior executives may learn sharp tactics

and strategies from their seniors, among which may be the expectation that ethical guidelines and legal requirements must be bent on occasion (strain theory). Alternatively, when norms internal and external to the organization are confused or unclear, deviance may result as a resolution to the conflict (anomie theory).

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See Also: Clayton Anti-Trust Act of 1914; Sherman Anti-Trust Act of 1890; *Standard Oil Company of New Jersey v. United States*; White-Collar Crime, Sociology of.

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a review of a decision or a verdict by a tribunal such as a court other than the one that rendered it. While the right to appellate review is not one of constitutional dimension, once a review system is put into place, considerations of due process require that it be fair, so, for example, an indigent seeking to perfect an appeal is entitled to the assistance of effective appointed counsel paid for by the state. All 50 states and the federal government provide for the appellate review of criminal convictions. In the federal courts, a two-tiered system is in place allowing first for a person convicted of a crime in a federal district court to appeal to the circuit court of appeals in the district of his or her conviction; and thereafter, with the permission of the U.S. Supreme Court via a writ of certiorari, which is a command to a lower court to send up the record, or in some cases, via an appeal if the constitutionality of a statute is involved, though the court tends to dismiss such appeals for want of a substantial federal question.

Two-Tiered Appellate Process

Many of the more populated states have a similar two-tiered review process. Thus, in New York, felony convictions are appealed to an intermediate appellate court called the Appellate Division, which is divided into four departments around the state to hear appeals by panels of four judges (a fifth is brought in in case of a tie vote) within their respective department. The court is allowed to consider both the law and the facts, though legal principles and statutes may limit the subject matter to be reviewed. Thereafter, an appeal may be taken to the state's highest court, the court of appeals that sits in Albany, New York, but only with the permission of either a judge of the court of appeals or the appellate division. If federal constitutional questions are involved, the appellant, after a decision by the New York Court of Appeals, as with its federal counterpart, may seek review in the U.S. Supreme Court. In neighboring Vermont, however, there are no intermediate appellate courts, and appeals go directly from their district court to the Vermont Supreme Court.

In addition to appeals from judgments of conviction, criminal defendants also make collateral attacks to their convictions and also bring claims with regard to the quality and quantity of their incarceration, if they are imprisoned, in what is

Appeals

In general parlance, an appeal is a solicitation, plea, or petition earnestly seeking something; but in the criminal justice system, the term has a much narrower and more precise meaning and refers to



New York's two-tiered review process means that felony convictions are appealed to an intermediate appellate court called the Appellate Division, after which an appeal may be taken to the court of appeals in Albany, New York, shown above. If federal constitutional questions are involved, the appellant may eventually seek review in the U.S. Supreme Court.

usually known as writs of habeas corpus, which are subject to appellate review, though such review is usually with permission rather than a right, requiring a certificate of appealability to bring an appeal to a circuit court of appeals from the denial of habeas corpus relief. In many jurisdictions, cases tried in local courts are reviewed by their district court and then sent to the appellate court of the state. In some jurisdictions, there are specialized criminal courts of appeal, such as in Texas.

In most cases, criminal or civil, an appeal is started by serving one's adversary, the prosecutor in a criminal case, a notice of appeal and filing the same in the court where the conviction occurred. While the specific content may vary by jurisdiction, the notice usually names the court of conviction and its date and what court the appeal is being taken to along with what the defendant was convicted of. Some notices list the errors for review by the appellate court, but this is usually not required because many issues do not become patent until an examination of the record and

transcript of the proceedings at the trial court. As for the timing of the service and filing of the notice, failure to serve and file it within the statutory period—which varies from jurisdiction to jurisdiction (i.e., 10 days in federal courts); for criminal appeals, collateral attacks are governed by civil rules; 30 days in New York—may lead to a dismissal of the appeal unless there was good cause or excusable neglect for the failure, which will allow for an extension of the time. The appeal must be presented to the appellate court in a timely fashion, though the exact amount of time varies from location to location and can usually be extended for good cause shown.

Role of the Attorney

Though there is a right of self-representation, criminal appeals are generally perfected by an attorney, who ensures that the record at the trial court, including the transcription of the minutes of the proceedings, is sent to the appellate court. Since most criminal appellants are indigents, due

process requires that a lawyer be appointed to represent the individual without a fee and that there is access to a transcript of the minutes or other proceedings without charge. This is especially important for obtaining transcripts and copying them. Records can easily run into thousands of dollars without even considering the lawyer's fee. The appointment of the lawyer, however, is a matter for the courts so that the right of an indigent to counsel at the expense of the government does not include the right to select the lawyer, who is usually chosen from a panel of lawyers. These appointed lawyers agree to take such cases, usually at fees far less than would be charged to a private client, or by organized agencies such as a public defender or Legal Aid Society.

As part of the process of perfecting the appeal, the attorney, whether he or she be assigned or retained, writes a "brief," which is a written statement and account of what took place at the trial court followed by the legal arguments that may be submitted and or orally argued to the appellate court to support the claimed errors that took place to justify and convince the appellate court of the need for a reversal or modification of the verdict or order at the trial court. The appellate counsel's submission is responded to by the prosecutor with his or her written brief, which may be argued or submitted as well, and defense counsel may thereafter respond to it with a reply, which ends the written submissions.

Proceedings of the Appellate Court

As the appeal is not a "de novo" or new trial, the appellate court is bound by the record before it and cannot consider extraneous matter not presented at the trial court. Thus, in a most extreme case, if during the preparation and argument of the appeal defense counsel should discover new evidence that would exonerate the appellant, the particular appeal would not be the place to present such new material. This is not to suggest that other procedures to obtain relief were not available, but only that the appeal was not the place to obtain it.

In addition to not considering matters *dehors*, or outside the record, what and how appellate courts review the proceedings at the trial court level are subject to certain other limitations. In order to raise a legal issue at the appellate court,

the issue must be preserved for review at the trial court with an objection or other protest with regard to the claimed error so that the trial court would have had an opportunity to review and correct its own mistake. Thus, in order to raise on appeal, as a matter of law, that the trial judge did not charge the jury that manslaughter was a lesser included crime of murder, trial counsel would have had to protest or object to the court's failure to so charge in order to preserve the claim for appellate review. Exceptions, of course, exist where the issue is so significant and fundamental such as where a court improperly delegates responsibility to nonjudicial personnel, depriving a defendant of his right to a trial by jury, an integral component of which is the supervision of the proceedings by a judge. A similar exception exists in the federal court under the doctrine known as "plain error" where the appellate court can correct an error not raised at trial where the mistake is clear and obvious and affects fundamental rights such as the outcome of the case and seriously impacts on the fairness, integrity, and reputation of the judicial proceedings. Another exception exists in those jurisdictions where the appellate court has the power to reverse in the interests of justice despite the absence of objection or protest or on the facts where the conviction is against the weight of the evidence.

In conducting a weight of the evidence review, the New York Court of Appeals indicated that the appellate court sits as a 13th juror, which must first determine that an acquittal would not have been unreasonable and thereafter weigh the conflicting testimony at the trial and review any rational inferences that may be drawn from the evidence and then evaluate the strength of the conclusions to determine whether the jury was warranted in its finding that the defendant was guilty of the crime beyond a reasonable doubt. This review by the intermediate appellate court is especially important in New York because it is a factual determination of the state's highest court, which considers only questions of law and cannot review the correctness of that determination.

The Verdict

A weight of the evidence review, however, does not mean that the appellate court sits as a super jury, substituting its view for that of the trial jury

or trier of the facts, and gives great deference to the determination at the trial court and does not move to set aside a jury verdict merely because if the appellate court were sitting as the jury it would have come to a different albeit reasonable conclusion. One reason for this is that the appellate court has only a cold record before it while the jurors below had an opportunity to both actually hear a witness and observe his or her demeanor.

However, the fact that an error, even one preserved for review, was made at the trial court does not always guarantee that a conviction will be reversed or modified because the error may be deemed harmless in that it had no impact on the verdict. The harmless error analysis, though, is not available in cases where the error is considered structural because it affects the framework in which the trial proceeds, such as the violation of the Sixth Amendment right to retained counsel of choice. While the scope of appellate review is expansive, it can also be short-circuited by a defendant's plea of guilty and/or a waiver of the right to appeal at the trial court, both of which require that they be made knowingly, voluntarily, and intelligently. And, of course, the question of whether the standard for the waiver in either or both situations has been met is itself susceptible to appellate review.

A plea of guilty, which is the equivalent of a conviction after a trial, waives objections to many rulings at the trial court. Thus, in the federal courts, the unconditional plea of guilty waives appellate review. Decisions of the trial court denying an application, even after a hearing, to suppress a confession or evidence on grounds that they were illegally obtained because the claim is considered nonjurisdictional include *United States v. Byrd* (2006), though New York, for example, allows for such review after a guilty plea. Though the appellate process provides for review of criminal convictions, what with a lack of uniformity for both rules of substance and procedure, its use is a complicated matter best left to those with the experience and training to wade through what might be a minefield to get the appellate court to both hear and decide the substantive issue brought before it.

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See Also: 1941 to 1960 Primary Documents; Appellate Courts; Courts; Defendant's Rights; Judges and Magistrates; Trials.

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Appellate Courts

Courts that receive cases from lower courts for examination of the constitutionality and legality of the lower court's actions, procedures, and decisions are appellate courts. The courts of first instance are usually the courts that try cases and then make decisions of fact about guilt or innocence. The idea of appellate courts can be found in the ancient Mesopotamian courts of the Sumerians, Babylonians, and Persians. It can also be found in the courts of the ancient Egyptians where Maat was the goddess of justice. Appellate

courts were instituted by Moses at the insistence of the father-in-law, Jethro (Exodus 18:13–22). The system of appeals in the American system was influenced in part by its English legal heritage, by the Bible, and by the system developed by the Romans, which allowed Saint Paul to “appeal (his case) to Caesar.”

The idea of appellate courts has not been universally accepted. In many of the tribal systems of the world there was no appeal from the chief. In modern times, there have been those who would prefer greater swiftness in meting out justice to prevent defendants, escaping on a technicality. At stake in a system of appellate courts is the knowledge that a second chance is very important for the establishment of justice. Trials may occur in conditions of passion and prejudice that may harm the fairness for a criminal defendant. Trial judges and juries are humans seeking to establish justice. They can and do err over questions of fact or the law. Granting appeals allows for a dispassionate review and examination of questions of law raised in the heat of a trial, questions that can argue that the law was fairly or unfairly interpreted or applied.

The American System

In a unified system of justice with appellate courts, there is a division of judicial labor organized through the granting of jurisdiction to each court. Trial courts have original jurisdiction, that is, the right to hear a case first. The courts that examine trials are appellate courts with appellate jurisdiction; they have the right to hear a case on appeal. In the American dual court system of one federal court system and 50 state court systems, there are trial courts and almost always two levels of appeals courts. The first level is the intermediate appellate level and the court of last resort is the supreme appellate court.

The federal intermediate appellate courts are the courts of appeal. Above them is the Supreme Court of the United States. The Supreme Court has both original and appellate jurisdiction. Its original jurisdiction is defined in the Constitution and was the subject of a landmark case, *Marbury v. Madison* (1803), early in American history. The case involved the granting of an expanded original jurisdiction to the Supreme Court by Section Thirteen of the Judiciary Act of 1789.

Section Thirteen of the act, the primary author of which was Oliver Ellsworth (third chief justice of the Supreme Court), was declared (in its first exercise of judicial review) to be an unconstitutional expansion of the original jurisdiction of the Supreme Court. In effect, the Supreme Court has found itself to be a poor trial court and will almost always appoint a master to hear cases that come to it as original jurisdiction cases, the main body of which involve disputes between the states. The effect is to allow the Supreme Court to hear the decision of the case as decided before the master as an appellate case.

The appellate jurisdiction of the Supreme Court has been defined by Congress by legislative action. Overall, it is a very broad jurisdiction; however, from time to time Congress has limited the Supreme Court’s appellate jurisdiction. In addition, the Eleventh Amendment to the U.S. Constitution was adopted following the case of *Chisholm v. Georgia* (1793) and in effect limited the appellate jurisdiction of the Supreme Court to prevent it from hearing cases brought by citizens against states. The federal courts of appeal today were originally the circuit courts of appeal. Historically, these courts met when a Supreme Court justice joined with federal district court judges to form the circuit court of appeals. It would hear appeals from the federal district courts of that region. The judges in the late 18th and all of the 19th century would literally travel in a circuit to hear cases.

Some cases in the 19th century involved criminal actions from the Wild West, such as the case of *In Re Neagle* (1890). The case was a story of romance, betrayal, and violent death out of the Old West. It involved Supreme Court Justice Stephen J. Field, U.S. Marshal David Neagle, and onetime California Supreme Court Justice David S. Terry. The Supreme Court held that a U.S. marshal (Neagle) was immune from state criminal prosecution when, acting as a U.S. marshal, he killed Terry in defense of Justice Field.

Federal cases are brought to the appellate courts through a writ of certiorari, which orders the lower court to send up the record for review. State cases can be appealed directly to the U.S. Supreme Court because of a provision in the Judiciary Act of 1793. The provision allows cases to be appealed from the highest state court to hear that type of case directly

to the Supreme Court. The opinions of the appellate courts are recorded in bound volumes and housed in law libraries from the county to the state or federal level. These legal opinions form a special body of literature that has developed from a tradition of legal rhetoric that seeks truth and justice. The attorneys in their briefs use the best persuasive tool of legal reasoning to sharpen the issues to persuade the judges or justices to their views of law. The legal opinions often continue the common law tradition of judges making law on a case-by-case basis, so that justice can be brought out of the workings of humans in human courts.

Prior to the late 1940s, almost all American criminal law was state law, so only a few cases involving criminal issues made it to the Supreme Court. Almost all criminal cases were decided by state appellate courts. However, throughout the 20th century, the Supreme Court increased the jurisdiction of the federal courts by applying the

Bill of Rights to the states through the due process and equal protection clauses of the Fourteenth Amendment. Several of these cases were major landmark civil liberties cases that involved limits on the power of the federal and state governments to jail people for objectionable speech, printing, or assembly whether the speech was pornographic, political, or religio-political, such as the refusal of Jehovah's Witness children to salute the American flag (*West Virginia State Board of Education v. Barnette*, 1943) in school rooms.

Many cases have involved defining specifically the meaning of "unreasonable search and seizure" as found in the Fourth Amendment. Others, such as the issue of double jeopardy (*Palko v. Connecticut*, 1937), right to counsel for indigents (*Gideon v. Wainwright*, 1963), or the Miranda Warning (*Miranda v. Arizona*, 1966), pushed law enforcement into more expensive forensic investigations of crimes rather than relying on confessions,



Courtroom One in the James R. Browning U.S. Court of Appeals Building in San Francisco, California, which was completed in 1905 and survived the San Francisco earthquake of 1906. Granting appeals allows for a dispassionate review and examination of questions of law raised in the heat of a trial, questions that can argue that the law was fairly or unfairly interpreted or applied.

which at times were found to be coercive. The case of *Rochin v. California* (1952) was the stomach pumping case that established the “shocks-the-conscience” rule. The case involved the constitutionality of forcibly pumping the stomach of a suspect in order to retrieve narcotics.

The 50 state court systems also have intermediate courts of appeal with one court serving as its state supreme court. The names of these courts vary among the states, but most use the terms *court of appeals* and *state supreme court* for the names of their appellate courts. New York, for example, uses *court of appeals* as the name of its supreme court. Usually, *judge* is the title in lower courts and *justice* is used as the title of judges in federal and state supreme courts. There are special courts such as military courts and the bankruptcy courts in the federal system and special courts such as traffic court in the state systems. Some of these courts hear criminal accusations, usually misdemeanor charges. The appellate courts hear these kinds of cases.

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See Also: 1941 to 1960 Primary Documents; Appeals; Courts; Defendant's Rights; Judges and Magistrates; Supreme Court, U.S.; Trials.

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Arizona

In popular culture, early Arizona is often portrayed as a lawless frontier where disputes were settled with guns. One example of this is the infamous gunfight at the O.K. Corral. This 1881 shoot-out took place in Tombstone, Arizona, and involved noted gunfighter and lawman Wyatt Earp. The state's actual history, however, is considerably more complex and varied in terms of crime and punishment.

Territorial Era

In 1863, the federal Arizona Organic Act established a provisional government for the newly formed Arizona Territory that included a U.S. marshal to maintain law and order. Later, a civilian policing system of county sheriffs, constables, and town marshals was established. Early criminal concerns focused on murder and property loss that resulted from Native American incursions. Because of this, the majority of early police duties fell to the U.S. Army. Conflicts involving Apaches proved so brutal during this era that more than 100 years later, some police districts experiencing violent cycles of crime nicknamed their stations “Fort Apache.” Arizona's criminal history includes violent episodes of labor unrest within its mining districts, such as the Bisbee Deportation (1917), and feuds or range wars between the territory's cattlemen and sheepherders—the most infamous among these being the Pleasant Valley War. This running battle between the Tewksbury and the Graham families lasted nearly 10 years and ended in 1892. From 1901 to 1909, a small mounted police force known as the Arizona Rangers operated within the rural regions of the territory. Patterned after the Texas Rangers, this agency experienced a great deal of success in eliminating cattle rustling. It also received criticism for its role in the suppression of a 1906 copper strike in Cananea, Mexico.

Arizona's penal system developed slowly during its territorial years. Initially, county jails served as territorial penitentiaries, with sheriffs overseeing legal executions by hanging. The first territorial prison opened in Yuma in 1875. This facility quickly developed a reputation as a hellhole and was moved to Florence in 1909. During this time, adult men and women were housed at the same



These mounted police were taking part in a parade in the city of Scottsdale, Arizona, in 2009. Arizona's Uniform Crime Reporting Program showed that the state suffered an increase in violent crime from 8.7 percent in 2002 to 9.5 percent in 2010. That year, the legislature passed a controversial bill designed to curtail chronic illegal immigration and smuggling along the border.

compound. Juvenile offenders not sentenced to the penitentiary were placed in custodial care or were sent to a reform school beginning in 1902.

Statehood

Increasing growth and industrialization led to statehood in 1912. With these developments came an increased use of automobiles, necessitating the formation of the Arizona Highway Patrol in 1931. Still largely rural in nature, Arizona's remote regions and proximity to the Mexican border encouraged outside criminal organizations to enter the state in increasing numbers at the turn of the 20th century. Following the end of Prohibition, the enforcement of state liquor laws fell to the Temperance Enforcement Commission, followed by the Department of Liquor Licenses and Control in 1939. Arizona later combined this department, the Highway Patrol, and the Narcotics Division of the Department of Law to create a Department of Public Safety in 1969. The

state also formed the Department of Corrections (DOC) in 1968 as the administrative agency of its various correctional facilities. Evolving from a weak and ineffective penal system, today this agency employs approximately 9,750 correctional professionals.

Over the years, Arizona has experimented with a number of reform efforts, including pardons, paroles, commutations, convict labor/leasing, the honor system, and indeterminate sentencing. Progressive Era reformers succeeded in abolishing the death sentence in 1916. Though vigilante activity continues along the border, Arizona's last vigilante hanging (1917) instigated the return of the death penalty in 1918. Arizona adopted poison gas in 1933 as its legal method of execution but has utilized lethal injection since 1993.

Contemporary Challenges

Criminal events in Arizona during the 20th century have had a marked influence on national

crime and policing practices. The conviction of Ernesto Miranda for the 1963 rape and kidnapping of a young Phoenix woman eventually led to the well-known Supreme Court decision concerning Miranda rights and the mandate that police advise criminal suspects of their right to remain silent and to the presence of an attorney during questioning. In 1967, a Supreme Court case concerning Arizona juvenile Gerald Gault's obscene telephone calls led to expanded rights for due process for juveniles. Lastly, the organized crime-related fatal car bombing of an investigative reporter from the *Arizona Republic* newspaper in 1976 created such an intense backlash within the national news community that it resulted in a massive wave of investigative reports exposing the extent to which political and financial corruption operated within the state.

Today, Arizona continues to produce colorful law enforcement figures like Maricopa County Sheriff Joe Arpaio. Its criminal justice system also remains turbulent. Statistics gathered from Arizona's Uniform Crime Reporting Program indicate that violent crime has increased from 8.7 percent in 2002 to 9.5 percent in 2010. In its attempt to fight this increase, Arizona's legislature keeps the state in political hot water. In October 2010, it passed SB 1070, a crime-fighting measure designed to curtail chronic illegal immigration and smuggling along the border. This bill quickly became politically divisive and was widely attacked as a racist measure. Within months of its passage, a gun battle between five bandits and a U.S. Border Patrol agent resulted in the officer's death near Nogales, further promoting the perception that Arizona remains a lawless region where criminals operate openly and without impunity.

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See Also: Arpaio, Joseph M.; Border Patrol; Earp, Wyatt; *Miranda v. Arizona*; Native American Tribal Police; Rural Police; Television, Crime in; Texas Rangers; Urbanization; Vigilantism.

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Arkansas

Arkansas was granted statehood on June 15, 1836; it was the 25th U.S. state. Arkansas was admitted to the Union as the 13th slave state because of its plentiful cotton cultivation. By the start of the Civil War, slaves comprised more than 25 percent of the state's population. Arkansas seceded along with other slave states to form the Confederate States of America at the outbreak of war. An examination of the state's history has much to offer in terms of understanding crime, police, and punishment in the United States.

Crime

Arkansas was riddled with criminals and outlaws before it gained statehood. Families moving west to settle land were prime targets on the Arkansas frontier because they were carrying their possessions with them. The lack of communication and centralized law enforcement units made it difficult to apprehend these thieves. It was not unusual for these families to be killed if they refused to give up their valuables to the thieves. One outlaw who was known throughout the country was Henry Starr, who came from a family of thieves and outlaw, and took over the family business in the 1890s. Starr was known for robbing banks on horseback with other thieves. A warrant for his arrest was issued after he killed U.S. marshal Floyd Wilson in 1892. He was sentenced to death by hanging by Judge Parker in Fort Smith in 1893. Starr managed to escape his death sentence after a courageous negotiation in which he convinced fellow outlaw Cherokee Bill to give up his gun during a shooting rampage. Starr was issued a pardon after this incident. Starr continued to have various run-ins with the police in Arkansas

and what is now Oklahoma. In 1921, Starr met his end when he was shot by the president of a bank he was robbing. Starr died four days later in the Boone County Jail.

Several other accounts of violence during the mid-1800s can be attributed to the fact that carrying weapons such as knives and guns was a common practice during this time. One account describes two friends who quarreled over a race and ended with both drawing their guns and shooting each other. Increased taxes on alcohol during the Civil War led moonshiners to produce and sell illegal alcohol in Arkansas. In 1898, John Burris, a local tax collector, went on a seven-day trip from Hot Springs to Scott County, where he destroyed several stills, poured out gallons of beer and whiskey, and arrested 23 men for the illegal production of alcohol. These men were transported to Fort Smith for trial, and they received sentences that ranged from 30 days in the local jail to two years in a U.S. penitentiary.

Racial crime and vigilante justice was also very common throughout Arkansas history. Lynching was the most common form of punishment imposed by vigilante groups in the early 1900s. Among those who were lynched was John Carter, an African American man accused of assaulting a white woman. Carter was hanged, shot, lynched, and burned in the center of Little Rock's African American community. Lynchings occurred even after a police force and penal system had been established in Arkansas.

Police

In order to combat the violent crime that plagued early Arkansas, Governor Carl Bailey created the first state-run police department in 1937 under Act 166. Prior to this decision, law enforcement was largely left to local entities and individual citizens. Many of these local forces feared the transition to a state-run police department because it was believed the police would become a force of oppression and gain too much power. The shift in attitudes for members of the legislature came from the fear of crime and from the increasing number of automobiles in Arkansas. Statistics show that in 1934, the fatality rate from automobiles in Arkansas was about 24 deaths for every 100 million miles traveled. Translated to today's rates, that would be equivalent to about 7,000

deaths for every 100 million miles traveled. The fear of crime came from the ineptitude of local law enforcement to arrest nonlocal criminals. Hot Springs saw many mobsters during this time, and law enforcement officials in the city were easily manipulated. The first police force had 13 members. Today, there are more than 1,000 officers and employees within the Arkansas State Police Department.

Punishment

Before he served as governor, Carl Bailey was the prosecuting attorney for the state of Arkansas. During his time in this position, Bailey was responsible for the extradition of Charles "Lucky" Luciano to New York. Luciano fled to Hot Springs, which had become a haven for mobsters. After Luciano was arrested, Bailey was bribed to not follow through with the extradition. Bailey stated that Arkansas would not be bought and publicly denied the bribe. Luciano was returned to New York, where he was convicted of running multiple prostitution rings.

The first state penitentiary in Arkansas was established in 1839 by Governor James Conway. This penitentiary was built where the Arkansas State Capitol now stands. In 1902, land for the Cummins prison was purchased; Cummins is still in operation today. A permanent death chamber was established and housed at the Cummins prison. The first man to be executed at Cummins was Lee Sims, who was convicted of rape, in 1902. Today, there are 20 facilities controlled by the Arkansas Department of Corrections. These range from work-release programs to supermax facilities. The state's death row is housed in the Varner Unit's supermax facility in Lincoln County. Executions are carried out adjacent to Varner at Cummins Unit.

Major changes were made to the Arkansas penal system after the landmark case *Holt v. Sarver* (1969). Judge J. Smith Henley presided over this case, which was brought by prison inmates who alleged physical abuses and torture. A device known as the "Tucker telephone" was used by prison officials to discipline inmates. This device used an old-fashioned crank telephone to issue electrical shocks through wires connected to an inmate's genitals. These complaints came from Cummins Farm Unit and



Prison inmates and guards at work, likely in the Cummins State Farm Unit in Gould, Arkansas, around 1934. This prison farm unit was the site of torture and abuse that led to statewide prison reform in Arkansas more than 30 years later in the landmark case Holt v. Sarver (1969). The Cummins prison is still in use today and houses the state's execution chamber.

Tucker Reformatory. During this time, guards were simply armed inmates called trusties. Judge Henley sided with the inmate petition and declared the prison practices unconstitutional. Statewide prison reform followed this decision to ensure all prisons met state and constitutional regulations.

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See Also: *Holt v. Sarver*; Luciano, "Lucky;" Lynchings; Moonshine; Parker, Isaac; Penitentiary Study Commission; Prisoner's Rights.

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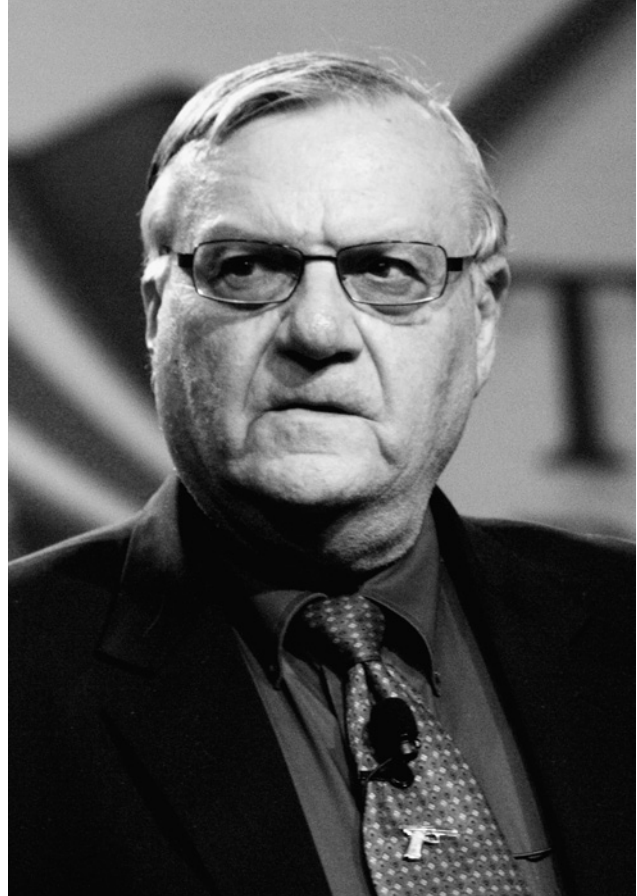
Arpaio, Joseph M.

Joseph M. Arpaio was born on June 14, 1932, in Springfield, Massachusetts. He is the sheriff of Maricopa County, Arizona, which includes Phoenix and the surrounding area. Joe Arpaio was first elected to the office in 1992 and has been reelected every four years since. He proudly promotes himself as "America's Toughest Sheriff." As sheriff, he is responsible for managing the county jail and it is in this role that he has garnered the most attention. Arpaio is a controversial figure who has been described as seeking publicity and has been accused of abusing his power and of committing civil rights violations.

Arpaio's mother died giving birth to him. He served in the U.S. Army from 1950 to 1953 as a military police officer. After being discharged, Arpaio lived in Washington, D.C., where he became a police officer, and later moved to Las Vegas, Nevada. In 1957, he was appointed as a special agent with what was then the Federal Bureau of Narcotics (now the Drug Enforcement Administration [DEA]). He married his wife Ava in 1958 and has two children. Arpaio spent 25 years with the DEA, where he served overseas in Turkey and other Middle Eastern countries as well as Mexico and other Central and South American countries. After 32 years as a federal law enforcement officer, he retired as the special agent in charge of the DEA's Phoenix Division.

As sheriff, Arpaio oversees over 10,000 inmates in the county jail system. In August 1993, he created the country's largest "tent city," where 2,000 convicted men and women live, eat, and sleep in a canvas-covered field on the jail grounds and where, he is fond of saying, the vacancy sign is always on. Arpaio has created "get tough" conditions by instituting rules that forbid coffee, all but G-rated movies, and TVs that air anything but the Disney and Weather Channels. He also banned pornographic material; the United States Court of Appeals for the Ninth Circuit upheld the ban, deciding that the policy was not a violation of the First Amendment. In 2007, Arpaio created KJOE, a radio station that airs classical music, opera, patriotic music, and educational programming throughout the jail.

He reduced meals to twice each day, feeds inmates surplus food (such as serving corn dogs for both meals for days on end), and removed salt and pepper from dining areas; the average cost of a meal in his jail system is under 20 cents. He is also well known for issuing all male inmates pink underwear. In fact, he ordered most items inmates wear to be pink, including the towels they use and the sheets on their beds. All inmates wear the traditional black and white striped jumpsuits. Also harking back to an earlier era, he reinstated chain gangs as a way of providing the county with free labor. Men, women, and juveniles remove graffiti, sweep streets, and bury unclaimed bodies in the county cemetery. Arpaio also started a program in which the nearly 300 people arrested each day can be viewed as they are processed into the jail



Sheriff Joe Arpaio during an appearance at a Tea Party Patriots event in Phoenix, Arizona, in February 2011. Arpaio has been reelected every four years since 1992.

on live streaming video over the Internet on the Maricopa County Sheriff's Department Web page.

In contrast to the tent city, Arpaio relocated the county animal shelter to climate-controlled buildings on the jail compound that formerly housed inmates. Inmates who are chosen for the coveted work assignment at the no-kill shelter are trained in animal behavior and nutrition. The jail's hog farm, worked by inmates, provides fertilizer for the Christmas tree farm, also cultivated by inmates, where trees are sold for less than \$10 each during the holiday season. He also established Hard Knocks High, the only accredited high school in the United States with a sheriff serving as principal.

In federal court, the Maricopa County jails have been found to violate the constitutional rights of inmates in areas including medical care.

Most recently, Arpaio has been sued by the U.S. Justice Department for refusing to answer to federal authorities who are investigating allegations of discrimination stemming from racial profiling as well as conducting illegal searches and seizures. Arpaio does not hide that his law enforcement officers, as well as a posse of nearly 3,000 volunteer community members, regularly pursue undocumented people in predominantly Latino communities in anti-immigration efforts. Some question whether, at the local law enforcement level, he has the power to arrest noncriminal undocumented people and turn them over to Immigration and Customs Enforcement (ICE), the agency responsible for deportation.

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See Also: Arizona; Immigration Crimes; Posses; Sheriffs.

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Arraignment

According to the Sixth Amendment arraignment clause, arraignment is a pretrial procedure in which a defendant is "informed of the nature and cause of the accusation." In other words, he/she is told specifically with which crime or crimes he/she is charged. The first mention of the concept of arraignment is found in the Assize of Clarendon (1166). It is also found in the Magna Carta (1215).

The right to notification of charges was important to the early British colonists in America. Many were religious dissenters. Some of them had been arrested, tried, and sentenced because of their religious beliefs without being informed of the charges against them. Perhaps for this reason,

many colonies built the concept of arraignment into their laws. By the time the Constitution was written, most states had included the concept of arraignment in their own constitutions.

Arraignment Process

In some states, arraignments occur at the same time as a defendant's initial appearance before a magistrate or judge. This usually takes place within 24 to 48 hours of arrest. In *County of Riverside v. McLaughlin* (1991), however, the Supreme Court found that there may be circumstances under which a person who is subject to a warrantless arrest may be held longer than 48 hours. At an initial appearance, the defendant is informed of the charges and of his/her right to an attorney. Bail is then set or the defendant is released on his/her own recognizance, that is, the defendant is freed as long as he/she agrees to return to court voluntarily when ordered to do so. If bail is set but the defendant cannot afford it, he/she will spend the time until his/her next court appearance in jail.

In other states, arraignments occur at some time after the initial appearance. Arraignments are conducted for both misdemeanors and felonies. In the case of misdemeanors, the initial appearance and arraignment occur simultaneously. The person is asked to enter a plea. If he/she pleads guilty, a sentence is handed down immediately. If the plea is not guilty, the person is either given a chance to post bond or is released on his/her own recognizance.

If the charge is a felony, the arraignment takes place after probable cause has been established. Probable cause is established in one of two ways: the information (which is a formal charging document filed with the court by the prosecutor that names the specific charge or charges of the accused) or the indictment (which is a charging document issued by a grand jury that names the specific charge or charges against the accused). One of these documents is presented to the court. The specificity of the charges is required in order to make the defendant aware of what he/she is accused of so that he/she can prepare a knowledgeable defense. It also helps ensure that the defendant is not being charged twice for the same crime.

After the charges are read, the defendant is required to enter a plea. According to *Hamilton v. Alabama* (1961), arraignment is a considered

a “critical stage” under the Sixth Amendment. A defendant is required to have counsel (unless he/she has knowingly and willingly waived that right) during a critical stage because of the chance of losing his/her freedom. The defendant may plead one of three ways: guilty, not guilty, or nolo contendere. If a defendant pleads guilty, the judge must determine that the defendant understands the rights being waived, that the plea was made voluntarily, and that the plea has a basis in fact. If the judge is satisfied as to these facts, the defendant is either sentenced on the spot or a sentencing date is set. If a defendant pleads not guilty, a trial date is set, and he/she either returns to jail (if he/she has not been able to make bail), remains free on bail, or continues release on his/her own recognizance. If a defendant refuses to enter a plea or stands mute, the court enters a not guilty plea for him/her.

A defendant may also plead nolo contendere (literally, “I will not contest it”). This means that while the defendant is not admitting to being guilty of the charges, neither is he/she refuting them. Essentially, he/she is willing to accept punishment. This plea is often entered in cases where the defendant also faces civil action for his/her criminal actions. Since the defendant has not admitted guilt, the plea cannot be used against him/her in a civil case. A defendant who pleads nolo contendere, like the defendant who pleads guilty, is sentenced immediately or given a sentencing date.

Because the defendant knows exactly what he/she is charged with, arraignment often marks the beginning of plea bargaining, which may continue until the trial, or, in some states, until just before a verdict has been reached. In a plea bargain, the defendant agrees to plead guilty in exchange for some benefit from the prosecution. There are three types of plea bargains: charge, count, and sentence bargaining. In charge bargaining, the defendant pleads guilty to a charge that is less serious than the one with which he/she was originally charged (e.g., simple assault instead of aggravated assault). In count bargaining, the defendant agrees to plead guilty if the number of counts against him/her is reduced. In sentence bargaining, the defendant agrees to plead guilty in exchange for a shorter sentence. If the judge determines that the defendant understands his/her

rights, that he/she voluntarily waived them, and that there is a factual basis to the charges, he/she will accept the plea agreement.

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See Also: Bail and Bond; Defendant’s Rights; Magna Carta; Plea; Trials.

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Arthur, Chester (Administration of)

Chester A. Arthur (1829–86) was born in Vermont, though his opponents claimed his “real” birthplace was across the nearby border in Canada. He was a lawyer, a Republican, an advocate for black rights, and a firm believer in the spoils system. He received a patronage job as collector of customs in New York City under the Grant administration and rose to become a power in state Republican circles. He had to resign his position in 1879 after an investigation revealed widespread corruption even though it did not implicate him. In 1880, Arthur was chosen as running mate to James A. Garfield to unify the party. When Garfield died after being shot in 1881, Arthur, the spoilsman, became president. He later refused to intervene when the man convicted of Garfield’s assassination, Charles Guiteau, sought a stay of execution. Arthur’s focus was reform, including, to the surprise of many,

hiring based on merit. The Pendleton Act was the first act to require a merit examination for would-be federal employees. Although the Pendleton Act covered only 10 percent of federal jobs, it was the beginning of a long, slow process of replacing spoils with merit. He improved the navy, reduced government waste, and outlawed polygamy. The Chinese Exclusion Act, the first-ever general immigration law, came into effect during his administration; initially, Arthur vetoed it but he signed it after Congress shortened its duration.

Arthur called for expansion of the court system to handle the increased volume in the federal courts but requested no specific change, noting that Congress was already dealing with the situation. The system's increased workload was initially thought to be a consequence of the dislocation of

Reconstruction, but Arthur recognized that the increase was permanent, coincident to the industrialization of the United States.

Cowboys and Indians

More bothersome was the ongoing lawlessness in the Arizona Territory and into Mexico, where a gang of 50–100 cowboys was engaging in lawless and brutal acts. Arthur was unsure if the territorial government was adequate to the task and believed that, given its reach into Mexico, the situation might better be served by a national government effort under the antifilibuster laws. Arthur interpreted the law to preclude federal assistance to a territory suffering “domestic violence.” Only states were entitled to call on the federal government because the revision to the federal statutes dropped the provision covering territories.



Chester Arthur's presidential party crossing the Snake River on horseback during an excursion into Yellowstone National Park and northwestern Wyoming in 1883. Arthur struggled throughout his presidency to impose order on western and southwestern territories, especially in underpopulated areas with an insufficient nearby civilian population to form posses.

In the territories, there were areas with insufficient nearby civilian population to form posses. The army from nearby posts had manpower to fill the void in order to control the cowboys. As Reconstruction began to falter, however, federal law barred the army from participating in a posse comitatus. Arthur speculated that perhaps army assistance to a territory in enforcing its laws was not contrary to the intent of the Posse Comitatus Act. Before sending troops to enforce the law in Wyoming for a 17-month period, Arthur sought reassurance that he was authorized to do so. A report by the Senate Judiciary Committee in 1882 indicated that the law restricted marshals only; the president still had the authority to call out troops.

In addition to cowboys, Arthur had to deal with Indians. He found fault with the ongoing treatment of Indian tribes individually and with the continual renegotiation of agreements that allowed the Indians to live in traditional ways on land that was no longer limitlessly abundant. Reservation Indians often clashed with whites covetous of their land. After wasting thousands of lives and millions of dollars, a new approach was implemented—acculturation and absorption into the general population after making state and territorial law applicable to reservations, including fair access to courts, adequate Indian schools, and allotment in severalty. The belief was that Indians, aware that the hunting life was history, when given the opportunity to own their own land would break away from their tribes and become farmers.

Polygamy and Other Issues

The most significant crime Arthur sought to stop was polygamy in Utah and other territories. The Morrill Anti-Bigamy Law of 1862 outlawed polygamy, but it was hard to prove a case, so there were few arrests. Brigham Young was arrested but was released without standing trial. The law was on the books but mostly unenforced, and Mormons expanded into Idaho, Arizona, and other territories in relatively large numbers, causing worry and an apparent need for new antipolygamy measures. Because polygamous marriages were performed secretly and thus were hard to prove, Arthur wanted a law allowing a wife to testify against her husband

and a law mandating that the person performing the ceremony had to file a document in territorial court.

He got the Edmunds Act in 1882. Probably ex post facto and thus unconstitutional, Edmunds banned cohabitation with more than one woman. Under the law, Arthur disenfranchised all practicing polygamists and put more than 1,300 men in jail. In 1885, Idaho began requiring all citizens to swear their opposition to polygamy and any organization supporting it or lose their right to vote. In 1887, Congress disincorporated the Mormon church under the Edmunds-Tucker Act and seized its property. The law also mandated loyalty oaths for officeholders, barring even nonpolygamous Mormons from office. Thousands of Mormons left for Canada and Mexico. The Mormons abandoned polygamy in 1890 after a new church president had a revelation.

Arthur made other efforts to maintain order. The Foran Act outlawed contract labor, a source of abuse of immigrants as well as a tool for weakening unions and driving down wages. The Star Route scandal involved postal service employees, but two trials failed to win convictions (the second trial was ordered after the foreman claimed a bribe attempt by the federal government during the first). Arthur also issued a warning to Sooners to keep out of Indian Territory; it was not open for settlement.

Arthur sought a second term in 1884 to avoid lame duck status. He recognized that his health was fading because he had Bright's disease, a kidney disorder. He was denied the nomination after he alienated both sides of his party. Arthur's administration was noted for his efforts to reduce abuses of the law and to combat scandals.

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See Also: Bigamy/Polygamy; Frontier Crime; Garfield, James; Guiteau, Charles; Pendleton Act of 1883; Posses; *Reynolds v. United States*.

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Articles of Confederation

The Articles of Confederation were created under the Second Continental Congress in 1777, though the states did not fully approve the document until 1781. Since the colonies declared themselves independent in 1776, they were technically under their own rule until the articles took effect in 1781. Yet the Articles of Confederation were not a binding document for the newly independent colonies. Instead, the articles acted as a loose organizing document giving the new states comrades and the support of one another but little more.

Originally, plans for the articles looked toward a loose confederation of states. John Dickenson headed the committee to form the articles, and he foresaw a strong central government. Unfortunately for him, when he presented his plan to the Continental Congress in July 1776, hostilities immediately arose. His plan placed the western territories under the control of Congress, even though much of the territory was claimed by various states. He also called for equal representation among all states. States like Virginia and Massachusetts held the largest populations, and accordingly they argued for more representation. Additionally, and most volatile, was Dickenson's proposal that African Americans and whites be equally counted for the population so that taxes could be determined. Clearly, the south opposed taxing on population the most.

Congress set out to redraft the articles and those adopted in November 1777 barely resembled Dickenson's strong central government plan. The articles were drafted by revolutionary leaders who shared the philosophy that a central government, removed from the people, would breed corruption and tyranny. These were the same arguments used throughout the Revolutionary period to ignite the colonists to rise up against English rule.

Provisions

The Articles of Confederation made Congress the dominant force, with no executive branch of government or federal courts. The articles called for a president, but he was a figurehead at best as everything had to pass through Congress. There were no federal courts because there was no united nation at this time. Furthermore, the Articles of Confederation crippled itself with its own binding rules. The five basic foundations of the articles stated that all bills before Congress required two-thirds vote for passage, any amendment to the articles needed a unanimous vote, Congress had no power to regulate commerce, and Congress could not enforce taxes as the states would pay them voluntarily. Also, it loosely set the boundaries of states and territories along natural boundaries, like the Great Lakes, the Mississippi River, and the Appalachian Mountains.

Since the writers of the adopted articles feared a central government, and the legacy of perceived unfair taxation still lingered in the minds of many colonists, no earnest attempts were made to force states to pay taxes. Congress had no means to support itself or the fledgling confederation, and most states refused to pay taxes on the grounds that they needed the monies for their own upkeep. The continual battlefield also played a key role in states' refusing to pay taxes, as the general populace remained largely divided on its support of the war. In spite of these obstacles, Congress did pass the Land Ordinance of 1785 and the Northwest Ordinance of 1787.

The two ordinances came to be seen as a way for Congress to secure funds, since it had no means of enforcing taxes. The Land Ordinance of 1785 said that the Northwest Territory would be sold to pay off debt, particularly as France loaned the colonies money to support the Revolutionary War. In addition to selling off this land,

the ordinance mandated the land be divided into townships of six miles square with 36 sections of one square mile each. Farms were to be 640 acres, to secure family units, and one section of each township must be secured for a public school. An attempt to outlaw slavery in the territory failed by one vote, but the issue quickly resurfaced with the ordinance's revisions in 1787. In 1787, the ordinance stayed the same, except slavery was forbidden and a clause enabled territories to become states of equal status with the original 13 once obtaining 60,000 inhabitants.

The Articles of Confederation stood as a loosely binding document for the states, making them a confederation but not a nation. Sometimes the short-lived nature of the articles gets them dubbed as a failure, but they were not. They did what was intended: to give the newly independent colonies a guide through the war to discover what they wanted and needed for a government. Yet growing foreign and domestic problems forced the states to reexamine the articles in 1787 when Britain refused to send an ambassador, France demanded repayments of funds, Spain seized lands along the Mississippi River, inflation crippled the economy, interstate squabbles roared about boundaries and taxes, and uprisings like Shays's Rebellion threatened the confederacy and the states. These were the issues intended to be dealt with by Congress and the articles, but practice verses theory proved to be difficult.

At the Annapolis Convention, Congress met to deal with interstate commerce disputes but quickly decided to disband and remeet in Philadelphia to reform the articles. In May 1787, 55 delegates from 12 states (Rhode Island boycotted) assembled, and almost immediately they began drafting the Constitution versus reforming the Articles of Confederation.

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See Also: American Revolution and Criminal Justice; Colonial Courts; Constitution of the United States of America.

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Atlanta, Georgia

Atlanta is the capital of Georgia and the state's most populous city at more than 540,000 (the population of the metropolitan Atlanta area is more than 5 million). The Atlanta area was settled by Native American tribes before the arrival of the first white settlers in the 1820s. Atlanta suffered severe damage during the Civil War but was rebuilt on the model of the "new South" with a diversified economy. Today, Atlanta is a center of business and commerce (among the companies with headquarters in Atlanta are UPS, Coca-Cola, Home Depot, and Turner Broadcasting) and boasts a transportation hub that includes the busiest airport in the United States (Hartsfield-Jackson Atlanta International Airport).

The Atlanta Police Department

The history of the city of Atlanta dates back to 1837 when the site of what was then called Terminus was marked by railroad surveyors. The organization of police services developed gradually: Originally, the town was patrolled by a marshal (first appointed in 1844) and then by an elected policeman (starting in 1853). By 1858, the number of policemen increased to 20, and in 1873, the first Board of Police Commissioners met; among their official acts was appointing Thomas Jones as the first chief of police of Atlanta. In 1896, the detective bureau was reorganized under Bradley Slaughter and began using the Bertillon system of identification through anthropometric measurements. In 1918, the first two female police officers joined the force (although women were not

assigned to regular beat patrols until 1957), and in 1924, the Women's Bureau was established. In 1947, the police union, dominated by members of the Ku Klux Klan, was abolished, and the following year, the first black officers joined the force. These black officers had limited authority, however: They were not authorized to arrest white criminals until 1962 and were not assigned to regular patrols until 1966.

In 1955, Howard Baugh and Ernest Lyons became the first black detectives on the force, which by this time included 15 black officers. Baugh became the first black superior officer in 1961, and in that same year, the police department was recognized by the U.S. Civil Rights Commission for the role it played in the peaceful integration of public high schools in Atlanta. In 1974, Maynard Jackson became the first black mayor of Atlanta and made improving race relations in the city, including reforming the police department and increasing the number of black officers on the force, a priority (Atlanta at this time was about 60 percent black while the police department was only 23 percent black). Jackson created the new post of public safety commissioner and appointed A. Reginald Eaves to this position while relegating the white chief of police, John Inman (who had resisted court orders to increase the number of black officers), to a figurehead position. Eaves implemented a team policing program that is credited with reducing homicides from 248 in 1974 to 185 in 1975. By 1981, he also increased the proportion of black officers to 35 percent, second only to Washington, D.C., among U.S. city police forces. In 1991, the first woman achieved the rank of major, and in 1994, Beverly J. Harvard became chief of police, the first black woman to achieve this rank in a major U.S. city.

Crime in Atlanta has declined sharply in the first decade of the 21st century. In 2002, Atlanta ranked as the third most dangerous city in America, according to the CQ Press Index, while in 2009 it was ranked 16th, and in 2010 it was ranked 25th. The city's crime rate fell from 11.2 percent to 8.2 percent between 2002 and 2009, and the rate of violent crime dropped by about 40 percent during that period. Among Georgia metropolitan areas with more than 100,000 inhabitants, Atlanta often has the most crimes because



The city of Atlanta was the first major city in the United States to have a black female chief of police. Above, a black policewoman at work in Atlanta in July 2008.

of its large population, but it has a lower rate per 100,000 population than many other cities. For instance, 323 murders were reported in Atlanta in 2009, for a rate of 5.9 per 100,000; although that is the largest number of murders reported, several metropolitan areas had a higher rate, including Brunswick with a murder rate of 15.5 per 100,000 and Macon with 23 per 100,000. Similarly, Atlanta had 9,578 reported robberies in 2009 for a rate of 174.3 per 100,000; although that is the largest number of robberies reported for any metropolitan area, more than 100,000 inhabitants, several cities had higher rates of robbery, including Savannah, Columbus, and Brunswick. In 2009, Atlanta also had 1,156 reported

forcible rapes (21 per 100,000), 12,838 cases of aggravated assault (233.7 per 100,000), 53,867 burglaries (980.4 per 100,000), and 21,944 motor vehicle thefts (399.4 per 100,000).

The 1906 Race Riot

In the early 20th century, Atlanta was a growing city beset, as was much of the American south, with racial and economic tensions. The two factors were intertwined, as white capitalists considered the black population a cheap labor pool to be exploited while blacks naturally wanted to improve their status. Many had already done so: Atlanta at this time had the largest black middle class in America, as well as the world's largest concentration of black colleges. Some whites did not agree that blacks should enjoy equal rights, and in the 1906 campaign for governor of Georgia, two candidates, Clark Howell and Hoke Smith, explicitly highlighted racial issues, including their desire to prevent black men from voting (a right granted in 1870 by the Fifteenth Amendment to the U.S. Constitution). Atlanta newspapers fanned the flames of racial hatred by carrying stories of lynchings and calling for a renewed Ku Klux Klan to "control" blacks. A series of sensationalistic stories alleging attacks on white women by blacks provided the final spark that set off the riot on September 12, 1906.

The riot began in downtown Atlanta (the Five Points area) as a mob of white citizens attacked blacks. The riot continued for days (some felt the Atlanta Police Department, then an all-white organization, did not respond sufficiently), and the official death count was 12 blacks and two whites but many historians think the death toll for blacks was much higher, in the range of 20–40 dead. Black businesses and homes were also destroyed. In the aftermath of the riot, black and white community leaders began meeting to try to address the city's racial problems, marking the beginning of the interracial civil rights movement.

Leo Frank

In 1913, Leo Frank, the Jewish American superintendant of the National Pencil Company in Atlanta, was convicted of the murder of Mary Phagan, a 13-year-old girl who worked in the factory. Frank was sentenced to death but his

sentence was commuted to life imprisonment. In August 1915, he was kidnapped from the Mid-geville State Penitentiary and lynched in the town of Frey's Mill, near Marietta, Georgia. As was common in the lynching of black men, photographs of his body, including clear images of the lynch mob, were taken and sold in local stores. Many felt that Frank had been accused and convicted because of his religion (in 1986, he was granted a posthumous pardon from the Georgia Board of Pardons and Paroles); this motivated the founding of the Anti-Defamation League by the Jewish service organization B'nai B'rith.

The Atlanta Youth Murders

Atlanta was rocked in 1979–81 by the murders of 28 children and young adults, all of them black. The first victim was Edward Smith, age 14, who disappeared on July 21, 1979; the last was Timothy Hill, 13, who disappeared on March 13, 1981. The murders received wide publicity, and the Federal Bureau of Investigation (FBI) was called in to assist in the investigation. In May 1981, Wayne Williams (a black man) became a suspect in the case, and in 1982, he was convicted of several of the murders, based largely on physical evidence (hairs and other fibers from Williams's home were found on the victims); the others were also attributed to him by the Atlanta Police Department.

The 1996 Olympics Bombing

The Summer Olympics were held in Atlanta in 1996, and a large public park, Centennial Olympic Park, was constructed in downtown Atlanta as a gathering location for visitors. On July 27, 1996, a bomb exploded in this park, injuring more than 100 people and killing one and indirectly causing another death as a journalist suffered a heart attack while covering the bombing. This incident received worldwide coverage as it occurred during the Olympics (President Bill Clinton denounced it as a terrorist incident).

Security guard Richard Jewell, an initial suspect in the bombing, was eventually cleared and filed several lawsuits claiming he had been slandered by news organizations. Eric Rudolph, who was also suspected of involvement in three other bombings (of abortion clinics and a bar), was formally named a suspect in October 1998 but evaded capture for several years. Rudolph was

arrested in 2003, pled guilty to all four bombings, and is currently serving four life terms without parole in a maximum security federal prison.

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See Also: African Americans; Georgia; Jewish Americans; Lynchings; Racism; Terrorism.

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Attica

From September 9 to 13, 1971, prisoners in New York State's Attica correctional facility held control of this maximum-security prison. During the revolt, 43 people died, most when the authorities retook control. State police and correctional officers killed 29 prisoners and 10 correctional staff members and wounded 80 people during the quarter of an hour that it took officials to retake the prison.

The McKay Commission, which investigated Attica, called it the "bloodiest one-day encounter between Americans since the Civil War." When these events occurred, nearly 60 percent of Attica's population was African American and 100 percent of the correctional officers were white. While the prisoner revolt at Attica took place over five days, the event is best understood within three contexts that span decades both before and after the Attica revolt.

Attica Over Time

Ironically, Attica prison opened in 1931 as a response to a wave of prison riots in New York and elsewhere in the late 1920s. Attica was to be "a convict's paradise," with spring beds and radios in each cell. From the time it was opened until the late 1960s, Attica experienced occasional prisoner uprisings, as did many maximum-security prisons. However, the 1960s provided a different political context. This was a decade of protest—and of government use of force to suppress protests. The period included the civil rights movement (including prisoner's rights), anti-Vietnam War protests, violent disturbances in America's urban centers, and prison riots in New York and other states. These events saw government repression of protest and activist organizations, including the Black Panthers and Black Muslims. These events provided a model of violence for both prisoners and the state. The assassinations of Malcolm X, Martin Luther King, Jr., Robert Kennedy, Fred Hampton (a Black Panther leader in Chicago), and George Jackson that occurred in the decade before the five-day revolt at Attica also provided a political context for violence.

In addition, during the 1960s, a new emphasis on research on all aspects of criminal justice from arrest to parole was raising questions about the legitimacy of criminal justice processes and was finding race to be an important factor throughout. Through these events and this research, the understanding of the politics of criminal justice was enhanced. In this environment, prisoners were redefining themselves as political prisoners, and the criminal justice process was seen as an exercise in political power to control the underclass of society (especially African Americans). This allowed prisoners to transform their criminal/deviant/prisoner status into a more empowered political status befitting men.

In New York, prisoner disturbances in New York City's House of Detention (Tombs) in August 1970 and Auburn Correctional Facility in November 1970 preceded the events at Attica. Prisoners from Auburn were transferred to Attica and were placed in segregation. This was contrary to promises from correctional officials that there would be no reprisals for those involved in the Auburn protest over the handling of a Black Solidarity Day event.

The Attica Revolt

On September 8, 1971, confusion over the handling of an inmate interaction (whether it was a fight or horseplay) provided the spark for what was to come on September 9. On September 9, when a lieutenant involved in the September 8 incident asked a group of prisoners to return to their cells after breakfast, he was attacked. From the chaotic violence that followed, prisoners eventually gained control of the institution after a failed weld on a gate allowed them access to a central control area called Times Square. The McKay Commission that investigated the events at Attica reported that the inmates had control of all four cellblocks and all of the tunnels and yards in the Attica complex and that more than 1,200 inmates had gathered in "D" yard with more than 40 hostages.



New York Governor Nelson Rockefeller, shown here in February 1975, gave the order for the National Guard and state police to retake control of Attica prison on September 13, 1971.

While the prison revolt at Attica was part of a larger pattern of prison disturbances and protests during the late 1960s and early 1970s, for a number of reasons, the negotiations that occurred in an attempt to obtain a peaceful settlement made the event much more significant and visible. That the negotiations took place at all was unique because negotiating with prisoners was not common practice. Further, an "observers committee" containing prominent African American and Hispanic political leaders from New York, activist lawyers, journalists, activists from the Black Panthers and Young Lords, and others representing more conservative perspectives gave some celebrity to the negotiations.

Members of the committee were used to mediate the negotiations and served to provide diverse perspectives and advice to Commissioner Russell Oswald. The decision to allow television reporters to enter the prison and film negotiations and comments of prisoners and hostages brought the events inside the prison to national attention. During the five days of negotiations, tensions within groups of correctional personnel and their families, prisoners and their families, and state police officials continued to build. On the evening of September 12, 1971, negotiations finally ended.

September 13, 1971

On the morning of September 13, 1971, after a final ultimatum from Commissioner Oswald was read to prisoners, the prisoners took eight hostages to catwalks and held knives to their throats or bodies. Fifteen minutes after inmates rejected Commissioner Oswald's ultimatum, a helicopter dropped tear gas into the yard and shotgun and rifle fire from state police and correctional officers commenced. When the firing stopped, 10 hostages and 29 inmates were dead or dying. From a state police helicopter, inmates were told to place their hands on their heads and surrender. They were told to sit or lie down and that they would not be harmed.

Within an hour, the prison had been secured. State police and correctional officers then started the process of dealing with the dead and wounded correctional personnel and prisoners, and with having the surrendered prisoners stripped, searched, and moved back to the cellblocks. In December 1971, a U.S. Court of

Appeals found that the harassment and reprisals directed at prisoners by correctional officers in the days after the riot entitled prisoners to protections against any recurrence.

One of the most infamous incidents of the revolt at Attica occurred shortly after the main yard had been secured. Gerald Houlihan, public information officer for the Department of Corrections, told the press that several hostages died as a result of inmates having slashed the throats of officers. This comment and interviews with state police officers who reported being eyewitnesses to such inmate brutality generated sensational headlines in the media. Less than 24 hours later, however, autopsy reports of the dead hostages found that all had died from gunshot wounds inflicted by representatives of the state.

Aftermath

Throughout the years since the events at Attica, criminal prosecutions of inmates, court hearings, and lawsuits seeking to hold prison and government officials in New York responsible for the deaths continued. In all, 62 inmates were indicted for more than 1,200 criminal acts. By contrast, one trooper was charged for a single crime in relation to the revolt. In 1974, New York Governor Hugh Carey sought to end inquiries into the Attica uprising when he pardoned seven inmates and commuted the sentence of a prisoner convicted of killing a correctional officer. In addition, Governor Carey ruled that no disciplinary action should be taken against 19 police officers and one civilian who investigators had suggested should be disciplined for their actions in the retaking and aftermath of the disturbance.

While criminal prosecutions had ended, civil suits by prisoners seeking monetary damages for the use of excessive force continued for years. It was not until 2000, nearly 30 years after the Attica riot, that the state of New York settled a civil suit brought by inmates for \$12 million. In 2005, New York Governor George Pataki created a \$12 million fund as a settlement with the Forgotten Victims of Attica, families of hostages and other correctional officers killed and injured during the retaking of the prison.

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See Also: Auburn State Prison; New York; Penitentiaries; Political Crimes, Contemporary; President's Commission on Law Enforcement and the Administration of Justice; Prison Riots; Prisoner's Rights; Rockefeller, Nelson; San Quentin State Prison.

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Auburn State Prison

Opened in 1817 on the fringes of Auburn village in western New York, Auburn prison was among the first modern penitentiaries in the United States. The prison quickly rose to national and international prominence for its renowned "silent system" that combined congregate labor during the day with cellular isolation at night, all in complete silence and enforced under threat of corporal punishment. Boasting this novel approach to penology that promised to discipline and reform criminals, Auburn drew visitors from across the country and around the world and served as the model for hundreds of prisons built at home and abroad. The Auburn correctional facility still houses inmates today, making it the oldest continually operating prison in the United States.

Building a Silent System

The New York legislature approved a second state prison in 1816 to alleviate overcrowding at New York City's Newgate Prison (est. 1797), and the first 53 inmates arrived in 1817 to accelerate construction. The original south wing of the new prison consisted largely of congregate cells, but as conditions at Newgate became increasingly violent and riotous, reformers, politicians, and prison officials questioned the wisdom of housing inmates together. Influenced by the Quaker system of solitary confinement pioneered in Pennsylvania, Auburn's first warden, William Brittin, oversaw the construction of a north wing made

up of individual cells in two rows, back to back, stacked five tiers high. Completed in 1821, the cells in this wing measured less than 4 feet wide, 7 feet deep and 7.5 feet high. The only windows were along the outside wall of the narrow corridor onto which the cells opened.

Housing prisoners individually helped to prevent communication that might lead to riots or escapes and also prevented the corruption of young offenders by hardened criminals. In 1821, at the recommendation of the legislature, Auburn graded its prisoners, keeping 80 of those deemed most dangerous in solitary confinement. After 18 months, prison officials determined that the physical and psychological damage of solitary confinement was too great, citing grave illness, insanity, self-mutilation, and suicide. In 1823, the governor pardoned 26 of these men, marking an end to the experiment with total isolation and this system of classification.

The hallmark of the Auburn system was its use of congregate labor during the day. Heads shaven and clothed in black-and-white-striped uniforms, prisoners lock-stepped every morning from their cells to the bucket room to dispose of their waste, then to the prison workshops. Considered important for both remaking the criminal and defraying the costs of the prison, inmate labor was contracted to the highest bidder. Prisoners worked in silence six days a week building furniture, weaving cloth, and making shoes, tools, brooms, and other goods. Silence in the workshops and on the cellblock was enforced under threat of brutal physical punishment. Prisoners were also isolated from the outside world; visits and correspondence were strictly forbidden.

Auburn first received female convicts in 1825 and housed them together in a large attic room. Although women escaped the hard labor of the men, visitors and prison officials remarked at the horrid conditions in which they were housed, receiving little exercise or fresh air and left to their own devices. In 1828, Governor DeWitt Clinton proposed a separate women's prison, but the legislature refused, citing the immense savings at Auburn from the sewing, ironing, and washing the female inmates did.

In 1857, the legislature approved funds for the New York State Asylum for the Criminally Insane, and Auburn became the first prison to house men-



This 19th-century photograph taken inside the Auburn prison shows long rows of metal doors on the small individual cells in which prisoners were segregated at night.

tally ill inmates separate from the general prison population. The asylum was converted into the State Prison for Women in 1893 and remained open until the operation was moved to Bedford Hills in 1933. Auburn was also the first prison to use electricity as a method of execution in 1890. In total, 55 men and one woman were put to death in Auburn's electric chair.

Penal Reform

By the turn of the century, Auburn's silent system was unraveling: Contract labor was eliminated in favor of a state-use system, leaving many inmates idle, and silence proved unenforceable as the prison population swelled. But once again, Auburn was at the forefront of penal reform. The highly publicized experience of local businessman and reformer

Thomas Mott Osborne in 1913 brought prisons to the center of public and political debate. Osborne had entered Auburn as inmate “Tom Brown” for a voluntary stay of one week to glean insight into the conditions and life of a prisoner. Osborne was the driving force behind the establishment of the Mutual Welfare League (MWL), an inmate self-governing organization that, under the motto “Do Good, Make Good,” sought to replace the stick with a carrot. The MWL organized inmate activities and helped to run the “honor” work camps where inmates labored outside the prison walls on public works projects such as road building. In the wake of two bloody riots in 1929, the MWL was disbanded.

Extreme overcrowding led to the riots on July 28 and December 11, 1929. Several inmates and guards were killed and injured during these uprisings, and the fires set to the prison workshops during the riots left the prison complex in shambles on the eve of the Great Depression. With little funding in the 1930s, and later resources directed to the war effort, reconstruction of the prison lasted more than a decade. New cellblocks eventually replaced old ones, with cells, still in use today, that are slightly larger and now include a sink and toilet.

The heated struggle for civil rights could be found behind Auburn’s walls. Following a peaceful inmate work stoppage in observance of Black Solidarity Day in November 1970, prison administrators identified and punished 14 inmate leaders. When administrators failed to discuss or drop these reprisals, a riot broke out. Using makeshift weapons, inmates took 43 hostages and issued demands for better conditions and greater educational opportunities. Several hours later, the inmates were persuaded to surrender peacefully.

Auburn continues to operate today as one of New York State’s maximum-security prisons, housing approximately 1,800 male inmates.

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See Also: Attica; New York; Penitentiaries; Prison Riots; Prisoner’s Rights.

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Augustus, John

John Augustus (1785–1859), a Massachusetts shoemaker, is credited with being the “father of probation.” Although much of his work pertained to pretrial supervision, it nonetheless contributed greatly to the origin of the American probation system. Augustus coined the term *probation*, which he derived from the Latin word *probare* meaning to be tested or proven.

Born in Woburn, Massachusetts, in 1785, he moved to Lexington at the age of 21 and began making shoes. (Augustus was married twice, fathering two daughters and two sons.) In 1827, Augustus again moved, but this time to Boston, where he continued his work as a cobbler. Shortly after his arrival, he noticed that the criminal justice system was failing to reform offenders. He commented on seeing drunkards, prostitutes, and petty thieves being sentenced to jail, only to return to the streets unprepared to lead law-abiding lives. Many unprepared ex-offenders would then commit additional crimes for which they would again be sentenced and imprisoned. For many offenders, this formed a recurring cycle. This convinced Augustus that when possible, the criminal justice system should rehabilitate offenders.

Consistent with this observation and his convictions, Augustus joined the Washington Total Abstinence Society, a group devoted to the humane treatment and rehabilitation of offenders. This group believed that alcohol consumption was the root cause of criminality, destroying both the moral and economic core of America. Augustus first entered a Boston courtroom in 1841. While there, he asked that an indigent man being arraigned on a charge of drunkenness be temporarily released into his care. The judge complied. Under his supervision, the man found a job



John Augustus's influential work led to the creation of probation systems throughout the United States for both adults and juveniles. By 1910, 32 states had followed the lead of Massachusetts and established juvenile probation. Among this group of newsboys and gum sellers photographed by Lewis Hine in Washington, D.C., in 1912 was at least one young boy on probation.

and swore to quit drinking. After three weeks, the man reappeared in court and surprised the judge with his improved appearance and penitent demeanor. Spared a term of incarceration, the judge levied a fine of one cent plus court costs, which totaled \$3.76. Subsequent requests were met with resistance from local police officials, whose pay was based upon the number of offenders sentenced to jail. Nevertheless, Augustus continued in his work. He soon expanded his efforts to include the supervision of children. By 1846, he had supervised approximately 30 children ranging in age from 9 to 16. By 1858, he had helped 1,152 men and 794 women. Of that number, it is reported that only four failed, requiring Augustus to forfeit bail.

When selecting individuals to supervise, Augustus paid particular attention to the extent of their

criminal record as well as their character, always looking for signs of remorse and an interest in redemption. Augustus was a volunteer, never being paid for his effort. Furthermore, he personally paid the bail of those he supervised. Although he received funding from several well-known philanthropists like Horace Mann, Theodore Parker, and Wendell Phillips, he eventually exhausted his financial resources. Augustus retired from both his probation work and his cobbler shop in 1858. He died in 1859 at the age of 75.

Although Augustus did not live to see the influence that his efforts would have on the American correctional system, they have nonetheless served as the cornerstone for all forms of community-based supervision. He is also credited with helping establish the use of the presentence investigation. Because of his work

and its success, in 1878 Massachusetts created a state probation system with paid officers. Other states soon followed. By 1900, Illinois, Minnesota, New Jersey, New York, Rhode Island, and Vermont also created similar systems. By 1910, 32 states had also passed legislation establishing juvenile probation. Today, adult and juvenile probation exists in every state and plays a significant role in the justice system.

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See Also: Drinking and Crime; Massachusetts Probation.

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Autobiographies, Criminals'

Autobiographical narratives written by criminals have provided both information for social scientists who study crime and entertainment for the general public. These works share narrative space with other works about the lives of criminals, such as gallows confessions, broadsheets, pamphlets, and fiction, including novels and films. In the United States, criminal autobiographies first began to be published in the 18th century. In these autobiographies, men and women who were accused and/or convicted of a crime not only recount the events of their lives but

often offer an explanation. These explanations often take the form of a mea culpa (an admission of fault). However, often the criminal also will blame people, events, or society for contributing to his or her downfall. This is particularly the case with post-Civil War western outlaws and the "political prisoners" of the 1960s. Autobiographical narratives reflect the perspectives and beliefs of the subject, who may wish to present him/herself in the best possible light. As with all such narratives, there is the issue of memory. The story is told retrospectively, and the teller may forget or distort the events that he or she is recalling. But even with these caveats, criminal autobiographies provide the researcher or general reader with insight into the time period and the world inhabited by the criminal.

Early Autobiographies

Perhaps the earliest American criminal autobiography, *The Memoirs of Stephen Burroughs* was published in 1798. In the memoir, Burroughs, a notorious 18th-century New England rogue, recounted his path from preacher's son to confidence man. Burroughs recounts the struggle of wills with his father that began in his childhood when he played pranks and engaged in petty theft. Although he attended Dartmouth College, Burroughs dropped out. Aside from assuming the guise of a minister and then a schoolteacher, Burroughs became a counterfeiter, thief, and seducer. He escaped from prison on several occasions. His exploits became so well known that crimes he had not committed were attributed to him. In his memoirs, Burroughs deals with his perception of self, a perception that allowed for shifting identities. Burroughs's *Memoirs* has been described as bearing similarities to the memoirs of a notorious British thief, James Dalton (1728), and to have been influenced by Henry Fielding's novel *Tom Jones* (1749).

In the 19th century, dime novels about western outlaws became popular among eastern readers. These pulp novels were often written by eastern writers, some of whom had never gone west. These books contributed to the mythology of the western frontier, particularly to the legend of western gunslingers and outlaws in the "Wild West." The image of the outlaw as hero, of the "good bad man," was constructed in the pages of

these novels. A few western gunmen took part in their own legend building by writing accounts of their lives. Cole Younger was one of four brothers, who with Jesse James and James's brother Frank led the James-Younger Gang in the years after the Civil War. In *Confessions of a Missouri Guerrilla: The Autobiography of Cole Younger* (1903), he opens the first chapter with an account of his boyhood in Missouri from 1856 to 1860. During the war, Younger joins Quantrill's Raiders, the pro-Confederate guerrillas led by William Quantrill. That he should fight on the side of the Confederacy is preordained, Younger explains, by the "political hatreds" that existed along the Missouri and Kansas border. Although he is the seventh of 14 children, the family is well to do and is politically prominent. But then his father was brutally murdered and three of his sisters and two cousins are imprisoned by Missouri militia. His mother is forced to burn her own house to the ground and walk through the snow for help with a faithful servant. These events before and during the war, and the government's failure to provide postwar amnesty in Missouri to Confederates, Younger writes, paves the way to his career as an outlaw. In the afterword to the book, he explains that he has written the book because of the libelous stories told about him and his dead brothers. Younger asserts that the worst offenders in this regard are the New York publishers of "five-cent-dreadfuls."

In 1896, *The Life of John Wesley Hardin as Written by Himself* was published. As had Younger, Hardin had made a reputation for himself as a gunman. He was killed in 1895, shot in the back of the head, while in a saloon. The manuscript he had written was found and turned over to his children. Although his daughters objected, his son decided to publish it. The book was withdrawn from circulation soon after publication, but copies remained in a warehouse. These copies of the book became collector's items. One of the debates about the book from the time of publication was whether Hardin had been literate enough to write the manuscript. The evidence suggests that he was. He had been the son of a Methodist preacher and had attended school. When he killed a man at age 15, he became a fugitive. Later, after serving time in prison, he had studied law, passed the bar exam, and even set up a law practice. But

he began drinking and gambling again and was killed at age 42. Although he was only 9 when the Civil War began, Hardin, as did Younger, experienced the war as a southern sympathizer and grew up rebellious.

In an example of the use of oral history, Willis and Joe Newton recounted their lives to two interviewers in *The Newton Boys: Portrait of an Outlaw Gang* (1994). The book was based on audiotapes made in 1976. The brothers were also the subject of a documentary and a popular film. One aspect of the gang activities in Texas from 1919 to 1924 was what has been described as the use of technology to avoid violence. The bank robberies were carefully planned, and the gang was not captured until after a \$3 million Illinois train robbery. In their joint narrative, the brothers discuss their perception of themselves as businessmen and their belief in the corruption of business and government institutions.

Twentieth Century

During the early 20th century, social scientists were interested in the careers of professional criminals. One of the more famous of these professional criminals was Joseph "Yellow Kid" Weil, whose book about his life is now subtitled *The Autobiography of America's Master Swindler* (1948). Weil (1875–1976) was a Chicago confidence man who began his career as an assistant to a patent medicine salesman. He asserts that he was able to succeed as a con man because of human nature; the people he cheated were greedy and wanted something for nothing. Weil's criminal career inspired the film *The Sting* (1973), starring Paul Newman.

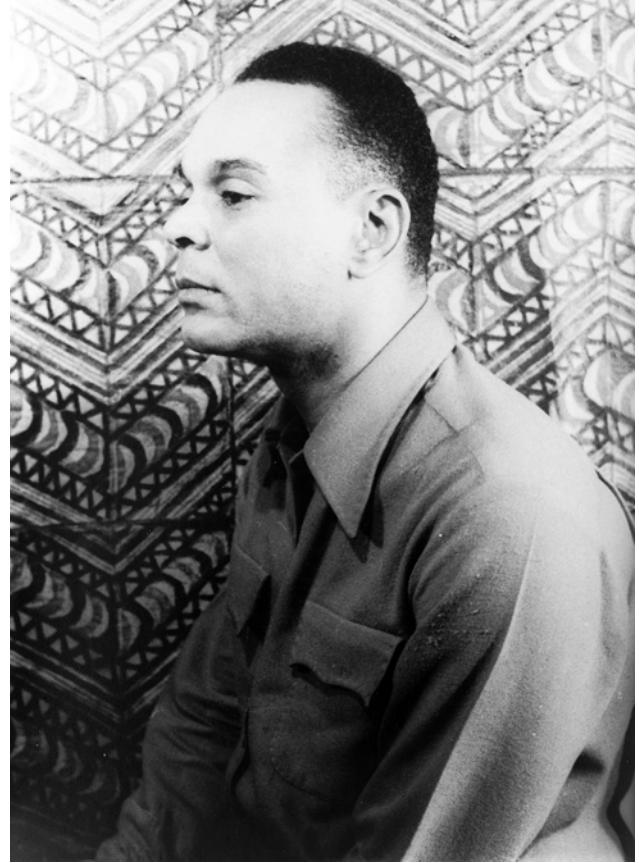
In 1924, two young Chicago college men of wealthy families became notorious for their attempt to commit the perfect crime with the "thrill killing" of 14-year-old Bobby Franks. The prosecution focused on the "deviant" sexual relationship between the two young men, Nathan Leopold and Richard Loeb. The defense turned to alienists (psychiatrists) to do a psychological evaluation of the two, who, inspired by their reading of Frederick Nietzsche, had believed themselves above the law. Defense attorney Clarence Darrow admitted their guilt but offered a classic argument against the death penalty. The two were sentenced to Stateville Penitentiary, where Loeb

was killed by another inmate, who claimed Loeb tried to sexually assault him. The year before his parole from prison, Leopold published his autobiographical *Life Plus Ninety-Nine Years* (1957). The title came from the sentence that he and Loeb were given by the judge for Bobby Franks's murder. In the book, Leopold addresses the issue of his motive for the murder. He says it "was to please Dick" [Loeb]. He recounts his confused thoughts after the murder when there was no turning back. Looking back at his crime from the vantage point of the 32 years he has spent in prison, he wonders how his mind worked. He admits that he felt no remorse until several years later. Leopold also comments on his reaction to *Compulsion* (1957), the novel by Meyer Levin based on the case. Leopold recalls that as he read he felt nauseated and exposed and knew that he was not the same person described in the book.

The book by Leopold is one of many works written by American prisoners while and after serving time in prison. This genre of "prison literature" has a long tradition, dating to the inmates of early European dungeons, gaols, and prisons. In 20th-century America, African American writer Chester Himes recalled his seven years in prison in *The Quality of Hurt* (1972). When he was growing up in the south, Himes's father was a faculty member at a historically black college. The lab accident that blinded his brother, his own suspension from college, and a fall down an elevator shaft while working in a hotel were all prologue to the armed robbery that sent Himes to the Ohio Penitentiary. Himes described his fits of rage that kept bigger and tougher inmates from harming him. In prison, he became aware of his own capacity for violence. Himes began to write short stories that he submitted and had accepted by magazines, including *Esquire*. After his release, Himes tried to make a living as a novelist, writing what has been described as "protest novels." His success came after he moved to Europe and began to write his "Harlem domestic" series featuring two black police detectives (one of whom was prone to blind fits of rage after being permanently disfigured by the acid thrown in his face).

"Political" Prisoners

In *The Autobiography of Malcolm X* (1965), the man who had been born Malcolm Little, but who



Chester Himes, who spent seven years in prison and later wrote *A Rage in Harlem*, *The Quality of Hurt*, and other works, is shown here in a 1946 photograph by Carl Van Vechten.

became a Muslim while in prison, told the story of his life and his spiritual and political transformation. The product of a collaboration between Malcolm X and journalist Alex Haley, the book was named by *Time* magazine as one of the 10 most influential nonfiction books of the 20th century. Malcolm X recounts the events that led to his conviction for robbery. He had spent time as a sleeping car porter, one of the better jobs that an educated young black man could expect to find. He had dressed in Zoot suits and conked his hair. He had been involved with white women in a society that punished black men for such relationships. When he reached prison, he was angry and defiant, but under the tutelage of a prisoner, he began to read and think and eventually experienced a conversion to the Muslim faith. After prison, Malcolm X became a controversial figure during the civil rights era. As he was reevaluating his world

view in the aftermath of a visit to Mecca, Malcolm X was assassinated.

A number of other prisoners during this era wrote about their experiences, describing themselves as “political” prisoners. Several of the women who were members of the revolutionary group or associated with the Black Panthers have written about their experiences. These books include Angela Davis’s *Angela Davis: An Autobiography* (1989) and Elaine Brown’s *A Taste of Power: A Black Woman’s Story* (1993).

In 2001, a book by Assata Shakur was published in the United States. In *Assata: An Autobiography*, Shakur, who escaped from prison after being convicted for her role in the death of a New Jersey state trooper, tells her side of the story. Badly injured during the confrontation, Shakur alleges that she was brutally treated by the police who responded to the scene and the medical staff at the hospital. Having survived, she was confined as the only woman in a men’s prison. She challenges the fairness of her trial and the testimony of the other police officer who took part in the shoot-out. After escaping from prison, she fled to Cuba, where the government has refused to extradite her back to the United States. Shakur presents her story in the context of the Federal Bureau of Investigation (FBI) COINTELPRO (surveillance program) that involved an effort to destroy the Black Panthers and other groups. Angela Davis, now a University of California professor, provided a foreword to Shakur’s book in which she discusses prisons, racial profiling, and the images of offenders.

Contemporary Accounts

Members of organized crime also have provided accounts of their encounters with the criminal justice system. These books include the bestseller, first published in 1973 as *Killer*, by “Joey the Hitman.” The present title of the book is *Joey the Hitman: The Autobiography of a Mafia Killer* (2002). David Fisher, the writer who collaborated with Joey on the book, recounts in his introduction that he was approached by Joey for help in telling his story, but that he never knew his real name or where he lived. Joey’s authenticity was confirmed by reliable sources, and Fisher agreed to work with him. In his autobiography, Joey offered an account of the day-to-day operation of the mob as seen from the perspective of a mob

hitman. Joey achieved notoriety for both his book and his appearance on *The David Susskind Show* for an interview with a paper bag over his head to protect his identity. In Joey’s account, he led an ordinary life, but he was able to quietly enjoy the money that he earned as a killer. He accepted death as an occupational risk. In *A Man of Honor: The Autobiography of Joseph Bonanno* (1983), another mobster offered an inside look at organized crime. Bonanno had immigrated to the United States from Sicily during Prohibition. He eventually became the boss of one of the five New York Mafia families. Bonanno is said to have been a likely model for Don Corleone in the book and the film *The Godfather* (1972).

One of the more usual “as told to” books is *Final Truth: The Autobiography of Mass Murderer/Serial Killer Donald “Pee Wee” Gaskins*. In a series of interviews with journalist Wilton Earle, over a 15-month period, Gaskins provided a graphic account of his life and crimes. Born in the backwoods of South Carolina and small in stature, Gaskins claimed to have been abused by his mother’s live-in lovers and then later bullied in school. He committed his first sexual assault as an adolescent when he and two friends raped the 11-year-old sister of one of the friends. He himself was gang-raped while in reform school. Later, in adult prison, Gaskins claimed to have realized that the only way he could survive was by becoming a “powerman.” He killed another violent prisoner to establish his reputation. On his release from prison, Gaskins began his career as a sadistic rapist who eventually killed his victims. He died on death row in 1983. The foreword to his autobiography is written by Colin Wilson, the well-known British crime writer.

In her autobiography *Stranger in Two Worlds* (1986), Jean Harris, who became notorious for only one murder—that of her lover Herman Tarnower, “the Scarsdale Diet doctor”—wrote from prison. Harris, who was the headmistress of an exclusive school, maintains as she did during her trial that she had intended to kill herself, and that Tarnower’s death was an accident. She also asserts that she was a victim of a media trial and the misinterpretation of forensic evidence as well as false testimony by witnesses.

Other autobiographies include those of former gang members, such as Luis J. Rodriguez’s

Always Running: La Vida Loca: Gang Days in L.A. (1994) and *Monster: The Autobiography of an L.A. Gang Member* (2004) by Sanyika Shakur. These books recount the life-and-death struggle for status and survival and the ritual encounters with fellow gang members, rival gangs, and the police. These books are sometimes referred to as “gangbanger autobiographies.”

In a twist on the criminal autobiography, historian Timothy J. Gilfoyle’s *A Pickpocket’s Tale: The Underworld of Nineteenth Century New York* (2006) uses an unpublished memoir by George Appo as the foundation for an exploration of crime and justice. The son of a Chinese father and Irish mother, Appo was a newsboy turned pickpocket and con man.

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See Also: Darrow, Clarence; History of Crime and Punishment in America, 1970–Present; Leopold and Loeb; Literature and Theater, Crime in; Literature and Theater, Punishment in; Organized Crime, History of.

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Automobile and the Police

It is difficult to separate the institution of policing from the tools and technology officers use to accomplish their assigned tasks. Just the term *police officer* conjures a mental image of a person in a particular type of uniform with predictable markings and equipment. For over 100 years, this constellation of police symbols has also included the distinct automobiles that they use. Various

called “squad cars,” “patrol cars,” “prowl cars,” “marked units,” or “black-and-whites,” these vehicles are an important part of police culture and identity. The adoption of automobiles by police transformed both how police did their job and what the public expected in terms of appropriate police response.

Early Use of Automobiles

In the late 19th century, law enforcement agencies began to use motor vehicles. These early forays into motorized policing did not resemble modern automobile patrol. Rather, they were usually limited to “paddy wagon”-type large conveyances for prisoners or the police. If police used a motorized vehicle for individual patrol or transportation, more often it took the form of a motorcycle. As the early 20th century unfolded, offenders began to use automobiles more frequently, so the police followed suit. Beginning with the 1920s, American policing was transformed through the use of automobiles.

The benefit of officers in automobiles was seen as twofold. First, it represented an economy of service. A police officer traveling in a car could patrol a larger area, thus obviating the need to position more officers across a given territory. Second, motorized officers could more quickly respond to increasingly distant calls for service. During the first few decades of motorized policing, the cars used by law enforcement were typically the same as any other retail automobile. They would then be modified by the agency to suit their particular needs. In these early years, the modifications were mostly basic: distinct paint and markings and additions of lights and sirens.

After World War II, American automakers recognized the growing market for specially modified fleet vehicles for law enforcement. This was the dawn of custom police packages that contained many of the popular options as regularly ordered by law enforcement agencies. Starting with Ford in 1950, a succession of automakers debuted these special police-equipped cars. Chevrolet began offering a package in 1955, Dodge in 1956, and Plymouth in 1957. Typical police package enhancements of the 1950s included more powerful engines, improved cooling systems, and heavier-duty transmissions and brakes. In addition to high performance suspension systems and

“crash” bumpers, more current package offerings often include alternators and batteries capable of supporting the array of computers, radios, and other electronics (light bars, deck, grill, and other emergency lights) found in the typical patrol vehicle. Many custom vehicle packages include special inserts designed for improved prisoner transport. These inserts typically replace some or all of the stock backseat in favor of a more secure and easier-to-clean transport unit. Likewise, many aftermarket vendors provide agencies with customized weapon and equipment storage mechanisms for use inside the cabin or trunk of the vehicle.

Popular Models and Equipment

Since the 1950s, certain models have proven especially popular with law enforcement. The Chrysler Enforcer, Dodge Polara, and Chevrolet Biscayne were common in the 1960s. Models such as the Mercury Monterey, Dodge Monaco, Ford Torino, Plymouth Fury, and Chevrolet Nova were popular in the 1970s. Many of

these models retained popularity across several decades and design generations. Of particular note in this category are the Chevrolet Caprice and Ford LTD Crown Victoria. The third and fourth generations of Chevrolet Caprice (1986–96) were widely adopted by agencies all over the United States, but it is the Ford LTD Crown Victoria (1978–present) that has enjoyed even longer and greater market dominance.

In 1996, Chevrolet discontinued production of the popular Caprice. This left a wide opening for Ford. The Police Interceptor version of the Crown Victoria had many of the attributes desirable for law enforcement. Also given the model designation P71 (and later P72), this automobile came with rear-wheel drive, a large V8 engine, and body-on-frame construction. As one of the few available cars built using a body-on-frame design, relatively inexpensive repairs could be accomplished (after minor collisions) without the need to straighten the chassis. These features, combined with the paucity of other large, rear-



A long row of Fords reserved for use as police cars waits at the Robey Motor Company in Washington, D.C., in the early 1920s. In the early years of police automobiles, law enforcement cars were usually the same models as those offered to the general public. Custom police cars became more prevalent after 1950, when Ford and other automakers created special models for the police.

wheel drive models, positioned Ford for near market monopoly.

In recognition of the now aging Crown Victoria, other companies have again entered the fray. In 2006, Dodge introduced a Police Package version of its popular Charger model. The exterior styling of the vehicle is reminiscent of muscle cars from the 1960s and 1970s. The police version Charger features a 340 Hp Hemi V8 engine, heavy-duty brakes, a severe-duty cooling system, police-performance Electronic Stability Program, police performance-tuned steering, and a gear shift mounted on the steering column instead of the center console. In place of the center console, the police Charger has an aluminum plate for mounting radio equipment, computers, and controllers for lights and sirens. The vehicle's electrical system is specially designed for integration of siren and light controls and other common accessories. Perhaps owing in part to its overtly masculine styling and powerful drivetrain, the Charger has proven instantly popular with law enforcement agencies. Even so, other automakers have continued to develop contenders to challenge the Crown Victoria's market share. These include the newly released Chevrolet Caprice PPV, Carbon Motor Company's E7 prototype car, as well as Ford's own police edition of the Taurus model. Apart from four-door sedans, many agencies have also adopted SUVs and other truck-framed vehicles as part of their patrol fleet, although these vehicles have tended to be more commonly purposed in non-pursuit capacities. Many highway patrols have adopted high-performance models such as the Ford Mustang, Chevrolet Camaro, and Dodge Magnum for highway pursuit purposes.

Motorized Versus Walking Patrol

Whatever model a given agency has adopted, the impact of motorized patrol has been great. Going back to the initial postwar proliferation of "radio cars" (police cars equipped with two-way radio units), policing was transformed by virtue of its greater mobility, speed of response, and expanded coverage area. Many advocates of community-oriented policing suggest that the move away from walking a patrol beat had negative consequences for police-community relations. Supporters of this position argue that patrol cars create a barrier between the police and citizens. They argue that officers in cars are less likely to

directly engage with the community. As this reasoning goes, with modern conveniences such as air conditioning and computers, police are more likely to drive along with the windows up and the public shut out. Scholars who study police and police tactics have devoted a great deal of effort to better understanding the way motorized patrol influences police practice. Policing scholar David Bayley observes that 60 to 65 percent of all police personnel in America are assigned to motorized patrol. As such, studies of this type explore an important dimension of police practice.

One of the most influential patrol studies is commonly referred to as the Kansas City Preventive Patrol Experiment. In this 1973 study, George Kelling and his coauthors sought to empirically test the validity of one of the major strategies of modern policing: routine, visible, motorized, random patrol. In other words, they wanted to know whether the regular presence of police officers in cars changed crime in the officers' patrol areas. The conclusions reached by Kelling and his coauthors in Kansas City challenged the conventional wisdom that random patrol had a significant effect on crime and fear of crime. This conclusion was quite controversial and not without its detractors. Critics argued that the patrol areas in Kansas City were not representative of the wide-ranging urban environments across the country. Other scholars contended the study did not contain enough beats, that the samples of citizens surveyed were too small, and that the statistical power of the tests was too weak to use as the basis for broader inference. Even so, by calling into question basic assumptions of police strategy, the study led to a wave of empirical research challenging many of the core assumptions of police strategy and tactics.

In the wake of Kansas City, many researchers took a position articulated by Carl Klockars, who discounted the value of random police patrol. In a now famous statement, Klockars likened random police patrol to firefighters roaming around looking for fires. Echoing this sentiment, police departments across the United States shifted focus from a traditional law enforcement mandate to one targeting public order and service. James Wilson, who would later partner with Kansas City author George Kelling, interpreted the results differently. Wilson argues that the Kansas City study shows that only random patrol is of questionable

value. He contends that other types of patrol, such as foot patrols or patrols in unmarked cars, might work to reduce crime. Out of this controversy, there is one strong consensus: Simply increasing the number of police doesn't reduce crime. In this, most experts agree that the number of police is not as important as what the police are doing.

The patrol car itself can form a barrier between the police officers and the public. This has also prompted a return to strategies like foot patrol, bicycle patrol, and even horse-mounted patrol. These techniques have been adopted to break down the perceived barrier and better integrate the officers into the communities they serve. However, placing officers on foot, bicycle, or horse may come with certain functional trade-offs. Whatever benefits these alternative conveyances provide in terms of improved community access, they also sacrifice certain capabilities in terms of response speed, ability to confine or transport suspects, and protection (or comfort) for the officer. The ability to quickly answer calls, cover larger areas, and do all that now typifies modern policing would be almost impossible without some motorized capabilities. Moreover, with the addition of computers and other means to transmit and receive electronic information, the patrol car is as much mobile office as it is officer transport.

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See Also: Community Policing and Relations; Dyer Act; Police, History of; Professionalization of Police; Technology, Police.

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Aviation and Transportation Security Act of 2001

Following the terrorist attacks in the United States on September 11, 2001, airport and aviation security became a key area of reform in the international effort against terrorism. Although some passenger and luggage screening methods had been utilized prior to 2001, a standardized international protocol was lacking. Following the attacks, concern about the future threat of airplane hijackings initiated widespread reform of airport security and screening practices, both in the United States and abroad; both the Airport Federalization Act (AFA) and the Aviation and Transportation Security Act (ATSA) were passed by the U.S. Congress in November 2001. By federalizing security services, these acts were designed to standardize passenger and luggage screening procedures.

The Aviation and Transportation Security Act also established the Federal Transportation Security Administration (TSA) as part of the Department of Transportation and charged it with monitoring all sea and air transportation security operations. In addition, the TSA was placed in charge of hiring and training airport screeners to screen all passengers and luggage prior to travel. Furthermore, these employees were required to be American citizens. Although the TSA's reach only extends within the United States, many of its standards and protocols have since been adopted internationally.

Beyond the federalization of security services and security personnel, the ATSA also called for significant changes in how screenings of persons and luggage were performed. For example, devices designed to detect residue of explosive materials and increased hand searches of baggage were among the proposed reforms. Passenger screenings also became more comprehensive, and in addition to the continued use of metal detectors already standard in most U.S. airports, more thorough checks of cellular phones, laptops, and carry-on luggage became routine. Furthermore, items previously permitted in carry-on baggage such as scissors and razors were prohibited, and



Inspectors with U.S. Customs and Border Protection examining business equipment and computers brought into the United States by a passenger on an international flight. Hand searches of suspicious luggage have become increasingly common, and there has been controversy over profiling techniques that are thought to unfairly select certain passengers and luggage for further screening.

the quantity of liquid substances was significantly limited. The ATSA also supervised the implementation of increased security measures within aircraft. Most notably, it required fortified cockpit doors in all aircraft, which are to remain closed throughout the duration of the flight. In addition, aircraft crew can monitor passenger activity via onboard video equipment. Emergency communication systems able to notify airport personnel, 911 operators, and federal authorities in the event of hostile activity were also required by the Department of Transportation to be installed in all aircraft. Changes were also made within airports, which the ATSA declared as secured areas to be surrounded by monitored fences. Private vehicles were no longer permitted to be parked within 300 yards of an airport and the number of airport security personnel was significantly increased. In addition, access to airport arrival and departure gates became restricted to only ticketed and pre-screened passengers.

Given ATSA's primary goal of reforming standard passenger and baggage screening practices, standardized protocols for conducting such screenings were developed. As declared by the ATSA, confirming the identity of passengers is the first step of the screening process. To that end, passengers are now required to present a valid form of identification with names matching the itinerary. International travelers are further screened by the newly developed Advance Passenger Information System (APIS), an international database of security information on travelers.

Upon check-in, both individuals and their luggage undergo thorough physical screening and passengers' identities are checked for a second time. Travelers are also checked by pulse induction metal detectors that send high-voltage pulses to detect hidden metal objects, or wand metal detectors, while baggage is screened by X-ray machines. Hand searches of suspicious luggage have also become commonplace. At the gate of

departure, passengers are required to answer detailed questions regarding their travel plans while security personnel conduct additional random searches of any carry-on bags. During the boarding process, passengers are often required to provide identification for a third time while computers compile a complete passenger list to be forwarded to federal and local agencies. Luggage surrendered to the cargo hold is first matched to its owner, and should that individual not board the flight, the luggage is automatically prevented from being placed into the airplane. CT scanners are also vital for the screening process and have the ability to calculate the density of items within a bag and compare the density to that of known chemicals and explosives.

Despite the general acceptance of these heightened security measures, some programs remain controversial. Mainly, some fear that profiling techniques have overwhelmed the screening process and unfairly select passengers and luggage for further screening. Random hand searchers have received recent criticisms given the claim that profiling, primarily racial and ethnic profiling, are the leading reasons for choosing passengers to be screened. Critics have also claimed that these searches can instill fear in other passengers since most are done in plain sight of other travelers.

This controversy escalated when the Department of Homeland Security and the Department of Defense suggested the use of the total information awareness (TIA) system, which is a database of private information and includes medical and financial documents. Although the TIA system was proposed for the use of gathering information and locating terrorist groups, Congress significantly restricted the program in 2003 by banning its use for domestic security purposes and

the TIA was renamed the Terrorist Information Awareness system.

The Transportation Security Administration in charge of reforming aviation and transportation security was integrated into the Department of Homeland Security (DHS) in 2002, which has combined existing and new anti-terrorism measures. The development of the Early Alert System, a warning system designed to indicate the possibility of a terrorist attack, marks the most recent change in security measures. Although the TSA is now a subsidiary of the DHS, the Department of Transportation and the Federal Aviation Administration continue to assist in reforming United States and international aviation security policies through recommendations and review of current transportation practices.

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See Also: 2001 to 2012 Primary Documents; Border Patrol; Bush, George W. (Administration of); Customs Service as Police; Homeland Security; New York City; Obama, Barack (Administration of); Terrorism; USA PATRIOT Act of 2001.

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Bail and Bond

Bail regulations in the United States were originally based on English laws that developed in reaction to the misuse of bail. Laws since the Eighth Amendment provision against “excessive bail” have incorporated both provisions for non-financial bail that will ensure more people are able to be released and a concern for community safety that will prevent some people from being released. The idea of releasing a person on bail is based on the belief that people are innocent until proven guilty and should not be punished until they are convicted of a crime. As the Supreme Court noted in *Stack v. Boyle*, it is also important for a person to remain free during the pre-trial stage to assist in the preparation of his or her defense. Bail reform continues to be debated in Congress around concerns about the equality of the bail process.

The primary purpose of bail is to ensure that the accused appears at trial. Whether a person accused of a crime is eligible for bail is determined by a judge, who also sets a financial amount or conditions that must be met to guarantee appearance at trial. Once the bail has been posted, the accused is released from detention. If the accused fails to appear, the amount is forfeited to the court. If the accused does appear, the amount is reimbursed. Bail can be imposed in the

pretrial and appeal stages of criminal and deportation cases. Material witnesses are also subject to bail. Since not everyone can afford to provide the amount of bail, people have the alternative of providing a bond. A bond is a surety, or promise, by a third party to meet the bail obligation of the accused. Bonds can be posted by a commercial bondsman, who usually charges the accused a nonrefundable amount of 10 percent or more of the court-determined bail.

History of Bail

Bail can be traced back to England, with the first legal regulation of bail appearing in the 1200s. Laws concerning bail have evolved more in reaction to misuse of bail than to changes in society. The first law to include bail was the Statute of Westminster in 1275. Prior to this, local sheriffs, who were the king’s agents, had sole discretion of whether to release an accused prior to trial. They were also able to set the amount of bail at their discretion. Reacting to the frequent misuse of this power, the Statute of Westminster lists those offenses that were and were not bailable, thus limiting the sheriff’s discretion.

The legal guarantees provided in the Statute of Westminster remained in effect until the 1600s, when several changes occurred in reaction to the king’s misuse of power. When King Charles I needed money, he forced his noblemen to issue

him loans; those who did not were jailed and not allowed bail. A case was brought to court, known as Darnel's case, arguing that the men should be allowed freedom since they were accused but not convicted. The court felt that they should not question the king's judgment and therefore denied the request. In reaction, Parliament passed the Petition of Right in 1627, which specifically references Darnel's case. This requests the king to prohibit detention without due process of law, including presentation of charges and trial. Consequently, people could no longer be imprisoned without having charges presented against them, being allowed bail, and having a judgment against them. The Petition of Right also gave people the right to challenge their imprisonments. Although there was concern at the time that this might impair the Statute of Westminster, the Petition of Right was intended to be read in conjunction with the statute and therefore ensured that people would be charged and released on bail if the charge was listed as a bailable offense.

Although the king respected the request, thus providing legal guarantees that arbitrary detention would no longer occur, three loopholes were quickly found. First, the king could not arrest people without cause but there were no provisions preventing others in positions of power from doing so. Second, anyone arrested outside the jurisdiction of the court did not fall under the provisions of the Petition of Right. Finally, procedural delays in the presentation of charges and assignment of bail could keep people detained indefinitely.

This last loophole was illustrated in the Jenkes case of 1676. When Jenkes was arrested on sedition charges for a speech calling for Parliament to be assembled, he challenged his imprisonment. After several delays, the court refused to hear his case. To eliminate these loopholes, Parliament passed the Habeas Corpus Act of 1679. The introduction of this act specifically mentions Parliament's concern with the continued imprisonment of people charged with bailable offenses but not convicted. The act states the number of days from receipt of a writ of habeas corpus until the person is to be brought before a judge. The number of days between the time the accused is brought before the judge and the judge releases the prisoner on bail, if the charge is bailable, is also established.

Although the Habeas Corpus Act blocked the use of procedural methods to detain people, judges still found that they could continue to detain people by setting high bail amounts. This was one of the issues Parliament stated in the introduction to the English Bill of Rights of 1689. Among the rights stated is a prohibition of excessive bail, excessive fines, and cruel and unusual punishment. Consequently, by 1689, reaction to misuse of bail resulted in the legal statement of bailable offenses, a prohibition against arbitrary imprisonment, the right to habeas corpus, procedural requirements for bail, and prohibition of excessive bail.

Bail in America

Learning from the experiences in England, the American colonists were also concerned with the misuse of bail and, therefore, included bail provisions in some of their earliest documents. The Massachusetts Body of Liberties of 1641 prohibited imprisonment before sentencing if the accused was able to provide a guarantee that he would appear at trial. Only capital cases and cases in which the accused had shown contempt for the court were exempted. The Massachusetts law also required the accused to post either a bail or surety and imposed a condition of "good behavior."

Two other colonies adopted similar bail provisions in their laws, although there were subtle differences and the "good behavior" condition was not imposed. The Frame of Government of Pennsylvania 1682 allowed bail in all but capital offense cases where there was either a clear indication or presumption of guilt. In the 1683 New York Charter of Liberties and Privileges, bail was allowed in all cases except treason and felony.

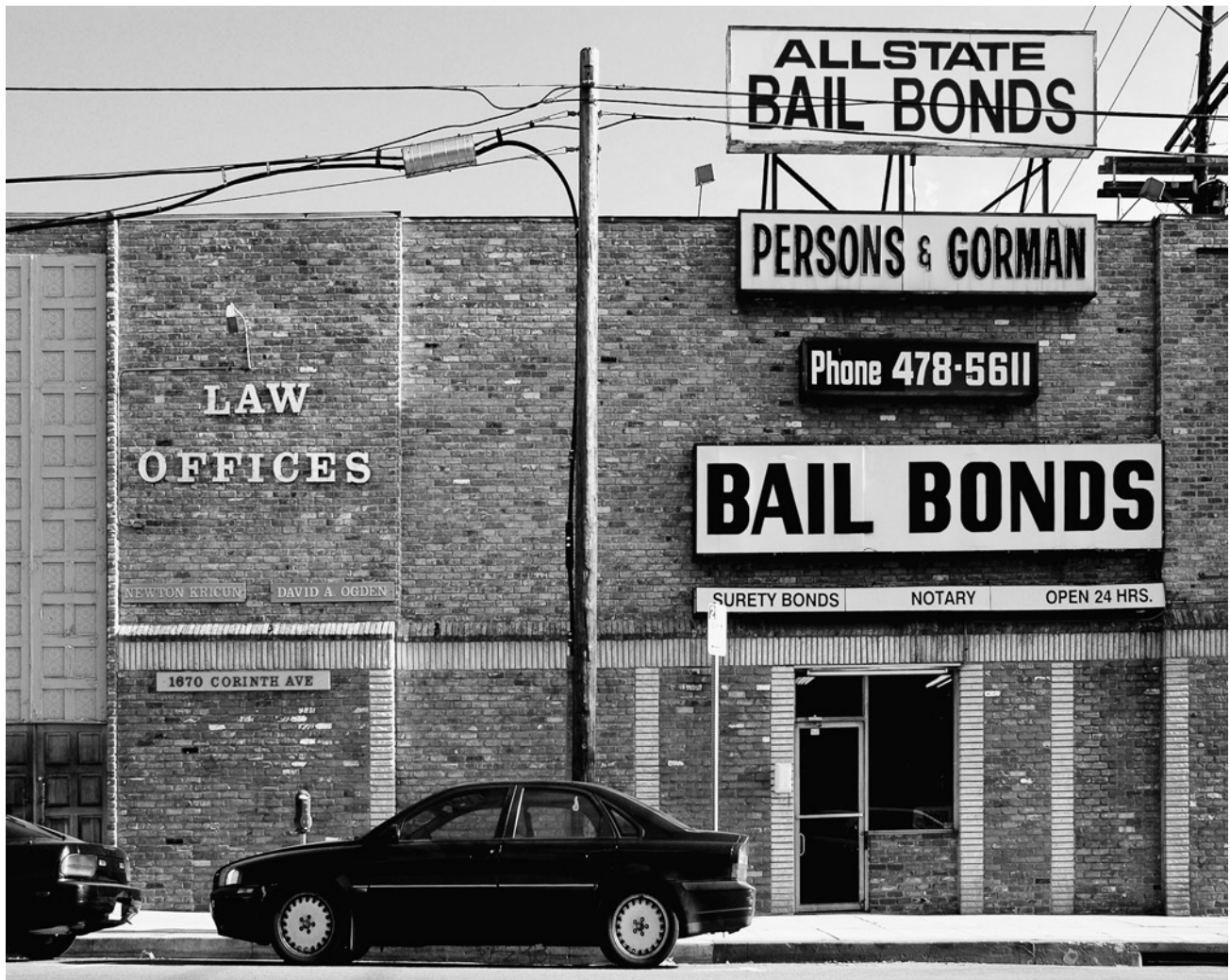
As constitutions were drafted for the states, the wording from the English Bill of Rights started appearing. The North Carolina Constitution of 1776 contained the statement from the English Bill of Rights with only two words changed: North Carolina stated that excessive bail "should not" rather than "ought not" be imposed and used the phrase *cruel nor unusual punishment* as opposed to the English phrasing of "cruel and unusual punishment." Georgia's Constitution of 1777 was more limited and included only provisions against excessive fines and bail. Reverting back to earlier phrasing, the Constitution of Vermont

of 1786 stated that all prisoners were bailable unless there was clear evidence that the prisoner had committed a capital offense and that excessive bail could not be required. The Northwest Ordinance of 1787 also combined provisions from several of the English laws by guaranteeing habeas corpus and trial by jury, stating that bail is allowed in all cases except capital offenses where there is clear evidence of guilt, instructing that fines are to be moderate, and prohibiting “cruel or unusual” punishments. Although Virginia did not include a provision against the misuse of bail in its constitution, the state legislature passed revisions to Virginia’s laws in 1785 that

included restrictions on judicial discretion in the application of bail.

Consequently, leading up to the drafting of the Constitution of the United States, there were several perspectives on the legal restrictions necessary to prevent the misuse of bail. Some of the new states were concerned enough with bail to include it in their constitutions and others were not. Some wanted to ensure restrictions on judicial discretion at several points in the process while others focused on the most recent abuse, the setting of the amount of bail.

At the time that the Constitution was being debated in Congress, the Judiciary Act of 1789



A bail agent's office in California in 2006. The value of bail agents and bounty hunters was seen in the early days of the United States when the law enforcement system was just establishing itself and the vast frontier afforded the opportunity to easily escape prosecution. The role of the bounty hunter established by the judiciary in the 1800s remains in effect today.

was also being debated. While the bail provisions in the Constitution were simply put, bail provisions in the Judiciary Act were more extensive. The Judiciary Act allows bail in all cases except those subject to the death penalty. When the death penalty is associated with a charge, the Judiciary Act allows only judges of the supreme, circuit, or district courts to grant bail upon consideration of the “nature and circumstances” associated with the charge. The Judiciary Act also provides for cases where bail is raised but a local judge is not available to take the bail by allowing judges of higher courts to take the bail.

Based on the history of abuse of bail leading up to the drafting of these two bills and the variance of bail laws between the states, it is interesting to note that records of Congress at the time do not record any debate on the bail provisions in either document. The only recorded comment expressed concern about the ambiguous wording of the Eighth Amendment.

Bail Reform

It was not until the Bail Reform Act of 1966 that another change occurred. This act enhanced the ability of people to be released on bail by increasing the options to financial bail, providing a list of circumstances that judges could consider in assigning bail, and allowing people who could not arrange bail to have their cases reviewed by a judge with the possibility of resetting bail. This law was passed in response to an increase in the number of people who were unable to arrange for financial bail. It also recognized the efforts of organizations such as the Vera Institute to provide background information to judges on people being considered for bail.

Up to this point, bail laws had been a reaction to abuse by those who awarded bail at their discretion and an effort to ensure those who had not been sentenced were not imprisoned. By the late 1960s, civil and criminal law had been revolutionized by the Warren Court. Americans were, therefore, concerned with rising crime rates and the belief that officials were “soft” on criminals.

A 1969 congressional hearing on the Bail Reform Act of 1966 was held in part because of the crime perpetrated by people released on nonfinancial bail, particularly in the District of Columbia. In response, Congress passed a law

for the District of Columbia that allowed judges to consider whether or not the accused would pose a danger to the community in determining whether to grant bail. The law also provides a list of criteria that the judge may use in this determination and requires that a written statement explaining the decision be provided. This signaled a legal shift in the determination of bail from being based solely on the determination of whether the person will appear at trial to a balance between appearance at trial and other considerations.

Judges were given an even larger role in protecting the community through the Bail Reform Act of 1984. Although the act provides a wide range of alternatives to financial bail and prevents the judge from setting financial bail at an amount that would result in the detention of the person, it does allow detention if the judge finds the person to be a danger to the community. This bill also addresses bail for immigration and material witness cases.

Reforms to correct the problems created by the Bail Reform Act of 1984, including the forfeiture of bail for failing to meet additional conditions associated with bail even though the person appeared at trial, have been proposed but have yet to be approved by Congress.

Throughout the evolution of bail, the U.S. Supreme Court has remained all but silent, issuing only three notable opinions on the subject, none of which provides definitive insight into the meaning of “excessive bail.” The first, *Stack v. Boyle*, occurred in 1951. This was a challenge that bail was set at an excessive amount and that there is a statutory right to bail. The Supreme Court decided bail that exceeded the amount necessary to ensure the accused appeared at trial was excessive but fell short of finding a right to bail in the Constitution.

In 1951, the court ruled in *Carlson v. Landon*, which dealt with bail in connection with a pending deportation, that the Eighth Amendment does not provide a right to bail. The decision also fails to say that all arrests are bailable. Finally, in 1987, *United States v. Salerno et al.* challenged the Bail Reform Act of 1984. The Supreme Court not only upheld the act, but it also failed to find a substantive right to bail and determined that “excessive bail” was no more

than a limit on the discretion of the judiciary. The only clear directive from these cases is that there is no right to bail.

As Congress has moved to increase both non-financial options to bail and the ability of judges to deny bail, the Supreme Court has moved toward a more restrictive interpretation of the “excessive bail” clause of the Eighth Amendment. Concerns about the current bail structure include the impact of racial and income disparities in both the assigning of bail and the ability to meet bail requirements.

Bail Agents and Bounty Hunters

The bail system in the United States functions through the private efforts of both bail agents and bounty hunters (also known as bail enforcement agents). These functions are viewed as beneficial but controversial. Since the relationship between the bail agent, bounty hunter, and defendant is based on a contract, they are constrained by constitutional protections of rights, as are their counterparts in law enforcement.

Bail agents arrange bail for the defendant. Because they are seen as serving a clerical function, bail agents are not viewed as part of the law enforcement system. However, they are in a position to provide their clients legal advice, names of attorneys, and information on the legal process. Conversely, law enforcement officers, lawyers, and court personnel are in a position to refer defendants to bail agents. Therefore, it is important that the bail agent have a good reputation among the professionals of the legal system. The symbiotic relationship between bail agents and legal system professionals allows the system to work smoothly and efficiently but also provides opportunities for bribery and corruption.

The most important part of a bail agent’s reputation is that clients appear in court as scheduled. When the client disappears, a bail agent may employ a bounty hunter to locate and return the defendant. Because their role is to capture a defendant who has fled prosecution, bounty hunters are frequently seen as playing a role similar to law enforcement. Their status as private individuals affords them both the necessary freedom to find and apprehend defendants as well as opportunities to use excessive violence and act without due process.

The value of bail agents and bounty hunters was seen in the early days of the United States when the law enforcement system was just establishing itself and the vast frontier afforded opportunity to easily escape prosecution. The role of the bounty hunter established by the judiciary in the 1800s remains in effect today. In *Nicolls v. Ingersoll*, the New York Supreme Court ruled that bail agents could appoint another party to retrieve a defendant. They also established that the appointed party could break into a house to capture a defendant and transfer the defendant to another state. These provisions were supported and extended by the U.S. Supreme Court in *Taylor v. Taintor*. The court upheld the right of the bounty hunter to enter a defendant’s dwelling as necessary, pursue defendants across state lines, capture a defendant without a warrant, and imprison the defendant.

Both bail agents and bounty hunters are seen as increasing the efficiency of the legal system while decreasing costs associated with pretrial incarceration. The need for both bail agents and bounty hunters increases as the use of bail increases. However, this also means that the potential for corruption and abuse of these functions increases.

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See Also: Arraignment; Bail Reform Act; Bill of Rights; Bodie of Liberties; Bounty Hunters; Courts; Defendant’s Rights; Due Process; Habeas Corpus, Writ of; Habeas Corpus Act of 1679; Habeas Corpus Act of 1863; Judiciary Act of 1789.

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Bail Reform Act

Federal bail procedures have been set by two statutes, the Bail Reform Act of 1966 and the Bail Reform Act of 1984. The differences between the two acts—one designed to protect criminal defendants and the other designed to allow for preventive detention—may be seen as representing the broader changes that the criminal justice system underwent over the course of the late 1960s into early 1980s. Bail reform in the United States began with the bail reform movement of the 1960s. Studies suggested that the cash bail system was overly harsh and discriminatory. Poor defendants were held in jail prior to trial where more affluent defendants in similar cases would have been released; conditions in pretrial detention facilities were so poor as to be worse than the prisons in which convicts were held; defendants

would be held in these jails while awaiting trial, only to be acquitted later, after seemingly unnecessary suffering.

In addition to these practical concerns, reformers questioned the constitutionality of the system. Critics believed that the only constitutionally acceptable reason to set bail was to ensure a defendant's presence at trial. From this perspective, the Eighth Amendment's prohibition on excessive bail created a constitutional right to bail, which was further supported in the 1951 case *Stack v. Boyle*, which stated the following:

Federal law has unequivocally provided that a person arrested for a noncapital offense shall be admitted to bail ... conditioned upon the accused's giving adequate assurance that he will stand trial and submit to sentence if found guilty.



A prisoner being processed in May 2011 after a sweep of drug-related gangs in Tulsa, Oklahoma, that resulted in 129 arrests. The Bail Reform Act of 1984 allows for pretrial detention of dangerous defendants if there is a serious risk that they will flee, obstruct justice, or threaten or harm a witness or juror. Others subject to pretrial detention include those charged with serious drug offenses.

The right to bail was necessary in order to allow a defendant to adequately prepare for his own defense. Additionally, constitutional critics questioned the procedural sufficiency of bail proceedings. Aside from the fact that bail hearings offer lesser procedural protections than a full trial, critics argued that, in practice, judges gave high bail based on evaluations of dangerousness without ever mentioning the issue, thereby without allowing the defendant to respond. The ability to set high bail and thereby incarcerate defendants prior to trial was seen as de facto preventive detention and punishment without trial.

Bail Reform Act of 1966

The Bail Reform Act of 1966 was passed to rectify these complaints. Under the 1966 act, defendants were entitled to be released prior to trial under conditions that were only as harsh as might be required to ensure that the defendant return to face trial. Rather than relying on cash bail, the defendant's presence could be assured with personal assurances, travel restrictions, the use of unsecured bonds, or by placing the defendant in the custody of a third party. These conditions would be determined based the defendant's "risk of flight," that is, the likelihood that he would not return to court if he were allowed to leave. Only in cases that might result in the death penalty was a judge allowed to consider the defendant's dangerousness in determining bail prior to trial.

The first Bail Reform Act came at a peak of emphasis on reform and rehabilitation in the criminal justice system. This emphasis was soon abandoned in the face of the fundamental social changes and shocking increase in crime that the United States experienced in the late 1960s. This change was reflected in debates about bail reform after the first act had passed. Negative reactions to the act were apparent almost immediately, based on the fear that dangerous defendants would commit harmful acts while awaiting trial, including acts of violence and witness tampering.

In 1969, President Richard Nixon asserted that the act had contributed to an increase in crime rates. The following 15 years saw state legislation allowing for pretrial bail and the successful passage of a federal preventive detention statute for the District of Columbia (D.C. Code Ann. §§23-1321 to 1332, 1981). Supreme Court decisions

also clearly favored preventive detention, such as *Schall v. Martin*, 467 U.S. 253 (1984), which found preventive detention of juveniles was regulatory rather than punitive and offered sufficient procedural protections to satisfy constitutional requirements.

Bail Reform Act of 1984

The Bail Reform Act of 1984, codified at 18 U.S.C. §§3141–3150, specifically allows for pretrial detention of dangerous defendants in order to protect society from their continued dangerous behavior. Defendants may be eligible for preventive detention if there is a serious risk that they will flee, obstruct justice, or threaten or harm a witness or juror. Additionally, they may be eligible for preventive detention if they are (1) charged for a crime that may result in the death penalty or life imprisonment, (2) charged with certain violent crimes (in 1996 this was amended to include the list of crimes defined as federal crimes of terrorism), (3) charged with nonviolent crimes involving minors, firearms, or destructive devices, (4) charged with certain drug offenses that may result in a sentence of 10 years or more, or (5) charged with a felony and have a history of convictions for the types of offenses listed above.

Defendants who have been convicted of committing any of the above types of offenses while awaiting trial also may be subject to a rebuttable presumption that they should be detained; this means that the burden is on the defendant to prove that there are conditions by which he can be safely released while awaiting trial. Although scholars argued that accurate predictions of dangerousness were impossible, the act was conclusively found to be constitutional in the 1987 Supreme Court case *United States v. Salerno*, 481 U.S. 739 (1987).

Conclusion

In focusing on public safety, the Bail Reform Act of 1984 has been cited as a primary example of the general shift toward preventive criminal justice noted since the 1970s. Outside of the above types of cases, the presumption that a defendant should be released under the least restrictive conditions possible still applies. Still, since 1984, pretrial detention has steadily increased, and the act and Supreme Court cases supporting it have opened the door to preventive detention in other areas,

including civil commitment of sexual predators and detention of enemy combatants. It remains subject to criticisms of discrimination, lack of due process, and undue difficulties placed on defendants who must try to prepare for trial from jail.

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See Also: Bail and Bond; Fear of Crime; History of Crime and Punishment in America: 1950–1970; History of Crime and Punishment in America: 1970–Present; Incapacitation, Theory of; Violent Crimes.

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Bailey, F. Lee

F. Lee Bailey (1933–) was a prominent American defense lawyer who helped establish the role of the modern celebrity attorney. Bailey was recognized as one of the most effective and successful criminal defense lawyers practicing in the United States in the second half of the 20th century. He was noted for his careful selection of jury members and his thorough pretrial preparation. He is also well known for the exorbitant fees that he demanded and received.

Francis Lee Bailey was the eldest of three children; the family lived in Waltham, Massachusetts. His father was a newspaper salesman and his mother, Grace L. Mitchell, was a teacher and

nursery school director who died on January 27, 2000. Bailey attended Cardigan Mountain School in Canaan, New Hampshire, and in 1950, he graduated from Kimball Union Academy, also in New Hampshire; then he entered Harvard University. After completing two years at Harvard, he dropped out and enlisted in the U.S. Navy Flight Corps. After joining the U.S. Marine Corps as a fighter pilot, he served as defense counsel in more than 200 court-martial cases. In 1960, Bailey graduated first in his class at Boston University Law School and in the same year was admitted to the Massachusetts bar.

Notable Cases

Bailey was involved in several prominent cases. In 1966, he successfully argued before the U.S. Supreme Court and obtained a retrial for Dr. Samuel H. Sheppard, who had been found guilty of the murder of his wife; Sheppard was found not guilty in the retrial. Other cases included the defense of Albert DeSalvo (the so-called Boston Strangler), of Dr. Carl A. Coppolino for the murder of his wife, of U.S. Army captain Ernest Medina for the My Lai incident, of Patty Hearst for armed bank robberies while kidnapped by the Symbionese Liberation Army, and of O. J. Simpson for the murders of Nicole Brown Simpson and Ronald Goldman.

The innovative use of tactics engineered by Bailey for the legal defense of some of his clients have made him a major legal pioneer. His public grandstanding as an attorney, now widely taken for granted, was considered quite radical when he introduced it. His bold approach to legal defense made him somewhat controversial, but many of his strategies have since become rather common in legal practice. He paid very close attention to the process of jury selection and devised techniques to increase the odds for his clients. For instance, he hired a purported expert on reading body language as a consultant. Bailey was trained as a polygrapher and drew upon his intimate familiarity with the technique to cross-examine expert testimony from witnesses for the prosecution. He astutely used mass media in attempts to sway public attitudes in hope of generating a more sympathetic jury pool. His adroit use of such techniques and strategies helped transform modern approaches to legal defense.

Controversy

Bailey ran afoul of the legal establishment on several occasions. In 1970, he was censured by a Massachusetts judge for breach of legal ethics for being critical of the conviction of one of his clients on the *Tonight Show With Johnny Carson*. In 1971, his license to practice law in New Jersey was suspended for one year after he accused a prosecutor of attempting to bribe witnesses. In 1973, Bailey was indicted in Florida for mail fraud, but the charges were never brought to trial. In 1982, he was arrested for drunk driving in California, but was successfully defended by Robert Shapiro.

On January 25, 1996, U.S. District Judge Maurice Paul, in a Tallahassee, Florida, court, ordered Bailey to surrender stocks that he claimed had been given to him as part of the payment for his legal fees and expenses in his defense of Claude DuBoc. DuBoc was a French Canadian drug trafficker who had been a client of Bailey's and was awaiting sentencing after pleading guilty on May 17, 1994. In question were 602,000 shares of Biochem Pharm, Inc., a Canadian-based pharmaceutical company; the value of the stocks when given to him as payment was estimated to be about \$6 million, but by April 1996, the value had risen to about \$27 million. Bailey had converted some of the stock to make a down payment on his estate in Florida and to purchase two airplanes, and he spent another \$1.9 million to purchase a 74-foot-long yacht, the *Spellbound*.

He at first refused to hand over the remaining stocks, so Judge Paul had Bailey placed in jail for contempt until he turned over the stocks. On March 1, 1996, he surrendered to the U.S. marshal in Gainesville, Florida. After 44 days in federal prison, he turned over about 400,000 shares of stock worth about \$16 million that Judge Paul insisted had been forfeited by DuBoc and could not be claimed by Bailey.

On January 14, 2000, he was cited for contempt of court in an unrelated case in Orlando, Florida, for failing to turn over \$2 million in assets forfeited by William McCorkle, who was convicted of fraud and money laundering in 1998; Bailey was found guilty of contempt in August 2000 for this case. Finally, on November 21, 2001, he was disbarred by the Florida Supreme Court; he

was found guilty of seven counts of misconduct, including misappropriating funds while defending DuBoc, giving false testimony, and disclosure of confidential client information. He was also ordered to pay \$24,400 for court costs. On April 11, 2003, Bailey received reciprocal disbarment in Massachusetts.

Writings

Bailey is also an accomplished author. He has written 17 books. In one of his early books, *The Defense Never Rests*, published with coauthor Harvey Aronson in 1971, he asserted that the competency of an individual's lawyer, which he admitted was directly related to how much money he or she could spend on his or her defense, was more important in gaining an acquittal than the individual's actual innocence or guilt.

In 1971, Bailey, with coauthor Henry Rothblatt, published *Successful Techniques for Criminal Trials*, a manual for use by defense attorneys; it emphasizes strategy and tactics and presents the basic mechanics of the role of defense counsel. In 1975, he published *For the Defense*, which describes his bold and innovative style of legal defense. In 1977, with coauthor John Greenya, he published *Cleared for the Approach: F. Lee Bailey in Defense of Flying*. In 2008, he published *When the Husband Is the Suspect*, which provides an overview of some of the most notorious cases of spousal homicide in the United States, including profiles of Sam Sheppard, Robert Blake, Claus von Bulow, and O. J. Simpson.

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See Also: DeSalvo, Albert; Famous Trials; Legal Counsel; Sheppard, Sam; Simpson, O. J.; Trials.

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Bakker, Jim

Jim Bakker is a television evangelist who had a spectacular and very public fall from grace. Sex scandals led to his resigning as chairman of the Praise the Lord (PTL) ministry. He was convicted on 24 counts of mail and wire fraud and conspiracy. Jim Bakker was born James Orsen Bakker on January 2, 1940, in Muskegon, Michigan. He graduated from Muskegon High School in 1959. Jim Bakker met his future wife, Tammy Faye, at North Central Bible College in Minneapolis, Minnesota. In 1961, they left the school and got married.

In 1966, Jim and Tammy Faye debuted their first evangelical television show on Pat Robertson's Christian Broadcast Network (CBN). Jim Bakker was the original star of the popular *700 Club* on the CBN. Jim Bakker was known for weeping on air while encouraging his viewers to send money to save him and Christianity. Jim

and Tammy Faye Bakker split from CBN in 1972 and cofounded the Trinity Broadcast Network, where, with Paul and Jan Crouch, they created their *Praise the Lord* (PTL) television show. In 1974, Jim and Tammy Faye created their own *PTL Club* television show and associated PTL ministry; by 1978, it included a satellite network on 1,200 cable systems with 13.5 million viewers. As part of PTL, they started building Heritage USA in Fort Mill, South Carolina, which was to be a 2,300-acre Christian-themed retreat, gospel park, and condominium resort project. While only 250 rooms were available at Heritage USA, Bakker sold over 68,000 partnerships, which were supposed to provide three nights of lodging each year at the resort. It was estimated that contributions requested from PTL viewers exceeded \$1 million a week.

On January 3, 1987, Jessica Hahn, a former PTL secretary, admitted to reporters that she had a sexual encounter with Jim Bakker at a motel in



The pyramid-shaped headquarters of Jim and Tammy Faye Bakker's PTL ministries in Pineville, North Carolina, as it looked in 1988. Jim Bakker was found guilty of one count of conspiracy, eight counts of mail fraud, 15 counts of wire fraud, and tax evasion the next year. While Bakker was sentenced to 45 years in a minimum-security penitentiary and fined \$500,000, he ended up serving only four-and-a-half years in prison after successful appeals that resulted in two separate sentence reductions.

Florida on December 6, 1980. She claimed that John Wesley Fletcher, a PTL preacher, arranged the assignation and that she was then paid to keep silent. It was later learned that PTL executive vice president Richard Dortch had paid Hahn \$265,000 with funds reportedly obtained from Roe Messner, a contractor, for nonexistent work done at the Heritage USA passion play amphitheater.

Other allegations of sexual misconduct surfaced from those within PTL, including Fletcher, who claimed that he and Bakker had homosexual relations and that Fletcher had obtained young men for homosexual acts with Bakker. On March 19, 1987, Jim Bakker resigned as PTL chairman. Jerry Falwell, cofounder of Moral Majority, was selected by Bakker to be his successor. However, Falwell found that there had been considerable misappropriation of PTL funds. In May 1987, the Assemblies of God Church revoked Jim Bakker's ministerial credentials. PTL filed for bankruptcy on June 12, 1987. Falwell resigned as PTL chairman in October 1987. In August 1989, the Heritage USA assets were sold for \$65 million to Stephen Mernick, a Toronto-based real estate developer.

On October 5, 1989, Jim Bakker was found guilty on all counts, including one count of conspiracy, eight counts of mail fraud, 15 counts of wire fraud, and tax evasion. He was sentenced to 45 years in a minimum-security penitentiary and fined \$500,000 by Judge Robert D. Potter at the federal courthouse in Charlotte, North Carolina. Bakker was immediately taken to the Federal Correctional Institution in Talladega, Alabama, to begin serving his sentence; he was later transferred to the Federal Medical Center in Rochester, Minnesota. In August 1991, on appeal, the sentence was reduced to 18 years. On March 13, 1992, Jim and Tammy Faye Bakker were divorced. A sentence reduction hearing was held on November 16, 1992, and his sentence was reduced to eight years. He was transferred to a minimum-security federal prison in Jesup, Georgia, in August 1993. Jim Bakker was moved to a halfway house on July 1, 1994, and he was released from the Federal Bureau of Prison's custody on December 1, 1994, after serving four and a half years.

A North Carolina jury threw out a class action suit filed on behalf of the over 160,000

previous supporters who in the 1980s contributed up to \$7,000 each to PTL coffers. In 1998, Bakker married his second wife, Lori Graham Bakker, and they started a new ministry called Covenant House. They then moved to Branson, Missouri, where they established a new church, television show, and condominium project called Morningside.

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See Also: Fraud; Religion and Crime, Contemporary; Religion and Crime, History of; Religion and Crime, Sociology of.

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Ballistics

Ballistics is the science of how a projectile travels in flight. Ballistics has been used for more than 150 years by police to match guns to crime scenes. Most people think of crime dramas such as *CSI* when they hear the term *ballistics* and only consider the comparison of bullets in the labs of those dramas. Ballistics, however, is much more than that. It includes the bullet exiting from the gun (internal ballistics), the bullet traveling through the air (external ballistics), and the bullet traveling into and/or through the target (terminal ballistics).

History of Ballistics

The extensive use of firearms in the United States, especially in the west, meant guns were often used in the commission of crimes. Police, therefore, often needed to be able to match a gun to a particular crime. This occurred somewhat by accident in the beginning, but before long, ballistics became

an accepted practice of police investigations. The first successful attempt at matching ballistic characteristics occurred in 1835 by Henry Goddard. He was an English “thief taker” (what would now be called a bounty hunter). During one case, he noticed an unusual marking on a bullet removed from a shooting victim. He was able to match that blemish to an imperfect bullet mold found in the suspect’s home.

For many years, bullet comparison was crude, and only entailed looking at bullets with the naked eye. It was not until 1898 that microscopic comparisons were made. This process was introduced by a German chemist, Paul Jeserich, when he fired a test bullet from a suspect’s gun and compared that fired bullet under a microscope to a bullet pulled from a shooting victim. Using the microscope, Jeserich was able to better examine and compare the tiny markings on the bullet. In 1922,

an attorney and researcher of bullet identification, A. J. Eddy, testified in a murder case regarding his own experiments with the suspected murder weapon. This was the first testimony related to guns’ leaving individualized marks and led to the conviction of the suspect. The conviction was later upheld by the Arizona Supreme Court. In 1925, the Bureau of Forensic Ballistics was created by Charles E. Waite, Calvin H. Goddard, Philip O. Gravelle, and John H. Fisher as a private firm that sought to provide firearms identification services to the police. Goddard and Gravelle developed comparison microscopy, where two bullets could be compared under the same microscope. This allowed easier identification of matching striations on fired bullets. The company went out of business in 1929 because the Federal Bureau of Investigation (FBI) developed a lab of its own to help police investigations.



The chief forensics firearms examiner with the Multi-National Corps–Iraq Provost Marshal’s Office Law Enforcement Forensics Lab fires a Dragunov sniper rifle into a machine that catches the round. The test round can then be compared with other rounds fired from the same weapon in order to determine whether it was used in a particular crime.

For many years, there was no national database of ballistics. The FBI had a ballistics lab, but most ballistics work was done by local law enforcement, and the investigations were essentially on a case-by-case basis. This only allowed bullets to be compared on a localized level. In the early 1990s, the FBI and the Bureau of Alcohol, Tobacco, and Firearms (ATF) both attempted to develop a national-level database where bullets from across the United States would be cataloged and ballistics matches could be made on a national level. The FBI database was called DRUGFIRE, and the ATF database was called the Integrated Ballistics Identification System (IBIS).

In the beginning, IBIS only recorded bullet markings, while DRUGFIRE only documented cartridge casing marks. These two programs were combined in 1997 with the development of the NIBIN (National Integrated Ballistic Information Network Program) system. In this system, each agency contributed its part of the identification process. NIBIN was transferred completely to the ATF in 2003. The database does not match the markings but holds the images for a firearms examiner to match them. The database will find a batch of similarly marked entries, but a human must do the final comparison for an admissible match. Nearly 100,000 pieces of evidence have been entered into NIBIN to date, with approximately 10,000 positive matches made by experts.

Over the years, ballistics has been used in several high-profile criminal investigations. In 1963, ballistics was used to identify the gun used by Lee Harvey Oswald in the assassination of President John F. Kennedy. In that case, FBI firearms examiners linked three bullet fragments and three cartridge casings to Oswald's rifle. In 1976, New York was captivated by the murders of the serial killer David Berkowitz (the Son of Sam). The New York Police Department was able to determine what type of gun was used in the killings from distinctive markings on the bullets.

Ballistics has not always been accepted as evidence in court. There have been frequent attempts to exclude firearms examiner testimony or to discredit ballistics as a science altogether. In a 1997 case that reached the U.S. Supreme Court, Anthony David Smith appealed his conviction for the murder of his wife, challenging the ballistics used in the case. In that case, the court ruled

that the testimony should have been excluded because the expert witness had no formal training in ballistics but was a recreational hunter. This established that courts would only accept the testimony of trained ballistics experts if the bullet comparisons were to be admissible in court.

After many years of inconsistency in admitting ballistic evidence, the U.S. Supreme Court in *United States v. Jose Santiago* (2002) was asked to determine if ballistics experts qualified as experts the same as other scientists, and if the testimony of ballistics experts would assist the jury in understanding evidence (a key requirement for scientific evidence to be admitted into court). The court found that his testimony would clearly assist the jury in answering the question of a match between bullets and shell casings from the crime scene and the gun recovered from the defendant. The court disagreed that forensic ballistics is a pseudo-science and allowed the testimony based on the expert's background in ballistic science.

The ruling in *Jose Santiago* was strengthened in 2003 in *United States v. Michael J. O'Driscoll*. In this case, the court ruled that ballistics meets evidentiary rule requirements necessary for it to be admitted in court and that ballistics is a proper form of expert testimony. In 2004, the court in *United States v. Richard Hicks* also upheld expert testimony in ballistics. The expert in this case had received FBI training in firearms comparisons testing and had completed examinations for more than 20 years. These cases show that ballistics has become an accepted part of criminal investigations and court cases.

Science of Ballistics

A fundamental element of ballistics is examining rifling marks. This is what is referred to as internal ballistics. This includes comparing a bullet against one known to have been fired from a particular gun, comparing two bullets, and other comparisons. The goal is to establish which gun fired a particular bullet. This type of comparison is possible because of the way guns are made and because of rifling inside the barrel of a gun. A gun barrel is rifled, or imprinted with the spirals that help stabilize the projectile when in flight. As the bullet moves through the barrel, it leaves striations (markings). Each gun leaves a different

pattern of striations, enabling a bullet to be matched to the correct gun.

There are other marks left by a gun. One mark is made by the firing pin striking the primer of the bullet. Markings are also made on the casing by firing the gun. The casing of a bullet moves slightly within the barrel when the gun is fired. This leaves markings on the casing that can link the casing to the gun that fired it. For semiautomatic weapons, markings are also left on the casing by the extractor and ejector of the gun. The extractor removes the spent casing from the firing chamber of the firearm and removes the casing from the gun. These marks are found on the rim of the expelled casing.

The basic goal of ballistics is matching a bullet to a gun using the distinctive markings on the bullet or on the casing. There is actually much more to ballistics than just matching, however. The science of ballistics involves how the bullet exits from the gun (internal ballistics), how the bullet travels through the air (external ballistics), and what happens when the bullet hits the target (terminal ballistics). All of these elements combine to make a distinctive set of marks that can place a fired round from a gun with that gun. Police and other investigators use these markings to solve crimes.

Also important to ballistics use in criminal investigations is what happens to the bullet once it makes impact and what happens to the object impacted. This is called external ballistics. Several types of external ballistics are important to solving crimes. These are penetration within the target, the damage done to the target (called a permanent cavity and a temporary cavity), and fragmentation of the bullet itself. Penetration is how deep into the target the bullet travels. Bullets are typically not made to pass through a target. They are made to stop 6–12 inches into the target. This creates the most damage and allows a complete transfer of energy from the bullet to the target (whereas a bullet that exits the target takes most of the energy with it). Penetration is important to criminal investigations because rifle bullets will often penetrate deeper than pistol bullets.

Two things happen to the target when a bullet penetrates it. A permanent cavity is caused by the path of the bullet—in other words, the bullet hole. A temporary cavity is caused by stretching

the inside tissues around the path of the bullet caused by the continued transfer of energy into the tissues surrounding the entry point. The permanent and temporary cavities can tell police such things as how far away the gun was fired from the target, what type of gun was used, and the angle from which the gun was fired.

Fragmentation is caused by pieces of the bullet splintering off and entering other areas of tissue from the permanent cavity. For example, a shot to the abdomen could result in fragments causing damage to parts of the rib cage. Fragmentation can also cause collateral bleeding such as when a fragment breaks off and cuts an artery in another part of the body beyond the permanent cavity. Fragmentation can also tell investigators about the angles, proximity, and type of gun used and aids in identifying markings of the bullet.

Ballistics Investigations

Typically, for ballistics to be compared between a crime scene and a gun in the possession of police, bullets must be fired from the gun. The bullets must be fired under similar circumstances, however, for accurate comparisons to be made. For example, firing a bullet against a brick wall would produce a different bullet for comparison than one recovered from a body or from the wall of a house. To mimic a bullet fired into a person, or to get a “clean” bullet for comparison, ballistic gelatin and ballistic soap are often used. Ballistic gelatin can be mixed to compare to human tissues, while ballistic soap is meant to be denser than tissue (for example, in comparing a bullet recovered from a wall).

Obtaining “clean” bullets for comparison and understanding internal, external, and terminal ballistics allows police to understand how guns are used in crimes and to compare guns used in crimes to those discovered through investigations. The science of ballistics has helped police solve crimes for more than 150 years, and as the science continues to advance, it is likely even more cases will be able to be solved with ballistics.

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See Also: Berkowitz, David; Crime Scene Investigation; Forensic Science.

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Baltimore, Maryland

Baltimore, Maryland, a major American city, the 21st most populous in the nation, is located on an upper tributary of the Chesapeake Bay, roughly 40 miles from Washington, D.C., and 100 miles from Philadelphia, Pennsylvania. It is home to the Inner Harbor, Baltimore Ravens, and Baltimore Orioles. An industrial city, Baltimore played a critical role in the historical development of the United States. More recently, Baltimore has been beset by violence, stemming to a large degree from the drug trade that has plagued—if not defined—the city for the better part of the modern era, particularly in the 21st century. Baltimore's struggles with drugs and related crime have been chronicled and embedded in critically acclaimed elements of popular culture, have led to critical assessments of the city's approach with respect to crime and drugs, and have contributed to reconsiderations as to the effectiveness and propriety of the "war on drugs" more broadly.

Historical Background

In 1752, Baltimore, a port city, had a modest population of about 200. By this time, other east coast port cities, such as Boston, New York, and Philadelphia, were thriving. Baltimore's location—as the farthest west of these existing cities and as an inland port—began to give it competitive advantages and resulted in Baltimore's

establishment as a hub of industry and trade. Growth was such that, by the late 1700s, the city was home to around 20,000 residents. Baltimore briefly served as the nation's capital from December 1776 to February 1777, as the leaders of the nascent nation left Philadelphia to avoid hostilities with the British.

Following the War of 1812, in which the American forces withstood a British naval attack on Baltimore's Fort McHenry, the Baltimore and Ohio (B&O) railroad was built, connecting Baltimore with cities in the midwest and significantly enhancing Baltimore's position as a hotbed of manufacturing and commerce. Rail between Baltimore and Washington was also built by 1834. As travelers from the north and west went through Baltimore in order to reach Washington, Baltimore served as a central link in the nation.

In the mid-19th century, riots related to labor or politics were not uncommon in Baltimore. In the 1830s and 1840s, disputes between rival volunteer fire companies regularly escalated into violent "collisions." In 1836, in the wake of frequent rioting, the *Baltimore Sun* asked,

When shall we be able to pass a Sabbath day without being called upon to record some act of disgraceful violation of the peace, some daring outrage amounting almost to bloodshed?

Election day riots provoked by nativists in the 1850s also helped contribute to its reputation. Baltimore came to be known as "Mob City."

One particular episode of unrest was of great historical and constitutional significance. Responding to Abraham Lincoln's call for troops on the heels of the Civil War, in 1861, a group of hundreds of volunteers from Massachusetts, traveling south toward Washington, were greeted by a mob of 20,000. Baltimore, in a border state, was home to southern sympathizers. In the ensuing melee, several people were killed, with both sides suffering losses. Rail bridges were burned north of the city in order to prevent federal troops from going through Baltimore again. The riots and burning of bridges led President Lincoln to authorize the suspension of habeas corpus—the time-honored writ used by an individual to challenge the legality of his detention—"at any point on or in the vicinity of any military line which is



Baltimore had become known as “Mob City” by the mid-19th century for its frequent riots. The engraving shows a violent confrontation between troops of the Sixth Maryland Regiment and striking workers during the Great Railway Strike of 1877.

now or which shall be used between the city of Philadelphia and the city of Washington.”

John Merryman, accused of having taken part in these disruptive activities, was arrested by a general pursuant to the president’s order suspending habeas rights. In the landmark ruling of *Ex Parte Merryman* (1861), the Supreme Court was asked whether President Lincoln could lawfully suspend the writ of the habeas corpus. The court answered in the negative, ruling that Congress, not the executive, possesses the power to suspend the writ and held that Lincoln’s unilateral suspension of the writ was unconstitutional as a result.

Baltimore bore witness to an economic depression in the 1870s and the effects of postwar migration by freed blacks into the city. Riots, strikes, and general unrest related to class and race accompanied these precarious times. For example, in the Great Railway Strike of 1877, B&O railway workers objected to wage cuts by striking

and attempting to impede the progress of railcars along the route. The workers clashed violently with federal troops charged with protecting the railways and restoring order. That said, Baltimore experienced urban development and economic growth as a result of its industrial capabilities.

Contemporary Era

In another wartime setting—World War II—Baltimore’s contribution in manufacturing to meet military needs resulted in further economic and population expansion. In particular, white migrants moved to Baltimore in search of industrial work, helping the city reach about 1 million residents by 1950—its largest population on record. In the postwar period, however, a confluence of factors led to population decreases, including the loss of manufacturing jobs, the desirability of more open suburban living, and “white flight” brought on by the desegregation of schools, riots in response to the assassination of Dr. Martin Luther King Jr. and the presence of blacks in the city proper. In addition to the movement of whites away from the city, some middle-class blacks similarly migrated into the suburbs. Accordingly, whereas about 35 percent of Baltimore was black in 1950, by 1990 this number had increased significantly to 59 percent.

In the 1950s and 1960s, a heroin epidemic began to take hold in Baltimore. Accompanying this drug activity were significant violence, health problems among addicted residents, increased allocation of city resources to combat the existence and effects of the drug trade, and a general diminution in the quality of life of segments of the city. The state of the city was perceived to improve under the leadership of Governor William Donald Schaefer (1971–86). For example, the city’s Inner Harbor was well developed and other parts of the city were revitalized.

Baltimore was not viewed as favorably under the administration of Mayor Kurt L. Schmoke (1988–99). Believing in the futility of the “war on drugs” and that drugs were more of a health-care issue than a criminal problem, Schmoke advocated the decriminalization of drugs, particularly marijuana. During his tenure, violent crime associated with drugs, particularly heroin and cocaine, reached very high levels. In 1990, for instance, half of all felony prosecutions were

drug offenses and 55 percent of all murders were drug related. In 1998, the city's murder rate was over seven times the national average, and the murder rate for blacks was six times higher than for whites. The city ranked second nationwide in violent crime and second in murders among large cities. Due in large part to this violence, Baltimore's population in the 1990s fell 11.5 percent. Baltimore was one of only four large American cities in which its population declined in the 1990s. These and similar statistics contributed to a nationwide reputation for Baltimore's struggles with drugs and crime. Indeed, the city has been referred to as "Bodystore, Murdaland."

These struggles continued in the 2000s, which further solidified the city's link to drugs and related violence. In 2002, more than half of all defendants charged for felony crimes were charged with narcotics violations. In 2003, it was reported that approximately 90 percent of homicides in Baltimore are drug related. A front-page story in the *New York Times* declared that Baltimore's 2004 homicide rate was five times that of New York. In 2007, 650 nonfatal shootings took place in the city, which amounts to nearly two per day.

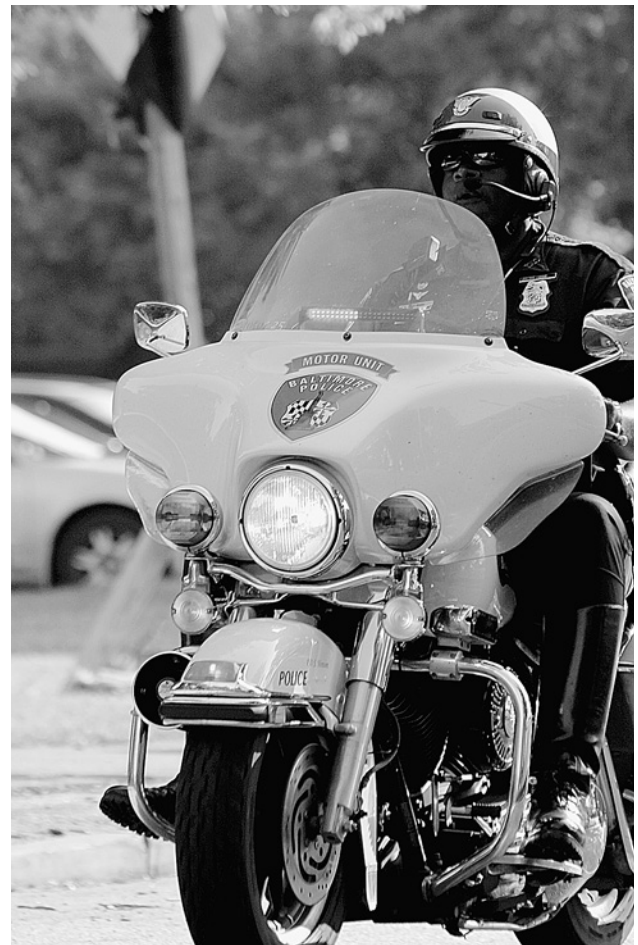
Indicating how serious the heroin epidemic has been in the city for decades, *USA Today* proclaimed, "Baltimore is the heroin capital of the United States," with one in 10 residents—60,000—addicted to the substance. A report found that Baltimore has the highest concentration of heroin use in the country and that of people arrested, about 40 percent of males and 50 percent of females test positive for the drug.

Violent crimes, particularly homicides, have been a central part of Baltimore's identity. In 1985, Baltimore witnessed 213 murders, which, based on a population of more than 761,000, works to a 27.98 murder rate. In 1993, however, there were 353 murders in the city, a 48.77 murder rate. In each of the years in the 1990s, Baltimore had a murder rate greater than 41. By the 2000s, Baltimore had been ranked as the most dangerous city in the nation and the "murder capital" of the United States.

Such crime has led to a disproportionately greater police force as compared to the general population. For example, a 2011 report issued by the Department of Justice's Bureau of Justice Statistics identified the Baltimore Police Department

as the 10th-largest local law police department in the nation, consisting of 2,990 sworn officers, even though it is only the 21st-largest city. Baltimore's police force is greater than some state law enforcement agencies, such as Massachusetts (2,310 officers) and Illinois (2,105).

The Baltimore Police Department, formally established in 1853, has had its share of difficulties. A frequent criticism, made perhaps most strongly in the 1990s, has been the department's inability to quell the violent crime associated with the drug trade. Some have objected to the police arrests for petty crimes, seen as insignificant and superficial in comparison to systemic problems in the city, including those tied to drugs. Calls for reform and reorganization were particularly acute in the 1960s and 1990s in large part



A member of a Baltimore Police Department motorcycle unit in 2010. The department is the 10th-largest local law police department in the country, with 2,990 officers.

because drugs and related violent crime continued to outpace police efforts.

Broader Points

The factual situation in Baltimore concerning drugs and violent crime spawned multiple television series that have etched the Baltimore experience with drugs and violence into the nation's social consciousness. *Homicide: Life on the Street* (1993–99) and *The Wire* (2002–08) are perhaps the two most prominent series that have made Baltimore, especially its history with drugs and criminal behavior, part of popular culture. These series depict not only the situation on the ground but also systemic problems that permit drugs, violence, and decaying conditions to persist over many years.

These include a police department's focus on street-level drug arrests. While these arrests may increase statistics that political figures may point to in arguing that safety has been enhanced, apprehending low-level drug dealers leaves the core of the drug operations—the mid- and senior-level drug operatives—untouched and able to continue their activities. The low-level dealers are not only easily replaced by individuals attracted by the allure and financial gains of the drug trade but are generally insulated from the actual decision making of the higher-level people in the drug rings. Thus, they make for modestly informative criminals for police purposes. These arrests, however, do provide some measure of statistical evidence for political statements that the police and political powers are focusing on drugs and related crime. The police and politicians may claim an improved quality of life in certain areas of the city, but skeptics may counter that such arrests only displace—rather than eliminate—drug and violent crime.

Politics aside, there is a question as to whether the police forces, given budgetary constraints, are able to conduct the sophisticated investigations necessary to nab the higher-level drug operatives. Moreover, the school system, also affected by limited budgets, appeared in *The Wire* to be unable to effectively reach students and to provide an attractive alternative to the streets and corners of the city. The media was infected by those more interested in personal accolades and quick stories than in the complex, nuanced reporting on

the city's systemic social and criminal problems, which would require serious investigations that may lie beyond the interest or capabilities of the journalists on staff. There is ample factual information supporting these portrayals of Baltimore, though one point of these series is to suggest that other major cities may be contending with similar problems that enable drugs and crime to carry on relatively unabated.

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See Also: *Barron v. Mayor of Baltimore*; Drug Abuse and Addiction, Contemporary; Habeas Corpus Act of 1863; Maryland; Poe, Edgar Allen; Riots; Television, Crime in; Television, Police in.

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Barron v. Mayor of Baltimore

The Bill of Rights, the first 10 amendments to the U.S. Constitution, lists the most valued freedoms held by Americans and states that the government may not legally violate these freedoms. The decision in *Barron v. Mayor of Baltimore* held that the Bill of Rights only limited the actions of the federal government and did not apply to state or local governments. Although this decision has not been overruled, in the 20th century its legacy and impact were limited by a series of

U.S. Supreme Court decisions holding that some amendments do restrict the actions of all governments—a process known as the incorporation of the Bill of Rights.

In order to undertake a series of city developments, Baltimore redirected the natural course of several streams. This had the effect of washing deposits of earth and sand into some of the city's wharfs. *Barron* came to the U.S. Supreme Court on appeal from the Court of Appeals for the Western Shore of Maryland when one wharf owner sought compensation for the loss of business that resulted from the reduction of the water level in his wharf. The court was asked to decide whether the takings clause of the Fifth Amendment—which says “nor shall private property be taken for public use without just compensation”—required Baltimore to pay compensation. The larger question was whether provisions of the Bill of Rights restricted state and local governments. Writing for a unanimous court, Chief Justice John Marshall held that it did not and that, as a result, Baltimore had not engaged in a taking of property for which there was a legal remedy under the U.S. Constitution.

The counsel for Barron, the wharf owner, contended that Article I, Section 10 of the Constitution supports the interpretation that the Fifth Amendment places specific limits on the powers of state governments. This argument could not withstand judicial scrutiny, argued Marshall, when one examined Section 9 of the same article, which places restrictions on governmental power using broad language. While these restrictions might be read to limit any government, they also appear in Section 10 but this time as specific limits on the actions of state governments. Consequently, when the Constitution limits the states, it does so expressly, and only “on subjects entrusted to the general government, or in which the people of all the states feel an interest.”

Marshall explained that this conclusion was supported by the fact that the Constitution was a document created by the people of the nation for themselves and their *national government*, just as the constitution of each state was established by that state's citizens for themselves and their *state government*. Any limit that a citizenry wished to place upon its government had, therefore, to be expressed using specific language—and there was

no such language in the Bill of Rights to indicate that it restricts the state governments. This was consistent with the theme of national unity present in many of the decisions during Marshall's tenure as chief justice (1801–35).

Marshall interpreted the Constitution and the Bill of Rights as two documents underpinned by the same principles. This understanding of the relationship of the Bill of Rights to the Constitution was generally consistent with the way in which Americans thought of individual rights in the late 18th century. However, after the decision in *Barron*, many people sought instead to highlight the differences between the Bill of Rights and the Constitution. For example, they emphasized that discussions of individual rights were conspicuously absent from the language of the Constitution.

Debates about the relationship between the Constitution and the Bill of Rights played a role in the framing of the Fourteenth Amendment, which was ratified in 1868. Through a series of 20th-century decisions, the Supreme Court has used the due process clause of this amendment—“nor shall any State deprive any person of life, liberty, or property, without due process of law”—to hold that provisions of the Bill of Rights can restrict the actions of state governments. This process intensified during the 1960s under the leadership of Chief Justice Earl Warren. To date, most of the provisions of the Bill of Rights have been incorporated. However, because of *Barron*, some provisions still only limit the federal government.

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See Also: Bill of Rights; Constitution of the United States of America; Marshall, John; Supreme Court, U.S.; Warren, Earl.

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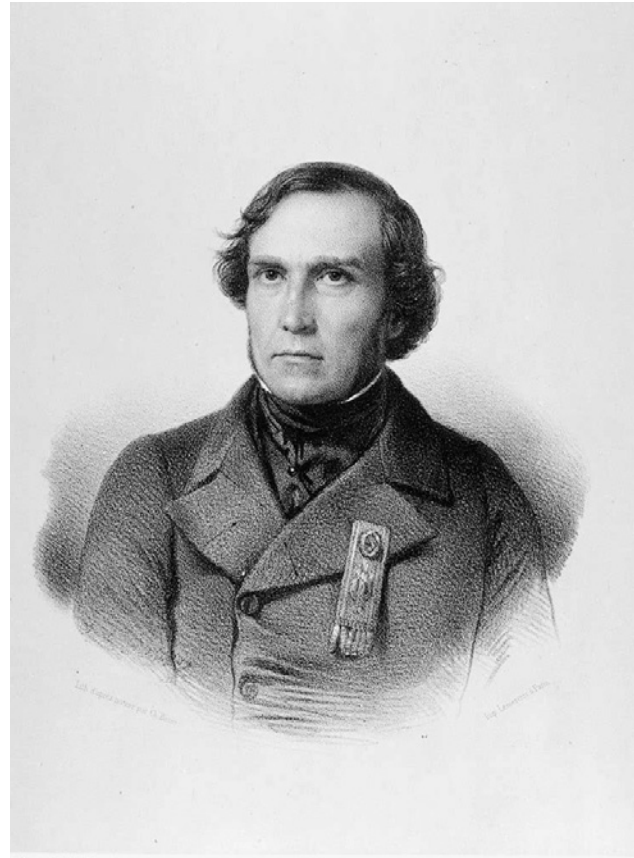
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Beaumont, Gustave de

French magistrate, aristocrat, and prison reformer Gustave de Beaumont was born February 6, 1802. In 1831–32, he investigated the penitentiaries of the United States with his lifelong friend Alexis de Tocqueville (1805–59). Upon their return to France, they coauthored *On the Penitentiary System in the United States and Its Application in France* (1833), which academics still consider a classic work in the fields of penology and the history of Jacksonian America. Beaumont also published a novel, *Marie; or, Slavery in the United States* (1835), and the sociological study, *Ireland: Social, Political, and Religious* (1839). In the late 1830s, he became a member of the French parliament and served in the National Assembly after the French revolution of 1848. Following a brief imprisonment for opposing Louis Napoleon's coup d'état in 1851, Beaumont retired from public life. He died 15 years later on February 22, 1866, in Paris.

In 1831, Beaumont and Tocqueville received a commission from France's July Monarchy to investigate the United States' two competing penitentiary systems: the New York system of daytime congregate labor and nighttime solitary confinement at the state's Auburn and Sing Sing prisons, and the Pennsylvania system of completely separate confinement at hard labor at Philadelphia's Eastern State Penitentiary. The two men traversed the United States for nine months, visiting prisons, almshouses, and houses of refuge throughout the nation. In 1833, they published their report, which compared and contrasted the penitentiary systems of the United States and made recommendations for the reform of France's penal code and penitentiaries.

Beaumont and Tocqueville's *On the Penitentiary System* offers insightful observations on the workings of prison discipline in Jacksonian America. The men visited New York's Auburn and Sing Sing prisons, where during the day, prisoners worked together in silence, in factory-like workshops. At night, the prisoners of New York's state prisons retired to solitary cells. Beaumont and Tocqueville reported that guards enforced the prisons' regulations through the ferocious snap of the whip. In Pennsylvania's Eastern State Penitentiary, on the other hand, prisoners spent their



Gustave de Beaumont, shown here in an 1848 portrait, traveled the United States with Alexis de Tocqueville and made a detailed comparison of the New York and Pennsylvania systems of prison labor and confinement for potential use in France.

entire confinement isolated from one another inside solitary cells where they read the Bible and worked as shoemakers and weavers and at other crafts suited to solitary labor. Beaumont and Tocqueville claimed wrongly that prisoners at the Eastern State Penitentiary were subjected to a "wholly mental punishment." An 1835 investigation would bring the guards' physical torture of inmates to the public's attention.

They augmented their personal observations with interviews with guards, wardens, prisoners, and prison reformers, and self-compiled statistics on recidivism. Toward the conclusion of their 1833 report, Beaumont and Tocqueville reflected on the applicability of the penitentiary systems of the United States to France. Both the New York and the Pennsylvania systems rested upon the isolation of convicts from one another

and hard labor. In the systems the men observed, silence, isolation, forced labor, and compulsory religious instruction punished all prisoners and maybe even reformed some. Theoretically, they preferred the Pennsylvania system, but the high cost of building prisons along this plan led the men to recommend the New York system as a more economical alternative. The men, however, stopped short of advocating the direct implementation of the New York system in France. Instead, they called for a measured, systematic reform of France's prisons, which contemporaries considered cesspits of immorality, disease, and criminality.

On August 20, 1849, after over a decade of debate in which Beaumont and Tocqueville participated, the government of France's Second Republic issued an executive order to construct cellular penitentiaries modeled upon the Pennsylvania system. In 1853, before the new penitentiaries were built, Napoleon III overturned the order, and a year later, France began the transportation of convicted criminals to its penal colony on Devil's Island in French Guiana.

The recommendations of Beaumont and Tocqueville's *On the Penitentiary System in the United States and Its Application in France* were never fulfilled during their lifetimes. Nonetheless, the book distinguishes Beaumont and Tocqueville as astute observers of penitentiary discipline and of the intersection of punishment and society.

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See Also: Auburn State Prison; Corrections; Eastern State Penitentiary; History of Crime and Punishment in America: 1783–1850; New York; Penitentiaries; Pennsylvania; Punishment Within Prison; Sing Sing Correctional Facility; Tocqueville, Alexis de.

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Bedford Hills Correctional Facility

Bedford Hills Correctional Facility, located in Westchester County, New York, is the state's sole maximum-security prison for women as well as the reception center for all women committed to the New York State Department of Corrections. Bedford's history as a female penal institution dates back to the turn of the 20th century. From its earliest years as a reformatory, Bedford Hills has been on the forefront of penology and has served as a model for other prisons.

In the late 19th century, the women's reformatory movement and the flurry of concern over prostitution and "white slavery" led to a focus on the moral uplift of fallen women. In this context, reformers such as Josephine Shaw Lowell and Abby Hopper Gibbons successfully persuaded New York state officials to establish a female reformatory at Bedford Hills in 1892. The State Reformatory for Women at Bedford was the third such facility in New York when it finally opened in 1901 to receive women between ages 16 and 30 convicted of misdemeanors who were considered reformable. These women were given indeterminate sentences, the length of which would be determined by their behavior and progress at Bedford.

Initial Success

Unlike male prisons that held convicts behind metal bars in massive stone and concrete buildings set behind high walls, women's reformatories tended to house small groups of inmates in cottages in rural pastoral settings. It was believed that in a familial setting under the guidance of morally exemplary matrons, fallen women could

be redeemed. Moreover, it was believed that exposure to the outdoors and fresh air was healthy for these women. As such, Bedford was constructed on 200 acres of rural land and included, in addition to administrative buildings, four cottages among which women were classified by age and behavior. Named for the reformatory's founders, the cottages each had a kitchen, flower garden, china and linens, and 28 individual rooms.

Katherine Bement Davis, a Vassar graduate with a Ph.D. from the University of Chicago, was tapped as Bedford's first superintendent. An educated and professional woman, Davis was not as concerned as some of her forerunners at other institutions with strict gender roles. Thus, although inmates at Bedford did learn domestic arts such as needlework and sewing, Davis sought to diversify the training women received to also include academic and industrial skills. And it was not uncommon to find women at Bedford draining swamps, engaged in masonry, cobbling shoes, building furniture, harvesting ice in winter, and even building a road. Upon release or parole, however, most women still found work only in domestic service.

Davis also embraced the "new penology" of the day that promoted good behavior through rewards. Bedford had an honor cottage for especially well-behaved inmates who had the privilege of electing their own officers and determining discipline for those among them who broke the rules.

The reformatory under Davis ushered in a medical approach to crime control. Looking for a scientific explanation for criminality, Davis received funding in 1910 from the New York Foundation to conduct psychological testing of Bedford's inmates. John D. Rockefeller, Jr., who abhorred prostitution and associated it with feeble-mindedness, was impressed with a pamphlet written by Davis on the use of such testing and invited her to join the board of his newly founded Bureau of Social Hygiene in 1911. Funded by Rockefeller, the bureau purchased 71 acres of land adjacent to the reformatory and established the Laboratory of Social Hygiene at Bedford Hills. In an agreement with the state that included a five-year lease of the facility for a nominal fee, the laboratory evaluated inmates to determine their proper sentences and collected data to better understand the causes of crime and prostitution. As studies revealed

that many defiant inmates were psychopathic or psychotic, Rockefeller's Bureau of Social Hygiene funded a psychopathic hospital that opened on the grounds of the laboratory in 1916. In 1920, the legislature ordered mentally defective female prisoners sent to the Division for Mentally Defective Women (DMDW) at Bedford, where they would serve indefinite sentences with parole or release to be determined by the superintendent.

Decline

The strains of overcrowding and underfunding at Bedford Hills were somewhat mitigated by Davis's leadership and the presence of additional staff through the Bureau of Social Hygiene. In 1914, however, Davis left Bedford to become the first female commissioner of corrections for New York City. Following her departure, and with



As the first superintendent of Bedford Hills, Katherine Bement Davis helped make it a model for other prisons. Shown here in the early 1910s, she became the first female Commissioner of Corrections for New York City in 1914.

increased overcrowding, the reformatory had disciplinary problems, mismanagement, inmate abuse, escapes, and rebellions over the tenure of four different superintendents. When a 1915 investigation revealed interracial homosexual relations at Bedford Hills, critics blamed Davis's policy of integration, and by 1916, the institution opened two new cottages specifically for African American women. On July 24, 1920, a riot broke out between black and white inmates as they were preparing for a visit from the governor. Local police and state troopers were called in to quell the fighting among nearly 150 women wielding knives, stones, clubs, and irons from the laundry room. In the aftermath, it was announced that psychologist Amos Baker would be brought in to serve as the first male superintendent at Bedford.

Bedford, which had been under the administration of the State Board of Charities, in 1926 came under the authority of the Department of Corrections. In 1932, the DMDW was transferred to Albion, the Bedford reformatory was renamed the Westfield State Farm, and a new prison was built on the grounds. In 1933, the State Prison for Women at Auburn was closed, and felons were sent to the new prison at Bedford. Only in 1970 did the entire complex come to be named Bedford Hills Correctional Facility.

Although Bedford Hills is now a maximum-security prison, there are vestiges of its reformatory past. Although most of the inmates are housed in large cellblocks, there is still an honor cottage on the campus where, as under Davis, the women are subject to fewer restrictions and engage in a form of self-governance. Since opening in 1901, Bedford has maintained a nursery, which is now part of a larger children's center that runs parenting programs, has a playroom for visiting children, and, in coordination with volunteers in the neighboring community, hosts weekend and summer visiting programs for children with mothers incarcerated there. The prison runs a number of tutoring and counseling programs, and inmates have established their own programs, including ACE, and human immunodeficiency virus and acquired immune deficiency syndrome (HIV/AIDS) counseling and education programs.

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See Also: Auburn State Prison; Corrections; New York; Prostitution, History of; Women Criminals, History of; Women in Prison.

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Berkowitz, David

At the age of 24, serial murderer David Berkowitz terrorized New York City residents for more than a year until his apprehension in 1977. His rambling letters to police and to the media added to the public's fear of the bizarre motives and unpredictability of someone claiming to be acting on the orders of a demonically possessed dog. Calling himself the Son of Sam, this seemingly mentally disordered individual prowled the streets, randomly darting out of the darkness and shooting unsuspecting strangers. The public's fear did not end with the arrest, since Berkowitz cautioned from his prison cell that there were others in a satanic conspiracy who would continue the killings. Although only six deaths and seven other injuries resulted from the Son of Sam shootings, the nature of the crimes made this one of the city's most notorious cases.

Berkowitz was born December 1, 1953, in Brooklyn to Betty Falco (a Jewish waitress) whose husband had left her and their daughter several years prior. Because the biological father, Joseph Kleinman (a married, Jewish businessman) insisted, Betty gave up the newborn. He was adopted by Nat and Pearl Berkowitz, a childless Jewish couple. The Berkowitzes told young Berkowitz of his adoption but chose to tell him that his biological mother had died during the birth. Consequently, Berkowitz grew up believing that he had contributed to his mother's death and

that his biological father hated him for it. Pearl died of breast cancer when Berkowitz was 14 years old, leaving him devastated by the loss. Nat, the owner of a hardware store, remarried, but Berkowitz did not care for his new stepmother or stepsister. When Nat retired and moved to Florida, Berkowitz enlisted in the service at age 18. He was stationed in Korea, as well as Kentucky, received a marksman rating, and was honorably discharged. During his time in Kentucky, in 1974, he converted from Judaism to the Baptist faith, but soon lost interest in his newfound religion.

After the service, Berkowitz located his biological mother and his older half-sister, Roslyn. He maintained a relationship with them, but that contact started to dissipate around the time he appeared to experience a self-imposed isolation and possibly a decline into mental illness. During this time, Berkowitz held a series of jobs as a security guard, air conditioning duct worker, taxi driver, and postal sorter. He also enrolled in the spring of 1975 at Bronx Community College.

Before his killing spree began, Berkowitz had engaged in fire-setting and would keep journals of dates, times, locations, and call box numbers for the fires. Although police did not find a journal for 1976, from the very detailed accounts Berkowitz kept for 1974, 1975, and 1977, it appears that he set over 1,400 fires. After reportedly hearing voices telling him to kill, he began his attacks, with botched stabbings of one unidentified female and 15-year-old Michelle Forman, minutes apart from each other in the Bronx on Christmas Eve 1975. They survived.

After acquiring a Charter Arms .44-caliber Bulldog revolver on a visit to Houston, Berkowitz used it in the following eight shootings: July 29, 1976 (Bronx), Donna Lauria (18) dead, with Jody Valenti (19) wounded; October 23, 1976 (Queens), Carl Denaro (20) wounded, with Rosemary Keenan escaping harm; November 27, 1976 (Queens), Donna DeMasi (16) wounded, with Joanne Lomino (18) paralyzed; January 30, 1977 (Queens), Christine Freund (26) dead, with John Diel (30) escaping harm; March 8, 1977 (Queens), Virginia Voskerichian (19) dead; April 17, 1977 (Bronx), Valentina Suriani (18) dead, with Alexander Esau (20) dead; July 26, 1977 (Queens), Judy Placido (17) wounded, with Salvatore Lupo (20) wounded; and July 31, 1977 (Brooklyn), Stacy

Moskowitz (20) dead, with Robert Violante (20) blinded. Initially, the press dubbed the assailant the .44-Caliber Killer, but after he signed a letter as Son of Sam, that became his label.

Berkowitz's capture took place in his car (containing guns and ammunition) outside his Yonkers apartment building after a six-hour stakeout on August 10, 1977. Police found him through a series of discoveries, such as a parking ticket received by him near the Moskowitz/Violante shooting, a witness coming forward who saw him in the vicinity remove the ticket from his car that night, and reports by neighbors to Yonkers police about odd contacts they had from him. Although Berkowitz claimed to have received commands to kill from the dog belonging to his neighbor, Sam Carr, he pled guilty to all the shootings and received a 365-year prison sentence.

At a 1979 Attica prison press conference, Berkowitz recanted his previous stories about demons and dogs ordering him to kill. In later televised interviews, he said that he was not the shooter in all of the incidents. He implicated Sam Carr's sons (John and Michael), claiming that he and the Carr brothers were members of a satanic cult (the Process Church of the Final Judgment). According to Berkowitz, the Son of Sam shootings were part of a satanic conspiracy and he was chosen to take the fall for all of the murders, even though he participated in only some of them.

Whether Berkowitz suffered from schizophrenia, experiencing delusions (of a demon conspiracy) and auditory hallucinations (of voices telling him to kill), or whether he was malingering may never be known. However, the .44-caliber killings stopped after his arrest. In 2010, for the fifth time, he was denied parole from Sullivan Correctional Facility, where he is a Jew for Jesus and prefers to be called the Son of Hope.

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See Also: Attica; New York; Serial and Mass Killers.

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Bertillon System

Toward the close of the 19th century, police agencies worldwide developed innovative scientific methods to help combat crime. Chief among these techniques were classification systems designed to measure and catalog physical, psychological, and social characteristics collected from criminal

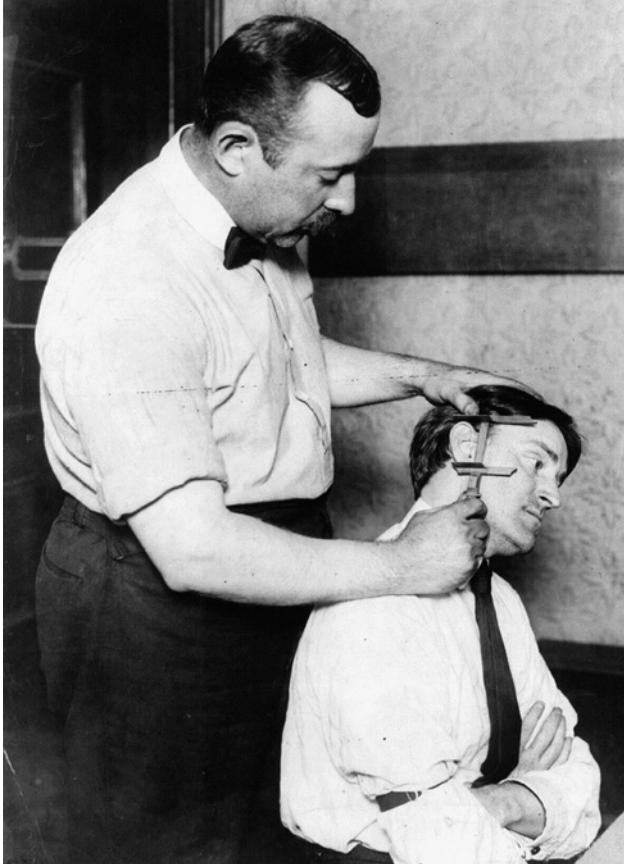
offenders. Of the many early forays into biometric data analysis, the Bertillon system is perhaps the best-known and most widespread.

The Bertillon system derives its name from its inventor, Alphonse Bertillon (April 24, 1853–February 13, 1914). While working for the police department in his native Paris, Bertillon developed a system to measure, photograph, and categorize offenders. The system Bertillon devised relied on what was then known as anthropometrics, a set of very precise anatomical measurements intended to uniquely identify an individual. Modern incarnations of this same approach are commonly referred to as biometrics.

As print technology evolved in the late 19th century, police departments began to keep photographic records of suspects and convicted offenders (mug shots). These so-called rogues' galleries



This class was learning the Bertillon method of criminal identification in Paris, France, between 1910 and 1915. The photographs on the wall were called portrait parles, now known as mug shots. Two of French criminologist Alphonse Bertillon's great contributions to the field were the standardization of criminal mug shots and the development of systematic crime scene photography; his general approach to systematic recordkeeping continues to influence law enforcement practices to this day.



A New York City police officer practicing taking Bertillon measurements of a subject's ear around 1908. There were 15 pages of instructions on ear measurement in the first English translation of Bertillon's original work.

were often little more than disorganized collections of known ruffians with little probative or investigatory value. What the Bertillon system did was to augment and organize these collections along structured and orderly principles. Two especially lasting contributions made by Bertillon were standardization of criminal mug shots (dimensioned front and profile views) as well as systematic crime scene photography. In the latter instance, Bertillon devised a process of “metric photography” for the purpose of reconstructing the dimensions of a particular space and the placement of objects in it.

Measurement and Classification

Bertillon's anthropometrical system was divided into three interrelated spheres: bodily measurements taken with extreme precision and under

carefully prescribed conditions, mostly based on a series of dimensions of bony parts of the human anatomy; morphological description of the offender's body; and a detailed description of any peculiar or distinguishing marks and scars such as those left by disease, injury, moles, warts, or tattoos.

The Bertillon method combined these detailed measurements and the classification of unique features with frontal and profile mug shots of suspects. This information was recorded on standardized photo cards in a systematic filing structure. Bertillon's system was based on five primary measurements: head length, head breadth, the length of the middle finger, the length of the left foot, and the length of the cubit (the forearm from the elbow to the extremity of the middle finger). Each heading was then subdivided into three size classifications. Many other less-central metrics were also recorded. These included the length of the little finger, eye color, and the size and shape of the ears. Taken together, the indicia included in the system led Bertillon to calculate an interesting probability: Bertillon stated that the odds of finding any two individuals with identical measurements were 286,435,456 to 1.

A particularly remarkable aspect of the Bertillon system was his focus on dimensions and characteristics associated with human ears. While stopping short of a blanket decree of individual uniqueness, Bertillon suggested that ears are sufficiently distinct as to be a good general marker. In Bertillon's exhaustive directions for ear measurement, one sees the complicated nature of the larger anthropometric process. Bertillon directed that the following aspects of the ear had to be described and measured: three portions of the border of the ear (helix) and its degree of openness; the contour, degree of adherence to the cheek, and dimension of the ear lobe; the inclination from horizontal, the profile, and the degree of reversion forward of the antitragus; and the measurement and windings of both the ascending and the median anthelix (i.e., the fold). Additionally, Bertillon required a description of the general form of the ear; its separation from the body at the head; any peculiarities that are noted with the border, the lobe, the tragus, the antitragus, the concha, the superior fold, and the various depressions; and Darwinian characteristics, as well as other elements. In all, the

directives for ear specification and measurement fill 15 pages in the first English translation of Bertillon's original work.

Inherent Difficulties

As a general construct, the system devised by Bertillon was so complex that its application was extremely difficult. As above, the aspects of the system requiring precise measurement were sufficiently cumbersome as to yield different measures of the same individual if performed by multiple observers. While high precision was one of the system's greatest attributes, complications in its uniform application ultimately gave cause for its abandonment.

Even with its incumbent difficulties, for a period in the late 19th century, the Bertillon system was very popular in both Europe and America. The broad adoption of the Bertillon system in the United States is largely attributable to the efforts of one man, Major Robert W. McClaughry. In 1887, while serving as warden of the Illinois State Penitentiary, Joliet, McClaughry and his records clerk, Gallus Muller, adopted the system for recordkeeping at the institution. As an active member of the Wardens Association of the United States and Canada, McClaughry effectively advocated use of the system by correctional administrations all over North America. As a relevant aside, when McClaughry was eventually obliged to face the inherent limitations of the Bertillon system, he became an equally staunch advocate for a more reliable and individually discrete biometric: fingerprints.

The Bertillon system was dealt another lethal blow when it was discovered that more than one person might have identical (or nearly so) measurements. Perhaps the most prominent case of mistaken identity involving the Bertillon system was that of Will West. Upon his arrival at the federal penitentiary at Leavenworth in 1903, West denied any previous incarceration there. When the record clerk took his Bertillon measurements, they matched those on file for an inmate named William West. Additionally, the photographs of William West looked identical to Will West. When the clerk turned over the card, it showed that William West was currently imprisoned in Leavenworth. The mistaken identity was only confirmed after the fingerprints of the two men were compared. Even from this one example, there was

little doubt that the Bertillon system would give way to fingerprinting.

Apart from its place in the annals of criminal justice practice, the Bertillon system also holds a particular fascination for authors of crime-related fiction. Reference to Bertillon is made by Sir Arthur Conan Doyle in his Sherlock Holmes series. Likewise, mention of Bertillon and his methodology also appear in works by novelists Maurice Leblanc and Caleb Carr.

While the Bertillon system was quickly abandoned with the advance of fingerprint technology, Bertillon's basic ideas about individual distinctiveness and the use of precise measurement to capture it were among the most prescient and lasting developments in criminal justice history. Furthermore, that his general approach to systematic recordkeeping continues to inform police practice today suggests the importance of his legacy.

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See Also: Crime Scene Investigation; Detection and Detectives; Fingerprinting; Forensic Science; Mug Shots; Technology, Police.

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Bible

The Bible is the foundational text of Jews and Christians, containing what adherents believe to

be the revealed word of God. Although it begins with an account of the creation of the world, ends with a startling account of the world's demise, and roughly catalogs a series of events from the Fall in the Garden of Eden to the life and teachings of Jesus and his early followers, it is not rightly understood as a unified narrative. Rather, it is a series of stories, poems, aphorisms, prophetic soliloquies, and historical accounts meant to convey the central belief of Jews and Christians that all of creation is made, sustained, and guided by God to a glorious conclusion in which God will be revealed as ruler of the nations.

Biblical theology and ethics have had a great deal of relevance for the subsequent history of criminal justice, including the early development of the American penal system. This short essay discusses in general terms what the Hebrew Scriptures and the New Testament reveal about criminal justice and concludes with some of the ways these teachings were at the core of the penal experiments in the United States.

Crime and Punishment in Hebrew Scriptures

Judaism is a legal religion. It has a fully transcendent understanding of the deity who, in all things, lies infinitely beyond anything humans can think, do, or imagine. Thus, the very first commandment given to Moses on Mount Sinai is that there be no alien gods among the chosen people. It is strictly forbidden to create any image of the Creator, as this would suggest that humans have some conception of God's own essence. The only way one can show proper reverence to God and live righteously is to obey the laws (Torah) that God provides in the first five books of the Bible (the Pentateuch). As the Book of Deuteronomy states often, to follow the law is to live, to disobey is to die.

That same sense of urgency and seriousness is revealed in the consequences for flagrant violations of the Torah, among them the prohibition against murder found in the Ten Commandments. Capital punishment is required for a wide range of offenses, normally by way of stoning to death, although there are instances of hanging, decapitation, and burning.

Imprisonment in a formal judicial sense was unheard of until after the Babylonian exile. Prior to that period, one only sees ad hoc cases of

punitive incarceration, as when the prophet Jeremiah is placed under restraint on several occasions, and of custodial confinement, as in the case of a person who blasphemed in the midst of an argument. After the exile, the Israelites, under the influence of King Artaxerxes II of Persia, began to place some types of offenders under formal detention. There is no indication, however, that the practice was widespread. In fact, the experience of exile led to a decrease in the severity of punishment for legal infractions, including a near-total rejection of the use of capital punishment.

Such moderation has ample precedent in biblical literature. Accompanying the stern warnings and punishments for failure to attend to the law, there is a rich genre of texts speaking of redemption and release of the captive, starting with Isaiah 42:7 and 61:1. God releases those imprisoned in the nether world in Psalms 30:4 and 40:3, brings the exile home in Ezekiel 39:27–28, and has mercy upon those bound in chains in Psalms 107:16.

Another of the traditions mitigating the practice of judicial violence was the establishment of cities of refuge. For those guilty of negligent homicide, certain localities were designated by divine command wherein the culpable could seek asylum and be assured protection from those intent on avenging the death of their kin.

Overall, then, the centrality of the law and punishments for its violation are predominant themes in the Hebrew scriptures. There is also a parallel commitment to free the captive and exiled after they have experienced punishment, and to quell the vendetta with its thirst for blood vengeance by providing safe havens for those who committed homicides under mitigating circumstances.

Crime and Punishment in the New Testament

The section of the Bible presenting the life and teachings of Jesus and those of some of his early followers leaves the reader with two strong impressions regarding criminal justice. The first is an overall wariness of law; the second is a strong theological position not only that Jesus was executed by the machinery of one of the world's most advanced legal systems but that he also identified with every prisoner, regardless of his or her crime.

As a Jew, Jesus had the utmost respect for the Mosaic law and its relevance to the lives and ethos

of his people. He, however, took a position toward law that was diametrically opposed to that taken by the Temple aristocracy and most legal scholars of his time. Rather than a literal approach, Jesus insisted that every legal directive is explained, fulfilled, and hence should be evaluated in terms of the one true commandment: unconditional love of God and neighbor. His repeated clashes with the Sadducees and Pharisees would surface this tension, one that would lead him to heal on the Sabbath, pick grain on the Sabbath, and touch both lepers and the dead in violation of what were perceived to be sacred and inviolable commands. Such decisions were contributing factors in his condemnation.

This contextualizing of the value of law and of the punishments it prescribes within the ambit of charity is also revealed in the strong emphasis Jesus placed upon forgiveness. He stressed to his followers repeatedly that this virtue must be unconditional regardless of the degree of fault.

Jesus also offers concrete advice to avoid lawsuits, oaths, and going to court and provides the format for adjudication of conflict that was instrumental in the development of Western criminal justice: The aggrieved party must first confront the offender in person; if the matter is not settled, a group intervention is called for; a continued lack of consensus should then involve the entire community; finally, continued obstinacy by the offender is to be followed by expulsion from the fellowship.

St. Paul also emphasizes the correctional format as presented by Jesus. Even at his most contentious, as when a Christian married his stepmother in 1 Corinthians 5:1–5, Paul insists that expulsion from the community is for the purpose of creating a sense of shame and repentance that is to be followed by forgiveness and reincorporation. Of course, his own frequent imprisonment surfaces often in his letters and colors his sense that righteousness is not a matter of legal attentiveness but a matter of faith.

Despite the ambiguity concerning law and punishment in certain passages, particularly in Paul's famous assertion in Romans 13:1–4 that Christians must obey all secular authority, the dominant ethos of the New Testament is in the direction of legal minimalism and a recognition of the sacredness of those who are confined, as when Paul urges a slave owner not only to forgive his

runaway slave, who stole from him, but to accept him as an equal, and in Paul's own evocative comment in Colossians 4:18: "Remember that I am a prisoner."

The Bible in Early American Correctional Experience

The Puritans who arrived in New England in the 17th century represented the radical wing of the English Reformation. Their strict demeanor bore testimony to their Calvinist-inspired interpretation of holy scripture. They instituted a strict biblical basis for punishment, corresponding to their belief that crime was tantamount to sin. While the corporal nature of correction was maintained, including the death penalty, their literal use of the biblical text reduced significantly the number of capital crimes that were then current in English law.

A similar adherence to scriptural guidelines was clearly in evidence when, in the 1820s, two penitentiaries were constructed in Pennsylvania and New York that became the centerpiece of a worldwide debate on the meaning and form of criminal punishment. The Eastern State Penitentiary in Philadelphia was founded by the Quakers



This 1842 print shows a Catholic priest confronting a reluctant New York City prison warden with a letter from the governor giving him permission to visit a murderer sentenced to death. The prisoner is shown kneeling in prayer with a Bible beside him.

and reflected their focus on the indwelling spirit of God within the person and on the nonviolent passages in the New Testament. The penitentiary at Auburn, New York, mirrored Calvinist biblical theology, including the belief in the inherent sinfulness of the individual. The urgency of the debate between the two systems was certainly fueled by economic questions centering on the most fiscally sound way to address the issue of crime, but the implications of the competing biblical theologies cannot be underestimated.

Another factor that made the matter so intensely argued was that the penitentiaries themselves grew out of the Second Great Awakening, arguably the most thoroughgoing religious movement in American history. The country was in the throes of a missionary crusade to bring each person to conversion, and the message of the leaders of the movement emphasized that the reformation of the social and moral environment and the building of remedial institutions, among them prisons, were the essential factors in creating the conditions for the lost to be found.

The penitentiaries initially allowed only one book for the inmate to read, the Bible. The salvation of the inmate and the fate of the nation depended on the power of its message. Chaplains saw it as their ministerial duty to have prisoners memorize as many scriptural verses as possible. Ministers read the Bible in the cellblocks each evening to the silent captives and, regardless of the misanthropy of some wardens, such as Elam Lynds in New York, the facilities were largely viewed as symbols of the belief that America was winning the war against evil and witnessing to the world that it was the New Israel.

The Auburn model, with common labor during the day and silence at all other times, came to dominate the philosophy of corrections, and its triumph was due in large part to the Reverend Louis Dwight. He was an employee of the American Bible Society whose job it was to travel to the different penitentiaries delivering Bibles to the inmates. He was so moved by the combination of labor, silence, and daily biblical preaching at Auburn and its sister institutions that he resigned his post and founded the Boston Prison Discipline Society, which did more than any other organization to spread that penal philosophy as the greatest tool in the conversion of the errant.

The history of American corrections took on a more scientific and therapeutic tone with the development of the social sciences in the late 19th century, exemplified in figures such as Lombroso and Ferri, but it was biblical religion that provided the instigation and structure of the prison systems in America and, through the efforts of its proponents, many prison systems elsewhere.

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See Also: Auburn State Prison; Corrections; Morality; Penitentiaries; Punishment Within Prison; Puritans; Quakers; Religion and Crime, History of.

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Bigamy/Polygamy

Polygamy intended as plural marriage or polygyny, that is, a marriage in which the man has more than one wife at the same time, has been a widespread practice throughout history, including in the Judeo-Christian tradition. Bigamy is the criminal act of marrying another person when one is still married to someone else in countries with laws against multiple marriage. In such countries, the resulting second marriage becomes void if discovered.

The Old Testament mentions Abraham and David having multiple wives and King Solomon having as many as 700 wives. In the 16th century John of Leyden, leader of a group of Anabaptists,

took control of the city of Munster in Germany and, after expelling all non-Christians from the town, declared that polygamy would be law under his jurisdiction. The government of the Anabaptists lasted barely one year, but during that time polygamy was considered to be the ideal form of marriage.

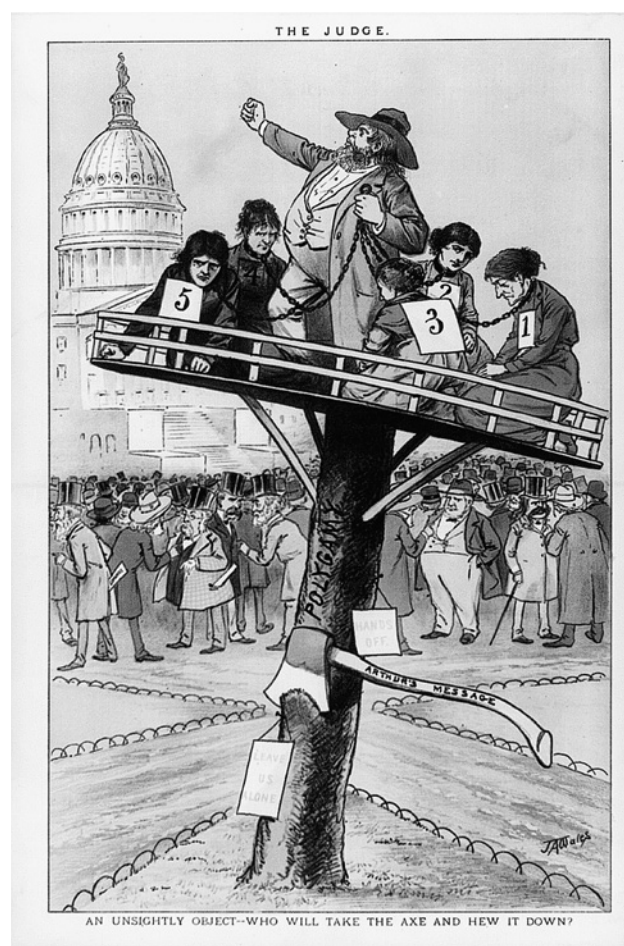
However, historical sources suggest that the Anabaptists' lifestyle did not attract a consensus among the other Christian sects. Although their leader laid down a strict code of conduct that would not allow sex outside marriage, the Republic of the Saints founded by the Anabaptists was met with widespread disdain, and it would not be until the 19th century that another Christian sect, the Mormons, would embrace polygamy again.

In 1830 Joseph Smith, Jr., founded the Church of Jesus Christ of Latter-day Saints. Since then the Mormons have had a difficult relationship with the government of the United States, probably not only because of their polygamous practices but also, and more importantly, because of their radical autarchy that included an autonomous system of dispute settlement and an independent militia. Furthermore, polygamy was the target of criticism and pressure from American society at large. In 1862 Congress prohibited polygamy in the United States, and in 1890 the Mormon Church banned the practice among its followers. There seems to be no evidence of church punishment for polygamous marriages, however, and some conclude that nothing had changed in reality. In 1888, new territories claiming statehood were required by Congress to pass antipolygamy amendments, and when in 1896 Utah entered the United States, its constitution included a formal ban of polygamy.

American legal precedents on polygamy date back to 1878 with the case *Reynolds v. United States*. Reynolds's arguments for the legitimacy of his plural marriage rested upon the First Amendment that protected religious freedom, but his claim was rejected based on the harm that polygamy would cause to American society, namely, patriarchy and despotism. This decision was followed by similar case law successfully arguing that polygamy was a criminal offense. In 1946, in the case of *Cleveland v. United States*, for the first time a justice of the Supreme Court engaged the court with arguments in favor of polygyny,

defining it as a cultural institution and as a form of marriage ruled by a set of moral and social principles. However, all the other justices dissented and declared polygamy to be a return to barbarism. As with fornication and sodomy laws, it has been argued that the ban of polygamy is challenging religious freedom as well as the right to privacy. Subsequent case law dating to the late 1970s shows a greater level of tolerance toward polygamous practices.

Although polygamy remains illegal, it is not declared barbaric any longer. In spite of its still being considered outside the law, Salt Lake City in Utah has remained the center of polygamist marriages. Besides Mormons, the Biblical Patriarchal Christian Fellowship of God's Free Men



This 1882 cartoon depicts a polygamist holding five wives in chains atop a precarious tree and asks, "Who will take the axe and hew it down?" That year, President Chester Arthur used the Edmunds Act to help imprison 1,300 polygamists.

and Women, the Fundamentalist Church of Jesus Christ of Latter-Day Saints, the Latter-day Church of Christ, and the Apostolic United Brethren practice plural marriages, even if only in secret. Occasionally these communities attract the attention of activists, social services, and police in relation to child-bride practices, women's rights abuses, slavery, and domestic violence. However, it is proving hard to prosecute polygamists for polygamy because they engage in informal matrimonial arrangements. Nowadays, religious polygamists often marry only once in a civil ceremony. Hence, subsequent polygamous marriages lacking civil ceremonies are nonexistent in the eyes of the law, unless authorities were to conduct investigations into the private lives of families, including sexual habits and finances. Although it has been argued that the religious practice of polygamy is a fundamental right according to the free exercise clause and the right to privacy, polygamy is still formally banned in the United States.

Polygamy is not only secretly practiced and moderately tolerated among some Christian communities in the United States, but it is also evident among other sociocultural groups. Case law shows that Native Americans belonging to tribes recognized by the government for allowing polygamy have a right to plural marriages. In spite of this legal recognition, however, there is almost no trace of modern polygamy among Native Americans. Islam allows a man to marry multiple wives if he can treat them all with equal fairness. However, the leading interpretations of Islamic polygamy mitigate this male prerogative to a maximum of four wives, and most importantly, it requires the consent of the existent wife or wives. Some Islamic legal scholars go as far as to say that polygamy is not appropriate to modern times. Yet, even if practiced rarely, evidence of Islamic polygamy emerges from recent Euro-American case law, especially in relation to inheritance, alimony, social benefits, divorce, and immigration laws. Some socio-legal scholars in the field of immigration law argue that objecting to the immigration of second wives makes Euro-American law particularly harsh toward Muslim communities because it denies them the enjoyment of family unity and deprives Muslim women and children of the legal protection deriving from marriage.

In contrast to polygamists, bigamists often try to keep their relationships secret from each other and do not create openly plural marriages. Bigamy may be committed for different reasons than polygamy, often does not have a religious basis, and may be done for financial gain or even by accident when a spouse is believed to be dead. In the United States, various state laws provide for fines and/or imprisonment for those convicted of bigamy. Section 230.1 of the Model Penal Code makes bigamy a misdemeanor as opposed to polygamy, or "purported exercise of a plural marriage," which is a felony.

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See Also: 1801 to 1850 Primary Documents; Adultery; Arizona; Arthur, Chester (Administration of); Children's Rights; Criminalization and Decriminalization; Fornication Laws; Religion and Crime, Contemporary; *Reynolds v. United States*; Utah; Victimless Crimes.

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Bill of Rights

The Bill of Rights—the first 10 amendments to the U.S. Constitution, ratified in 1791—are designed to protect individual civil liberties from government oppression and arbitrary prosecution. They include 28 specific rights, of which 16 concern criminal justice. The framers understood that procedural limits on the state's power to enforce criminal law are necessary to protect the "Blessings of Liberty." The Bill of Rights was grounded in British liberties that had evolved since the 12th

century, including trial by a local jury, the writ of habeas corpus, and the principle that the government could deprive no one of life, liberty, or property without due process of law, drawn from the Magna Carta (1215). From English common law came the privilege against self-incrimination and the rule that a previous conviction or acquittal barred reconviction.

Parliamentary and judicial reactions to oppression by 17th-century Stuart kings cemented the view that rights and institutions, like the self-incrimination prohibition and the grand jury, were essential to liberty. The Glorious Revolution (1688), overthrowing James II, was confirmed in law by the English Bill of Rights of 1689, which prohibited excessive bail, excessive fines, and cruel and unusual punishments and guaranteed arms to Protestants for their defense. In the 1770s English courts held that officers who broke into houses searching for evidence of political crimes, on orders of high government officers but without search warrants, violated citizens' privacy rights and were liable for damages in civil lawsuits.

British liberties were included in the charters of England's American colonies; the new American states included many in their constitutions. The U.S. Constitution, drafted in 1787, guaranteed federal jury trials and federal and state habeas corpus but had no Bill of Rights. The Constitution's opponents, known as Anti-Federalists, feared a strong central government with taxation powers. They attacked the Constitution in ratification conventions because it lacked a Bill of Rights. The Constitution's narrow ratification impelled James Madison, a key Constitutional drafter and representative from Virginia, to draft a Bill of Rights for the First Congress. The need to do so was urgent, as Anti-Federalists planned to amend the Constitution by calling a second constitutional convention to unravel the government that went into effect in 1789. Madison's proposed amendments were debated, modified, and approved by two-thirds of the House and Senate. Ten were ratified by three-quarters of the states and became part of the Constitution in 1791.

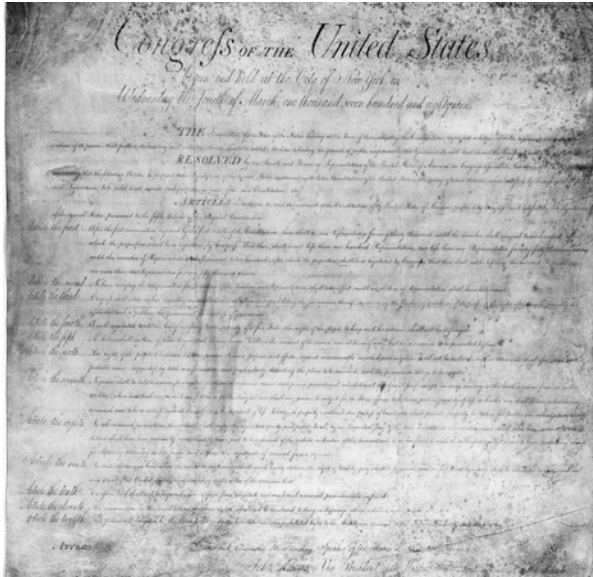
The criminal justice provisions include the Fourth Amendment, which prohibits unreasonable searches and seizures of "persons, houses, papers, and effects" and generally requires search warrants, although the Supreme Court

recognizes search warrant exceptions. The Fifth Amendment includes four criminal justice provisions: federal trials must be preceded by a grand jury indictment; double jeopardy is prohibited; no person can lose life, liberty, or property by government action "without due process of law"; and the privilege against self-incrimination is protected. The Sixth Amendment guarantees rights to an accused in a "criminal prosecution": a speedy and public jury trial, an impartial jury drawn from the crime's vicinity, notice of the criminal charges that will be brought against the defendant, the right to subpoena favorable witnesses, and the right to a defense lawyer. The Eighth Amendment offers three additional rights: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Effect on Criminal Justice

The Bill of Rights had little effect on criminal justice before the 20th century and did not apply to state or local governments. After the Civil War, defendants tried to apply the Bill of Rights to state and local governments by "incorporating" them into the Fourteenth Amendment due process clause, which was ratified in 1868. This process was finally successful in the 1960s when the Supreme Court expanded defendants' rights by holding that the criminal provisions in the Bill of Rights applied to local justice. The incorporation cases, collectively known as the "due process revolution," brought American criminal justice closer to the ideals of the rule of law.

The history of incorporation begins with *Barron v. Mayor of Baltimore* (1835), which held that the Bill of Rights limited only the federal government and did not apply to state or local governments. The opportunity to revise *Barron's* constitutional ruling arose with the ratification of the Fourteenth Amendment. It established the civil rights of former slaves after the Thirteenth Amendment (1865) abolished slavery. The Fourteenth Amendment declared that all naturalized or born citizens were citizens both of their state and the United States; it guaranteed the privileges or immunities of citizens and decreed that states could not deprive persons of life, liberty, or property without due process of law, or deprive any person of the equal protection of the laws.



The U.S. government's official parchment copy of the Bill of Rights. Articles 3 to 12, ratified December 15, 1791, by three-fourths of the state legislatures, constitute the first 10 amendments of the U.S. Constitution.

To many, the criminal procedure provisions of the Bill of Rights were expressions of due process—the principle that criminal trials and criminal justice must be fundamentally fair. Defendants' attorneys appealed state convictions to the Supreme Court, seeking incorporation because federal procedural rules under the Bill of Rights were more favorable to defendants' rights than state rules of criminal procedure. In cases from 1884 to 1961, the Supreme Court declined to incorporate criminal provisions of the Bill of Rights.

In *Hurtado v. California* (1884), the Supreme Court refused to incorporate the grand jury clause. However, Justice John Marshall Harlan's impassioned dissent forced the majority to agree that if a state law or procedure violated "fundamental principles of liberty and justice" included in a Bill of Rights provision, the Supreme Court would find that a state had to abide by the constitutional provision, via the Fourteenth Amendment's due process clause. The majority, however, did not believe that state laws allowing prosecutors to charge by their own "information" rather than by grand jury indictments violated fundamental rights. Likewise, *Twining v. New Jersey* (1908) held that state judges' comments on defendants

not testifying did not violate a fundamental right, although in federal prosecutions such comments violated the Fifth Amendment privilege against self-incrimination. The strongest reason for the court's refusal to apply the Bill of Rights to the states was Federalism—the idea that criminal justice should be left entirely to the states.

After *Twining*, the Supreme Court began to find some state criminal justice practices unconstitutional, vacating state defendants' convictions. These cases did not apply the Bill of Rights to state procedures but ruled that the practices simply violated the Fourteenth Amendment's due process clause. The first cases targeted the worst injustices against African Americans under Jim Crow racial practices. Trials held under lynch-mob threats, rushing defendants incapable of defending themselves to trial without an opportunity to consult with attorneys, indictment by all-white grand juries, and confessions secured through torture all violated due process. After 1940, the Supreme Court ruled more frequently on criminal cases from all parts of the nation under the due process clause.

A Uniform Standard

The Due Process Revolution was hastened by the incorporation of the First Amendment in the 1930s and 1940s, the weakening of states' rights, growing civil liberties awareness, and the rights-affirming goals of the Warren Court. In 1961, the Supreme Court held that the federal Fourth Amendment exclusionary rule applied to the states in *Mapp v. Ohio*. In 1962, the Eighth Amendment cruel and unusual punishment clause was incorporated. By 1969, the court incorporated the Fifth Amendment double jeopardy and self-incrimination clauses, paving the way for *Miranda v. Arizona*. The Sixth Amendment's counsel guarantee was applied in *Gideon v. Wainwright* (1963), followed by the confrontation, subpoena, and the speedy, impartial, and public jury trial provisions. By the end of the 1960s, these rights were considered fundamental. Piecemeal application of the Bill of Rights to the states was known as "selective incorporation," as opposed to the "total incorporation" of the entire Bill of Rights.

The incorporation of the Bill of Rights was accomplished by a "liberal" Supreme Court under

Chief Justice Earl Warren in the 1960s. Since that time, the more conservative Burger, Rehnquist, and Roberts courts have been more favorable to claims by police and prosecutors and more hostile to claims under the Bill of Rights by criminal suspects and defendants. In general, the court has strengthened defendants' rights under the confrontation clause and has supported procedures for the selection of race-neutral juries.

On the other hand, the court opened the door to preventive detention for jailed suspects and has created exceptions to the *Miranda* rule that excludes unwarned confessions from evidence. For example, an officer need not warn a suspect of his or her rights before interrogation if an immediate threat to public safety is present. The court has also created many exceptions to Fourth Amendment protections that give police a freer hand in conducting searches and seizures.

Incorporation made the Bill of Rights a reality in state and local criminal justice, where most police, prosecution, and judicial processes occur. It advanced police professionalization and injected greater legality into American criminal justice. Supreme Court interpretations in the last 40 years have generally favored the state rather than defendants' rights, but nationalizing the Bill of Rights has made America a more just nation.

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See Also: *Barron v. Mayor of Baltimore*; Brennan, William J., Jr.; *Brown v. Mississippi*; Constitution of the United States of America; Defendant's Rights; Due Process; Habeas Corpus, Writ of; Interrogation Practices; *Mapp v. Ohio*; *Marbury v. Madison*; *Miranda v. Arizona*; Rule of Law; Supreme Court, U.S.; *Twining v. New Jersey*; Warren, Earl; *Weeks v. United States*; *Whitney v. California*; *Wolf v. Colorado*.

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Billy the Kid

Billy the Kid (1859–81) was born William Henry McCarty. The exact date and place of his birth are not known but are believed to have been sometime in 1859 in New York City, perhaps on the Lower East Side of Manhattan. The family's location and living arrangements between 1865 and 1873 also remain unknown. However, in 1873, the family moved to Santa Fe, New Mexico. Shortly thereafter, the family moved again, this time to Silver City, New Mexico, where, upon his mother's death, McCarty was uprooted and sent to live with a foster family. He worked odd jobs in a butcher shop and a hotel but was soon arrested and jailed for petty theft. Not wanting to be in jail, he orchestrated an escape. He then returned to his foster family, who promptly put him on a train to Arizona, where his stepfather lived. Upon arrival, his stepfather refused to allow McCarty to stay because of his status as a fugitive. With no home and with little money, he was forced to accept a low-paying position as a ranch hand.

Beginnings

McCarty committed his first murder around the age of 16 during a fight at a saloon in Camp Grand, Arizona. The victim, Frank "Windy" Cahill, had bullied McCarty in the past. During this encounter, the older, physically stronger, and more experienced Cahill gained the advantage. However, during the struggle, McCarty was able to reach his gun and mortally shoot Cahill. After this incident, McCarty returned to New Mexico, where he was given the nickname "Kid" because of his young age and youthful appearance. Unable to find work, he soon joined a gang called

the Boys. The Boys, operating in Lincoln County, New Mexico, were hired by rancher James Dolan. Dolan was embroiled in a bitter dispute with rival rancher John Tunstall. Eventually, this dispute became known as the Lincoln County War.

The Boys, under Dolan's direction and as a form of harassment, began to steal livestock from the Tunstall ranch. The sheriff arrested some of the gang's members, including Billy the Kid, and jailed them. When Tunstall realized that Billy the Kid was not a hard-core rustler but just a boy, he offered Billy the Kid a choice—if he would testify against the other rustlers, Tunstall would hire him to work on his ranch. Billy the Kid gladly accepted. Hopeful for a better future, Billy the Kid changed his name to William H. Bonney. His employment, however, did not last long, since Tunstall was soon murdered by members of the Boys.

An Outlaw

To avenge Tunstall's murder, Bonney and other Tunstall ranch hands banded together, creating the Regulators. Initially, the Regulators sought to use the law to their advantage but soon found it impossible to work through the existing court system. Increasingly, they took matters into their own hands, seeking vigilante justice. Eventually, they killed Bill Morton (leader of the group that had killed Tunstall), Frank Baker, and William McCloskey (a Regulator suspected of working for both sides). They also killed the sheriff and his deputy. These murders resulted in arrest warrants being issued for members of the Regulators.

Once warrants were issued, Dolan intensified his efforts to eliminate the Regulators. Soon, Dolan and his men surrounded a known Regulator hideout, trapping numerous members inside. The siege lasted for five days before Dolan ordered the house to be burned. Once the house was ablaze, Bonney took charge and had the men form two groups so that an escape could be attempted. As Bonney and the other members of the Regulators emerged, four were shot and killed. Their deaths effectively broke up the Regulators and ended the war. Once the Regulators disbanded, Billy the Kid was a fugitive on the run once again.

Eventually, when Bonney learned that a new governor had assumed office in New Mexico, he sought a pardon on his murder charges. In exchange, he offered to testify against Dolan, his



The only known photograph of Billy the Kid is this tintype taken around 1879 or 1880 in Fort Sumner, New Mexico, not long before the outlaw's death there on July 14, 1881.

ranch hands, and the Boys. The governor agreed. Bonney soon surrendered himself to the proper officials and testified; yet his testimony had little effect—each person who was tried was acquitted. Since Bonney was already in custody, prosecuting attorney William Rynerson put him on trial for murder, effectively making it impossible for the governor to follow through with his promise to issue a pardon. Not trusting the authorities or the court system, Bonney again escaped custody.

Over the next two years, Bonney spent most of his time in and near Fort Sumner, New Mexico. During this time, Pat Garrett was elected sheriff of Lincoln County and accepted the task of bringing Billy the Kid to justice. Garrett was familiar

with Bonney's usual hideouts and arrested him on December 23, 1880, in Stinking Springs, New Mexico. Bonney was put on trial for murder, found guilty, and sentenced to hang. After sentencing, Bonney was transported to Lincoln County to await execution. On April 28, 1881, he escaped custody yet again, killing two jail guards in the process. He then left Lincoln County and headed to Fort Sumner. Accounts of what happened next vary greatly and are difficult to confirm. Yet most accounts agree that Garrett, while searching for Bonney on July 14, 1881, stopped to ask a citizen of Fort Sumner about Bonney's whereabouts. At just that moment an unaware Bonney approached. Garrett recognized Bonney and fatally shot him in the chest. Other accounts tell of Garrett waiting in ambush style, killing Bonney as he entered a darkened room. Billy the Kid is buried at the Fort Sumner cemetery.

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See Also: Arizona; Frontier Crime; History of Crime and Punishment in America: 1850–1900; New Mexico; Posses; Rural Police; Sheriffs.

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million. Birmingham was founded in 1871 during the Reconstruction period following the Civil War as an industrial center. It was a leader in iron and steel production (the city was named after the industrial city of Birmingham, England) through the 1960s as well as a railroad hub for the American south. Today, the economy of Birmingham is much more diversified and includes white-collar industries such as insurance, healthcare, and banking as well as higher education. Birmingham played an important role in the American civil rights movement, and events in Birmingham helped provide the momentum for passage of the 1964 federal Civil Rights Act.

Along with the rapid growth of industry and related enterprises such as coal mining, the city experienced recurring conflict between workers and owners of these businesses. The most notable incident was the Birmingham District coal strike of 1908, which lasted two months and was often marked by violence. Initially, the union seemed to hold the upper hand, but mine owners recruited strikebreakers from as far away as Ellis Island, New York, and leased convict laborers from the state in order to keep the mines operating; eventually, Alabama Governor Braxton Bragg Comer declared martial law and sent state troops into the coal fields. The strike ended in a crushing defeat for District 20 of the United Mine Workers, one of the few racially integrated labor unions in the American south at the time (about half the mining labor force in the Birmingham area was African American at the turn of the century).

Segregation and Civil Rights

As was typical in the American south in the 1950s, Birmingham was segregated by law, and although the city was about 40 percent black, only a small fraction of the black population was registered to vote. Blacks were extremely limited in the jobs they could hold in both city government (for instance, there were no black firefighters or police officers) and private businesses. Black unemployment was also substantially higher than white unemployment, and black income was substantially lower, partly by design as a steady supply of cheap labor served the interests of the city's industrialists. Birmingham became a focus of the American civil rights movement when in 1958, the Alabama Christian Movement for Human

Birmingham, Alabama

Birmingham is the largest city in Alabama (2010 population 212,237, a 12.6 percent drop since 2000); the Birmingham-Hoover metropolitan area had a 2009 population of more than 1.2

Rights challenged the city's segregation laws. The city earned the nickname "Bombingham" in these years because of the number of bomb attacks on black churches and homes, perhaps the most famous of which was the September 1963 bombing of the 16th Street Baptist Church. In 1962, a series of boycotts of Birmingham businesses, modeled on the Montgomery Bus Boycott of 1955, drew attention to the growing power of the civil rights movement.

In 1963, the Southern Christian Leadership Conference (SCLC), led by Martin Luther King, Jr., began a campaign in Birmingham focused on changing hiring practices and desegregating Birmingham's downtown business district. The SCLC employed a variety of methods, including sit-ins at segregated restaurants, "kneel-ins" at white churches, marches, and voter registration drives. These efforts were opposed by the city's commissioner of public safety, Eugene Connor, better known as Bull Connor. Connor became nationally known as a symbol of segregation, proclaiming that the civil rights movement was inspired by Communism and refusing to cooperate with Federal Bureau of Investigation (FBI) investigations into police misconduct. He also obtained a court injunction against the desegregation protests and quadrupled the amount of bail required to free those arrested. On Good Friday, April 12, 1963, Martin Luther King was arrested in Birmingham, and was denied bail and access to a lawyer. This event drew widespread publicity, particularly after the release of King's "Letter from Birmingham Jail," a response to eight white clergymen who accused him of being an outside agitator. In the letter, King articulated his belief that forceful nonviolent action was necessary in order to bring about social change and that civil disobedience was justifiable if the laws were unjust.

The so-called Children's Crusade began in May 1963 as more than 1,000 students, some as young as 8, marched to the downtown area of Birmingham, where they were arrested. As this pushed the Birmingham jails far over capacity, it forced Connor to change tactics and attempt to keep protesters out of the downtown area. This was accomplished by turning high-pressure fire hoses and dogs on the students, a tactic that backfired when images of these acts were widely publicized

in the news media and played a key role in turning national sentiment against the Birmingham police force and in favor of the protesters. Most private businesses agreed to desegregate shortly thereafter, and the city government followed within a few months, although the reality of integration was slower in coming than the legal recognition of the principle: For instance, the first black police officer, Leroy Stover, was not hired until March 1966. The Birmingham public schools were integrated beginning in September 1963 despite the efforts of Governor George Wallace to use the U.S. National Guard to keep black students from enrolling in formerly white schools. The events in Birmingham were instrumental in leading to passage of the Civil Rights Act of 1964, which prohibited segregation in public accommodations, including schools, as well as discriminatory voter registration requirements.

Police

In Birmingham's early years, police officers and the chief of police were selected by alderman and the mayor, and these positions were an important source of political patronage. This system persisted even after passage of an 1892 state law that gave the county probate judge the power to appoint a police commission; the appointed commission had no actual power, and the mayor also appointed his own force, thus retaining control over city policing. The Birmingham Police Department was entirely white into the 1960s, one of many issues addressed by civil rights protesters. Even after the department integrated, this history meant that police-community relations were often strained, and the department has taken a number of measures to address this. In the mid-1990s, Birmingham founded a Citizens' Police Academy (along the lines of the model established in Devon and Cornwall, England) to familiarize private citizens with the operations of the police department and to build bridges between the police and the community. The department also has a Volunteers in Police Services program (founded in 2002), a senior citizen paid volunteer program, and offers internships to high school and college students considering a career in law enforcement.

The FBI had agents working in the Birmingham area from its earliest years: For instance, they pursued cases of peonage (coerced labor) in a sawmill

near Birmingham in 1909. The Birmingham FBI office was closed in 1925, with responsibilities shifted to the Atlanta Division, but was reopened in 1930 because of increasing casework in the Birmingham area (it remains open today). The FBI Birmingham office played a key role in the apprehension of George “Machine Gun” Kelly, protected army bases and industrial installations from sabotage during World War II, and participated in investigations into some of the key crimes (for instance, the 16th Street Baptist Church bombing) during the civil rights era.

Crime

Today, Birmingham is widely considered to have a high crime rate: CQ Press ranked it the 10th most dangerous city in America, with a crime index (based on FBI statistics from 2009) of 244.83 (0 would indicate average crime while a positive number indicates higher than average crime). Among 234 cities with a population of 100,000 to 499,000, Birmingham had the sixth highest crime rate ranking according to the CQ Press methodology. In 2009, 2,812 violent crimes were reported in Birmingham, including 65 incidents of murder or nonnegligent manslaughter, 198 incidents of forcible rape, 1,150 robberies, and 1,399 aggravated assaults. Further, 18,159 property crimes were reported in 2009, including 5,019 burglaries, 11,546 cases of larceny-theft, 1,594 cases of motor vehicle theft, and 135 cases of arson.

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See Also: African Americans; Alabama; Civil Rights Laws; King, Martin Luther, Jr.; Ku Klux Klan; Racism; Segregation Laws; Terrorism.

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Black Panthers

Also known as the Black Panther Party for Self-Defense, the Black Panther Party is an African American organization founded in 1966 by group members Bobby Seale and Huey Newton, advocating a platform of black nationalism and economic and civic empowerment within the African American community. Some of the more prominent members included civil rights activists Eldridge Cleaver, Stokely Carmichael, David Hilliard, and Fred Hampton.

Platform

On October 15, 1966, in Oakland, California, during one of the most turbulent times regarding civil rights in the United States, Huey Newton and Bobby Seale founded the Black Panther Party for Self-Defense, better known as the Black Panther Party. The Panthers quickly drew the attention of several of the most prominent African American activists of the era, who became vital members and leaders of the party: Eldridge Cleaver, Stokely Carmichael, David Hilliard, and Fred Hampton. The membership practiced a philosophy grounded in the theoretical foundations and practices of civil rights activist Malcolm X and the tenets of Maoism. The Panthers promoted a strong sense of communal self-respect, dignity, and responsibility while demanding economic and educational equality along with political and social justice from the United States government for African Americans and other oppressed communities. In fact, the Panthers developed an organizational plan of action, often referred to as the Ten-Point Program:

We want freedom. We want power to determine the destiny of our Black and oppressed communities.

We want full employment for our people.

We want an end to the robbery by the capitalists of our Black and oppressed communities.

We want decent housing, fit for the shelter of human beings.

We want decent education for our people that exposes the true nature of this decadent American society. We want education that teaches us our true history and our roles in the present-day society.

We want completely free health care for all Black and oppressed people.

We want an immediate end to police brutality and murder of Black people, other people of color, and all oppressed people inside the United States.

We want an immediate end to all wars of aggression.

We want freedom for all Black and oppressed people now held in U.S. federal, state, county, city, and military prisons and jails. We want trials by a jury of peers for all persons charged with so-called crimes under the laws of this country.

We want land, bread, housing, education, clothing, justice, peace, and people's community control of modern technology.

Protest and Outreach

The Black Panther Party envisioned itself as the vanguard movement for equality and social justice for people of color and/or the oppressed masses, holding the U.S. government responsible for their well-being. On April 25, 1967, the Panthers published the first issue of *The Black Panther*, the organization's official newsletter, and shortly afterward marched on the California State Capitol fully armed to protest the state's attempt to outlaw carrying weapons in public. Although more than 30 members were arrested by police, this event set the tone for the Black Panthers as a true resistance movement in America, creating



A participant in a June 1970 Black Panther Convention in Washington, D.C., stands on the steps of the Lincoln Memorial holding a banner promoting the "Revolutionary People's Constitutional Convention."

new chapters around the country. At its height, the Panthers had chapters all over the country, with membership of more than 10,000. In 1969, Panthers started the Free Breakfast for School Children Program, in which they set up kitchens in cities across the nation, feeding more than 10,000 children every day before they went to school.

As the Black Panther Party gained national prominence, it quickly drew the attention of various law enforcement agencies, specifically the Federal Bureau of Investigation (FBI). Huey Newton was arrested in 1967 and was charged with killing an Oakland, California, police officer. After this incident, the Black Panthers became a primary target of FBI director J. Edgar Hoover

and his counterintelligence program, commonly known as COINTELPRO. Spearheaded by the FBI, COINTELPRO was a covert and often illegal operation that ran from 1956 to 1971 and designed to infiltrate, discredit, disrupt, and neutralize various domestic social and political organizations in the United States, including those supporting the massive civil rights movement. Hoover publicly stated that the Black Panther Party was the “greatest threat to the internal security of the country.”

Schism

Internal strife within the Black Panther Party began to surface in the summer of 1969. Stokely Carmichael, the prime minister of the Black Panthers and chairman of the Student Nonviolent Coordinating Committee (SNCC), a nationally known proponent of black power, urged Panther members to completely separate themselves from white Americans and other civil rights organizations that included white members. Carmichael openly stated that white Americans cannot relate to the black experience and have a detrimental effect on black communities. Carmichael publicly declared:

Whites who come into the black community with ideas of change seem to want to absolve the power structure of its responsibility for what it is doing, and say that change can only come through black unity, which is the worst kind of paternalism ... if we are to proceed toward true liberation, we must cut ourselves off from white people ... otherwise we will find ourselves entwined in the tentacles of the white power complex that controls this country.

Several Panther leaders disagreed with Carmichael's assessment, advocating the inclusion of all people, regardless of race, as long as they supported the Black Panther ideology. However, this issue created an interminable split among members, culminating in an open gunfight between sparring factions on the campus of the University of California, Los Angeles, resulting in the death of two Panthers, and giving the impression of the Black Panthers as a radical, dangerous, and violent anti-American organization.

From 1968 to 1971, numerous Black Panther Party members were arrested and/or killed in

police-related shootings, including 17-year-old member Bobby Hutton and the party's charismatic Chicago leader, Fred Hampton. The Black Panthers were in disarray. Eldridge Cleaver fled the United States, and the remaining members were either jailed or disillusioned with the struggle, leaving the party leaderless. By the early 1980s, the Black Panther Party of Self-Defense was dissolved.

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See Also: African Americans; Attica; Autobiographies, Criminals; Chicago, Illinois; Chicago Seven/Democratic National Convention of 1968; Hoover, J. Edgar; Racism.

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Blackstone, William

William Blackstone (1723–80) was one of the most famous legal philosophers of the Western world. He was a British judge, professor, author, and politician. He is best known for his four-volume treatise *Commentaries on the Laws of England*, which is a classic work on the common law.

William Blackstone was born in London to Charles Blackstone, a silk merchant, and Mary Blackstone nee Bigg, the sister of a surgeon, five months after the death of his father. Blackstone had three brothers, one who died before reaching

adulthood; the other two attended Oxford and joined the church. Before the death of Blackstone's father, the family was considered to be prosperous, but the family's position declined after the father's death. Despite the decline in the family fortunes, Blackstone was sent to Charterhouse School, where he excelled. After the death of his mother in 1736, with the family wealth gone, Blackstone was able to obtain an appointment at the Charterhouse School as a poor scholar, which he held until 1738. At that time, Blackstone qualified for a scholarship and went to Pembroke College at Oxford University.

While at Oxford University, Blackstone studied the liberal arts but after a little more than a year, he switched to studying the civil law. In 1741, Blackstone was admitted to the Middle Temple, which permitted him to begin preparation for a career as a lawyer. While at Oxford University, Blackstone published several books on poetry and architecture, which won him some academic fame. He was subsequently elected a Fellow at All Souls College of Oxford University in 1743. In 1746, Blackstone was appointed an administrator at All Souls College. Blackstone continued his studies in law and was called to the bar in the Middle Temple in 1746.

Developing Legal Expertise

After his call to the bar, Blackstone began to divide his time between Oxford University and London so that he could practice law. The court records show that he had very few cases. However, he apparently acted as counsel for Oxford University. In 1750, Blackstone was awarded his Doctor of Civil Law from Oxford University, which allowed him to be appointed to the Convocation at Oxford University. In 1750, Blackstone's first legal publication was completed. It was titled "An Essay on Collateral Consanguinity." In 1753, Blackstone announced that he would no longer practice law but intended to lecture on the common law. The same year, Blackstone applied for a vacant professorship but was passed over for another person.

From 1753 to 1755, Blackstone gave a series of lectures on the common law, which were very well received. Blackstone was not noted as a good speaker, but the content of his lectures compensated for his lack of oratory skill. As a result of

his success, Blackstone's prominence at Oxford University grew and he was appointed to be the assessor for the Chancellor's Court. As assessor, he adjudicated minor cases involving the faculty and the students.

In 1756, Blackstone published his first legal textbook, *An Analysis of the Laws of England*. The textbook was a huge success, resulting in the publication of six editions. He continued to publish various legal treatises over the succeeding years. By 1758, Blackstone was a widely accepted expert in English law and was appointed to be the first Vinerian Professor of English Law at Oxford University. Despite his recognition as a legal scholar, Blackstone was not popular within the university, due in large part to his personality. He had made a number of enemies, and he failed to be elected to the post of vice-warden of the university.

Despite his unpopularity within the university, Blackstone had an excellent reputation outside. The Prince of Wales sponsored Blackstone, and he obtained chambers in the Inner Temple and began to practice law as a barrister. He continued to successfully publish legal treatises. In 1761, Blackstone married Sarah Clitherow. He had a number of children, some of whom died during childhood, which was not uncommon during that period. In 1761, Blackstone was appointed to Parliament. He remained a member of Parliament until 1768. In Great Britain, at that time, service in Parliament was considered helpful in obtaining an appointment as a judge.

Commentaries on the Laws of England

Over the succeeding years, Blackstone made numerous attempts to obtain an appointment as a judge, without success. In 1766, Blackstone resigned from Oxford University. In 1766, Blackstone began publishing his magnum opus: *Commentaries on the Laws of England*. The work consisted of four volumes, the final volume being published in 1770. It was a huge success and was republished five more times until his death.

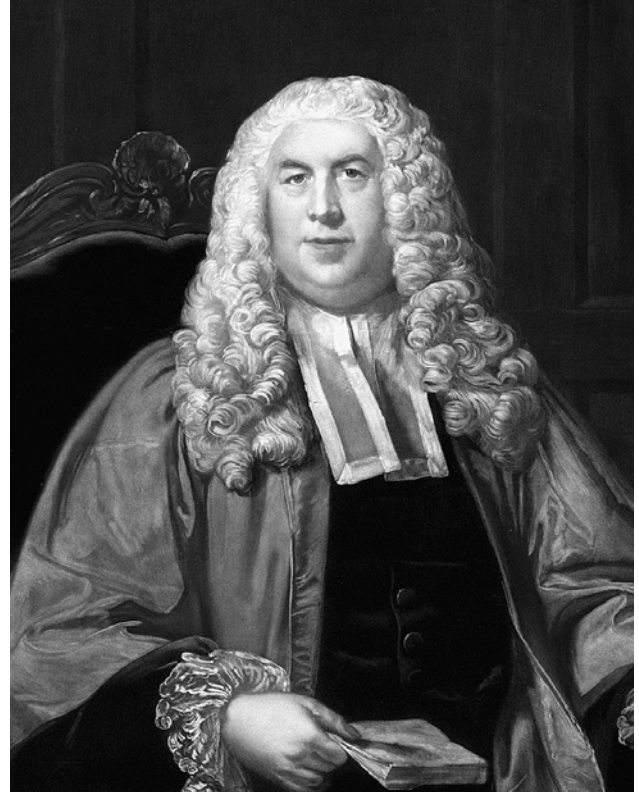
The *Commentaries* were, for the times, a vast compendium not only of the common law but of the philosophy of law. The first volume of the *Commentaries* contained a section that recognized and explained the nature of law as an expression of both natural law and the Creator. Blackstone

is perhaps best known for his recognition of the absolute natural rights of individual persons, otherwise known as civil or political liberties. The first absolute right was the right of personal security in a person's life, limbs, body, health, and reputation. It is here that the basis for modern tort law can be found. The second absolute right was the right of personal liberty, which included the right of locomotion, changing one's situation, or removing oneself to another place. The right of personal liberty could not be ever abridged without sufficient cause and due course of law. It is here that the basis for the modern concept of due process of law can be found. The third absolute right was the inherent right to property, which included the free use, enjoyment, and disposal of all of a person's acquisitions.

This right could only be regulated by the law of the land and the judgment of a person's peers, under what is now known as due process of law. Not even the government could take private property for public use. Each of these three absolute natural rights is found throughout the Declaration of Independence, the Constitution, and the Bill of Rights. Ancillary to these three absolute rights, Blackstone presented five auxiliary rights to help protect the three absolute rights. These five auxiliary rights were a legislature separate from the executive branch of government so that the making and enforcing of the laws are not vested in a single person, a limitation of the sovereign to act within the bounds of the law, the right to apply to the courts for the redress of injuries, the right to petition the sovereign or the legislature for the redress of grievances not addressed by the courts, and the right to keep and bear arms for self-defense and opposition to tyranny.

In 1770, Blackstone was appointed to the Court of the King's Bench. After a few months, Blackstone was transferred to the Court of Common Pleas, where he handled primarily civil matters. Blackstone was considered an excellent jurist and remained on the Court of Common Pleas until his death on February 14, 1780, in Wallingford. After his death, the Fellows of All Souls College arranged to have a statue erected in his honor.

Blackstone's greatest legacy is the *Commentaries on the Laws of England*. It is considered the seminal work of English common law and has been considered to be the first systematic formula-



A copy of a portrait of William Blackstone from 1755, just before the publication of his very successful first legal textbook, An Analysis of the Laws of England. By 1758, Blackstone was considered an important expert in English law.

tion of English law. Some authorities rank Blackstone with other figures of the Enlightenment, to include Montesquieu and Voltaire. There is little doubt that Blackstone was a significant legal philosopher who contributed much to the development of Western legal thought. Blackstone's influence on the founding fathers and the development of the civil and criminal law in America was significant. Until the last part of the 19th century the *Commentaries* were and remained the seminal legal reference for legal proceedings in America. Even today, the *Commentaries* continue to exert their influence on American law.

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See Also: Bill of Rights; Common Law Origins of Criminal Law; Constitution of the United States of America; Declaration of Independence.

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Blood Sports

Traditionally, the term *bloodsport*, or commonly, "blood sports," refers to sporting activities that involve humans inflicting pain on animals through their own agency or through the actions of other animals in the context of a game or agonistic contest. Such activities include cockfighting, dog fighting, bear baiting, hare or deer coursing, gander pulling, and eel pulling. Traditional activities such as fox hunting and hunting, per se, besides being complex subjects in their own right, are usually only considered blood sports by animal advocates and lobbyists.

Blood sports, though often viewed as coarse and faintly disreputable, enjoyed popularity among all classes of people worldwide until the 1600s. The Tudor monarchs, in particular, were patrons of cockpits and enjoyed bear baiting and other more outré forms of agonistic sport. Other bizarre variations included setting dogs on monkeys that were riding on ponies, and similarly baiting asses with dogs.

Rat catching, in which specially trained terriers would kill a large number of rats within an enclosure (typically a cockpit), was popular among the poor and within bachelor culture in urban areas into the late 1800s. However, beginning in the 1600s and 1700s, royalty, nobility, and the upper classes, as a whole, moved toward fox hunting and horse racing and away from the more common, rural pastimes such as cockfighting and folk activities where familiar farm animals were featured in highly ritualized spectacles. By the 1820s, animal cruelty legislation

in England criminalized most forms of agonistic sport involving animals.

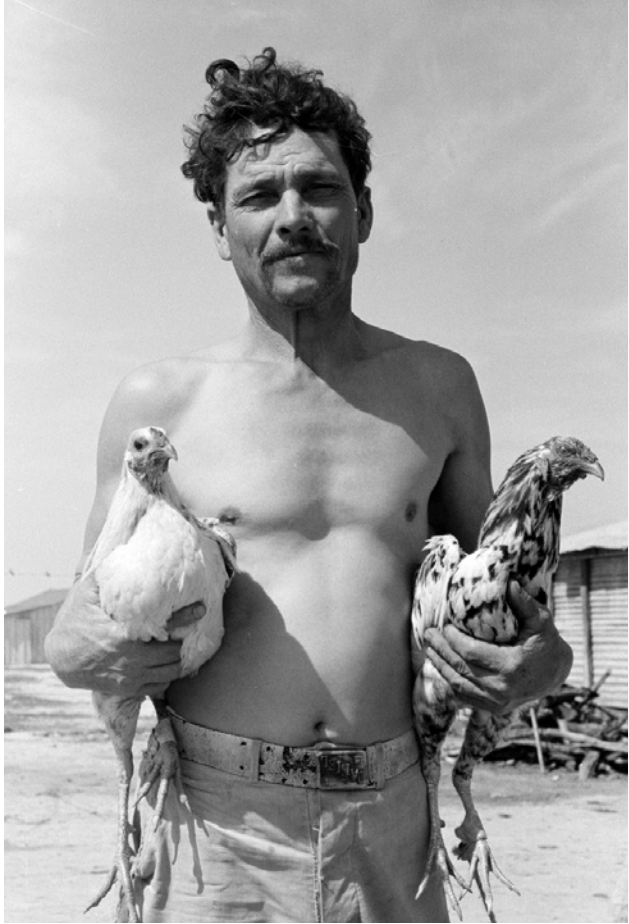
However, in premodern Europe, pitting animals against other animals of the same or different species, or sport in which humans contested to kill an animal, frequently occurred on religious feast days and had a faintly pagan veneer. That is, such pastimes were akin to animal sacrifice in many respects and at one time had enjoyed a religious or teleological significance. Although poorly understood today, it seems that the subject animal symbolized certain values or embodied qualities held in high esteem by rural folk. Its sacrifice afforded the participants and observers some linkage to ultimate causes and nature itself. The fact that agonistic sports events involving animals frequently occurred on religious feast days certainly suggests that many of these events were survivals from the pagan past.

Gander pulling, in which the greased neck of a live goose that was suspended upside down from a gallows-like structure was grasped at by riders moving at a high speed, fell from favor in the Low Countries and New Netherlands in the 1700s. It was also popular in frontier days in the United States. Eel pulling, an aquatic sport in which boatloads of intoxicated Amsterdammers jostled for a chance at tugging a greased or soaped eel that was suspended on a rope over a canal, was a Dutch variation on this theme.

Police officers attempting to stop an illegal eel tug in 1886 set off a riot that lasted days and caused more than 20 deaths. The Eel Uprising pointed to the fact that these activities were highly significant to the common people. Acadian people in southern Louisiana continue to enjoy a Mardi Gras (Shrove Tuesday) ritual of having often intoxicated, masked, mounted men collect live chickens from farmers to put in a collective stew or gumbo. The connection with old European days of pagan religious celebration where drunken, riotous sacrifice precedes ceremonial gluttony, followed by ritual abnegation, is scarcely coincidental or accidental and reflects ancient practices and belief systems.

Reduction Efforts

It is precisely this potentially uncontrolled riotousness that early reformers wanted to channel and limit when laws were passed banning blood



A Mexican American man holding two fighting cocks in Crystal City, Texas, in 1939. Cockfighting is now illegal in the United States but is still practiced in rural areas of the south and southwest by both Anglo and Hispanic Americans.

sports. Many laws that emerged in the 17th and 18th centuries were specifically sabbatarian and intended to halt any sort of amusement that might detract from an austere observance of the day of Christian worship. Feast day intoxication and drunkenness were anathema to Puritan Protestants in England and the Americas, and it was said in jest that they banned such sports not for the sake of the animal but to prevent humans from enjoying the sport. In their defense, they did, in fact, provide other protections for domesticated animals in a more general sense. Contemporary animal protectionism is supposedly based on more humane and ethical motivations, rather than proceeding from a fanatical adherence to theological observance, but issues of culturally-

based abuse are emergent and manifest. That is, urban elites impose their mores and the pastimes of rural folk with an adherence to the program of “progress” used as a rationale. The suffering of animals used for food or for the sports of the rich, for example, horse racing, is almost never discussed by anti-blood sport activists.

Most blood sports are extinct in the United States. Survivors include dog fighting, brought into relief by the Michael Vick case, and cockfighting. Both are now illegal throughout the United States but enjoy large underground followings. Cockfighting, in particular, has a large rural audience of both Hispanic and Anglo Americans. Until recently, the activity was legal or minimally proscribed in Louisiana, Oklahoma, and Arizona, but well-funded efforts by lobbyists have succeeded in criminalizing the activity. Federal prosecutions of those who engage in interstate transport of fighting cocks or paraphernalia have increased, and stiff sentences have added a larger element of risk to the activity. Certainly, some participants and potential spectators have been deterred.

The distinction between the sport of pitting brute animals against each other for the amusement of humans and the spectacle of humans fighting for the enjoyment of other humans may seem obvious to some but nevertheless can be seen as artificial or at least highly paradoxical.

Although dog fighting has undergone a renaissance in recent years, it is still held in disrepute by society at large and fetches harsh penalties for those convicted of involvement. Cockfighting, more or less ignored by prosecutors, is now being vigorously prosecuted both at the federal and the state levels. Sentences of one year in federal prisons have been imposed.

That notwithstanding, cockfighting has been an occult pastime for the past 50 years and will continue in that vein. It will probably grow as a diversion because of the recent infusion of Hispanic participants.

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See Also: Cruelty to Animals; Fish and Game Laws; Gambling; Livestock and Cattle Crimes; Puritans.

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Blue Laws

See State Blue Laws.

Bodie of Liberties

One of the first legal codes established in British America, the Massachusetts Bodie of Liberties was composed by the Puritan minister Nathaniel Ward and adopted by the General Court in December 1641. It reflected the Puritans' vision of their mission to create a theocracy in the New World while at the same time pioneering some politically progressive ideas. Combining elements of the English common law and Mosaic principles, the code dealt with civil and ecclesiastical matters. The Bodie of Liberties was adopted during a trying period of New England history.

In the very first decade after the Puritans started to arrive in New England, the king nearly revoked the charter of their colony twice. In the late 1630s, the region was ravaged by the Pequot War. Furthermore, the settlers were torn in disagreements on a wide range of issues from religion to governance. Many Puritans envisioned their colony as a theocracy; they opposed any initiative to formalize laws because it could undermine the power of magistrates. Others insisted that laws should be codified to prevent arbitrariness in legal matters and hoped for a more representative government with well-defined functions.

Ward's legal code took into account the colony's precarious situation. Its provisions were called "liberties" rather than "laws," even though everyone was expected to "consider them as laws" (Sec. 96). It clarified punishments for various crimes, thus offering some protection against arbitrary judgment of magistrates. Furthermore, Ward's code appealed to different factions in the colony; it reflected Puritans' religious fundamentalism, while embracing some politically progressive ideas.

The progressive streak in the Bodie of Liberties is apparent in several areas. Everyone was declared equal in the face of law and had access to courts. Regardless of "whether Inhabitant or foreigner, free or not free," one had "liberty to come to any public Court, Counsel, or Town meeting, and ... to move any lawful, seasonable, and material question, or to present any necessary motion, complaint, petition, Bill or information" (Secs. 2 and 12). Furthermore, the code guaranteed trials "without partiality or delay" (Sec. 2), outlawed "imhumane Barborous or cruel" punishments (Sec. 46), and limited the use of torture to exceptional cases (Sec. 45). For the sake of economic fairness, the Bodie of Liberties prohibited monopolies, making exceptions only for "new Inventions that are profitable to the Country, and [only] for a short time" (Sec. 9). The code protected the rights of women, children, foreigners, and even farm animals. It specifically condemned domestic violence, allowing women to bring complaints against abusive husbands. It also protected indentured servants from mistreatment.

Although the majority of the Puritans nominally believed in the separation of church and state, the code dealt not only with civil but also with religious matters. It defined the functions of churches and created venues to resolve religious tensions. Most importantly, the code affirmed congregational principles—the notion that people can form congregations without much interference from the central government. This innovation reflected the Puritans' antipathy toward overly centralized religions such as Catholicism and Anglicanism. The Bodie of Liberties gave "all the people of god" the freedom to "gather themselves into a Church Estate" (Sec. 95.1). Furthermore, every congregation was guaranteed "free libertie of Election and ordination of all their officers" (Sec. 95.3). To underscore the importance of religion in legal

matters, all capital laws in the Bodie of Liberties were adopted directly from the Bible. Capital punishment was reserved for such crimes as idolatry, blasphemy, perjury, adultery, murder, bestiality, homosexuality, and witchcraft (Sec. 94).

The code was meant to promote religious orthodoxy in Massachusetts by imposing several restrictions on religious freedom. The right to form congregations was given only to people “Orthodox in Judgment” (Sec. 91.1). Officers of any church were expected to be “pious and orthodox” (Sec. 91.3). Puritan appreciation of religious homogeneity was also apparent in the clause on immigration; the colony was open to refugees from “the Tyranny or oppression of their persecutors, or from famine, wares, or the like,” as long as they professed “the true Christian religion” (Sec. 89). This clause was probably intentionally vague. In the decades that followed, the authorities in New England not only barred but also persecuted such religious minorities as Anabaptists and Quakers. The Bodie of Liberties served as a basis for the more extensive Laws and Liberties of Massachusetts, which was adopted in 1647. The new legal code echoed the principles established in the Bodie of Liberties, but was far better defined as a set of laws.

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See Also: Colonial Courts; History of Crime and Punishment in America: Colonial; Mayflower Compact; Puritans.

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after she was accused of murdering her sister-in-law and infant niece at their Staten Island home in 1843. The Housman home was ablaze that Christmas night, and after the fire had been extinguished, investigators discovered Emeline Van Pelt Housman and her daughter, Ann Eliza, under a mattress that had been set up in the kitchen to keep them close to the wood-burning stove during the cold winter months. Murder was suspected when investigators found that Emeline had been bound and that her limbs had been broken. Furthermore, both Emeline and the baby had suffered crushing blows to their skulls.

It was determined that Emeline and Ann had died on Christmas Eve, the night before the blaze, during a time that Polly Bodine had been at the house. Bodine, who was in her 30s and widowed at the time, lived with her teenage children, William Albert and Eliza Ann, in her father's home very near to the Housman home. Bodine admitted that she had spent Christmas Eve with her sister-in-law, who was often afraid to be left alone when her husband traveled. Emeline's husband and Bodine's brother, Captain George W. Housman, was away from home on a trip to Virginia at the time of the murders. He returned three days later to find his home burned, his wife and daughter dead, and his sister accused of the heinous crime.

Police, who first surmised that the murders might have followed a robbery committed by a band of thieves, quickly changed course and concluded that Bodine and her alleged lover, George Waite, had committed the crimes in order to take and sell the Housmans' belongings, and the pair was arrested within days on the circumstantial evidence that investigators had gathered in the intervening period.

Trials

Bodine's first trial began in Richmondtown in the summer of 1844. The prosecution provided accounts of Emeline's and Bodine's movements on Christmas Eve and Christmas Day, providing a timeline that established not only that Bodine had the opportunity, but that she might also have been responsible for selling some items that were taken from the Housman home before the fire. Against the mounting circumstantial evidence, defense attorneys presented witnesses who testified that Housman was alive on Christmas Day and

Bodine, Polly

Born Mary Polly Housman (ca. 1808–92), Polly Bodine was dubbed the “Witch of Staten Island”

therefore could not have been murdered by Bodine the previous evening. That didn't satisfy prosecutors, who could not establish Bodine's whereabouts on the following evening either—she had not stayed with a friend, as she had told her son. Defense attorneys later contended that it had been an innocent lie; Bodine had not wanted to tell her son that she was staying with Waite. When the first trial ended, jurors took two days before declaring that they could not reach a verdict in the case. It was later reported that 11 of the jurors had been convinced of Bodine's guilt and were prepared to deliver a verdict of guilty against her. The holdout juror declared that he could not deliver a verdict, either an acquittal or a judgment of guilt, based on the circumstantial evidence provided.

A second trial for Bodine in Richmond County was aborted when attempts to convene a jury failed. The trial was moved to New York City in 1845. During the three-week proceedings, some of the witnesses who initially claimed to have seen Bodine at the pawn shop could no longer identify her as the woman who sold the items belonging to the Housmans. Despite the changed testimony and timeline, the jury quickly delivered a guilty verdict.

However, Bodine's defense attorneys submitted a petition to set aside the verdict, noting 29 exceptions, and the New York Supreme Court, in agreeing to 27 of those submitted, set aside the verdict before the end of 1845 and ordered a retrial. Bodine's trial had attracted so much public attention that attempts to find an impartial jury from among the thousands of possible jurors interviewed in Manhattan failed to seat the necessary 12-member panel. The third trial was moved to Orange County, New York. The jurors in the April 1846 trial found Bodine not guilty.

After two years in jail and three highly publicized trials, the charges against Bodine were dropped and she was freed. She returned to her family on Staten Island, moving with her children to a home in Port Richmond. She died on July 27, 1892. The Housman murders were never solved, and no one else stood trial for the crimes.

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See Also: New York; Women Criminals, History of; Women Criminals, Sociology of.

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Boles, Charles

Charles E. Boles used several aliases, including Charles E. Bolton and T. Z. Spaulding, but he is best known as the infamous stagecoach robber Black Bart. He was born Charles E. Bowles in 1829 in Norfolk County, England. In 1831, when he was 2 years old, his family migrated to Alexandria, New York. At some point, he changed his name to Charles E. Boles. He made a couple of trips to California to try his luck at gold mining. In 1854, he married Mary Elizabeth Johnson in Plessis, New York. They had four children. He and his family moved to Decatur, Illinois, just prior to the outbreak of the Civil War. Charles E. Boles enlisted in the Union Army on August 13, 1862, at Decatur. During the war, he served as a sergeant with Company B, 116th Illinois Volunteer Infantry. After the war, Charles Boles returned to the west. He tried his hand at several odd jobs, including gold mining, but then he turned to robbing stagecoaches, particularly those affiliated with Wells, Fargo & Company. There is a story that he was forced to abandon a gold mine he was working in Montana by Wells Fargo men.

Charles Boles established a consistent modus operandi: he operated as a lone bandit, usually on foot. He typically selected a spot on a curve along a winding mountain road where, out of necessity, the stagecoach had to slow down. Boles generally wore a long duster coat over his clothing and covered his head; he carried a 12-gauge, double-barrel shotgun and often an ax to smash open the strongbox. His first stagecoach robbery was on July 26, 1875, in Calaveras County, California, about four miles outside Copperopolis, California. He usually got away with the Wells Fargo strongbox and mail sacks. For instance, Wells Fargo reported that the

strongbox that Charles Boles got away with from his first heist contained \$160. On his fourth and fifth stagecoach robberies, he gave each respective stagecoach driver a scrawled poem, both of which were signed “Black Bart, the P o 8.” Black Bart, it turned out, was the name of a dime novel character from a story Charles Boles had read. He appropriated the name but created his own legendary exploits. He often waited several months between heists. He was always a gentlemanly bandit, particularly courteous to female stagecoach passengers. Boles is believed to have struck 28 times and to have garnered a total of about \$18,000 from Wells Fargo & Co. strongboxes.

At the site of his last stagecoach robbery, on November 3, 1883, at Funk Hill in Calaveras County, Charles Boles left behind a handkerchief. Sheriff Tom Cunningham of San Joaquin County noticed a laundry mark on that critical piece of evidence. Eventually, Harry Morse, who ran the Morse Patrol and Detective Agency of San Francisco, found other laundry with the same markings, which led him to the subsequent apprehension of Charles Boles with the assistance of Detective James Hume of the Pinkerton Detective Agency. After he was caught, Charles E. Boles admitted to committing some of the stagecoach robberies attributed to him. He was convicted and sent to serve six years in San Quentin Prison, which he began doing on November 21, 1883. He was released on January 21, 1888, after serving about four years. He had not aged well during this incarceration, and although there continued to be unsubstantiated reports for some time that he had returned to robbing stagecoaches, he is believed to have died around 1917.

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See Also: California; Frontier Crime; Robbery, History of; San Quentin State Prison; Sheriffs.

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Bonnie and Clyde

During the Great Depression, in the beleaguered state of Texas, an outlaw couple made a name for themselves through robbery, kidnapping, and murder. Clyde Chestnut Barrow was born in Teleco, Texas, on March 24, 1909, to Henry and Cumie Barrow. Clyde's girlfriend, Bonnie Parker, was born in Rowena, Texas, on October 1, 1910, to J. T. and Emma Parker. Originally married to Roy Thornton, Bonnie became Clyde's girlfriend when Roy was imprisoned. Together, Bonnie and



Bonnie Parker and Clyde Barrow just before they died in May 1934. That month, Clyde Barrow had been indicted for theft of U.S. government property for stealing his weapons from National Guard armories.

Clyde ran the Barrow gang, also known as the Bloody Barrows, which was an assortment of small-time thieves who robbed small banks, grocery stores, and gas stations across the American midwest and southwest. Although responsible for murdering at least a dozen men between 1932 and 1934, Bonnie and Clyde's criminal exploits rarely caught the attention of northern journalists. Even other legendary gangsters of the era gave no respect to Bonnie and Clyde, who were seen as small-time bandits clashing with sheriffs in the backwoods of America.

While they were often romantically glamorized as a man-and-woman bandit team living for the moment in a chaotic world, Bonnie and Clyde were actually not imposing in stature and were considered to have childlike appearances. In fact, Bonnie weighed less than 100 pounds. Regardless of their looks, the heavy Browning automatic rifles used in the commission of their crimes gave them the edge they needed. These powerful firearms were stolen by the Barrow gang from National Guard armories around Texas and Oklahoma. Later, in May 1934, a federal grand jury indicted Clyde Barrow for the theft of U.S. government property in response to these weapon seizures.

Bonnie and Clyde would often kidnap a hostage to quicken their escape from whatever bank branch or grocery store they decided to rob. These hostages were often later released unharmed; however, in June 1933, the Barrow gang wrecked their car and, because of severe burns that Bonnie sustained, they were forced to take a farm family hostage, which resulted in an innocent woman having her hand shot. The debacle ended when the kidnapping of two law officers enabled the Barrow gang to escape to Erick, Oklahoma, where the officers were subsequently released. Other encounters with the authorities resulted in murder. For instance, in January 1934, Bonnie, Clyde, and James Mullen raided the Eastham Prison Farm in Texas to free Raymond Hamilton and four others, but they killed one guard and wounded another during the escape. In April 1934, the Barrow gang killed two highway patrolmen around Grapevine, Texas, and later killed Constable Cal Campbell near Commerce, Oklahoma.

After these three murders, Bonnie, Clyde, and Henry Methvin fled into Kansas. Soon, Bonnie and Clyde returned to Texas to visit their families.

Despite the pleas from their family members, Bonnie and Clyde refused to go to Mexico to evade capture. Instead, Bonnie, Clyde, and Henry found refuge in the abandoned John Cole house near Gibsland and Sailes, Louisiana, which was close to where Henry's parents lived.

Concerned for his son's life, Ivy Methvin sent his neighbor, John Joyner, to negotiate a deal with Sheriff Henderson Jordan that would guarantee Henry Methvin's pardon in exchange for the lives of Bonnie and Clyde. Fearful of reprisals from Bonnie and Clyde, Ivy Methvin ardently argued for the death of the two bandits instead of their lawful capture. Frank Hamer, the legendary former Texas Ranger, agreed to Methvin's deal and planned the perfect ambush while using a posse of only three Texans along with Ivy Methvin, Sheriff Jordan, and his deputy. The seven men hid on a brush-covered embankment on the road that led to the Cole house. Methvin was instructed to stand by his car, which had the left tire off and was up on a jack. On May 23, 1934, when Clyde and Bonnie returned, they stopped to offer Methvin help, but they were shot 167 times by high-powered rifles from the men hiding on the other side of the road. Their bullet-riddled bodies were left inside Clyde's V-8 Ford as it was towed to Arcadia, where roughly 16,000 onlookers came to see their corpses. Their bodies were returned to Texas for burial.

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See Also: 1921 to 1940 Primary Documents; Great Depression; Guns and Violent Crime; Murder, History of; Robbery, History of; Texas.

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Book of the General Lawes and Libertyes

The first law code printed in colonial America, the *Book of the General Lawes and Libertyes of the Massachusetts Bay Colony* was a codification of rights, duties, and criminal penalties. The General Lawes were a revision of the 1641 Bodie of Liberties, a compilation of rights assembled by the Massachusetts General Court. The General Lawes reflected a strong reliance on Puritanical morality and individual liberty, expressing fundamental principles that served as the basis for later legal codes and constitutions.

As early as 1635, Massachusetts' legislature, the General Court, had sought a review of existing laws in order to establish a revised and unified legal code. Towns were requested to compile their fundamental laws so the court might draft a compendious abridgement. The effort languished until the utility of a uniform jurisprudence became apparent and the distraction of domestic and foreign hostilities subsided. Nathaniel Ward and John Cotton, Puritan ministers who emigrated from England to escape religious persecution, drafted the requested compilations in 1641. These drafts were sent to towns for further consideration and then revised and amended by the General Court before being presented as the Bodie of Liberties.

This precursor to General Lawes consisted of 100 provisions respecting rights and privileges, crimes and punishments, and the propriety of civil and ecclesial governance. The principal contributors were English-educated barristers and ministers, and the Bodie of Liberties clearly incorporated secular and religious as well as foreign and regional traditions. The influence of the Magna Carta, Bill of Rights, and English common law were evident in the code's persistent invocation of individual liberties and procedural due process. The democratic sentiment of the American colonists was reflected in the exclusive authorities granted to the General Court. As Massachusetts' economy thrived upon commercial ventures, as opposed to the agricultural system of the south, the code focused upon laws affecting trade and commerce. The entire code was grounded in a biblical foundation of morality and religion.

Yet the Bodie of Liberties was a general statement of rights intended to guide the legislature. An effort to refine this declaration into a formal code of statutes culminated in the *Book of the General Lawes and Libertyes* in 1648. The General Lawes remained faithful to the nature and objectives of the earlier code while expanding and clarifying its content. Massachusetts thereby established an unprecedented system of government—founded upon democracy, committed unto religion, and devoted to individual liberty.

Attesting that the protection of liberty is essential to the safeguarding of civil and religious order, the General Lawes introduced a variety of fundamental rights into the colonial legal system. In order to establish a just and equitable rule of law, the General Lawes incorporated rights to counsel, trials by jury, notices and hearings prior to trial, and appeals. Double jeopardy and cruel punishment were prohibited. Personal property was secured and fair compensation was mandated in cases of eminent domain. Slavery was banned and protections were extended to women, children, servants, and even animals. Public records were open to inspection. Authority over laws of a criminal nature was withheld from local jurisdictions.

While criminal offenses were broad and punishments severe, care was taken to ensure fairness and justice. Burglary incurred branding, whipping, and death, whereas theft earned fines, whipping, and stocks. Fornication unconsummated by marriage resulted in fines or corporal punishment. Gamblers were subject to fines, as were bartenders and customers in the event of drunkenness. Fraudsters faced fines and lashings. Anabaptists and Catholics faced banishment or death. Witchcraft, blasphemy, murder, sodomy, adultery, kidnapping, perjury, treason, rebellion, and rape brought about death. Servants, laborers, strangers, and the poor were all subject to criminal regulations. These measures were considered by contemporaries as practical legislation in keeping with traditions of liberty.

The General Lawes were revoked, along with colonial charters, by Charles II in 1684 and only temporarily restored upon the deposition of James II before being abrogated by William and Mary's 1691 provincial charter creating the Province of Massachusetts Bay. Nevertheless, the General Lawes' principles of individual liberty

and procedural due process founded upon the authority of divine revelation provided the foundation of civil and criminal colonial law until the American Revolution. Thereafter, the fundamental ideas of the General Lawes would be incorporated into state constitutions and the Constitution of the United States of America.

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See Also: 1600 to 1776 Primary Documents; Bodie of Liberties; Colonial Charters and Grants; History of Crime and Punishment in America: Colonial; Magna Carta; Massachusetts.

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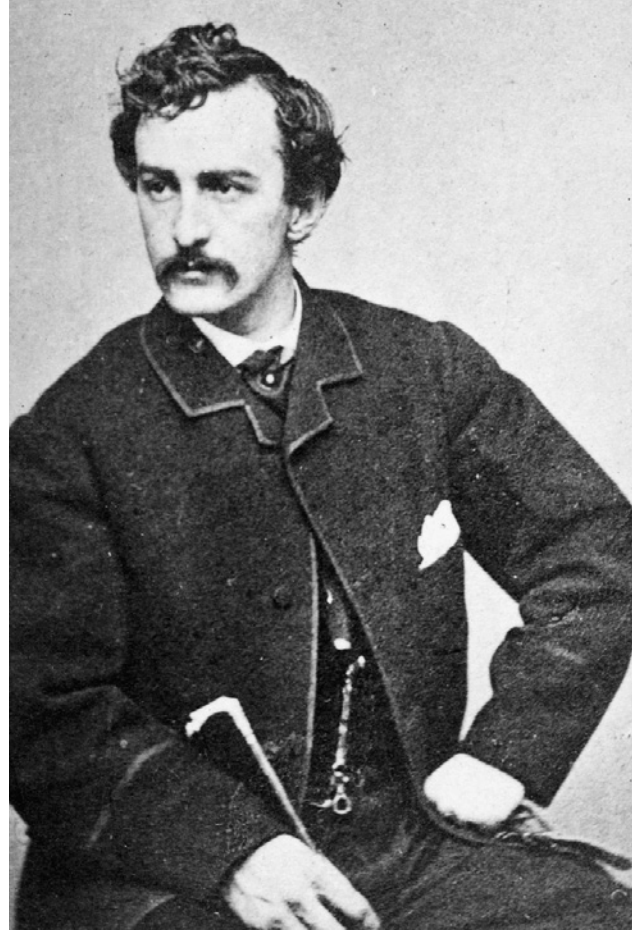
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Booth, John Wilkes

American stage actor and Civil War southern sympathizer, John Wilkes Booth was born in Bel Air, Maryland. On April 14, 1865, he shot President Abraham Lincoln at Ford's Theater in Washington, D.C. Lincoln died the next morning. Booth was killed 12 days later, on April 26, when he and fellow conspirators were surrounded by pursuers while hiding in a barn. Booth was the ninth of 10 children of Junius Brutus Booth and Mary Ann Holmes. Booth's father was a renowned Shakespearean actor and his older brothers, Edwin and Junius Brutus Jr., followed in their father's footsteps. Booth also had theatrical ambitions. In 1855, at the age of 17, he made his stage debut. Because his early performances revealed his inexperience and he did not want to be compared to his father and brothers, Booth used a pseudonym, "J. B. Wilkes."

In 1858 Booth performed in *Hamlet* with his brother, Edwin, playing Horatio to Edwin's



A photograph of John Wilkes Booth taken in Washington, D.C., in 1865. The scheme to assassinate Abraham Lincoln was originally part of a larger plan to destabilize the government by also killing the vice president and the secretary of state.

Hamlet. By 1860 Booth had progressed from novice actor to leading man. He performed both in the south and north of the Mason-Dixie Line. In January 1861, Booth was performing in Albany, New York, on the same night that Abraham Lincoln stopped there en route to his inauguration as president of the United States. Having injured himself during an earlier performance, Booth was returning to the stage that night and did his performance with his injured arm strapped to his body. There is no record that Booth and Lincoln encountered each other that evening in Albany. As the war continued, Booth was estranged from his brother, Edwin, who supported the Union. Booth was arrested in St. Louis in 1863 when he made treasonous

remarks about Lincoln and his administration, but released when he took an oath of allegiance to the Union. With a small group of conspirators, Booth began plotting to kidnap President Lincoln and turn him over to the Confederate administration in Richmond, Virginia. Booth thought that Lincoln could be exchanged for Southern prisoners of war held by the Yankees.

When the kidnapping scheme planned for March 1865 failed because Lincoln did not appear at the expected place, Booth began to think of assassinating Lincoln. According to the plan, Booth was to assassinate Lincoln. At the same time, the vice president, Andrew Johnson, and the secretary of state, William Seward, were to be killed. This would leave the federal government in disarray. However, Booth's conspirators, George Atzerodt and Lewis Powell, failed to successfully carry out their assignments. Powell seriously wounded but did not kill Seward. Atzerodt lost his nerve and did not try to kill Johnson.

On April 14, only Booth accomplished his part of the plan. He shot Lincoln as his wife, Mary Todd Lincoln, and Major Henry Rathbone and his fiancée, Clara Harris, sat in their box watching the performance of the play *Our American Cousin*. Rathbone was stabbed and seriously injured when he struggled with Booth. Then jumping to the stage below, Booth shouted out the motto of the state of Virginia, *Sic semper tyrannis* ("Thus always to tyrants") and then, "The South shall be free" (witnesses disagree about the wording of his second declaration).

Booth managed to escape, but had fractured a bone in his leg either when he jumped to the stage or later. He sought medical attention from Dr. Samuel Mudd (who would be arrested as one of the conspirators). After several days, Booth and the man accompanying him were able to cross the Potomac into Virginia. But they were tracked to the farm of Richard Garrett by a detachment of Union soldiers. When the barn was set on fire, Booth appeared and was shot.

According to the report of Lieutenant Colonel Everton Conger, the commander of the detachment, Booth was killed by Sergeant Boston Corbett, a hat maker from Troy, New York. Corbett had disobeyed the order that Booth be taken alive. Corbett claimed that he had fired because Booth raised his pistol to shoot. Booth's body was

taken back to Washington for identification. The body was buried at the Washington Arsenal on October 1, 1867. In 1869, Booth's remains were turned over to his family for burial in the family plot in Baltimore. Eight people accused of conspiring with Booth were tried before a military tribunal. One of the accused conspirators was a woman, Mary Surratt. She and three men, including Powell and Atzerodt, were hanged on July 7, 1865. The other accused men, including Dr. Mudd, were sentenced to prison, but three (one died of yellow fever) were eventually pardoned.

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See Also: 1851 to 1900 Primary Documents; 1961 to 1980 Primary Documents; Czolgosz, Leon; Guiteau, Charles; Lincoln, Abraham (Administration of); Political Dissidents.

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Bootlegging

While the term *bootlegging* likely entered the lexicon of American slang many decades earlier, it is chiefly associated with the illegal production, distribution, and sale of alcohol during Prohibition (1920–33). The precise origins of the term are somewhat vague. Many sources suggest the term dates to the 19th-century American west. Others extend the provenance of the term as far back as the 17th century. Most concur that the term derives from the practice of secreting contraband (or other items) in the top of a tall boot leg. While predominantly a reference to illegal

alcohol trafficking, it now enjoys popularity as a way to describe many forms of illegal trading in copyrighted, trademarked, or otherwise protected forms of merchandise.

Prohibition began with passage of the Eighteenth Amendment to the U.S. Constitution. Section 1 of the amendment states, “After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.” With this one sentence, the impetus was given to establish a vast underground network of alcohol sales and distribution. Far from quelling the American appetite for intoxicants, Prohibition merely drove underground and arguably solidified alcohol consumption as a part of national culture.

In its original sense, the enterprise of bootlegging alcohol in America extends back to the beginnings of the nation itself. The right of rural settlers to manufacture alcohol and the power of the government to collect taxes on production fueled violent clashes throughout the hills and backwoods of early America. The inevitable conflict between individual enterprise and governmental “intrusion” via taxation was something the Scotch and British immigrants to America knew all too well. Whiskey had been taxed by European governments as far back as the mid-1600s. By 1700, the British had coined the term *moonlighters* for the brandy smugglers on the coast of England. In the American colonies, the illegal distiller came to be called a “moonshiner” or “bootlegger.” The United States collected an excise tax on alcohol from 1791 to 1802 and then again from 1813 to 1817. Alcohol production was untaxed for the next 45 years, but in the midst of the Civil War, Congress again passed a whiskey tax. By 1865, the tax on whiskey was \$2 per gallon. This rate of taxation amounted to as much as 12 times the actual cost of making a gallon of liquor.

Illegal production and distribution of alcohol was not a strictly rural phenomenon. Individuals in urban centers likewise developed their own culture of organized crime and violence revolving around the illegal importation and sale of untaxed or prohibited alcohol. In the cities and along the national borders (including coastlines), illegal

alcohol trade centered on methods of undetected importation and promulgation of venues for sales (i.e., underground clubs or “speakeasies”). Competition between rival factions seeking to dominate or monopolize particular territorial interests eventually fomented the formation of what would become long-enduring organized crime syndicates. In contrast, rural areas tended to support a yeoman culture of covert production (i.e., “moonshiners”) and overland distribution (i.e., “running”) to cities and other distribution points.

The height of bootlegging activity in America came at the confluence of several important national trends. On the one hand, the enactment of Prohibition made scarce a once-plentiful resource. This drove up both price and demand. On the other hand, Prohibition became law less than a



Posing with a seized whiskey still during Prohibition. Trafficking in the illegal alcohol production of moonshiners became a widespread and lucrative activity during Prohibition and was often eased by the complicity of law enforcement.

decade before the onset of the Great Depression. During the economic cataclysm of the Depression, many suffering people turned to acts heretofore unthinkable as otherwise legitimate employment opportunities grew increasingly rare. Concomitantly, people in rural America, for whom the Depression was just another bump in the larger travail of subsistence living, saw the newfound demand for illegal alcohol as a uniquely fitted economic opportunity. Given that this era was a little more than a generation removed from the pioneer mythos and manifest destiny that opened the western frontier, the appeal of bootlegging as a means to exist (or perhaps become wealthy) is understandable. Trafficking in illegal alcohol became a widespread and lucrative empire, often with the complicity of law enforcement. Many sources recount systematic payoffs, bribery, and extortion involving those tasked with bringing bootleggers to justice. In particular, corruption among federal agents was so rampant, President Warren Harding remarked on it in his 1922 State of the Union address.

Many lasting and important cultural themes emerged out of Prohibition. The crime associated with bootlegging thrust underworld figures such as Al Capone and “Lucky” Luciano into peculiar antihero celebrity. The era also cemented the American fascination with crime dramas such as *The Untouchables*. In bootlegging, one sees the lasting imprint of dynamic individualism juxtaposed against the perception of draconian government. Both the urban gangster and the hillbilly moonshiner are celebrated, not for what they do, but for what they oppose.

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See Also: Capone, Al; Drinking and Crime; Great Depression; Luciano, “Lucky”; Moonshine; Organized Crime, History of; Prohibition; Smuggling; Volstead Act; Wickersham Commission.

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Borden, Lizzie

Lizzie Andrew Borden (1860–1927) was the daughter of Andrew Jackson Borden and Sarah Anthony Morse. The Borden family had three daughters: Emma Lenora, Alice Esther, and Lizzie, the youngest. The Borden family were wealthy members of aristocratic society living in a quiet neighborhood located near the business district of Fall River. The mystery surrounding Lizzie Borden began on August 4, 1892, at the Borden family home on 92 Second Street, Fall River, Massachusetts. Upon entering the parlor of her home, 32-year-old Lizzie Borden discovered the body of her 70-year-old father.

Abby Borden, the stepmother of Lizzie Borden, was discovered by Adelaide Churchill, a neighbor, in an upstairs guest bedroom in the Borden home, face down in a pool of congealed blood. An autopsy report revealed that she had been struck 19 times with a sharp object presumed to have been an axe. Her husband, Andrew, had been struck 11 times with a heavy sharp object, presumably the same weapon.

The Mystery Begins

The list of suspects was short. Those who had immediate access to the Borden family included Emma Borden; live-in maid Bridget “Maggie” Sullivan; and a visitor named John Vinnicum Morse, who was Lizzie’s maternal uncle. However, police focused their investigation on Lizzie Andrew Borden.

As the murder investigation got under way, it became very clear that the local police department was not trained or prepared to handle a double murder of this magnitude. Police investigators

determined that there were four significant events that took place on August 3, the day before the murders occurred. First, Abby Borden went to visit Dr. Bowen, claiming that she and Andrew Borden were being poisoned because they had become very ill during the night; the autopsy, however, showed no evidence of poison in either of the bodies. Second, Lizzie Borden went to a local drugstore and asked for the poison prussic acid, which she said she was going to use to rid her sealskin cape of bugs; however, she left without purchasing the drug because she did not have a prescription for it. Third, John Morse visited the Borden home unannounced, without luggage, and spent the night. It was reported that Lizzie Borden heard her parents and Morse arguing about money. Finally, Lizzie Borden visited her friend Alice Russell, who told police that Borden had seemed out of sorts and confided her worry that something bad would happen to her father.

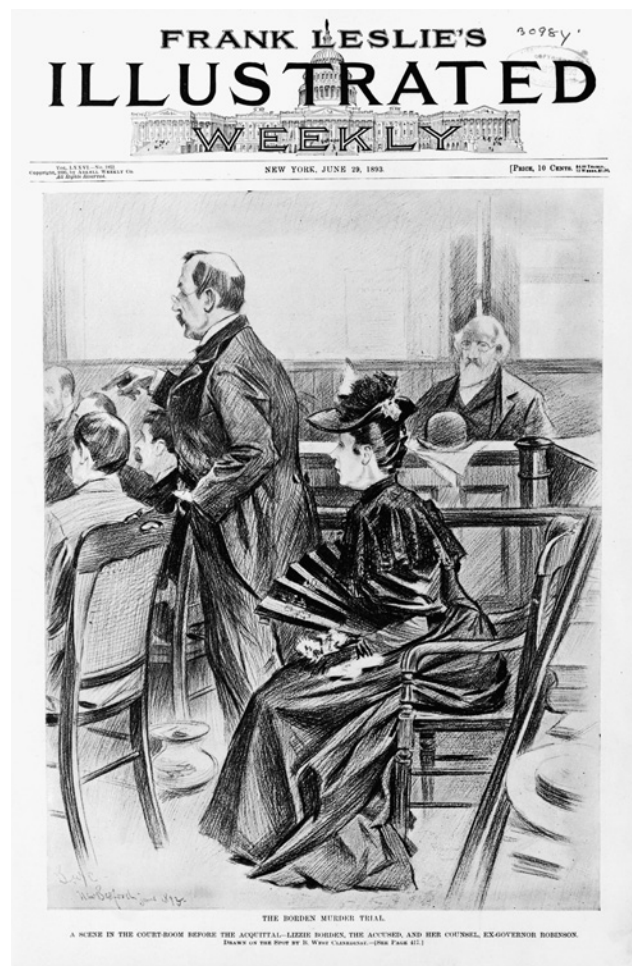
As the police investigation continued, a timeline of events began to emerge. On the day of the murders, August 4, 1892, according to Churchill, Andrew Borden left his house around 9 A.M. to visit some of his business ventures. Workmen at one location stated that at approximately 9:40 A.M., Borden said he was returning home. Meanwhile, back at the Borden home, the maid, Bridget "Maggie" Sullivan, stated that between 9 and 10 A.M., Abby Borden said she was going to go upstairs to straighten up the guest room that Morse had occupied. Sullivan also stated that Andrew Borden returned home sometime after 10:40 A.M. At approximately 10:55 A.M., Sullivan went to her room to take a nap, and Andrew Borden went to lie down on the sofa in the parlor. During this time, Lizzie Borden testified that she had gone out to the barn loft to find some fishing sinkers to use during a planned fishing expedition with her sister Emma. At approximately 11 A.M., Lizzie Borden discovered her father's body, and shortly thereafter, Churchill discovered Abby Borden's body.

Given the nature of the wounds, police assumed the perpetrator of these crimes must have been a male and used an axe. A total of four axes were collected at the Borden home, and one with a recently broken handle was submitted as evidence. The most damaging statement came from Russell, who told police that on Sunday, August 7, she observed Borden burning a dress in the

kitchen stove. Russell told police that when she asked Borden why she was burning the dress, Borden replied that the dress was stained with paint. Russell's testimony to these events at the inquest prompted Judge Josiah Blaisdell of the Second District Court to charge Lizzie Borden with the murders of her parents.

Trial

Lizzie Borden's trial began June 5, 1893, and lasted 14 days. An all-male jury was selected, consisting of local and area residents. Hosea M. Knowlton was selected as the lead prosecutor. It has been documented that Knowlton was reluctant to assume this role but was told by Attorney General Arthur Pillsbury to prosecute the case. Attorney



An 1893 newspaper illustration based on a courtroom drawing of accused murderer Lizzie Borden and her counsel just before her acquittal after jury deliberation of little more than an hour.

Knowlton appointed William Moody, who was the acting district attorney for Essex County, to assist him in the prosecution of Lizzie Borden.

Moody, during his opening statement to the jury, put forth three plausible arguments: (1) that Borden had planned the murders of her father and stepmother for some time, (2) that Borden committed the murders, and (3) that Borden's behavior and testimony were not those of an innocent person. The prosecution faced an uphill battle with no witnesses, a murder weapon that was suspect at best, and a basketful of circumstantial evidence.

Moody called witnesses to establish a motive for each murder, asserting that the motive was money: Andrew Borden was going to write a new will that would leave only small sums to Lizzie and Emma Borden with the remaining portion of his estate going to his wife, Abby. Defense attorneys Andrew J. Jennings, Melvin O. Adams, and George D. Robinson worked tirelessly at breaking down damaging testimony set forth by the prosecution. During closing arguments, Borden was asked if she would like to address the court. Borden's statement was brief: "I am innocent. I leave my counsel to speak for me." Justice Justin Dewey gave final instructions—which by today's standards would be considered extremely biased for the defense—to the jury. It took the jury just over an hour to return a not guilty verdict on all charges. Borden died on June 1, 1927, at the age of 67, from a long illness brought on by an earlier gall bladder surgery. Emma Borden died nine days later from a fall that occurred in her Newmarket, New Hampshire, home. The murders of Andrew and Abby Borden were never solved.

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See Also: Massachusetts; Women Criminals, History of; Women Criminals, Sociology of.

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Border Patrol

The U.S. Border Patrol is a civilian federal agency, bound by federal laws and the Constitution, and is responsible for the security of the U.S. borders. Border Patrol agents, who are now part of the Department of Homeland Security (DHS), Customs and Border Protection (CBP), had very humble beginnings as inspectors with the Bureau of Immigration. As early as 1904, these mounted guards patrolled the southern border from El Paso, Texas, to southern California and the Pacific Ocean to stem the flow of illegal aliens. However, the illegal aliens who were of concern at the time were from China, not Mexico.

Establishing the Patrol

The United States borders two countries, Mexico to the south and Canada to the north; these borders span 6,000 miles of land, about 2,000 miles of coastal waters, and the island of Puerto Rico. But it is the border with Mexico that presents the biggest challenge. In the early 1900s, the U.S. Bureau of Immigration was responsible for controlling who crossed the border into the United States, and the Customs Service was responsible for controlling what entered into the United States. At the time, allotments had been established for the number of individuals of a particular nationality who were permitted to immigrate.

By 1915, inspectors were patrolling the southern border, attempting to control illegal immigration. There were also Texas Rangers and U.S. military personnel involved in these early border patrols, but they did not have the same legal authority as the inspectors. Supervising Inspector Frank Berkshire wrote to the commissioner-general of immigration in 1918 about the "lack of a coordinated, adequate effort to enforce immigration and customs laws along the border with Mexico"; this is a comment that is still relevant today. The Immigration Reform and Control Act of 1986 was intended to set the stage for amnesty, citizenship, and rigid enforcement of immigration laws and border security, yet the problem is still without resolution in 2011, along with a new element: national security.

Prohibition and two amendments to the Constitution briefly added a new focus to border activities, particularly in the north, but activity

was targeted to illegal border crossings. The passage of the Labor Appropriations Act of 1924 officially established the U.S. Border Patrol. In 1933, the Bureau of Immigration merged with the Bureau of Naturalization to form the Immigration and Naturalization Service (INS). It remained the INS until the massive government reorganization in 2003 after the terrorist attacks on the World Trade Center and the Pentagon. As a result, today's Border Patrol focuses more on national security than it ever has.

Homeland Security

During the early years of the Border Patrol, the concern was stemming the flow of illegal aliens across the U.S. border. But there were also business owners and politicians who wanted open borders to ensure the flow of cheap labor and high profits. Up to 1 million people could illegally cross the border each year. Law enforcement efforts were usually directed at stopping the individuals and returning them to Mexico; little attention was paid to the businesses that provided the job incentives that would lure the workers across the border.

In reaction to the attacks of September 11, 2001, there were significant adjustments in federal law enforcement, especially regarding border security. On November 25, 2002, President George W. Bush signed the Homeland Security Act of 2002 (Public Law 107-296) into law. The mission of the new department included preventing terrorist attacks, reducing the vulnerability of the United States to terrorism, and carrying out all of the functions of the 23 agencies transferred to the department. Although the act abolished the INS, its immigration and border security responsibilities (including the Border Patrol) were brought into DHS.

The new law became effective in 2003. The functions of the INS and the U.S. Customs Service were moved into the Border and Transportation Security Directorate, reporting to an undersecretary of DHS. However, there have been several reorganizations within DHS. As of 2011, law enforcement functions of the INS and U.S. Customs come under the auspices of the Immigration and Customs Enforcement (ICE). The border control functions of the INS and Customs are located within Customs and Border Protection (CBP).

What started as an organization designed to stop illegal immigration has seen its mission grow

extensively since 2001. Clearly, the Border Patrol is no longer a few mounted guards patrolling the southern U.S. border. Border Patrol agents are assigned around the world. Currently, there are CBP attachés in 20 different nations: Belgium, Brazil, Canada, China, Dominican Republic, Egypt, Germany, Hong Kong, India, Italy, Japan, Kenya, Korea, Mexico, Panama, Singapore, South Africa, Thailand, the Netherlands, and the United Kingdom. In 2011, the mission of the patrol has become more sophisticated and challenging. The patrol works with other federal, state, local, and tribal law enforcement elements to control access to the United States and is a key organization in the battle against terrorism and drug smuggling. The Border Patrol is a mobile uniformed law enforcement service that operates as an integral part of national and homeland security. From an initial 450 officers, the Border Patrol has grown to more than 20,000 agents. One of the most important activities of the Border Patrol is the

... detection, prevention and apprehension of terrorists, undocumented aliens and smugglers of aliens at or near the land border by maintaining surveillance from a covert position, following up leads, responding to electronic sensor television systems, aircraft sightings, and interpreting and following tracks, marks and other physical evidence.

The CBP has grown to include an Office of Air and Marine (OAM), which is the world's largest aviation and maritime law enforcement organization. It has a significant role in protecting the nation's critical infrastructure and key resources from terrorism and the smuggling of any form of contraband into the United States. CBP also has a key role, along with the U.S. Coast Guard (another part of DHS) for port security.

Training the Green Machine

The first Border Patrol Academy opened in 1934. With the establishment of the Federal Law Enforcement Training Center (FLETC), in Glynco, Georgia, in 1970, the Border Patrol joined with other federal agencies to provide basic training at a centralized location. FLETC now provides training to more than 80 federal agencies, as well



A Customs and Border Protection Blackhawk helicopter swoops down on vehicles in an isolated area of the southwest in June 2008. The agency's Office of Air and Marine is now the world's largest aviation and maritime law enforcement organization.

as state, local, tribal, and foreign enforcement personnel. The Border Patrol training is considered some of the toughest training at the center. Before the opening of the Border Patrol Academy at FLETC in Artesia, New Mexico, it was easy to tell when agents were moving about the site; they marched and jogged in formation. They were referred to as the Green Machine, a reference to the green uniforms worn by Border Patrol agents; while in basic training, many recruits also wore green T-shirts bearing the Green Machine logo.

In 2011, new agents receive 19 weeks of basic training at the Border Patrol Academy in Artesia, New Mexico. Border Patrol agents also receive training in Charleston, South Carolina, and Cheltenham, Maryland. The basic training of Border Patrol agents includes the following:

law, border patrol operations, antiterrorism training, Spanish, firearms, ethics and conduct, report writing, fingerprinting, computers, vehicle operations, and physical training. Recruits for the patrol must be citizens of the United States under the age of 40; have a state driver's license; pass written, oral, and medical/drug exams; and have a favorable background investigation that includes criminal background checks. In each area, failure to perform to the high standards set for Border Patrol agents will result in the release of the recruit from his or her law enforcement position.

EPIC

The El Paso Intelligence Center (EPIC) was established in 1974 to ensure that information was collected and shared among federal, state, local, and tribal agencies that were involved in law enforcement along the southern U.S. border. It was the first among the many fusion centers that have developed since the terrorist attacks to enhance communications among law enforcement organizations. At the time of its creation, the INS and the Border Patrol were key participants. At the present time, DHS, CBP (Border Patrol), ICE, Alcohol, Tobacco, Firearms & Explosives, Drug Enforcement Administration, U.S. Marshals Service, Internal Revenue Service, El Paso County Sheriff's Office, and other domestic and foreign agencies staff the center.

Nonmilitary Border Security

Another key aspect of border security in the United States is that this function does not rest with the military; this reflects the very limited domestic role that the military has in this democracy. In Italy, the border police are part of the Italian Army; India's border patrol agency is part of a paramilitary force. In Russia, Soviet troops have relinquished primary border control duties to the new Federal Security Service. Egypt's Border Guards are part of the Ministry of Defense and are seen as a paramilitary organization.

Clearly, the responsibility of border security rests with the federal government, not the states. Over the years, immigration and border security agencies have been moved among various cabinet-level departments that were responsible for the oversight of these organizations. Most recently,

these entities have been part of the Department of Justice, Department of the Treasury, and the Department of Transportation. After September 11, 2001, 23 agencies (or parts thereof) were brought into the new Department of Homeland Security. There was a clear recognition of the need for a more secure border and not just to control illegal drugs or aliens.

Border Patrol Activities

A key responsibility of the Border Patrol is the apprehension of illegal aliens. Starting in fiscal year 2000, with the apprehensions of 1.7 million individuals, the apprehension numbers varied: 1.27 million in 2001, 0.96 million in 2002, 0.93 million in 2003, 1.16 million in 2004, 1.19 million in 2005, 1.09 million in 2006, 0.87 million in 2007, 0.72 million in 2008, and 0.57 million in 2009, with the vast majority of those apprehensions on the southern border. It is important to remember that there is a significant element of human trafficking crimes for labor and sex with the entry of illegal aliens. To emphasize this, CBP reports that there are at least 12.3 million enslaved adults and children in the world; 1.39 million are involved with sexual servitude; and more than 56 percent are female.

To help prevent this criminal activity, the Border Patrol has a Tactical Infrastructure Program (TIP). This involves the construction and maintenance of physical structures to reduce illegal border crossings. This includes fences, checkpoints, towers, sensors, screening facilities, lights, roads, and barriers. However, the primary goal for the Border Patrol, as part of DHS, is to “prevent terrorists and terrorist weapons, including weapons of mass destruction, from entering the United States.” The TIP is intended to support national security by establishing a substantial probability of apprehending terrorists seeking entry into the United States, disrupting and restricting the smuggling of narcotics and humans, preventing violence against border residents and illegal immigrants, and restricting potentially harmful diseases (both human and agricultural) from crossing the border.

Conclusion

Some may only see the Border Patrol as an impediment to their entry into and employment within

the United States; however, its role is far greater. The Border Patrol is an integral part of homeland security. It is the first line of defense in preventing drugs, terrorists, and criminals from entering the United States and is a key resource in fighting transnational crime at the border.

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See Also: Bootlegging; Customs Service as Police; Drug Enforcement Administration; Immigration Crimes; Smuggling; Texas Rangers; USA PATRIOT Act of 2001.

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Boston, Massachusetts

Boston, like most cities in the United States, has seen a reduction in crime rates since the 1990s. The Boston Police Department has played an essential role in these efforts, working with neighborhood and church groups as well as the federal government to steer young people away from gangs and toward more productive activities. Those efforts have been so successful that they have collectively been labeled the Boston Miracle, and Boston has served as a crime-reduction model for other cities. The success of the Boston Miracle was documented by a 58.7 percent drop in homicide rates between 1990 and 1996. Historically, however,

Boston has been one of the most crime-ridden cities in the United States. Members of Boston's Irish mob were major players in organized crime throughout much of the 19th and 20th centuries.

Throughout the 1980s, many large American cities experienced outbreaks of gun violence as a result of the crack cocaine epidemic that took place on urban streets. Boston was no exception, but the violence was generally limited to particular areas. Between 1980 and 1988, an average of 40 incidents of gun violence were reported each year. Such crimes peaked in 1990, with 86 crimes reported. A subsequent decline reached a low of 19 incidents in 1999. Gun violence began to increase again in the early 21st century, reaching 55 incidents in 2001. Again, a gradual decline followed. In modern-day Boston, approximately 75 percent of all serious gun assaults continue to take place in sections comprising only 5 percent of the city. Traditionally, Boston's Police District D-4, which includes Back Bay, Fenway, South End, and Lower Roxbury, has contained the highest concentrations of violent crime. Gang activity is responsible for much of that activity, particularly on Lenox Street, Villa Victoria, and in the Castle Square housing projects. Around half of all homicides are perpetrated by Boston youths, who commit 70 percent of all shootings. Hot spots such as high schools, housing projects, subway stations, and public parks report that crime rates have remained fairly constant over time.

Notorious Crimes and Criminals

Dominated by the Irish mob, organized crime was a major problem in South Boston for much of the 19th and 20th centuries. The most notorious figure associated with the latter part of that period was James "Whitey" Bulger, whose brother Billy served as president of the Massachusetts State Senate before becoming the head of the University of Massachusetts. Whitey Bulger was the leader of the Winter Hill Gang, which was heavily involved in drug dealing, loan sharking, extortion, and other forms of racketeering. Bulger was also an Federal Bureau of Investigation (FBI) informant, and he counted FBI agents among his cronies. Bulger was known for his savagery, which was in evidence when, with his bare hands, he killed 26-year-old Debra Davis, the girlfriend of his partner in crime, Steve Flemmi. After murdering Davis, he pulled

out all of her teeth with pliers to prevent her identification by dental records.

More than 50 of Bulger's associates were indicted in 1990, and Bulger was wanted on charges of murdering 19 people. Following a tip-off that he was due to be arrested, Bulger went into hiding on December 23, 1994. Both Flemmi and Kevin Weeks, Bulger's former right-hand man, began cooperating with the police in 1999. It was not until the summer of 2011 that Bulger, then 81 years old, was finally discovered in Santa Monica, California, where he was living as Charlie Gasko. His girlfriend, Catherine Grieg, was arrested and charged with harboring a fugitive. Ironically, Bulger had killed two of Grieg's brothers-in-law. Law enforcement officers discovered 30 guns and \$800,000 in cash in Bulger's apartment. In response to pressure from the families of victims, the U.S. attorney dropped all racketeering charges in order to focus on murder charges. John Connolly, the FBI agent who informed Whitey Bulger of his imminent arrest, was subsequently convicted of racketeering and obstruction of justice.

Boston was also home to one of the most notorious serial murderers in American history. The Boston Strangler's first victims were all older women, and the police developed a tentative profile identifying him as an 18-to-40-year-old white male who hated his mother. The theory was discarded when the strangler chose a 20-year-old as his next victim. He continued his *modus operandi* of raping his victim before strangling and "decorating" her with a bow made up of the item used to strangle her. He killed his last victim on January 4, 1964. During the same period, Albert DeSalvo raped at least 300 women in Massachusetts, Connecticut, Rhode Island, and New Hampshire. DeSalvo had become known as the Green Man because of his habit of masquerading as a handyman wearing green clothing. When arrested, he claimed to be the Boston Strangler. Although he admitted to murder, he was convicted solely on rape charges. DeSalvo was stabbed in prison in 1973. Serious doubts remain about his being the Boston Strangler.

Developing Law Enforcement Capabilities

In the American colonies, law enforcement tended to model itself after systems that had already

developed in England. The first American efforts involved the creation of a night watch in 1636. In 1824, Boston became the first city in the United States to create a professional police force, with 260 patrolling officers who answered to the first police chief. The department was separated into divisions under a captain and two lieutenants. The rank of sergeant was added in 1857. Patrol officers carried a blue-and-white six-foot pole and used a “rattle” to summon assistance. By 1838, Boston had created a day patrol. The night patrol continued to exist as a separate entity. The Boston Police Department (BPD) was established in 1854 in compliance with the model established in London by Sir Robert Peel (1788–1850). BPD endured one of its greatest ordeals in November 1872 when a patrolman chasing recalcitrant boys along Lincoln Street discovered a major fire in progress. The Great Boston Fire, as it became known, was the most disastrous fire in Boston’s history, destroying 65 acres of valuable downtown property. At least 960 establishments were burned out and 776 buildings were destroyed. The total cost was estimated at \$75 million.

Leaving City Hall behind, the department relocated to Pemberton Square in 1883. In September 1919, the safety of Bostonians was compromised when 1,117 police officers went on strike for increased benefits. With three-fourths of the force on strike, rioting and looting went virtually unchecked. Governor Calvin Coolidge replaced strikers with World War I veterans and rewarded the veterans by raising their salaries, instituting a shorter work week, and providing them with free uniforms. In 1925, BPD moved from Pemberton Square to 154 Berkeley Street. Resources were again overtaxed during the Cocoanut Grove nightclub fire of 1942, which resulted in 490 deaths and 166 injuries. The notorious Brinks robbery of 1950 focused the limelight on the BPD. The crime had occurred on January 17 when a group of men wearing Halloween masks absconded with \$1.2 million in cash and \$1.5 million in checks, money orders, and other securities. Because of the magnitude of the crime, the FBI took over the case, eventually arresting Anthony “Fats” Pino and his gang.

In 1997, BPD moved to its current headquarters at One Schroeder Plaza. Employing modern technology is instrumental to a modern police

force, and BPD began using advanced identification imaging and ballistics identification. An in-house DNA laboratory became essential in reducing the time involved in crime investigations and in improving accuracy of criminal charges.

Criticism and Innovation

In the 1980s and early 1990s, the Boston Police Department came under heavy fire for its use of overly aggressive tactics, and officers were accused of prejudice against minorities. In response, the BPD began to reinvent itself, and was ultimately successful in repairing its tarnished image. Since that time, BPD has partnered with local neighborhoods to enforce a policy of zero tolerance in dealing with minor offenses that occur in neighborhoods with high crime rates. This practice has sent a message to would-be criminals that they will be apprehended and forced to pay for their crimes. Many of those efforts have involved working with minority communities. African American clergy played a major role in crime-reduction efforts following a gang-related attack at a funeral for an African American victim of a drive-by shooting.

During the violent 1980s and a nationwide crack cocaine epidemic, turf wars broke out in Boston. However, politicians and the BPD maintained a policy of denying that the city had a problem with gangs. Nevertheless, in 1988, the City-Wide Anti-Crime Unit (CWACU) was ordered to provide support in areas where violence was well established. Over the course of the next year, gangs became a major target of the CWACU. Simultaneously, two separate scandals besieged the department. Investigators were attacked for unquestioningly accepting the word of Charles Stuart, a white Bostonian, when he assured them that an African American had murdered his wife. In fact, Charles Stuart had killed Carol Stuart. A “stop and frisk” campaign directed at gang-related violence backfired on the BPD because of complaints that it targeted only African American males, leading to dismissed evidence because it was deemed illegal search and seizure. The CWACU was disbanded as a result of the latter scandal. The *Boston Globe* added fuel to the fire in 1991 by publishing a four-part series, “Bungling the Basics,” in which it accused the BPD of repeatedly mishandling investigations and compromising its authority.

By 1993, following the resignation of the mayor, William Bratton was back in Boston, replacing Mickey Roache as police commissioner. Bratton had first come to public attention as a rookie police sergeant in 1975 when he faced down an armed bank robber holding a hostage, convincing him to lay down his gun. As police chief, Bratton's initiatives typically focused on increasing the number of patrol officers on city streets and dispatching them to areas where crimes were predicted to occur. He also created an environment in which police officers were held accountable for what occurred in their assigned neighborhoods and made the BPD more accessible to citizens with complaints.

Combining his knowledge of Boston with experience gained in New York City, Bratton reorganized the BPD, transforming the Anti-Gang Violence Unit into the Youth Violence

Strike Force and implementing a philosophy of community policing. Under his leadership, the probation department became more proactive, and Operation Night Light was instituted to allow probation officers to work directly with patrol officers to monitor the activities of their charges. Cooperation among agencies was encouraged, and the BPD worked closely with a team of policy researchers at Harvard's John F. Kennedy School of Government.

In 1994, Boston implemented Operation Scrap Iron to target anyone illegally transporting guns into Boston. The following year, the city established the Boston Gun Project, a three-year program designed to bring city agencies together to address the issue of youth violence. In 1996, Operation Cease-Fire finalized the collaborative effort to fight crime in Boston. Two years later, the Bloods and Crips Initiative was established to



Policemen keeping order on a streetcar during a trolley strike in the city in June 1912. A few years later, the safety of Bostonians was seriously compromised when the police went on strike in September 1919. With 1,117 police officers comprising three-fourths of the entire force, on strike, rioters and looters swarmed the city from September 9 to 11.

bring interested parties together to fight the city's two largest and most well-established gangs.

Various private groups also work with law enforcement to reduce gang activity in Boston. For instance, the Boston Foundation provides grants to community groups that institute programs designed to steer gang members toward education, jobs, and services that provide them with opportunities to become more productive and to adopt law-abiding lifestyles. One of the guiding lights of the foundation is Robert Lewis, Jr., an African American city employee who grew up in an impoverished area of Boston. He had previously established the Streetworkers Program to get young people working with gang members in areas well known for their gang activity. Since 2008, through StreetSafe Boston, the foundation has monitored the 1.5-square-mile area of the city in which 78 percent of all shootings and homicides occur. An evaluation of the StreetSafe program by a Harvard professor revealed that crime rates in the targeted area had begun to decline at the same time that crimes in other areas of Boston were climbing.

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See Also: 1600 to 1776 Primary Documents; DeSalvo, Albert; Los Angeles, California; Massachusetts; New York City; Organized Crime, Contemporary; Police, Contemporary; Sacco and Vanzetti; Violent Crimes.

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Bounty Hunters

The Eighth Amendment protects against excessive bail, but there is no constitutional right to bail. A judge may refuse to set bail for risky offenders, or those accused of serious crimes such as murder. Most offenders are able to post bond while awaiting trial or disposition of their case. The amount of bail depends on the crime; the more serious the crime, the higher the bail amount. Not everyone accused of a crime can afford bail money, which can run into the hundreds of thousands (if not millions) of dollars. In those cases, a bail bondsman will post a bond for an offender. The bond is given to the court until the case is disposed. In other words, the bail bond acts as insurance guaranteeing that the accused will show up for his or her scheduled court appearance. In essence, a bond is a guarantee to the court that the offender will appear for trial and remain in the jurisdiction.

What happens if an offender on bond decides to flee the jurisdiction, or jump bail? In such cases, bail jumping, or unlawfully skipping future court appearances (which about 20 percent of people do), results in the forfeiture of a bond. However, the bail bond must still be paid. Because bondsmen are liable for the bail bond amount, and the police cannot always track offenders across state lines, many bondsmen hire bail enforcement agents, or bounty hunters, to track the offenders (unless the state outlaws bounty hunting). In payment for their services, bail enforcement agents typically receive 10 to 20 percent of the total bail bond. If a bondsman cannot enforce

bail by apprehending the fugitive, the bondsman, in cases where he works with a surety company, must pay the surety company the forfeited bail. If the bondsman is a professional bondsman (he uses his own capital for the bail), he forfeits his capital. Bounty hunters claim to catch 31,500 bail jumpers per year, about 90 percent of people who jump bail in the United States.

Evolution

The art of bounty hunting originated in England more than 100 years ago. In the 13th century, bail was a person, not an amount of money. An individual such as a friend or family member was designated custodian of the accused, and if the accused did not return to face his penalty, the custodian could be hanged in his place. During colonial times, America relied upon the bail system set up by the government of England. In 1679, the British parliament passed the Habeas Corpus Act, which guaranteed that an accused person could be released from prison on monetary bail. However, if the accused jumped bail, bounty hunters were sent after him.

In the Old West, bounty hunters were hired by local sheriffs or marshals to pursue wanted offenders who often fled hundreds of miles across desolate territory. They were hired because of the difficulty in locating fugitives and the limited resources of local jurisdictions. These bounty hunters were paid according to the seriousness of the offender's crimes: An escaped murderer and bank robber netted more than a common horse thief. To assist in capturing these offenders, the U.S. Supreme Court case *Taylor v. Taintor* (1872) gave bail enforcement agents nearly limitless power and authority when hunting down a subject. This decision remains in effect.

Modern Regulation

Many early bounty hunters were greedy and didn't care if they brought the fugitives in dead or alive, as long as they collected the posted reward. There were no regulations. Today, the rules have changed. Bail enforcement agents are regular citizens and operate under the same state and federal laws as everyone else who is not in law enforcement. This means that they are not bound by the Fourth Amendment search and seizure laws like law enforcement officers.

However, there are procedures that bail enforcement agents must follow. A bail enforcement agent cannot harm a defendant or any innocent bystanders but may use reasonable force to enter the residence or place where the defendant is hiding, although some states do not allow a bounty hunter to "break and enter" a place that does not belong to the defendant. The agent must be sure that the fugitive is in the place to be entered.

Bail enforcement agents cannot arrest anyone without a warrant authorized by the jurisdiction from which the offender fled. Bail enforcement agents are expected to use all possible legal methods to capture a defendant, including trickery or deceit. Bail enforcement agents may or may not carry a weapon, depending on the state laws. Agents can cross state lines to apprehend a defendant. An extradition treaty is not needed. While agents have more freedom than police officers, they may not break any laws in the apprehension of a defendant.

Bounty hunting is illegal in nearly every nation in the world. Only the United States and the Republic of the Philippines allow the occupation. There are a handful of states that have banned it completely, such as Florida. In that state, bail enforcement is the responsibility of the bondsman and local police authorities. The Florida bondsman must do a skip trace or hire a skip-tracing agency to try to find the fugitive. Once the bondsman finds the person, he can call the arresting agency to alert it to the possible location of the fugitive. It is hoped that the arresting agency will find the fugitive at that location when officers arrive.

For those states that allow bounty hunting, several require licenses for bail enforcement agents. Most licenses are available through a state's department of insurance, and each state sets its own prerequisites for licensure. There are many training programs available online and elsewhere, but not all of these fulfill the requirements to get a license. Some states, like California, require training and/or licensure, while other states require no formal training or licenses. In California, bounty hunters must be at least 18 years old and have no felonies on their criminal record. Agents must pass the Bureau of Security and Investigative Services class on using the power to arrest a citizen and a 40-hour course on "power of arrest" by the Commission on Peace Officer Standards and Training.

Job Skills

Becoming a bail enforcement agent requires other skills. An agent must have knowledge of how the bail bonds industry works and be proficient in other skills such as detecting deceit, surveillance, skip tracing, and negotiation. A bail enforcement agent must also know how to research and investigate missing persons. He must be able to access and analyze phone records of the fugitive's friends and family. He will have to know how to dig into the fugitive's past and find all past residences. He will need to learn the fugitive's habits, vices, friends, enemies, and hangouts. In other words, a bounty hunter must have good investigative skills, which include skip tracing, negotiating, interviewing and deception, and apprehension techniques. The bounty hunter's principal motivator is the reward for a successful hunt, while the skip tracer's reward is the predetermined fee that is earned.

One of the most famous bail enforcement agents is Duane "Dog" Chapman. Chapman gained notoriety in 2003 when he captured Max Factor cosmetics heir Andrew Luster, who jumped bail and fled to Mexico during his rape trial in California. Chapman made news with his capture of Luster, who was later returned to California; however, Chapman was arrested in Mexico because bounty hunting is illegal in that country. Chapman returned to the United States but faced extradition to Mexico. Because of political pressure, Mexico dropped its extradition order for Chapman. Chapman and his family have a successful business and a reality television series on bounty hunting.

Bail enforcement is a challenging and potentially dangerous business, and there are reports of agents being assaulted and killed, as well as reports of agents using excessive force and injuring innocent persons. A number of schools provide training for bail enforcement agents; getting established in bail enforcement usually requires working with experienced agents and officers. The job of a bail enforcement agent is challenging, but a career that needs more regulation as to jurisdiction and personnel. Regulation is especially needed since these agents may carry weapons and use force to apprehend others.

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See Also: Bail and Bond; Bail Reform Act; Frontier Crime; Posses; Sheriffs; Vigilantism.

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Bowers v. Hardwick

Beginning in the 1980s, the National Gay Task Force (NGTF) began a campaign to erase sodomy statutes from American law. By the mid-1980s, however, the U.S. Supreme Court had only heard two gay rights cases, *Doe v. Commonwealth's Attorney* (1976) and *National Gay Task Force v. Board of Education of Oklahoma City* (1984), both of which were summary affirmances that did not result in written opinions. The NGTF, along with the American Civil Liberties Union (ACLU), believed that if they could get the right case in front of the court, they would have a good chance of victory. With *Bowers v. Hardwick* (1986), many in the NGTF believe that it was the right case at the right time.

In July 1982, Michael Hardwick threw a beer bottle into a trash can outside the gay bar where he worked. Atlanta Police Officer Torick wrote him a citation for public drinking, and when Hardwick failed to appear in court, Torick issued a warrant for his arrest. When he went to Hardwick's apartment to serve the warrant, Hardwick was not at home. When Hardwick arrived home and found the warrant, he went to the courthouse and paid the ticket. A few weeks later, on August 3, 1982, Torick returned to Hardwick's apartment to serve

the now-recalled arrest warrant. A houseguest opened the door and let Torick enter the apartment. Torick observed Hardwick's bedroom door slightly ajar, and entered Hardwick's bedroom. There, Torick found Hardwick and a male companion engaged in consensual, mutual oral sex.

Torick placed both men under arrest for sodomy. In Georgia, sodomy was defined as oral and anal sex between members of the same or opposite sex. The local district attorney decided not to present the case for further review by a grand jury. However, Michael Hardwick sued the attorney general of Georgia, Michael Bowers, in federal court, declaring that the state's sodomy law was invalid because under the law, he could be arrested for simply being a sexually active gay man.

After some consideration, Hardwick accepted the ACLU's offer to represent him in his court battles. Hardwick's attorney, Kathy Wilde, filed

the case first in the U.S. District Court for the Northern District of Georgia, where it was dismissed. Hardwick appealed and the U.S. Court of Appeals for the 11th Circuit reversed the lower court's decision, finding that the state's sodomy law infringed on Hardwick's constitutional rights. The state of Georgia appealed to the U.S. Supreme Court, which decided to review the case in 1985.

The right of privacy was the central issue in the *Bowers* case; a right first recognized in *Griswold v. Connecticut* (1965) as an implicit right in the due process clause of the Fourteenth Amendment. However, in *Bowers*, the court maintained that the right to privacy did not extend to private, consensual homosexual sexual acts. Writing the opinion for the 5–4 decision, Justice Byron White framed the question as whether the Constitution confers “a fundamental right upon homosexuals to engage in sodomy.” White believed it did not.



Marchers in a gay rights rally during the Democratic National Convention in New York City in 1976. While *Bowers v. Hardwick* in 1986 was a major setback in the drive for gay rights in the United States, it did galvanize efforts to increase awareness of the issues and to continue a legal campaign that was eventually successful in overturning sodomy laws for adults in all states.

In addition to White's opinion, Justices Warren Burger and Lewis Powell wrote concurring opinions that addressed and eliminated any possible future cases brought against state sodomy laws claiming a conviction for acts of sodomy to be a cruel and unusual punishment and thus in violation of the Eighth Amendment.

In the aftermath of the decision, gay activists and legal supporters were stunned. *Bowers v. Hardwick* produced three legal holdings. First, homosexual sodomy is not a fundamental right. Second, a state legislature only needs to demonstrate a rational basis for criminalizing homosexual sodomy. Third, public morality is a sufficient reason to criminalize homosexual sodomy. In essence, the U.S. Supreme Court declared that homosexuals did not have the same constitutionally protected right to privacy, even in their own bedrooms with consenting partners. Though activists referred to *Bowers* as the gay community's *Dred Scott*, *Bowers* did place gay rights into the public sphere and helped to ignite a serious legal rights campaign that attempted to align gay and straight Americans on the issue of equal rights.

In the years after *Bowers*, several state legislatures repealed their sodomy laws. In addition, state judiciaries invalidated sodomy laws, including the Georgia Supreme Court, which struck down the state sodomy law in the 1998 case *Powell v. State*. In 1996, the U.S. Supreme Court's *Romer v. Evans* decision overturned Colorado's Amendment 2, a law that allowed discrimination based on sexual orientation, and, according to Justice Antonin Scalia, placed the court in contradiction with its ruling in *Bowers*, paving the way for future cases. Finally, in 2003, the court's *Lawrence v. Texas* decision overturned *Bowers* and invalidated sodomy laws for consenting adults throughout the nation.

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See Also: American Civil Liberties Union; Burger, Warren; Georgia; *Griswold v. Connecticut*; *Lawrence v. Texas*; *Romer v. Evans*; Sodomy.

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Brandenburg v. Ohio

The First Amendment to the U.S. Constitution says, "Congress shall make no law abridging the freedom of speech." This language can be interpreted as offering broad protection to expressive freedom. However, the U.S. Supreme Court did not adopt an expansive interpretation of this provision of the Bill of Rights until the last half of the 20th century. In *Brandenburg v. Ohio*, widely considered to be a landmark decision, the court wrote an opinion laying out a test for judging the constitutionality of speech advocating illegal actions. Still an important component of First Amendment law, the *Brandenburg* test offers a considerable degree of protection for free speech and demonstrates the way in which the Warren Court of the 1960s explicitly rejected earlier, more restrictive standards.

The Case

Clarence Brandenburg was convicted of violating the 1919 Ohio criminal syndicalism statute. This law prohibited the advocacy of criminal action "as a means of accomplishing industrial or political reform" and voluntarily assembling for the purpose of teaching or advocating such syndicalism (Brandenburg did not, himself, advocate the doctrine of syndicalism). Ohio was one of 20 states that adopted such laws between 1917 and 1920, a period immediately following World War I when there was widespread enactment of laws restricting many civil liberties, including free speech across the United States.

Brandenburg was arrested after films of a Ku Klux Klan rally that he organized and participated in were broadcast on television. The only people present at the rally were the Klan rally



This Ku Klux Klan rally and cross burning held sometime between 1921 and 1922 was likely similar to the ones that instigated the Brandenburg v. Ohio case. The decision in that case remains intact and continues to stand for the importance of affording the greatest protection to speech that can be classified as political, which is an important principle of modern First Amendment jurisprudence. It brought to an end the era of free speech opinions that used versions of the “clear and present danger” test.

participants and a television camera crew invited by Brandenburg. The film showed groups of hooded figures, some of whom were armed and some of whom assembled around a burning cross. Although most of their speeches were inaudible, at one point, a group of members could be heard saying that if the government continued to “suppress the white, Caucasian race,” there was a possibility “that there might have to be some revengeance [sic] taken.” The film included a speech given by Brandenburg containing racial slurs but saying nothing about potential “revengeance.”

A unanimous Supreme Court overturned Brandenburg’s conviction. The short *per curiam* opinion—an opinion that is issued by the court as a whole rather than being authored by a specific

justice—struck down the Ohio law and overturned the decision in *Whitney v. California* (1927). In *Whitney*, the court upheld an almost identical law, but in *Brandenburg*, the court held that in the intervening years, *Whitney* had been “thoroughly discredited by later decisions.” The court wrote that together, these subsequent decisions emphasized principles that created the following test. Under the First Amendment, a government may not

... forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

This language has come to be known as the *Brandenburg* test.

Lasting Impact

The *Brandenburg* requirement that actual imminent harm be proven makes it very difficult for the government to convict anyone of criminal advocacy. In recent years, some Supreme Court decisions have revisited elements of the 1969 legacy. For example, in *Virginia v. Black* (2003), a divided court struggled to identify an appropriate standard for judging expressive actions, such as cross burning, that are done with a specific intent to intimidate and that might constitute a true threat. And the ability of *Brandenburg* to guide criminal advocacy rulings in the Internet age remains uncertain. However, the decision remains intact and continues to stand for an important principle of modern First Amendment jurisprudence—the importance of affording the greatest protection to speech that can be classified as political.

In overturning *Whitney*, the decision in *Brandenburg v. Ohio* brought to a decisive end the era of free speech opinions that used versions of the “clear and present danger” test. As a result, since 1969, it has been much more difficult for the government to limit free expression by seeking to remove from the societal dialogue speech that expresses particular points of view, even if the point of view in question is the advocacy of illegal action.

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See Also: Ku Klux Klan; Supreme Court, U.S.; *Whitney v. California*.

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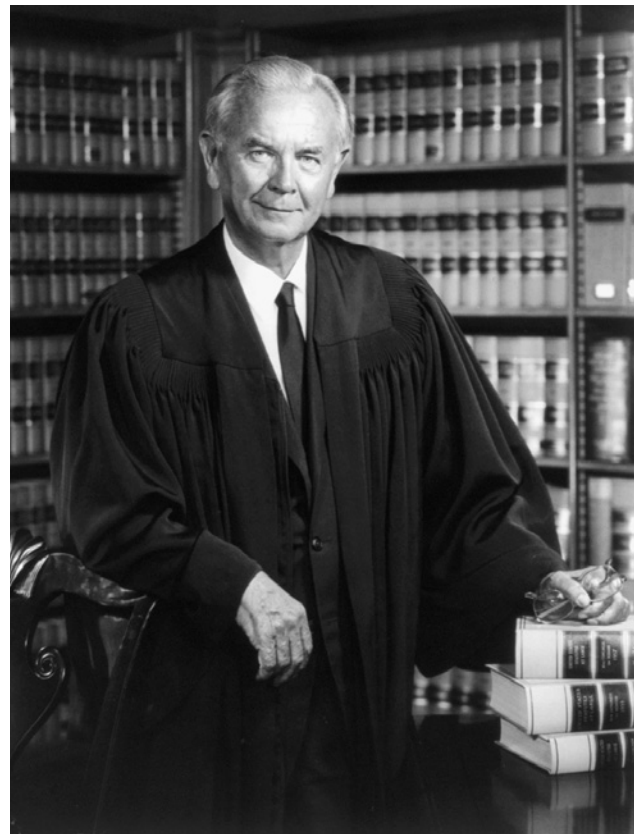
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Brennan, William J., Jr.

William J. Brennan, Jr., was a U.S. Supreme Court justice from 1956 to 1990. During his time on the Supreme Court, Justice Brennan played a major role in the understanding of rights for criminals and the accused. William J. Brennan, Jr., was born in Newark, New Jersey, in 1906, into an Irish Roman Catholic family. Brennan received an Ivy League education, having attended college at the University of Pennsylvania and law school at Harvard University. Brennan was a colonel in the army during World War II. Prior to attaining a seat on the U.S. Supreme Court, Brennan was a judge on the New Jersey Supreme Court and lower state courts.

William Brennan was nominated by President Dwight Eisenhower in 1956, at the age of 50, but he was not confirmed by the Senate until 1957. Justice Brennan served on the court until



Justice William J. Brennan in 1976. Brennan served one of the longest terms ever on the Supreme Court and had a notable impact on protecting the rights of those accused of crimes.

he retired in 1990. His tenure on the court was one of the longest in U.S. history. According to several studies, Justice Brennan was one of the great Supreme Court justices. During his tenure on the court, Justice Brennan had a major impact on several areas of the law, notably the rights of the criminally accused and convicted. Brennan was in the majority twice in decisions, *Spano v. New York* (1959) and *Escobedo v. Illinois* (1964), which increased defendants' access to attorneys to prevent self-incrimination. Protections against self-incrimination became fully supported by the court in *Miranda v. Arizona*, the case that required suspects' rights to be read to them. Brennan again voted in the majority in this case. Justice Brennan was also vehemently opposed to the death penalty. In *Furman v. Georgia* (1972), a case in the Supreme Court that led to a nationwide moratorium on the death penalty, Brennan wrote that in his view, the death penalty was always unconstitutional. Brennan continued to support this view in his dissent in *Gregg v. Georgia* (1976), in which the Supreme Court reopened the use of the death penalty.

Justice Brennan had his largest impact in the area of search and seizure. In this area of criminal law, like those described above, Justice Brennan consistently voted to respect the rights of the accused. Brennan wrote the majority opinion in *Warden v. Hayden* (1967), a case that allowed a police force to search a house without a warrant if speed is necessary to apprehend a suspect or if there is reason to suspect that the officers might be in danger. However, Brennan also wrote the majority opinion in *Welsh v. Wisconsin* (1984), a case involving an alleged drunk driver who had already arrived home, that the police overstepped their bounds because speed was no longer of the essence and the public safety was not threatened. Justice Brennan was also an ardent supporter of the exclusionary rule. He voted in the majority for the incorporation of the exclusionary rule to the states in *Mapp v. Ohio* (1961). He continued to support this rule, even as it was contracted in subsequent opinions, including *United States v. Leon* (1984).

Although he was nominated to the Supreme Court by President Eisenhower, a Republican, Justice Brennan was one of the most important members of the Warren Court's efforts to expand protections to the accused and convicted. Brennan

was a close confidant of Chief Justice Earl Warren and would meet regularly with Warren to discuss the court's cases. Moreover, Chief Justice Warren assigned Brennan to write some of the most important opinions of the Warren Court era. After Earl Warren's retirement, Brennan became the leader of the liberal voting bloc on the Supreme Court during Warren Burger's term. When Chief Justice Burger retired, William Rehnquist was elevated to chief justice, becoming the third and most conservative chief justice under whom Brennan had served. Although always a liberal lion on the court, Brennan and Rehnquist reportedly had a very cordial and respectful relationship.

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See Also: Douglas, William O.; *Furman v. Georgia*; *Gregg v. Georgia*; *Mapp v. Ohio*; *Miranda v. Arizona*; Suspect's Rights; Warren, Earl.

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Brocius, William

William Brocius (ca. 1845–82) was an infamous outlaw in the American West of the 1880s. He used various aliases, including William Bresnaham and William Graham, but he is best known by his nickname “Curly Bill” (also spelled in newspapers of the day as “Curley Bill”) Brocius. Cattle rustling, robberies, and several murders are attributed to the gunslinger William Brocius.

William Brocius is thought to have been born around 1845, but his actual origins are somewhat murky. He is reported to have stood six feet tall,

with curly black hair, dark complexion, and blue eyes. Brocius had allegedly been involved in an attempted robbery of a U.S. Army stagecoach on May 20, 1878. During the failed holdup, a couple of enlisted men were wounded. After being apprehended, Brocius was sentenced to five years in the Texas Penitentiary. However, on November 2, 1878, William Brocius and two accomplices escaped from the Ysleta, Texas, jailhouse by digging under the adobe walls. He rapidly departed Texas, and a warrant was issued for his arrest.

William Brocius reportedly arrived in the Arizona Territory around 1878 after completing a cattle drive from either Missouri or Texas. He soon was serving as the head wrangler at the McLowery Ranch located outside Tombstone, Arizona, next to the Clanton Ranch. He also became a member of the Clanton-McLowery gang, which was involved in rustling cattle, robbing stagecoaches, and other associated criminal activities. The Clanton-McLowery gang, known locally as the Cowboys, was headed by Nathan Haynes Clanton, known as "Old Man" Clanton. Clanton apparently recognized the leadership ability and ruthlessness of Brocius and is said to have touted him as his successor. After "Old Man" Clanton's death, William Brocius, in fact, became one of the leaders of the Cowboys. It has been estimated that there were more than 400 outlaws working both sides of the Mexican border under Brocius as part of the largest rustling organization of the Old West.

William Brocius was reputed to have been quick to quarrel, including a tendency to shoot at his opponents, and he had a reputation for frequently being inebriated. Brocius reportedly sported two gun belts with holsters tied down, one normally worn on his right side and the other facing backward on the left hip.

Trouble With Lawmen

On October 28, 1880, William Brocius shot Deputy Marshal Fred White of Tombstone, Arizona, in the stomach while the marshal was attempting to arrest him. Brocius was intoxicated, and White, who died two days after the incident from his wounds, stated that he thought it had been an accidental shooting. Wyatt Earp, a Pima County law officer, had been with Marshal White while he was attempting the arrest of Brocius, and Earp clubbed Brocius hard on the head with his pistol,

knocking him unconscious. Wyatt Earp testified at the trial of Brocius that he also thought the shooting of Marshal White was unintentional. William Brocius was thereafter acquitted of the shooting. Virgil Earp, Wyatt's brother, was appointed marshal of Tombstone by the mayor and city council to serve out the rest of Marshal White's term. Virgil Earp had already become a deputy U.S. marshal on November 27, 1879.

On May 25, 1881, William Brocius got into an argument in Galeville, Arizona, with Deputy Sheriff William Breckenridge, a tough lawman, who shot Brocius in the mouth. Brocius recovered from this horrible wound and, according to some reports, settled in Texas using the name William Graham. Other reports claim that William Brocius continued his life of violent crime. In July 1881, Brocius and Johnny Ringo, another known gunman and assassin, are said to have killed Isaac and William Haslett in Hachita, New Mexico, as revenge for their earlier killing of two members of the Clanton gang who had tried to rob the Haslett brothers' general store.

After the famous shootout in October 1881 at the O.K. Corral, William Brocius may have been involved in the attempted killing of Virgil Earp and the assassination of Morgan Earp. However, there were no eyewitnesses to either crime, and thus Brocius was not charged. In December 1881, Pima County indicted William Brocius for rustling 19 head of cattle. However, in March 1882, Brocius was deputized by Sheriff Johnny Behan of Cochise County, Arizona, and given a warrant for the arrest of Wyatt Earp after his vendetta following the death of his brother Morgan. On March 24, 1882, Wyatt Earp and Brocius came upon each other at Iron Springs, Arizona. Earp allegedly shot and killed Brocius with a double shotgun blast to the chest.

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See Also: Arizona; Earp, Wyatt; Frontier Crime; History of Crime and Punishment in America: 1850–1900; Livestock and Cattle Crimes.

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Brockway, Zebulon

Following the Civil War, collective violence, personal crime, and crimes against persons rose precipitously. Immigrants and the urban poor were seen by elites as lacking in control and in need of training to aid their assimilation. The criminal justice process was insufficient to deal with the problem of crime in the urban milieu. Since the goal of the justice system was to maximize efficiency of the capitalist system, and criminals were *lumpenproletariat*, it would follow that these potential workers should and could be converted into dependable lower-class workers. The goal of prisons in the 1870s then, according to most contemporary experts, was to mold obedient citizen-workers. The foremost instigator in this process was Zebulon Reed Brockway (1827–1920), the founder and superintendent of Elmira Reformatory.

As a young man, Brockway started his career in the correctional field as a guard in a Connecticut jail. He moved to New York and became warden of the Monroe County Penitentiary in Rochester by 1854. Next, he became warden of a Detroit, Michigan, house of correction, where he tried to introduce a rudimentary version of indeterminate sentences. However, this nascent effort was nullified by state courts. A signal event in his career occurred when he became an enthusiastic penal reformer at the Cincinnati meeting of the National Prison Association in 1870. As a consequence of his activism and experience, he was appointed warden of the new Elmira Prison, taking office in 1876.

Reform and Rehabilitation

In 1880, Brockway was finally able to initiate a reform regime. The first attempts began with male first-time offenders between the ages of 16

and 25. It was widely felt that this age group would be more trainable, easier to educate, and more vulnerable to efforts at reform. The training focused on repetitive molding of fine motor skills and rote learning of mathematical principles and tables. Various prison industries such as a farm, a foundry, and prison maintenance were tasked to prisoners. Brockway had prisoners drilling with dummy rifles for hours during the day, primarily to keep them busy and to build discipline and obedience. If prisoners adjusted well, they were raised a grade and given a parole hearing after a period of time. If prisoners did not respond, they could be demoted a grade and not be eligible for a parole hearing. If they were obdurately recalcitrant, they could be beaten with a strap, have ice-cold water dumped on them while strapped to a chair, be placed in solitary confinement for months, or even be slapped in the face by the warden himself.

Brockway was a master of self-promotion and wrote numerous essays and several books expounding his philosophy and justifying his sometimes bizarre and seemingly brutal methods. That being said, it is only fair to point out that he popularized and basically originated the humane concept of indeterminate sentence and parole in the United States. Under indeterminate sentencing, a prisoner was held in a reformatory until he made a good institutional adjustment and qualified for parole. Parole was a strategy of managing prisoners and preparing them for reentry into the outside community. Prisoners who behaved while in prison and progressed according to a three-part system of grades earned a parole hearing. Paroled inmates remained under state jurisdiction for a period of six months on the outside. It was Brockway's notion that a longer probationary period was counterproductive.

In addition, the parolee had to report to a volunteer guardian once a month and give a full account of his situation during that period. Later, the guardian role evolved into the familiar parole officers employed by the state. This was the foundation of modern parole, which even today retains many of these characteristics. The hope was that the parolee, having made a satisfactory institutional adjustment and working his way through the grade system, would find a good job and become a good, conformist American worker.

The parolee would leave his criminal milieu, associations, and subcultures behind in the process. However, this seldom occurred.

After a long service in the correctional field, Brockway ran afoul of the prison's correctional supervisors because of his seemingly tireless self-promotion and resistance to change. He was forced out as superintendent in 1900. Brockway toured the lecture circuit for many years, and he wrote *Fifty Years of Prison Service* in 1912, when he was 85. His contributions include classification systems, indeterminate sentencing, parole, and creating the first modern reformatory-style prison.

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See Also: Corrections; Elmira Prison; National Congress on Penitentiary and Reformatory Discipline; Parole; Penitentiaries; Rehabilitation.

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Brown v. Board of Education

In *Brown v. Board of Education* (1954), the Supreme Court overturned its earlier decision in *Plessy v. Ferguson* (1896) in which the court had ruled that state-sponsored racial segregation was constitutional on the basis of "separate but equal." Prior to *Brown*, racial segregation was typical in public education and, in fact, many states had laws that either required or permitted segregation in public schools. In effect, African American children were restricted to African

American schools and were often denied access to comparable educational resources and opportunities available to their white counterparts attending white schools.

Many plaintiffs from across the United States challenged racial segregation in public education; however, based on the precedent set by *Plessy*, state courts repeatedly held that racial segregation in education was acceptable on the basis of "separate but equal." Equality was measured by "objective" factors such as buildings, curricula, teacher salaries, and similar measures. In *Brown*, the court considered whether other "intangible" factors undermined the "separate but equal" doctrine set in *Plessy*.

In *Brown*, the court specifically confronted the question of whether racial segregation in public education failed to provide minority children equal protection under the Fourteenth Amendment. During arguments, the court heard testimony from social scientists about research findings on the effects of racial segregation on African American children. The court decided that "intangible" factors, such as the psychological effects of racial segregation on African American children, promoted and preserved inequality. The court determined that racial segregation had a detrimental effect on African American children because it established a sense of inferiority that was not conducive to education; therefore, "separate but equal" was an impossible standard in public education.

The court's unanimous ruling in *Brown* is considered a landmark decision that served as the first step toward eliminating racial segregation in American public schools. By finding racial segregation in public education to be unconstitutional, the *Brown* decision paved the way for further integration efforts and for the civil rights movement.

Case History

Linda Brown, a third-grade student in Topeka, Kansas, had to walk one mile through a railroad switchyard to a bus stop in order to be bused to her African American elementary school, even though there was a white elementary school only seven blocks away from her home. In 1950, Linda's father, Oliver Brown, attempted to enroll her in the neighborhood school, but the principal refused on the basis of racial segregation. Similarly, 12 other parents attempted to enroll their



The former Monroe Elementary School in Topeka, Kansas, seen here in 2010, is now the home of the Brown v. Board of Education National Historic Site, which was established in October 1992. As the school that Linda Brown was bused to, it was one of four segregated elementary schools in Topeka that were central to the Kansas cases included in Brown v. Board of Education.

children in neighborhood schools and were also denied on the basis of racial segregation.

Oliver Brown approached the Topeka branch of the National Association for the Advancement of Colored People (NAACP) and asked for help. The NAACP was prepared to help the Browns and the other families as it had long wanted to challenge racial segregation in public schools. The NAACP hired lawyers and, in 1951, filed a class action lawsuit against the Board of Education of the City of Topeka in the U.S. District Court for the District of Kansas. The NAACP asked the court for an injunction that would prohibit the segregation of Topeka's public schools.

The U.S. District Court heard Brown's case in June 1951. During the trial, the NAACP lawyers

argued that racially segregated schools created a sense of inferiority in African American children. Expert witnesses testified that denying African American children contact and experience with white children created inherent inequality in education. The Board of Education's defense was that segregated schools prepared African American children for other kinds of segregation that they would later experience in adulthood. The board also denied that segregated schools were necessarily harmful to African American children and alluded to famous African Americans who were able to achieve success despite segregation.

The NAACP's request for an injunction put the court in a difficult situation. On the one hand, the

judges agreed with the expert witnesses about the detrimental effect of racially segregated schools on African American children. On the other hand, the precedent set by *Plessy* allowed “separate but equal” school systems for blacks and whites, and no Supreme Court ruling had overturned the *Plessy* decision. Because of the precedent set by *Plessy*, the court felt “compelled” to rule in favor of the Board of Education.

The Supreme Court Decision

On behalf of Brown and the other plaintiffs, the NAACP lawyers appealed to the Supreme Court on October 1, 1951, and their case was combined with other cases that challenged racial segregation in public education in South Carolina, Virginia, and Delaware. The court first heard the case in December 1952, but failed to reach a decision. The case was reargued in December 1953 and finally decided on May 17, 1954. Chief Justice Earl Warren read the decision of the unanimous court:

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other “tangible” factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does ... We conclude that in the field of public education the doctrine of “separate but equal” has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.

The *Brown* decision overturned the “separate but equal” doctrine of *Plessy* for public education, ruled in favor of the plaintiffs, and required the desegregation of schools across the United States. The decision, however, did not abolish segregation in other public areas, such as restaurants nor did it require desegregation of public schools within a specific time period. It did, however, declare that state laws requiring or permitting racial segregation in public schools were unconstitutional. As

such, the *Brown* decision was instrumental in paving the way for further integration efforts and for the civil rights movement.

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See Also: African Americans; Civil Rights Laws; National Association for the Advancement of Colored People; *Plessy v. Ferguson*; Segregation Laws.

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Brown v. Mississippi

The *Brown v. Mississippi* case involved the murder of a white farmer on March 30, 1934. Three black tenant farmers were accused of the murder: Arthur Ellington, Ed Brown, and Henry Shields. Anyone would confess to avoid horrific beatings with a metal-studded belt, simulated hangings, and additional consequences of brutality and police torture. The *Brown* case put a spotlight on some disturbing police interrogation practices. The constitutional legal issues concerned confessions that were introduced into the court proceedings. The trial lasted one day, with illegally obtained and forced confessions serving as the main case against the defendants, which resulted in guilty verdicts. The defendants were sentenced to be hanged, and the sentence was affirmed by the Mississippi Supreme Court on appeal. During the trial, the prosecution witnesses made statements that the defendants confessed after being severely beaten.

In *Brown v. Mississippi*, 279 U.S. 278 (1936), the Supreme Court held that such behavior was unconstitutional. In a unanimous decision, the

U.S. Supreme Court remanded the conviction to retrial. The court cited that the defendants' confessions obtained through the use of police violence would not be tolerated. The court cited the due process clause of the Fourteenth Amendment as grounds for excluding these involuntary confessions.

Involuntary statements from the defendants concern the right to not engage in self-incrimination. When self-incrimination violates the spirit of the Fourteenth Amendment's due process clause, the evidence must be suppressed. These constitutional issues are important when the state's case is based only on the defendant's confession. The protection of the court requires the elimination of contaminated evidence from reaching the jury. The self-incrimination clause prohibits the element of coercion; the clause provides that no person shall be compelled to give evidence against him- or herself in a criminal case. Therefore, cases involving statements that are solicited with harsh pressures that overcome a suspect's insistence on innocence do not meet these constitutional requirements.

The *Brown v. Mississippi* case is a classic example of police violence and torture. In addition, there are lesser forms of coercion, such as prolonged isolation from family or friends in a hostile setting, as in *Gallegos v. Colorado*, 370 U.S. 49 (1962). Moreover, officers conducting interrogations with physically or mentally exhausted suspects in long hours of interrogation is unconstitutional, as in *Watts v. Indiana*, 338 U.S. 49 (1949). The positive outcome is that the case focused on the need to protect the constitutional rights of citizens. Eventually, the famous Supreme Court case of an accused rapist in *Miranda v. Arizona*, 384 U.S. 346 (1966) decided that the defendant had the right to counsel and the right to remain silent during custodial interrogation. In addition, anything he said could and would be used against him in court of law.

The Supreme Court remanded the *Brown* case for retrial; rather than risk a retrial, the three defendants' pled nolo contendere to manslaughter. The sentences ranged from six months to seven years. The cases that followed *Brown* refined the process to represent the intent of the Constitution, Bill of Rights, and the protection from self-incrimination. Confessions that are not voluntary

and that are illegally coerced undermine the Fourteenth Amendment and the due process clause.

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See Also: Appeals; Bill of Rights; Confession; Due Process; Interrogation Practices; *Mapp v. Ohio*; Police Abuse; Torture.

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Buchanan, James (Administration of)

James Buchanan was the 15th president of the United States. Buchanan's administration is perhaps best known as the one that was in control when the southern states began to secede from the Union.

James Buchanan ran his 1856 campaign for the presidency on, ironically, a "Save the Union" theme. The slavery crisis had been forging a rift between sections of the country for some time. This issue led to the emergence of the Republican Party, which absorbed many northern Whigs and many of those who had helped form the nativist American Know-Nothing Party. The 1856 Republican candidate was John Charles Fremont, a well-known explorer and army officer. James Buchanan became the Democratic candidate, in large part because he had been serving for three years as minister to England and had thus been able to avoid taking a public stand on the festering Kansas-Nebraska issue as to whether new states admitted to the United States would be free or slave. Buchanan won the election, receiving 174 electoral votes and 1,838,169 popular votes to his Republican opponent Fremont's 114 electoral



President James Buchanan's administration has been criticized for not being able to maintain unity as the country moved closer to civil war. As a result, he is often ranked among the least popular presidents in U.S. history.

votes and 1,341,264 popular votes; the remaining eight electoral votes went to Millard Fillmore, the Whig candidate.

Attempts to Save the Union

After the election, Buchanan wrote that the main purpose of his administration would be to stop the unrest associated with the slavery question. To this end, he did not appoint any extreme section-
alists to his cabinet but selected more conservative ones. For instance, Buchanan chose Jeremiah S. Black to serve as his attorney general; Black functioned as the chief architect and the primary administration spokesman on the issues of slavery and secession. Black became Buchanan's secretary of state on December 17, 1860. Other members of Buchanan's cabinet included Secretary of War John Buchanan Floyd of Virginia; Secretary of

the Treasury Philip Francis Thomas of Maryland, who was followed by John Adams Dix of New York, who assumed his duties on January 15, 1861; Secretary of the Interior Jacob Thompson of Mississippi; and Secretary of the Navy Isaac Toucey of Connecticut.

The U.S. Supreme Court handed down the famous *Dred Scott* decision in March 1857, two days after Buchanan's inauguration. This ruling declared the Missouri Compromise of 1820 unconstitutional, stating that Congress could not ban slavery from the territorial acquisitions; it further meant that slaves had virtually no rights and that even free blacks were not citizens. Buchanan intended to calm the volatile situation by enforcing the Fugitive Slave Law under the premise that citizens should not be deprived of their property without due process of law. It was naively hoped that this move would placate the southern slave-holding states and help prevent their impending secession. However, the vigorous enforcement of the Fugitive Slave Act kept attention on the slavery issue, and a few highly publicized attempts to rescue slaves in violation of the act fueled southern resentment against northern abolitionists.

Buchanan also declared that his administration would adhere to the principle of popular sovereignty at least with respect to the situation in Kansas. Two opposing governments were attempting to operate in Kansas. One was the antislavery Topeka faction, which Buchanan outlawed, and the other was the Lecompton faction that was proslavery and had been legalized by Franklin Pierce, the preceding president—a stance that Buchanan and his administration supported.

Buchanan selected Robert J. Walker, an anti-slavery advocate, to serve as governor of the Kansas Territory with clear instructions to hold impartial elections, at which time there would also be a vote for or against slavery as stipulated in the 1854 Kansas-Nebraska Act. However, the antislavery populace refused to register to vote for this referendum, forfeiting their right to decide. The proslavery convention presented the question to the electorate and, of course, won the vote; but that vote was condemned by the majority of the people of Kansas, who had refused to participate. Buchanan asked Congress to accept the Lecompton Constitution that would make

Kansas a slave state. William English offered a compromise bill that reduced the federal land grant to Kansas.

Buchanan accepted the English compromise, and thus Kansans rejected the Lecompton Constitution and in 1861, Buchanan signed off on the admission of Kansas as a free state.

Other Issues

The slave-free discussion was a national topic. The Lincoln-Douglas debates focused on this issue. Perhaps to divert attention, Buchanan proposed the annexation of Cuba, which he saw as a move to expand the boundaries of the country, as well as a way to help unite the fractured Democratic Party. Democrats in Congress heavily supported the proposal, but Republicans defeated the plan, feeling it might be a way to add another slave state.

Several other important events took place during Buchanan's administration. On May 11, 1858, Minnesota was admitted as the 32nd state. Oregon was admitted on February 14, 1859, as the 33rd state. On October 16, 1859, John Brown raided the federal arsenal at Harper's Ferry, Virginia, in a failed attempt to initiate a slave revolt. South Carolina then seceded from the Union on December 20, 1860. It was followed from January to February 1861 by the secession of Mississippi, Florida, Alabama, Georgia, Louisiana, and Texas. On January 29, 1861, Kansas was admitted as the 34th state. On February 8, 1861, the Confederate States of America was organized.

Buchanan's administration ruled the country at a time when it was rending itself apart. Historical critics have been harsh toward Buchanan and his administration. James Buchanan, and by extension his administration, is frequently ranked at or near the bottom of presidential popularity lists. However, given the deep-seated divisions that the issue of slavery had within regions of the nation at that time, it is unclear if any presidential administration could have prevented the crisis from erupting. Buchanan ended his administration on March 4, 1861, handing the presidency over to Abraham Lincoln.

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See Also: *Dred Scott v. Sandford*; Fugitive Slave Act of 1850; Kansas; Pierce, Franklin (Administration of); Slavery; Slavery, Law of.

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Buck v. Bell

The Supreme Court decision in *Buck v. Bell* (1927) was the culmination of a national movement to improve the quality of the population by implementing eugenic notions of heredity and racial improvement at the expense of individual rights. It serves as an example of how government decisions can affect the most intimate and private aspects of American lives.

Advocates of negative eugenics pushed for state laws to sterilize the "unfit," a word loosely defined to include imbeciles, "morons," the "feeble-minded," and in some cases, alcoholics and prostitutes. A first wave of laws began with Indiana in 1907; by 1913, 16 states had laws that allowed a board of experts to sterilize state-institutionalized patients deemed unfit. Eugenic rhetoric swayed state legislators more than judges; the latter demanded proof that the procedure benefited the individual, not society. By 1918, the courts had struck down each of the seven civil laws that had been contested as violations of due process or equal protection of the law. A second wave of legislation passed in the 1920s, based on the model sterilization law drafted by Harry Laughlin, which attempted to address early court concerns.

Proponents of these new laws chose the Carrie Buck case in Virginia as a constitutional test.

Justice Oliver Wendell Holmes, Jr., rendered the Supreme Court's decision in May 1927. Holmes upheld the basic tenets of the eugenics movement: Mental defects and criminality are inherited; and mental defectives' fertility could overrun society with incompetence. Influenced by evolutionary science and social Darwinism, he accepted without question the three-generation theory that Emma Buck, her daughter Carrie, and Carrie's daughter Vivian were "feeble-minded." He used the judicial precedent set in *Jacobson v. Massachusetts* (1905) that allowed for compulsory vaccination to protect society. In his view, Carrie was a potential parent of "socially inadequate offspring" who could be "sexually sterilized without detriment to her general health and ... her welfare and that of society [would] be promoted by her sterilization." Arguing that society had the right to "call upon those who already sap the strength of the State ... in order to prevent our being swamped with incompetence," he concluded that "three generations of imbeciles are enough." Dissenting without opinion was Justice Pierce Butler, presumably due to his Catholic opposition to sterilization.

In this case, the court accepted public welfare over individual rights, legitimating the government's right to control who could reproduce. The case lent the mantle of respectability to eugenic sterilization. It legitimized societal scrutiny of women's extramarital sexual behavior, allowing women with illegitimate births to be labeled "feeble-minded," institutionalized, and then sterilized, thus "saving" society from the continuation of "socially unfit" offspring. Nuremberg attorneys used *Buck* to defend Nazi doctors' actions.

The case, however, disregarded important evidence. Holmes ignored increasing warnings among scientists and geneticists that eugenic assertions of hereditary social characteristics such as prostitution were baseless. Holmes also gave cursory consideration at best to the equal protection issue that had gained attention at state and lower federal court levels: The law in question mandated sterilization of feeble-minded persons only in state, not private, institutions. He did not probe the labeling of these three females as "feeble-minded," when in fact they were not. Emma had given birth to three illegitimate children and had sometimes supported them through prostitution. Carrie, born in 1906, had at age 3 been placed in foster care with

the Dobbs family. Carrie progressed normally in school until the Dobbses removed her at age 16 to help out at home. The following year, the Dobbs's nephew raped Carrie. To avoid familial shame, Mr. Dobbs, the town peace officer, petitioned to have Carrie labeled feeble-minded and thus institutionalized. Under pressure, a nurse testified that Carrie's 7-month-old daughter, Vivian, was feeble-minded. Vivian later succeeded in school, achieving honor roll before dying at age 8 from complications of measles. Carrie's sister Dora Buck was also sterilized, although officials told her the procedure was an appendectomy.

In sum, *Buck* relied upon unsound scientific data, intervened in the personal liberty of citizens to reproduce, and legitimated an involuntary program of eugenics in an attempt to "protect" society from the "unfit." Officials wrongly deemed Carrie Buck and her daughter to be unfit. Although Virginia Governor Mark Wagner apologized in 2003 for using state power to enforce eugenic ideals, the case has yet to be overturned.

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See Also: Holmes, Oliver Wendell, Jr.; Supreme Court, U.S.; Virginia.

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Bundy, Ted

While the precise number of victims he murdered will never be known, Ted Bundy remains one of the United States' most infamous and

prolific serial killers of all time. His true motives also remain a mystery. Nearing his execution, he blamed the violent pornography he viewed as a teen as well as the man he believed was his father, who he said tortured animals and was racist and anti-Semitic. Bundy was known to kidnap young women, knock them unconscious, violently sexually assault them, and strangle them to death.

On November 24, 1946, Theodore Robert Cowell was born in Burlington, Vermont, where his mother was living in a home for unwed mothers. Eleanor Cowell told her family she had an affair with a World War II veteran, but they suspected she was impregnated by her abusive father. Nonetheless, Bundy believed his maternal grandparents were his parents and his mother was his older sister. After living for a few years in Philadelphia, Pennsylvania, in 1950, she and Ted were sent to Tacoma, Washington, to live with relatives; one year later, she married Johnny Culpepper Bundy. Bundy's future behavior was only hinted at while he was a teenager. He was a withdrawn high school student, spending time in the library reading novels that included tales of victims of sexual violence and looking through magazines for pictures of dead bodies. To fund his hobby of skiing, he engaged in shoplifting and counterfeited ski passes to gain access to the slopes.

Bundy went to college at the University of Puget Sound and studied psychology. During these years, he drifted from one part-time job to another, suspected of stealing from his employers but never caught. After transferring to the University of Washington (UW) in Seattle, he met the woman who he believed was the love of his life. When she ended their relationship, Bundy became despondent, dropped out of school, and traveled to Vermont where he discovered the truth about his mother. He returned to college and graduated with honors. He met up with his former love from college in the summer of 1973. Impressed with the new Bundy, who was then enrolled in law school, she accepted his marriage proposal, but in January 1974, he abruptly ended the engagement. Shortly after, Bundy dropped out of law school and young women began to disappear in the Washington State area.

There is no consensus about when Bundy began killing or the identity of his first victim. Just before his execution, Bundy told his lawyer his



Notorious serial killer Ted Bundy's Volkswagen Beetle, which he used in his crimes, can be seen among the exhibits at the National Museum of Crime and Punishment in Washington, D.C.

first murder was in 1972; while being examined by a psychiatrist, Bundy said he killed two women during his brief time in Philadelphia. Bundy's first confirmed victim was in January 1974—a student at UW who survived the vicious sexual assault. His first substantiated murder was of another UW student in February 1974, whom he kidnapped from her room. Over the next several months, seven young women, mostly college students, disappeared. The victims were often last seen helping a man with an arm or leg in a cast struggling to load items such as books or a briefcase into his Volkswagen Beetle. Bundy moved to Salt Lake City in the fall of 1974 to attend law school at the University of Utah. He brutally raped and murdered at least five women in the Salt Lake City area. Another victim escaped his attack while in his car as he posed as a police officer. At the end of 1974, Bundy's girlfriend at the time called Salt Lake City police, reporting him as a match to

the profile being publicized. He was quickly dismissed as a suspect, though, due to his charming personality and handsome appearance.

While still living in Utah, Bundy began committing crimes in Colorado, murdering at least six women and young girls. It was here that he was first arrested during a traffic stop. Although they found a ski mask, crowbar, handcuffs, and rope, the police thought they caught a burglar. He was placed in a line-up and two of his victims who had survived picked him out. He was convicted of aggravated kidnapping in Utah in February 1976.

He was extradited to Colorado, where law enforcement was certain they could obtain a murder conviction. He served as his own lawyer and was able to escape custody while doing research in the law library in June 1976; he was caught nine days later. He escaped again in December 1977 and was able to board a plane to Tallahassee, Florida. He went on a rampage, raping four women in a sorority house, killing two. The same night, he killed another college student in her bed; weeks later, he kidnapped, raped, and murdered a 12-year-old girl. Days later, he was arrested during another traffic stop.

One of the sorority house survivors gave convincing evidence during his second trial, in which he also served as his own counsel, and he was sentenced to death. Bundy was put on trial once more in Florida, for the murder of the young girl. His lawyer entered a plea of not guilty by reason of insanity, but he was again sentenced to death. Bundy maintained his innocence throughout the trials and several appeals. Over the next 10 years, he confessed to a number of other crimes, hoping to escape the electric chair. He was executed in Florida on January 24, 1989.

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See Also: 1961 to 1980 Primary Documents; Rape, History of; Serial and Mass Killers; Sex Offenders.

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Buntline, Ned

The author and entertainment entrepreneur known as Ned Buntline was born Edward Zane Carrol Judson in 1823 in Stamford, New York, a small rural farming community in the northern Catskill Mountains. He was the son of a Masonic schoolmaster who was also the author of moral and patriotic pamphlets. Beyond this, it is difficult to know what parts of Judson's past are authentic and what he invented in order to develop his popular persona and alter ego, Ned Buntline. The main source of biographical information about Judson is from his autobiography, *Ned Buntline's Life Yarn*, published in 1849. According to Buntline, he was a self-made and fiercely independent young man who sought adventure and success in the rough-and-tumble world of Jacksonian America. Rejecting his father's patriarchal authority, he proclaimed: "Resurgam is my motto—independence my character! Farewell, Sir; you might have made me all you could have wished—now I will make myself." This kind of bravado led Buntline to fit into the emerging, ruggedly masculine, and individualistic culture of mid-19th-century America.

Between 1838 and 1842, Buntline went to sea, holding a midshipman's commission in the navy and seeing some action in the Second Seminole War in Florida (1835–42). He commenced his literary career shortly thereafter, editing a journal called *Ned Buntline's Magazine* in 1844. He spent several years as a bounty hunter and brawler in Kentucky and Tennessee, arriving in New York City in time to emerge as a self-proclaimed leader of the nativist mob action that took place around the Astor Place Theatre Riot of 1849. His participation in this event, in defense of American actor Edwin Forrest, resulted in an arrest and jail sentence. In New York, he received the attention of sensational newspaper editor James Gordon Bennett, married Bennett's daughter, and became an active member of the Know-Nothing Party that endorsed anti-immigrant and anti-Catholic policies. In 1862, he enlisted in the Union army, only to be discharged two years later with a dishonorable record.

Dime Novels

Buntline is best known as a writer of sensational urban melodramas, and later as the promoter of



Ned Buntline wrote hundreds of stories that influenced popular views of crime and cities in the 19th century. One of his novels even helped lead to the criminalization of abortion in New York.

William Cody (popularly known as Buffalo Bill, an army scout who supplied buffalo meat to the railroad crews). He was central to the construction of a prolific and culturally significant mid-19th-century popular culture. His most famous dime novel, *The Mysteries and Miseries of New York* (1848), which drew upon the form of the French writer Eugene Sue's *Mysteries and Miseries of Paris*, was an attempt to create a panorama of the underside of New York's new urban polyglot culture. One of its principal subplots was configured around a fictionalized version of Mary Rogers (known as the "Beautiful Cigar Girl"), whose mysterious disappearance and death became a cause célèbre and the rhetorical inspiration for the New York City Police Reform Act and the New York State act criminalizing abortion, both passed in 1845. *Mysteries* was followed by *The*

B'hoys of New York (1850), *The G'hals of New York* (1850), and *Three Years After* (1849). These works featured a group of white, working-class characters and a series of interconnected subplots that told the sagas of gamblers and rakes, prostitutes and brawlers, and the poor and the wealthy. As cultural critic Michael Denning and others have pointed out, these novels, which purported to introduce a middle-class audience to the perils of urban life, were probably more popular with the working class than with their wealthier neighbors, despite their very ambivalent portrayal of working-class characters.

Buntline's novels were instrumental in portraying a particularly problematic construction of the mid-19th-century city. For him, it was a dark and dangerous space, a place of social and sexual danger whose chaotic landscape threatened to undermine the entire social order. In *Mysteries and Miseries*, the author's xenophobic politics are supported by a set of appendixes, including a lexicon of urban slang, statistics on New York City crime, and official documents and reports relating to poverty, prostitution, and city asylums. The book also included a reprint of the 1845 Police Act. Throughout the later 1840s and 1850s, Buntline wrote dime novels set in exotic places: Peru, Mexico, Florida, and the Gulf Islands. His literary production was prolific, with his stories and tales numbering in the hundreds.

Buffalo Bill

In the late 1860s, he met William Cody (then a Pony Express messenger, soldier in the Civil War and several wars against the American Indians, hunter, and army scout), the man he would turn into the western adventurer, Buffalo Bill. The popular novel *Buffalo Bill, the King of the Border* inspired the production of many sequels by Buntline and others and eventually led to the creation of Buffalo Bill's "Wild West Show," a traveling extravaganza that critics have seen as instrumental in promulgating not only the myth of the frontier as an iconic feature of American culture but also the even larger dream of American imperial supremacy and power. Although Cody would eventually reject Buntline and replace him with another dime novelist as his chronicler and publicist, Buntline has endured as the primary creator of the legend of Buffalo Bill. In 1871, Buntline

returned to his birthplace of Stamford, New York, married his fourth wife, Anna Fuller, also of Stamford, and lived comfortably there until his death in 1886.

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See Also: Abortion; Dime Novels, Pulps, Thrillers; Fear of Crime; Literature and Theater, Crime in; News Media, Crime in.

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Bureau of Alcohol, Tobacco, Firearms and Explosives

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is a federal law enforcement agency within the U.S. Department of Justice (DOJ) charged with administering and enforcing federal laws related to the manufacture, importation, and distribution of firearms and explosives. It is also responsible for investigating arson cases with a federal nexus, as well as

criminal violations of federal laws governing the manufacture, importation, and distribution of alcohol and tobacco.

Evolution of the ATF

ATF's roots as a law enforcement agency can be traced back to July 1862, when Congress created an Office of Internal Revenue (OIR) within the Treasury Department charged with the collection of taxes on distilled spirits and tobacco products. The following year, Congress authorized the OIR commissioner to hire detectives to facilitate the apprehension, punishment, and deterrence of tax evaders. The role of these detectives known as "revenooers" expanded significantly in 1919 when the Eighteenth Amendment to the U.S. Constitution, along with the Volstead Act, established Prohibition. These laws made illegal the manufacture, sale, transportation, and exportation of intoxicating liquors from or to the United States or its territories. In order to enforce the new statutes, a Prohibition Unit was established within the Bureau of Internal Revenue. Revenue agents assigned to the unit were tasked with investigating violations of internal revenue law, including the illicit manufacture of liquors. On April 1, 1927, the unit was elevated to bureau status and was transferred from the Department of the Treasury to the DOJ. The unit had jurisdiction over alcohol, as well as federal narcotics statutes, until 1930, when the Federal Bureau of Narcotics, a forerunner of the Drug Enforcement Administration, was established.

The Bureau of Prohibition was returned to the Treasury in 1934 at the end of Prohibition and was renamed the Alcohol Tax Unit (ATU). In addition to collecting liquor excise taxes, agents assigned to the unit were tasked with stopping the illegal manufacturing of untaxed liquor. ATU's list of responsibilities was later expanded to include the collection of firearm manufacturing and transfer excise taxes following the enactment of the National Firearms Act (NFA). In 1952, the ATU's title was changed to the Alcohol and Tobacco Tax Division (ATTD) and its list of responsibilities was again expanded to include the enforcement of tobacco tax laws.

In 1968, Congress passed two major pieces of legislation that significantly expanded the role of the ATTD. These were the Omnibus Crime

Control and Safe Streets Act and the Gun Control Act. The laws placed new restrictions on the ownership, manufacture, and transfer of firearms and implemented strict government regulation and control over bombs and other explosives. The ATTD was renamed the Alcohol, Tobacco, and Firearms Division (ATFD) and was given jurisdiction to enforce the firearm and explosives provisions of the new laws. In 1970, it was given the added responsibility of enforcing the Organized Crime Control Act and the Explosives Control Act. These laws provided for close regulation of the explosives industry and designated certain arsons and bombings as federal crimes.

Modern ATF

On July 1, 1972, the ATFD was given full bureau status and renamed the Bureau of Alcohol, Tobacco, and Firearms (ATF). The new agency was tasked with an eclectic array of enforcement and regulatory responsibilities, including the collection of federal taxes on alcohol and tobacco and federal regulation of firearms and explosives. Subsequent laws expanded ATF's jurisdiction. The 1976 Arms Export Control Act focused the bureau's attention on international gun smuggling. The 1982 Anti-Arson Act granted ATF authority to investigate the destruction of property by fire as well as by explosives. Regulatory measures such as the 1978 Contraband Cigarette Act enhanced the agency's ability to collect mandated government taxes from cigarette and liquor manufacturers.

Two incidents in the early 1990s focused national attention on the ATF and led to widespread condemnation of the newly formed agency. The first incident was the standoff at Ruby Ridge, Idaho, that occurred in March 1991. Even though ATF agents were not directly involved in the standoff that led to the death of a federal agent and the antigovernment extremist Randy Weaver's juvenile son and wife, the agency was nevertheless criticized for alleged malfeasance of its agents in the investigation that led to the standoff. The second incident began on February 28, 1993, when ATF agents unsuccessfully attempted to execute a federal search warrant at the Branch Davidian ranch at Mount Carmel near Waco, Texas. An intense gun battle took place, resulting in the deaths of four agents and six Branch Davidians.

The Federal Bureau of Investigation subsequently assumed control of the standoff and initiated a siege of the Branch Davidian compound. This led to a fire that destroyed the compound and killed 76 people, including 24 children. Major changes were made in the ATF hierarchy as well as systemic changes in the agency hiring, recruiting, and training procedures following government investigations into the two controversial incidents.

As part of the Homeland Security Act signed by President George W. Bush after the terrorist attack on the World Trade Center on September 11, 2001, ATF's regulatory and enforcement functions for firearms and explosives were transferred from the Treasury to DOJ. The agency's title was also changed to the Bureau of Alcohol, Tobacco, Firearms and Explosives. Despite the name change, the agency is still referred to as ATF. The agency's regulatory responsibilities for alcohol and tobacco were given to a newly formed Treasury entity, the Alcohol and Tobacco Tax and Trade Bureau.

In recent years, the established link between firearms and drug trafficking has resulted in a significant portion of ATF's resources being dedicated to counternarcotics activities and the reduction of firearms-related violence. The agency is considered a major repository for gang-related information and intelligence incidents. ATF continues to dedicate significant resources to ensure that federally licensed gun dealers comply with federal firearm statutes. ATF is responsible for the National Integrated Ballistic Information Network, a state-of-the-art computerized program that enables law enforcement officers to rapidly determine if a piece of recovered ballistic evidence came from a firearm that was previously used in a crime. The agency has also been recognized for its investigative expertise in responding to both arson and explosives incidents. Specially trained ATF agents with postblast and cause-and-origin expertise assist federal, state, and local investigators with significant arson and explosives events. ATF agents also provide foreign governments with technical and forensic assistance in arson, explosives, and firearm smuggling investigations.

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See Also: 1941 to 1960 Primary Documents; Drug Enforcement Administration; Federal Bureau of Investigation; Omnibus Crime Control and Safe Streets Act of 1968; Prohibition; Ruby Ridge Standoff; Volstead Act; Waco Siege.

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Buren, Martin Van (Administration of)

Historians and political theorists often relate the name of Martin Van Buren with the establishment and consolidation of the Second Party System and with the collapse of the American credit system leading to the country's first harsh economic depression. Yet, his professional training as a lawyer and his position as New York State attorney general made him particularly sensitive to issues relating to crime and punishment. His pronouncements, however, were not entirely consistent, particularly when concerned with slavery. Although he stood firmly against the annexation of Texas during his administration to prevent the addition of slave territory to the United States and run for president for the abolitionist Free Soil Party in 1848, his presidency was marked by the judicial controversy of the Spanish slave-ship *Amistad*. During the case, Van Buren acted against the defendants, using his influence to urge returning the ship to Spain.

Van Buren's career embodies the American myth of social mobility. Born into a humble family on December 5, 1782, he went on to become one of the most influential politicians of his era and was eventually elected the eighth American president, the first to be born a citizen of the United States. In 1796, when he was only 14, Van Buren

managed to enter one of the most respected legal offices in his native town of Kinderhook, which gave him the opportunity to receive seven years of legal training. Van Buren was admitted to the bar in 1803, and the legal office that he established in Kinderhook with his half-brother James Van Alen quickly acquired fame beyond local borders. He particularly made a name for himself as a defendant of land renters and tenants who claimed the land tenure of the Hudson Valley to be based on imprecise colonial grants and sought to limit the power of the big landowners. His fame as a lawyer, together with his networking skills, quickly paved the way for a career in party politics, making Van Buren one of the first American professional politicians. In New York, Van Buren organized the Jacksonian Democrats building the Albany Regency, a shrewd political machine that aimed to maximize party loyalty and discipline. Van Buren actively engaged in fighting political corruption. Yet, his Albany Regency was a first example of a spoils system, as party allegiance was increased by giving government jobs to faithful voters.

In the 1810s and 1820s, Van Buren held important positions in the state of New York, first as senator, then as the state attorney general and, finally, as governor. After only three months in office, Van Buren resigned from governorship in March 1829 to join President Andrew Jackson's cabinet as secretary of state. One of his first legal initiatives as a senator was to fight for the abolition of debtors' prisons, arguing that imprisonment for people who were too poor to pay their debts was an inhumane measure. Once on the national scene, Van Buren was a loyal supporter of Jackson, becoming his vice president in the 1832 election and his successor as president of the United States in 1836. As a national politician, Van Buren affirmed his belief in a legal framework that asserted the primacy of states' rights over those of the federal government as long as these respected the Constitution. Van Buren applied this conviction to the contentious issue of slavery: Although he considered it morally wrong, as a president, he declared himself against its abolition.

The case of the Spanish slave ship *Amistad* forced Van Buren out of his noncommittal strategy as far as slavery was concerned. When the Africans aboard the *Amistad* seized control of the ship that had sailed off from Cuba, they brought



A modern replica of the Spanish ship Amistad sailing off the coast of Connecticut in 2005. The 1841 Amistad case became a defining event of Martin Van Buren's presidency.

it into the port of New London in Connecticut. As they disembarked onto American soil, they immediately became a case for the federal judiciary. Against the abolitionists' claims that the Africans should be freed, Van Buren adopted a legalistic stance, ordering that, in compliance with international treaties, the slaves should instead be handed back to Cuba. Yet, the president maintained that it was the court's responsibility to decide the fate of the slaves. The final decision to return the Africans to their homeland rather than Cuba represented an apparent challenge to the president's wishes.

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See Also: African Americans; Jackson, Andrew (Administration of); Slavery; Slavery, Law of.

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Burger, Warren

Warren Burger was the 15th chief justice of the United States (1969 to 1986). Regarded as a conservative court, the Burger Court did not reverse the decisions of the Warren Court. It did, in some instances, limit those decisions, especially as they related to the rights of the accused.

Warren Burger was born in St. Paul, Minnesota, on September 17, 1907, the fourth of seven children. His parents were Charles J. Burger and Katharine Schnittger. He grew up on the family farm and attended John A. Johnson High School, from which he graduated in 1925. Burger then worked his way through the University of Minnesota (1925–27) and the St. Paul College of Law while selling insurance. He received his law degree magna cum laude in 1931. He then took a job at the firm of Boyensen, Otis and Faricy. He also taught law at the St. Paul College of Law (1931–48). Burger married Elvera Stromberg (1907–94), whom he met while they were both students at the University of Minnesota, on November 8, 1933. They had two children, Wade Allen Burger and Margaret Elizabeth Burger.

Burger was active in Republican politics in Minnesota. He managed Harold Stassen's campaigns for governor in 1938, 1940, and 1942 and managed his unsuccessful bids for the Republican nomination for president in 1948 and 1952. From 1942 to 1947, Burger served on Minnesota's Emergency War Labor Board. In 1952, he played a key role in Dwight D. Eisenhower's nomination by delivering the Minnesota delegation (after Stassen's withdrawal) to the general at the GOP Convention, ensuring a first ballot victory. In 1953, Eisenhower then appointed Burger assistant attorney general for the Civil Division

of the Justice Department. In 1956, he became a judge on the U.S. Court of Appeals for the District of Columbia Circuit, a position he held for the next 13 years. As an appellate court judge, he gave a number of speeches and wrote articles critical of the Warren Court's decisions concerning the rights of the accused.

President Richard M. Nixon nominated Burger to be chief justice of the Supreme Court to replace Earl Warren in 1969. The Senate confirmed Burger, and he took office on June 22, 1969.

When Burger was nominated for the chief justiceship, conservatives in the Nixon administration expected that the Burger Court would overturn controversial Warren Court-era precedents. By the early 1970s, however, it became apparent that the Burger Court was not going to reverse the rulings of the Warren Court and in fact might extend some Warren Court doctrines.

In 1972, the Burger Court issued a unanimous ruling against the Nixon administration's desire to invalidate the need for a search warrant and the requirements of the Fourth Amendment in cases of domestic surveillance with *United States v. U.S. District Court*. That same year, in *Furman v. Georgia*, the court invalidated all death penalty laws then in force in a 5–4 decision in which Burger dissented. In *Roe v. Wade* (1973), Burger voted with the majority to recognize a broad right to privacy that prohibited states from banning abortions. Burger later abandoned *Roe v. Wade* with the 1986 case *Thornburgh v. American College of Obstetricians and Gynecologists*.

Burger led the court in a unanimous 8–0 decision in *United States v. Nixon* on July 24, 1974. President Nixon was trying to keep several memos and tapes relating to the Watergate Affair private based on a claim of executive privilege. In the opinion, authored by Burger, the court held that the judicial branch alone would have the power to determine whether something qualifies to be shielded under executive privilege.

Burger wrote a concurring opinion in the court's 1986 decision upholding a Georgia law criminalizing sodomy (*Bowers v. Hardwick*). He referred to long-standing laws criminalizing homosexuality in his arguments against gay rights.

On the court, Burger rarely showed sympathy for criminal defendants or their asserted rights. In *Harris v. New York* (1971), he announced that a

statement obtained without reading a suspect his or her rights as required by *Miranda v. Arizona* (1966) could be used in court cases. He voted with the court majority and helped bring back the death penalty in *Gregg v. Georgia* (1976). In a seemingly extreme example, in 1983 he even dissented from the court's holding in *Solem v. Helm*, which found that a life sentence for writing a \$100 bad check was indeed cruel and unusual punishment.

Burger took seriously the chief justice's responsibility for administering the nation's legal system. He founded the Institute for Court Management (1970) and the National Center for State Courts (1971). In a December 1971 speech at the National Conference on Corrections, Burger called for the creation of a national training academy for corrections. This led to the establishment of the National Institute of Corrections in 1977. He began the tradition of the annual State of the Judiciary speech by the chief justice at the American Bar Association in 1970. He was both the founder of the Supreme Court Historical Society and, as chief justice, acted as chancellor of the Smithsonian Institution.

Burger retired on September 26, 1986, becoming the chair of the Commission on the Bicentennial of the U.S. Constitution. He had served longer than any other chief justice appointed in the 20th century. Burger led the national celebrations of the Constitution's 200th anniversary in 1987 and the Bill of Rights' 200th anniversary in 1989. He remained chair until the commission ceased to exist in 1991. He was also chancellor of the College of William and Mary from 1986 to 1993. He received the Presidential Medal of Freedom in 1988.

Burger died of congestive heart failure in Washington, D.C., in 1995. He was 87. After lying in state in the Great Hall of the U.S. Supreme Court Building, Justice Burger was buried at the Arlington National Cemetery.

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See Also: Abortion; *Bowers v. Hardwick*; Brennan, William J. Jr.; Capital Punishment; *Furman v. Georgia*; Nixon, Richard (Administration of); Obscenity; Pornography; *Roe v. Wade*; Sodomy; Suspect's Rights; *United States v. Nixon*; Warren, Earl; Watergate.

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Burglary, Contemporary

Burglary is an ancient common law crime against a dwelling, which was sometimes punishable by death. The felony crime of burglary is defined as the nocturnal breaking and entering into the dwelling house of another to commit a felony. Burglary is a felony crime against a habitat, as opposed to robbery, which is a crime against a person. Traditionally, burglary is a crime of stealth committed while the structure is unoccupied.

The Federal Bureau of Investigation (FBI's) Uniform Crime Reporting (UCR) program defines burglary as the unlawful entry into a structure to commit a felony or theft. To classify an offense as a burglary, the use of force to gain entry need not have occurred. The UCR program has three sub-classifications for burglary: forcible entry, unlawful entry where no force is used, and attempted forcible entry. The UCR definition of a "structure" includes apartments, barns, house trailers, or houseboats, when used as permanent dwellings; offices; railroad cars (but not automobiles); stables; and vessels (i.e., ships).

Burglaries are among the most frequently committed crimes and the most difficult to investigate.

This crime is committed approximately every 15 minutes. The average citizen thinks that burglaries only involve homes and business; however, many recent state statutes cover recreational vehicles, railroad cars, houseboats, airplanes, and other vehicles. A few states have included coin-operated machines—typically vending machines located outside businesses.

Automatic teller machines (ATMs) have attracted burglars in recent years because of their availability in businesses and convenience stores. These lucrative targets entice determined burglars to drive trucks through the windows of business establishments to gain access to ATMs. Smash-and-grab strategies require little skill, simply an unrestrained criminal impulse. Generally, after burglars gain entrance, they break into the ATM or try to move it to another location within two to seven minutes.

Burglary frequency and related economic consequences negatively impact the lives of hard-working citizens. Burglaries predispose spin-off crimes because stolen credit cards and checks provide additional criminal opportunities. The second and third burglary offenses may result when the profits are high. In addition, hot targets like laptop computers or jewelry are vulnerable items. When homeowners are the victims of serial burglaries, within 30 days of each other, trauma multiplies and heightens.

Burglary Statistics

According to the FBI, in 2009 there were an estimated 2,199,125 burglaries—a decrease of 1.3 percent when compared with 2008 data. There was an increase of 2 percent in the number of burglaries in 2009 when compared with the 2005 estimate, and an increase of 7.2 percent when compared with the 2000 estimate. Burglary accounted for 23.6 percent of the estimated number of property crimes committed in 2009. Of all burglaries, 61 percent involved forcible entry, 32.6 percent were unlawful entries (without force), and the remainder (6.4 percent) were forcible entry attempts. Victims of burglary offenses suffered an estimated \$4.6 billion in lost property in 2009; overall, the average loss per burglary offense was \$2,096. Burglaries of residential properties accounted for 72.6 percent of all burglary offenses.



Burglaries, which are defined as unlawful entry into a structure to commit a felony or theft, are among the most common crimes, with one occurring about every 15 minutes.

The FBI UCR program cannot offer a full picture of the burglary problem because some citizens do not report offenses; moreover, there are a multitude of UCR research reporting problems. For example, according to FBI statistics, the percentages of burglaries cleared by arrest are low: (1) forcible entry 11.7 percent; (2) unlawful entry, 13.7 percent; and (3) attempt forcible entry, 10.8 percent. The national arrest clearance rates have been consistently reported at fewer than 15 percent for decades.

The National Crime Victimization Survey (NCVS) measures the property crimes of household burglary, motor vehicle theft, and property theft. Since the survey information is obtained from a sample of households, it does not include property crimes affecting businesses or other

commercial establishments. If these crimes are reported to the police, they are included in the UCR. NCVS includes property crimes affecting victims and household members that were not reported to the police.

Summary Findings

In 2009, members of U.S. households experienced about 15.6 million property crimes. Property crimes were experienced at a rate of 127.4 per 1,000 households in the United States during 2009. Rates of household burglary remained unchanged between 2008 and 2009. Property theft rates declined between 2008 and 2009.

Property theft is the most frequently occurring property crime. About 11.7 million property thefts occurred in 2009. About 95.7 per 1,000 households experienced property thefts during this period.

In 2009, about 40 percent of property crimes were reported to police. Motor vehicle theft (85 percent) was the property crime most frequently reported to police. About 32 percent of property thefts were reported. More than half of household burglaries (57 percent) were reported.

Burglary Typologies

High-security burglary targets require the skills of the professional burglar. For example, a former U.S. Army Airborne soldier earned the nickname “Spiderman” after a crime spree of burglarizing and terrorizing high-rise apartment owners in Florida. He stole \$6 million in cash, jewelry, and credit cards. His unique abilities for rappelling the exterior walls of 30-story buildings placed him in a high-level expertise category. “Spiderman” was prosecuted for burglarizing and breaking into a total of 132 high-rise condominiums.

Unconventional jewel thieves and cat burglars like Jack “The Smurf” Murphy and John Henry “The Lizard” Coulthurst scaled balconies with a hook, breaking and entering to glean their targeted bounties. Professional burglary specialists like these often enjoy their criminal reputations, notoriety, and media attention. Their unique skills, method of operation (MO), and trademark behaviors may serve as the clues that lead to their arrest and conviction.

However, most burglary typologies are the result of low-level criminals or burglars create and

search for further uncomplicated opportunities; they have mediocre breaking-and-entering skills. They engage in surveillance and develop contacts for stolen goods. Low-level amateur (novice) burglars tend to prey close to home, where they target unwitting neighbors because of prior knowledge and opportunities. Juvenile first-time offenders and repeat offenders are generally in the novice typology; however, they may graduate to the journeyman or professional levels.

Burglaries always have the potential to turn violent when the lawful property owner returns unexpectedly. Burglary that evolves into a robbery/home invasion where victims are present can lead to violent homicides. Cases where drug addicts are seeking the means to feed their addiction multiply the violence equation. In most cases, the burglar wants to break and enter, seize the money and hot products that can be converted to drug money, and get out.

Burglary Rings

Most burglars are male, with less than 10 percent female offenders, and operate as lone wolves. There are, however, burglary gangs that operate in an organized fashion. These burglary rings may apply coordination strategies that involve cell phones; texting or police countersurveillance strategies are frequently applied. Gang operations may conduct specific targeting behaviors for potential victims and products like jewelry. Some of these gangs have operated successfully for decades without suffering arrests and prosecutions. For example, a Colombian burglary ring, the Code-wise Crew, committed up 12 daily burglaries. This burglary ring operated in groups of approximately three members, identifying structures for breaking and entering when the residents were absent.

Conclusion

Burglary is a crime that affects many citizens and violates the safety and security sentiments of millions of Americans. There is sense of psychological violation and emotional consequences for burglary victims. Lost cherished possessions and family heirlooms represent the theft of the owner's heritage. This kind of psychological loss should not be underestimated. Police agencies have the opportunity to win the support of victims when

their personal property is returned. The crime of burglary is difficult to solve because prior contact between offender and victim is rare. Law enforcement agencies need to improve the burglary clearance arrest rate.

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See Also: Burglary, History of; Burglary, Sociology of; Crime in America, Types; Crime Prevention; Felonies; Larceny; Robbery, Contemporary.

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Burglary, History of

While the historical underpinning of the law of burglary as developed by the common law judges in England starting in the reign of King Henry II in 1154 was the protection of the right of habitation, present-day statutes broadly apply to any building, not just a dwelling, though the focus remains on protecting occupancy and or possession. Under the common law as carried over to the American colonies and incorporated into the various state penal laws, burglary is defined as the breaking and entry of the dwelling house of another, in the nighttime, with the intent of committing a felony therein.

Although the various jurisdictions in this country have both expanded and contracted the scope of the crime and have divided it into degrees of culpability, the common law definition still survives as the core basis of the present-day burglary statutes.

Evolution of Burglary Statutes

The essential element of the common law burglary was the requirement that there be something literally broken, which was no doubt envisioned by Henry II's judges as the forcible invasion of a place of habitation such as the smashing in of a door to someone's home, but since the right to be protected was one of habitation as well as property, a constructive or symbolic break soon developed to satisfy the statute. Thus, opening an unlocked door was sufficient but passing through an open doorway was not. Indeed, by the middle of the 20th century, many states, including California, had eliminated the break requirement altogether, but other states such as New York had not. In the 1960s, New York's law was updated so that the basic definition of burglary was expanded to apply to a person who knowingly enters or remains unlawfully in a building with the intent to commit a crime therein. This definition is now accepted by the majority of the states.

Thus, in 1990, 11 men with copied keys unlocked a closed door and entered the Brinks Bank building with the intent of committing a robbery therein in Boston, Massachusetts—a state that still required breaking as well as entry but no longer limited the law to a dwelling house to constitute a burglary. The men overpowered the guards in the money-counting room and made off with \$1.2 million in cash and another \$1.5 million in checks and securities. All were eventually caught and were sentenced to long prison terms.

In the common law, an essential element of burglary was that it be committed in the nighttime; the intent of this provision was to protect a person sleeping in his house from an intruder who forcibly enters and with the intent to cause damage to persons or property. Common law determined that night was the period of time when a man's face could not be discerned by the light of the sun. The determination of when night began and ended was not a trivialization of the law because, as a felony, the crime of burglary was punished by death. Thus, the time that the crime was committed was of extreme importance.

At the present time some states, including New York, have eliminated the nighttime requirement in the definition of burglary, though most others retain night as an element of an aggravated form or higher degree of burglary, with some chang-

ing the common law definition to the period from sunset to sunrise.

As the common law protected habitation, a break and entry into a structure that was not a person's dwelling house such as a barn or mill did not meet the definition of the crime. By statute in just about every jurisdiction, the definition of burglary was expanded to include property crime. Thus, statutes include any type of structure or building or offices therein, including trains, cars, airplanes, and boats, though a burglary of another person's home is still considered more serious; in New York, for example, a burglary where a dwelling is involved raises the crime from third-degree burglary to second-degree burglary.

Case Study: Watergate

On June 17, 1972, a security guard at an apartment and office complex in Washington, D.C., noticed that a door leading from the building garage to the interior had been taped opened and later resealed. The guard called the police, who reported to the scene and discovered five men in the offices of the Democratic National Committee taking pictures and repairing a wiretap. This break-in at the Watergate, which has been referred to as a "third-rate burglary," was the beginning of one of the greatest political scandals of the 20th century, which ultimately led to the resignation of President Richard M. Nixon. While King Henry II's judges may have found the Watergate break-in to be a criminal act, they would never have found it to be a burglary because the offices where the men were apprehended were not a dwelling house of another person.

In discussing whether the acts of the Watergate perpetrators amounted to a burglary, no consideration would be given either in the common law or in today's statutes as to whether the individuals involved were armed with weapons or explosives because such fact is not an element of the basic crime; but such possession, if illegal, would not preclude prosecution for same as a separate crime. However, under the modern view, if burglars are in possession of weapons or explosives at the time of the crime, even if they are not used, it raises the risk and danger of harm to persons and property, so that the degree of burglary is enhanced, resulting in the possibility of greater punishment.

Breaking and Entering

As a shorthand, burglary is many times referred to as breaking and entering. While the breaking element may no longer be necessary under the law, entry remains an essential element of the crime even where the entry is only of a foot or hand of the perpetrator because of the trespassory nature of the offense. In categorizing the type of entry, many states require that it be an illegal or unauthorized one with the intent to commit a crime. However, at least two states, California and New York, require only that there be an entry with an intent to commit a crime without consideration of whether the entry is authorized.

The New York approach would seem to be more preferable since without a special statute, it covers what the common law of burglary did not: the situation, for example, of a person who knowingly enters a department store lawfully and then unlawfully remains there after closing with the intent formed at the time of the entry to commit a crime such as the stealing of merchandise after the store closes.

In the common law as well as modern law, a burglary had to be of someone else's house or structure unless the possessory interest is split from legal title; for example, a landlord who owns a building could be guilty of burglarizing the apartment of a tenant therein, and in a matrimonial matter, a spouse who obtained a court order for exclusive use and occupancy of the marital home owned by both the husband and wife could have the spouse who was ordered out of the house charged with burglary if that spouse entered or broke and entered the house with the intent of committing a crime inside, such as assaulting the spouse who had the court order.

Intent

Though many elements of the crime of burglary have changed in both nature and scope since the 12th century, one element has remained constant: the intent to commit a crime once inside the dwelling. Thus, a person who breaks and enters and/or enters and remains unlawfully may be guilty of some trespassory crime such as unlawful entry; but without an intent formed at the time of the entry, it is not a burglary. For proof purposes, intent can be inferred from the circumstances of the entry and conduct

thereafter despite any disavowals from the perpetrator. However, once the unlawful entry is made with the requisite intent, the crime is complete regardless of whether the perpetrators then change their minds.

Therefore, if the Brinks or Watergate burglars, after entering the bank building or the Democratic National Committee headquarters, changed their minds and left, taking no money or documents, they could still have been prosecuted for burglary.

Conversely, if an individual were to unlawfully enter a dwelling with the intent to get out of the cold and take a nap, the person may be guilty of some trespassory offense, but it would not be a burglary. Indeed, even if the individual were to awaken and then decide to steal something from the dwelling, it still would not be a burglary because the intent was not formed at the time of entry. It is also clear that the intent is to commit a criminal act but not necessarily any specific one. Thus, if the perpetrator unlawfully entered the dwelling house of another with the intent to steal jewelry therein, but then rapes the homeowner instead, burglary charges would still apply.

Under present law, most jurisdictions have expanded the intent requirement to include any criminal conduct. Thus, the intent can be for a larceny as at common law, but it also can be for an assault, arson, robbery, or rape. It may not, however, be for antisocial behavior, which does not amount to a crime; therefore, a person who unlawfully enters the dwelling of another with the intent to harass, annoy, or alarm another person is not guilty of burglary.

In the common law definition of burglary, the perpetrator had to have the specific intent to commit larceny, which was at the time defined as the felonious taking of the property of another and against his will with intent to convert it to the use of the taker. It is not unreasonable to assume that since the punishment for burglary and larceny was death, the legal community deliberately narrowed the definition of burglary to avoid the extreme penalty.

Under both common and modern law, the intended crime is not merged into the burglary, so that the perpetrator can be prosecuted for both the burglary and for the crime committed (e.g., larceny, rape, or assault).



A New York City policeman and dog with a man they captured carrying suspected stolen goods in 1912. New York's law was updated in the 1960s so that the basic definition of burglary was expanded to apply to a person who knowingly enters or remains unlawfully in a building with the intent to commit a crime therein, and this definition is now accepted by the majority of states.

Conclusion

The crime of burglary has changed over hundreds of years because of case law and wide interpretation by the courts. In reviewing the development of burglary cases, we understand the need to reshape our system. Burglary as represented here is as serious a crime as ever, and close attention must be paid to the way laws change.

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See Also: Burglary, Contemporary; Burglary, Sociology of; Common Law Origins of Criminal Law; Felonies; Larceny; Robbery, Contemporary; Robbery, History of; Watergate.

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Burglary, Sociology of

Burglary as a concept is often thought of in terms of the crime it entails, which involves the breaking and entering of another's home or temporarily unoccupied dwelling with the intent of stealing. Yet this simple definition can be limiting, as there are many burglaries that do not involve "breaking," such as those on home construction sites; one-third of all burglaries have taken place when the offender entered through an open door or window in a house, basement, or garage. As a problem, burglary is no more prevalent now than it has been throughout history. In the United States, the number and the rate, respectively, were reported for 2009 as being 2,199,125 and 732.1 per 100,000 people—lower than the previous year. However, additional understanding of the people who commit and are affected by burglary has established the need for a sociology of burglary.

Burglars

The imperative to commit this type of crime is often the money that can be earned from such endeavors. Most burglars are directly inspired by their surroundings and thus often steal from those within their social or business networks. As a society, America has a very low success rate of catching burglars: only 13 percent. This has been attributed as giving established and potential burglars a sense of confidence in their actions and the belief that they will not be caught.

Typically, those who commit burglary are male and young, with most being under 25 and predominantly Caucasian. Evidence suggests that among this population of burglars there is a striking difference socially and skill-wise between those who get caught and those who have been successful and remain undetected, a group set apart from the general description. A burglar puts him/herself in situations that are often premeditated and knows that they are socially unacceptable. Many criminologists have determined that there is a specific type of personality associated with such antisocial behavior; this is referred to as a criminal personality type. Burglars often lack certain deterrence mechanisms that alert them to standard social norms.

Often, a burglar will not restrict him/herself to crimes of burglary but will also commit robberies

and varying drug-related crimes. In fact, burglary in some cases has been utilized as a means to fund additional crime or drug/alcohol habits. It has been found that in the United States, crackdowns in heroin trafficking and on abusers also leads to decreases in burglaries. Studies have shown that an increase in the level of crack trafficking and use correlates with lower burglary levels but higher robbery levels. According to the U.S. Department of Justice, burglars have a tendency to be "recidivists: once arrested and convicted, they have the highest rate of further arrests and convictions of all property offenders."

Expertise and Specialization

Burglars can be classified as novice, middle-range, and professional. The novice is generally familiar with the target and has taken into account the visibility, accessibility, and vulnerability to spontaneously make attempts that most often yield minimal gains. The middle-range burglar may be more familiar with certain techniques and use strategizing as a way to guarantee the most successful gains. Professionals will take on more complicated jobs farther from areas they are familiar with.

There are several classifications of burglars, one of which is the home construction site burglar. People who decide to steal from these areas often enjoy a higher success rate as the flow of people, tools, and supplies on these sites is not often strictly regulated. Additionally, the groups of people who are affected by the thievery in these instances are larger and more dispersed as they are housing associations, insurance companies, and house buyers. As a unit, they have less agency and interest in retrieving stolen items, particularly with low-level burglary. The U.S. Department of Justice breaks home construction site burglars into three groups: amateur opportunists, insiders, and professional thieves. Amateur opportunists generally steal less valuable items that require less skill to move; professional thieves do the most damage financially as there is more planning and experience involved.

Victims

Home-site burglary results in little to no psychological damage to the victims as the housing associations, insurance companies, and house buyers usually have little personal attachment with what

has been stolen. This is not the case with single- and multifamily homes where becoming a victim of burglary can be psychologically damaging and, depending upon the extent of the burglary, can be a label that carries throughout the life of the victim. Many victims of burglary are often repeat victims, with subsequent offenses occurring within a short time frame after the first.

Single-family homes may be more at risk of burglary than multifamily homes because of their physical separation from others. Another factor is that many homes are unoccupied during the daytime. This is the result of the larger societal transition of women en masse entering the workforce and thus leaving the home for a large portion of the day. In fact, the U.S. Department of Justice reported “in 1961, about 16 percent of residential burglaries occurred in the daytime; by 1995, the proportion of daytime burglaries had risen to 40 percent.” This is in contrast to the general assumption that most burglaries occur late at night.

However, there are also those burglaries that occur while there is a member of the household present at the residence. The standard definition of burglary only alludes to the potential for property crime. This is true in 72.4 percent of the cases. Yet 27.6 percent occur while a household member is present, which often leads to additional violent crime. There are three basic scenarios in this situation: (1) the offender intended to harm a specific victim; (2) the offender mistakenly believed that the home was empty; (3) the homeowner returns to find the burglary in progress. It is reported that households of married couples who have no children are the least likely to experience this type of burglary—while single households, both male and female—with children are most likely to experience this, a fact attributed to a balancing of risk assessment and greed because families with children often occupy larger, more appealing dwellings. Furthermore, households that have higher incomes and heads of households that are older than 19 are least likely to experience a home invasion.

The pattern that seems to result when burglaries are committed in more suburban regions is that neighborhoods suddenly hit by a burglary will experience periods of hypervigilance where additional burglar alarms are installed, targets are hardened or entryways in homes are secured, property is marked to make it difficult

for a burglar to sell any stolen goods, occupancy indicators are increased to give the impression that someone is present in a home, and initial police response and follow-up investigations are improved. This is less the case in large cities where burglaries are more commonplace.

Despite the fact that certain dynamics of burglary have shifted over time, the burglary rate has remained consistent like that of many other crimes. Therefore, the antisocial personality dynamic that leads to crime generally is a consistent factor within our society irrespective of law enforcement efforts.

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See Also: Burglary, Contemporary; Burglary, History of; Crime in America, Types; Felonies; Larceny; Robbery, Sociology of.

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Bush, George H. W. (Administration of)

George Herbert Walker Bush (1924–) was elected president of the United States in 1988 and served one term in office (1989–93). Before that, he served as vice president under Ronald Reagan from 1981 to 1989. His administration’s focus on criminal justice policy largely revolved around advancing the war on drugs that was escalated

during the Reagan administration. Like Reagan, Bush viewed drugs as synonymous with crime. While vice president, Bush led a task force on international drug smuggling in an effort to better coordinate federal efforts to reduce the importation of drugs into the country. As president, he escalated the war on drugs, following in Reagan's footsteps. He was the first president to appoint a "drug czar," as mandated by the 1988 Anti-Drug Abuse Act. He also signed into law several significant pieces of crime legislation, including the 1990 Crime Control Act and the Hate Crime Statistics Act.

Bush successfully used the crime issue to defeat Democrat Michael Dukakis in the 1988 general election. Bush was able to paint Dukakis, a former governor of Massachusetts, as soft on crime because of his opposition to the death penalty and a controversial weekend prisoner furlough program that Dukakis oversaw as governor. The furlough program, which allowed approximately 53,000 Massachusetts prisoners to leave prison for a short time in 1987 (mostly for the purpose of beginning to reintegrate into the community before release), was generally successful, with few inmates committing crimes while released. However, Bush highlighted one high-profile case: William Horton, a convicted murderer, raped a woman and stabbed her fiancé while on a weekend furlough. Bush's campaign bombarded viewers with television ads showing "Willie" Horton's picture and describing the crime made possible by Dukakis's furlough program. As a result, Bush was able to exploit this weak spot in the Dukakis campaign and make crime a central issue for voters.

The War on Drugs

As president, Bush was able to successfully raise public concern over the war on drugs. In a televised speech that aired on September 5, 1989, Bush rolled out his campaign to get even "tougher" in the war on drugs. In that speech, he famously held up a bag of crack cocaine that had allegedly been purchased by undercover agents in the park across the street from the White House. He told Americans, "Our most serious problem today is cocaine, and in particular, crack." Because of this speech, as well as a dramatic increase in television coverage of the "drug problem," the Gallup Poll

showed a surge in public concern over drugs, with a record 30 percent of Americans naming drugs as the most important problem facing the United States. Even though a *Washington Post* reporter revealed several weeks later that the drug "bust" in front of the White House was staged by federal agents who lured the dealer into the park, the war on drugs proceeded rapidly forward.

Bush appointed William Bennett to be the director of the Office of the National Drug Control Policy; in effect, Bennett became the country's first "drug czar." Bennett, who had been Reagan's secretary of education, was outspoken and embraced media attention. Many of his stances and comments were controversial, including a statement he made on the *Larry King Live* show, saying that a viewer's suggestion of beheading drug dealers was "morally plausible." Bush's drug policy focused more on law enforcement than treatment. His first drug control budget provided more funds for police forces and jail space, in addition to funds to states for developing alternatives to incarceration such as boot camps for nonviolent drug offenders. Bush also expanded border interdiction systems, approving use of the National Guard to help local law enforcement officials in multiple states. Bush's drug policy drew criticism for not focusing enough money on drug treatment and prevention. Bush's administration defended its strategy by claiming that there was not enough money to expand the drug war on all fronts. Bennett left the Bush administration in 1990 and was replaced by former Florida Governor Bob Martinez. Bush's subsequent drug control strategy attempted to increase funding for health initiatives, but the appropriation was taken out of the final drug control budget. Overall, arrests and incarceration rates for drug offenses climbed considerably during Bush's administration.

Other Presidential Achievements

In addition to escalating the war on drugs, Bush focused on several other crime-related initiatives. In 1990, he signed into law the Crime Control Act. This legislation established the Crime Victims' Bill of Rights in the federal judicial system and provided \$900 million to assist states with the functioning of their criminal justice systems. Among other things, the bill also enhanced penalties for child pornography. During the same year,

he also signed into law the Gun-Free School Zones Act, which forbade “any individual knowingly to possess a firearm at a place that [he] knows ... is a school zone.” The law was eventually declared unconstitutional by the Supreme Court and was therefore voided. An amended version was signed into law in 1995. Another piece of legislation Bush signed into law in 1990 was the Hate Crime Statistics Act, which required the Justice Department to collect and publish data on crimes that “manifest prejudice based on race, religion, sexual orientation, or ethnicity.”

Bush appointed two new Supreme Court justices during his administration—David Souter and Clarence Thomas. Thomas proved to be a highly controversial nominee when he was accused of sexual harassment by a former coworker. The Senate ultimately confirmed his appointment in a 52–48 vote. Significant Supreme Court decisions during Bush’s administration related to crime and criminal justice include *Texas v. Johnson* (1989), in which the Supreme Court ruled that flag burning was protected under the First Amendment and therefore was not a criminal offense. The decision in *Hudson v. McMillan* (1992) reversed a lower court’s ruling that the beating of a prisoner by guards only constitutes “cruel and unusual punishment” if the prisoner is “significantly” injured. The court decided that any “wanton and unnecessary infliction of pain” was cruel and unusual punishment. Thomas, who was one of two dissenters in the ruling (the other was Antonin Scalia) argued that prisoners who are beaten by guards are not protected under the Eighth Amendment.

Bush lost his reelection bid to Arkansas Governor Bill Clinton. While Bush was able to effectively use crime as an issue in his first election, he downplayed it in the 1992 election, possibly because he did not have the powerful crime symbol (Willie Horton) that he had before. As a result, Clinton was able to gain the upper hand in the crime issue, along with many other issues that voters felt were important.

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See Also: Drug Abuse and Addiction, History of; Prisoner’s Rights; Sentencing.

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Bush, George W. (Administration of)

George W. Bush was the 43rd president of the United States, serving from 2001 to 2009. Bush defeated Al Gore in the closely contested 2000 presidential election, which was highlighted by the controversy surrounding the Electoral College votes in the state of Florida. As president, Bush was able to appoint many conservative judges to the federal bench, including John Roberts as the chief justice of the U.S. Supreme Court. However, the terrorist attacks of September 11, 2001, and the subsequent war on terror largely defined his presidency.

September 11 and the War on Terror

On September 11, 2001, 19 members of Al Qaeda crashed three civilian airliners into the Twin Towers of the World Trade Center in New York City and the Pentagon in Washington, D.C., killing almost 3,000 civilians. President Bush immediately announced that the United States was engaged in a “war on terror.” His administration immediately took several steps designed to secure the United States from further attacks and to retaliate against Al Qaeda. Putting the United States on a war footing was an important part of the Bush administration’s response to the attacks. Historically, wartime presidents have enjoyed a considerable degree to freedom when exercising their Article II commander in chief powers. By couching the government’s responses to the September 11 attacks in terms of it being a “war,” the administration hoped to receive substantial deference to its preferred antiterrorism policies. Some of President Bush’s legal advisers, such as Office of Legal Counsel official John Yoo, were of the



President George W. Bush and Texas Governor Rick Perry face the media at a news conference in the aftermath of Hurricanes Katrina and Rita in Port Arthur, Texas, on September 27, 2005. That same year, Bush appointed the conservative Supreme Court Chief Justice John Roberts; this was followed by the appointment of Justice Samuel Alito in January 2006.

opinion that there were few, if any, limits on how the president could respond to the ongoing terrorist threat. This stance became highly controversial when it became clear that the Bush administration had used it as legal justification for many of its secret and most controversial programs.

On September 14, 2001, Congress passed the Authorization to Use Military Force (AUMF). The AUMF, which remains in effect, even after the death of Osama bin Laden, is a vague, open-ended grant of power articulating congressional support for the president's efforts to pursue those who helped commit the September 11 attacks. The president was also given the power to use military force to prevent future terrorist acts against the United States if/when needed. Later that fall, the United States launched attacks against Taliban and Al Qaeda forces in Afghanistan. The military effort in Afghanistan against these groups continued into

the presidency of Barack Obama and remain ongoing as of 2011. In the spring of 2003, the Bush administration also launched a military campaign against Iraq premised on the argument that Saddam Hussein possessed weapons of mass destruction that could be used against the United States. The initial conflict was brief, and the United States and its coalition allies occupied Iraq and captured Saddam Hussein. However, no weapons of mass destruction were ever found. The continued occupation of Iraq and attempts to transition it to a functioning democracy occupied much of President Bush's second term in office. It was a difficult process marked by uneven progress and divisions among the various political factions in Iraq.

On October 26, 2001, Congress passed the USA PATRIOT Act, legislation designed to provide President Bush with enhanced tools to fight terrorists. The act made it easier for government to

access e-mail, telephone, and financial records of suspected terrorists. It also expanded government surveillance powers and allowed government agencies to more readily share information. Although it easily passed both chambers of Congress, the PATRIOT Act soon became a focal point of Bush administration critics who argued that the act went too far and that it infringed on the constitutional rights of Americans. Despite these criticisms, the act—even its more controversial provisions—has been reauthorized several times, most recently by President Barack Obama in May 2011.

The Bush administration also unilaterally enacted a number of controversial antiterrorism policies. Some of these policies were public, but others were less so. As the fighting began in Afghanistan, the administration recognized that it would need a place to detain those captured by U.S. forces. As a result, the administration designated the American naval base at Guantanamo Bay, Cuba, as a primary detention facility for suspected terrorists. The use of the Guantanamo facility and the questionable treatment of many detainees there sparked harsh domestic and international criticism from those who believed that the United States was violating international law by engaging in torture. It later came to light that many detainees in U.S. custody, most notably those in Iraq's Abu Ghraib prison, suffered from extensive abuse. While acknowledging some problems, the Bush administration stood firm and continued to insist that many of its more controversial interrogation techniques such as waterboarding (a technique in which water is poured over a person's face to simulate drowning) did not amount to torture.

Shortly after September 11, 2001, the Bush administration also implemented what later became known as the Terrorist Surveillance Program (TSP). This secret program allowed executive branch agencies to engage in electronic surveillance of suspected terrorists without warrants or any judicial supervision. Many critics argued that this program was an attempt to circumvent legislative and judicial oversight. They also claimed that it violated the Federal Intelligence Surveillance Act (FISA), the legislation designed to regulate the collection of foreign intelligence by the U.S. government. The program was eventually discontinued after its existence became public. Still, the administration defended its secret

program, arguing that FISA didn't provide the needed speed and flexibility in the war on terror. The government sometimes needed to move quickly, officials argued, and the TSP allowed agencies to do just that.

Eventually, many of the Bush administration's controversial programs were challenged in federal court, and the U.S. Supreme Court handed down several decisions on their constitutionality. In *Hamdi v. Rumsfeld* (2004), the court held that the AUMF authorized the president to detain terror suspects as enemy combatants (even American citizens) but that suspects had the right to due process and the ability to challenge this "enemy combatant" designation before a neutral tribunal. In *Rasul v. Bush* (2004), the court ruled that Guantanamo detainees had the right to challenge their detention in U.S. federal court despite the fact that they were not technically being held on U.S. soil. In a related case, *Hamdan v. Rumsfeld* (2006), the court also struck down the system of military tribunals used to try many of the Guantanamo detainees, a system that had been unilaterally established by the Bush administration shortly after 9/11. Congress responded to the *Hamdan* decision by passing the Military Commissions Act of 2006, again authorizing Guantanamo detainees to be tried via military commission.

Even after leaving office, President Bush and Vice President Richard Cheney were adamant that their antiterrorism policies were the right course of action for the United States. Far from being apologetic of their actions, they steadfastly proclaimed that they would take same actions if they had to do it all over again. In his first days in office, President Barack Obama quickly repudiated a number of the Bush administration antiterrorism policies, issuing executive orders designed to close the detention facility at Guantanamo Bay and rejecting many of the harsh interrogation methods used by the Bush administration.

George W. Bush and the Federal Courts

During his eight years in office, George W. Bush had the opportunity to appoint more than 300 judges to all levels of the federal bench. President Bush also appointed two justices to the U.S. Supreme Court. In 2005, District of Columbia Circuit Court Judge John Roberts was nominated to replace Chief Justice William Rehnquist, who had died

after a battle with thyroid cancer. That same summer, Justice Sandra Day O'Connor also resigned, allowing Bush to appoint Judge Samuel Alito to her position on the court. Despite these successes, Bush faced significant opposition from Democrats in the U.S. Senate on a number of his other appellate court nominees. Democrats charged that his nominees were "radically conservative" and out of the "judicial mainstream" of thought. Several were filibustered, which caused a handful of nominees to withdraw from consideration altogether. Eventually, a bipartisan group of senators called the "Gang of 14" reached an agreement that allowed most of Bush's judicial nominees to receive votes on the Senate floor and be confirmed.

The Roberts Court has issued a number of rulings that have pleased political conservatives. Two of the more notable ones touch on right to bear arms. In *District of Columbia v. Heller* (2008), the court struck down a Washington, D.C., ordinance banning firearms in the home and requiring weapons to be disassembled or otherwise disabled with mechanisms such as trigger locks. The court ruled that the Second Amendment protects the right of an individual—unconnected to any service in the militia—to possess a firearm in one's own house for the purpose of self-defense. Two years later, the court took the significant step of incorporating the Second Amendment, applying it to the states in *MacDonald v. Chicago* (2010). While the court left some issues unresolved, the fact that it recognized that the Second Amendment contained an individual right to own firearms was an important victory for advocates of gun rights.

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See Also: 2001 to 2012 Primary Documents; Homeland Security; Terrorism; Torture; USA PATRIOT Act of 2001.

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Byrnes, Thomas

A famous New York City detective, police chief, and author, Thomas Byrnes was born in Ireland and immigrated to the United States as an infant. He grew up in New York's Fifth Ward along the Hudson River. He briefly served in the Civil War with Ellsworth's Zouaves, returned to New York, and joined the police force in 1863. Byrnes quickly rose through the ranks: He was appointed roundsman in 1868, sergeant in 1869, captain in 1870, inspector and chief of detectives in 1880, and superintendent of police from 1892 to 1895. Known for his charisma and strong personality, Byrnes exemplified the evolution of New York's detective force from an untrained group of watchmen to a disciplined military-like organization. Byrnes instituted a variety of high-profile reforms.

In 1880, Byrnes opened detective offices at 17 Wall St. and in the New York Stock Exchange Building in order to monitor and arrest thieves and pickpockets in the city's business district who preyed on bank messenger boys, depositors, and others cashing checks. Byrnes then established the "dead line"—any known thief or pickpocket found south of Fulton or Liberty streets was "dead" and the police could arrest him on sight. Aggressive enforcement of the dead line transformed street life in lower Manhattan. Crime dropped, and Byrnes became a hero among New York businessmen. His success convinced President-elect Grover Cleveland to place him in charge of presidential security during the 1885 inauguration ceremonies in Washington, D.C.

Byrnes also created a system of municipal espionage during the 1880s. His detectives infiltrated and monitored leisure resorts in the tenderloin nightlife district along Broadway and Sixth Avenue. He expanded and enlarged the "rogues' gallery," a photographic collection of criminal suspects posted on public display at the central police headquarters in Manhattan. He required pickpockets and other "professional criminals" traveling through New York to "register" with him and avoid any criminal activity while in the city. Before major parades, Byrnes's detectives waited in railroad depots and ferry stations in Jersey City, Hoboken, and New York and detained any suspected criminal. Defenders of Byrnes claimed that he was responsible for transforming New York's



Two detectives study portraits in the police "rogues' gallery" in July 1909. Thomas Byrnes improved and expanded this photographic collection of criminal suspects displayed at the New York City police headquarters in Manhattan.

detective force into an unparalleled crime-fighting organization, surpassing even London's Scotland Yard. Concerns about civil liberties mattered little to Byrnes. He was associated with harsh methods of criminal interrogation, often referred to as "the third degree" (some erroneously claimed Byrnes invented the tactic). Although Byrnes admitted to physically assaulting suspects at times, he insisted that the use of corporal punishment, sleep deprivation, and the denial of food and water were short-sighted and usually ineffective. "The 'third degree,'" he told reporter Frank Marshall White, "should be a psychic rather than a physical process."

After Allan Pinkerton, Byrnes was the most influential crime writer in the 19th-century United States. In 1886, he published *Professional Criminals in America*, an illustrated compendium

of the leading underworld figures at the time. In 1891, he coauthored *Darkness and Daylight: or, Lights and Shadows of New York Life* with Helen Campbell and Thomas W. Knox. Byrnes even became the subject of story papers and melodramas, best exemplified by Julian Hawthorne's five novels allegedly "from the diary of Inspector Byrnes."

Byrnes was appointed New York City police superintendent in 1892, but immediately came under attack from the Rev. Charles Parkhurst and various reform groups. Byrnes responded by transferring precinct captains, instigating formal charges of corruption against certain inspectors and captains, and raiding brothels and gambling dens. These actions never placated Byrnes's critics. Byrnes testified before the Lexow Committee investigating municipal malfeasance in 1894 and not only admitted that the police department suffered from corruption but also that he personally profited from his position. He described how he turned \$12,000 of savings into \$300,000 with advice from Jay Gould and Cornelius Vanderbilt. Shortly thereafter, Theodore Roosevelt was appointed president of the New York City Board of Police and Byrnes resigned on May 27, 1895. Byrnes became an officer in the United States Casualty Co. after he left the force. He dabbled in real estate in New York and New Jersey, while occasionally providing law enforcement advice to police officials and New York City mayors. He died of stomach cancer in his home at 318 West 77th Street in New York on May 7, 1910.

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See Also: Detection and Detectives; Interrogation Practices; New York; Professionalization of Police; Reform, Police and Enforcement; Roosevelt, Theodore (Administration of).

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California

California is the third-largest U.S. state by area and the largest by population. The population of California in 2010 was 37,253,956, a 10 percent increase from 2000. California has an ethnically diverse population that is 57.6 percent white, 13 percent Asian, and 6.2 percent African American, with smaller numbers of other ethnic groups and people reporting multiple ethnicities; 37.6 percent of the population identified themselves as Hispanic or Latino (a person of any race can be of Hispanic or Latino origin), 26.8 percent were foreign born, and 42.2 percent spoke a language other than English at home. The median household income in 2009 was \$58,925 (above the U.S. average), and 14.2 percent lived below the poverty line (comparable to the U.S. average).

Early History

Numerous Native American tribes lived in the area now known as California before the arrival of the Europeans. Many resisted the arrival of European settlers beginning in the 16th century, and the first colonizers, the Spanish, used military force to establish and sustain their missions in California. Several armed revolts against the missions were documented in the 18th century, as were the assassinations of several priests by Native Americans, before the mission system collapsed in

the 19th century. However, the Native Americans suffered far more than the Europeans, with their numbers declining about 50 percent between the arrival of the Europeans and annexation of California by the United States at the conclusion of the Mexican–American War in 1848.

The California Gold Rush, which began after gold was discovered at Sutter's Mill in north central California in 1848, caused a huge increase in California's population, particularly in San Francisco, which was the official port of entry by sea for the state. Most of the gold mining claims were on public land, and as California was essentially without government other than that provided by military commanders, miners adapted a variety of codes governing issues such as the rights to a particular claim.

In 1850, California became a state, and one of its earliest pieces of legislation was the somewhat ironically named Act for the Government and Protection of Indians, which, among other things, devalued the legal testimony of Native Americans against whites, prohibited them from buying alcohol, and established the legal basis for kidnapping and enslaving Native Americans. Another early law required foreign miners to pay an onerous tax (\$20 per month, when a good claim might produce \$16 per day), an act specifically implemented to discourage or prevent Chinese, Mexicans, and other migrants from

placing claims, a practice already in place before statehood. In 1854, the California State Supreme Court ruled that Chinese people, as well as African Americans and Native Americans, did not have the right to testify in court against whites. Chinese immigrants were also resented by white laborers, who saw them as economic competition; racist attacks on Chinese occurred regularly. The so-called Anti-Coolie Act (officially An Act to Protect Free White Labor Against Competition with Chinese Coolie Labor, and to Discourage the Immigration of the Chinese into the State of California) passed by the California legislature in 1862 imposed a tax of \$2.50 per day on Chinese who worked in the mines or in any business. Tensions increased with the completion of the transcontinental railroad in 1869 because the thousands of Chinese who had been working on it joined the labor pool. In 1882, the United States passed the Chinese Exclusion Act (it was

not repealed until 1943, by the Magnuson Act), which excluded Chinese immigrants from U.S. citizenship, made it difficult for immigrants to leave the United States and re-enter, and excluded Chinese laborers and miners from immigrating to the United States.

Police and Policing

The first statewide law enforcement agency in California was the California State Rangers, established in May 1853 to capture or kill Joaquin Murrieta, a Mexican bandit and his gang, known as the Five Joaquins. Murrieta was killed in July 1853, and the Rangers disbanded shortly thereafter. The California State Police (CSP) was founded in 1887 to protect state agencies, the governor, and the capitol building. The state police also patrolled the aqueduct systems, performed tax seizures, and provided investigative services. The California Highway Patrol (CHP)



The California Highway Patrol is sometimes called upon to assist local police in disasters and emergencies. These California Highway Patrol mobile field force officers performed annual training in crowd dispersal methods using smoke canisters at the Marine Corps Air Ground Combat Center in Twentynine Palms, California, on November 9, 2011.

was created in 1929 to enforce traffic laws on county and state highways with the goal of promoting safe and efficient use of the highway traffic system. The CHP also provides disaster and lifesaving assistance and assists in emergencies that are beyond the capacity of local authorities. By World War II, the CHP consisted of more than 700 uniformed officers. In 1947, the state established the Department of the California Highway Patrol, headed by a commissioner. The CHP was merged with the California State Police in 1995 and today has many responsibilities beyond those stated in the original mandate, including inspecting buses and trucks, educating the public about safety issues, and protecting the governor, state property, state employees, and visiting dignitaries.

As the population of California has increased (from 15.7 million in 1960 to 37 million in 2009), so have the number of crimes generally increased. Looked at in terms of the rate of different crimes per 100,000 population, it can be seen that the amount of crime relative to population has fluctuated over this period, changes attributed to various causes, including the crack epidemic that hit much of the United States in the 1980s, changes in policing patterns, passage of the three strikes laws that kept many criminals incarcerated and by definition not committing crimes in the civilian world, and (more controversially) changes in abortion laws that meant that fewer unwanted children were born in the socioeconomic classes mostly likely to commit violent crimes. In 1960, California had 3.9 murders per 100,000; in 1970, 6.9 per 100,000; in 1980, 14.5 per 100,000; in 1990, 11.9 per 100,000; in 2000, 6.1 per 100,000; and in 2009, 5.3 per 100,000. The rates of total violent crime (of which murders make up a small proportion) follows a slightly different pattern: in 1960 there were 239 violent crimes per 100,000 population; 474.8 per 100,000 in 1970; 893.6 per 100,000 in 1980; 1045.2 per 100,000 in 1990; 621.6 per 100,000 in 2000; and 436.6 per 100,000 in 2009. Of course, in any year the number of crimes reported varies widely by location: In 2009, Los Angeles County had 6.7 homicides per 100,000 while Ventura County (also in southern California) had a homicide rate almost 50 percent lower at 3.4 per 100,000.

Political Protest and Free Speech

In 1919, the California legislature passed the Criminal Syndicalism Act, which prohibited individuals from acting or organizing in ways intended to overthrow the government (many other states had similar laws at the time). In 1922 Anita Whitney was convicted under this act for her role in establishing the Communist Labor Party. She claimed that the act violated her right to due process and equal protection and appealed to the U.S. Supreme Court, which in 1927 ruled that the law was constitutional, declaring that the state had the right to control and punish those whose speech was intended to incite crime, disturb the peace, or threaten established government. However, this judgment was overruled in a later Supreme Court decision, *Brandenburg v. Ohio* (1969), in which the court ruled that speech could not be prohibited or punished unless it was judged likely to incite immediate lawless action.

The University of California, Berkeley (UCB), was a center of political protest in the 1960s, and the free speech movement was founded on the UCB campus in 1964. Some of the organizers had participated in civil rights actions in the south and questioned practices on their own campus, including the fact that faculty were required to take a loyalty oath and that political advocacy and fund-raising by students was severely restricted. In December 1964, a sit-in (a tactic borrowed from the civil rights movement) protesting the arrest of Jack Weinberg (a former student who had been sitting at a table soliciting donations for the Council of Racial Equality) took place in Sproul Hall and was the site of a famous speech by Mario Savio that advocated that students stop the “machine” of society. Hundreds of students were arrested, although they were released a few hours later, and UCB rules were revised to allow more political activity and discussion on campus.

In the following years, the UCB campus was the site of many protests against the Vietnam War, including a teach-in held in May 1965 attended by about 30,000 people. UCB students also participated in antiwar demonstrations off campus, including a May 5 march to the Berkeley Draft Board bearing a black coffin and numerous protests that included young men publicly burning their draft cards. Deliberately destroying or mutilating a draft card was made a criminal act in

1965 and, in the 1968 decision *United States v. O'Brien*, the U.S. Supreme Court ruled that the prohibition was not a violation of free speech.

More recently, students and some faculty at several branches of the University of California gathered in 2009 to protest a 32 percent increase in undergraduate tuition (pushing costs to more than \$10,000 annually) as well as cuts in staff. Most of the demonstrations were peaceful, although some students were arrested for conducting sit-ins (at UCB, the University of California, Davis, and the University of California, Santa Cruz, among others), and a protest outside the home of the UCB chancellor resulted in property damage and eight arrests. Although the demonstrations drew publicity about the price hikes, they were not successful in rolling them back due to the California budget crisis.

Three Strikes and Drug Laws

California passed one of the nation's first "three strikes" laws in 1994 (Proposition 184), which specified life imprisonment for offenders convicted of three felonies. This law was amended in 2000 (Proposition 36) so that certain nonviolent drug offenders could receive probation and mandated treatment rather than incarceration. Another amendment (Proposition 66) to the three strikes law failed in 2004; it would have required the "third strike" to be a serious violent crime (not all felonies meet this definition). There is no general agreement on the usefulness of three strikes laws in reducing crime and whether other measures could achieve better results at lower cost. California also has tough laws regarding parole violations: A 2007 study found that parole violations were the reason for nearly two-thirds of prison admissions.

The three strikes law and severe enforcement of parole regulations contributed to overcrowding in California's prisons. About 25 percent of California's prisoners are serving extended sentences for second or third offenses, which are punished more severely under the three strikes law than first offenses. On May 23, 2011, the U.S. Supreme Court ruled in a 5–4 decision (*Brown v. Plata*) that the prison conditions were so bad they constituted cruel and unusual punishment, a violation of the Eighth Amendment to the U.S. Constitution. The majority decision cited the overcrowding and lack of medical and mental healthcare as

causing needless suffering and death and ordered state officials to reduce the prison population to 110,000 (still 137.5 percent of capacity) from the 2011 level of more than 140,000. The state was given two years to accomplish this reduction, which Governor Jerry Brown stated he intended to do by moving nonviolent inmates and those convicted of relatively minor crimes into county facilities, with the state subsidizing the counties for the costs of incarcerating these inmates.

California opened its first adult drug court in 1991 and juvenile offender drug court in 1995. These courts have several goals, including providing treatment rather than incarceration for drug and alcohol offenses, integrating drug treatment with other rehabilitation services, reducing the number of children in the welfare system, and reducing the social costs of drug and alcohol abuse. Typically, possession offenders who complete the court-ordered treatment program are discharged without a criminal record.

California has allowed the use of medical marijuana since 2003. Patients or their caregivers are required to obtain a recommendation from their physician and are then issued a Medical Marijuana Identification Card, which allows them to purchase marijuana legally. As of 2011, 53,378 cards have been issued: 46,972 to patients and 5,697 to caregivers. Nonmedical use of marijuana has been somewhat decriminalized in California: Gift or possession of 28.5 grams or less is treated as an infraction carrying a fine of \$100, while possession of larger amounts is a misdemeanor carrying a sentence of six months incarceration and a fine of \$500.

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See Also: 1851 to 1900 Primary Documents; *Brandenburg v. Ohio*; Chinese Americans; Chinese Exclusion Act of 1882; *Griffin v. California*; Hispanic Americans; *Hurtado v. California*; Native Americans; Racism; Three Strikes Law; *Whitney v. California*.

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Camden, New Jersey

Camden is a city in southern New Jersey that was incorporated in 1828. The city serves as the county seat of Camden County. Camden is situated near Philadelphia, Pennsylvania, and the Delaware River and has a population of roughly 77,344. Camden County was initially settled by the Dutch West India Company in 1626 at a time when the Dutch and Swedish competed for control of the fur trade in the region. The settlement of a Quaker colony at Philadelphia in 1682 encouraged trade between Camden (located in what was then West Jersey) and Pennsylvania through the introduction of ferries that helped to facilitate transportation, making Camden an important hub in the Philadelphia region for more than 100 years. The Port of Camden developed on the eastern shore of the Delaware River in New Jersey opposite the Port of Philadelphia.

The development of the Industrial Revolution in America through the 19th century brought railroads such as the Camden and Amboy Railroad

and industries such as shipping, shipbuilding, food canning, and the manufacture of phonographs. Campbell Soup Company (1869), the New York Shipbuilding Corporation (1869), and RCA Victor (1901) were based in Camden during the height of the industrial era in the United States. Camden became a thriving industrial city in the early decades of the 20th century, with an expanding population, connected by transportation links to both Philadelphia and New York City.

Since World War II, Camden has been a city marred by the ravages of deindustrialization, high unemployment, poverty, crime, and urban decay despite more recent attempts at revitalization. Modern Camden is at the center of the social history of crime and punishment in the United States. Crime or some form of mismanagement has been documented at nearly every level in the city, including the police department, school system, and government. Three mayors have been jailed for corruption (the most recent in 2000) while the school system and the police department have both been made subject to state takeover amid the rise of violent crime. This has led some to label Camden as either a "failed" or "dysfunctional" city. Camden has been routinely listed as one of the most violent cities in the United States since the late 20th century. The social history of crime and punishment in Camden may be explained through a discussion of the changes in economics, industry, society, and politics from postwar deindustrialization to the present.

Economy and Industry

The economy and industry of Camden have been shaped by the geographic positioning of the city. Camden is located between two key waterways: the Delaware and Cooper rivers. This prime area facilitated the growth of the ferry system in and around Camden at places such as Coopers Point on Market Street, Federal Street, and Ferry Street from the late 17th century through the early 19th century. Some of the earliest buildings erected in Camden emerged first around the ferry industry, including taverns, hotels, and companies such as the Coopers Point Hotel built by Samuel Cooper in 1770 near Delaware Avenue. The ferries helped to connect Camden to emergent cities (such as Philadelphia and New York) and major towns in South Jersey. Industrial development through the

19th century brought improvements in transportation, urbanization, new immigrants, and manufacturing industries to Camden.

The railroads were a vital feature of industrial growth and development in 19th-century Camden. One of the first railroads in the United States, the Camden and Amboy Railroad, was built by inventor Robert L. Stevens (1787–1856) in New Jersey during the 1830s. This was the first railroad in New Jersey and the first railroad in the United States to connect major cities; it was built more than three decades before the Pacific Railroad connected Mississippi to California. The Camden and Amboy Railroad was followed by the Camden and Atlantic Railroad in the 1850s, bringing new business and passengers to the Camden ferries.

The rise of business and industry came with the railroads. In 1860, there were 80 manufacturers in



A carpenter finishing a wooden radio cabinet in an RCA Victor factory in Camden, New Jersey, in 1937. In the early 20th century, RCA Victor employed 10,000 workers in 23 Camden factories.

Camden; by 1870, that number had risen to 125. Joseph Wharton's Camden Metal Works (American Nickel Works) began production in 1862 in Camden and served as a major supplier of nickel to the U.S. Mint for the manufacture of coins. In 1869, Joseph Campbell and Archibald Anderson formed a partnership to develop a canning factory that later came to be known as the Campbell Soup Corporation. Some other successful Camden businesses at the time included Henry Bottomley's Camden Woolen Mill, the Coopers Point Iron Works, and the New York Shipbuilding Corporation. New York Shipbuilding at its height in Camden employed 40,000 workers. In 1901, the Victor Talking Machine Company (RCA Victor) emerged in Camden and eventually became the world's largest manufacturer of phonographs and phonograph records for much of the early 20th century, employing 10,000 in Camden.

Though the Campbell Soup Corporation continues to make Camden its world headquarters, post-World War II Camden has suffered economically. The decline of industry and white flight from the city have contributed to its economic downfall. Currently, two of every five residents in Camden live below the national poverty line. Camden spends an estimated \$17,000 per student per year in the Camden school district, yet only two-thirds of these students actually graduate high school. By 2006, Camden was listed as one of the poorest cities in the United States, with a large majority of residents living under the poverty line. The median household income in Camden was estimated at \$18,000 in 2000, and in 2009, the unemployment rate was recorded at roughly 17 percent. The lack of economic opportunity as compounded by a crippling poverty has contributed to the changing sociopolitical landscape and the rise of crime in the city.

Society and Politics

Camden has a multiethnic and multiracial social history. The Lenni Lenape were the Native American inhabitants of the region. They engaged in hunting and gathering activities until their numbers began to dwindle because of European encroachment, disease, and the depletion of natural resources. The first European settlers were the Dutch, English, and Irish through the 1600s and 1700s. The ferry sites, including Daniel's Ferry,

Samuel Cooper's Ferry, and Roberts Ferry, served a vigorous Delaware River slave-trading business through the 1700s. German, Polish, and Italian immigrants came to the area through the 19th century. The rise of cities and urbanization contributed to a dramatic period of growth in Camden's history between 1870 and 1920, with the population increasing from 20,000 to 116,000. Immigrants from Italy and eastern Europe began to dominate the city in the 1920s, coupled with the Great Migration of African Americans to northern cities. Once teeming with a mixture of mostly British, Irish, and German migrants, modern Camden is primarily a city of African Americans (45 percent), Hispanics (43 percent), and foreign-born immigrants from places such as the West Indies and the Dominican Republic. In terms of politics, though it was once significantly Republican, Camden is a place that has become recognized as a stronghold of the Democratic Party.

The same industries that brought immigrants to Camden during the 19th century have now drained middle-class communities out of Camden, with key businesses having withdrawn from the city, in decline, or simply relocated elsewhere during the 20th century. RCA Victor, once maintaining 23 of its 25 factories inside Camden, was no longer headquartered in Camden after 1929. The New York Shipbuilding Corporation no longer made Camden home after 1967.

Camden has been operating under a mayor-council form of government since the 1960s, and in 1994, the council members were no longer elected at large. Instead, the city was divided into four districts, with one council member elected from each district. Mayor Milton Milan was jailed for corruption in 2000.

Crime and Punishment

Crime and punishment in Camden took a violent turn in the postindustrial era after World War II with the decline of industry and the rise of poverty. In fact, the first single episode of mass murder in U.S. history occurred in Camden. Howard Unruh, an unemployed World War II veteran, killed 13 of his neighbors in 12 minutes during a random killing spree that took place on September 6, 1949. Unruh was subsequently found not subject to criminal prosecution by reason of insanity and was sent to the New Jersey Hospital

for the Insane (now Trenton Psychiatric Hospital), where he died in 2009 at age 88. Both the Trenton Psychiatric Hospital and the Riverfront State Prison have been instrumental institutions of punishment for Camden's criminals. The Riverfront State Prison was opened on Camden's north side in 1985 and closed in 2009 to make way for new commercial development along the waterfront. In 2002, Camden was ranked the third most dangerous city in the United States, and in two consecutive years, 2004 and 2005, Camden had the dubious distinction of being the most dangerous city in the United States, a milestone it reached again in 2009. The designation of "most dangerous city" is based on the statistics for violent crimes such as murder, rape, robbery, and assault.

Camden has experienced a high incidence of crime or impropriety in society, government, the police department, and education system. The rise of crime in Camden is directly linked to deindustrialization and the rise of poverty. Nearly a third or more of the city's residents live below the poverty line. Social scientists have long made the link between high rates of poverty and crime. Working and middle-class families began to abandon the city for places such as Cherry Hill once railroads, electric trolleys, and highways began to serve as avenues into the suburbs and out of the city. This was coupled with the mass decline of industry as compounded by racial tensions in the late 1960s, culminating in the Camden Riots in 1971. Several days of violence occurred in 1969 in response to rumors that an African American girl had been beaten by a white cop; in 1971, the actual beating death of a Puerto Rican motorist led to days of violent civil unrest through August. The two white police officers charged with the beating death of the motorist (Rafael Rodriguez Gonzales) were subsequently acquitted of manslaughter by a jury.

In the 1990s, less than 10,000 of the 50,000 manufacturing jobs brought by businesses such as RCA and New York Shipbuilding remained in Camden, and in the 2000s, Camden began to acquire a notorious reputation as the crime capital of America. The Port of Camden (South Jersey Port Corporation) has been under scrutiny for alleged improprieties and the school system and police departments of Camden remain under a state takeover. By 2003, according to



Revitalization plans in Camden, New Jersey, which averaged one of the highest crime rates in the United States in the late 2000s, include waterfront projects, new upscale housing and commercial developments, and Urban Enterprise Zones. This sign marked the site of an American Recovery and Reinvestment Act Project near a partially abandoned row of houses in inner-city Camden in March 2011.

the Federal Bureau of Investigation (FBI) report “Offenders Known to Law Enforcement,” Camden had surpassed the national average in nearly every arena of violent crime several times over, including murder (6.69 times the national average), rape (1.9 times the national average), robbery (4.8 times the national average), and aggravated assault. In 2008, Camden had the highest crime rate in the United States with 2,333 violent crimes per 100,000 people (the national average was 455 per 100,000 at this time). The 2011 layoff of nearly 50 percent of Camden’s police force has led to a rise in arson, burglary, rape, and aggravated assault.

Revitalization

The post–World War II industrial decline of Camden has given way to a vast revitalization plan despite the rising crime statistics. Major

employers in the city include the Campbell Soup Corporation, the City of Camden, Rutgers University, the state of New Jersey, and Cooper University Hospital. The Port of Camden, with terminals at Beckett Street and Broadway and access to the Atlantic Ocean, continues to handle both international and national bulk cargo. The Campbell Soup Corporation’s Campbell’s Field is home to the minor league baseball team known as the Camden River Sharks and is situated on the waterfront along the Delaware River. This area also includes the Adventure Aquarium, the Susquehanna Bank Center, and the floating museum USS *New Jersey*. Some sections of Camden have also been designated as Urban Enterprise Zones to encourage redevelopment. There are also redevelopment plans in the works to produce upscale housing and more commercial businesses.

The city of Camden has undergone profound changes in its history. This is evident in the social, economic, and industrial past, including the rise of crime and punishment. Camden was once the industrial capital of New Jersey in many respects with ferries, railroads, electric trolleys, and thriving corporations. There is no doubt that Camden has harshly weathered the fate of deindustrialization, not unlike other great cities in the American experience.

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See Also: Crime Rates; New Jersey; Newark, New Jersey; Riots; Urbanization.

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Caminetti v. United States

During the 1890s and the first two decades of the 20th century, the U.S. Congress began to criminalize interstate commerce deemed harmful to society in general. Among the prohibitions were impure food and drugs, stolen automobiles, prostitution, and child labor. Lawmakers relied on two provisions of Article I of the U.S. Constitution to legitimize these statutes: the commerce clause and the necessary and proper clause. Farley Drew Caminetti was convicted of violating one of these laws, a verdict the U.S. Supreme

Court subsequently upheld. National authority to do so remains controversial today, nearly 100 years later. Legal challengers asserted in federal court that such national policies violated the Tenth Amendment by invading “the powers ... reserved to the states.” At that time, these advocates had history on their side. With rare exception since 1789, states had protected the health, welfare, safety, and morality of persons residing within their boundaries from the criminal behavior of others.

The White Slave Traffic Act, also known as the Mann Act, was a significant example of an early-20th-century congressional policy that spawned constitutional conflict between Article I and the Tenth Amendment. Introduced by Republican Congressman James Robert Mann of Illinois, the proposal was enacted in 1910 and was signed into law by President William Howard Taft. The statute specifically invoked the commerce clause by providing that “any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any territory or in the District of Columbia, any woman or girl” could be prosecuted for felonious conduct.

The U.S. Supreme Court first adjudicated the Mann Act in 1913. In *Hoke v. United States*, counsel for the petitioner asserted that the law was invalid on its face, as written, and argued that the federal government was attempting to interfere with the Tenth Amendment police power of the state of Texas to regulate the morals of its citizens. The interstate commercial element of the Mann Act was evident, however, in such references as “for the purpose of prostitution” and “with the intent and purpose to induce, entice or compel such woman or girl to become a prostitute.” A unanimous court upheld the act, deciding that the statute was concerned with a “domain which the States cannot reach and over which Congress alone has power.”

The Caminetti Case

The law was more ambiguous about the appropriate scope of application of the Mann Act. The statutory language pertaining to “debauchery or for any other immoral purpose” and engaging in “any other immoral practice,” if divorced from

prostitution, raised serious questions about the potential for selective enforcement. Farley Drew Caminetti and Maury I. Diggs were convicted in 1913 in Sacramento, California, by jury verdict in separate trials for violation of the Mann (White Slave Traffic) Act. Their wives had informed law enforcement agents that their husbands were traveling with Lola Norris and Marsha Warrington—with whom the wayward husbands were having extramarital affairs—to Reno, Nevada. Upon arrival, the men rented an apartment, and arrests followed. On appeal to the U.S. Supreme Court in *Caminetti v. United States*, the convictions were affirmed in 1917.

A three-fifths majority sustained application of the Mann Act to the conduct of Caminetti and Diggs. In doing so, Justice William Day and the majority construed the intent of Congress to include interstate travel for the purpose of consensual extramarital sexual activity. Justice Day concluded that not to apply the law in this case “would shock the common understanding of what constitutes an immoral purpose.”

Justice Joseph McKenna’s dissenting opinion called attention to the tenuous relationship between the commerce clause and the facts of these cases. From his perspective, the intent of Congress in passing the Mann Act was to attack “commercialized vice as a business which used interstate commerce as a facility to procure or distribute its victims. These defendants were not so engaged.” Not until 1986 did Congress amend the law by replacing “debauchery” and “any other immoral purpose” with “any sexual activity for which any person can be charged with a criminal offense.”

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See Also: Fornication Laws; Mann Act; Prostitution, Sociology of.

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Capital Punishment

The United States is virtually unique among modern industrial democracies in maintaining the use of capital punishment. Both historically and in the contemporary world, the death penalty has had strong supporters as well as serious critics. Reflecting the contested status of the sanction, its use has varied depending on a number of factors, including crime rates, public sentiment, legal strictures, and geographical differences.

The annual number of executions in the United States has been on the decline since it reached a peak of 98 in 1999. In 2010, there were 46 executions in the nation, virtually all of them in the south. Only seven states executed more than one person. Texas alone was responsible for 37 percent of these deaths. It appears from the statistics that although some surveys indicate the persistence of support for capital punishment, in recent years, its use has become less frequent and more localized. Likewise, the number of offenders sentenced to death has also declined from 315 in 1999 to 114 in 2010. More than 85 percent of those death sentences were handed down in the south and the west. If juries are reflective of community sentiments toward capital punishment, the death penalty’s popularity has decreased even in such traditional areas of support as Virginia, Georgia, and Missouri, which had no death sentences in 2010. In addition to a decline in both executions and death sentences, a number of anti-capital punishment governors were elected in recent years in California, Connecticut, Maryland, New York, Massachusetts, and Illinois. A number of opinion polls indicated a decline in support for the death penalty, especially when respondents were offered a life sentence without parole as an alternative.

Several reasons may be offered to explain why, according to a variety of measures, support seems to be declining. A number of high-profile cases have indicated that innocent persons are sentenced to death, and some have suggested that such wrongful convictions may actually lead to the execution of some who are innocent. The existence of alternatives such as life without parole makes the argument that death is necessary to protect public safety more tenuous. Likewise, many citizens are concerned about the cost of capital punishment when state budgetary problems lead to

cutting other vital services such as education and law enforcement. A significant number are also concerned about the apparent arbitrariness of a system that disproportionately affects minorities, the poor, and the mentally ill.

Historical Background

Although capital punishment has been a fact of life in America from the earliest colonial period, its purposes, the rationales for its use, and the methods of execution have undergone many changes. To the earliest settlers who brought the English legal codes with them, capital punishment for a large number of crimes was simply a reality intended to serve a variety of purposes. It was meant to be a deterrent whereby potential offenders would be discouraged from criminal activity. It was intended as retribution, holding the lawbreaker responsible and requiring him to pay the price for his crimes. And it was designed to offer the opportunity for a sinner/criminal to repent and to end his life in a state of grace, which could spare him eternal damnation. Up until the late 18th century when prisons were developed, the death penalty served as the major punishment available for serious crimes. Few questioned its utility or its necessity, and both the theory and practice of capital punishment suggested that most people regarded criminals not as “others” different from law-abiding citizens, but as neighbors who had succumbed to the evil forces that could tempt anyone.

For free white persons sentenced to death, hanging was the usual form of execution. The event followed a standard ritual and generally brought a community together to witness the public drama. After the prisoner was brought to the scaffold, the sheriff read the death warrant and sometimes added some editorial comments of his own. One or more ministers would follow with sermons, setting out the moral lessons to be learned from the fate of the condemned man. Next, the offender would speak, offering his own interpretation of the failings that had brought him to such a miserable end. The crowd would sing hymns, and finally, with a hood draped over his head, the prisoner would be hanged. The whole ceremony could take hours and was typically conducted with the solemnity of a religious service. During the 17th and 18th centuries, parents were

encouraged to bring their children to observe the hanging, as it was believed to be an especially effective way to teach about morality. However, even in the colonial period, some observers complained that the hanging ritual would often have a contrary effect if it instilled sympathy for the condemned man, who could seem to be a victim himself.

The crowds who observed executions represented all elements of the community; in fact, the event could serve a number of secular purposes. It might satisfy a curiosity about violence, even provide a sort of vicarious excitement in otherwise normal lives. It could show how the community made a statement of its disapproval of certain behaviors, thus reinforcing its solidarity. And it demonstrated the power of the state to punish those who defied the authority of the law. For people who were unable to attend an execution, the highlights would be available in published form—the sermon, the last words of the condemned man, and a description of the death itself could be profitable to publishers and could serve as exciting as well as efficacious reading to the public.

Although hanging was the most common method of execution, several other options existed during the colonial era. While witches had been burned at the stake in Europe, those convicted of witchcraft in America were—like most common criminals—hanged. The more dramatic punishments were reserved for persons found guilty of either petit treason (wives who murdered their husbands or slaves who killed their owner would be burned) or treason. In the latter case, the offender might be disemboweled and dismembered. His corpse could be left to decompose in public view. Slaves or Native Americans could be hanged in chains, as an added deterrent to members of their community. These examples served as a sort of “super capital punishment,” intended to demonstrate that the crime was so horrible that “mere” death was insufficient as a response.

By the time of the American Revolution in the late 18th century, voices began to be raised questioning both the propriety and the utility of capital punishment. Enlightenment thinkers had emphasized the need for governments to establish rational systems based on a social contract that assumed human rights. One such influential

thinker, Cesare Beccaria, wrote *On Crimes and Punishments* in 1764. Beccaria's work, which was widely read by the American founding fathers, argued that capital punishment was a violation of human rights. No one, he maintained, could give the state the power to take his life. He further claimed that the death penalty was ineffective as a deterrent. Life in prison accompanied by hard labor would, Beccaria argued, frighten a potential offender more than the prospect of a simple hanging. And, he noted, rather than discouraging violence, public hangings hardened citizens to brutality.

Although Beccaria's treatise did not lead to the abolition of capital punishment in the United States, along with other Enlightenment writings, it influenced policy makers to reduce its use to a few serious crimes: For example, Pennsylvania limited the use of capital punishment when it distinguished degrees of murder in 1794. The development of prisons in the 19th century provided an alternative sanction that seemed more consistent with the enlightened and humane society Americans hoped to create. In addition, many thoughtful people came to believe that crime was not simply a matter of free will but that instead, a malign environment could be responsible.

As a movement promoting the abolition of capital punishment developed, its proponents argued that crime was analogous to illness. The solution was not to kill the patient, but to remove him from the sources of contamination. Others tried to reconcile opposition to the death penalty with the Bible by citing the New Testament teachings favoring mercy rather than the Old Testament's endorsement of retribution. Although the idea of doing away with capital punishment altogether had some adherents, before the Civil War, only a few northern and midwestern states followed the 1847 example of Michigan and abolished it. In the south, there was little or no opposition.

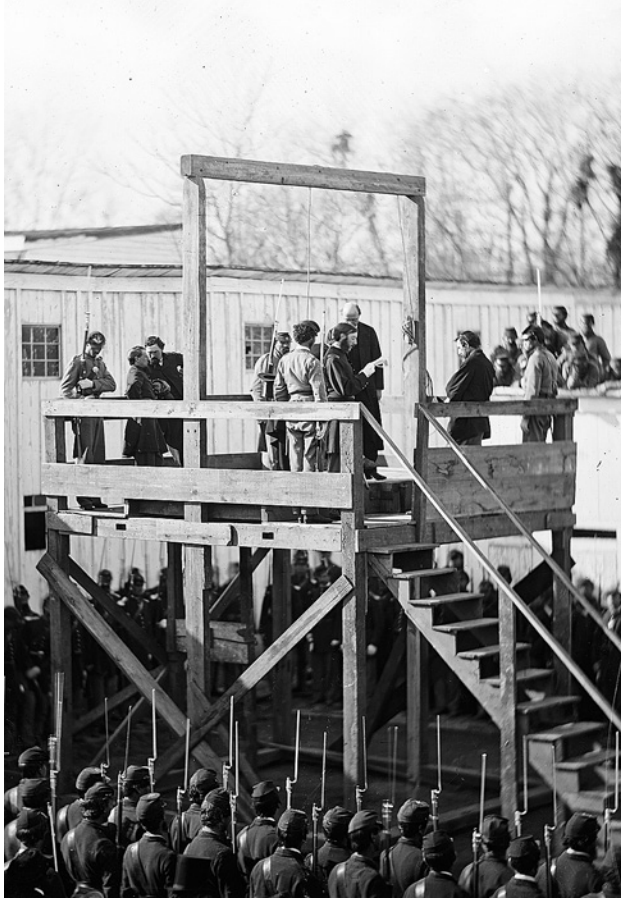
Many authors note that the retention of capital punishment in the south is inexorably connected to the institution of slavery. While the southern states abolished the death penalty for most crimes other than murder committed by whites, black slaves were hanged at rates quite disproportionate to their population. They might be executed for rape, slave revolt, attempted murder, burglary, or arson, as well as for murder. Hangings

were public and were intended to deter others from similar behaviors. State governments were required to reimburse owners for the cost of an executed slave. For that reason, many slaves were executed outside the system by lynching, while in other cases, states sold slaves outside the country to defray the cost of reimbursement.

The Nineteenth and Twentieth Centuries

While the debates over the use of capital punishment waxed and waned, the setting of executions in the north moved from the public square to the prison yard. The rise of the urban middle class in the 19th century was accompanied by attitudes that valued gentility and decorum. The violence of a public execution came to be regarded as barbaric, something well-bred people would not wish to see. Nor did members of the new bourgeois class approve of the behavior of vulgar crowds, who might drink and carouse during a hanging. Mobs might miss the moral lessons of a hanging and be brutalized instead. Such sentiments led authorities to move executions inside the prison walls, where only invited observers witnessed the death of the offender. The result was that the community no longer came together to participate in a ritual and make a moral statement. The responsibility for carrying out the punishment symbolically shifted from the public to the government. Some would argue, in retrospect, that the opponents of capital punishment made an unfortunate deal whereby hangings continued unabated, and the potential for abolition was reduced when they moved out of public view.

The effort to move executions from a public space into the confines of the prison was only the first change that altered the relationship between the community and the application of the death penalty. Some have suggested that as Victorians and modern Americans became less comfortable with death, it was only consistent that capital punishment became less visible and more sanitized. Technology, especially the development of the electric chair and the gas chamber, meant that executions would be carried out by "experts" in a closed room in a centralized location. Some states sought alternative means of death because of frequent reports that bungled hangings caused serious pain to the condemned person. At the end of the 19th century, a faith in science as the solution



Confederate Captain Henry Wirz was hanged for war crimes in the Civil War in November 1865, in the yard of Old Capitol Prison, the future site of the U.S. Supreme Court in Washington, D.C.

to many human problems and a belief in the wonders of electricity contributed to the notion that electrocution could provide a clean and “painless” way to put criminals to death. New York was the first state to execute a convict in the electric chair when William Kemmler was put to death in 1890. Prior to his execution, state and federal courts, including the Supreme Court, had ruled that death by electrocution would not violate any of Kemmler’s rights. However, the procedure was badly bungled. The generator malfunctioned, and the electrician in charge of its operation ordered repeated surges of current. Kemmler’s hair caught on fire, and witnesses reported the smell of burning flesh. Nonetheless, New York continued with the use of the electric chair, and 14 other states adopted the method before World War I. Most people inside and outside the criminal justice

system viewed the electric chair as a progressive development. Perhaps some of this approval occurred because electrocutions were carried on behind closed doors, with no visual reports of errors in its application. With few exceptions, states located their electric chairs and therefore all their executions in a single prison, often far from the community where the crime had occurred.

Nevada adopted the gas chamber in the mid-1930s, and 11 states followed suit. The use of toxic gas promised a swift and painless death that would simply “put the convict to sleep.” However, concerns about the safety of spectators as well as the expense of building and maintaining a gas chamber made the method somewhat impractical. In addition, after World War II and the Nazi use of lethal gas during the Holocaust, its appeal waned in the United States. With the use of the electric chair and the gas chamber, executions were not only concealed from the public but were more exclusively male. In virtually every case, everyone who participated in the killing—the warden, the technicians, the witnesses—was a man and an agent of the state. The relationship between the community ritual and the visibility of the punishment became more attenuated, making the argument for deterrence more difficult. Almost none of the witnesses were the sort of people for whom the deterrence message was intended.

If the argument that capital punishment was necessary to deter potential criminals was cast into doubt, scholarly work in the early 20th century also raised questions about the extent of individual responsibility for criminal behavior. Criminologists, psychologists, and other students of human behavior advanced theories suggesting that deviant behavior could possibly be correlated with inherited characteristics or, alternatively, with environmental factors. Both types of theory argued that individual offenders could not be totally responsible for their actions. If that were true, the death penalty as an instrument of retribution could not be justified. Such academic arguments seemed to influence the public’s perception of criminal accountability. Juries were returning fewer death sentences, and in some cases where death was a mandatory punishment with a guilty verdict, juries were engaging in nullification and returning verdicts of “not guilty.” As a result, states enacted statutes allowing juries

more discretion in sentencing. Legislatures in 15 states abolished the death penalty before 1917. However, after World War I, seven states reenacted the sanction.

The issue was clearly a matter of political debate, but trends shifted frequently during the early 20th century. Publicity about a number of high-profile trials such as the Sacco and Vanzetti case where there were doubts about the defendants' guilt kept the issue in the public eye. By the mid-20th century, death sentences in both the north and the south had significantly decreased. However, in the south, African Americans continued to be sentenced and executed in disproportionate numbers.

The Role of the Supreme Court

Although the task of interpreting the Constitution falls to the Supreme Court, it did not address the issue of applying the Bill of Rights to the states until the mid-20th century. Before that time, the court tended to defer to the individual states' application of their criminal law despite the constitutional prohibition against cruel and unusual punishment in the Eighth Amendment. However, beginning with a series of decisions in the 1960s, the court tended to set national standards that protected the rights of the accused in the criminal process.

The concept that the death penalty might be inherently unconstitutional first came to the Supreme Court as a result of cases raised by the National Association for the Advancement of Colored People (NAACP). The NAACP had represented a number of African American men on trial for capital offenses. It gathered statistics showing the disparities in sentencing based on race. From the 1890s to the 1970s, more than 54 percent of those executed were "non-white." Among 4,736 illegal executions (lynchings), 73 percent of those killed were black. These percentages were grossly disproportionate in a society where African Americans made up 10 percent to 12 percent of the general population. Many observers argued that capital punishment was used as an instrument to maintain white supremacy. The NAACP claimed in the post-World War II period that the biased application of the death penalty violated "evolving standards of decency."

The court in a 1958 case, *Trop v. Dulles* (1958), had ruled that the definition of cruel and unusual

punishment must "draw its meaning from the evolving standards of decency that mark the progress of a maturing society." In other words, the justices indicated that the test of whether a punishment violated the Constitution would be based on the changing (and presumably more humane and refined) attitudes of the contemporary society. Thus, when challenges to the death penalty were raised before the court, they almost always tended to reflect the argument that capital punishment no longer conformed to the views of the American people.

In 1963, the NAACP in *Rudolph v. Alabama* raised a claim that racial bias in capital sentencing violated the evolving American standards. The case concerned a black man sentenced to death for the rape of a white woman, a situation all too common in the south. Although the court declined to hear the case, three justices in a rare procedure wrote a dissent from that decision. Their opinion questioned whether executing a man for rape violated evolving standards.

Furman v. Georgia. *Rudolph* laid the groundwork for a landmark case nine years later. In *Furman v. Georgia* (1972), the court for the first time ruled on the constitutionality of the death penalty. It found that capital punishment *as applied* violated the ban on cruel and unusual punishment in a 5–4 decision. *Furman* involved three cases consolidated into one argument. Furman was a black man who had shot a white homeowner, apparently by accident, during a burglary. The other two cases involved rapes of white women by black offenders. All three defendants had been condemned to death by juries that enjoyed wide discretion in choosing sentences.

Each member of the Supreme Court wrote a separate opinion and, although five justices found the death penalty as administered unconstitutional, their reasoning varied widely. Justice William Brennan concluded that American juries voted for so few death sentences that its rejection showed that it violated evolving standards. Likewise, it was disproportionate to many crimes and its use could be arbitrary and biased. For Brennan, the court could simply formalize the consensus that the larger society had already reached. Justice William O. Douglas believed that a punishment that fell most heavily on unpopular

minorities was in conflict with enlightened public opinion. Justice Thurgood Marshall found capital punishment both excessive and abhorrent. He wrote that if citizens were fully informed, they would find the death penalty unjust and unacceptable. Justices Potter Stewart and Byron White focused on the arbitrariness with which capital punishment was inflicted. The four dissenters made various arguments based on Federalism, which focused on the need to allow the states to determine their own criminal penalties based on popular sentiment within their jurisdictions.

Gregg v. Georgia. Reactions to *Furman* varied widely. Some saw it as a death sentence for capital punishment itself. Others saw it as a step toward standardizing criminal procedures across the states. Opponents claimed it was an outrage. After *Furman*, most scholars agree, capital punishment became more politicized. Support became a way for politicians to demonstrate their zeal for “law and order.” The majority of states immediately began to write new laws intended to meet the constitutional standards for avoiding arbitrariness and uncontrolled discretion. Some states, including North Carolina, tried to avoid these concerns by creating a mandatory death penalty for certain offenses. The court rejected this approach in *Woodson v. North Carolina* (1976), holding that a mandatory sentence would not take individual circumstances into account. Instead, it upheld a revised capital statute from Georgia in *Gregg v. Georgia* (1976). The court ruled that the death penalty per se did not violate contemporary standards of decency and that the new law fixed some of the flaws identified in *Furman*. Essentially, the provision identifying specific aggravating factors that would make a crime death eligible, the bifurcated procedure separating the guilt phase from the sentencing phase of a capital trial, and the provision for automatic review of capital sentences satisfied the majority of the court that death penalty laws could be written to be compatible with the Constitution. The decision in *Gregg* revealed the court majority’s deference to the principles of Federalism as they held that each state legislature can best evaluate the moral consensus in its state.

Since *Gregg*, the Supreme Court has worked from the assumption that the death penalty is

constitutional. The complex structure of capital law that has emerged since the death penalty was reinstated in 1976 is essentially an attempt to reconcile the sometimes divergent requirements that it be both consistent with the Constitution and in conformity with local public standards.

Although “evolving standards of decency” provide a guideline for deciding whether a punishment conflicts with the Eighth Amendment, the question of how to measure those standards is a complicated one. The court often looks to laws passed by state legislatures to see if a majority of states prohibit or permit a certain category of punishment. However, in looking to evaluate the policies of states, the justices often disagree about how to count them. Some advocate counting all the states—those with the death penalty and those without—to find a consensus. Other justices argue for counting only pro-death penalty states to determine whether a certain application meets contemporary standards. Besides tabulating state laws, the Supreme Court also looks to jury verdicts, opinion polls, and scholarly research. Some members of the court also consider the policies of other nations and the standards of international law. Others say laws from outside the United States are irrelevant for interpreting our Constitution.

Proportionality. In a number of cases, the court considered the issue of proportionality—how to ensure that taking the life of the convicted person was not excessive in relation to the crime. Prior to *Furman*, rapists had often been punished with death, particularly when the offender was African American and the victim was white. Shortly after reinstating capital punishment, the court considered whether it was a constitutional penalty for the rape of an adult woman. In *Coker v. Georgia* (1977), the court ruled that the death penalty was a disproportionate sanction and that it therefore violated evolving standards of decency. *Coker* did not address whether capital punishment could be permissible for the rape of a child. The court considered that question in *Kennedy v. Louisiana* 2008. It ruled that although child rape is a heinous offense, if no murder was involved, execution violated the ban on cruel and unusual punishment. As only six states provided a death sentence for child rape, there was not a national

consensus in favor of that sanction. And as no one had been executed for child rape since 1964, the court found that it violated contemporary standards of decency.

Other cases involving proportionality have considered whether someone who participated in a murder but did not kill or intend to kill anyone should be eligible for the death penalty. Here, the justices reversed themselves between the decision in *Enmund v. Florida* (1982) and *Tison v. Arizona* (1987). In the prior case, they held that capital punishment for an accomplice who did not kill nor intend to kill was disproportionate and therefore unconstitutional. In *Tison*, they ruled that a defendant who was a major participant in a murder but did not actually kill could be sentenced to death. The latter case seems to reflect the court's increasing willingness in the years since *Gregg* to allow more discretion to the local criminal justice community in determining death eligibility.

Cruel and Unusual Punishment. The court has also considered how the execution of some categories of offenders could violate the ban on cruel and unusual punishment. *Atkins v. Virginia* (2002) concerned the question of whether a person suffering from mental retardation could be put to death. The court ruled that such an execution did not conform to contemporary standards of decency and was therefore impermissible. However, the justices left it up to the states to decide how mental retardation would be determined. Thus, definitions and procedures vary widely among the states. Three years later, basing some of their reasoning on *Atkins*, the justices, in *Roper v. Simmons* (2005), found it was unconstitutional to execute someone who was a juvenile (under 18 years of age) at the time of the crime. In *Roper*, they cited not only state legislation and jury verdicts but also international law to support their ruling.

In *Ford v. Wainwright* (1986), the Supreme Court held it was unconstitutional to execute a person who was insane at the time of death, although it has not decided whether a convict may be medicated so he will be competent to be put to death. It also has not determined whether it is constitutional to sentence someone to death who was severely mentally ill (but not legally insane) at the time of the crime.

Many people might be surprised to learn that another area where the court has not ruled definitively concerns the execution of the innocent. In *Herrera v. Collins* (1993), the justices addressed that question. In that case, they held that a defendant claiming innocence must also show that his or her constitutional rights had been violated by improper procedures. He or she would not be allowed an appeal simply by offering evidence that he or she was factually innocent. Several justices wrote that executing an innocent person would be "perilously close to simple murder," but the majority did not reach that conclusion.

McCleskey v. Kemp. Perhaps the most important post-*Gregg* case was *McCleskey v. Kemp* (1987), which had the potential to challenge the whole capital punishment regime based on claims of racial bias. Warren McCleskey, who was African American, was charged with shooting a white police officer in the commission of a robbery. He based his appeal on a massive statistical report, the Baldus Study, which examined sentencing in Georgia and found that the killer of a white person was more than four times as likely to be sentenced to death as the killer of a black person. Earlier studies had focused on the race of the defendant. The Baldus Study showed that the race of the victim was an even stronger predictor of sentencing than the race of the defendant. It appeared to play an impermissible role in determining who would be sentenced to death. McCleskey argued that the bias in the system violated his constitutional rights guaranteed in the Fourteenth Amendment provision that no state may deny a citizen the "equal protection of the laws."

The Supreme Court in a 5–4 decision rejected McCleskey's claims, insisting that McCleskey would need to show bias in his own case, not only in the system. (This approach contradicted the rationale in *Furman*, which found the death penalty unconstitutional based on systematic arbitrariness.) The court also noted that although the Baldus Study found a "discrepancy that appears to correlate with race," the disparity did not result in an "unacceptable risk of racial prejudice." They suggested that if McCleskey's allegations of racial bias were followed to their logical conclusion, the whole criminal justice system would be at risk. Although three justices

found the statistical evidence of prejudice “intolerable,” the court as a whole did not. One might view the contrast between the willingness of the court to overturn the death penalty in *Furman* in 1972 with its cautiousness in *McCleskey* as evidence of a change in the national mood from one focusing on the rights of the accused to one that emphasized “law and order” in the late 1980s. However, a study of the relationship of race and capital punishment by the General Accounting Office in 1990 supported the findings of the Baldus Study.

Lethal Injection. After the reinstatement of the death penalty, many states sought a method of execution that would be less controversial than the electric chair. Most ultimately adopted lethal injection, which appeared to be clean and appar-

ently painless. However, a challenge to the three-drug cocktail used in lethal injection and the method of its administration developed in *Baze v. Rees* (2008). Despite claims that the procedure carried a risk of significant pain, especially when done by untrained correctional personnel, the court found that the threat of pain was not “objectively intolerable.” This decision is consistent with earlier rulings that the method of execution should be left to the states.

Current Status of Capital Punishment

Although it is possible to argue that the death penalty is still popular in the United States, surveys show that when offered the alternative of life without parole for convicted murderers, a majority of citizens favor that option. More than 30 years after its reinstatement, many remain



The gas chamber at San Quentin State Prison in California, shown here, was the site of 194 executions by gas, including those of four women, from 1938 to 1967. After a 1994 ruling barred the state from using the gas chamber, as it was found to be cruel and unusual punishment, lethal injections were instead administered inside the chamber until the completion of a lethal injection room in 2010.

concerned about the fairness with which capital punishment is administered. Additionally, as the cost of an execution exceeds the cost of a life sentence, state officials are weighing its value more critically. Finally, the possibility of executing an innocent person and numerous well-publicized exonerations have undermined public support.

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See Also: *Coker v. Georgia*; Cruel and Unusual Punishment; Death Row; Electric Chair, History of; Executions; *Furman v. Georgia*; *Gregg v. Georgia*; Lynchings; *McCleskey v. Kemp*.

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Capone, Al

Alphonse Capone (1899–1947) was born in Brooklyn, New York, and was a notorious gangster who never made it to his 50th birthday. Although he was an elementary school dropout, Capone learned how to survive on the streets in a gang known as the Five Pointers. He became known for his toughness and his willingness to follow orders. He had an uncanny ability to sense danger, and his survival skills were sharpened on the backstreets of Brooklyn. His criminal career served as a model for organized crime members.

Capone's street name alias was "Scarface," a legendary calling card for his infamous criminal career. However, no one dared call him "Scarface" in his presence. The large scar running down the side of his face, along with his big eyes and penetrating glare, gave Capone a formidable appearance.

Climbing the Criminal Ladder

Capone's early mentor was Frankie Yale, who put the aspiring gangster to work in a Coney Island dance club. Capone earned his prominent facial scar during a bar fight over a crude remark he made to Frank Galluccio's sister. Galluccio struck Capone in the face with a knife. Capone apologized for the comment on orders of Frankie Yale, and learned a lesson: His controlled use of charm and violence became his new persona during his rise in the organized crime hierarchy.

Capone followed orders without hesitation, including orders to kill. He became a suspect in the murders of "Wild Bill" Lovett's White Hand Gang. Facing retaliation, Capone could stay and pay the consequences or flee New York and find sanctuary in Chicago. He wisely chose the latter. His murderous rise to the top and mob reign in the Chicago syndicate made him a gangster legend.

Capone's Chicago Outfit

Capone's Chicago mentor was Johnny Torrio, who in turn was assigned to "Big Jim" Colosimo, the kingpin of prostitution. Colosimo resisted the lucrative opportunities for bootlegging alcohol during Prohibition, leading his fellow mobsters to reason that he stood in the way of progress and profit. Colosimo was killed in his office over his resistance to cash in on the bootlegging alcohol



A mug shot of Al Capone in 1931. In November of that year, he was convicted of income tax evasion and sentenced to 11 years in prison; he served seven and a half years, partly in Alcatraz.

enterprise. In the power vacuum that followed, Johnny Torrio and Al Capone seized the Chicago rackets: Capone unleashed a campaign of terror and violence while Torrio tried but failed to play the role of peacemaker. In the ongoing gangland war, a rival Irish gangster, Dion O'Banion, was killed in a flower shop.

O'Banion's successor, Hymie Weiss, plotted to kill Torrio and Capone in retaliation for the flower shop murder. The ambush took place in downtown Chicago; however, Capone escaped without injury. Later that day, Torrio was shot five times in his home. Johnny Torrio survived the shooting, though he eventually stepped aside and retired as a millionaire, leaving Capone to be the sole boss of the Chicago outfit. Capone decided that Weiss needed to be eliminated for his own personal safety and survival. Weiss, while walking to his car, was confronted by two killers from the North Side Gang, and then was murdered gangland style with a machine gun and shotgun.

Capone prevailed in Chicago; his syndicate eventually reigned supreme. His operations, power, and influence infiltrated businesses and unions. The outfit emerged not as a corporate hierarchy, but more like a senior partnership comprising four men who eventually formed a variety of criminal partnerships to operate explicit criminal enterprises. The partnership of four ruthless organized crime figures included Al Capone, his brother Ralph Capone, Frank Nitti, and Jake Guzik, the accounting specialist. Illicit payoffs were divided equally with prescribed deductions for general expenses that included operational building space, clerks, and bodyguards. In addition, expenditures included political bribes and protection that allowed the criminal enterprises to flourish.

The St. Valentine's Day Massacre represents the classic Capone hit in the name of preserving his lucrative business interests. In 1929, George "Bugsy" Moran, the leader of a rival gang, and seven other gangsters were shot to death in Chicago's Clark Street Garage. Capone ordered the killings, and the hit included the assassinations of "Machine Gun" Jack McGurn and two other known killers: Albert Anselmi and John Scalise. The hit men drove a black limousine and entered the garage dressed in police uniforms. The unsuspecting gangsters inside offered no resistance to the "officers." They lined up against the wall and died in waves of bullets. Seven men were left dead; no criminal trial took place. Capone had an airtight alibi in Florida socializing with friends; he later personally murdered Anselmi and Scalise to cover his link to the St. Valentine's Day Massacre.

Capone's Arrest

The final assault on Capone did not advance from other gangsters, but from the federal government. President Herbert Hoover advocated the repeal of Prohibition as a means of controlling Capone. The Treasury Department assigned Special Agent Elliot Ness to track down and arrest Capone. Ness formed his "Untouchables" unit to uncover and shadow Capone's assets. The arrest team executed search warrants, conducted midnight raids, and collected evidence in support of Capone's arrest. Ironically, Al "Scarface" Capone was not tried and convicted for his involvement in many murders but for income tax evasion on \$165,000 dollars of unexplained income.

Al Capone, the bully with a propensity for violence, was, in the end, not able to protect himself. He wandered in a state of senility throughout his Palm Island, Florida, mansion in gangster retirement. Capone, who suffered from syphilis and became unable to recognize his old gangster companions, refused treatment while serving prison time in Alcatraz. Al “Scarface” Capone lived in seclusion, and was totally incapacitated until his death at age 48 after a case of pneumonia and a resulting stroke in 1947.

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See Also: Alcatraz Island Prison; Bootlegging; Chicago, Illinois; Ness, Eliot; Organized Crime, History of; Prohibition.

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Carter, Jimmy (Administration of)

James Earl “Jimmy” Carter was the 39th president of the United States, serving from 1977 to 1981. Carter, a former peanut farmer, naval officer, and governor of Georgia, won the Democratic

nomination in 1976 and defeated incumbent President Gerald Ford in the general election. He ran for reelection in 1980 but was defeated by Ronald Reagan.

Carter assumed office in the years following the Watergate affair with the goals of reestablishing trust and transparency to the office of the presidency. Economic stagflation and a focus on energy policy were key domestic issues. The Department of Energy was created during Carter's term in office. In foreign affairs, the Camp David Peace Accords, the Soviet invasion of Afghanistan, a foreign policy emphasis on human rights, and the Iran hostage crisis were key events.

Carter is also well known for his international humanitarian work after his presidency, having received the Nobel Peace Prize in 2002. Indeed, these themes of human rights, peace, and democracy can be seen in both the domestic and foreign policies that Carter pursued during his presidency. In the domestic arena Carter could fairly be labeled as liberal in the area of law and criminal justice, especially when compared to his immediate Republican predecessors. On the first day of his presidency, he signed a controversial general amnesty for those who had avoided the Vietnam draft. He was also an outspoken opponent of the death penalty both during and after his term as president.

Despite the fact that Carter is the only full-term modern president not to have the opportunity to appoint a justice to the U.S. Supreme Court, his impact on the federal judiciary was a distinct one. It was under Carter that the Omnibus Judgeship Act of 1978 was passed. This act created 152 new federal judgeships, including 35 at the appellate level. This act becomes more significant when Carter's appointment record is more closely examined. Carter greatly increased the number of women and minorities appointed to the federal bench. In fact, Carter appointed five times more women to the bench than all his predecessors combined. While subsequent Democratic presidents have built upon these numbers, it was the Carter administration that was really the first to nominate significant numbers of women and minorities to serve on the federal bench. It was also Jimmy Carter who appointed future Supreme Court Justices Stephen Breyer and Ruth Bader Ginsburg to the appellate federal bench.

Restoring Executive Trust

Carter was elected to the presidency in an era in which Americans were reevaluating the scope and desirability of presidential power in the wake of Watergate and President Richard Nixon's resignation from office. The Church Committee investigations of the mid-1970s revealed an extensive history of executive branch lawlessness in the area of government surveillance by the Central Intelligence Agency (CIA), the Federal Bureau of Investigation (FBI), and other government agencies. Over the course of several decades, executive branch agencies secretly implemented a host of programs designed ostensibly to counter domestic and international threats to U.S. security.

COINTELPRO was a counterintelligence program originally intended to target racist groups, Black Nationalist groups, and Communists. It included illegal eavesdropping, mailing anonymous threats to targets, disinformation, harassment, the fabrication of evidence, and the creation and dissemination of false documents. Operation CHAOS gathered information on political protesters, which resulted in more than 13,000 computerized files on more than 300,000 people.

Operation MERRIMAC targeted civil rights and peace organizations. In project SHAMROCK, Western Union and other wire service providers gave intelligence personnel at the National Security Administration (NSA) access to private messages. Project MINARET was an NSA database that contained computer files on more than 75,000 American citizens, including members of Congress. By 1968, almost every intelligence agency in the executive branch was spying in one form or another on nonviolent protesters. Abuses of constitutional rights and liberties were rampant in all of the above programs, and it was these widespread abuses that eventually prompted Congress and the courts to respond with increased oversight measures.

Carter ran as a Washington outsider and sought to bring about a renewed sense of trust and transparency to the office of the presidency. One example of this was the Federal Intelligence Surveillance Act (FISA) of 1978. FISA was an attempt to provide legislative and judicial restraints on presidentially ordered warrantless electronic surveillance while still providing presidents with the flexibility that they needed to gather foreign

intelligence. FISA created the Federal Intelligence Surveillance Court (FISC) and the Federal Intelligence Surveillance Court of Review. Executive branch agencies wanting to conduct electronic surveillance to obtain foreign intelligence needed to obtain warrants from the FISC (absent exigent circumstances). These warrants have generally been quite easy to obtain, with the FISC denying only a handful from thousands of applications. After the terrorist attacks of September 11, 2001, President George W. Bush generated immense controversy when he initiated a secret warrantless electronic surveillance program that critics argued violated FISA.

Unfortunately, Carter found it difficult to shake the perception held by many Washington politicians and the national media that he was a nice guy but not one who was tough enough to be a forceful, effective president. Carter remained active in public affairs after his presidency. He founded the Carter Center, a nonprofit agency dedicated to advancing human rights around the globe. Carter worked as a U.S. emissary in North Korea, Haiti, Africa, and the Middle East, earning a Nobel Peace Prize in 2002 for his efforts. The extent of his work after his presidency has led some commentators to describe him as a more successful ex-president than he was president. Nevertheless, Carter's lifelong record on international humanitarian issues is one that few presidents can claim to match.

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See Also: 1961 to 1980 Primary Documents; Clemency; Ethics in Government Act of 1978; Ford, Gerald (Administration of); Internment; Watergate.

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Chain Gangs and Prison Labor

Chain gangs were found in all regions of the United States in the last third of the 19th century, and legal provision for convict roadwork existed in all states except Rhode Island as late as 1923. Convicts were used in all types of road construction in western states such as Arizona, Montana, and Nebraska in the 1910s, but chain gangs were synonymous with the southern region where economic, racial, and climatic factors spurred their expansion in the early 20th century. For example, Georgia abolished its convict lease in 1908 and nearly 5,000 felony and misdemeanor convicts, 91 percent of whom were black, became available for roadwork. By 1910, every southern state legislature had authorized use of convicts for public works to replace the inefficient statute labor system that required male citizens to undertake roadwork every year.

Racism

Support for convict road labor came from civic groups, penal reformers, organized labor, and the Good Roads Movement. In the south, road labor in the fresh air and sunshine was often promoted as a healthy alternative to the increasingly discredited convict lease system and to idleness in the dank stone cellblocks of northern prisons. It was a more cost-effective alternative to housing able-bodied inmates in prisons with fewer work opportunities. It was also deemed particularly appropriate for black convicts, whose numbers continued to outstrip those of white prisoners, in a period when free African Americans were usually employed in unskilled positions at low wages (including road construction, sewer digging, and quarrying). African Americans arrested on charges of vagrancy and disorderly conduct as well as more serious property and personal violence offenses constituted a ready supply of labor to build roads for white planters, politicians, and industrialists. Chain gang labor was very much linked to the patronage politics of the southern Democratic Party in the approval of construction projects and the awarding of guard and other official jobs to party loyalists. It was also a key component of the systems of racial oppression

and labor subordination that shored up white supremacy and racial segregation.

Chain gang labor became an integral part of southern states' plans for economic development, expanding farm-to-market routes, tourism, and urban growth in the 1920s and 1930s when millions of dollars of federal monies were apportioned to states for road and highway construction (the states had to provide matching funds). In January 1921, 628 prisoners were located in 24 road camps in Florida, and North Carolina had over 2,400 prisoners working on county chain gangs by October 1926. Lines of dirty, sweaty, exhausted, bare-chested men toiling on roads and in ditches and clad in black and white convict suits were common sights. The men were chained day and night at the ankles and together. They could wear up to 20 pounds of chains at a time. Shotgun guards on foot, horseback, or in trucks monitored their progress and watched out for escapees. Physical strength was vital for survival and to undertake the back-breaking work for 12–15 hours a day. African American chain gangs moved in time to the tempo of work songs, while white gangs might rely on counts or shouts. Chain gang labor had to be synchronized to avoid death or injury from fellow inmates randomly wielding pickaxes, shovels, and bush axes.

Conditions on the chain gang and in the road camps could be as brutal and harrowing as those under the convict lease system. In the early days, convicts were often housed in mobile steel-barred pie wagons on wheels with tiers of iron bunks, a zinc pan underneath for the toilet, and an open bucket for washing. Northern journalist John L. Spivak likened them to cages "in which a circus pens its most ferocious beasts." Out on the road, inmates relieved themselves in bushes at the side of the road, but only with a guard's permission. Prisoners who could not or would not complete their daily tasks were subject to corporal punishment, and the strap was a ubiquitous feature of chain gang life. The unsanitary camp conditions, physical punishments, and hard labor took its toll on inmates' health and mortality.

Criticism

There was growing criticism of chain gang labor and conditions from the 1910s. Opposition to chain gang labor, lynching, and racial oppression

were key parts of influential left-liberal political movements in the south in the Depression years. However, Robert E. Burns's 1932 expose of Georgia's brutal chain gang system, *I Am a Fugitive From a Georgia Chain Gang!*, its adaptation as a Hollywood movie in 1933, and Burns's much-publicized extradition fight with the state of Georgia did much to increase opposition to southern penal practices in the 1930s and 1940s. Burns's experiences also illustrated that chain gangs of white convicts were not uncommon and were becoming more prevalent in the majority of southern states where numbers of white prisoners were increasing.

Most states constructed permanent road prisons in the 1930s and 1940s with marked improvements in material conditions, particularly sanitation, although they were still very basic. Inmates were transported to and from road construction or maintenance sites by truck. Southern states

began to abandon chained labor squads in the period during and after World War II. Leg irons were removed from all but the most incorrigible inmates, striped suits and chains gradually disappeared, corporal punishment was replaced with the sweatbox, and the working day was gradually shortened. Yet, southern prison road labor was still hard and unrelenting as illustrated in Donn Pearce's iconic novel, *Cool Hand Luke* (1967), set in early 1940s Florida. States like Florida continued to utilize road labor prison gangs until the late 1960s, and "honor squads" of low-risk prisoners continued into the last third of the 20th century.

In the 1990s, several states in the south and west revived the classic chain gang of the 1930s. Chain gang revival was part of a series of measures designed to "get tough" on prisoners that enjoyed significant popular support in the context of frustrations over so-called molly-coddled prisoners



These young African American men were serving on a chain gang in the American south between 1900 and 1906. By 1910, every southern state legislature had authorized the use of convicts for public works, including Georgia, where 5,000 convicts were made available for road labor, 91 percent of whom were black.

that were taken up by politicians across the spectrum, public resentment at spiraling prison costs, and public weariness with prisoners' rights and rehabilitation programs. It also coincided with dramatic rises in the numbers of nonwhite state and federal prisoners. Inmates were set to work clearing roads and highways of litter and weeds. These tasks were similar to those of the "honor" squads, except chain gang inmates were literally chained at the ankles. Another common feature was the use of conspicuous uniforms, including old-fashioned black and white stripes and orange and pink jumpsuits. Critics charged that the primary purpose was not punishment but to deliberately humiliate inmates and create a demeaning public spectacle that could not effect rehabilitation.

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See Also: African Americans; Convict Lease System; Corporal Punishment; Cruel and Unusual Punishment.

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Chandler v. Florida

In *Chandler v. Florida* (1980), the U.S. Supreme Court ruled in a unanimous decision that the

presence of a television camera in the courtroom or simply broadcasting or televising portions of a trial does not in and of itself constitute prejudice to the defendant or interfere with the defendant's right to a fair trial.

During the early 1980s, Florida was implementing an experimental pilot program to allow cameras in its courtrooms. In 1981, two Miami police officers were convicted of stealing \$3,000 from a Miami Beach restaurant and challenged the new rules in Florida permitting cameras in the courtroom. Specifically, the defendants argued that the television coverage of their trial in and of itself had prevented them from receiving a fair trial. In *Chandler*, the court held that an absolute ban on cameras in the courtroom could not be justified based on the rationale that their use may pose a danger to the fair trial rights of a defendant, especially considering a judge's ability to control the media. Specifically, the court held that because it had no supervisory authority over state courts, its decision was limited to whether a constitutional violation had occurred. While the court approved the use of cameras in the criminal courtroom, the court reserved the right to hold that their use may, on a case-by-case basis, violate a defendant's right to a fair trial. Moreover, the court did not hold that a state was required to allow cameras in the courtroom.

Chandler v. Florida was not the first time the Supreme Court contemplated the constitutionality of cameras in the criminal courtroom. The prohibitions limiting the use of recording devices and cameras were instituted in the 1930s, in response to the outrageous press coverage of the trial of Bruno Hauptmann, who was charged with kidnapping the baby of Charles and Anne Lindbergh. As a result, the American Bar Association (ABA) adopted rules, known as Canon 35, prohibiting the use of cameras and other electronic equipment in courtrooms. These rules were adopted in most states. In 1952, the ABA rules were amended to include television. By the mid-1960s, the Supreme Court considered the constitutionality of the ban on cameras in the courtroom. Texas was one of a handful of states that sometimes permitted recording and photography in the courtroom. In *Estes v. Texas*, Billie Sol Estes was convicted of fraud and sentenced to 15 years imprisonment. Estes appealed on the grounds that he was deprived of

a fair trial because his trial had been televised and broadcast. In *Estes*, at least a dozen cameras were present. The court agreed with *Estes*. During the mid-1970s, recording devices and cameras were barred from courtrooms in all but two states: Colorado and Texas. However, as technology improved, the experimental use of cameras in the courtroom also continued. Moreover, *Estes* was not explicitly overruled by *Chandler*.

In *Chandler*, the use of cameras in the courtroom was strictly regulated by an order from the Florida Supreme Court. Specifically, only one camera was present, and its location was fixed throughout the trial. Jurors were not permitted to be filmed, and recording of attorney and bench conferences was forbidden. Furthermore, the trial judge had the discretion to ban the coverage of certain witnesses, such as the victims of sexual assault. In all cases, a defendant retains the right to establish that the presence of cameras (or other media) violates, or compromises, his or her right to a fair trial. If the defendant establishes that the media compromises his or her constitutional right to a fair trial, an appellate court should reverse the conviction pursuant to *Estes*.

In 1991, the Courtroom Television Network, known as Tru-TV, premiered. It was the first commercial effort to televise selected trials nationally and to provide commentary by experts on what happens in the courtrooms of America. Millions of viewers have had access to the network, which has covered well over 1,000 trials. The advent of the Courtroom Television Network, along with several highly publicized trials such as the William Kennedy Smith rape trial and the O. J. Simpson murder trial, has led to questions and concerns about cameras in the courtroom and the transformation of trials into televised drama. By 2001, South Dakota became the 50th state to allow cameras in the courtroom to some degree. However, many states have limitations. For example, in Minnesota, if anyone in the case objects, the judge may keep cameras out.

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See Also: Due Process; *Estes v. Texas*; News Media, Crime in; Television, Crime in.

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Chapman, Mark David

Mark David Chapman was born to David and Diane Chapman on May 10, 1955, in Fort Worth, Texas. Chapman is well known as the man who shot and killed musician and former member of the Beatles John Lennon on December 8, 1980. After pleading guilty to the murder of Lennon, Chapman was sentenced to 20 years to life in prison and remains incarcerated at Attica Correctional Facility near Buffalo, New York. Although Chapman became eligible for parole in 2000, parole boards have denied his release six times. Guilty of a crime that shocked the nation, Chapman is considered by many to deserve lifetime imprisonment.

Mark David Chapman settled in Decatur, Georgia, with his parents and younger sister when he was 7. Both of his parents were present throughout his childhood, but Chapman has claimed that his father was often emotionally distant. Chapman became involved with drugs during his early teenage years, but by the age of 16 he was off drugs and became a born again Christian, working for several years as a camp counselor for his local YMCA. After graduating from high school in 1973, Chapman made an unsuccessful attempt at obtaining a college degree before returning to his hometown to work as a security guard. Suffering from depression, Chapman eventually moved to Honolulu, where he was briefly hospitalized in a mental facility following an unsuccessful suicide attempt in 1977.

After being discharged, Chapman began doing maintenance work for the same facility in which he had been hospitalized. While planning a vacation, Chapman met Gloria Abe, a Japanese-

American travel agent, and the two married on June 2, 1979.

While Chapman's motive for assassinating Lennon is not clear, several theories have been put forth. Some have asserted that Chapman was offended and enraged by Lennon's statement that the Beatles "were more popular than Jesus." However, there is little evidence to support this theory. Additionally, Chapman's obsession with J. D. Salinger's *The Catcher in the Rye* has been considered a potential contributor. This theory has been given more attention than the former because Chapman had a copy of the book on his person at the time of the murder. Finally, some indicate that Chapman was upset after reading Anthony Fawcett's *John Lennon: One Day at a Time*, which showed the style and wealth in which Lennon lived. Chapman's wife claimed that he perceived Lennon to be a hypocrite due to his wealth and lifestyle.

Though the exact motive for Chapman's crime is disputed, the circumstances of his crime are not. Chapman made one trip to Manhattan in October 1980 prior to returning to the city on December 6 of the same year. It was during this second trip that Chapman assassinated Lennon. He staked out the Dakota apartment building where Lennon lived with his wife, Yoko Ono, for two days before returning to the building on the evening of December 8. Lennon and Ono returned to their apartment around 10:50 P.M., at which time Chapman shot Lennon in the back four times. Chapman did not attempt to flee the scene and was restrained by security guards until police arrived. Lennon died in the ambulance on the way to Roosevelt Hospital.

Chapman was charged with second-degree murder in Lennon's death and, after being examined by a psychiatrist, was declared delusional but competent to stand trial. Initially, his attorney entered a plea of insanity. However, after several months of preparation for his trial, Chapman changed his plea to guilty in June 1981, and on August 24, 1981, he received a sentence of 20 years to life in a New York State Correctional Facility. Chapman remains in a special housing unit at Attica Correctional Facility and his next parole hearing was scheduled for 2012.

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See Also: Attica; Guns and Violent Crime; Insanity Defense; New York City; Violent Crimes.

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Chicago, Illinois

Chicago's reputation for vice and corruption was born as it became the entrepôt of the northwest and grew with the city's rise as a commercial and industrial power. Famed for their innovations in agricultural processing, manufacturing, and retail sales, Chicago entrepreneurs took to less legitimate industries as well. The patterns of criminal activity that developed, and the social conflicts and attempts at study, reform, and control they fostered, all shaped and were shaped by the city's dynamic growth.

Chicago is located in the portage between the two major water systems of the Old Northwest—the upper Mississippi basin and the Great Lakes. It incorporated as a village in 1833 with 150 settlers. Though the city had but 25,000 residents by 1848, the conditions for its emergence as a commercial nexus were in place: the telegraph, the Illinois and Michigan Canal, oceangoing steamers, and railroad tracks. The city's unbridled growth reached 500,000 residents by 1880 and more than doubled during the next decade. Only after it reached 1.7 million in 1900 did growth slow to 25 percent for the next three decades before the population stabilized above 3.4 million from 1930 to 1970.

Early Law Enforcement

A murky relationship between politics and law enforcement developed early in Chicago's history. Mayor Levi Boone's attempt to enforce liquor regulations in 1855 led to the Lager Beer Riot, which spurred the replacement of the old system of law



A squad of Chicago mounted police lined up in a show of force around 1907. From 1875 to 1920, Chicago police killed three times as many people as local gangsters, committing one out of every 18 homicides, or 307 total. The city's overall murder rate was the highest outside of the south by 1920, at 9.7 per 100,000 persons.

enforcement—a salaried marshal coordinating the nighttime watch and nine daytime police—by the new Chicago Police Department. The new force, which grew from 80 officers in 1855 to more than 3,000 by the turn of the century, quickly became one of the most important institutions in establishing a new urban social order.

With officers wearing uniforms and a centralized chain of command, the police were able to perform a number of important tasks: Officers directed traffic and stopped runaway horses, and reunited lost children with their parents; police stations provided beds for the indigent. On the beat, officers mainly arrested drunks, vagrants, and other disorderly people who hung around the city's thousands of saloons. Such arrests could be demanding: Until 1880, when the call box and patrol wagon were invented, an officer might find himself with a belligerent arrestee and nothing more than a club to get him the up to half a mile to the station.

The police managed crime and vice rather than fighting it. Pickpockets and con men found ready prey among the many strangers in the city on business, and many travelers in turn sought out illicit recreation. Among Chicago's many houses of ill repute, Carrie Watson's parlor house and the Everleigh Club were the industry leaders. By 1911, the city had more than 5,000 prostitutes serving 5 million customers each year; their average weekly earnings of \$25 were three times the mean female wage. Vice proliferated because it was often symbiotic with politics. In the 1870s, the city's biggest gambler, Mike McDonald, also ran the Democratic Party. Vice was segregated into its own districts, bringing to prostitution and gambling the same advantages that geographical concentration brought the stockyards. The most notorious district was "the Levee," where Michael "Hinky Dink" Kenna and "Bathhouse John" Coughlin ruled the First Ward from the 1890s to the 1920s by drawing graft and protection money

from saloons, brothels, and gambling halls. “Big Jim” Colosimo rose from precinct captain to mob boss, running his many illicit operations out of the First Ward for nearly 20 years.

The embedding of policing within local politics was made possible by the exceptionally decentralized structure of both institutions. Wards overlapped police districts, and aldermen and ward committeemen reinforced their power by using the police to generate contributions. Gambling dens that refused to pay their tribute might find themselves suddenly subject to strict enforcement of the law.

Ward political machines centered on the city’s thousands of saloons; 15 percent of alderman in 1874 were involved in the liquor business. “Hinky Dink” Kenna ran the Workingmen’s Exchange Saloon. Saloons were the hub of social activity for Chicago’s young workingmen, providing free meals, networking, paycheck cashing services, and recreation. An acceptance of illegal activity quickly became part of the department’s institutional subculture for many reasons. Many policemen shared values with the men who hung out in saloons. National ties linked others of the 54 percent of police who were foreign born from 1890 to 1925. Tolerance pleased the political patrons of the officers—the men who sponsored them for their jobs and any promotions—by furthering the goals of the ward organization. It also could provide a supplement to the policeman’s modest pay.

Early Crime and Punishment

Saloons were at the heart of a violent society in which drunken brawls were the leading cause of homicide before 1890. Violence permeated economic affairs, with labor and capital squaring off in the Great Railroad Strike of 1877, the Haymarket bombing in 1886, and the Pullman Strike of 1894. Although Chicago’s businesses often went over the heads of the police department to Chicago’s own Pinkerton Detective Agency, or even to state militia or federal troops, the Haymarket bombing solidified the police against labor radicalism. Resulting in the deaths of seven officers and injuries to 60 others, Haymarket created a bunker mentality in police culture and justified the creation of a Red Squad to collect intelligence on radicals. It remained in evidence when police killed 10 picketers at Republic Steel on May Day

in 1937, and during the riot at the 1968 Democratic National Convention.

The influence of police culture was present in the high rate at which the police killed civilians in the line of duty. Overall, Chicago’s homicide rate increased from 2.25 per 100,000 persons in 1875 to 9.7 in 1920—the highest rate outside of the south. The inclusion of new types of homicide (vehicular, abortion, and infanticide) accounted for only part of the rise. As murders multiplied, they also became more controlled, deliberate, and private, with domestic homicides and robbery-murders becoming the leading modes after 1890. Police officers were among the most lethal residents, committing one out of every 18 homicides—307 total over the period from 1875 to 1920. Police killed three times as many people as local gangsters, 2.5 times as many as were killed as a result of labor conflict, and killings by police outpaced killings of police threefold. A disproportionate number of their victims (21 percent) were from the city’s 3 percent African American population.

Convictions were almost nonexistent (1 percent) in police killings and were rare for other homicides (24 percent of all homicides resulted in convictions). From 1875 to 1920, only 27 percent of individuals arrested by the police for a crime were convicted. Muckrakers attributed such failings to institutional corruption, but acquittals were often an expression of popular justice. This was especially true for homicides. As police improved at apprehending suspects—from 44 percent of cases in the 1870s and 1880s to 70 percent by the 1910s—the conviction rate decreased by 63 percent. More than 40 percent of suspects were released without indictment, and jurors convicted those who were tried only 36 percent of the time. However, against defendants considered particularly cold-blooded—wife-killers, robbery-homicides, those who killed police officers, and African American defendants—juries convicted at twice that rate.

In the 20th century, the proprietors of illicit commerce required flexibility to thrive. Reformers never took gambling lightly, and beginning with William T. Stead’s exposé of the city during the 1893 World’s Fair, *If Christ Came to Chicago* (1894), they attacked prostitution as well. Chicago’s awful reputation came almost directly from their attacks. By the mid-1910s, Progressive pressure resulted in the breakup of the Levee (the city’s

red-light district), but this merely transformed vice. Automobiles and telephones, employed by a human network of saloonkeepers and pimps, made a more dispersed structure possible. Gamblers innovated as well, especially Mont Tennes, who used the telegraph to standardize off-track betting and used violence to consolidate his control of it.

Prohibition Era

The coming of Prohibition and the murder of Colosimo in 1920 by his lieutenant Johnny Torrio led to underworld consolidation and the quick rise of Torrio's subordinate, Al Capone. Bootlegging actually began as a diversified industry, run primarily by enterprising, young, usually immigrant men who had some experience in organized crime and were hungry for success. Liquor wholesalers soon turned to cartels to limit their investment risk: They divided territory, raised prices, reduced quality, and—especially—bought political protection (including payoffs to a rumored 50 percent of Chicago policemen). Bootlegging turned violent in Chicago in part because the decentralized structure of politics meant that there was no authority that could restrict grabs for more territory.

When William Dever became mayor in 1923, he destabilized the status quo by trying to enforce Prohibition. It was Capone, though, whose efforts to dominate the industry led to the “beer wars” from 1924 to 1930, punctuated by the St. Valentine's Day Massacre in 1929. This led the influential citizens group the Chicago Crime Commission to cement his historical reputation by naming him their Public Enemy No. 1.

In the early 20th century, Chicagoans built new institutions to address crime. The world's first juvenile court was established in 1899. Rather than finding children guilty and incarcerating them with adults, the court had the option of finding them delinquent, dependent, or neglected; judges could choose treatment from a variety of alternatives, including probation or placement in a reformatory. While the municipal court, which was founded five years later, did not transform the entire criminal court system, it did bring sociological jurisprudence to the lesser crimes, the governance of morals offenses (such as prostitution), and the behavior of boys who were too old for the juvenile court but not yet fully adults.

Just as influential in the history of criminology were the studies of delinquency done in the Sociology Department at the University of Chicago. Deploying an ecological understanding of social phenomena, the scholars of the Chicago school used the city as a laboratory for empirically studying various manifestations of crime and delinquency.

Race Relations

For Chicago's growing African American communities, the crackdown on segregated vice in the 1910s had unintended consequences. Chicago's strategic position in the rail network made it a major destination for African American migration, first from Kentucky and Tennessee and later from Louisiana, Mississippi, and Alabama. These migrants increased Chicago's African American population from 40,000 in 1910 to 278,000 in 1940, with the South Side Black Belt becoming increasingly crowded and racially concentrated. It also became the new vice district. Excluded from many other businesses, African American entrepreneurs invested in gambling and entertainment, especially in the policy wheel. Chicago's most powerful African American politicians of the 1920s, Oscar DePriest and Dan Jackson, were closely linked to both gambling interests and Republican Mayor William Hale Thompson.

The growing African American population was confronted with a massive rise in racially motivated crime. Between 1917 and 1921, there were 58 bombings in the name of restricting black residential mobility, which left two people dead, many injured, and much property destroyed. In the midst of this violence were five days of rioting in July and early August 1919, during which whites invaded black neighborhoods to injure, maim, and murder blacks. Before the violence ended, 38 persons were dead, 537 were injured, and more than 1,000 were left homeless. Nonetheless, the 17 indictments stemming from the riot all targeted African American men. After World War II, as Chicago's African American population grew to 813,000 by 1960, disputes over African American mobility once again led to racially inspired bombing or arson at a rate of one incident every 20 days.

Ironically, it was under the last of the nation's great political machines that the link between crime

and politics was broken. Graft persisted during the reign of the Cermak-Kelly-Nash Democratic machine of the 1930s and 1940s. The mob took over slot machines, the racing wire, and many of the police operations. According to the *Chicago Tribune*, there remained 1,000 gambling establishments in Cook County in 1959. When a group of Chicago policemen were discovered to be part of a burglary ring in the Summerdale district, Mayor Richard J. Daley used the scandal to clean house. Orlando W. Wilson, the nation's leading expert in police administration, was named commissioner and was given the political support to divorce wards from police districts, modernize communications, and put beat officers in squad cars.

Although Wilson created an environment that was intolerant of brutal methods and outright racism, long-standing tensions over police-community relations intensified before his retirement in 1967. Claims of discrimination were one source of friction: Although African American police officers

roughly paralleled the percentage of African American residents in Chicago in the 1950s, they did not keep up with the city's rapid demographic change. During the late 1960s, African Americans and Puerto Ricans rioted in response to police treatment, leading Mayor Daley in one case to utter his famous "shoot to kill" order. The nadir came when Black Panther leaders Fred Hampton and Mark Clark were murdered in a midnight raid by police officers in 1969. The police were understood by those on the left to be a force of conservative counter reaction, symbolized by the Red Squad's spying on left-wing activists and the police riot at the 1968 Democratic National Convention.

Modern Chicago

From the 1960s to the present, suburbanization, deindustrialization, and rising income inequality have remade metropolitan Chicago. This structural transformation was accompanied by rising crime in the 1960s and 1970s. Homicide peaked



Chicago Police Department superintendent Jody Weis displayed these guns seized by Chicago police at a press conference on January 13, 2010. That year, the city experienced its lowest number of homicides since 1965, but six police officers were killed, the most in 25 years. Of all groups, African American men in the city are among the most likely to be victims of homicide.

in 1975, in 1981, and, again in 1992, each time at around 30 per 100,000 persons. After the latter, it began a long decline to half of its peak. Over this period, victimization rates for whites have remained remarkably stable and low; those for African Americans—especially men—grew to unprecedented heights in the early 1990s; and those for Latinos remained in the middle. Although Illinois maintains an incarceration rate well below the national average, there are more Chicagoans incarcerated today than at any other time in its history. The Cook County Department of Corrections alone holds more than 10,000 prisoners on a daily basis.

Policing has been a particularly important political issue over this period. By 1960, the department had more than 10,000 officers. In 1975, a federal judge concluded that the city had discriminated in the hiring of women, African Americans, and Latinos. Although the percentage of minority and female officers has increased in recent years, it has never reached parity with their percentages of the population. Over the past decade, claims of police brutality and discrimination were given credence amid revelations of the ongoing use of torture by a group of officers under Commander Jon Burge during the 1970s and 1980s. The Burge case has helped turn attention to the death penalty, as a number of his victims were sentenced to death based on confessions obtained through torture. While 171 Chicagoans were executed between 1840 and 1962, the practice has rarely been used since 1977 and may have ended since Governor George Ryan issued a moratorium in 2003.

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See Also: 1851 to 1900 Primary Documents; 1941 to 1960 Primary Documents; Bootlegging; Capone, Al; Chicago Seven/Democratic National Convention of 1968; Everleigh Sisters; Gacy, John Wayne; Illinois; Leopold and Loeb; Nitti, Frank; Organized Crime, History of; Torrio, John; Wilson, O. W.

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Chicago Seven/ Democratic National Convention of 1968

In 1968, many groups protested the Vietnam War and fought for civil rights. It was the high-water mark of the Vietnam War for the United States with the Tet Offensive. It was also a year of great sorrow, because it saw the assassinations of two civil rights icons: Robert F. Kennedy and Martin Luther King, Jr. King, the spiritual and temporal leader of the civil rights movement for African Americans, was assassinated on April 4, 1968. Kennedy, the favored candidate for the Democratic nomination for president and the great hope for the youth of the nation to start the withdrawal from Vietnam and continue the civil rights movement, was assassinated on June 5, 1968. It was also the year of the 1968 Democratic National Convention and the year when one of the most infamous occurrences of police misconduct was televised to the entire nation. Riots broke out in over 100 U.S. cities.

Against this backdrop, the 1968 Democratic National Convention was scheduled to be held in Chicago from August 26 to August 29. The mayor of Chicago, Richard Daley, wanted to make the convention a national event to highlight the city. However, various social justice groups, focused around the Yippies, had made plans for holding a festival in Chicago to coincide with the Democratic National Convention to protest the Vietnam War. Other groups, including the Students for a Democratic Society (SDS) and the Black Panthers, were also involved. Mayor Daley, in response to the plans of the protesters, assured the media that they would not take over the streets of Chicago.

Prior to the start of the convention, Jerry Rubin, one of the Yippie leaders, announced that their nomination for president was an actual pig named Pigasus (the Yippies referred to the police as pigs). When the pig was placed on parade, Rubin and several others were arrested, resulting in Pigasus becoming a national media event.

With the start of the convention, approximately 10,000 demonstrators appeared. Mayor Daley had arranged for the Illinois National Guard to be present, and over 23,000 police and National Guardsmen met them. On August 28, at the rally in Grant Park, a boy lowered the American flag. The police attacked, broke through the crowd, and started to beat the boy. The protesters responded by pelting the police with rocks, food, and urine. A pitched battle broke out between protesters and the police, with one of the SDS leaders, Tom Hayden, exhorting the protesters to take the fight to the city if there was to be bloodshed. The police used tear gas, and many bystanders were injured. Newsmen Dan Rather and Mike Wallace were assaulted by the police. The protesters were taunting the police with the now-famous phrase “Hell no, we won’t go,” which changed to “Kill, kill, kill” as the violence became worse. The violence spread throughout the city, and for 17 minutes, the assault of the police against the protesters in front of the Hilton Hotel was broadcast on national television. At one point during the convention, Connecticut Senator Abraham Ribicoff stated that if George McGovern were nominated, the Gestapo tactics used in Chicago would not occur. Mayor Daley was reported to have cursed him in response.

The nation was shocked. Public opinion polls showed that the majority of Americans supported the actions of Mayor Daley, but too many people were incensed at the police conduct to forget the incident. An investigation was launched and the Walker Report was issued, which found much fault with the police. In the Walker Report, the phrase *police riot* was used to describe the behavior of the Chicago Police Department. One positive result was an increased national focus on the proper training for police officers.

Because of the riot, the U.S. Justice Department prosecuted a number of the leaders, who became famous as the Chicago Eight and then the Chicago Seven, after one defendant was dismissed

for charges of conspiracy and incitement to riot. The defendants included such 1960s notables as Abbie Hoffman, Tom Hayden, Jerry Rubin, and Bobby Seale. The trial was a focus of media attention and became a circus due to the antics of the defendants and the defense mounted by their attorneys, who included famous civil rights attorney William Kunstler. All of the defendants were found guilty of incitement to riot but acquitted on the charges of conspiracy. Even the defendants’ attorneys were sent to jail. All of the convictions were reversed on appeal, and the Justice Department declined to retry the case.

From a historical context, the 1968 Democratic National Convention and the Chicago Seven are monuments to the principle that there are limits to police conduct. Further, these events are considered one the major influences that began the modern professionalization of police departments in America through the use of education and training.

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See Also: Kennedy, Robert F.; King, Martin Luther, Jr.; Kunstler, William; Police, History of; Political Crimes, History of; Professionalization of Police; Riots.

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Child Abuse, Contemporary

The two major categories of child abuse are physical and sexual. Child abuse may initiate the

next cycle and generation of adult abusers. Emotionally damaged survivors may engage in future child abuse, criminality, and violence. According to Childhelp, children are suffering from a hidden epidemic of child abuse and neglect. Over 3 million reports of child abuse are made every year in the United States; however, those reports may include multiple children. In 2007, approximately 5.8 million children were involved in an estimated 3.2 million child abuse reports and allegations. Almost five children die every day as a result of child abuse. More than three out of four are under the age of 4. There are many other forms of child abuse, including neglect, psychological maltreatment, and medical neglect.

Child Physical Abuse

The most frequent cause of death in children is physical abuse. Psychologists and social workers describe the physical abuse pattern as “battered-child syndrome.” The telling signs of this syndrome are children exhibiting a pattern of bone fractures, subdermal hematoma, and soft tissue swelling. Sudden, near-death experiences should initiate further investigation and raise suspicion from medical and law enforcement professionals. Combinations of these symptoms represent positive indicators for child abuse and physical violence. In addition, the observation and documentation of prior recovered or healing injuries may indicate a future life-threatening attack.

Child abuse represents many cruel behaviors, from lesser assaults to sadistic torture. Investigators of possible child abuse incidents may discover that the injuries cannot be explained by guardians and remain inconsistent with factual evidence. Past injuries and bruises at varying degrees of coloration remain a strong indicator of child abuse. Generally, the first weapon of choice is the common belt attack, disguised as child discipline. The most subtle attack involves Munchausen syndrome, in which the mother presents an infant with a mysterious illness to doctors. However, she causes the emergency intervention to meet her own ego needs for attention. Another less obvious sign of physical abuse is shaken baby syndrome (SBS). This intentional and violent shaking of the child causes severe brain damage due to intracranial trauma. The violence and abuse may be precipitated by the child’s continuous cries or screaming.

Burn Injuries

Deliberate burn injuries occur with children under the age of 10, with the majority of victims under 2 years of age. Children are burned for different reasons, which are generally related to twisted forms of deviant discipline. Burns may result from a caretaker’s poor impulse control and anger over toilet training. There is an erroneous notion that the child will associate the punishment with toilet training compliance. In some cases, little hands may be forced into a pot of hot water as a punishment for playing near a stove.

Immersion burn patterns have a distinctive line pattern. They occur when a child is intentionally placed in a tub or sink full of hot water. Burn marks that are consistent with child abuse leave a pattern that cannot be hidden. The burn injury has a noticeable line of demarcation of uninjured tissue and injured tissue. In cases of deliberate immersion, the depth of the burn is consistent. Burn borders have defined “waterlines,” with slight tapering of the depth at the edges. There may also be evidence of finger impressions/bruises on arms and shoulders resulting from the child trying to twist and turn from the hot water. These bruises indicate that the child was held in place by the caretaker. Generally, burns are located on the buttocks, between the legs, or on ankles, wrists, palms, or soles of the feet.

There may be a delay in medical treatment and inconsistent explanations from the caregivers. Close medical evaluation may find evidence of past child abuse. In addition, there may be a burn pattern that is inconsistent with the explanation of an accidental injury and evidence. The interview with the victim may reveal the identity, intent, and motivation of the offender(s). The possibility and incidence of death or serious injury is high in these burn cases.

Child Sexual Abuse

The average person views the child predator as wearing dark glasses and wearing a black trench coat. They summon mental images of the offender lurking in the shadows of an alley waiting for a child to appear. Child sadistic offenders exist; however, they do not appear any different than the average person on the street. More often, the offender knows the child, is an acquaintance, friend of the family, professional person of trust, or even



In the United States, physical abuse is the most frequent cause of death in children and almost five children die per day as a result of such abuse. In 2007 alone, about 5.8 million American children were involved in an estimated 3.2 million reports or allegations of child abuse. Three million reports of child abuse per year or more has become the average in the United States.

a family member. The child molester may engage in behaviors like touching or fondling to sadistic torture and rape. The terms *pedophile* and *child molester* may be applied interchangeably; however, the terms are different in their meaning and application. Pedophilia is a diagnostic mental disorder; the child molesters may not have this disorder.

According to the *Diagnostic and Statistical Manual of Mental Disorders III-R*, the child molester may be a pedophile, or the molester may be a situational offender. Pedophilia is a psychological attraction to children, a psychosexual disorder. Offenders have an intense attraction to children that is recurrent, including sexually arousing fantasies; their sexual targets rivet on prepubescent children. Pedophilia is a sexual desire or erotic craving of an adult who focuses on children. They are generally attracted to child victims between 8 and 10 years old and are not attracted to adults. In some cases, the children may even be as young as 2 years old. Child molesters may simply view children as opportunistic substitutes for their sexual gratification. Investigators have new investigative

strategies for child sex offender cases. Investigators determine the modus operandi (MO), signature behavior, trademark, and behavioral activities linked to related cases. Crime analysis plus inductive and deductive reasoning techniques offer additional investigative opportunities. Analytical charting techniques offer new methods of analyzing behavioral evidence that link offenders to certain cases. Geographic information system (GIS) crime mapping identifies the geographical patterns of the offender's and victims spatial relationships. Social network analysis provides the means for identifying the offender's victims and relationships.

Conclusion

Police agencies are beginning to respond by assigning specialists to investigate crimes against children. Child abuse investigative strategies require interviewing the victim, caregivers, and coordinating the physical evidence with medical personnel. Accurate reporting serves as the backbone of any investigation, especially child abuse and predator investigations. Excellent reporting describes

the acts that occurred between the offender and child. This means recounting the damage caused by the offender in the form of specific emotional symptoms and physical injuries.

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See Also: 2001 to 2012 Primary Documents; Child Abuse, History of; Child Abuse, Sociology of; Children, Abandoned.

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Child Abuse, History of

Instances of child abuse have been documented as early as 322 B.C.E., during the era in which many believed that one's actions should promote quality of life for the greater good. Since then, child abuse and maltreatment have been part of virtually every culture and society. Protections against child abuse were instituted in the 1700s but were not effective until the mid- to late 1800s. Child abuse continues to be a social concern, despite the ongoing effort to reduce child abuse in the United States.

Colonization of the United States

In the 1500s and early 1600s, child abuse was widespread throughout the United Kingdom and Europe. The streets and rivers of England were often saturated with children who were not wanted by their parents. Furthermore, parents were able to discipline their children with any means they saw fit, often resulting in beatings, whippings, and burning. When the Puritans broke away from England and sailed to North America, these traditions and habits followed.

The majority of the first English colonists in North America were dependent children. Many of these children were homeless before coming to

the colonies and remained so because of lack of funds and family. The English Privy Council issued an order to gather indentured and orphaned children and dispose of them in Virginia. Upon their arrival, indentured children were forced into shelters or remained homeless. Many infants did not survive past age 1 and approximately 50 percent of these children did not survive past age 20.

Life was especially complicated for orphaned children who found settlement in Virginia or Maryland. For example, Virginia desired to increase the number of wool and hemp products to create more revenue. The courts opted to appoint orphans and indentured children to workhouses, resulting in fewer children on the streets and cheap labor for manufacturers. This practice resulted in the desired outcome of increasing production; however, the bosses would whip and beat the children if they did not produce enough material or if they were slacking on the job.

Those families fortunate enough to find areas suitable for living made their children participate in the construction of housing and other labor necessary for family survival. The children working on the construction of homes or other projects were made to carry large pieces of lumber, despite their lack of muscle and proper help. It was not uncommon to find reports of child death as a result of labor accidents. In fact, when an accident occurred, fathers would give lashings to the child for making mistakes.

The familial structure of the new colonies was not unlike the familial structure of precolonial England. Fathers, or the eldest son, were the heads of the family and were the sole owners of property. Furthermore, the eldest son was typically the heir to the family fortune and women were often ineligible for property acquisition if a male in the family was alive. Because a man's house was considered his castle, he was free to do as he pleased, so long as he did not take a life.

Children in Colonial America

Children in colonial America faced the same challenges as those who first settled in the New World. Children were considered valuable assets because they could be used for work around the house. Nevertheless, children were often physically abused, neglected, and in some cases, sexually abused. Orphanages and almshouses were the

main forms of relief from this type of behavior, yet the conditions in these places were less than desirable. Children who avoided their homes or the almshouses often lived on the side of a road in cardboard boxes. It was often the case that at least one-quarter of the inhabitants in jails were children. This pattern of child abuse and neglect was seen throughout the colonial period and into the Civil War.

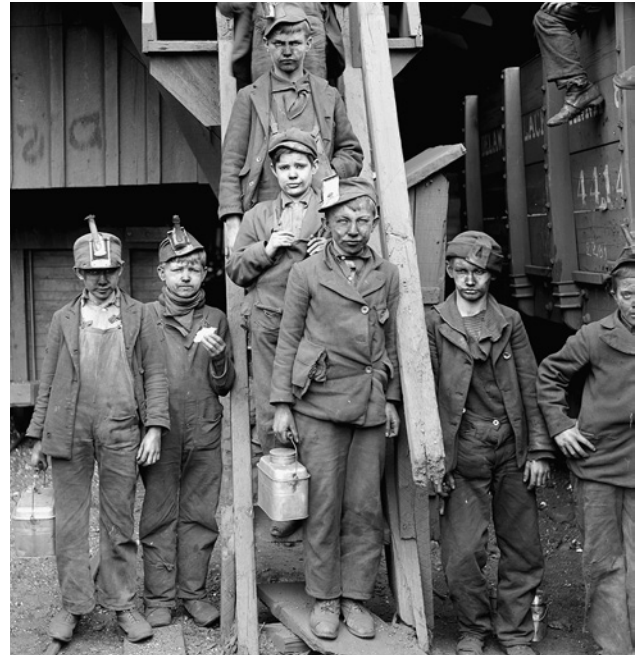
Civil War in the United States

Child abuse in the United States was widespread at the time of the Civil War. Male children were made to work on farms from sunrise to sunset, and female children learned the ways of the housewife for their future husbands. The children of slaves were subjected to much harsher rule than those of nonslave parents. African females and their female children were prostitutes, housemaids, and cooks. They were regularly beaten by slave owners and were sometimes loaned to other slave owners for prostitution. The prostitution of a slave began anywhere from age 10 to 14. Male slave children were made to work on the farm with the adult male slaves. Like the adults, they were beaten, cattle prodded, and sold at the will of the slave owner.

After the Civil War, the children of former slaves had little in the way of social support. The almshouse in Richmond, Virginia, was a place where African females who were pregnant could take refuge, but it was not uncommon for the nurses there to beat the children. Families who did not want their children would leave them at the almshouse, hoping that the nurses would give them a better life; however, the nurses often disposed of children by drowning, heavy medication, or starvation.

Industrial Revolution, Child Labor, and Abuse

The Industrial Revolution influenced the United States by creating more factory jobs. Children of the Industrial Revolution were faced with new tasks, which required them to develop new skill sets to make them more marketable in the workforce. This new requirement meant that children had to attend school to learn to read and write. Children were expected to behave in a certain manner while in school. Deviation in behavior often resulted in lashings or whippings by schoolteachers. When school recessed for the day, the children would either go to work or go back home for chores,



These "breaker boys" worked sorting impurities from coal by hand in the Woodward Coal Mines in Kingston, Pennsylvania, around 1900. Breaker boys were usually 8 to 12 years old.

depending on age and gender of the child. Unlike their counterparts, who typically were meant to stay at home and tend the house, male children were meant to go to work to provide for their family. Long hours and low pay were the norm of society, and even lower pay and longer hours were the norm for children. The bosses of mills would often strike children who were not producing enough goods or who were not working hard enough. When the children were finished with work for the day, they would also tend to chores at home, such as cooking, cleaning, or farm work. The combination of school, long work hours, and regular beatings by authoritative figures led to the child savers movement in the United States.

Preventing Child Abuse

Laws protecting children from harsh labor did not appear until the late 1800s in the United States. These laws reduced the number of hours a child could work per day and the total number of hours per week. These laws were derived directly from England's Factory Act, passed in 1831, which allowed children from the ages of 9 to 12 to work for 12 hours a day and for a maximum of 48

hours per week. Furthermore, statutes mandating that children attend school on a regular basis promoted children's well-being by valuing education for the young.

During the late 1800s, child abuse started to become more of a social problem, rather than a family problem. In 1874, the case of Mary Ellen in the United States was the beginning of the social reform movement to stop child abuse. After a neighbor witnessed the beating of Mary Ellen by her foster mother, the Society for the Prevention of Cruelty to Animals brought the case before the court. They argued that a child should have at least as many rights as an animal. The result of this case led to the creation of the Society for the Prevention of Cruelty to Children. It also led to a number of laws preventing and punishing child abuse in the United States. Many of the laws that have been passed categorize child abuse, sexual abuse, and neglect under the term *child maltreatment*. Additionally, the courts began considering the well-being of children by enacting *parens patriae*. This doctrine permitted courts to act in loco parentis, meaning that the court could act as if it was the parent of a child if there was a need to do so. Typically, a court would do so if there was evidence of severe abuse or if a child was orphaned. This doctrine gave some assurance that children of the state were going to be protected from abuse and neglect.

Abuse in Modern Society

Modern child abuse is not unlike the forms of child abuse in previous decades. Regular reports of beatings, burnings, and accidental and purposeful deaths riddle the nightly news and newspapers. In the early to mid-2000s, the focus on child abuse shifted from parents to educators; namely, the clergy and schoolteachers. Catholic priests were scrutinized when reports of rape and sexual abuse surfaced in the media. Many priests were accused of raping young men who served as altar boys. Several public school teachers across the United States also became the targets of lawsuits when it was discovered that some children had been brutally raped by teachers. Though many of these accusations have since been invalidated, especially those against educators, society has recognized different forms of child abuse and the need to protect against them.

Despite having passed laws to prevent child abuse, there are still forms of child abuse commonly practiced through religion or as a habit of society. Male circumcision is thought of as child abuse by some. In this procedure, the physician removes the sheath of foreskin from the penis. This is done as a religious ceremony for the Jewish faith, and for non-Jewish families it is done out of tradition. Research concerning the effectiveness and cleanliness of circumcisions has shown mixed results. Some researchers have concluded that circumcisions of both males and females can lead to later complications in life, such as human immunodeficiency virus and acquired immune deficiency syndrome (HIV/AIDS) and infections, while others have found little evidence to support the health risks involved with the procedure. Circumcision is a widely accepted ritual in many countries, however, the risks involved with the procedure may be cause for concern.

Historians have documented the prevalence of child abuse as early as the Greek philosophers. Early attempts at punishing child abuse failed because of lack of enforcement of child abuse laws. The reform movements of the 19th century resulted in more cases being presented to the courts, better identification of child abuse, and legislation for harsher punishment of child abuse. In spite of reform, some modern societies continue to practice child abuse as either a religious ceremony or out of habit.

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See Also: 1777 to 1800 Primary Documents; 2001 to 2012 Primary Documents; Child Abuse, Contemporary; Child Abuse, Sociology of; Infanticide.

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Child Abuse, Sociology of

Child abuse, as a recognized sociological phenomenon, is relatively new. It wasn't until 1946 that American medicine recognized the intentional mistreatment of children as a real entity. This changed, in large part, due to John Caffey's seminal article in the *American Journal of Radiology* that documented a series of long-bone injuries and subdural hematomas in infants and toddlers consistent with our current understanding of child abuse. However, it was not until C. Henry Kempe et al.'s paper defining the battered child syndrome that our current view on child abuse took hold. Laws mandating the reporting of child abuse have since been put in place in all 50 states.

Until the Renaissance (and perhaps later), children were not seen as being different than their adult counterparts. They were often viewed as "small adults" and were treated as such in labor, personal responsibilities, and in methods of discipline. Only as the popular view of childhood evolved into one of childhood as a process of development did the views on discipline change. It was requisite that children be seen as separate from adults to have two separate disciplinary standards. What is now viewed as potentially abusive was not in times past. Differing cultures continue to have widely different views on what is or is not abusive.

In 1974, in line with the nation's evolving awareness of child abuse, Congress passed the Child Abuse Prevention and Treatment Act. Its definition includes the physical or mental injury, sexual abuse, or negligent treatment of a minor by those responsible for the child's welfare. The National Incidence Study (NIS), a comprehensive review of current incidence of child abuse in the United States, was mandated by this act. Currently in its fourth iteration, the NIS has two definitions for child maltreatment: the harm and endangerment standards. The harm standard defines abuse only if the child has already experienced some degree of harm. The endangerment standard, in contrast, also sees children as maltreated if they have been put at risk of harm. The maltreatment of children encompasses all areas of abuse: physical, sexual, emotional, and neglect.

While physical and sexual abuse are relatively easy to document and quantify, defining neglect

is more difficult. Neglect universally includes the failure of a caregiver to provide food, clothing, shelter, medical care, or supervision. In addition to physical and emotional neglect, an increasing number of states (24 as of 2009) also have provisions for educational neglect. Yet fewer (seven) states have specific provisions defining medical neglect. Depending on local and regional reporting laws and dependency and criminal statutes, the definition of neglect becomes even broader.

National Incidence Study Results

Unfortunately, estimating the prevalence of any form of child abuse is exceedingly difficult. The majority of abuse cases go unreported or undiscovered, thus artificially deflating any reported incidence. The National Incidence Study, however, gives the best and most comprehensive data on child abuse available. Between 1986 and 1993, cases of abuse increased by more than 50 percent. However, it is unknown if this reflects a true increase in abuse cases or is more suggestive of an increase in awareness and reporting. In 2006, in contrast, there was a 19 percent decrease in reported cases of maltreatment. Despite potential underreporting biases, the numbers remain alarmingly high. Using the harm standard definition, nearly 1.25 million children were abused in the United States. Almost three million children were maltreated during this time using the endangerment standard, however. Of all reported cases, physical abuse was most common, followed by sexual abuse. In terms of neglect, educational neglect was most common (47 percent), a third were physically neglected, and a quarter were emotionally neglected.

In the case of sexual abuse, victims tend to be more heterogeneous as a group, and as a result, development of prevention programs has been more complex. A large focus has been on educating children at risk of being potential targets. In 2006, girls had a significantly higher rate of harm standard abuse than boys. An estimated 8.5 per 1,000 girls experienced harm standard abuse compared to 6.5 per 1,000 boys. In other words, girls' risk of abuse was 1.3 times that of boys. However, girls' overall higher risk of harm standard abuse is due primarily to their significantly higher risk of sexual abuse (five times greater than for boys).

White and black children had significantly different rates of maltreatment according to the harm standard during 2006. Approximately 12.6 per 1,000 white children experienced harm standard maltreatment, whereas this number was nearly double, or 24 per 1,000 for black children. The rate for black children was also significantly higher than that for Hispanic children (14.2 per 1,000), with black children 1.7 times more likely to experience harm standard maltreatment than Hispanic children. Other race categories (including American Indian or Alaska Native, Native Hawai'ian or other Pacific Islander, or mixed race) were represented too rarely to develop estimates for these groups.

The rate of harm standard abuse was also significantly higher for black children than for children in the other two racial/ethnic groups. An estimated 10.4 per 1,000 black children suffered harm standard abuse during 2006 compared to 6 per 1,000 white children and 6.7 per 1,000 Hispanic children. The abuse rate of black children is 1.7 times that of white children and 1.6 times that of Hispanic children. An estimated 14.7 per 1,000 black children experienced harm standard neglect during 2006 compared to 7.5 per 1,000 white children, a statistically marginal difference. Thus, black children had nearly two times the risk of harm standard neglect compared to white children.

Corporal punishment remains a controversial topic, partly due to the difficulty distinguishing between discipline and abuse. Despite this, more than 90 percent of American parents report having used physical discipline at least once, according to J. E. Lansford, and between 40 to 70 percent report using corporal punishment within a more limited time frame. Multiple studies have indicated a link to a higher incidence of externalizing disorders, aggression, and delinquency among those who experience corporal punishment. However, in cultures where corporal punishment is more accepted, this is not entirely the case.

Laws have been developed in every state in the United States defining mandated reporters. These individuals include personnel working in educational, legal, law enforcement, criminal justice, social services, medical, mental health, foster care, or child care fields. Provisions in these laws allow for mere "reasonable suspicion" that abuse

or other maltreatment has occurred and provides immunity for acting in good faith. School professionals represent the largest group of mandated reporters (17 percent), followed by law enforcement (16.3 percent). Social services, medical staff, and mental health practitioners follow (10.2, 8.4, and 4.3 percent, respectively). Physicians, nurses, daycare personnel, and neighbors are frequently the ones to suspect and report neglect occurring to infants, toddlers, and preschool-aged children. Relatives, police officials, and close friends are frequently the ones to suspect neglect toward teens and young adults.

Effects of Abuse

Youth who experience maltreatment are at significant risk for both short-term as well as long-term deleterious consequences. According to the National Survey of Child and Adolescent Well-Being (NSCAW), more than 25 percent of children in foster care 12 months or more had a lasting health problem. More than 75 percent of foster children between 1 and 2 years of age were found to be at medium to high risk for problems with brain development, as opposed to fewer than 50 percent of children in a control sample. Given that the human brain experiences its greatest growth



An advocate works with a child abuse victim in 2009. As many as 80 percent of young adults with a history of abuse may suffer depression, anxiety, eating disorders, and suicide attempts.

in the first year of life, and continues to rapidly develop during early childhood, this is significant. In addition, fear, disruptions of attachment, and violations of trust can also have lasting consequences, including poor self-esteem, troubled relationships, and psychological symptoms including depression and anxiety.

These difficulties can carry on into adulthood. In one long-term study, as many as 80 percent of young adults with a history of abuse demonstrated symptoms, including depression, anxiety, eating disorders, and suicide attempts. Children who experience maltreatment are also more likely to develop antisocial traits. Parental neglect is also associated with borderline personality disorders and violent behavior. A number of studies have also suggested increased risk of the following outcomes: delinquency, risk-taking behaviors, teen pregnancy, poor academic performance, substance use, and psychiatric comorbidity. Child maltreatment also results in a cost to society. Financially, these costs are significant. A 2001 report by Prevent Child Abuse America estimates \$24 billion per year, including costs associated with juvenile and adult criminal activity, mental illness, substance abuse, and domestic violence.

A number of programs have been developed over the past 40 years addressing prevention of child abuse and neglect with different strategies. These programs have focused on increasing parent and caregivers' knowledge and skills, changing societal norms, and increasing support for parents. Theories supporting these programs have varied from psychodynamic, learning, ecological, to environmental. According to D. Daro, psychodynamic theory suggests that if parents better understood themselves, they would be less likely to engage in abusive behavior, whereas gaining more knowledge about how to best care for children helping decreasing rates of abuse is supported by learning theory. Provision of greater material or social supports being of benefit is supported by environmental theory, whereas ecological theory suggests that a network of services to compensate for a variety of deficiencies would be helpful.

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See Also: Child Abuse, Contemporary; Child Abuse, History of; Children, Abandoned.

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Child Murderers, History of

Evidence of children who murder dates back to the 1700s with the case of William York, who in 1748 mutilated and stabbed to death 5-year-old Susan Mahew in Suffolk, England. A few other historic cases are of note. In 1874, Jesse Pomeroy killed a 4-year-old boy and a 10-year-old girl in Boston at the age of 14. During a home burglary in June 1945, 16-year-old William Heirens attacked an unsuspecting homeowner in Chicago and slit her throat.

American serial killer, Edmund Kemper, began his murderous career in 1963, at age 15, when he shot both of his grandparents in California. Another high-profile child murderer is 11-year-old Mary Bell, who strangled a 3-year-old and 4-year-old boy in Scotswood, England, during the summer of 1968. In March 1978, 15-year-old Willie Bosket shot and killed Noel and Moises Perez in New York, during attempted robberies, which led to the state's law changing so that juveniles as young as 13 could be tried as adults. In an inexplicable chain of events, 17-year-old Brenda Spencer, shot into a San Diego elementary school

in 1979, killing two men, simply because she did not like Mondays. Additionally, in February 1993, there was the incident of two 10-year-olds, Robert Thompson and Jon Venables, who lured 2-year-old James Bulger away from a shopping center in northwest England where they sexually abused him and subsequently beat him to death with bricks, stones, and a metal bar.

In 1988, 15-year-old Rod Matthews of Massachusetts lured his 14-year-old neighbor into the nearby woods, where he beat him to death with a baseball bat for the thrill of learning what it was like to kill someone. Matthews later bragged to two friends of his actions and brought them to view the bludgeoned body. Matthews's impulsive homicide serves as an example of thrill killing, whereby a relatively normal juvenile randomly kills a stranger to experience some form of exhilaration. The 1986 cult-related torture killing of James Thimm in Nebraska was committed by 15-year-old Dennis Ryan and his father, Michael Ryan. As members of a deeply religious survivalist cult, Ryan and his father demoted fellow cult follower, Thimm, to rank of slave and subsequently tortured him to death. In the same year, 16-year-old Sean Sellers killed both of his parents in Oklahoma during a satanic ritual that he conducted while they slept. Thus, the prevalence of involvement in the occult is associated with past instances of juvenile-perpetrated homicides. While the motives of some juvenile murderers often appear nefarious, some youth-involved homicides are committed in the defense of others. For instance, in 1988, a 3-year-old boy living in Detroit retrieved his father's pistol from a nearby table to shoot and kill his father, who was brutally assaulting his mother.

Youth-involved homicide remains a contemporary problem, especially since homicide arrests for juveniles in the United States rose every year from 1984 to 1993. Current trends suggest that young people in the United States are killing more now than in the mid-1980s. However, homicides by juveniles are still quite rare in comparison to those committed by adults, especially when the youngest of juvenile homicide offenders are considered. Nevertheless, such brutal and violent murders committed by children bewilder a concerned public. In fact, the 2003 case of Lionel Tate, who killed his 6-year-old neighbor while reenacting professional wrestling moves he had

seen on television, garnered immediate media attention. The 12-year-old Tate was facing life in prison without the possibility of parole until an appeal reversed the decision because his competency to stand trial as an adult had not been evaluated prior to trial. As a result, Tate was given one year of house arrest and 10 years of probation. This landmark case led many social and behavioral scientists, such as Thomas Grisso, Robert Schwarz, Laurence Steinberg, Franklin Zimring, and Elizabeth Cauffman to further develop research on how developmental maturity affects a juvenile homicide offender's ability to competently stand trial as an adult.

Risk Factors

While the term *youth* is often used to broadly include both juveniles and adolescents, there are distinctions between the two. The minority status of *juvenile* is defined by legislative statute and the federal government. This legal label is applied to children who have committed a crime while under the age of 18. On the other hand, *adolescence* refers to a stage in human development when a child reaches puberty, which usually occurs by age 12 but can extend to age 19 or 20. The use of the term *children* typically refers to prepubescent youth.

Since the mid-1950s, research has revealed numerous factors associated with youth homicide. Lauretta Bender's research in 1959, which involved 33 children who committed homicide prior to age 16, found that roughly half of the subjects had been referred for psychiatric evaluation, where several were diagnosed with schizophrenia, epilepsy, chronic brain syndromes without epilepsy, and depression. Bender acknowledged several risk factors for child homicide offenders, which included a history of brain damage, schizophrenia, compulsive fire setting, mental retardation, unfavorable home environments, and personal life experience with a violent death.

Elsewhere, researchers identified different risk factors, such as intense self-destructive impulses, intense hostile reactions, immaturity, infantile rage, psychopathic tendencies, language and education deficits, inability to find alternatives to difficult life situations, availability of weapons, history of harming small animals, presence of an overly dominant mother, childhood maltreatment, living in poverty, and a history of making

homicidal threats and fighting other children. These risk factors encapsulate the biological, psychological, and sociological underpinnings of child murderers.

Specifically, psychological deficits among juvenile murderers are explained by mental illnesses, psychoses, mood disorders, defective intelligence, and severe childhood trauma. These include factors like impaired ego development, unresolved dependency needs, displaced anger, the ability to dehumanize the victim, and narcissistic deficiencies. Biological dysfunctions include neurological impairments or brain injuries. Sociological factors refer to turbulent or disturbing home situations, family violence, spousal abuse, and parental abuse. Peer influences may also play a role in youth-involved homicide, since adolescence is a period of development where a youth undergoes great pressure to obtain peer acceptance and individual autonomy. In fact, peer rejection and ridicule were linked to the Columbine High School shootings, which took place in 1999.

Classifications

In 1989, Dewey Cornell and colleagues developed a typology for classifying juvenile homicide offenders into three categories based on the circumstances of the offense: (1) psychotic, (2) conflict, and (3) crime. In the case of the psychotic youth, he or she exhibits severe mental illness such as hallucinations or delusions, and psychiatric disorders play a large role in the person's homicidal tendencies because these conditions cause the youth to lose touch with reality. However, juvenile homicide offenders are rarely classified as psychotic. One example of a juvenile psychotic killer is the 1986 case of Patrick DeGelleke who, at the age of 15, murdered both of his adoptive parents by setting fire to their bedroom. Psychologists concluded that DeGelleke's knowledge of his parents' intent to institutionalize him threw him into a psychotic rage that resulted in his homicidal actions.

The conflict-related classification is reserved for youthful murderers who engaged in an argument or dispute that later resulted in the victim's death. For example, in 1998, 15-year-old Jonathan Miller attacked and beat 13-year-old Josh Belluardo as the two exited a school bus in Georgia. The assault was a result of an argument between the two boys

that occurred while on the bus. The blows Belluardo sustained caused a hole in an artery at the base of his brain, which put him in a coma and later led to his death. Miller was sentenced to life in prison. Conflict-related offenders score higher on family dysfunction measures and seldom have a significant prior delinquency record.

Those offenders with circumstances categorized as crime-related are youth who kill while committing some other felony such as rape or robbery. A widely publicized Vermont case of rape eventuating into homicide took place in 1982 when 15-year-old James Savage and 16-year-old Louis Hamlin dragged two 12-year-old girls into the woods where they undressed them, tied them up, raped them, shot them with a BB gun, and stabbed them. One of the girls died. Crime-related offenders usually have school adjustment problems, substance abuse problems, and involvement in previous criminal activity. They tend to act with accomplices and to be under the influence of drugs during the murder.

Due to the seriousness of their offense, youthful murderers face the increased potential of being transferred to criminal court where they face adult sanctions. Traditionally, judicial waiver was the predominant method of transfer in the 1960s, and it entailed a review by a juvenile court judge of the youth's prior record, character, maturity, seriousness of the offense, his or her amenability to rehabilitation, the suitability of available programs at facilities, and the interest of public safety. However, between 1992 and 1995, automatic forms of juvenile waiver, such as prosecutorial direct file or statutory exclusion, became more commonly used; these waivers do not require any formal review of the youth's sophistication and ability to stand trial competently as an adult. Instead, the focus of automatic or mandatory waiver practices is to punish the grave crime of murder with severe sentencing in the hope of achieving deterrence and retributive goals. Competency to stand trial refers to the defendant's ability to assist counsel; the ability to reason and understand the legal proceedings against him or her; and the ability to adeptly make legal decisions. Research in the behavioral and social sciences has found that juveniles may not possess the developmental maturity necessary to be considered competent to stand trial as adults. Mandatory or automatic forms of waiver lack

adequate guidelines to properly evaluate a youth's level of developmental maturity to be deemed fit for trial and thus place the juvenile defendant in peril of receiving long-term confinement without consideration of treatment and rehabilitation. Although the U.S. Supreme Court decided in the 2005 *Roper v. Simmons* case that defendants under the age of 18 are not eligible for the death penalty, youthful murderers may still receive a sentence of life without parole.

Treatment

Research between the late 1970s and the early 1990s revealed many effective treatments for child murderers. In 1992, Wade Myers identified four major areas of treatment for homicidal youth: psychotherapy, psychiatric hospitalization, institutional placement, and the use of psychopharmacological drugs. These four interventions can be effectively utilized to treat young killers, but must be tailored to account for the individual needs of the youth while attending to unique family situations, mental and learning disorders, and substance abuse and/or dependence. Psychotherapy has proven successful for youth with undifferentiated conduct disorder who also have prior emotional relationships with their victims and are suicidal. Psychotherapy is most effective for more mature youth who are capable of forming emotional relationships with others and can perform introspective self-examination.

Psychiatric hospitalization is usually used for preadolescent child murderers who appear psychotic and require psychopharmacological management. Hospitalization can allow mental health professionals to provide an appropriate setting to evaluate the youth and stabilize his or her homicidal impulses. Institutional placement is frequently used for adolescent murderers in order to provide a prosocial environment that aids their cognitive and emotional growth, which will permit them to better control their aggression. Psychotropic drugs, which require careful monitoring, can be used in addition to the above treatments in an effort to reduce aggression, stabilize mood, and alleviate the symptoms of mental disorders.

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See Also: Infanticide; Juvenile Justice, History of; Juvenile Offenders in Adult Courts; Murder, Contemporary; Murder, History of; School Shootings.

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Children, Abandoned

Child abandonment means giving up all claim and interest over an infant with intent of never reclaiming the baby. Mothers surrender offspring for various reasons: mental illness, for example, or poverty, particularly in societies with inadequate

social welfare arrangements or in which adoption procedures are difficult or orphanages are rare or overcrowded.

An abandoned child, a foundling, is not to be confused with a runaway or an orphan. The prevalence of child abandonment in literature does not necessarily mean that the culture practices abandonment. Societies that long abandoned or never practiced it still have the literature and tradition. Even societies with no history of abandonment have myths of abandoned children living in luxury after being taken by supernatural beings.

Historical Context

Oedipus was abandoned after an oracular proclamation that the child would cause harm. Some mothers in Greek myth chose to hide the result of a god's rape. A jealous stepmother cast out Snow White. Commonly, the foundling is taken in by a lower-class person, often a shepherd, a rural start for an abandoned urban child. Extreme examples involve the rearing of the child by animals: Romulus and Remus by wolves, Tarzan by apes. Oedipus grows up to marry his mother. Snow White survives with the help of dwarves. A common twist, introduced by Euripides, is the happy reunion of the now-grown child because of his or her possession of a token.

In the 1980s, historians and anthropologists agreed that premodern societies practiced infanticide to control population, most commonly through exposure. Modern instances are rare but not unknown. In 1988, John Boswell's *The Kindness of Strangers* found that abandoned children included not only the deformed or those born outside "legitimate" relationships but "normal" babies as well. Boswell estimated 20 to 40 percent of Roman babies were abandoned—but most were rescued. Some became slaves, most were foster children. The kindness of strangers, as in the fairy tales, determined the fate of the child.

Even in seriously infanticidal societies, most children are not killed but abandoned, given at least a chance to survive. Religious authorities in countries dominated by Abrahamic religions (Judaism, Christianity, Islam) condemned infanticide as murder but had no proscription of abandonment.

Abandonment waned between 1000 and 1200 and then rose in the 13th century as population

increased and economic hard times prevailed. Some Italian cities introduced foundling homes to reduce the likelihood of an unwed mother killing her infant to avoid social stigma or by parents too poor to care for another child. Foundling homes replaced the kindness of strangers as they spread through Portugal, Spain, and France. In the Enlightenment, foundling homes proliferated anew in Catholic Europe and Russia in response to a rise in exposures, up to 150,000 a year in Europe in the early 19th century, as illegitimacy and poverty rose. The mortality of foundlings in the first year in the homes was 50 percent.

In early-19th-century Protestant Europe and the United States, abandonment was rare. In Catholic Europe, abandonment was discreet until the mid-19th century, when asylums made abandonment a public rather than a private matter. When abandonment was public, the number of abandonments dropped sharply, as did the incidence of foundling mortality. Increased availability of contraception also decreased abandonments.

Industrialization generated unregulated work for children as young as 4 in mines and factories and as chimney sweeps. Often, the children were farmed out by workhouse managers. Charles Dickens became a child worker at age 12 when his father was in debtor's prison and regarded the experience as one of abandonment by his family, as reflected in the largely autobiographical *David Copperfield*. Reform in the early 19th century focused on the mines and factories but also on asylums; 19th-century England had asylums in virtually all major cities for the care of babies abandoned by unmarried or indigent mothers. Charles Dickens's *Oliver Twist* is the story of such a facility. In 19th-century Canada, indigent and abandoned British children were worked as agricultural apprentices in order to get the children off the dole and out of the unhealthy city air. Italian children worked in Paris, New York City, and elsewhere as figurine sellers and street musicians.

In 1853 minister Charles Loring Brace was determined to do something about the problem of "street Arabs." He founded the Children's Aid Society, which relocated more than 100,000 street children (maybe 150,000 to 200,000) to rural America between 1854 and 1929. Brace thought



The director of the Sprague Settlement House, which began providing vocational training and health services to needy families and children in 1910 in Providence, Rhode Island, cares for a recently abandoned infant while watching over a class of local girls learning to sew in November 1912. In the early 20th century, institutions for foundlings began to be replaced by more foster care and adoption.

the children would be welcome as an additional source of farm labor and that farmers would take the children into their homes. These efforts were the forerunner of foster care.

Modern Era

In antebellum U.S. cities, abandoned children were sent to the poorhouse. New York City on the eve of the Civil War had a foundling problem caused by rapid development, population increase, immigration, and mass poverty. Once aware that foundlings were a symptom of urban moral decay, religious reformers and public officials established four institutions for foundlings and infants. The asylums proved inadequate, and early in the 20th century, three of the four were closed. In New York, adoption replaced abandonment, and foster

care replaced institutionalization. In Kansas in the early 1920s, the United Methodist Church opened the Kansas Methodist Home for Children in Newton to provide a farm environment for homeless and abandoned children. In 1960, it shifted to providing services to adolescents with social adjustment or emotional problems. In 1996, Kansas became the first state to completely privatize adoption, foster care, and family preservation, with Youthville holding a regional contract that included care of more than 1,000 children.

Modern law regards child abandonment as a serious crime because of its potential for direct harm to the child and because of the burden it places on society. Georgia classifies simple abandonment as a misdemeanor, with abandonment and subsequent leaving of the state a felony. In

the 20th century, the definition of child abandonment moved beyond the actual physical giving up of the child. Abandoned children included street children, war victims, child prostitutes, refugees, and runaways seeking to flee unhappy home environments. For some, particularly during the 1980s and 1990s surge of “retrieved memories” of child abuse, living in a dysfunctional family constituted a cruel form of child abandonment. In 1996, the United States had 1 million street children. They are more likely to be arrested, to contract human immunodeficiency virus (HIV), and to abuse drugs.

Reduction Approaches

To reduce instances of child abandonment, many jurisdictions have introduced “safe haven” laws that identify hospitals, police and fire stations, and other facilities where an infant can be left, usually with no recrimination and often with no need to identify the mother. In 1999, Texas became the first state to enact a safe haven law. Some states allow the handing of a newborn to a doctor or police officer, some decriminalize the act, some allow for parental anonymity while others want identity to establish a medical history, and some set time or age limits. By 2006, 47 states had these laws.

In 2008, Nebraska was one of the last states to pass a safe haven law. The law was so loosely written that it included 17-year-old abandoned children; child welfare experts argued that it didn’t deal with the causes, particularly of the abandonments of older children. Infants could be the result of an embarrassing teen pregnancy, but when a parent just left a child or teenager in the hospital for authorities, that was another matter. It smacked of the Depression era when parents bought children bus tickets and put signs on them asking that they be directed to Boys Town, the original safe haven. Federal funding of safe havens came in 2002 as a state option, not as a mandate.

Foster care is a more significant approach than safe haven. Before its safe haven law, Texas had 33 newborns abandoned a year, same with Illinois, with other state numbers closer to five to 10. A third died. Today, nearly half a million American children are in foster care. Foster care dates back more than 150 years. In the

1850s, New York City was home to thousands of street children who roamed in search of food, shelter, and money and were a source of disease and crime. They were street vendors of matches, newspapers, and rags, and their defense against street violence was to form gangs. Police arrested vagrant children as young as 5 and locked them up with adult criminals.

Foster care receives 40,000 infants a year. Not all children in foster care are physically abandoned; most are abused physically, sexually, or emotionally, then taken by the state from their parents. Foster care costs \$25.7 billion a year, and child abuse and neglect cost an additional \$100 billion. For this cost, former foster care children constitute a fourth of prisoners and 30 percent of homeless people. Four years after leaving foster care, half are unemployed, in part because foster care reduces the probability of finishing high school, virtually rules out completion of college, and increases sixfold the chance of teen motherhood.

The problems of child abandonment are worldwide and solutions are scarce. Urbanization and industrialization merely exacerbate the situation.

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See Also: Child Abuse, Contemporary; Child Abuse, History of; Children’s Rights; Juvenile Justice, History of; Juvenile Offenders in Adult Courts.

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Children's Rights

While many may believe that the concern for children's rights is a relatively recent phenomenon, it must be placed in its historical context. As early as 1919, the League of Nations established the Committee for the Protection of Children, and in 1923, the organization formally codified the rights of children in a series of proclamations referred to as the Declaration of the Rights of the Child, collectively endorsing a child's right—regardless of race or nationality—to survival, nutrition, shelter, healthcare, humanitarian relief, and protection from exploitation, as well as the right to grow up in an environment that fosters his/her material and spiritual development.

Early Social Reforms

However, concern for children's rights in the United States took root much earlier—at the same time that the first European colonies were being established and children were dying at astoundingly high rates. Settlers in Massachusetts attempted to define the legal relationships between children and parents. The “stubborn child laws” of the mid-1600s permitted parents to discipline children physically, including to the point of death, and defined the limited basis on which public officials could intervene. “Poor laws” inherited from England authorized parents who were unable to sustain their children to send their children out to work. Children were routinely seen as cheap and legal labor. And yet, by the late 18th and early 19th centuries, there were already numerous organizations denouncing child labor and agitating for the rights of children. The New England Association of Farmers, Mechanics and Other Workingmen condemned child labor in 1832, and by 1836, Massachusetts passed the first state child labor law requiring children under 15 who worked in factories to attend school for three months each year.

In the 1870s, social reformers tackled the problems of child labor and child delinquency and crime. These movements were in large part driven by the efforts of middle-class women whose faith in the continuation of the social order was tied to the apt rearing of children and the inculcation of proper social values. Many children who lived in cities spent their time in the streets. Labor

unions, including the Knights of Labor and the Workingmen's Assembly in New York, rallied to the cause. The New York legislature passed compulsory school attendance legislation in 1874. In 1886, that state passed the Factory Act of 1886 prohibiting factory work by children under 13 years of age.

Twentieth-Century Advances

The most significant advance in the history of children's rights, however, was the entry of the federal government as a powerful and influential stakeholder. In 1906, a senator from Indiana introduced a federal child labor bill, but Theodore Roosevelt did not support the bill, and support among social reformers was also mixed. After a few years of continued efforts, President William Howard Taft signed into law a bill that created the U.S. Children's Bureau, as part of the Department of Commerce and Labor, to investigate and report on all matters related to the welfare of children. In 1938, President Franklin Roosevelt signed the Fair Labor Standards Act, limiting many forms of child labor.

In the early 20th century, experts were mobilized on behalf of children's rights. In 1909, William A. Healy, a doctor, was appointed director of the Juvenile Psychopathic Institute and announced that the institute would begin to research the causes of juvenile delinquency. Young people who ran afoul of the law were considered victims of their circumstances and perceived to be delinquents whose offenses were the result of neglect and poverty. They were guilty of undesirable behaviors, but they were not viewed as criminals. Focus was on the root causes of offending behavior, indicting parents for ineffectively socializing their children, thereby locating the legislation as part of the rise of the “child-saving movement” of the late 19th and early 20th centuries. The prosperity of the 20th century, declining mortality rates, and the rise of the teenager as a distinct social group defined a turning point in the relationship between children and American society. In particular, the 1920s saw young people—“flaming youth”—capture attention like they never had before.

Recognizing the rights of children—particularly legal rights—has been problematic given the dependent nature of children. As Michael



In the latter half of the 19th century, vagrant nondelinquent children could be sent to the New York Juvenile Asylum. These boys learned shoemaking at the facility sometime before 1905.

Grossberg put it, children are “double dependent: on their parents and on the state,” thus not only creating a tenuous basis on which children might assert rights but also setting up a tension between parents and government about how best to recognize and protect the rights and welfare of children.

In 1944, the decision of the Supreme Court in *Prince v. Massachusetts* underscored the tensions between parents and state even as it articulated a legal basis to ensure the welfare of children. The court confirmed that government possessed broad authority to regulate the treatment of children, at the same time declaring that parental authority was not absolute. *Prince* established that the state's interest in protecting children through child labor laws superseded the constitutional right of parents to raise their children as they choose. Parental authority could be restricted when it was in the best interests of the child for the state to do so. On November 20, 1959—a date that was accepted as Universal Children's Day in 1954—the United Nations General Assembly adopted an expanded version

of the 1923 League of Nations declaration, adding provisions regarding a child's right to an identity, family, and education, and the right to be free from discrimination. In *In re Gault* (1967), the U.S. Supreme Court established once and for all that perhaps there was justice for all. The court confirmed that juveniles accused of crimes possess many of the same fundamental due process rights as adults. These rights include the right against self-incrimination, the right to be arraigned on charges, the right to confront witnesses, and the right to be represented by counsel.

Conclusion

The struggle throughout the 20th century to comprehend, articulate, and define the rights of children has been a philosophical, moral, and legal struggle that has sought to separate the rights of children from other rights claimants. Some argue that children have the same rights as adults; others disagree and assert that children have no rights or at best only some of the rights enjoyed by adults. As worries about globalization, poverty, war, child soldiers, national security concerns prevailing over civil rights, and other historically specific debates shape our conception of human rights, it remains to be seen how these issues will impact and shape our conceptions of children's rights and our willingness to define them in law and social practice in the century ahead.

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See Also: 1777 to 1800 Primary Documents; 1901 to 1920 Primary Documents; Child Abuse, History of; Children, Abandoned; Civil Rights Laws; Juvenile Justice, History of.

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Chillicothe Correctional Institution

The Chillicothe Correctional Institution is located in the city of Chillicothe, Missouri. It is the administrative seat of Livingston County and sits approximately 80 miles northeast of Kansas City. State highways 36 and 65 intersect at Chillicothe, making it a hub of political, economic, and commercial activity for the region.

The first visitors to the area established Chillicothe as a settlement in 1837, naming it after its sister city in Ohio. The city was incorporated in 1851. As Chillicothe grew, so did its prominence, attracting the attention of the state's political leaders. In 1887, the state legislature selected Chillicothe as the site of the State Industrial Home for Girls. It appropriated \$50,000 to its construction and operation. The home was located two miles south of the town square, on what was later to become Third Street. Designed around the cottage plan (a design that allows residents to live in a smaller and more relaxed setting), the first dormitory was given the name of Marmaduke Cottage in honor of Governor John S. Marmaduke. By the early 1900s, three more dormitories had

been completed, with the home being renamed the State Training School for Girls. Capacity grew to 225 residents. In addition to the existing dormitories, the school also consisted of a chapel, boiler house, and administration building.

In 1981, the home closed permanently, and the campus was updated and expanded to function as a women's prison. Known as the Chillicothe Correctional Center, this 525-bed prison housed minimum to maximum security inmates. After more than 20 years of operation, the old prison structure fell into disrepair, convincing state officials to construct a larger and more modern women's facility. After considering various proposals, state officials decided to vacate the old prison and construct a larger, more modern facility north of Chillicothe.

Before construction began, a tragic event marred the otherwise favorable reputation of the old facility and shocked the surrounding community. On September 10, 2006, two officers were involved in a domestic dispute that resulted in their deaths. Just before 3:30 P.M., outside the prison's library, a male officer approached his female roommate and fired two shots, striking her in the back. He then turned the gun on himself, firing one shot into his chest. Both officers were pronounced dead at the local hospital. At the time, officers were not required to pass through metal detectors and were only occasionally required to submit to security screening processes. The prison went into lockdown. Because this incident involved no inmates, and because all inmates cooperated as instructed, the lockdown soon ended. This shooting prompted a re-evaluation of the security measures at Missouri's prisons pertaining to correctional employees. The old facility continued to operate until the construction of the new facility was completed.

A groundbreaking ceremony for the new facility was held on October 24, 2006. Construction was completed in 2008 at a cost of \$120 million. The new facility consists of four 256-bed general housing units utilizing 4-person rooms. It also contains a 240-bed unit (with 2-person rooms), a 76-bed administrative segregation unit, a 96-bed mental health unit, and a 200-bed reception and diagnostic unit. The new prison complex is made up of six single-story buildings, eight two-story buildings, and a 126,000-square-foot Central Services Building. The Central Services Building houses the prison's classrooms as well as its laundry, kitchen,

culinary arts, and dining and religious areas. The new Chillicothe Correctional Center sits on 55 acres and was, at the time of its construction, the largest design-and-build project ever undertaken by the state of Missouri. The new prison employs approximately 315 security staff. Even though the new facility has an operating capacity of 1,636 inmates—nearly 300 percent more than the old facility—the use of architectural features and technological advancements has helped reduce the need for additional security personnel.

Transfers to the new facility began on the night of December 4, 2008. Approximately 150 specially equipped and highly trained correctional officers participated. Buses were dispatched two at a time. Transfers started at 10:30 p.m. and continued until the last offender arrived at 5:15 a.m. the next morning. The last two transports were of inmates housed in the old segregation unit. Extra security procedures were taken with these high-risk inmates, who were transferred by van. All transfers went smoothly and without incident. Shortly after the arrival of the 525 inmates from the old facility, another 550 from the Women's Correctional Center in Vandalia, Missouri, arrived. At the time, the Vandalia facility was operating in excess of 500 inmates over its designed capacity. The Missouri female prisoner population was 1,071 in 1996, ballooning to 2,522 in 2006—an increase of 150 percent (during the same 10-year period, the male population increased by 50 percent). Such an increase necessitated Missouri's building of a large prison and centralized processing center for female offenders.

Since the opening of the new facility, discussion has taken place about what to do with the old prison complex. Suggestions have ranged from its complete demolition to turning it into a home for mentally handicapped women, creating a transitional facility to assist female inmates during their return to society, or perhaps even creating an inpatient substance abuse treatment center for women. One proposal even calls for the entire site to be turned into commercial and residential housing units. A 15-acre plot on the north side of the old compound is now being developed into a medium-income housing subdivision.

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See Also: Corrections; Missouri; Racism; Women in Prison.

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Chinese Americans

Chinese Americans are a racial, ethnic, and cultural group making up part of the landscape of U.S. citizenry. While distinguished by their perceived cultural and geographical tie to China, Chinese Americans are also identified as part of a broader Asian American community. Historically, Chinese Americans' difference from and sameness to other Asian American ethnic communities (like Japanese Americans) has fluctuated depending on the political climate. U.S. law and policy, as well as social attitudes, have shaped Chinese Americans into a distinct and marginalized racial and cultural category historically criminalized as inassimilable aliens and foreign threats to the integrity of the United States.

Early Immigration

The category *Chinese American* was in part created and defined through the policing of early U.S. immigration and citizenship laws. With westward expansion, the need for undervalued labor in places like California met with free labor ideologies, which argued against slavery on grounds that advocated ideals of capitalism based in notions of free (white and male) labor. This antislavery sentiment often worked in tandem with anti-black racism on the west coast. The result of these sentiments impacted developing industries like railroads, mining, and agriculture by forcing employers to find ways of employing so-called cheap labor without depending on slavery or undercutting the labor of free (white and male) workers.

Nineteenth-century economic development in the west looked to indigenous and Mexican laborers, as well as Chinese immigrants to fill the need for cheap labor. While Japanese labor migration recruitment patterns sought peasants from rural areas to work in agriculture on the west coast and sugarcane plantations in Hawai'i, recruitment of "coolie" Chinese labor was often funneled into railroad and mining. Because the Chinese government had been weakened with the Opium War against Britain (1839–42) and the Taiping Rebellion (1850–64), it was not able to negotiate strong emigration treaties with the United States (in contrast to the Japanese government, for instance).

Federal immigration laws passed during the late 19th century restricted entry and naturalization

along racial lines, helping to distinguish and criminalize Chinese Americans as outside the boundaries of the U.S. national body. For immigration officials, Chinese racial and cultural difference was read as a marker of inassimilability, criminality, and sexual deviance, reasons used to justify exclusion, detention, and deportation. Such rationale informed the passage of the Chinese Exclusion Act of 1882, widely considered the first federal immigration law. With this law, all Chinese laborers were prohibited from entering the United States. Exceptions were made only for the merchant and wealthy classes and students. Thus, proving class status to gain entry after 1882 often meant fitting into immigration officials' preconceived ideas about what "respectable" Chinese would



Chinese American men pause to read announcements posted on a wall (right) on what was known as "the street of the gamblers" in San Francisco's Chinatown sometime between 1896 and 1906. Associations of a Chinese criminality were magnified by the myth of Chinatowns being distinct geographies plagued by vice and dominated by gangs.

look like. For example, the assumption carried by many immigration officials that wealthier Chinese women would have small, bound feet helped shape policing efforts at the border, where a physiology of respectability/criminality developed, which linked physical features with perceived class status and sexual morality.

As Chinese female sexuality was constructed as suspect, Chinese women were assumed to be prostitutes even when they presented legal documentation of their status as wives. Legal documentation was often not enough proof of respectability, and policing of Chinese immigrants, particularly women, was accompanied by physical and medical exams as well as interviews. Immigration scholars consider the early treatment of the Chinese on issues such as entry, permanent residence, and citizenship as establishing the blueprint for immigration law and practices.

This policing of immigration based on assumptions of a Chinese threat to the health and morality of the U.S. nation impacted the formation of Chinatowns as seemingly distinct, self-controlled, and self-governed areas separated from the rest of the city. The association of Chinese difference with exotic cultural proclivities, disease, and underground vice activities like gambling, opium, and prostitution was both a result of and shaped by media sensationalism, policing practices, and social science research.

The myth of Chinatowns as self-governed and distinct geographies housing vice, disease, and run by gangs (rather than police) further entrenched the associations of Chinese difference with criminality. For example, when such racial assumptions helped justify overpolicing of Chinatowns and Chinese (and often also Japanese) American communities, the adverse effects (drop in business, psychological and social impacts on the community) of overpolicing on “respectable” Chinese merchants was blamed on “tong violence” rather than on police harassment. Such associations of Chinatowns as self-governed, gang-run neighborhoods continued into late 20th-century representations of Chinese Triads (organized criminal networks) working within Chinatowns in the United States.

In the late 19th and early 20th centuries, the policing of Chinatowns helped entrench Chinese difference as linked to criminality, as well as to

solidify what were otherwise very porous geographic, social, and political boundaries between so-called blighted city neighborhoods like Chinatowns and respectable ones. Such constructions of Chinese difference continue to inform Chinese American racial formation.

Citizenship Rights

In the late 19th and early 20th centuries, the context of a shifting political and economic landscape resulting from westward expansion, industrialization, and urbanization helped posit Chinese Americans in politics and media as symbolizing the potential threat of a changing national body and citizenry. These anxieties manifest in media sensationalism and overpolicing of reports of Chinese men with white women, which helped the passage of the Mann Act (or White Slavery Act) in 1910 and is evident in examples such as D. W. Griffith’s film, *Broken Blossoms* (1919). Popular representations of the Chinese threat to the health and future of the nation (symbolized through white women) differed from representations invoking African Americans. As in *Broken Blossoms*, Chinese masculinity was often constructed as an implied moral and cultural threat to whiteness as opposed to the more sexually overt depictions of African American masculinity as a physical threat, as Griffith’s infamous film *Birth of a Nation* illustrates. Such depictions helped solidify constructions of the Chinese as foreign threats to the (white) American body, which were later used to justify eugenics and social purity movements and further immigration restrictions well into the 20th century.

The extension of citizenship rights to African Americans with the Fourteenth Amendment (1868) called into question the rights of U.S.-born Asian Americans. A key Supreme Court case testing both the application of the Fourteenth Amendment and the Chinese Exclusion Act, *Wong Kim Ark v. United States* (1898) involved a U.S.-born Chinese American who was denied re-entry under the Chinese Exclusion Act after visiting China in 1895, despite his U.S. citizenship. While the constitutionality of the Chinese Exclusion Act was not in question, the Supreme Court overturned the initial lower court ruling to prohibit Wong Kim Ark’s re-entry. The decision included Asian Americans born in the United States as citizens

with rights recognizable under the Fourteenth Amendment, though it did not extend naturalization rights to Chinese and other Asian Americans. Citizenship through naturalization continued to be withheld from Chinese until the 1943 Magnuson Act, when the politics of World War II helped shape Chinese Americans as allies against the figure of the Japanese enemy.

Following the U.S. government's official recognition of China as a wartime ally, the Magnuson Act repealed the Chinese Exclusion Act, though it did not lift the national origins quotas established in 1924, which barred all immigration from the region termed the Asiatic Barred Zone. This quota system was not lifted until the 1965 Immigration Act. The Magnuson Act thus did little to ease immigration restrictions, though it extended the right of naturalization to Chinese Americans. Part of the politics of the war, the 1943 act came as part of a broader cultural movement to deploy ethnicity to construct the Japanese as "bad" enemy aliens contrasted with a decriminalized image of the Chinese as "good" or model immigrant minorities. Notably, magazines such as *Life* published articles that provided physical measurements to distinguish "Japs from Chinese." Even with the end of World War II and the shifting geopolitics of the Cold War, notions of Chinese Americans as model minorities continued to saturate both the cultural and political landscape. As a cold war strategy, the U.S. government promoted the idea of Chinese Americans as model minorities so long as Chinese Americans were also aligned with the nationalist (rather than the communist) government. However, the image of the Chinese model minority worked simultaneously and alongside constructions of Chinese criminality as is evident in the popularity and longevity of the fictional character Dr. Fu Manchu, an evil Chinese mastermind featured in literature, film, and television throughout the first half of the 20th century.

The "Model" Minority

Such constructions of the Chinese as potential model minorities also helped the government shift civil rights claims into matters of cultural, rather than structural, deficiency. In 1966 amid nationwide civil rights protests, the popular magazine *U.S. News and World Report* published a story

on the "success ... of one minority group in the United States," which contrasted Chinese Americans as models minorities against African Americans as failures. These constructions tied culture to the so-called criminal element of African American failure and the model element of relative Chinese success, which were also assumed to be visible on the body. Often noted by scholars of race and ethnic studies as an example of the ways the privileges of whiteness remain hidden, the construction of the Asian American model minority situated against the African American "monitored minority" is cited as one cultural and political argument used to argue against the need for civil rights reforms.

Despite these constructions of Chinese and, by extension, Asian Americans as so-called model minorities, the linking of Asian and Chinese difference to notions of a "foreign threat" continued to operate in shaping public understanding of Chinese Americans. Most notably, the economic restructuring of the 1970s and 1980s, which saw a dramatic shift in import/export relations with Japan, impacted how Chinese Americans were viewed by the broader U.S. public. In 1982, Vincent Chin, a Chinese American, was murdered by two white men who had recently lost their jobs in auto manufacturing in Detroit. Perceiving Chin to represent what the white men (Ronald Ebans and Michael Nitz) saw as the Japanese auto industry responsible for their job losses, the men beat Chin to death. The murder of Chin demonstrates the widely perceived construction of Chinese and Asian racial and cultural difference as perpetual outsiders in imagining U.S. national belonging, and the homogenizing function of racism. Despite the fact that Chin was not Japanese, but was raised in Detroit and worked in the Detroit auto industry, it was Chin's perceived racial difference that the men read as an indicator of his outsider status, which to the white men made Chin culpable for national (and their personal) economic hardships.

Further, the case of Vincent Chin demonstrates the ways race works to homogenize ethnic difference, where racial stereotypes of the Japanese as economic enemies impacted the daily lives of Chinese and other Asian Americans. The fact that the men responsible for killing Chin were sentenced only to probation and a \$3,000 fine (they served

no prison time) indicates that race plays an important role in configuring notions of criminality.

The criminalization of Chinese difference through the axis of national belonging also resonates in the 1999 case of Wen Ho Lee, a U.S. citizen who worked as a scientist at the Los Alamos National Laboratory before being accused of espionage. Lee was placed in solitary confinement for the theft of classified documents and charged with 59 different counts. Investigators were ultimately not able to find any evidence that Lee was acting as a spy or selling classified information. The charges against Lee were dropped, with the exception of one charge for mishandling sensitive documents, to which Lee pled guilty. After the ordeal, Lee filed his own lawsuit and won a \$1.6 million settlement from both the federal government (for misconduct) and various news media organizations who leaked his name before he was charged with any crime. The targeting of Lee as a potential spy by both federal authorities and the news media helps continue to circulate constructions of Chinese Americans as suspect citizens and national outsiders. As with cases of Japanese Americans and internment during World War II, the Lee case demonstrates the racializing of Asian American difference as perpetual foreigners and suspect citizens even as these constructions work alongside stereotypes of Asian Americans as model minorities.

Throughout the late 20th century, Chinese difference was linked to criminality and suspect behavior, and these constructions continued to be informed by the political, economic, and social context. For example, the circulation of discourses around the Chinese triads gaining ground once again in Chinatowns during the 1980s and 1990s can be linked to the political context of the end of the cold war, where the Soviet threat loomed less large in contrast to the hypervisibility of Chinese difference as symbolizing both the economic and political threat of communism in a newly imagined global political landscape. Thus, the historical and contemporary linking of Chinese difference with criminal and foreign elements in public discourse is a continual process that reflects social, economic, political, and cultural national anxieties.

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See Also: 1851 to 1900 Primary Documents; African Americans; Chinese Exclusion Act of 1882; Japanese Americans; Mann Act.

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Chinese Exclusion Act of 1882

The Chinese Exclusion Act of 1882 was the signature piece of a body of legislation affecting the immigration of Asians to America. Signed into law by President Chester Arthur, the act established a 10-year moratorium on immigration from China of skilled and unskilled laborers and Chinese in the mining industry. It also provided that Chinese who were already in the country could not leave and re-enter without certification. The act raised a bar to citizenship by relieving state and federal courts of the power to grant citizenship to Chinese resident aliens. Unauthorized importation of Chinese was punishable by a \$500 per person fine and no more than a year's imprisonment. The act also placed regulations on ships that might carry Chinese passengers or crew, barring them from setting foot on shore. The restrictions succeeded in limiting Chinese immigration and that of Asians in general, but it also produced human smuggling and the phenomenon of "paper sons," Chinese subject to bar or deportation who shed names and pasts to pass as the children of Chinese American citizens. Angel Island in San Francisco Bay served as the main processing center for Chinese entering or re-entering the country. The act was

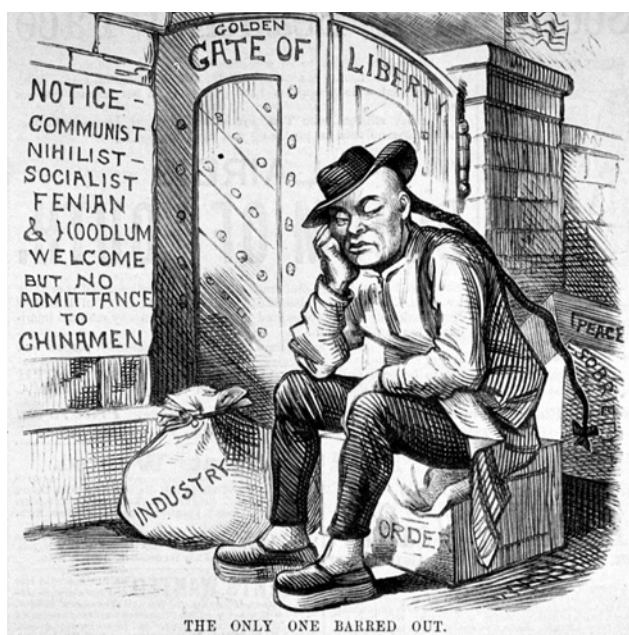
representative of the broader racism and suspicion affecting Asian Americans that periodically shifted ethnic focus but openly operated from the mid-19th century through World War II and resonated well afterward. Restrictions relaxed against the Chinese during the war, when China became an ally of the United States and American hostility refocused on Japan and Japanese Americans.

Chinese immigration to America swelled in the 19th century, fed by the steady disintegration of the Qing (Manchu) dynasty. As China crumbled under military and economic pressure from Western powers, internal dissent increased. After rebellions and the Opium Wars, the Chinese faced hunger and oppression from an increasingly desperate and fragile government and Western forces. This coincided with the 1848 California gold rush and frontier development that included railroad construction and the growth of countless American cities, towns, and industries. Chinese laborers sought success in the *Gam Saan* or “Gold Mountain” of California, often leaving wives and children behind. The immigrants were not welcomed in a nation already wracked by racism and an unresolved conflict over slavery. In the period of retrenchment

after the Civil War and Reconstruction, white settlers, as well as immigrants considered marginally white during the period, turned concerns about labor, wages, race, and miscegenation into opposition to Chinese immigration. White workers and politicians argued that productive Chinese workers lowered wages for whites and reduced them to coolie labor. Eugenic arguments also emerged, warning that the Chinese were a diseased, inferior race that would rapidly reproduce and threaten the hegemony of whites through miscegenation.

Chinese and other Asians resisted the act in the courts, but Supreme Court decisions eventually smothered most challenges. In *Chae Chan Ping v. United States* (1889), *Nishimura Ekiu v. United States* (1892), and *Fong Yue Ting v. United States* (1893), the court affirmed the right of the United States to establish the immigration scheme. In *Lem Moon Sing v. United States* (1895), the court upheld an 1894 appropriation act that made the negative decisions of customs or immigrations officers final. In *United States v. Ju Toy* (1905), the Supreme Court ruled that the judgments of immigration officers and the secretary of commerce were final, even though a district court found that Ju Toy was a citizen. However, in *United States v. Wong Kim Ark* (1898), the court did rule that the act did not apply to a Chinese American born in the United States to resident alien parents. Under the Fourteenth Amendment, he was a citizen.

The Chinese Exclusion Act may be better understood in the context of related legislation. In 1875, the Page Act largely barred the immigration of Asian women. Ostensibly saving white men from Chinese prostitutes and protecting against forced labor, but also constructed to reduce miscegenation, it blocked almost all immigration by Asian women. The United States renegotiated the Burlingame Treaty on Chinese diplomatic relations in 1880, suspending Chinese immigration. The Geary Act extended the original Chinese Exclusion Act in 1892, and another extension in 1902 added a registration requirement for Chinese residents. Further legislative action in 1924 virtually arrested all Asian immigration. It was not until 1943 that the immigration impediments for Chinese were removed in the Magnuson Act.



This 1882 newspaper cartoon pointed out the unfairness of the Chinese Exclusion Act, depicting a Chinese man at the “Golden Gate of Liberty” above the caption “the only one barred out.”

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See Also: Arthur, Chester (Administration of); Chinese Americans; Immigration Crimes; Racism.

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Chisholm v. Georgia

Chisholm v. Georgia (1793) was one of the first important cases decided by the U.S. Supreme Court. In *Chisholm v. Georgia*, the court held that federal courts can hear suits when a citizen of one state sues another state. By a 4–1 decision, the court ruled that states did not have sovereign immunity and were subject to lawsuits from citizens of other states. The term *sovereign immunity* is a common law legal concept that states are immune from civil suit or criminal prosecution. Because of the potential litigation disaster, the decision was very unpopular and led to the adoption and ratification of the Eleventh Amendment in 1795, which overruled *Chisholm v. Georgia*. This was the first time that a Supreme Court decision was overruled by a constitutional amendment. The overturning of the *Chisholm* decision gave states sovereign immunity from being sued in federal court by citizens of other states without the consent of the state being sued. The case also illustrates the relative importance of the Supreme Court of the United States during the early years of the country.

Case Study

The case of *Chisholm v. Georgia* began in 1777 when Robert Farquhar of South Carolina sold supplies to the Executive Council of the state of Georgia for use by the army in the Revolutionary War. Georgia never paid its debt, and upon Farquhar's death, his executor, Alexander Chisholm, filed suit to collect payment from the state of

Georgia in federal court. Georgia refused to even acknowledge the lawsuit for fear of giving legitimacy to the plaintiff, claiming that as a sovereign state, Georgia was not subject to the authority of federal courts. The governor of Georgia claimed that his state had not consented to the suit and was therefore immune from being sued on the grounds of sovereign immunity.

The case was heard in Georgia by Supreme Court Associate Justice James Iredell, who was riding circuit at the time. Iredell, like most of the justices, spent more time circuit riding than sitting as a member of the high court. Iredell found that the Georgia court lacked jurisdiction to hear the case because under Article III of the Constitution, only the U.S. Supreme Court can hear a lawsuit when a state is a party.

Upon appeal to the U.S. Supreme Court, only Chisholm's lawyer, Edmund Randolph, appeared. Randolph had attended the Constitutional Convention and introduced the Virginia Plan regarding the representation scheme to Congress. The court was asked to decide: Was the state of Georgia subject to the jurisdiction of the federal courts? The answer was inevitable since only one party of the dispute, Chisholm, appeared before the court. Having no choice, the Supreme Court entered a default judgment for Chisholm, ordering the state of Georgia to pay its war debt.

The Supreme Court decision was 4–1. Writing for the majority opinion was Justice James Wilson. Wilson, who had also attended the Constitutional Convention in Philadelphia and drafted the very jurisdiction language in question, ruled that the intent of the framers was to bind the states to the legislative, executive, and judicial powers of the national government. Any sovereign power was held by the people, not by the state government. Each—Chief Justice John Hay and Justices William Cushing, John Blair, and Wilson—wrote a separate opinion for the majority.

Justice Iredell angrily dissented. A southerner who believed in states' rights, Iredell reasoned that Article III did not alter the immunity of suit that states enjoyed. Just as the British king retained sovereign immunity at the time of the settlement of America, so did the states at the creation of the Union. Justice Iredell argued that in the Judiciary Act of 1789, Congress authorized federal courts to issue writs "necessary for the exercise of

their respective jurisdictions, and agreeable to the principles and usages of law.” This, for Iredell, was the common law of the states, and Article III did not alter the immunity of states without their consent of being sued.

Eleventh Amendment

The reaction in the states was swift and negative. Fearing that the court’s decision left the states vulnerable to lawsuits of monetary claims and debt collectors, a petition circulated among the states condemning the decision. A call to amend the Constitution and to pass state legislation to counter the court’s decision came quickly. Congress responded by drafting and ratifying the Eleventh Amendment. By 1798, 12 states had ratified the amendment, with Pennsylvania and New Jersey rejecting ratification and two southern states, Tennessee and South Carolina, taking no action.

The Eleventh Amendment added to the Constitution in 1798 states that “the judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizen of another State, or by Citizens or Subjects of any Foreign State.” In short, the Eleventh Amendment guarantees sovereign immunity to the states from being sued in federal court without their consent. It has been reaffirmed, early on in *Hans v. Louisiana* (1890) and even recently in *Alden v. Maine* (1999).

The text of the Eleventh Amendment does not mention suits brought against a state by its *own* citizens. In *Hans v. Louisiana*, the Supreme Court ruled that the amendment reflects a broader principle of sovereign immunity. The court argued that sovereign immunity derives not from the Eleventh Amendment but from the broader structure of the entire Constitution.

The full breadth of sovereign immunity was explored in *Alden v. Maine*. By a 5–4 vote, the court ruled much like it did in *Hans v. Louisiana*. Writing for the majority, Justice Anthony Kennedy extended immunity to states sued by citizens of their state for federal violations. In *Alden*, the court chose not to use the language of the Eleventh Amendment but rather the common law immunity implicitly adopted by the framers of the Constitution. Writing for a four-justice dissent in *Alden*, Justice David Souter argued that states surrendered their sovereign immunity when they

ratified the Constitution. The dissenting justices read the amendment’s text as reflecting a narrow form of sovereign immunity that limited only the diversity jurisdiction of the federal courts. They concluded that the states are not insulated from suits by individuals by either the Eleventh Amendment in particular or the Constitution in general.

Today, the Supreme Court can only hear these cross-lawsuit cases if the state waives its immunity, which they do on a case-by-case basis, or consents to a lawsuit. The federal government has waived some of its sovereign immunity in the Federal Tort Claim Act, which allows a suit if the act of a federal employee is actionable under tort law. The Tucker Act waives immunity involving contract claims when one party is the federal government.

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See Also: Judiciary Act of 1789; Jurisdiction; Supreme Court, U.S.

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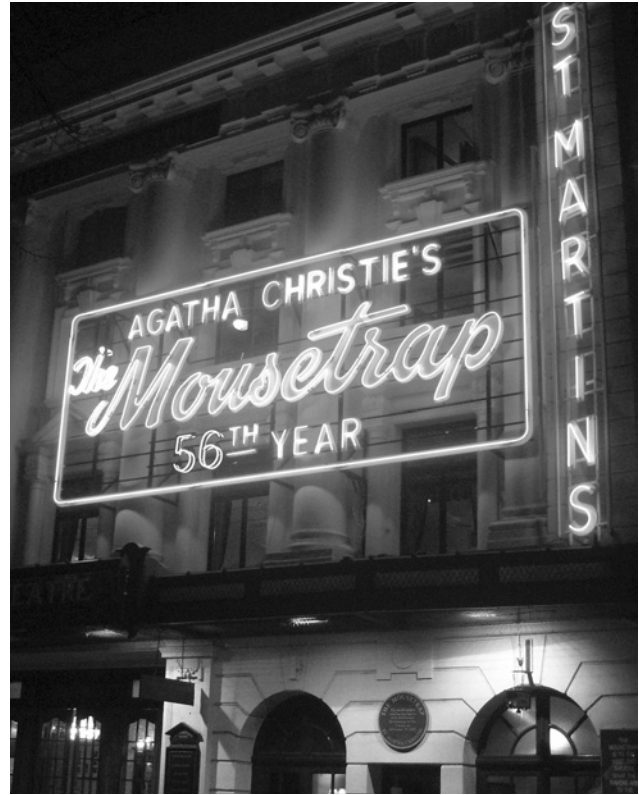
Christie, Agatha

The English “Queen of Crime” and renowned author of detective novels, Agatha Christie created some of literature’s most iconic characters and shaped how many people today imagine not only the genre of crime fiction, but also the nature of crime and the work of detectives. Born Agatha Mary Clarissa Miller on September 15, 1890, to an English mother and an American father, she left home in 1906 for a finishing school in Paris, her first formal education after a childhood tutor. At age 18, Christie turned to writing her first book while recovering from an illness and

soon afterward began placing stories and poetry in magazines. At a dance at age 22, Agatha met her future husband, Archibald (Archie) Christie, a member of the Royal Flying Corps. They married on Christmas Eve, 1914, and Agatha moved to London when Archie went to war shortly thereafter. While working in a hospital dispensary, she learned about poisons, which became a central feature in many of her books. During this time, Christie also wrote her first detective novel, although she did not publish it until after the war.

In 1928, having had one child, Agatha divorced Archie after discovering his infidelity. In 1930, Christie met archaeologist Max Mallowan, marrying him the same year. Remaining together until her death in 1976, Christie traveled as part of her husband's archaeological team to clean and photograph their findings. Christie published her first detective novel, *The Mysterious Affair at Styles*, in 1921, introducing one of her most famous characters, Mr. Hercule Poirot, an eccentric and egotistic Belgian refugee living in England. As a former policeman, Poirot employs his skills of deduction and the art of interrogation to solve murders in some of Christie's most famous works, including *The Murder of Roger Ackroyd* (1926), *Murder on the Orient Express* (1933), *The ABC Murders* (1936), and *Death on the Nile* (1937). Christie's second famed detective, Miss Jane Marple, appeared for the first time in a full-length novel, *Murder at the Vicarage* (1930). An English spinster and, unlike Poirot, an amateur investigator, Miss Marple draws on a studied understanding of human nature in combination with keen powers of observation and a modicum of nosiness. Christie later reported that she modeled Miss Marple on her grandmother.

In total, Christie wrote 66 detective novels featuring Marple and Poirot, along with scores of other novels, plays, and short stories. Her books typify the detective novel genre. In particular, she wrote her stories as puzzles, inviting the reader to act as detective from the pieces she laid out, though her novels characteristically culminate with surprising plot twists. Christie was a member and later president of the Detection Club, formed in 1930 by a group of British writers who pledged to give readers a fair opportunity to guess the perpetrator. Still, having helped create "rules" of fair play for the genre (such as giving the reader the same infor-



With 24,000 performances, many of them at London's St. Martin's Theatre, shown above, Agatha Christie's play *The Mousetrap* is the world's longest-running show of any kind.

mation as the detective), Christie was famous for breaking them; her stories frustrate readers when the detective reveals a crucial detail at the very end or when the narrator suddenly admits their guilt.

Credited as the best-selling writer of all time, with her work adapted many times to film and translated into more than 100 languages, Christie is the foremost figure in the development and increasing popularity of crime fiction as a literary genre. Preceded by Arthur Conan Doyle and joined by Dorothy Sayers and others, Christie's work encouraged readers to see the brilliant detective as the primary figure in investigation. That trope has recently undergone changes as technological developments (such as DNA testing and ballistics analysis) have emphasized the impartial collection of scientific evidence. Christie's overwhelming popularity extended to the United States, and has persisted, even as American audiences provided a ready readership for the "hard-boiled" sub-genre of crime fiction, including the

unsentimental or more violent stories of Dashiell Hammett, Raymond Chandler, and later, Mickey Spillane. With her characters' keen insight into the motivations of criminals, Christie's work has also been associated with the fascination in and rise of psychological profiling, a tool used successfully in many real-life, high-profile investigations to identify and efficiently interview possible suspects. Some police have criticized the literary devices of crime fiction popularized by Christie and others for presenting a distorted picture of forensic work and raising false expectations among the public for how easily crimes can be solved.

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See Also: Detection and Detectives; Dime Novels, Pulp, Thrillers; Literature and Theater, Crime in.

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Cincinnati, Ohio

Cincinnati, Ohio, is an Ohio River city, 255 miles downriver from Pittsburgh, Pennsylvania, and 83 miles upriver from Louisville, Kentucky, with a 2010 population of approximately 333,000. It has throughout its history been a city in transition, a trend that is as true today as it was in the 1780s. Over the centuries, numerous contributory factors caused by racial divides, population migration, substandard public education, poor governance, and serious economic and industrial decline have all contributed to Cincinnati's crime and punishment legacy.

Cincinnati's creation was a direct result of the opening of the Northwest Territory to settlement

following the American Revolution. A riverfront location made it a convenient entry point for that first wave of settlers intent on forging new lives in what was then the western wilderness. The city was carved from an enormous 1788 land grant awarded by Congress to John Cleves Symmes (1742–1814). Other land speculators soon followed, hoping to find quick profits. In 1789, this emerging hamlet, which then consisted of only a few crude cabins, took the name Losantiville, meaning “the place opposite the Licking River.” In 1790, General Arthur St. Clair, governor of the territory, replaced the name Losantiville with Cincinnati, in honor of the Roman hero-soldier, Lucius Quinctius Cincinnatus, and in recognition of the Society of Cincinnati, a Revolutionary War veterans' organization. In addition, St. Clair made Cincinnati the county seat of Hamilton County, which honored Alexander Hamilton, the nation's first secretary of the treasury. Cincinnati was also home to Fort Washington, an early base for defending the area from Ohio Indian tribes resistant to this settler expansion.

Police Force

Cincinnati was formally charted as a town in 1802, formed a rudimentary police force in the same year, and, in 1819, was incorporated as a city. Initially, the city's police force followed the night watch tradition but shift pay began in 1817, which was, after 1834, supported by direct commercial taxation. The early police reflected the English model, and in 1850, the post of police chief was established. During the 1850s, a more regular uniformed organization emerged. However, recruits largely came from the wards and precincts, which formed a structure easily influenced by local politics and politicians. Police positions were political plums subject to patronage perks associated with the “boss” system of urban government that characterized the late 19th and early 20th centuries. For example, in 1880, 219 of the 295 police were dismissed following a change in the political alignment. A more nonpartisan police structure did not see the light of day until after 1886.

A civil service exam for city police was introduced in 1902, and beginning in the Progressive Era, Cincinnati's police followed the national pattern of professional development and bureaucratization, which, it was argued, contributed



This African American boy lived near Cincinnati, Ohio, around 1942. The city's black population grew to almost 48,000 in the 1940s as a result of the Great Migration.

to declining crime rates. This process was also believed to counter petty levels of corruption such as bribes and street backhanders that occurred in urban policing, particularly evident during the Prohibition era. However, the more subtle levels of corruption involving perceived inequalities in the application of the law have continued to produce issues throughout the late 20th and early 21st centuries.

Racial Tensions

The city's economic base was strengthened after the War of 1812 with the arrival of riverboat steamers that allowed trade and traffic to travel both up and downstream. The opening of the Miami-Erie Canal in 1827 provided further vital commercial infrastructure. Cincinnati in the 1820s was a frontier town with a rough edge. Lawlessness was common and was made worse by an abundant supply of distilled corn whiskey. In these early days, martial law was frequently employed to instill order. A significant early example of social unrest was the

Cincinnati riots of 1829, which had clear racial overtones, a foretaste of divides that continue to mark the city's history. Fugitive slaves and free black residents in the city had grown from approximately 400 to more than 2,250 in the 1820s. As such, they competed with whites for the available jobs; this competition led to violent attacks and motivated the local authorities to require blacks to post bonds or leave at the risk of being expelled. Such circumstances set the stage for thousands of African Americans to leave the city for Canada, where they eventually established a base at Wilberforce in Ontario. This racial tension manifested itself again in anti-black rioting in September 1841 when the 2,200 city blacks were attacked by unemployed whites—an event that required militia intervention.

By 1830, the first waves of German and Irish immigrants brought the city's population to more than 46,000. A number of commercial enterprises, aided by the city's trade connections with the south, fostered further development, particularly in the meat-packing industry, which helped give Cincinnati the appellation "Porkopolis" and gave rise to one of America's great companies, Procter & Gamble. Because the city was surrounded by hills, Cincinnati's initial residential expansion was contained in the flat river basin. By the mid-19th century, downtown neighborhoods such as the Over-the-Rhine quarter became home to many German settlers. Since the 1960s, this district has witnessed repeated urban renewal schemes, and major investment drives continue in an effort to preserve its considerable 19th-century architectural legacy. Unfortunately, Over-the-Rhine has not yet become a genteel urban oasis for it remains ranked, according to some recent accounts, as the most dangerous neighborhood in all of America.

By 1850, Cincinnati's population exceeded 100,000, and its commercial success had gained it a reputation as the "Queen City of the West." Estimates from this era suggest that 27 percent of the population was German, followed by 12 percent Irish. The German influence was particularly felt in the city's cultural development and in its then-vibrant brewing industry. The German presence also stimulated mob violence in 1855 when anti-German crowds marched against the German community only to be stopped by the local

militia. The city's German cultural orientation continued until World War I, when anti-German sentiments led to significant suppression of all things deemed German.

The coming of the Civil War stifled Cincinnati's trade relationships with the south and made it home to an active "Copperhead" movement sympathetic to the Confederacy. Its location, on the border of Kentucky, a slave state, also made the city a convenient depot for the Underground Railroad transporting runaway slaves to freedom in Canada. The city was home to several prominent abolitionists, including Harriet Beecher Stowe, James Birney, and Lyman Beecher, but its divided loyalties did not make for civic harmony. The additional threat of Confederate raids led to martial law being imposed in 1862.

Descent Into Corruption

After the Civil War, Cincinnati continued to grow. The city's population reached more than 200,000 in 1870. Newly constructed bridge and rail links with the south contributed to this expansion. Intense overcrowding made Cincinnati the second most densely populated city in the country, which increased late 19th century migrations to the neighboring hillside sections of the city. In addition, the city spread northward into the low-lying Mill Creek valley, which became a home to the city's industrial manufacturing base. However, during these years, Cincinnati's ambition to become a major national metropolis ended. New commerce and industry moved to other cities farther north. The decline in riverboat trade contributed to this state, as well as expanded railway links to the west through Chicago.

During the late 19th and early 20th centuries, the city became identified with municipal corruption and mismanagement. This was the era of bossism, led by George B. Cox, a Cincinnati tavern keeper, appointed in 1884 by Ohio Governor Joseph B. Foraker to lead the Board of Public Affairs. Cox dominated the city through his control of more than 2,000 jobs and numerous contracts. His influence and reach created a blatant climate of graft and corruption that was ended in 1924 when municipal reformers finally rid the city of old-style bosses, replacing them with a charter system of city manager-led government supposedly free of cronyism.

In this atmosphere of urban malaise, Cincinnati's judicial system was also suspect, and this led to a major riot by a mob outraged by what they saw as a corrupt verdict in a March 1884 murder case. Angry citizens armed themselves and marched on the courthouse, burning it to the ground, and attacked police. Barricades were erected, and three days of violence followed, leaving 56 people dead. The situation was finally ended with the arrival from Columbus of the National Guard. Besides riots, high levels of violence and soaring crime rates characterized life in Cincinnati during the late 19th century. With 93 murders in 1883, the city's level of violence was indeed staggering.

Urban Renewal

Cincinnati was part of the Great Migration, when nearly 2 million African Americans ventured north between 1910 and 1940 in search of better social and economic conditions. Cincinnati's African American population rose from 19,000 at the beginning of this period to nearly 48,000 in the 1940s. In residential terms, most of these new arrivals were concentrated in Bucktown on the eastern edge of downtown and in Little Africa on the western riverfront. This set a pattern of residential segregation that remained for most of the 20th century.

In the central business district, several commercial and public buildings were constructed during the 1920s and 1930s, yet the city's urban housing worsened, creating a major West End ghetto. Urban renewal and interstate road construction beginning in the 1950s began the steady dispersal of the black population to other city neighborhoods that offered cheap or government housing. Following World War II, city planners remained focused on downtown redevelopment, which eventually led to significant central business district and riverfront projects in the 1970s and 1980s. The Year 2000 Plan promised further downtown revitalization. However, in the midst of these revitalization schemes, geared to creating a vibrant downtown business district, the last half of the 20th century witnessed a two-thirds decline in the city's white population, which dropped from 425,000 to 175,500. Correspondingly during these years, the city's black population increased by 82 percent to 142,000. There



Cincinnati's population declined 10 percent from 1960 to 1970 and has continued to fall. This row of Italianate houses built in the 1890s in the West End of Cincinnati stood vacant in 1982, and the area was later redeveloped with mixed success. The pattern of segregation in housing that began during the influx of African Americans in the early 20th century has also persisted.

is the clear possibility that Cincinnati in the 21st century stands to become a black majority city. Of those whites who do remain, many represent a continued Appalachian presence that began during the World War II employment boom. More recently, there has been the arrival of a small Hispanic contingent.

Cincinnati's demographic experience presented clear evidence of the nation's post-World War II suburbanization phenomenon reinforced by increasing white flight to outlying neighborhoods beyond the city limits. From 1960 to 1970, a further 10 percent of the city population was lost through flight, and subsequent decades have continued this trend. African American rioting in 1967, 1968, and 2001 contributed to a further white exodus, which was worsened by a sense of rising, often racially linked, crime and violence in the downtown areas. Although there

was a downward trend in overall crime statistics during the 1990s, since the 2001 riots, violent crime has increased and has been concentrated in certain neighborhoods, contributing to Cincinnati's reputation as the 19th most dangerous city in America.

Cincinnati police have been on the front line in trying to stem the criminal tide; however, they are perceived as being institutionally racist and prone to excessive use of force in dealing with a concentrated minority population. The resulting perceived absence of law and order threatens the city's corporate balance and tax base. Dealing with these urban challenges is made more difficult by a heavily indebted city government. Although an array of social programs and initiatives are periodically put forth, such attempts to reverse or alleviate circumstances that are viewed as contributory to crime have fallen short, suggesting that

other issues might be at play. As in the nation as a whole, Cincinnati's crime successes are limited.

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See Also: Ohio; Racism; Riots; Urbanization.

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Citizen Participation on Juries

In the United States, citizen participation on petit, or trial, juries is a cornerstone of the judicial system. Members of a jury deliberate and attempt to agree upon a verdict. If summoned, unless exempted or excused, all American citizens have a legal duty to serve on juries. However, the extent and manner of citizen participation on juries has varied and continues to evolve because of a myriad of both social and legal developments.

While the Sixth Amendment affirms the right to a jury and explicitly states that the jury be an impartial body drawn from a district where an alleged crime took place, the right to a jury trial was extended to all civil cases involving a dispute

of \$20 or more via the Seventh Amendment. In *Duncan v. Louisiana* (1968), the Supreme Court held that the Fourteenth Amendment afforded the right to a jury trial in criminal cases to any defendant tried in state court who, if tried in federal court, would require a jury. Later decisions established that any individual facing at least a six-month incarceration has a right to a jury trial. However, a state's constitution governs the right to jury trial in civil cases. Thus, states are able to determine the degree to which defendants being sued civilly must be provided a jury. As a result, in some states, citizen participation on juries involving civil disputes may be more limited.

Jury Qualification

Historically and even into the 20th century, citizen participation on juries was limited because early jury selection relied on the "key man" system. Techniques utilized under this system were heavily influenced and controlled by individual jury commissioners. As a result, jurors included only those citizens who the jury commissioner believed were of the appropriate intellect and character. Additionally, prior to the ratification of the Fourteenth Amendment, as well as the Supreme Court's decision in *Strauder v. West Virginia* (1880), only white men who owned a certain amount of property were eligible for jury service. With the passage of the United States Jury Selection and Service Act of 1968, voting lists replaced the "key man" system and were used to randomly generate jury lists in federal cases. However, this method also limited citizen participation by neglecting certain segments of the citizenry who were not registered to vote. Recently, efforts have been focused on selecting initial jury panels that reflect a more representative sample of the relevant citizenry population. Therefore, instead of relying on voting lists alone, tax rolls, records of welfare recipients, and rosters of licensed drivers are also used in attempts to gain a representative sample of the relevant population. Today, the vast majority of states utilize protocols similar to the federal act to generate jury lists.

Additionally, at one time, categorical exemptions were employed to keep certain citizens off juries. For example, citizens working in certain professions such as medicine or law were automatically excluded. Moreover, the exclusion

of parents with primary child care obligations greatly limited the participation of female citizens on juries. The majority of these exemptions are no longer in place in most states. However, citizens under 18 or citizens convicted of felonies are not permitted to serve on juries.

During the jury selection process in both state and federal court, biased citizens who might decide cases subjectively must be excluded from serving on a jury. The ideal is a jury comprising citizens who are capable of being objective in regard to the parties and issues of a particular case. If a citizen demonstrates a bias, both sides have a right to prevent that citizen from serving on the jury. The general process of *voir dire* is utilized to identify and exclude partial citizens. Specifically, lawyers and/or the judge, by asking questions, work to identify and disqualify those citizens who have a bias and exclude these individuals for cause. Both sides may eliminate citizens from sitting on a jury

via peremptory challenges. Although limited in number, peremptory challenges may be used in either civil or criminal matters and allow either side to exclude a citizen for any reason except race or gender. In *Batson v. Kentucky*, the Supreme Court created a new process for evaluating the use of peremptory challenges against racial minorities.

Additionally, although a completely random jury is not constitutionally mandated, a jury must be drawn from a fair cross-section of the community. According to *Duren v. Missouri*, to establish a *prima facie* violation of the Sixth Amendment fair cross-section requirement, a defendant must satisfy a three-pronged test. Specifically, the defendant must show (1) a group is distinctive in the community, (2) the group is underrepresented on the jury in comparison to its numbers in the community, and (3) that the underrepresentation is the result of the group's systematic exclusion during jury selection. Thus, this requirement, in



These women took part in the first all-woman jury in California. On November 2, 1911, in Los Angeles, they acquitted the editor of the Watts News of printing indecent language. The inclusion of women was part of a trend toward making juries more and more representative of the general public in the 20th century.

theory, further increases citizen participation on juries. Depending on the state, the size of a jury in both civil and criminal trials may vary between six and 12 members. Additionally, the vast majority of states require unanimous verdicts in criminal cases. However, a majority of states allow for less than unanimity in civil cases.

Jury Instructions

At the federal level and in most states, judges instruct the jury on the law at the end of the trial. Additionally, a judge may determine the length of time a jury is required to deliberate. Citizens participating on a jury are primarily finders of fact that apply the law as explained by the judge through his or her charge to the jury. Moreover, by participating on juries, citizens have the final word and do not have to explicitly state the reasons for their verdict. Jury nullification occurs when citizens on a jury acquit an individual who they believe based on the facts is guilty, because the jury believes the law or the application of the law is wrong. Jury nullification is relatively rare. In most states, citizens participating on a jury have a limited role, if any, in the punishment process. However, juries do participate in the punishment phase of capital cases. Additionally, in most states, the jury's decision concerning the imposition of the death penalty is conclusive. In civil cases, the citizens comprising a jury decide liability and award damages.

However, judges may have the right to reduce excessive damage awards or increase damages, though the latter is rarely utilized. Additionally, some states have placed limits on the amount of certain types of damages, such as punitive damages. Unlike a conviction, which may be overturned on appeal, a jury acquittal in a criminal matter is final.

In sum, jury service is an opportunity for citizens to learn about the law and participate in government. However, it should be noted that the percentage of both civil and criminal jury trials has steadily declined in recent years.

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See Also: 1941 to 1960 Primary Documents; Appeals; *Duren v. Missouri*; Juries; Trials.

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Civil Disobedience

Civil disobedience occurs when a person refuses to obey a law or policy he or she believes to be unjust. Theoretically, there are three basic types of civil disobedience; in practice, the three types overlap somewhat. Integrity-based civil disobedience involves citizens engaging in protest against a law or policy they feel is immoral. Justice-based civil disobedience involves the disobeying of laws to obtain a denied right. Policy-based civil disobedience involves breaking the law in order to change a policy a citizen believes to be wrong. Civil disobedience has long been recognized as a fundamental right of American citizens. For instance, the Bill of Rights (1789) holds that citizens have the right to engage in civil disobedience if their conscience and the actions of government dictate it. Civil disobedience can take many forms, including pamphleteering and letter writing, demonstrations and marches, and worker strikes, as well as the occupation of public buildings. However, the exact nature of protest can vary considerably given the nature of the law or policy being demonstrated against. For example, campaigners for the legalization of cannabis have attended public demonstrations in possession of the drug, and furthermore, they have also been known to organize illegal medical cannabis dispensaries to

promote cannabis usage to combat illnesses and diseases they argue it is effective in treating.

Practitioners of civil disobedience risk retaliatory acts, including perhaps most importantly the threat of physical violence and imprisonment. There is some disagreement between civil disobedience campaigners as to how a protester should respond to violence (from police or otherwise), as well as how protesters should submit to police arrest if it occurs. Some practitioners of civil disobedience argue that a campaigner must never engage in violence. Others argue it is sometimes necessary to protect oneself from aggressive and violent members of the public as well as from state-authorized violence committed by the police or armed forces.

Some practitioners of civil disobedience argue that a protester must not cooperate with police investigations or legal procedures, though others argue that it is necessary to cooperate so that the protesters can make their arguments heard. Some seek to make a political point by winning an acquittal or avoiding a fine, often using legal proceedings as an opportunity to inform observers of their reasons for breaking the law. There is also some debate among practitioners of civil disobedience as to whether a protester should plead guilty if he or she is charged—pleading guilty can be seen to imply wrongdoing, and a protester may well feel he or she is not doing anything wrong when engaging in civil disobedience, particularly when it is against a law or policy he or she feels is highly immoral.

Nonviolent Versus Violent Civil Disobedience

An important debate among civil disobedience campaigners revolves around the issue of nonviolent protest. Advocates of nonviolent civil disobedience reject completely the use of physical violence to achieve political goals. Voluntary human rights organizations that seek to promote civil liberties worldwide, such as Amnesty International, solely advocate nonviolent action. The use of nonviolent protest is held by some practitioners of civil disobedience to be a key measure by which the moral authority, social acceptability, and intellectual persuasiveness of their arguments can be demonstrated to other members of society, as well as, perhaps just as importantly, how their activities can be most clearly distinguished

from the actions of terrorists. Practitioners of nonviolent civil disobedience use a diverse range of proactive protest methods in their campaigns, including sit-ins, blockades, and hunger strikes. Prominent campaigners who advocated nonviolent civil disobedience include Mohandas Gandhi, who led protests against British rule in India, as well as Martin Luther King, Jr., who followed Gandhi's lead in using nonviolent methods as he sought to win civil rights for African Americans. An important contemporary nonviolent movement was the Velvet Revolution, which led to the peaceful overthrow of the Communist government in Czechoslovakia in 1989. Similar success was obtained by the Singing Revolution, which occurred across Estonia, Latvia, and Lithuania in the early 1990s. During this time, protesters stood in front of Russian tanks and armed forces and sang national songs to help achieve independence. Such successes have been cited by the Dalai Lama as he has advocated nonviolence to gain freedom from Chinese rule for Tibet.

Not all civil disobedience campaigners have advocated nonviolent action. Leon Trotsky, Subhash Chandra Bose, George Orwell, and Malcolm X, among others, have all been ardent critics of nonviolent protest. They have variously argued that the poor and socially excluded have more to lose than the middle classes or rich elites when engaging in nonviolent action; that revolutionary change to society necessarily involves some element of physical violence; and that the right to self-defense is a fundamental human right. For example, during the 1960s' civil rights movement, Black Panther George Jackson argued that the nonviolent protests would not by themselves lead to social change. Similarly, Malcolm X clashed with American civil rights leaders over the issue of nonviolence, arguing that violence should not be ruled out when no other option remained. In a debate at the Oxford Union in 1965 titled "Extremism in the Defense of Liberty Is No Vice; Moderation in the Pursuit of Justice Is No Virtue," Malcolm X argued passionately that it was a crime for anyone being brutalized—as many African Americans were at the time—to continue to accept that brutality without doing something to defend themselves. Indeed, some civil disobedience commentators have argued that populist histories of social protest movements tend to ignore

the involvement of more militant group members in both the Indian independence and American civil rights movements. Furthermore, it is arguable that violent protest and civil disobedience by citizens is justifiable when nation-states break international law and engage in war crimes such as torture and genocide.

The question of the conditions under which violent protest and civil disobedience are justifiable is a debate that is likely to continue for the foreseeable future. Justifications for violent protest and civil disobedience must be balanced against the recognition that the refusal of Gandhi and Martin Luther King, Jr., to engage in violence themselves, in spite of being physically assaulted and imprisoned, led to significant wider public sympathy and international support for their respective causes.

The Impact of Thoreau's *Civil Disobedience*

The history of civil disobedience in America reinforces the power of such forms of protest to engender social change. One of the earliest and most historically important examples of civil disobedience in America is the Boston Tea Party. In 1773, the British parliament passed the Tea Act, which levied a tax on tea in the then British colony of America. Protesters believed this violated their right to be taxed only by their own elected representatives and began a series of protests to stop the tea being imported into the country via key colonial ports, of which Boston was one. In no small part because the British governor in Boston, Thomas Hutchinson, refused to allow the tea to be returned to Britain, the protesters chose to destroy the tea by dumping it in the water. This act played a key role in galvanizing wider support for independence from British colonial rule. It was also drawn upon by Henry David Thoreau as inspiration for his famous 1849 essay *Civil Disobedience*. Thoreau had refused to pay poll taxes to his local tax collector, Sam Staples, as he was morally outraged with what he saw to be a corrupt American government that endorsed slavery and engaged in war against Mexico. He was sent to jail but was freed when a relative, without his knowledge, paid his debt. In *Civil Disobedience*, Thoreau sought to justify the viewpoint that citizens must not allow governments to act with impunity and rule as they please, and indeed, that citizens have

a civic and moral duty to engage in organized protest and civil disobedience to fight social injustice. His arguments influenced many political activists, including Gandhi and Martin Luther King, Jr.

The Industrial Workers of the World (IWW) in the early 20th century followed Thoreau's lead and under a First Amendment free speech campaign sought to organize workers and publicly speak about labor issues, frequently in the face of violent repression by local government and business authorities. IWW members were frequently beaten and imprisoned for causing public disorder. Some IWW members were even kidnapped and covered in tar and feathers by local vigilantes paid by the business community to disrupt their activities. Yet wherever the IWW campaigned, it won the right to speak in public.

Thoreau's ideas also played a role in the women's suffrage movement in America during the late 19th and early 20th centuries. Lucy Stone and key members of the National American Woman Suffrage Association (NAWSA), alongside the National Woman's Party (NWP), engaged in protest and civil disobedience as they



A man wearing a placard reading "bread or revolution" on his hat at an Industrial Workers of the World rally in Union Square in New York City on April 11, 1914.

sought to secure equality and the right to vote for women. Many suffragettes endured physical violence and imprisonment for pursuing their political goals. Women finally gained the right to vote in 1920 through the enactment of the Nineteenth Amendment to the U.S. Constitution. However, the women's movement in America has continued to be active on a range of issues such as abortion, domestic violence, trafficking, and enforced prostitution, as well as the use of rape as a weapon of war.

Modern Civil Disobedience

The civil rights movement of the mid-20th century is another important moment in time for the history of civil disobedience in America. Martin Luther King, Jr., among others, engaged in numerous nonviolent protests such as the Montgomery Bus Boycott in Alabama, the Greensboro sit-in in North Carolina, and the Montgomery and Washington marches and public demonstrations. The civil rights movement is widely credited with achieving voting, employment, and home-ownership rights for African Americans.

Other important movements during this time included the anti-Vietnam War protests. Also bound up with the antiwar protests during the latter part of the 20th century was the antinuclear movement, which was against the use of nuclear energy and weapons. In 1982, more than 1 million people demonstrated in New York City's Central Park and called for an end to the arms race against the Soviet Union.

Aside from public marches and speeches, acts of civil disobedience in recent years have included maintaining peace camps near military bases and nuclear energy sites, as well as blockading and otherwise disrupting the transportation of nuclear materials. More broadly, the environmental movement in America has engaged in civil disobedience to protect animals and human beings from ecological harm, as well as to campaign against global warming. Although the movement is largely made up of nonviolent activists, some militant elements do exist.

The history of civil disobedience doesn't simply tell the story of how beliefs and values in the United States have changed and developed over the past 200 years—it also contains within it an important reminder of the power of nonviolent protest to

engage in public debate and to help achieve real social change. Nevertheless, it must be acknowledged that it also reinforces that for some individuals, violence remains a legitimate form of protest.

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See Also: 1600 to 1776 Primary Documents; 1777 to 1800 Primary Documents; 1801 to 1850 Primary Documents; 1851 to 1900 Primary Documents; 1941 to 1960 Primary Documents; 1961 to 1980 Primary Documents; African Americans; Alien and Sedition Acts of 1798; American Civil Liberties Union; American Revolution and Criminal Justice; Anarchists; Civil Rights Laws; King, Martin Luther, Jr.; Malcolm X; National Organization for Women; Paine, Thomas; Political Dissidents; Riots; Strikes; Tax Crimes; Tea Act of 1773; Thoreau, Henry David.

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Civil Rights Act of 1866

As of January 1, 1863, President Abraham Lincoln's Emancipation Proclamation freed the slaves in the Confederacy. Republicans were concerned, however, that winning the war would not permanently end slavery; thus, the Thirteenth Amendment was enacted, abolishing slavery and giving Congress power to enforce abolition. Section 2 of the Thirteenth Amendment was designed to eliminate the structural obstacles and practical impediments that existed under slavery—the so-called badges of slavery. After the war, southern culture did not easily embrace racial equality. African Americans were terrorized by the Ku

Klux Klan and other white supremacist organizations. Continued fear, hate, and racism led to the Black Codes, in which previous Confederate states enacted vagrancy and apprenticeship laws. Apprenticeship laws led to the institutionalization of African American orphans and abandoned children. Vagrancy laws resulted in the incarceration of unemployed African Americans. Overall, the Black Codes made African Americans unemployable, except to work for their previous owners or other white males.

In the post-Civil War South, the idea that African Americans were little more than chattel and savages was commonplace. Many whites believed that African Americans were becoming “uppity” because they stayed in the same hotels as whites and sat next to whites in church and at the theater. In addition to the continuation of racial inequality and discrimination through the Black Codes, there was a white backlash emboldened by vigilantism and violence.

Enactment and Prosecutions

In an atmosphere of white supremacy in the war-ravaged south, Congress overturned *Dred Scott v. Sandford* (1857) by enacting the Civil Rights Act (CRA) of 1866 over President Andrew Johnson’s veto. Seeking to permanently enshrine the freedoms within the Thirteenth Amendment, the 1866 CRA granted newly freed slaves federal rights and removed obstacles to obtaining those rights. Known today as Title 18 U.S.C. Section 242, Section 2 of the 1866 CRA made it a federal crime for local or state government officials to violate the federally guaranteed rights (usually constitutional rights) of individuals.

The Reconstruction backlash from states’ rights advocates kept the 1866 CRA relatively inactive until the middle of the 20th century. Even today, defendants are only prosecuted under Title 18 U.S.C. Section 242—per U.S. Justice Department policy—if federal prosecutors can show that state or local government officials acted under “color of law” and “willfully” with “specific intent” violated the victim’s federally protected rights. Moreover, a Title 18 U.S.C. Section 242 prosecution occurs only when a “gross injustice has occurred.” The “gross injustice” usually involves a state and/or local criminal justice official who avoided justice for committing a crime.

The 1866 CRA was designed to protect the federally guaranteed rights of African Americans and their white sympathizers from lawless local government actors. Such an application of the law existed in the case of *Screws v. United States* (1945), in which Sheriff Claude Screws arrested and beat to death an African American male. No state prosecution occurred, so the federal government stepped in to prosecute Screws. The “color of law” element was satisfied even though Screws acted outside the scope of his employment. Screws acted under “color of law” since “misuse of power possessed by virtue of state law and made possible because the wrongdoer is clothed with the authority of state law, is action taken under ‘color of law’” (*United States v. Classic*, 1941). The federal right violated was the Fifth Amendment right to due process prior to the state taking a life. To meet the statutory requirements of Section 242, the crime must be intentional, willful, and specifically aimed at the victim.

Even though the 1866 CRA was designed to preserve equality and end discrimination, its impact was blunted by the U.S. Supreme Court’s *Civil Rights Cases* (1883), which shifted civil rights enforcement power from the federal government to the states. As a result, Jim Crow laws allowed the continuation of race-baiting, lynching, extreme violence, and discrimination against African Americans until the civil rights movement of the 1960s.

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See Also: African Americans; Civil Rights Act of 1875; Civil Rights Laws; *Dred Scott v. Sandford*; Johnson, Andrew (Administration of); Police Abuse; Racism; Supreme Court, U.S.

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Civil Rights Act of 1875

The Civil Rights Act of 1875 prohibited racial discrimination in public accommodations, including inns, modes of transportation, and theaters. The law was found unconstitutional by the Supreme Court in the 1883 *Civil Rights Cases*.

Following the emancipation of slaves and the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution, Congress enacted several pieces of legislation designed to ensure that African Americans would enjoy the full rights of citizenship. The Civil Rights Act of 1875 provided that “all persons” would be entitled to use the “accommodations, advantages, facilities, and privileges” of public places, including inns, theaters and other places of entertainment, and forms of transportation. Policies restricting access to those venues must be “applicable alike to citizens of every race and color, regardless of any previous condition of servitude.” The penalty for denying access to public facilities was a fine ranging from \$500 to \$1,000. Clearly, Congress was responding to the behavior of private businesses that separated the races as well as to state legislation that segregated people on the basis of race. They considered such discrimination both a violation of the Fourteenth Amendment’s guarantee of equal protection of the law and the Thirteenth Amendment’s ban on slavery and involuntary servitude.

Supreme Court Challenge

In the 1883 *Civil Rights Cases*, the Supreme Court found the Civil Rights Act of 1875 unconstitutional by a majority of 8–1. Justice Joseph Bradley wrote the opinion of the court, which held that discriminating in access to public accommodations is the act of private individuals and does not fall under the Fourteenth Amendment. The court’s holding significantly narrowed the application of the Fourteenth Amendment’s guarantee of “equal protection of the laws” by asserting that the amendment only prohibited unequal treatment by the states, but that it could not be read to prohibit discrimination by individual proprietors of inns, theaters, or modes of transportation. He wrote that Congress could only make laws in response to discriminatory actions by state legislators or by other state actors. It could not

create codes of “municipal laws” that regulated the behavior of some private citizens and upheld the rights to social activities of others. Bradley made a “slippery slope” argument, stating that if Congress could pass civil rights laws, there was nothing to prohibit it from enacting codes of law for every possible situation. He distinguished the civil rights law from laws enforcing the right to vote or to serve on juries free from racial discrimination, as the latter examples would require that the state itself was directly involved in the forbidden discrimination.

Bradley also stated that the law could not be sustained under the Thirteenth Amendment’s prohibition of slavery. Supporters of civil rights argued that discrimination in public places was one of the “badges of slavery,” a form of bias that was held over from the laws that restricted the free movement of slaves. The Supreme Court also rejected this argument, stating that there was no similarity between servitude and the denial of the “accommodations or privileges” of staying at an inn, riding in a public conveyance, or attending a theater. The justices also maintained that it was time for former slaves to “take the rank of a mere citizen” and to stop “being the special favorite of the laws.” They seemed to assume that no civil rights laws were necessary, but that African Americans would “be protected in the ordinary modes by which other men’s rights are protected.”

Justice John Marshall Harlan was the only dissenter in the *Civil Rights Cases*, as he was in *Plessy v. Ferguson* (1896). Harlan based his disagreement with the majority on several principles. He argued for judicial restraint, that the court should defer to the judgment of Congress in deciding which laws were “necessary and proper” to carry out the Constitution. Likewise, he argued that discrimination was indeed a “badge and incident of slavery,” and that it was one of the “mischiefs to be remedied and grievances to be redressed” by the Thirteenth Amendment. In addition, he argued that the civil rights laws were permissible under the Fourteenth Amendment, which forbade the states from denying equal protection of the law. Inns and railroads, even if privately owned, were put to public use and were often licensed and regulated by the states. Therefore, the states were complicit in the policies of segregation practiced by those nominally private entities.

It was not until the Civil Rights Act of 1964 that the 1883 Supreme Court decision was rectified. In the 1964 act, Congress, mindful of the earlier decision, prohibited discrimination in public accommodations under its authority to regulate interstate commerce, not under the Thirteenth and Fourteenth Amendments.

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See Also: African Americans; Civil Rights Act of 1866; Civil Rights Laws; *Plessy v. Ferguson*; Segregation Laws.

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Civil Rights Laws

The concept of civil rights refers to legal measures designed to protect citizens from arbitrary or discriminatory treatment by either a government or a private entity. Since the mid-19th century, the federal government has extended civil rights protections through executive orders, congressional legislation, constitutional amendments, and Supreme Court rulings. Together, such measures have established a legal framework for such protections. For most of U.S. history, they primarily aimed at protecting African Americans from discrimination but by the 1990s, the federal government had expanded the scope of civil rights protections to include, women, older workers, homosexuals, and the disabled.

Civil Rights Acts of 1866 and 1875

During the Reconstruction period following the Civil War, Congress acted to protect African Americans from oppressive actions by southern

states. Those states had enacted measures known as the Black Codes—discriminatory laws that applied only to African Americans. The Civil Rights Act of 1866, passed over President Andrew Johnson's veto, established citizenship for all African Americans and banned states from enforcing discriminatory legislation. Fearful that the courts would strike down the law as unconstitutional or that a future Congress might repeal it, Congress passed the landmark Fourteenth Amendment (ratified in 1868) incorporating the terms of the Civil Rights Act of 1866 into the Constitution, thereby making it extremely difficult to eliminate. The Fourteenth Amendment established U.S. citizenship for all persons born or naturalized in the United States and banned states from unreasonably discriminating between classes of citizens or abridging the rights of any citizen without due process of law.

The last major civil rights legislation passed by Congress during the Reconstruction period was the Civil Rights Act of 1875. This measure banned racial discrimination in public accommodations such as inns, restaurants, theaters, and public transportation. Unlike previous civil rights policies, it regulated the behavior of private individuals and businesses.

From the end of the Reconstruction period in the late 1870s to the mid-20th century, no major civil rights legislation or policy was enacted by the federal government as the issue mostly lost favor with the public and Congress. Moreover, the judicial philosophy of the Supreme Court tended to limit the scope and effectiveness of the federal government to protect the civil rights of African Americans from discriminatory policies of states and private interests through narrow interpretation of both the Fourteenth Amendment and the commerce clause. In the *Civil Rights Cases* (1883), the court struck down the Civil Rights Act of 1875, arguing that Congress lacked authority under the Fourteenth Amendment to regulate discriminatory acts by private individuals and groups. Later, in the 1896 ruling in *Plessy v. Ferguson*, the court ruled that state laws requiring racially segregated transportation systems did not violate the Fourteenth Amendment if the quality of accommodations was equal, establishing the “separate but equal” doctrine. Such narrow rulings continued until the 1954 decision in

Brown v. Board of Education revised *Plessy* to strike down state laws requiring racially segregated public schools.

Presidential Action on Civil Rights

The federal government began to once again act to counter racial discrimination when in 1941, President Franklin Roosevelt established the Fair Employment Practices Committee, which forbade war industry contractors to discriminate in hiring and pay on the basis of race, religion, or national origin. In this first presidential directive on race since the Reconstruction period, Roosevelt was spurred to act by African American labor leader A. Philip Randolph's threat to organize a march on Washington. As its enforcement powers were limited, the committee's effectiveness proved a disappointment to many civil rights leaders.

Shortly after World War II, President Harry Truman pushed for a new national civil rights law, but that effort failed largely because of strong southern opposition in Congress and in his Democratic Party. Unable to get a bill through the committee system of Congress, Truman turned to his executive powers to promote civil rights. On July 26, 1948, he signed Executive Order 9981, which ordered all U.S. military installations, at home and abroad, to remove any policy that separated the races. This meant that all facilities, including barracks, mess halls, and bathrooms, would be racially integrated. Although Truman failed in getting a civil rights bill passed in Congress, he did contribute to bringing about more equality in the U.S. Armed Forces.

As Truman promoted civil rights policies through executive actions, the Supreme Court was evolving away from its narrow interpretation of the Constitution. In 1954, it delivered its landmark decision in *Brown v. Board of Education*, a case challenging state laws requiring racial segregation in public schools. Led by Chief Justice Earl Warren, the court rendered a unanimous decision, ruling the "separate but equal" standard to be unconstitutional. Consequently, the court ordered all levels of government—federal, state, and local—and particularly local school boards, to remove legal barriers to racial integration. Despite the unanimity of the court, many states, mostly in the south, resisted the order. For more than a decade, racial segregation continued in

most southern public schools. Racial minorities would not get the relief they were looking for until the enactment of the Civil Rights Act of 1964.

President Dwight D. Eisenhower was cautious about advancing civil rights, believing such reform must come gradually as hearts and minds changed. However, he issued an executive order to desegregate public facilities in Washington, D.C., and he signed the Civil Rights Act of 1957, the first such legislation passed by Congress since the Reconstruction period. The latter measure mainly aimed to eliminate barriers to African American voting rights (only 20 percent of African American citizens were registered to vote). However, the act turned out to be largely ineffective and was ridiculed by civil rights activists. In order to overcome a southern filibuster in the Senate, its enforcement power had been watered down. Three years after enactment, African American voter registration had not increased.

Civil Rights Act of 1964

Like his Republican predecessor, Democrat John F. Kennedy was cautious when it came to civil rights issues. Although philosophically supportive, he was a political realist, generally fearful of alienating the southern wing of his party. His actions in support of civil rights were usually in reaction to events rather than proactive. In 1961, for example, he directed the Interstate Commerce Commission to enforce the Supreme Court's ruling in *Boynton v. Virginia*. That decision struck down as unconstitutional state and local statutes that mandated segregated bus and train stations on interstate routes. He took this action only after civil rights activists forced the issue with the so-called Freedom Rides, an exercise in civil disobedience against state segregation laws and a tactic the president opposed. The racist violence provoked by the Freedom Rides convinced Kennedy to act. The next year, violence again forced Kennedy's hand when he sent troops and federal marshals to the University of Mississippi to enforce a court order to allow an African American student, James Meredith, to enroll. Shortly before his tragic death, Kennedy called for Congress to pass a new and stronger civil rights law.

The request was fulfilled when President Lyndon B. Johnson, with Martin Luther King, Jr., standing by his side, signed into law the Civil



President Lyndon B. Johnson signing the 1964 Civil Rights Act on July 2, 1964, with Martin Luther King, Jr., standing behind him. In the following years, President Johnson also signed both the Voting Rights Act of 1965 and the Civil Rights Act of 1968 (the Fair Housing Act). The 1964 act reestablished many of the terms of the defunct Civil Rights Act of 1875.

Rights Act of 1964. The statute empowered the national government to safeguard civil rights in both the public and private sectors. It prohibited workplace discrimination, as well as discrimination in public accommodations based on race, color, religion, sex, or national origin, reestablishing many of the terms of the defunct Civil Rights Act of 1875. Any business—including theaters, motels, restaurants, or sports stadiums—that substantially affected interstate commerce was considered a place of “public accommodation” and was thereby subject to federal regulation. For example, the federal government charged a motel owner in downtown Atlanta, Georgia, for violating the 1964 civil rights law. The motel owner provided lodging for whites, but not for African Americans. The dispute ended up at the U.S. Supreme Court. The court was asked to address the issue of whether the motel business practices interfered with interstate commerce. The court

ruled that the motel practices substantially disrupted the flow of interstate commerce because more than 70 percent of the motel’s guests came from out of state. The *Heart of Atlanta* decision, coupled with other Supreme Court rulings, expanded the federal government’s regulatory powers over civil rights issues. The Civil Rights Act of 1964 also helped speed compliance with the *Brown* decision. According to its provisions, public schools that were slow to desegregate no longer received financial support from the federal government until they complied with national policy. To enforce the provisions of the new law, Congress created the Equal Employment Opportunities Commission (EEOC).

A year after the enactment of the Civil Rights Act of 1964, President Johnson signed another major piece of legislation into law, the Voting Rights Act of 1965. For decades, many states, most notably in the south, had circumvented the

Fifteenth Amendment by enacting clever barriers to African American voter registration such as literacy test requirements and poll taxes, which effectively disenfranchised the vast majority of African American citizens. The voting rights law banned these devices and other legislative measures that states had used to suppress minority voting. Moreover, the law placed particular state and local governments with long histories of discriminatory practices under the supervision of the federal government. Any state or local governments covered by the law would have to get approval from the federal government before executing a new law that, for example, changed polling locations, modified voting qualifications, or redrew electoral districts. The Voting Rights Act has been amended and renewed many times since 1965. In 2006, the federal government renewed the act for another 25 years, despite strong opposition from several southern states and local communities.

The following year President Johnson signed into law the Civil Rights Act of 1968, commonly known as the Fair Housing Act. It prohibited discrimination in the sale, rental, or financing of housing based on race, national origin, and religion and later covered gender and disability.

Other Disenfranchised Groups

By the late 1960s, civil rights activists were addressing discrimination issues involving other aggrieved social groups such as women, older workers, homosexuals, and the disabled. As with the African American civil rights movement, the favored tools for changing policies were lawsuits based on the Fourteenth Amendment's equal protection clause and new federal legislation.

The first major federal civil rights initiative aimed at enhancing women's rights was the Nineteenth Amendment, which was ratified in 1920. It prohibited states from denying any citizen the right vote based on one's sex. Later, the Civil Rights Act of 1964 prohibited gender discrimination in the workplace, while Title IX of that law required equal opportunity of participation by both males and females in all educational programs and activities that receive federal financial assistance. The implementation of Title IX has been controversial. In order to ensure compliance, many colleges have eliminated certain

sports programs for men such as wrestling in order to fund new programs for women. In 1973, the Supreme Court ruled in the landmark *Roe v. Wade* case that governments may not prohibit or restrict women's access to abortions during the early months of pregnancy.

In 1967, Congress addressed the issue of age discrimination in the workplace. The Age Discrimination in Employment Act (ADEA) prohibited job discrimination based on age against employees 40 years of age or older working for employers with 40 or more workers.

The Americans with Disabilities Act of 1990 (ADA) protected disabled citizens from being treated unfairly in the workplace or in public accommodations. The 1990 law mandated state and local governments, as well as private businesses with 15 or more employees in 1994, to make "reasonable accommodations" for any worker with a physical or mental disability that significantly limits a major life activity.

Although some states have enacted statutes to extend civil rights protection to homosexual citizens, there have been no federal civil rights laws that specifically address discrimination against homosexuals. National policy changes in this area have generally come from the federal courts and usually concern privacy and substantive due process considerations. Some have argued that homosexuals, unlike like African Americans or women, are defined by a freely chosen behavior and lifestyle for which there is no Fourteenth Amendment protection. Traditionally, Congress had banned homosexuals from service in the U.S. military, fearing their presence might create problems in discipline and cohesion. In 1993, after failing to persuade Congress to change the policy, President Bill Clinton issued a policy directive, later dubbed "Don't Ask, Don't Tell" (DADT), under which the military would not question its members concerning their sexual orientation or preference, but the individuals were prohibited from revealing publicly that they were homosexual. This compromise policy lasted until Congress repealed the DADT in December 2010 and removed the ban on homosexuals serving in the military.

Other issues targeted as civil rights violations by homosexual activists have been antisodomy laws and marriage laws of states. In 1993, the

Supreme Court struck down state laws banning sodomy in *Lawrence v. Texas*. Consensual sexual contact between adults, the court ruled, is protected from government interference through the substantive due process doctrine of the Fourteenth Amendment. Activists have also argued that state laws that do not allow same-sex marriage are discriminatory. Fearing some states would legalize gay marriages that would have to be recognized by all other states under the full faith and credit clause of the Constitution, President Bill Clinton signed the Defense of Marriage Act in 1996. It defined marriage for federal purposes between one man and one woman, and it stated that states did not have to recognize same-sex marriages that are recognized by other states.

The penalties for violations of previously discussed acts have included corrective measures such as court injunctions, equitable relief, ordered restitution of back pay, job reinstatement, or hiring of employees.

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See Also: 1961 to 1980 Primary Documents; *Brown v. Board of Education*; Civil Rights Act of 1866; Civil Rights Act of 1875; *Katzenbach v. McClung*; *Lawrence v. Texas*; *Plessy v. Ferguson*; Segregation Laws.

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Clayton Anti-Trust Act of 1914

The Clayton Anti-Trust Act of 1914 created the Federal Trade Commission and contained major amendments to firm up the antitrust statutes of the Sherman Anti-Trust Act of 1890. After much discussion and compromise, the act was supported by labor and agriculture interests and signed by President Woodrow Wilson on October 15, 1914. The Sherman Act was the first major regulatory legislation to govern business and it became apparent by 1914 that the law had some vague language that needed to be corrected to tighten up industry regulations. Wilson's predecessors Theodore Roosevelt (1901–09) and William Howard Taft (1909–13) worked hard during their administrations to break up the monopolies that developed in numerous industries prior to 1901. Monopolies became targets of the Attorney General's Office in both administrations, resulting in the breakup of the Standard Oil Trust, American Telephone and Telegraph, and the American Tobacco Company.

The Clayton Anti-Trust Act originated from legislation proposed by Henry Clayton (D-AL) the chair of the House Commerce Committee. The House and Senate both offered versions of the bill in 1914 and formed a compromise version in conference committee. The conference opted to restore the prohibition on price fixing and added a test to see how the differential would impact trade. Congress also opted to use a modified version of the House and Senate's regulation on holding companies. The major conciliation was the decision to use administrative regulation powers for the commission versus a criminal approach that would remove enforcement of criminal acts from the Attorney General's Office. A success for the unions came with the Clayton Act's prohibition of the Sherman Act's conspiracy of interstate trade statute being used against them when they voted to strike, impacting multiple states.

Congress passed the Clayton Act 35–24 in the Senate and 245–52 in the House. In its final version the law created a regulatory agency, the Federal Trade Commission, to help implement the law and regulate industry. Industry could no longer set prices to eliminate competition, the same managers could not be on the boards of

competing companies or interlocking directorates, and companies could no longer hold stock in a corporation that was in direct competition with that company. The role of the Federal Trade Commission was to promote free and fair competition in industry. A concern related to monopolies was the economy being controlled by the business decisions of a few people.

Trust-busting, another term for breaking up monopolies, declined during the 1920s because the economy was booming. However, once the Great Depression started, President Franklin Roosevelt called for the commission to pursue any illegal activities being carried out by industry. In 1936, the Robinson Patman Act amended Section 2 of the Clayton Act, which discusses price and other forms of discrimination among customers and prohibits the practice (this was not clarified in the Clayton Act). Additional changes to the legislation passed Congress in 1950 under the Celler-Kefauver Act, which amended Section 7 of the Clayton Act to prohibit not only horizontal mergers (firms producing similar goods) but any form of merger that might impact competition like conglomerate mergers. In 1976, further amendments to the law were included in the Hart-Scott-Rodino Anti-Trust Improvements Act of 1976, which impacted Sections 15 and 18 of the law and also required premerger filings with the FTC.

The Clayton Anti-Trust Act of 1914 strengthened the Sherman Anti-Trust Act of 1890, which did not prove to be a strong-enough set of regulations to protect consumers and industry from the abuses of monopolies. This legislation fixed the loopholes in the original law and put tighter regulations in force. In correcting the problems, Congress created the Federal Trade Commission (FTC) to oversee and regulate industry. The FTC looks for violations and reviews complaints about price fixing, mergers, and acquisitions, and issues administrative penalties for violations. The 1914 legislation has been amended only three times: 1936, 1950, and 1976, to adjust language and to add a prohibition of conglomerate mergers and to require premerger filings with the FTC. The main role of this legislation is to prevent illegal activity by corporations that can damage competition.

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See Also: Antitrust Law; Sherman Anti-Trust Act of 1890; Wilson, Woodrow (Administration of).

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Clemency

Clemency in the United States encompasses many related procedures, including amnesty, commutation, pardon, remission, and reprieve. All involve forgiving someone for a crime or cancelling the penalty associated with his or her crime. When an individual has paid his/her debt to society or is considered deserving, executives at the federal or state level can choose to assist his/her cause through any of these mechanisms. In the United States, there have been multiple examples of executive clemency throughout history—some more memorable than others—depending on the different types of executive clemency available, explanations for why an executive may choose to exercise clemency, and additional factors that shape when clemency may be exercised.

Amnesty

Amnesty involves overlooking a person's actions in order to serve some greater cause. Many cities, for example, have weapons amnesty programs in which citizens can hand in weapons without having to worry about facing any legal questions from authorities regarding how they were obtained or why they were in their possession. Likewise, a citizen who observes a violent crime while committing a property crime may have his/her own transgression overlooked through amnesty in exchange for his/her willingness to cooperate regarding what he/she observed. The key facet to amnesty is

that one individual's actions are forgiven in order to fulfill some larger mission—whether it is having someone to testify regarding a murder or to help eliminate violent weapons on the streets.

Commutation, Remission, and Reprieves

Commutation has become a popular subject in the United States in recent years because of the actions of two prominent governors. When commuting a sentence, an executive is substituting one penalty for a crime with another. The key is that the individual remains guilty; only his or her punishment changes. The governors of Illinois and New Mexico both commuted sentences for all death row inmates to life without parole over concerns with potential executions of innocent individuals.

Remission is similar to commutation and involves a complete or partial cancellation of a punishment while the offender is still legally guilty. In its most basic form, remission involves a sentence being reduced. For example, if you are supposed to serve a two-year term but prison overcrowding leads to your being released after serving eight months, you have had your sentence remitted.

Reprieves are temporary postponements of a punishment and are most frequently granted when someone is facing execution in the immediate future and needs additional time to appeal. Again, a reprieve does nothing to remove guilt from an offender.

Pardons

Of the five procedures encompassed by clemency, pardons are the most prominent historically. Pardon powers are given to both federal and state officials. The president of the United States gains his ability to pardon from Article II, Section 2 of the Constitution, which gives the ability to grant reprieves in pardons for any offense except in cases of impeachment. An individual seeking a pardon will address the request to the president, who will receive a nonbinding recommendation from the Office of the Pardon Attorney (housed in the Department of Justice). Likelihood for success depends on the administration, but overall has decreased since the conclusion of World War II. Franklin Roosevelt offered more pardons than any other president with 3,687. Woodrow Wilson offered the second most at 2,480.

The Department of Justice recommends that an individual must wait five years after conviction before receiving a pardon. This, however, is only a recommendation. In normal circumstances, an individual needs to have served his/her entire sentence and shown an ability to lead a productive life. Technically, an individual could receive a pardon before even being charged, let alone convicted, for a crime. The actual request is technically unnecessary. The president could opt to pardon an individual who does not even wish to be pardoned if he sees fit. An individual must affirmatively accept a pardon for it to be recognized by the criminal justice system but that acceptance also carries with it an admission of guilt.

By accepting a pardon, an individual has many rights restored that may have been lost. While it helps eliminate the stigma and public perceptions to an extent, it is important to note that pardons do not expunge one's criminal record. As a result, the person must still disclose his/her conviction on forms and must count on state governments to remove any actions related to voting or holding public office. Simply receiving a pardon does not wipe clean a person's past or assist him/her in bettering his/her future. Since the pardon power of the president is only applicable to matters of federal law, state executives play an important role in regard to clemency through pardons. Most states grant their governors the power to issue pardons while some give this ability to an agency or board appointed by the governor.

From its initial creation, clemency through pardons was highly controversial. At the federal level, the founders—particularly Alexander Hamilton—remembered the many royal abuses of similar powers throughout Europe and feared that the same would occur in the United States if presidents were given the ability to follow suit. Today, watchdog groups focus on whether pardons are being issued consistently with fairly strict, publicly available guidelines so the process is as transparent as possible. After all, the entire idea is to instill mercy into the system where possible and to assist individuals in regaining their lives after paying their debt to society. Pardons at the state level are similarly controversial. In the early years, they were often used in the case of people sentenced to death for lesser crimes (such as robbery) to reduce capital punishment, but even these decisions were

not always received well by the public. Writing long before the American experience, Cesare Beccaria found that pardons gave too much power to executive authority, through which they could opt to act in a humane manner. By doing so, however, they failed to set examples for the general public.

Considerations

Several factors can impact whether an individual receives clemency. Legal and technical explanations for clemency are often quite telling. In this category are individuals who were granted some form of clemency because of their innocence, mitigating factors, or disproportionate punishments. Irregularities at trial, insufficient evidence, mistaken identity, new evidence, confessions, no premeditation, the heat of the moment, insanity, intoxication, and nonequal punishment for participants can all serve as causes for legal/technical clemency to be granted. In most cases, these explanations do not invite much controversy, given the black-and-white nature of the decision.

Humanitarian compassion and mercy form another basis for granting clemency. While there is considerably more controversy surrounding these decisions, the appeal to morality and sympathy may help mitigate the negative feedback an executive receives in response to his/her action. Prisoners near death, those whose health threatens other inmates, and those who begin to suffer from mental illness after years in prison may qualify under this category. Many executives choose to grant clemency under this category around the Christmas season when they can clearly explain that they are acting out of compassion in a season of giving to help control any negative public responses.

Judgments of reform and rehabilitation are often the basis for clemency. The clemency claims in this category face the most public scrutiny since it is merely a subjective judgment on whether someone has been rehabilitated that determines whether to grant clemency. Just because an offender has found religion, works for charity, or vows to never commit a crime again is not a basis to assess accurately whether he/she has been truly reformed. For an executive to take a chance in granting clemency puts the executive's own political career on the line, as an opponent will be quick to point out any grants of clemency that lead to future criminal activity.

A series of factors can impact whether an executive is likely to grant clemency. The background, experiences, attitudes, and concerns of the executive are a major factor. Presidents may favor helping people from their state, for example. Or a governor who lost a childhood home to an arsonist may be less willing to grant clemency to individuals who have committed similar crimes. Perhaps most importantly, executives who enter office with tough-on-crime policy beliefs are typically the least likely to grant clemency. Largely, commentators have argued that by granting clemency in cases, tough-on-crime executives are not remaining consistent in the eyes of their followers and risk backlash. In this way, ideology and party identification can impact the frequency with which an individual executive grants clemency.

A separate set of factors are more overtly political in nature. These include things like public opinion, social status of the petitioner, or the outbreak of war. Public opinion, as in most cases, can help or hurt an individual's petition for clemency. Some high-profile petitions can become captivating to the American public and lead to organized efforts to persuade an executive one way or the other. If an executive grants a series of pardons and receives public backlash, he/she may choose to cut back on future pardons. While most Americans would like to believe that who you are would play little role in whether clemency was granted, evidence has shown that more prominent, socially connected petitioners are likely to be viewed favorably by executives.

Administrative considerations also factor into pardons. For example, the number of pardons granted will depend on the number of petitioners. Likewise, the individuals making initial recommendations to the executive can impact numbers. Some individuals, after all, are simply more likely to favor clemency than others. Through this category, we are reminded that clemency is a process with some protocols at the federal and state levels. As a result, there are many places where the system can ultimately influence its own outcomes.

Famous Examples of Clemency

One of the most famous pardons was granted by Gerald Ford to Richard Nixon in 1974. Despite Nixon's never being charged, let alone convicted,

Ford opted to pardon Nixon for misconduct that led to the Watergate scandal. Americans strongly disapproved of this action (especially since Nixon had selected Ford to be his vice president after Spiro Agnew resigned) and punished Ford at the polls as a result. Ford insisted that the pardon was necessary to fully allow the nation to move forward in the wake of the scandal.

Many other presidents have undertaken controversial pardons. Andrew Johnson opted to pardon thousands of former Confederate officials and military personnel following the Civil War. While not surprising given that Johnson was from Tennessee, this decision was unpopular in the north, where many Union families were still seeking revenge on the south for costing them so many lives. Likewise, Johnson was already viewed as being too favorable to the south, which only made this appear as another attack to the citizens of the north. Jimmy Carter granted amnesty to draft dodgers from the

Vietnam era. This is important to mention because Carter chose to give amnesty rather than pardons, allowing the young men to return home without fear of facing any legal action. George H. W. Bush pardoned six individuals from the Reagan administration who were accused or convicted in relation to Iran-Contra. Again, the public was not sold on the decision—largely because Bush had served under Reagan with many of these men. Bill Clinton caught flack for commuting the sentences of 16 members of FALN (a Puerto Rican paramilitary organization) and another 140 individuals in his final hours as president. George W. Bush also raised eyebrows when he chose to commute the prison term of “Scooter” Libby, who was convicted in relation to the leak of Valerie Plame’s identity while she was with the Central Intelligence Agency. With hundreds of acts of federal executive clemency having occurred in U.S. history, these represent only a small number. They do, however,



President Gerald Ford speaks to the House Judiciary Subcommittee during a hearing on pardoning former president Richard Nixon on October 17, 1974, in Washington, D.C. The controversial pardon for Nixon is one of the best-known examples of clemency. The president of the United States is given the ability to pardon in Article II, Section 2 of the Constitution.

help to present how controversial the decision can be for an executive.

At the state level, two of the most famous examples involve state governors commuting sentences in similar ways for very different reasons. First, in 1986, on his way out of office, Toney Anaya chose to commute the death sentences of all eight death row inmates in New Mexico. He had campaigned against the death penalty and was staunchly opposed to capital punishment—particularly in his own state. In 2003, two days before ending his term as governor, George Ryan of Illinois followed Anaya's path and commuted the sentences of all 167 individuals on death row in Illinois. He believed that the system was beyond repair and that the death penalty could never be administered fairly. Going even further, he pardoned four inmates because of their tainted murder convictions. Ryan made his decision after seeing an inmate exonerated—two days prior to his execution—by new evidence collected by students at Northwestern University. As these two examples make clear, state governors can have significant impact on policies within their states through the use of executive clemency.

Clemency was written into U.S. law to ensure that mercy was extended to individuals throughout the year at all levels of government rather than to one turkey by the president every November. While executive clemency is, and always will be, a controversial element in American democracy, when used properly, it offers an opportunity for the American criminal justice system to right past wrongs and reward individuals who have truly been rehabilitated. When abused, however, it opens up the potential for significant backlash for all parties involved.

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See Also: Capital Punishment; Carter, Jimmy (Administration of); Courts; Discretionary Decision Making; Ford, Gerald (Administration of); Nixon, Richard (Administration of).

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Cleveland, Grover (Administration of)

Grover Cleveland was the first Democrat to be elected president after the Civil War and the only one to serve two nonconsecutive terms (1885–89 and 1893–97). Deference and respect for the law played an important part in Cleveland's swift political ascent as mayor of Buffalo, New York, New York State governor, and president of the United States. Cleveland trained as a lawyer and served as a sheriff and district attorney of Erie County, earning a reputation as an honest and hardworking citizen who fought Big Business interests and political corruption. Yet, during his two administrations, his reputation as a defender of the common man suffered as a result of adverse economic conditions. Particularly during his second term, he had to face a severe economic depression and his harsh financial measures, together with his support for the gold standard, ultimately proved so unpopular that the president lost even the support of his own party. The working classes were particularly alarmed by Cleveland's repression of the Pullman Strike in Chicago in 1894 with the intervention of federal troops and the punishment of its charismatic young leader, Eugene Debs, with a six-month prison sentence. Most of them interpreted these incidents as a signal that the president was now enforcing the law to protect the interests of the rich.

Born in Caldwell, New Jersey, on March 18, 1837, Cleveland had to help support his family from a young age after his father died in 1853. However, thanks to an influential uncle, he got a job in one of the most respected law firms in Buffalo and was admitted to the bar in 1859, starting his own practice three years later. As a lawyer, he

defended some members of the Fenian Brotherhood who had taken part in the raids of the late 1860s against British targets in Canada to put pressure on Britain to withdraw from Ireland. He also associated his name with the freedom of the press when he successfully defended the editor of a Buffalo newspaper against a libel suit. During his term as sheriff of Erie County, he personally carried out two hangings and gained the reputation of being a staunch fighter against political corruption. He consolidated such reputation during his terms in office as mayor of Buffalo and as governor of New York. These two positions were instrumental in launching Cleveland's successful run for the presidency in 1884.

Yet, particularly during his second, non-consecutive term as a president, Cleveland gave the impression of having abandoned his crusade against corruption and of using the law to favor business interests. Even moderate progressives and reformers saw the decision to use federal troops to stop the Pullman Strike as the legal result of the laissez-faire capitalism that prevailed during the Gilded Age. This economic attitude prevented the passing of effective protective legislation for workers, who tried to make up for their inability to obtain better wages and improve working conditions by forming unions. The conflicts between labor and capital became harsher as a severe economic depression materialized in the late 1880s through the 1890s. The Pullman Strike represented the dramatic and irreconcilable clash between the interests of capital and labor, which legislation had failed to moderate.

The Pullman Place Car Company owned a town near Chicago where it housed its workers, providing them with accommodations and services. This paternalistic policy toward its workers allowed the company to exercise a high degree of social control over them and effectively reduced their capacity to negotiate their wages. When economic recession struck in 1893, the Pullman Company adopted the strategy to slash workers' wages up to 40 percent while leaving rents and prices in their model town unchanged. Led by the charismatic Eugene V. Debs, the workers voted in favor of the strike. Yet, George Pullman refused to negotiate with union leaders and, thanks to the second Cleveland administration, he was able to get legal approval of his conduct.

The intervention of U.S. Attorney General Richard Olney, who obtained a court ruling to prevent the strikers from obstructing the railways and withholding the mail, effectively banned the strike. Citing this ruling, President Cleveland ordered troops to Chicago with the stated task of protecting the mail but with the implicit duty of curbing the strike, which ended within a month after the troops had been sent. Taking this action, Cleveland overruled the progressive Governor of Illinois John Altgeld, who had planned to use state troops to control the strikers.

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See Also: Great Depression; Harrison, Benjamin (Administration of); Strikes.

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Cleveland, Ohio

Cleveland is a city in northern Ohio with a northern border on Lake Erie. Formerly a manufacturing center and transportation center, the city's fortunes sank along with the decline of heavy industry and the departure of much of the city's population after World War II. Cleveland was dubbed "the mistake on the lake" after several incidents, including the heavily polluted Cuyahoga River catching fire in 1969 and the city defaulting on federal loans in 1978–80, but the city has made a comeback since then and is today often cited as an example of a Rust Belt city that has successfully transitioned to a diversified economy. In 2006, Cleveland had a population of 444,313, a 6.9 percent decline from 2000 and a more than 50 percent decline from its population of 914,808 in 1950. The Cleveland-Elyria-Mentor metropolitan statistical area had

a population of 2,077,240, making it the largest metropolitan area in Ohio. In the city of Cleveland, 51 percent of city residents were black, 41.5 percent were white, 1.3 percent were Asian, and the remainder were American Indian, Alaska Native, or multiracial; 7.3 percent were of Hispanic or Latino origins and 4.5 percent were foreign born. Only 69 percent of persons age 25 or older were high school graduates, and 11.4 percent were college graduates. Median household income was \$26,535 and 27 percent of the population lived in poverty, as did 41.9 percent of children.

Cleveland Police Department

Prior to 1866, police services were provided in Cleveland by constables and volunteer night watchmen under the authority of a city marshal. In 1866, the Cleveland Police Department (CPD) was formed using the metropolitan system already in use in several large U.S. cities, in which a board of police commissioners was empowered to appoint a superintendent of police and patrol

officers. The CPD assumed its modern form in 1903 when control of the department was granted to the city government.

Cleveland grew rapidly in the early 20th century (the population increased from 381,000 in 1901 to 831,000 in 1921) and so did the police department, from 388 in 1901 to 1,384 in 1921. The first women police officers in the CPD were appointed in 1923 but they were part of the Women's Bureau and were restricted to a few duties, including guarding women prisoners and witnesses and assisting in home investigations, and were not given the right to bear firearms until 1971.

The Mayfield Road Mob (named after a street in Little Italy) was the leading Cleveland crime syndicate beginning in the 1920s. They ran bootlegging and gambling operations and in the 1930s expanded into laundries, casinos, and nightclubs in cooperation with the Jewish-Cleveland Syndicate. In the 1920s and 1930s, the CPD adopted many new technologies and procedures and gained a reputation as one of the most progressive departments



A visitor looks at a display of death masks of victims of the 1930s "Torso Murderer" at the Cleveland Police Museum in Cleveland, Ohio, in October 2007. The Cleveland Torso Murderer killed and dismembered at least 12 victims from 1935 to 1938, but his identity remains unknown, as do the identities of some of the victims.

in the United States. Eliot Ness was appointed safety director in 1935 and reorganized the CPD into a system of five police districts and 32 zones. Ness had one famous failure on his record, however: In the 1930s, the city was terrorized by an unknown killer (officially responsible for 12 deaths, although some believe there were more) dubbed the “Torso Murderer” because he beheaded and often further mutilated the bodies of his victims. The crimes were never solved but one suspect, Frank Dolezal, died while in police custody and another, a physician named Francis E. Sweeney who was a very strong suspect, voluntarily admitted himself to a mental institution.

In the 1950s, the CPD pioneered the use of automatic cameras in banks and stores to gather evidence of robberies, and in 1957, the St. Clair Savings and Loan holdup became the first bank robbery in history captured on film by hidden camera (it was activated by the sound of the bank alarm). Photographs of the holdup were printed in the local newspapers, and two of the robbers turned themselves in to the police within a few days. Most of the cash stolen was also recovered.

Race Relations

In the 1960s, racial tensions heightened in Cleveland, as they did in many other cities in the United States, and the relationship between Cleveland’s growing black community and the police department deteriorated. The Hough Riots began on July 18, 1966, over a dispute within a café but quickly escalated into a large crowd, which the police were unable to control. The violence escalated to rock throwing, looting, vandalism, and fire setting, and on July 20, Cleveland Mayor Ralph Locher called in the National Guard to restore order. Four people were killed in the riot, 30 people were injured, and about 300 people were arrested. On July 23–28, 1968, an armed black militant group engaged in an action against the CPD known as the Glenville Shoot-out. This initial disturbance spread over a six-square-mile area of looting and arson, and in an attempt to calm matters Mayor Carl Stokes (the first African American to be elected mayor of a major U.S. city) announced that only black policemen and community leaders would be allowed into the area. This prevented further deaths, although looting and arson continued; ultimately, seven

people were killed (all in the first day), 15 were wounded, and 63 businesses were damaged, with financial losses estimated at \$2.6 million.

In 1977, the Cleveland Police Department was found guilty of discrimination in recruitment, hiring, and promotion, and after this time placed more emphasis on hiring minority officers. The CPD also instituted community policing programs in the 1980s and 1990s. In 1994, Patrick Oliver became the first black chief of police in Cleveland, and in 2001, Mary Bounds became the first female chief of police.

Crime

Crime in Cleveland has fluctuated over years with a general decline, as seen in much of the United States, over the past several decades. In 1980, there were 47 homicides and 1,187.8 robberies per 100,000 population, while in 1990 these rates had fallen to 26.1 and 972.5 per 100,000; in 2000, they fell to 15.3 and 644.4 per 100,000. However, Cleveland remains a relatively dangerous American city: According to the CQ Press rankings based on Federal Bureau of Investigation (FBI) statistics, in 2010, Cleveland had the 7th highest crime rate in the country with a score of 260.6 (where 0 would indicate an average crime rate and a positive number a higher than average rate). According to FBI statistics, in 2008, 6,193 violent crimes were reported in Cleveland, including 102 murders or nonnegligent manslaughters, 423 forcible rapes, 3,804 robberies, and 1,864 aggravated assaults. There were 25,071 property crimes reported in that year, including 9,102 burglaries, 10,686 larceny-thefts, 5,283 motor vehicle thefts, and 532 cases of arson.

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See Also: African Americans; Ness, Eliot; Organized Crime, History of; Racism; Serial and Mass Killers.

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Clinton, William (Administration of)

Criminal justice policy was central to Bill Clinton's (1946–) presidential administration (1993–2001). Coming into office after more than two decades in which the Republican Party had dominated political debates over crime by emphasizing policing and punishment, the Democratic Clinton administration was determined to demonstrate that it could provide tough and effective criminal justice. While the Clinton administration supported traditionally liberal positions such as gun control, it also ratified punitive programs more often associated with conservatives. At the same time, the Clinton administration had to deal with the emerging challenges of terrorism, both domestic and foreign. As a result, the Clinton administration continued a long-term trend of expanding the federal government's role in crime control.

Crime Prevention Efforts

In the early 1990s, Bill Clinton sought to position himself as being tougher on crime than the Republicans. As a candidate for president in 1992, Clinton—then the governor of Arkansas—flew back to his home state in the midst of the campaign to authorize the execution of a convicted murderer, signaling his political support for the death penalty. Candidate Clinton also proposed that the federal government should pay to hire 100,000 new police officers.

The Clinton administration initially enacted long-standing liberal goals. In 1993, Bill Clinton signed into law the Brady Handgun Violence Prevention Act, which passed after years of efforts by a coalition of gun control advocates and police leaders. When the law went into effect in 1994,

it banned the sale of firearms to people who met certain conditions, including having prior convictions for felony offenses and prior institutionalization for mental illness. The law implemented a mandatory five-day waiting period before a purchaser could buy a gun, during which time a background check could be conducted. This waiting period was replaced with an instant background check in 1998.

Although Clinton's Attorney General Janet Reno came into office in favor of expanding crime prevention efforts, the administration as a whole quickly shifted toward a more punitive position. This occurred in the context of high crime rates. According to Federal Bureau of Investigation (FBI) statistics, in 1993, the absolute number of homicides in the United States reached an all-time peak. In addition, a series of widely publicized crimes in 1993 such as the kidnapping and murder of 12-year-old Polly Klaas by a previously convicted offender drew national attention. In this atmosphere, mandatory sentencing schemes such as three strikes rules—proposals that a third felony conviction should entail a mandatory extended or life term in prison, thereby preventing people like Klaas's killer from harming innocents—gained increasing public support. Voters in the state of Washington approved the first three strikes law in a November 1993 election, and President Clinton subsequently endorsed the concept in his State of the Union message in January 1994.

The Clinton administration most directly affected criminal justice policy through the Violent Crime Control and Law Enforcement Act of 1994. This omnibus crime law included funding for Clinton's proposal to add 100,000 new police officers through the Community-Oriented Policing Services (COPS) program. It also incorporated the Violence Against Women Act, which provided \$1.6 billion for measures to reduce domestic violence. In addition, the 1994 crime law included funding for crime prevention programs and a controversial ban on some automatic weapons (which expired in 2004). In congressional debate, however, the law abandoned other elements favored by liberals such as racial justice provisions that would have allowed defendants to challenge sentences on the grounds that members of minority groups were disproportionately represented. The law also supported more

conservative approaches to crime control such as linking funds for states to build additional prisons to provisions that states adopt tougher sentencing guidelines. It also required states to establish registries of convicted sex offenders. Finally, the law expanded the number of federal offenses subject to the death penalty.

The 1994 election of a Congress with a Republican majority limited the effect of the crime law. Subsequent budget decisions prevented most of the funds designated for crime prevention and prison building from being spent. In addition, the Republican Congress sought to convert COPS into block grants for states to spend as they wished on criminal justice programs; Clinton's threat to veto this change ultimately led Congress

to create a separate block grant program in addition to the more directed COPS funds. By 1999, Justice Department reports showed that COPS had technically paid for 100,000 police officers, but that only about half were actually new positions; the others were replacements hired with the federal funds.

Terrorism and Federal Authority

Challenges posed by different forms of terrorism also shaped the Clinton administration's law enforcement policies. The Bureau of Alcohol, Tobacco, and Firearms and the FBI initially faced congressional and public criticism after 1993 raids on the Branch Davidian cult's compound near Waco, Texas, left 85 people dead. Federal agencies subsequently sought to avoid dramatic confrontations and primarily treated terrorist incidents as law enforcement matters. The 1993 bombing of an underground parking garage in the World Trade Center in New York City was handled through the arrest, trial, and conviction of the attack's main planner, Ramzi Yousef. Similarly, after the Alfred P. Murrah Federal Building in Oklahoma City was destroyed in 1995, that attack's main perpetrator, Timothy McVeigh, was arrested and tried on federal charges; he was convicted in 1997. Finally, federal authorities arrested Theodore Kaczynski in the Unabomber case in 1996 after he sent a series of bombs through the mail over several decades. Kaczynski pleaded guilty to federal charges in 1998.

The Clinton administration continued a trend toward expanded federal authority in criminal justice, which had traditionally been a matter for state and local governments. The 1994 crime bill and other legislation increased the number of offenses under federal jurisdiction. In addition, the federal prison system continued to grow. The number of federal prisoners nearly doubled under the Clinton administration, with most new inmates convicted on drug offenses. In addition, the federal government opened its first super-maximum-security (or "supermax") prison at Florence, Colorado, in 1994. Federal spending on criminal justice increased by more than one-third between 1992 and 2000.



A throng of emergency vehicles outside the World Trade Center when the underground parking garage was bombed on February 26, 1993, in a plot led by Ramzi Yousef.

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See Also: 1981 to 2000 Primary Documents; Gun Control; History of Crime and Punishment in America: 1970–Present; McVeigh, Timothy; Terrorism; Three Strikes Law; Violence Against Women Act of 1994.

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Clinton Correctional Facility

Clinton Prison, as it was known until 1970, is the largest and third oldest of New York State's 70 correctional facilities. Often called Dannemora for the town in which it is located, or Little Siberia for the punishing northern climate of the region, Clinton Prison is a maximum-security facility that houses New York State's most violent and dangerous criminals.

Into the Mines

Built in 1845, Clinton quickly developed a reputation as a professional, no-nonsense institution known for its unique programs. However, prior to its national reputation, Clinton Prison was conceived in the midst of economic protest. With the recent perfection of the Auburn system of prison management, which boasted a prison industrial system capable of offsetting its operating costs by achieving factory efficiency, came an uproar of protests from local artisans and craftsmen, who frequently owned their own businesses and who saw the industrial production at nearby prisons as unfair competition. In an effort to appease these small business owners without destroying the

profitable prison industrial scheme, lawmakers proposed a compromise by restricting the number of prisoners allowed to be employed in a prison workshop. However, the act, which was passed in 1835, failed to appease their concerns, and a subsequent amendment passed in 1842 that tightened the restrictions. It also proposed an idea developed by a local resident: that prisoners be sent to Clinton County, New York, and be employed in iron mines. In 1844, the legislature passed an act to establish a prison for the purpose of employing convicts in the mining and manufacturing of iron. A total of \$17,500 was spent to purchase a mine in Clinton County along with 200 acres of land.

Ransom Cook, who had been commissioned to find the land and to design the institution, was appointed Clinton's first warden and agent and began preparations for building the prison yard. On June 3, 1845, Clinton's first 50 prisoners arrived, having been personally selected by Ransom Cook for their health and physical strength. Three weeks later, 44 convicts arrived from Auburn Prison. With nearly 100 prisoners to aid in the construction of the institution, progress was made quickly, and within 18 months a section of the first cellblock was made ready for occupancy. A kitchen, blacksmith shop, steam saw mill, and iron foundry were also completed during that time, and the nearby Lyon Mountain mine was opened.

Three years later, in January 1848, Cook was replaced by George Throop, who had been appointed by the new legislature to unify the administration of the Clinton, Auburn, and Sing Sing prisons. Unfortunately, the new administration, coupled with the remote location of the prison and the depletion of the iron mine, quickly led to the downfall of the mining project, and the state was forced to pay significant fees to send prison workers to adjacent mines. In 1876, prison inspectors declared the iron mining project at Clinton Prison to be a disastrous financial failure, resulting in closure of the mines in 1877. Production subsequently changed to making brooms, shoes, and other items to be used by other prisons in the state.

Rehabilitation and Reform

During the 50 years following the mining project, Clinton developed into one of the largest correctional facilities in the country; its capacity was

doubled in 1881 with the addition of 656 prison cells. Moreover, with cases of tuberculosis at a steady increase during the following years, Clinton physicians were surprised by the full recoveries of several of the affected inmates. Reportedly because the healthfulness of the prison location, Clinton quickly saw an influx of ailing prisoners from other institutions, and a special tuberculosis hospital was constructed on prison grounds in 1918. In addition to treating tuberculosis, Clinton Prison also specialized in working with incorrigible prisoners and steadily received the worst criminals other prisons had to offer, including those with multiple felonies and those legally declared insane.

In July 1929, riots at Clinton and Auburn prisons led to calls for reform, and increasing emphasis was placed on rehabilitative programs. Consequently, Warden Thomas Murphy, who was appointed several years prior, required all inmates to attend school. He also ordered that Clinton Prison be rebuilt, with modern housing replacing the antiquated cellblocks. With the increased modernization of national prisons and the further development of rehabilitation services, several creative programming concepts were also developed. In 1977, the Merle Cooper program was introduced to help prisoners adjust to incarceration. In addition, the Assessment and Program Preparation Unit was developed to help address inmates' real or imagined fears of other prisoners and to help their transition into the general population. The location of the prison, which was built into a hillside, also provided for sporting activities unusual for prisons, including skiing, ski jumping, and bobsledding. Additionally, Clinton is known for another unusual tradition whereby small areas of the hillside, called "courts," were used by inmates to gather and socialize, play chess, and grow flowers and vegetables. Clinton housed approximately 300 such courts, which could accommodate up to six men. The courts have been identified as having played a key role in the management and social development of Clinton's inmate population.

Continuing Effectiveness

Clinton Prison has also been known to be the leader in modern rehabilitation and currently provides academic education, vocational training, and drug and alcohol treatment. In 1970, the

facility's name was officially changed from Clinton Prison to Clinton Correctional Facility, and in 1989, Clinton became the 19th correctional facility to be accredited by the American Correctional Association.

Currently, Clinton houses up to 2,900 prisoners and provides housing for prisoners on death row. It remains a maximum-security prison and contends with its share of prison gangs, including the Bloods, Crips, Five Percenters, Trinitarios, and MS-13. It still houses New York State's most notorious criminals and has housed several famous inmates, including Charles "Lucky" Luciano, a key player in the establishment of Italian organized crime in America; Jesse Friedman, convicted of sexual abuse and sodomy of a minor and the subject of *Capturing the Friedmans*, a documentary of his crimes produced in 2003; Carl Panzram, a notorious serial killer; and Tupac Shakur, who served nearly a year for sexual abuse but was later released on appeal.

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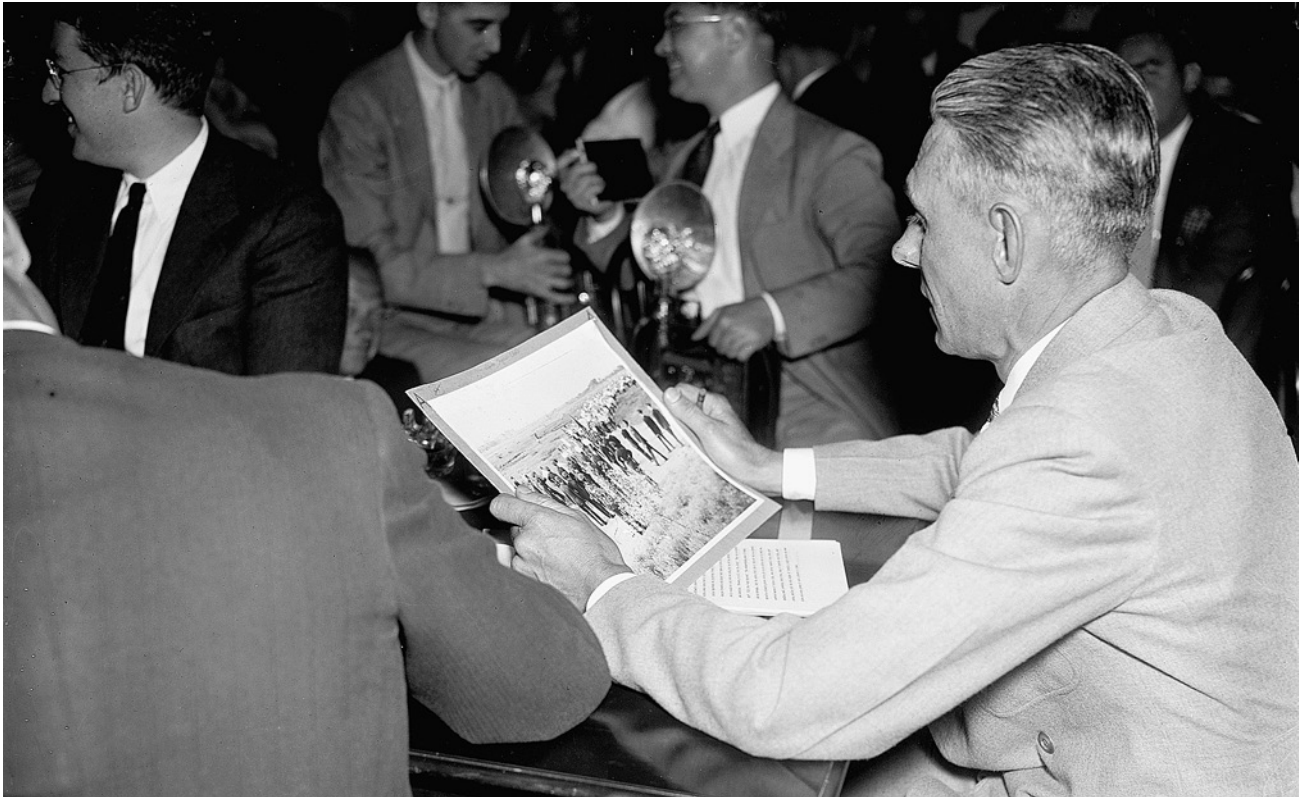
See Also: Auburn State Prison; Federal Prisons; New York; Sing Sing Correctional Facility.

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Code of Silence

The code of silence, as it is known among police officers, is the unwritten rule that a police officer does not report, complain about, or testify against a fellow police officer. It is also commonly referred to as the "thin blue line." Any police officer who reports, complains about, or testifies against a fellow police officer is said to have crossed that line.



This Chicago police sergeant was heckled by spectators when he testified in defense of his fellow officers at a Senate Civil Liberties Committee hearing in Washington, D.C., on July 1, 1937, after the killing of 10 steel strikers in what became known as the Memorial Day Massacre. The code of silence may make it difficult for police officers in similar situations to testify against their fellow officers.

Those police officers who cross that line are usually tagged with various different names, all of them derogatory in the criminal justice lexicon. Some of these names are rat, squealer (with rather contradictory connotation to the 1960s and 1970s nickname for cops as “pigs”), whistle blower, and Serpico. Frank Serpico, as many people in the criminal justice field are aware, is the name of a famous New York City Police Department detective who reported widespread corruption involving New York City police officers and was subsequently not backed up on a drug raid, resulting in Serpico’s being shot. Serpico had crossed the line and alienated himself from his fellow police officers because he had reported the corruption. Serpico and his actions have been immortalized in a book and a movie starring Al Pacino, yet it is still usually an insult when a police officer calls another police officer a Serpico.

It is interesting to note that organized crime or the Mafia have an almost identical code for the

conduct of their members. This code of silence is called *omerta*. Members of organized crime or the Mafia are expected to keep quiet about their associates and activities when they are questioned, arrested, charged, tried, or convicted for their activities. The usual punishment for a crime family member who broke *omerta* was death, with the body being dumped in a location where it was certain to be found with a canary or a pigeon stuffed in the mouth. This was a warning to other members of the crime family who were considering breaking *omerta*.

Police officers, like organized crime and the Mafia, will punish fellow police officers who cross the thin blue line. Although being killed is not one of the usual retaliations brought against a police officer for crossing the line, the results can be just as devastating, as demonstrated by the experience of Frank Serpico. Retaliation against a police officer who crosses the line usually involves lack of backup on dangerous calls, assignment to

undesirable jobs within the department, denial of promotion even if the applicant receives the highest score on the promotional examination, and discipline for minor infractions that other police officers would not be disciplined for.

Justifications

Police officers present a number of excuses in attempts to justify the code of silence. One of them is the idea of professional courtesy. For example, if a police officer stops a fellow police officer for driving drunk, he might not arrest him but, rather, will drive him home. Another excuse for keeping silent about the misconduct or criminal activity of fellow criminal justice officials is fear. For example, if a police officer brings a complaint against a fellow police officer for criminal activity, then the reporting police officer will justifiably be afraid that he might not receive backup on a dangerous call from the reported police officer or the reported police officer's friends.

This fear was highlighted by Frank Serpico in his testimony before the Knapp Commission on police corruption, where he stated that 10 percent of the cops are good, 10 percent of the cops are bad, and 80 percent of the cops wish they were good. Potentially honest criminal justice officials are also afraid, with justification, that they will not be promoted if they blow the whistle on their fellow criminal justice officials. A third excuse used by police officers to justify the code of silence is the pressure of the job and the proposition that because the public hates cops, police officers need to receive special consideration or breaks when they engage in misconduct, as the misconduct is supposedly not a result of any criminal intent by the police officer. A fourth excuse employed by police officers for the code of silence is that police officers, on some occasions, have to break the law to catch the criminals. Some decisions of the U.S. Supreme Court provide a little support for this position through the use of good faith and recognizing that police officers can engage in some deception when enforcing the law. For example, in *Frazier v. Cupp* (1969), the U.S. Supreme Court allowed a conviction to stand where the police lied to the suspect about his cousin implicating him in the crime. In *Oregon v. Mathiason* (1977), the Supreme Court ruled that it was not improper for the police to lie about finding the suspect's

fingerprints at the scene of the crime. Further, in *Illinois v. Perkins* (1990), the Supreme Court held that it was permissible for an undercover police officer to pose as an inmate and that it did not invalidate the suspect's confession.

However, none of these excuses adequately counters the basic principle of civilized law that no person is above the law, no person is below the law, and all persons must be equally subject to the law. As the code of silence is not formally enshrined in the American criminal justice system, it can be argued that it is not a valid principle of criminal justice procedure. Unfortunately, the widespread recognition and employment of the code of silence illustrates that law cannot always ensure justice, and justice is all too frequently subject to the ethical quality of the persons holding office in that system.

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See Also: Equality, Concept of; Knapp Commission; Mollen Commission; Police Abuse; Professionalization of Police.

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Codification of Laws

Codification is the general process of collecting, arranging, and revising the laws of a nation or other specified jurisdiction into a systematically ordered legal code. A codification of laws attempts to be comprehensive, covering the entirety of a field of law. A codification also endeavors to consist of a logically consistent whole of rules and legal structures. In this sense, a system of codified law is able to make a break from the past,

whereas an uncoded system typically retains aspects of historical legal traditions. Advocates of codification assert that codified law is more certain, harmonious, and knowable.

Ancient Codes

In ancient times, legal systems focused primarily upon the issues that societally seemed to be the most pressing. Accordingly, ancient laws concentrated on matters such as protecting private property, suppressing violent crimes, maintaining civil peace, and enforcing accepted moral standards like those concerned with family relations and religious observances. Individual laws were created as the need for them was perceived, but as they accumulated, it became difficult to be aware of all that might be applicable. Law codes were established, often by local rulers, to be more accessible and understandable to the populace. The scope of laws gradually expanded, such that it is difficult to find any areas of human conduct that are not, in some way at least, regulated by legal codes.

The Code of Hammurabi was carved in Akkadian cuneiform upon a black stone stele so that all who read it would know what was expected of them. It publicly proclaimed an entire body of laws that were arranged in organized groupings. Like many ancient codes, it began with an invocation to divine authority. Hammurabi was a king of Babylon who ruled from about 1728 B.C.E. to 1686 B.C.E. He ruled an empire stretching from Nineveh on the Tigris River to the Persian Gulf. Anyone within his kingdom could read it and know what the laws of the land were, including particular punishments for respective violations, several of which carried the death sentence. However, special laws applied only to select members of Babylonian society who had particular obligations such as nuns or physicians. Although the Code of Hammurabi is the best known, it was not the earliest Mesopotamian code of laws. Earlier Mesopotamian law codes that could have served as precedents for that of Hammurabi have been found, such as the Sumerian Code of Ur-Nammu from about 2050 B.C.E., one from Isin codified by Lipit-Ishtar around 1800 B.C.E., and another in Akkadian from Eshnunna.

Mosaic law of the ancient Hebrews, as presented in the Old Testament, has been shown



This detail from the top of the black stone stele that is inscribed with the Code of Hammurabi in cuneiform script shows Hammurabi (standing) with the sun god Shamash.

to have been influenced by Mesopotamian law codes; indeed, both list specific punishments for respective offenses with proportionality used as a guiding moral principle of punishment. The Mosaic Code, although said to be collected and codified by Moses, is claimed to have been written by God. Breaches of the Mosaic Code, accordingly, offend God, and all crimes are regarded as sins. The Mosaic Code is said to have been promulgated around 1250 B.C.E. The Mishnah, a collection of existing traditions and oral law, was a later (redacted ca. 220 C.E.) codification of Jewish Halakha law. These sorts of codes were attempts to reduce laws to a consistent and uniform whole.

Codes of law were created elsewhere across the ancient world; these, for example, include the Code of Nesilim written in Hittite around 1650 to 1500 B.C.E., the Law Code of Vishnu (*Vaisnava-dharmasastra*) composed around the 7th century B.C.E. in Kashmir, India, and the Gortyn Code from 5th-century B.C.E. Crete. The first comprehensive criminal code in China was the Tang Code created around 624 C.E. During the

19th century, the Ottoman Empire created a civil law code based on Islamic Sharia law.

Roman-Byzantine Law

The first known set of Roman laws was first written down around 450 B.C.E. This was known as the Law of the Twelve Tablets (*Leges Duodecim Tabularum*), which was posted in the Roman Forum so all Romans could read them. They served as the foundation for the constitution of the Roman Republic. The main significance of the Law of the Twelve Tablets was that it fixed in written form a large corpus of customary law.

Emperor Theodosius II (401–50 C.E.) ordered the codification of Roman-Byzantine law. This was known as the Code of Theodosius (*Codex Theodosianus*) and was completed about 438 C.E. It was based on a review of primary sources of laws from the reign of Constantine to that of Theodosius II. However, the best-known codification was that known as the Code of Justinian. Emperor Justinian I (483–565 C.E.) ordered the compilation of the *Corpus Juris Civilis* (Body of Civil Law), which was completed about 534 C.E. It secured the status of Orthodox Christianity uniting church and state; it forbade specific pagan practices, including sacrifices. The Justinian Code became the basis for later legal systems of many countries. Other Byzantine law codes included the *Ecloga*, issued in the 8th century (circa 740 C.E.) by Leo III, and the *Basilika*, commissioned by Basil I and completed by his son Leo VI in the late 9th century.

Common Law

The notion of common law originated in the 11th and 12th centuries with the kings of England granting the authority to settle disputes. Gradually, the concept of legal precedent took hold in English thought and the doctrine of *stare decisis*, that previous decisions should be used to direct the adjudication of new controversies, served as the operating principle for common law courts. Thus, English common law was created by the customary practices of judges and not by legislated decisions. English colonists brought their common law traditions with them, and therefore, common law serves as the basis of the legal systems in the United States, the United Kingdom, and most of the countries that are members of the

Commonwealth of Nations. Nevertheless, codifications have become common in many common law systems. Criminal codes, for instance, have been adopted in Australia.

Napoleonic Code

After becoming emperor of the French, Napoleon Bonaparte (1769–1821) in 1804 enacted a comprehensive codification and reformation of French civil laws, which in 1807 became known as the Code Napoleon. The Napoleonic Code clarified and standardized the body of law that applied to all French domains and territories. Prior to the Napoleonic Code, there were more than 400 legal codes extant throughout France, with common law more dominant in the north and Roman-based systems in the south. Further, the revolutionary regimes enacted thousands of pieces of legislation. Created after the French Revolution, the Napoleonic Code permitted freedom of religion, forbade hereditary feudal privileges, and ensured that governmental jobs be given to the most qualified. It also reaffirmed patriarchal authority, designating the husband as the ruler over the household.

The Napoleonic Code served as a secularized and uniform system of French law. It heavily influenced the codification of laws in other countries, notably those across western Europe, the Americas, and the Caribbean. For example, the Napoleonic Code was virtually copied and became the civil code of Haiti in 1825; of Oaxaca, Mexico, in 1827; and of the Dominican Republic in 1845. It also profoundly impacted the standards of legal practice in the state of Louisiana, as well as the Louisiana Code adopted in 1824. This was the first state code established in the United States.

In addition to the Napoleonic Code, several other codes were established for European nations during the late 17th and 18th centuries. The spread of codification was aided by the forces of the Enlightenment, which asserted the notion that human conduct could be regulated by means of adhering to structured rational systems. In 1756, for example, the Maximilian Code (*Codex Maximilianus bavaricus civilis*) was established in the Duchy of Bavaria. In 1794, Frederick the Great (1712–86) promulgated the General National Law for the Prussian States (*Allgemeines Landrecht für die Preussischen Staaten*), which compiled

civil, constitutional, and penal law. However, these early codes generally covered a limited geographic region and contributed little to more widespread reform efforts. The Napoleonic Code, on the other hand, had a global impact.

Following the dissemination of the Napoleonic Code, other law codes were, in fact, adopted throughout much of Europe. After the breakup of the Holy Roman Empire of the German Nation as a result of the Napoleonic Wars, a similar codification effort in 1811 created the Austrian General Civil Code (*Allgemeines bürgerliches Gesetzbuch*). In the early 19th century, following the establishment of these prominent law codes, there was a codification movement that spread across Europe and beyond, including the Americas. Advocates for codification at the time argued that laws codified by legislators would better reflect the will of the people than would case-by-case decisions by judges. Codification efforts continued in Europe as well, such as with the passage of the Spanish Civil Code (*Código Civil*) of 1889, the German Civil Code (*Bürgerliches Gesetzbuch*) of 1900, the Swiss Civil Code (*Zivilgesetzbuch*) in 1907, and so forth up to the Dutch Civil Code (*Burgerlijke Wetboek*) finally completed in 1992, and the work continuing within the European Union.

Codes of law were established elsewhere as well, many heavily influenced by the Napoleonic and German codes in particular. For example, in 1898, during the Meiji Restoration, Japan adopted a civil code (*Minpo*), influenced by that of the French. The Republic of China adopted a civil code after the Xinhai Revolution of 1911, one that was heavily influenced by that of the Germans. The Code of Canon Law (*Codex Iuris Canonici*) is the codification of the canonical legislation of the Roman Catholic Church; the first edition, known as the Pio-Benedictine, was released in 1917, and the Reformed edition in 1983.

American Legal System

The American colonists justified their rebellion against the British Crown by the assertion that the government of King George III (1738–1820) grossly violated their fundamental liberties, such as those guaranteed by the Magna Carta, which King John (1167–1216) had been forced by his barons to sign on June 15, 1215. The American colonists carried with them the principles of British

common law. This was modified over time by the enactment of statutory changes. Criminal law, for example, consists of legislatively prescribed lists of crimes, which are clearly defined. Although the American Revolution severed the political unity between England and the United States, it did not break the continuity of legal tradition.

U.S. law consists of many levels of codified and uncoded varieties of law. In addition to the federal level, law codes can be adopted by state and municipal governments. When a state codifies its laws, the statutes contained in the code supersede previous laws. In 1848, New York passed the Field Code, devised largely by David Dudley Field, to serve as a systematic Code of Civil Procedure. Its adoption stimulated legal reforms and code enactment in other U.S. states. In fact, during the middle of the 19th century, there was an influential codification movement in the United States. For example, the Georgia Code was adopted in 1860. Individual municipalities can adopt locally enforceable codes. These include not only building codes, electrical codes, and fire codes but other areas over which local municipalities have jurisdiction.

The United States Code (U.S.C.) is a codification, by subject matter, of the general and permanent federal laws of the United States. The first edition of the U.S.C. was passed by Congress in 1926. The U.S.C. is prepared and published by the Office of the Law Revision Council of the U.S. House of Representatives. The office engages in positive law codification, a process intended to remove contradictions, ambiguities, and other imperfections from the law. Public laws are incorporated into the U.S.C. every six years. The U.S.C. is divided into 50 different titles based on the respective topics covered. Most federal criminal statutes, for example, are contained in Title 18. Procedural rules in the United States have been codified as well; these include the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedures, and the Federal Rules of Evidence. While the U.S.C. is a codification of laws created by Congress, regulations emanating from the executive branch are published in the *Federal Register* and codified in the Code of Federal Regulations (C.F.R.).

The American Law Institute is one of the leading organizations involved in the codification of U.S. laws. The National Conference of Commissioners on Uniform State Laws in collaboration

with the American Law Institute developed and monitors the Uniform Commercial Code (U.C.C.). The U.C.C. is a comprehensive code that covers most areas of U.S. commercial law. Other model statutory projects of the American Law Institute have included the Model Code of Evidence, the Model Code of Pre-Arrest Procedure, the Model Land Development Code, and the Model Penal Code.

As the law is dynamic, not static, codification of laws must evolve over time. The legislative process tends to amend statutes; however, updates often conflict with earlier versions, and as conditions change, the language of codes may become archaic. The process of recodification addresses the need to rewrite and reformat the law.

Conclusion

Codification of laws serves many useful purposes. A major benefit of codification is that laws can be collated and organized. A code of laws discloses the penalties that a society will inflict upon specific transgressions. More generally, a law code clearly announces the standards of public morality expected to be held by members of that social grouping. A code of laws also attempts to identify punishments commensurate with the severity of the respective offense.

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See Also: American Law Institute; American Revolution and Criminal Justice; Common Law Origins of Criminal Law; Constitution of the United States of America.

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Cohens v. Virginia

Cohens v. Virginia (1821) was a case that solidified the Supreme Court's power of judicial review. Washington, D.C., had a lottery that had been created by Congress. Virginia state law did not recognize the law that authorized the lottery. When Phillip and Mendes Cohen, who were brothers, were arrested, tried, and convicted in Virginia for selling lottery tickets, they appealed to the U.S. Supreme Court, arguing that national law was supreme and therefore their conviction was illegitimate. The Supreme Court heard the case, and the Virginia state attorneys, including one future U.S. Supreme Court justice, argued that states were sovereign and therefore state court decisions could not be reviewed by the national court. Specifically, they argued that the Eleventh Amendment to the Constitution prevented the Supreme Court from hearing appeals by citizens brought against their home state. Despite the claims of the state, the justices unanimously decided against Virginia.

At issue was the 25th section of the 1789 Judiciary Act, which allowed the Supreme Court to hear cases in which a state was challenging federal authority. The court's opinion, penned by Chief Justice John Marshall, declared that national law is supreme over state law, and when state law contradicts the Constitution, that law is void. Moreover, states are members of a nation and in some instances are sovereign, but in others they are not. Marshall reinforced the idea that it was necessary for the federal judiciary to ensure that state legislation and judicial decisions were within the bounds set by the national constitution. Additionally, according to Marshall, although the Supreme Court was provided the power of judicial review in the Constitution, the original intent of the framers, as evidenced in the *Federalist Papers*, was that the Supreme Court would have the power to decide the constitutionality of government actions.

Judicial review, first recognized in *Marbury v. Madison* (1803) and supported in *Martin v. Hunter's Lessee* (1816), remained controversial for years. In particular, some states did not want to become subservient to the national government, and therefore questioned the right and power of the Supreme Court to overturn laws and judicial decisions of the states. *Cohens* is but one case stemming from Virginia in which the state claimed equality or supremacy over federal law. In addition to its impact regarding the Supreme Court's judicial review power over the states, the case is noteworthy because it continued to recognize the states' right to have a major role in defining criminal law. Although the Supreme Court did reserve the right to review the Virginia decision, Marshall's opinion clearly notes that although Congress allowed the District of Columbia to have a lottery, Virginia had banned such practice. Because the Cohens were selling District of Columbia lottery tickets in Virginia in violation of state law, Virginia had jurisdiction to prosecute the interlopers.

Although John Marshall's opinion in *Marbury v. Madison* is more famous, his opinion in *Cohens* is one of his most highly regarded. However, several political opponents thought that Marshall ignored his own constitutional jurisprudence from prior decisions, most notably *McCulloch v. Maryland*. Additionally, some critics argue that Marshall purposefully misread the applicable Virginia statute, so that he and his Court could make a decision that was broader than the facts would suggest. *Cohens* served as the capstone to the Marshall effort to provide the Supreme Court with judicial review over the branches of the national government including the actions and judicial decisions of state governments. This allowed, and continued to allow, the Supreme Court the power of oversight of state laws, including criminal laws and defendant rights. The Supreme Court continues to hear and decide cases that profoundly impact defining characteristics of criminal law at the state and local levels.

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See Also: *Marbury v. Madison*; Marshall, John; *Martin v. Hunter's Lessee*.

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Coker v. Georgia

This landmark Supreme Court decision found the irrevocable imposition of the death penalty for the rape of an adult woman to be a violation of the Eighth Amendment, given that rape is a non-homicidal crime. The decision stems from the events of September 2, 1974, when convicted felon Ehrlich Anthony Coker escaped from Ware Correctional Institution outside Waycross, Georgia, where he was serving several sentences for aggravated assault, rape, kidnapping, and murder. Later that evening, at roughly 11 p.m., Coker entered the residence of Allen and Elnita Carver through an unlocked kitchen door. Armed with a board, Coker managed to tie up Mr. Carver in the nearby bathroom, after which he located a knife in the kitchen and threatened Mrs. Carver with the blade; he then raped her. Next, Coker stole money from Mr. Carver, gathered the keys to the Carvers' family car, and kidnapped Mrs. Carver as he fled. Able to break free, Mr. Carver contacted the police, and Coker was subsequently arrested. Mrs. Carver was not killed during the perpetration of these crimes.

Coker was charged with escape, armed robbery, motor vehicle theft, kidnapping, and rape. After hearing Coker's general plea of insanity, the jury found him guilty and a sentence of death by

electrocution was decided. At this time, rape of an adult woman was still a capital offense under Georgia statute as long as one or more of the following aggravating factors were found to be present: (1) the rapist had a prior record of conviction for a capital felony, (2) the rape was committed during the commission of another capital felony, or aggravated battery, or (3) the rape was outrageously or wantonly vile, horrible, or inhumane in that it involved the torture, depravity of mind, or aggravated battery to the victim. In *Coker*, the jury found the first two of these aggravators to be present during Mrs. Carver's rape. Coker had prior convictions for three capital felonies and he committed capital armed robbery in concurrence with the rape. Upon appeal, Coker's conviction and sentence was affirmed by the Georgia Supreme Court. However, the Supreme Court of the United States granted a writ of certiorari to assess whether the application of the death penalty for the rape of an adult woman violated the Eighth Amendment to the U.S. Constitution.

The Eighth Amendment holds that excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Thus, the cruel and unusual clause serves to prevent the abuse of judicial and legislative discretion in regard to sentencing punishments that may be either overly disproportionate or excessive in relation to the harm caused by the crime committed. The court applied a two-step test, where the first step sought to ascertain whether the goals of the punishment were met or if the punishment served to inflict needless pain and suffering; and the second step inquired as to whether the penalty was grossly disproportionate to the severity of the crime.

From the court's analysis, the majority opinion concluded that after *Furman v. Georgia*, only North Carolina, Louisiana, and Georgia kept rape as a capital offense. However, *Woodson v. North Carolina* and *Roberts v. Louisiana* invalidated the mandatory sentence of death for rape in those two states. Also, in no time in the past 50 years had the majority of states imposed the death penalty for the crime of rape. As a result of the proportionality test applied to *Coker*, the court found the application of the death penalty to be excessive and disproportionate for the crime of raping an adult woman. Finding rape

to be the most reprehensible and heinous crime second to murder, the Supreme Court still ruled that it was unconstitutional to impose the death penalty for the crime of rape of an adult woman, where the rape victim was not also murdered. The court decided that while rape was deserving of serious punishment, it did not compare with murder. In the court's opinion, life of the rape victim is not beyond repair, whereas life is over for the murder victim.

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See Also: Capital Punishment; Cruel and Unusual Punishment; *Furman v. Georgia*; Rape, History of; Rape, Sociology of.

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Colonial Charters and Grants

The American colonies were brought into legal existence by means of colonial charters and grants bestowed by the British Crown. These documents granted proprietors and settlement companies the exclusive and broad authority to govern territories and punish crimes in accordance with prescribed royal allowances. They laid the foundations for colonial and state constitutions and greatly influenced the evolution of individual rights, criminal law, and representative democracy in America.

Early Charters

The first English charter granted in consideration of present-day America was "The Letters Patents of King Henry the Seventh Granted Unto Iohn Cabot and His Three Sonnes, Lewis, Sebastian and

Sancius for the Discoverie of New and Unknown Lands.” The charter, issued on March 5, 1496, granted John Cabot the right to sail under the English flag as a vassal of the Crown. Cabot was entitled to occupy and govern any discovered lands on behalf of the Crown—retaining exclusive rights, after a 20 percent contribution to the Crown, of all commercial profits. This general charter was preceded less than a decade earlier by the “Privileges and Prerogatives Granted by Their Catholic Majesties to Christopher Columbus” in 1492, by which Columbus was declared governor of any territory he discovered in North America and vested with authority to decide criminal cases and to punish offenders. Various contemporary charters and land grants were issued in consideration of present-day Canada, particularly the Newfoundland fisheries, with analogous investitures of governing rights.

If history is a guide to interpreting the intentions of these earliest royal charters and grants,

the recipients were expected to govern discovered territories in a manner consistent with their maritime command of the fleet delivering them to their destination. As the captain of a ship at sea was vested with authority to govern his vessel in accordance with strict rules of discipline, so were colony builders granted sufficient authority to govern their subjects and territories. These early documents reveal prototypical features common to nearly all future colonial charters and grants. Their primary purpose was to encourage often perilous but potentially lucrative expeditions to distant lands by providing assistance to explorers and ensuring personal rewards for successful commercial discoveries. While the Crown retained full sovereignty and ultimate authority over the expedition and colony, charter and grant recipients were conferred broad discretion to implement laws and mete out punishments within governed territories.

Settling North America

The earliest American colonial charters were granted to trading companies—the latter-day version of explorers such as Columbus and Cabot. These companies were political corporations, and their charters were letters vesting governing authority over colonial settlements. The charters served as corporate constitutions vesting officers with discretion to determine colonial administration and legislation. This discretion was limited only by the mandate that colonial law submit to the laws of England.

James I’s initial attempt to settle North America’s eastern seaboard in 1606 relied upon a charter granted to the Virginia Company, which consisted of a pair of English joint stock companies known as the London and Plymouth Companies. The Virginia charter permitted the companies to establish settlements in North America and to govern colonial administration through corporate councils. Notably, the Virginia charter confirmed the enduring guarantee that subjects of the Crown born or living in the colonies possessed all of the rights, liberties, and immunities afforded to those remaining in England.

The Plymouth Company’s settlement was abandoned after a single year, but the London Company enjoyed greater success in present-day Virginia and expanded its charter upon the former’s



A 1762 painting of John Cabot, recipient of the first English charter for America. Charter holders had broad discretion to implement laws and inflict punishments in new territories.

dissolution. This second Virginia charter reiterated the power of the council residing in London to pass laws and expressly made available English courts of law for legal matters arising in the colonies. The London Company's officers in Virginia were granted explicit governing authority to conduct criminal procedures in order to punish and correct misbehavior. The charter anticipated the exercise of martial law in cases of rebellion and endorsed the administering of religious oaths in order to prevent the immigration of Catholics.

Upon the London Company's bankruptcy in 1624, the Virginia Company's charter was revoked, and Virginia became a royal colony. As such, the colony continued to enjoy a popularly elected assembly, but the prevailing governor and council were royally appointed and administered justice in accordance with royal prerogative. The Old Dominion would remain a royal colony until American independence.

In 1620, the abandoned Plymouth Company was resurrected as the Plymouth Council for New England with corresponding land grants and governing authorities commensurate with those provided by the Virginia charter. A far more successful venture, the council issued its own land grant for a plantation in Massachusetts Bay to the New England Company in 1628. However, conflicting territorial claims among competing companies caused the New England Company to seek a charter in place of its land grant. Charles I granted the charter in 1629 and thereby established the legal authority of the New England Company to govern Massachusetts Bay. In accordance with the Cambridge Agreement later that year, the Massachusetts Bay Colony became the first English charter colony to boast a board of governors that was not situated in England, permitting extensive local autonomy in the administration of criminal law.

The Charter of Massachusetts Bay mirrored the earlier Virginia charters, vesting power in the legislative General Court and elected officers to enact laws, punish offenders, and take all necessary actions to ensure peace and security. By 1634, the General Court was comprised of two deputies elected by each town, and the corporate structure of the trading company had largely been transformed into a system of representative democracy. In 1641, Massachusetts Bay adopted the first colonial legal code, the Massachusetts

Bodie of Liberties, which declared the civil and religious foundations of rights, privileges, crimes, and punishments.

The Decline of the Charter System

Charles II issued the final corporate charters in America to the established colonies of Connecticut and Rhode Island in 1662 and 1663, respectively. Both of these documents sustained the traditions of earlier charters by granting extensive authority for self-government, including the administration of criminal law and penal sanctions. The charter of Rhode Island instituted unprecedented rights of religious liberty.

Aside from corporate charters, colonial America was also governed by proprietary charters that vested governing authority in lords proprietors. Proprietary charters resembled royal colonies except that a proprietor was substituted for the king. Proprietors arranged the form of government, appointed governing officers, and enacted legislation subject to the advice and consent of voting members of the colony. While colonists were generally afforded greater civil and religious liberty within these colonies, the authority to dispense criminal justice was largely consolidated in the proprietor. Pennsylvania, Delaware, New Jersey, and Maryland were founded as proprietary colonies.

However, by the late 17th century, colonial charters were regarded by the Crown as obstacles to royal governance of the colonies. In 1684, as a result of perceived colonial insubordination with regard to the Navigation Acts, Charles II voided the charter of Massachusetts Bay and began the process of converting the New England colonies into royal colonies under the Dominion of New England. Massachusetts Bay, the Plymouth Colony, and the provinces of New Hampshire and Maine were soon administratively unified with Connecticut, New York, and New Jersey.

The Dominion was dissolved with James II's overthrow in the Glorious Revolution of 1689. Connecticut and Rhode Island reinstated their corporate charters. King William III issued a charter unifying Massachusetts Bay and Plymouth as the Province of Massachusetts Bay. Though administered by a royally appointed governor, Massachusetts Bay continued to functionally operate under the forms of its vacated charter.

Nevertheless, royal provinces had replaced most charters by the time of the American Revolution. Provincial colonies governed by proxy agents of the Crown were authorized to assemble and dissolve provincial legislatures, veto acts thereof, and enact all necessary criminal laws consistent with the laws of England. New Hampshire, New York, North Carolina, South Carolina, Georgia, and Virginia were provincial colonies. Only Maryland, Delaware, and Pennsylvania retained proprietary charters, while Connecticut and Rhode Island retained corporation charters, and Massachusetts persisted as a hybrid royal colony under charter administration.

Upon independence, colonial charters were converted or consulted as the basis for state constitutions. The balance of individual rights and criminal sanctions that evolved under charter governance were codified in state and federal government.

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See Also: 1600 to 1776 Primary Documents; *Book of the General Lawes & Libertyes*; Colonial Courts; Constitution of the United States of America; History of Crime and Punishment in America: Colonial.

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Colonial Courts

In colonial British America, local county courts functioned as the primary unit of adjudication. The English colonists who came to America failed to transport the English system of common law, prerogative, and ecclesiastical courts to the

colonies intact, and no exact counterparts to the English assize, prerogative, and chancery courts existed in 17th-century North America. Instead, local county courts (outwardly similar to English Quarter Sessions) performed a number of tasks that had previously been assigned to different branches of the English court system, and at the colony level, a higher judicial body, usually composed of the colony's leading male residents, functioned as a trial court for certain cases (usually involving felonious acts or property exceeding a certain minimum valuation) and as a supreme appellate court with the power to overturn lower rulings. As time passed, in the later 17th and 18th centuries, this simple system became more elaborate and more contentious as special-purpose courts (often staffed by English appointees), including Vice-Admiralty Courts, Courts of Oyer and Terminer, and Chancery Courts, were established in some colonies.

Throughout the colonial period, individual county courts served as the primary vehicle for distributing justice to the king's subjects in America. In each county, a number of justices—usually 12—held office, and monthly court sessions took place when a quorum of the sitting justices was present. The method of selection for justices varied from colony to colony, depending in part on whether the colony was a proprietary, corporate, or royal one. In New England, where the tradition of annual elections was strong, judges usually served for short periods of time. Farther south, members of county courts usually received their appointment from the colony's governor, although in royal colonies, the appointment had to be confirmed by the sitting monarch. The county court system (in which justices were originally called commissioners) was not implemented in Virginia until 1634 but was present throughout the southern colonies from that date until the end of the colonial period.

Regional Variations

Regional differences existed in the quality of individual appointed to the local bench. In the New England colonies, for instance, early justices tended to be members of the local Puritan congregations who sometimes possessed a formal university education and legal training. In the first generations, these included men who had

attended university in England but, as the 17th century progressed, increasingly included locally educated New Englanders as well. These were men of property, local standing, and religiously orthodox beliefs; accordingly, the justice they dispensed as well as the local laws they interpreted often bore witness to orthodox Puritan theology.

In the southern colonies, the character of local justice differed significantly. The nature of Chesapeake settlement and the high mortality rates throughout the region meant that there was a smaller pool of potential justices and rapid turnover in the composition of the courts, especially during the first half of the 17th century. Some justices were men of good social background and education in England; many, however, were self-made men who had sometimes come as indentured servants or menial laborers but who rose in wealth and status over time. Contemporaries sometimes complained that these men were illiterate, unorthodox, unscrupulous, rude, and self-serving. Over time, as great families emerged at the helm of Chesapeake society, the composition of the courts changed; these younger justices had often received English educations, and the later 17th century witnessed an anglicization of the American colonial courts as lawyers better trained in English legal theory and method came to proliferate. Still, even in the late colonial period, the character of American frontier justice remained rough, with recent Scotch-Irish and German immigrants finding their way onto the bench along with migrants from the north and east who had moved south and west in search of improved fortunes.

Court Procedures

During the 17th century, a typical county court docket might include the recording of property deeds, the probate of local estates, and the empanelling of juries to hear legal suits. Courts simultaneously heard civil and criminal cases. Justices might negotiate boundary disputes and settle conflicting inheritance claims at the same time as they disciplined unruly servants and slaves, determined who would care for illegitimate children, punished gossips whose tales damaged personal reputations, punished cases of petty theft and criminal trespass, and ferreted out accused arsonists, rapists, and murderers from the local

population. Plaintiff, defendant, and witnesses at one suit often served together later in the same session as jurors at another. Throughout colonial America, “court day” became an important occasion, one when the entire community—ranging from the wealthiest local grandees to the most humble servants—assembled to transact both legal business and personal affairs, a day filled with gravity as the court handed down its legal rulings and often afterwards with jollity as participants fellowshipped in local taverns and celebrated the outcome of their suits.

Much evidence suggests that the court rulings, fair or unfair, upheld prevailing local concepts of law and order. In New England, these most frequently reinforced local Puritan orthodoxy. Old Testament Mosaic law influenced both the way legislators wrote laws and the way jurors and judges interpreted them. In the southern colonies, court decisions and the punishments assigned guilty parties tended to uphold the hegemony of the planter elite by supporting their claims to real and chattel property and extending their dominion over servants and slaves.

Throughout colonial America, the court system also upheld the gendered norms of 17th- and 18th-century America. “Unruly” women—those who violated the religious norms of the northern colonies or more genteel ideals about elite women in the south—found themselves subject to a number of punishments intended to chasten them into proper behavior, including punishments for allegedly lewd and unchaste actions, for bearing children out of wedlock, for spreading malicious gossip, for promoting witchcraft, and for encouraging men to criminal activity. While women might testify in colonial legal disputes, they could not as a rule bring court suits on their own and could own property only under specific circumstances, usually as unmarried spinsters or, later in life, as widows.

Punishments

As in England, punishments for crimes—ranging from small fines and short stays in “gaol” to public flogging or execution—acted as deterrents intended to curb criminal activity and to promote law and order. Like their English counterparts, albeit on a lesser scale, American justices also used the majesty of their position and the mercy

allowed them in dispensing justice to commute sentences or to impose more lenient punishments than legally prescribed when strict adherence to the letter of the law ran contrary to prevailing local norms. Because many colonial legal statutes had been created with particular local issues in mind, courts also exercised considerable leeway in the application of these laws, and even when English laws appeared in simplified form in American legal codes, the realities of colonial life often led to rulings that could seem at odds with prevailing legal interpretations in England. One example is the case of Anne Orthwood, an English indentured servant who became pregnant while working on a plantation on Virginia's Eastern Shore; in interpreting legal liability in a case in which a pregnant Orthwood had been sold to an unsuspecting planter, the court reversed the prevailing English tradition of applying the principle of *caveat emptor* ("let the buyer beware") to sales in favor of *caveat venditor* ("let the seller beware"), a concept that better functioned to bolster the local social order and to support an unstable economy in a tumultuous and rapidly evolving society.

In the northern colonies, where population density was higher, where town meetings and religious congregations rivaled the county courts for local power, and where residents often lived in closer proximity to the true seat of provincial authority in the colony's capital city, the authority of the local courts was not as great as in the southern colonies, where the local county courts dominated local governance throughout the 17th and early 18th centuries. New England justices tended to serve shorter terms (often rotating off the bench annually), which limited their ability to dominate local society when compared with southern justices, who often held what amounted to life appointments. But even in the southern colonies, where a few powerful local families often tended to dominate the bench across several generations, the possibility of appeal to a higher authority existed when litigants questioned the validity of a local ruling.

Appeals

In each of the colonies, certain legal rulings could be appealed beyond the county officials who meted out local justice. In the southern colonies,

the Governor's Council usually functioned as a supreme court to hear matters referred to it for appeal. The Governor's Council, a group of 12 of the colony's preeminent men, usually appointed for life or good behavior, advised the governor on policy matters and served as the upper chamber of the colony's bicameral legislature. Sitting in another capacity, these men also interpreted the laws they had helped create. Given their positions at the helm of the colonial ruling elite, these men issued rulings that often upheld the status quo, although they did occasionally reverse local rulings in particularly controversial decisions.

A similar system existed in the New England colonies. For instance, the Massachusetts Bay Charter of 1629 established a General Court, which would meet four times annually to conduct company business and issue local laws and ordinances. Elected annually, the General Court over time came to function as a legislature (bicameral after 1644), an administrative body, and a supreme court. As compared with the southern colonies, the Massachusetts Court of Assistants (in which the Governor's Council served as judges) differed chiefly in terms of the quality of men chosen for the office (with a preference for educated men of solid Puritan outlook), its frequently changing composition, and a tendency to interpret laws in a manner consistent with local Puritan theology. Following the Glorious Revolution, with the grant of a new charter to Massachusetts in 1691, the Puritan stronghold on the colony declined (and the court was also formally separated from the council), but the religious outlook of many of its members shaped the Court of Assistants into the Revolutionary era.

In the Dutch New Netherland colony (which after 1655 included struggling New Sweden), a different juridical system prevailed. Based on Roman-Dutch law, this system differed significantly from English common law, with one important feature being that it allowed women a greater economic and legal role in society. Many Dutch women worked independently, trading and operating businesses on their own, bringing both civil and criminal cases in their own right, and occasionally serving as legal arbitrators in cases involving other women. Because New Netherland was organized as a trading colony, resident officials were always responsible to higher



The Capitol building in Williamsburg, Virginia, shown after modern reconstruction. The first floor of the west building was used by the colonial government as a General Court in the early 1700s. During the 17th century, a typical county court might handle recording property deeds, probate of local estates, and empanelling of juries to hear legal suits.

authorities residing in the homeland. Within New Netherland itself, however, the court of New Netherland—which included the director general and council—had supreme authority. Over time, local courts (similar to the county courts in English colonies) were established, such as the municipal court created in New Amsterdam (New York City) in 1653. The New Amsterdam court, for example, consisted of the *schout* (a combination of prosecutor and sheriff), two *burgomasters* (co-mayors), and five *schepens* (aldermen), who (apart from the *schout*) fulfilled both legislative and judicial functions.

The English capture of the colony in 1664 brought gradual change, with Dutch law initially left in effect. The duke's laws, issued by future King James II in 1665, provided the first step in the transformation to English common law, which came to fruition after the second and final English capture of the colony in 1674. Although Dutch

cultural influence remained significant throughout the Middle Colonies for the rest of the colonial period, attempts to anglicize the colony's legal operations were successful, largely bringing New York in line with other British colonies by the end of the 17th century.

Special Purpose Courts

As British America's colonial population increased and local affairs grew more complex, government officials created a number of special purpose courts throughout the colonies. The enforcement of the Navigation Acts after the middle of the 17th century created many problems. In 1675, Charles II had appointed the Lords of Trade, a subcommittee of the Privy Council, to enforce the Navigation Acts, and they sent Edward Randolph (who later became the first Surveyor General of Customs for all of North America) across the Atlantic as their special agent to ensure

colonial compliance. Colonial assemblies interpreted Randolph's mandate as an invasion of their own administrative and judicial powers and objected to Randolph's presence.

During its brief existence in the 1680s, the Dominion of New England streamlined justice in the northern colonies, taking the power to empanel juries from local justices and giving it to sheriffs appointed by the Dominion's governor, Sir Edmund Andros, and establishing a special Admiralty Court with no jury to handle trade offenses.

In 1696, the English government made two important changes impacting colonial legal and judicial matters. William III created the Board of Trade as an intermediate body under the supervision of the Privy Council to oversee colonial administration, and in a controversial move, Parliament mandated the governors of Massachusetts, New York, Pennsylvania, Maryland, and Virginia to establish Vice-Admiralty Courts similar to the one established under the Dominion of New England to hear cases involving trade laws. New York established a Court of Chancery to hear equity matters in 1701, but most other colonies waited until after the American Revolution to establish such bodies. Still, throughout the 18th century, colonial elites continued to regard attempts to divest them of their judicial authority with alarm.

Under Governor Alexander Spotswood in the 1710s, Virginia's Governor's Council bitterly resisted Spotswood's effort to create a special Court of Oyer and Terminer that they believed violated their rights as the colony's highest court. Later, during the imperial crisis of the 1760s, it was likewise the threat to colonial "rights" represented by the order to establish Vice-Admiralty Courts that provoked alarm throughout British America following the Townshend Acts of 1767.

While there were important 17th-century variations in the Middle Colonies, where the first governments were proprietary ones and where the colonists were more socially and culturally diverse than elsewhere, throughout colonial British America, the courts imposed order in a rapidly changing, often unstable environment and profoundly shaped the character of everyday life. As society grew more complex in the later colonial period, so, too, did the court system. Efforts to anglicize the law brought greater uniformity in the 18th century, but by then, local traditions were

so entrenched that eventually the role of the local court system itself would become part of the disputed terrain of the larger revolutionary conflict.

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See Also: 1600 to 1776 Primary Documents; Colonial Charters and Grants; Common Law Origins of Criminal Law; Court of Common Pleas; Court of Oyer and Terminer; Court of Quarter Sessions.

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Colorado

The development of Colorado's early legal system was intimately tied to the land and its natural resources and to the settlers who moved into the state to pursue these resources. In the late 1850s, gold was discovered along the front range of and within the Rocky Mountains, leading to the creation of the provisional Jefferson Territory to govern the growing population. In December 1859, following a lynch mob's hanging of John Stoeffel for the murder of his brother-in-law over a bag of gold, the newly chartered city of Denver

appointed its first marshal, William E. Sisty. That year, the Jefferson Rangers were created to protect gold shipments and otherwise maintain law and order throughout the Jefferson Territory. A series of local miners' and people's courts were established within this territory as early efforts at institutionalized justice.

In 1861, Congress officially established the Colorado Territory, with William Gilpin as the first territorial governor. The Jefferson Rangers became the Colorado Rangers (also called the Colorado Mounted Rangers); this unit still exists as an all-volunteer auxiliary unit authorized by statute to assist law enforcement and emergency and rescue services throughout the state. Today, there are 64 county police departments throughout the state of Colorado, as well as the Colorado State Patrol.

Early Conflicts

As new settlers poured into Colorado, conflicts between these settlers and Native Americans increased, and the U.S. Army was used to maintain order. On November 29, 1864, 650 Colorado troops attacked a friendly settlement of Cheyenne and Arapahoe Indians along the banks of Sand Creek. These troops were led by John M. Chivington, known as the "Fighting Parson." Approximately 150 Indians, mostly women, children, and the elderly, were killed; a subsequent congressional investigation found that they had been murdered in cold blood by the troops commanded by Chivington. The site of this atrocity, known as the Sand Creek Massacre, was dedicated as a national historic monument in 2007.

Colorado is also the site of one of the most deadly confrontations between striking workers and the state militia. Since the beginning of the 20th century, workers in mines and mills in Colorado began organizing and striking for better wages and working conditions. In 1913, the United Mine Workers organized a lengthy strike against Colorado coal companies. On April 20, 1914, the Colorado National Guard went to clear out a tent city occupied by striking miners and their families. The conflict escalated, and state militia killed a number of men, women, and children, some of them burned to death in their tents. The site of this Ludlow Massacre is now owned by the United Mine Workers and has been designated a national historic landmark.



A striking miner holding a white flag of truce approaches the body of a victim of the April 29, 1914, Ludlow Massacre as smoke rises from fires in the background.

Criminal Justice System

In 1868, the first prison was established by the Territorial Legislature in Canon City. The Colorado Territorial Penitentiary admitted its first prisoner in 1871, and the prison facility has been active since that time.

In 1876, Colorado became the 38th state to join the Union. In 1935, a separate Women's Prison was built in Canon City; this building now houses the Museum of Colorado Prisons. In 1903, one of the first juvenile courts in the United States opened in Denver; Ben B. Lindsey served as this court's first judge. This court was based on a similar model created in Chicago and focused on rehabilitation, rather than punishment of juvenile offenders. Judge Lindsey was an early advocate for juvenile justice; his legacy survives today, as the Colorado Department of Corrections operates a Youthful Offender System, diverting juvenile offenders from prison into rehabilitation programs. While

the Colorado legislature eliminated the practice of sentencing juveniles convicted of murder to life without parole in 2005, this law was not retroactive. As a result, Colorado still has dozens of juvenile offenders convicted of murder who are serving life sentences without parole.

Until 1933, hanging was the method used for executions in Colorado. Colorado then became one of the first states to adopt the gas chamber, which replaced hangings until 1967. Lethal injection is the current method of execution; Gary Lee Davis (1997) was the last person executed in Colorado. There are currently three prisoners on death row in Colorado, which is located in the Colorado State Penitentiary in Canon City.

During World War II, Japanese Americans from California were interned at the Amache relocation camp near the town of Granada on the eastern plains of Colorado. This camp was established pursuant to Executive Order 9066, signed by President Franklin Roosevelt on February 18, 1942, two months after the bombing of Pearl Harbor. This order required that all west coast Japanese Americans were to be immediately relocated to inland camps to prevent their participation in espionage activities against the United States. Amache was open from August 1942 through January 1946 and housed 7,597 Japanese Americans.

The 1970s and early 1980s saw large population growth in the state, thanks to an increase in the mining and oil shale industries. During the 1980s and 1990s, a technology boom similarly resulted in an influx of new residents. Along with these new residents, the prison population in Colorado soared; in the past 15 years, the number of state inmates and parolees has tripled. As of June 30, 2011, the Colorado Department of Corrections had 22,610 adult inmates, with an additional 10,696 offenders on parole. In recent years, the Colorado Department of Corrections has focused on reducing recidivism rates through the adoption of evidence-based practices such as more effective offender diagnostic tools, motivational interviewing, and reentry programs that assist offenders in escaping the revolving door of prison.

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See Also: 1941 to 1960 Primary Documents; 1981 to 2000 Primary Documents; Executions; Japanese Americans; Juvenile Corrections, History of; Native Americans; Penitentiaries; Strikes.

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Common Law Origins of Criminal Law

There are four major legal traditions in the modern world: the common law, the civil law, the socialist law, and the religious law legal traditions. Although many other different legal traditions have existed throughout history, these four traditions are representative of the major legal traditions that have developed over the course of history.

It must be realized that each of these four legal traditions consists of certain fundamental principles unique to that tradition, but they are not necessarily mutually exclusive. Some aspects of each tradition might be found in the other traditions. Indeed, many legal systems in the world may incorporate some aspects of each these traditions. Further, classification of a legal system as falling within one of the legal traditions is a function of determining which tradition not only predominates in that legal system but how that legal system developed over time.

Religious Law Legal Tradition

The religious law legal tradition is not limited to one religion. A number of major religions are recognized in the world today, including Buddhism, Hinduism, Judaism, Christianity, and

Islam. Throughout history, many other religions have been practiced. Each of the major religions that have been practiced throughout history have developed some form of laws and methods to enforce those laws. These two aspects of law are referred to as substantive law and procedural law. Substantive law is law that provides rights or mandates a duty. Thus, substantive criminal law usually defines what acts are criminal. In contrast, procedural law is law that specifies the methods used to enforce the law and adjudicate violations of it. In criminal law, the procedural law would state what steps are required to enforce the criminal law and what steps are required to adjudicate a violation of the substantive criminal law.

In the religious law legal tradition, the source of the substantive criminal law is usually the divine law. Usually, this divine law is codified in holy texts. For example, in Christianity, this would include the Ten Commandments; in Islam, it would be the Koran. Procedurally, as a general matter, under a religious law legal tradition, the courts would be subject to the religious leaders. The courts would not be independent government agencies, and changes to the religious law would come through religious leaders, who would interpret the meaning of that law.

Socialist Law Legal Tradition

For the purposes of this article, the socialist law legal tradition that is addressed refers to the Communist view of socialism. The socialist law legal tradition is a relatively new phenomenon, having its basic roots in Marxism and the Russian Revolution of 1917. Karl Marx was a political philosopher who lived during the 19th century and developed a theory of politics and economics that focused on the economic resources of a society and the division of these resources between the social classes. Marx's primary works were *Das Kapital* and the *Communist Manifesto*. Marx was an advocate of the basic principle that a society's resources should be shared by all of the populace and not concentrated in the hands of a few wealthy individuals. Marx was a vehement opponent of capitalism.

Under the socialist law legal tradition, the law is subordinate to the policies and principles of socialism. Even though a person may be factually innocent of a crime, if a guilty verdict would help advance the socialism ideals of the nation and an

acquittal would damage the state, then a guilty verdict would likely be the result of any trial. The substantive law in such a tradition would likely include all of the criminal laws of common law and civil law nations, including murder, rape, and robbery, but it would also include laws that focus on advancing socialist principles. While the procedural law of a socialist law legal tradition would include some of the same aspects of a common or civil law tradition, such as a court trial, its functions would not be for the searching of truth and protection of the innocent but for the advancement of socialist ideals. Thus, the courts are not independent government agencies.

One must be careful to distinguish between the various uses of the term *socialism*. When the term *socialist* is used, it is usually used in the context of the welfare of the people, that is, for each person's welfare. In actual practice, there are three distinct uses of the term. For example, the Nazis, who were acknowledged fascists, actually used the terms *national* and *socialism* in the title of their political party, and in actual practice, it only meant that the individual person had no value and that the power of the state was paramount. The Communists, who are used as the primary example of a socialist government, used *socialism*, like the Nazis, as meaning that the individual had no value but, unlike the Nazis, believed that the overall good of all of the individuals was more important. Unfortunately, the Communists of the former Soviet Union, especially under Stalin, perverted much of Marx's philosophy, and the practical effect of the system was little different than Nazism. The third meaning of *socialism* is that demonstrated by the Scandinavian nations of Europe. In these nations, *socialism* refers to a government that provides extensive social services for the individual people, which include education, healthcare, and other social services. It is democratic in nature and is not totalitarian like fascism or communism.

Civil Law Legal Tradition

When the term *civil law* is commonly used in the United States of America, many people today accept it as meaning the law that is not criminal, that is, there is the criminal law and the civil law. In both cases, the law is generally found in codes or statutes. However, when the term is used with regard to a legal tradition, it refers to the historical

development of the law through the use of actual codes or statutes rather than from the common law or customs, which is explained in the succeeding section of this article.

The civil law legal tradition has its roots in ancient Rome. Legend has it that Rome was founded in the 8th century B.C.E. by two brothers, Romulus and Remus. However, archaeological evidence indicates it existed for thousands of years before that time. The Roman Republic was founded in 510 B.C.E. with the Roman Empire coming into being in 27 B.C.E. With the founding of the Roman Republic, there began a historical period of great cultural development. Around 450 B.C.E., the Twelve Tables of laws were enacted. From that time, Rome developed more complex legal codes and courts to adjudicate violations of the law. Finally, in 527 C.E. under the Roman emperor Justinian, the Corpus Juris Civilis was created, which was a codified set of laws. With the Corpus Juris Civilis, all prior law was abolished, but this does not mean that previously recognized principles of law were ignored. In fact, many of these previously recognized principles of law were incorporated into the Corpus Juris Civilis. Many nations subsequently followed the civil law legal tradition, following the Roman law or enacting their own codes of laws. In France, during the reign of Napoleon Bonaparte, in 1804, the Napoleonic Code was enacted, which provided a comprehensive set of laws for the French criminal justice system. In modern times, many nations still adhere to the civil law legal tradition.

Thus, under the civil law legal tradition, the law was defined in a specific written code. The primary difference between the civil law legal tradition and the common law legal tradition is that the law under the common law legal tradition developed through customs of that particular society, as opposed to specific written statutes. However, this does not mean that nations that follow the common law legal tradition do not have codes or statutes. What is different between the two systems is how each system makes decisions and adjudicates criminal charges.

Common Law Legal Tradition

The common law legal tradition developed from the influence of several separate preexisting legal

systems. These were customs, feudalism, and equity. Customs were those practices that were adopted by social groups, which eventually came to have the force of law. As the same customs were repeatedly enforced over time, they came to be accepted by that society as law. According to Sir William Blackstone, the famous English legal philosopher, such customs have existed since ancient times. The employment of these customs led to the use of precedents as controlling law in common law systems. Under feudalism, a monarch was owed fealty by subordinate lords, who in turn were owed fealty by their serfs. Disputes that arose between serfs were resolved by the local lord. Usually, these disputes were resolved by referring to the local customs in that fiefdom. Under equity, a separate system of courts developed. These



England was the primary source of the common law legal tradition. Today, important English criminal cases are tried at London's Central Criminal Court, or "Old Bailey," shown above.

courts were called courts of chancery (or equity) as opposed to courts of law. They flowed from the office of the chancellor of England. Courts of chancery could provide justice where courts of law would not. The chancellor could order parties to act or desist from acting to accomplish fairness, as opposed to granting relief according to law, especially where the law was unjust.

Thus, there was no code of equity that guided the chancellor in his decision but rather his sense of fairness and justice with reference to custom. Approximately a century after the Norman conquest of England in 1066, Henry II reformed the legal system such that the customs of the land would be fairly and consistently applied by the courts. These three legal systems, combined with Henry II's reforms, led to what is now known as the communal legal tradition.

England was the primary source of the common law legal tradition, which has been adopted by the Commonwealth of Nations—which includes Australia, Canada, and New Zealand—and the United States. The common law legal tradition was imported by the English colonists who eventually revolted and formed the United States of America.

In England and, thus, the common law legal tradition, there was no written legal criminal code. Most of the written laws concerned civil matters separate from the criminal law, although in its early years, there was no distinction between civil and criminal law in the common law legal tradition. However, over the centuries, the common law came to recognize a number of crimes: high treason, petty treason, sedition, murder, manslaughter, mayhem, arson, larceny, robbery, burglary, rape, assault, battery, riot, escape, breach of the peace, and blasphemy. Of course, there were many other crimes under the common law, but what is important to realize is that the crimes recognized under the common law are remarkably similar to the subsequent codifications of the criminal law in the United States of America and to the criminal codes found in civil law legal tradition nations.

Under the common law legal tradition, the same distinction between felonies and misdemeanors was present that is present in modern American criminal codes. However, in ancient England, during the development of the common law legal tradition, the punishments were much

harsher. For almost all felonies, the punishment could be death.

Common Law Versus Civil Law

Even though the United States of America is a common law legal tradition nation, every jurisdiction in the United States has, for the most part, abolished all of the common law crimes that were brought over from England. Today, every jurisdiction has codified the criminal law and has abolished the common law crimes previously recognized. This does not mean that the United States is no longer a nation that follows the common law legal tradition.

The only exception in the United States to the common law legal tradition is the state of Louisiana. Because Louisiana was founded and developed by the French, it initially adopted the Napoleonic Code. Even after the Louisiana Purchase, when the United States bought the area from the French, Louisiana, at the state level, retained its adherence to the civil law legal tradition and still does so today.

The primary facet of the common law legal tradition is the employment of custom or, as it is called in modern times, precedent to adjudicate violations of the criminal law. In a common law legal tradition court, such as those found in the United States, where criminal codes have been adopted, although a criminal statute is the basis for the criminal charges against a suspect, the law is applied by reference to legal precedents. Legal precedents are previous court decisions that have interpreted and applied that statute. The reason for the use of legal precedents is that any criminal statute cannot possibly foresee and address all possible ways the crime in question could be committed. Accordingly, courts are allowed to use precedents to aid in the adjudication of violations of the criminal law. In contrast, courts in a civil law legal tradition nation would, at least in theory, only refer to the statute when adjudicating violations of the criminal law. The use of previous judicial decisions as legally binding precedents is called the principle of *stare decisis*.

It is interesting to note that, in the United States, with the abolishment and supplantation of the common law by codes and statutes, it would appear that the United States has essentially adopted the civil law tradition in all but name.

This process of codification of the common law in the United States began in the early part of the 19th century. However, the fundamental difference between the current system of American law and a strictly civil code nation is that precedents are still considered controlling over the interpretation and application of codes and statutes. Thus, the essential aspect of the common law, *stare decisis*, is controlling and the United States is still a fundamentally common law nation.

Criminal Law Through History

Even though the criminal law as recognized and as employed in the United States originated with the common law legal tradition as developed in England, England was not the source of all criminal law. Since ancient times, nations have recognized and codified criminal acts. Indeed, under the Code of Hammurabi, which was written approximately 4,000 years ago, numerous crimes and punishments for them were established. This is also true for each of the other modern legal traditions of religious law, socialist law, and civil law. Each has had its own criminal laws, although some traditions will recognize crimes that other traditions might not.

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See Also: Blackstone, William; Bodie of Liberties; *Book of the General Lawes & Libertyes*; Codification of Laws; Courts; Felonies.

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Community Policing and Relations

The United States is a constitutional republic founded on the premise that the government is entrusted with power that comes from the people to be used for the benefit of society; therefore, the government needs to be accountable to the people for how it uses power. An important role of the government is to provide for the safety and security of the public through the enforcement of law. The police are the agency of government that carries out this function. The police need the support and assistance of the public in order to effectively enforce the law and ensure the safety of the people. To do this, they need to work as partners with the community and collaboratively identify and solve problems within the community. However, the police have not always had positive relations with the community, and relations with the minority community in particular have been strained.

Racism and racial profiling, brutality, and corruption have been recurring themes with American police throughout their history. The late 20th century has seen the police reach out to the community to improve community relations through community-oriented policing and similar ventures.

Early Police Relations

Modern paid policing in the United States began in the early 19th century. Social changes caused by the Industrial Revolution and urbanization brought increased crime and disorder to American cities. The system of constables and unpaid watchmen was ill-suited to deal with these issues, and following similar developments in England, U.S. cities began to develop formal police departments. Unlike England, however, American police departments developed in a decentralized fashion with each municipality creating its own police force. This has been called the political era of policing because these early police were closely allied with the politicians who appointed them and controlled their fate.

This epitomized the spoils system; patronage was the order of the day. This system served to foster racism, brutality, and corruption among

police officers, particularly as these served the political power holders in society.

While there were many problems with policing in this period, police officers were close to the public. The primary method of patrol was by foot, with some locations utilizing horses or bicycles. This, by its very nature, enabled the police to work closely with citizens. When citizens needed police assistance, they usually knew where to find the officer in the neighborhood. Police performed many social service functions, and a large part of their role was public service. Police stations operated as homeless shelters and soup kitchens, providing aid to those who needed it. Police officers also worked with disobedient children and assisted the public in a myriad of other ways.

While the police were directly involved with citizens, it did not mean that they were active partners in the community. To the contrary, police were still beholden to the politicians who appointed them and kept them in their positions. To this end, police officers followed the dictates of those in power, even if they opposed the interests of the community. Often, this included intimidating citizens during elections to achieve desired results. The corruption of the police went hand in hand with political corruption, and there was no distinction between the two.

Nineteenth- and Twentieth-Century Policing

In the late 19th and early 20th centuries, concerns over corruption and abuses by the police led to frequent calls for reform. Several commissions investigated the police, and there were numerous demands to eliminate corruption and brutality in policing. Chief among them were proposals to separate politics from policing as it was felt that this was a primary cause of corruption. Some argued that the police needed to be removed from the public as much as possible since contact with them also could lead to corruption. This period of police history has been termed the reform, or professional, era.

The mission of the police in this era was narrowed to crime fighting, and many of the social service functions that the police formerly performed were removed to distance the police from the public. Police officers were told to maintain a professional attitude and detachment from the public. Further widening the gap between the

police and the community were technological advancements that changed police service delivery methods. Patrol officers were placed into automobiles equipped with two-way radios and removed from foot patrols. Citizen use of telephones enabled them to call the police directly so they could be dispatched to calls for service. This spurred the development of random police patrol to deter crime, the police as crime fighters, and citizens as passive recipients of police services.

The changes of the reform/professional era did not lead to improvements in relations between the police and the community. The police were still perceived to be brutal and racist, and in minority communities, relations were outright hostile at times. Ironically, the changes that were meant to improve and professionalize the police only served to widen the gap between them and the community. Police were alienated from the community and were viewed with suspicion by many citizens. These feelings erupted in the decade of the 1960s as riots occurred throughout the United States. Events—including an unpopular war in Vietnam, a growing civil rights movement, and unrest on college campuses—fueled a distrust of government that spawned numerous civil disturbances that pushed police into the national spotlight. Police actions during these disturbances only exacerbated these feelings. In addition, there was a growing fear of crime in many communities and a belief that the police could do nothing to alleviate rising crime and violence. The decade saw several national commissions that studied the urban unrest and the criminal justice system, leading to recommendations that again spurred an agenda of reform.

Some police administrators recognized these issues and attempted to reach out the community. These efforts, termed police community relations programs, were endeavors to address community concerns and build relations with the community. As well-intentioned as these programs were, they often failed for a variety of reasons: lack of staffing, insufficient funding, and attempts at legitimizing past police practices. They were run as separate units in the police departments and were operated by staff rather than line officers, which meant that the officers in these units did not work the streets. While they attempted to foster good relations with the community, their efforts were

frequently undone by police officers in the field who did not know, or even care, what the community relations officers were doing or saying. This caused even more damage as people felt that the police said one thing but did another.

Team policing, another attempt to build relations with the community, was tried in the 1960s and 1970s. This consisted of decentralization of the police and an increase in participation by the community. In its ideal form, the patrol force was reorganized into one or more semiautonomous teams that were assigned permanently to particular neighborhoods. The team was then responsible for handling all calls for service and crime in that area. The team was to work closely with neighborhood residents with the goal of building close relationships. With a few exceptions, team policing did not work, and most efforts failed, mainly because they did not differ from traditional reactive policing, they did not receive sufficient administrative support, and officers did not clearly understand their roles. Team policing did not last into the 1980s.

By the 1980s it was clear that reactive patrol was not working. Police were isolated and alienated from the community, and this was magnified by the automobile. The narrowing of the police mission to crime fighting and a focus away from service further pulled the police from the community. In many minority communities, the police were looked upon as an alien occupying force. Rising crime and violence increased fear of crime and citizen dissatisfaction with the police. Concerns over police use of force and violence continued, putting additional strains on community relations. These factors, combined with new research into police operations, led police departments to seek different methods of delivering police services.

Modern Community Policing Efforts

Research conducted in several aspects of police operations in the 1970s and 1980s challenged traditional assumptions regarding policing. Random police patrol, rapid response to calls for service, foot patrol and fear of crime, and the investigative function were areas examined with unexpected results that led to questions regarding policing. These findings suggested that the police needed to pay more attention to conditions that

cause crime and disorder, and that random patrol might not be effective in addressing problems. Foot patrol studies showed that while it might not initially reduce crime, it did reduce citizen fear of crime, and improved relations between police and citizens. These all came together in the concept known as “broken windows.” This theory states that the police must work proactively to address problems and the conditions that cause them, that they need to work in partnership with communities, and that fear of crime must be a police concern. Most importantly, the theory also recommended that attention be paid to disorder and quality of life issues since they contribute to fear of crime and citizen perceptions of the community and police.

By the 1980s, there was considerable movement toward community policing as a method to improve police service and relations with the community. The idea and meaning of community policing have evolved over the past 30 years as police departments have experimented with different ways to achieve its means and as academics and the federal government have studied its processes and effects with the goal of identifying best practices. Community policing has grown for many reasons. Police departments embraced the idea as a way to reduce crime and disorder and to foster better relations with the community. The public accepted it and welcomed having a say regarding policing in their communities.

A major factor in the growth of community policing has been the federal government program COPS (Office of Community Oriented Policing Services), which started in 1994. Since its inception, COPS has distributed in excess of \$1 billion to promote community-oriented policing around the country. This money has been used to hire new officers, to start and maintain community policing programs, and to purchase new technology that assists in promoting community policing. In addition, COPS has funded numerous studies of community policing.

Community policing, simply defined, means a decentralized form of proactive policing working in partnership with the community to identify and solve problems, and having permanent police officers assigned to permanent places. Three ideas underlying community policing are citizen input, an enhanced and broadened police function, and



Bicycle police on patrol in the city of White Plains, New York, in November 2002. Moves toward increased foot and bicycle patrols, which allow for more face-to-face interaction with the public, and away from automobile patrols, which tend to isolate officers from their communities, have been emphasized in recent community policing efforts.

personal service. The emphasis is on working with citizens to improve the quality of life by reducing fear of crime and finding the causes of problems in the community and fixing them.

Elements of Community-Oriented Policing

There are four dimensions to community policing, each with several elements. The philosophical dimension implies that community policing is a philosophy rather than a program. It begins with citizen input, meaning that citizens have a say in their policing. Next is a broad police function, which suggests that policing is expanded to include dealing with issues that impact quality of life. Another component is personal service, policing that is tailored to the needs of the community.

The strategic dimension includes the elements that translate the philosophy into action. A reorientation in operations emphasizes face-to-face interaction with citizens over random patrol and finding ways to free officer time to achieve this. A geographic focus places officers into permanent areas rather than assignment by time of day. This also implies accountability for that area. A prevention emphasis places importance on proactive approaches that prevent crime and disorder rather than reacting after the fact.

The tactical dimension translates the philosophical and strategic dimensions into practice. The element of positive interaction stresses the need for officers to interact with citizens in positive, meaningful ways. This is related to the element of

partnerships, which involves organizing the community and its organizations to jointly deal with quality of life issues. Problem solving is the final element. Problem solving is the process of getting to the root causes of problems and either eliminating them or reducing their harm.

The organizational dimension consists of changing and streamlining the organization to enable officers to carry out their mission. The structure and management of the organization need to change so that authority and responsibility are pushed down to line officers to allow them to act as “mini-chiefs” in their areas. Also, real-time information must be provided to these officers so that they may succeed in their mission.

Ongoing Challenges

While community policing has been practiced for approximately 30 years, it still faces challenges. One primary obstacle is that there is no clear definition of community policing. Police departments practice different forms of community policing, some of which may not be clearly defined as community policing, or may adopt only certain elements of it. True community policing is not just programs or projects; it is a philosophy. Some of this is attributed to police departments that claim to be practicing community policing, but actually are doing something different, such as aggressive policing tactics under the cover of community policing. Other departments may have adopted the language of community policing but have not changed organizational structures or value systems to be in line with true community policing. Because community policing is so difficult to define, it is difficult to accurately study, making its effectiveness difficult to measure.

Another challenge is funding: Community policing is labor intensive and expensive. Local governments are struggling with budget constraints in the 2000s, and the federal government has reduced funding as money is used for other programs. The downturn in the economy in the 21st century has hit state and local governments particularly hard. Tax revenues are down, and many communities have either laid off police officers or not replaced those who retire. Community policing is typically cut back as officers are needed for regular patrol duty. For example, Cleveland, Ohio, cut 250 police officers in the mid-2000s

because of reductions in federal funding; Trenton, New Jersey, laid off 105 police officers as a result of budgetary problems. This is occurring in communities across the United States.

Finally, the focus on terrorism since September 11, 2001, has turned attention away from community policing as funds and other resources are dedicated to the war on terror. The federal government has not only shifted funding from community policing to homeland security, it has also asked local police to do more in this area, such as immigration enforcement, intelligence gathering, and guarding of likely terrorist targets. While some feel that community policing and antiterrorism policing can work together, others argue that they are incompatible and that only one style of policing can survive. Regardless of the direction that community policing takes, it is imperative that the police work closely with the public. Police need the support of the public to do their jobs effectively and are dependent on them for funding. Police are accountable to citizens for their use of power, and only by cultivating positive relationships can they work together to create an improved quality of life in their communities.

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See Also: Automobile and the Police; Crime Prevention; History of Crime and Punishment in America: 1970–Present; Police, Contemporary; Police, History of.

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Community Service

Community service orders are sanctions that typically require youth or adult offenders to work for governmental or nonprofit agencies for a specified number of hours. Such orders are used frequently in both adult and juvenile justice systems in the United States, United Kingdom, Europe, Australia, and New Zealand.

Community service programs may vary in the types of work required from offenders, as well as in the degree of service obligations, usually measured in hours or less frequently in remuneration. Common forms of community service work include physical labor as well as semiskilled work, and less frequently involve skilled work. The duration of service obligations is typically determined by offense within any given municipality and may range from a few hours to hundreds of hours.

History

Community service orders were first used in Alameda County, California, in 1966 as an alternative for female traffic violators who faced jail time as a consequence of unpaid fines. In the late 1960s and early 1970s, interest in alternative sanctions continued to grow, and community service programs flourished. By the late 1970s, community service orders were being used in many juvenile and adult criminal courts in the United States.

Research suggests that public support for community service programs in the United States has remained strong since their initial use. However, the reasons for this support have shifted over time in relation to changing criminal justice philosophies. In the 1970s and early 1980s, for example, community service programs were supported as cost-effective and potentially rehabilitative alternatives to incarceration. Such programs received significant governmental support, and organizations such as the Law Enforcement Assistance Administration provided millions of dollars in assistance to jurisdictions in order to establish programs in support of these goals.

By the mid-1980s, however, support for community service as an alternative to incarceration had begun to wane. Initial research on community service had found little if any reductions in recidivism when compared to other sanctions such as

short-term incarceration or community supervision. Other research suggested a “net-widening” effect of offenders sentenced to community service. Nevertheless, throughout the 1980s, the use of community service remained popular, less as a means of rehabilitation or an alternative to incarceration than as one of a growing number of punitive sanctions popular within the growing “tough on crime” turn in criminal and juvenile justice practices. The purpose of community service itself was thus largely reframed as one of retribution or deterrence. Along with other sanctions such as boot camps, house arrest, and intensive supervision, community service became increasingly viewed as a popular form of intermediate punishment between community supervision and incarceration.

More recently, community service has gained support from some advocates of restorative and community justice approaches. Beginning in the late 1970s, several notable works emerged from Albert Eglash and others that argued for a restorative use of community service focused on repairing harms caused to victims and successfully reintegrating offenders into their communities through the use of service work. Research on restorative applications of community service has focused on its use as a symbolic or even literal type of restitution to the community and on its ability to foster interactions between community members and offenders. Within restorative justice, however, the use of community service is not unanimously supported. Some proponents of restorative justice have argued that community service, whatever its merits, fails to directly address the harms caused to victims. Others have pointed out the problem of old wine in new wineskins, arguing in effect that community service programs that use work crews or other punitive practices have simply been relabeled as restorative for the reason that they have some tangible benefit to the community.

Community Service Outcomes

The majority of research on the use of community service programs has focused on whether such programs decrease recidivism. Overwhelmingly, such research indicates either a small reduction or no net increase in reoffending. Other research on community service has focused on individual indicators—for example, rates of completion—as



These young offenders were assigned to clear snow from a set of stairs as part of a community service program in January 2010. Studies of community service program results have overwhelmingly found either a small reduction or no net increase in reoffending. Other research has made a connection between reduced recidivism and rates of offender satisfaction with their service assignments.

well as community indicators—for example, the contributions of offenders to nonprofit or public agencies measured in hours or in the monetary value of service work. One of the best-known studies on community service is Douglas McDonald's research on the Vera Institute service program in New York City, published in 1986. McDonald's research found that this program at the very least did not increase recidivism, that it was able to effectively divert many offenders from incarceration, and that it was able to provide significant cost savings to the city in the form of more than 60,000 hours of unpaid labor. A more recent study of community service as used by Vermont Reparative Probationers found high rates of program completion for offenders (91 percent) and high rates of agency satisfaction for organizations involved in this program (94 percent).

Survey, assessment, and participant observation research on participant involvement in community service programs has been cautiously positive. One study of 19 adult community service programs in the United States found that both offenders and victims believed the requirements of such programs were fair, and offenders who completed the programs by and large viewed their experience as useful. A study on the use of youth restorative community service in Deschutes County, Oregon, found that this program was able to address and serve immediate community needs, such as the building of low-income housing, and also found significant community support in the form of both time and funding from community volunteers and organizations. A study on the use of youth restorative community service in Clark County, Washington, focused on the transition from work

crews to service projects where youth worked side by side with community members and found that such work increased rates of completion for youth offenders, solicited substantial community volunteerism in service projects, and allowed community organizations to propose projects that met local community needs.

International research on the use of community service has also found high levels of offender satisfaction with service work in countries such as New Zealand and Scotland. Research from Scotland on the use of community service has also found an important connection between reduced recidivism and rates of offender satisfaction with service assignments, suggesting that how offenders perceive the quality and purpose of their community service work may contribute to lower rates of reoffending.

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See Also: Corrections; Courts; History of Crime and Punishment in America: 1970–Present; Juvenile Corrections, History of; Law Enforcement Assistance Administration; Probation; Rehabilitation; Sentencing.

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has a growing Pacific Islander community (1.1 percent). In 2000, 31.4 percent of the population was foreign born. The median household income in Compton is \$31,819, well below the California average of \$47,493, and 28 percent of the population lives below the poverty line (versus 14.2 percent for California as a whole). A higher percentage of firms in Compton are owned by African Americans (27.8 percent) and Hispanics (37.4 percent) than in California as a whole (3.9 percent and 14.7 percent, respectively).

The area that is now Compton was originally claimed for Spain but was ceded to the United States after the Mexican–American War in 1848 and was incorporated in 1889. The first settlers were primarily white, but African Americans began migrating to the area in larger numbers in the 1940s, settling mainly in the western side of the city, while the eastern side remained largely white. The first African American was elected to the City Council in 1961 and in 1969 Douglas Dollarhide became the first African American mayor. In 1973, he was succeeded by Dora A. Davis, the first African American female mayor of metropolitan city.

In 1952, Compton received an All American City honor from the Civic League, and in 1960, the median income was twice that of Watts (a primarily African American area in the city of Los Angeles, located about 11 miles north of Compton), while unemployment was also much lower. In these years, the city offered a stable working-class and middle-class environment to its residents. In 1963, Compton elected its first black mayor. However, after the Watts riots in 1965, many business owners and middle-class residents, both African American and white, left the area, and unemployment and crime both rose. Compton became a center of gang activity: The Crips were founded in 1969 Watts (now known as South Central Los Angeles, and the Bloods in 1970 on Piru Street in Compton. The emblematic color of the Bloods, red, is the school color of the Centennial High School in Compton.

In the 1980s and 1990s, Compton became a symbol of urban decay and gang violence. A survey by the RAND Corporation in 1982 declared Compton a disaster area, and a 1992 survey found that half of all black men ages 21–24 in Compton were affiliated with gangs. Compton's negative

Compton, California

Compton is a city in Los Angeles County, California, located south and east of downtown Los Angeles. The 2006 population was 95,701, a 2.3 percent increase since 2000. The area of the city is approximately 10 square miles. The largest racial group in Compton is African American (40.3 percent), but the largest ethnic group is Hispanic or Latino (56.8 percent; people of Hispanic or Latino origin can be of any race). The city also

image was crystallized by the 1988 album *Straight Outta Compton* by the rap group N.W.A., which ushered in the era of “gangsta rap” and achieved double platinum status despite minimal airplay due to profanity and violent lyrics (including the controversial track “F*** tha Police”).

In 1991, the murder rate in Compton was three times that of the city of Los Angeles. Over 50 people were killed in the riots following the acquittal of four white Los Angeles Police Department officers for the beating of Rodney King (which was captured on videotape and played repeatedly on television during the trial), but partly in response to this extreme violence, the Crips and Bloods agreed to a truce. Crime declined in much of the Los Angeles area in the 1990s and Compton was no exception. Although gang membership remained high—with an estimated 65 gangs and 10,000 members in Compton in 1998—the number of murders committed in Compton declined to 48 in 1998 (versus 87 in 1991) and to 28 in 2008. The drop in crime was attributed to several causes, including the waning of the crack epidemic, California’s three strikes law (Proposition 184), which took effect in 1994, and California’s ban on semi-automatic weapons that took effect in 1989.

In 2000, the Los Angeles County sheriff’s department took over policing of Compton due to a scandal involving Compton Mayor Omar Bradley, later convicted on felony corruption charges. The city is patrolled by 79 deputies and a gang unit with 38 members, and significant efforts are devoted to community policing, which has improved the relationship between the city residents and the force. However, the overall crime level in Compton remains high relative to other U.S. cities. According to the CQ Press rankings (based on Federal Bureau of Investigation [FBI] statistics from 2009), in 2010, Compton had the eighth highest crime rate in the country with a score of 260.13 (where 0 would indicate an average crime rate and a positive number a higher than average rate) and the second-highest crime rate among cities with populations of 75,000 to 99,999. According to FBI statistics, in 2008, 1,738 violent crimes were reported in Compton, including 28 cases of murder or non-negligent manslaughter, 48 forcible rapes, 595 robberies, and 1,067 aggravated assaults; 3,333 property crimes were reported in that year, including 896

burglaries, 1,409 larceny-thefts, 1,028 motor vehicle thefts, and 95 cases of arson.

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See Also: African Americans; Gangs, Contemporary; Gangs, History of; Gangs, Sociology of; Racism; Riots.

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Computer Crime

Virtually unknown 20 years ago, computer crime has rapidly become part of daily life. Computer crime, also known as cybercrime, includes a range of criminal activity associated with computers or networks. Cybercrimes include the theft of property or identity, stalking and bullying, child pornography, and the distribution of illegal goods and services. Computer crime also includes denial of service attacks, securities fraud, and a variety of emerging issues regarding copyright and intellectual property. Due to the disruptive potential of crimes directed at businesses or governments, computer crime also raises concerns about terrorism or cyber warfare.

Although technological breakthroughs have always created new opportunities for criminal behavior, the pace of change has accelerated because of rapid advancements in processing power, access to technology, and the expansion of networks used to access computer-based technology. This technology allows criminals to operate

more efficiently and effectively, often with minimal surveillance. Because these crimes are not detected or investigated through traditional law enforcement tools, they present a significant challenge for the justice system.

According to Federal Bureau of Investigation (FBI) estimates, U.S. businesses spend around \$67 billion each year dealing with computer theft and malicious programs such as viruses and spyware. The Internet Crime Complaint Center (IC3), a partnership between the FBI, Bureau of Justice Assistance, and National White-Collar Crime Center, also estimates a total loss of \$559 million in 2009 related to a variety of frauds, including scams asking for advance fees associated with a large return from a fake lottery or estate, nondelivery of merchandise or payment, and other crime related to consumer goods and services. The number increased substantially in

2009, more than doubling the 2008 estimate of \$265 million.

Computers as Targets of Cybercrime

The targets of computer crimes include both individuals and organizations. Crimes against individuals target the person's property, or in the case of stalking and bullying, the person is the target. The computer itself was the target of many of the first cybercrimes. Cybercriminals, often motivated by curiosity and challenge more than by personal gain, exploited opportunities to access other computers. The infringement on the privacy of others, which may include damage to files, software, or other property, is known as hacking. The first hackers were younger computer users who engaged in hacking as a hobby that provided an opportunity to develop and demonstrate their computer skills. The initial hackers were not interested in harming



An instructor at the U.S. Department of Defense Cyber Investigations Training Academy in Linthicum, Maryland, teaching methods of forensic analysis of cybercrime in September 2010. Changes in the National Information Infrastructure Protection Act as a result of the USA PATRIOT Act have made it easier to investigate and prosecute certain cybercrimes.

others. In fact, they were often helpful in efforts to identify and reduce security risks.

Cybercriminals soon moved beyond simply accessing other computers to a more active effort to control these computers or the networks to which they are attached. Computer viruses and worms, transferred through the exchange of infected files or embedded in Trojan horses or other seemingly benign files, have the potential to quickly spread from one system to another. Once infected, files and information on the computer are altered or destroyed as the virus actively seeks other computers to infect. A virus can hide and replicate itself, wait harmlessly until activated, delete or transfer files and information, post messages on the user's screen, and interfere with the use of printers or other peripherals. In a cycle of development often demonstrating escalating skill levels, individuals, businesses, and governments have spent billions on the development of anti-virus and antispyware software, often staying just a step ahead of cybercriminals.

Vandalism and defacement are also examples of crimes directed at computers. Cybervandalism ranges from sending destructive viruses and worms to hacker attacks designed to disrupt or destroy entire computer networks. Vandals may delete information needed by legitimate users or install programs that deny users from accessing this information. Hackers may also vandalize a Website or personal computer in order to display political, religious, or other malicious messages.

Hacking has reached a global level, often targeting businesses or governments. For example, a hacker group known as Anonymous successfully organized denial-of-service attacks that disrupted service at Visa and MasterCard after these corporations stopped allowing donations to WikiLeaks. Like WikiLeaks, Anonymous and similar groups use the Internet to highlight what they see as illegal or unethical corporate or government behavior. Although these organizations target computers, their actions also demonstrate the use of computers as a tool for protest and/or financial gain.

Computers as Tools for Cybercriminals

Rather than targeting the computer or network, other computer crimes use technology as a tool for the completion of a crime. These crimes include fraudulent use of credit and debit cards,

unauthorized access to bank accounts, and theft from accrual, conversion, or transfer accounts. Because of the prevalence of technology, cybercriminals can steal millions of dollars by using technology to skim a few cents, or less, from billions of routine transactions performed every day.

While embezzlement and fraud are not new crimes, technology has changed the rules. Similarly, stalking and bullying are examples of existing crimes that have evolved to take advantage of technological tools. Cyberstalking refers to the use of the Internet, e-mail, or other electronic communication methods to stalk another person. Some stalkers pursue minors through online chat rooms, while others harass their victims through social networking or other online or electronic communication. Cyberstalking can range from simple harassment, threatening or intimidating a victim, or repeated attempts to communicate with the victim. Since computers and the Internet provide a safe haven for the cyberstalker, while also providing a place to exhibit uninhibited conduct, this crime can be difficult to identify and address.

Stalking and exploitation have grown to the extent that these crimes reach beyond inexperienced computer users to impact individuals who assume they are well protected and fully aware of threats encountered with the use of technology. Although stalking and exploitation have always been challenging issues for the justice system, the use of technology in order to complete these crimes creates an enormous challenge. Similarly, bullying has always been a challenge for parents, schools, and the justice system. Cyberbullying inflicts and compounds the harm of traditional bullying but does so through the medium of electronic text.

Cyberspying, another growing concern associated with both crime and privacy, involves accessing computer files or using the Internet to gather private and confidential information. While hackers may access confidential information through illicit means, many willingly share a large amount of information on Facebook and other sites with social networking features. For example, crime may occur when an individual posts vacation pictures celebrating a trip. This announcement also notifies friends and others that the potential victim's house may be empty. On a larger scale, techniques used by cybercriminals may include data mining, which involves the analysis of cumulative

data about an individual's financial history, habits, preferences, and other unique traits.

Technology has also provided new opportunities for cybercrime associated with child pornography, money laundering, gambling, and the distribution of illegal substances. In addition to new laws and policies, law enforcement has responded to this category of computer crime by taking advantage of the privacy that is so attractive to cybercriminals. For example, child predators have been targeted by investigations in which law enforcement officers pose as children in an attempt to lure predators to a certain location for an arrest. Gaming Websites have also been infiltrated, and charges brought, as a result of similar sting operations.

Opportunities for Cybercrime

Other computer crimes are the result of the massive opportunity created due to the widespread use of computers and technology. These crimes are committed by groups or individuals actively involved in cybercrime as well as citizens who break the law, willingly or otherwise, because it has become so easy to do so. Computer theft and the black market for technology are simple examples of this type of criminal activity. Similarly, technology has advanced to the point where amateurs can easily engage in counterfeiting. As with other types of cybercrime, the justice system has responded to these challenges by relying on technological advances that make it more difficult to profit from breaking the law.

Crimes in this category also target industries, individuals, and businesses in order to engage in criminal activity ranging from music trading, software piracy, and other infringement of copyright and intellectual property rights. These crimes occur, in part, as the result of confusion about ownership. For example while an individual knows it is wrong to steal a computer, the ownership of software, music, and movies is not immediately apparent. It can also be difficult to define a victim when the crime is limited to downloading music from Websites using programs that facilitate file sharing.

The policy response to this type of cybercrime includes education, increased threats, and reliance on technological advances that monitor the sharing of digital media. This monitoring can lead to a DMCA (Digital Millennium Copyright Act)

warning, an informational first step provided by the Internet provider, potentially followed by legal action. While the DMCA increases penalties for online copyright infringement and criminalizes efforts to defeat copyright protections, the initial policy response to this type of cybercrime includes the opportunity to learn about copyright laws. The cybercriminal, who may be a computer-savvy child with a great music collection, has the opportunity to conform to these laws before facing further legal action. The DMCA also addresses repeat behavior by authorizing both civil and criminal penalties, including imprisonment and fines up to \$1 million.

Identity theft is another example of a crime that relies on the ubiquitous use of computers and technology. Identity thieves use a variety of electronic tools, often relying on the individual's limited understanding of computers, to collect social security numbers, credit card information, and other unique information to gain access to a person's financial data. Phishing, one of the best-known tools used by cybercriminals, uses e-mail or Websites to steal personal and financial information. Computer criminals have become increasingly sophisticated in their efforts to make it difficult to distinguish legitimate e-mail and Website content from illegitimate ones, so Internet users have been forced to become similarly creative, educated, and suspicious in order to protect themselves from cybercriminals.

While the majority of Internet users have learned to identify and avoid these risks, much as people have learned to minimize risk in the nonvirtual world, phishing and related scams only need to succeed for a small number of people when the scam is operating on a global level. Research supported by the financial services industry reports that more than 11 million adults were victims of identity theft and fraud in 2009. The total cost of these crimes was more than \$54 billion. The number of victims actually decreased considerably in 2010, down to just over eight million people, but the cost of identity fraud increased to \$631 per incident, up 63 percent from the previous year. The decreased number of incidents may be attributable to increased security by the general public and financial institutions, although the increasing cost of such crimes can be financially devastating for victims.



A forensic technician cleaning a hard drive in a 91 percent alcohol/9 percent water solution. Such cleaning may allow for the recovery of crucial evidence in an investigation.

Responding to Computer Crime

While law enforcement agencies are typically bound by geography, computer criminals can treat the whole world as their target. While leading to a vast number of potential victims, the global nature of cybercrime leads to unique challenges for the justice system.

Like computer crime, the enforcement of cybercrime is evolving. Based on the uniqueness of this criminal activity, Congress has treated computer-related crime as a distinct federal offense since 1984. Identity theft became a federal crime in 1998, with most states passing similar laws against identity theft since then. The attacks of 9/11 also impacted the definition of, and response to, computer crime. The USA PATRIOT Act amended parts of the National Information Infrastructure Protection Act in order to make it easier to investigate and prosecute crimes against crucial computer systems.

Federal and state law enforcement agencies have also increased their efforts to collaborate in a variety of ways, including the coordination of activities completed by law enforcement agencies involved in investigating cybercrime. Local police departments have also responded to new challenges by creating specialized units focusing on specific types of cybercrime, with undercover officers actively involved with the investigation of gambling, child pornography, and the distribution and sale of illegal goods and services.

Though contemporary techniques have increased the effectiveness and efficiency of justice agencies charged with responding to cybercrime, critics are concerned that these efforts have compromised the privacy and liberty of U.S. citizens who have not engaged in criminal activity. While the level of intrusion and surveillance citizens will tolerate may depend on the perception of risk, computer crime has rapidly become a massive problem and people may not fully comprehend the risks to both security and liberty. Cybercriminals have also demonstrated the ability to respond very quickly to new opportunities for criminal gain, in spite of increased efforts to stop their behaviors.

As with other questions about crime, there are issues regarding the balance of security and liberty. Although the justice system has a long history of protecting rights in the face of threats, cybercrime has accelerated these efforts to uncomfortable levels, and there will be continued policy changes in response to the challenges of computer crime.

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See Also: Confidence Games and Frauds; Identity Theft; Pornography; Terrorism.

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Comstock Law

In 1873, Congress passed An Act for the Suppression of Trade in, and Circulation of, Obscene Literature and Articles of Immoral Use, better known as the Comstock Law or Federal Anti-Obscenity Act. The act expanded upon 1842 legislation designed to impede the importation of “obscene” materials, 1865 legislation to curb the thriving wartime “obscenity” business, and 1872 legislation that included “obscene” postcards. Upon the initiative of Anthony Comstock (1844–1915), Congress expanded the legislative purview by broadening the definition of obscenity to include information concerning abortion and birth control.

Comstock moved to New York City after the Civil War. Dismayed by an urban life fettered with prostitution, “obscene” novels and pamphlets, and pornography, Comstock became a leader in the New York Society for the Suppression of Vice, founded in 1872 and sponsored by the Young Men’s Christian Association. Blending traditional Christian moral language with new concepts of state regulation of issues previously considered

private, Comstock convinced numerous philanthropists that not only vice but also abortion and birth control undermined public morality. Comstock included the latter two because he believed the younger generation’s reading of “lascivious” material reflected increasing promiscuity that could be concealed with contraceptives and abortion. He latched onto the postal office because he feared the privacy entailed there allowed people to transmit morally offensive materials.

Congress obliged Comstock and passed the act with little discussion and no roll-call vote. No federal restrictions on abortion or birth control existed prior to 1873, and many legislators were unaware that the act included these two matters, believing instead that it merely strengthened regulation of pornographic and other indecent materials. President Ulysses Grant signed the law on March 4, 1873. The act eliminated “nefarious and diabolical traffic” in “vile and immoral goods” from the postal service. It banned the selling or distribution of materials that could be used for abortion or birth control; forbade importation, mailing, and interstate transportation of obscene books, articles, and literature, including those dealing with contraceptives and abortion; and empowered the U.S. Postal Service to censor any such materials. The law carried a fine of between \$100 and \$5,000 for each offense, or jail and hard labor for at least one year and not more than 10.

This law passed within the historical context of antiobscenity and social purity crusades. Reformers looked to the federal government to regulate issues they believed were undermining the moral fabric of American society—a society experiencing rapid change as a result of industrialization, urbanization, and immigration. The law fit well within the growing concerns of elite white Anglo-Saxon Protestants who feared their inundation by increased fertility among the lower classes, especially among immigrants considered racially and morally inferior. In addition to this moral aspect, Congress passed the act to substantiate its right to regulate the interstate flow of “lewd” and vulgar materials through the postal system.

Enforcement

Enforcing the Comstock Law proved difficult. Congress appointed Comstock as a special agent of the U.S. Postal Service from 1873 until 1915,

but the lack of funding for additional agents made implementation onerous. His main tactic was entrapment: He wrote to doctors pretending to be a young pregnant woman, seduced, abandoned, and in need of abortion information. When doctors accepted cash from the letter and mailed back abortive preparations, Comstock arrested them. Yet juries were often reluctant to find defendants guilty. Even Grant pardoned nearly 50 percent of those indicted for contraceptive violations; President Rutherford B. Hayes similarly pardoned some defendants.

Attempts to repeal the law, however, were unsuccessful. In 1876, the National Liberal League protested the law as unconstitutional because it imposed specific moral and medical mandates. Nearly a half century later, Mary Ware Dennett and the Voluntary Parenthood League worked to introduce the Cummins-Vaile Bill in 1923 to repeal Comstock as an infringement on free speech and press. Margaret Sanger and the National Committee on Federal Legislation attempted to amend the law to exempt medical professionals. Her campaign from 1929 to 1935 became moot with federal court decisions. While *Bours v. United States* (1915) laid a foundation, the case of *United States v. One Package* (1935) exempted doctors from the contraceptive aspects of the law, thereby allowing hospitals and free-standing birth-control clinics to multiply, and *Bolger v. Youngs Drug Products Corp.* (1983) declared that preventing Americans from receiving truthful contraceptive information was harmful. In 1971, Congress eliminated the reference to birth control from the law; in 1994, it increased the fine for the abortion provision from \$5,000 to \$250,000 for a first-time offense; and in 1996, it extended the abortion stipulation to the Internet.

Although the law remains, the government takes little action to enforce it. Even during the law's height at the turn of the 20th century, millions of women ignored it, evidenced by the continued decline in the fertility rate of white and black women, especially among the urban middle and upper classes.

While usually associated with abortion and birth control, the law also censored other aspects of society. Agents raided low-rent pornography shops and cheap mail-order pornography services; censored art, with Paul Emile Chabas's

"September Morn" in 1912 as one example; and banned books mailed to libraries and bookstores. The law targeted classics such as Aristophanes's *Lysistrata*, Rabelais's *Gargantua and Pantagruel*, Chaucer's *Canterbury Tales*, Boccaccio's *Decameron*, DeFoe's *Moll Flanders*, the *Arabian Nights*, Rousseau's *Confessions*, and Voltaire's *Candide*. Modern authors such as D. H. Lawrence, John Dos Passos, William Faulkner, F. Scott Fitzgerald, Oscar Wilde, Ernest Hemingway, John Steinbeck, and Eugene O'Neill also faced censorship; most famously, James Joyce's *Ulysses* came before Judge John Woolsey, whose decision in 1933 that the book was not obscene initiated a change in legislative and judicial interpretations of free speech with regard to obscenity. Still, courts were slower to overturn these aspects of the law than the contraceptive aspects. In *Miller v. California* (1973), the Supreme Court declared that works were obscene if they lacked serious artistic merit, violated contemporary moral standards, or portrayed sex in a blatantly odious manner.

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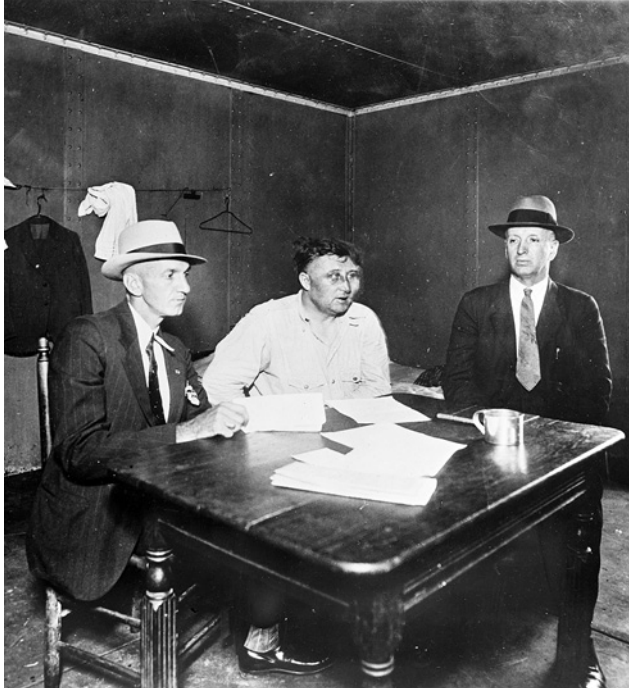
See Also: Abortion; *Griswold v. Connecticut*; *Roe v. Wade*; *United States v. One Book Called "Ulysses."*

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Confession

The pursuit of a confession from a criminal accused is a pivotal development in the early stages of law enforcement's "often competitive



Harry F. Powers, known as the "Bluebeard of Quiet Dell," confessing to murder in Clarksburg, West Virginia, in August 1931. He later recanted but was hanged in 1932 for multiple murders.

enterprise of ferreting out crime." Framed from a legal perspective, a confession is a statement made by an alleged suspect who is the focus of a criminal investigation, which is adverse to the penal interests of the accused. *Black's Law Dictionary* defines a confession as "a criminal suspect's oral or written acknowledgment of guilt, often including details about the crime," which usually concerns "the truth of the main fact charged or some essential part of it." Once obtained, the state prosecution may seek to utilize the out-of-court statement against the accused at trial. Therefore, it is critically important that the confession be made voluntarily or willingly, free from any coercion, and as a by-product of the confessor's free will and choice.

Anglo-American legal jurisprudence has carefully developed standards to ensure confessions are competent to be received as evidence at trial and to safeguard against any of the inherent evils that arise from the rigors of custodial interrogation. The main concerns underlying the confession of an accused arise from the dynamic pressures surrounding the making of such an admission.

Jurisprudential experience with the criminal procedure, as well as psychological and sociological insight into human factors, have exposed the grave likelihood that an accused may render a confession as a result of intense interrogation, the incommunicado ambiance of police questioning, the pressures of coercion, and/or the attendant perplexity and confusion of confrontation rather than as a lucid and introspective choice by the confessor. Despite advancements in the quality and training of law enforcement officers with regard to interrogation techniques, many legal scholars and jurists have recognized that police interrogation still takes place in secluded settings that are unfamiliar to the suspect, who is separated from any familiar faces and stripped of any meaningful support.

With these concerns as the foundation of confessional jurisprudence, the overriding principle since common law has been trustworthiness. Trustworthiness was the traditional doctrine used by courts in England and the United States to exclude confessions. The trustworthiness doctrine emphasized the notions of freeness and voluntariness as the cornerstones that make a confession credible. American criminal procedure was in need of some constitutional bases encompassing the law of confessions, which extended beyond the common law to ensure greater protections.

Due Process Clause

The due process clause of the Fourteenth Amendment to the U.S. Constitution provides in pertinent part, "[N]or shall any State deprive any person of life, liberty, or property, without due process of law ..." In the context of confessions, this language has a profound implication, the meaning of which has been shaped and interpreted by various decisions from the U.S. Supreme Court. The protection of by the due process clause of the Constitution has been made applicable to and is binding upon the several states.

In the earliest seminal decision, *Brown v. State of Mississippi* (1936), a farmer named Raymond Stewart was discovered beaten to death on the grounds of his home in Kemper County, Mississippi, on March, 30, 1934. Outraged by the brutal killing, town locals turned vigilantes sought to bring someone to justice. A mob assembled and pursued three African American males—Ed

Brown, a tenant on the deceased farmer's land, Yank Ellington, and Henry Shields—whom they suspected committed the heinous crime. The mob, accompanied by a deputy sheriff, confronted Ellington. He vehemently denied the accusations and maintained his innocence. The group of vigilantes, backed by the color of law, repeatedly hung Ellington from a rope tied to a tree and let him down only for sporadic rests. Demanding that he confess, the mob then tied him to a tree and violently whipped him. He continued to protest his innocence. Although he was released, the deputy, accompanied by a member of the unruly mob, returned two days later to arrest Ellington. En route to take Ellington to jail, the deputy detoured and proceeded to whip him yet again, and threatened the beating would continue until he confessed. Finally, Ellington agreed to comply with the deputy's desires and confess to any statement as directed by the deputy. All three men were arrested for the murder.

At the trial, the defendants testified about the brutal tactics that surrounded the making of their coerced confessions. The prosecution did not refute the defendants' account of the interrogation tactics. By the same token, the defense neither moved to suppress the confessions nor sought a mistrial. As such, the defendants were convicted and sentenced to death. An appeal was taken to the Mississippi Supreme Court, which upheld the trial court's conviction based on a failure to timely object to the confessions. The defendants' attempt to have the state's high court review its decision proved futile. Finally, an appeal before the U.S. Supreme Court was granted.

In *Brown*, the U.S. Supreme Court established that brutal police tactics in any form employed to coerce a confession from a suspect directly contravene and violate the explicit demand of the due process of law under the Constitution. Consequently, any coercive police conduct that would reasonably elicit from a suspect a statement that is not the product of free will and choice violates due process and renders any resulting confession a nullity. The due process of law dictates that an involuntary confession acquired through coercive means is inadmissible in a criminal trial. The *Brown* decision would shape the legal landscape of confessional law for years to come.

In the decades that followed the *Brown* decision, the due process limitation was interpreted to have several objectives, which constituted a complex system of values: (1) the trustworthiness concern of a confession that is procured through unfair means or gross violations, which is presumptively unreliable; (2) the due process concern of deterring future police misconduct; (3) the voluntariness of the confession under the totality of the circumstances—an analysis which, among other things, included the relevant characteristics of the suspect and his or her susceptibility to the pressures of police tactics.

Fifth Amendment to the U.S. Constitution

The self-incrimination clause, also referred to as the privilege against self-incrimination, of the Fifth Amendment to the Constitution of the United States of America provides that no one "shall be compelled in any criminal case to be a witness against himself." Taken at face value, this constitutional protection seems to only encompass being made a witness against oneself in a court of law, not in a police interrogation room or elsewhere. However, in *Bram v. United States* (1897), the U.S. Supreme Court overturned a conviction on Fifth Amendment grounds and found that there was no meaningful distinction between compulsion inside as opposed to outside a courtroom. Although the precedent of *Bram* existed, and was argued by the defense attorneys in *Brown*, courts were reluctant to apply the Fifth Amendment as a constitutional power source of exclusion. Aside from the plain meaning of the text, another reason for not invoking the self-incrimination clause was the historical and original intent of the Fifth Amendment as a proscription on the power of the federal government rather than a grant of power.

Following decades of meager precedential value—during which it was not yet accepted that the protections of the federal Constitution were binding upon state courts—the self-incrimination clause was revived in the momentous decision of *Miranda v. Arizona* (1966). In *Miranda*, the Supreme Court was confronted with deciding the constitutionality of law enforcement officers interrogating criminal defendants while in custody, or otherwise having their freedom curtailed, without being notified of their right to counsel. Along with *Miranda*, the Supreme Court decided three other

consolidated cases: *Westover v. United States*, *Vignera v. New York*, and *California v. Stewart*.

In the case of Ernesto Arturo Miranda, officers arrested him based on circumstantial evidence loosely connecting him to the kidnapping and rape of an 18-year-old victim. Police officers interrogated Ernesto Miranda for two hours, at which point he orally confessed to the crime and signed a sworn written statement, which included a provision that his confession was free and voluntary and not the product of coercion, threat, or physical harm. The officers never informed Miranda—neither prior to nor during the interrogation—of his right to the assistance of counsel, his right to remain silent, or that any statements he made would be used against him. At trial, the prosecution attempted to introduce Miranda's written confession as evidence against him. Miranda's court-appointed lawyer, Alvin Moore,

argued that the confession should be excluded on the grounds that it was not free and voluntary since he was not properly informed of his rights. The trial court overruled the objection, and Miranda was convicted and sentenced to a term of imprisonment. Following the conviction, Miranda appealed to the Arizona Supreme Court, which affirmed the conviction since the trial court found he did not specifically seek the assistance of an attorney. The U.S. Supreme Court granted him an appeal.

The *Miranda* court, in a 5–4 decision with Chief Justice Earl Warren penning the opinion for the majority, established a series of warnings or prophylactic safeguards to ensure the right of an accused against compelled self-incrimination under the Fifth Amendment. The reason the warnings are often referred to as prophylactic is because they are not explicitly mandated by the



At the moment when questioning by law enforcement becomes "custodial interrogation," defined as "questioning initiated after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way," Miranda warnings become necessary. Not only must a suspect be warned of his or her rights prior to interrogation but the rights entailed in those warnings must be expressly waived by the suspect before any interrogation takes place.

text of the Fifth Amendment but instead are judicially created mediums to ensure the protections of the Fifth Amendment are afforded. In unpacking the reasoning for the majority, Chief Justice Warren carefully examined various police manuals and texts, which proved valuable insight into the police practices of the day. The police techniques depicted psychological ploys and manipulative tricks calculated to tire the will of a suspect during interrogation. Some examples include the proverbial good cop–bad cop routine, the unassuming false friend, and blatant misrepresentations or lies regarding other evidence against the accused. Under such circumstances, the court reasoned that it was necessary to have protective devices or warnings that mitigate the inherently coercive atmosphere of custodial interrogation.

The *Miranda* precedent demanded that a suspect, prior to any custodial interrogation, be warned that (1) he/she has the right to remain silent, (2) anything said by him/her may be used against him/her in a criminal prosecution, (3) he/she has the right to consult with an attorney and (4) counsel will be appointed if he/she cannot afford to retain one himself/herself. Not only must a suspect be warned of his/her rights prior to interrogation, but the court also held the rights entailed in those warnings must be expressly waived by the suspect before any interrogation takes place.

Two significant concepts to the *Miranda* decision are custodial interrogation and waiver. Pinpointing the moment that interrogation by law enforcement becomes custodial is central to triggering the necessity for *Miranda* warnings. Custodial interrogation means “questioning initiated after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” The court has clearly distinguished situations where a suspect is the focus of police investigation from custody by explaining that in the former, *Miranda* warnings are not required if the investigative efforts of police officers occur before the suspect has been taken into custody. Courts utilize an objective standard to determine custody in which the relevant inquiry is whether a reasonable person in the suspect’s position would feel believe he/she was in police custody of the quality associated with formal arrest—not whether the suspect subjectively felt he/she was in custody or free to leave.

Criticisms

Miranda has garnered both support and disfavor. On the one hand, *Miranda* serves a useful and instructive purpose by reinforcing the rights of the citizenry in the daily practice of police officers. By the same token, *Miranda* helps ensure that the uneducated segments of our society are essentially warned of what is at stake during interrogation. Furthermore, *Miranda* provides uniformity, predictability, and constancy in the court system and in the case law. These warnings have been embraced by all facets of popular media and culture, so much so that most people have a working understanding of their rights. On the other hand, prosecutors, politicians, law enforcement groups, scholars, and the public at large felt the *Miranda* decision unnecessarily hindered police investigations and provided suspects with a loophole to escape liability. Critics predicted that the ruling would “handcuff the police,” and that police efforts would be thwarted because suspects would refuse to talk or go free based on what critics perceived to be a technicality.

Initially, the decision took center stage in the political arena. During the 1968 presidential campaign, Richard Nixon commented the *Miranda* decision “had the effect of seriously hamstringing [*sic*] the peace forces in our society and strengthening the criminal forces.” The Senate Judiciary Committee held hearings into the benefits and drawbacks of the *Miranda* requirements and ultimately concluded that crime would not be effectively decreased if criminals who have voluntarily confessed are released on mere technicalities. Various efforts in the legal and legislative forums were made to overturn *Miranda*.

Challenges to *Miranda*

The greatest challenge the *Miranda* ruling faced was the threat of repeal by Congress. In response to rising crime rates and an influx of urban riots, Congress passed the Crime Control and Safe Streets Act of 1968. Congress made an explicit attempt to repeal *Miranda* as applied in federal prosecutions. The law provided that confessions that were given voluntarily could be used in federal court regardless of whether the suspect was warned of his rights as required under *Miranda*. Perceiving *Miranda* to be nothing more than a procedural matter, the federal government argued

that Congress maintains the enumerated power to create, modify, or set aside any judicial rules of evidence and procedure. In *Dickerson v. United States* (2000), approximately 34 years after the pronouncement of *Miranda*, the viability of the warnings as a constitutionally compelled rule was called into serious doubt. In deciding whether Congress possessed the constitutional authority to repeal *Miranda*, the Supreme Court reasoned that *Miranda* was constitutionally compelled and that the legislature had no authority to supersede the judiciary's interpretation and application of the Constitution.

Today, *Miranda* remains vitally prominent and relevant in the context of law enforcement interrogation and confessional jurisprudence. As recently as 2010, the Supreme Court addressed whether *Miranda* warnings are insufficient, and as such a constitutional violation, when the warnings omit the suspect's right to the presence of counsel during interrogation and instead narrowly advise the suspect of the right to presence of counsel prior to questioning. Justice Ruth Ginsburg, writing for the majority, explained that *Miranda* only requires law enforcement officers to clearly inform suspects of their right to consult with counsel and to have counsel present during interrogation. Thus, the Tampa Police Department's *Miranda* warnings at issue in the case were sufficient to reasonably convey to a suspect the right to have an attorney present.

Right to Counsel Under the Sixth Amendment

In *Brewer v. Williams* (1977), the Supreme Court held that confessions and admissions elicited from a suspect after the right to counsel has attached must be suppressed if the incriminating statements were elicited without the presence of counsel or without a proper waiver by the suspect of his right to counsel. The Sixth Amendment standard serves as a basis for exclusion of confessions that is independent of the voluntariness and *Miranda* standards.

The Sixth Amendment right to counsel standard for suppression of incriminating statements requires the following judicial inquiry: (1) whether the right to counsel has attached at the time of the statement, (2) whether the suspect has made an effective waiver of the right if it has attached, and (3) whether the conduct of the police or their

agents violates the right to counsel if no waiver has been made.

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See Also: *Brown v. Mississippi*; Constitution of the United States of America; Defendant's Rights; Due Process; Interrogation Practices; Lynchings; *Miranda v. Arizona*; Police Abuse.

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Confidence Games and Frauds

Confidence tricks, *con games*, and *confidence games* are terms for fraudulent activities where the intention of the swindler is to gain items of value through means of deception, confidence, or trust. Confidence gaming requires at least two players; the confidence game, therefore, is in fact a game. The operator of the con is known as the "swindler" or con artist, and the victim is called the "mark." The confidence trick is a game

of chance where the risk of losing is minimized through a set of rules and rehearsal by the swindler. The more times the con artist plays the game, the more likely he or she will be successful.

Confidence games differ from other types of fraudulent crimes such as white-collar crimes, check frauds, and pyramid schemes. All of these have some aspect of similarity with one another and are often considered to be in the same type of crime category; however, confidence gaming requires the deceiver to be a talented wordsmith and actor. Furthermore, the con artist accepts his or her role and actively engages in the world of con artistry, whereas the white collar criminal generally does not confide in others.

Selecting a mark is usually accomplished by two swindlers. The first swindler gains the confidence of the mark so that he or she will be comfortable in engaging in a scheme. The second swindler is the target of the scheme. In the end, the mark puts his or her money at risk in the hope of a large gain. This can be illustrated with the following scenario: The first befriends the mark and invites him or her to a poker game. He informs the mark that the individuals playing are not very good and that a large sum of money can be made. The swindler's partner is one of the poker players who acts as an unskilled player and intentionally loses money throughout the poker game. After some type of signal between the two swindlers, one swindler urges the mark to make a large bet, only to lose it to the swindler's partner.

Confidence games are categorized as either short-scale or large-scale games. Short-scale games usually involve a quick scheme, taking from a few minutes to a week to complete. These types of schemes usually involve one or two swindlers and a mark. Large-scale schemes include elaborate plans that may take weeks or months to develop. These schemes are aimed at maximizing the amount that the swindler can extract from his or her marks. The most common forms of short-scale scams are the pigeon drop, three-card monte, and large-scale schemes include the bait-and-switch and apartment swindle.

Vice and Confidence

The earliest forms of confidence games in the United States were those of vice. In the early 1800s,

gambling halls became popular among young males in New York City. These halls offered two of the most popular confidence games: three-card monte and the shell game. It was not uncommon to also have prostitution rings associated with gambling halls. Though these places were illegal in America, they were able to continue by bribing the authorities. Like the Prohibition period that was to come in the next century, law enforcement officials would also partake in the gambling halls, further promoting its survival.

Three-card monte is a confidence game in which the object is for the mark to pick the correct playing card from a choice of three cards. The dealer shows the mark which card he or she is to pick, rearranges the cards face down, and the mark is to choose the correct card. During the process of the game, the dealer uses sleight of hand to trick the player into choosing the wrong card. The game itself is run by two or more swindlers. The first swindler is the game operator, and the second is an audience member. To lure the potential marks in, the fake audience member plays a few rounds of the game and is allowed to win. Once the mark enters the game, the team will then attempt to extract as much money from the mark as possible, using persuasive tactics.

Though confidence games have been observed throughout history, the first confidence trick formally recorded, and described as such, was in 1849. William Thompson, a New York conman, was arrested for tricking a man out of his watch. Thompson approached a man on the sidewalk, struck up a conversation, and asked him if he would trust him with his watch until tomorrow. Once the item was in his possession, Thompson walked off laughing.irate, the man informed the authorities of the theft and later arrested Thompson. Once on trial, the New York Herald wrote a story about Thompson and how he tricked men by gaining their confidence. Thus, the confidence man was born.

Before the modern era of confidence games, three-card monte was one of the most popular confidence tricks; however, as confidence games became more popular, so did the streets. Business for the conman declined as a result of increased competition, resulting in the emergence of the dollar store swindles of the 1870s. Here, the conman would buy a store and stock vanity items for



A three-card monte dealer at work at a street market in 2009. Swindlers and con artists are often first involved in other types of crime and may be recruited in jail or by an acquaintance, typically at around age 30 or older. The use of violence is rare, but it is occasionally used to prevent a mark or another swindler from going to the police, rather than as a means of gaining money.

a mere dollar. Once a mark was lured into the store, the conman would shift the mark's focus from the merchandise to the three-card monte.

The bait-and-switch is used to trick the mark into paying for a more expensive service or item when the mark has agreed to an initial lower price. The swindler lures the mark in by persuading him or her to buy an item or service because of a special deal. The swindler then tells the mark that the item or service is no longer available at the special price and that the mark now has to pay for the item or service at regular price. Marks are more difficult to trick with this type of confidence game versus other types of confidence games because it requires the swindlers to be able to pitch an item to the mark and for the mark to agree to buy the item.

In the apartment scandal con, the swindler and accomplices trick several marks into renting an apartment that the swindler does not have the right to rent out. The first part of the confidence

trick is having the swindler rent an apartment. The swindler visits apartments for rent and, with persuasive discussions and false information, rents one. The swindler takes out an ad in a newspaper or Website showing the apartment for rent. This confidence game is difficult to accomplish because the swindler must be aggressive when showing the apartment to the mark and must sell the features of the apartment. If successful, the swindler may convince several marks to rent the apartment and put up a large sum of cash for the first month's rent.

Perhaps one of the most famous Internet cons was the Nigerian 419. Originating in Nigeria, but practiced in various countries around the world, the 419 scam is a scheme to relieve multiple marks of their money. In this scam, the con artist produces mass e-mails telling about a large sum of money that is held in an African bank account or deposit box. The swindler then asks the mark for help in transferring the money into

a legitimate bank account. In return, the mark is promised a share of the money. When successful, the swindler receives the bank account information from the mark, eventually relieving the mark of his or her money. This confidence trick acquired its name from the Nigerian Criminal Code 419, which prohibits impersonation of an official for financial gain.

Cooling-Off the Mark

Swindlers set up confidence games with the intention of never having to interact with the mark after the confidence trick is finished. Often times, the mark will be hustled and no report to the authorities will be made because he or she broke the law in undertaking the confidence game or because of embarrassment. There are times, however, when the mark threatens to call the police or to take other types of action. When this occurs, it is important for the swindler to be able to cool off the mark so as not to draw unwanted attention.

The Code of the Confidence Game

The code of the confidence game is one held by each of its practitioners. Generally, a swindler avoids working in another swindler's area. Moreover, swindlers rarely report other swindlers to authorities or use another swindler as a mark. When this occurs, the person is referred to as a "niner," someone who is willing to swindle another confidence artist or someone who reports a confidence artist to authorities. An example of the usage of this term is, "He would nine ya in a heartbeat."

Confidence men and women often look out for one another in times of need. When a confidence man or woman is outed by a mark or is caught by the authorities, others come to the criminal's aid. This is typically done by collecting money and giving it to the person's closest friend for bail or attorney's fees. Once the swindler is out on bail, it is almost impossible for him or her to pay back the money because it is given anonymously. It is expected that he or she will do the same for another when the time comes.

The practice of confidence gaming would not survive without partnerships. Swindlers often are members of a con artist "circle," with several members filling different roles. For example, one person may have a specialty in cooling off the mark, while another is able to lure in the mark with ease; these

people may be referred to as the "roper" or the "outside man." Desired traits are the ability to fill several roles and the ability to improvise based on the situation. A partnership between con artists does not come without risk. Partners usually come to an agreement as to how much money each is going to earn from the schemes. Most often, an even split of money is agreed upon; however, some give a larger portion of the earning to his or her partner to avoid conflict. The basis of a good partnership is founded in the ability to trust the partner and in making him or her feel useful and well paid.

The use of violence within the realm of confidence gaming is shunned by many members. There are times when confidence men and women use violence to prevent a mark from going to the police or when another member of the circle is about to go to the authorities with information. When violence does occur, it is out of necessity and not as the means of gaining money. The use of violence is thought of as undignified and something a simple thief would commit. Swindlers agree that the con game is just a game; if you lose, be a good sport about it.

The Life of a Con Artist

The life of a con artist is hectic and often mobile. Con artists usually begin their career around age 30. It would be rare to find a person who is a professional at confidence games before age 25. Professional confidence men and women argue that a person younger than 30 does not have enough life experience to participate in confidence games. Many of these people are recruited in jail or by an acquaintance who is a swindler. Often, the con artist begins as a gambler or is involved with other types of crime similar to confidence gaming, and then becomes a professional con artist.

When the person is fully involved in schemes, it is typical to not be stationary for a long period of time. It is likely that the con artist will move to new cities and use other confidence men and women to help build a reputation within the network of confidence men and women. If con artists marry at any point during their career, they will travel to other nearby cities, instead of swindling in their neighborhood.

Con artists rarely completely retire. Many are still active well into their 60s and have a steady income other than using confidence tricks. Others,

however, have made a large enough profit to live comfortably into their old age. Older con artists are more likely to buy a home, get a steady job, and be married with children. These con artists realize that living a conventional life is important for the continuation of the confidence game as a practice. Having a steady income and a family makes a person more legitimate within society and in the eyes of the law.

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See Also: Fraud; Gambling; White-Collar Crime, History of; White-Collar Crime, Sociology of.

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Connecticut

Connecticut, the fifth state in the United States, was established in 1788. Connecticut covers 5,018 square miles and has a population of approximately 3.5 million residents. There are eight counties with 164 towns and 21 cities in the state. Connecticut's major cities are the capital city of Hartford, New Haven, Bridgeport, Stamford, and Waterbury. Located in the northeastern part of the country, Connecticut borders Massachusetts to the north, Long Island Sound to the south, Rhode Island to the east, and New York to the west. Boasting one of the countries lowest unemployment rates, Connecticut is ranked as one of the top states for personal income. It is known for educational opportunities at the elementary and secondary levels as well as for excellent colleges and universities. Yale University, an Ivy League institution established in 1701, is

located in New Haven, Connecticut. Other private universities such as Wesleyan in Middletown are nationally recognized.

As with other states, crime rates in Connecticut are declining. The total number of crimes reported in Connecticut was 96,514 in 2008, while in 2009 there were a total of 92,689 crimes reported to the Federal Bureau of Investigation (FBI). In 2009, there were 10,508 violent crimes and 82,181 property crimes. Connecticut had 107 murders, 651 forcible rapes, 3,990 robberies, and 5,760 aggravated assaults in 2009. The city of Hartford had the greatest number of murders.

Police

Established in 1903 by legislation signed by Governor Abiram Chamberlain, the Connecticut State Police Department is one of the oldest state police departments in the United States. In 2003, the Connecticut State Police celebrated its 100th anniversary. The department began when five law enforcement officers were hired to fight the growing problems of illegal liquor manufacturing and gambling in the state. An old mansion near the state capital of Hartford served as the first police department. Officer pay was minimal, with most officers paid \$3 a day for their service. The emphasis on crime prevention and safety in Connecticut rose with the increasing population in the state. Twenty years after the first state law enforcement officers were hired, police numbers had grown to 80 officers. Today, Connecticut State Police officers are divided among 12 troops across the state.

In 1941, the Auxiliary State Trooper Program was established in order to guard the shorelines from enemies prior to World War II. More than 1,200 volunteers were recruited, and at the end of the war, these troops were reassigned to barracks throughout the state. In 1988, the Auxiliary State Trooper program ceased recruitment; 56 volunteer troopers are in service today. Their duties consist of crash scene and traffic stop assistance, traffic control, disaster relief, and special detail support for state officers. Auxiliary troopers are required to maintain the same training standards as state law enforcement officers.

Overall, according to the FBI, there were a total of 10,556 individuals employed by police departments in Connecticut in 2009. Of those employees, 8,622 were law enforcement officers.

These officers were employed in 104 agencies. In addition to state and local police officers, Connecticut also employs 35 capitol police officers. The state capitol opened in 1878; however, the State Capitol Police Department was not established until 1974. State capitol police officers are stationed in the Hartford, and they work closely with Hartford police as well as Connecticut State Police officers.

The largest cities in Connecticut employ the greatest numbers of both civilians and officers. The cities of Hartford, New Haven, Bridgeport, Waterbury, and Stamford have the largest police forces in the state. In 2009, Hartford had 448 officers, followed by New Haven with 423 officers, Bridgeport with 409, Waterbury with 291, and Stamford with 284 officers.

Hartford has the oldest police department in Connecticut. Similar to other colonies, the original police forces in Connecticut consisted of constables and citizen patrols. Men were assigned as night watchmen who watched for fires and suspicious persons. The Hartford Police Department dates back to 1636, when Samuel Wakeman was appointed to the position of constable. In the summer of 1860, the first official police force was established. In most cities, an organized police force developed in the 1800s. This organization was in response to the growth of the population, increases in immigration, and the emergence of economic class divisions.

Punishment

There are approximately 21,000 offenders under the custody of the Connecticut Department of Corrections, with approximately 18,000 inmates housed in correctional facilities. Overall, the Connecticut Department of Corrections is responsible for 18 correctional facilities for juveniles and adults. The average daily cost of housing an offender in Connecticut is \$90, compared to approximately \$33 to supervise an offender within the community. Contrary to the trend in the United States, the prison population in Connecticut has been declining since 2008. Connecticut's Office of Policy Management (OPM) projects that this moderate decline will continue, with the prison population in Connecticut experiencing a 2 percent reduction in 2012. Further, in February 2010, the State Criminal Justice and Plan-



The entrance to an underground cell at Connecticut's infamous Old Newgate Prison, where Loyalists were held during the Revolution. It was the first state prison in the United States.

ning Division completed a study on recidivism within the Connecticut Department of Corrections. Approximately 16,000 sentenced offenders were followed for a three-year period after they were released from a prison facility in 2005. The study found that almost 37 percent of the offenders were reincarcerated within three years after release from prison. Additionally, the chance of recidivism of an offender was reduced if the offender spent time under supervision within the community toward the end of the sentence.

Along with state correctional facilities, Connecticut is home to one federal correctional facility located in the town of Danbury. The Danbury Federal Correctional Institute currently houses an all-female population of approximately 1,000 low-security inmates. This facility, nicknamed "Club Fed," has housed such notable inmates as Leona Helmsley, G. Gordon Liddy, Michael Milken, and Sun Myung Moon.

Connecticut is one of 35 states in the United States that have the death penalty, and along with New Hampshire is one of only two New England states with this punishment. However, while Connecticut has the death penalty sanction, it is rarely used. In 2005, Connecticut carried out its first execution since 1960 when Michael Ross was put to death for killing four women. Ross spent 18 years on death row before his execution, when he became the first inmate in Connecticut executed by lethal injection. Lethal injection is the state's official method of execution, and there are currently 10 inmates awaiting execution at Northern Correctional Institution in the town of Somers.

Connecticut is also home to Newgate Prison in East Granby. Built in an abandoned copper mine, Newgate Prison is considered Connecticut's first prison institution and America's first state prison. Newgate Prison housed inmates between 1773 and 1827 and was declared a national historic landmark in 1972. Political prisoners, Tories and Loyalists, were held at Newgate during the Revolutionary War, and Confederate soldiers were held there during the Civil War. While primarily a male institution, female inmates were housed at Newgate for three years starting in 1824 until the facility was closed in 1827.

Newgate Prison is now a tourist attraction run by the Connecticut Commission on Culture and Tourism. While the majority of the prison is in ruins today, visitors can still view the guardhouse and enter the copper mine where inmates were held in solitary confinement. While Newgate was deemed one of the most secure prisons in the colonies, several escapes and escape attempts are said to have taken place there. Newgate housed more than 800 inmates throughout the course of its history. It was well known for horrific living conditions that included vermin, bunks of wet straw, floors covered in slime, and inedible food. Harsh punishment at Newgate consisted of flogging, a reduction in food, hanging by the heels, extra sets of hand and leg irons, and solitary confinement.

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See Also: 1851 to 1900 Primary Documents;
Capital Punishment; Crime Rates; Penitentiaries;
Prisoner's Rights.

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Constitution of the United States of America

The U.S. Constitution, at the time it was adopted on September 17, 1787, did not address crime and punishment issues in great detail. Article I (Legislative), Section 9 stipulates that the "privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it" and that "no bill of attainder or ex post facto law shall be passed." Habeas corpus requires that cause be shown for detaining an individual; a bill of attainder declares an individual guilty of a crime and subjects him/her to punishment without a trial; and ex post facto laws declare some action illegal after the fact. Further, Article III (Judicial), Section 2 specifies that the "trial of all crimes ... shall be by jury; and such trial shall be held in the state where said crimes shall have been committed." Aside from these brief passages, the unamended Constitution is silent on crime and punishment issues.

That the authors of the Constitution felt it necessary to include these restrictions on government power to protect individuals' rights is evidence of the historical context in which the Constitution was written. Although many of the legal rights that were adopted in the Constitution were already law in England, there is an important distinction

to be made between the rights of subjects and the rights of citizens. In a monarchy, subjects receive their rights from the Crown. Therefore, the rights of subjects can be abused by the Crown, which was happening in the colonies. In a republic, citizens have natural rights that are guaranteed, and the government's function is to protect these rights. The document that guarantees and protects these rights is the Constitution of the United States of America. While the authors of the Constitution believed the previously mentioned protections were sufficient, others disagreed.

That the Constitution did not address crime and punishment issues more specifically was one point of contention between the Federalists and the Anti-Federalists—with the Federalists arguing that state constitutions would protect citizen rights and the Anti-Federalists arguing that citizens needed legal protection from the federal government as well. In order to gain support from the Anti-Federalists, a compromise was reached. The compromise called for amending the Constitution, after it was ratified, to include what has come to be known as the Bill of Rights. On September 13, 1788, the Constitution was ratified by 11 of the 13 states, and the Bill of Rights came into effect on December 15, 1791.

Bill of Rights

The Bill of Rights consists of 10 amendments to the Constitution. Of these, the Fourth, Fifth, Sixth, and Eighth Amendments specifically address crime and punishment issues. The Fourth Amendment guards “against unreasonable searches and seizures” and stipulates that “no Warrants shall [be] issue[d], but upon probable cause ... and particularly describing the place to be searched, and the persons or things to be seized.” The Fourth Amendment specifically addresses past abuses of general search warrants or a writ of assistance. In addition to being general in nature, a writ of assistance did not expire. As such, law enforcement officials could search anywhere and for any reason without limitations on what was seized and used against the accused in criminal prosecution. By guarding against unreasonable searches and seizures, guaranteeing a threshold of probable cause before a warrant can be issued, and stipulating the place and person or things to be seized, the Fourth Amendment limits the government's ability

to prosecute individuals without sufficient cause and secures individual rights against unwarranted criminal charges.

The Fifth Amendment guarantees the rights of citizens in criminal cases. Specifically, the right to a grand jury indictment “for a capital, or otherwise infamous crime . . . nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.” Grand juries and due process were not new concepts as both can be traced to the Magna Carta. Although not new, the inclusion of both in the Fifth Amendment is important. Because grand juries are composed of a jury of peers, not government officials, indictments (a formal charge of a crime) cannot be pursued by the government alone. Protection against double jeopardy restricts the government from charging an individual with the same crime after an acquittal. Without double jeopardy, the government would be able to prosecute an individual for the same crime until it achieved a guilty verdict. Finally, protections against self-incrimination guard the accused from providing evidence that can be used against him/her in criminal proceedings.

The Sixth Amendment ensures the right to a fair trial. These rights include the “right to a speedy and public trial, by an impartial jury ... [that the accused] be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.” An individual's right to a speedy and public trial by an impartial jury limits the government's ability to hold the accused for prolonged periods of time while it builds its case and guarantees that trial proceedings will be open and fair. In order to ensure fairness in the proceedings, the accused has a right to review the indictment levied against him/her, to cross-examine witnesses testifying against him/her, to present witnesses defending his/her innocence, and to have legal representation in his/her defense.

The Eighth Amendment stipulates that “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.” The Eighth Amendment is almost



An original copy of the U.S. Constitution, which delineates the rights and processes of crime and punishment in the American legal system, can be seen at the National Archives, shown here.

indistinguishable from a provision in the English Bill of Rights of 1689, which states that “excessive bail ought not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” Excessive bail is prohibited under the assumption of the accused being innocent until proven guilty of a crime, while excessive fines can be linked to the prohibition against cruel and unusual punishments. In short, the punishment must fit the crime committed.

While most of the crime and punishment rights outlined above are absolute, others are not. For example, bail can be denied under certain circumstances. In addition, the accused can waive some of these rights—trial by jury, assistance of legal counsel, and self-incrimination, to name a few. Further, because the Supreme Court interprets the Constitution, crime and punishment rights have changed and evolved throughout the history of the United States of America.

Supreme Court Interpretations

Examples of how Supreme Court interpretations have affected the rights discussed are plentiful. For instance, where the Fourth Amendment protection against unreasonable search and seizure is concerned, *California v. Greenwood* (1988) gave law enforcement agencies more leeway in collecting evidence. The question presented to the court in *Greenwood* was whether law enforcement could search a suspect’s trash without a warrant and use evidence secured in the warrantless search to obtain a warrant. The court ruled that the warrantless search of Greenwood’s trash was legal on the grounds that it was on the street and open to inspection by “animals, children, scavengers, snoops, and other members of the public.”

Where the Fifth Amendment is concerned, specifically the self-incrimination clause, *Griffin v. California* (1965) provides a good example of the court finding for the defendant. Griffin was on trial for murder and, under advice of counsel, refused to testify. In closing arguments, the prosecutor implied to the jury that Griffin’s refusal to testify was evidence of guilt. Griffin was convicted and was sentenced to death, but the Supreme Court found in Griffin’s favor, saying what the jury “may infer when the [trial] court solemnizes the silence of the accused into evidence against him is [dangerous].”

The Sixth Amendment right to have the assistance of counsel has evolved through Supreme Court rulings as well. *Powell v. Alabama* (1932) and *Gideon v. Wainwright* (1963) illustrate this evolution well. Powell was one of nine African American males accused of raping a white woman. The day of the trial, Powell’s attorney refused to represent him. When an attorney willing to represent Powell was secured, he was given 30 minutes to meet with Powell before the trial. Powell was convicted and was sentenced to death. Among other due process issues addressed, the court ruled that defendants facing the death penalty be guaranteed counsel regardless of ability to pay. Gideon was arrested for attempting to break and enter a poolroom with the intent to commit a misdemeanor, which was a felony in Florida. Gideon, illiterate and indigent, was denied request for counsel and made to represent himself in the criminal proceedings. He was convicted

and was sent to prison. In the *Gideon* case, the court extended the guarantee of counsel regardless of ability to pay to include all defendants facing felony charges.

Where the Eighth Amendment is concerned, specifically the cruel and unusual punishment clause, two cases illustrate how Supreme Court interpretations can change within a short period of time—*Furman v. Georgia* (1972) and *Gregg v. Georgia* (1976). In the *Furman* case, the court ruled that the death penalty constituted cruel and unusual punishment and was therefore unconstitutional. Justice Thurgood Marshall stated that the death penalty was “excessive, unnecessary, and offensive to contemporary values.” Four short years later in the *Gregg* case, the court reversed itself and found that “punishment of death does not invariably violate the Constitution.”

As these cases illustrate, the Supreme Court, through judicial review, interprets the Constitution, which can alter crime and punishment procedures and rights. In some instances, the court restricts the government’s ability to pursue justice (*Griffin*, *Powell*, *Gideon*, and *Furman*), while in other instances, the court expands the government’s ability to pursue justice (*Greenwood* and *Gregg*). Regardless, the Constitution remains the governing document on crime and punishment issues.

Conclusion

While many of the historical origins of the American legal system can be traced to English common law and the Magna Carta, the Constitution of the United States of America delineates the rights and processes of crime and punishment in the American legal system. It is the function of the U.S. Supreme Court to interpret the Constitution and the Bill of Rights to determine that each citizen is afforded the full protection of the law.

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See Also: Anti-Federalist Papers; Bill of Rights; Defendant’s Rights; Due Process; *Furman v. Georgia*; *Gideon v. Wainwright*; *Gregg v. Georgia*; *Griffin v. California*; Habeas Corpus, Writ of; *Mapp v. Ohio*; *Miranda v. Arizona*; Rule of Law; Supreme Court, U.S.

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Convention on the Rights of the Child

The United Nations (UN) Convention on the Rights of the Child recognizes and protects the civil, cultural, economic, political, and social rights of children. The most current convention advances the autonomous rights of children, beyond the welfare-oriented paternalism of earlier conventions. Children are defined as persons under the age of 18, unless an earlier age of majority is recognized by the signatory country’s laws.

An earlier precedent was the Declaration of the Rights of the Child of 1924, a nonbinding resolution from the League of Nations. In 1959, the UN General Assembly unanimously adopted new text of the Declaration of the Rights of the Child, but it was still not legally binding. In 1978, Poland submitted the draft text of a new convention on the rights of children, coinciding with the International Year of the Child in 1979. The UN Commission on Human Rights organized a working group on the convention that included unprecedented involvement by nongovernmental organizations (NGOs).

The convention was adopted and opened for signature, ratification, and accession by the UN General Assembly Resolution 44/25 of November 20, 1989. The convention entered into force on September 2, 1990. It has been ratified by every UN member state except Somalia and the United States. The convention’s 54 articles consist of guiding principles, categories of rights, and implementation details.

Provisions

Nondiscrimination is the first of four guiding principles and requires each child to be treated equally without reference to his/her race, gender, language, religion, political belief, origin, property, disability, or birth status, or the status, activities, opinions, or beliefs of the child's family or legal guardians. The second is that the best interest of the child must be the primary concern in making decisions that affect the child. Third is that governments must ensure children have the right to life, survival, and development. Fourth is respect for the views of the child. Children's input should be sought, and their opinions should affect the decision-making process.

The first of four categories is protection rights. Criminal justice-related issues are covered in this category. Article 37 covers detention and punishment and ensures children are not "subjected to torture or other cruel, inhuman or degrading treatment or punishment"; prohibits capital punishment or life imprisonment; states that "arrest, detention or imprisonment ... shall be used only as a measure of last resource and for the shortest appropriate period of time"; notes children should be housed separately from adults; declares children have access to their family through visits and correspondence; and guarantees prompt access to legal assistance and the judicial system.

Article 40 focuses on the juvenile justice system. Part I states that the system should respect children's rights, account for their younger age, and promote reintegration into society. The second part calls for presumption of innocence, prompt notification of charges; access to legal assistance, hearing before an independent legal authority, protection against self-incrimination, the right to call and question witnesses, the right to interpreters, and the right to privacy. Part III promotes the establishment of a juvenile justice system specifically designed for children, including a minimum age for criminal responsibility and the use of alternative methods, rather than relying on judicial proceedings. The last part recommends alternatives to institutional care be made available, such as counseling, probation, foster care, and training programs.

References are made to protective rights for adoption, child labor, drug abuse, kidnapping, and rehabilitation of child victims. Protection rights related to sexual exploitation and the

abduction, sale, and trafficking of children are both augmented by the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. The use of children as armed combatants is prohibited for those under the age of 15. The Optional Protocol on the Involvement of Children in Armed Conflict raises the age of involvement to 18. The United States has signed and ratified both optional protocols.

The United Nations Children's Fund (UNICEF) defines participation rights as "ensur[ing] children are entitled to the freedom to express opinions and to have a say in matters affecting their social, economic, religious, cultural and political life. Participation rights include the right to express opinions and be heard, the right to information, and freedom of association. Engaging these rights as they mature helps children bring about the realization of all their rights and prepares them for an active role in society."

Survival and development rights, as recognized by UNICEF, "are the resources, skills and contributions necessary for the survival and full development of the child." They include rights to adequate food, shelter, clean water, formal education, primary healthcare, leisure and recreation, cultural activities, and information about their rights. These rights require not only the existence of the means to fulfill the rights but also access to them. Specific articles address the needs of child refugees, children with disabilities, and children of minority or indigenous groups.

Implementation

To implement convention obligations after ratification, countries review their laws related to children. The review process examines the educational system, health and social services, and legal structure to ensure minimum standards set by the convention are met. The review also evaluates funding to ensure that adequate resources are available for educational, health, legal, and social services. The review process has led to the creation of new laws in some countries and expansion and strengthening in others. Article 41 ensures that existing laws that already guarantee higher standards than the convention are not abandoned in favor of the convention's minimum standards.

Monitoring of treaty obligations takes the form of periodical reports to the UN Committee on the

Rights of the Child. The committee consists of 18 children's rights experts who act in a personal capacity despite being nominated and elected by country representatives. Countries submit their reports within two years of ratification and every five years after. The committee has created report guidelines.

A number of weaknesses of the convention have been acknowledged. There are no provisions for petitions by individuals or interstate petitions. Critics point to the lack of specific, strong rights for girls. The committee suffers from its limited ability to independently research, rather relying on nongovernmental organizations to confirm the veracity of country reports, and the body has fallen behind schedule, as has the submission of many country reports. Lastly, the broad nature of the convention's economic and social rights has led to complaints by countries trying to meet the rights of children and by child proponents, who claim that countries often do not do enough to meet those specific rights of children.

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See Also: Children's Rights; Juvenile Corrections, History of; Juvenile Justice, History of.

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Convict Lease System

Under the system of convict leasing, persons convicted of criminal offenses were contracted out to private businessmen, planters, and corporations

to serve their prison sentences laboring in coal and phosphate mines, turpentine farms, lumber and naval stores operations, brickyards, sawmills, and sugar and cotton plantations. In return for an annual fee for each prisoner that was paid to local and/or state governments, these private entrepreneurs were to work, clothe, house, and discipline men, women, and children. Several northern states, including New York, leased some of their prisoners in the decades after the American Revolution, but convict leasing was associated more with the southern states in the decades after the Civil War, where, for example, they were contracted to construct railroads in the late 1860s and 1870s. In the last third of the 19th century, convict leasing acted as a bridge between a displaced agricultural slave economy in the region and a free labor society with nascent industrial and manufacturing concerns. It was also firmly wedded to the political agendas of conservative southern white Democratic governments.

The former Confederate states experienced rising levels of property and interpersonal violence offenses in the immediate aftermath of the war and during the Reconstruction period. In the context of extremely weak state governments with deep financial problems, war-damaged and dilapidated penitentiaries that were expensive to rebuild and maintain, severe labor shortages, and four million former slaves no longer under the control of white planters, southern state governments viewed the convict lease as an all-encompassing solution. The system of leasing convicts to private employers offered cash-strapped governments a means of profiting from the labor of prisoners, dispensing with expensive penitentiaries, and controlling the free black labor supply.

Some historians, such as David Oshinsky and Douglas Blackmon, view convict leasing as merely another form of racial slavery. It rested on corrupt networks of sheriffs, judges, and labor agents who used criminal justice systems to provide entrepreneurs with a reliable source of labor. By the 1880s, African Americans comprised over 90 percent of state prison populations in Alabama, Georgia, and Florida.

Private employers acquired their convict laborers through a public bidding procedure, usually every two to four years. Many convicts were subleased to other contractors at a profit to the



These wagons, which were lined with bunks, were home to a group of African American laboring convicts in Pitt County, North Carolina, in the fall of 1910. The wagons could be moved from one location to another depending on the work project. The armed guards and bloodhounds shown would hunt down any escapees.

original purchaser. Profit was the main driver of convict leasing. It was a system of punishment that was always characterized by brutality, violence, race subordination, and labor exploitation. Employers had few incentives to provide anything more than basic shelter, food, and clothing for their charges. There were considerable variations in convict leasing practices. Generally, inmates were housed in itinerant and unsanitary camps in remote rural areas near phosphate, lumber, or railroad construction operations or in more permanent but equally unsanitary structures near mines and plantations. Labor squads worked from dawn until dusk, subsisted on meager rations, were often clothed in rags, and slept in vermin-infested cots. Corporal punishment or the lash was a central feature of the lease in all southern states. Death rates and numbers of escapes were both high.

From its inception, convict leasing was subject to criticism; for example, from governors and legislators over lessees' failures to pay fees or comply with rules and regulations. Over the decades,

legislative investigations and newspaper exposés led to calls for reform that were supported by church ministers, physicians, boards of health, and progressive reformers. More fundamental moral and political criticisms over private corporations reaping financial rewards from public lawbreakers and sustained calls for abolition of convict leasing appeared during the 1890s alongside the rise of the Populist Party. The American Federation of Labor also waged a highly successful campaign against unfair prison labor practices and unfair competition with free labor. Prisoners demonstrated their opposition through work slowdowns, strikes, and open rebellion, as in the Tennessee coalfields in the late 19th century.

Southern governments responded by tightening rules and regulations and increasing state oversight of leasing and subleasing. Incentives to induce good prisoner behavior included free Sundays, paid extra work, pardons, and "gaintime" schedules where sentences could be reduced by a specified number of days per month. Yet, support

for leasing declined in the early 20th century as alternative forms of prison labor, including prison farming and chain gang labor, gathered support in southern states. Whereas nine southern states leased their prisoners to private contractors in 1898, only Florida and Alabama continued to do so by 1913. There is debate over the extent to which humanitarianism played a role in the decline of convict leasing as it became less profitable compared to publicly funded convict road labor in the 1910s and 1920s, as Matthew Mancini and Alex Lichtenstein have noted. However, the much-publicized murders of white convicts at the hands of brutal prison guards in these states in 1923 and 1924 provided the final important catalyst for abolition of convict leasing in the south. Nevertheless, other forms of peonage endured longer in the region.

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See Also: African Americans; Alabama; Chain Gangs and Prison Labor; Corporal Punishment; Georgia.

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Coolidge, Calvin (Administration of)

Calvin Coolidge, Jr., (1872–1933) was the 30th president of the United States (1923–29). He held various local, state, and federal political posts prior to becoming president. John Calvin Coolidge was born in Plymouth Notch, Vermont. He was the elder of two children of John Calvin Coolidge, Sr., and Victoria Josephine Moor. He graduated from Black River Academy in 1890, attended Amherst College, and graduated cum laude in 1895.

Coolidge moved to Northampton, Massachusetts, because of its location near a courthouse. He decided not to attend a formal law school but rather apprenticed with a local law firm, Hammond and Field. He was admitted to the Massachusetts Bar in 1897. In 1898, he opened his own law office with practice interest in transactional law. He was elected as a Republican city councilman in Northampton in 1898. In 1905, he was formally introduced to Grace Anna Goodhue, and they were married on October 4, 1905, in Burlington, Vermont. The couple had two sons: John, born in 1906, and Calvin, Jr., born in 1908.

In 1910, Coolidge was elected mayor of Northampton. As mayor, he increased salaries for teachers, slightly decreased taxes, and managed to retire some of the city's debt during his first term. He was elected and served in the Massachusetts State Senate from 1912 to 1915. He was the lieutenant governor of Massachusetts from 1916 to 1918. He was nominated for governor of Massachusetts in 1918, and his campaign emphasized law and order, fiscal conservatism, opposition to Prohibition, and support for American involvement in World War I, among other positions.

In 1919, Coolidge was elected governor of Massachusetts. One of his greatest challenges as governor was to deal with the crime and criminal justice aspect of the Boston Police Strike of 1919. Displeased with their working conditions, the Boston police officers walked off the job September 9, 1919, leaving the city unprotected. Consequently, crimes of violence, arson, and lawlessness followed, with business store windows smashed and stores' contents vandalized and

looted. Other trade unions, including firemen, streetcar men, and telephone and telegraph operators, all had grievances and threatened to join the police strike. As violence continued through the nights of September 10–11, gamblers openly played dice in the streets and snatched women's handbags. In South Boston, gunfire killed two people and wounded others, with a death total overall reaching nine.

At the request of Boston Mayor Andrew Peters, Coolidge deployed almost 5,000 troops to control the chaos and criminality that besieged the city. Coolidge's actions during the strike and after in reconstructing the police department earned him a reputation as a man of decisive action and thrust him into the national spotlight as a presidential figure.

Presidency

In 1920, the Republican Party nominated Senator Warren G. Harding of Ohio as its presidential nominee and Calvin Coolidge as its vice presidential nominee. Coolidge's party won the election in 1920, and he became vice president in 1921. President Harding died on August 2, 1923, while on a speaking tour. On August 3, 1923, Coolidge's father, John Coolidge, a notary public, administered the oath of office to his son in the presence of Mrs. Coolidge and several others, making him president.

As president, Coolidge's first message to Congress in December 1923 was a call for isolation in foreign policy and tax cuts, economic growth, and limited subsidies to farmers. His administration dealt with resistance to Prohibition, which lasted from 1920 to 1933. That era was associated with corruption and violence from criminal gangsters, bootleggers, and rumrunners, as well as an overall chaotic situation in the American criminal justice system. As president, Coolidge gained a reputation as a small government, low taxes, conservative politician, and also as a person who said very little. He was credited as the president who restored public confidence, dignity, and prestige to the White House after the scandals of his predecessor's administration. In a number of his annual addresses, Coolidge called attention to the civil rights of African Americans and challenged Congress to exercise powers of prevention and punishment against the lynching

of African Americans based on racial hatred. He left the presidency and returned to Northampton in 1929. On January 5, 1933, he died of a heart attack at age 60.

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See Also: Boston, Massachusetts; Harding, Warren G. (Administration of); Prohibition.

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Corporal Punishment

The use of corporal punishment occupies a controversial place in the history of the United States. Government-sanctioned corporal punishment has been used for millennia. Often, these punishments tended toward brutal and theatrical public spectacles. By the time the American colonies had separated from England, a vast transformation in punishment was under way. Gone were the grotesque spectacles of ritualized barbarity that often typified pre-Enlightenment European criminal justice. In their place, the relative banality of imprisonment rose to dominance. Even so, one holdover from the previous era, flogging, remained common in many spheres.

Flogging in U.S. History

Flogging was retained as a way to impart discipline to many vulnerable constituencies. Reports from the 19th century describe routine flogging of slaves, prisoners, members of the military, women, and children. The parental right to physically discipline children was circumscribed only by vague admonitions to avoid excessive force. This practice carried over to school officials. Even now, many

states still permit the use of physical punishment to chastise students. Slaves were often subject to the cruelest forms of physical discipline. Women, owing to their inferior legal status, also faced physical punishment from their husbands, fathers, and the state. While slaves, women, and children were often subjected to corporal punishment in an arbitrary manner, members of the military were systematically flogged until the mid-1800s. In 1775, the Continental Congress authorized whipping aboard American naval vessels by permitting officers to strike enlisted men with up to 12 lashes. Shortly thereafter, a naval court-martial was allowed to assign whipping as a punishment. During this same period, the U.S. Navy vastly expanded the number of crimes punishable by flogging.

As a punishment for convicted criminals and as a means to discipline prison inmates, corporal punishment proved to be equally enduring. Setting

aside its use inside prisons, the American movement against the use of corporal punishment as a sanction in lieu of prison gained momentum in the years between 1820 and 1850. Fueled by a potent combination of Enlightenment philosophy and Utilitarian social theory, religious leaders, educators, and the medical establishment spoke out against excessive and barbaric physical punishment. A growing public distaste for the practice prompted restriction and outright abolition of corporal punishment against soldiers, students, and juvenile offenders. In response to growing public opposition, Congress eventually restricted the use of whipping in the U.S. Navy, abolishing it formally in 1853. The U.S. Marine Corps would not ban all forms of direct physical punishment for another century. Likewise, many state and local school systems modified regulations to move away from corporal punishment. Adolescents were no



A crowd watches as a man is whipped while restrained at a whipping post in Delaware in the early 20th century. Delaware continued to allow whipping as a punishment for certain crimes as late as 1963 and did not ban it entirely until 1972. However, no offender has actually been subject to corporal punishment in almost 60 years.

longer subject to whippings and other punishments such as shackling but were instead diverted to the growing institution of juvenile court.

Whipping Continues in Some States

Despite this trend away from corporal punishment, whipping laws remained in some state systems as late as 1972. Although the practice was in effect discontinued by the early 1950s, Delaware approved whipping as a punishment for certain crimes as late as 1963. Until the practice was finally banned in 1972, the Delaware Supreme Court recognized growing opposition to corporal punishment but left to the legislature the question as to whether it violated the state constitutional prohibition on cruel and unusual punishment. Even with the state's relative recalcitrance to embrace prevalent punishment norms regarding corporal punishment, no offender has been subject to corporal punishment in almost 60 years. Even in the face of abandonment in most other realms, corporal punishment died a hard death in American prisons. As seen above in the matter of Delaware's criminal justice history, the U.S. Constitution recognizes the right of each state to legislate its own punishments. This right can only be abrogated if it is proven that a particular punishment is cruel and unusual under the terms of the Eighth Amendment. Therefore, one might expect judges and legislatures to permit a broad range of punishments, provided they were demonstrably neither cruel nor unusual. As applied to a given state's right to discipline prison inmates, this doctrine permitted corporal punishment inside many American prisons until the 1960s.

Resistance to Corporal Punishment

In *Talley v. Stephens* (1965), Arkansas state prison inmates challenged the use of corporal punishment citing due process (Fourteenth Amendment) claims. Their base allegation was that being beaten by correctional staff amounted to punishment without being afforded due process. In response, a federal judge ordered not that corporal punishment be banned altogether, but that its use be restricted until adequate safeguards were established for its application. Just three years later, another Arkansas case, *Jackson v. Bishop* (1968), sealed the fate for corporal punishment in American prisons. *Jackson v. Bishop* concerns

an injunction brought against the superintendent of the Arkansas State Penitentiary, O. F. Bishop, to cease using the strap (a long, flat leather whip) to discipline prisoners. The court of appeals held, among other things, that any use of the strap (even when due process of the Fourteenth Amendment was demonstrated) violated the Eighth Amendment of the Constitution that prohibits cruel and unusual punishment, simply because it was cruel.

A brief examination of three court cases demonstrates how American courts have chosen to navigate the qualitative aspects of being punished as a prison inmate. In the case of *Ingraham v. Wright* (1977), the U.S. Supreme Court noted that while prison brutality is part of the total punishment to which an individual is subjected for his crime, the protection afforded by the Eighth Amendment is, nevertheless, limited after incarceration. As such, only unnecessary and wanton infliction of pain constitutes cruel and unusual punishment in the context of incarceration. Some scholars have argued that this holding yields a kind of legal paradox in that the court's position seems to affirm the infliction of harsh conditions, especially violence, upon inmates as an intrinsic part of prison, whereas specifically administered violent or harsh punishments would likely be deemed unconstitutional. Along this same line of reason, some have argued the court's failure to perceive the variety of possible punishments is well demonstrated in its assumption that all corporal punishments are the same, and that they are all synonymous with torture. Even in the light of these landmark court cases, the possible revival of corporal punishment is periodically explored by U.S. lawmakers. While none of these efforts has advanced the cause beyond discussion, its continual reemergence speaks to its place in the history of American criminal justice.

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See Also: 1600 to 1776 Primary Documents; 1851 to 1900 Primary Documents; Cruel and Unusual Punishment; *Gates v. Collier*; History of Crime and Punishment in America: 1783–1850; Prisoner's Rights.

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Corrections

Corrections is typically considered the third major component of the criminal justice system (with law enforcement and courts being the first and second, respectively). Corrections are those sentencing options for someone who has been convicted of a crime and can include financial penalties and reimbursement (fines and restitution), community/public service hours, community-based sanctions (probation, parole, or house arrest), intermediate sanctions (work-release and restitution centers, boot camp programs), institutional corrections (jails and prisons), and capital punishment (the death penalty). Corrections consists of both the pretrial and posttrial management of offenders charged with and convicted of criminal offenses. According to data from the Bureau of Justice Statistics, there were 7.2 million adult offenders under correctional supervision in the United States (those persons on probation, on parole, or incarcerated in jails or prisons) at year end 2009. According to the American Correctional Association, the purpose of corrections is to enhance social order and public safety.

Early Correctional History

Corrections and punishment can trace their origins to ancient Greece. Punishments at that time were carried out in public and included execution,

denunciation of the offender, banishment and exile of the offender, public shaming, the confiscation of the offender's property, and corporal punishments, including stoning offenders and throwing them over cliffs. Old Testament punishments included corporal punishment as well, including beating and blinding the offender, and capital punishment that included beheading the offender, burning the offender at the stake, crushing the offender to death with heavy weights, drowning the offender, and crucifixion.

Confiscation of the offender's property was practiced at this time as well. In early Rome, both corporal and capital punishments were practiced, which included decapitating or hanging the offender, clubbing (beating) the offender, burning the offender at the stake, and throwing offenders over cliffs. In some instances, offenders were required to pay compensation to the victim for any loss caused by the offender.

Punishments during these eras were considered theatrical performances as they were carried out in public in a carnival-type atmosphere (the rationale was that if the public observed the punishment and sanctioning of an offender, they would be deterred from then engaging in criminal behavior); these public punishments were often considered social events of sorts where the public would gather to observe the macabre punishments as a form of entertainment.

Punishment at that time had various levels of severity. The least was flogging, which involved the offender being whipped using either leather whips or the cat-o-nine-tails. Branding, in which the offender was branded with a symbol or letter noting the type of offense he had been convicted of, was considered an appropriate correctional measure. For example, if an offender was convicted of stealing, he would be branded with a "T" in his right palm. The rationale was that if an individual was ever required to testify or appear before the court, either as a defendant or a witness, and was required to swear or be affirmed in court, he would raise his right hand. The brand would then be visible by the court and would indicate that the offender had been previously convicted of an offense. Mutilation involves afflicting the offender with corporal punishment, sometimes consistent with the offense committed. For example, a thief may have a hand cut

off; a liar may have his tongue removed. Instant death (the fourth in terms of level of severity) included hanging, beheading, or strangulation. Finally, lingering death was the most severe punishment; the offender was put to death slowly and often was tortured beforehand. This may have included burning the offender alive or breaking the offender on the wheel (a procedure that broke all of the offender's major bones).

Torture played a key role in corrections and punishment during the Middle Ages and included stretching offenders until their joints separated (on a device known as the rack) or crushing the offender by placing heavy stones on his chest. Exile and transportation were used, sending offenders out of the country. For example, England sent its offenders to the American colonies or Van Diemen's Land off the Australian coast. During the 1500s, penal bondage emerged as a form of punishment that involved all forms of incarceration. From 1550 through 1700, houses of corrections were formed to incarcerate vagrants (at the time, it was a crime to be vagrant). Those who could not document that they had a viable means of support were placed into a bridewell (workhouse). Prisons emerged once there was a philosophical shift from punishment of the body to punishment of the soul.

Goals of Corrections

There are five commonly held goals of corrections in terms of punishment. Deterrence is preventing crime through the threat of punishment. There are two types of deterrence: general and specific. General deterrence is where the court punishes the offender to dissuade the remainder of society from committing criminal offenses. Specific deterrence is where the offender is punished in such a way so as to dissuade him/her from committing a subsequent offense. Retribution is the premise that punishment should be the act of taking revenge on the criminal and adheres to the doctrine of *lex talionis* ("an eye for an eye"), in which the offender receives his just deserts for his offense. Rehabilitation is the goal of reforming the offender through fundamental changes and addressing any mental health, substance abuse, or behavioral challenges he/she may have that may be causing or influencing his/her criminal behavior. The goal is to "correct" behavior of offenders through treatment,

education, and training, yet provide some level of punishment. For example, a condition of probation may be to require an offender to complete substance abuse treatment or anger management courses. Restoration focuses on the victim and seeks to make the victim and all affected by the offender's crime (e.g., society, community) whole again, either through financial reparations or restorative justice. Incapacitation seeks to reduce the likelihood that an offender is able to offend again, through physical barriers and restraints, or through court or other government-imposed restrictions.

Corrections in the United States is typically divided into nine distinct eras. The Penitentiary era (1790–1825) focused on rehabilitation and deterrence of offenders. This era was characterized by offenders serving their time in prisons designed on the congregate system (Auburn system), in which offenders worked and ate together in silence, or the separate system (Pennsylvania system), in which offenders lived and worked in their cell and in silence. The Mass Prison era (1825–76) focused on incapacitation and deterrence, including inmate labor. From 1876 through 1890, the Reformatory era focused on rehabilitation of the offender. During this era, parole gained in popularity, as did indeterminate sentencing, in which offenders were sentenced to an unspecified sentence range (e.g., 5–10 years). Depending on the offender's behavior in custody, he/she would serve the minimum sentence or the maximum (rewarding productive and compliant behavior with the minimum sentence). The Industrial era (1890–1935) focused on incapacitation and included contract labor, state use labor, and the convict lease system. The Punitive era (1935–45) focused on retribution through strict punishment and the offender being in custody. From 1945 through 1967, the Treatment era focused on rehabilitation and included the medical model of treating offenders (i.e., rehabilitation). The Community-Based era (1967–80) emphasized reintegration of offenders into the community through halfway houses, work-release centers, and community service. The Warehousing era (1980–95) focused on incapacitation of offenders with parole being abolished and sentencing guidelines prescribing specific and mandatory sentences. Finally, from 1985 through the present, the Just Deserts era

has focused on retribution. This era is marked by determinate sentences (fixed sentences), truth in sentencing laws, and three strikes legislation.

Community-Based Corrections

Community-based corrections are those sanctions that afford the convicted offender an opportunity to remain in the community with the possibility of receiving therapeutic support programs. Those offenders sentenced to a community-based sanctions can be formally supervised by community corrections professionals (such as a probation officer, parole officer, or other case manager) and are subject to terms and conditions ordered by the court, parole commission, or other governing body. The most popular community-based corrections sanctions are probation and parole. Of the 7.2 million persons under correctional supervision at year-end 2009, 70 percent (just over 5 million offenders) were on either probation (4.2 million) or parole (819,000).

Probation. Probation is considered the most widely used sentencing option, and it is a criminal sanction in which the offender remains in the community subject to terms and conditions imposed by the court; probation is an alternative to incarceration. Probation can be supervised (in which the offender is monitored by a probation officer or other community corrections professional) or unsupervised (where the offender is not monitored). While the terms and conditions vary from jurisdiction to jurisdiction and offender to offender (e.g., based on the offense or the offender's challenges), there are standard conditions of probation (required of all offenders, regardless of their offense, special needs, or previous convictions) that require the offender to (1) be gainfully employed or enrolled in a program of study, (2) commit no criminal offense and notify the court and/or probation officer if charged with a new offense, (3) pay a fine, cost of court, restitution, or other fees, (4) report as directed to the court, probation official, or other community corrections professional, (5) notify officials of any change in address and/or employment, (6) not possess any illegal weapons, (7) maintain family obligations (e.g., child support), and (8) remain within the court's jurisdiction unless given permission to leave by the court and/or probation officer. Punitive conditions of probation are those that increase

the punishment of the offender based on the severity of the offense.

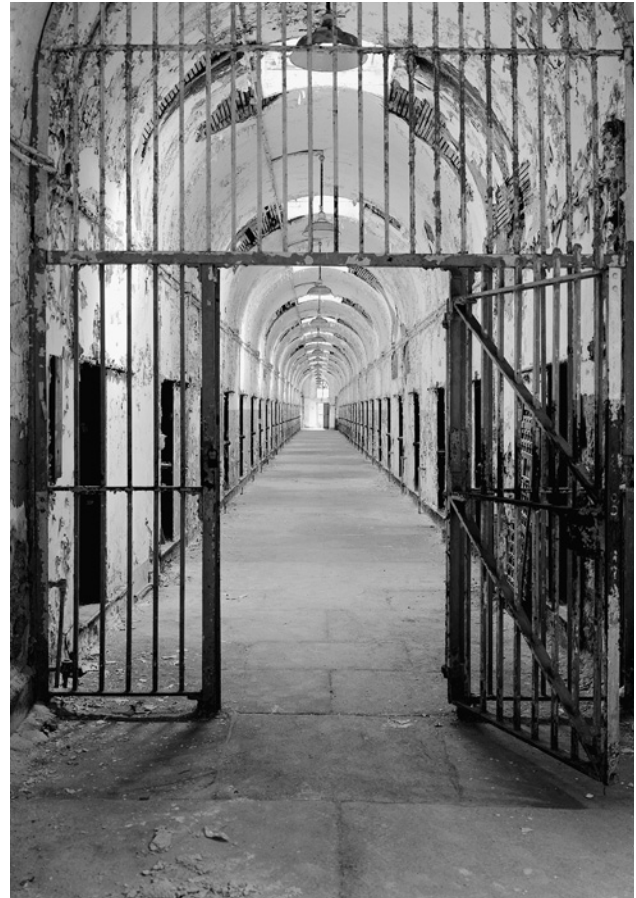
Therefore, the offender may be sentenced to complete community service hours as a condition of probation, or the offender may be required to observe a curfew, or be placed on intensive probation (a more restrictive form of probation). Treatment conditions of probation (such as requiring the offender to participate in substance abuse treatment or mental health counseling) attempt to reverse the offender's self-destructive behavior.

Probation as a community-based sanction can trace its origins to Boston, Massachusetts, in the 19th century. In 1841, John Augustus, a Boston shoemaker and a member of the temperance movement against alcohol, would often visit the Boston courts to observe the daily hearings, operations, and business of the courts. There, he observed that many offenders were often held over for court or remained in custody because they could not afford to pay the fine or other monetary assessment ordered by the court. Augustus then decided to approach the judges and ask if the courts would consider releasing the offender if Augustus promised to "monitor" them while they were released and ensure that they did not get in further trouble. It is estimated that by the time of his death in 1859, Augustus supervised 2,000 offenders over the years. Boston led the nation in establishing probation as a statutory sanction: The first state law prescribing probation and a full-time paid probation officer was passed in Massachusetts in 1878. By 1925, probation was available for juveniles in every state and for every adult by 1956.

Parole. Parole is the conditional release of an offender from an active jail or prison sentence. Parole can trace its origins to the 18th century, when English judges transferred the custody of inmates to contractors who were paid to transport the prisoners to the American colonies and in turn sell the services of the offenders to the highest bidder. These offenders would have to work for the high bidder until the end of their sentence. However, once the Revolutionary War started in 1775, the British offenders were fighting for the colonists against England, and thus the practice ended. From 1775 through 1856, offenders

were transported to penal colonies such as Norfolk Island in Australia. Navy captain Alexander Maconochie was appointed the superintendent of the penal colony, and he implemented a marks system in which an offender could be released from custody early if he earned good marks for improved behavior (much like the indeterminate sentencing policies of today). In 1854, Sir Walter Crofton, who directed the Irish prison system, implemented conditional release of the offender if he reported to local authorities weekly once he was released, committed no new criminal offense, earned an honest living, produced documentation of his ticket of leave, and did not change residence without notifying officials. Massachusetts authorized the first parole legislation in the United States in 1837. At the Elmira Reformatory in New York (which opened in 1876), the institution's superintendent, Zebulon Brockway, developed a classification system in which the offender was categorized based on earning good marks for productive behavior. Brockway determined his impression of the inmate during a one-on-one interview and, eventually, a parole hearing before Brockway and five other staff members. The 1920s through the 1930s were marked by organized crime, Prohibition, and media criticism of crime in the United States. As a result, President Herbert Hoover established the Wickersham Commission to examine these issues facing the criminal justice system. One of the recommendations of the Wickersham Commission was that there be uniformity in state parole practices through the creation of central policy-making boards in the states.

Advantages and Disadvantages. There are a number of advantages and disadvantages for community-based corrections. Community-based corrections are more cost effective than incarceration. Nationwide, the average cost to house an offender in a jail or prison is \$62 per day, far more than \$2 to \$3 per day for probation. Community-based corrections are also advantageous because there is a reduced criminalization of offenders as they are not subject to socialization with more hardened offenders behind bars. Another advantage of community-based corrections is that the offender can maintain family ties. Parents are able to remain in the home to raise their children (whereas incarcerating the parent may result in the



Rows of separate cells in cellblock nine of the Eastern State Penitentiary, in Philadelphia, Pennsylvania, which was built in 1829 and promulgated the separate "Pennsylvania" system.

children being placed with other family members or in foster care). Community-based corrections are advantageous because they allow an offender to work, thereby providing for the family; paying restitution, court costs, and fees; and contributing to the tax base. The offender also has a greater opportunity to receive therapeutic and professional services. In prison, there are few programs available to offenders, and those that are available have limited availability based on the large numbers of offenders in prison seeking to participate. Disadvantages of community-based corrections are that these sanctions can be considered a lack of punishment. There is a social liability in that offenders do remain in the community and often reoffend, sometimes committing violent acts. According to the Bureau of Justice Statistics, 52 percent of offenders recidivate, being rearrested

for a parole violation or new offense within three years of being released from jail or prison.

Intermediate Sanctions

Intermediate sanctions are those punishments that are not as lenient as community-based corrections but not as restrictive as institutional corrections. The offender is not completely confined to a correctional facility around the clock and has some freedom in the community. Some of the most popular intermediate sanctions are halfway houses, work-release and restitution centers, and boot camps. Intermediate sanctions grew from the need to create alternative sentencing options that did not involve the incarceration of offenders and were more harsh and restrictive than traditional community-based corrections.

Halfway houses are residential programs, located in the community, in which the offender may serve a portion of his/her sentence as a condition of probation or as a condition of early release (e.g., parole, post-release supervision). The offender is ordered to reside in the house, where he is subject to supervision by house staff and any other conditions imposed by the court or sentencing authority, yet he is free to work and to go to school or training programs. Boot camps are paramilitary programs of intensive physical training and include an educational component in which offenders can complete a GED, earn a high school diploma, or pursue other vocational skills. These programs average 90 days, and their goal is to instill discipline, respect, and other skills to foster successful transition once the offender returns to the community.

Institutional Corrections

Institutional corrections are those punishments that involve the offender serving an active sentence in a correctional facility. There are primarily two types of institutional corrections: jails and prisons. Jails are typically local or county facilities that house those offenders who are awaiting trial or convicted offenders serving short-term sentences. Prisons are typically state or federal facilities that house convicted offenders serving long-term sentences. Institutional corrections are often considered an “American” invention as they were developed as a result of a push in the colonies to focus on punishment of the spirit versus punishment of

the body during the 1700s. Prisons are total institutions in that offenders work, play, eat, recreate, and sleep together on a continual basis.

During the 1980s, several high-profile, violent offenses by parolees led citizens to demand that the criminal justice system, politicians, and society “get tough” about the recidivism of offenders on parole. That, coupled with President Bill Clinton’s signing the 1994 Violent Crime Control and Law Enforcement Act, led to the abolishment of parole. One of the components of the Violent Crime Control and Law Act included \$10 billion in funding to the states for corrections spending if those states created provisions or changed their sentencing laws to mandate that offenders serve their sentences in their entirety without provisions for good time, gain time, or parole. However, practitioners and policy makers came to the realization that offenders were being released from prison without any supervision, monitoring, or therapeutic support upon their release. Likewise, there were not any incentives for offenders to continue not to get in trouble (apart from the threat of a new conviction and the punishment sanctioned as a result of the same) as the offender was no longer subject to the authority of the parole commission or other sentencing authority. In 2007, President George W. Bush signed the Second Chance Act, which created federal funding for government agencies and organizations, including faith-based organizations, to provide re-entry programs for offenders in an effort to address the issues and challenges of releasing offenders from prison without any resources in place to assist in their transition back to society.

Re-entry programs promote the reintegration of offenders back into the community once they are released from jail or prison. Re-entry programs differ from parole because parole is a supervision status, which can be revoked if an offender fails to comply with the terms and conditions of his release, and re-entry programs are in place to assist the offender in his transition back to society. Re-entry programs not only prepare offenders for life after prison but reduce future criminality by addressing their challenges of obtaining gainful employment, teach life skills needed (e.g., money management, soft skills needed to deal with other individuals), and put community support resources in place for the offenders.

In the United States, the responsibility for the administration of corrections varies from jurisdiction to jurisdiction. At the federal level, the U.S. Probation Office is responsible for administering probation in each of the U.S. district courts. The Federal Bureau of Prisons is responsible for administering the various federal correctional facilities and penitentiaries. At the state level, most states have a department of corrections, which is responsible for administering the state prisons. Yet probation and parole can be administered through the state's executive branch of government, state judicial agencies, or local executive or judicial agencies. In some states, probation is administered by a combination of these agencies and organizations or may even be a private function, contracted by the states to a private organization.

Capital Punishment

Capital punishment is the ultimate sanction, in which the offender is sentenced to death for his/her offense. The first execution in the United States was Captain George Kendall in the Jamestown Colony in 1608 (he was executed for being a spy for Spain). According to the Bureau of Justice Statistics, at year-end 2009, there were 3,173 offenders on death row in 36 states and in the Federal Bureau of Prisons. Currently, the death penalty is a sanction in 36 of the 50 United States and the federal criminal justice system. Lethal injection is the most common form of execution (allowed in all 36 states). Seventeen of the states give the offender an alternative form of execution in addition to lethal injection, including electrocution (in nine states), lethal gas (in four states), hanging (in three states), and firing squad (in two states). Most of the offenders on death row (1,708) were convicted in southern states, followed by those convicted in western states (940). It is believed that the numbers are as high as they are in these regions because of traditional, conservative views of punishment, retribution, and justice.

Capital punishment as a sentencing option is still widely accepted in the United States, although support for it has declined over the past 30 years. Internationally, capital punishment is not widely accepted, with the United States being the only Western democracy and the only country in North America that executes offenders. Critics of the death penalty argue that it violates the Eighth

Amendment of the Constitution, citing that it is cruel and unusual punishment; the U.S. Supreme Court upheld the practice in 1976 in the landmark case *Gregg v. Georgia*. Per the U.S. Supreme Court, the death penalty is constitutional if (1) the court is informed about an offender's criminal background and history, (2) there are standards to guide the trial court in the sentencing decision, (3) the state appellate court must review every death sentence, and (4) the court is made aware of mitigating factors.

The United States does have a history of executing juveniles. George Junius Stinney, Jr., was convicted of the murder of two young girls in April 1944 and was executed in June 1944 at the age of 14 (he was the youngest person executed in the 20th century), despite questions about his ability to commit the murder based on his size, physical attributes, and the alleged method by which the victims were executed. There was also a question about his mental competence. However, in 2005, the U.S. Supreme Court in *Roper v. Simmons* declared it unconstitutional to execute individuals for crimes committed under the age of 18.

In 2002, the Supreme Court also held in *Atkins v. Virginia* that it was unconstitutional to execute persons who are mentally challenged/mentally impaired. In the court's decision, Justice John Paul Stevens, writing for the majority, cited public views against executing this population and changes in several state statutes that were reflective of the view that this was cruel and unusual punishment.

Special Needs Offenders

Special needs offenders are those offenders who provide challenges to the agencies that provide services to them and to the community corrections professionals who work with them based on physical, mental, social, or health challenges. These offenders include substance-abusing offenders, elderly offenders, mentally ill and mentally challenged offenders, as well as offenders with communicable diseases.

Substance-abusing offenders are those offenders who suffer from dependency on one or more substances, including alcohol, as well as legal and illegal drugs. According to the U.S. Department of Justice, 83 percent of all jail and prison inmates abuse or are addicted to drugs and/or alcohol. In addition, 25 percent of all federal and 33 percent

of state inmates were under the influence at the time of their arrest, and 50 percent had used drugs within one month prior to the time of their arrest.

Elderly offenders are those offenders age 50 and over. It is estimated that one-third of all offenders are age 50 and older. As a result, some states have developed geriatric prison facilities, which can provide the long-term care needs of elderly inmates and protect these inmates from younger, stronger, and more violent offenders.

Mentally ill offenders are those offenders who have experienced a recent history or symptoms of a mental health problem and its occurrence within the past 12 months. It is estimated that 50 percent of all jail and prison inmates have a mental health disorder (schizophrenia, major depression, bipolar disorder, or post-traumatic stress disorder [PTSD]), and there are eight times more mentally ill individuals in jails and prisons than in mental hospitals. The Los Angeles County Jail spends \$10 million per year on psychiatric medication because constitutional standards require that offenders be treated for physical and mental

health disorders. This likely mirrors the community-based corrections population, and community corrections professionals work with these offenders, often visiting them in their residence and workplace and during office visits. With government budget cuts prompted by the economic challenges facing most states, there has been an emphasis to deinstitutionalize mentally ill individuals, causing them to remain in the community and often engage in criminal behavior.

Offenders with communicable diseases are a challenge to both institutional and community-based corrections in that diseases attributed to airborne pathogens such as tuberculosis or hepatitis can be easily transmitted by inmates living in close confines. Because of sexual contact (which occurs regardless of policies prohibiting the acts), sexually transmitted diseases are often spread in prison. Likewise, inmates have these diseases upon being admitted to the correctional facilities and are seldom screened. Other communicable diseases such as human immunodeficiency virus and acquired immune deficiency syndrome (HIV/AIDS) pose a risk for corrections in that they can be transmitted to staff, inmates, and visitors through sexual contact with the inmate or through the inmate placing his/her blood in the drink or food of other parties.

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See Also: Capital Punishment; Community Service; Parole; Prisoner's Rights; Probation; Sentencing.

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With 50 percent of all U.S. inmates suffering from a mental health disorder, the Los Angeles County Jail, shown above, is forced to spend \$10 million a year on psychiatric medications.

Corruption, Contemporary

Corruption is the practice of using influence or money to cause officials to do what they would otherwise have not done or to accelerate what they would already have done. The first of these cases is considered more serious than the second, although this is still illegal. Corruption can affect every sector of society and can be found in both the public and private sectors. In the 21st century, the United States has scored as having a relatively low level of corruption and is a member of a second group of countries somewhat behind the leading economies of Sweden, Norway, Australia, and Canada, among others. Nevertheless, there are still plenty of causes for concern in the strong and opaque relationships between some corporate interests and certain politicians, in the new forms of corruption that are possible, and in the continued issue of public discourse being negatively affected by the continued use of falsification and oversimplification by some commentators.

The Federal Bureau of Investigation (FBI) claims that public corruption remains one of its principal targets because of its role in eroding trust in government institutions and the poisonous effect such lack of trust has on society. Meanwhile, corporate lobbyists continue to try to water down the provisions of the Foreign Corrupt Practices Act (1977) and other anticorruption measures. The Supreme Court itself, notably in the 2006 *Garcetti v. Ceballos* decision, has made government suppression of corruption difficult by permitting retaliation against whistle-blowers. The post-September 11 environment has been used to justify many practices that were previously considered outrageous.

Financial Industries

Owing to the high levels of cash available, the volume of transactions, the complexity of many new financial instruments, and the informational asymmetries existing, there remain powerful incentives for rogue individuals to cheat the public or even institutional customers. Bernie Madoff, for example, organized a Ponzi scheme in which customers were fraudulently repaid with money drawn from newer customers. Madoff was subsequently convicted and given a 150-year prison sentence, but the significance of his career lies in the complexity

of contemporary financial services and their separation from the scrutiny of nonspecialists. Even specialist attorneys and prosecutors find it difficult to take into account all the different interactions involved; people less conversant with the issues find it extremely difficult to make proper judgments about what may or may not have happened. Combined with the drastic reduction in regulation of the finance industry and the enormous increases in income inequality created by repeated tax cuts for the very richest in American society, a number of finance industry executives came to feel a sense of impunity that contributed to the banking crisis of 2007–08 and its subsequent disastrous impact on countries around the world. Some efforts were subsequently made to reform the industry by, for example, breaking up those banks deemed to be “too big to fail,” but these efforts are widely considered to be inadequate.

Cash-Based Industries

Cash-based industries offer a particular incentive for operators to commit minor or even major acts of corruption because cash can easily be transferred from one hand to another without appearing on any books. These industries, including casinos, establishments offering sexual services, or others in which patrons may be reluctant to leave their personal details, are also associated with the laundering of money by criminal gangs. Prostitution and drug money, for example, can be reworked through such industries, and cash payments can also be made to officials charged with regulating the businesses to turn a blind eye to infractions. Such activities are often associated with newly arriving migrants, who may find it difficult to obtain alternative sources of employment and who are vulnerable to exploitation and in urgent need of money quickly.

Military-Industrial Complex

In the years following the terrorist attacks on the United States in 2001, a vast increase in military action overseas and homeland security domestically have provided a wide range of opportunities for well-connected military goods and services providers that have raised new fears of a corrupt relationship between industry and government. These fears were intensified by the opacity with which many contracts were awarded and

operations organized, because of the pretext of security, as well as the use of private-sector companies such as Blackwater (now renamed Xe) that have hired large numbers of former service personnel to provide guarding and security services in Iraq and other overseas trouble spots, while also bolstering their position in the United States. This company, which is not alone in the field, has been accused of numerous acts of unwarranted violent aggression overseas, and the thought of its heavily armed personnel being deployed on American streets to keep order in the wake of natural disasters has prompted concern.

Police Corruption

Recent work on corruption in the American police has argued for a broader definition of corruption, which, like the treatment of the military-industrial complex, includes some actions not previously considered to be corrupt. Malfeasance, for example, can include many illicit activities conducted with a view to completing official tasks. Falsifying statements or manufacturing evidence, for example, would be classified as corruption according to this thinking. Police departments might succumb to systemic corruption either through the desire to prosecute individuals believed to be guilty but for whom evidence is insufficient, or because of desire for personal gain. The temptations are more severe in the case of cash-based industries such as sale of illegal drugs. However, the problems of police corruption have declined over the years as measures enforcing accountability and transparency have become more effective.

Recent high-profile cases such as the execution of Troy Anthony Davis reveal the suspicion with which many people view statements made by at least some of the police in some circumstances. Davis was convicted of the August 1988 murder of a Savannah, Georgia, police officer and was sentenced to death. In the years after his conviction, many of the witnesses in the case recanted their statements and accused the police of coercing their testimony, casting doubt on his guilt. In 2011, Davis was denied his final appeal for a new trial and was executed by lethal injection in the midst of mass protests and pleas from such notable figures as former President Jimmy Carter and Archbishop Desmond Tutu, among others.

Popular Media

It has been argued that the normal issue of bias in the popular media has been stretched to the extent that it should now be referred to as “media corruption.” The dividing line appears to be when falsehoods are deliberately passed off as truths and facts are deliberately traduced for the sake of ideological bias. The best-known examples of this involve the talk radio sector, which is strongly associated with the extreme political right, and the Fox News Network, which also has a pronounced right-wing agenda and, according to its critics, deliberately produces inaccurate reports that suit its ideology better. Man-made global climate change is one issue that has attracted the charge of media corruption in that it is alleged that corporate agencies with an interest in promoting fossil fuel use have persuaded media outlets to claim that a debate exists among scientists concerning the existence of global climate change, its cause, and what can be done to combat it, when such debate does not exist in a meaningful sense.

Corporate Social Responsibility

American business tends to prefer a contractual basis to underline its activities, and this approach extends to the provision of laws and regulations. Laws now expressly forbid American people or corporations, participating in any form of bribery or corrupt practices wherever they might happen in the world. Despite some high-profile exceptions, this approach has proved quite successful in most parts of the world, although the reservations related to military services mentioned above should be retained. At the same time, the continued spread of information and Internet technology have made it much more difficult for business entities to keep activities secret anywhere in the world. Although it remains difficult to attract widespread media coverage in the United States for stories critical of corporate behavior, it is possible to bring it to the attention of state authorities, who in due course will bring about investigations and prosecutions when these are warranted.

Companies, especially large companies, have reacted to a changing marketplace by creating and propagating campaigns of corporate social responsibility (CSR) to demonstrate their benign intentions toward the environment and society at large. Although not all of these programs are

entirely sincere or indeed of any real use, it does indicate the current belief in business that, as the knowledge-based economy approaches, intangible assets will be increasingly valuable to businesses and, of these assets, the most obvious is the reputation of the company. It is believed and taught in many business schools, therefore, that any gain that might be obtained from an act of corruption is greatly outweighed by the negative consequences to the organization if the wrongdoing is discovered and made known.

Computer-Mediated Corruption

One of the most significant differences between contemporary forms of corruption and those of the past is the ubiquity of computer-mediated communication as part of everyday life. People intending to take part in some form of corrupt practice are now likely to deal with each other through some kind of electronic means rather than on a face-to-face basis. The transmission of money or other resources might also be conducted by computer rather than being physically transferred from one party to another. This change has made clear differences in the type and nature of evidence that may be obtained by legal authorities in pursuing a prosecution. From a human perspective, computer-mediated communication has greatly widened the range of possible contacts, but the communication is often on a very shallow level with limited amounts of trust and, hence, increases the likelihood of cheating other people.

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See Also: 1961 to 1980 Primary Documents; Computer Crime; Corruption, History of; Corruption, Sociology of; Madoff, Bernard; Technology, Police.

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Corruption, History of

Corruption is generally defined as an act that is evil or wicked or that involves dishonesty or violation of a duty or trust. This is a very broad definition and can include almost any act and, as a general matter, can include criminal acts. It also includes any number of acts that, although dishonest or unethical, are not crimes. Indeed, *corruption* is a term that is not legally defined, as specific criminal acts are defined. Thus, the term can and does have a broad meaning and is frequently applied in many different contexts, although it is generally limited to acts involving government officials and agencies. In the context of crime, it can have various applications.

Corruption and Crimes

In the context of crime, corruption is usually not used for generic crimes such as murder, rape, kidnapping, arson, battery, assault, robbery, burglary, or simple theft, although such crimes would be encompassed in a broad definition of corruption. The term *corruption* can be and frequently is applied to certain crimes that involve the violation of a trust or a fiduciary relationship. These crimes usually involve embezzlement, bribery, extortion, malicious prosecution, abuse of process, insider trading, and malfeasance or abuse of office.

Embezzlement is usually defined as the crime of theft by a person who holds a position of fiduciary responsibility such as a banker or a trustee but can be applied against government officials. Bribery is usually defined as the payment of money to a person in a position of trust, such as a government official, to influence that person's behavior in his or her official capacity in a particular manner. The crime of extortion is frequently defined as when a government official demands money in exchange for performing a certain act or failing to execute a duty. Malicious prosecution is usually defined as the initiating of criminal charges

against a person for an unethical or unlawful motive such as personal hatred, even though the criminal charges are technically correct. Abuse of process is similar to malicious prosecution but is more expansive in that it can involve the employment of other government processes to harm another person. Malfeasance or abuse of office occurs when a government official intentionally engages in some unethical or illegal activity for his or her own or another's personal gain or purposes, such as the harm of another person, even if the act is technically legal. Malfeasance is not a crime in some jurisdictions and may only constitute a civil offense.

Corporations and commerce present a different problem regarding corruption than government agencies and officials. Many acts that would be considered corrupt or illegal when committed by a government official are not corrupt when done by a corporate official. However, there are crimes that are uniquely associated with corporations and commerce. For example, the crime of insider trading occurs when people with secret information concerning certain corporations or securities use that information to gain an unfair advantage in the purchase or sale of securities—this is a crime. Another example is the crime of embezzlement, which is defined as the theft of money that is entrusted to a person or entity such as a bank. Those persons or entities who hold such a trust are called fiduciaries.

Corruption is also used when describing unethical activities such as conflicts of interest, to include nepotism and cronyism, which might not constitute an actual crime. Nepotism is the employment of a relative rather than hiring the most qualified person for a job. Cronyism is the hiring of people based on their personal or professional contacts rather than on their qualifications. Although nepotism and cronyism are not illegal in private corporations, some political entities have laws against nepotism. But cronyism is usually not illegal, even though it is generally recognized as not fair or equitable, and is even widely accepted in political systems that allow for “political spoils” to the winners of elections. Conflicts of interest usually involve situations in which a government official might have a personal or financial interest in the matters before that official. Many political entities have laws or

regulations that prohibit conflicts of interest. In the modern world, one of the biggest problems is the awarding of lucrative government contracts. Because government contracts are so profitable, with payments amounting to billions of dollars, many corporations will do anything to win them. There are many examples of politicians and bureaucrats being caught in the web of government contracts.

Corruption can be and is frequently viewed as a government-based phenomenon (to especially include political corruption). Corruption by government officials tends to be viewed as more serious than corruption in the private sector, at least in certain democratic nations. Moreover, political corruption can include activities by a government that suppress or oppress the citizenry for the enrichment and benefit of government officers and powerful private entities. Political corruption also includes tampering with elections or improperly influencing the creation or selection of a political system or leader. Of course, the view of such activities must be interpreted through the nature and philosophy of the political system present in that country. What might be corrupt in one country (e.g., capitalism in a communist regime) might not be corrupt in a country holding different political values.

Political Corruption in Early America

Political corruption has been with America since its founding. A brief representative list of events and legislative enactments up to the start of the 21st century provides the flavor of political corruption in American history.

One of the first major corruption scandals in America involved President John Adams and the Federalist Party. The opposing Democratic-Republican Party, led by Thomas Jefferson, had been criticizing Adams and his administration. Also, Adams and the Federalists were concerned about the French Revolution causing problems in the newly formed United States of America. In response, Adams and the Federalists enacted the Alien and Sedition Acts of 1798, which, among other results, criminalized criticism of the president or the government. Subsequently, a number of Democratic-Republicans, including several publishers, were arrested and convicted. The political reasons for the Sedition Act were obvious

when the expiration date of the statute—one day prior to the expiration of Adams's term—came to light. As a result, the Federalists were swept from office in the next election, and Jefferson, the new president, pardoned all of the people convicted under the Sedition Act.

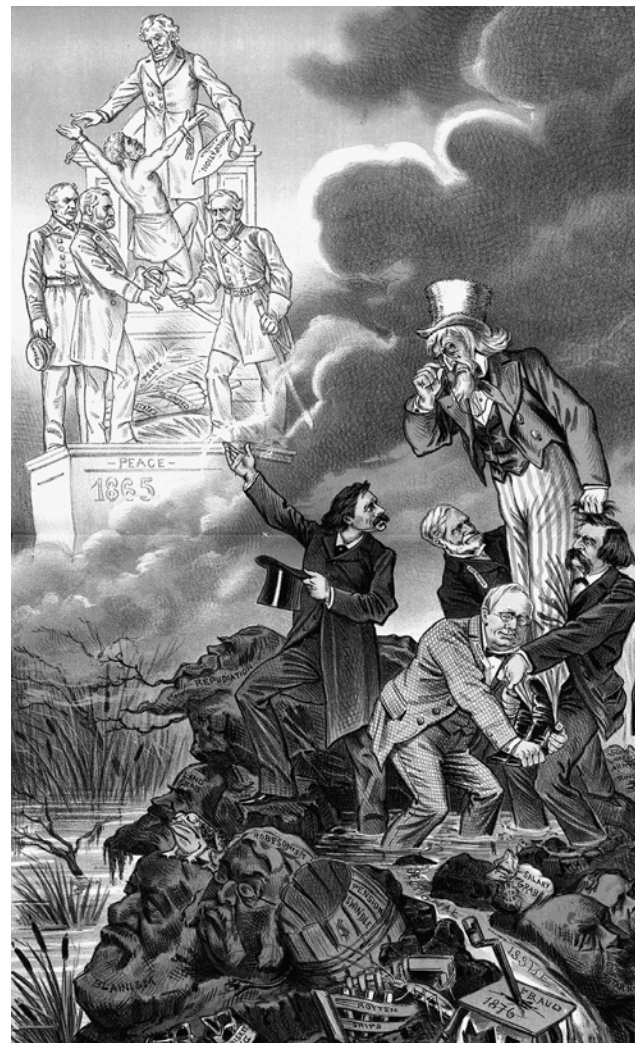
New York City in the 1860s was the location of one of the most famous corruption scandals in America. The power brokers of New York City had created a massive political machine known generically as Tammany Hall. The name *Tammany Hall* came from a political society known as the Tammany Society that was founded in 1789 and opposed the Federalists. Over the years, it developed into a corrupt political organization that did not gain power until the 1850s. It specialized in political patronage and corrupt business dealings involving city money, such that the name *Tammany Hall* became synonymous with political corruption. Corruption by Tammany Hall included but was most certainly not limited to political favors, police payoffs, and election fixing. The power of the Tammany Hall political machinery reached its height in the 1860s. Despite efforts at reform, it continued to exist in one form or another until the 1960s, when it was finally extinguished.

After the Civil War, Ulysses S. Grant, the victorious commander of the Union army, was elected president in 1868. Grant's administration was considered one of the most corrupt in American history, becoming ridden with political scandals. Grant was primarily accused of being incompetent in the selection and appointment of subordinates and of abusing his authority by protecting family members and cronies.

The Credit Mobilier scandal in 1872 was another major national political corruption scandal. Credit Mobilier was a company started in the early 1860s to build a transcontinental railroad across the United States. The construction of the railroad was burdened with enormous unnecessary costs. To prevent any congressional investigations and to obtain favorable legislation, numerous congressmen were showered with bribes, gifts, and stock. After several years the railroad began to experience huge financial losses, and in 1872, the scandal broke in the newspapers. Congressional investigations resulted in the expulsions of two congressmen from the House of

Representatives, who were viewed as scapegoats. No criminal charges were brought against any other person. President Ulysses S. Grant, whose administration was under severe criticism for corruption, was not implicated.

In 1875, the Whiskey Ring scandal broke in St. Louis, Missouri. It was discovered that a large number of government agents were involved in the siphoning of tax revenues from the sale of whiskey. Treasury Secretary Benjamin Bristow had conducted a secret investigation to prevent the suspects from being warned because so many government officials were involved. More than 350 people were arrested, resulting in more



This 1885 cartoon shows Uncle Sam in a swamp filled with symbols representing such scandals as the Whiskey Ring, while a man points to a statue of Abraham Lincoln freeing a slave.

than 200 indictments. President Grant was not informed of the investigation prior to the arrests. When the prosecutions started, Grant interfered in them to the extent of firing the special prosecutor who was handling the trials as well as Bristow himself. Only a few people were convicted.

In 1883, as a result of the extensive corruption in the Grant administration and the assassination of President James Garfield by a disappointed office seeker, Congress enacted the Civil Service Act of 1883. Up to that point, appointments to the government bureaucracy were a result of the "spoils system," in which a government job was obtained by favors from the primary officeholder. With the advent of the civil service, it became more difficult to fire government employees after an election with a new party taking office, and the seeds of a professional bureaucracy were planted.

Twentieth-Century Corruption

The Tillman Act of 1907 was the first attempt by the Congress to limit spending in campaign finance. Because of the widespread corruption in elections, especially from corporations and banks giving gifts to political campaigns, Congress attempted to limit the influence of these entities on elections to public office. This was shortly followed by the Publicity Act of 1910, which not only revised the Tillman Act but also required the disclosure of campaign contributions and spending.

With the passage of the Volstead Act of 1919, the manufacture and sale of alcohol became illegal in the United States. As a result of the Volstead Act, organized crime expanded its operations from gambling and prostitution to include bootlegging to address the demand for alcohol, which many people in America still wanted despite the law. This expansion into bootlegging also brought a new perspective to corruption in America, which is illustrated by events in Chicago in the 1920s and the early 1930s. It has been estimated that the Chicago mob, personified by Al Capone, operated more than 10,000 speakeasies in the city. The problem was so widespread, with the corrupt assistance and protection of the Chicago Police Department, that the federal government eventually moved in to enforce the law and stop the violence. In 1933, in recognition that some forms of vice cannot be controlled, the Volstead Act was repealed.

The Teapot Dome Scandal, which occurred from 1923 to 1929, was one of the most famous political corruption scandals in America. Earlier in the century, a number of areas in the United States had been set aside for the development of oil, one of which was called the Teapot Dome. In 1920, President Warren Harding appointed Albert Fall to be his secretary of the interior. Fall was friends with several oilmen. Fall convinced Harding to transfer control of the oil reserve areas to the Department of the Interior. After apparently accepting bribes, Fall leased some of the areas to his friends. The oil reserves were estimated to be worth \$100 million, for which Fall received payments of almost \$500,000. When the secret deals became public, there was a massive public outcry. Harding died in 1923 his successor, Calvin Coolidge, appointed a special prosecutor to investigate the matter. As a result, Fall was convicted and sent to prison, though his friends were acquitted.

During this time period, Congress continued its attempts to regulate corruption in elections. The Federal Corrupt Practices Act of 1925 repealed the Tillman Act of 1907 and the Publicity Act of 1910, adjusted the spending limits for federal candidates, and mandated disclosures of campaign contributions and expenditures. The Hatch Act of 1939 prohibited federal employees from working on campaigns of candidates for federal offices and prohibited the coercion of contributions from federal employees.

The early 1950s saw an income tax scandal during the administration of President Harry Truman. Allegations of corruption at the Internal Revenue Service (IRS) became public along with accusations that the Department of Justice was refusing to investigate the IRS. Truman appointed a special prosecutor to investigate the matter, but when the special prosecutor attempted to investigate the Department of Justice, the attorney general refused to cooperate. Truman fired the attorney general and appointed another one, who took over the investigation, despite accusations of a cover-up. As a result of the investigation, only one minor Department of Justice official was fired.

Chicago is a place where political corruption is considered by many people to be standard operating procedure. It is personified by the administration of Mayor Richard J. Daley, who served for

21 years from 1955 to 1971. Daley is considered to be the last old-style political boss. He was in charge of the Democratic Party in addition to being mayor and exercised an incredible amount of power.

Although he was frequently accused of being heavy-handed, undemocratic, and politically corrupt, which included accusations of fixing the election for President John F. Kennedy and being responsible for the police riot at the 1968 Democratic National Convention, he was honored as a man who protected Chicago and had a number of positive accomplishments. Although a number of his assistants were jailed for corruption, Daley was never convicted.

Corruption in the Modern Era

At the start of the 1970s, Congress enacted the Federal Election Campaign Act of 1971. This law established stricter standards for the monitoring and reporting of campaign finances. It also limited the contributions by individuals and political action committees. The act was amended in 1974 to address the abuses of the Nixon campaign after the Watergate scandal.

The 1970s ushered in a new era of corruption in America. The Watergate scandal exploded in 1972. President Richard Nixon was forced to resign under the threat of impeachment after it was discovered that the Republican Party was responsible for the burglary of the Democratic National Committee headquarters in the Watergate Hotel in Washington, D.C. Congressional hearings followed after the matter was widely publicized by two *Washington Post* reporters, Bob Woodward and Carl Bernstein. Nixon appointed a special prosecutor, Archibald Cox, who was eventually fired when he tried to compel Nixon to reveal certain tape recordings, after Nixon forced the resignations of various government officials who refused to fire him.

This firing later became known as the Saturday Night Massacre. In dramatic testimony before Congress, former Nixon lawyer John Dean provided testimony that sealed Nixon's fate. President Gerald Ford's subsequent pardon of Nixon is considered the primary reason Ford was not given a full term as president. Watergate is considered the watershed for political cynicism in modern America.

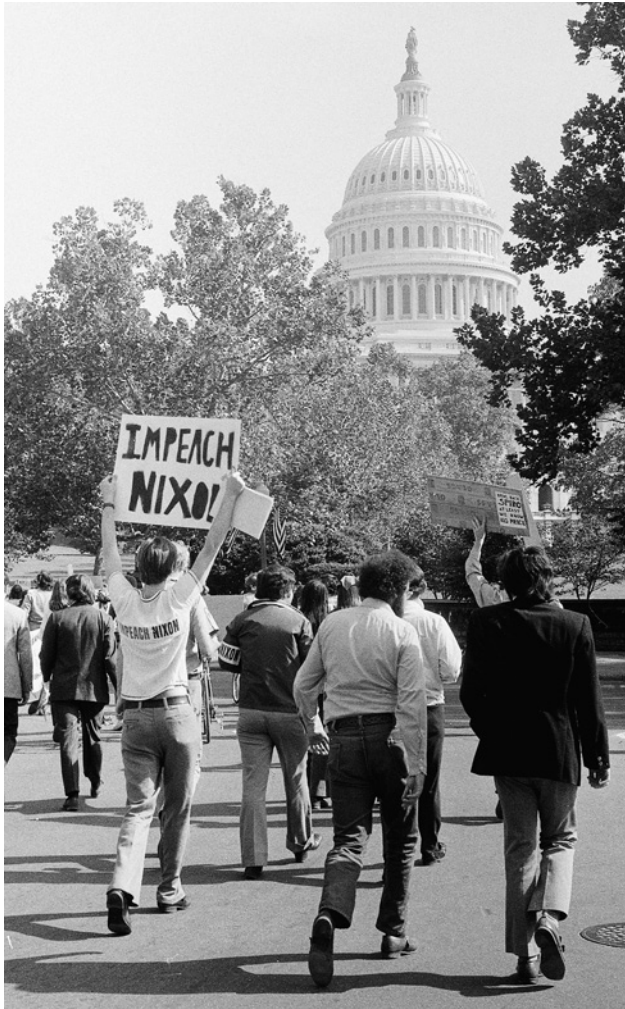
In 1975, following the Watergate scandal, there was a mood in the country for increasing oversight of government activities. In 1975, the Church Committee was formed in the U.S. Senate and was tasked to investigate allegations that the Central Intelligence Agency (CIA) had plotted assassinations of foreign leaders and was involved in subverting foreign governments, and that the CIA and the Federal Bureau of Investigation (FBI) were involved in spying on American citizens. The most infamous FBI operation was COINTELPRO, in which the FBI engaged in covert surveillance of American citizens for political reasons. The results shocked America and resulted in significant changes to increase accountability of covert activities and law enforcement. Much of the Church Committee report is still classified.

In the aftermath of the Watergate scandal, Congress enacted the Ethics in Government Act of 1978. This law prohibited officers and employees of the government from soliciting or accepting anything of value from any corporation or person that conducts business with the government. This law also established the Office of Independent Counsel to investigate violations of law by government officers. It provided for the appointment of a special prosecutor by a panel of three judges.

The 1970s saw the expansion of investigation into government corruption by the FBI. From 1978 to 1980, the FBI conducted a sting operation against various U.S. congressmen, which was called ABSCAM. FBI agents posed as Arab sheikhs and offered bribes to the various congressmen for help in gaining entry into the United States and for the purchasing of casinos. A number of congressmen were convicted. A subsequent congressional investigation into whether the FBI entrapped the congressmen was unsuccessful. ABSCAM is considered to be one of the most effective sting operations in the history of investigations of political corruption.

The Iran-Contra scandal lasted from 1986 to 1993 and was probably the biggest embarrassment of President Ronald Reagan's administration. Up until 1986, officials in the Reagan administration had been secretly and illegally shipping arms to Iran. This occurred during the Iranian Hostage Crisis, and the arms shipments were justified on the grounds that they were intended to secure the release of the hostages. Another purpose was the

funding of the Contras, a group of rebels in Nicaragua who were being supported in their revolt against the government of Nicaragua. After the revelation of the shipments, the resulting political carnage was devastating. Fourteen Reagan administration officials were indicted, with 11 being convicted, including Defense Secretary Casper Weinberger. Reagan was never charged or convicted. Some of the convictions were overturned on appeal, and the remaining people who were convicted were pardoned by the next president, George H. W. Bush, who was Reagan's vice president. Interestingly, some of those who were pardoned later became officials in the administration of President George W. Bush.



Protesters calling for Richard Nixon's impeachment near the U.S. Capitol in 1973. After the national trauma of the Watergate scandal, Congress enacted the Ethics in Government Act of 1978.

Throughout the 1980s, there was a serious financial crisis with savings and loans in the United States. Charles Keating was the chairman of Lincoln Savings and Loan, which was under investigation by the federal government. In 1989, Lincoln Savings and Loan collapsed, costing the United States more than \$3 billion. Keating had made numerous donations to various politicians. Five U.S. senators, who came to be known as the Keating Five—a group that included John McCain—attempted to intervene on behalf of Keating. Although none of the senators were charged or convicted of any crimes, they were reprimanded and/or criticized by the Senate for their actions.

In 1989, the Housing and Urban Development scandal was brought into the public light. The Department of Housing and Urban Development, which was formed in 1965, was, among other things, responsible for assisting the poor with housing projects. One of these programs was Title 8. It was revealed that a Reagan appointee, Judge Samuel Pierce, Jr., had overseen a massive campaign of fraud, embezzlement, influence peddling, and preferential treatment relative to Section 8 housing. Although Pierce was never charged with a crime, it is estimated that the fraud cost the United States between \$2 billion and \$8 billion.

With the 1990s came a new president—Bill Clinton. However, political corruption and scandal still appeared. From 1993 to 2001, the Whitewater scandal occupied much of the nation's time and attention. Bill and Hillary Clinton were accused of being involved in an extensive land fraud deal that occurred before their move from Arkansas to Washington, D.C. One of their associates had used money from Madison Savings and Loan to secretly finance the land deal. Some of the money was alleged to have been improperly used for the Clinton campaign. Madison Savings and Loan later collapsed, costing the United States \$68 million. An independent prosecutor was appointed to investigate the matter, while several committees in Congress conducted investigations. Eventually, several Clinton associates were sent to jail; the Clintons were never charged or convicted, although the final report indicated that they were involved in the fraud.

In recognition of the corrupting influence of lobbying and the ineffectiveness of previous

legislation, Congress enacted the Lobbying Disclosure Act of 1995. This act required the registration of and disclosure by lobbyists who were attempting to influence the government.

Corruption in the Context of Crime

In the context of crime, corruption in the nation's law enforcement agencies has been widespread. A primary example is the continuing effort in New York City to address corruption. In 1894, the Lexow Committee conducted an investigation into police corruption and found that election tampering, bribes for assignments and promotion, brutality, and bribery for gambling and prostitution were widespread in the New York City Police Department dating back to the 1850s. In 1913, the Curran Committee investigated murder by the police, the police extorting protection payments from citizens, bribes, payoffs concerning gambling and prostitution prosecutions, and the rather unique situation of assigning officers to investigate complaints against themselves. In 1932, the Seabury investigation addressed bribes to and extortion by the police department, lawyers, judges, and politicians to fix criminal prosecutions.

Perjury was found to be widespread in the police department. In 1954, the Helfand investigation was formed to investigate protection payments extorted by the police department and widespread perjury. In 1972, the Knapp Commission, made more famous by the events surrounding Frank Serpico, found extensive perjury and bribery by the police involving prostitution, drugs, and gambling. Payoffs inside the department were frequent for promotions and medical retirements. In 1994, the Mollen Commission found that the police engaged in systematic burglary, robbery, and drug trafficking. It also found that the police engaged in perjury and brutality and had a code of silence and cover-ups that prevented internal investigation into corruption. The Mollen Commission also found that it was impossible for police departments to investigate themselves.

Conclusion

There is no doubt that corruption in America has been and is widespread, continuing, and widely accepted, if only informally. Corruption is part of

the political and governmental culture of America despite the many attempts to address it. And it appears to be widely accepted as a part of the law enforcement community. It is ironic that corruption is so ingrained in the very governmental agencies that are intended to stop crime. Indeed, history seems to show that it will never be effectively stopped.

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Independent Scholar

See Also: 1961 to 1980 Primary Documents; Code of Silence; Corruption, Contemporary; Corruption, Sociology of; Ethics in Government Act of 1978; Knapp Commission; Mollen Commission; Political Crimes, Contemporary; Volstead Act; Watergate.

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Corruption, Sociology of

Corruption involves using money, power, or influence to cause an official to act differently from

how his or her duties would normally require. It can occur in the private or public sectors and can involve both accelerating what would have happened anyway and changing a decision that should have been made. Clearly, people who are able to wield such power, influence, and money are most able to cause corruption, and this is a crime that has much less involvement with the poor. Corruption in the private sector has become quite closely involved with white-collar crime both domestically and internationally. A conflict of interest occurs when an individual or institution is charged with providing an impartial decision but has a connection with one or more of the other actors involved, which tends to prevent impartiality. A lobbyist writing legislation represents a conflict of interest.

Political Corruption

It should be acknowledged that much of the rest of the world considers the American political system to be inherently corrupt—but that does not mean that they overlook the corruption in their own systems. This is because of the close cash nexus between politicians and lobbyists and the lack of binding ideology among the large parties that means candidates customarily run as individuals rather than as members of a party with a defined partly line and known principles that would guide behavior in situations that are still emergent.

Political corruption tends to center on the ability of lobbyists to persuade representatives to pass or reject legislation in a way that benefits them and that does not meet that the legal requirements. As lobbying has become more professional in the modern age, the relationship between politicians and lobbyists has become not just more intense and multivalent but also much longer-lasting in time. One of the principal reasons many political posts have term limits placed upon them is to try to inhibit this type of relationship, and it is problematic that many leading positions are open-ended in nature. As the relationship continues, people become more familiar with each other's desires, intentions, and goals, and this has the effect that, like a long-term personal relationship, it is no longer necessary for one party fully to express desires and wishes to the other party. When understanding is present without anything being said and certainly nothing documented,

then it is much easier for the relationship to slide into a corrupt one without it being apparent at any particular stage that the line has been crossed.

This form of corruption is most commonly associated with corporate interests, which have used their influence throughout American industry to resist the regulation that protects consumers from dangerous products or the negative externalities of their actions, to restrict or deny freedom of association or collective bargaining for their workers, or in the endless demands for tax cuts for themselves and subsidies to protect them against more-competitive foreign firms. However, some labor unions have also exerted their influence in corrupt ways, notably the International Teamsters Union, which has attracted an unwanted reputation for both corruption and violence. These cases show the weakness of a relationship in the public sphere that is not properly transparent and subject to investigation and, preferably, limited in time. Since positions of influence in America have been most commonly held by rich, middle-aged, white men, most cases of corruption have focused on the actions of rich, middle-aged, white men. However, investigations of corruption around the world have demonstrated that there are people of all genders, ethnicities, religions, and any other demographic factor willing to become involved in corruption on either side of the relationship, and there are no demonstrable differences among people in this regard. Instead, it is all about the money and the power.

One of the most prominent examples of corruption of this sort is seen in the administration of President Warren Harding (1921–23), when a significant number of his long-term political allies, who became known as the Ohio Gang, were appointed to high office. “Gang” members profited from rents obtained from their actions, although it is not clear whether Harding himself was complicit in these actions or just negligent. An earlier example is the administration of Ulysses S. Grant (1869–77), under whose rule nepotism and rent-seeking by political appointees was apparently rife.

The relationship between political supporters and office appointments has continued to be problematic at all levels of government. Transparency and scrutiny by courts and media have been weapons used to combat this form of corruption, although it can hardly be said that the

battle has been won. Former Illinois Governor Rod Blagojevich, for example, was found guilty of a variety of corrupt practices in 2011. Numerous officials were indicted and prosecuted during the Reagan (1981–88) and Nixon (1969–74) administrations, in particular, though no administration has been free of its own scandals. Often, corrupt practices were tied to other illegal or unethical activities, sometimes in the interest of ideological purposes (as in the Iran-Contra scandal during the Reagan administration) and sometimes just in the interest of personal gain (as the Blagojevich case seems to indicate).

Attempts to Limit Corruption

To deal with corruption at the corporate level, various laws have been introduced to add transparency to corporate practices and also to prevent bribery, notably through the 1977 Foreign Corrupt Practices Act. As business became more internationalized and non-Western states became prominent as both potential markets and suppliers of goods, American corporations found themselves drawn more or less willingly into corrupt practices, when, for example, gift-giving exchanges escalated or bribes were openly solicited by private- or public-sector officials. The principle enforced now is that any corrupt practice by an American corporation is punishable in a domestic court no matter where in the world it took place and who was involved in such an act. This principle is becoming popular around the world and, in combination with the empowering effects of the Internet and mobile communication devices, companies are becoming obliged to pay close attention to the nature of their supply chains to make sure they are not linked in any way not just with corruption but with trying to hide the use of sweatshop or child labor, polluting other countries, or exploiting their resources in an unsustainable way.

People who attempt to reveal wrongdoing and corruption by organizations are known as whistleblowers. Such people are often subject to considerable pressures to keep them quiet, either through intimidation or being involved in peer groups that privilege loyalty to the organization above normal standards of behavior. Consequently, several laws have been introduced to protect and regulate the interests of whistleblowers,

including the 1912 Lloyd–La Follette Act and the Sarbanes-Oxley Act of 2002, in addition to clauses or provisions in various other pieces of legislation. Increased job insecurity in the wake of lower levels of unionization, together with corporate attempts to monopolize the thoughts of employees and keep them from being broadcast publicly, deter many people from speaking out as they might otherwise do. Incidents of workplace bullying, for example, reveal that many people will tolerate abuse shown to others if it seems to mean they themselves will not be persecuted.

Small-Scale Corruption

In the case of small-scale corruption, officials with discretionary ability have in some cases accepted bribes of different kinds to turn a blind eye to crimes or to manipulate the resources to which they have access. During Prohibition, for example, organized criminals running illegal alcohol production and distribution services often used bribery to induce police to leave them in peace to conduct their operations. The same is true of cash-based illegal or semilegal industries throughout history. This includes such activities as gambling, prostitution, and the use of drugs. Even when the activities are, strictly speaking, legal or the involvement of an individual as a customer has not been criminalized, business operators are reluctant to have police involvement since this leads to scandal, and potential customers are scared away. In these cases, the type of people involved are also those involved in the industries concerned, and there is a link between illegal, gang-related activities and marginalized members of society, such as members of recently arrived ethnic minorities who lack the network connections or influence to obtain decent work. Since most criminal gangs prey on their junior members, the actual money used to pay bribes is extorted from the sex workers or drugs runners at the ground level. Sex workers, in particular, are vulnerable to this kind of extortion, especially when they have been trafficked from overseas, have no official standing in America, and thus have no opportunity to appeal to the authorities or to anyone else.

In the case of nonpolice officials, the type of influence that can be brought to bear includes a combination of cash payments and other inducements. Nearly all academic institutions have

organizational memories, usually anecdotal in nature, in which male teachers request or are offered sexual favors from female students (other configurations are possible but are less common) in return for better grades or other rewards. The same situation exists in many workplaces, and it is often the case that prosecutions are almost impossible to achieve because any case reduces to one person's word against another, and this is very difficult to adjudicate. However, suspicion that many people, especially men, abuse their position to obtain such favors from female staff was part of the motivation leading to the rise of the political correctness campaign.

This campaign was aimed in part at raising the consciousness of people concerning incidents of potential abuse and corruption and, by stigmatizing certain forms of language and behavior, to minimize the opportunity for potential offenders to do so. This has been largely successful in most American workplaces and classrooms that are properly monitored and in which workers and students have proper representation. Going into 2011, however, various high-profile cases involving leading American politicians and foreign officials have demonstrated the continuing willingness of many high-status men to abuse their power by enticing, soliciting, or even forcing women into providing sexual favors to them.

Conflicts of Interest

The dividing line between urging a certain decision to be made and a conflict of interest has become notoriously difficult to determine. The nature of gift-giving culture in Asian business and society, in particular, was influential in leading to the Foreign Corrupt Practices Act (1977), which aimed to outlaw any form of incentive provision in making commercial decisions anywhere in the world. Codes of ethics have been adopted in a variety of professions in which similar situations might be found: for example, market researchers, travel agencies, and medical doctors. As the amount of money increases, the thought given to noncriminalized incentives also increases. A medical doctor given the latitude to select between competing pharmaceutical products for a number of patients represents an important market opportunity. Hollywood producers and people in similar positions, notoriously, ask for sexual favors from young

actors in return for a career boost. Historically, American society has turned to binding contracts, legislation, and the law to try to minimize these problems and, in partnership with investigative journalism, some important abuses of power have been discovered.

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See Also: 1961 to 1980 Primary Documents; Corruption, Contemporary; Corruption, History of; Political Crimes, Sociology of; Sexual Harassment.

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Counterfeiting

Though relatively rare now, counterfeiting once flourished on a staggering scale in the United States. Beginning in colonial times and continuing well into the 19th century, counterfeiters manufactured innumerable imitations of coins and paper money that entered into circulation via extensive criminal networks. They operated with relative impunity, thanks to an unusual combination of lax law enforcement, limited federal oversight of the money supply, and a general tolerance for "making money" that dated to colonial times. Only during the Civil War, when the nation began issuing the first federal paper currency, did counterfeiting attract a more sustained and ultimately successful campaign to suppress it. Beginning in the early 20th century onward, counterfeiting ceased to play a major role in the criminal economy, a state of affairs that remained the rule, with rare exception, until the present day.

Bills of Credit in the Colonies

The rise of counterfeiting in the United States dates to the 17th century, when criminal entrepreneurs began churning out imitations of the European coins then in circulation, substituting lead and other base metals for silver and gold. After individual colonial governments began issuing paper money or “bills of credit,” counterfeiters began imitating them as well. By the 18th century, counterfeiting had evolved into a reasonably sophisticated, capital-intensive enterprise that relied on a network of manufacturers, wholesalers, and dealers in counterfeit coins and notes, as well as the people who passed them into circulation (known as “utterers,” “passers,” or “shovers”).

Though colonial authorities made periodic attempts to suppress the trade or design bills that defied imitation, these campaigns met with limited success. The absence of a significant police presence and the lack of secure jails both contributed to the problem. So, too, did the limited cooperation between the individual colonial governments. It was not uncommon, for example, for a colonial government to ignore counterfeiters who imitated other colonies’ bills of credit, and counterfeiting rings were quick to turn these jurisdictional lacunae to their advantage. On the rare occasions when they caught and convicted counterfeiters, colonial governments rarely imposed the kind of draconian punishments common in Europe. Their reluctance to do so may reflect a genuine ambivalence about the place of counterfeiters in colonial society. Throughout the 17th and 18th centuries, the colonists repeatedly complained of shortages of money. Counterfeiting, however illicit, may have met a very real need for a sufficient medium of exchange.

Counterfeiting played an important role in the American Revolution. When the colonies broke away from Britain, the Continental Congress turned to the printing press to finance the coming war. As Congress issued growing amounts of paper money, counterfeiters put their own imitations into circulation. Some of these counterfeiters may have operated with the encouragement, if not outright support, of the British. These imitations hampered the war effort and contributed to the dramatic depreciation of the Continental dollars by the final years of the war. Similar problems plagued paper money issued by the individual states.

Bank-Issued Tender

The postwar years brought significant change to the world of money and counterfeiting. The U.S. Constitution banned state-issued bills of credit and vested the federal government with control over the money supply as well as the power to punish counterfeiters of the coins and securities of the new nation. Yet the government rarely did so, largely because it did not issue paper money of its own. Nor did it mint significant numbers of coins. Instead, most money in circulation originated with private banks chartered by state legislatures, each of which issued paper money in a variety of denominations and designs.

In ceding control to the states, the federal government made prosecution of counterfeiting a local matter, even as counterfeiters continued to operate across state and eventually national lines. Beginning in the 1790s, counterfeiters set up numerous “manufactories” just north of the border between Vermont and Canada. This region, a relatively lawless and remote area, became home to a growing number of rural manufactories of counterfeit notes. The most famous of these were clustered along a dirt road known as Cogniac Street, a few miles beyond the border. The criminal enclaves based there employed numerous engravers, printers, and signers of notes who sold their wares through a complicated network of “boodle carriers” (people who carried the money south from Canada), wholesalers, retailers, and shovers.

Banks pooled their resources to combat the problem, and they worked with local authorities in the United States to prosecute counterfeiters. Still, their efforts rarely yielded anything more than the conviction of a handful of low-level retailers and shovers, few of whom received prison terms beyond three or five years at most. Moreover, few counterfeiters convicted served out their prison terms, thanks to pardons by state governors. This reluctance to punish is puzzling but may reflect a deeper ambivalence about banks and banking at this time. Fraudulent banks were not uncommon in this era, and there was no hard and fast distinction between a bank that issued worthless paper and a gang of counterfeiters who did the same. Even legitimate banks often refused to redeem their notes in times of financial panic or distress. In this larger atmosphere of fraud and



A member of the Secret Service division of the U.S. Treasury examines confiscated counterfeit currency in October 1938. Soon after its founding, the U.S. Secret Service conducted one of the most successful law enforcement campaigns ever when it arrested and convicted numerous high-level counterfeiters in the 1870s and 1880s.

instability, counterfeiters found courts and juries reluctant to convict them.

Nonetheless, by the early 1830s, the growing operations of gangs of counterfeiters in Canada sparked a coordinated crackdown by a consortium of banks and law enforcement officials on both sides of the border. After several successful (and well-publicized) raids, the region lost its monopoly over the counterfeit economy. In response, many counterfeiters began shifting some of their engraving and printing activities to remote regions in the midwest where limited law enforcement, a scarcity of money, and a general skepticism of banks and banking prevailed. Counterfeiters in these regions generally focused on banknotes, though they also manufactured bogus coins.

At the same time, counterfeiters established workshops in the nation's burgeoning cities. Many things drew them to places like New York and Philadelphia: the growing anonymity of urban centers, the absence of an effective police force, the presence of many legitimate engravers and printers who could be lured to work in the counterfeit economy, and a growing population of poor people who passed counterfeit notes to supplement their income.

By the 1850s, New York, and to a lesser extent Philadelphia, harbored extensive gangs of criminals who manufactured, vended, and passed counterfeit notes. Satellite gangs also emerged in cities like Chicago, Cleveland, and St. Louis at this time.

The counterfeit economy of urban areas was sophisticated. In general, new notes would be commissioned by criminal partnerships headed by a “capitalist” who advanced the funds necessary to hire an engraver and print the money. Wholesalers and retailers would then purchase the counterfeits at a significant discount on their face value and then sell them at a higher price to growing armies of “shovers” who put the notes into circulation in grocery stores, bars, and other local retail establishments. Men typically dominated the manufacture and sale of counterfeit notes, but a growing number of women, most of them from the ranks of the working poor, put many of the notes into circulation.

On the eve of the Civil War, counterfeiting assumed new guises. By this time, approximately 10,000 different banknotes floated in circulation, making it hard to remember the appearance of a genuine note, much less a counterfeit. Counterfeiters exploited this chaos, issuing new kinds of bogus currency that relied on artful erasures and substitutions. They took genuine notes of defunct banks and altered them to imitate more solid banks; they “raised” denominations on genuine notes; and increasingly, they issued notes of fictional banks with plausible-sounding names. These notes, while not counterfeits in the conventional sense of the word, were generally considered to be as dangerous, if not more so, than conventional imitations of banknotes and coins.

Greenback

The Civil War set the stage for the destruction of the counterfeit economy. Over the course of that conflict, the North issued a new, federal currency known as the greenback. Congress also sanctioned the creation of national banks that would issue a common, uniform currency meant to replace the currency issued by the state-chartered banks. These radical reforms of the monetary system had profound implications for the craft of counterfeiting: Anyone who preyed on these currencies posed a direct threat to the sovereignty of the nation-state. In fact, the legislation that created the greenback and the national banknotes spelled out much harsher penalties for counterfeiting, including lengthy prison terms and onerous fines.

Nonetheless, counterfeiters had plenty of incentives to imitate the new notes. Whatever the risks,

the new national currencies could be counterfeited in much greater volumes. The allure of far greater profits led counterfeiters to create a number of dangerous imitations, but for the first few years of the war, the federal government effectively ceded the problem to corrupt and inept local law enforcement authorities, and counterfeiters ran into little resistance at first. Counterfeiters generally ignored the currency of the South, with the exception of a handful of legitimate printers who sold millions of dollars of bogus Confederate notes to federal soldiers headed to the battlefield.

In 1864, the warden of the Old Capitol Prison in Washington, Colonel William Wood, pushed for a more concerted federal campaign against the counterfeiters of the federal currency. A protégé of Secretary of War Edwin Stanton, Wood eventually obtained permission to recruit and direct a new, national police force dedicated to prosecuting counterfeiters. This organization, soon known as the U.S. Secret Service, moved aggressively to combat counterfeiting. Under Wood’s tenure, it hired dozens of operatives to catalog and destroy the counterfeit economy that threatened the new federal currencies.

This took an unprecedented amount of detective work, and during the first few years of its existence, the Secret Service interviewed thousands of suspects and secured hundreds of convictions. A controversial figure, Wood was eventually replaced by a succession of far more competent and bureaucratic chiefs, each of whom widened the assault on the counterfeit economy. In one of the most successful campaigns in law enforcement history, the Secret Service arrested and convicted scores of high-level counterfeiters in the 1870s and 1880s and hounded many others into retirement, including famed counterfeiters like William Brockway.

By the early 20th century, counterfeiting ceased to pose a threat to the nation’s currency. It experienced a minor revival from the 1910s onward, when criminal syndicates underwritten by the Italian Mafia started to manufacture counterfeits on a large scale. While they never posed as serious a threat as the gangs of the 19th century, they enjoyed considerable success, particularly during the Great Depression, when the market for counterfeit notes, presumably driven by economic need, thrived. Counterfeiting then went

into a sustained decline from the 1940s through the 1980s.

While counterfeiting experienced a minor revival in the 1990s after the widespread adoption of digital scanners and personal computers, domestic counterfeiting remains something of a rarity. In the 21st century, most counterfeiters of American currency operate beyond the borders of the United States, seeking out lawless locales much the way their predecessors did in centuries past.

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See Also: 1851 to 1900 Primary Documents; 1921 to 1940 Primary Documents; Confidence Games and Frauds; History of Crime and Punishment in America: Colonial; History of Crime and Punishment in America: 1850–1900; Secret Service.

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Court of Common Pleas

The Court of Common Pleas, the King's Bench, and the Court of Exchequer were the three superior courts of common law in England. Criminal matters were handled by the King's Bench, while the Exchequer dealt with tax collection and rent. All three were lodged in Westminster Hall from 1395 to 1882. Henry II established the Court of Common Pleas in 1178 to hear civil cases involving pleas, or suits, between citizens, and the Crown used this court when it took civil action

against a citizen. This court was responsible for shaping English law. It employed numerous functionaries and acted as an early law school. The superior court structure held until the passage of the Judicature Act of 1873, when it was dissolved. In the United States, four states have courts called Courts of Common Pleas: Delaware, Ohio, Pennsylvania, and South Carolina.

Delaware

The Courts of Common Pleas are trial courts divided into criminal and civil jurisdictions. Courts with criminal jurisdiction have original, general jurisdiction over motor vehicle offenses and criminal misdemeanors, with the exception of most drug offenses. Original jurisdiction means that the court has the authority to be the first to try the case and rule on it directly; general jurisdiction means that it has the ability to hear a wide variety of cases.

Courts with criminal jurisdiction handle preliminary hearings for the Superior Court. These courts also have appellate jurisdiction over two lower courts, the Alderman's Court and the Justice of the Peace Court. Appellate jurisdiction means that it can hear cases from lower courts in order to affirm or reverse the actions of those courts.

Common pleas courts with civil jurisdiction hear civil actions not exceeding \$50,000, cases in which a person has been accused of being a habitual offender under the motor vehicle code, and petitions for name changes. They also hear appeals from Justice of the Peace Courts and administrative appeals from the Division of Motor Vehicles.

Ohio

The Courts of Common Pleas are Ohio's trial courts. Each of the state's 88 counties houses one. There are four divisions: general, domestic relations, juvenile, and probate. The General Division hears criminal as well as civil cases when the suit is for more than \$15,000. It has original, general, and appellate jurisdiction. The Domestic Relations Division has limited jurisdiction (meaning that it is restricted to the types of cases it may hear) over cases dealing with marriage and family matters. The Juvenile Division has limited jurisdiction over matters involving people under 18 years of age who

have been charged with delinquent acts (i.e., acts that would be crimes if they were committed by adults). It also hears cases concerning abused and incorrigible children, paternity, neglect, failure to pay child support, and contributing to the delinquency of a minor. The Probate Division has limited jurisdiction over issues such as adoption, marriage licensing, and the determination of mental competency.

Pennsylvania

As in Ohio, Pennsylvania's Courts of Common Pleas are the trial courts, hearing major criminal and civil cases. There are 60 judicial districts, most serving one county, although seven districts serve two counties. Similar to General Division courts in Ohio, Pennsylvania courts have original, general, and appellate jurisdiction. These courts also deal with a variety of other cases, including juvenile delinquency, child abuse and custody, divorce, and estates.

South Carolina

The South Carolina Court of Common Pleas is a civil court within the state's circuit court. The criminal court is known as the Court of General Sessions. South Carolina is divided into 16 judicial districts. The Court of Common Pleas has general jurisdiction over civil cases involving more than \$7,500. Administrative support is provided by the clerk of the courts, which schedules trials, maintains records of military discharges, and collects and pays out money as ordered by the court.

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See Also: Appellate Courts; Common Law Origins of Criminal Law; Courts; Jurisdiction; Juvenile Delinquency, History of.

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Court of Oyer and Terminer

The Court of Oyer and Terminer (literally translated as "to hear and determine") originated from English law; these courts were used to prosecute criminal offenses of an extraordinary and/or serious nature. The judges of assize sat on these commissions (along with some others) and were charged with the duty to inquire about the situation and prosecute those found guilty. Trials of treason, felonies, and misdemeanors that were committed in the areas specified by the commission were tried in these courts. First, the inquiry section of the court processes was conducted by a grand jury. Once the grand jury indicted, the commissioners of the court then heard and decided upon the petit jury.

In Scotland, commissions of the Court of Oyer and Terminer can be established by the crown in cases of treason and misprision of treason per the Treason Act of 1708. This act created a shared law of high treason after the uniting of Scotland and England in 1707 created the kingdom of Great Britain. The commission must have three lords of justiciary to begin proceedings. Courts of Oyer and Terminer have been used historically in Scotland on many occasions, namely the Radical War of 1820.

Salem Witch Trials

The American Court of Oyer and Terminer was established in 1692 by Governor William Phipps during the Salem witch trials in Massachusetts. The commission appointed John Hathorne, Nathaniel Saltsonstall, Bartholomew Gedney, Peter Sergeant, Samuel Sewall, Wait Still

Winthrop, and Lieutenant Governor William Stoughton to examine the claims of witchcraft in the small town. During the subsequent trials, Cotton Mather wrote a formal letter to the court appealing for the desistance of the use of spectral evidence—claims of images that were visible only to the witchcraft victims who had supposedly been attacked by the specter. The use of this type of evidence was common in English law but never had a decisive role in proceedings. Nonetheless, Mather's request was dismissed, and the trials continued at an accelerated rate.

Later that year, Reverend Increase Mather, the president of Harvard College, condemned spectral evidence as being of use in court and urged caution prosecuting those accused of witchcraft in his "Cases of Conscience." Mather stated that "It were better that 10 suspected witches should escape, than that one innocent person should be condemned," a position that eventually led to the demise of the Court of Oyer and Terminer.

After the condemnation posed by Increase Mather, Governor Phipps recanted the use of spectral evidence in the witch trials and later released the accused and banned further arrests for witchcraft. The Court of Oyer and Terminer was terminated a mere five months after its inception, and the witch trials of Salem, Massachusetts, were declared unlawful by the general court.

In later years, Governor Phipps requested that Increase Mather record all knowledge about the Salem witch trials through obtained official records. The resulting publication *Wonders of the Invisible World* was based directly on the trials.

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See Also: Colonial Courts; Court of Quarter Sessions; Courts; History of Crime and Punishment in America: Colonial; Massachusetts; Salem Witch Trials.

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Court of Quarter Sessions

The Court of Quarter Sessions, sometimes known as general sessions, is a local court in the United States that has criminal jurisdiction and sometimes presides over local administrative matters, such as the development and repair of roads. The court gets its name from its English predecessor. The link between English and early American legal systems illustrates that American leaders felt comfortable using familiar English legal institutions to help establish judicial procedures in the colonies and, later, the United States. To understand the court's role in the United States, it is useful to look at its place in the English legal system.

The Court of Quarter Sessions in the United Kingdom sat four times a year, dating from the 14th century, usually at the county level. These courts existed until the 1970s in the United Kingdom. The court had criminal jurisdiction for crimes that needed to hold a jury trial to be dealt with, but it could not preside over crimes that were of a very serious nature, such as those constituting a sentence of life in prison or capital punishment. The Quarter Sessions also had some civil jurisdiction, such as designating the repair of roads and overseeing county institutions like jails and lunatic asylums. The Court of Quarter Sessions in the United States ran in a very similar fashion to that in the United Kingdom.

Several states in the United States, like Pennsylvania and New York, used the Court of Quarter Sessions to preside over local criminal matters. For instance, Pennsylvania held Quarter Sessions until 1968 when the state constitution enacted that the Court of Quarter Sessions be moved under the jurisdiction of the Court of Common Pleas in each county. New York underwent a similar reform of its court systems in the 1960s.

Looking at the use of the Court of Quarter Sessions in Pennsylvania provides an example of how these local criminal courts were used in the United States. In 1683, Philadelphia and the surrounding counties established the Court of Common Pleas to oversee civil matters and the Court of Quarter Sessions to preside over criminal cases. The Quarter Sessions would meet every three months in each county. Justices of the peace for these courts were generally appointed by the governor. The trials in the Court of Quarter Sessions empanelled a

jury of 12 men who had to be unanimous in their decision to designate a guilty verdict as opposed to merely a majority rule. This court heard all criminal matters, including very minor transgressions, except those of a more heinous nature, such as the capital crimes of murder and treason. In the colonial era, these more serious crimes were heard by the Supreme Court in Pennsylvania in which the judges would hold commissions of Oyer and Terminer. After the American Revolution, a separate Court of Oyer and Terminer heard the capital crimes. Criminal jurisdiction was split, then, between the Court of Quarter Sessions and the Court of Oyer and Terminer.

Particularly in Philadelphia, the Court of Quarter Sessions was, at times, renamed or the criminal jurisdiction given to other courts, such as during 1838–43. During these years, the Quarter Sessions relinquished its criminal jurisdiction to the Court of General Sessions and its successor, the Court of Criminal Sessions. By 1843, the Court of Quarter Sessions regained its jurisdiction over local criminal matters until its consolidation with the Court of Common Pleas in 1968.

In addition to its criminal jurisdiction, throughout the 18th century and into the 19th century, the Court of Quarter Sessions in Pennsylvania also had growing county administrative duties. These were similar to the administrative responsibilities held by the English Court of Quarter Sessions. Some of these duties included the opening of new roads or bridges, examining county officials' record books and punishing them for any misuse, the establishment of election districts, and the official licensing for businesses such as taverns or peddlers. In essence, the Court of Quarter Sessions also acted as a form of county government, as was typical in most of the southern colonies.

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See Also: Court of Common Pleas; Court of Oyer and Terminer; Courts.

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Courts

Courts are created to provide justice and protection of the law through the civil and criminal justice systems. The differences between civil and criminal courts will be highlighted, but the focus of this entry is about criminal courts. In the United States, criminal courts operate at the state and federal levels, known as the dual system of justice. The state and federal systems are divided into three tiers—trial, appellate, and supreme—each with its own functions and duties. Throughout the history of courts, their duties have been similar, but the processes of how the courts actualized the duties has changed.

Specifically, court processes shifted between due process and crime control models and courtroom workgroup members managed their roles in working together. Examples of how the court process has changed over time include specialized courts and sentencing structures. These topics display the historical importance and evolving nature of the federal and state courts in the United States.

Civil Versus Criminal Court Systems

The civil and criminal court systems engage in similar actions but have different purposes and types of cases. Civil courts deal with personal issues between individuals and/or businesses, where the individuals or businesses represent themselves or can hire an attorney. Civil law is all law outside of criminal law. Civil courts have various types of cases, including general (e.g., contracts, personal injury, and damaged property), family (e.g., divorce and child custody), juvenile (e.g., child abuse and neglect), small claims cases (e.g., suits for smaller monetary amounts), and probate (e.g., wills and trusts).

Criminal courts work with criminal law violations; criminal law deals with criminal behavior. The city, state, or federal government takes action



The photo shows the U.S. Supreme Court in 2009, including Sonia Sotomayor (top right), who was confirmed in August of that year. Every year, about 4,000 to 7,000 cases are petitioned to be reviewed by the U.S. Supreme Court, but the court's nine justices decide to hear only the approximately 100 cases that they find most important that year.

against the person accused of engaging in criminal behavior and is considered the representative of the individual victim(s) of the crime because crimes are viewed as actions against society and the common good, not just the individual. The governmental entity that is in charge of the crime is dependent upon what type of offense was committed, whether it was a city ordinance violation, state crime, or federal crime. Criminal courts operate to determine the guilt of defendants and sentence offenders. Criminal courts function separately at the state and federal levels of government and are divided among trial courts, appellate courts, and superior courts.

Organization of the Federal System

The U.S. Constitution in Article 3, Section 1 establishes the right of a supreme court and other inferior courts to operate in the United States to deal with law violations as necessary. The federal court system deals with federal crimes and constitutional issues through its three tiers of U.S. dis-

trict courts, U.S. courts of appeals, and the U.S. Supreme Court, with the majority of the cases dealing with civil issues.

U.S. district courts are the trial-level courts for the federal government. There are 94 district courts in operation across the United States, with most states having multiple district courts as decided per their population. As trial courts, the U.S. district courts hear cases about criminal federal law violations, civil rights abuses, and crimes that involve interstate movement. Within the United States, however, the majority of crimes committed are in violation of state laws, not federal laws. Thus, the majority of the cases heard at this level of court are civil in nature, dealing with constitutional right concerns such as petitions for habeas corpus in which prisoners ask the federal courts to review the constitutionality of their imprisonment.

U.S. courts of appeals, or circuit courts, are divided into 13 judicial circuits throughout the United States. These courts are in charge of hearing federal appellate cases covering substantive

and procedural constitutional issues that occurred during federal district court proceedings. The U.S. courts of appeals do not concern themselves with original jurisdiction, meaning they do not retry cases or determine guilt; instead, they review trial cases to ensure that rights were not infringed upon. A panel of justices reviews the written petitions of attorneys and oral arguments to determine if the original decision of the trial court should be upheld or overturned. If the decision is to uphold the trial court's decision, nothing extra happens with the case. However, if the decision is overturned, cases can be reopened and remanded to the original court or dismissed.

The U.S. Supreme Court is the highest appellate court and is known as the “court of last resort.” In the U.S. Supreme Court, there are nine justices who preside over all of the cases and are appointed to life terms by the president of the United States and confirmed by the Senate. Cases are petitioned to be reviewed by the U.S. Supreme Court from the state and federal systems. The U.S. Supreme Court only hears cases from state systems when an important substantive constitutional issue is in question. The justices select which cases they want to review; typically, 4,000 to 7,000 cases are petitioned to be reviewed by the U.S. Supreme Court each year, but only about 100 cases are chosen by the justices. The justices select the cases they view as the most pertinent constitutional issues, with their decisions shaping the direction of law within the United States. These landmark decisions have been entered on such pivotal issues as segregation, abortion, birth control, and the meanings of legal concepts like cruel and unusual punishment and legal search and seizures. Once decisions have been entered by the court, they become precedent for all other courts at the state and federal level to follow when similar legal issues arise.

History of the Federal System

Prior to the creation of the federal court system, the executive and legislative branches operated without separation; the judiciary branch was a function of Congress under the articles of the Confederation. It was not until after the first Constitutional Convention and the adoption of the U.S. Constitution that a separate judiciary branch existed. Article 3 of the Constitution, however, only created the Supreme Court and left the devel-

opment of other types of courts to future decisions and compromises of Congress. Under the Judiciary Act of 1879, the legislative power of the United States created the lower-level federal courts.

Even though separate, the Supreme Court justices were required to oversee the operation of the circuit courts in what became known as “circuit riding.” The justices would travel to different circuits to hold court in each of the three districts twice a year. Per Congress, this would ensure that all justices would understand the complexities and concerns of the local system, which would allow them to be more effective in the Supreme Court. This proved to be a difficult task in colonial years when a lack of secure transportation in the growing nation made the trips lengthy and unsafe; justices would retire from the bench to stop riding the circuit. This practice by the Supreme Court justices was abolished with the Judicial Act of 1801 but then reconfirmed with the Circuit Court Act of 1802. The 1802 act, however, also stated that Supreme Court justices did not need to be present for circuit courts to hear cases and increased the number of districts to six; district judges were hired to preside over the courts.

Although the Supreme Court decided only 50 cases during its first decade of operation, this number rapidly increased with the developing roles and duties of the court. The varied functions of the justices and movement across the districts created a backlog of cases in the courts. As time progressed, it was decided that circuit riding was ineffective and that the system needed to be redesigned. Throughout the mid- and late 1800s, including the implementation of the Evarts Act of 1891, the Supreme Court, circuit courts of appeals, and federal district courts developed their individual roles and actions.

During the development of the three levels of courts, the Supreme Court was charged with determining the functions and purposes of courts. The early cases of the court were fraught with battles over the powers of the courts as well as arbitrating differences between states, businesses, and political powers. It was these early years, however, that built the foundation of the court's power and its influence as a policy maker. Some of the first decisions entered shaped the power of the courts, including the rights of original jurisdiction (the ability of the court to overview the

actions of Congress) and judicial review (ability to ensure that state legislation is constitutional).

The Supreme Court also has been charged with ensuring that due process rights of citizens, especially those involved in the criminal justice system, are upheld, using the Fourth, Fifth, Sixth, and Eighth Amendments as a framework for decisions. For instance, the cases of *Terry v. Ohio* (1968) and *Arizona v. Gant* (2009) aided the construction of what are illegal search and seizures, whereas *Weeks v. United States* (1914) and *Mapp v. Ohio* (1961) resulted in the exclusionary rule that evidence from illegal actions cannot be used in courts. In connection to the Fifth Amendment, the case of *Miranda v. Arizona* (1966) established rules for how police can legally interrogate individuals without concern of self-incrimination, and the 2010 cases *Berghuis v. Thompson* and *Maryland v. Shatzer* fine-tuned the implementation of the Miranda warnings. The right to counsel as identified in the Sixth Amendment was not extended to all defendants until *Gideon v. Wainwright* (1963) and *Argersinger v. Hamlin* (1972); these two decisions effectively created the public defender. With regard to the Eighth Amendment, individuals have a right to bail that is not excessive as defined by cases such as *Stack v. Boyle* (1951) and *Bell v. Wolfish* (1979), whereas the other clause of not bearing cruel and unusual punishment has been outlined by influential decisions such as *Francis v. Resweber* (1947), *Harmelin v. Michigan* (1991), and *Roper v. Simmons* (2005). All of these decisions helped to shape the functions of the criminal justice system and the operation of the state courts in protecting the constitutional rights of defendants.

Organization of the State System

The state court system is similar to the federal court system in having three tiers with distinct duties. State courts were created and operate as a distinct system from the federal court system because of the dual court system. In addition, state criminal courts operate individually and distinct from all other states. Although different states operate in various manners, a typical court process does exist. The three levels of state courts are trial courts, appellate courts, and state supreme courts.

The trial courts can be broken into two levels of courts that can be called minor courts or courts

of general jurisdiction, and major courts or courts of limited jurisdiction. The minor trial courts usually are not operated at the state level and instead deal with municipal violations at the city level. Some examples of these courts are municipal courts, magistrate courts, and police courts. These courts work with less serious violations and, at times, civil matters. Less serious offenses are city or municipal violations that include traffic violations, trespassing, and disorderly conduct. When an individual is guilty of a municipal violation, the punishment is normally a fine.

Major courts are the typical trial court of the state and conduct court processes for defendants charged with state crimes, including misdemeanors and felonies. The trial courts are known by different names throughout the states such as superior courts, courts of common pleas, and circuit courts. Trial courts have a formal process to determine guilt of a defendant that begins with charging the individual, pretrial procedures, trial processes including the verdict, and ends with sentencing the individual. Individuals who are found guilty of a misdemeanor or felony criminal offense are subject to receiving penalties that range from fines to house arrest to probation to prison to death sentences.

The next court level is the intermediate appellate court or court of appeals. This court has the duty of hearing cases in which offenders bring grievances of constitutional issues that occurred during the trial process, such as judicial errors, prosecutorial misconduct, and defense attorney incompetence. The appellate court acts as a check to ensure defendant rights were protected during trials. Not all states have appellate courts, and instead constitutional issues are heard by the supreme courts.

The highest state court is the state supreme court or the court of final resort. These courts are the final stop in the state criminal court system to ensure that due process and constitutional rights are upheld for defendants in trial processes. If cases are not resolved at this level, cases can be transferred to the federal system.

History of the State System

The history of each state system is unique, as is the organization and operation of each of the court levels previously explained. Commonalities,

however, do exist in the creation of the state court system. Most states developed their court system at the time the state's constitution was ratified. The similarities between state systems result from connections to English common law as a foundation for building the court systems in the original colonies. State courts began with the idea of having one person controlling the decisive power of the court while creating the roles of juries and prosecutorial attorneys to aid with the procedural aspects known in state courts. The means to become judges and attorneys were not formalized, and often social power was enough to hold the position without consideration of education or employment experience. Those attorneys who gained experience went to general colleges in England or had apprenticeships with practicing attorneys in the United States. There was a lack of strict and formal guidelines of what it meant to pass the bar or be an attorney.

As state courts continued to mature between the Revolutionary War and the mid-1800s, legislative powers increasingly removed justices and stopped courts from engaging in free enterprise; decisions and practices were watched over to ensure that the courts were enforcing laws as desired by the legislature. The role of attorneys became more professionalized as law schools began to be built in successful law offices in the late 1700s and as established curricula in universities in the mid-1800s, but the practice of apprenticeships still ruled the means to become a lawyer. Thus, state courts had concerns with being impartial purveyors of justice as the courts were not yet professionalized and lacked true formal systems of justice.

It was not until the early 1900s when judges were able to hold more autonomous powers over the courts, but these powers were often shared with those in the courtroom workgroup. In response to growing cities and urban areas, the courts had to find means to make their workload manageable while ensuring the rights of those involved in the system. During this time the roles of judges and attorneys became more formalized and attuned to requirements of educational pursuits. More universities began to develop educational programs for attorneys, but achieving college education prior to a law degree is a more recent development. The mid- to late 1900s were

marked with a growth in the professional and social prestige of attorneys; professionalization was a direct consequence of educational requirements as well as the ethical standards of the American Bar Association. Although many judges do have backgrounds in law, it is important to note that trial judges have different requirements across the states, but higher-level state courts have educational and experiential requirements. One major change during this time was the development of a public defender in the 1960s and 1970s; it was not until this time that all defendants were afforded the constitutional right to an attorney even if they were unable to afford one. Another modification of the late 1990s was the development of specialty courts, where specific concerns or cases were dealt with.

Specialized Courts

Specialized courts are trial courts that deal with particular issues of the defendant, crime, and/or case and have been in existence since the late 1980s, with a larger movement in the late 1990s and 2000s. They move away from the traditional stance of the court and criminal justice system as being focused on retribution, punishment, and adjudication. Specialized courts are created to aid defendants in rehabilitative and restorative efforts that rebuild the defendant's life and help him/her move away from criminal lifestyles. Some examples of specialized courts are drug courts, domestic violence courts, mental health courts, and veteran courts. Numerous states have been creating these types of specialized courts to allow individuals with these types of concerns to be funneled out of the traditional trial court system and into the specialized court to receive treatment, supervision, and case management to reduce concerns of recidivism while diverting the defendant away from the system.

Specialized courts can be viewed as problem-solving courts where the courtroom actors, including the judge, prosecutor, and defense attorney, develop bonds with the defendant and his/her life. Information is gathered to determine the best means to aid the defendant. Judges do more than enter decisions as they monitor the defendant's progress and focus upon life outcomes instead of verdicts and sentences. For instance, in mental health courts, judges make certain that the

defendant is obtaining necessary treatment and require numerous court dates to congratulate success or to ensure increased compliance with requirements for defendants not engaged properly with treatment. The courtroom workgroup works with the community, each other, and the defendant to provide a wrap-around model of care.

Overall, research about specialized courts, especially drug courts, domestic violence courts, and mental health courts, has demonstrated success. Defendants who are engaged with the processes and procedures of these courts tend to have lower recidivism rates and increased successes in life, including employment. However, when individuals do not work with the court, penalties do exist. Sanctions often include jail days, fines, termination of involvement with the programs, and prosecution in traditional courts for the original offenses.

Courtroom Workgroup

In the courtroom workgroup are employed individuals of the court who work together to ensure an effective and efficient court process. These individuals include judges, prosecutors, defense attorneys, and various support staff and administrators who each have their own set of duties and obligations.

Judges are leaders of the courtroom. Judges may be elected or appointed and are to be impartial voices and decision makers during pretrial, trial, and sentencing stages of the court process. Their duties include presiding over court cases, deciding verdicts in nonjury cases, and assigning sentences to guilty defendants. Although judges are viewed as the most powerful courtroom workgroup members, they would be unable to complete their job without the aid of the other courtroom workgroup members.

The attorneys of the courtroom include prosecutors and defense attorneys. Prosecutors work for the city, state, or federal government. Their role during the court process is to make charging decisions, engage in plea negotiations, and present the case against the defendant. Defense attorneys can be private or public and work for the defendant. It is their responsibility to uphold the rights of the defendant, research evidence, engage in plea negotiations, and exploit weaknesses in the prosecutor's case.

Support staff members of the courtroom are those individuals who aid with the smooth functioning of the courtroom but are not tied directly to the pretrial, trial, and sentencing processes. They engage in the ancillary functions of the courtroom such as scheduling, recording, and providing information during court processes. Support staff includes bailiffs, court clerks, court administrators, court reporters, and expert witnesses.

Due Process Versus Crime Control Models

In the criminal justice system, there is a debate between how the system should work and how it can function. This debate includes the processing of defendants through the court process, especially within state trial courts, and is understood best as the due process model versus the crime control model.

The due process model of justice states that rights should be upheld at all times for all people. In the court system, this means that defendants should be afforded their due process rights guaranteed by the Sixth Amendment in the U.S. Constitution. All defendants are granted the right of a speedy and impartial trial by a jury of their peers and must be presented with and allowed to confront all witnesses with the protection of a defense attorney. Although some of these rights are difficult to define and put into practice, the overreaching meaning is that the defendant's rights are protected at all stages of the trial; when rights are not enacted properly, the system has broken down, and the grievance must be fixed by the appeals processes at the state and federal level. In addition, all defendants should be treated equally, all steps of the court process should be questioned to ensure rights were protected, and precedence of court procedures should be abided.

The crime control model suggests that the system operates in an efficient and productive manner; it gives a picture of assembly line justice in which defendants move in and out similarly to factory production of car parts. Courts become duty- and goal-oriented and less focused upon the individual. The formal court process becomes minor to the overall desire of pushing defendants through the system. Whereas the due process model operates more through the formal trial court processes and individualized justice, the



The east courtroom of the Howard M. Metzenbaum U.S. Courthouse in Cleveland, Ohio, in 2009. The Supreme Court, circuit courts of appeals, and federal district courts developed their individual roles and actions in the mid- and late 1800s. However, the courts were not yet professionalized and lacked true formal systems of justice.

crime control model appreciates plea negotiations and devalues the individualization of justice.

It is difficult to state which one of these models the court process more closely resembles, especially because of the diverse nature of justice in each state and in different courtrooms. Yet it is safe to conclude that the court system is a myriad combination of these two models. The due process model provides a checkpoint and goal for how justice should be served for each defendant, while the crime control model depicts a means for the system to work without huge backlogs and to operate with appropriate levels of resources. Defendants are able to have rights upheld in an efficient manner, and other procedures such as the presence of the defense attorney and appeals process ensure rights are not trampled upon. This hybrid model of justice also ensures that the attorneys as well as the judge and other courtroom workgroup members work together to create fair and equal justice.

Adversarial Process

Connected to the models of justice is the picture of a court as an adversarial process. Numerous aspects of the court process were created to demonstrate separation of powers among the judge, prosecutor, and defense attorney. Think of how most movies and television shows depict the courtroom atmosphere; they usually picture the attorneys against each other, fighting for their cause without concern for the others involved in the process, with the judge as the ultimate arbiter deciding which attorney is correct. This depiction of the adversarial process does have some truth to it, but overall it is not how most courts and courtroom workgroups operate on a daily basis.

The adversarial process is used to determine guilt of the defendant by having the prosecutor represent the state's (and victim's) cause to demonstrate guilt of the defendant while the defense

attorney represents the defendant to show the weaknesses of the prosecutor's case. These two attorneys work to benefit their client while the judge ensures that legal procedures are met. However, as suggested in the discussion of the due process and crime control model, all must work together to have an efficient system of justice that does not break down because of the number of cases and defendants in the system. Therefore, although aspects of the adversarial process are intact, the court system and its work-group members more often work together in an amicable process.

Sentencing Structures

With the beginning of trial courts at the state and federal level also came the ability of the system to regulate the types of punishments received by offenders for the crimes they have committed against society. The court processes were created to ensure that the rights of citizens were upheld through a just and fair process. Through the history of the court, various arguments and concerns have arisen about the ability of the court to uphold these most basic functions of the court. One example that demonstrates the operations of the courts through the due process and crime control models as well as its continued regulation of itself is sentencing structures.

Early in the court system's history, judges were afforded the right to have sole discretionary decision making over the sentence received by offenders. This type of sentencing is referred to as indeterminate sentencing, because there is a lack of legal mandates placed upon the types of sentences assigned to offenders except that the punishment cannot be cruel and unusual and should fit the crime. Beginning in the 1980s, public outcry led to legislators and other governmental officials asking for more legal guidance to be given to judges in their sentencing duties because of disparities and discrimination that were found in sentencing practices. By the mid-1990s, most states and the federal government shifted sentencing practices to determinate or fixed sentencing structures. These types of sentencing structures limited the discretion judges were afforded in sentencing decisions by legislation providing guidelines and proscriptions about appropriate sentences for various types of crimes.

Determinate sentencing structures were created to lower the disparities and discriminatory practices of judges that were found with unbridled discretion. However, another consequence of determinate sentencing is a movement away from individualized justice and the adversarial court processes while moving toward the efficiency expected in crime control models of justice. Determinate sentencing structures have not made the improvements with respect to disparities that were desired; sentencing outcomes still are not equal among differing populations in society. Determinate sentencing has allowed for efficiency of the system and created a larger need for the courtroom workgroup to be amicable and less adversarial. More recently, however, the U.S. Supreme Court has entered decisions suggesting that when determinate sentencing is highly prescriptive and structured (e.g., federal guidelines), it does a disservice to the defendant's right to justice and infringes upon his/her constitutional due process rights to an individualized court process. Although geared more toward the federal guidelines, other states have been examining their guidelines to ensure constitutional rights are upheld in their jurisdictions.

Conclusion

Courts must ensure that rights are protected and that the need for an efficient system does not disregard the need for fairness and justice in the process. The court system was created by the Constitution as well as decisions of the federal and state governments to protect due process rights of defendants that were infringed upon without formal court systems. Throughout history, the court process has moved along with public policy as well as dictated public policy through its regulation of laws. The court system, as shown in the example of sentencing structures, is a revolving process attempting to find the best balance between the due process model and the crime control model of justice to create an efficient, rights-oriented version of justice and equality in all of its duties and processes. In addition, the court system can be highly regimented and focused on punishment as determinate sentencing structures demonstrate, but also it can be a place for forgiveness, restoration, and rehabilitation as shown in specialized courts. Both of

these demonstrate the reason courts exist to aid society in finding a just means to deal with the concerns of its members.

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See Also: Appellate Courts; Court of Common Pleas; Judges and Magistrates; Legal Counsel; Sentencing; Sentencing: Indeterminate Versus Fixed; Supreme Court, U.S.

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Courts of Indian Offenses

Courts of Indian Offenses were the first courts in Indian Country resembling the Anglo-American legal system. Indian nations had previously regulated criminal behavior using social and religious rites, mediation, and restitution; beginning in the 1880s, however, the courts established a forum for prosecuting criminal charges, including many traditional Indian customs and religious practices newly outlawed under the courts' criminal code. Courts of Indian Offenses arose not in express statutory authorization, but in the early administrative practices of the Bureau of Indian Affairs.

After decades of military oversight, the Bureau of Indian Affairs was placed under civilian control when the Interior Department was established in 1849. The bureau's transfer from the Department of War resulted in the creation of Indian agents to oversee Indian Country. Quarrelling chiefs increasingly turned to these agents to arbitrate disputes not resolved through traditional tribal means, laying the foundation for the court. Although not formally sanctioned, this practice was recommended



A Native American chief of police in uniform surrounded by tribal members in traditional dress at the Pine Ridge Agency in South Dakota around 1891.

by the first secretaries of the interior, who regarded Indian agents as local justices of the peace.

Indian agents also helped shape Courts of Indian Offenses by creating a class of Indian police to carry out their instructions. Through this newly won police force, agents were able to exercise control over American Indians while introducing Anglo-American jurisprudence to Indian Country. The rise of Indian agents corresponded with the decline of traditional tribal political and legal institutions, prompting administrators in Indian Country to recognize the need to establish a court system to regulate life on reservations. Deeming traditional tribal rites and customs an obstacle to the government's effort to assimilate Indians, the Interior Department formulated rules to govern tribal affairs while bolstering the proliferation of Anglo-American law.

By 1883, Courts of Indian Offenses became a standard component of the Bureau of Indian Affairs' administration of reservations. In addition to outlining the courts' organization and

procedure, the department's rules stipulated only that potential jurists not be polygamists and provided brief civil and criminal codes, which outlawed many remaining traditional practices. The resulting Courts of Indian Offenses thus established a forum in which native peoples were prosecuted for engaging in tribal rites, dances, and other customs.

The need for courts also arose from the bureau's management of Indian Country. The allotment process dispersed families across reservations, making it difficult for communities to observe traditional conflict resolution practices. As a result, Native peoples increasingly turned to Courts of Indian Offenses to resolve disputes. Moreover, the sale of reservation land to non-Indians introduced new residents to Indian Country, further compelling American Indians to turn to the courts for redress.

As reservations became more complicated, so too did the Courts of Indian Offenses, plagued by jurisdiction dilemmas and growing financial troubles. Founded on the general authority of the Interior Department and lacking statutorily defined jurisdiction, the courts were frequently challenged. Nevertheless, in their 51-year history, no legal challenge proved successful, in large part due to the commissioner's strategic avoidance. The status of the courts remained correspondingly unstable, especially because Congress repeatedly failed to appropriate sufficient funds to guarantee their efficacy. Calls for law in Indian country, therefore, often meant a need for assimilation and acculturation. In light of the offenses prosecuted, the courts operated more as instruments of oppression than traditional courts in either the Indian or Anglo-American traditions. *United States v. Clapox*, 35 Fed. 575 (D.C. Ore. 1888), one of the only cases tried that deals directly with the legality of the courts, even describes the tribunals as educational and disciplinary instruments, specifically distinguishing the courts from those provided for in the Constitution.

Sometimes called "CFR courts" because they followed the regulations established by the Code of Federal Regulations, the courts were commonly staffed with Indian judges, who were often appointed by agents as a reward for assimilation. Well-known Indian leaders were also appointed to lend credibility to the courts. The ultimate

judgment in most cases, however, lay primarily with the agent. Courts of Indian Offenses were established for nearly all Indian tribes, except the Five Civilized Tribes and a handful of others that had recognized governments and courts. Other reservations maintained courts only temporarily, in part because of limited congressional funding. Nevertheless, at the courts' peak around 1900, approximately two-thirds of all reservations had courts. As public concern for the poor conditions on Indian reservations mounted in the late 1920s, however, the administrative abuses in Indian Country were increasingly criticized. The resulting reform movement culminated in the passage of the Indian Reorganization Act, which formally abolished Courts of Indian Offenses in 1934.

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See Also: Indian Civil Rights Act; Indian Removal Act; Native American Tribal Police; Native Americans.

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Coverture, Doctrine of

Coverture is a legal term with origins in the British common law. It established the legal status of married women with respect to the exercise of personal rights to enter into contracts, conduct business, function as a member of a community, and incur criminal liability. Coverture also limited women's capacity to purchase and inherit property and was used to deprive women of a remedy for domestic violence. In the common law tradition, married couples became one person with the

legal status of the wife merged into that of her husband, who took almost unlimited legal control over the wife's earnings, contractual rights and obligations, capacity to sue, and property. In addition, the husband became responsible for the wife's debts and assumed her liability for criminal and tortuous acts. Thus, married women ceased to have legal standing, and their status was covered by the husband. Coverture governed the legal status of women during the American colonial era through American jurists' reliance on the work of Sir William Blackstone. In the United States, policies restricting the civil, criminal, economic, and social status of women prevailed throughout the 19th century. As a result of reform efforts during the early decades of the 20th century, states began to dismantle coverture laws through legislation recognizing the personal liberties and property rights of women. Furthermore, by the mid-20th century, courts began considering some remaining gender discriminatory policies as violations of the Fourteenth Amendment's equal protection clause.

Women as Chattel

The American experience with coverture begins with the British common law and its establishment upon the American continent at the Jamestown colony in 1603. Under the common law of England, women held the position of chattel property. That condition followed women across the Atlantic. In the 18th century, American jurists relied heavily upon William Blackstone's organization of the common law, titled *Commentaries on the Laws of England* (1769). Blackstone defined coverture as the suspension of a woman's legal status during marriage to such an extent that she could not sign legal documents, obtain an education, or work for wages without her husband's consent. If allowed to work, her wages belonged to her husband. Since the legal status of a wife did not exist apart from her husband, coverture even prevented a husband from contracting with his wife because to do so would suppose she had separate existence from him, and no man can make a legally binding contract with himself. Furthermore, a married woman could not sue or be sued apart from joining her husband as a party. The style of court cases reflected that restriction (e.g., the early products liability case, *Thomas and Wife v. Winchester*, 6 N.Y. 397 (1852), in

which the injured party was Mrs. Thomas. Her husband filed the lawsuit, which she joined).

However, the systems of law established in England and America did not completely deprive women of rights. The law identified numerous exceptions to the doctrine of coverture, although not all of these acknowledged the independent agency of women. For example, if a woman could demonstrate that her husband had induced her to commit a crime, she would be exempt from punishment. While all property brought into a marriage became the property of the husband upon marriage, a wife was legally entitled to a portion of that property upon the husband's death. Thus, a husband could not sell property without his wife's consent, and consent often required a wife's signature on a deed or contract accompanying a statement attesting that she signed of her own free will.

Property Rights for Women

Throughout the 19th century, the legal structure based on coverture began to slowly unwind as state governments gave women greater control over their earnings and property (e.g., the Illinois Married Women's Property Act of 1869). During the same period, however, courts enforced the doctrine of coverture with respect to personal rights. For example, when considering cases of divorce and domestic violence, state courts upheld the legal principle that a married woman has no legal status apart from her husband. In the 1862 North Carolina case *Joyner v. Joyner*, the court held that an allegation of physical violence might not be enough to grant a divorce if the wife provokes her husband. The court stated that "the law gives the husband power to use such a degree of force as is necessary to make the wife behave herself and know her place." In support of this arrangement, the court recited the common law doctrine of coverture, noting that a husband will be held liable for the criminal offenses of his wife, that a wife cannot make a will disposing of property, but that a husband may not sell land without the wife's consent. It concluded that "the law gives this power to the husband over the person of the wife, and has adopted proper safeguards to prevent an abuse of it." By the end of the 19th century, however, state courts began to treat physical violence in the home as criminal behavior.



An executive group of the National Woman's Party meeting around 1920, before their February 1921 convention in Washington, D.C. The convention called for the abolition of coverture laws, among other improvements in women's legal, social, and economic status. It was not until much more recently that the Supreme Court struck down some of the last remnants of those laws when it banned gender discriminatory policies in the assignment of work-related and survivor benefits and educational opportunities.

Removal of Coverture Laws

During the early decades of the 20th century, women's rights movements campaigned against coverture laws. Long after the Nineteenth Amendment granted women suffrage in 1920, coverture laws continued to determine the legal rights, duties, and responsibilities of men and women for broad areas of civil and economic life. Reformers sought the removal of such laws at the state level. In 1921, the abolition of coverture laws headlined the program of the National Woman's Party's Washington, D.C., convention. These efforts resulted in almost all states abolishing coverture by statute and recognizing women's property rights independent of their husbands. But vestiges of coverture remained. Courts routinely made decisions on child custody, alimony, and welfare policies based on gender distinctions.

In the 1972 case *Forbush v. Wallace* (405 U.S. 970), the Supreme Court of the United States held that states have the power to require women to use their husband's surname on all legal documents. However, in more recent decisions, the court has found state government policies that discriminate on the basis of gender unconstitutional abridge the equal protection clause of the Fourteenth Amendment. The court has struck down gender discriminatory policies in the assignment of work-related and survivor benefits and educational opportunities. These are the last remnants of an age-old legal system of state sanctioned inequalities between men and women dating back to the American colonial era.

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See Also: Blackstone, William; Colonial Courts; Domestic Violence, History of.

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Crabtree v. State

Crabtree v. State is a criminal law case decided on February 8, 2002, by the Court of Appeals of Indiana. The majority opinion clarified the degree of reasonable suspicion of criminal activity that is necessary to justify an investigatory stop of a suspect by law enforcement officers.

In the early morning hours, two Indianapolis police officers responded to an anonymous complaint of African American males loudly playing a car stereo. Ervin Crabtree was observed hiding behind a parked car. The car was not in operation and there was no noise, though one of its doors was ajar. Several people took flight when an approaching officer's presence was made known, but none were in close proximity to Crabtree. When the officer shined a flashlight on Crabtree and ordered him to raise his hands, Crabtree threw aside a plastic bag before lying down on the ground. Upon Crabtree's refusal to comply with several verbal commands, the officer drew his handgun and placed him in handcuffs. The plastic bag that had been thrown aside was found to contain cocaine, and another bag of marijuana was found on the seat of the car behind which Crabtree had been hiding.

At trial, Crabtree was charged with drug related offenses and sought to suppress the cocaine and marijuana evidence. The motion was denied and Crabtree appealed. Crabtree raises two issues on appeal: first, whether a person has been subjected to an investigatory stop when spotted by a flashlight and ordered to raise

his hand but refuses to comply and throws away an object; and second, whether reasonable suspicion exists to justify an investigatory stop when an officer is responding to a group of people loudly playing a car stereo, but encounters a single person hiding behind a car from which no music is heard. The Court of Appeals held that the altercation constituted an investigatory Terry stop but ruled that the stop was justified by the officer's reasonable suspicion of criminal activity. The Court of Appeals of Indiana affirmed the lower court's decision.

As a matter of law, the court confirmed that an appellate review of a denied motion to suppress evidence does not allow for a reweighing of evidence. Conflicting evidence is reviewed in a manner most favorable to the trial court's ruling and uncontested evidence is considered in a manner most favorable to the defendant. Review of a decision to admit evidence despite a motion to suppress is considered under an abuse-of-discretion standard, but the ultimate determination of reasonable suspicion to conduct an investigatory stop is reviewed de novo. The court held that Crabtree was subjected to a Terry stop, by which an officer briefly detains an individual for investigatory purposes based upon reasonable suspicion of criminal activity. In the case of *Terry v. Ohio*, reasonable suspicion was determined by objectively weighing whether an officer's actions were initially justified and reasonably related in scope to the justifying circumstances. A crucial factor was whether a reasonable person would feel free to end the detainment and leave the officer's presence.

The court subsequently found that the officer had reasonable suspicion to justify the Terry stop. The Fourth Amendment's reasonable suspicion requirement was deemed satisfied if the totality of the circumstances known to the officer would suffice to lead a reasonably cautious person to believe that criminal activity had occurred and that the officer's conduct was appropriate. In a dissenting opinion, Judge J. Darden denied the existence of a reasonable suspicion that would justify the investigatory stop. Noting that reasonable suspicion must be based upon more than inchoate and unspecified suspicion, Darden objected that evidence of criminal activity was lacking. The officer admitted that Crabtree's

crouching behind a car was consistent with legal activity and the order to raise his hands was intended to ensure the officer's own safety rather than a response to criminal suspicion. Darden thus held the stop to be invalid from its inception and refused to speculate as to whether subsequent events supplied the necessary reasonable suspicion for the investigatory stop. The majority holding has been substantially upheld on these merits by later courts.

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See Also: Indiana; Police, History of; *Terry v. Ohio*.

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Crime and Arrest Statistics Analysis

Criminologists and criminal justice system officials rely on crime statistics to obtain greater insight into currently existing crime levels and to determine whether rates of crime are increasing or decreasing over time. Criminologists utilize crime data to help test current theories of criminal behavior and to help them develop newer theories as they learn more about general crime trends. Law enforcement officials use crime statistics to help determine the extent to which existing crime control policies are effective or ineffective at deterring crime and to help make decisions about where to allocate their limited resources. The three most common methods for measuring crime are arrest statistics, self-reports of offending surveys, and victimization surveys. Each method has advantages and disadvantages, with no single measure of crime being a perfectly reliable measure of the extent of criminal behavior.

Since the pioneering works of Adophe Quetelet in the early 1800s, criminologists have utilized aggregate-level crime statistics as a means of gauging the moral health of nations. Quetelet was a Belgian astronomer who, along with lawyer André-Michel Guerry, first utilized judicial statistics to observe a consistency in crime rates in France and Belgium between 1826 and 1829. This systematic collection of national judicial statistics on prosecutions and convictions came to be known as “moral statistics” and were influential in the development of current methods of crime data collection.

Arrest Statistics

In the United States, the U.S. Census Bureau was the first national agency to collect crime data beginning in the 1850s. Data collection focused on counting the number of individuals committed to jails, houses of correction, and penitentiaries. While these basic census counts were informative, police in the United States at this time were not collecting reports of crime in any systematic or uniform fashion across jurisdictions, nor did the classifications of crimes conform to any one legal definition.

As a means of addressing the public's perception about the amount of crime, the International Association of Chiefs of Police (IACP) formed the Committee on Uniform Crime Records in 1927 to develop a system for collecting uniform police statistics. The result was a data collection method that would report both the number of offenses reported to police and the number of those offenses that resulted in an actual arrest. Police departments anticipated that these reports would dispel the notion that juvenile and adult crime in the United States was out of control and reinstall confidence in police efforts to control crime. Today, the Federal Bureau of Investigation's (FBI) Uniform Crime Report (UCR) collects information from approximately 16,788 law enforcement agencies, covering 97 percent of the U.S. population. Issues such as nonreporting by individual departments, as well as problems with the collection of data on the part of some agencies, often lead to the elimination of some, or even the entirety, of a state's crime data to become ineligible for recording in the UCR.

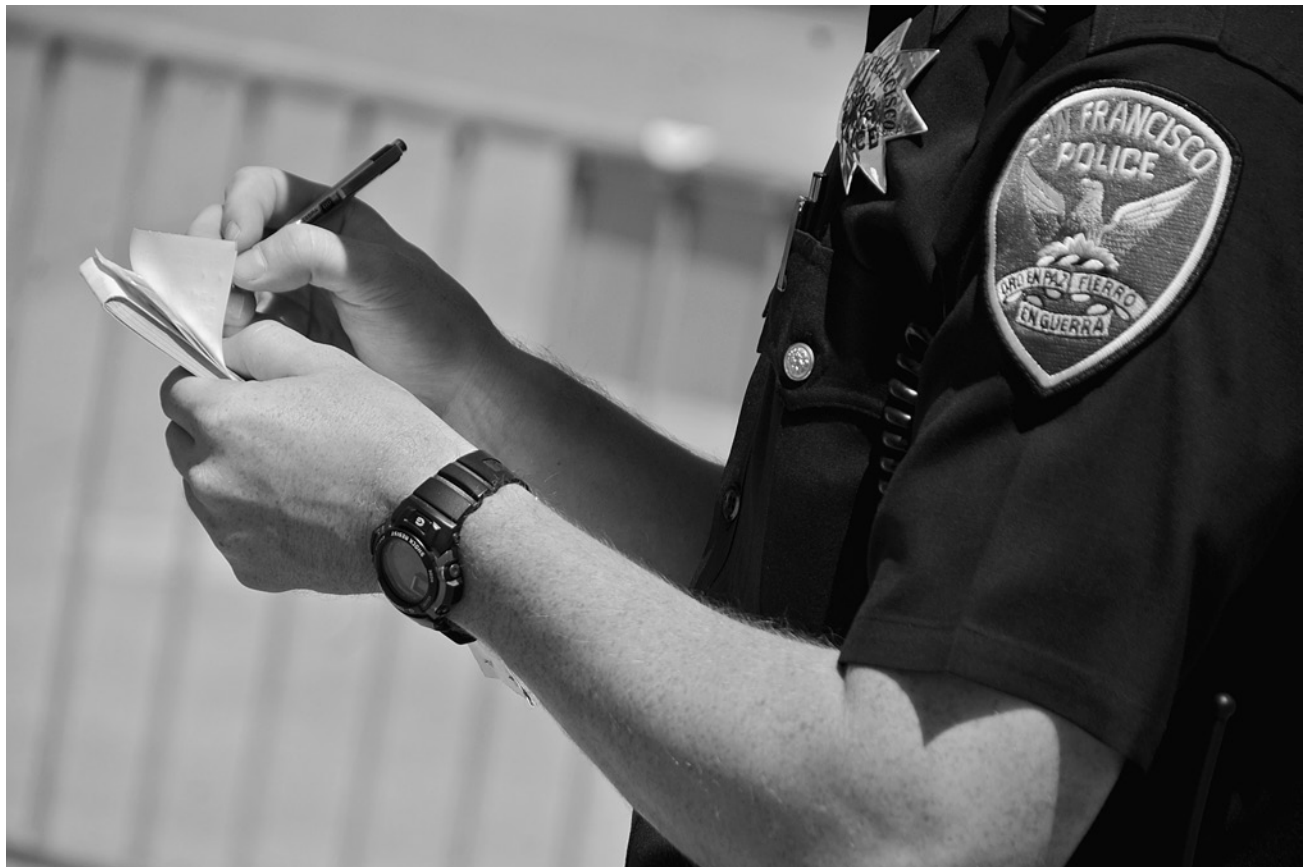
In 1958, the FBI constructed a composite offense index that sums eight individual offense categories into an overall crime index: murder,

forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and eventually arson, which was not added to the index until 1979. All of the remaining offenses are included in a list of 21 categories, which are known as Part II offenses. Currently, the FBI's Uniform Crime Reporting program lists the number of offenses known to police and the number of arrests police then make. The UCR also provides information about these offenses at the city, state, and county level as well as the age, sex, and race of persons arrested by police. Because Part II offenses are so numerous, the UCR does not collect data on the number of reports of these offenses to police and only reports the number of actual arrests.

Information from the UCR is often reported either as absolute numbers or as rates per 100,000 population to control for changes in the popula-

tion composition. These crime rates then allow for comparisons of crime rates across cities and states of varying sizes. Finally, the UCR reports the number of crimes cleared by arrest. Crimes are considered by police to be "cleared" when there is either an arrest of a suspect or there are exceptions that are beyond the control of law enforcement, such as the death of a suspect, which makes a future arrest implausible. In other words, a clearance rate refers to the proportion of reported crimes that have been "solved." The arrest of one person often clears several crimes, such as a burglar who had broken into several homes. Conversely, the arrest of several people may clear only one crime, such as when the police arrest three people for an aggravated assault.

In 1988, a more contemporary approach to measuring crime using police arrest data known as the National Incident-Based Reporting System



A San Francisco police officer making notes at a June 2009 protest against healthcare cuts in California where 17 disability activists were arrested. The FBI's Uniform Crime Report (UCR) collects information from approximately 16,788 law enforcement agencies, covering 97 percent of the U.S. population, and including information on the age, sex, and race of persons arrested by police.

(NIBRS) was introduced. The purpose of NIBRS is to develop a more detailed crime-reporting program that would address some of the data-collection problems in the UCR. The more contemporary NIBRS system of data collection goes into much greater detail than the summary-based UCR system. NIBRS includes 46 offenses (labeled “Group A” offenses) within 22 offense categories, whereas UCR only has eight index offenses classified as Part I offenses. Another important distinction between the two systems is that while the UCR does not differentiate between completed and attempted crimes, the NIBRS does. While the NIBRS is still being implemented nationwide, the traditional UCR reporting format is still being used extensively. As of 2007, the FBI has certified 31 states to participate in NIBRS.

Self-Report Surveys of Offending

Although official arrest statistics like the UCR and NIBRS have historically provided insight into nationwide characteristics of particular types of offenses, the ability of these arrest statistics to accurately measure trends in the entire scope of criminal behavior came into question and spawned the development of self-report surveys. Early studies utilizing self-report data revealed that arrest data vastly underestimated the extent of delinquency in the United States, especially for minor crimes, which are less likely to become known to the police or result in an arrest. Even when police catch offenders, there are several factors that influence whether they actually make an arrest, such as the seriousness of the offense and the offender’s prior record. These early self-report surveys revealed that the study of criminal arrest trends ignored a substantial amount of unmeasured crime—crime that official data simply did not even recognize. Criminologists often refer to this unidentified crime as the “dark figure” or “hidden figure” of crime.

In response to concerns among criminologists that arrest statistics were measuring trends in police and reporting behavior rather than actual changes in offending behavior, the development of self-report studies of delinquency gained popularity in the late 1940s and 1950s with the work of James F. Short and F. Ivan Nye. Short and Nye’s use of self-report data challenged many conventional assumptions about the extent

and nature of crime, especially when it came to the study of less serious offenses. Self-report surveys have given researchers a more complete picture of crime trends by revealing estimates of a greater proportion of the crime committed by individuals, both serious and minor, regardless of whether those behaviors are ever reported to police or result in an arrest. Self-report data also give researchers a more complete picture of subjects’ attitudes toward topics such as educational aspirations, interpersonal relationships, occupational aims, government, and levels of friends’ delinquency, along with individuals’ reports of their own criminal behaviors.

Researchers obtain self-report data by asking groups of individuals (often high school students) about the extent of their offending behavior in the past. Sometimes the subjects are interviewed, but most often they fill out questionnaires about their behavior. Most self-report surveys focus on crimes committed during the previous year, to minimize problems with memory. In almost all cases, self-report surveys are anonymous or the researchers assure respondents that their answers will remain confidential. There are a substantial number of longitudinal self-report surveys of delinquency, such as the National Youth Survey Family Study (NYSFS), the National Survey on Drug Use and Health (NSDUH), and the Monitoring the Future (MTF) survey. The majority of these types of studies are panel studies where one group of youth, such as high school seniors, is repeatedly given a similar survey each year over several years. Surveys like the MTF survey have been distributed each year since the mid-1970s.

While more modern versions of the self-report survey have improved on early versions of self-report surveys, they also have the increased potential of suffering from testing effects. As youth fill out the surveys each year, there is the potential that many juveniles will eventually learn that the more delinquency they admit to, the longer it will take them to fill out their questionnaire. As a result, many juveniles who would otherwise admit to delinquent acts underestimate their delinquency simply to finish the survey more quickly.

There are other difficulties with self-report surveys beyond individuals simply not wanting to fill out the questionnaire. Another concern is with exactly how subjects experience specific events

and the extent to which they feel those events are serious enough to report. For example, an 11-year-old may recall a recent scuffle in the schoolyard and indicate on the survey that he has gotten into a serious fight at school within the last 12 months. However, as that individual gets older, the types of behavior considered relevant or severe enough to mark down on a survey as a “serious fight” may be quite different. What an 11-year-old sees as a “serious fight” may be quite different to that same individual when he or she is 21 years old. Finally, since many self-report surveys are given to seniors during high school, the criminal behavior of many serious delinquents such as dropouts or those who have already entered the criminal justice system do not appear, as they are not present to take the survey.

Victimization Surveys

A final method used to study trends in criminal offending is victimization surveys. A typical victimization survey asks respondents to report on their experiences as victims of crime. Researchers began collecting data on victimizations in the 1960s and the federal government started compiling victimization data on an annual basis in the early 1970s through the administration of the National Crime Victimization Survey (NCVS), originally called the National Crime Survey (NCS). The NCVS is administered by the U.S. Census Bureau on behalf of the Bureau of Justice Statistics (under the U.S. Department of Justice).

Twice each year, the NCVS obtains data from a nationally representative sample of roughly 49,000 households comprising about 100,000 persons age 12 and older on the frequency, characteristics, and consequences of criminal victimization in the United States. The NCVS asks respondents to report crime experiences during the previous six months in an effort to improve the accuracy of recalling specifics of events. Many crimes that can be measured by arrest statistics or self-reports of offending are not measured in victimization surveys because there is no immediate, direct victim. For example, measures of crimes such as drug abuse or prostitution are not included in the NCVS as they could be considered “victimless” crimes. Similarly, some situations make it impossible to interview the victim, such as homicide victims or situations of retail

theft where a company rather than an individual was the victim.

Victimization surveys have provided criminologists and law enforcement with valuable information that could not be gained from other data sources. Questions are asked regarding whether the victim and offender knew each other, where and what time of day the victimization occurred, whether the victim resisted the offender, whether or not the police were called, why the crime was or was not reported to police, and whether the offender was under the influence of drugs or alcohol or used a weapon. Although victimization surveys help to provide more insight into crimes that may never be reported to police, many victims of crime are resistant to report their victimizations to the NCVS for reasons such as embarrassment, fear of repercussion, and fear of getting the law involved.

Collecting data about the extent of crime is not a simple undertaking. Official police arrest data, self-report data, and victimization data should not be seen as incompatible, but instead the strengths of each method should be viewed as complementary to the weaknesses of the other. Together, all three methods yield a more complete picture of overall trends of criminal offending than a single method can provide. Knowledge about how researchers collect data and the strengths and weaknesses of that data can help researchers and law enforcement gauge the type of data that will provide the best estimate of the extent of crime or trends in crime for a particular crime or situation.

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See Also: Crime in America, Causes; Crime in America, Distribution; Crime in America, Types; Crime Rates; Federal Bureau of Investigation; International Association of Chiefs of Police; Uniform Crime Reporting Program.

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Crime in America, Causes

Crime is a major social problem in the United States affecting the quality of life and daily interactions of its citizens. The importance of crime is evidenced, in part, by the rise of academic criminal justice and criminology degree programs throughout American institutions of higher education since the 1970s. Whereas criminal justice is primarily concerned with addressing and responding to crime across the three major prongs of the criminal justice system (law enforcement, the courts, and corrections), the discipline of criminology is the study (*ology*) of crime (*crimin*) and related phenomena. Crime causation is a central concern for criminologists, who seek to identify the leading and contributing factors that explain or are associated with crime. Crime is a complex and multifaceted phenomenon, so it is not surprising that numerous causes and correlates have been identified and debated. In general, the causes of crime are considered in terms of factors internal and intrinsic to individuals or social forces external to a person, commonly referred to as the “nature versus nurture” debate.

While criminal abnormalities and personalities are addressed by psychology and, to a far less degree, biology, the scientific treatment of crime in America is primarily engaged by sociological criminologists. As a subfield of sociology, the practice of criminology is typically engaged with theory-methods symmetry according to the axioms of social science. Criminologists usually narrow research focus by dichotomizing crime into one of two general categories: criminality or crime rate. Whereas criminality refers to the amount and dispersion of crime attributable to

the behavior of a group of people (as designated by age, gender, employment status, race/ethnicity, educational attainment, citizenship, criminal history, socioeconomic status, and a host of other indicators), crime rate denotes criminal offenses that are specific to a geographic locale such as a city, county, state, or justice system–designated jurisdiction, for example, a police precinct.

When trying to account for crime, regardless whether the focus is on a group of people or a place, criminologists seek to explain the fluctuation (i.e., variability) in crime levels and rates rather than to generate definitions or specifications of crime. The goal of accounting for the variability of crime entails a research process involving creating hypotheses that specify relationships composed of cause-and-effect elements. These relationships are then examined through data collection and quantitative, qualitative, or mixed methods analysis that inform whether the contended hypotheses are valid. Valid hypotheses, in turn, are combined to construct theories, which are basically formal explanations of crime.

The process of theory construction and theory testing is primarily engaged according to a variable analysis logic, wherein researchers strive to identify which factors (independent variables) correlate with a crime or an index of crimes (dependent variables) as indicated by statistically significant relationships. Because crime, like other forms of human behavior, is such a multifaceted reality, a single factor never fully explains all of the variability, thus necessitating identification of combinations of factors that collectively better specify why crime increases or decreases. Criminologists consider crime fluctuation spatially (across place) and temporally (over time). Assembling multiple factors into coherent explanations is referred to as modeling, often related in the formulaic expression of multivariate analysis. As noted in the overview of criminological theory below, which essentially is a chronological account of the study of crime causation in America, a wide range of factors, social forces, and dynamics are thought to account for criminal phenomena.

Sociological Explanations of Crime

The Italian Cesare Beccaria (1738–94) and the Englishman Jeremy Bentham (1748–1832) are

remembered for framing what is known as the classical school of criminology, a perspective grounded in the central concepts of deterrence and free will. Much of applied criminology involves consideration of how the application of the elements of deterrence (certainty, severity, and celerity) condition decisions to offend and how crime prevention initiatives might be more effective.

The classical school has proved consequential for the evolution of criminological thought in two regards: (1) crime is no longer thought to be a function of religion, superstition, or myths that place the solution to crime and related problems beyond the control of man and (2) crime is to be considered, at least in part, the result of free will. Viewing crime as a result of free will means that it is something that can be explained as a

result of rational choice-centered decision making. Criminal rational thought infers a determination of gains versus risks, suggesting that crime is related to elements impacting the decision to offend such as the amount and relative value of criminal proceeds and the likelihood of getting caught in the act.

American Criminology

In the evolution of American criminology, positivism began replacing the classical approach to crime during the 1920s, largely due to the rise of the Chicago school, an academic movement resulting from a series of groundbreaking studies conducted within and around the University of Chicago Sociology Department. From the 1920s through the 1940s, the Chicago school demonstrated that crime results from social ecology,



A police officer stands behind three young gang members who were arrested for suspicion of involvement in a fatal shooting in Brooklyn, New York, in 1959. In the 1950s and 1960s, the emergence of gangs and the resulting study of subcultures became a leading focus of crime causation theories as urban, lower-class males were profiled as likely gang members.

particularly the social disorganization that characterizes urban life. The social ecological approach to crime does not focus on the ways in which criminals and noncriminals differ in terms of intelligence, physical characteristics, and personality, instead examining and exploring economic disadvantage, community cohesion, and social stability. The Chicago School crime studies of H. Shaw and D. McKay (1924), D. Merton (1938), and E. Sutherland (1939) grounded U.S. criminology in sociology and established a dominant paradigm (model of inquiry) oriented toward environmental and interactional causes of crime.

Shaw and McKay used Ernest Burgess's "concentric zone" theory to direct their investigations of juvenile delinquency and to develop a forerunner to social disorganization theory. Social disorganization is defined as a community's failure to organize in order to prevent social problems from occurring because of poverty, residential mobility, and racial/ethnic heterogeneity. Social disorganization theory explains why some communities or neighborhoods are more vulnerable to crime than others, with research in this tradition focused on identification of informal network and collective efficacy issues. Focus on order maintenance and crime prevention are policy steps derived from disorganization theory, known more commonly now as environmental criminology.

The legacy of social disorganization theory is Lawrence Cohen and Marcus Felson's routine activities theory, which focuses on macrolevel social change conditioning opportunistic situations to motivate an individual to commit crime. According to routine activities theory, there is a conventional order of everyday events that creates predictable circumstances where crime is both more and less likely to occur. According to routine activities theory, three conditions must be present at the same time and place in order for crime to occur: (1) a motivated offender, (2) a suitable target (person or object), and (3) a lack of effective guardianship. Eliminating or significantly reducing the level of any one of these three elements theoretically invites crime and serves as a good example of how criminological theory has direct implications for crime prevention, such as target hardening strategies, which really are just suitability manipulation efforts.

The 1950s and 1960s

Ronald Akers and Robert Burgess, revising Sutherland's differential association theory with a new social learning theory during the mid-1960s, explained specifically how individuals learn by examining variations in social structure, culture, and locations of associations. Akers and Burgess observed the influence of these factors on key social learning variables such as differential association, imitation, definitions, and reinforcements. Social learning theory specifies that learning processes are contextually similar across social structure, interaction, and situation by producing both conforming and deviant behavior.

In the 1950s and 1960s, the emergence of gangs became a leading focus of crime causation theories as urban, lower-class males were profiled as likely gang members, and the sociological term *subculture* came to be used in reference to these unconventional groups. Albert Cohen's subculture of delinquency theory, Richard Cloward and Lloyd Ohlin's differential opportunity theory, and Walter Miller's focal concern theory are main contributions to what is a notably American line of criminology inquiry based in the notion of the cultural transmission of criminogenic values. The subcultural perspective acknowledges that middle-class values define social norms and proscribe quality of life standards that are reflected in the concept of the American dream. Subcultural theories suggest that everyone does not have equal opportunity to attain the American dream of upward mobility and thus people experience stress and frustration. Theoretical work in this Durkheimian anomie tradition predicts how individuals of lower socioeconomic class status face blocked opportunities and turn to unconventional alternatives (i.e., crime) to achieve needs and desires. People with similar attitudes congregate and form collective solutions to shared problematic situations—therein creating alternate values, beliefs, and rules that define and form a delinquent subculture.

Subcultural theories derive from and are thus similar to Merton's use of Emile Durkheim's anomie concept to theorize deviance in the 1930s. Durkheim defined "anomie" as deregulation and normlessness in society due to breakdown of rules and morals, with Merton redefining the term as a discrepancy between goals and means as a result of the way society is structured. Merton predicted

that anomie leads to dissatisfaction, frustration, conflict, and ultimately, deviance. This approach to crime became known as strain theory, with constant and rapid social change prompting multiple revisions such as reverse strain theory, which purports that crime and delinquency can also be a result of too much positive assistance that can be defined as pressure to perform. Anomie and subcultural perspectives both emphasize that people are not naturally inclined to commit crime, but rather external forces compel individuals to deviate from social norms—a view that was challenged by the introduction of social control theories during 1960s.

In 1969, Travis Hirschi extended Thomas Hobbes's belief in the social contract and that people are expected to be deviant because they are rational and driven by efforts to realize gratification. Hirschi unveiled a theory anchored in the inner workings of the social bond. This social bonding explanation of crime hypothesizes that internalized norms, conscience, and desire for approval restrain individuals from delinquent behavior and encourage conformity. Because the social bond serves to control behavior, the perspective is known as social control theory, and it explains why some people are not prone to criminal behavior rather than focusing on why certain individuals are deviant.

Recent Developments

In 1990, Michael Gottfredson and Hirschi published a revision of social control theory in a book titled *A General Theory of Crime*, which proposed that levels of self-control internalized early in life determine who is apt to commit crime. This self-control theory purports that it is human nature to opt for pleasure over pain, but our self-control assists in evaluating short- and long-term consequences to prevent impulsive acts. Gottfredson and Hirschi's self-control perspective is distinct from most other criminological theories because their theoretical approach considers the type of parenting a person experienced rather than sociological factors to predict levels of self-control.

Another identified cause of crime is the natural result of class inequality that is inherent to capitalist societies. Known as critical criminology, the social thought of Karl Marx has shaped various class conflict-based theories examining

the relations between the bourgeoisie (wealthy, elite) and proletariat (working) social classes. According to the Marxist perspective, various social problems, including crime, are caused by the constant, reifying competition between upper and lower classes with the minority ruling class using advantage and power to exploit and alienate the majority working class. Critical criminology emphasizes that criminal law is created and enforced to benefit the powerful and oppress the weak, leading to hostility within societies and, ultimately, participation in crime. In this view, much of the everyday crime is considered an expression of political inequality, with criminals seen as helpless victims of an uncaring society.

Theoretical Integration and General Theories

Theoretical criminology systematically analyzes explanations for crime and provides an extensive understanding for variation in offenders and crime occurrence. The previously discussed theories each better explain some crime types (violent or property) and specific offenses with no single theory offering a full account of either criminality or crime rate. Accordingly, contemporary criminological theory construction involves theoretical integration as reflected in general theories of crime. Theoretical integration refers to the regrouping and reconfiguration of single theories of crime into grander theories so as to offer fuller elaborations. As various theories are linked and interwoven, criminologists develop explanations that offer ever greater breadth and scope in terms of range and applicability. Moving forward, research on the causes of crime in America will be increasingly interdisciplinary. Biological and psychological traits such as personality, impulsivity, genetics, and body chemistry have received increased attention over the past decade both as independent and in conjunction with sociological orientations. Accordingly, the current state of crime causation analysis in the United States and internationally is situated in the concept of bio-social theory toward better understanding how genetic and social factors coalesce to foster crime.

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See Also: Crime in America, Distribution; Crime in America, Types; Crime Rates; Criminology.

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Crime in America, Distribution

Despite the images sometimes seen in the media, crime in the United States follows some relatively predictable patterns. For example, in any given year, there will be much more property crime than violent crime, and men will be arrested more than women. While crime is not a new phenomenon, the definition of what constitutes a crime, and the salience of certain crimes, changes with policy shifts and public opinions. Law enforcement and the public's concern over street crime means that official data collected by police and government agencies focus on property and violent crime. According to those data, all types of crime have been decreasing since the 1990s for all groups and across all regions, though not uniformly. Property crimes have been decreasing since about the 1970s, whereas violent crimes did not start rapidly decreasing until the 1990s. Those rates have varied by location, with higher crime rates consistently reported by the south and west over the northeast and midwest, and urban centers over rural areas. Crime rates also vary by social groups, with poor men of color overrepresented in official crime data. Although crime in the United States is a complex

phenomenon, criminals still behave in some predictable ways.

How Crime Patterns Are Understood

Crime data used to identify crime patterns are collected by a variety of sources, each giving a slightly different picture of offending. Most crime data reported in the news are collected by the Federal Bureau of Investigation (FBI) through the Uniform Crime Reports (UCR) or the National Incident-Based Reporting System (NIBRS). The Bureau of Justice Statistics (BJS) also collects information on victimization experiences of those from a large national sample of households for the National Crime Victimization Survey (NCVS), and there are various self-report surveys, where those surveyed report the crimes they have committed. Unfortunately, reliable data are not available for all crimes, including professional, organized, and white-collar offending. Therefore, the public tends to fear and focus on street crime over white-collar offending, although such offenses have a much higher social cost. For the crimes that are most often studied, official, victim-based, and self-report data each are collected in a different way and therefore show some differences in crime rates.

The UCR collects information on crimes known to police. Because UCR data track offenses known to the police, law and enforcement policies and victim-reporting practices as well as offender behavior are reflected in these data. Violent crimes are more likely to be reported than minor crimes, so the UCR reflects the amount of serious violent crime more accurately than less serious violent and property crimes. The UCR also asks law enforcement to record only the most serious crime that occurred during an incident. If an offender breaks into a house, steals a TV, and shoots the homeowner, only the shooting will be reported in the statistics. This also means that the UCR reports serious violent crime more accurately than other types of crime.

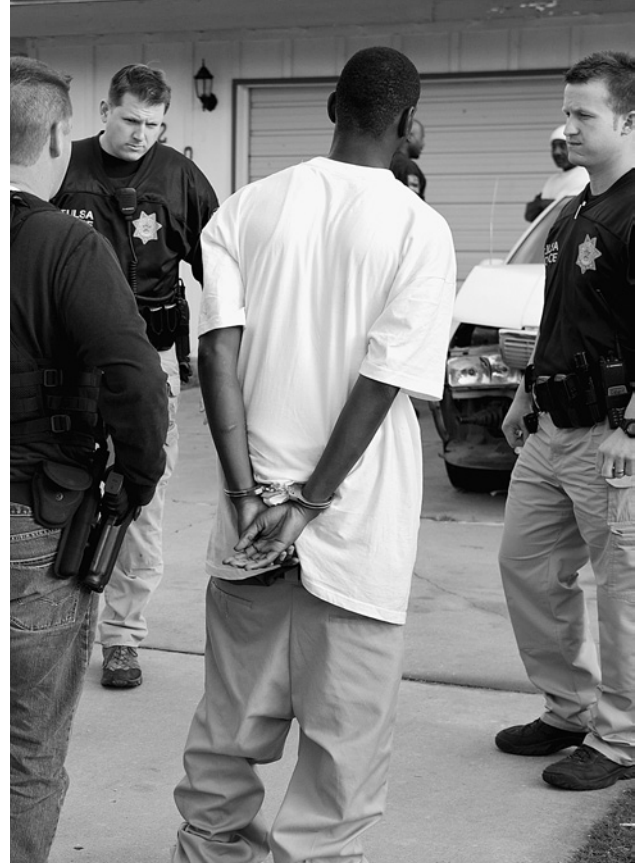
NIBRS collects much more detailed information about crime incidents, allowing law enforcement and researchers to make connections between victims and offenders, among other relationships. It also collects information for all of the crimes that happen in an incident, not just the most serious. This gives a more detailed picture of crime, but because far fewer jurisdictions participate in the

data collection, the numbers do not necessarily reflect crime happening all over the United States. Participation in the UCR and/or NIBRS is voluntary, and law enforcement practices and policies may mean uneven or inconsistent reporting. Using self-report data, such as the NCVS, more than half of violent crime (such as rape, assault, and robbery), and even more property crime (such as larceny, motor vehicle theft, and arson), never gets reported to the police.

The NCVS randomly surveys households across the United States, asking individuals age 12 and older about whether certain crimes have happened to them and/or their household. While these data capture a view of crime not filtered by law enforcement, it is also possible that there are data inaccuracies related to the victims' reporting and interpretation of events and issues with personal recollection. Victims tend to be more willing to report offenses that were serious and those perpetrated by strangers. Even though all of the numbers are not in sync, the patterns and trends reported in both official and victim-based data sources are often similar. Self-report data give an even different picture, as such studies ask respondents to report on their own delinquencies and offending. Such studies tend to focus on minor and more common forms of delinquency. In general, self-report data show that crime is underestimated by police data, and that the race, class, and gender differences found in official data are often exaggerated, especially class.

Patterns of Crime by Type

For crimes on which data are consistently collected, rates of property crimes (damaging or taking property of another person) are consistently much higher than rates of violent crimes. According to victimization survey data, less serious crimes are not reported as often, so the difference looks even bigger using data collected by police. Those same survey data show that property crime makes up about three quarters of all victimizations; official data show that property crimes constitute well over 80 percent of crimes known to the police. Of the property crimes, the one most often reported to the police is larceny-theft, followed by burglary. Homicide, though it receives a disproportionate amount of attention by the media, is the smallest category of all serious crimes.



The discrepancy between high minority arrest and imprisonment rates compared to self-report data that show smaller or no race differences points to bias in the U.S. criminal justice system.

Patterns of Crime Across Time

Overall, crime trends, as reported from the biggest data sources, have followed a distinctive pattern. From about 1830 to 1860, there was a gradual increase in the crime rate, especially for violent crime. Following the Civil War, the crime rate increased significantly for about 15 years. From 1880 until about the time of World War I, the number of crimes reported went down, other than spikes around the beginning and ending of the war. The crime rate steadily declined until about 1930, when the United States experienced a crime wave during the Great Depression. According to the UCR, crime rates gradually increased between the 1930s and 1960s, followed by a faster increase through the 1970s. The homicide rate, which had gone against the trend and decreased between the 1930s and 1960s, also had a sharp increase in rate through the 1970s.

Crime peaked in the 1990s and has been declining ever since. The UCR and NCVS have both shown decreases in property and violent crime since the mid-1990s. Self-report data appear to be more stable than the UCR; they also show that people may be offending at significantly higher rates than the FBI is able to capture in their data sources.

In addition to broad changes over time, there are also smaller fluctuations in crime within a given year. For example, most reported crime happens in the warm summer months of July and August. That is a time when teenagers (who commit higher rates of offending) are out of school, more people are spending time together, and homes are left vacant during summer vacations. The two exceptions seem to be murder and robberies, which also have high rates during December and January.

Patterns of Crime Across Place

Just as crime rates vary over time, they are unevenly distributed by place. Rates of offending vary between the United States and the rest of the world, they vary by regions within the United States (the south and west tend to have higher rates than the midwest and northeast), and they vary by demographic attributes within those regions (urban areas have higher rates than rural areas). It is very difficult to compare U.S. crime rates with other countries because there are differences in how each country defines crimes, and there are widely varying perspectives between nations on the value of life and property. Some efforts have been made to overcome these differences, including one major international survey of victimization. Although it is difficult to know exactly how the United States compares to other countries, it seems that the United States consistently has among the highest rates of homicides and incarcerations compared to other developed nations. Some criminologists theorize that the variance between regions within the United States occurs because cultural values vary by region, while others argue it is because of economic differences across regions. Large urban areas have the highest rates of violent crimes, by far, and rural areas have the lowest crime rates on average. Even so, a small number of rural areas have violent crime rates that meet or exceed those of large cities. Cities outside metropolitan areas typically fall between urban and rural rates.

Patterns of Crime Across Social Groups

Just as there are differences in crime across areas, there is variation in crime rates across groups of people within the United States. The most commonly studied differences are between gender, age, race-ethnicity, and class categorizations. Criminological research aims to identify the social factors that cause these differences among population subgroups.

Using both official and other data sources, for almost every crime, men offend at much higher rates than women. In victimization studies and official data, men account for around 80 percent of violent crimes and almost 70 percent of serious property crimes. In self-report data, males consistently report more offending, and more serious crimes, than females. Criminologists theorize the differences could be due to gender socialization and opportunities to offend. When women do offend, their offending tends to be less serious and is more likely to involve crimes tied to women's stereotypical roles in society, like sex work, consumer fraud, and shoplifting.

As with gender, age is another strong correlate of crime. Young people are arrested at a much higher rate than any other age group. Offenders begin in their childhood, rapidly increase offending in late adolescence, then slow down starting with early adulthood. Property crime commission tends to peak a couple of years earlier than violent offending, and property crime arrests drop off more rapidly than arrests for violence. As age increases beyond adolescence, the likelihood of being arrested decreases greatly; criminologists call this "aging out" of crime. Robert Agnew, a criminologist, says that this peak in offending during adolescence can be tied to the unique lives of youth in modern, industrial societies. Youth in these cultures are given many of the privileges of adulthood, yet also experience less supervision as their demands and social networks increase. Although there is variability across nations in the age at which crime peaks, it nearly always is during late adolescence.

Official crime data show that members of minority groups are overrepresented in property crime arrests, and especially in violent and drug crimes. Based on other data sources, criminologists affirm that young, lower-class men of color have disparately high rates of homicide and robbery.

People of color disproportionately experience economic inequality and disadvantaged living conditions, which have been connected to criminality. However, regarding the more common minor offenses, self-report surveys found that minority members generally report lesser or similar rates of minor offending than their majority counterparts. For example, white youth have the highest rates of substance use, whereas African American adolescents report among the lowest levels. The discrepancy between high minority arrest and imprisonment rates compared to self-report data that show smaller or no race differences suggests some amount of bias in the criminal justice system. The United States has a long history of racial stereotypes and media portrayal of young men of color as dangerous, drug addicted, and criminal. Thus, the same action performed by both a white and a black youth could be seen as a “stunt” for the former and a “crime” for the latter. Such stereotypes can influence decisions made by victims to invoke the law and personnel at every level of the criminal justice system, from law enforcement to judges and members of juries.

The association between class and crime almost seems like common sense, as one might believe those in lower classes have the most motivation to commit crimes. That perspective seems validated by the higher arrest rates of those from lower income areas. The use of self-report data, which originated in the 1950s, has complicated this perception among criminologists, although it has not changed public discourse. Whereas class differences are more apparent for serious crimes like homicide and robbery, social class differences are lesser for more common forms of offending. The connection between class and offending is also exaggerated by the disproportionate attention given to street crime over white-collar offending. Although difficult to estimate, societal harm due to corporate and elite crime is thought to be far more damaging in terms of lives lost and financial costs than street crimes.

Criminologists use a variety of data sources to define how crime is distributed systematically across places, historical periods, and social groups in the United States. This endeavor is complicated because definitions of crime differ over time and across places and because each data source measures a slightly different aspect

of criminal behavior. However, all sources agree on several enduring patterns of crime. The most serious crimes, like homicide and robbery, occur infrequently, whereas less serious crimes like larceny and burglary occur more often. Crime is concentrated in urban centers, although not absent from rural areas, and more prevalent in the southern and western United States. Crime rates in the United States have declined precipitously since the mid-1990s. Even so, the United States has higher crime and punishment rates compared to other industrialized nations. The demographic profile of the typical offender is a young male; offending rates of females and older people are considerably less. Minorities and the lower class are overrepresented in arrest data. Differences between race, class, and gender appear smaller when using self-report data that is unfiltered by law enforcement practices and better at representing minor forms of offending.

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See Also: Crime in America, Causes; Crime in America, Types; Crime Rates; Juvenile Delinquency, Sociology of; Uniform Crime Reporting Program; Women Criminals, Sociology of.

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Crime in America, Types

Crimes are classified into various typologies that are used for different purposes, such as legislation and research, as well as specialized law enforcement and prosecutorial initiatives. Typologies of crime can suggest strategies for preventing and controlling crime and can contribute to understanding how and why crimes are committed and the effects of crime on individuals, families, and communities. Crime typologies guide studies of the causes of crime, people's membership in criminal organizations, the impact of programs and punishments on crime rates, and the distribution of crimes across periods of time and across places.

A crime is a definitive act or omission, defined by law for the protection of the public, and made punishable by the state in a judicial proceeding in its own name. Parsed into its basic elements, this definition illuminates the nature of crime and how it differs from other kinds of rule-breaking or deviant behavior. A crime can be an act of commission (e.g., robbery, burglary, or theft) or omission (e.g., child neglect, tax evasion, or failure to register as a sex offender). A crime must be provable in a criminal court in order to bring to justice an individual alleged to have committed the crime (i.e., the defendant). Thus, a crime (the alleged action or inaction) must be substantiated by legal evidence before an individual can be processed through the criminal justice system (arrested, indicted, tried, convicted, and sentenced).

A behavior constitutes a crime only if it is defined as such by the law or a criminal statute. In addition, for suspects to be charged with a crime, their behavior must have been defined as a crime at the time the behavior occurred. In other words, people cannot be charged with a crime if their behavior was not statutorily defined as illegal at the time the act was committed, even though the act is now defined as a criminal one. Charging people with a crime retrospectively is unconstitutional. Hence, *ex post facto* laws are prohibited.

The state is responsible for redressing the harm that results from criminal activity by prosecuting and helping to convict and punish people who are found guilty of a crime in a judicial proceeding. Only the state can charge people suspected of committing a crime, and only the court can convict and punish people found guilty of committing

a crime. Individuals who seek personal vengeance against a criminal—outside the court or legal system—can themselves be charged with a crime (e.g., harassment or assault).

Felonies and Misdemeanors

The most basic typology of crime is built on the law and places offenses into categories of crime severity for sentencing purposes. The most serious crimes are felonies. Felonies consist of any crime that is punishable by a year or more of incarceration in a state prison. The more serious the felony, the higher the class (e.g., class 1 through class 4, in descending order of seriousness) and the longer the prison term as a potential punishment. People convicted of a felony are not automatically sentenced to prison, but they are eligible for imprisonment. In fact, most offenders convicted of a felony are sentenced to probation, a community-based sanction that monitors offenders under conditions of release stipulated by the court (e.g., curfews, participation in drug treatment, fines, or restitution). A conviction for a crime in the highest felony class, often called class X, results in a mandatory prison sentence. A conviction for a capital crime, also a felony, can carry the death penalty (the ultimate punishment).

The least serious crimes are misdemeanors, punishable by up to one year of incarceration in a county jail. Like felonies, misdemeanors are also classified into categories of severity (e.g., class A through class C, in descending order of seriousness); the more serious the misdemeanor, the more likely the perpetrator will be sentenced to a period of incarceration. Also, as is the case with felonies, most people convicted of a misdemeanor are sentenced to a community-based sanction (e.g., court supervision). In addition, they are also likely to receive a monetary sanction, usually in the form of a fine.

Violent, Sex, Property, Hate, and Drug Crimes

Other classifications of crimes place offenses into categories that largely reflect the target or focus of the crimes but are mostly unrelated to the severity of the crimes (i.e., both felonies and misdemeanors can be placed in the same category). Examples of such crime types are violent crimes, property crimes, drug crimes, and sex crimes. Violent crimes are also termed crimes against person and

are generally considered more serious than crimes against property, because violent crimes involve harming or threatening to harm a victim. Violent crimes include homicide, which is taking the life of another person (purposefully, knowingly, recklessly, or negligently). Murders can be perpetrated with varying degrees of intent (deliberateness); the greater the degree of intent, the higher the level of offender culpability and the greater the likelihood of a severe punishment. For example, first-degree murder (by definition, with premeditation and purposefulness) by death or life in prison; whereas negligent homicide (without premeditation, purposefulness, or intentional malice) might be punishable by a term of incarceration, but never by the death penalty. Other violent crimes include aggravated criminal sexual assault (i.e., rape), which is compelling a person to engage in sex by physical force or threat of force; robbery,

which is taking a person's property by force or threat of force; battery, which is inflicting bodily harm or injury on another person with a weapon or other means; and assault, which is threatening another person with bodily harm. The commission of robbery, battery, or assault with a weapon is referred to as an "aggravated" crime.

Sex offenses are another type of crime against person; they vary greatly in terms of their nature and severity. They can often be violent; for example, rape, which is also classified as a crime against person, is a sex offense. Sexual abuse is regarded as an extremely serious crime; it consists of fondling, kissing, or touching a minor in a sexual manner (contact with breasts, buttocks, or genitalia) or forcing a child to engage in oral or anal sex (sodomy) or masturbatory acts. Possessing, selling, or trading photographs of children for sexual gratification falls under the definition



A member of the U.S. Coast Guard opening a 60-pound bale of cocaine seized in a large antidrug operation in the Caribbean Sea in June 2008. Drug crimes are differentiated between drug-defined crimes such as possession, sales, and trafficking, and those that are associated with drug abuse and dependence, called drug-related crimes.

of child pornography. The exposure of genitalia in public (exhibitionism or indecent exposure) or watching others without their knowledge or consent (voyeurism) for explicitly sexual purposes are generally considered sex crimes of lesser severity and rarely result in prison terms.

Property crimes are the most common offenses reported in the United States. Similar to violent crimes, property offenses can also be placed into several subcategories. Theft (larceny) is taking another person's property without the person's knowledge or consent. Unlike robbery victims, theft victims typically have no contact with perpetrators. If they do, they are unaware of the contact; for example, a victim of pickpocketing might bump into the thief, but is unaware of the victimization during the encounter. Theft from stores (i.e., retail theft) is also called shoplifting. Car theft is its own category of crime, mostly for insurance purposes. Due to the appreciable value of automobiles, this crime is called grand theft auto; the term *grand* refers to the worth of a stolen object, usually in excess of \$250 to \$500 in value, depending on the state statute. Burglary involves theft from a home, store, car, or garage, following forced or unlawful entry. Only structures can be burglarized; only people can be robbed. Arson involves the deliberate burning of a structure (home, garage, store, or church) or vehicle by igniting an incendiary device or manipulating electrical wiring or utilizing other mechanical means for causing a fire. Arsonists can be motivated by revenge, profit (which occurs when property is insured for fire damage), or thrill seeking (such as pyromania, an impulse control disorder).

Hate crimes are driven by bias or prejudice, not by profit or anger against a specific individual. Perpetrators target victims on the basis of their actual or perceived race, sexual orientation, religious affiliation, or national origin. Hate crimes can be directed against a person (e.g., through acts of assault, battery, or murder), or against a property (e.g., through acts of vandalism, such as spray painting a swastika on a synagogue or torching a gay bar). In 1990, President George H. W. Bush signed into legislation the Hate Crime Statistics Act, mandating the reporting of hate crimes as a separate category of offenses in the Federal Bureau of Investigation's (FBI) Uniform

Crime Report. The Violent Crime Control and Law Enforcement Act of 1994 created a specific category of hate crime: "crimes of violence motivated by gender."

Drug crimes involve the possession, sale, or distribution of illicit substances—in order, from the least to the most serious in terms of criminal penalties. Drug distribution done on a large scale and across long distances (across borders and oceans) is called drug trafficking. Most criminal statutes separate marijuana laws from controlled substances laws, which include, for example, cocaine (powder and crack), methamphetamine, opiates (e.g., heroin), and phencyclidine (PCP). Selling drugs near school or church property (drug-free zones) is considered more serious than selling drugs in other public places.

Another way to classify drug crimes is to differentiate between actual drug crimes, called drug-defined crimes, and those that are associated with drug abuse and dependence, called drug-related crimes. The former constitute drug offenses, such as possession and sales; whereas the latter constitute offenses committed to obtain money to purchase drugs, such as robbery, burglary, or theft. The relationship between drug crimes and violent acts can also be classified as pharmacological (e.g., the effects of the drug lower inhibitions or exacerbate paranoia, thereby increasing the risk of violence) or economic (e.g., armed robbery is committed to obtain money to purchase drugs). Systemic violence is caused by competition—usually between rival street gangs—to control drug markets.

Victimless Crimes

Although they are in a category of their own, drug crimes are usually included in a class of offenses known as victimless crimes, in which offenders willingly participate in a criminal transaction by exchanging money for illegal goods or services. For example, people arrested for drug possession seek out the substance that they have purchased, often at great expense and in high-risk places or situations. Prostitution (a sex crime) is also classified as a victimless crime; it involves the exchange of money for sexual services. The behavior itself, consensual sex between adults, is legal when no payment is made for the sexual acts performed. In a few counties in the state of

Nevada, prostitution is legal and operates out of state-regulated and licensed businesses known as brothels. Similarly, gambling is also a victimless crime. However, unlike prostitution, which is legal in only a few jurisdictions in the United States, gambling is legal in nearly every state in the country. Many states operate lotteries and numerous cities, towns, and Indian reservations operate gambling casinos.

The difference between victimless and non-victimless crimes is related to two other broad categories of crime called *mala in se* and *mala prohibita*. The former are crimes recognized as inherently or naturally evil, such as hurting others (violent crimes) or stealing the property of others (property crimes). *Mala prohibita* crimes are objectionable on moral grounds; they are labeled as offenses only because they are defined as such by law. These offenses fall mostly into the victimless crime category (drugs, prostitution, and gambling).

Organized Crime

For research and prosecutorial purposes, crime can be classified on the basis of the perpetrators' characteristics or the methods of criminal activity. Organized criminal activity, or organized crime, is a collective enterprise in which groups of offenders engage in systematic, planned criminal pursuits within a well-defined organizational structure and hierarchy of leadership. Traditional organized crime, exemplified by the Italian American La Cosa Nostra, once consisted of organized crime families in several large cities in the United States, including the five families of New York City as well as families in Chicago, Philadelphia, Cleveland, Kansas City, New Orleans, and Miami.

At one time, these families wielded considerable political power and infiltrated the leadership ranks of major labor unions. La Cosa Nostra monopolized various illegal markets, engaging in labor racketeering and controlling legitimate businesses (construction, music, waste removal, clothing, and food) through intimidation, extortion, and violence. In addition to its criminal mainstays—gambling, loan sharking, and prostitution—La Cosa Nostra has been involved increasingly in sophisticated crimes such as stock manipulations, phone card theft, and health

insurance fraud. Major street gangs are another example of an organized criminal group.

White-Collar Crimes

White-collar crimes are committed by professionals who hold legitimate positions of power, authority, and trust, allowing them to take advantage of people in fraudulent schemes that can cost victims millions or billions of dollars. White-collar crimes are differentiated in name from “street” or “predatory” crimes. Unlike street crimes, white-collar crimes are committed in an office by men wearing suits and ties—hence, the term *white-collar*. Corporate administrators, bank and real estate executives, commodities traders, and stock brokers are but a few examples of the positions held by white-collar criminals. White-collar criminals act for self-gain (for example, embezzlement) or for the benefit of a business (for example, corporate price-fixing). Victims of white-collar crime include employers, consumers, and financial institutions. Such crimes can also significantly damage the economy and the environment. Under the identification doctrine, entire corporations can now be treated as legal entities and charged with white-collar crimes.

The Ponzi scheme, one of the oldest white-collar crimes, involves a fraudulent investment operation that pays initial investors dividends that are not based on actual profits, but on the investments of subsequent victims. The offender attracts would-be investors by promising high financial returns that are not attainable through traditional investments. A recent example of a Ponzi scheme was the Madoff scandal, costing victims/investors more than \$20 billion in losses.

Computer Crime and Terrorism

Two of the more recent types of crime are Internet crime, also called cybercrime, and terrorism. The World Wide Web created a number of new opportunities for criminal pursuits. Computers can be a vehicle or tool for other types of crimes, such as fraud. The Nigerian Letter Fraud scheme involves e-mails from Nigeria that offer recipients a share of the millions of dollars that the author—a self-proclaimed government official—is attempting to transfer out of Nigeria illegally. The official asks the “fortunate” e-mail recipient to wire money to expedite the transfer of these dollars; in the vast

majority of these cases, the money will never be traced or recovered. Other kinds of crimes facilitated by the Internet include identity theft, which involves using people's banking or credit card information to steal their assets, and infecting computer systems with viruses (computer programs that can copy themselves and damage a computer) in order to wreak havoc in government agencies or companies. A computer virus can be spread to personal computers simply out of maliciousness. Spyware can also be surreptitiously installed on personal computers to track the users' habits and interests for commercial gain.

Although legal definitions of terrorism are nebulous, such acts are generally characterized by violence, mayhem, and destruction against innocent victims. This is generally done for the purpose of instilling fear in order to advance political, religious, or ideological causes and to raise the profile of the groups that claim responsibility for the terrorist acts. The random, brutal, and public nature of the violence is calculated to have paralyzing effects on the citizenry. Targets are often selected for their symbolic value, such as in the 9/11 attacks on the World Trade Center and Pentagon.

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See Also: Burglary, Contemporary; Child Abuse, Contemporary; Codification of Laws; Computer Crime; Crime in America, Distribution; Crime Rates; Criminalization and Decriminalization; Gambling; Larceny; Murder, Contemporary; Organized Crime, Contemporary; Prostitution, Contemporary; Race-Based Crimes; Uniform Crime Reporting Program.

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Crime Prevention

Crime prevention is recognized as any action designed to reduce the actual level of crime, perceived levels of crime, or fear of crime. Its effects are a priori (i.e., proactive techniques) to future crime. Conversely, crime control is the maintenance or management of crime in society. Its effects are ex post facto (i.e., reactive techniques) to existing crime problems. While crime prevention can be broad, it focuses on efforts to alter the environment in order to reduce crime. These efforts involve actions of individual citizens, small groups of citizens, and entire communities.

Crime prevention encompasses both formal and informal strategies. Formal approaches are often planned, carried out by criminal justice officials, regulated by law or policy, and utilized to enforce explicit norms and values (i.e., criminal law). Informal approaches tend to be carried out by all members of society, unregulated, and used to enforce all norms of society. Crime prevention efforts can also be designed to encompass formal and informal strategies, and thus, prevention techniques are often seen on a continuum. At the formal end of the crime prevention spectrum are conventional maintenance efforts of the traditional criminal justice system. Moving along the continuum to less formal activities are such tactics as community-oriented policing initiatives, citizen patrol, and neighborhood watch groups. At the informal end of the spectrum are self-protection and risk-avoidance strategies of individual citizens.

Environmental and community crime prevention programs have emerged because of a myriad of factors. Citizen participation in crime reduction initiatives was encouraged and motivated by the political and social climate of the 1960s and 1970s. Furthermore, community prevention efforts were also encouraged by issues involving the formal criminal justice system. The justice system has often been criticized for being ineffective because of its reactive and punitive nature. Operating and maintaining the criminal justice system is also expensive and resource-intensive. Money and time are spent investigating existing crimes and prosecuting, trying, and housing criminal offenders rather than on strategies to reduce or eliminate crime. Finally, because of recent "get

tough on crime” movements such as the war on drugs, determinate sentencing, three strikes laws, truth-in-sentencing laws, increased incarceration, and longer prison sentences, the formal justice system routinely operates at full capacity.

Many community crime prevention efforts are rooted in criminological theory. While traditional theories of crime focus on the offender and offender motivation (e.g., biological, psychological, and sociological factors), opportunity theories of crime emphasize the physical characteristics of the criminal event (e.g., spatio-temporal patterns of victims and offenders, and environmental influences). The most recognized opportunity theories of crime include Lawrence Cohen and Marcus Felson’s routine activity theory, Derek Cornish and Ronald Clarke’s rational choice theory, and Paul Brantingham and Patricia Brantingham’s crime pattern theory. The three most utilized applications of these theories have been formulated through Oscar Newman’s defensible space, C. Ray Jeffery’s “crime prevention through environmental design” (CPTED), and Clarke’s situational crime prevention.

Routine Activity Theory

Lawrence Cohen and Marcus Felson developed a criminological perspective based on the routine activities of people and changes in activity structures. They compared these changes to crime rates from 1947 to 1974. The authors posit that criminal behavior is routine and it is interdependent with other pro-social routines. Crime, therefore, is a result of the structures of “everyday life.” Further, they contend that everyday life affects the extent to which three necessary elements must converge in time and space: (1) a motivated offender, (2) a suitable target, and (3) the absence of capable guardianship.

The motivated offender is taken as a given by Cohen and Felson, but the exposure between people (potential offenders and victims) is variable. Crime rates, thus, are a function of rates of exposure, target suitability, and a lack of able guardianship. For property offenses such as theft, the suitability of a target is determined by its value and portability. Guardianship refers to the capability of a person to guard his or her property by keeping it under surveillance or preventing access to it.

The authors specify several factors that emerged during this era that contributed to the alteration of routine activities in society. More women joined the labor force and enrolled in higher education, which fostered an increase in unattended households during the daytime. There was a greater production and consumption of goods, which created an increase in available targets. Moreover, the new items being produced (e.g., personal electronics) were also made smaller and lighter. This makes theft crimes easier. Further, there was a decrease in the number of people getting married. This meant more single people living alone; they also tend to be outside the home more often, which increases their likelihood of committing crime or being a victim of crime.

Cohen and Felson found support for their theory. They concluded that the increases in crime during that period (especially residential burglary and robbery) were associated with the routine activities of everyday life. Subsequent empirical tests of routine activity theory have suggested that aggregate crime rates and individual victimization can be attributed to the normal routines of people in society. These variables include the number of nights spent outside the home, the number of valuables carried outside the home, the number of portable household goods, and the lack of preventive maintenance (e.g., locks, security systems, and neighborhood watches).

Rational Choice Theory

While routine activity theory posits that variation in one’s activity can alter crime, rational choice theory focuses on human agency; that is, the decision-making processes of humans, specifically criminals. It seeks to understand the dynamic components of involving oneself in committing crime, decisions directly related to the crime event, and the decision to desist from crime.

Cornish and Clarke state that rational choice theory concerns both crime and criminality, and it seeks to explain why motivations can change. It accounts for all types of crime, stresses the importance of situation and opportunity, and has direct policy implications. Rational choice theory has six basic tenets: (1) crimes are purposive and deliberate acts with an intention of benefiting the offender, (2) offenders do not always succeed in making the best decisions because



George Kelling and James Wilson's "broken windows" theory holds that increases in the number of minor crimes, such as littering or graffiti as seen in this pedestrian tunnel in Philadelphia in 2009, may lead some residents into antisocial behavior if they feel it will go unpunished and can lead to more serious forms of crime.

of risks and uncertainty, (3) offender decision making varies considerably with the nature of the offense, (4) involvement decisions are quite different from event decisions, (5) involvement decisions can be divided into three stages (initiation, habituation, and desistence), and (6) event decisions involve a sequence of choices made at each stage of criminal acts.

Crime Pattern Theory

Criminal behavior is typically not random in both motivation and geographical space. Recent research has demonstrated that relatively few "hot spots" produce the most crime and the most calls for police service. In a study by Lawrence Sherman, 50 percent of all calls for service in Minneapolis occurred in 3 percent of the places within the city. Moreover, all auto thefts were committed in 2.7 percent of places,

all robberies were committed in 2.2 percent of places, and all rapes were committed in 1.2 percent of places within the city. Thus, the locations of many crimes are capable of being predicted. Crime pattern theory and offender search theory both add to routine activity theory by describing how and where offenders and victims come into contact with one another, creating the possibility of criminal opportunity.

The daily activities of offenders and law-abiding citizens are often structured around nodes and paths. Nodes refer to the specific places where individuals typically congregate (e.g., home, work, school, and places of entertainment). Paths refer to the roads and pathways that connect nodes to other nodes. Humans tend to be creatures of habit and often traverse the same route to and from their nodes. Moreover, humans typically do not stray too far from home. The probability of

target selections becomes less and less as potential offenders get farther and farther from home.

Crime is most likely to occur at nodes or along paths because there they yield the greatest availability of offenders and targets. Offenders will often search for crime in search areas that are based off an offenders' typical type of target. Offenders will also commit crimes where their search areas overlap with their target areas. These places of convergence are based upon patterns of movement within the environment. Opportunity theories of crime contend that illegal behavior is largely a function of the structure of opportunity. Some offenders can actively create their own illegitimate opportunities, and thus, some crime may be best explained as a response to a situation in which the attraction of a particular crime may be too good to dismiss.

Broken Windows Theory

Situational and ecological factors that create or facilitate opportunities for crime have become vital elements of study for criminologists. George Kelling and James Wilson's "broken windows" theory details how neighborhood image impacts crime and crime prevention. Their central thesis is that unchecked social disorder is the primary cause of serious crime. Areas marked by unrepaired physical deterioration may lead to decreased participation in maintaining order among residents. This decrease in collective efficacy can lead to increases in delinquency, rowdiness, and vandalism.

This general disorder can lead to further neighborhood deterioration and further withdrawal among residents. Disorderly behavior, which goes unregulated and unchecked, signals to residents that the area is unsafe. The downward spiral begins not with serious offenders but with disreputable or disorderly persons (e.g., panhandlers, drunks, prostitutes, and addicts). Though the risk of criminal offending by these persons may be low, residents no longer feel safe walking down the street. Fearful residents will then avoid certain locations and withdraw from public life. By withdrawing from their roles of mutual support with their fellow neighbors, residents surrender the social control they had formerly helped maintain. With community safety now undermined, the area becomes vulnerable to increases in disorder and other serious crimes. In essence, serious

crimes are able to flourish in areas where disorder and general incivility have gone unchecked.

Increases in the number of "broken windows" (e.g., graffiti, trash, or dilapidated housing) may lead some residents to conform to antisocial behavior if they feel it will go unpunished. It may also lead to outside offenders moving into the neighborhood who are attracted by the neighborhood's vulnerability to crime. Finally, "broken windows" can lead to more serious forms of crime if offenders are realizing that less serious crimes are going unnoticed.

Crime prevention initiatives focused on fixing the "broken windows" may involve residents or community groups but mainly concentrate on police tactics, such as zero-tolerance policing, quality-of-life policing, community-oriented policing, and problem-oriented policing. Zero-tolerance policing focuses on maintaining order through aggressive police action, whereas community- and problem-oriented policing relies mainly on citizen input, evidence-based policing, and fixing the root cause of the disorder. For Kelling and Wilson, order maintenance would not simply mean fighting serious crime but rather fighting the disorder and general incivility that undermined neighborhood social control in the first place. Some academics (e.g., Kelling) point to New York City's dramatic crime drop in the 1990s as evidence for zero-tolerance policing, but other academics claim that much of the crime drop would have happened anyway.

Environmental Crime Prevention

In the early 1970s, environmental crime prevention flourished with the published works of C. Ray Jeffery and Oscar Newman. In 1971, Jeffery coined the phrase *crime prevention through environmental design* (CPTED) and used it for the title of his book. He was followed by Newman in 1972 with his classic book, *Defensible Space*. Each helped to clarify how to design new buildings, structures, and neighborhoods more carefully so they did not foster crime. They also encouraged property owners to fix old places to reduce their crime problems.

Defensible space pertains to an environment that is under control of its residents, and Newman carefully considers a set of strategies for achieving such an environment. He suggests that

community crime prevention is a function of four elements: territoriality, natural surveillance, image, and juxtaposition. Territoriality refers to the demarcation of space and its proper usage along with the development of residents' sense of ownership. Natural surveillance is the ability of residents to observe activity from inside or outside their homes. Image refers to the appearance, maintenance, and condition of the neighborhood (civility versus incivility). Juxtaposition refers to the positioning of structures within the broader environment.

To achieve defensible space, community developers and property owners must take these elements into consideration. Newman suggests that to properly achieve a "defended space," structures within communities must provide for the delineation of space for particular users (e.g., public versus private space). Private spaces (e.g., homes) are better for crime prevention because the area is better guarded. Provisions should also be made so that residents can naturally observe the area from inside and outside their homes. Finally, space should be created and maintained so that it is not isolating or stigmatizing (i.e., no "broken windows"), and residential buildings should be properly placed next to "safe" areas. Aspects of the physical environment that can influence these elements include access, site and street design, disorder, and boundary markers.

Situational Crime Prevention

In combining rational choice and human agency perspectives within environmental contexts, Ronald Clarke suggests that to reduce crime, society must reduce an individual's opportunity to commit crime. Although people differ in their motivations and dispositions to offend, Clarke argues actual criminal acts depend on situational factors. People may come from varying backgrounds, but all persons must still decide to break the law in any given situation; the nature of the situation can affect their decision making. To that end, he developed a new perspective of crime prevention, one that took situational variables into account.

Situational crime prevention focuses on the criminal event, whereas traditional theories center on the criminal offender and sources of individual motivation. This perspective promotes the importance that physical environments play in

encouraging or inhibiting criminal activity and suggests that changes to the environment can reduce criminal opportunity. Clarke's focus on opportunity differs from other perspectives in that the reduction efforts being made are directed at repeated and highly specific forms of crime based upon analysis of crime patterns. The focus is also much more on reducing the opportunity than it is on fostering collective efficacy or informal social control.

Crimes are more likely to occur if they are easier to commit, have low risks of detection, provide attractive rewards, and are encouraged by the immediate environment. Altering the opportunity structure may be best utilized through situational crime prevention. Specifically, situational crime prevention is comprised of opportunity-reducing measures directed at specific forms of crime. It involves the management or manipulation of the environment in systematic ways to make crime more difficult and risky and/or less rewarding. The general concepts of this technique focus on the implementation of safety measures that help protect people and property by making criminals feel they will be unable to successfully commit crimes. If there are enough safeguards being implemented to reduce temptation or cause a high probability of failure or detection, then the rational choice for a criminal would be to avoid committing the act.

Situational crime prevention seeks to decrease specific crimes at specific places by focusing on five preventative techniques: (1) increasing the effort, (2) increasing the risks, (3) reducing the rewards, (4) reducing provocations, and (5) removing excuses. Increasing the effort made by potential criminals to commit crime can be done through measures of target hardening (e.g., locks and tamper-proof packaging) and controlling the access to facilities (e.g., electronic card access).

Increasing one's risk of detection can be achieved through the strengthening of informal (e.g., neighborhood watch groups) and formal (e.g., red-light cameras) surveillance. Reducing the rewards one might get as a result of a criminal act can be accomplished through measures of concealing or removing targets (e.g., a removable car radio) and by identifying or marking property. Reducing one's provocation for crime can be achieved by avoiding disputes, neutralizing peer

pressure, and reducing stress. Finally, removing excuses for crime can be implemented by setting rules (e.g., rental agreements), posting instructions (e.g., "Private Property"), assisting compliance, and controlling drugs and alcohol.

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See Also: Community Policing and Relations; Crime Rates; Criminology; Deterrence, Theory of; Fear of Crime; Theories of Crime; Wilson, James Q.

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within a defined population or jurisdiction. Such rates are particularly useful for measures of crime over time as well as for the comparison of specific crimes or crime types between two or more different populations.

Measuring Rates of Crime

Official Data. The first systematic attempts to record and measure rates of criminal offending were undertaken in the middle of the 19th century. In 1825, France began to collect national data on rates of criminal prosecutions and convictions, and Great Britain began to collect data in the 1850s on "crimes known to the police." The United States also had begun collecting judicial data on rates of crime by the latter part of the 19th century, but it wasn't until the 1920s that the government began to seek a way to systematically record, measure, and make available statistics on rates of criminal offending. For a variety of reasons, most notably because judicial records were seen as further removed from the act of crime itself than were police records, the recording of crime was standardized under the auspices of the Federal Bureau of Investigation (FBI). Beginning in 1931, the FBI began its annual publication of its Uniform Crime Report (UCR), which compiled statistics on criminal arrests from local, state, and federal law enforcement agencies.

Today, the UCR consists of data from over 17,000 police agencies that report on crimes known to the police, arrests, and crimes cleared by the police. Information reported in the UCR includes type of offense, region, and jurisdiction of offense, and in the case of arrests, the age, gender, and race of the offender. Historically, the UCR has also grouped crimes into more serious (Index I) crimes and less serious (Index II) crimes, as well as compiling indexes for "violent crime" and "property crime."

Since its inception, the UCR has served as the benchmark of official data on crime rates. However, official data (including the UCR) have several limitations. It has long been recognized that official measurements of crimes known to the police constitute only a small part of the overall crime that occurs. Criminologists refer to this unknown amount as the "dark figure" of crime. Other problems include varying policing strategies (i.e., beat cops versus vehicle patrols) that

Crime Rates

Crime rates refer to the collection and publication of data on criminal offending, usually measured in rates per 1,000 or per 100,000. The use of rates as opposed to raw numbers allows researchers to determine the prevalence of specific crimes

may lead to differences in the amount of crime known to police; differential policing or enforcement that may result in skewed data on certain demographic groups or communities; and the “inflation of seriousness” whereby policing agencies frequently charge offenders with the highest offense possible in the expectation that they will likely plea-bargain to a lower charge. One notable problem with the UCR in particular is the “hierarchy rule,” where only the most serious crime in any single incident is reported, even when there may also be several less serious offenses. Other problems in the UCR include lack of data on relationships between offenders and victims, lack of detailed demographic information on victims, and lack of information regarding drug or alcohol use by offenders. Also, controversially, the UCR’s definition of rape does not include male victims.

More recently, the FBI has implemented the National Incident-Based Reporting System (NIBRS) to address some of the problems in the UCR. NIBRS does not use the hierarchy rule. Rather, it collects information about crimes based on “incidents” rather than single offenses, allowing for a more comprehensive recording of both events and information on offenders and victims. It has an expanded recording of more serious (Type A) and less serious (Type B) offenses, including information on drug and alcohol use. It also differentiates between “attempted” and “completed” crimes, while the UCR does not. Finally, it includes males in its definition of rape. As of 2004, approximately 5,300 law enforcement agencies contributed to the NIBRS, representing 20 percent of the U.S. population.

Self-Report Data. In the 1940s, researchers began to measure rates of criminal offending in ways that did not involve reliance on policing agencies. In 1946, Austin Porterfield compared rates of “self disclosed” juvenile delinquency in college students against disclosed rates of adjudicated delinquents and found that these rates were more similar than official records suggested. Subsequent research by James Short and Ivan Nye in the 1950s confirmed that crime was more uniformly distributed among the population than evidenced in official data. They also developed a standardized instrument by which disclosed rates of criminal activity could be measured

through the administration of an anonymous “self-report” survey. The use of such surveys has consistently demonstrated the underrecording of crime rates in official measures, and with varying reliability they have provided researchers with a second important measure of crime rates. Examples of well-known self-report surveys include the National Youth Survey, started in 1967 and used annually since 1976, as well as the Monitoring the Future project started in 1975.

Self-report surveys have several advantages over official data. Primarily, they are able to record and measure many crimes that go unreported to the police. Second, self-report surveys allow researchers to design survey instruments in ways that can test hypotheses on the etiology of crime and characteristics of offenders. Third, self-report surveys are often able to capture a larger amount of data than official records provide. However, they are not without their problems and limitations. Self-report surveys rely on the recollection of respondents, who may remember dates, places, or incidents incorrectly. Also, some researchers argue there is a trend that finds respondents over-reporting their involvement in less serious crimes, and underreporting their involvement in more serious crimes, particularly sexual crimes and homicide. Finally, while hundreds of such surveys have been undertaken, differences in sampling and instrumentation make them difficult to use for comparative purposes.

Victim Data. Victim data utilizes surveys to inquire into the type and frequency of victimization of respondents. In 1972, the Bureau of Justice Statistics implemented its biannual National Crime Victimization Survey (NCVS). Today, the NCVS collects information from approximately 85,000 households and 150,000 persons per year. Households participate for three years, and individuals over the age of 12 are surveyed every six months. Questions in the survey include types of crimes experienced by victims; victim relationship to offenders; demographic data and characteristics of victims, offenders, and others in the household; attitudes toward crime and the police; and whether or not the crime was reported.

The NCVS is generally considered to be the most accurate and reliable single measure of crime in the United States. It records “personal

crimes,” including rape and sexual attack, robbery, aggravated and simple assault, and purse-snatching/pocket-picking; and “property crimes,” including burglary, theft, motor vehicle theft, and vandalism. It does not record arson or homicide. Since 1972, the NCVS has consistently demonstrated a higher level of crime than is reflected in official data. For example, research conducted in the 1970s using the NCVS in eight U.S. cities found rates of assault to be 15 times higher than reported to police, and rates of robbery nine times higher. Another important finding of the NCVS has been that many people do not report crimes to the police because they do not believe it will make a difference or because they think the crime was not serious enough.

As with other self-report surveys, the NCVS relies on the recollection of respondents. This can lead to problems where respondents may conflate incidents of victimization, report crimes that may not have occurred (i.e., a lost wallet that is reported as stolen), not report particularly shameful types of victimization such as rape, or not report crimes that may implicate family members. Respondents are also asked to report crimes within the previous six months, and this can result in both under and overreporting due to misrecollection of when the victimization occurred.

Crime Trends

Establishing definitive rates of crime prior to the systematic collection of official and other data is difficult. Historians of crime, with few exceptions, suggest that crime rates in 18th- and early-19th-century America were for the most part significantly higher than those of the 20th century. Beginning in the mid-19th century, historians have found divergent crime trends between some major older metropolitan areas such as Boston and Buffalo, New York, which saw a general reduction in recorded violent crimes throughout the latter part of the 19th century, and rural areas (in particular, the southern states) or newly emerging urban centers, where crime rates frequently rose during this time.

Data from the first half of the 20th century in the United States evidences several trends. Most generally, crime began to decline overall at the end of the 19th century (and in some places earlier), and remained relatively low with a few



Unemployed people protesting in Camden, New Jersey, in 1935. The Great Depression saw an increase in crime but the relationship between crime and unemployment is ambiguous.

exceptions over the next 60 years. Historians have noted the short-term suppressant effect of major wars on crime rates, as well as the increase in crime rates (particularly property crime) in times of economic hardship—in particular, the Great Depression. However, there is considerable debate as to why crime apparently fell in the late 19th century and remained relatively low until the 1960s. Some historians suggest that the growing efficacy of modern police forces was significant in this decline, but others have noted that violent crime, in particular, began to decrease in several urban areas prior to the advent of modern police departments. Other explanations for the general reduction of crime in this period include the early growth of a middle class and subsequent suburbanization of northern cities; the growing assimilation of immigrant populations; the growth of

civil organizations, including churches, unions, lodges, and clubs; and the growing stability of labor patterns and occupations (with the exception of the Great Depression).

Following World War II, crime rates rose in many European countries in the 1950s. Between 1945 and the early 1960s in the United States, however, rates remained relatively stable until the early 1960s, when both violent and property crime began a precipitous climb. In 1960, the violent crime index was 161 per 100,000. By its peak in 1991, this rate was 758 per 100,000. Property crime followed a similar trend, with 1,726 per 100,000 in 1960 and a peak of 5,350 in 1980, with only a gradual decline until the mid-1990s. Yet just as precipitously as crime rates climbed after 1960, they began to fall again in the mid-1990s. By 2009, violent crime rates had returned to 1973 levels, and property crime rates were at the same level as 1968.

UCR, self-report, and victimization data vary, but all confirm that the growth and subsequent decline in crime was real. Some argue that the increase in crime was due to the growing number of young people as a result of the Baby Boomer generation (1946–64). Sociologists have long recognized that young people (particularly young men) are responsible for a disproportionate amount of crime. The demographic bulge of maturing young people in the 1960s and 1970s, it is argued, led to an increase in crime rates during this time, as well as to a decrease in crime rates as the median age moved upward in the United States as Boomers started to age. Yet, while there is agreement that the growth and aging of Boomers has played a part in these changing trends, there is debate as to the degree of effect. Problematically, for example, birthrates at the beginning of the 20th century were even higher than during 1946–64 and life expectancy shorter, yet crime rates remained relatively lower, even in the Great Depression.

Some historians have argued that the Boomer generation was different, however, not only for its increased birthrates, but also for the changing culture values, including an emphasis on individualism and, in some cases, opposition to authority. The growth of social movements such as the civil rights movement and Black Panthers reflected, respectively, the fracture of the promises of the

postwar boom in the 1960s as well as the growing despair of joblessness and growing poverty in the 1970s. In this respect, many criminologists have linked the growing crime rates of the 1970s and 1980s to growing poverty rates, particularly within minority communities, which also subsequently decreased during the 1990s along with rates of crime. However, the historical evidence on the relationship between crime and both unemployment and poverty is ambiguous. In some historical cases, crime has increased with poverty (particularly during the Great Depression), but in other cases it has not. A possible explanation put forth by some criminologists is that smaller recessions and periods of unemployment frequently lead to conditions where people are home more often and thus less likely to either commit or be victims of many types of crime, while more serious economic downturns such as depressions or prolonged poverty may serve as a tipping point at which otherwise law-abiding people begin to engage in criminal activity.

Other Theories

Aside from age and economics, several other theories exist as to the rise and fall of crime in the latter part of the 20th century. Most of these theories suggest that there is no single causal factor in the rise and subsequent fall of crime rates but rather a series of social, cultural, political, and demographic convergences and divergences that have in some cases been more instrumental and in other cases less so. For example, many criminologists point to the rise of the number of police officers as well as to changes in policing strategies in the 1990s as causal factors in the decline of crime.

The massive growth of incarceration, beginning in the 1980s, is also frequently cited as a factor in declining crime rates, although there is substantial debate as to the degree of this effect. Franklin Zimring, for example, has pointed out that Canada's crime rates also decreased at similar levels to the United States, even while its comparative rate of incarceration was significantly lower.

The economist Steven Levitt has argued that among other factors, the receding epidemic of crack cocaine and the legalization of abortion under *Roe v. Wade* in 1973 resulted in significantly lower crime rates beginning in the 1990s. In the case of abortion, Levitt argued that the decrease

in unwanted births has resulted in a decrease of unwanted children at risk of future criminal activity. More recent research, however, has cast some doubt on this theory due to methodological errors in his work as well as to mistaken assumptions about the effects of abortion on crime rates.

Conclusion

While the three primary means of determining crime rates have increased in reliability and validity over the last 50 years, particularly when used together, they have arguably led to a wider divergence of explanations for general crime trends. Yet such divergent analysis of general crime rates often masks the fact that research on specific types of crime has yielded more definitive and concrete explanations. For example, decreases in burglary and larceny have been widely attributed to the relative decreasing value of electronics and other consumer goods over the last two decades. On the other hand, the growing arrests for marijuana possession over the last two decades are more likely explained by changes in drug laws and policing tactics than by any real increase in use, which self-report surveys show as decreasing beginning in 1985 and remaining relatively low throughout the early 21st century. Not all changes in rates of specific types of crime are so easily explained, but the development of multiple means of measuring rates has allowed researchers to know more about crime than at any time in the past.

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See Also: Abortion; African Americans; Automobile and the Police; Black Panthers; Boston, Massachusetts; Civil Rights Laws; Crime and Arrest Statistics Analysis; Crime in America, Causes; Crime Prevention; Great Depression; *Roe v. Wade*; Violent Crimes.

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Crime Scene Investigation

The fundamental premise of a crime scene investigation is that perpetrators often leave clues during the commission of a crime. The smallest detail that may seem insignificant to the general public may provide vital information to crime scene investigators. Details from the crime scene will help investigators determine if the case in question resulted from criminal activity. If criminal activity is established, investigators carefully and thoroughly sift through the evidence in hope of apprehending a suspect.

Basic Procedure

The basic features of a crime scene investigation include the recognition, documentation, collection, packaging, and preservation of evidence left behind after the commission of a crime. After the commission of a crime, the first responder determines if the perpetrator is still in the vicinity of the crime scene, seeks to locate and assist any injured parties, and identifies any potential witnesses. Once those determinations have been made, the crime scene is secured in order to do an initial walk-through to assess the area. Investigators may physically secure the crime scene by placing ropes, tape, barricades, or law enforcement personnel around the perimeter to prevent the scene from being contaminated. Investigators and other personnel may also utilize protective gear if safety hazards have been identified at the scene. After the initial evaluation of the crime scene, investigators work to ensure that all physical evidence is discovered, investigated, and secured for scientific evaluation and comparison. Limiting the number of personnel entering the

scene is essential for safeguarding the evidence and minimizing contamination. The proper collection, packaging, and preservation of evidence are essential so that physical evidence is not altered, misplaced, or lost.

Crime scene investigations are often long, tedious processes that involve precise documentation of the crime scene in order to directly or indirectly lead to potential suspects in order to solve cases. The documentation process may include photography, video, sketches, diagrams, and/or methodical notes. Recent developments in computer software even allow investigators to create a 360-degree panoramic image of the crime scene and how the crime may have unfolded. These various processes all combine to ensure that the details of the crime scene are permanently archived for further analysis. These processes aid investigators in examining the crime scene long after the area has been cleaned or officially disposed of.

Scientific Advances

In the past couple of decades, police have increasingly been relying on science in the collection, identification, and analysis of evidence retrieved from crime scene investigations. In addition to indirect clues, crime scenes may yield direct clues such as weapons, bullets, tire tracks, fingerprints, shoe prints, hairs, fibers, bite marks, blood splatter, or DNA from biological material. These clues can then be analyzed to identify or exclude suspects. The sophistication of these techniques drastically reduces the criminal's ability to elude justice. Prior to forensic evidence and advancements in science, many investigators relied on confessions, eyewitnesses, informants, and hunches.

The identification, measurement, and comparison of projectiles and firearms in the discipline of ballistics is one area of the scientific fight against crime. Advancements in science have increased the ability of investigators to match shell casings, bullets, and calibers to specific weapons and their corresponding owners. Forensic examiners can also examine the rate and range of fire, nature of bullet wounds, and the chemical residues that linger after discharge. These analyses have progressed tremendously with technological advances in lasers, complex computer software programs, and genetic engineering. The field of

ballistics helps investigators determine if a case involving a firearm is a result of an accident, suicide, or murder.

Modern fingerprint analysis was first conducted in 1892 and was used as a sole means of identification in crime scene investigations by the early 1900s. The use of fingerprint analysis as a form of criminal identification has sparked considerable debate and controversy over the years. Critics argue that many of the central assertions of fingerprint examiners have not been thoroughly verified or tested in a number of important ways. The main controversial issue surrounding fingerprint analysis revolves around laboratory protocols. Some of the skepticism stems from the fact that fingerprint examiners lack objective standards for evaluating whether prints match. This is based on the fact that there is no uniform approach to deciding what counts as a sufficient basis for making an identification. Fingerprint examiners may also have inconclusive laboratory results stemming from the evaluation of partial, smudged, distorted, or incomplete prints. Nonetheless, fingerprint identification has a long role in the history of crime scene investigations.

Deoxyribonucleic acid (DNA) profiling is one aspect of forensic evidence that has significantly grown in importance for criminal investigations and court proceedings in recent history. DNA testing was formulated by British geneticist Alec Jeffreys in 1984 and was first used in a criminal case in the United Kingdom in the same year. DNA analysis has been especially important in cases involving rape and murder and has vastly transformed criminal investigations over the past few decades. Nonetheless, DNA testing is not without its criticisms. The reliability and accuracy of many of the processes involved in analyzing and interpreting DNA evidence have been hotly contested within recent years. Although many researchers contend that DNA testing is the most accurate of the forensic sciences, different interpretations of one DNA sample can be made by different experts. Calculating the probability of a match is one of the main criticisms of DNA profiling. Analysts must determine the frequency with which a genetic pattern is likely to occur in the general population and then base the probabilities accordingly. The accuracy of DNA evidence relies heavily on the individual

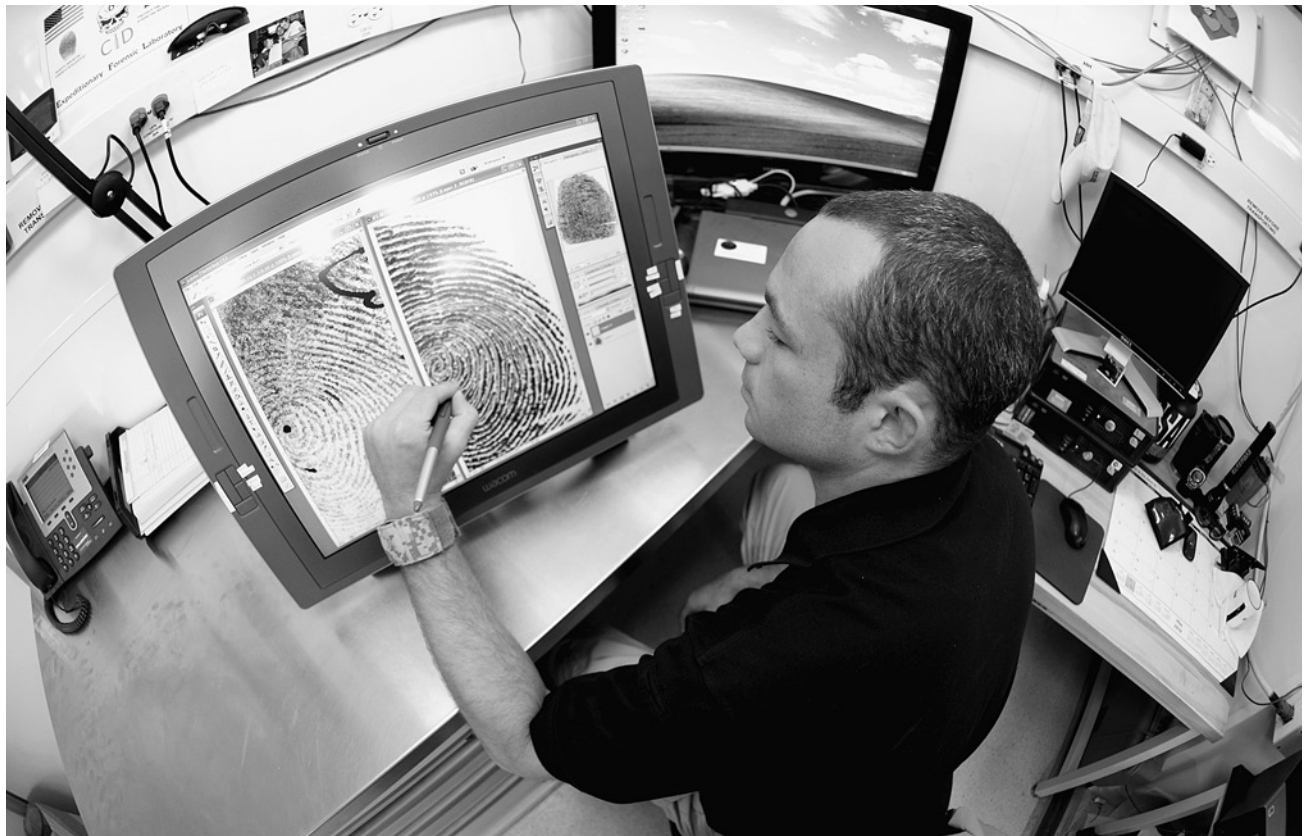
analysts and laboratory equipment available for use. Many departments do not have the equipment, personnel, resources, or funding needed for DNA analysis. The mere presence of DNA at a crime scene does not by default prove guilt. Biological material left at a crime scene may have been left prior to the commission of a crime or even planted afterward. Nonetheless, biological material left behind at a crime scene is one of the biggest leads an investigator can obtain.

Application in the Courtroom

Many courts, when dealing with this type of evidence, apply the ruling of *Frye v. United States*, which contends that evidence derived from a novel scientific technique may be presented to a jury only if the court first determines the technique has gained general acceptance in the particular field to which it belongs. This ruling was implemented to make sure juries were safeguarded against

misleading scientific testimony. A report by the National Research Council, *The Evaluation of Forensic DNA Evidence*, recommended that laboratories be accredited by professional boards such as the American Society of Crime Laboratory Directors. In addition, the report recommended proficiency tests be regularly administered and the results given to the courts. The report further recommended that research be conducted on how to present data on probabilities and genetics to juries in order to aid them in understanding the complexities of the information presented.

Wrongful convictions can occur because of inept criminal investigations, eyewitness errors, unethical conduct by police and prosecutors, inadequacy of counsel, or plea bargains. These injustices raise concerns and criticisms about the integrity and ethicality of our criminal justice system. Fortunately, the development of DNA technology has increased the number of people who have



This fingerprint examiner with the U.S. Army Criminal Investigation Division compares a latent fingerprint, left, and a recorded fingerprint, right, in a lab at Kandahar Air Base in Afghanistan in May 2010. Fingerprint analysis is considered controversial by some because of a lack of objective matching standards but continues to be an important tool in crime scene investigations.

been exonerated after being falsely convicted and imprisoned. The creation of the Innocence Project in 1992 has led to more than 200 exonerations of wrongly convicted prisoners by analyzing DNA evidence. DNA analysis is therefore viewed as a reliable mechanism for apprehending and securing convictions of criminals and is seen as one of the most important aspects of criminal investigations. Although DNA evidence has been very influential in the criminal justice system in convicting the guilty and exonerating the innocent, it is only one aspect of forensic science. Criminal investigators investigate all leads, possibilities, and evidence in hope of securing a strong case to be presented at trial.

Portrayals in the Media

Many researchers argue that the public has become captivated with crime scene investigations and the wide range of scientific techniques used by law enforcement as a result of the plethora of crime shows on television. This public fascination led to prosecutors and defense attorneys contending that jurors are becoming more reluctant to convict defendants without forensic evidence presented at trial. This reluctance to convict defendants without forensic evidence is what many call the “CSI effect.” This term began in 2003 when the television program *Crime Scene Investigation* became popular. During this time, many attorneys have claimed that jury members based the decision to convict or acquit a suspect entirely on whether forensic evidence was found at the crime scene. Many have argued that forensic evidence may help the prosecutor’s case because jury members often believe that forensic evidence is accurate and infallible. Following the same line of reasoning, many have argued that a lack of forensic evidence hinders criminal cases because jurors expect some type of forensic evidence to be present for a prosecutor to have a strong case. Although the existence of a CSI effect has been disputed by some critics, it nonetheless demonstrates the emergence of science as an investigative tool in aiding crime scene investigations.

Contrary to real life, television dramas often portray crime scene investigations as being a speedy and straightforward process. In actuality, criminal investigations may be hindered by individuals’ failing to leave evidence behind or



Crime scene investigations may turn up such evidence as tire tracks, weapons, bullets, shoe prints, fingerprints, hairs, fibers, bite marks, blood splatter, or DNA.

cleaning up after the commission of the crime. In other cases, officials may be burdened by inadequate funding and/or resources that may negatively affect the process of analyzing various types of evidence after the investigation. Some experts have claimed that criminals may even watch crime shows such as *CSI* in order to escape detection. Analyzing evidence is also more time consuming than portrayed through the media. Investigators may take weeks, months, or years to compile enough evidence to go to trial in hope of securing a conviction. Cases lacking sufficient evidence may remain unsolved for decades and ultimately be forgotten. Crime shows may give a distorted view of how criminal investigations are carried out in the field. For instance, regardless of how criminal investigations are conducted on television, law enforcement personnel, investigators, and forensic scientists all have their own education, training, and methods. The majority

of forensic laboratories do not perform multiple analyses because of cost, demand, and/or insufficient resources. Most investigators cannot devote all of their time and resources to a single case and are thus overloaded with cases.

The Department of Justice's Bureau of Justice Statistics found that in 2002 there were more than half a million backlogged cases in forensic labs. This is a surprising statistic considering that the tests were being processed at or above 90 percent of the expected completion rate. Another problem from the amount of backlogged cases includes having ample computers, software, and personnel to safely store and track the evidence after criminal investigations have been completed.

Conclusion

Forensic evidence is increasingly becoming a fundamental part of the criminal justice process. Research has shown that forensic evidence tends to be very influential at trial and is thus viewed as an important part of crime scene investigations. The National Institute of Justice recommended to the federal government that research be conducted to address basic principles, error rates, and standards of procedure to ensure a more efficient means of handling evidence collected during criminal investigations. Although every crime scene is unique, scientific crime scene investigations are the best methodology for ensuring proper investigative techniques for unraveling the clues to the method, motive, and suspect of a crime.

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See Also: Ballistics; Fingerprinting; Forensic Science; Police, Contemporary; Private Detectives.

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Criminalization and Decriminalization

Criminalization is the legislative decision to make a noncriminal act into a criminal act. Decriminalization is just the opposite; it is the legislative decision to make a once criminal act into a noncriminal act. This decision may also be a judicial one. Judges have the power to criminalize and/or decriminalize behavior. In some instances, that decision may be more informal (as to not sentence persons for acts that the judges deem unworthy of punishment), and therefore they do not strictly enforce them. In other cases, the legislature can change the application of law. Law enforcement officers might more overtly change the treatment of offenders in their decision making; that is, using their discretion to enforce or not enforce the law. Thus, changes can be made in theory and/or in practice. There have been many examples of each of these decisions over the course of American legal history.

Prohibition

One of the best-known examples of criminalization and decriminalization regards the manufacturing, sale, and transportation of alcoholic beverages. Prohibition was the first and only time in the history of the United States that a constitutional amendment was repealed. In the 1920s, during the time known as Prohibition, and for a period of 14 years, alcohol production was forbidden. The move to criminalize this behavior developed from a group called the Women's Christian Temperance Union, which was made up of mostly women, fed up with their husbands spending their earnings on alcohol. The American Temperance Society was formed in 1826 and the Anti-Saloon League lobbied for Prohibition in the early 20th century. These organizations did not demand changes in drinking habits, but instead asked for changes in the laws passed by politicians in the legislature. Crimes were also associated with intoxication and



The mayor of Zion City, Illinois, personally pouring out bottles of beer in front of a camera at an event during which 80,000 pint bottles of beer were publicly destroyed during Prohibition.

the prevention of accidents in the workplace was a goal of criminalization. However, there was no amendment to establish national Prohibition (until 1918 with the Eighteenth Amendment). During Prohibition, offenders faced the destruction of their stills and products. Fines and jail time could also be imposed. At first, this happened on a state-by-state basis. By 1916, over half of the states had statutes that prohibited alcohol. The Eighteenth Amendment to the Constitution established Prohibition, but the law did not go into effect until the Volstead Act was passed in 1919, so there was time for people to buy cases of alcohol legally to store for future use.

As with most behavior, sanctioning often does not prevent it from happening. Instead, it just brings the behavior into hiding. This is exactly what happened during Prohibition. Gangsters opened speakeasies as places for people to drink

(drinking alcohol itself was not illegal), and enforcement agents were not successful in dealing with the problem, because they were often underpaid and willing to accept bribes.

Those with power would hire rumrunners (men who could smuggle in rum from the Caribbean and whiskey from Canada) to bring alcohol into the United States. Gangsters and everyday people were violating the law. Almost as quickly as the law went into effect, there was opposition to it. Organizations formed to repeal the ruling, but the Great Depression and the stock market crash in 1929 were the largest impetus for change; making alcohol legal again would allow the government to tax citizens and would open up new jobs for them. By 1933, the Twenty-First Amendment to the Constitution was ratified (repealing the Eighteenth Amendment), once more making alcohol legal. Thus, the criminalization of alcohol in 1920 led to the decriminalization of alcohol in 1933.

Criminalization/Decriminalization Process

The process of criminalization is a means of creating social order. It defines and classifies acceptable behavior. In fact, there are more criminal laws today than in any other time in American history, and these laws are becoming increasingly intrusive into the private lives of citizens (e.g., control over smoking in public places, and even within one's car if a minor is in that car).

In some ways, crime control has become an industry, especially with the development of technology. For example, once cell phones were invented, people wanted to use them in their cars. However, once it was deemed a distraction to drive and hold a phone in one's hand, the act of doing so became a punishable offense. Companies had to develop hands-free devices so that people could talk on the phone but still keep their hands on the wheel. At first, this behavior was criminalized in ordinances, and then was extended to statutes.

Changing the designation from criminal to noncriminal (and back) can be both a social and an economic process. The creation of a law and the enforcement of that law must be acceptable to the majority. However, there are often changing social and moral views. If not viewed as harmful any longer, an act might be decriminalized. A

fine or other penalty might still be associated with the behavior, however, such as requiring a permit before decriminalizing an act.

The decriminalization of certain crimes demonstrates how the ruling class has had much control of the definitions of crime. The plight of women and minorities has been difficult, especially in other countries. For years, abortion, witchcraft, adultery, and seduction were seen as crimes by women. Yet, behaviors that amounted to domestic violence and sexual harassment were not. Today, there are still some countries that stone women for being raped (because they are accused of committing adultery), and there are still classes of people who believe that the criminal justice system may treat some matters as crimes (even if the behavior was not considered criminal in the past).

Women's Rights

Another example of decriminalization, and one that is still a controversial subject today, is the right to abortion. Early secular law ruled abortion a crime only if the wife obtained one without her husband's knowledge. Abortions of the past were not outlawed in all cases. In the Middle Ages, penance was imposed in ecclesiastical courts, but there was no corporal punishment assigned. However, once medical evidence was produced, scientific knowledge supposedly demonstrated that life began at fertilization. Thus, the 18th century saw stricter abortion laws. Over time, some countries became more liberal in their legislation, generally allowing abortion; but overall, there was government control over abortion. It was not until the 1973 case *Roe v. Wade* that the U.S. Supreme Court struck down state laws banning abortion. This case determined that banning abortion violated the right to privacy. However, many countries do require certain criteria be met for an abortion to be considered legal (e.g., a 24-hour waiting period, parental notification, and the distribution of information on fetal development). Even in countries that ban abortion, it is usually allowed in cases of rape, incest, or risk of maternal death.

Legislation has been passed regarding the right of a woman to breast feed in public. Before an amendment was signed into law in 1999, government funds were used to prohibit women from breast-feeding in public because it violated indecent exposure laws. It took 10 more years, but

by 2009, a majority of states had enacted statutes that permit the public exposure of the breast for breast feeding infants so that mothers are exempt from prosecution. In addition, employers are required to allow break time for their employees to breast feed their children in a private area.

Euthanasia and Prostitution

In general, it is a crime to commit a homicide, unless it is justified or excused. In the case of euthanasia (or assisted suicide at the request of the patient), some governments have legalized voluntary euthanasia. The use of pain medication to relieve suffering or withholding life-sustaining treatment with patient consent is considered legal. However, euthanasia remains a criminal homicide, if only in name.

Prostitution is another crime that has been criminalized and decriminalized, depending on the location and politics. Decriminalization means that laws regarding prostitution are removed. States collect tax in legal prostitution (instead of a pimp). Decriminalization of prostitution has occurred in Australia and New Zealand, and is thought to decrease brothel owners' hiring illegal, underage, or trafficked women. However, some research shows that it has promoted sex trafficking and child prostitution. Brothel prostitution was also instituted in the Netherlands. The United States is one of the few countries with laws against prostitution.

Until the 1960s, attitudes against prostitution were based on morals, risk of venereal disease, and the belief that prostitution led to additional crimes. Today, there have been strong arguments in favor of prostitution, such as the ability to regulate it (through medical testing of prostitutes, control and restrictions, and decreased risk of exploitation). Some argue that women would be more likely to report rape or assault if prostitution were decriminalized. However, any woman (prostitute or not) can report rape under current law. Legal status does not change the shame associated with such a career. The decision to criminalize or decriminalize the behavior often depends on community sentiment. Strong arguments have been made in support of legalizing prostitution, but more important might be the need for stable housing, social services, medical treatment, and job training for women, to provide them with alternatives.

Marriage Laws

Polygamy is another crime that has seen legislative changes that vary by location. In the United States, polygamy is illegal in all 50 states. However, under Islamic law, a man can have up to four wives. Polygamous marriages are recognized in almost 50 countries (mostly Muslim and African nations). Pakistan, Saudi Arabia, Yemen, Qatar, Egypt, Kuwait, Iraq, and Iran are just a few others that accept this practice. Interestingly, the United Kingdom and Australia do recognize polygamous unions performed in other countries (if those countries permit them).

The practice was formally abolished in 1890 in a document labeled the Manifesto, but many people still remain in illegal polygamous marriages, especially American Muslims. In Utah, for example, the Morrill Act, which was an Anti-Bigamy Act, was passed in 1862. The Edmunds Act was passed 20 years later. It punished polygamy as a misdemeanor with a fine of up to \$300 and/or six months in jail. Mormons could not obtain statehood for Utah unless they officially ended the sanctioning of plural marriage. However, these laws only led to the unofficial practice of polygamy. Thus, Mormons continued to practice polygamy (in defiance of federal law). However, even after the establishment of the Morrill Act, and the 1882 Edmunds Act that strengthened the laws against bigamy and polygamy are not enforced by most governments. Changes in the criminalization of this behavior could impact the enforcement against it in the future.

Related to marital issues is the matter of same-sex marriage, which has legally been prohibited in many states. Yet, some states have decriminalized it. Until 2004, the marriage of same-sex couples was illegal. Some states do allow civil unions, and some offer domestic partnerships. However, 36 states have statutes that prohibit gay marriage, even if they have not taken action against “offenders.” Gay marriage is legal in Massachusetts, Connecticut, Iowa, Vermont, Maine, and New Hampshire.

Marijuana

Decriminalization of marijuana use has been studied at length. Portugal was the first European country to officially abolish criminal penalties for possession of drugs, including marijuana and

cocaine. The country replaced jail time with therapy. Although the Netherlands is known for marijuana “coffee shops,” Holland has never actually legalized cannabis; the law simply isn’t enforced against the shops. Since 1973, 13 U.S. state legislatures have decriminalized marijuana possession (or use of small amounts): Alaska, California, Colorado, Maine, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New York, North Carolina, Ohio, and Oregon. This means no jail time, arrest, or criminal record is applicable in these locations.

Similar policies have been enacted internationally. In Australia, penalties have also been reduced. Evidence suggests that removal of criminal penalties for marijuana does not increase its use or affect the drug of choice for users. In fact, expenses for arrest and prosecution for marijuana possession offenses have been reduced without any impact on use. However, some research does find an increase in use among adolescents. Only time will tell if other states and countries will follow the decriminalization route or if the locations that have decriminalized marijuana will criminalize it in the future. For now, fear of apprehension, the cost of marijuana, and the difficulty of obtaining it do not seem to affect the decision to use it, and its use has been regulated for those with medical needs.

Conclusion

What or who is considered a victim is socially constructed and thus can change over time. Those who advocate the rights of the accused might say that certain behavior has been over-criminalized and should not be enforced. Sometimes, interpretations of the law are so broad that innocuous behavior can be construed as criminal. For those who advocate for the victim, there is an assumption that the criminal justice system must be more forceful in treating certain matters as crimes. Moreover, the view of whether an act is criminal is often based on politics, that is, the sentiment of the ruling class. Those theories vary depending on the evidence that is presented and on political change. If there is a modification to scientific or medical evidence, then certain behavior may be treated differently overnight. It will be interesting to see which behaviors become criminalized over time and which become decriminalized. Those

decisions will have been socially constructed and based on political and economic factors.

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See Also: 1941 to 1960 Primary Documents; Abortion; Prohibition; Prostitution, Sociology of; *Roe v. Wade*; Victimless Crimes; Volstead Act.

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Criminology

Emerging as a field of inquiry in Europe in the late 1700s, criminology is currently defined as a subdiscipline of sociology or as the science that studies crime, criminal activity, and social reaction to crime. Since its beginning, criminology has overlapped considerably with sociology and criminal justice.

However, criminology has developed as a discipline more specifically related to the causes of crime, whereas criminal justice is generally concerned with applied outcomes such as policing, correction, and reinsertion of criminals. In fact, criminology and criminal justice have developed a mutually beneficial relationship that has contributed to general sociology.

While in Europe criminology was seen more as a medical, psychiatric, and legal field, in the United States it was soon identified as a subdiscipline of sociology. By the 1960s, criminology was introduced as an independent doctoral degree at the University of California at Berkeley, and by the 1990s more than 1,000 universities were offering separate degrees in criminology.

Although criminology theories are classified in a variety of ways and criminologists have elaborated perspectives that can draw from more than one school of thought, there is a general consensus on the following classifications: the early main criminological theories (demonological, classical and neoclassical, ecological, and economic), biological theories, new biological or biosocial theories, psychological theories, sociological theories, and critical theories (labeling, conflict, feminist, and neo-Marxist).

Early Criminological Theories

Demonological Theory. The earliest theories on criminology are classified as demonological because they refer to possession, sin, and evil as explanation of crime. These theories rely on supernatural causalities of crime such as demonic influences and/or witchcraft as inscribed in the theological approach classified, but not advocated, by the French sociologist Auguste Comte (1798–1857). This was at a time when social control was primarily assured by religion and kinship. The typical procedure for the ascertainment of criminal responsibility was the trial by ordeal, in which the accused was subjected to dangerous and painful experiences (i.e., walking on fire or holding a red-hot iron, dipping their hands in boiling water, or dipping in a stream with a millstone around their necks). The logic was that if the accused was innocent, God would intervene and save or heal him or her.

Classical and Neoclassical Theory. In the 18th century, the classical theory of criminology challenged the theological approaches to crime and deviance by stressing rational explanation revolving around the concept of free will of criminals. From the same approach stems the notion of individual responsibility for one's action and the commensurability of the punishment with the crime. Cesare Beccaria (1738–94), with his work *Of Crime and Punishment* published in 1764, and Jeremy Bentham (1748–1832) both had a profound impact on European and American criminology, criminal justice, and penology by advocating the abandonment of unjust suffering, torture, slavery, and the death penalty. Only adequate, swift, and proportionate punishment, they argued, would deter criminal behavior.

Neoclassical theory, as a continuation of classical theory, generated social reforms based on the concepts of human rights and rationalism, elaborated in the Enlightenment. Not only is criminal behavior caused by one's free will, but also criminals consider the costs and benefits of their actions while making decisions. Rational choice theories, for the first time, pointed to the context and circumstances of the crime, which may characterize the typology of crimes (i.e., domestic assault differs from robbery and burglary). Stress was also put on deterrence, not only through punishment, but also by an array of preventive measures that would reduce criminal activity and was defined as situational criminal control: securing buildings, controlling access to property, and adopting procedures of identification. Notions of crime deterrence were formulated as expressions that would become well known, such as "just deserts," also called *lex talionis*, or punishment proportionate to or resembling the offense is what wrongdoers deserve.

Ecological Theory. The ecological school of criminology was interested in the dynamics between human organisms and their physical environment. It was also called statistical, cartographic, and geographical because it was the first school of thought to apply statistical data and to rely on maps for its investigation of the causes of criminality.

André M. Guerry (1802–66) is regarded by many as the author of the first scientific work on criminology because his analysis was based on the French official crime statistics, which were notoriously difficult to access. Not very different from the contemporary Marxist theories, the findings of ecological theories pointed out the close relationship between crime and the upper stratum of society. However, Guerry's contribution was quite detailed in establishing a correlation between property crimes and urbanized areas, and violent crimes and rural areas. By systematically using statistics on crime, Lambert Adolphe Jacques Quetelet (1796–1874), who is remembered as the precursor of modern criminologists and was the author of the *Treatise on Man and the Development of his Faculties* (1835), successfully challenged the classical theories that insisted on the free will of criminals. He showed that crime is

consistently the outcome of a group of sociological variables: gender, age, class, and economic factors. Guerry's and Quetelet's ecological theories advocated social investment into the improvement of physical and environmental contexts. Other ecological theories relied on moon cycles, climate, and astrology but remained inconclusive.

Economic Theory. Early economic theories in criminology, inspired by Karl Marx (1818–83), refuted the biological approach by arguing that crime is the product of inequalities stemming from capitalism. However, Marx's writings do not address crime in any depth. Economic criminological theories, treating crime as a social problem, have applied Marxist dialectical materialism and argue that the causality of crime must be sought in the exploitation of the proletariat by capitalist bourgeoisie.

The Dutch philosopher Willem Bonger (1876–1940) figures among the prominent names of early Marxist criminology. In his work *Criminality and Economic Conditions* (1910), he denounced criminal law as protecting the interests of landowners and hence contributing to perpetuating the inequalities created by capitalism. Pre-capitalist societies, being essentially altruist and based on consensus, were not afflicted by crime as much as capitalist societies. Social revolution, as a natural consequence of capitalism, was seen as the solution par excellence to many problems, including crime, afflicting society. Marxist criminology has been criticized for underestimating the gravity of crime and for naively arguing that the elimination of poverty and inequality would automatically reduce crime.

Biological Theories

Inspired by Auguste Comte's positivism, which was attracting worldwide consensus, biological and psychological theories dominated the late 19th and early 20th centuries. The scientific method, diagnosis of pathology, and treatment were the three elements favored by positivist approaches, whose principal streams in criminology were identifiable as biological and psychological theories. Albeit quite controversially, Cesare Lombroso (1835–1909) has been often indicated as the founder of modern criminology. In spite of his focus on criminal law reforms more than

on the analysis of crime, Lombroso is remembered for the principle of atavism as the cause of criminality. *The Criminal Man* (1876) is perhaps the most recognized contribution by Lombroso. Essentially evolutionist, Lombroso argued that criminals were atavistic human beings born criminals and identifiable by particular biological features and physical appearance such as big jaws, prominent superciliary arches, high cheekbones, and insensibility to pain. *The Female Offender* (1895) was among the first criminology studies on women. Women are depicted as inferior and likely to be even more atavistic than men. Perfectly in tune with his times, Lombroso contributed to the emergence of social Darwinism, that is, the application of the theory of evolution to society. The criminal was seen as the one who struggles to adjust to society and is therefore ill or defective. Thus, with Lombroso, criminology becomes a branch of medicine.

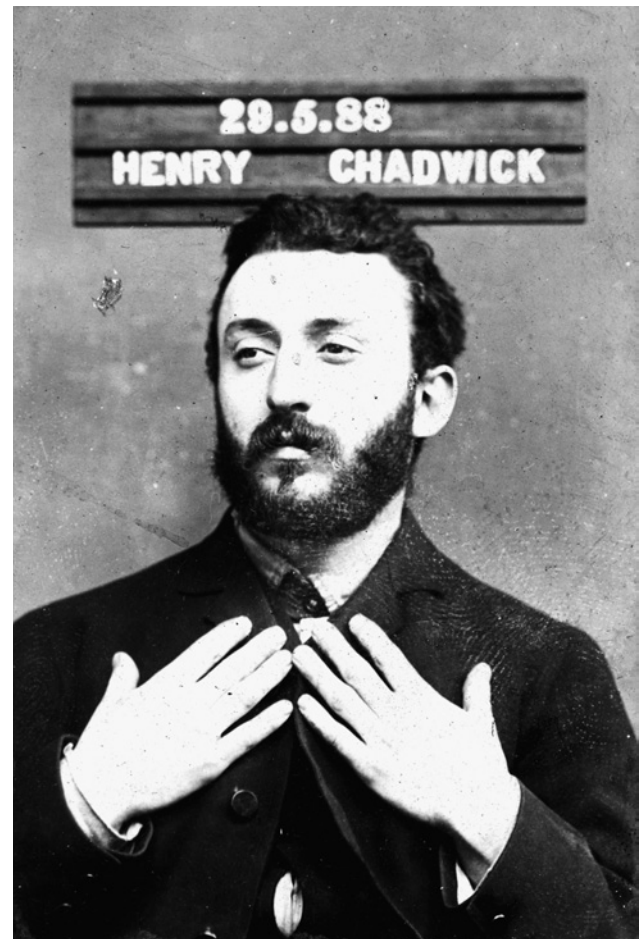
Enrico Ferri (1856–1929) and Raffaele Garofalo (1852–1934) furthered Lombroso's theory by locating four categories of criminals: insane, born, occasional, and passion-driven. Ferri also included both the individual and environmental variants. Both Ferri and Garofalo sympathized with fascism and supported the physical elimination of the unfit and their offspring. Little credit is given nowadays to Lombroso and the Italian school of criminology. Not only was their use of statistics not rigorous, but their stress on physical features for their typology of criminals completely disregarded the impact of environmental and societal factors such as malnutrition and poverty.

Contemporary to Lombroso, Charles Goring (1870–1919), Richard Dugdale (1841–1883), and Henry Goddard (1866–1957) also engaged in theories supporting the biological heredity of criminality. Goring's *The English Convict* (1913) compared about 3,000 convicts with students, soldiers, and hospital patients on the basis of personal physical features, personal histories, and mental abilities. Although he refuted Lombroso's classification of criminals, his theory of feeble-mindedness as a cause of criminal behavior did not show convincing results. Dugdale and Goddard authored two case studies of families of criminals. By tracing the kinship of criminals, they meant to show that the offspring of the feeble-minded were irremediably flawed and hence

unfit for society. Their uncritical adhesion to positivism and Darwinism made their fortune but they remained flawed by the overestimation of dominance principles. Lombrosian theories have been considered the dark age of criminology.

New Biological or Biosocial Theories

Biological theories had a revival in the late 20th century and the new biological or biosocial theories still have their advocates. Different from the early biological theories, most biosocial theories take into account the social environment and recognize the limited impact of biological factors for certain types of crimes. Among these was the disturbing trend involving surgically removing or altering the brain tissue in an attempt to influence personality or behavior of criminals and deviants.



An English prisoner photographed for identification purposes in Manchester in 1888. The late-19th-century stress on physical features for the typology of criminals has since been discredited.

Perhaps the best-known case is that of actress Frances Farmer, who, was forced into psychiatric treatment in the 1940s, allegedly including a lobotomy, essentially because of her independent personality.

Twin studies also belong to the trend of new biological theories and contribute to the nature versus nurture debate. These studies investigate the life of criminals who have twins in order to detect biological similarities in their hereditary environment. Similarly, with adoption studies, attempts were made in order to show that the behavior of adoptees tends to match the personality of their biological parents. Other biological factors that have been taken into consideration are diet (i.e., sugar consumption), environmental pollution, hormonal imbalance, learning disabilities, and menstrual cycle. In spite of the fact that occasional neobiological studies have shown some interconnection between biological factors and criminality, biological explanations of deviance tend to be inconclusive, potentially dangerous, and less convincing than social and cultural factors.

Psychological Theories

While Charles Darwin was the principal reference for the biological school of thought, many psychological theories have been inspired by Sigmund Freud (1856–1936) and Burrhus Frederic Skinner (1904–90). However, most psychological theories were hybrid in the sense that they borrowed not only from a variety of authors but also from different schools of thoughts. The perfect example is that of Hans Eysenck (1916–97), who merged early classical theory and psychology by proposing two kinds of paradigmatic personalities: the extroverted and the introverted. Eysenck argued that the extroverted personality is most prone to crime and less responsive to guiding and conditioning. He advocated the use of modern psychology to encourage positive behavior and fight criminality.

Psychological theories continued through the late 1970s; perhaps the most recent representative of this trend has been the work of psychologist Samuel Yochelson (1906–76) and psychiatrist Stanton Samenow (1941–). Drawing from early criminological theories, Yochelson and Samenow claim that environmental and economic factors

are irrelevant and revive the free will component of crime's causality. Although Yochelson and Samenow formulate a finite number of thinking patterns that seem to characterize the personality of criminals, they have not insisted on the causality but on the treatment of criminals through programs that would lead them to assume responsibility for their actions. In fact, contrary to economic theories, most psychological theories show a tendency of not challenging the dominant social order (consensus model) and of using psychological techniques to diagnose criminality as a pathology to be treated in view of social rehabilitation of criminals.

Sociological Mainstream Theories

Different from psychological theories, sociological theories do not favor the interpretation of crime as pathology because they tend to direct their attention and criticism to societal components that are likely to generate criminal behavior.

Robert King Merton (1910–2003), an American sociologist, argued that anomie, or personal feelings of “normlessness,” is caused by society's pressure to achieve material aims without providing individuals with adequate means. His concept of anomie generated the strain theories, so called because of their focus on the situation of strain produced by the discrepancy between means and aims in the life of an individual. The difficulty or impossibility of reaching the goals that society impresses on individuals produces five possible modes of personality adaptation: conformist, innovator, ritualist, retreatist, and rebel. The conformist, quite unsurprisingly is the only mode that is not problematic because he or she accepts not only the aims indicated by society but also the limitations of the means. The innovator accepts the aims of society but does not accept their limitations and looks for alternative means, whose typical examples are the activities of organized crime, fraud, and forging identities. The ritualist personality accepts the means to such an extent that the achievement of the goals becomes irrelevant. The retreatist personality, typical of drug addicts and chronic alcoholics, refuses both the aims and the means and ends up with begging, stealing, or borrowing. Finally, the rebel personality rejects both means and aims

but engages in the pursuit of new alternative goals and paths for achieving them: typically, the revolution.

Robert Agnew (1953–) has innovated considerably the strain theory by showing that the discrepancy between means and goals does not lead necessarily to criminality. Agnew's reformulation of the theory includes many more variables and goals that are not necessarily materialistic. By stressing the fact that individuals tend to be frustrated and upset when they do not reach their goals systematically, Agnew reasserts the link between strain and crime and also proposes policy recommendations.

Subcultural criminological theories were inspired by the application of Merton's definition of anomie to the study of specific deviant groups such as juvenile gangs and marginal classes. Albert Cohen's *Delinquent Boys* (1955) elaborates a theory on the reaction of the lower stratum of society, which is unable to share middle-class values and therefore becomes prone to deviant behavior in the quest for self-esteem. Travis Hirschi and Michael Gottfredson are the most prominent figures among control theorists. Their widely known book *A General Theory of Crime* (1990), starting from a large spectrum of criticism of all previous schools of criminological thought, claims to have discovered the essential feature of crime in the absence of self-control. The latter is usually acquired during childhood or in early life to such a degree that restraining from criminal activity becomes an almost permanent feature of the individual's personality.

Without departing from the notion of self-control, developmental and life course (DLC) theories, a theoretical model that investigates an individual's history in order to analyze the influence of early events of life on the future decision-making process, have encouraged a series of longitudinal studies looking at personal life as a sequence of events that impact one another. Development and life course theories were developed at the end of the 20th century on the basis of pioneering studies on children's development carried out at Berkeley in the 1960s. They try to isolate the factors that have an impact on the manifestation of deviance in the course of an individual's life and suggest that, on the basis of developmental sequences, it is possible to detect situational factors, such as

temptation and friction, that are crucial for policing and deterrence.

Critical Theories

Critical theories include four major approaches: the labeling perspective, conflict theory, feminist, and radical (neo-Marxist) perspectives. A general consensus among these different perspectives seems to revolve around the idea that crime is a label often attached to the less privileged stratum of society in order to protect the interests of dominant groups. Crime is, therefore, not necessarily viewed in negative terms, because it is the rational response to the situation of unfairness and inequality in capitalistic societies.

Labeling Theories. The sociologist Howard S. Becker, born in Chicago in 1928, is usually indicated as the one who laid the foundation of the labeling theory. Also known as social reaction theory, the labeling theory departs from the majority of earlier theories by arguing that crime and deviance are not concerned with acts or behaviors but instead with the practice by dominant groups of society to label minority groups as deviant. Thus, deviance is instigated by the negative reaction of society that labels minority and marginal groups and leads them to commit crime. The modalities and contexts of labeling can be either formal (e.g., law courts, police stations, or state jurisdictions) or informal (e.g., family and social entourage). Labeling theories have isolated some patterns regarding the greater impact of formal labeling, of male-offending females, and race-related perception of the gravity of deviant behavior with consequent increase of the probability of deviant behavior. Criminality and deviance are not any longer approached as aspects of personality or as status but instead as the outcomes of the process of tagging, identifying, and segregating.

Conflict Theory. Inspired by Georg Simmel (1858–1918) and Ralph Dahrendorf (1929–2009), conflict theorists have expanded Marx's perspective on crime as the inevitable outcome of capitalism. Austin Turk, Richard Quinney, Thorsten Sellin, and Georg Vold are usually indicated as the major representatives of this trend, featuring the common distrust in the social contract between the state and citizens. Conflict theories



These suspected criminals were photographed together by the New York City Police Department in May 1933. Criminology in the United States became a subdiscipline of sociology but by the 1960s it had become an independent doctoral degree at the University of California, Berkeley, and by the 1990s, more than 1,000 universities offered separate degrees in criminology.

have developed in several directions, but the notion of conflict among individuals and social classes because of the variety and difference of interests pursued by each of them seems to be a common stance. Turk argued that some degree of conflict between social groups struggling for the monopoly of authority is beneficial because it allows the scrutiny of the ones who detain power. Sellin maintained that increased opportunities for conflict would stem from the increasing diversity in society. Vold suggested that conflict exists because of the struggle between different social groups to control the authority to govern society and further their own self-interest. Not always directly related with criminology, conflict criminology theories were soon the object of criticism for being too idealistic.

Feminist Theory. Feminist criminologists have attracted attention to the uncontested connection

between masculinity and crime. Feminist criminology has included studies on women as criminal offenders, women as victims of crime and deviance, and women as professionals in the system of criminal justice. By focusing on the context of women's emancipation, Freda Adler (1934–) argued that the more women were provided with social and economic opportunities, the more they would become prone to deviance and crime. Feminist approaches had a great impact on the theory of power-control as articulated by John Hagan, whose view is that crime is the outcome of two factors: power expressed in function of class, and control expressed in function of family. Hagan's theory stresses the need to look at the structural foundation of crime. Crime itself implies a power relationship. To perpetrate a crime means to impose one's power on others, while to be punished for a crime means to be subjected to somebody else's power. Crime is, furthermore, not one-

dimensional but has to be defined as a function of class, gender, and race. Hagan has attempted to explain the lesser role of women in criminality with the description of power dynamics at the interior of the family. Conventional patriarchal families, in which the role of the mother is confined to the home, would tend to provide more freedom to boys and greater control on girls who are closely supervised by their mothers and therefore are less prone to deviance. The egalitarian family characterized by an equal repartition of power between mother and father would allow similar access to experimentation and risk taking with indulgence in criminal behavior. Similarly, in single-parent, female-headed families, children would experience a lesser degree of control and therefore similar access to crime and deviance by boys and girls. However, Hagan's conclusion that women experiencing social mobility are more prone to deviance has been criticized for not explaining the overall lesser rate of their participation in criminal acts.

Radical (Neo-)Marxist Perspectives. Radical (Neo-)Marxist perspectives on crime tend to look at class struggle as the source of what is only labeled as crime and they argue for the need to attract the public's attention to what real crime is, namely, the violation of human rights, imperialism, over-evaluation of the rule of law, capitalism, racism, and sexism.

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See Also: Crime in America, Causes; Crime in America, Types; Crime Prevention; Crime Rates; Criminalization and Decriminalization; Critical Legal Studies Movement; Cruel and Unusual Punishment; Deterrence, Theory of; Fear of Crime; Theories of Crime.

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Critical Legal Studies Movement

The critical legal studies movement has developed as an academic, legal, and political project that seeks to challenge the terms of dominant legal discourse. Critical legal studies (CLS) scholars (sometimes referred to as "Crits") are interested in power and how law intersects with society. While much of legal scholarship is focused on explaining law, the critical legal studies movement is interested in critiquing law and changing society. CLS has roots in Marxism and aligns in many ways with other critical approaches such as feminist critical theory, postcolonial theory, queer theory, critical criminology, postmodern critique, and, to some degree, critical race theory.

Critics of CLS claim that CLS undermines confidence in our legal system and erodes public perceptions of the law's ability to promote equality and justice. However, proponents of CLS claim that the goal of a critical approach has the purpose of

addressing what they perceive to be false assumptions about the neutrality of legal discourse and the autonomy of individuals.

Development

CLS developed with roots in legal realism and the antiwar movement of the 1960s. It is a part of the realist response to natural law and positive law jurisprudence. CLS posits that law is a discourse that cannot be detached from social, historical, and political context. Legal scholar Mark Kelman explains that CLS challenges law as a force of “legitimation” and the ways that law can make the contingent and unjust seem natural and just. From this perspective, law is ideological and epistemic; it does not just reflect norms, beliefs, and values but generates them. CLS has sought to demystify dominant Western ideologies about the certainty and legitimacy of legal decision making. The first conference on critical legal studies took place in 1977 at the University of Wisconsin, Madison. The ongoing annual conventions of CLS are characterized by interdisciplinary gatherings of scholars and activists with varied attachments to Marxism and Deconstruction.

One important CLS contention is that law is indeterminate. The “indeterminacy thesis” is a claim that legal rules do not really determine the outcome of legal disputes. It emerged as a critical response to the positivist notion that law is separate from politics and that legal reasoning is absolute. Indeterminacy thesis argues that legal resources are inherently incoherent, with legal structures based on binary oppositions and legal disputes often resolved in split decisions or procedural complications. The “indeterminacy debate” was in the spotlight in the 1980s and cast doubt on the neutrality of law and, more broadly, on modernity’s claims to universality, rationality, and reason.

Many traditional legal theorists have been uneasy with the CLS attack on the legitimacy of legal authority. Mainstream legal authority has promoted a depiction of law as derived from historical figures (such as the founding fathers) and ordered progress. Another facet of mainstream legal thought is its embrace of liberalism’s conception of universal equality and rights. Additionally, mainstream legal theory has mostly presumed law to be distinct from and in service of society. Countering these presumptions of traditional

legal theory drives much of the CLS scholarship. According to Mark Kelman, much of the scholarship in CLS has the purpose of proving that legal doctrine is fraught with irresolvable contradictions of liberalism, including a positivistic commitment to rules in the face of fluctuating social standards, and commitment to individual values under the mask of objective truth. Many Critics, including Duncan Kennedy and Robert Gordon, have argued that legal education does little to challenge liberal ideology and may actually be complicit in maintaining entrenched legal justifications of hierarchy. These CLS scholars charge that the sterile discussion of appellate cases in law school ensures a disconnect from the real-life consequences of legalistic thought.

Related Theories

Critical race theory covers a spectrum of contestation and coalition with the CLS movement. Kimberle Crenshaw, in her work on critical race theory (CRT), describes opposition to liberalism and rule-of-law ideology as a point of alliance. These schools of thought share an understanding of law as a source of white supremacy. However, there are divergent points between CLS and the CRT perspective, especially in terms of a critique of rights. For CLS, the notion of legal rights is indeterminate and composed of contradiction. Many CLS scholars argue that the existence of formal “rights” will not of itself produce social change; it may in fact legitimize inequality and serve the interests of the wealthy and elite. CLS tends toward transformative efforts for social justice, focusing on substantive equality rather than equal access. In contrast, for critical race theorists combating disenfranchisement of African Americans, the notion of exercising rights has been an important component of inclusion. Mobilization around rights was an effective aspect of black empowerment and the success of the civil rights movement. While CRT and CLS diverge on various aspects of the role of rights in social justice, they coalesce on a critique of liberalism.

Feminist legal theory also has both alliance and divergence with the CLS movement. The predominant distrust of rights in CLS has been criticized by many feminist scholars in the quest for equal rights. Much success in feminist strategies is indebted to liberal feminism, which relies on the

construct of a universal “woman” and has been useful in exposing law’s maleness and exclusivity. On the other hand, postmodern, antiessentialist feminist critiques align with CLS to disrupt liberalism’s notion of experiential consistency and community. Like CLS activists, feminists are often divided on the question of whether law can be useful as a transformative strategy or is fundamentally inimical to transformative social change effort.

Recent extensions of CLS include prison studies and global studies scholarship. Transnational prison abolition work, rooted in CLS, is a growing response to the global struggle for political and economic justice. This critical approach to criminology shares anticapitalist, anti-imperialist, and antiracist ties with CLS. In this conception of justice, resistance is formulated around criminalization, colonization, and capitalism. Scholar-activist Angela Davis argues that prison expansion in recent decades is linked to ideologies of racism and global capitalism. She suggests that the “prison industrial complex” (PIC) refers to the relationships between prisons, government, corporations, media, and the pursuit of profit. CLS is critical of penal expansion as expensive, ineffective, and rooted in the false neutrality of the legal system. Critical prison abolitionists see prison economy as more than the sum of all jails, but as comprising a whole set of relationships involving systems of education, medicine, and law in the service of global capitalism.

Continuing Debate

CLS scholars have brought the “critique of rights” to contemporary human rights discourse. There have been many successes of rights-based approaches to justice, including abolition of legalized slavery, civil rights for African Americans, suffrage for women, and humane regulation of work conditions. However, CLS scholar David Kennedy challenges rights-based discourse as “a drop of liberation in an ocean of oppression” and calls for more substantive formulations of justice. Many CLS movement activists and scholars emphasize that the professionalization of human rights work and the ascendance of penal policies has meant exclusion of more progressive and communitarian approaches to justice. From a CLS perspective, giving priority to liberal ideas of equal rights and procedural fairness is insuf-

ficient to combat problems of institutional racism and sexism; they argue instead that economic and material equality are preconditions for justice.

Many critical scholars view the current legal system as a rhetorical structure that serves to legitimate hierarchy and inequality. They have worked to present challenges to both the formalism of positive law jurisprudence and the alleged neutrality and objectivity of natural law jurisprudence. The critical legal studies movement has many times succeeded in the objective of challenging bias and privilege in the law. The long-standing themes of the CLS movement, accompanied by new, radical insight, offer alternatives to the traditional approaches to justice.

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See Also: 2001 to 2012 Primary Documents; Equality, Concept of; Libertarianism; Race, Class, and Criminal Law; Theories of Crime.

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Cruel and Unusual Punishment

Those who are convicted of a crime are vulnerable to the punishments inflicted upon them and are not in a position to easily protect themselves from

extremes of punishment. To protect these people, the Eighth Amendment prohibits the infliction of punishment that is cruel and unusual. The phrase *cruel and unusual* is particularly effective because it allows interpretation according to an evolving standard. Therefore, although it was included in the Constitution to protect against punishments in use in the 1700s that the framers found offensive, it is used today to challenge the death penalty.

History of Cruel and Unusual Punishment

The prohibition against cruel and unusual punishment can be traced back to the principle of *lex talionis* (retaliation), which holds that a person's punishment should equal the harm caused by his action. This principle is seen in the Magna Carta as well as other 13th and 14th century documents. The Constitution's prohibition against cruel and unusual punishment is very similar to that in the English Bill of Rights of 1689. Records of discussions around the time the Constitution was drafted indicate that the framers intended to include the principle of *lex talionis* and prevent the use of punishments that were disproportionate to the crimes committed.

Despite its long history and consistency with historic principles, the wording of "cruel and unusual" in the Constitution has caused considerable debate. The phrase is vague and subject to interpretation. When the Constitution was drafted in the late 1700s, punishments such as drawing and quartering, branding, and ear cropping were falling out of use but not yet outlawed. Although the framers of the Constitution intended to protect against these punishments, standards of decency had altered the idea of "cruel and unusual" by the time the words were adopted into the Constitution. Thus, the phrase must be interpreted to determine the punishments that are considered "cruel and unusual" at any particular time. This necessity for interpretation was recognized by the Supreme Court in *Trop v. Dulles*, 356 U.S. 86 (1958). Realizing that the concepts of "cruel" and "unusual" evolve with society, the Supreme Court interprets the phrase according to "evolving standards of decency." Although this allows courts flexibility in determining inappropriate punishments, it puts them in the position of having to make a subjective judgment of attitudes and morals. To add impartiality to this task, the

Supreme Court has assessed the enactment and repeal of laws concerning the punishment in question, as well as the frequency with which the punishment is administered.

In addition to being vague about the punishments to be prohibited, the "and" in the phrase causes confusion in determining the standard of judgment to be used. One interpretation would be that punishments that are cruel and punishments that are unusual are to be prohibited. An alternate interpretation is that a punishment has to be both cruel and unusual to be prohibited. It was not until 1989, in *Stanford v. Kentucky*, 492 U.S. 361 (1989), that the Supreme Court clarified that a punishment must be both cruel and unusual to be prohibited. This position was reiterated two years later in *Harmelin v. Michigan*, 501 U.S. 957 (1991), when the Supreme Court acknowledged that a punishment may be cruel but not unusual and, therefore, not prohibited by the Eighth Amendment.

During the last part of the 20th century, the Supreme Court also attempted to provide standards for determining whether a particular punishment was cruel and unusual. The first effort was in *Furman v. Georgia*, 408 U.S. 238 (1972). In his concurring opinion, Justice William Brennan defined a cruel and unusual punishment as one that violates human dignity, is imposed arbitrarily, is not considered acceptable by contemporary society, and is not proportional to the crime. In *Solem v. Helm*, 463 U.S. 267 (1983), the Supreme Court held that a punishment is proportional to the crime if the gravity of punishment meets the gravity of the crime and the punishment is consistent with punishments for similar crimes in the same jurisdiction and the same crime in other jurisdictions. These comparisons of the punishment to other punishments are consistent with the Supreme Court's position that the punishment must be both cruel and unusual to be prohibited.

Application of Cruel and Unusual Punishment

Throughout its history, the Supreme Court has been asked to determine whether various punishments are cruel and unusual. In some cases, this involved weighing the punishment against the crime. For example, in *Weems v. United States*, 408 U.S. 238 (1910), a sentence of 15 years in a Philippine prison, where the inmates were shackled and

expected to perform hard labor, was judged to be disproportionate to the crime of forgery. In other cases, the Supreme Court considered the punishment itself. Revocation of citizenship and forfeiture of associated rights was found to be a cruel and unusual punishment in *Trop v. Dulles*, 356 U.S. 86 (1958). More recently, the Supreme Court failed to find California's three strikes law, which mandates or increases prison terms for repeat offenders, to be cruel and unusual punishment in *Ewing v. California*, 538 U.S. 11 (2003).

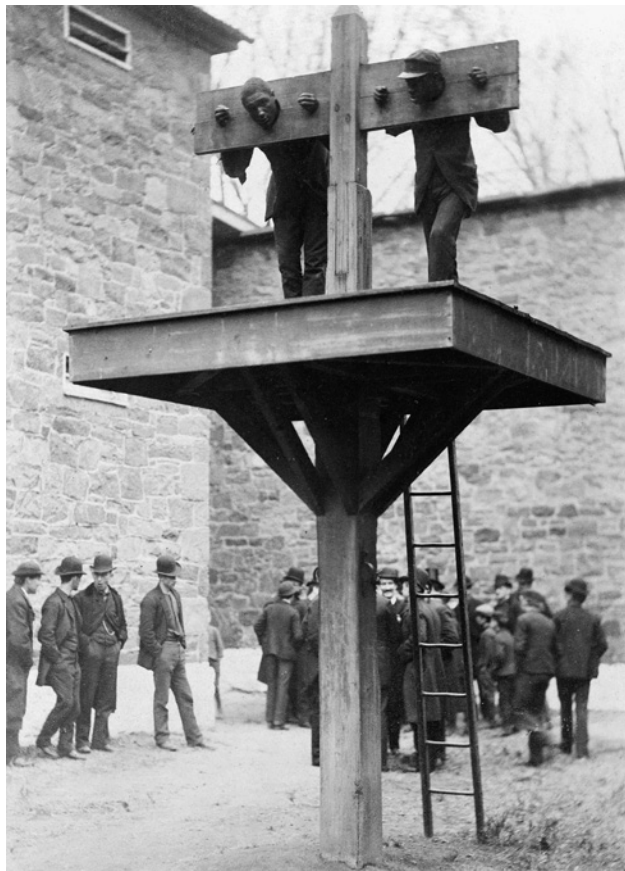
Recently, the majority of the debate about cruel and unusual punishment has focused on the death penalty. The death penalty is at a comparable stage of acceptability as many of the punishments at the time the Constitution was written. Although the death penalty has not been prohibited as cruel and unusual punishment, primarily because it does not meet the criteria of both cruel

and unusual, society is beginning to see it as unacceptable. Consistent with this view, the Supreme Court has limited both sentencing associated with the death penalty and the application of the death penalty itself.

The Supreme Court began limiting the sentencing procedures when the death sentence was involved as early as the late 1970s. In *Woodson v. North Carolina*, 428 U.S. 280 (1976), the Supreme Court ruled against a mandatory death sentence as punishment for a crime because it did not allow consideration of the defendant's character or the circumstances of the crime. Through subsequent cases, the Supreme Court has clarified the circumstances and character that are to be considered mitigating circumstances that should be considered before sentencing a person to death. Regarding the defendant's character, the sentencing jury is to consider any emotional problems, violent family background, learning difficulties, and IQ. Defendants should also have the chance to raise any doubts about their guilt and their good behavior. Prior imprisonment of the defendant is not to be considered because it is not necessarily associated with guilt.

Special procedures have also been attached to the process of sentencing when the death penalty is involved. Defendants are to receive prior notice that the death penalty will be included in sentencing options so that they can appropriately prepare and present their defense and sentencing arguments. Although defendants are not allowed to present new evidence during the sentencing hearing, victim impact statements are also not allowed, since they could lead to the arbitrary imposition of a death sentence. Furthermore, instructions to the jury in death penalty cases cannot be vague and must clearly explain the alternate punishments, such as prison without the possibility of parole. Instructions must also provide the jury with information about weighing aggravating and mitigating circumstances to avoid arbitrary sentencing. Sentencing in death penalty cases must be individualized.

Limitations placed on the application of the death penalty indicate that the Supreme Court is responding to America's changing attitudes. The death penalty was found not to be a cruel and unusual punishment, and therefore constitutional, in *Furman v. Georgia*, 408 U.S. 238 (1972), which



The concept of "cruel and unusual" has evolved over time with society. This pillory was in use as late as 1889 in Delaware, a state that also allowed whipping until the mid-20th century.

was decided at a time when the death penalty was supported by a majority of Americans. Five years later, another Georgia case, *Coker v. Georgia*, 433 U.S. 584 (1977), considered the death penalty for rape cases. In this decision, the Supreme Court found the death penalty to be a cruel and unusual punishment for rape because Georgia was the only state to impose death for rape, and it did so in only 10 percent of the rape cases. Five years later, in *Enmund v. Florida* 458 U.S. 782 (1982), the Supreme Court used similar logic to rule against the imposition of the death penalty if the defendant participated in a crime but not the associated murder. Two death penalty challenges were reviewed by the Supreme Court in 2008 that brought them closer to a determination of cruel and unusual punishment. In *Kennedy v. Louisiana*, 128 S. Ct. 2641 (2008), the Supreme Court admitted that there was a national consensus against imposition of the death penalty for child rape and that as a punishment it did not meet the goals of retribution and deterrence. Although the court did not feel that the defendants in *Blaze v. Rees*, 553 U.S. 35 (2008), met the required burden of proof to show that death by lethal injection was cruel and unusual punishment, it felt that execution when an alternative and feasible method was available did constitute cruel and unusual punishment.

When assessing whether sentencing a juvenile to death was cruel and unusual punishment, the Supreme Court considered state practice as well as its potential deterrent effect. The Supreme Court prohibited execution of children under the age of 16 in *Thompson v. Oklahoma*, 487 U.S. 815 (1988), reasoning that their age and associated lack of education minimized their ability to evaluate the consequences of their conduct. But in determining the acceptability of the death penalty for those over the age of 16, the Supreme Court focused more on state practice. In *Stanford v. Kentucky*, 492 U.S. 361 (1989), a lack of historical evidence against the execution of juveniles and evidence of the practice by the majority of states led them to the conclusion that execution of juveniles was not prohibited. However, recognizing the change in public attitude, the court reversed itself less than 20 years later. Combining the logic used in the previous two cases, the Supreme Court found in *Roper v. Simmons*, 543 U.S. 551 (2005),

that states had either prohibited the death penalty entirely or prohibited its application to juveniles, and that its effectiveness on juveniles was limited due to their underdeveloped sense of responsibility and character.

The Supreme Court used a similar combination of practice and deterrent effect in determining whether the death penalty was cruel and unusual punishment for the mentally impaired. In its first effort to address this issue, *Penry v. Lynaugh*, 492 U.S. 302 (1989), the court found that mental retardation did not warrant prohibition of the death penalty, but should be considered as a mitigating factor at sentencing. Thirteen years later, the Supreme Court recognized changing public attitudes and found execution of the mentally retarded to be cruel and unusual punishment in *Atkins v. Virginia*, 536 U.S. 304 (2002). In a format that it would follow three years later when it prohibited the death penalty for juveniles, the Supreme Court considered the increased number of states prohibiting the death penalty for the mentally retarded and the infrequency of its use where it was allowed, as well as the ineffective deterrent value as a result of the diminished mental capabilities. However, the Supreme Court also recognized the result of the *Penry* decision by commenting that the mentally retarded were not able to effectively argue mitigating circumstances and thus were more likely to be wrongfully executed.

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See Also: Capital Punishment; *Coker v. Georgia*; Corporal Punishment; Deterrence, Theory of; Electric Chair, History of; Executions; *Furman v. Georgia*; Three Strikes Law.

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Cruelty to Animals

Criminal justice generally focuses on how humans treat one another, but one aspect of criminal justice centers on how humans treat nonhuman animals. Initially, American law did not prevent cruelty to animals, but during the 19th century, states gradually, albeit limitedly, protected animals against abuse. Because of the efforts of the animal advocacy movement, governments since the 1980s have expanded criminal prohibitions against harming animals, but enforcement of cruelty laws varies considerably, and there is significant controversy over how far prohibitions on animal cruelty should extend.

For most of Western civilization, legal and political philosophy regarded animals as property; therefore, humans were free to wantonly abuse the animals they possessed. This view of animals as property was exported to colonial America, and as a result, colonial law and the law of the early

American republic continued to allow humans to physically harm their animals. States did ban mistreating another person's animal, but those laws were not concerned with animal welfare; rather, harming another person's animal was tantamount to destroying his physical property. Even the few state statutes that banned abusing wild animals or animals in one's possession were not concerned with the suffering of the animals. Instead, the state legislatures were worried that mistreating animals would eventually lead to mistreating humans.

Shortly after the Civil War, activists, particularly Henry Bergh of New York, became concerned directly about animal welfare; consequently, they sought to expand anticruelty legislation. Bergh was inspired by English philosophers, such as Jeremy Bentham, who emphasized the immorality of animal suffering. After a trip to Europe, Bergh recognized how political organizations could help prevent cruelty to animals. In 1866, Bergh founded the American Society for Prevention of



The American Society for Prevention of Cruelty to Animals (ASPCA), whose activities included providing water for these New York City carriage horses in July 1911, convinced the New York legislature to pass animal cruelty laws that prohibited neglect of animals as well as wanton cruelty. The state allowed the ASPCA to enforce these laws and even to arrest the most severe violators.

Cruelty to Animals (ASPCA), which successfully lobbied the New York legislature to pass meaningful animal cruelty laws. Unlike previous laws that weakly addressed animal cruelty, New York's anticruelty statutes included all animals regardless of ownership, banned animal fighting for sport, prohibited neglect of animals in addition to wanton cruelty, and required that old animals be humanely euthanized. Although violations of the New York laws were only misdemeanors, the state did empower the ASPCA to enforce these laws, seize mistreated animals, and even arrest the most severe violators. Throughout the late 19th century and the first half of the 20th century, most states enacted statutes similar to New York's anticruelty laws and empowered local ASPCA organizations to enforce them. This activity protecting animal cruelty occurred primarily at the state level, but by the 1960s, the federal government also banned animal cruelty by passing the Animal Welfare Act and the Marine Mammal Protection Act.

Animal Advocacy

The most significant changes in animal cruelty law commenced because of the efforts of the animal advocacy movement that emerged during the 1970s. Unlike the animal welfare movement that had developed during the 19th century, which called for more humane treatment of animals used by humans, this new movement advocated the more radical view of completely eliminating human use of animals. Moreover, this contemporary movement used more aggressive tactics to reduce animal cruelty.

Inspired by Peter Singer's landmark book *Animal Liberation*, groups such as People for the Ethical Treatment of Animals (PETA) and the Animal Legal Defense Fund (ALDF) increased their efforts to combat the animal cruelty that occurred in the fields of agriculture, entertainment, and scientific research. Members of PETA engaged in undercover operations to expose the cruel treatment of animals used in these endeavors. Most significantly, in 1981, a member of PETA worked undercover in a scientific research laboratory and publicly exposed the extremely cruel conditions in which monkeys were kept. The state of Maryland charged the lead researcher, Dr. Edward Taub, with animal cruelty, and he was convicted on six counts. Although the convictions were ultimately overturned on appeal,

largely on procedural grounds, Taub was the first person in the United States convicted of animal cruelty because of the conditions of a laboratory.

The animal advocacy movement has grown since the 1980s, and it has focused on expanding criminal sanctions and penalties against animal abusers. It lobbied state legislatures to increase animal cruelty violations from misdemeanors to felonies, and almost every state has now adopted felony animal cruelty statutes, although a few states still do not consider animal cruelty to be a felony. Animal advocacy groups have also sought the passage of state ballot initiatives to ban all animal fighting and require better treatment of farm animals.

Despite these changes, controversies over animal cruelty still exist. High-profile cases, such as National Football League (NFL) quarterback Michael Vick's conviction and prison sentence for dog fighting, have brought the issue of animal cruelty to the public's attention, but activists contend that budget cuts to local enforcement agencies and public indifference have resulted in spotty enforcement of existing cruelty laws, with tremendous variation across jurisdictions. Moreover, animal advocacy groups seek to expand the definition of animal cruelty to include any use of animals in agriculture, entertainment (especially circuses and rodeos), and scientific research. However, because those endeavors are so ingrained in the American economy and culture, these efforts to expand the definition of animal cruelty have been unsuccessful.

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See Also: Blood Sports; Child Abuse, History of; Fish and Game Laws; History of Crime and Punishment in America: 1783–1850; New York.

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Cummings, Homer

Homer Stille Cummings (1870–1956), a native of Chicago, was a noted lawyer and politician who served in elected and appointed office at the local, state, and national levels. Cummings graduated from Yale University Law School in 1893 and began practicing law in Stamford, Connecticut. In 1901, he was elected to his first of three terms as Stamford's mayor. Although his tenure in office was not without its accomplishments, he earned greater notoriety serving as a state's attorney for Fairfield County, an office to which he was named in 1914.

While serving in this position, Cummings was responsible for prosecuting Harold Israel, who was charged with murder. The victim, a popular local Catholic priest, was shot in the head at point-blank range while taking his daily evening walk on February 4, 1924. Based on witness accounts, the police focused their attention on Israel, who was already in custody for vagrancy and possession of a concealed .32 caliber pistol—a weapon matching the type used in the crime. Despite what appeared to be overwhelming physical evidence and eyewitness testimony gathered by police, as well as a confession from the accused, Cummings embarked on his own investigation. His review included interviewing witnesses a second time to determine the truthfulness of their stories, hiring ballistics experts to determine if Israel's pistol shot the fatal bullet, and requesting the examination of the accused by physicians to determine his capacity to commit the crime. The inquiry led Cummings to conclude that Israel was not responsible for the murder and to ask that the charges be dismissed. In 1947, 20th Century Fox produced the film *Boomerang*, directed by Elia Kazan and starring Dana Andrews and Jane Wyatt, depicting the events of the case.

Cummings later served as both vice chairman and chairman of the Democratic National Committee and was instrumental in winning support for Franklin Delano Roosevelt's bid for the Democratic nomination for president in 1932. For his efforts, Roosevelt originally selected Cummings to serve as governor-general of the Philippines. However, when Roosevelt's original choice for attorney general, Senator Thomas J. Walsh of Montana, suffered a fatal heart attack,

Cummings was asked to head the U.S. Department of Justice. As attorney general, Cummings earned recognition for leading the charge, with Federal Bureau of Investigation Director J. Edgar Hoover, to reform elements of federal criminal law. Faced with a public shocked by a number of violent and notorious crimes, Cummings proposed nearly a dozen bills that won the approval of Congress. Signed by Roosevelt in the spring of 1934, the combined legislation leveraged various federal powers to prohibit illegal activity that involved interstate transportation or communication or was an assault on a federal institution or employee. Cummings offered a defense of his program in his 1937 book *We Can Prevent Crime*.

Cummings also helped lead the Roosevelt administration's unsuccessful defense of many of the novel laws passed as part of the New Deal reforms meant to ameliorate the effects of the Great Depression. Frustrated by the defeat of his programs by the U.S. Supreme Court, Roosevelt engaged Cummings in a project to develop a proposal to reshape and remake the membership of the bench to enable the president to nominate justices who might look more favorably on reforms passed by Congress at the behest of the administration.

Beginning in January 1935, Cummings and several of his assistants worked in secret to develop a plan to pack the court with several new justices. Cummings and his aides hatched a plan, originally proposed by the Wilson administration more than two decades earlier, that would allow the president to appoint an additional justice for each current member of the court who was 70 years of age and had served at least 10 years on the bench. Although this proposal was part of a larger restructuring of the federal judiciary, the administration's political motivations were clear in spite of explanations that the change was meant to relieve the workload for aging members of the bench. Despite large Democratic majorities in both the Senate and the House of Representatives, Roosevelt's plan met significant resistance. The administration eventually tabled the proposal when the Supreme Court ended its habit of invalidating the Depression era policies sponsored by Roosevelt.

Cummings continued in his position as attorney general until 1939, when Roosevelt began

making changes to his cabinet. Before resigning his post, Cummings asked the Federal Bureau of Investigation to unearth information about Harold Israel. Investigators found him working as a miner in Pennsylvania with his wife and two children.

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See Also: Great Depression; Roosevelt, Franklin D. (Administration of); Supreme Court, U.S.

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Cunningham, Emma

Emma Cunningham (1818–87), a mother of five, was accused of the gruesome murder of her lover, Harvey Burdell, a financially secure New York dentist. Burdell was found strangled and stabbed to death on January 31, 1857, in his four-story boarding house at 31 Bond Street, where Cunningham served as his landlady. The grisly details of the crime and the lurid details of the couple's tumultuous relationship, which were publicly divulged during the subsequent legal battles that included two criminal proceedings and an estate battle, were splashed across New York newspapers and captured the attention of New York residents for nearly a year.

Emma Augusta Hempstead was born in Brooklyn to devout Methodists Christopher and Sara Hempstead. She was a young girl, probably between 17 and 19, when she and widower George Cunningham, who was 21 years her senior, were united, although when and if they were ever for-

mally married remains unclear. Nevertheless, the two lived as man and wife and had five children. The first, Margaret Augusta, was born in 1839; she was followed by Helen, Georgiana, and boys William and George, Jr. Although they had lived in relative comfort among the elite for a time, George Cunningham's badly managed business ventures and extended illness meant that even the modest insurance policy he left her following his uneventful death in 1854 at the age of 57 would not support the family.

A widow at the age of 33, Cunningham relocated her children several times in the months that followed in a desperate attempt to find a suitable husband—and a source of much-needed financial support. Although she failed to gain a marriage proposal, she did find a companion in Burdell, who lavished her with attention and took her to Saratoga Springs, a popular retreat among New York's elite, during the summer of 1855.

Burdell, born in 1811, began his dental practice with his brother John, but the two became entangled in a bitter dispute. Burdell opened his own practice and became successful, if unscrupulous. Cunningham and Burdell, both of whom were manipulative and scheming, made for a volatile couple. When they returned from the trip to Saratoga Springs, Cunningham was pregnant and hopeful that the two would be married. Instead, she had an abortion and moved into the Bond Street boarding house, becoming Burdell's landlord, but it was an uneasy relationship and the two were at odds almost immediately.

Sensational Trial

New York prosecutors argued that Cunningham and John Eckel, a resident at the 31 Bond Street boarding house who was said to be having an affair with Cunningham, were responsible for stabbing Burdell 15 times. Cunningham faced prosecution twice. During the trial, evidence was presented that Cunningham had charged Burdell with rape and with breach of contract for failing to marry her. Testimony also suggested that officials had mishandled the collection of evidence and the investigation of the crime. The defense accused the prosecution of misconduct, painting Cunningham as a twice-widowed victim. Her attorney claimed that there was evidence that there were other potential suspects who had greater motive and opportunity

to murder Burdell, but that the prosecution had failed to do a proper investigation. Although the public was convinced of Cunningham's guilt, she was twice acquitted of Burdell's murder. Eckel was released without ever facing a trial.

During her trial, Cunningham had produced evidence of a marriage to Burdell and claimed to be pregnant with his baby in an effort to establish a credible claim to his estate. Cunningham continued to carry out her ruse, even after the trial. Cunningham and her personal physician unwittingly enlisted the services of another physician working with the district attorney to produce a newborn that she could claim was the product of her affair with Burdell.

A sting operation was put in place, and Cunningham laid claim to a newborn who presumably was born to an indigent woman. Cunningham and those who assisted her were arrested shortly after obtaining the newborn. Her fakery finally revealed, her claims to Burdell's estate were denied. Following the trial, she was disgraced. In 1859, she moved to San Francisco, where she met and married William E. Williams. She returned east after his death in 1883. Burdell's murder was never officially solved, and Cunningham died a poor woman at the age of 69 in 1887. Burdell and Cunningham are buried in Brooklyn's Green-Wood Cemetery.

The sensational trial is the subject of two fictionalized accounts: Raymond Paul's *The Bond Street Burlesque: A Historical Novel of Murder* (1987) and Ellen Horan's *31 Bond Street: A Novel* (2010).

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See Also: New York; Women Criminals, History of; Women Criminals, Sociology of.

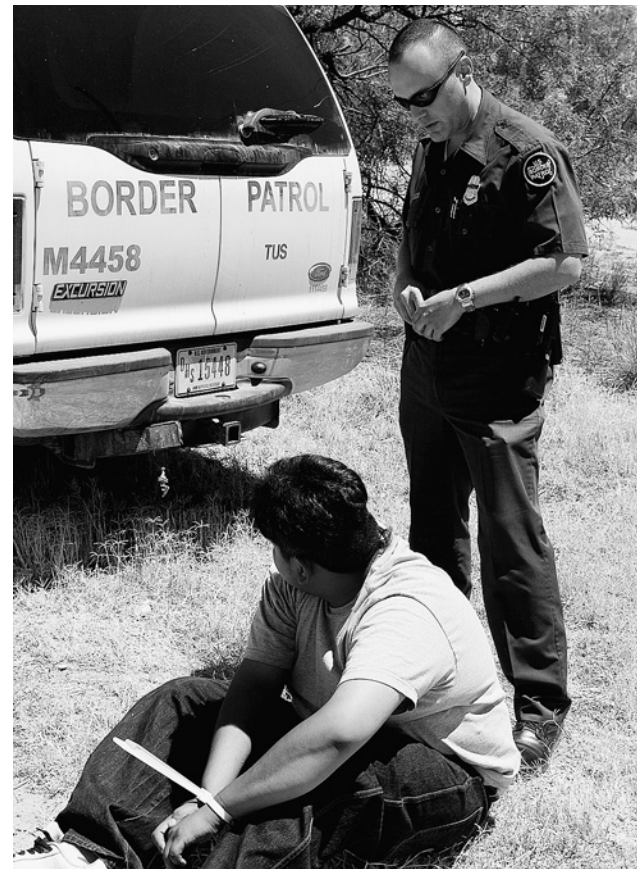
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Customs Service as Police

From its earliest days as a nation, the United States has employed mechanisms to monitor its borders to secure commerce and collect import duties on items being brought into the country, as well as to investigate those involved in attempts to avoid paying import tariffs and more complex smuggling operations. The history of the agencies responsible for these tasks can be explored in two stages: the establishment and operation of the U.S. Customs Service, which was at its inception primarily concerned with collecting revenue for the government and its operations, as well as conducting investigations of failures to do so; and the creation of the Department of Homeland Security, during which the U.S. Customs Service was dismantled and



An agent with the U.S. Border Patrol, which is now part of U.S. Customs and Border Protection, arresting a Mexican national for transporting drugs into the United States.

reassembled into two separate agencies, U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, both of which have primarily a national security focus. In both the previous and current incarnations, customs officials have been required to work with representatives from other law enforcement agencies on numerous complex criminal matters in order to satisfy overlapping goals.

The U.S. Customs Service was established upon the passage of the Tariff Act of 1789, which was the first major piece of legislation passed by the First Congress of the United States. This act established a schedule of tariffs, or duties, to be levied against goods imported into the country. Soon thereafter, Congress identified 59 official ports of entry that would fall under the jurisdiction of an entity to be known as the Collectors of Customs, which would be responsible for collecting duties on all items brought through these ports at the appropriate rate as designated by the import duty schedule.

The Collectors of Customs was a precursor to the U.S. Customs Service (as it was eventually renamed at the turn of the 19th century). The collector of customs and other high-ranking positions within the organization were prestigious and powerful political appointments. Lower-ranking positions within the organization, however, were often filled on the basis of politics and were granted by federal, state, and local politicians in exchange for patronage and loyalty. This state of affairs did not completely end in many regions of the country even after the agency came under civil service in the late 19th century.

The establishment of duties on imported goods was intended to have a certain protectionist effect for the developing American manufacturing base, but more importantly, at that time there did not exist a formal stable mechanism of funding the government. Import duties were perceived as a reliable stream of revenue for the fledgling nation to cover the costs of its debts and to support its developing infrastructure. Import duties were the major source of income for the U.S. government over the course of the next century, until the permanent introduction of the income tax in 1913.

The U.S. Customs Service's role in preserving national interests was clear: By monitoring trade activity across the country's border, it not only provided a source of revenue for the government

but also helped facilitate commerce and protect the nation's economy. Meanwhile, the agency was responsible for preventing attempts to avoid paying import duties and for investigating individuals flouting the law with smuggling activities. In the mid-19th century, the agency was responsible for immigration law enforcement as well, but by the late 19th century, those responsibilities were moved to the agency that eventually evolved into the Immigration and Naturalization Service.

The U.S. Customs Service grew to be one of the largest, most visible law enforcement agencies in the country. It was responsible for physically monitoring several hundred different ports of entry (which included vehicular and pedestrian entry points, airports and seaports, railways, and postal facilities accepting mail from outside the United States) not only to collect import duties when appropriate, but to interdict and seize any individuals attempting to enter the country illegally or under false pretenses, as well as any items (whether plant, animal, or inorganic) that might threaten U.S. agricultural, environmental, public health, or economic interests.

Homeland Security Era

In the aftermath of the terrorist attacks on September 11, 2001, there was a dramatic organizational change within federal law enforcement. The Department of Homeland Security (DHS), which began operations in early 2003, was established with the primary mission of protecting the United States from domestic terrorism and improving the nation's readiness to respond to all serious emergencies, whether natural or man-made. All of the law enforcement agencies within the DHS would share the common goals of preventing and/or investigating activities that could undermine domestic safety and security. While some existing agencies were essentially unchanged when they were moved to DHS, others were dramatically reorganized.

The U.S. Customs Service was one of the agencies most dramatically affected by these changes. It was disbanded and reassembled into two separate and independent agencies, both of which are concerned with the same set of federal laws surrounding customs and immigration issues, albeit with very different specific tasks: U.S. Customs and Border Protection (CBP), with a border-based patrol, interdiction, and deterrence focus; and U.S.

Immigration and Customs Enforcement (ICE), which has solely investigative responsibilities. In performing their duties, CBP and ICE can be considered two sides of the same coin in that they share an interest in the same types of criminal law violations, but they are indeed two separate and autonomous agencies that are required to share information and work together on specific cases.

CBP retained its presence at all ports of entry but now focuses its efforts solely on detection and interdiction. It is no longer involved in investigations; rather, such activities were reassigned to the newly formed ICE. Although officially the agency's primary responsibility is to actively prevent terrorists and terrorist weapons from entering the United States through formal entry points, such apprehensions are relatively rare occurrences. Most of the daily activities of CBP officers involve other national security interests, such as detecting illicit narcotics or firearms smuggling (which, if discovered, are referred to the Drug Enforcement Administration and the Bureau of Alcohol, Tobacco, Firearms and Explosives, respectively); interdicting individuals attempting to enter illegally; preventing dubious plants, foods, or animals from passing into the country's interior; and collecting of import duties.

Within CBP is the Border Patrol, which was originally managed within the U.S. Department of Labor when it was established in 1924; its initial focus was preventing illegal entry into the country through the borders shared with Canada and Mexico. The agency's responsibilities included physically monitoring these land borders as well as approximately 2,000 miles of coastal borders surrounding the Florida peninsula and the island of Puerto Rico. Although the Border Patrol is a subunit of CBP, it operates with a fair amount of autonomy. Its responsibilities are identical to those of CBP, with one significant exception: Whereas CBP officers are stationed at formal, official ports of entry, Border Patrol agents comprise mobile units that travel along the U.S. border between ports of entry. Border Patrol agents, therefore, are particularly likely to encounter individuals attempting to enter the country in an effort to evade detection of some kind of illicit activity by officials at ports of entry. Although Border Patrol agents might hypothetically encounter individuals attempting to smuggle taxable goods as part

of a scheme to avoid paying import duties, the vast majority of persons they encounter are either independently attempting to violate immigration laws, are part of a human trafficking scheme, or are involved in drug trafficking activities.

ICE was established by the dismantling and reassignment of duties that were once within the jurisdiction of the U.S. Customs Service and U.S. Immigration and Naturalization Service. It is primarily an investigative agency, staffed with nonuniformed agents with a specific interest in probing allegations of federal immigration and customs laws violations. Much of ICE's efforts revolve around apprehending individuals who have illegally entered the country or who entered legally but have remained past the terms of their visas. ICE also investigates individuals involved in cross-border human trafficking. However, the agency is also the entity responsible for investigating individual violations of customs laws as well as more complex smuggling schemes; particular cases are generally brought to their attention by CBP officers (after the seizure of items at a port of entry alerts them to smuggling activity) or other law enforcement agencies.

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See Also: 1961 to 1980 Primary Documents; Border Patrol; Bureau of Alcohol, Tobacco, Firearms and Explosives; Bush, George W. (Administration of); Drug Enforcement Administration; Federal Policing; Homeland Security; Immigration Crimes; Smuggling; Tax Crimes; Terrorism; Washington, George (Administration of).

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Czolgosz, Leon

On September 6, 1901, at the Pan-American Exhibition in Buffalo, New York, Leon Czolgosz fired two shots at President William McKinley. McKinley died September 14, of gangrene poisoning, the third president in 36 years to be felled by an assassin. Czolgosz's trial began September 23, in the New York Supreme Court, in Buffalo, and ended the next day. During his incarceration, a physical examination revealed no signs of insanity and thus no insanity defense was undertaken. Czolgosz, however, never met with his defense team until the day of his trial. Czolgosz also did not take the witness stand. He was found guilty of murder and there was no appeal. He was electrocuted at Auburn Prison on October 29. His body was incinerated with acid and buried in an unmarked grave.

Not much is known of Czolgosz's life prior to the assassination. There is no extant birth certificate. It is commonly assumed that he was born in Detroit in 1873. His father, Paul, and his mother, Mary, née Nowak, arrived separately from Poznan, Prussia, in 1873. The family was Catholic. Mary died circa 1883 or 1885. Paul then married Katren Meltzfaltr, whom Leon disdained. Paul and Mary had nine children (seven sons and two daughters) and Paul and Katren had two sons. Leon was the first of Paul and Mary's children to be born in the United States.

Leon Czolgosz had little formal education. He briefly attended a Catholic school, attended public school on and off for about three years, and also attended night school for about three months in the late 1890s. He regularly attended church and was familiar with the Bible, although he abandoned any interest in religion in the late 1890s. He was fond of reading newspapers, the *Peruna Almanac*, which told him his lucky days, and Edward Bellamy's *Looking Backward*, though it is unknown if he read it in Polish or English.

Czolgosz worked on a family farm and in factories, starting at age 12 or 13. By the mid-1890s, he was earning about a dollar a day, working 12-hour shifts in a factory in Cleveland. He was laid off in 1896 but was later rehired under the name Fred Nieman. Czolgosz used a number of aliases—variations on Nieman—most likely because his name was difficult to pronounce, though it has also been suggested that Nieman

was his mother's maiden name and that he used aliases because he was part of a conspiracy. Czolgosz quit working in 1898 because of ill health. In November 1898, he went to see a doctor, complaining of a chronic cough. He purchased an inhaling machine. The doctor suspected emphysema but found no evidence of it. At his trial, Czolgosz seemed to twitch, and throughout his life, he appeared dreamy and would suddenly fall asleep. After his trial, some doctors suspected Czolgosz had epilepsy, but this is unproven.

In his prison confession, Czolgosz said that he did not believe in the republican form of government and admitted to being an anarchist. McKinley was the fifth head of state or government since 1894 to be assassinated by an anarchist, though Czolgosz belonged to no anarchist club, party, or organization. In May 1901, Czolgosz admitted to an acquaintance that he had not read any anarchist literature. But because he asked so many questions regarding anarchism's tenets, the established anarchists in Chicago thought him a spy and warned anarchists, through the anarchist press, to stay away from "Nieman." Emma Goldman, who met Czolgosz in July 1901 under his alias Nieman, rejected Czolgosz's use of violence, but wrote of him with affection after his death. After the assassination, Goldman and a number of prominent anarchists were arrested on suspicion of aiding and abetting Czolgosz but were later released. The fear of anarchist violence persisted after Czolgosz's death. In 1903, Congress passed the Immigration Act, which excluded from the United States anarchists, epileptics, beggars, and importers of prostitutes.

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See Also: Anarchists; Booth, John Wilkes; Guiteau, Charles; McKinley, William (Administration of).

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Dahmer, Jeffrey

Jeffrey Dahmer (1960–94) was one of the most notorious serial killers of the 20th century. The particularly gruesome nature of his crimes attracted widespread attention following their discovery and his arrest in Milwaukee, Wisconsin, in 1991. Born May 21, 1960, in Wisconsin, Dahmer spent much of his youth in Bath, Ohio. As a child, he grew aloof and unhappy, jealous of his brother and burdened by an overbearing father. He was known to bring home and store the remains of dead animals and reportedly committed acts of cruelty against animals. Alcoholism took root in high school. Dahmer's first murder occurred shortly after his high school graduation in 1978, when he picked up a hitchhiker, Steven Hicks, had sex with him, and then bludgeoned him with a barbell when Hicks wanted to leave. After just one semester at Ohio State University, Dahmer spent two years in the army, but he was honorably discharged due to his alcoholism.

In 1982, Dahmer moved into his grandmother's home in Milwaukee until she asked him to leave on account of his late hours and the bad smells coming from the basement—he had killed three times in this period. Just a day after moving into his own apartment in 1988, Dahmer was arrested and later served 10 months for sexually assaulting a 13-year-old boy. Upon his release, and in a

new apartment, the violence began to accelerate. Many of Dahmer's murders followed a gruesome pattern. After drugging and strangling his 17 victims, Dahmer would then dismember their bodies, often having sex with the corpses. He stored some remains, such as skulls and testicles, as trophies; other remains he cooked and ate. He disposed of the bulk of the bodies by dissolving them in a large vat of acid.

Dahmer's crimes evaded detection despite the late-night noises and smells. Two neighbors did alert police one evening when a 14-year-old Lao-tian boy stumbled naked out of Dahmer's apartment, heavily drugged and bleeding. Dahmer persuaded officers to release him back to his care and then killed the boy moments after they departed. The police finally arrested Dahmer in July 1991 after a would-be victim overcame the effect of the drugs, fought off Dahmer, escaped, and directed police to the apartment.

Inside his bedroom, police discovered rotting remains, skulls, and photos of the dismembered bodies of some of his victims. Dahmer plead not guilty by reason of insanity and he gave a detailed confession of all his murders. A jury found him sane and he received 15 consecutive life sentences. After his conviction, business groups in Milwaukee gathered the funds to purchase Dahmer's possessions, which were promptly destroyed, and the apartment building was demolished. Dahmer and

a fellow prisoner were killed by a third inmate while the trio cleaned the prison's gym.

The causes of Dahmer's crimes have been the subject of much discussion. Though some scholars have found his cannibalism and hoarding of body parts consistent with other murderers who feel no guilt and collect trophies from their victims, others have found it difficult to explain his actions in terms of a readily identifiable psychological condition. However unhappy or abnormal his childhood, most view his upbringing as an insufficient explanation. Many point to self-hatred, related to struggles with his homosexuality, as one factor. Psychologists question whether people like Dahmer have inherent psychopathic tendencies or develop them through life. The Dahmer case is frequently cited as an example of a jury rejecting an insanity plea because of the potential for the accused to re-enter society.

Dahmer has remained a cultural reference point over two decades. Much of Dahmer's notoriety, compared even to other serial killers, stems from the dismemberment, necrophilia, and cannibalism displayed in the murders. Aspects of Dahmer's activities parallel that of Ed Gein, the Wisconsin murderer who inspired the Alfred Hitchcock movie *Psycho*. Critical appraisals of the Dahmer episode suggest that this fixation on the horrific nature of his crimes obscures the racism present in Dahmer's motivations (many of the men he killed were African American or Asian American gay men). Sociologists and other critics also noted that the difficult relationship between the police and African Americans and gays in Milwaukee allowed Dahmer to avoid arrest, particularly in the near-miss when officers trusted Dahmer over the concerns of black neighbors.

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See Also: Famous Trials; Insanity Defense; Serial and Mass Killers; Violent Crimes; Wisconsin.

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Darrow, Clarence

Attorney Clarence Darrow was born on April 18, 1857, in Kinsman, Ohio, to Amirus and Emily Darrow. Raised in an agnostic working-class home, Darrow attended Allegheny College and one year of law school at the University of Michigan. Although Darrow obtained a degree from neither Allegheny College nor the University of Michigan, he studied law and entered the Ohio bar in 1878. For the first nine years of his career, Darrow practiced in Ashtabula County, Ohio. In 1887, Darrow relocated to Chicago. His move to Chicago was motivated both by career ambitions as well as a desire to work with John Peter Altgeld, who would later become governor of Illinois in 1892. Specifically, Darrow had read and was inspired by Altgeld's text *Our Penal Machinery and Its Victims*, which attacked the criminal justice system as being biased in favor of the wealthy.

Chicago transformed Darrow, and he was greatly impacted by the suffering of the poor and the imprisoned. In the late 1880s, Darrow acted as a public speaker while embracing various social and political reform movements. By 1890, Darrow had been hired as the general attorney to the Chicago and North Western Railway. However, in 1894, Darrow defended the president of the American Railway Union, Eugene V. Debs, who had been charged with contempt of court in relation to the Pullman Strike. As a result, Darrow's employment with Chicago and North Western Railway ended. This trial marked the beginning of a period in Darrow's career in which he fiercely advocated the interests of labor and its leaders. For example, in 1907, Darrow defended William Haywood, another influential labor leader. Haywood had been charged with the murder of Frank Steunenberg, a former governor of Idaho. Darrow's meticulous cross-examination of the state's main witness was crucial to Haywood's acquittal.

Additionally, in 1910, Darrow defended trade unionists and brothers James and John McNamara, who were accused of bombing the *Los Angeles Times* office building and killing over a dozen employees of the newspaper. Organized labor vociferously proclaimed the innocence of the McNamara brothers. However, Darrow convinced the brothers to plead guilty in an attempt to avoid the death penalty. Many leaders in the



Clarence Darrow in 1913, around the time he was frequently defending labor leaders and trade unionists. Darrow's other interests included racial equality, the rights of criminals, capital punishment, and the protection of individual liberties.

labor movement were shocked by the confessions of the McNamara brothers, as well as by Darrow's defense. Moreover, Darrow found himself in the middle of a controversy when he was charged with jury tampering in relation to the McNamara trial. Although never convicted, both his work on the McNamara case and his subsequent legal battle served to transition Darrow away from defending labor leaders and toward high-profile criminal cases. Over the next several years, Darrow continued to build his criminal defense practice. During World War I, Darrow represented several individuals charged with antiwar activities and was a vocal critic of the Espionage Act of 1917.

In 1924, Darrow defended two wealthy teenagers, Nathan Leopold, Jr., and Richard Loeb, who faced the death penalty. Darrow stridently opposed the death penalty. However, the case was difficult

because the defendants had confessed to brutally murdering 14-year-old Robert Franks. In spite of the brutal details of the crime and the defendants' confessions, Darrow masterfully mitigated the punishment to life in prison, while eloquently condemning the death penalty. More precisely, Darrow managed to save both from the death penalty by convincing them to plead guilty and by utilizing experts in psychology during the trial. These expert witnesses assisted Darrow in successfully arguing that social and psychological pressures were primarily responsible for the defendants' acts.

Just a year later, in *State of Tennessee v. John Thomas Scopes*, Darrow joined the defense team for a high school biology teacher, John T. Scopes. Scopes was on trial for violating a Tennessee law, the Butler Act, which made it illegal to teach evolution in a public school. Former Democratic presidential candidate William Jennings Bryan was a member of the prosecution's team. The trial captured the friction between religion and science. During the trial, Bryan even attempted to use the Leopold-Loeb case in an effort to buttress his argument that evolution was morally wrong. Darrow called William Jennings Bryan to the stand as a witness. Darrow was relentless in questioning the former presidential candidate about his literal interpretation of the Bible; the confrontation lasted for over an hour.

At the end of the trial, Scopes was eventually convicted and fined \$100. Only five days after the trial, William Jennings Bryan died in his sleep. In another high-profile case, Darrow joined the defense team of black physician Dr. Ossian Sweet and his brother Henry. Both brothers were facing murder charges. Ossian Sweet had purchased a home in a primarily white neighborhood of Detroit. After an angry white mob gathered around Sweet's new home, an individual within the mob was shot and killed. Both Sweet brothers, as well as all other individuals in the Sweet home at the time of the shooting, were charged with murder. Darrow's skillful direct examination of Ossian Sweet, along with a riveting closing argument, helped both Sweet brothers escape conviction.

After Darrow's retirement from the practice of law, President Franklin D. Roosevelt appointed him chair of a commission to study and review the operation of the National Recovery Administration. Additionally, Darrow chaired the opening

session of the American Inquiry Commission, which was established to study the disturbing events occurring in Germany during the mid-1930s. Darrow wrote several books, including *Crime, Its Cause and Treatment*, *The Prohibition Mania*, and *The Story of My Life*. Although not always victorious, Clarence Darrow took into account human nature, human emotion, and societal forces when advocating a cause or for an individual. Darrow's battles in the courtroom encompassed issues of racial equality, the rights of criminals, the appropriateness of capital punishment, and the protection of individual liberties. Darrow died in 1938, at the age of 81.

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See Also: 1921 to 1940 Primary Documents; Capital Punishment; Espionage Act of 1917; Famous Trials; Legal Counsel; Leopold and Loeb; Scopes Monkey Trial; Trials.

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continued on his travels. During his trip, he kept the pistol on the seat to his side as well as under the seat. During this time, there was a statute that regulated the use of firearms. More specifically, it stipulated that weapons were to be concealed and only to be used for self-defense when embarking upon a journey, which was an exemption to the statute. However, Davis was indicted for wearing and carrying a weapon. In other words, his trip was not deemed a journey, which would have exonerated him from any wrongdoing. The defense argued that the appellant had the right to bear arms and defend himself. To strengthen their argument, they centered on two core issues: first, limiting the use and possession of a firearm was disputed as a violation of the appellant's Second Amendment right. Second, the law was argued as being adhered to incorrectly. In other words, the law was referring to the concealment of weapons with the exception of moments when a person feels the need to defend him- or herself. However, the appellant was charged with wearing and carrying a gun, not with failing to conceal a weapon or having embarked on a journey.

The standard for what constitutes a journey was not clarified, despite its apparent relevance. For instance, though the distance between the appellant's home and his destination is not known, Davis was reported to have obtained the pistol while he was within 12 miles of his destination. However, this issue was deemed insignificant and the jury was not instructed to consider the question pertaining to a possible exemption stemming from a clause that allowed for the possession of a weapon for self-defense. However, the jury was instructed that the appellant was guilty if the pistol was within his reach, which the defense argued contradicted the true nature of the law. Other decisions related to this case include *Carr v. State*, in which the exception to the statute was clearly stated: travelers are able to protect themselves while traveling on the highway. Also, to clarify the misunderstanding surrounding what constitutes a journey, *Wilson v. State* declared that it is impossible to outline a specific distance that will properly characterize a journey. Instead, it was decided that each case must be dealt with individually because the circumstances in each will ultimately make the difference during the decision-making process. The Second Amendment protects against

Davis v. State

The fundamental issue in the case of *Davis v. State* has to do with the protection provided by the Second Amendment. The appellant (i.e., Davis; the person seeking to have the decision reversed) was traveling via wagon on the highway toward the town of Fayetteville, Arkansas, from his home in 1885. Before arriving at his destination, however, he borrowed a navy pistol, which he did not try to conceal as he made his way to the wagon and

the prohibition of the right to bear arms. More specifically, an individual has the right to possess a firearm and does not have to be serving in the militia at the time of possession. This right was included within the Bill of Rights out of fear that the federal government would one day attempt to disarm the citizens and thus leave them at the mercy of the standing army.

As a result of the above arguments, the Arkansas Supreme Court ruled that the appellant was not indicted for failing to conceal a weapon or embarking on a journey; rather, the issue was simply being in possession of a weapon. However, the court stated that the law preserved the right of people to protect themselves while traveling on highways. The court also recognized that no rule or law can be developed or implemented that will accurately depict the true nature of a journey. In their ruling, the court argued that a journey can take one day or several, for this reason, it is impossible to establish a standard that clearly defines a journey. However, since the appellant was traveling outside the scope of his neighbors, family, and friends, and was detained during the day, the court ruled that under these circumstances, this constituted a journey. Ultimately, due to a lack of evidence, the original judgment was reversed and a new trial was ordered.

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See Also: Arkansas; Bill of Rights; Gun Control; Guns and Violent Crime.

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Davis v. State, 45 Ark. 359 (1885).

Wilson v. State, 68 Ala. 41 (1881).

Dayton, Ohio

Dayton is located in Montgomery County, the fifth most populated county in Ohio. With a 2010 population of 141,527, Dayton is the sixth-largest city in the state. The population is approximately 53.4 percent white and 43.1 percent African American

with minimal numbers of other ethnic groups. Dayton is home to Wright-Patterson Air Force Base and thus caters to significant industrial, aerospace, and technological research. Dayton also has a large service economy that includes insurance and legal sectors and a nationally ranked health-care system.

Dayton is the birthplace of the Wright Brothers, who invented powered flight. The work of the Wrights started a long record of aviation accomplishments that have earned Dayton a reputation as the “birthplace of aviation.” The first parachute jump, first solo instrument landing, night flying advances, world altitude records, and pioneering in aerial photography are all noted in Dayton’s heritage as an aviation hub. Since the 1980s, Dayton’s population has been in decline caused by a loss of manufacturing industries and the national economic downturn.

Nineteenth Century

With the admission of Ohio into the Union in 1803, Montgomery County was formed. Dayton was incorporated in 1805, with a government of seven trustees acting as council, a supervisor, and a marshal. Although Dayton was incorporated in 1805, the foundation of the local police service began with the appointment of the first constable, Cyrus Osborn, in 1797. At this time, Newcom Tavern, built by Colonel George Newcom, served as the town’s courthouse and jail, with white prisoners lowered into a dry well and Indian prisoners bound and held in the corn crib. In 1803, Newcom was appointed Dayton’s first sheriff.

Dayton is the home of the Montgomery County Jail. First built as a log cabin on the courthouse lot in 1803, in 1811 the jail was removed to allow a combination jail and sheriff’s office. In 1834, a stone jail with four cells was erected; it served the city and county for 10 years, until a new jail was built in 1844 that allowed for 60–70 prisoners. In 1869, another jail was built and equipped with gallows that held public hangings; the last hanging in Dayton occurred in 1877. In 1965, the current county jail was built in Dayton; it was renovated in 1993 and in 2004 and has a 900-prisoner capacity.

In 1805, James Miller was appointed Dayton’s first marshal. A marshal remained Dayton’s only peace officer until 1818, when a deputy marshal

was added. For the next 16 years, the marshal and deputy marshal were the entirety of Dayton law enforcement. In 1834, Joseph L. Allen became the first walking patrol beat officer. In 1840, Dayton was incorporated as a city. At this time, its population was more than 6,000 and the police force consisted of a marshal and deputy marshal assisted only by watchmen and citizens. By 1848, Dayton's population reached 10,000, and the city approved six watchmen, one for each city ward, to assist the marshal, deputy marshal, and two constables in law enforcement duties. After a rash of burglaries occurred in the mid-1850s, the city council authorized the mayor to appoint up to four watchmen for each of the six city wards.

The Dayton Police Department was officially established in 1873 when the Ohio General Assembly passed a law creating the Ohio Board of Police Commissioners. At this time, a new metropolitan police force was formed, consisting of a captain, acting superintendent, two sergeants, and 20 sworn officers to police Dayton's more than 25,000 residents. In these days, patrolmen were assigned 12-hour work shifts and worked seven days a week with minimal vacation time. Foot

patrol was the only method of patrol, and officers were expected to purchase their own uniforms and equipment. In 1883, when Dayton's population reached 38,000 citizens, the police force mobilized its first horse-drawn patrol wagon.

Twentieth Century and Beyond

In 1886, Dayton purchased the Gamewell System, a police telegraph. Considered the greatest modern improvement in police service delivery, the \$25,000 system consisted of 64 patrol boxes placed around the city. When a lever was pulled, a telegraph signal transmitted the call box number and location to the central exchange. In 1901, the Red Light Signal System enhanced the Gamewell System. Red lights were located on telegraph stations across the city, and when the lights were turned on by central exchange, patrolmen were required to contact headquarters for instructions. Although the Gamewell System was the primary method for dispatching officers for the next 50 years, by the 1970s, new portable radio dispatch systems rendered call box communications a technology of the past. Dayton was the first police force in the nation to have its entire fleet of squad cars equipped with two-way radio



The Dayton Police Department introduced its first police cars in 1918; this modern squad car was typical of those used in the city in 2011. Dayton had the 20th-highest crime rate in the United States in 2010, with 1,509 violent crimes being reported, including 34 murders, 92 forcible rapes, 782 robberies, and 601 aggravated assaults.

communication. Also, by 1977, the Dayton police force of nearly 500 had 50 African American and 28 women officers. In 1901, Dayton adopted the Bertillon system for criminal identification. This system relied on anthropometry, and specific body parts thought never to change were measured and cataloged for identification. In 1910, Dayton introduced motorcycles to its police units; in 1918, the police force purchased several automobiles for patrol; and in 1919, the Henry fingerprint system replaced the Bertillon system.

In 1933, John Dillinger was gaining infamy for bank robberies across Ohio and Indiana, and Federal Bureau of Investigation (FBI) director J. Edgar Hoover named him Public Enemy No. 1. On September 22, 1933, Dillinger was visiting his girlfriend, Mary Longnecker, at her residence in Dayton when two Dayton police detectives, Russell Pfauhl and Sgt. Charles Gross, finally arrested him.

According to the CQ Press rankings, based on FBI statistics from 2009, in 2010, Dayton had the 20th-highest crime rate in the country with a score of 191.14 (where 0 indicates an average crime rate and a positive number a higher than average rate). In 2010, 1,509 violent crimes were reported in Dayton, including 34 murders, 92 forcible rapes, 782 robberies, and 601 aggravated assaults. Finally, 8,891 property crimes, including 3,380 burglaries, 4,840 larcenies, 671 motor-vehicle thefts, and 203 cases of arson, were reported in 2010.

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See Also: Cincinnati, Ohio; Cleveland, Ohio; Crime Rates; Dillinger, John; Ohio; Police, Contemporary; Police, History of.

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Death Row

Death row, often a separate unit within a prison, houses individuals who have been sentenced to death for commission of a capital crime. As of 2011, 3,279 inmates were on death row in the United States. The number of death sentences has dropped dramatically since 1993, when 287 defendants were placed on death row, in comparison to 112 in 2009. Of the 7,773 prisoners awaiting execution between 1977 and 2009, 15 percent were executed, 5 percent died from causes other than execution, and 39 percent received other dispositions, such as having their convictions overturned or their sentences commuted.

Although a handful of states do not operate their death rows on a punitive-segregation model, most continue to follow a common practice from the 19th century, which required a condemned prisoner to spend the final months preceding execution in solitary confinement, primarily in the hope of forcing the prisoner into self-reflection that might help him repent before death. Today, the conditions of confinement on death row are often as austere as they were in the 1800s. Prisoners awaiting execution are generally isolated from other prisoners, often spending as much as 23 hours each day alone in their cells, except when medical or legal reasons otherwise dictate. The cells are small; in Florida, for example, a death row cell is 6 feet by 9 feet by 9.5 feet high. Food is usually prepared and delivered to death row inmates by prison trustees (inmates who are well behaved and deemed dependable to complete minor tasks within the prison). These conditions are comparable to solitary confinement, except that the latter is designed to be an acute form of punishment for a restricted time period for general-population prisoners.

Condemned prisoners are typically distinguished from other prisoners by color-coded clothing. They are generally excluded from recreational,

educational, and employment programs, although a handful of death row units allow prisoners to participate in media interviews and/or highly limited recreation. Most are permitted to receive mail after screening by correctional officials. Visitations are also highly restricted, if they are permitted at all. Death row inmates are usually counted at least once per hour since many attempt suicide. They are escorted in handcuffs whenever they leave their cells, and the only time they are not restrained is in the exercise yard or the shower. Some institutions allow capital prisoners to have cigarettes; more recently, some prisons have also allowed access to snacks, radios, and closed-circuit televisions.

Execution Process

Once a state's governor signs a death warrant—a writ authorizing the execution of a judgment of death—the condemned is moved to a “death watch cell,” a cell closer to the execution chamber where security is heightened; in many facilities, deputies provide 24-hour supervision. It is customary that prior to execution, an inmate may request a last meal; however, in an attempt to avoid profligacy, some states limit the meal's cost. Additionally, on the eve of execution, condemned inmates are usually permitted one legal and one social phone call.

States vary with regard to the preparation and processes used on the day of an execution. Most states allow the condemned person to select a fixed number of family, friends, and a spiritual adviser to act as witnesses at his/her execution. Most states also invite the victim's family to witness the execution, as well as representatives from the state and the media. All witnesses are mailed an information packet detailing the execution date, time, and processes so that they are informed about what will take place.

On the day of execution, witnesses are briefed in person about the condemned's offense, last meal, the witnesses in attendance, and execution procedures. Precautions are taken to ensure that the victim's and offender's witnesses remain separate during the entire process. Typically, multiple state actors (often correctional employees) serve as executioners. This redundancy helps ensure that no one knows who was actually responsible for the execution. Medical personnel are typically present to pronounce death, although in some states,

medical professionals refuse to participate in any aspects of an execution. Once pronounced dead, the body is then transported for autopsy. Witnesses are escorted to a secure room for an opportunity to gather their thoughts. Most states allow witnesses to speak to media representatives if they so desire. They are then escorted from the facility.

The Death Row Phenomenon

Death rows were designed for short-term confinement of the condemned, often up to no more than three months, while a prisoner under a capital sentence exhausted last-minute appeals and requests for executive clemency. But after the adoption of the Fourteenth Amendment, providing due process rights to state prisoners, multiple appeals became commonplace, and the time spent awaiting execution grew from an average of six months to approximately two years between the 1950s and the mid-1970s. Since that time, the average stay on death row has lengthened exponentially. The extensive judicial review of death sentences after the 1976 case *Gregg v. Georgia* is partially responsible for the fact that death row inmates routinely spend between 10 and 20 years awaiting execution. The 52 inmates executed in the United States in 2009 spent an average of 14 years and one month on death row, about 30 months longer than those executed in 2008. Jack Alderman, executed September 16, 2008, spent nearly 34 years on death row, the longest time between sentencing and execution in U.S. history, although others with pending executions have been on death row even longer. Advances in technology have also contributed to long death row incarceration periods. DNA exonerations, for example, have heightened concerns about the potential execution of the innocent. As of August 2011, there have been 273 post-conviction DNA exonerations in U.S. history. The most common causes of wrongful convictions include eyewitness misidentification, invalidated or improper forensic science, false confessions/admissions, government misconduct, misinformation from informants, and poor lawyering. Yet, in *District Attorney's Office for Third Judicial Dist. v. Osborne* (2009), the U.S. Supreme Court held that prisoners have no right to obtain DNA evidence for testing that could prove they are innocent, even if paying for the testing themselves.



These guards are shown escorting a prisoner outside the numbered death row cells at California's San Quentin State Prison in 2010. In 2011, 3,279 people were on death row in the United States. Among all inmates awaiting execution, 29.1 percent were between the ages of 30 to 39, 51 percent were 25 to 44, 1.2 percent were under the age of 25, and 2.6 percent were older than 65. The average age at the time of arrest for the capital crime is 28 years.

Psychologists and lawyers have argued that extended periods of confinement and uncertainty of death—referred to as the “death row phenomenon”—can have profound and detrimental psychological effects, including marked decreases in cognitive functioning, dehumanization, mood disorders, delusions, and suicidal ideations and/or suicide attempts. Jens Soering, a German citizen charged in 1985 with murder in Virginia, fled to the United Kingdom and argued to the European Court of Human Rights that the protracted period on death row was as psychologically damaging as torture. The court ruled in his favor, citing the death row phenomenon. He was extradited in 1990 with the sole condition that he would not be sentenced to death. Canada and South Africa imposed the same condition on extraditions in 2001.

In a dissent to a denial of certiorari in the 2009 case *Thompson v. McNeil*, Justice John Paul Stevens argued that the average time spent on death row highlights the “fundamental inhumanity” and “unworkability” of the death penalty. Justice Stephen Breyer had expressed similar sentiments in his dissent from the denial of certiorari of two 1999 cases in which two inmates, who had spent 20 and 25 years on death row, argued that their prolonged stays on death row constituted cruel and unusual punishment. No majority decision of the U.S. Supreme Court, however, has ever agreed with these sentiments, although other countries have. In 1993, the British court of last resort for Caribbean Commonwealth countries ruled that it was “inhumane and degrading” in a manner constituting double punishment to execute a prisoner

who had spent more than five years on death row. As a result, all such death row inmates have their sentences commuted to life in prison. For the same reasons, the president of Kenya commuted more than 4,000 death sentences in 2009.

The extensive judicial processes and special correctional procedures involved in capital cases make death sentences extremely costly. Most studies conclude that it costs two to four times more to try, convict, incarcerate, and execute a capital offender than it does to imprison an inmate for life without the possibility of parole. For example, Florida executed 44 people between 1976 and 2000 at a cost of \$24 million per execution. This \$1.056 billion cost amounts to approximately \$51 million each year beyond the cost of incarcerating all first-degree murderers for life in the state.

Death Row Inmates

Racial and ethnic disparities in death sentences account, in large part, for the racial and ethnic

composition of the death row inmate population. Of the 1,235 prisoners executed between 1976 and January 1, 2011, 696 (56 percent) were white, 427 (35 percent) were black, 91 (7 percent) were Hispanic, and 24 (2 percent) were “other.” Blacks are significantly overrepresented in proportion to their prevalence in the U.S. population by an overall ratio of 3.5 to 1; in some states, however, the ratio is much higher, ranging from 5 to 1 in Connecticut to 29 to 1 in Utah. Blacks and Hispanics are significantly more likely to be condemned to death for the same crime than a white defendant. This is especially the case in interracial murders; only 15 whites have been executed for killing a black victim while 247 blacks have been executed for killing white victims. In spite of these disparities, the U.S. Supreme Court upheld the death penalty over due process and equal protection challenges in *McCleskey v. Kemp* (1987), reasoning that no constitutional violation takes place unless particularized discrimination can be proven in a specific case.



Direct telephone lines labeled “Attorney General,” “Supreme Court,” “Warden,” and “Governor” and topped with red lights were installed for last-minute communications at the newly constructed Lethal Injection Facility at California’s San Quentin State Prison in 2010. Partly because of lengthy judicial reviews of death sentences after 1976, condemned inmates may spend between 10 and 20 years awaiting execution. The 52 inmates executed in the United States in 2009 spent an average of 14 years and one month on death row.

Death row inmates are overwhelmingly male, revealing extreme gender differences in the way capital cases are handled. Even though women commit roughly 10 percent of all known homicides, only 12 women have been executed since 1976. In 2009, women comprised only 1.9 percent of the total death row population.

Of inmates under sentences of death, 42 percent graduated high school, 36 percent reached a 9th to 11th grade educational level, and 14 percent reached the 8th grade level or less; 9 percent received some college instruction. Almost 55 percent of death row inmates never married; 20.5 percent were either divorced or separated, 21.9 percent were married while on death row, and 2.8 percent were widowed. Only 8.6 percent of death row inmates had a prior homicide conviction at the time they were sentenced to death; 65.7 percent of them, however, had prior felony convictions.

Among all inmates awaiting execution, 29.1 percent were between the ages of 30 and 39, 51 percent were 25 to 44, 1.2 percent were under the age of 25, and 2.6 percent were older than 65. The average age at the time of arrest for the capital crime was 28 years. The 2005 U.S. Supreme Court decision in *Roper v. Simmons* restricted the death penalty to defendants who were at least 18 years of age at the time they committed their crimes. Prior to that case, however, 200 juvenile offenders had been sentenced to death in the post-*Furman* era; half of such sentences were handed down in Texas, Florida, and Alabama.

Of these, 17 were executed for crimes committed while 16 or 17 years of age, all of them were male, and three-quarters of them were minorities. At the other end of the spectrum, capital prisoners over age 65 present significant problems for the justice system. Seniors are housed in death row with other condemned prisoners, not in the geriatric units available for general population inmates. The constitutionality of executing seniors who suffer from dementia and other age-related impairments is questionable, especially in light of the Supreme Court's 1986 decision in *Ford v. Wainwright*, which held that the Eighth Amendment forbids capital punishment of offenders who became mentally incompetent, reasoning that execution of those who do not understand the reasons for doing so was cruel and unusual.

In the 2002 case *Atkins v. Virginia*, the U.S. Supreme Court held that executions of mentally retarded criminals were prohibited by the Eighth Amendment. In spite of *Atkins* and *Ford v. Wainwright*, clinical studies report that between one-quarter and two-thirds of death row inmates possess borderline intellectual functioning and upward of 85 percent suffer from an Axis I disorder as classified by the American Psychiatric Association in its *Diagnostic and Statistical Manual of Mental Disorders*.

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See Also: 1961 to 1980 Primary Documents; 1981 to 2000 Primary Documents; Capital Punishment; Clemency; Corrections; Cruel and Unusual Punishment; Electric Chair, History of; Executions; *Furman v. Georgia*; *Gregg v. Georgia*; Hanging; Sentencing.

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Declaration of Independence

The Declaration of Independence is probably the most treasured and revered document in the history of the United States. With this document, the colonists declared their independence from

Great Britain and the American Revolution was justified, which resulted in the formal independence of the thirteen colonies from King George III and Great Britain and the eventual creation of the United States of America. In fact, the American Revolution had already started with the battles of Concord and Lexington before the Declaration of Independence was signed. Moreover, King George III had already issued a Proclamation of Rebellion against the thirteen colonies the year before, in 1775.

Ratification

The Continental Congress, the legislative body formed by the founding fathers, enacted the Declaration of Independence on July 4, 1776, in Philadelphia, Pennsylvania. It was signed by numerous leaders of the colonies. However, the enactment of the declaration was not a foregone conclusion. Some of the colonies were wary of signing a formal document proclaiming their independence. The Declaration of Independence was a dangerous document. For, as Benjamin Franklin is said to have stated: "If we do not hang together we most certainly will all hang separately." Any man who signed the Declaration of Independence was signing his death warrant if the revolution were lost.

Although a committee by the Continental Congress was appointed to write the Declaration of Independence, Thomas Jefferson is credited with writing the greatest part of it. After the draft was approved by the committee, it was sent to the full Congress for ratification. Twelve of the colonies voted for ratification, with New York abstaining because the New York delegation had not received permission to vote for it. New York ended up ratifying the Declaration of Independence a week later.

The majority of the Declaration of Independence lists the grievances of the thirteen colonies against King George III and Great Britain. Although many of these reasons, today, would not likely justify a revolution, they were sufficient in the minds of the founding fathers. The Declaration of Independence is renowned not for the list of grievances it presents but for several basic principles that form the basis of the political philosophy of the founding fathers and the nation they founded.

Principles

The first, and arguably the most important, principle set forth in the Declaration of Independence is that under the natural law and God, all men are entitled to have equal and separate station in life; when their current political circumstances deny them this right, they are entitled to sever those political bonds. This principle leads directly into the second principle of the Declaration of Independence, which is that all men are created equal and endowed with certain inalienable rights. This clause presents the fundamental importance of the individual and that men are entitled to certain rights that cannot be taken from them. The third principle is that each man has certain inalienable rights, which include the right to life, liberty, and the pursuit of happiness. The fourth principle is that the purpose of government is to secure those rights, not to oppress the people for the benefit of the few who occupy the upper echelons of society. The fifth principle is that when a government becomes destructive of these ends (i.e., protecting the life, liberty, and the pursuit of happiness of its citizens), then the people have the right to alter or abolish that government.

This right to change the government was founded on the Magna Carta, a political document written in the 13th century that allowed the nobles to rebel against the king if he oppressed them. Further, the idea of natural rights was expressed by English legal philosopher Sir William Blackstone, who, before the American Revolution, codified the English common law in his *Commentaries in the Laws of England*. Also, prior to and concurrent with the American Revolution was a philosophical period in Europe known as the Enlightenment. The Enlightenment included many famous social and political philosophers, such as John Locke, Baron Montesquieu, and Jean-Jacques Rousseau, who championed individual rights and liberty. Thus, the basic principles espoused in the Declaration of Independence were not new and had been previously recognized in English history and in the philosophy of the Enlightenment.

This right to revolt, which was specifically recognized in the Declaration of Independence, was implicitly recognized by the enactment of the individual right to keep and bear arms in the Bill of Rights. However, since that time, the U.S. Supreme Court has declined to formally recognize

the right to revolt and has refused to consider the Declaration of Independence as a legally binding instrument, as is the Constitution and the Bill of Rights. This posture is understandable, as it appears incongruous for a court of a nation to rule that it is legal to revolt and abolish that nation's government. Thus, in one sense, it is difficult to say that the Declaration of Independence has had a lasting historical impact on the criminal justice system in America. However, that does not diminish the power or authority of the Declaration of Independence concerning its expression of American political philosophy.

The Declaration of Independence has greatly influenced many Americans in their passionate belief in the American political and legal system as the best in the world because the formation of the American nation was based on such revolutionary principles as individual liberty and freedom.

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See Also: Bill of Rights; Blackstone, William; Civil Disobedience; Constitution of the United States of America; Jefferson, Thomas (Administration of); Magna Carta.

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charging, which marks the beginning of adversarial proceedings, he or she is known as a suspect. The rights of defendants are set forth in the Fifth and Six Amendments to the Constitution, although their origins exist in antiquity and English common law. The Fifth Amendment guarantees a defendant due process of law, freedom from self-incrimination, and protection against double jeopardy. The Sixth Amendment guarantees a fair, speedy, and public trial by an impartial jury; knowledge of the charges against him/her; representation by counsel; the right to be present at the trial and to confront witnesses; and procedures for obtaining witnesses.

American jurisprudence is adversarial. It is a "battle" between the prosecution and defense in which the judge acts as a relatively passive referee. It is governed by three major principles of procedural due process: the presumed innocence of the defendant, the burden of proof on the prosecution, and the level of proof beyond a reasonable doubt.

The Fifth Amendment

The concept of due process originates in the Magna Carta (1215), in which the king asserted that the government could not take away a person's property or freedom "except by the lawful judgment of his peers or by the law of the land." The phrase "due process of law" was substituted for the phrase "the law of the land" in the 1354 revision of the Magna Carta. Due process of law has to do with fundamental fairness in the way in which the government deals with the defendant. There are two types of due process: substantive and procedural. Substantive due process requires that the laws themselves be fair and constitutional. Procedural due process requires that the procedures by which the laws are applied be fair, as well. Legal authorities must satisfy a set of requirements when depriving someone of his/her freedom.

The concept of freedom from self-incrimination (also known as the right to remain silent) is deceptively simple: Government cannot force citizens to testify against their will. A fairly late addition to English law, freedom from self-incrimination came about as a result of Puritan John Lilburne's trial before England's Star Chamber. After refusing to take the oath *ex officio*, which meant that defendants had to swear to answer

Defendant's Rights

A defendant is the person charged with a crime by a prosecutor or grand jury. Until the time of

truthfully before they were questioned, Lilburne was pilloried and whipped. This led Parliament to declare Lilburne's punishment illegal, disband the Star Chamber, and recognize the right against self-incrimination. Although many other Puritan settlers had been persecuted by the British government, the Massachusetts Bodie of Liberties, which consisted of Puritans, allowed the use of torture to obtain confessions in capital cases. James Madison likely had both British and colonial history in mind when he included this clause in the Fifth Amendment. This right is the basis of the Miranda warnings, by which a suspect is informed that he or she has "the right to remain silent." It prohibits the state from forcing a defendant to confess his/her crime.

The government is prohibited from prosecuting a person twice for the same crime (also known as protection against double jeopardy). Although the concept can be traced to antiquity and is considered a core principle of common law, English law defined it narrowly to apply only to capital felonies. In the U.S. Constitution, it applies to all crimes. In the United States, this right was not made applicable to the states until 1969, in *Benton v. Maryland*. The doctrine demands that the state "get it right" when it prosecutes someone, because it will not get another chance.

The Sixth Amendment

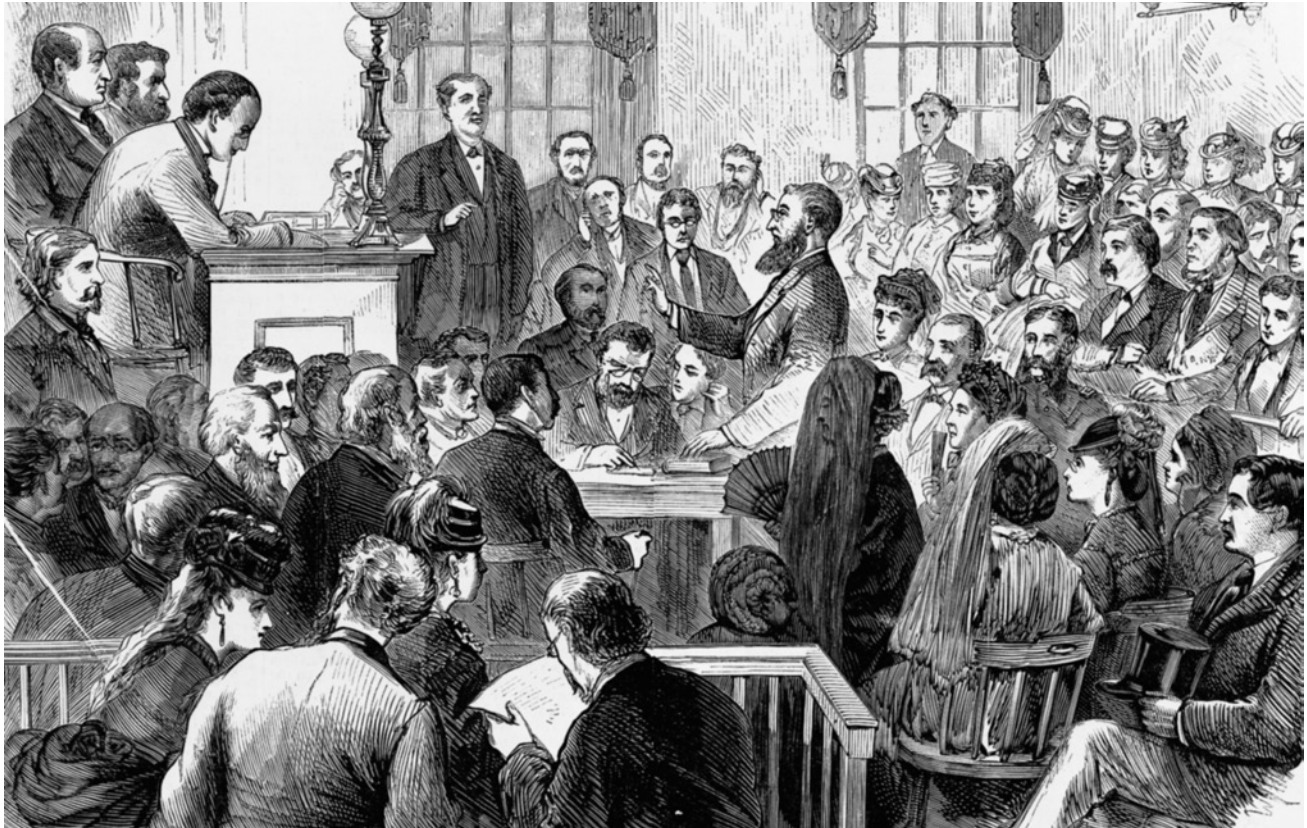
The origins of the right to a speedy trial may be found in the Magna Carta and the Virginia Declaration of Rights of 1776. Although the Constitution does not specify exactly what is meant by a "speedy trial," the federal government and the states have set guidelines intended to move trials quickly through the system. If the prosecution cannot meet the requirements, a case may be dismissed. Some reasons for a speedy trial are to prevent defendants who cannot make bail from languishing in jail (which increases the cost to the state and to the families of the accused); to ensure that witnesses are available and that their memories are accurate; and to protect the public from criminals who are out on bail. Despite this right, many courts have large case backlogs, and cases often take a long time.

While not mentioned in English legal documents, the right to a public trial was considered a common law privilege. It first appears

in the Pennsylvania Constitution of 1776 and is important for several reasons. First, it allows the community to see that justice is being carried out, which can have a deterrent effect on future criminals. Second, it guarantees that the defendant is not treated unfairly by prosecutors and judges. Unfair treatment was common during the Spanish Inquisition and Star Chamber proceedings. The right to a public trial is not an absolute right, since seating in the courtroom is limited to the courtroom's capacity, judges have discretion over who may be in the courtroom, and the judge may deny access to spectators who are disruptive or whose presence is intended to intimidate witnesses. The press cannot be denied access to the trial, but judges can impose limitations in order to keep order and protect the defendant's rights. Judges also decide whether cameras will be allowed in the courtroom. Juveniles do not have the right to a public trial, although some states do not close juvenile trials to the public.

The origins of the right to a fair trial by an impartial jury may be traced to Viking and Norman conquerors of England, although it did not become an integral part of English law until it was included in the Magna Carta. Prior to this, jury members were witnesses to a defendant's trial. The defendant might have to do battle or undergo a physical trial such as taking a rock out of a pot of boiling water. Guilt or innocence would then be determined by how quickly the person's skin healed. By the 17th century, trial by jury had become an integral part of English law, so much so that it was a key element in the constitutions of the original 13 states. It served as a check on government power. In *Duncan v. Louisiana* (1968), the Supreme Court argued that a jury greatly lessens the chance of unfairness on behalf of the judge or the prosecutor.

An impartial jury is one that has not had its judgment influenced unduly by publicity surrounding the case. A judge may limit the effect of such publicity by changing the venue, sequestering the jury, granting a continuance, imposing a "gag rule," or controlling the press. Changing the venue means moving the trial from one locale, such as a county, to another in an effort to find an impartial jury. Sequestering the jury means keeping the jury together for the duration of the trial under the watchful eye of the court in order to prevent



A lawyer stands to argue the case of a female defendant charged with murder at a trial in Annapolis, Maryland, in 1871. The Fifth Amendment guarantees a defendant due process of law, freedom from self-incrimination, and protection against double jeopardy, while the Sixth Amendment guarantees a fair, speedy, and public trial by an impartial jury; knowledge of the charges against him or her; representation by counsel; the right to be present at the trial and to confront witnesses; and procedures for obtaining witnesses.

members' being exposed to media reports about the trial. Granting a continuance means postponing the trial in order to allow publicity to subside. Imposing a "gag rule" means that the judge forbids the attorneys, police officers, witnesses, and jury who are affiliated with a trial from speaking publicly about the trial. Controlling the press means limiting the access of the press.

The right to be present at the trial and to confront accusers is based both on the consideration of due process and on the confrontation clause of the Sixth Amendment. In order to exercise the rights to confront and obtain witnesses, the defendant must be physically present at his/her trial. Their origins may be found in Roman law and in Blackstone's *Commentaries on the Laws of England*. Both sources stress the importance of examining witnesses face to face in order to arrive at the truth. Defendants who are able to hear and see

a witness testify against them may likely prepare a better defense. Also, a witness who testifies in front of a defendant may be more likely to understand the importance of testifying truthfully.

In recent years, the court has decreed that in cases in which confrontation with the defendant may be difficult or impossible for the witness, the witness need not be in the courtroom with the defendant. In *Maryland v. Craig* (1990), a case in which Craig was being tried for the sexual abuse of a 6-year-old, the judge determined that the child would suffer too much distress to be able to testify effectively. The child was allowed to testify in another room in front of the prosecutor and defense attorney while the judge, jury, and defendant observed via closed-circuit television from the courtroom. The right to be present may be forfeited by defendants who disrupt or abscond from their trials.

The right to compulsory procedure to obtain witnesses is relatively new in American jurisprudence. It was not until after the Revolutionary War that some state constitutions permitted defendants to call witnesses in their defense and gave them power to bring those witnesses to the trial. When James Madison included this right in an early version of the Bill of Rights, it was accepted without discussion. This right gives subpoena power to the defense equal to that of the prosecution in order to compel witnesses to testify on their behalf.

The right to counsel, too, is relatively new. In English law, defendants had no right to an attorney except under certain circumstances, and then they had to hire their own. After 1688, only defendants charged with treason were granted the right by Parliament to have an attorney. In the American colonies, defendants were generally prohibited from hiring an attorney, although some colonies appointed attorneys in certain cases. One shortcoming of the Constitution, in the eyes of many Americans, was its failure to offer enough protections of individual rights, one of which was the right to counsel. Consequently, it was included in the Sixth Amendment.

The right to counsel is unique among Sixth Amendment rights in that it applies beyond the scope of the trial. The Supreme Court has identified critical stages in the criminal justice process during which a suspect or defendant is in need of an attorney to protect his/her rights. At the investigation stage, the suspect has a right to counsel during police interrogation. At the pretrial stage, the suspect has a right to counsel once the proceedings against the defendant have turned adversarial (i.e., during the arraignment, the preliminary hearing, identification processes, and when submitting a guilty plea).

Originally, the right to counsel meant that a defendant had a right to an attorney as long as he or she could afford one. Certain landmark cases led to a different interpretation of the right, in light of the difficulty that a layperson would have in defending himself or herself before the power of the state. The finding in *Powell v. Alabama* (1932), the first “Scottsboro Boys” case, was that a defendant in a capital case must be assigned counsel if he or she is unable to afford it. In *Gideon v. Wainwright* (1963), the Supreme Court found that indigent defendants in felony

cases were to be assigned an attorney. In *Argersinger v. Hamlin* (1972), the court expanded this right to misdemeanor defendants. In *In re Gault* (1967), the court found that a juvenile who stands a chance of being incarcerated in a state institution has a right to counsel. Essentially, anytime a defendant is in danger of losing his or her freedom, he or she has the right to representation by an attorney at state expense. In addition, a person who has been convicted of a crime has a right to counsel for his/her first appeal.

A defendant may waive his/her right to counsel, as long as he or she can satisfy the court that he or she clearly understands what it means to give up the right to counsel and that he or she is doing so voluntarily. A defendant may act as his/her own counsel, or “pro se” (meaning “for himself”). Again, however, the court must be satisfied that the defendant is aware of his/her right to counsel, that he or she is making a valid waiver of that right, and that the defendant is competent to do so. Along with the right to counsel is the presumption of effective counsel. Defendants who are convicted are often unhappy and believe that their attorney did not represent them effectively. This belief is difficult to prove, however. In *Strickland v. Washington* (1984), the court ruled that a defendant must show that the representation provided by his/her counsel prevented him/her from receiving a fair trial. As this is quite difficult to show, most appeals on the grounds of ineffective counsel fail.

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See Also: Arraignment; Bill of Rights; Common Law Origins of Criminal Law; Constitution of the United States of America; Due Process; *Gideon v. Wainwright*; Prisoner's Rights; Scottsboro Boys Cases; Suspect's Rights; Trials.

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Delaware

One of the smallest U.S. states, Delaware is also one of the most densely populated states, with more than half of its 900,000 residents living in affluent New Castle County. Many of Delaware's legal records and laws from the colonial period have been lost to the historical record. For some of that period (1664–1704), Delaware (originally a Swedish colony, but then owned by the English) was part of Pennsylvania and operated under its laws; dissatisfied with that, Delaware seceded from Pennsylvania, but continued under English control during the Revolutionary War. Many of its early statutes in the 18th century were passed in order to clarify the legal environment, because Delaware courts had previously operated under Swedish, English, and Pennsylvanian laws.

Crime

As in some of the other former colonies, the post-Revolutionary War period saw more legislative activity, clarifying the state's relationship to English common law and individuating its legal codes. For instance, in the post-Pennsylvanian colonial period, a sodomy law had been enacted that affirmed that English common law—which called for the death penalty—would be upheld in Delaware. This was revised in 1826 as part of a wide-scale revision of Delaware criminal law, and the death penalty for sodomy was reduced to a maximum of three years in prison and a \$1,000 fine.

The Revolutionary War also led to the partial outlawing of slavery in Delaware. The war had disrupted the economy, and wheat (which didn't depend on slave labor) replaced corn and tobacco (which did depend on slave labor) as the state's biggest cash crop. The new state leaders outlawed the importation of slaves in the state's new constitution, and in 1789, slave ships were barred from Delaware ports. The laws made it increasingly hard to sell slaves in order to discourage the slave trade, and by the turn of the 19th century, any Delaware slave sold out of state was automatically freed—essentially making those sales impossible. Despite this, attempts to abolish slavery entirely, beginning in 1792 and repeatedly attempted, failed until the Civil War.

Early law enforcement in Delaware consisted of constables responsible for keeping the peace

during the day, and a night watch—often just one watchman per town, or in larger towns like Wilmington, one watchman per ward—with similar duties at night. Hours were long (typically 12 hours) and job duties might include other town chores: The night watch of Wilmington, for instance, was also responsible for lighting and trimming the wicks of the town's street lamps. During the 19th century, these constabulary forces were gradually replaced by city police, though they did not resemble a modern police department until late in the century. Until then, police constables were appointed and dismissed by local government—the mayor or town council, depending on the locality—which too often led to men being appointed to the police force by a new mayor as a political favor. Only when the state legislature passed the Metropolitan Police Act in 1891 were Delaware police departments professionalized, with a board of commissioners to oversee them, and a law requiring that officers be terminated only for just cause, with the right to a hearing to plead their case. Only two years after the act, the first female police officers, called matrons, were hired. Although their primary function was to guard female prisoners, they were sworn officers with the same powers as male officers. In the 20th century, the state's highway traffic police force was created (in 1919, reorganizing as the Delaware State Police in 1923), and local police departments added detectives. The Police School of Instruction was founded in 1916 as the state's first police academy, and a forerunner of the SWAT team was instituted in Wilmington in 1922, with a special division of officers trained in submachine guns and other specialized weapons.

During Prohibition, the state created the Department of Prohibition in order to enforce the new alcohol restrictions. After Prohibition's repeal, there was little formal alcohol regulation in the state for 20 years, during which time the few basic regulations that did exist (particularly those dealing with licensing and taxation) were overseen by “revenueurs.” They were frequently corrupt bureaucrats who attained their positions through political connections. The Delaware Alcoholic Beverage Control Commission was created in 1955 to move away from this and to respond to a new concern over youth drinking as parents around the country worried about the specter of juvenile delinquency.

Over the next few years, the licensing and regulation system was overhauled and formalized, and in the following decades, agents of the Division of Alcoholic Beverage Control were made police officers with statewide jurisdiction. In the 1990s, they were further tasked with the enforcement of tobacco laws, especially to enforce the 1998 mandatory federal Synar Amendment, which required states to test at least 10 percent of the tobacco retailers in their borders to ensure that they were not selling tobacco products to minors. In 2004, the division was reorganized and renamed the Division of Alcohol and Tobacco Enforcement. Its investigations include alcohol and tobacco offenses, organized crime, tax evasion, prostitution, gambling, and the manufacture and distribution of fake IDs.

Punishment

During the ramp-up of the war on drugs in the 1980s, Delaware adopted legislation imposing mandatory minimum sentences for a number of drug crimes, feeling that there was too little consistency across the sentences handed out by judges and that stricter punishments would be an effective deterrent. From 1981 to 2008, the average daily prison population in Delaware had risen from 1,562 to 7,100, at a cost to the taxpayers of about \$30,000 per inmate. By 2008, 80 percent of the prison population was estimated to be in need of substance abuse treatment, but only half received it, and of varying quality and efficacy, contributing to a 60 percent recidivism rate.

In 2010, the state began rolling back those mandatory minimums in the case of first-time offenders; it also reclassified drug possession of small quantities as a misdemeanor, rather than a felony. Further, the new sentencing structure prevented prosecutors from charging a defendant with multiple crimes with mandatory minimum sentences, instead using a variety of base charges modified by aggravators, in order to avoid disproportionately long sentences. The new sentencing structure also more clearly delineated between the crimes of drug use and the crimes of drug dealing.

At the same time, while some states have begun to move away from drug criminalization, the new Delaware drug laws are actually stricter in specific areas. Increased penalties were added for distributing drugs near schools or parks or for drug dealers who resisted arrest with violence. Maximum



National Drug Policy Director Gil Kerlikowske at the signing of the Delaware Prescription Monitoring Act on July 22, 2010. The act created a new state monitoring database for frequently abused drugs such as OxyContin, Adderall, and Percocet.

sentences for the illegal sale of prescription drugs were increased. And a new crime was defined: allowing one's dwelling to be used as the site for drug deliveries.

Delaware was the last state to end the use of flogging as a punishment. By the 20th century, flogging had become very rare, but remained on the books as a sentencing option for 25 crimes. Abolished in 1972, it had been used as recently as 1964.

Delaware's Department of Corrections is a unified corrections system, meaning that there is no separate regional, county, or municipal corrections or jail system, nor a separate probation system. The state takes responsibility for all corrections business and community-based sanctions. Most offenders serve their time in jail (sentences of less than one year), rather than prison (sentences of one or more years), and a large number of those held in jail are defendants awaiting trial who cannot make bail. Parole was abolished in 1990, except for those inmates whose sentences had been imposed prior to that year. The state's oldest correctional facility, the Sussex Correctional

Institution (SCI), was founded in 1931. In 1997, Delaware's first and thus far only correctional boot camp was added to the SCI site. The boot camp is home to 100 inmates designated "cadets," nonviolent offenders, and first-time drug offenders who are given a regimented, military-style routine of exercise, substance abuse treatment, education, and community service.

Delaware is a state that practices capital punishment. The death penalty was reenacted in 1974 after temporarily being suspended after the 1972 Supreme Court decision in *Furman v. Georgia* made extant death penalty statutes unconstitutional. Predating the 1976 Supreme Court cases that clarified the relationship between capital punishment and constitutionality, this 1974 law proved faulty when evaluated by the Delaware Supreme Court in light of those decisions, and in 1977, the legislature passed a new death penalty statute modeled on the law that the Supreme Court upheld in 1976's *Gregg v. Georgia*. Hanging was the method of execution until 1986, when the legislature passed a law allowing the convicted to choose between hanging or lethal injection. In 1991, when a jury returned a guilty verdict but failed to sentence the defendants to death in *Robertson v. Delaware*, the legislature amended the death penalty statute to eliminate jury sentencing, an amendment that was applied to capital trials already pending, since it was adjudicated that the change was procedural. The statute was amended again in 2002, when the Supreme Court ruled in *Ring v. Arizona* that a jury must find the factors that make the death penalty an eligible sentence. The new law, which remains in effect, requires that a jury unanimously find a statutory aggravating circumstance; it then makes a recommendation to the judge, who has ultimate sentencing power.

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See Also: 1921 to 1940 Primary Documents; 1961 to 1980 Primary Documents; American Revolution and Criminal Justice; Capital Punishment; Corporal Punishment; Hangings; Supreme Court, U.S.

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Democratic National Convention of 1968

See Chicago Seven/Democratic National Convention of 1968.

Dennis v. United States

During World War II, the Soviet Union and the United States were allies in the fight against Nazi Germany. The fact that the Soviet Union was a communist nation was not a major problem during the war. Communism was, however, gaining in popularity in the United States, so Congress enacted the Smith Act in 1940, which made it a crime to advocate, aid, advise the violent overthrow of the U.S. government, or belong to any association that advocated such a violent overthrow. After the end of World War II, with the Soviet isolation of Eastern Europe, the construction of the Berlin Wall, the trials of the Rosenbergs for espionage, and the Soviet Union's development of atomic weapons, a second Red Scare descended upon America. Shortly after World War II, President Harry S. Truman created the Federal Employees Loyalty Program to help address the perceived problem of communist spies in the government. This Red Scare was brought to its zenith by the activities of Senator Joe McCarthy and the House Un-American Activities Committee during the 1950s.

Eugene Dennis was a longtime member of the Communist Party in America. By the end of World War II, he had become the General Secretary of the Communist Party USA. As a member and general secretary, he engaged in numerous political activities on behalf of the Communist Party. In 1947, Dennis voluntarily appeared before the House Un-American Activities Committee. At that

time, Congress had two bills under consideration to outlaw the Communist Party. When questioned by the committee, Dennis refused to answer any questions about his name, date of birth, or place of birth. As a result, the chairman of the House Un-American Activities Committee ordered that a subpoena be served on Dennis for April 9, 1947. On the appointed date, Dennis failed to appear. The committee reported the failure to appear to the House of Representatives and the House certified the report of nonappearance to the U.S. Attorney for the District of Columbia for prosecution.

Dennis and 11 other leaders of the Communist Party USA were indicted, arrested, and brought to trial on charges of violating the Smith Act. Prior to the start of the trial, Dennis asked the trial court to transfer the case to another district on the grounds that he could not receive a fair trial as government employees comprised the majority of the population of the District of Columbia and were subject to President Truman's Federal Employees Loyalty Program and possibly biased because of his status as a communist. The trial court denied the motion. During the trial, the government had difficulty proving that Dennis actually advocated the violent overthrow of the U.S. government, causing the government to rely on quotations from Marx and testimony from other witnesses that Dennis had privately advocated this. Dennis was then convicted at trial of willfully refusing to testify before the House Un-American Activities Committee, in violation of the Smith Act. Dennis appealed to the U.S. Supreme Court on the grounds that he was denied a fair and impartial jury.

On appeal, the Supreme Court affirmed his conviction. What is remarkable about the decision in the *Dennis* case is that both the two concurring justices and the two dissenting justices criticized the application of the clear and present danger test announced in the decision of the U.S. Supreme Court in *Schenck v. United States* in 1919 when considering the free speech clause of the First Amendment in criminal cases. Essentially, the dissenting justices and later decisions of the Supreme Court took cognizance of the lack of immediacy to the threat of violent overthrow of the government. It would not be until the case of *Brandenburg v. Ohio* in 1969 that the requirement of imminence of the threat would be formally recognized as a requirement for such speech

not to be protected by the First Amendment. However, the *Dennis* decision is also historically important in the American criminal justice system in that it illustrates that constitutional civil rights are frequently, if not always, in danger in times of national political hysteria, as illustrated by the decision of *Schenck v. United States*.

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See Also: Civil Rights Laws; Political Crimes, History of; Political Dissidents; Political Policing; *Schenck v. United States*.

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Deportation

Legally understood as a civil procedure rather than criminal punishment, deportation—and the spatial-political banishment it entails—nonetheless has interacted with forms of law and social/territorial control since European colonization of the Americas. Proponents of deportation have seen it as a "second line" of defense against illegal immigration and the self-evident right of a sovereign polity to control its territory and population. Critics have seen it as an effort to create an amorphous mechanism of state control over labor markets and global populations: a means to repress political radicals; enforce a shifting, contested, moral order; and practice social-Darwinist racial eugenics.

Colonial Poor Laws

In the colonial period, governments set provisions on who might enter their lands and who might

be forced to leave. They feared that European nations were deporting their convicted criminals into the colonies, and colonial laws dictated that prospective migrants convicted of crime would not be allowed to land. Impoverished travelers fared little better. Colonial deportation evolved from English law and the concept of “jus solis”—membership based on birth. More specifically, the English poor laws justified expelling those people seen as likely to become a drain on parish coffers. Unwed pregnant women not born in the locality where they resided might be forced out so that citizens would not have to care for the mother or the child she bore. As with the control of criminals, these approaches were transferred to U.S. state and federal law. In 1794, Massachusetts required that arriving paupers be returned to their natal towns “or to any other State, or to any place beyond the sea, where he belongs.”

Alien and Sedition Acts

Federal deportation laws first focused on political belief with the Alien and Sedition Acts (1798–1801). Under the acts, noncitizens thought to pose a threat to the nation could be deported at the president’s discretion. Though highly contentious and not widely enforced, the acts prompted a number of noncitizens to leave the country. Thus, while U.S. law developed regulations on noncitizens’ political beliefs, it strengthened the practice of noncitizens’ “voluntary” departure when more forcible measures loomed.

Chinese Exclusion Act

In the late 19th century, white citizens, believing that national integrity was under threat, passed a series of restrictive immigration laws. Though the 1875 Page Act was geared toward the exclusion of unfree Chinese “coolie” laborers, it also forbade the arrival of criminals, prostitutes, and other “immoral classes.” The 1882 Chinese Exclusion Act prohibited the immigration of the Chinese as a racial group, though it did differentiate by class: merchants and diplomats could still enter. The 1891 Immigration Act and the 1892 Geary Act compounded the legal bases for Chinese and many others’ deportation. Subsequent acts expanded the range of excludable and deportable categories, including criminals, the insane, the epileptic, those deemed “likely to become a

public charge,” and, with the ascendancy of scientific racism, those judged biologically or morally “unfit.” Noncitizens convicted of crime after arrival were readily despised for wrongdoing, compounded by ethno-racial and national difference. Conviction of crimes of “moral turpitude”—a widely interpreted category—also became a deportable offense. The laws lengthened the time period during which the growing list of people might be expelled, and some offenses were made retroactively enforceable. The Palmer Raids, a series of antiradical sweeps in 1919–20, expelled a great many dissidents as “enemy aliens,” but also prompted liberal response that mitigated, for the time being, the harshest measures of political deportation, and would eventually give rise to modest protections for potential deportees.

Nativism

The 1930s saw a massive upswell of nativist expulsion, combining formal deportation with informal “repatriation.” An estimated 1 million Mexicans, many of whom were born in the United States and thus were citizens, were removed from the nation early in the Depression to protect jobs for white citizens. Sweeps in state institutions also intensified. Immigration declined as jobs became scarce, but with the 1940s and following the Alien Registration Act, European migrants experienced a period of relative tolerance. Immigrants who had shown “good moral character” or whose spouses or children were citizens might be granted stays of deportation. Undocumented Mexicans, maligned as “illegal aliens,” benefited little from this shift. In World War II, Japanese internment was based on earlier alien enemy acts, though most internees were citizens.

During the cold war, the McCarran-Walter Act (1952) extended existing deportation provisions and revitalized the threat of expelling political dissidents. It also restricted administrators’ discretion to prevent deportation, and amnesty was limited to those cases in which deportees would suffer “exceptional and extremely unusual hardship.” Ordinary hardship was seen by lawmakers as appropriate to those deemed to threaten cold war security.

Political and Economic Refugees

The 1965 Immigration Act created new opportunities for legal arrival on the bases of family



These Mexican men were being prepared for deportation at a U.S. Customs and Border Protection holding facility. Those who are deported on criminal grounds face imprisonment if they attempt to return. The sentence is 10 years if they reenter the United States illegally and is increased to 20 years if they have been convicted of an aggravated felony. Related crimes, such as the use of false documents, harboring undocumented immigrants, or falsely claiming U.S. citizenship, are also punishable by incarceration.

reunification and skilled labor needs, and migrants from Latin America and Asia responded in considerable numbers.

Others found legal asylum as refugees from communist regimes. Deportation capacities expanded in the 1970s and 1980s, partly in response to these new migratory streams. In the 1980s, a great number of refugees from the United States' Latin American cold war allies came under harsh scrutiny and were threatened with deportation. In the late 1980s and 1990s, attention returned to Mexican nationals at the bottom of stratified labor markets. This came alongside a public rhetorical return to the deportation of "criminal aliens." It closely paralleled the war on drugs, and, later, the war on crime, becoming an analogue to the mass incarceration that nonwhite citizens would face. Provisions against criminal aliens were solidified in 1996 with the Antiterror-

ism and Effective Death Penalty Act and the Illegal Immigration Reform and Immigrant Responsibility Act. Like the laws passed at the turn of the 20th century, each led to a massive increase in deportation. There were hundreds of thousands of deportations each year in the early 21st century.

Terrorists

Since September 11, 2001, deportation related to military matters was explicitly politicized in the "extraordinary rendition" of accused terrorists to Guantanamo Bay and other secret sites. Deportation continues to reflect tensions over immigration, perceptions of security, economic health, the shifting racial bases of the population, and the meaning of the nation itself.

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See Also: Alien and Sedition Acts of 1798; Border Patrol; Chinese Exclusion Act of 1882; Homeland Security; Immigration Crimes.

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DeSalvo, Albert

Albert DeSalvo, the self-professed Boston Strangler, was born on September 3, 1931, to Charlotte and Frank DeSalvo. Albert's father was an abusive alcoholic who once sold Albert and two of his sisters into slavery to a Maine farmer. The children remained captive for months before returning home. Frank DeSalvo taught Albert to steal at a young age and frequently brought prostitutes into their home. Albert witnessed his father having sex with prostitutes and had his first sexual encounter around the age of six with another child. Albert frequently ran away from home to escape his father's brutality, until finally enlisting in the army in 1948.

Albert met Irmgard Beck while stationed in Frankfurt, Germany, and they eventually married, moved back to the United States, and had two children, Judy and Michael. DeSalvo was honorably discharged in 1956 after allegations of sexual misconduct. In addition to his deviant sexual appetite, DeSalvo would occasionally burglarize homes. DeSalvo was arrested twice in 1958 for breaking and entering and received suspended sentences for both crimes. In the late 1950s, DeSalvo posed as a representative from a modeling agency as a way to gain entrance into the homes of young women. DeSalvo would then seduce the women or offer to take measurements of their body. Although he never assaulted any of these women, the police were called with complaints about a representative failing to follow up after DeSalvo's visit.

DeSalvo was arrested again in 1961 in Cambridge, Massachusetts, and charged with breaking and entering and lewd and lascivious behavior. DeSalvo was subsequently sentenced to 11 months in prison. On June 14, 1962, the killer who would eventually be known as the Boston Strangler took his first victim in a series of stranglings that baffled police and terrorized the city. Anna Slesers, 55, was found dead by her son in her Boston apartment after being sexually assaulted and strangled with a cord from her housecoat that was tied as a bow. There was no sign of forced entry and robbery was ruled out as a possible motive. The Strangler then continued on a series of murders whereby he would sexually assault and strangle women with their own clothing. There seemed to be no apparent motive and victims were both young and elderly. In 1964, DeSalvo was arrested for a string of sexual assaults in Massachusetts and Connecticut. These sexual assaults were known as the Green Man crimes as a result of DeSalvo wearing his green work clothes during the commission of the crimes.

While serving time at Bridgewater State Hospital for the Green Man crimes, DeSalvo and fellow inmate George Nassar had an unusual conversation that led Nassar to believe DeSalvo was the Boston Strangler. Soon after, Nassar contacted his attorney, Lee Bailey, with his suspicions. Although initially reluctant, Bailey interviewed DeSalvo shortly thereafter at the Bridgewater State Hospital. During the interview with Bailey, DeSalvo eventually confessed to 13 murders (11 known Strangler murders as well as two additional killings). With

the exception of a few mistakes, DeSalvo provided detailed descriptions of the crimes, including information that had never been released to the general public. Although DeSalvo never provided a concrete motive for his criminal behavior, he at times would attribute his behavior to his wife, sexual impulses, and childhood.

Although DeSalvo confessed to the Strangler killings, the police lacked any concrete evidence tying DeSalvo to the crimes and he was never tried for these killings. DeSalvo was transferred from Bridgewater State Hospital to Walpole Prison in Massachusetts after being sentenced to life for rapes unrelated to the stranglings. On November 25, 1973, DeSalvo was found dead in his cell after being stabbed six times through the heart in a prison brawl after only serving six years. Eyewitnesses never came forward after DeSalvo's death, and inmates at the prison failed to provide any meaningful information leading to a suspect. Decades later, Strangler victim Mary Sullivan was exhumed in order to extract DNA for testing against DeSalvo's. In 2001, tests revealed that the DNA sample from Sullivan's body did not match that of DeSalvo's. Even though it did not completely exonerate DeSalvo, it shed doubt on whether he killed Sullivan or was even the true Boston Strangler. The controversy remains, and the Boston police have not officially closed the Strangler case.

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See Also: Boston, Massachusetts; Famous Trials; Massachusetts; Murders, Unsolved; Serial and Mass Killers; Sex Offenders; Violent Crimes.

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modern patrol forces developed in England and the United States, all police who operated during the daytime were detectives. The only force expected to prevent crime by their presence was the night watchmen. Though officially public officers, constables were attached to courts and received fees paid by the victim. Usually, the detective officer had connections in the underworld that were especially useful in cases of burglary or robbery. After talking to his informants, he then confronted the suspect, offering not to arrest him if he returned the property, sometimes letting him retain a portion. The victim recovered some of the property or its value, and the detective kept some as an additional fee.

This was perfectly legal, but reformers were critical. In 1749, English magistrate Henry Fielding created the Bow Street Runners, a force of six men working under his supervision. These detectives were paid out of government funds, and Fielding meant them to supplant the "thief takers," who sometimes, like the notorious Jonathan Wild, worked both sides. The Bow Street Runners, disbanded in 1839, pioneered modern detection. Fielding started a crime reporting function and began publishing the *Covent Garden Journal*, which incorporated descriptions of wanted criminals, similar to the Federal Bureau of Investigation's (FBI) Most Wanted bulletins.

In both England and the United States, many feared detectives as either corrupt colluders with the underworld or secret police who spied on political activities. In England, by the early 19th century, reformers focused on the idea of prevention of crime by regular, professional, uniformed day and night patrols. The preventive ideal was realized in the 1829 Metropolitan Police Act, an innovative piece of legislation specifically designed for the civilian policing of the populace of London.

At first, Sir Robert Peel's legislation was not popular, but eventually the "Bobbies" won at least the acquiescence of Londoners. Nevertheless, fears of detectives lingered, and the new police did not create its first detective branch until 1842. This decision eventually led to the creation of the Criminal Investigations Department (CID) in 1878. Sir Robert Peel and his Metropolitan Police Act of 1829 set precedents for detectives all over the world.

Detection and Detectives

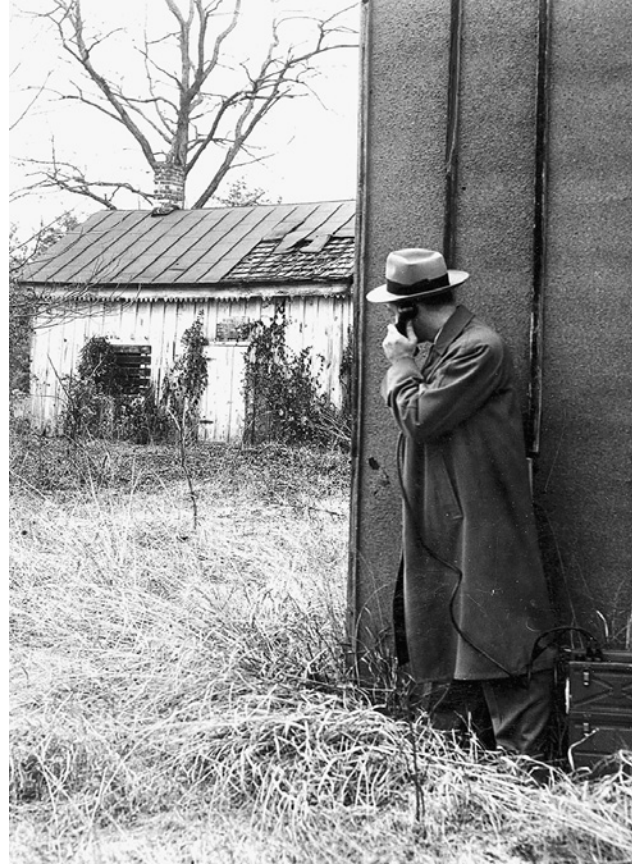
Along with prevention of crime, detection of the criminal is an essential police function. Before

Detectives in the United States

Similarly to Britain, the United States began its urban policing with constables and night watchmen. In 1845, the New York City Police Department (NYPD) became the first police department to offer 24-hour service. This force did without a specialized detective branch for many years, regular officers being “detailed” for special detective duty. Making deals with underworld characters became illegal, “compounding a felony,” when preventive forces were established. Detectives continued to rely on the old method because of its practicality, which contributed to the persistent problem of corruption and considerable public suspicion. Some former constables became private detectives, who served victims wanting more efficient or unpublicized recovery of their property.

In New York, it was not until 1857 that the police department authorized and assigned 20 patrol officers as detectives. Other cities like Chicago (1861) soon established detective forces. NYPD detectives organized the rogues’ gallery system, which included photographs of criminal offenders arranged by criminal specialty. The detectives studied these photographs to recognize them on the street. By the early 20th century, police detective units were utilizing the latest scientific methods, such as the Bertillon identification system, and fingerprinting and forensic techniques as they developed over the years. Thomas Byrnes, an enterprising NYPD detective captain, published *Professional Criminals in the United States* in 1886, a book that included pictures, descriptions, and methods of operations of criminals. His book encouraged criminal intelligence sharing among other jurisdictions. In the early 1900s, detectives were highly specialized, various urban departments forming vice squads, drug squads, anarchist and red squads, and Italian squads to deal with organized crime. Detectives of this era were not fussy about suspects’ constitutional rights. “Third degree” interrogation methods, forms of mental and physical torture, were widely exposed by the Wickersham Commission in 1930, but persisted long after that.

Federal law enforcement did not have detectives until after the Civil War. In 1865, the U.S. Secret Service emerged to prevent and suppress counterfeiting. During 1894, the Secret Service was occasionally involved in guarding President



An early FBI agent reporting on his surveillance of a building using a field radio telephone around 1939. J. Edgar Hoover established the Scientific Crime Laboratory and the National FBI Academy to train field investigative agents in 1932.

Grover Cleveland. That duty did not become permanent until 1901, after the assassination of President William McKinley.

The Bureau of Investigation, which eventually became the Federal Bureau of Investigation (FBI), was established in 1908 and paved the way for other investigative agencies. J. Edgar Hoover became the director of the bureau in 1924. He set the foundation for the FBI, which became one of the most prestigious investigative agencies in the United States. Director Hoover concentrated on crimes of high publicity that promised early solution. His focus was on bank robberies and kidnapping. He was primarily responsible for creating the “G-man” (government investigator) public image. Hoover portrayed the G-man as the nation’s incorruptible crime fighter. In addition, Hoover established the National FBI Academy to

train field investigative agents, as well as the Scientific Crime Laboratory, in 1932. The Uniform Crime Reports established by the FBI were important factors in coordinating crime statistics among police agencies in the United States. The crime laboratory located at Quantico, Virginia, has the most recent scientific technology available.

Director Hoover also focused on political policing, having been one of the organizers of the Red Raids of 1919–20. He never lost his hatred of communism, and during the cold war, the FBI organized operations against communists, leftists, and even liberal leaders like Martin Luther King, Jr. These campaigns were secret, relying on informers and agents provocateurs. Hoover saw himself as an expert on communism, and his *Masters of Deceit* had a profound influence on American thinking. Not only was he popular, but Hoover had embarrassing information about the different presidents he served, making him the longest-term federal official by the time of his death in 1972.

Private Detectives

Several factors created the need for private investigators. First, big-city corruption and graft were rampant, and police officers were directly involved. Police detectives could suppress, manipulate, and ignore criminal investigations and citizen complaints. Detectives, because of their underworld connections and the political nature of police forces, were particularly susceptible to corruption by saloonkeepers, brothel owners, and members of organized crime enterprises. Vice reformers especially received no official help, so they hired private individuals to uncover illicit activities. Second, criminals would cross jurisdictional lines to avoid detection and arrest. Third, there was little criminal information and cooperation among police jurisdictions. In 1846, two former St. Louis detectives established the first private detective agency. The need was clear for private detectives; however, Allan Pinkerton took the service to a higher standard of professionalism. Pinkerton's trademark emblem was an open eye and with a slogan underneath: "We never sleep." Thus, the trade jargon "private eye" became associated with private investigators. Born in Scotland, Allan Pinkerton was the son of a police sergeant, but he supported the working-



Mary A. Shanley, celebrated undercover New York City detective, meets New York Mayor Fiorello H. La Guardia in 1937. Shanley was known for catching pickpockets and thieves, pulling her regulation police revolver out of her handbag.

class political movements of the early 19th century. Eventually, he got into trouble for his politics and fled with his wife to America, surviving a shipwreck. He started a successful barrel making company. While he was owner of that business, his initiative led to the arrest of counterfeiters. This gave him an appetite for police work, his father's profession, and changed his life and American policing forever.

Pinkerton established his agency in 1852, at first working for railroads seeking to stop employee theft and later "troublemaking." He earned national and international respect for meticulous detective work. Some of Pinkerton's accomplishments include discovering and preventing an

assassination attempt on President-elect Abraham Lincoln in Baltimore. During the Civil War, he infiltrated Confederate lines to obtain valuable military intelligence. Pinkerton's pursuit of Butch Cassidy (Robert Parker) and the Sundance Kid (Larry Longabaugh) forced them to flee the United States. They were eventually killed in a gun battle with Bolivian soldiers in 1909. The underside of Pinkerton's and other private detective agencies included spying on labor organizers and breaking strikes with hired thugs.

A Pinkerton detective's most famous spying operation was against the Mollie Maguires, a violence-prone organization of Pennsylvania coal miners. His testimony led to the hanging of some of the leaders in 1877. The infamous Pinkerton strike-breaking efforts during the Homestead steel strike of 1892 prompted considerable criticism. Congress even passed an "Anti-Pinkerton" law in response, but industrial spying and strikebreaking by private detective agencies such as Burns and Baldwin-Felts continued through the 1930s.

Forensic Science Contributions

Forensic science is an essential tool of detective work, which has increased in effectiveness as the field has developed. Massachusetts police investigating the murder of Lizzie Borden's parents in 1892 could distinguish cow from human blood on a hatchet, but they did not make use of the new technique of fingerprinting. Forensics developed steadily in the later 19th and early 20th centuries to reach the complexity of today.

In 1856, William Herschel, a British official in India, noted that the pattern of palm prints and fingerprints of an individual never changes, regardless of his or her age. Herschel eventually applied his knowledge to the identification of criminals. In 1900, Edward Henry developed the Henry fingerprint classification system. Henry published *Classification and Use of Finger Prints*, which eventually replaced Bertillon's anthropometric measurement system.

In 1879, Alphonse Bertillon developed a system of anthropometry, or exact physical measurements of the human body. He believed that the sum of these measurements would yield an individual formula that could identify a specific person or criminal. Though popular for several years, the Bertillon system was eventually

discredited by contradictions in measurements taken by different individuals.

An Argentine police officer, Juan Vucetich, discovered fingerprints at a crime scene and was able to match them with prints in the department's files. He established the first fingerprint bureau in 1892.

Hans Gross published *Criminal Investigation* in 1893, a primary field publication for detectives that was translated into English in 1906. This book became the major source for criminal investigations, and remains highly respected.

In 1910, Edmond Locard established the first forensic laboratory. Locard's Exchange Principle suggests that when a criminal offender encounters a crime scene, a transfer of trace evidence takes place. Moreover, criminals contribute trace evidence and take trace evidence with them when they depart.

James Watson and Francis Crick inaugurated a new era of genetics and DNA research in 1950. Forensic scientists focused on DNA applications in 1985, and research into the structure of human genes by Alec Jeffreys and his colleagues added a new dimension. They discovered that portions of the DNA structure of certain genes could serve as a unique point of human identification, similar to fingerprints. This discovery led to solving cold cases from earlier decades. It also proved the innocence of many people convicted of crimes, including several on death row. DNA analysis is not perfect, but many people assume that it consistently reveals the truth.

Detection Methods Today

Procedures today vary according to the complexity of the crime and nature of the criminal. Criminal investigative analysts focus on major violent serial crimes. For example, the analyst provides psychological profiles in serial murder, rape, child molestation, and serial arson cases. Broader than the profiling process, it also involves the collection of psychological clues and physical evidence. Investigators develop offender traits, characteristics, and typologies that stem from crime scenes, victim statements, and autopsies. Analysts review crime scene reports and forensic evidence to make observations concerning criminals' reasoning. They can then target or eliminate suspects. The end purpose is to provide criminal information on



U.S. Army Criminal Investigative Division special agents gathering potential DNA evidence at a crime scene for processing at the Army Criminal Investigation Laboratory.

offender motivation, modus operandi (MO), and psychological signature clues. The term *signature* represents a serial offender's calling card. The offender engages in psychological and compulsive behaviors that he or she must perform to obtain satisfaction. These behaviors occur because of personal needs that reflects the criminal's personality. Signature behaviors are generally excessively violent, sexually oriented, or both. These unique behaviors assist in case linkage.

Such information can further the interrogation process. This kind of analysis can create opportunities for related case linkage and prosecution. In addition, the psychological profile can assist prosecutors in the courtroom, should the offender take the witness stand.

Crime analysis focuses on street crimes such as burglary, robbery, larceny, theft, and automobile theft. This form of analysis is primarily concerned with recognition of crime patterns. Crime analysts assist investigators in targeting the location of offenses, and in identifying emerging offense patterns. Their work involves crime mapping, targeting potential offenses, and preparing crime alerts and bulletins. Crime analysis is a systematic attempt to examine crime patterns and criminal behavior. The analyst identifies necessary and critical information related to crime patterns. He or she examines hot spots, crime clusters, and trends, and provides criminal information to field officers and detectives. This intelligence assists the investigative process, criminal apprehensions, and the successful case clearance rate of criminal cases.

Future Implications

Technology available to detectives will be increasingly sophisticated. The shift to detection in terrorist investigations encourages new technology and information sharing. Interagency cooperation, shared resources, and criminal intelligence require advanced computer technology applications. Centralized services and improved computer software offer maximum opportunities for timely criminal and terrorist detection and detective work. Computer crime-mapping technology provides detectives with the ability to correlate data and potential future crime hot spots. Geographic information systems (GIS) pinpoint crime incidents according to a specific location. GIS and tactical computer mapping permits detectives to establish geographical insights into crime patterns.

GIS crime-mapping technology continues to unlock potential criminal patterns. Crime-mapping software can visualize case-related data and descriptive crime patterns that can produce investigative leads. The GIS data may suggest questions in the interrogation process that might close cases. GIS and crime analysis mapping combine the interpretation of related incidents. Crime mapping spatial analysis might locate time factors and travel patterns for serial offenders. Crime mapping can bring disparate pieces of information together into a specific MO, criminal pattern, and case linkage to related offenses. The

criminal's MO may enable investigators to build a case in reverse order to explain the origins of the crime pattern and estimate future outcomes. Specialists can apply criminal geographic targeting (CGT) to locate suspects who work or reside in the crime cluster. Investigators apply a computerized spatial and statistical model that can connect the hot spots or events of a crime series. Then, it may be possible to trace the travel patterns to the offender's residence or workplace. Called a jeopardy surface, or geoprofile, this analysis provides an optimal criminal search process.

Conclusion

At first feared as spies, detectives have become an essential element of police work and their activities and responsibilities have expanded and become more complex over the years. Detection has become far more efficient than in the past, but unfortunately, sometimes the old problems of abuse of power and corruption resurface. Detectives, both official and private, continue to be significant, if sometimes ambiguous, figures in American popular culture.

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See Also: Ballistics; Bertillon System; Burglary, Contemporary; Byrnes, Thomas; Crime Scene Investigation; Federal Bureau of Investigation; Fingerprinting; Forensic Science; Private Detectives; Robbery, Contemporary.

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Deterrence, Theory of

The theory of deterrence attempts to answer one of the most fundamental questions concerning crime: Why do individuals commit criminal and/or deviant acts? Deterrence theory attempts to answer this question by examining the choices and subsequent actions of the offender. Deterrence theory has its roots in the historical evolution of crime and punishment.

Judicial systems within feudal states were ruthless in their approach to crime control. During the Middle Ages and into the late 1700s, judicial representatives often punished criminals in an extremely harsh manner with little concern for the circumstances surrounding the act. The goal of the punishment during this time period was to punish all criminals so brutally that the criminal and others witnessing the punishment would not commit similar acts. This approach to punishment was effective in terms of preventing the accused from committing further criminal acts because the offender was often killed or incapacitated. However, this approach to handling crime was not effective at preventing future crime by other individuals.

During the late 18th century, scholars began to recognize this shortcoming, and began to recognize the need for reform that would eliminate the long-standing injustices present in the justice system. These changes largely came through the writings of two classical criminologists—Cesare Beccaria and Jeremy Bentham.

Cesare Beccaria was a visionary scholar in that he recognized the torturous and biased way that justice was being administered during his time. Beccaria subsequently pioneered discourse that guides the justice system to this day. His seminal work, *On Crimes and Punishment*, was published in 1776 and has since been recognized as the founding doctrine for what scholars now label deterrence theory.

The ideas that Beccaria discussed in *On Crimes and Punishment* were simple, yet groundbreaking for his era. The general idea that Beccaria outlined in his work was that crime and deviance occur when the potential positive rewards for committing a certain act outweigh the potential negative consequences. Since Beccaria's time, the theory has advanced and evolved as societies have

experienced social change, and it is now one of the most researched and cited theories in criminology.

The theory of deterrence has been widely used in the field of criminology to conduct research on various types of deviant acts. The deviant acts that have been examined in the past range from speeding to homicide. In addition to being used in academe, the theory of deterrence has gained popularity among politicians, criminal justice practitioners, and criminal justice policy makers.

Basic Tenet of Deterrence Theory

The modern conception of deterrence theory is grounded in ideas that are fundamental to classical criminology. Inherent in the ideology of classical criminology is the thought that humans are rational actors capable of exercising free will. Assuming that humans are rational actors, classical criminologists such as Cesare Beccaria and Jeremy Bentham posited that individual behavior is guided by a series of calculations that are actually a type of cost-benefit analysis.

The cost-benefit analysis is sometimes linked to the pleasure-pain principle. The calculations made by individual social actors are attributed to things such as individual experiences, knowledge of codified laws, and the degree to which one has a vested interest in societal mores, folkways, and laws. Scholars sometimes argue that the theory of deterrence can be described as a process wherein social actors calculate risks and rewards prior to choosing to perform certain acts.

Historically, criminologists have recognized the utility of a criminal justice system that promotes the positive control and prevention of crime through clear legal standards and unambiguous societal norms. A prerequisite for understanding deterrence theory is understanding of the ability to make rational and calculated decisions concerning personal behavior. Once this is achieved, scholars argue, deterrence theory gains predictability with reference to human behavior. Scholars posit that individuals will not commit crime once one attaches more negative attributes to the risk or consequences associated with a certain behavior than positive attributes. If the negative consequences do not outweigh the potential benefits, crime is more likely to occur. Bentham and Beccaria recognized these ideas and lobbied for their integration into the ideologies behind crime and punishment.

Specifically, Beccaria held that punishment should be only severe enough to deter and no harsher. Beccaria also held that punishment should occur within a short period of time after the offense. Lastly, Beccaria believed that the consequences associated with a given crime must be certain. The basic tenets of deterrence theory suggest that crime will not occur when punishment is “swift, severe, and certain.” Under the classical criminology paradigm, punishment for any given offense must only be as severe, certain, and swift as is needed to prevent future offending.

Considering contemporary approaches to punishment, the idea that punishment should follow this ideology has brought about much debate. Some scholars argue that contemporary criminal justice policies have brought about laws that are too severe and ineffective. The most common argument that scholars pose following this belief concerns capital punishment. The central question concerning capital punishment is, “What is the purpose of the death penalty?” Popular answers to this question include responses such as “retribution,” “incapacitation,” and “deterrence.” Debates among practitioners and academics often focus on the latter of these purposes.

Those arguing against capital punishment believe that the modern conception of deterrence is not aligned with the intent that Beccaria originally described in *On Crimes and Punishment*. These scholars hold that the death penalty is too severe and does not deter future offending. Under this conception of deterrence theory, those who commit a crime that is punishable by the death penalty are involved in a situation wherein they will take extreme measures to avoid punishment. This occurs because the punishment often goes unobserved by the general public and because crimes that are punishable by capital punishment are often “passion” crimes that are committed with little regard for the negative consequences.

Other debates surrounding deterrence theory are often centered on the importance and relevance of the three tenets of the theory. Scholars often ask, “Which of the three basic tenets play the most important role in deterring crime—severity, swiftness, or certainty?” Most scholars and criminal justice practitioners who debate this question take the position that certainty is the most important tenet of deterrence theory. Within

the deterrence paradigm, certainty refers to the odds that one will be arrested, convicted, and punished for a given offense. Swiftiness refers to the amount of time between the commission of an act and the application of punishment. Severity refers to the harshness or negative consequences associated with a given crime. When contemplating the importance of each one of these tenets, it is important to recognize that they are not mutually exclusive. And, no one tenet can be described as having more power to deter.

Scholars still posit that certainty is the most important when planning criminal justice policies, practices, and procedures. The reasoning behind this position is usually rooted in the other tenets of the theory. Certainty is often cited as being more effective because when the severity of a given punishment is extreme, the application of the respective punishment becomes less likely. Swiftiness is the least often debated among the three tenets of deterrence theory, most likely because the contemporary criminal justice system does not expedite punishment enough to make it relevant to the deterrence argument.

Types of Deterrence

Deterrence theorists and criminal justice practitioners often reduce deterrence theory into two explicit types of deterrence—general and specific. Specific deterrence occurs when an individual receives some type of punishment for an offense. For example, an offender who is found guilty of a traffic violation may be charged a fine as punishment for the offense. The intent behind the punishment is to make the fine expensive enough that the offender will abstain from committing future traffic violations out of the fear of losing more money. The other type, general deterrence, is deterrence that is witnessed by other individuals when punishment is being given to offenders other than oneself.

Deterrence Theory Today and Tomorrow

Today, the policy and practice implications of deterrence theory continue to be relevant to scholars and practitioners, especially law enforcement agencies, prosecutors, and legislators. Deterrence theory continues to be one of the most discussed theories in academe and one of the most utilized theories among practitioners. The most popular

studies of deterrence look at the effect of capital punishment on homicide rates.

Another emerging trend within the deterrence discourse is the examination of the relationship between the traditional conception of deterrence and informal deterrence. Researchers have displayed a growing interest in understanding how informal deterrence or informal social sanctions influence one toward or away from crime and deviance. Informal sanctions, in this context, can be described as the actions of one's family, friends, and significant others following a crime and the subsequent punishment. The results of such studies generally indicate that the informal sanctions that often follow formal sanctions strongly deter individuals from future offending. In light of this movement, researchers examining deterrence argue that looking at informal deterrence integrates other theories to the point that deterrence theory is no longer deterrence theory because it begins to expand beyond the law. Regardless of these arguments, deterrence theory has withstood the test of time and will continue to be relevant within criminology.

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See Also: Capital Punishment; Corrections; Crime in America, Causes; Crime Prevention; Criminology; Cruel and Unusual Punishment; Executions; History of Crime and Punishment in America: 1783–1850; Punishment Within Prison; Retributivism; Sentencing; Theories of Crime.

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Detroit, Michigan

The history of crime and justice in Detroit, Michigan, is consistent with that in other large industrial cities in the east and midwest. In the 19th century, Detroit struggled to establish order in a growing city. In the 20th century, a manufacturing boom and later decline contributed to problems with serious crime, while racial tensions complicated the relationship between the police and the city's population.

The city of Detroit, founded in 1701, faced relatively little disorder until it began to grow rapidly in the middle of the 19th century, attracting immigrants particularly from Germany and Ireland. Law and order became a bigger concern for Detroit's citizens in the 1850s and 1860s as crime

became concentrated in the city's downtown business district. Burglaries, muggings, and public disorder—often associated with young, unmarried male workers—prompted business leaders and residents of respectable neighborhoods to demand a professional police force. In response, the state legislature created the Detroit Metropolitan Police force in 1865. By the 1870s, the police had largely brought disorder under control by concentrating patrols downtown and in the nearby disreputable districts, providing lodging for transients, and making arrests for offenses against public order such as drunkenness and disorderly conduct.

Detroit's police gradually shifted from their order maintenance role in the 19th century to presenting themselves as service providers and crime fighters in the 20th century. Some police commissioners



These moving vans needed a police and National Guard escort while transporting new black tenants' furniture into the Sojourner Truth Homes federal housing project in Detroit in 1942 after a violent riot by white neighbors trying to prevent them from moving into the project. The next year, a three-day riot broke out in which whites attacked African American neighborhoods and African Americans looted white-owned stores. The riot led to the deaths of 17 African Americans at the hands of the Detroit police.

such as James M. Couzens (1916–18) and James K. Watkins (1931–33) emphasized police efficiency and attempts to work with the broader community, even as other commissioners such as James W. Inches (1919–23) emphasized efforts to respond vigorously to crime by increasing the number of officers on street patrol. The sudden growth of the automobile industry and military production during World War I contributed to a sudden increase in population in the 1910s and a corresponding increase in the amount of crime. The number of police officers grew at the same pace as the population, but rank-and-file officers may not have fully embraced the stated ideals of their commissioners. Throughout the first two-thirds of the 20th century, the Detroit police remained comprised almost entirely of working-class white men with limited training, despite the opening of a training school in 1911.

The Great Migration and Beyond

With the Great Migration bringing African American migrants to cities in the urban north beginning in the 1910s, racial tensions became a central theme in the 20th-century history of criminal justice in cities such as Detroit. African Americans were attracted by the job opportunities created by the boom in the automobile and munitions industries, and their numbers increased from roughly 5,700 in 1910 to roughly 149,000 in 1940. The resulting racial conflicts were highlighted by the arrest and trial of Ossian Sweet in 1925.

After Sweet, an African American physician, moved into a home in a previously all-white neighborhood, a mob surrounded his house. Someone fired shots from the home into the crowd, killing one person, and police arrested Sweet and other defenders of the house. After one highly publicized trial ended in a mistrial, Sweet was eventually acquitted. In addition, 1920s investigations by both the National Association for the Advancement of Colored People (NAACP) and the Mayor's Committee on Race Relations revealed that police officers routinely brutalized African Americans.

Conflicts between African Americans and whites over jobs and housing escalated in the 1940s with renewed industrial growth and migration prompted by World War II. In June 1943, a series of brawls between African Americans and

whites escalated into a riot lasting three days. African Americans looted white-owned stores, and whites attacked African American neighborhoods. The police tended to side with the white rioters, shooting 17 African Americans to death.

Racial tensions and police violence persisted in the post-World War II period. Detroit's industrial economy peaked and began to decline, even as the Great Migration continued. The African American population exceeded 660,000 in 1970, while the police force remained overwhelmingly white; the few African Americans who were hired met hostility from their fellow officers. Many examples of police abuse persisted in the 1950s and 1960s. One 1957 report by the NAACP cited more than 100 incidents in a seven-month period, the majority involving violence; in 1965, an elite black social organization complained to the mayor of hundreds of injuries to African Americans inflicted by police officers. In July 1967, a police raid on an illegal after-hours saloon prompted a violent backlash by African Americans, which rapidly became a major riot. Unlike the 1943 riot, the 1967 riot mostly involved African Americans revolting against the effects of discrimination and a deindustrializing economy. After five days of violence in which 43 people died (33 African Americans) and property destruction reached millions of dollars, federal troops quelled the violence. Relations between the police and the African American community continued to deteriorate with the 1971 formation of a special undercover police unit called Stop the Robberies, Enjoy Safe Streets (STRESS). In its first year, the STRESS unit made more than 1,400 arrests and killed 10 suspects, nine of whom were African American.

Since the 1970s, crime and justice have remained major issues in Detroit. The decline of the automobile industry has also continued to reduce job opportunities. In this context, Detroit has experienced consistently high crime rates. At times, it has had the highest homicide rate of any large city in the United States, earning it a reputation as the nation's murder capital. The Detroit police, however, have sought to improve relations with the community. Beginning with the 1973 election of Coleman Young, Detroit's first African American mayor, the police department became much more racially integrated. Young also abolished the STRESS unit. The police established community

ministations in the 1980s, intended to help incorporate officers into neighborhoods and to help city residents feel safer. A Justice Department investigation beginning in 2000 revealed that police use of force remained a problem. The investigation resulted in a 2003 consent decree governing arrest, restraint of suspects, and detention. In addition, the number of Detroit police officers dropped by more than 25 percent between 2000 and 2007.

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See Also: 1921 to 1940 Primary Documents; 1961 to 1980 Primary Documents; African Americans; Michigan; Police Abuse; Race-Based Crime; Racism; Riots.

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Devery, William

William S. Devery (1857–1919), nicknamed “Big Bill,” “Big Fellow,” and “Big Chief,” was a controversial New York City police official and the first chief of police after the consolidation of New York City in 1898. He was born in New York City to impoverished Irish immigrants and raised in a West Side tenement district. Devery joined the police force in 1878 and was appointed roundsman in 1881, sergeant in 1883, captain in 1891, inspector in 1898, deputy chief of police in 1898, chief of police in 1898, and deputy police commissioner in 1901. Devery joined the Democratic Party as a young man and eventually allied himself to Tammany Hall. He was befriended by Tammany leader Richard Crocker and served as one of his chief assistants throughout his career.

From 1891 to 1893, Devery was a captain in the tenderloin district. He developed a reputation for tolerating prostitution, gambling, illegal saloons, and other elements of the underground economy. Devery privately claimed that “police graft” exceeded \$3 million annually. In particular, he was charged with working in alliance with the “poolroom trust” headed by professional gambler Frank J. Farrell and headquartered on West 30th St. near Sixth Avenue and half a block from the West 30th St. police station. In 1893, Devery was transferred to the Lower East Side, just east of the Bowery. Devery’s toleration of “vice” attracted extensive criticism from the Reverend Charles Parkhurst and Frank Moss, who instigated four charges against Devery in 1893; Devery, however, was acquitted.

Parkhurst, Moss, Anthony Comstock, Theodore Roosevelt, and Republican officials continued collecting evidence against Devery. In 1894, during the Lexow Committee investigation, Devery was charged with accepting a bribe. Police department officials tried Devery in absentia for extortion (he claimed he was ill) and dismissed him from the department. A year later, the New York Supreme Court overturned the dismissal.

In 1896, Devery was tried and acquitted of extortion. In 1901, Devery was tried and acquitted for neglect of duty and oppression. That same year, the Republican-controlled legislature eliminated the chief of police position by a legislative statute. But police commissioner Michael Murphy (with support from Mayor Robert VanWyck) appointed Devery deputy commissioner of police, and he remained the acting head of the force.

Devery was severely criticized for defending police brutality, first against agents representing the Society for the Prevention of Crime in 1893 and against African Americans in the tenderloin police riot of 1900. Devery also attempted to influence the national election of 1900 by ordering police officers to ignore orders from the state election bureau. New York governor and Republican vice presidential candidate Theodore Roosevelt intervened and ordered New York mayor Robert Van Wyck to rescind Devery’s order.

Devery retired with an estimated wealth of \$900,000, despite a total official income of \$58,000 during his 24-year law enforcement career. Devery’s toleration of underworld activities

convinced critics such as *Gunton's Magazine* that he was “the culmination of official vice” and “the concentrated nastiness of political depravity.”

But Devery was popular in the Irish and immigrant communities, in part because he practiced an informal, less professional form of policing. Many nights, Devery stood in front of an Eighth Avenue saloon known as the Pump, leaning on a fireplug and listening to complaints from the poor, pimps, policemen, widows, and anyone who felt aggrieved. As a Tammany politician, he intervened on behalf of many. Devery was noted for his inventive slang, witty one-liners, and beginning many public pronouncements with “Touchin’ on and appertainin’ to.”

In 1902, Devery successfully ran for district leader in his Chelsea neighborhood. A year later, however, Tammany leaders Richard Croker and Charles Murphy considered Devery and “Deveryism” a liability and refused to support his

mayoral campaign. Devery ran as an independent candidate and attracted a little more than 2,200 votes. In 1903, Devery and Frank J. Farrell purchased the Baltimore Orioles baseball team for \$18,000. They promptly moved the club to New York and renamed the team the Highlanders, making the organization the first American League franchise in New York. In 1913, they became the Yankees. The team enjoyed little success, so in 1915, Devery and Farrell sold the team to Jacob Ruppert and Tillinghast Huston for \$460,000. Devery also sold real estate in Manhattan and Far Rockaway and owned a large West End Avenue mansion in Manhattan. He died of apoplexy on June 20, 1919, in his home in Far Rockaway, New York.

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See Also: Corruption, History of; New York; Police, History of; Reform, Police and Enforcement; Roosevelt, Theodore (Administration of).

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This 1902 cartoon titled “The Big Chief’s Fairy Godmother” shows William Devery showered in coins by a fairy whose wings are made of playing cards and is captioned “Mr. Devery tells ‘where he got it.’” Devery retired with an estimated \$900,000.

Dewey, Thomas E.

Thomas E. Dewey (1902–71) was a federal and state prosecutor, district attorney, governor of New York, and the Republican presidential candidate in 1944 and 1948. Dewey is best known to criminal justicians for his war on organized crime in New York during the 1930s. After earning a law degree from Columbia Law School in 1925, Dewey worked as a prosecutor and then went into private practice. In the early 1930s, Dewey returned to public service as a special prosecutor, charged with investigating corruption and organized crime in New York.

In 1935, Dewey assembled a staff of over 100 to target organized crime and the political corruption related to such enterprises. Dewey went after prominent New York City gangster Arthur Flegenheimer, better known as “Dutch” Schultz, who had made millions with an illegal alcohol bootlegging enterprise during the 1920s and then continued with other criminal activities after Prohibition ended. Lacking direct evidence of Schultz’s involvement in criminal enterprises such as extortion, numbers running, and union racketeering, Dewey instead charged Schultz with tax evasion for failing to report the proceeds of his criminal activities. Schultz’s first trial, in 1935, resulted in a hung jury. He was acquitted in a second trial after spreading money around the small town in which the trial was held.

By 1935, New York crime gang bosses had formed a syndicate, which met to make and enforce rules designed to minimize violent warfare among the city’s gangsters. Schultz proposed to the syndicate that Dewey be murdered in order to stop his investigations into organized crime. Agents from Murder Inc., a gangland hit squad, tailed Dewey and developed a plan to assassinate him. Before the plot could be carried out, the syndicate leaders decided to call it off because killing such a high profile lawman would increase surveillance of organized crime and potentially expose the entire syndicate to federal charges. The mob leaders decided that it would be better to undermine Dewey’s cases by killing his witnesses instead. Schultz announced that he would have Dewey killed anyway, in defiance of the syndicate. The syndicate responded by having Schultz assassinated. In 1936, Dewey won a conviction against Gurrah Shapiro, a founder of Murder Inc. who was involved in garment district labor racketeering and protection rackets. Shapiro had been the only syndicate boss who agreed with Schultz about assassinating Dewey. Shapiro received a two-year prison sentence for violating federal antitrust laws.

Dewey also went after Louis “Lepke” Buchalter, a full partner in Shapiro’s criminal enterprises. Lepke reportedly surrendered to federal authorities on the condition that they not turn him over to Dewey. Lepke received 30 years for narcotics trafficking and labor racketeering. He was later convicted of murder and became the highest-

ranking organized crime boss ever executed for his crimes. Dewey then set his sights on Charles “Lucky” Luciano, another syndicate boss. Dewey won convictions on 90 counts related to Luciano’s prostitution rackets. Luciano received a sentence of 30 to 50 years in prison. In 1937, Dewey was elected New York district attorney.

He won a conviction against Tammany Hall leader Jimmy Hines on corruption charges. Dewey ran for governor in 1938, but lost. He failed to win the Republican presidential nomination in 1940 but was elected governor of New York State in 1942. Dewey’s third term as governor ended in 1955, after which Dewey returned to private practice. President Richard Nixon offered Dewey the position of chief justice of the U.S. Supreme Court in 1968. Dewey declined, and he died three years later.

Dewey received criticism for his relationships with mob figures. As governor, Dewey approved “Lucky” Luciano’s transfer to a minimum-security prison and eventually approved Luciano’s parole and deportation to Italy. Luciano would later claim that the mob had contributed to Dewey’s campaign fund in exchange for his release. In the early 1950s, Dewey refused to testify before the U.S. Senate’s Kefauver Commission—then investigating organized crime—about his actions related to Luciano’s pardon. In the 1960s, Dewey became a major shareholder in a firm with Caribbean gambling interests, run by Meyer Lansky—another mob boss. Charges against Dewey’s integrity notwithstanding, Dewey won numerous convictions against powerful mob figures between 1935 and 1937, thus establishing his place in history as one of the first significant organized crime fighters in the United States.

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See Also: District Attorney; Luciano, “Lucky”; Organized Crime, History of; Schultz, “Dutch.”

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The Social History of
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The Social History of Crime and Punishment in America

AN ENCYCLOPEDIA

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Dillard v. the State of Georgia

Dillard v. the State of Georgia was an 1870 case tried before the Supreme Court of Georgia. It contemplated obscene language as defined by section 4306 of the Revised Code of Georgia. The decision of the court, and hence the interpretation of obscenity pursuant to the statute, pivoted on the intent of an offender in speaking certain words. The court held that a man uses obscene or vulgar language if, without provocation, and intending to propose sexual intercourse, he asks a female in his presence to “go to bed with him.” The court’s decision underscores a speaker’s purpose or objective when issuing certain words to bring about certain results. It also implicates cultural notions of male chivalry and female virtue pertaining to language and obscenity. The justice of the peace of Oglethorpe County charged James T. Dillard with using obscene and vulgar language in the presence of Mary S. Sanders, William H. Sanders’s wife. Apparently without provocation on the part of Mrs. Sanders, Dillard asked Mrs. Sanders to go to bed with him. Mrs. Sanders summoned her husband, in whose presence Dillard called Mrs. Sanders a “God-damned liar.” At trial, Dillard waived indictment by a grand jury. His attorney argued that Dillard’s words did not constitute obscene or vulgar language under section 4306. The justice of the peace disagreed, finding Dillard guilty and imposing a fine of \$100 plus costs, or three months in jail if Dillard did not pay the fines and costs.

Dillard’s case reached the Supreme Court of Georgia on a claim of error in a motion in arrest of judgment. The Supreme Court upheld all lower court findings on the grounds that the legislature, in enacting section 4306, probably contemplated both words and their corresponding mental state as requisites for the crime. The court suggested that words are contingent and relational because their meaning is dependent upon context and circumstance. Therefore, few if any words are unconditionally and universally banned; the prosecution of particular words makes sense only in light of the vulgarity or obscenity of the ideas that they convey. In the case at hand, Dillard’s words were prosecutable because they signified a state of mind deemed indecent according to the standards of society in

which the words were uttered. Concurring with the decision, Justice C. J. Brown approved of the principles of decorum underlying the statute but expressed reservations about prosecuting an individual for language that is obscene or vulgar if that individual takes no definite, physical steps toward carrying out the intent conveyed in such language. The concurrence recalls the long-standing principle in Anglo-American law that thoughts alone are not punishable. The question is whether the spoken word by itself constitutes an act and therefore satisfies the element of *actus reus*, or whether some physical act besides verbal articulation is necessary to prosecute an individual for a crime.

The *Dillard* case stands for the idea that the meaning of language—and, in particular, language deemed obscene—depends upon community consensus and prevailing moral standards. The majority and concurring opinions in *Dillard* refer to ideals about womanhood and gentlemanliness as criteria by which to review obscenity. Phrases such as “decent ideas,” “public morals,” “protecting females from insult,” “female whose modesty has been unlawfully shocked,” “virtuous woman,” “moral decency,” and “good breeding” signify cultural touchstones. The tendency of an utterance to become generally accepted or generally rejected determines its legal status as vulgar, obscene, or permissible. The judges in *Dillard* deemed that Dillard’s words were not generally socially acceptable; therefore, his words were obscene.

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See Also: Obscenity; Obscenity Laws; Sexual Harassment.

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Dillinger, John

American outlaw John Dillinger (1903–34) was a controversial bank robber and desperado during

the 1930s Depression. His uncanny ability to escape the clutches of the law—while apparently demonstrating coolness under fire, ingenuity, defiance, and an unfailing sense of humor—won him many admirers, especially among those who had become economic victims of untrustworthy banks. On the other hand, most law enforcement officials regarded Dillinger as a bloodthirsty criminal with no redeeming qualities. Dillinger's sudden death and alleged betrayal by a mysterious woman have only enhanced his legendary mystique.

Dillinger was born June 22, 1903, in Indianapolis, Indiana, into a respectable, but not wealthy, family. His father worked as a grocer and his mother died when he was 3. Dillinger dropped out of school after the eighth grade and held a series of unskilled jobs before enlisting in the navy at the age of 20. However, military discipline did not suit Dillinger well; after several instances of desertion and disobeying orders, he was dishonorably discharged and returned home to Indiana. There, he married a local farm girl, Beryl Hovious, in 1924 but also befriended Edward Singleton, an older man with a criminal record. Dillinger and Singleton were arrested for forcibly robbing a grocery store. Pleading guilty to the crime, Dillinger received a harsh 10–20-year sentence and served nearly nine years in Indiana state prison before he was paroled in 1933.

If Dillinger was not a hardened criminal before entering prison, he emerged as one afterward by most accounts. His wife had divorced him in 1929, and an ex-convict was unlikely to find steady employment in the midst of the Great Depression. Like other 1930s outlaws already at large—such as Clyde Barrow, Bonnie Parker, Charles “Pretty Boy” Floyd, and the Barker gang—Dillinger and his criminal accomplices embarked on a series of bank robberies throughout the Midwest, frequently moving from one heist to another in stolen cars, and often seizing weapons and ammunition from police stations.

Although Dillinger's crime rampage in 1933–34 lasted only 14 months, it captured the imagination of an economically depressed populace. Many of Dillinger's criminal exploits seemed almost too bold and daring to be true. For instance, after he was captured in Arizona and transferred to prison in Indiana, he somehow escaped five weeks later, perhaps by using

a fake gun. In the following month, while vacationing in a northern Wisconsin tourist lodge, Dillinger and his gang escaped unharmed despite being surprised by more than a dozen agents of the Federal Bureau of Investigation (FBI). Two months later, when Attorney General Homer Cummings announced a \$10,000 reward for Dillinger's capture, many newspapers labeled him “Public Enemy Number One.” The national hunt for Dillinger ended on July 22, 1934, when he was shot and killed by FBI agents as he was leaving a Chicago movie theater in the company of a woman who supposedly had betrayed him to federal authorities.

Nevertheless, Dillinger's demise at age 31—like the untimely death of several other youthful folk heroes—has seemed to confirm his reputation as a cunning and charming Robin Hood-like rogue who stole from rich banks but not from poor people. Stories continued to circulate of how Dillinger had written a letter to Henry Ford, thanking the automaker for producing such fast getaway vehicles, or how he had brazenly returned to his family's farm in Indiana to enjoy a Sunday dinner of fried chicken even while being hunted by the FBI.

In subsequent years, several forms of popular culture have further enhanced Dillinger's reputation. Ballads and popular songs have praised the outlaw's courage and cleverness. Lawrence Tierney, Nick Adams, Warren Oates, Robert Conrad, Martin Sheen, and Johnny Depp have all portrayed Dillinger sympathetically in Hollywood feature films. A street gang in Washington, D.C., called itself the Young Dillingers. A math-rock band from New Jersey became known as the Dillinger Escape Plan. Delmar Arnaud, a singer of West Coast Gangsta Rap, adopted Daz Dillinger as his stage name.

Finally, several long-standing legends claim that Dillinger had the last laugh on his pursuers by planning for another man, closely resembling the fugitive, to be killed in his place in Chicago by the FBI. According to this theory, the real Dillinger escaped to Hollywood, California, and did not disclose his fake death until he wrote a letter to an Indianapolis newspaper 25 years later.

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See Also: Bonnie and Clyde; Cummings, Homer; Federal Bureau of Investigation; Floyd, Charles Arthur; Great Depression; Hoover, J. Edgar; Nelson, "Baby Face."

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Dime Novels, Pulp, Thrillers

Accounts of crime, whether fiction or nonfiction, have long been popular with a wide range of readers. Although all levels of literature have centered on crime, the terms *dime novels*, *pulp*, and *thrillers* tend to refer to rapidly written works that use sensational language, themes, and style. First appearing in the mid-19th century, dime novels became immensely popular. Although read by all types, dime novels, pulps, and thrillers often were considered to be "low-brow" and of less literary merit than other genres.

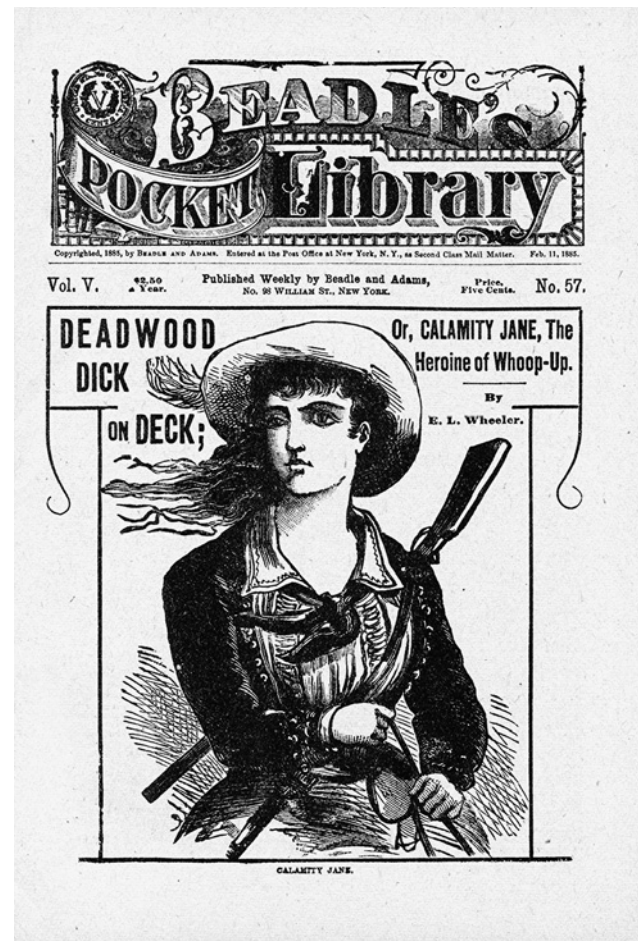
The terms *dime novels*, *pulp*, and *thrillers* were used originally to refer to different types of publications. Over time, however, the terms have come to be used interchangeably and now refer to any publication that features fast-paced action and racy subject matter. Originally ignored by more mainstream press, academia, and bookstores, some dime novels, pulps, and thrillers are now regarded as having literary merit. These works continue to be a source of profit and inspiration to publishers, film and television producers, and retail outlets.

Origins

As literacy rates in the United States increased during the 19th century, a market developed for reading material that was entertaining and inexpensive. *Dime novels* emerged as a generic term for several distinct but related forms, including

story papers, thick-book reprints, five-and ten-cent weekly libraries, dime novels, and early pulp magazines. Although the last true dime novels were published during the 1920s and pulp magazines ceased publication during the 1950s, descendants of the forms exist today, including comic books, mass-market paperback novels, and television programs and films based upon popular genres first developed decades ago.

In 1860, the publishing house Beadle & Adams inaugurated Beadle's Dime Novel Series with Ann S. Stephen's *Maleaska, the Indian Wife of the White Hunter*. This book, a reprint of an earlier serial that appeared in the *Ladies' Companion*, is generally regarded as the first dime novel. The Beadle & Adams dime novels varied



A Beadle's Pocket Library issue featuring a story about "Calamity Jane, The Heroine of Whoop-Up," which appeared in February 1885. Weekly dime "libraries" in the 1880s were large tabloids in format, as big as 8.5 by 12 inches.

in size, although many measured approximately six and one-half by four and one-quarter inches, and most were limited to 100 pages in length. After 28 books were published with a plain salmon wrapper, Beadle & Adams added an illustration to the covers, all of which sold for 10 cents. The series was immediately popular and ran to 321 issues, many of which were reprinted through the 1920s.

Many of the Beadle & Adams books focused on themes from the frontier and the American west, and initially, reprints of serials and other novels were used exclusively. Beadle & Adams' success led to many competitors, including Bunce's Ten Cent Novels, Brady's Mercury Stories, and Champion Novels. Although all books of this genre were referred to as dime novels, actual prices ranged from 10 to 15 cents.

Although there was a certain look to the genre, the formats of dime novels varied over time and from publisher to publisher. In the interest of cutting costs, some publishers produced dime novels as short as 32 pages in length, although readers at first resisted these. Beginning in the 1880s, weekly dime "libraries" became increasingly popular. These publications were essentially tabloids in form and varied in size from seven by 10 inches to eight and one-half by 12 inches.

Dime novels tended to feature a single story, unlike story papers and other similar genres. Fierce competition between various publishers generated colorful covers, which attracted readers' attention and increased sales. In addition to Beadle & Adams, major publishers of dime novels included Street & Smith and Frank Tousey. Even after competition forced the price of many of these publications to five cents, the general public continued to refer to them as dime novels.

Other publications emerged as the market for dime novels began to decline. These included "thick books," which often reprinted multiple stories from dime novels, with the material slightly rewritten to tie the material together into a cohesive whole. Thick books were published by Street & Smith, J. S. Ogilvie, and Arthur Westbrook. Running roughly 150 to 200 pages, thick books were four and three-quarters inches by seven inches and often featured color covers and higher-grade printing stock. In 1896, Frank Munsey converted his juvenile magazine, *The Argosy*,

NEXT WEEK! **Dick Dolliver,** THE HERO OF PEKIN. NEXT WEEK!
HAPPY DAYS
 A PAPER FOR YOUNG AND OLD.
 Vol. XIII. NEW YORK, OCTOBER 20, 1900. No. 314
BROTHER X; Or, The Gobblers of Turkey Neck.
 By C. LITTLE.



Mr. Burton gave a terrified exclamation, leaped to his feet, and started for a revolver which lay upon the table among the piles of bills. "Drop it!" cried Jack. "Drop it, and throw up your hands, Burton, or you are a dead man."

This black and white weekly from October 20, 1900, which was called *Happy Days, A Paper for Young and Old*, would have had to compete with more elaborate color publications that had already begun to change the market.

into a fiction magazine for adults. *The Argosy* became the first pulp magazine.

The term *pulp magazines*, also known as *pulps*, derives from the cheap wood pulp paper on which the publications were printed. Unlike magazines printed on more expensive paper (known as glossies or slicks), pulps featured lurid and exploitative stories and sensational cover art. The pulps took advantage of new high-speed presses, low payments to authors, and inexpensive paper to reduce the price of the magazine to ten cents per issue, as opposed to glossies, which generally sold for 25 cents. This cost differential greatly increased sales, although profit margins for publishers remained slim. Most pulp magazines measured 10 inches high by seven inches wide and were a half-inch thick with 128 pages.

Major pulp publishers included A. A. Wyn's Magazine Publishers, Clayton Publications, and Culture Publications.

At the height of their popularity during the 1920s and 1930s, many pulp magazines sold up to a million copies per issue. Popular titles included *Adventure*, *Amazing Stories*, *Black Mask*, *Dime Detective*, *Flying Aces*, *Horror Stories*, *Marvel Tales*, *Oriental Stories*, *Planet Stories*, *Spicy Detective*, *Startling Stories*, *Thrilling Wonder Stories*, *Unknown*, and *Weird Tales*. Pulp magazines remained popular from 1896 through the 1950s, when paperback books reduced their popularity.

"Paperback" books, sometimes known as softbacks or soft covers, refers to books with covers made of paperboard and held together by glue rather than stitches. Although paperbacks were first tried in Germany in 1931 by Albatross Books, the form was first financially successful in the United Kingdom beginning in 1935. The Penguin Books imprint of British publisher Allen Lane used many innovations introduced by Albatross, including color-themed covers indicating different genres and a conspicuous logo. In the United States, Robert de Graaf entered into a partnership with Simon & Schuster to create Pocket Books in 1939. Early paperback publishers used reprint rights from publishers and huge print runs (often 20,000 or more) to reduce unit prices. Paperbacks were sold in locations where books had not been stocked before, such as drug stores and supermarkets, overcoming initial bookseller reluctance to stock the new format. In addition to Penguin and Pocket Books, prominent paperback publishers included Ace Books, Ballantine Books, and Popular Library.

Many of the early leading paperback publishers—including Ace, Avon, and Dell—were started by pulp magazine publishers. Although initially publishing only reprints, paperback publishers also began to issue original material. Thrillers and other crime-related material were immensely popular with paperback readers. Comic books and graphic novels also have used some of the themes developed in earlier decades by dime novels and pulps. Because comic books appeal to children, critics have objected since the 1950s to the use of this form for certain adult themes, such as sex or violence. Despite this, comic books and graphic

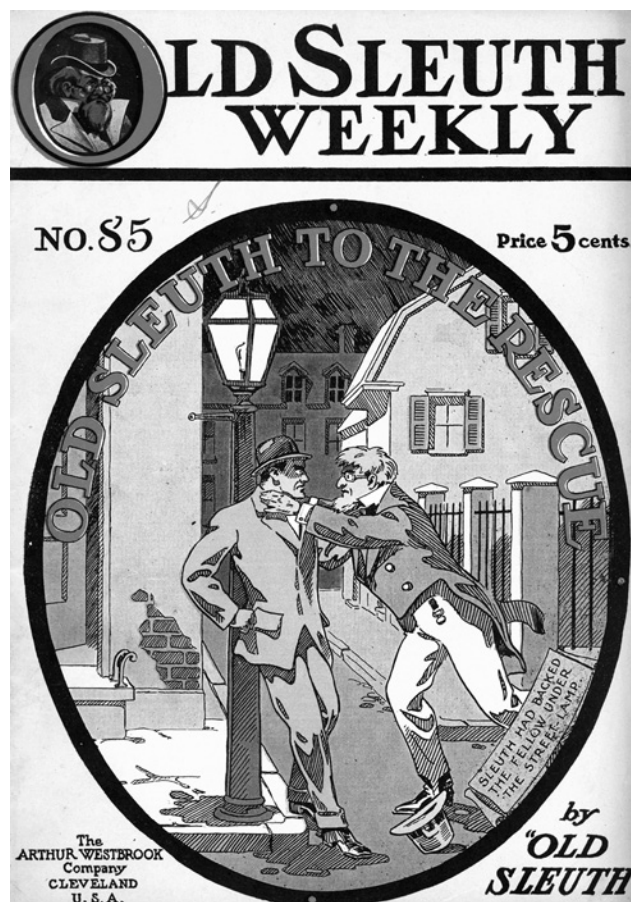
novels remain popular avenues to explore crime and detective fiction.

Themes and Subject Matter

Edgar Allen Poe's *The Murders in the Rue Morgue*, published in 1841, has been hailed as the first detective story. Since that time, a variety of writers have explored this genre, and slick magazines often featured the works of well-known crime and detective authors such as Arthur Conan Doyle and Edgar Wallace. Crime and detective themes became popular in dime novels almost from the beginning. Although the majority of early stories stood alone, publishers soon found that featuring a recurring series hero or theme would increase sales and help sales grow. Old Sleuth, who began appearing in *The Fireside Companion* story paper in 1872, was the first character who began the trend toward detective and crime fiction. While the term *sleuth* had earlier been used to refer to bloodhounds, Old Sleuth initiated the usage of the term to indicate a detective. Wildly popular, Old Sleuth inspired a host of competitors, all using the word *Old* in their names, including Old Broadbrim, Old Cap Collier, Old Ferret, Old King Brady, Old Lightning, and many others. Perhaps the most popular dime novel detective, Nick Carter, made his first appearance in *The New York Weekly* in 1886.

Nick Carter was a transformational character, who appeared in all formats of popular fiction, including dime novels, pulp magazines, and paperbacks, as well as being featured in films and radio and television programming. First created by Ormond G. Smith, the scion of the Street & Smith publishing empire, the Nick Carter stories never were credited to an author, since Carter himself ostensibly wrote the tales. While never especially well-written, the Nick Carter stories demonstrated the value of a well-known brand, as readers sought out any publication featuring his name. As a result, other popular characters with a crime theme emerged in pulp magazines, including Walter B. Gibson's *The Shadow*, Seabury Quinn's *Jules de Grandin*, and Rex Stout's *Nero Wolfe*.

Pulp authors enjoyed less status and received lower payments for their work than authors who published in the slicks, such as Agatha Christie, Ellery Queen, and other major mystery authors.



A 1910 issue of *Old Sleuth Weekly* featuring the story "Old Sleuth to The Rescue." The character of Old Sleuth began appearing in *The Fireside Companion* story paper in 1872 and first popularized the use of the term sleuth to mean a detective.

Nonetheless, pulp authors enjoyed a cult-like following among loyal readers. Certain authors who began working for the pulps later were recognized as masters of the crime genre, including Dashiell Hammet, Erle Stanley Gardner, James M. Cain, and Raymond Chandler.

Mainstream book publishers and slick magazines from the 1920s through the 1950s most commonly were part of the subgenre known as the "whodunit," short for "Who done it?" While whodunits and puzzle problem plots were not unknown in dime novels, pulps, and thrillers, these publications more commonly focused upon private eyes, police procedurals, supernatural tales, horror stories, and hard-boiled detectives. Mickey Spillane's Mike Hammer, who first appeared in 1947 in *I, the Jury*, was immediately

successful, with the first novel selling over six million copies. Although tame by contemporary standards, Spillane's books featured more sex and violence than was common at the time. Thrillers were popular with commuters who read them on the train or bus and as weekend and vacation reading. Although often savaged by critics, the genre was popular with the public and often saw cross-over success in films and comic books. Such works dealt with sexual themes, including extramarital intercourse, homosexuality, and loneliness, that were eschewed in more mainstream novels.

Up through the 1960s such forms were considered to be of lesser quality than other forms, and works of crime fiction that originated as dime novels, pulps, and thrillers were largely ignored except by devoted fans. As more readers and critics became familiar with crime fiction that had long been dismissed as pulp fiction, certain authors, especially Chandler, Hammett, and Cain, began to be viewed in a more favorable manner. Today, many who began as the writers of dime novels, pulps, or thrillers have received respect and acclaim from the academy, with university seminars and symposiums devoted to their work. As sexual mores evolved, dime novels, pulps, and thrillers were reexamined and reevaluated by a new generation.

Lasting Influence

Dime novels, pulps, and thrillers have had lasting influence. The works of many modern and contemporary authors such as Ross Macdonald, Robert B. Parker, Marcia Muller, Sara Paretsky, and Sue Grafton show the influence of dime novels, pulps, and thrillers from the first half of the 20th century. As women's liberation and the civil rights movement have become more accepted, many authors have re-examined genres such as police procedurals and hard-boiled private eyes so that they reflect more contemporary perspectives. Many feel that the themes originally developed in dime novels, pulps, and thrillers provide an ideal form in which to examine many problems and issues facing the contemporary United States.

Dime novels, pulps, and thrillers explore themes that have a dual allure to readers that are both lasting and persistent. On the one hand, the world is often portrayed as a dangerous and uncertain place where bad things happen to ordinary

citizens. On the other hand, avenging forces exist that punish criminals and protect the innocent. While simplistic, occasionally vulgar, and often violent, the themes developed in dime novels, pulps, and thrillers have a durable appeal that continues to entice and enthrall readers. As the lines between books and other written works, films, and television have blurred, these themes can also be explored more readily.

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See Also: Buntline, Ned; Christie, Agatha; Gardner, Erle Stanley; Grafton, Sue; Hammett, Dashiell; Literature and Theater, Crime in; Literature and Theater, Police in; *National Police Gazette*; Paretsky, Sara; Poe, Edgar Allen; Spillane, Mickey.

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Discretionary Decision Making

Modern criminal justice has evolved into a complex and loosely coordinated set of systems characterized by formality in rules and bureaucratization in organization. From a system composed of amateurs and extremely local and community-focused prior to the 18th century, criminal justice systems transformed into ones with significant growth in size, professionalism, and specialization. The codification and expansion of substantive and procedural criminal laws in the last two-plus centuries has increased pressures to use limited resources efficiently, to be selective in enforcement, and to

be responsive to sovereigns on the part of criminal justice institutions and actors.

Today, law enforcement, adjudication, and correctional reform involve a significant number of actors making decisions about individuals and individual cases at multiple stages of each system. Coupled with the differences in the substance and operation of multiple systems, the potential and realization of significant gaps and inconsistencies between justice ideals and real practices make most criminal justice decisions potentially consequential and problematic. The ability to make decisions translates into considerable levels of power and resistance held by criminal justice actors, which also highlight the need to examine the policy, implementation, practice, and evaluation realities in modern criminal justice systems.

The exercise of power and authority by police officers, judges, prison wardens, and parole boards is highly diffused and hidden, making any examination and accounting of discretionary decisions be invariably politicized and open to varying interpretations. The growth of discretionary decision making paralleled the growth of criminal justice and societal changes in terms of increased heterogeneity, urbanization, and industrialization.

Diversity, anonymity, and standardized and bureaucratic provision of criminal justice services required formalization and the ability to process greater volumes of cases. The desire and ability to regulate the enforcers in their decision making was and continues to be limited (only the courts were able to exert any meaningful check on discretionary decisions but had few resources to independently and thoroughly monitor these decisions).

Only the due process and civil rights revolution supported by an activist higher court resulted in greater attention being given to discretionary decision making, but this was short-lived and superseded by rising crime rates and the reemergence of the crime control model. For these reasons, discretionary decision making was given greater attention in the 20th century, especially the second half of this century. Presently, most observers recognize that discretion is inevitable and the focus is on how to control such choices so as to minimize any negative externalities resulting from the making of such decisions.

Background

Discretionary decisions involve judgments and choices in relation to arrest, sentencing, rehabilitation, parole, and countless other decisions made by criminal justice actors. While noncriminal justice actors are influential, their decision making is more limited, sporadic, and specific to particular ends and, hence, the exercise of their discretion has not received extended scrutiny (examples would be the discretion of jurors and community correctional actors). However, the development and evolution of juvenile justice systems accompanied by the growth of community corrections presents a whole gamut of discretionary decisions being given a greater degree of emphasis in the last four decades.

The sources of discretion are varied and involve a mix of formal and informal factors. The allocation of power and the degree of discretion granted for any particular decision reflects value choices made in the larger society. Formal discretion reflects authoritative and legitimacy concerns with the distribution of power. Legitimate use of power and immunity from decisions was justified on the basis of critical functions provided by particular actors, including being fair, objective, and unbiased in enforcement of laws and dispensing justice.

Following Weberian analysis, the historical growth of criminal justice systems with a specialized set of personnel signified formalized discretionary powers and followed a division of labor across and within governments. Early modern societies placed greater emphasis on checking discretion through the organization of legal and executive governments than on balancing abuses of discretionary power across each branch as well as levels of government (as in the federal system). Discretion has been permitted to allow trained and experienced criminal justice professionals to make efficient and effective choices to fulfill the public interest and to provide flexibility to these professionals in achieving individualized justice.

The Eighteenth and Nineteenth Centuries

Providing individualized treatment of cases was stressed in most political revolutions, most notably the American Revolution. The humanness of the system was thought to be achievable through discretionary decisions that tempered the power

of the state, provided and protected freedoms of citizens, and made punishments proportional and fair. Proposed penal reforms in the late 18th and early 19th centuries emphasized the necessity to reform offenders through isolation from society, religious training, and hard labor while making punishments more lenient overall. Many observers have noted opposite effects from the broad and unchecked discretion resulting during the 19th century, including Jacksonian democracy emphasizing local governance. Instead, this period saw increased discipline and punishment within prisons and development of formal police forces, who served the functions of controlling surplus populations and dangerous classes produced by the spread of capitalism, urbanization, and industrialization.

With the development of legal systems and the growth of prisons (specifically, the distinctly American invention of the penitentiary), organizational and local political forces became increasingly important in discretionary decision making. Largely left unregulated, corruption and mismanagement by the police departments and prisons was rampant in the 19th century, partially because of the need to respond to urban riots and a significant increase in disorderly activities. Police were given deference and latitude to exercise their discretion without specific procedures to be followed, and these discretionary decisions were hidden from the public.

Further, many have pointed to the critical role police and corrections played in the labor markets as broadening the discretion by police to control the lower classes in the 19th century. Many of these decisions derived from vague and overbroad ordinances and laws offering extensive discretion in enforcement and interpretation. Criminal justice institutions provided vital welfare functions to poorer and marginalized populations as Western societies modernized. These discretionary decisions, then, were more directly connected to urban social problems and criminal justice systems served broader (manifest) functions than crime control and order maintenance.

The Twentieth Century

Even in the 20th century to the present, discretionary decision making is useful for a wide range of latent reasons, including increasing managerial

efficiency, serving as politically expedient, allowing criminal justice actors to do publicly unmentionable activities without concern for legal scrutiny, permitting these institutions and actors to protect themselves from criticism, and providing a sense of accomplishment in being able to make choices and discretions based on their professionalism. The classist and racist nature of discretionary decisions dictated unduly by extralegal factors would only be acknowledged toward the later decades of the 20th century when legal discrimination ended.

The trust placed in these decision makers has been historically based on the separation of powers between the three branches of government, whereby the judicial and executive branches make various enforcement, administrative, and judicial decisions and the legislative branch is limited to decisions regarding criminal laws and penal codes. The classical approach championed by Cesare Becarria targeted the significant, arbitrary, and discriminatory nature of discretionary decision making by judges and magistrates. While this discretion was proposed to be shifted to legislators, the judicial branch and, later on, the executive branch still retained considerable discretion with regard to sentencing and related decisions. Further, the growth of formal police forces and prosecutorial offices in the late 19th century resulted in most discretionary decision making powers being shifted to these actors. Most prominently, discretionary decision making was reflected in the growth of plea bargaining and the strong incentives for police and prosecutors to cooperate with each other to meet the shared goals of maintaining social order, effectively responding to crime, and providing justice.

The Progressive Era was singly the most important period of time with regard to the increase in discretionary decision making in criminal justice. Replacing formalization with professionalism and accompanied by federalization and national attention to crime, police, legal, and correctional discretionary decisions were given the stamp of approval as being legitimate and necessary if placed in the hands of trusted professionals. Ironically, efforts to depoliticize criminal justice were undermined when professionalism created a permanent set of criminal justice institutions seeking to preserve their discretionary powers with

control of this discretion regulated internally by these same organizations. In fact, a new professional and managerial criminal justice class was created and expanded considerably throughout the 20th century.

In the last century, the extent and character of formal discretion and discretionary decision making were rediscovered. Efforts to control discretion gained prominence with the work of the 1957 American Bar Association (ABA) Survey and the Presidential Crime Commission (1967) pointing to the lack of professionalism in the exercise of discretion and the considerable abuse, brutality, and use of extralegal factors in “formal” systems of criminal justice.

Various policies and proposals gained prominence to control discretion, including police use-of-force guidelines, mandatory minimum sentencing policies, and abolishing plea bargaining. Largely, these efforts were resisted by criminal justice actors for reasons that they were leading to excessive formality and rigidity, shifting discretion to other actors, and misplaced as the criminal justice systems were adequately and appropriately managing crime and risks posed by serious criminals. Ultimately, formalization of discretion and its control directly challenged the professionalism of criminal justice professionals and their discretionary decision making powers are not easily usurped or minimized.

Other Recent Developments

The exercise of informal discretion is more pervasive and historically has been considered contrary to principles of justice and governance in modern societies. Biased decision making and the abuse of discretionary powers were considered unfair and undemocratic. Nevertheless, extralegal factors continue to be prevalent in modern societies. Given the impossibility of full enforcement of laws and societal pressures for selective enforcement, the use of extralegal factors and nonlegal and non-professional norms to guide discretion is deeply ingrained in the history of criminal justice in modern societies. Colonial and premodern criminal justice systems relied exclusively on informal discretion exercised by public officials and religious and community leaders, with minimal monitoring and accounting for abuses of these discretionary powers. Dictated by community norms, discretion

was exercised with the intent to solidify boundaries and provide lessons to all members of the community.

From the 1920s (and especially during the civil rights era) onward the links between the exercise of discretion and racial discrimination on the part of the police were increasingly brought to question, and pressures to control discretion gained substantial momentum in the 1960s. Courts were willing to put pressure on the police exercise of discretion but unwilling to push for the control of discretion by legal actors (the visibility of police and the closeness with fellow court actors may explain why this was the case).

Most of the focus from the politically liberal side was on eliminating the use of extralegal factors in the exercise of discretion by the police and courts, while conservatives viewed discretion as allowing for leniency (mainly due to technicalities and excessive focus on suspect and prisoner rights, which are also extralegal factors but of a different kind) in responding to crimes and criminals. Discretion was seen as hiding patterns of social bias on the one hand and hampering effectiveness on the other hand. In the neoliberal and neoclassical contexts of the last four decades, the prospects for controlling discretionary decision making are poor at best.

Discretionary decision making as a problem was short-lived, as alternatives were impractical and nonexistent. Additionally, criminal justice systems actors were resistant to control and elimination of discretionary decision making. The wars on drugs and crime contributed heavily to making discretion a nonissue by enhancing formal discretion (increased discretionary decision making powers to the executive branch) and informal discretion (use whatever means necessary to win these wars). In current policy environments, decision making is dictated mostly by internal organizational norms and external political considerations.

Conclusion

Discretion is vital to criminal justice actors as a filtering device in classifying (and prioritizing) cases and criminals. Decision making dictated by professionals with vested interests in continuing to retain discretionary choices makes it likely that discretionary decision making will be widespread

in criminal justice in the long-term future. At the heart of discretion are deference to experts and trusted authorities and dependency on these same professionals. Criminal justice personnel expect such respect and understand the significant discretionary powers in their hands.

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See Also: Clemency; Judges and Magistrates; Justice, Department of; Race, Class, and Criminal Law; Sentencing: Indeterminate Versus Fixed.

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District Attorney

District attorneys are generally elected officials whose roles in the justice system include prosecuting violations of state and local laws on behalf of the state, ensuring a fair and equitable process, protecting victims' rights and safety, and working to ensure public safety. The district attorney of the 21st century has tremendous discretionary power over life and liberty, responsible for making decisions about whether or not to pursue criminal charges, which criminal charges to file in court, negotiating pleas, conducting trials, making sentencing recommendations, and in some states, handling appeals of criminal convictions. These responsibilities are quite unlike those of the first prosecutors in colonial America, who were relatively minor actors in local justice systems.

District attorneys, referred to more generally as prosecutors, have many different titles, including prosecuting attorney, county attorney, commonwealth attorney, state attorney, and in three states attorney general. Alaska, Delaware, and Rhode Island have elected statewide attorneys general

who then appoint deputy attorneys general to handle prosecution at the county level. In Connecticut and New Jersey, the governor appoints a statewide prosecutor who then appoints prosecutors to handle prosecution at the county level. In the remaining 45 states, prosecutors are elected by individual counties or by judicial districts. Traditionally, district attorneys are thought of in terms of the criminal matters that they prosecute. However, 54 percent of prosecutors also represent the government in civil matters. All district attorneys have jurisdiction over the prosecution of felony offenses; not all, however, handle misdemeanor offenses. Similarly, all district attorneys have jurisdiction over adult criminal matters, but not all handle juvenile cases.

Origins of the District Attorney

The origins of today's modern district attorney are not well known, and in fact, there are many opinions about how the position of district attorney emerged. The first prosecutor-like figure appeared in the mid-1600s and evolved significantly in prominence through the 1700s. The original thirteen colonies had differing arrangements for addressing prosecution. Early prosecutorial functions were conducted on a colony-wide level. From these colony-level prosecutors emerged the local prosecution function and, ultimately, the modern-day district attorney. The first prosecutor-like officer in the courts appeared in Virginia in 1643 and was known as the king's attorney. The role of this officer was largely advisory and only used when the matter before the court directly involved royal interests. The king's attorney generally did not focus on domestic crimes, and as such, crime victims in the colonies had no formal advocate in the courts. Nearly a decade later, colony-wide attorneys general began to emerge with a focus on domestic criminal matters. These early attorneys general had the responsibility of representing colonial interests; however, here too the roles varied from more advisory-type roles to investigative roles. Zealous advocacy in court on the part of the colonies by attorneys general was limited.

Soon thereafter, the first true "local" prosecutors were created, which were ultimately the precursors to the modern-day district attorney. Recognizing a need to provide deputy attorneys to handle criminal matters in outlying counties

of the colonies, colonial governments and/or the attorney general began appointing deputy attorneys general. Because of the importance of the deputy attorneys general in meeting local county needs in courts, the appointment of the deputies increasingly occurred at the county level. In 1711, in Virginia, local men were nominated by the colonists to serve as their county-level deputy attorney general. In 1732, counties in Virginia began paying salaries to the deputy attorneys general, thereby creating the first locally appointed and locally paid prosecutor.

Around the same time, in the former Dutch colonies of New York and New Jersey, another form of local prosecution was emerging—the "schout." Like the attorneys general and deputy attorneys general in many of the colonies, the schout had responsibility for handling domestic criminal matters but, unlike the attorneys general and deputy attorneys general in other colonies,



New York District Attorney Thomas Gagan photographed in late 1914 or early 1915 while he was serving as the prosecutor in a murder trial in Rockland County, New York.

had two distinguishing characteristics. First, the schout's role in some areas included an investigatory function, which meant that the schout acted essentially as a quasi-sheriff and prosecutor. Second, a schout was essentially a private prosecutor, retained and paid for by crime victims. In return, the schout would file charges that victims wanted pursued and advocate on their behalf in court.

In 1704, Connecticut became the first colony to pass a law creating a formal system of public prosecution, abandoning private prosecution. By the mid-1700s, prosecutors were operating at the county level and in courts of original jurisdiction in most of the colonies. It wasn't until the mid-1800s that the system of publicly elected prosecutors began to emerge. Between 1820 and the American Civil War, there was increased concern with the ability to hold prosecutors accountable for their work and methods for reviewing prosecutorial actions. In response, states began providing for publicly elected prosecutors. Thus, by the end of the 1800s, the system of public prosecution in America was fully realized, although the role of the prosecutor would continue to undergo significant expansion into the following century.

Case Screening and Plea Bargaining

Between the American Civil War and the early 1970s, prosecutorial power and discretion increased significantly, placing today's district attorney among the most powerful actors in the modern-day criminal justice system. Rapidly growing cities and changing demographics of the populace brought about by mass immigration during the Industrial Revolution virtually eliminated informal solutions to criminal activity and deviant behavior. Professional police agencies were developed and flourished; correctional facilities and departments emerged and grew; and the need for a more professional prosecution function to meet these new demands on the justice system increased. Up to this point, victims and the public often served as the source of criminal complaints to local prosecutors. Now police responded to the victims, conducted the investigations, and brought the matters to the prosecutors' offices. Prosecutors' offices began to grow in size with the volume of cases, as did the need for mechanisms to manage the increasing caseload and still provide for due process. These mechanisms—case screening and plea

bargaining—also became among the most controversial forms of prosecutorial power.

Case screening is the function that gives prosecutors unparalleled power over life and liberty. As prosecutorial caseloads began to increase substantially, there was a pressing need to create a mechanism to control which cases would be pursued and which would not. Standards began to emerge related to evidentiary sufficiency (whether or not the evidence is sufficient enough to convict beyond a reasonable doubt) trial sufficiency (i.e., the likelihood that a case could be won at trial), and whether or not prosecution of the case was in the best interest of the state. These standards were, and still are, used to evaluate the strength of a case and to make determinations about whether formal charges will be filed in court and, if charges are to be filed, what the appropriate charges should be. Although the new case screening processes were thought to encroach upon the traditional case-initiation role of the police, who up to this point made decisions about charges, the processes were upheld in case law and further solidified in the 1967 President's Commission on Law Enforcement and Administration of Justice.

The other controversial practice, plea bargaining, is perhaps the most studied and highly criticized practice of the traditional prosecutor and remains a point of contention in modern-day prosecution. The practice allows the prosecutor to further control caseload by offering and accepting pleas in exchange for concessions in the defendant's sanction. In the plea bargaining process, prosecutors can negotiate the number and type of charges and the types of sanctions that the defendant may face. This practice, which generally did not exist prior to the Civil War, became the most frequent type of case disposition by the end of the 19th century. It is this singular practice that significantly altered the justice system—moving it from a jury-based system with its power rooted in the judiciary to a plea-based system in which the power lies with the local prosecutor.

It is also during this period (from the mid-1800s through the 1970s) that the day-to-day activities of the district attorneys' offices were solidified. In addition to reviewing cases brought to the attention of the office by law enforcement and making decisions about what, if any charges

to file, attorneys became engaged in all facets of case processing—making appearances in all hearings, convening grand juries in states that provide for such a practice, interviewing victims and witnesses, participating in jury selection for trial, and making recommendations for sanctions. In addition, in some states, prosecutors began to handle criminal appeals of misdemeanor offenses. Apart from the actual processing of cases, prosecutors began acting in an advisory capacity to law enforcement—conducting training on the law and legal process and providing input on the investigations. At each decision point in the adjudicative process, the prosecutors' influence has increasingly greater power because of the discretion afforded to them. Finally, the autonomy of the district attorneys' offices was solidified, allowing them discretion with regard to the internal policies and practices that would be used in their jurisdiction with regard to how their offices would be structured, how cases would be assigned and handled, and even the authority line attorneys would have with regard to specific case decisions. As a result, there is variation across states, and even within states, as to how district attorneys' offices operate.

By the 1970s, a new evolution of the prosecutorial role began—the movement toward community-based prosecution. If the other significant developmental periods in prosecution are marked by increasing power and representation of the state, the movement toward community-based prosecution has expanded the district attorneys' domain into the larger social goals of crime control and problem-solving. A slight shift in focus includes the invocation of the interests of the communities that district attorneys serve, in addition to representing the interests of the state.

A number of changes in the legislative and social climate can be related to the newest focus for prosecutors. On the heels of the civil rights movement and antigovernment sentiment in the late 1960s came significant reform in the justice system, including recognition that the community was as much a patron of the system as were the state and crime victims. The upsurge of drugs and new laws increasing the penalties for drug use brought an unprecedented volume of cases into the criminal justice system, creating significant backlogs, and reform began to find alternative ways of handling

certain crimes. Closures of mental health institutions and decreasing services for at-risk populations brought new types of offenders, with new problems under the purview of the justice system. The district attorney, as the gatekeeper to the justice system, was poised to configure modern prosecution with modernist ideologies in a way that would have a more meaningful impact on public safety and address the underlying problems associated with certain types of criminal offending, particularly low-level, nuisance-type crimes.

Proactive Approach to Crime

Alternatives to traditional prosecution strategies emerged that embodied the elements of the traditional prosecution period (efficient and equitable case processing) and sanction setting with the more modern strategies focused on problem solving to prevent and reduce crime, strategic investment to build capacity for responding to crime, and a leadership role in restoring the social institutions that provide both formal and informal crime control. The practices that emerged included mediation, arbitration, and victim restoration, which were intended to find lower-cost alternatives to traditional case processing for low-level offenses and focused on dispute resolution in lieu of criminal charges. Coordination with law enforcement and other justice system sectors also became prevalent to address specific forms of crimes that victimize whole communities. At the same time, this coordination produced an increased volume of cases that required swift and certain sanctioning, and the practice of vertical prosecution became widespread. Vertical prosecution is the practice of assigning the same prosecutor to a case from the initial charging decision through its final disposition. With vertical prosecution comes a connection between the line attorney, the victim, and the community that harkens back to the relationships of the early prosecutor to crime victims.

A natural progression, then, was increased interaction with community members to address crime and disorder. In this model, district attorneys' offices take a proactive approach to crime with an emphasis on identifying the problems associated with criminal offending, particularly in low-level offenses, as well as quality-of-life issues and forming and solidifying partnerships with law enforcement and other allied professionals such

as schools, mental health agencies, treatment programs, and businesses to bolster their institutional capacity for both informal and formal problem solving. While traditional case processing activities still occur, line attorneys are often assigned to geographic areas within the jurisdiction to handle the cases that come from these communities.

These new roles of the modern district attorney are not without controversy. With prosecutorial approaches influenced by the community, concerns arise that access to justice varies, with some populations having greater access than others. Similar concerns are raised that question the appropriateness of the new problem-solving and institution-building roles as overstepping the legal authority of the prosecutor's office or encroaching upon the traditional investigative and case initiation roles of law enforcement. In addition, even though the intent behind the movement toward community prosecution was to help quell the crush of low-level offenses entering the system, there are unanswered questions about whether the focus on these offenses diverts limited prosecutorial resources from more serious crimes. Finally, the emphasis on nontraditional approaches to these crimes and less reliance on formal adjudication is viewed by some as "soft on crime."

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See Also: Plea; President's Commission on Law Enforcement and the Administration of Justice; Trials; Wickersham Commission.

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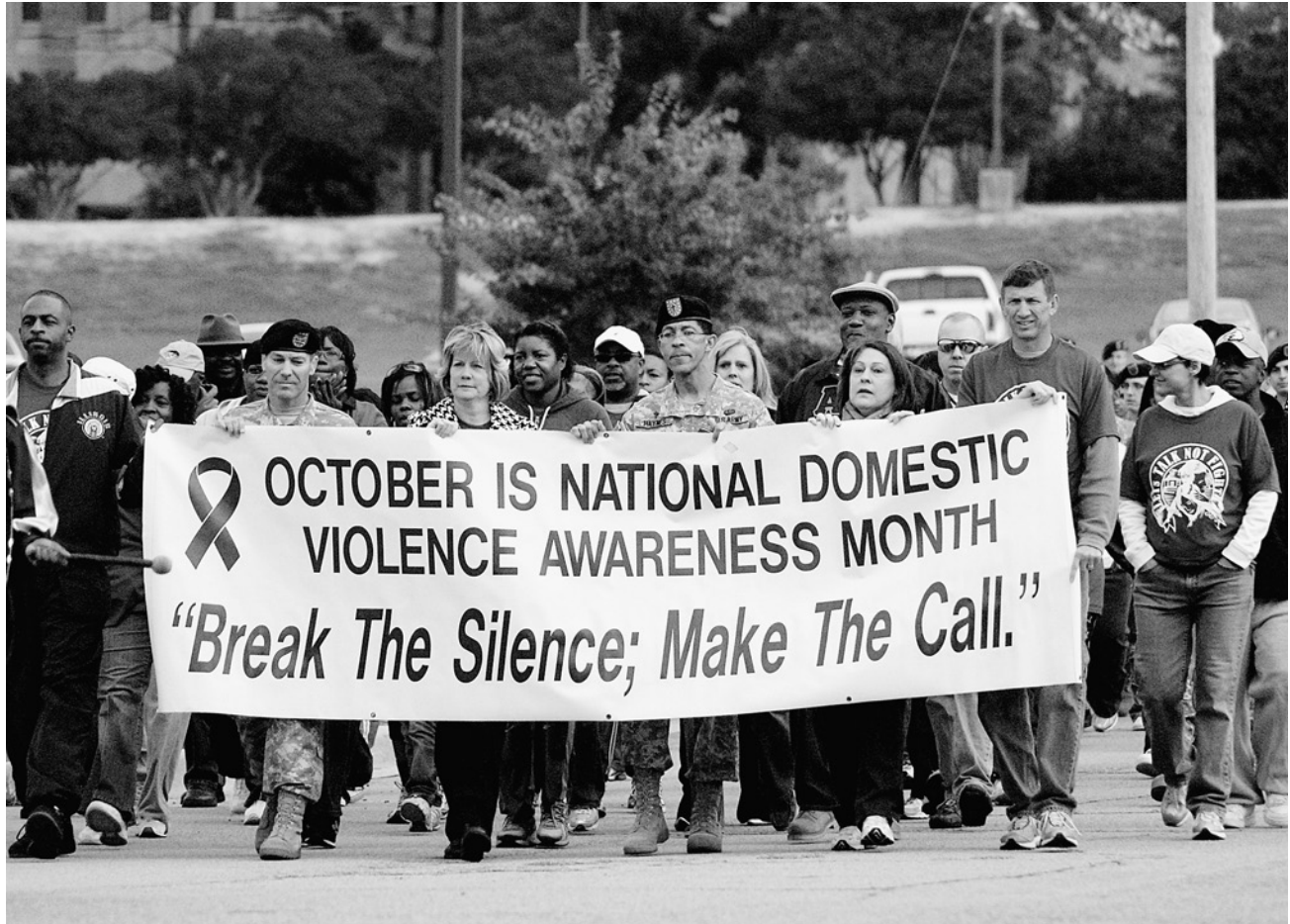
Domestic Violence, Contemporary

Domestic violence refers to the abuses such as name-calling, beating, stalking, rape, and even murder that occur between married or unmarried couples who currently live or previously have lived together. The Bureau of Justice Statistics gathers information on intimate partner violence, but the bureau acknowledges the difficulties in tracking such information. The bureau finds that women from nonwhite groups, particularly African American women, experience higher rates of domestic violence than women from white groups. Also, intimate partner violence occurs within ethnic groups more frequently than across ethnic groups.

Earlier initiatives surrounding domestic violence resulted in bringing the once-private issue into public awareness, educating people about the signs and dangers of it, and creating and enforcing legislation designed to protect victims and punish abusers. In addition to seeing a continuation of the previous efforts, the first decade of the 2000s saw some shifting in the news coverage of domestic violence, emerging technologies changing both public education and domestic violence crimes, growing money issues impacting domestic violence programs in various states, continuing initiatives from previous decades and the developing of new ones, and increasing understanding of domestic violence in various situations.

Media Coverage

Early news coverage regarding domestic violence crimes blamed the victims and sidestepped blaming the abusers. This approach has shifted slightly in recent years, particularly among celebrity news coverage. Actors such as Mel Gibson and Charlie Sheen drew media attention after being accused



The early 2000s brought many attempts to raise awareness of domestic violence and improve services for victims of abuse. The 2000 Violence Against Women Act mandated funding for programs run through the U.S. Department of Justice and the Department of Health and Human Services, and President Barack Obama also signed a Family Violence Prevention and Services Act in late 2010. The domestic violence awareness march shown here included members of the military in Columbia, South Carolina, in 2009.

of domestic violence, though coverage of Gibson did more to highlight Gibson's mean personality than to reinforce the seriousness of his crimes. Pop singer Rihanna received coverage for reports of domestic abuse from her then boyfriend, Chris Brown. While Rihanna received some media sympathy but no blame for what happened, the media also avoided calling for Brown's punishment.

Other celebrities took advocacy positions on the issue. Some celebrities shared their stories of domestic violence on the consciousness-raising Website endabuse.org. Still other celebrities participated in specific initiatives. For example, *Law & Order: SVU* star Mariska Hargitay participated in a 2010 documentary titled *Telling Amy's Story*, a public television program that

attempted to raise awareness about domestic violence and its effects.

Other documentaries served as focal points for multimedia initiatives. Olivia Klaus's *Sin by Silence* (2008) follows the stories of several incarcerated women who murdered their abusers and chronicles their involvement with Convicted Women Against Abuse (CWAA). The documentary became a focal point for a national consciousness-raising tour, which included multimedia offerings that employed various social networking connections such as Facebook, Twitter, Flickr, MySpace, and a dedicated Website. CWAA founder Brenda Clubine also maintains a blog (brendaclubine.com), where she writes about her experiences and advocacy efforts.

Domestic Violence and the Internet

The proliferation of the Internet and the ease of setting up Websites has allowed domestic violence organizations to provide information to sufferers, survivors, and volunteers. Several organizations online include the National Coalition Against Domestic Violence (ncadv.org), the National Domestic Violence Hotline (thehotline.org), the Family Violence Prevention Fund (endabuse.org), and the U.S. Department of Justice's Office on Violence Against Women (www.ovw.usdoj.gov).

While new technologies offer opportunities to educate the public, they also offer opportunities to further oppress the victims of domestic violence. In the early 1990s, stalking first became recognized as part of domestic violence activities, and with the proliferation of new and easy-to-use technologies in the 2000s, instances of it have increased dramatically. Small cameras can track activities within the home, while global positioning devices allow stalkers to track their victims wherever they go. Disposable cell phones have allowed harassing phone calls to go untraced. Other devices can follow victims' activities online, recording Websites they visit, instant messages and e-mail they send and receive, and even every keystroke they make. In recognition of this online stalking, many domestic violence Websites feature an "escape key," which users can click to be redirected to a "safe" site such as weather.com or google.com.

Challenges and Outlook

With the recession hitting U.S. federal and state budgets, and with government deficits increasing, domestic violence programs have faced reduced or cut funding. In summer 2009, California Governor Arnold Schwarzenegger eliminated the entire \$20.4 million budget for the state's domestic violence programs, including its 94 women's shelters. Six shelters closed within six weeks of the cuts, and many others were forced to cut back on staff, services, and operating hours. In October 2009, the California legislature approved \$16.3 million for the programs, which the governor then approved. Three of the shelters managed to reopen. Similar budget reductions occurred in New York and Rhode Island.

Legislation has furthered efforts begun in the previous decades. First approved in 2000 and renewed in 2005, the Violence Against Women

Act mandated funding for programs run through the U.S. Department of Justice and the Department of Health and Human Services. Other legislation continued efforts to recognize the impact of domestic violence on children, such as the Keeping Children and Families Safe Act of 2003. In late 2010, President Barack Obama signed the Family Violence Prevention and Services Act, which further recognized that domestic violence affected not just spouses but other household members, particularly children.

Other newer developments have included the recognition of the situational differences in domestic violence. For example, social expectations stipulate that women become the victims and that men become the abusers, but sometimes the roles get reversed. According to the Federal Bureau of Investigation, on average, about one man is murdered by a domestic partner each day, and this type of murder accounts for about 5 percent of murders of men each year. For women, the rates still hovered around 34 percent of male abusers killing their victims in 2009–10, though overall the rates decreased slightly. Starting in the 1990s and growing in the 2000s, the situations surrounding male abuse victims became a focus of research and advocacy. Another focus addressed those without convenient access to services, such as women living in rural communities.

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See Also: Child Abuse, Sociology of; Children's Rights; Domestic Violence, History of; Domestic Violence, Sociology of; Obama, Barack (Administration of); Violence Against Women Act of 1994.

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Domestic Violence, History of

Domestic violence refers to abusive activities that occur between married or unmarried couples who currently live or previously have lived together. Harmful activities include verbal abuse such as name-calling, emotional manipulation such as withholding affection or victim blaming, physical abuse such as hitting or beating, and sexual abuse such as rape. Other activities include forms of stalking, such as monitoring all the victim's movements and communications, and forms of public humiliation, such as through defamatory Websites. The victim endures both physical and psychological traumas as a result of the violence. While some victims escape and survive, other victims die at the hands of their abusers.

Abusers in these relationships typically are male, and the victims are typically female. This construction follows the gendered expectations in both historical and contemporary societies that women hold less power and fewer rights in social and cultural positions. Early practices and later laws reinforced these gendered assumptions, even though domestic violence occurs among homosexual couples and occurs between a female abuser and a male victim. Early laws in the United States followed British and European models, though the laws changed slowly from the country's founding until the 1960s and 1970s, when social movements, particularly feminist movements, called

attention to the need for domestic violence awareness and prevention, for survivor support and empowerment, and for proper legislation and enforcement within both communities and police and legal systems.

Early History

Early British and European ideas about domestic violence came from the Romans and later the Catholic Church. During Roman times, the Laws of Chastisement permitted husbands to beat their wives with an implement no larger in circumference than the base of the husband's thumb; this was known as the "rule of thumb." Husbands held complete control over their wives' lives and fates, and husbands even could divorce or murder them. Within the Catholic Church, wives were expected to submit and devote themselves fully to their husbands, and in the 15th century, Friar Cherbubino of Siena's *Rules of Marriage* condoned wife beating as part of a husband's role as a judge to his wife's soul. Overall, these matters remained private and were not considered part of public discourse. Following British common law, early U.S. laws first allowed wife beating with an implement that followed the rule of thumb. Later, Puritans prohibited family violence and some states made it illegal, but enforcement of the laws remained lax.

Legislation throughout the early and mid-1800s started with reinforcing the husband's right to beat his wife and eventually moved toward criminalizing the act of wife beating. An 1824 case in Mississippi upheld that a husband could beat his wife only in cases of emergency. In 1857, a Massachusetts court acknowledged marital rape. In 1871, Alabama became the first state to withdraw a husband's right to beat his wife, while in 1882, Maryland became the first state to make it a crime. Other states followed suit in the late 1800s, but the punishments for these crimes were weak or remained unenforced.

Women faced difficulties in getting divorces during the 1800s, and getting them on grounds of domestic violence proved even more challenging. Cruel treatment became grounds for divorce in the early 1800s in some states. Alcoholism became recognized as grounds for divorce as early as the 1830s, and most divorces were granted on these grounds. Not until 1895 did abuse become grounds for divorce.



This 1782 drawing pokes fun at British Judge Francis Buller for his support of the common law that allowed wife beating with an implement no thicker than a thumb. He is shown carrying bundles of sticks while another man prepares to strike a woman.

In the early 1900s, the first family court appeared in Buffalo, New York. The civil court was intended to handle domestic issues, including domestic violence, through intervention and reconciliation instead of through criminal punishment. This separation moved domestic violence out of the criminal court, suggesting its lesser importance to other crimes. Because of the family court system and other influences, domestic violence cases remained personal issues, not social ones, with explanations pointing to individual or pathological causes and with solutions to crises occurring through mediation, not arrest or imprisonment.

Women's Movements

The various civil rights movements of the 1960s brought about radical upheavals in U.S. society,

and laws and criminal justice activities relating to domestic violence issues began to change. A key change occurred with the fundamental idea of domestic violence: Instead of domestic violence remaining a private issue, efforts were made to make it a public one, following the new “personal is political” thinking supported by some aspects of the feminist movements. In the 1960s, courts continued to send domestic violence cases to the family (civil) courts, but social organizations began to address the needs of victims. As part of cooperation with Al-Anon programs, for example, Rainbow Retreat in Phoenix, Arizona, and Haven House in Pasadena, California, offered shelter to women abused by alcoholic husbands.

The feminist movement pushed the outreach to abused women forward. Abused women's stories brought into the public eye created a fuller picture of the realities of domestic violence, its manifestations, and its effects. Shelters for battered women began to open across the country, including one of the first in Maine in 1967, and some received Title XX funding to expand staff and services, which included hotlines and counseling. Educational programs, however, received no funding support at the time. Women attempting to escape abusive husbands still faced multiple challenges, such as ensuring personal safety, securing employment, and getting welfare. Many cities denied welfare assistance to these women because of their husbands' incomes.

Grassroots efforts grew in the 1970s. One of the first groups was Women's Advocates, which formed in 1971 in Minneapolis/St. Paul, Minnesota; in 1974, the organization purchased a house for a women's shelter. Other groups formed to engage women's empowerment, such as the Women in Transition group of Philadelphia and Transition House in Boston. On the legal side, states upheld laws that allowed victims to bring criminal charges against their abusers, but policing programs such as ones in California and Ohio still attempted to avoid making arrests in domestic violence calls. Police reluctance to make these arrests resulted in several lawsuits filed against departments in Los Angeles and Oakland, California; New York City; New Haven, Connecticut; Chicago; and Atlanta. Legislation shifted to allow police officers to make arrests without warrants in these cases, such as in Washington, D.C., though

critics claimed that police still avoided it whenever possible. Officers found reasons to avoid the situations, such as citing the couple's refusal to cooperate or the couple's conflicting versions of events.

Other efforts recognized the unfairness that women suffering from domestic abuse experienced through the press, the public, and the legal system, with women being blamed for the abuse and with their being compared to a stereotyped helpless victim. In reality, though, battered women sometimes killed their abusers. A 1976 case centered on Francine Hughes, who had suffered abuse at the hands of her husband since the early 1960s and who had murdered him. Instead of a jail sentence, she pleaded temporary insanity and was acquitted. Another case in Washington State, *State v. Wanrow*, recognized that imminent danger and other factors were different for women than for men and thus allowed women to be judged differently than by male standards. Along with "battered spouse" and "battered woman" becoming part of the International Classification of Diseases, these rulings opened the door for battered woman syndrome to become a viable defense. While the court cases, classification, and research raised awareness of the battered woman's experiences, the courts still sentenced women who murdered their abusers to long sentences and repeatedly denied them parole. Brenda Clubine was sentenced to 17 years to life for murdering her abuser in 1983, and in 1989, from prison, she founded an organization called Convicted Women Against Abuse in an attempt to raise awareness about these issues.

Contemporary Domestic Violence Issues

In addition to the multiple organizations founded and shelters opened during the 1970s, state and federal governments began making attempts to recognize domestic violence, to pass legislation, and to fund other initiatives. The first Take Back the Night rally happened in 1977. The National Coalition Against Domestic Violence started in 1978. The Domestic Violence Act of 1978 passed in the Senate but failed in the House of Representatives.

Women's monetary and legal struggles persisted into the 1980s. After Ronald Reagan's election to office, in 1981 the Office on Domestic Violence was dismantled, and its remaining funding dwindled so that no other federal programs

received financial support. Funding for state-level initiatives continued through Title XX grants, and the Ford Foundation began offering grants to organizations such as the Women of Color Task Force of the National Coalition. In 1980, a proposed Domestic Violence and Services Act failed to pass in the Senate. In 1984, Lenore Walker wrote the first book-length treatment on *The Battered Woman Syndrome*. Later in the decade, the syndrome became a key component in courts in terms of training officials and prosecuting cases.

The awareness and outreach efforts also continued, addressing key issues to create a fuller picture of domestic violence across different legal and social organizations. One study revealed that mediation techniques favored by policy proved ineffective. Other initiatives recognized the place of domestic violence within the military, among both women serving and military wives. In 1981, Domestic Violence Awareness Week was recognized for the first time. The number of shelters also grew significantly, and some shelters even turned away victims because of insufficient capacity.

Significant advances on multiple fronts occurred in the 1990s. In legal changes, in 1992, California passed the first state law that established stalking as a crime. After several attempts dating back to the 1970s, Congress passed the Violence Against Women Act in 1994. The act offered funding for domestic violence services and training for police and court officials. Further, the act granted victims the right to sue in civil courts for gender-based crimes. The medical implications also received some attention. In 1992, U.S. Surgeon General Antonia Novello established abuse from husbands as the key cause of injuries in women ages 15–44. Further, the American Medical Association acknowledged the risks of domestic violence through suggesting guidelines for screening women for its signs. Domestic Violence Awareness Week expanded to become Domestic Violence Awareness Month in October 1997 and later recognitions of the month include the Silent Witness Project, Take Back the Night rallies, and the Clothes Line Project.

Increasing Awareness

The 1990s also saw grassroots organizational efforts attempt to assist members of different groups to find help for domestic violence. The

Gay Men's Domestic Violence Project (GMDVP) started in 1994 in response to other programs denying services to gay men. The project grew to include a telephone hotline, legal help, and counseling services, as well as rent assistance programs and initiatives to rewrite the laws to include all gender identities and sexual orientations. Other groups addressed different ethnic groups and their specific needs, such as Asian Task Force Against Domestic Violence, founded in 1992, and Alianza, National Latino Alliance for the Elimination of Domestic Violence, founded in 1997. The Arab American Chaldean Council also offers the Safe at Home Project, in conjunction with HAVEN. The organizations developed following initiatives that recognized the different experiences with domestic violence among immigrants and other groups in the 1980s.

Celebrity news coverage of domestic violence cases began grabbing headlines in the 1980s. A key case from the 1980s occurred between boxer Mike Tyson and actress Robin Givens, who accused Tyson of abuse in 1988 and was granted a divorce in 1989. An even more sensational case occurred in the early 1990s, when O. J. (Orenthal James) Simpson was accused of murdering his ex-wife Nicole Brown Simpson and her friend Ron Lyle Goldman. The news media covered the police chase of Simpson's white Chevrolet Blazer down California highways, and it covered the trial in which Simpson was acquitted. In 1997, Simpson lost a civil trial that found him liable and was ordered to pay \$33 million in damages to the families. Both cases pushed awareness of domestic violence issues into the new century.

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See Also: 1777 to 1800 Primary Documents; Domestic Violence, Contemporary; Domestic Violence, Sociology of; Simpson, O. J.

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Domestic Violence, Sociology of

The historical context of domestic violence can be understood when one examines how society has named this event. In colonial America, domestic violence was referred to as "wife disciplining" or as chastisement. As social and legal ideas of family and women's rights progressed, these events came to be known by terms such as *wife beating*, *wife abuse*, *family violence*, *domestic violence*, and *intimate partner violence*. Each name was led by theoretical explanations and resulted in changing social and legal philosophies and responses.

Historical and Social Context

Within colonial America, Puritans were the only group to prohibit wife beating. Puritan law required a practice known as "holly watching" as a form of social control. This practice required that neighbors watched each other in order to keep wives free from bodily harm. However, Puritan law's approach to wife beating did not dominate as the typical justice response to the problem. Even where wife beating was illegal, courts rarely heard these cases. In Plymouth colony, for example, between 1633 and 1802, only 12 cases were brought before the court.

The early American legal and social context of domestic violence is reflected in English common law. As early as the 1780s in England, Judge Sir Francis Fuller ruled that a husband could physically discipline his wife with a weapon, as long as the weapon was no thicker than his thumb. While written reference to this English ruling is hard to

find, this “rule of thumb” was officially adopted by U.S. courts in *Bradley v. State* in 1824. Since all actions of the wife and child were the ultimate responsibility of the husband, it was at this time that the court officially ruled that wife chastisement or disciplining was a continued expectation. Furthermore, in 1879, the North Carolina court ruled in *State v. Oliver* that husbands cannot be held criminally responsible for violence against their wives as long as the violence was not cruel in nature and did not cause irreversible damage.

These court rulings fell in line with social beliefs that the wife’s place was in the home and that wives were required be obedient to their husbands. Even as late as 1962, in *Joyner v. Joyner*, the court ruled that a husband had a right to use force in order to keep his wife in line. Notions that the man is the king of his castle pushed the justice system’s response to this form of violence into the 1970s. Until then, problems of wife beating were believed to be few and far between. In most cases, the incidents were viewed as being provoked by the incorrigible wife or as committed by the mentally unstable husband. In these instances, police often dismissed calls for help as the man’s right to discipline a nagging wife. If police did make an arrest or mandate a husband to court, then prosecutors and judges often dismissed these cases. When cases did make it through the entire judicial process, sentencing often involved mandated treatment for the husband and sometimes the wife. Jail or prison time was a rare event, as was probation (a sentence in which the offender is supervised in the community by a probation officer but does not serve time within a jail or prison).

Early identification of this form of abuse did not acknowledge the victim who was not married to her abuser. Terms such as *wife battering* and *abuse*, *family violence*, and *domestic violence* depicted a family environment in which the couple was married. It was not until the civil unrest of the 1970s that these definitions began to change. With the onset of the women’s rights movement, domestic violence movement, and anti-rape movement, women began to influence social and legal change toward this problem.

The Scope of Domestic Violence

A sociological examination of domestic violence must begin with defining violence. Sociologists

(and psychologists) have identified domestic violence to include physical violence, sexual violence, stalking, economic abuse, and psychological abuse. The distinction between violence and abuse has been debated. At what point does the violence become abusive? Physical violence includes any nonsexual person-on-person or object-on-person violence, whereas sexual violence is any unwanted sexual contact or threat of sexual contact. Researchers have found that 4.8 million females fall victim to physical or sexual domestic violence every year. Males represent 2.9 million physical domestic violence victims annually. Physical violence has always been the quintessential example of domestic violence. However, it was not until the 1970s that sexual violence was learned to be a common occurrence within relationships plagued by domestic violence. It was also in the 1970s that the concept of marital rape, in which the law criminalized the rape of a woman by her husband, was recognized by the courts.

Stalking involves two or more unwanted occasions of visual, audio, or physical proximity or communication toward one individual by a current or former intimate partner. Initially, the crime of stalking was thought to be committed by a stranger and usually only famous victims ever became the subject of news reports. However, later research found that 59 percent of women and 30 percent of men are stalked by intimate partners. Additionally, contrary to popular belief, half of all victims are stalked while still in a relationship with their stalkers. Economic abuse is much more difficult to study and involves limiting a victim’s access to money, whether it is by depriving the victim of the right to work or of the right to keep what he or she earns. This form of abuse works to keep the victim trapped in the abusive relationship.

The psychological abuse experienced by victims within domestic violence has more often been examined within the field of psychology. Within this form of abuse, victims experience an array of emotional assaults that work to make the victim feel fearful, incompetent, blameworthy, isolated, and even mentally unstable. Many sociologists and psychologists have determined that since domestic violence involves so many debilitating forms of abuse, the most accurate explanation of domestic violence is power and control. It is argued that abusers feel a sense of entitlement that



U.S. Air Force personnel act out a role-playing scenario of a law enforcement confrontation with an angry spouse during a crisis intervention and domestic violence response training exercise in 2009 at Peterson Air Force Base family housing in Colorado Springs, Colorado. While there are 4.8 million female victims of physical or sexual domestic violence every year in the United States, researchers have found that there are also about 2.9 million male physical domestic violence victims as well.

justifies their need to assert their power over their victims by controlling the victim's body and mind. While this is currently the most widely accepted explanation of domestic violence, many theories have been developed over the decades.

The Etiology of Domestic Violence

Domestic violence was not identified as a social problem until the 1970s. *Family abuse* was the term for this violence in the 1960s. This was followed in the 1970s by terms such as *wife abuse* and *wife battering*, and in the 1980s by *domestic violence*. Common to all of these names, however, were their theoretical explanations.

Social constructions guide our theoretical explanations of and responses to domestic violence. To be sure, early ideas of domestic violence focused on the victims (usually women) as the primary cause of the violence. Since men had a legal responsibility for the actions of the women under

their care, they also had a legal right to physically chastise them. As a result, any violence placed on the woman was deemed to be her fault. Only when a man took the violence too far (often a subjective ruling) was he identified as a criminal. Social scientists, also holding these constructs, developed their theoretical explanations of them. As a result, psychological explanations dominated most early examinations of domestic violence.

Early examinations into the causes of domestic violence took on a clinical analysis and attempted to create batterer typologies. Many of these typologies examined the mental condition of the victim, which was thought to push the batterer toward the violence. Other explanations examined the codependency of the offender on the victim. These typologies shared a common ground in placing much of the blame and control in the hands of the victim. However, many categories within these typologies identified the batterer as mentally unstable.

Later psychological examinations, however, focused on the harms of the abuse to the victims and identified conditions of trauma, including post-traumatic stress disorder, the cycle of violence, and battered woman syndrome. Studies on the psychological damage of domestic violence became so widely accepted that many courts today allow battered woman syndrome as a criminal defense in cases where victims kill their abusers.

Sociologists, however, have a different focus. They tend to reject the abuser or victim as mentally ill and instead examine the family/relationship dynamics of domestic violence or the structural conditions that lead to such widely found patterns within this crime. Early sociological focus was placed on the family and the roles that the members played (or failed to play). Most famous was Richard Gelles and his exchange/social control theory. Gelles argued in the 1980s that the role of the family was reproduction and socialization of its members into society. Members within the family unit understand the roles they play and operate on a reward/punishment system. If there are ample controls within the family, then violence is not an option as a punishment. As a result, if a member, for example the wife, does not fulfill her role within the family unit and there are not enough controls within the family to prevent violence, then the husband will engage in abuse.

At the same time, other sociologists examined the family or intimate relationship as a violent subgroup. Straus argued that most domestic violence situations involve “mutual combat,” in which there is ongoing conflict and both partners engage in violence at various times during the relationship. Murray Straus developed the Conflict Tactics Scale (CTS) in order to measure this behavior and determined that women were just as violent as men. Further, this finding was adopted within police practices along with an increase in the arrest of women during domestic violence incidents in the 1980s and 1990s. The problem that was later identified was that, among other things, self-defense was identified as combative, that is, victims were identified as abusive. In reaction to this, feminist scholars brought forth their own set of theories.

The most widely accepted feminist theoretical explanation is the power and control model discussed above. This model has been utilized in many criminal justice laws and policies that man-

date arrest or incarceration or within treatment programs that operate on the notion that the male must change his definition of the power structure within the relationship. Intersectionality is another feminist theory used to explain domestic violence. This theory emphasizes that in addition to the sexual politics and inequalities, we must examine additional marginalities of race, class, age, and sexual orientation. People may experience more than one minority status (e.g., poor, black women). This necessarily affects their lives in a society with interconnecting systems of power and oppression.

The common denominator within feminist theories is patriarchy as the center of women's oppression. However, other sociologists argue that male entitlement cannot explain same-sex intimate partner violence or female-on-male violence. As a result, sociologists focus on these inequalities minus the patriarchy variable. Structural inequalities based on racism and classism are often examined. Another theoretical focus is on a subculture of violence. Many of these studies examine poor urban environments as the nexus for the subculture of violence in which violent norms are transmitted. Recently, however, studies of domestic violence in rural areas have called into question subcultural violence explanations. Yet other sociologists have examined the intergenerational transmission of violence theory (or cycle of violence). This theory explains that domestic violence is the product of children learning violence as a result of observing or experiencing violence in their families.

The numerous explanations have forced the continued evolution of our understanding of domestic violence. As a result, we now accept that though females are far more likely to be victims of domestic violence, males are also victims that we have yet to examine. We have branched out explanations to cohabitating and even dating couples. We understand that dating violence is commonplace, and even commonplace among teens. Further, the newest term, *intimate partner violence*, which was officially used in 2000, now incorporates the need to acknowledge and study same-sex intimate partner violence.

Evolving Debates and Solutions

Evolving debates continue to examine whether arrest should be mandated in domestic violence

cases. The debate itself reveals continued social beliefs that domestic violence may in fact be a private affair. Advocates continue to fight for equal protection for victims. As the emphasis remains on arrest, we have seen an increase in arrests of women in domestic violence cases. Many argue that women are just as violent as men, and so arrest is justified. However, there has been evidence contrary to this assumption for the past two decades. Furthermore, the increase in dual arrests since the implementation of mandatory arrest policies points to other factors.

Dual arrest refers to the arrest of both the victim and the offender. Many claim that the increased arrest of both parties may be a result of a backlash effect of the major social redefinitions of intimate partner violence. The redefinition is in fact a redefinition of the institution of the family and the place of women in society. Many claim that as society equalizes gender structures, backlash tends to occur in an effort to maintain the status quo.

Other redefinitions of domestic violence have also extended to what is an acceptable union. Historically, domestic violence was socially defined to be an act committed by a husband against his wife. As social change progressed, the term *domestic violence* was replaced in the social but not so much the legal context by the term *intimate partner violence*. This renaming was required as it incorporates violence against intimates who are not married or cohabitating or who may no longer be intimate. Dating violence was recognized as a social problem in the 1990s, especially among teenagers.

The term *intimate partner violence* also incorporates female-on-male violence and same-sex partner violence. The latter two unions have often been rejected as possibilities. First, women have often been viewed to be nonviolent while males are defined as aggressors and protectors but never as victims. Second, same-sex partners have often been denied any kind of legal protection.

Another focus of the courts has been on the defense of domestic violence victims who kill their abusers. Sociologists and psychologists have examined the causes and effects of domestic violence since the 1970s. One finding has been that many victims experienced increasing violence that results in social and mental instability. When

women kill their abusers, it has been argued that they have experienced post-traumatic stress disorder (PTSD). This is also known as shell shock among soldiers. PTSD is the psychological distress that follows traumatic events and can result in destructive—both internal and external—actions. Researchers claimed that battered women who kill experience PTSD that can be identified as battered woman syndrome. *State v. Ciskie* (1988) and *State v. Baker* (1980) were the first cases to uphold the use of battered woman syndrome evidence via expert testimony.

The use of battered woman syndrome within the court is a big step forward in recognizing the enormity of domestic violence as a social problem. However, battered woman syndrome brings the victim full circle to the mentally unstable individual as was defined prior to the social movement of the 1970s. As society progresses in efforts to eliminate violence against women, changing social definitions bring changing legal responses. While the country has made progress toward equal protection under the law, many argue that we have taken two steps forward and one step back.

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See Also: Courts; Domestic Violence, Contemporary; Domestic Violence, History of; Gender and Criminal Law; Insanity Defense; Violence Against Women Act of 1994.

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Douglas, William O.

William O. Douglas (1898–1980) was one of the most famous justices of the U.S. Supreme Court who was known for his dissents and his liberal and libertarian perspectives. He was also the longest-sitting justice on the U.S. Supreme Court, serving for over 36 years.

Formative Years

Douglas was born in Minnesota on October 16, 1898. His father was a minister. His family resided in several different places before settling in Washington. Douglas's family was not wealthy, and he had to work at odd jobs. He won a scholarship that allowed him to attend college. While working picking cherries among the very poor, he was inspired to be a lawyer. During his work in the field, Douglas observed the harsh life of the Chicanos, migrant laborers, and those who fought to help them, such as the Industrial Workers of the World (IWWs), who were shot at by the police. Douglas graduated with a bachelor's degree in English and taught for a few years. He then attended Columbia Law School, graduating in 1925, and started working for a prestigious New York law firm. He later started teaching at Columbia Law School. He quit Columbia Law School in protest over an appointment by the university president and started teaching at Yale Law School.

While teaching at Yale Law School, he specialized in business law. At Yale, Douglas developed his pragmatic approach to the practice of law, placing him in the legal realism school of legal philosophy. He taught his law school courses from a practical perspective that won him much praise. He carried this approach with him through his life and onto the U.S. Supreme Court. In 1934, Douglas was asked to prepare a report on the Securities and Exchange Commission. His eight-volume work was highly praised for his revelations of deceit, manipulations, and illegal conduct. In 1936, Douglas was appointed as a commissioner of the Securities and Exchange Commission. As a commissioner, Douglas continued his attacks on corruption and started hearings to make the stock exchange a public institution. Douglas was appointed chairman of the Securities and Exchange Commission in 1937.



William O. Douglas on the day he was nominated to the Supreme Court by President Franklin D. Roosevelt in March 1939. He was 40 years old and was the chairman of the Securities and Exchange Commission at the time.

Appointment to the Court

In 1939, the famous Justice Louis Brandeis resigned from the U.S. Supreme Court. Douglas's friend, President Franklin D. Roosevelt, appointed Douglas to succeed him. Douglas's opinions on the bench gained him lasting fame. In his first major opinion, *Skinner v. Oklahoma*, Douglas displayed his support for individual rights over government power that would become his trademark. Douglas wrote that the government had no right to force sterilization onto people who had been convicted of three felonies for "moral turpitude." He was a staunch supporter of the First Amendment. He wrote the court's opinion in the decision of *Terminiello v. Chicago* (1949), which reversed the criminal conviction for breaching the peace of a Catholic priest who had made anti-Semitic remarks.

In the decision of *Dennis v. United States* (1952), Douglas began to show his deep suspicion of government when he dissented on First

Amendment grounds from the affirmation of the criminal conviction of a Communist Party member. Douglas held the opinion that judges should not be neutral and that their primary purpose was to protect the individual person from the government. This principle was showcased in the famous opinion in *Griswold v. Connecticut* (1965), when Douglas wrote the court's opinion finding a constitutional right to privacy. As a member of the Warren Court through the 1950s and the 1960s, Douglas was a principal supporter of liberal changes brought to the nation by Chief Justice Earl Warren. For Douglas, the concept of equal protection meant that all people are equal, regardless of wealth, race, office, status, nationality, religion, age, or sex.

Environmentalism and Individualism

Douglas was widely known and respected for his love for and protection of the environment. He engaged in numerous activities to protect the environment in addition to legal decisions protecting it. He was a member of the Board of Directors of the Sierra Club. He was one of the initial supporters of the now-famous, and universally recognized as prophetic, environmental book *Silent Spring* by Rachel Carson. However, Douglas earned lasting fame (and ridicule in the minds of some people) that trees have standing to sue and protect themselves. In his famous dissent in the decision of *Sierra Club v. Morton* (1972), Douglas argued that inanimate objects should have standing to protect themselves on the basis that other inanimate objects, such as ships and corporations, have been granted such legal standing.

Douglas was a rugged individualist who frequently hiked and camped in wildernesses across the world. He had four wives. He was frequently criticized for his lifestyle and his judicial opinions. Douglas wrote numerous dissenting opinions and did not mind being the lone dissenter. In fact, Justice Potter Stewart is credited with once saying "Bill Douglas seems positively embarrassed if anyone agrees with him." Douglas, like Chief Justice Earl Warren, repeatedly incurred the ire of conservative politicians. He was frequently criticized for his opinions. Several attempts were made to impeach him, one on a stay of execution in the Rosenberg espionage case and another on

his involvement with a private foundation and his liberal opinions, but they were unsuccessful.

In 1975, Douglas retired from the U.S. Supreme Court and was replaced by Justice John Paul Stevens. William O. Douglas, like Chief Justice Earl Warren, was a groundbreaking judge who stepped forward to do justice when so many others lacked such courage. He was not widely respected as a legal scholar or author, but he was unmatched in his recognition of individual rights and human dignity and for being willing to take the side of justice against the government.

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See Also: *Dennis v. United States*; Equality, Concept of; *Griswold v. Connecticut*; Warren, Earl.

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Dred Scott v. Sandford

Dred Scott v. Sandford was a landmark U.S. Supreme Court case holding that Congress did not have the power to create citizenship for slaves, that freed slaves were not citizens as contemplated by the U.S. or Missouri constitutions, that the Missouri Compromise was unconstitutional, and that the right of property in slaves was affirmed in the U.S. Constitution. One of many catalysts for the Civil War, the court's decision, authored by Chief Justice Roger B. Taney, a slave-owning Marylander, denied people of African descent the

right to citizenship and constitutional protection. The case is perhaps the most important Supreme Court decision on the issue of slavery.

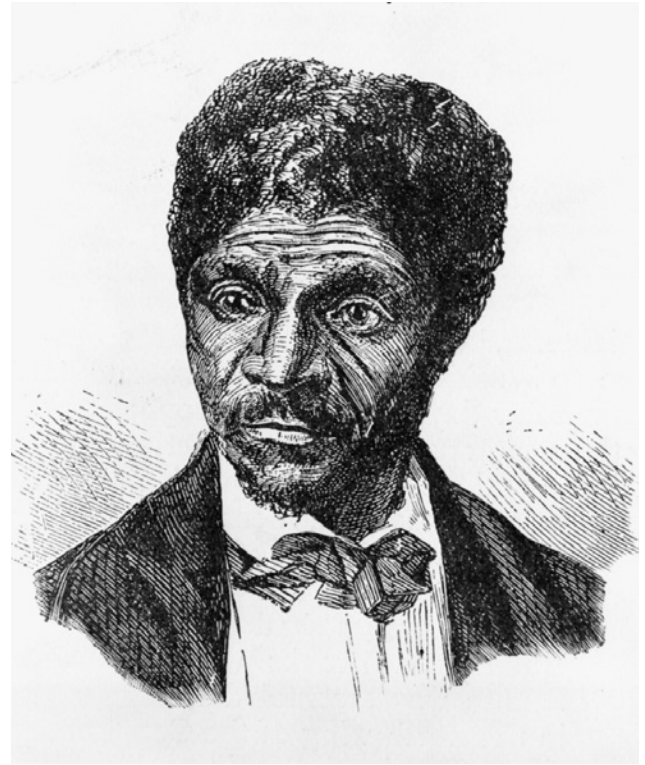
Background

John Emerson purchased Dred Scott, a slave, around 1830. Emerson was an army surgeon who transferred Scott to Illinois, a free state, and then to the Wisconsin Territory, where Scott married Harriet Robinson, another slave. The army transferred Emerson to St. Louis, Missouri, and Emerson left the Scotts in the service of clients in the Wisconsin Territory. Because slavery was forbidden in the Wisconsin Territory, Emerson technically violated the law when he hired out the Scotts in that region.

Emerson moved to Louisiana, where he met and married Irene Sanford; he then summoned the Scotts, who boated down the Mississippi River to reunite with their master and his wife. John Emerson returned to St. Louis in 1838, bringing the Scotts with him. He died in 1843. Irene Emerson's brother, John F. A. Sanford, a former Missourian residing in New York, carried out the terms of John Emerson's will, including the distribution of Emerson's property. The Scotts were among that property.

The case began in 1846 in Missouri state trial court, where Scott sued to purchase his and his family's freedom on the grounds that Scott became a free man during his travels in the Wisconsin Territory. Scott sought freedom under the "once free, always free" principle that Missouri courts previously and regularly had recognized. This principle maintained that slaves taken into free territory would become and remain free, even if they later returned to slave states. Despite this long-standing principle in Missouri, the judge dismissed Scott's suit on a technicality.

Scott was granted a new trial in 1847. His claim made its way to the Missouri Supreme Court, which, in 1848, held that Scott was a slave and therefore could not prevail in the matter. The Scotts then sued John F. A. Sanford in 1853, filing in federal court based on diversity jurisdiction, which was established because the Scotts resided in Missouri while Sanford resided in New York. The Scotts couched their claim in terms of trespass *vi et armis*, alleging that Sanford assaulted Scott and his family. Historians have debated the truth of this allegation.



A wood engraving of Dred Scott that appeared in Century Magazine in 1887. Scott sought freedom under the principle that maintained that slaves taken into free territory would become and remain free, even if they later returned to slave states.

A Pivotal Supreme Court Decision

In 1854, the First Circuit Court of Missouri ruled against the Scotts, who appealed to the U.S. Supreme Court. Montgomery Blair, who would later serve in the cabinet of Abraham Lincoln, was one of Scott's lawyers at the Supreme Court level. The case was argued before the court on February 11–14 and December 15–18, 1856. In a notorious misspelling, the U.S. Supreme Court referred to "Sandford" rather than "Sanford" in the case name.

Writing for the majority, Chief Justice Taney dismissed the Scotts' claim for lack of jurisdiction, reasoning that Scott was a slave of African descent and therefore was neither a citizen of Missouri nor of the United States within the meaning of Article III of the Constitution. Federal courts therefore could not hear the Scotts' claim. Accordingly, Taney excluded slaves or any individuals of African descent from being citizens of the United States or citizens of the several states,

establishing that such individuals fell outside the protection of the Constitution. Taney also held that Congress's power to declare certain states free or slave extended only to territories belonging to the United States in 1787. The constructive effect of this holding was that the Missouri Compromise—Congress's attempt to regulate the admission of new slave states—was unconstitutional.

Justice Taney was joined by six justices in the majority opinion: Justice James M. Wayne, Justice John Catron, Justice Peter V. Daniel, Justice Samuel Nelson, Justice Robert C. Grier, and Justice John A. Campbell. Only two justices dissented: Justice Benjamin R. Curtis and Justice John McLean, both northerners. Long after the decision, historians discovered that President James Buchanan had corresponded with Justices John Catron and Robert Grier about the case while the matter was still pending. Buchanan's correspondence could have influenced Justice Grier to join the southern majority.

The court's decision further divided a country that was already split over the matter of slavery. It led to speculation about whether newly admitted states or territories would become slave or free areas. The case remains one of the most cited and criticized matters in Supreme Court history.

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See Also: Fugitive Slave Act of 1850; Racism; Slavery; Slavery, Law of; Supreme Court, U.S.

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Drinking and Crime

The existence of a relationship between alcohol consumption (drinking) and criminal behavior has been acknowledged for decades by the public at large and by policy makers and researchers in particular. The precise nature of this relationship, however, has not been identified. As many researchers point out, the relationship between alcohol consumption and crime can only be fully understood when placed in social, cultural, and historical contexts.

Because drinking and crime are two complex social phenomena, one must look at the fluctuations in both behaviors across time and observe the social responses that accompanied these changes, while considering that the interaction of both behaviors within the social nexus is influenced by a multitude of factors. The complexity of this relationship is apparent in the piecemeal approach undertaken by scholarly literature in this field and reflected in the variety of methodologies employed. Some have examined the intersection of alcohol and crime in offenses that are alcohol specific, such as drunk and disorderly conduct, drunk driving, and underage drinking, while others have looked at a continuum of offenses that involve alcohol to a greater or lesser degree (i.e., non-alcohol-specific offenses). This latter category includes studies at the aggregate level, which contrast variations in crime rates to variations in rates of alcohol availability and alcohol consumption in various populations, and individual-level studies, which focus on criminal events in which either the perpetrator or the victim is intoxicated. Other research perspectives include attempts at explaining the relationship between alcoholism and criminality, and the relationship between alcohol consumption and aggressive behavior. Understanding the drinking-crime relationship is of great interest

to the criminal justice community, for it allows for the identification and implementation of specific intervention and prevention efforts. While decades of research on this issue confirm that alcohol correlates to criminal behavior, the issue of whether drinking causes crime is still pending.

Historical Survey

Historical research shows that, up until the mid-19th century, alcohol consumption was a social fact of life in America, although drunkenness was never well accepted. Beer and hard cider were common beverages in colonial America, and as distilled spirits became widely available in the 1700s, drinking patterns shifted to more potent beverages. Through the 17th and 18th centuries, people drank alcohol regularly, and in large quantities. Records indicate that the nation's alcohol consumption peaked around 1830. By contemporary standards, alcohol consumption was quite high in this period, with an annual average per capita alcohol consumption at about five drinks a day, which is nearly four times what it is today.

Drinking declined in the mid-1800s, a likely result of the temperance movement—a social reform to reduce alcohol consumption—in particular, that of distilled spirits. Adherents to the temperance movement viewed alcohol as the cause of serious personal and social problems. Among the early leaders of this movement was physician and signer of the Declaration of Independence Benjamin Rush. In his 1784 pamphlet “An Inquiry Into the Effects of Ardent Spirits on the Human Mind and Body,” Rush decried the use of hard liquor, warning of the mental (e.g., madness, moral degeneration), physical (e.g., jaundice, epilepsy), and social (e.g., poverty and crime) dangers of excessive alcohol consumption. Rush is credited as the first to introduce the concept of alcoholism and the view of alcohol addiction as a disease. While he did not condemn drinking per se, Rush advocated abstinence from alcohol for those with a drinking problem.

While social drinking remained prevalent at the dawn of the 19th century, the seeds of the temperance movement were planted, and Rush's ideas infused into political and religious groups that saw alcohol as a social evil, contributing to poverty, social disorganization, civil dis-

obedience, and other public order crimes and concerns. Supported by the upper classes, ministers, and business elites, the temperance movement expanded rapidly in the early 1830s. For instance, the American Society for the Promotion of Temperance (later renamed the American Temperance Union) boasted within only a couple of years after its establishment hundreds of chapters across the nation and hundreds of thousands of members who had renounced the consumption of distilled beverages. The Temperance “crusade” was on the march. By the 1850s, legislation forbidding the sale of distilled spirits had been introduced in 12 of the 30 U.S. states, and in two Canadian provinces. At the same time, the trend in annual per capita alcohol consumption was drastically declining.

The temperance movement reached its peak during the Progressive Era (late 1800s to early 1900s). In 1874, both the National Prohibition Party and the Woman's Christian Temperance Union (WCTU) were formed and pushed a morally conservative agenda that shaped public perception of drinking and social perceptions of the effects of drinking on behavior. Alcohol became vilified and was viewed as a threat to both the public and political orders. The WCTU soon became a political player and paved the way for national prohibition through protest marches, organized letter-writing campaigns, and fundraising. Soon, the belief that alcohol played a causal role in the commission of crimes became widespread. Between 1907 and 1919, 34 states enacted legislation enforcing statewide prohibition. The temperance view was officially imposed on America by the National Prohibition Act (Volstead Act of 1919), which set up the enforcement procedures of the Eighteenth Amendment to the U.S. Constitution prohibiting the manufacture, sale, transportation, or importation of intoxicating liquors.

Prohibition took effect on January 16, 1920, and did show some positive outcomes in its early years, with a significant reduction in alcohol-related health problems and alcohol-related crimes. But Prohibition did not result in an alcohol-free society. Clandestine alcohol production provided the country with liquor, and people continued to purchase and consume alcohol illegally. Enforcement of Prohibition proved to be an issue,

and criminal activity—organized crime, and violent crime in particular—associated with illegal drinking expanded to unprecedented proportions. The Twenty-First Amendment repealing the Volstead Act was signed in 1933, marking the end of the “Noble Experiment” and returning regulatory control over alcohol to the states. The effects of Prohibition on alcohol consumption persisted long after its repeal, and per capita consumption rates did not return to pre-Prohibition rates until the early 1940s.

Modern scientific interests in the explanation of the drinking-crime relationship can be traced to the late 1800s in the works of Italian criminologist Cesare Lombroso. Lombroso believed that alcohol was a contributing factor to criminality, reporting that increases in crime and alcohol consumption fluctuated at comparable rates.

American social science literature remained silent on this issue until the middle of the 20th century. In 1950, Robert Seliger expressed concerns that alcohol abuse and crime posed a threat to the social health of the nation, and pointed to a correlation between alcoholism and aggressive and violent criminal behavior, as evidenced by official police and prison statistics. Seliger warned of an occurrence of such acts at increasing rates. The alcohol-crime link was further supported in the scientific community by a seminal study of criminal homicides by Marvin Wolfgang, who pointed to the possible link between alcohol and violent crimes based on the results of his research, where homicides were frequently associated with the consumption of alcohol by one of the protagonists. By the 1970s, several studies were undertaken to better understand the relationship



This illustration shows a group of women staging a protest in a barroom against the sale of alcoholic beverages in 1874, the year of the founding of both the National Prohibition Party and the Woman's Christian Temperance Union (WCTU). Through protests such as these, letter-writing campaigns, marches, and fund-raising, the WCTU helped pave the way for national prohibition. These groups also shaped public perception of drinking as a threat to social order.

between alcohol consumption and various criminal behaviors in an attempt to explain the potential causality of this relationship. The debate then fundamentally shifted from the view of alcohol as a public order crime to alcohol as a factor contributing to criminal behavior.

Alcohol-Specific Crimes

There are crimes in which the consumption of alcohol itself is the primary object of the offense, such as public intoxication, drunk driving, and underage drinking, by contrast to crimes in which alcohol plays a secondary or indirect role.

Public drunkenness is a public order crime covered by various legal definitions, depending on the jurisdiction, such as disorderly conduct, breach of peace, drunk in a public place, and inability to care for one's own personal safety. While extending to all age categories, drunkenness as a crime tends to be associated primarily with juveniles and college students, particularly as it relates to binge drinking. Indeed, underage drinking is considered one of the biggest public health concerns of our times. Data from the 2008 National Survey of Drug Use and Health indicates that 10.1 million youth aged 12–20 reported having consumed alcohol in the 30 days preceding the survey, which corresponds to 26 percent of youths in this age group. The National Institute on Alcohol Abuse and Alcoholism reports that about 5,000 youth under age 21 die each year from incidents involving underage drinking, such as vehicle crashes, homicides, suicide, and other incidents.

Impaired driving is also a national concern, particularly as many drunk-driving fatalities involve young drivers. Currently, 44 of the 50 U.S. states prohibit possessing and/or consuming an open container of alcohol (including beer, wine, and distilled spirits) in public. Open container laws also extend to the passenger compartments of noncommercial motor vehicles and were designed to reduce impaired driving by limiting access to alcoholic beverages inside a motor vehicle. Additionally, many states have adopted zero-tolerance laws for underage impaired driving in recent years. Official statistics attest to the national effort being made to fight drunk driving. According to the National Highway Traffic Safety Administration, the rate of alcohol-impaired driving fatalities decreased 38 percent nationwide over the

past two decades (from 6.3 per 100,000 in 1991 to 3.9 per 100,000 in 2008). The reduction was even more pronounced for underage drivers, with a 55 percent decrease in drunk-driving fatalities (from 3.8 to 1.7 per 100,000 between 1991 and 2008). Despite all efforts being made, alcohol-impaired driving still accounts for 32 percent of all traffic fatalities.

Non-Alcohol-Specific Crimes

Alcohol consumption is also associated with a wide array of offenses in a less direct fashion. Interestingly, this perspective has received the most attention in academic literature. Various methodologies have been employed in this endeavor, ranging from aggregate-level studies to individual-level approaches.

Studies of population constitute the primary approach to explore the alcohol-crime link at the aggregate level and come from diverse perspectives, including economics, criminal justice, and public health. Such studies correlate trends in alcohol consumption of particular populations with trends in crime rates, and trends in alcohol availability with rates of crime across populations. The underlying interest of such studies resides in the theory that alcohol regulation can become a crime control strategy, since access to alcohol can be manipulated by public policy.

There seems to be a general consensus in literature regarding a positive correlation between per capita alcohol consumption and crime rates, particularly for violent and property crimes. Regarding the relationship between crime and alcohol availability, literature reports decreases in rates of violence (e.g., child abuse, spousal abuse, physical assault, and trouble with the police) with increases in state alcohol taxes. A major limitation of population studies, however, concerns the probable spuriousness of the alcohol-crime relationship. Indeed, while the two measures correlate at the aggregate level, researchers suggest that there may be other factors explaining this association at the individual level.

Studies of criminal events constitute another approach to studying the drinking-crime relationship, specifically examining whether individuals have been consuming alcohol prior to perpetrating subsequent criminal acts or prior to being victimized. Such studies typically use official statistics

and police reports, as well as victimization surveys and studies of correctional populations. They focus on a variety of crimes, most of which represent interpersonal violence offenses (e.g., homicide, assault, rape, family violence). The Bureau of Justice Statistics reports, for instance, that about 3 million violent crimes occur each year in which victims perceived the offender as intoxicated at the time of the offense. In cases of homicide, studies have consistently reported frequent intoxication of both perpetrator and victim. In cases of intimate partner violence (e.g., spousal abuse), studies reveal that a great majority of victims reported that alcohol had been a factor.

Overall, among the studies that have addressed the issue of alcohol intoxication in violent crimes, results show that the offender was intoxicated at the time of offense in the majority of the situations. A more in-depth review of the literature, however, reveals a wider range of results, which is likely to be related to the wide range of methodologies used in the studies. The validity of results of criminal event studies is of concern for several other reasons. First, some of those studies often ask whether the victim or the arresting officer perceived the offender as intoxicated. As such, the reliability of the measure may be questionable. Second, there may be a self-selection process in which intoxicated offenders are more likely to be arrested by the police than nonintoxicated offenders. In a similar fashion, intoxicated individuals constitute more suitable targets of interpersonal violence. Finally, report of the eventual intoxication of the offender by either the arresting officer or the victim may depend on the subsequent criminal proceeding of the case.

Alcoholism and Criminality

Another approach at the individual level consists of analyzing the incidence of drinking problems among criminal populations. More specifically, this entails looking at the relationship between alcohol and criminal careers. This issue is usually examined based on interviews and self-reports of various populations of interest, from the general population to samples of arrestees, incarcerated offenders, and probationers.

Results of research on chronic drinking indicate that individuals who drink more frequently are more likely to engage in violence. By contrast

to matching samples of the general population, violent offenders seem more likely to be heavy drinkers. This trend can be found in groups of various offenders and is not necessarily limited to violent offenders. Overall, it appears that heavy drinking is intrinsic to the criminal lifestyle. Professional criminals, however, tend to avoid drinking before committing a crime, and some studies have reported that not all violent offenders drink in excess. Indeed, some studies have reported a low prevalence of alcoholism among murderers. Evidently, the diversity of criminal activities is reflected by a diversity in drinking patterns. For instance, while alcohol is used by some burglars as “Dutch courage” prior to committing a crime, other groups of criminals tend to ostracize those who drink on the job because they constitute a potential threat and may not be able to carry out their task carefully.

Several limitations are associated with research on alcoholism and crime. First, the very definition of alcoholism is a potential methodological hindrance when comparing different samples. Also, depending on the type of study, the instruments used to measure drinking habits and classify them may vary heavily. Second, different samples may produce varying results simply because of the nature of the population under study. Indeed, it has been reported that offenders may either exaggerate or minimize their drinking habits, depending on the type of crime committed, their history of alcohol abuse, and the subsequent disposition of the case. Third, correctional research has long shown that prison populations are not representative at all of the general population. Another bias resides in that studies of inmates have a tendency to overestimate the frequency of alcoholics in the criminal population. The necessity of having a control group for any meaningful comparison then becomes evident.

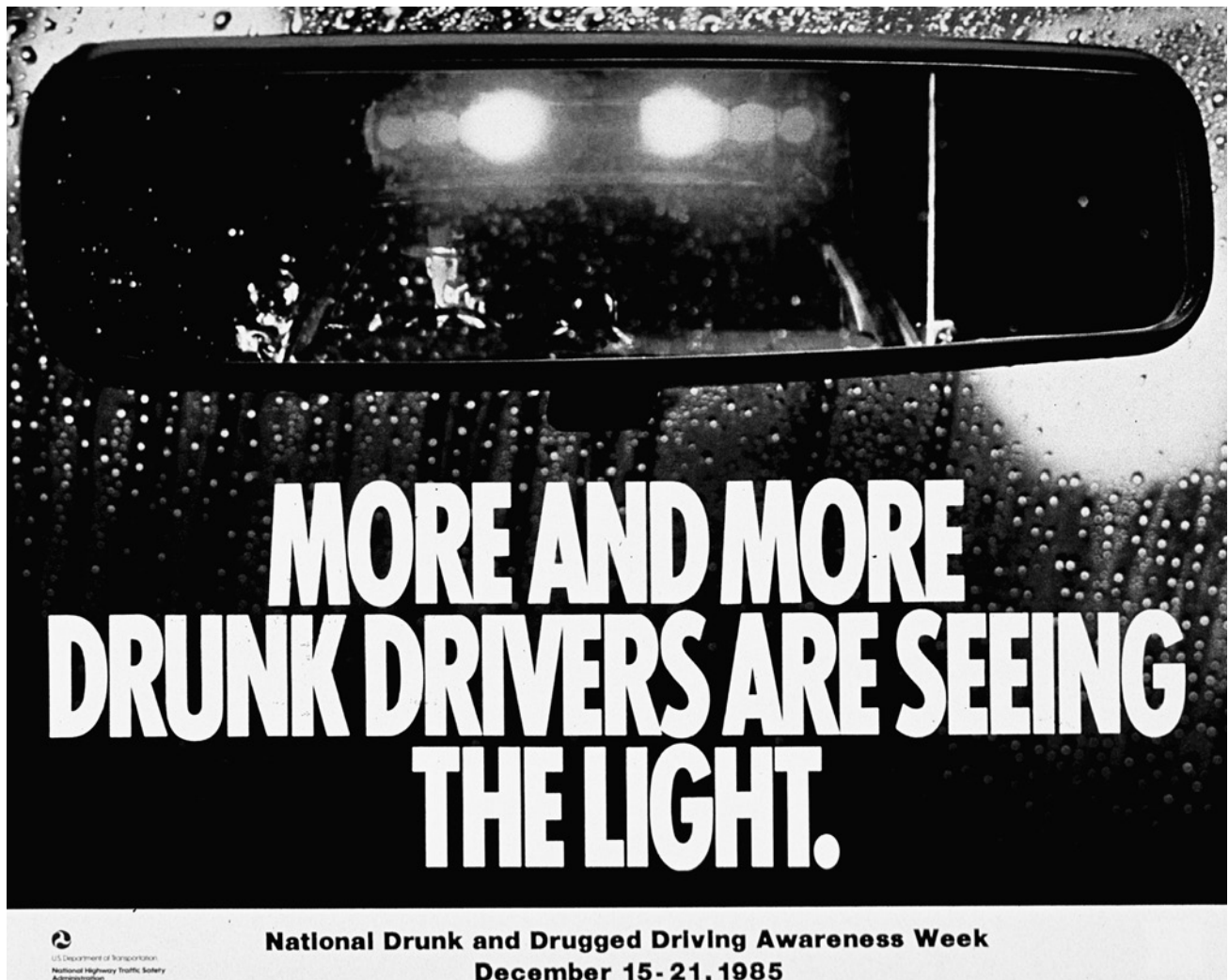
Drinking and Aggressive Behavior

There is a common belief that alcohol consumption is related to aggressive behavior. Early experimental research on the relationship between alcohol and aggression began in the early 1970s, and produced mixed results: Some studies suggested a causal role played by alcohol in aggression, while others reported an absence of relationship between the two variables. Later studies then considered

additional factors that might have an effect on the relationship, such as the type of beverage and the dose level, as well as situational elements, including, among others, alcohol expectancies, the perception of a threat, and the intervention of a third party, as well as individual elements. Such studies typically give subjects specific doses of alcohol in various situations in a controlled environment, while monitoring subjects' aggressive behavior.

An overview of empirical research in this area indicates that, in general, lower doses of alcohol typically inhibit aggressive behavior, while higher doses lead to greater interpersonal aggressive

behavior among subjects. Literature also reports heightened levels of aggressive behavior among alcohol-intoxicated individuals when placed in a threatening environment. Some psychological experiments looked at the possible placebo effect of alcohol by comparing behavioral responses of two groups of subjects who believed that they had consumed alcoholic drinks, while in reality only one group was given alcoholic drinks. Findings revealed increased aggression among both groups when placed in various situations, regardless of the actual consumption of alcohol by the subject. Such experiments led to further research focusing



A U.S. Department of Transportation poster touting increased enforcement of drunk driving laws in 1985. These increases, along with public awareness campaigns, may have helped decrease drunken driving rates. The rate of alcohol-impaired driving fatalities decreased from 6.3 per 100,000 in 1991 to 3.9 per 100,000 in 2008, a reduction of 38 percent. However, alcohol-impaired driving still accounts for 32 percent of all traffic fatalities in the United States.

on individual responses to alcohol and in particular, looking at possible pathological intoxication, which is characterized by excessive aggressive behavior in intoxicated subjects.

The overall conclusion that can be drawn from research on drinking and aggressive behavior is that there is no simple direct relationship between alcohol and aggression. Situational factors appear to play a significant role in alcohol-related aggression, as well as the subjects' expectations regarding both the consumption of alcohol and the outcome of a situation. Individual psychological factors seem to be also at play.

A Causal Relationship?

While it seems agreeable that an association exists between alcohol consumption and criminal behavior, the question that remains is whether this relationship is a causal one. In other words: Does drinking cause crime? While the presence or absence of a causal link both are valid assumptions, scholars tend to agree that conceptualizing the alcohol-crime relationship as causal is overly simplistic.

Indeed, considering a strictly causal relationship seems only appropriate for alcohol-specific offenses (e.g., public drunkenness, drunk driving), which are defined by law as when alcohol is used alongside an otherwise lawful behavior. A causal link can also be a valid explanation in other offenses that are either induced by alcohol (e.g., domestic violence) or inspired by alcohol (e.g., liquor store robbery). For most nonalcohol-specific offenses, however, alcohol consumption is indirectly associated with offending. As a matter of fact, researchers are very careful with the terminology they use to qualify the drinking-crime relationship, perhaps for the very reason that causation *per se* is rarely asserted in the social sciences. Rather, researchers usually point to alcohol as a determinant, correlate, or contributing factor to criminal behavior. In sum, alcohol consumption has a variable effect on criminal behavior. In such cases, several explanations have been advanced, including common-cause, interactive, conditional, conjunctive, and spurious relationships.

Common-cause explanations posit that alcohol consumption and crime are behaviors that result from common individual or circumstantial factors. Interactive, conditional, and conjunctive

explanations all consider environmental factors that may affect the alcohol-crime relationship. Taking the example of a criminal encounter, the conditional effect of alcohol on violence can be understood as the likelihood of the argument ending violently being increased by the consumption of alcohol by one or both protagonists.

An interactive effect explanation would suggest that the probability of violence occurring is greater than the sum of the probabilities of either alcohol or argument occurring. Considering the relationship between criminality and alcoholism, one can ask whether criminal behavior is a condition of alcoholism itself or whether alcoholism increased the chances of criminal behavior because of the drinking. These questions still puzzle social scientists.

The spuriousness model, also referred to in literature as the coexistence model, assumes that drinking and crime are distinct activities that bear no relationship with each other, aside from the purely statistical association. An example of this spurious relationship can be found in surveys of correctional populations, which found disproportionate numbers of criminal offenders with drinking problems. A plausible explanation is that alcoholics are more likely to be arrested and incarcerated and not that they commit more crimes than nonalcoholics.

Conclusion

In conclusion, the relationship between drinking and crime is a complex one. A review of the literature by and large confirms its multifaceted aspect. Understanding this relationship requires an understanding of alcohol consumption and criminal behavior, which are in and of themselves complex social phenomena. Despite the extent of existing literature on this topic, much has still to be done, perhaps because of the lack of scientific rigor in much research. Also, many competing frameworks have been proposed, each uncovering one facet of the alcohol-crime relationship. Recent scholarship calls for a refocus on the issue, considering different types of offenses, types of individuals, as well as the conditions under which alcohol consumption was circumstantial to the commission of the offense. From a policy standpoint, however, the issue of causality is not so problematic. Indeed, scholars and policy makers

agree that what matters most is that an alcohol policy be effective in reducing crime, regardless of the causal mechanism.

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See Also: Bureau of Alcohol, Tobacco, Firearms and Explosives; Drug Abuse and Addiction, History of; Drug Abuse and Addiction, Sociology of; Prohibition.

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Drug Abuse and Addiction, Contemporary

Drug abuse and addiction refer to an individual's continued use of a mind-altering substance, often illegal, despite negative consequences or an inability to stop using. While, clinically, the terms refer to varying degrees of severity, in the context of the criminal justice system, there is often no

real distinction between abuse and addiction. The inclusion of the word *drug* in that same context generally implies either an illicit substance (such as marijuana, cocaine, or heroin) or the use of a prescription drug in a nonmedical way (such as OxyContin). While it is not a crime to be a drug addict, it is a crime to use, possess, manufacture, or distribute drugs.

Drug Use Statistics

Drug use declined in the 2000s, among both adults and adolescents, although arrests and convictions for drug-related crimes rose. In 2007, the Federal Bureau of Investigation's Uniform Crime Reports estimated that there were more than 1.8 million arrests for drug abuse violations in the United States, an increase of about 300,000 from 2000. More than 80 percent of these arrests were for drug possession, rather than drug sales. While the overall number of drug-related arrests increased during the 2000s, different drugs revealed different arrest patterns. The number of arrests for marijuana offenses increased by about 20 percent from 2000 to 2007, while the number of arrests for heroin and cocaine offenses increased by only about 2 percent over the same time period. Arrests related to synthetic drugs increased by almost 70 percent, although these arrests only accounted for about 5 percent of all drug-related arrests in 2007. Marijuana crimes accounted for almost half of all arrests in 2007.

Because of the continued increase in drug offenses, the 2000s also saw many states and counties change the way they processed drug-abusing offenders, with an increase in programs utilizing drug treatment. The most ambitious of these initiatives was the passage of Proposition 36 in California in 2000, which changed state law so that first- and second-time nonviolent, simple drug possession offenders would be sent to drug treatment instead of prison. At the close of the 2000s, there was also a considerable shift in federal drug policy; the Obama administration has taken a more public health approach to dealing with drug abuse and addiction in the United States than its immediate predecessor.

The most current survey of American adults, conducted in 2005, showed that overall rates of illicit drug use had not changed significantly during the first half of the decade. Marijuana was the

most widely used illicit drug, a trend that has not changed since national surveys of drug use began in the 1970s. The same survey revealed that an estimated 6.9 million individuals (about 2.8 percent of the population age 12 and older) could be clinically diagnosed with illicit drug abuse or dependence, based on criteria in the *Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)*. This was essentially the same number as the three previous years. The drugs with the highest levels of abuse and dependence were marijuana, cocaine, and pain relievers. Among high school students, overall drug use declined during the 2000s, although daily marijuana use remained constant (about 6 percent of the high school student population). Declines in past month illicit drug use among students were sharper from 2000 to 2005, and increased slightly between 2005 and 2010.

Sentencing Trends and Drug Treatment

During the 2000s, state and federal policies revealed a trend toward relaxing some of the most punitive policies that had been enacted since the 1980s, while integrating more substance abuse treatment into criminal case processing. For instance, the restructuring of New York State's Rockefeller Drug Laws, enacted in 1973, led to reducing the mandatory minimum sentence from 15 to 8 years for possession of four ounces of narcotics. The notorious 100:1 sentencing disparity in crack and cocaine possession sentences was also decreased at the federal level to the new ratio of 18:1. The restructuring of these and other laws was largely a response to the overcrowding of prisons and the public's sense that many of those incarcerated were nonviolent offenders in need of drug treatment.

As a result, there has been an immense increase in programs like drug courts, which incorporate drug treatment into criminal case processing. Because of the criminal justice system's expanded role in sending offenders to treatment (sometimes involuntarily), the criminal justice system has become the largest referral category for those currently in drug treatment. Prior to 2004, self-referrals made up the largest proportion of those in drug treatment.

In the near future, it appears that initiatives that incorporate drug treatment into criminal

case processing will expand further and that federal drug policy will reflect a more public health approach to dealing with drug addiction. For instance, the Obama administration lifted the ban on federal funding for needle exchange programs. These programs, while overwhelmingly effective at reducing the transmission of human immunodeficiency virus (HIV) and other diseases, have been controversial because opponents argue that they encourage illicit drug use.

Changes are also on the horizon for how drug abuse and addiction are clinically conceptualized. The American Psychiatric Association's *DSM-IV*, published in 1994, currently refers to substance abuse and substance dependence as two separate ailments. The next revision, *DSM-5*, to be published in May 2013, combines substance dependence and substance abuse as one ailment and redefines it as "substance use disorder." The editors claim that the existing "dependence" label has been problematic and has resulted in many individuals being labeled "addicts" who have normal tolerance and withdrawal levels. The new edition will also include "Cannabis Withdrawal" as a diagnosable condition; the previous *DSM* editions did not include cannabis as a substance from which one could suffer withdrawal symptoms.

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See Also: 1941 to 1960 Primary Documents; 1961 to 1980 Primary Documents; Crime Prevention; Drug Abuse and Addiction, History of; Drug Abuse and Addiction, Sociology of; Drug Enforcement Administration; Narcotics Laws; Obama, Barack (Administration of); Sentencing; Three Strikes Law.

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Drug Abuse and Addiction, History of

Whereas many drugs' psychoactive qualities have been known for centuries, indeed for millennia, insofar as Western pharmacology and society are concerned, their use really began around 1800. The problematic use of these drugs began to peak in the late 1800s. Alcohol, of course, was noted and acknowledged as challenging, at least for some people, in ancient times, but in the Americas, especially in the British North American colonies, it was used prodigiously. Tradesmen and farmers drank beer at breakfast, at lunch, and during the day. Colonial leaders drank gallons of hard liquor and "punch" at political and social gatherings. Indeed, being a teetotaler was a deviant status. Problems with excessive alcohol use were recognized by founding father Dr. Benjamin Rush, who began a campaign for temperance. This simply meant, in the language of the late 1700s, to drink less often and to abstain from "spirituous (hard) liquor." In the next century, the definition of temperance came to mean abstaining from all alcohol use, and the temperance movement took on an evangelical Christian tone. Finally, in the late 1800s, temperance enthusiasts succeeded in proscribing alcohol in many states, and in the early 1900s, throughout the United States itself. The experiment of Prohibition proved to be disastrous insofar as promoting the interests of organized crime and concomitant disrespect for the law were concerned.

But the importance of alcohol for the discussion of drug abuse and addiction is as an exemplar of how not to control an addictive and highly problematic drug. Specifically, the use and growth of federal anti-alcohol enforcement informed federal control of opiates in the 1920s and in subsequent decades. Like Prohibition, federal law enforcement-oriented control of addictive drugs has proven to be counterproductive, driving normally conformist opiate users to the street to get stronger drugs (e.g., heroin) from expensive organized crime sources. Over time, this association with criminal elements led to the creation of a criminalized drug-based subculture. Variant drug-based subcultures evolved in a similar manner.



Brown's Iron Bitters, a patent medicine produced in the 1880s that claimed to "give new life to the nerves," contained cocaine. At the time, products like this were available over the counter at pharmacies and neighborhood general stores.

This model, rather than a more humane and possibly more effective medical model, is seen repeatedly in the history of drug regulation and enforcement in the United States since 1920. Current moral crusades to more tightly regulate opioid analgesics only repeat this lamentable narrative.

That being said, it must be admitted that in the late 1800s the United States was a “dope fiend’s paradise.” Morphine, in particular, was used by a wide variety of people. Housewives used morphine or liquid opium in patent medicines to deal with nerves, depression, or “female problems.” Civil War veterans were acknowledged as a problematic at-risk subpopulation for “soldier’s disease,” that is, opiate addiction; opiates were used to deal with chronic stress, pain, and post-combat trauma reactions. Working-class men—for example, cowboys, longshoremen, and laborers—flocked to opium dens, where they could both relax and get relief from chronic pain. Doctors both prescribed and freely used morphine and cocaine themselves. Children were routinely given opioid-based nostrums to help with teething, diarrhea, and colic. Cannabis was available in a variety of forms but at the time was not extensively used recreationally.

Patent medicines, often containing large amounts of cocaine, opioids, and cannabis dissolved in a strong alcohol base, were available over the counter at pharmacies and neighborhood general stores. Mail order houses sold morphine, cocaine, and syringes—no prescription needed. Morphine was even used to treat alcoholics. That is, doctors deliberately tried to get alcoholics to transfer their addiction to the less damaging opioid. Under these conditions, drug addiction was common and was not necessarily socially or criminologically problematic. Drug addicts could work and participate fully in their families and communities while maintaining their drug habit.

Mobilization of Bias

The specter of intoxicated veterans and wives and mothers on drugs proved too much for moral crusaders. Linking opioids to “Chinese opium dens” in explicitly racist appeals, such reformers were able to mobilize bias against drugs and drug users. Cocaine use, which was a minor issue in the same period, was similarly vilified and connected to African American criminals. Cannabis,

called “marijuana” in order to link it to unsavory Mexican laborers, was correspondingly stigmatized. This process also included presenting only a single policy option: total prohibition. Accordingly, myriad social problems were linked to drug use, including crime, rape, and recruitment into prostitution (“white slave trade”). Importantly, all drug use and “abuse” was seen as essentially equivalent. Therefore, there could be no legal or wholesome context for recreational drug use. All drug users (“fiends”) and sellers (“pushers”) were regarded as loathsome spreaders of the contagion of drug use to children at worst, and as parasites at best. Those who defended drug use or drug users or who questioned the prohibition approach were reviled, stigmatized, and marginalized. This process was begun with opium and repeated throughout the history of drug regulation in American history. It enjoys currency today.

Regulation

In 1875, laws banning opium dens and requiring prescriptions for opioid use were passed in various locales. Not surprisingly, these ordinances often directly impacted Chinese opium dens. In succeeding decades, federal laws followed, the most notable being the Harrison Narcotics Act of 1914. This created a tax structure on importers and distributors of narcotics. Doctors and pharmacists were forced to register and pay a small tax in order to prescribe and sell narcotics. Federal enforcement agencies interpreted the law to mean that medically maintaining addicts on drugs was illegal and began a full-scale persecution of doctors who utilized drugs as a treatment philosophy. In short, the Harrison Act and subsequent legislation and Supreme Court decisions drove previously respectable citizens into the streets and into the arms of organized crime. This enforcement approach became the foundation of American drug policy. It has proven counterproductive as it criminalized a large population who found that they had little choice but to commit crimes to get money in order pay inflated street prices for formerly cheap drugs. Heroin, formerly shunned by opioid addicts in favor of morphine, became the drug of choice due to its superior strength and availability. Organized crime members preferred to deal with heroin as it was much easier to smuggle than other opioids due to its compactness. Heroin proved to be much



Two Chinese men smoking in an opium den around 1909. Opium dens in Chinese American neighborhoods were targeted by often racist and xenophobic local laws in the late 19th century.

more addicting and much more problematic than the opioids like morphine and patent medicines that were used previously. But throughout the 1920s and 1930s, heroin use declined as federal drug seizures increased. Cocaine and cannabis were similarly stigmatized and criminalized and, likewise, fell into disuse for decades. The campaign against cannabis in the 1930s, led by federal bureaucrats and other moral crusaders, was a masterpiece of mobilization of bias and misinformation and made much use of media such as the propaganda movie *Reefer Madness*.

After World War II, heroin use increased, primarily in African American neighborhoods. Working-class whites in urban areas began to experiment with drugs while bohemian intellectuals (Beats) began to advocate the use of drugs

such as cannabis and hallucinogens in order to expand consciousness. The influence of such figures as writers Jack Kerouac, Allen Ginsberg, and Aldous Huxley and academic Timothy Leary in popularizing recreational drug use can scarcely be overestimated. The attention paid to drugs by magazines, television, and cinema made drugs somewhat respectable and led to the hippie movement in the mid- and late 1960s, in which cannabis use might be said to have been a sacrament and LSD use could be seen as a form of seriously subcultural commitment. This social movement reached a climax in 1969 with the Woodstock and Altamont festivals and fell into dissolution over the following years. Many of the youth involved continued involvement with cannabis but moved from urban hippie concentrations to rural communes or communities. Others fell prey to the lure of the hard drug-based subcultures and lifestyles. Prescription drugs and illicitly manufactured amphetamines (e.g., “speed” and “meth”) became more popular. Cannabis became normalized, and its use reached an all-time high in 1978. At that time, moral crusaders were able to derail attempts to decriminalize or legalize its use.

More problematic was the increase in the use of cocaine that occurred in the 1970s. Initially and erroneously thought to be as innocuous as the cannabis of the 1960s, cocaine proved to produce strong psychological dependency and was, perhaps, addictive. Its use became widespread in the late 1970s. Even more ominous was the proliferation of “crack,” a chemically altered and inexpensive cocaine by-product. Its spread through American cities in the mid-1980s was marked by frank addiction, violence by gangs competing for control of its distribution, and neighborhood chaos. Penalties affixed to crack use, a drug assumed to be used primarily by African Americans, were so harsh and disproportionate compared to those levied on powdered cocaine users that many urban juries refused to convict. It was only in 2010 that the penalty structure was adjusted.

Abuse of pharmaceutical drugs, a growing problem since the 1950s, when the pre-benzodiazepine minor tranquilizers hit the market, became a matter of concern throughout the following decades. The problems with these early tranquilizers were somewhat exaggerated though

they were overprescribed, as were the early benzodiazepines. In the 1990s, analgesic opioids such as oxycodone and hydrocodone became popular for recreational use. However, such casual use often led to addiction. Time-released oxycodone (OxyContin), particularly popular in rural areas, became known as “hillbilly heroin” and was linked to poor whites in media accounts. Housewives and “soccer moms” were also linked to this drug and a variety of benzodiazepine sedatives, most notoriously alprazolam, or Xanax. Recreational use of methamphetamine by rural folk became a media focus in the 1990s and into the next century.

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See Also: 1921 to 1940 Primary Documents; 1941 to 1960 Primary Documents; 1961 to 1980 Primary Documents; Criminalization and Decriminalization; Drug Abuse and Addiction, Contemporary; Drug Abuse and Addiction, Sociology of; Drug Enforcement Administration; Narcotics Laws; Prohibition.

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That is, how and what is labeled drug abuse and addiction is about much more than just the physiological or psychological properties of drugs or individuals. What is labeled a “drug,” “abuse,” or “addiction” in society reflects larger cultural values, is often the result of underlying conflicts in society between groups (i.e., social class, race, and ethnicity), and is political. Sociologists attempt to put the study of drugs into a social context. The sociology of drug abuse and addiction emerged out of several other sociological areas, namely, the sociology of deviance, criminology, and medical sociology. Each has made significant contributions to the understanding of sociological issues around drugs and addiction, although each focuses on a different area and/or uses a different theoretical perspective.

Drug Policy

Since what is considered today to be illicit drug use was mostly unregulated and legal through the early part of the 20th century, sociologists did not really study drug abuse and addiction until after Prohibition. Heroin and cocaine were not illegal until the passage of the Harrison Act in 1914; marijuana was legal until 1935. Many contemporary sociologists have studied the history of drug prohibition. They often use a constructionist perspective to understand the processes of how certain legal drugs became redefined as illegal and, as in the case of alcohol prohibition, back to legal. These sociologists attempt to understand who the major claims-makers were in each historical period, or those people who were able to construct and control the wider debate around drugs and drug use. Sociologists argue that drug policy is often the result of moral panics around drug use. In different historical moments, the public shows rising concern for particular substances, and more strict policies usually follow.

In the 1930s, marijuana was portrayed as violence-inducing, extremely dangerous, and would lead to a host of other criminal and social problems. As a result, it became criminalized in 1935. Similar drug scares occurred in the 1980s, around crack cocaine. Crack cocaine, which is pharmacologically identical to powder cocaine, became used more widely in the 1980s, especially in poor urban areas, because it was relatively inexpensive. Early researchers argued that crack cocaine was

Drug Abuse and Addiction, Sociology of

The sociology of drug abuse and addiction ranges among many different topics, including drug policy, drug treatment, the labeling of drug abuse and addiction, subcultures of drug use, theories of drug abuse, and trends in drug use. A sociological perspective of drug abuse and addiction emphasizes social and cultural processes around drugs.

more addictive than powder cocaine and could cause users to become violent. As a result, legislation penalized the possession of crack cocaine much more heavily than powder cocaine. Further research showed that crack cocaine was not actually more addictive than powder cocaine and did not have different pharmacological results than powder cocaine (such as causing the user to become violent). Still, the disparity in sentencing between the two drugs remained until 2010, when Congress passed the Fair Sentencing Act, reducing (but not eliminating) the disparity between crack and powder cocaine. Sociologists viewed the labeling of crack cocaine as the most dangerous and addictive drug ever as a result of who typically used crack (poor people of color) compared to who typically used powder cocaine (wealthier white individuals).

Medicalization of Drug Addiction

Another contribution from sociologists regarding how drug addiction is defined is within the area of medicalization, that is, how something viewed as immoral (or criminal) becomes redefined as a medical problem. Alcoholism became accepted as a disease in the 1950s by the World Health Organization and the American Medical Association. Drug addiction slowly became accepted as a legitimate disease because of the medicalization of alcohol abuse. By the beginning of the 21st century, a majority of Americans agreed with the principle that addiction was a disease. However, while drug addiction has been medicalized in many ways (in definition and treatment), it is still also managed by the criminal justice system and also still retains a great deal of stigma, preventing complete medicalization. Sociologists examine this issue by showing how addiction still retains a great deal of stigma, how treatment for it is still largely punitive and has moral overtones. Twelve-step practices, founded in Alcoholics Anonymous, are the dominant framework for drug treatment, even in publicly funded treatment programs.

When studying the etiology of drug abuse and addiction, sociologists emphasize the social and environmental context rather than individual-level factors. For instance, while psychologists might focus on personal characteristics, such as self-esteem or mental health problems, as possible explanations for drug addiction, sociologists

examine social factors, such as peer and family dynamics, poor structural conditions, or unemployment. The major sociological theories used to explain drug addiction are learning theory, control theory, strain theory, and conflict theory. These theories were originally formulated to explain criminal behavior and delinquency and were eventually extended to explaining drug abuse and addiction.

Social Learning Theory

Social learning theory posits that individuals learn how to become drug abusers, that is, they do not have an inherent quality that makes them drug abusers. They learn this deviant behavior either from their family members or their peers. The theory argues that individuals are socialized to be drug abusers due to those closest to them also being drug abusers. According to Ronald Akers, a contemporary theorist in the social learning tradition, individuals encounter a social reinforcement for drug use by their peers. That is, drug use is tolerated and encouraged, creating a positive reinforcement for the individual to also use drugs. Control theory argues that those who are not sufficiently “bonded” to society will engage in criminal behavior, such as using drugs. Those who have more attachment to society, either through positive social networks, activities, or religion, will be less likely to engage in antisocial behaviors.

Strain Theory

Strain theory, developed by sociologist Robert Merton, posits that some individuals feel more strain than others because they lack the appropriate resources to achieve goals. According to Merton, just about everyone in a society has similar goals, what that culture determines as success. Not everyone, however, has the means to achieve those goals. Those who lack the means will often resort to other methods (criminal) to achieve their goals. Merton argued that a drug user rejects both the socially approved goals and the “legitimate” ways of achieving them. These individuals become “retreatists” and become socially isolated. The drug use serves as an escape from the strain they feel, often because they initially lacked resources to achieve their goals. Research has not given much support to strain theory in explaining drug addiction,

although it may be better at explaining initial drug experimentation.

Conflict Theory

Conflict theory emphasizes social and political inequality as a main contributor to drug addiction. Those who use conflict theory to study drug addiction tend to focus on poorer, inner-city communities with high rates of drug abuse. They argue that drug rates are higher in these areas because of the lack of economic opportunities in these areas and the resulting alienation that the residents feel. They also argue that the current war on drugs has been unsuccessful at alleviating these structural problems, and as a result, has not dramatically reduced the chronic drug abuse in these communities. Conflict theorists contend that only large-scale and dramatic shifts in our economic and social policy will reduce the inequality in these communities, and hence, drug addiction. While research has not found strong support for any one of these theories in explaining drug addiction, they are useful for emphasizing the social, economic, and political contexts around drug use, and their utility might lie in conjunction with other theories for a multidisciplinary perspective.

Arrest and Treatment

Arrest and incarceration rates for drug-related crime have skyrocketed since the 1980s because of the continuing escalation of the war on drugs. Most of these arrests have been for drug possession, not drug sales, which has led many local and state governments to adopt new approaches to drug-related crime, such as including drug treatment in criminal case processing. One such approach is drug courts, begun in Miami in 1989, where nonviolent offenders are given the opportunity to attend drug treatment and complete a 12-month program in exchange for a dismissed record. To be eligible for such programs, offenders must be evaluated as having a drug problem. In most drug courts, if the offender remains conviction-free for one year following graduation from the program, their record is expunged. However, if the individual fails to complete the program, he or she is sent to prison. Drug courts now operate in every state, as well as the District of Columbia and Puerto Rico, with many more added each year. Another change in policy is California's Proposition 36, passed by vot-

ers in 2000, which automatically diverts first- and second-time, low-level drug offenders into drug treatment. While the program has suffered from a lack of state funding, a 2007 report by researchers at the University of California, Los Angeles, found that the initiative saved California \$2.50 for each \$1 spent. Critics of the program highlight the fact that many of those eligible for the program never complete treatment and argue that it is basically a "get out of jail free" card. Supporters contend that addiction research shows that most people who eventually become drug-free require numerous treatment attempts. An expansion of the program was rejected by California voters in 2008.

Sociologists also study subcultures of drug users to understand the social organization of drug use and abuse. What they have found is that drug-using subcultures share similar sets of norms (i.e., language, behaviors, and knowledge) that exist because drug use is illegal. If drug use were legal (such as alcohol), norms would develop around the appropriate use of the drug and users would not necessarily be part of a separate subculture. Sociological research on the "careers" of drug users also shows that most people who consume drugs, even those who do so heavily for a period of time, eventually stop using on their own without formal treatment.

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See Also: 1921 to 1940 Primary Documents; 1941 to 1960 Primary Documents; 1961 to 1980 Primary Documents; Criminalization and Decriminalization; Criminology; Drug Abuse and Addiction, Contemporary; Drug Abuse and Addiction, History of; Narcotics Laws; Prohibition; Sentencing.

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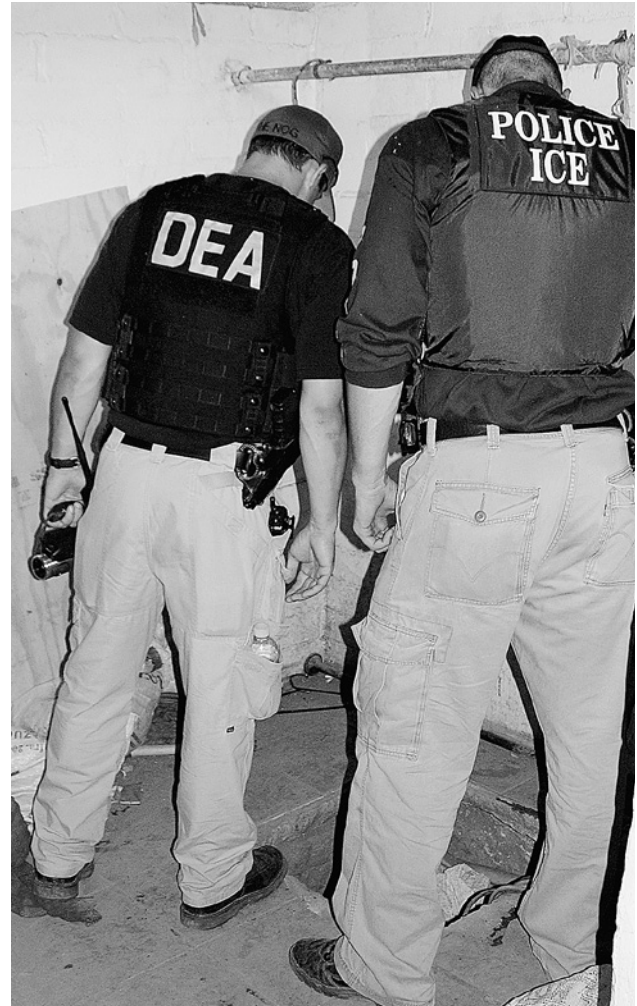
Drug Enforcement Administration

Established in 1973, the Drug Enforcement Administration (DEA) is a federal law enforcement agency of the U.S. government operating under the auspices of the Department of Justice. In order to safeguard American society, DEA agents work to bring drug kingpins and local suppliers to justice by enforcing controlled substance laws and regulations, conducting narcotics investigations, and tackling international drug trafficking and those organizations and members involved in the growing, production, and distribution of illegal drugs appearing in or destined for the United States. They are also tasked with advocating and implementing prevention initiatives aimed to reduce the demand and availability of controlled substances domestically and internationally.

Although the DEA shares jurisdiction concurrently with two other federal law enforcement agencies—the Federal Bureau of Investigation (FBI) and Immigration and Customs Enforcement (ICE)—it has sole authority over drug investigations conducted abroad. Appointed by the president and confirmed by the Senate, the administrator heads the DEA and reports to the attorney general through the deputy attorney general. Currently, this position is filled by Michele Leonhart, who assumed office on December 22, 2010, after serving as acting administrator since November 2007 following the resignation of Karen Tandy. Second in command is the assistant administrator and chief of operations, which is currently filled by Thomas Harrigan, who assumed office in 2008.

History

The federal policing of controlled substances—and thus the roots of the DEA—can be traced back to a series of laws, for example, the Harrison Narcotics Act of 1914 (opiates), the Eighteenth Amendment of the Constitution (alcohol), the Narcotics Drugs Import and Export Act of 1922, the Marijuana Tax Act of 1937, the Boggs Act of 1956 (heroin), and the Controlled Substance Act of 1970, to name a few. Consequently, a number of agencies with similar functions were formed—the Bureau of Narcotics and Dangerous



Agents with the DEA and Immigration and Customs Enforcement peer into a cross-border smuggling tunnel connecting a house in Nogales, Arizona, to another in Mexico in June 2007. Forty such tunnels were found from 2001 to 2007.

Drugs, the Office of Drug Abuse Law Enforcement, the Office of National Narcotics Intelligence, and other offices—which, in some cases, led to interagency rivalry and hampered federal law enforcement efforts. As such, on March 28, 1973, President Richard Nixon signed Reorganization Plan No. 2—an executive order to consolidate and establish a unified federal agency in order to more effectively enforce narcotics laws, investigate infractions, and prosecute violators, primarily in response to the growing drug problem plaguing the nation. Several months later, on July 1, 1973, the DEA officially commenced operations, powered by a budget of \$73 million and

2,775 employees and headquartered in Washington, D.C., in order to stay in close proximity with the attorney general, an office the agency worked with closely. Then, in 1989, considerable expansion of the DEA spurred by increased federal anti-drug efforts (the “war on drugs” in the 1980s) necessitated relocation to larger headquarters in Arlington, Virginia, opposite the Pentagon.

The main objectives of the DEA are to identify, apprehend, and prosecute major violators of controlled-substance laws, which may also include drug gangs utilizing violence, fear, and intimidation as weapons to terrorize citizens and communities. To do so, investigations are conducted on both the interstate and international levels and in cooperation with a number of authorities—local, state, federal, and foreign—for the collection, analysis, and dissemination of drug intelligence and related information. Additionally, the agency has authority to confiscate any proceeds or assets discovered to be linked to, derived from, or intended to be used for drug trafficking.

Working in cooperation with authorities in a number of jurisdictions, including the United Nations and Interpol, the DEA is also responsible for the implementation, coordination, and cooperation of drug enforcement efforts and nonenforcement programs designed to reduce availability of illegal substances in the U.S. drug market, such as through crop eradication or substitution. Agents also work to raise awareness of the adverse affects of drugs through drug resistance education programs and provide police training programs in cooperation with domestic and foreign counterparts. In addition to illegal substances, the DEA enforces laws involving the regulation of those controlled substances legally produced, such as prescription and over-the-counter medication.

In addition to the two aforementioned chief administrators, other executive leadership offices include the chief inspector, chief counsel, chief financial officer, and two assistant administrators—one for operations and a second for human resources. These offices are supported with executive staff from equal opportunity and employee assistance, planning and policy, and public affairs offices. Further compartmentalized into six divisions, the human resources division includes two boards for career and professional conduct and a training office. The operations division,

which includes two divisions for aviation and special operations, comprises five offices—operations management, diversion control, international programs, and financial and enforcement operations. The El Paso Intelligence Center and Organized Crime Drug Enforcement Task Force (OCDEFT) Fusion Center are housed in the intelligence division, which includes three offices for strategic, special, and investigative intelligence, and one for intelligence policy and management. Three offices for acquisition management, finance, and resource management make up the financial division. In the operational support division, there are offices for administration, information systems, forensic sciences, and investigative technology. The inspection division includes offices for inspection, professional responsibility, and security programs. The agency also operates a rigorous 16-week federal training academy at the same location as the FBI Academy—the U.S. Marine Corps base in Quantico, Virginia.

Evolution

In the 1970s and 1980s, international drug trafficking and the crack epidemic were the center of DEA operations. During this time, although heroin was starting to enter the United States from the Golden Triangle countries of southeast Asia, the Colombian Medellín cartel was growing rapidly, leading to a heavy flow of cocaine and marijuana to the United States. The violence associated with these drug activities made this a globally feared crime syndicate, which allowed members to easily infiltrate and insulate themselves into legitimate sectors of the U.S. economy. Consequently, the DEA in cooperation with other federal agencies conducted a number of high-profile operations such as Operation Grouper in 1981, which led to the arrest of 122 indicted subjects, the seizure of more than \$1 billion in drugs, and the forfeiture of \$12 million in assets such as vessels and airplanes. In the mid-1980s, crack cocaine, which fueled street crime and devastated communities, only added to the agency’s agenda and thus prompted the passage of new laws and drug prevention programs to arm the DEA with additional fighting power and authority to tackle the nation’s drug epidemic.

In the 1990s, the agency notoriously captured and prosecuted Manuel Noriega, the president of Panama, for his alleged role in smuggling cocaine

into the U.S. drug market. During this decade, increased attention to the legalization of marijuana was a growing concern for the DEA, with proponents arguing the prescription of marijuana cigarettes for purposes of treating terminally ill patients and therapeutically benefiting those with painful conditions would be unlikely to add to the crime problem, which was an obvious concern to the agency.

Interestingly, although California voters passed Proposition 215 to allow physicians to prescribe marijuana for serious health conditions, federal law still holds marijuana to have no legitimate use, even medically, and thus still allows the DEA to prosecute those in possession of this drug. Today, the concern has shifted to various synthetic designer drugs, especially MDMA/ecstasy, given the growing availability and popularity among young people, as well as connections to terrorist financing.

Since 1986, DEA efforts have resulted in 623,454 arrests, with 30,567 in 2009. During that same time, agents have seized more than 1,484,222 kilograms of cocaine, 15,060 kilograms of heroin, 7,362,303 kilograms of marijuana, 26,026 kilograms of methamphetamine, and 149,583,030 dosage units of hallucinogens. Operating on \$2.4 billion annually, these efforts were accomplished by nearly 11,000 DEA staff and 5,500 special agents working in more than 200 domestic field offices and 87 foreign offices in 63 countries worldwide.

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See Also: 1961 to 1980 Primary Documents; Bureau of Alcohol, Tobacco, Firearms and Explosives; Drug Abuse and Addiction, Contemporary; Federal Bureau of Investigation; Federal Policing; Justice, Department of; Narcotics Laws; Nixon, Richard (Administration of); Secret Service; Smuggling.

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Due Process

Underlying and protecting the principle of fairness in crime and punishment is the constitutional protection of due process. Due process protects against arbitrary deprivation of life, liberty, or property. Therefore, due process requires that before the government deprives people of their life, liberty, or property, the applicable law is publicly accessible, the person is notified of the action and reasons for the action, he or she is allowed a trial in accordance with legal principles at which he or she can present evidence and witnesses in his or her defense, and he or she is not subjected to any punishment unless and until he or she is found guilty. Due process appears in two places in the U.S. Constitution, each having a different impact on crime and punishment. As it appears in the Fifth Amendment, due process protects against the arbitrary actions of the federal government. Due process in the Fourteenth Amendment is used to incorporate, or apply, the federal constitutional rights to the states.

Historical Perspective

The concept of due process, or not arbitrarily depriving people of life, liberty, or property, can be traced back to the Magna Carta. Chapter 39 of the Magna Carta requires a trial by peers according to the law before punishment can be taken against a person. These provisions were further clarified by Sir Edmund Coke in 1628 in the Petition of Right. Coke expanded and clarified the protections in the Magna Carta by protecting against deprivation of life, liberty, and property without either parliamentary action or due process of law. Therefore, in the English context, due process protected against arbitrary action by the Crown.

As the American constitution was being drafted, the framers included the concept of due process to protect against arbitrary action by all branches and actors of the federal government. Due process is part of the Fifth Amendment, which also protects against self-incrimination, double jeopardy, and taking of property without compensation. In the context of the Fifth Amendment, the federal government is prevented from prosecuting and punishing criminal activity without fair proceedings that are in accordance with established legal practice. The U.S. Supreme Court has

consistently applied the Fifth Amendment due process guarantees to actions by the federal, not state, government.

With its inclusion in the Fourteenth Amendment, due process, and through its interpretation other rights, were applied to actions by the state governments. As worded, the Fourteenth Amendment specifically requires states to follow the principles of fairness and legal process in the deprivation of life, liberty, or property. Thus, while the Fifth Amendment protects against arbitrary federal action, the Fourteenth Amendment protects

against arbitrary state action. Yet the power of the Fourteenth Amendment's due process clause has been in its interpretation. The U.S. Supreme Court has interpreted due process in the Fourteenth Amendment to extend the protections in the Bill of Rights to actions by state governments.

In the American context, due process has evolved from a protection against arbitrary action by the Crown to protections against arbitrary action by actors and institutions at all levels of government. The American interpretation of due process has also expanded to encompass more



This 1903 illustration titled "Due Process of Law" uses a figure representing justice riding a snail up a winding path to comment on the perceived slowness of the legal system caused by due process. The path is strewn with boulders labeled "certificate of reasonable doubt," "appeals," "change of venue," "injunctions," and "stays," and ends at the "Hall of Justice" at the top of the hill.

than a process for determining punishment. Due process in the American legal context has a procedural and substantive context. Grounded in the Magna Carta tradition, procedural due process recognizes that before a person can be deprived of life, liberty, or property, a person has the right to procedural safeguards such as notice of intent and a fair trial. The intent of the procedural due process is to ensure that government action does not infringe on rights enumerated in the Constitution. Substantive due process recognizes that not all rights are enumerated in the Constitution.

Lawrence v. Texas (2003) illustrates the difference between procedural and substantive due process as well as the evolution of due process within the American context. Lawrence was arrested and charged with violating the Texas anti-sodomy law. Procedurally, Lawrence was afforded due process. The law was publicly accessible, he was notified of the charges, he was convicted through a fair trial, and he was not punished until after conviction. However, the Supreme Court found a substantive due process violation of the right to privacy. Although there is no right to privacy enumerated in the Constitution, the Supreme Court found privacy to be fundamental to the concept of liberty and, therefore, protected against arbitrary government intrusion. In the American legal system, therefore, due process has evolved from the prevention against arbitrary arrest by the Crown to protection against laws that infringe on the privacy of individuals.

Principles

Due process is grounded in the principles of fairness, protection against arbitrary government action, and procedures based in law. Therefore, for someone to be tried and punished for a crime according to due process, several criteria must be met. First, there needs to be a law in effect at the time of the action prohibiting the alleged criminal action. People must have the ability to know in advance that their action would be considered criminal. This does not mean the person must know that the law exists, only that there is an enforceable law, passed and enacted according to established rules, which the person is expected to obey. The person must also be appropriately notified that he or she has violated the law and is being charged with a crime.

Once the person is charged with a crime, due process requires that he or she is tried in an impartial court of law. The trial must be fair such that the accused cannot be disadvantaged and neither side can prejudice the outcome. This principle of fairness extends through all aspects of the trial process, including assignment of counsel, discovery, jury selection, presentation of witnesses and evidence, jury instruction, and sentencing. The actions of those involved with the trial (judge, prosecutor, counsel) must also be grounded in fairness.

Due process requires that fairness and protection against arbitrary action apply to the punishment for crimes as well. Punishment cannot occur unless and until the person is convicted. Although pretrial detention may be warranted to ensure appearance at the trial, it cannot amount to punishment for the crime. When a person is sentenced to detention, any disciplinary actions during the detention must follow due process, including notification of the reason for disciplinary action and the ability to present a defense against the charges.

It is important to remember that due process protects against arbitrary deprivation of life, liberty, or property. Therefore, a violation of due process must be associated with an interest in life, liberty, or property. For example, substantive due process in *Lawrence v. Texas* was based on a violation of the right to privacy associated with liberty. If an interest in one of these three areas cannot be identified, due process requirements are not applicable.

Development of Substantive Due Process

Substantive due process evolved slowly through the Supreme Court's application of the Fourteenth Amendment. Through a series of economic cases, beginning with the *Slaughterhouse Cases* in 1873, the Supreme Court slowly developed substantive limits to state regulatory powers. The *Slaughterhouse Cases* considered whether a state could regulate business to the point where one company had a monopoly on an industry. Although the majority supported the state's actions, a dissent raised the point that this limited employment thus deprived citizens of employment opportunities, and the associated quality of life and property, without due process.

The Supreme Court first upheld substantive due process in 1897. In *Allgeyer v. Louisiana*, the court struck down a state regulation preventing the purchase of insurance from a company not licensed in Louisiana. The court found that the regulation violated a person's freedom of contract. Consistent with the dissent in the *Slaughterhouse Cases*, the court felt that freedom of liberty included the ability to choose whom to contract with and whom to work with. This was the first of a long line of cases in which the court struck down state legislation.

However, while substantive due process was used to support and expand free enterprise, too much liberty can sometimes be a bad thing. This was demonstrated in *Lochner v. New York* (1905). In this infamous case, the Supreme Court used substantive due process and liberty of contract to invalidate laws that limited employee work hours. When analyzing the statute in question, the court concluded that the goals of the statute could have been achieved through less restrictive means. In the years that followed, the court repeatedly struck down economic legislation. However, the court was willing to support regulation for groups that needed extra protection and thus upheld statutes that set maximum hours for women.

Economic times changed, Roosevelt introduced the New Deal programs, and the composition of the Supreme Court changed. In 1934's *Nebbia v. New York*, the court began moving away from the *Lochner* standards by assessing whether there was a relationship between the law and goals to be achieved. Three years later, the court expressly overturned *Lochner* by upholding minimum wage laws for women (*West Coast Hotel v. Parrish*). Over the years, the Supreme Court has continued to remove itself from the review of state economic legislation unless it impacts a "fundamental right" such as the right to privacy.

Fundamental rights are also key to the Supreme Court's treatment of noneconomic rights through substantive due process. As the court's review of state economic legislation has decreased, it has become increasingly willing to review noneconomic legislation. To pass the court's review, the state's legislation must have a compelling interest and means used must be necessary to achieve the goal. Rights that fall into this category frequently involve the right to privacy and include

the areas of sex, marriage, and children. Because this standard is so strict, few state statutes have been upheld by the court.

American Crime and Punishment

In its application, the most basic role of due process is to ensure that the prosecution and punishment of crime is fair and not arbitrary. This begins with fair laws that are neither vague nor discriminatory. If someone is suspected of committing a crime, due process requires that he or she be treated in a fair and informed manner. The Miranda warnings are intended to ensure that suspects are informed of their rights and consequences of their actions during interrogation. Access to counsel is an important aspect of due process because it ensures that someone familiar with the legal system, and the legal procedures to ensure due process, is assisting the accused in making informed decisions and protecting the rights of the accused.

As the accused is brought to trial, due process requires fairness in relation to the jury. Selection cannot result in a jury biased as to the accused, the outcome of the trial, or the outcome of sentencing. During the trial, juries cannot hear or see information that would bias their opinion. For example, because the Miranda warnings provide an option of silence, the fact that the accused chose to remain silent cannot be used against him or her at trial. It would also be prejudicial to the jury to see the accused in a manner that presupposed his guilt without justifiable cause. Fairness must also prevail in instructions given to the jury, both for deliberation and sentencing, so they understand what they are to do in a way that does not prevent independent thought and allows them to consider all options. This is particularly the case where a sentence of death is involved.

If convicted, due process also applies to probation, detention, and parole, although there are limitations on the rights involved, and there must be a life or liberty interest. For example, a prisoner does not necessarily have a liberty interest in being transferred from one facility to another. Disciplinary actions, including revocation of probation or parole, are subject to notification of charges and the ability to present a defense. In these cases, the person must be informed of the reason for the disciplinary action, be allowed to

present a defense, and be notified of the reason for the outcome of the hearing. However, the hearing is not a court of law, the person does not have a right to an attorney for the process, and the use of witnesses is subject to consideration of the situation of detention. Even if there is no life or liberty interest, actions must meet the minimum standard of not being arbitrary.

It is important to remember that there is a separation between due process protections at the federal and state levels. The rights enshrined in the Bill of Rights, including Fifth Amendment due process rights, are applicable to actions by the federal government. The Supreme Court has selectively incorporated rights to the states through the Fourteenth Amendment so not all rights are protected from state action. For example, double jeopardy has not been incorporated to the states. Furthermore, the Supreme Court has consistently respected the sovereignty of state laws and state courts. This is seen clearly in the cases of due process requirements for disciplinary actions while in detention, such as transfers or probation. There is no constitutionally protected right for prisoners to remain in a particular prison or to probation. Therefore, if the state has not enacted laws that create expectations of probation, and the associated liberty, due process does not apply.

When considering due process challenges, it is important to understand requirements that have been established by the Supreme Court. When convicting someone of a crime, the burden of proof lies with the prosecution. In addition, the prosecution must prove guilt beyond a reasonable doubt. Due process does not allow shifting the burden of proof to the defendant. Nor does due process allow conviction at a standard less than reasonable doubt. When due process is violated in this respect, it is usually in communication to the jury.

Defendants must meet certain criteria when presenting a due process challenge. Before raising a challenge on the evidence presented during a trial, consideration must be given to the ability of a reasonable fact finder to determine guilt beyond a reasonable doubt. If the instructions given to the jury are being challenged, it must be shown that the specific instruction being challenged violated due process. In other words, consideration must be given to the impact of the challenged instruction in the context of both the trial and

the full instructions given to the jury. Due process challenges to state prison transfers and disciplinary actions must consider expectations created in state law for both process and liberty.

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See Also: Constitution of the United States of America; Defendant's Rights; Federal Rules of Criminal Procedure; *Lawrence v. Texas*; Magna Carta; *Miranda v. Arizona*; Prisoner's Rights; Punishment Within Prison; Supreme Court, U.S.

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Duren v. Missouri

The Sixth Amendment to the U.S. Constitution provides that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed...." The Fourteenth Amendment guarantees due process to each citizen of the United States by ensuring that the Sixth Amendment will apply in all criminal prosecutions within each state of the union. In *Duren v. Missouri* (1979), the U.S. Supreme Court held that a Missouri law permitting a high percentage of women to be excluded from the venire (jury pool) resulted in their underrepresentation on juries. Women, unlike men, were able to receive an automatic exemption from jury service. While women represented 54 percent of the county population, they were 9.4 percent of the prospective jurors, and none of those on Duren's jury; as a result, neither the venire nor the jury represented a fair cross-section of the community, a key requirement of ensuring an impartial jury.

In 1975, Billy Duren was indicted for first-degree murder and first-degree robbery. In 1976, he was convicted by an all-male jury. In both a pretrial motion and in a post-conviction motion for a new trial, Duren “contended that his right to a trial by a jury chosen from a fair cross-section of his community were denied by provisions of a Missouri law granting women, who so request, an automatic exemption from jury service.” His motions were denied. During the six months prior to his trial, 26 percent of the 11,197 persons summoned were women; and during the week his trial began, 15.5 percent of the venire were women, but from the 53 individuals on his jury panel (~9.4 percent women), none were selected for his jury.

In *Peters v. Kiff* (1972), the court upheld a petitioner’s challenge to the exclusion of jurors to either a grand jury or a petit jury on the basis of race as a violation of his due process rights. He was also not required to show any actual harm or that the individuals who were excluded from a jury were the same race as the defendant; the mere exclusion was sufficient for due process denial.

In *Taylor v. Louisiana* (1975), Taylor was convicted of aggravated kidnapping by an all-male jury that was selected from a venire that did not contain any female members. The Supreme Court held that juries were to “be drawn from a source fairly representative of the community.” The court was clear when it noted that the “... fair cross-section requirement as fundamental to the jury trial guaranteed by the Sixth Amendment, and are convinced that the requirement has solid foundation. The purpose of a jury is to guard against the exercise of arbitrary power—to make available the common sense judgment of the community...” This will not happen when *any* group is deliberately excluded from a jury. The requirement that a petit jury be selected from a representative cross-section of the community, which is fundamental to the jury trial guaranteed by the Sixth Amendment, is violated by the systematic exclusion of women from jury panels, which in the judicial district here involved amounted to 53 percent of the citizens eligible for jury service.

In deciding *Duren*, the court relied on *Taylor* and provided a three-prong test to be followed in order to establish “a prima facie violation of that (cross section) requirement.” The defendant must show “(1) that the group alleged to be excluded

is a ‘distinctive’ group in the community; (2) that the group’s representation in the source from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation results from systematic exclusion of the group in the jury selection process.”

While of no legal significance regarding the holding of this case, Ruth Bader Ginsburg, Esq., was co-counsel with Lee M. Nation, Esq. on behalf of the petitioner and provided legal argument regarding a defendant’s right to have a jury that represented a fair cross-section of the community. She went on to become an Associate Justice of the Supreme Court.

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See Also: Citizen Participation on Juries; Juries; Race, Class, and Criminal Law; Racism.

Further Readings

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Dyer Act

The Dyer Act, also called the National Motor Vehicle Theft Act, was enacted on October 29, 1919, to impede the interstate trafficking of stolen vehicles by organized thieves. The act makes it a crime to transport stolen motor vehicles across state borders in interstate or foreign commerce.

Throughout the early part of the 20th century, development of automotive technology was rapid. The advent of the Ford Model T in 1908 revolutionized availability of the automobile to all Americans, as the Model T was the first car to be mass-produced. In 1909, a Model T could be purchased for \$825, making it affordable enough for most middle-class Americans. Ford sold more than 10,000 cars in its first year of production. As the availability of cars increased dramatically over the next year, so did the complex but logical nature of a relationship between cars and crime.



New automobiles for sale in a showroom between 1921 and 1922. The increase in car ownership and related crime in the late 1910s led to the enactment of the Dyer Act in 1919. It requires three elements that must be established beyond a reasonable doubt for conviction: (1) that a vehicle is stolen, (2) that the defendant knows that the vehicle is stolen, and (3) that the defendant transports the vehicle in interstate or foreign commerce.

As more Americans were able to own and drive cars, they were being used more often to facilitate crime. Cars were used as getaway vehicles, for the transportation of illegal goods, and to aid in the ability of criminal offenders to elude police capture. However, cars were also a commodity worthy of crime themselves and were often stolen. The Dyer Act was passed in part to respond to this new crime issue facing the United States.

Response to Changing Times

The Dyer Act gave the Federal Bureau of Investigation (FBI) the authority to investigate auto thefts that crossed state lines. Prior to the passage of this act, law enforcement officials were not as easily able to thwart interstate auto theft rings or investigate these offenses because of jurisdictional issues. Auto theft was often a component of other organized criminal activity that crossed state lines. The Dyer Act gave law enforcement officials the

ability to use federal information, resources, and personnel to track and investigate these offenses. The notorious Barker gang was well known for serious offenses throughout the midwestern United States, including auto theft, robbery, and murder. The willingness of offenders such as these to flee jurisdictions warranted involvement and concern from federal law enforcement.

Three elements must be established beyond a reasonable doubt for conviction under the Dyer Act: (1) that a vehicle is stolen; (2) that the defendant knows that the vehicle is stolen; and (3) that the defendant transports the vehicle in interstate or foreign commerce. Any person who aids or abets the commission of this crime is also guilty and equally culpable as a principal who actually commits the crime. Anyone who receives, possesses, conceals, stores, barter, sells, or disposes of any motor vehicle, vessel, or aircraft that has crossed a state or national boundary after being

stolen will be punished under the act. The punishment for conviction under the Dyer Act is an unspecified fine, imprisonment of no longer than 10 years, or both.

As with any legislation, there has been legal controversy surrounding the Dyer Act, particularly the meaning of the word *stolen*. Federal courts reviewing cases under the act have disagreed as to the meaning of this term: Some have limited it to the common law larceny definition, while others have begun to expand the definition to other crimes of theft, including embezzlement. Courts attempting to expand the application of the Dyer Act have argued that *stolen* refers to any and all unlawful misappropriations; therefore, the Dyer Act is applicable to these circumstances as well.

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See Also: Automobile and the Police; Crime in America, Types; Federal Bureau of Investigation; Felonies; Gangs, History of; History of Crime and Punishment in America: 1900–1950; History of Crime and Punishment in America: 1950–1970; Larceny; Organized Crime, History of; Robbery, History of.

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Earp, Wyatt

Wyatt Earp (1848–1929) is popularly known as a lawman, though in his varied career he was a land speculator, teamster, farmer, gambler, bar owner, gunman, and possibly a bouncer in a brothel. His fame as a law officer in the West stems from his stint as town marshal of Tombstone, Arizona, and most specifically, his role as participant in the iconic gunfight at O. K. Corral. This brief gunfight, which took less than a minute from beginning to end, gave Earp a perhaps undeserved notoriety and a place in the pantheon of the Wild West.

Born in Iowa, Earp drifted into minor lawlessness, such as horse-stealing and financial irregularity, after the tragic death of his first wife. He was also involved in pimping and protecting a brothel in Peoria, Illinois. He then became a low-ranking lawman (and card dealer) in a series of cow towns (like Lamar, Missouri) and boom towns—places like Wichita and Dodge City, Kansas, ultimately ending up in the silver boom town of Tombstone, Arizona, in 1879. Interspersed with lawman duties, he worked as a teamster and buffalo hunter and gambled in Texas, where he met “Doc” Holliday, a notorious gunman and gambler who would become his friend.

Earp worked in law enforcement in Tombstone with his brothers Morgan and Virgil. The latter was the federal marshal for the area. He also

bought an interest in a saloon and a silver mine. Shortly thereafter, he came into conflict with a group of ranchers who were allied with Democratic and ex-Confederate ranching interests, called the Cowboys. The Republican Earps began to brawl with the McLaury brothers, “Curley Bill” Brocius, the Clantons, and the Democratic Sheriff John Behan of Tombstone. Additionally, Earp took up residence with Behan’s mistress, a fact that pulled the two men even further apart. Election irregularities and political shenanigans further alienated the two lawmen.

The conflict flared into open warfare on the morning of October 26, 1881, when Earp and his brothers Virgil and Morgan, together with “Doc” Holliday, shot it out with the Clantons and the McLaurys. Frank and Tom McLaury were killed, as was Billy Clanton. Ike Clanton and a retainer ran from the scene, and Vigil and Morgan Earp were wounded. While this event electrified the frontier, local citizens were not so sanguine, and a trial was convened. Johnny Behan testified against the Earps and Holliday, and although they were found innocent and freed, their reputations were damaged. After the trial, Virgil Earp was wounded in an ambush and Morgan Earp was killed. Consequently, Wyatt Earp and some companions were on the hunt for Clanton and his gang. A shoot-out accorded in Tucson, and Wyatt killed Frank Stillwell. Later, the Earps formed a

posse and killed “Curley Bill” Brocius and Indian Charlie Cruz, cowboys who were supposedly involved in Morgan’s death.

When warrants were issued for the Earps and pursued by Sheriff Behan, they left the Arizona Territory forever. Their properties and assets were seized for back taxes and they moved on to places all over the West. Wyatt apparently married Josie, the woman whose affections he alienated from Johnny Behan in 1883, and they roamed the West together until his death. Earp spent the next few years working in saloons and as an investor in the northwest. He moved to San Diego, California, in 1885, and became a real estate speculator and gambling hall impresario. In 1893, the Earps moved to San Francisco and then on to Alaska in 1897. He later moved back to California, where he became a Hollywood film consultant and performed certain off-the-books activities for the Los Angeles Police Department. During the latter part of his life, he was the subject of numerous newspaper stories, some laudatory and others scandalous. His reputation was by no means secure.

Earp died in Los Angeles in 1929 after a failed attempt to revive his fortunes mining in California. He was discovered there by Stuart Lake, who wrote a highly flattering and exaggerated account of the lawman’s life and exploits. This account was to have a huge influence on cinematic and televised portrayals of Earp and other western lawmen.

Earp lives on in legend in such films as *My Darling Clementine* (1946), *Gunfight at O. K. Corral* (1957), *Wyatt Earp* (1994), and *Tombstone* (1993), to name just a few. *Tombstone* comes the closest to catching the spirit of the times, preserves the richness of the frontier argot, and accurately portrays the moral ambiguity of Earp and his milieu. It also points out that Earp was a flawed hero and thug, who consorted with gamblers, prostitutes, and amoral gunslingers. It basically ignores the political dimension of the struggle to bring a certain brand of law and order to the post-bellum West.

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See Also: Arizona; Brocius, William; Film, Crime in; Frontier Crime; Gun Control; History of Crime and Punishment in America: 1850–1900; Kansas; Sheriffs.

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Eastern State Penitentiary

Philadelphia’s infamous Eastern State Penitentiary (1829–1971) was the most famous example of a prison administered according to the Pennsylvania System of Separate Confinement, which argued that inmates should be totally segregated from one another while incarcerated. Eastern State Penitentiary’s roots stretch back to an organization called the Philadelphia Society for Alleviating the Miseries of Public Prisons (PSAMPP), which was formed in 1787 by a group of prominent citizens including Benjamin Franklin, Dr. Benjamin Rush, and William White (Philadelphia’s Anglican bishop).

Initially, the PSAMPP focused its efforts on reforming conditions at Philadelphia’s Walnut Street Jail, which was overcrowded and filthy. The PSAMPP’s efforts led to the addition of a “penitentiary house” to the Walnut Street Jail; prisoners incarcerated in the penitentiary house were physically separated from one another, received some religious instruction, and were expected to learn and practice a trade during their sentence. The goal of this program, which formed the basis of what later came to be called the Pennsylvania System, was reforming inmates, making the Walnut Street Jail the world’s first penitentiary.

Pennsylvania System

Unfortunately, the Walnut Street Jail’s penitentiary house quickly became overcrowded, making strict practice of the Pennsylvania System impossible. The PSAMPP advocated the construction

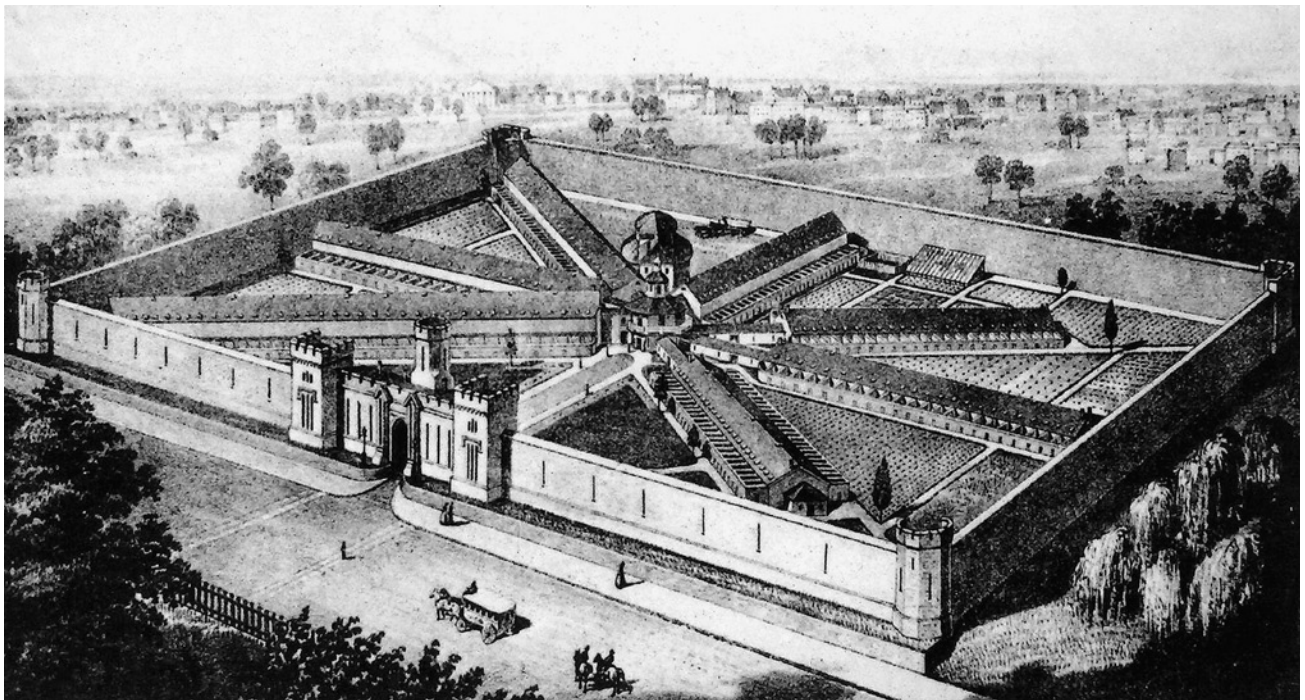
of replacement penitentiaries, specifically built to practice the Pennsylvania System. The first of these, Western State Penitentiary, opened near Pittsburgh in 1826, but the building did not allow for the full implementation of the Pennsylvania System because the cells were not large enough for inmates to practice their newly acquired trades.

By contrast, Eastern State Penitentiary, which was built 1821–36, was specifically designed to implement all aspects of the Pennsylvania System. Designed by Philadelphia architect John Haviland, Eastern State Penitentiary was the largest and most expensive public works project of its time because of the need to guarantee that all inmates were totally separated from one another and had enough space in their cells to practice their trades.

The building was constructed on a radial plan, with all seven of the original cellblocks meeting at a central location like the spokes of a wheel. Surrounding the cellblocks was a massive wall designed to resemble a castle. Each cell opened to a small, walled exercise yard where prisoners were allowed one hour of recreation per day (weather

permitting). Because inmates were expected to spend most of their time in their cells, each cell had indoor plumbing and running water at a time when President Andrew Jackson was still using an outhouse.

Eastern State's administration could be surprisingly relaxed and shockingly brutal. On the one hand, inmates were allowed to keep pets in their exercise yards and could decorate their cells and exercise yards. At the same time, punishments for breaking the penitentiary's rules included strait-jackets and the shower bath, whereby prisoners were chained to a wall or strapped to a chair and deluged with gallons of chilled water. One particularly fearful punishment called the "iron gag" was a bit placed in the mouth and was attached to the convict's hands, which were bound behind him; as the inmate lowered his hands from fatigue, the bit was pulled tight and slowly choked the inmate. Use of this device led to at least one inmate's death (Matthias Maccumsey) and triggered an investigation that revealed mismanagement, embezzlement, and perverse sexual encounters between inmates and staff.



This 1855 lithograph shows the Eastern State Penitentiary's radial design, with its seven separate cellblocks meeting at a point in the middle. Each cell had a private walled exercise area behind it where the prisoners could go outside alone for an hour per day. For the majority of the time, they were meant to stay inside their cells working at solitary trades, but overcrowding soon made this impossible.

Overcrowding and Other Difficulties

Because it was so complex, Eastern State's administrators were never able to fully implement the Pennsylvania System. From the day the penitentiary opened, inmates were recruited to work around the prison site as a cost-cutting measure, frustrating attempts to keep them separated. After the Civil War, the penitentiary's inmate population quickly swelled beyond the number of available cells, making it impossible to adequately separate inmates. Despite the construction of multiple additional cellblocks, by the early 20th century, the Pennsylvania System at Eastern State was more often honored in the breach than the practice. Furthermore, Western State Penitentiary had abandoned the Pennsylvania System in 1869, and by the 1870s, the penitentiary model had been eclipsed by the reformatory model developed by Zebulon Brockway at the Elmira Reformatory. Though Eastern State's administrators clung to the Pennsylvania System into the 20th century, the penitentiary officially abandoned it in 1913.

Though no longer the cutting-edge penal institution it had once been, Eastern State Penitentiary's administrators continued working with local and national leaders in penology to reform inmates. During the 1910s and early 1920s, penitentiary administrators implemented many of the reforms initiated by famed penal reformer Thomas Mott Osborne at Eastern State's onetime rival, New York's Sing Sing; unfortunately, these reforms were short-lived due to a series of well-publicized scandals involving drugs, alcohol, and a prison-wide counterfeiting operation. These scandals led to a period of military-style discipline at Eastern State and a de-emphasis on inmate reform. However, following a series of prison riots throughout the United States, in the early 1950s, Eastern State once again became a cutting-edge laboratory for inmate reform.

Rechristened "State Correctional Institution—Philadelphia" (SCI-PHA), Eastern State's administrators divided the institution into a correctional facility and a diagnostic center where newly arrived convicts were offered psychological and medical treatment. Moreover, some of the more horrific aspects of discipline at Eastern State, like the group of underground cells known as "Klon-dike," were removed. During its final years, Eastern State Penitentiary returned to the spirit of

inmate reform that had characterized its founding more than a century before.

Closure of the Facility

Unfortunately, the changes at Eastern State only made clear that the penitentiary's aging physical plant was simply not up to the challenge of functioning as a modern, maximum-security state prison. Proposals for closing Eastern State had appeared as early as the turn of the 20th century, and in 1929, the state opened the new Eastern State Penitentiary (SCI—Graterford). It was only the Depression, which drastically increased Pennsylvania's inmate population, that kept Eastern State Penitentiary open.

As Pennsylvania's inmate population declined in the 1950s and 1960s, many observers began calling for Eastern State's closure, especially following a riot at the penitentiary in 1961. In 1970, the state closed Eastern State Penitentiary, though



A cell at the now closed Eastern State Penitentiary as it looked in the early 2000s. The massive building complex still stands, though the last prisoners left in 1971.

the city of Philadelphia used the building to house inmates following a riot at the city jail the following year. However, this respite was only temporary, and by 1971, the penitentiary closed its doors for the last time as a correctional facility, leaving behind an imposing monument to American correctional history.

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See Also: Auburn State Prison; Brockway, Zebulon; Corrections; Penitentiaries; Pennsylvania; Pennsylvania System of Reform; Sing Sing Correctional Facility.

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Eddy, Thomas

Thomas Eddy (1758–1827) was born in Philadelphia to Irish Quakers who had immigrated five years earlier. His father was in shipping before moving into hardware in 1766. A few years after Eddy's father died in 1766, the family relocated to Bucks County, Pennsylvania. At age 13, Eddy became a tanner's apprentice in Burlington, New Jersey. At age fifteen, he left the apprenticeship for New York with plans of being a merchant, despite having a lack of capital or experience. He dealt in goods shipped by his brother Charles from Ireland and England. He also made a significant sum of money from the British in 1781 by remitting money from the New York headquarters to troops imprisoned in Lancaster, Pennsylvania, after the fall of Yorktown.

In the general economic downturn after the end of the American Revolution, in 1784, Eddy and his brothers Charles and George went bankrupt in Philadelphia. Eddy returned to New York,

where he was an underwriter and then broker and speculator in public funds. He became the director of the Mutual Insurance Company, and in 1803, he was one of the founders of the New York Savings Bank. He also was among the founders of the New York Bible Society.

Eddy was a principal advocate of the Erie Canal, second only to DeWitt Clinton in working for the project. One of his enterprises was the Western Inland Lock Navigation Company, which sought to make the Mohawk River navigable to Lake Ontario. When the Western Inland Lock Navigation Company became financially unstable, Eddy shifted his attention to the building of a canal. He and Federalist State Senator Jonas Platt proposed a commission to explore canals to Lake Ontario and Lake Erie and reported in favor of the Erie Canal.

Penal Reform

Eddy advocated moral uplift of blacks and the poor and other unfortunates. By 1793, his charitable impulse led him to an interest in penal reform. He wanted an end to branding, solitary confinement, whipping posts, and pillories. Eddy served on the prison reform commission and helped Senators Philip Schuyler and Ambrose Spencer draft the penitentiary reform bill that became law in 1796. Eddy's penal legislation authorized two state penitentiaries, one in Albany and the other in New York City. The Albany plan was abandoned, apparently because there was expectation of insufficient demand upstate.

Eddy oversaw construction of the old Newgate prison in Greenwich Village. Eddy relied on knowledge of Philadelphia's Walnut Street Jail in designing Newgate, but he differed in creating a prison with no accommodation for vagrants, debtors, or suspects. Newgate was for felons only. He also included a large room for public religious services, which Walnut Street did not have because there was no expectation when it was constructed that prisoners would be interested in religious exercises.

Eddy served as penitentiary director for four years, from 1797 to 1801, during which time he reformed the institution by emphasizing cleanliness and discipline. Deterrence to Eddy was merely temporary. Restitution was also good, but the long-term goal was eliminating the habits and urges, the patterns of guilt. Punishment had as its end reform. He was unsentimental and stern but

humanitarian. His underlying assumption was that the felons were wicked and depraved, always plotting to cause a disturbance or to escape. But he did not believe that all prisoners were alike, so he treated each as an individual. For rehabilitation, he divided them into three categories: hardened criminals, depraved but not totally lost offenders, and young first timers.

His rehabilitation included religious worship and night school (open to the well-behaved and costing additional labor as tuition.) Prisoners had to work together in the shops, which promoted discipline and a sense of community and turned a small profit. There was no corporal punishment under the law, and guards were not allowed to strike prisoners. Discipline was through solitary confinement, which Eddy earlier sought to ban, with reduced rations. Well-behaved prisoners earned visits with wives and family members each quarter. Among Eddy's innovations was the individual cell for each convict rather than the community cell then in use. He also rejected the idea that prisoners should be kept in solitary confinement at night, not being enthusiastic about solitary confinement even in daytime.

In 1803, Eddy was on the outs with the new Jeffersonian prison inspectors, being a good Federalist, and the final straw—implementation of a contract shoemaking enterprise in the prison—caused him to resign in 1804. After leaving the prison, Eddy continued to criticize the increasing mismanagement, harsh discipline, and financial deficits of the new administration. He still insisted in 1818 that prisoners should work together during the day and sleep in individual cells at night, as they had during his tenure.

Eddy was also instrumental in getting the legislature to build mental institutions. In 1793, he became one of the governors of the New York state mental hospital, and he got the legislature to be more liberal in financial support for mental institutions. In 1798, the Quakers assigned John Murray and Eddy to visit New York state Native American tribes, and Eddy worked to make conditions for them better. In 1815, he cofounded Bloomingdale, an insane asylum. Eddy also published *State Prison of New York* in 1801.

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See Also: Corrections; History of Crime and Punishment in America: 1783–1850; New York; Penitentiaries; Punishment Within Prison; Rehabilitation.

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Eisenhower, Dwight D. (Administration of)

Thirty-fourth President (1953–61) Dwight Eisenhower was a war hero, a grandfatherly figure, and a natural leader for a decade of rest and recovery from two turbulent decades of depression and war. His administration was one of unparalleled prosperity and peace. Crime was defined broadly, although traditional crime rates were at record lows. Order was the word of the day.

The Cold War and Organized Crime

With political and social conservatism came paranoia and suspicion during the cold war. Joe McCarthy was allowed free rein during the early Eisenhower years in a paranoid pursuit of communists. Eisenhower initiated an anti-crime effort targeting dissident groups. The Supreme Court in the 1950s was limiting government power to intervene overtly against dissident groups. The Counter Intelligence Program (COINTELPRO) was a Federal Bureau of Investigation (FBI) effort to infiltrate and disrupt anti-American organizations and cause defections. It had antecedents in the World War I targeting of dissents and J. Edgar Hoover's ongoing anticommunist crusade through



Fidel Castro (bearded) at a meeting of the United Nations General Assembly in 1960. Dwight Eisenhower was responsible for authorizing an effort to kill Castro, which at one time involved 400 full-time members of the Central Intelligence Agency.

the 1940s. Under Eisenhower, the first to be targeted under COINTELPRO was the Communist Party USA but under Kennedy, COINTELPRO spread to include the socialists, Ku Klux Klan, Black Muslims, Black Panthers, and new left groups. Eisenhower received information about political and social contacts by such individuals as Bernard Baruch, Eleanor Roosevelt, and William O. Douglas. Eventually, Congress and the courts agreed that COINTELPRO violated legal restrictions on the FBI as well as individual constitutional rights to free speech and association.

Another issue was corruption and dictatorial management in organized labor. The Kefauver Committee hearings into organized crime had made Estes Kefauver a presidential contender in

1952, but organized crime was not a priority with FBI head J. Edgar Hoover. In 1957, the McClellan Committee investigated links between organized labor and organized crime. The AFL-CIO expelled three major abusers—laundry, bakery and confectionary, and teamsters—but the president was not satisfied. The Landrum-Griffin Act (Labor-Management Reporting and Disclosure Act) of 1959 required honest and democratic internal union arrangements. The act established federal penalties for misuse of union funds, violence against union members seeking to exercise legal rights, other specified crimes, and, in support of Taft-Hartley, bans on secondary boycotts and greater power for states to define their own labor relations in the right-to-work effort. But the Eisenhower administration was weak on organized crime.

Eisenhower made a gesture toward fighting the Mafia when he established an organized crime unit in the Criminal Division of the Department of Justice in 1954. But anticrime efforts were secondary when it came to dealing with Fidel Castro, the strongly anti-American Cuban dictator and potentially an ally of America's enemy the Soviet Union. Eisenhower authorized Operation Mongoose, an effort to kill Castro, an effort involving 400 full-time Central Intelligence Agency (CIA) agents.

When developing a paramilitary force in Cuba proved unfeasible, the next option was to hire the Mafia to assassinate Castro. The Mafia was willing because Castro had destroyed the lucrative casino and brothel business it enjoyed under Fulgencio Batista. The CIA liked the plan because they had plausible deniability. The CIA and FBI arranged immunity for Mafia figures in return for Mafia efforts to kill Castro. The Mafia, benefiting from the immunity, hustled the CIA, talking a good game but not actually doing much against Castro. When Eisenhower left Mongoose to Kennedy, Kennedy renamed it Operation Freedom, and the effort began to include poisoned diving suits and exploding cigars, as well as the more traditional snipers and assassins.

Juvenile Delinquency

In 1960, Eisenhower referred to a worldwide problem, one that most industrialized countries, including the harshly repressive Soviet Union, shared but could not control. The problem was

juvenile delinquency, and Eisenhower wanted a program that would address the causes without mentioning juvenile delinquency, but instead talking about positives such as healthy development of intellect, morality, and physical condition. For Eisenhower, the beginning was the child's home environment. Historically, the solution to juvenile crime was jail, but in the 19th century, particularly late in the century and into the early 20th, juvenile delinquency became another target of the reformers who thought by intervention to turn poor juveniles away from the criminal path. In the late 1940s and 1950s, the problem spread into the middle class, and public opinion was excited by the popular press, national magazines, and Hollywood. Latchkey kids and unsupervised teens meant a doubling of the juvenile justice workload between 1948 and 1956, with 1954 the peak year. In 1955, Eisenhower asked Congress for federal aid to states for antidelinquency programs. Congress rejected Ike's calls in 1955 and again in 1956 and 1960. Aid to the states began under Kennedy.

Causes of juvenile delinquency included gangs, parental failure, rock and roll, bad neighborhoods, and, according to the federal government, the international trade in drugs. The war on drugs dates at least to 1914's Harrison Narcotics Tax Act that regulated distribution of heroin and other opiates and the 1937 Marihuana Act that broadened the scope of the 1914 legislation. In 1954, Eisenhower established the U.S. Interdepartmental Committee on Narcotics, a coordinating body for executive actions against drugs. The largely symbolic measure was lauded by the *New York Times* as a new war on narcotic addiction. Not until 1971 would the term *war on drugs* come into use, and Richard Nixon was first to use it.

Immigration and Civil Rights

Eisenhower was the last president to enforce the effort to block illegal immigrants. In 1954, he instituted Operation Wetback, a repatriation effort of the Immigration and Naturalization Service (INS) that saw 750 federal agents in cooperation with local and state authorities remove 1.3 million Mexican nationals in a single year with no protest from government-funded Hispanic advocacy groups. The border patrol as well as state and local police in the southwest swept Mexican American neighborhoods, made random stops

and ID checks of "Mexican-looking" people, and deported both illegal aliens and, sometimes, legal citizen children. Eisenhower was the last president to authorize the execution of a soldier, signing a death warrant in 1958 for an execution carried out under Kennedy in 1961.

One law-and-order issue that Eisenhower largely sidestepped was civil rights. The Eisenhower administration accepted *Brown v. Topeka* and promised to support federal laws against poll taxes and lynching. Integration of the government and armed forces would continue. But Eisenhower needed southern votes for his foreign policy and let civil rights groups fight their battles without the federal government. The exception, intervention in the Little Rock desegregation crisis in 1957, was a matter of countering the flouting of federal authority rather than upholding a court decision. In a sense, it was a matter of law and order. Eisenhower presided over a nation enjoying prosperity and peace and relatively low crime rates. Anticrime efforts were relatively moderate, and there was no campaign for harsher punishments or more prisons.

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See Also: 1941 to 1960 Primary Documents; Civil Rights Laws; Federal Bureau of Investigation; Italian Americans; Juvenile Delinquency, History of; Juvenile Delinquency, Sociology of; Landrum-Griffin Act of 1959; Organized Crime, History of; Political Crimes, History of.

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Eisenstadt v. Baird

This Supreme Court case, argued in November 1971 and decided in March 1972, declared unconstitutional a Massachusetts statute that imposed a five-year jail term for distributing contraceptives unless by a licensed physician or pharmacist, or distributing contraceptives to unmarried persons. The decision removed the institutionalization of punitive premarital sex standards, allowing unmarried, consenting adults to engage in sexual conduct for reasons other than procreation. With *Griswold v. Connecticut* before it and *Roe v. Wade* after it, the court accepted a zone of privacy recognized in the Fourteenth Amendment's due process clause. The court decided the crux of the case, however, on the Fourteenth Amendment's equal protection clause.

Students at Boston University invited William Baird, Jr., a birth control activist, former medical student, and former employee of a pharmaceutical company, to deliver a lecture on contraception and overpopulation. He preceded the hour-long lecture on April 6, 1967, with a statement that he meant to test the Massachusetts law on contraceptives by distributing products. He urged his audience of nearly 2,000 students and faculty to petition the state legislature to repeal the law and to come forward at the end of the lecture to take contraceptive supplies from his display. When Baird handed a single woman Emko contraceptive foam, officials arrested him on two counts: displaying contraceptives and distributing contraceptives without a license. Although the woman's marital status was not an issue at the arrest, it became important in the court's deliberations.

Joseph Nolan argued for appellant Thomas Eisenstadt, sheriff of Suffolk County. Because Baird did not have a medical license, he could not appreciate the dangers of contraceptives. Privacy was not an issue because Baird had openly displayed contraceptives. The state, in Nolan's view, had a compelling interest to deter fornication among unmarried couples. Joseph Tydings argued for Baird, supported by amicus briefs from the Planned Parenthood Federation of America, Inc., Planned Parenthood League of Massachusetts, the American Civil Liberties Union, and Human Rights for Women, Inc. Tydings contended that Massachusetts had no compelling basis for this

law, and that legislation already existed to regulate dangerous and unsafe products.

In a 6–1 decision, the court found no rational reason for the state to restrict contraceptives to married women. Justice William Brennan, writing for the majority, argued that because the statute treated differently married and unmarried persons who were “similarly situated,” it violated the Fourteenth Amendment's equal protection clause: “the rights must be the same for the unmarried and the married alike.”

The court also expanded the Ninth Amendment's right of privacy enunciated in *Griswold*:

It is true that in *Griswold* the right of privacy in question inhered in the marital relationship. Yet the marital couple is not an independent entity ..., but an association of two individuals each with a separate intellectual and emotional make-up. If the right of privacy means anything, it is the right of the *individual*, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.

The court extended the zone of privacy not only to contraception but also to adults' right to engage in sex as they saw fit, including sodomy. While the decision implied heterosexual couples, the court broadened this right to all consenting adults with *Lawrence v. Texas* (2003).

Justice William Douglas concurred but wrote an opinion invoking First Amendment rights to free speech. The state could not restrict an individual's right to deliver an educational lecture on birth control: “The teachings of Baird and those of Galileo might be of a different order; but the suppression of either is equally repugnant.” Chief Justice Warren Burger cast the lone dissent. President Richard Nixon appointed Justices William Rehnquist and Lewis Powell, Jr., too late for them to participate in the deliberations. This case fits within the larger historical context of expanding individual rights, especially for teenagers. The Twenty-Sixth Amendment, in 1971, lowered the voting age from 21 to 18. In 1972, Title IX prohibited discrimination in schools receiving federal funds, including prejudice against pregnant students. *Carey v. Population Services International*

(1977) explicitly ruled that the right to privacy with regard to procreation extended to minors under the age of 16. In 1978, congressional actions led to teen rights to use family planning clinics confidentially and without parental consent.

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See Also: 1851 to 1900 Primary Documents;
Griswold v. Connecticut; Morality; *Roe v. Wade*.

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Electric Chair, History of

The use of electricity for execution dates back to the 18th century. Benjamin Franklin and other scientific minds of the time fired jolts of electricity into animals in order to kill them. This practice originated with Luigi Galvani, an Italian inventor who attempted to shock animals and persons back to life after they had died. The process was far more useful in killing than in saving lives—no records indicate that a test subject was ever brought back to life. Franklin and others postulated that electrical currents, shot into the vital areas of an animal, would kill it instantaneously and result in a painless and humane death. Franklin used electrocution regularly in order to slaughter his own chickens or cows, as he thought that the animals suffered far less with that method than with traditional methods. While experiments of this nature continued to be performed during the 19th century, the focus of electrical research was redirected. The harnessing of electrical power for lighting was far more important for inventors such as Thomas Edison and George Westinghouse because of the potential

for commercial gain. However, from the 1850s forward, a group of activists centered in the northeast began to press for increased humanity in execution. Hanging came to be seen as “old world” and “barbaric” and completely unacceptable in a civilized, modern nation.

As early as 1878, the Ohio state penitentiary system had modified Thomas Edison's Inductrium device to punish prisoners. The device was originally intended to deliver a small shock of electricity to a person, as this was thought to improve circulation and general health. The penitentiary altered the device to produce a much larger jolt and attached electrodes from the Inductrium directly to the skin of an unruly prisoner to administer a painful shock.

Throughout 1879, the *New York Times* ran a series of articles detailing the possibilities for more humane execution methods. Electrocution was brought up a number of times in the article as something that needed to be examined further, but after the articles stopped running, the small public debate about electrocution ended. In 1882, three individuals were accidentally electrocuted. The news of these electrocutions coincided with a resuscitation of the debate over the humanity of hanging. A growing number of death penalty detractors called for the abolition of the practice altogether, but an even larger number saw execution as a necessary part of law and order. A large percentage of these were, however, moved to step away from hanging, as the idea of execution as a public spectacle had become distasteful.

Westinghouse's Dynamo

In the early 1880s, George Westinghouse devoted time to the creation of a more powerful electric generator capable of delivering far greater voltage than Edison's device. The Dynamo was the result. A prototype unit caused the accidental death of a worker when he inadvertently grasped both poles at once. In the autopsy, physicians could find no discernible cause of death, save for a large coagulation of blood in his lungs. On closer inspection, a faint line was observed under the epidermis on his chest where the electrical current had been delivered. Alfred Porter Southwick, a dentist from Buffalo, New York, was convinced that electrocution was just the thing for humane executions and resumed experimenting with animal



This electric chair in the execution chamber at the Louisiana State Penitentiary is a replica of one known as "Gruesome Gertie," which was used for 87 executions from 1957 to 1991. The electric chair was still in widespread use until the 1980s, when lethal injection increasingly replaced it as a method of execution. Through 2003, 4,432 people in the United States had been executed in electric chairs.

electrocutions. He decided, after a number of trial runs on stray dogs, that a current delivered to the brain would kill quickly and painlessly.

Southwick took the helm of a New York committee to explore execution and decide upon the most humane method. An encyclopedic manual was drawn up, which alphabetically listed and discussed historical execution and torture tactics. Two possible candidates were named: poison by injection, or electrocution. At the behest of New York physicians, poison was eliminated because they feared it would lead the public to refuse to use hypodermic syringes. When Southwick wrote to Edison asking his opinion on the matter, Edison initially remained silent and only said that he was opposed to the death penalty. Weeks later, when asked again, Edison had reconsidered. He thought that electrocution was the most humane

method of ending a life. Further, he thought that George Westinghouse's relatively new "alternating current" electricity was the best suited sort of electric current for the job, because of the high voltages that it made possible. The Gerry Report, named for Chairman Elbridge Gerry, was compiled and presented January 17, 1888. The final report stated that of all methods of execution, electrical current was the most humane because the shock traveled faster than nerves could receive information, and so death was instantaneous and completely painless. The idea was to deliver a shock to the brain of the condemned by way of wire connected to one of Westinghouse's Dynamo machines. The committee further estimated that executions that used this method would be inexpensive—the entire chair should cost less than \$500, they estimated.

First Execution by Electric Chair

A bill was proposed in New York the same year and passed quickly. On January 1, 1889, New York was the first state to abolish hanging and institute electrocution as the only acceptable method of execution. William Kemmler, convicted of the murder of Tillie Ziegler, was to be the first man executed by electric chair. He was actually scheduled to be second, but due to a last-minute pardon, the line was cut shorter. The execution took place at Auburn Prison in New York the week of August 4, 1890. The execution was a failure. Kemmler was attached to the chair by 11 leather straps and had a skullcap placed on his head. The skullcap held a sea sponge into which was injected a soda solution intended to speed to current. A similar fixture was placed on the small of his back, and the shock of 1,000 volts was delivered. Kemmler was shocked for a short time and then pronounced dead. When the skullcap was removed, he was still breathing, and so he was shocked again for far longer with 2,000 volts, at which time his skin was charred and reportedly caught fire.

All sides of the equation placed the blame elsewhere—doctors blamed the attendants, attendants blamed the equipment. George Westinghouse denounced the execution and noted that there would have been more success with an ax. Thomas Edison, however, stuck by his statement that electrocution was perfectly valid; he just thought there were some mistakes made that caused the botched execution. He cited his own animal experiments as proof of instantaneous death. Refinements to the chair continued, and in 1897, Edwin F. Davis was awarded a patent for the “electrocution chair,” which, along with one designed by Charles Adams, represents the final form of the electric chair.

The botched execution did not stop the acceptance of electrical execution. After New York’s 1888 adoption, Ohio adopted it in 1896, Massachusetts in 1898, and New Jersey in 1906. Acceptance of the chair moved beyond government and into the medical profession. By 1910, the *Journal of the American Medical Association* and other esteemed publications either encouraged or at least acknowledged the chair as humane. The public was also fascinated by the chair. Edison’s film company produced two movies, first in 1901, *The Execution of Czolgosz*. The film was a short

reenactment of the electrical execution of William McKinley’s assassin. In 1903, Edison produced a film wherein a rogue elephant that escaped from a circus tent and trampled onlookers was electrocuted. By the middle of the 20th century, at the greatest extent of the electric chair’s use, it had been adopted by 25 states.

Conclusion

Throughout the 1950s and 1960s, detractors of capital punishment pressured governments to rethink execution. A series of court cases and decisions slowed the rate of executions over this time, and in the late 1960s, capital punishment by any means had essentially stopped. In 1972, the National Association for the Advancement of Colored People (NAACP) reported on the tremendous racial disparity in executions, especially in the south. The report stated that between 1908 and 1930, 148 people were electrocuted in Virginia. Of these, only 18 were not black. Capital punishment in the United States resumed in the early-to-mid 1970s, but the electric chair fell out of favor. The method that replaced it, and is still the most widely practiced in the nation, is lethal injection. By 2003, 4,432 persons had been executed in the electric chair in the United States.

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See Also: Auburn State Prison; Capital Punishment; Czolgosz, Leon; Death Row; Executions; Hanging; Sing Sing Correctional Facility.

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Electronic Surveillance

Electronic surveillance has been an important part in the debate between civil liberties and national

security. Soon after the invention of the telegraph, the government began intercepting communications. Enterprising individuals intercepted communications for profit. State legislatures responded by prohibiting electronic surveillance. Soon after, the government learned that electronic surveillance provided intelligence and evidence against criminal conspiracies. As electronic surveillance increased, supporters and opponents of it lobbied for legislation. Though legislation followed to restrict surveillance, the debate now focuses on the proof necessary to permit judicially authorized wiretaps.

Wiretapping

Electronic communication began with the invention of the telegraph in the first half of the 19th century. Its first governmental use was to send news of Henry Clay's presidential nomination from Baltimore to Washington, D.C. By the outbreak of the Civil War in 1861, the telegraph was an important communication device. Both sides employed it for war communications. Sending news of troop movements and strategy across telegraph wires permitted commanders to remain safe from the battlefield while directing their troops. It also gave the opposition the opportunity to gather intelligence about enemy plans. Specialists attached unauthorized cables to opposition cables. These unauthorized cables, wiretaps, permitted outsiders to listen to communications intended for others.

Following the Civil War, telegraph use expanded. Commercial enterprises used telegraphs to transmit stock and commodity prices. People in London could buy cotton from New Orleans through telegraph communications. The telegraph also featured prominently among the gambling community. Betting halls could place a person at the horse track and have the results telegraphed to the betting hall. Those seeking to ensure victory tapped the telegraph lines. These incidents led to laws prohibiting wiretapping. Technology evolved, first to the telephone, then radio. State governments passed laws prohibiting intercepting these communications, but law enforcement ignored them. They learned that wiretapping phone lines provided strong evidence against criminal conspiracies, especially against those involved in illegal alcohol distribution. In *Olmstead v. United States*



An unidentified man examining telegraph lines in an 1862–63 photograph attributed to the Civil War-era U.S. Military Railway Department. Surveillance of telegraph communications during that war marked the beginning of widespread use of wiretapping.

(1928), Roy Olmstead challenged the government's wiretapping. The Supreme Court upheld the search because the government did not enter Olmstead's property. Justice Louis Brandeis dissented, arguing that Olmstead's privacy rights were violated, creating a battle between privacy and law enforcement interests.

Following *Olmstead* and the disclosure of wiretapping during World War I, Attorney General William Mitchell banned governmental wiretapping. Congress passed the Federal Communications Act, barring wiretap evidence in federal courts. Law enforcement's demand for wiretapping soon overtook the prohibition and used the information obtained from wiretaps for leads. By the end of the 1930s, the Supreme Court effectively ended

the practice. However, with the outbreak of World War II, President Franklin Roosevelt needed information about German and Japanese activities. He ordered J. Edgar Hoover, the director of the Federal Bureau of Investigation (FBI), to oversee these efforts. In doing so, Roosevelt set the precedent for separating criminal justice and national security surveillance.

Cold War Fears

Following World War II, electronic surveillance expanded greatly with the advent of the cold war. The threat of communist expansion served to justify extensive electronic surveillance. Hoover directed surveillance of political opponents, arguing that opposition was fueled by communist infiltration. Targets included organized crime, the Hollywood filmmaking establishment, the civil rights movement, and other government agencies. The Supreme Court tacitly approved by excluding national security surveillance from judicial review. As national security surveillance increased, law enforcement pushed for electronic surveillance in criminal cases. Congress relented and, in 1968, established procedures for judicially authorized electronic surveillance. The law limited electronic surveillance to specific criminal offenses and required a judicial probable cause determination and procedures designed to minimize interception of innocent conversations.

Ten years later, Congress regulated national security surveillance. The Foreign Intelligence Surveillance Act (FISA) established criteria for national security surveillance. Although similar to the requirements for criminal cases, significant differences existed. Congress created the secret Foreign Intelligence Surveillance Court to review surveillance applications. Probable cause standards were relaxed by only requiring evidence that the subject of the surveillance was connected to a foreign power. The dual systems created difficulties for national security-related criminal cases. FISA surveillance often uncovered evidence of crimes. Courts uniformly admitted evidence obtained via FISA, but expressed concerns about potential abuse. To avoid judicial exclusion of FISA evidence in criminal cases, the Justice Department erected a “wall” preventing FISA-obtained evidence from entering criminal investigations.

Surveillance and Terrorism

Within 10 years, the “wall” contributed to the United States not detecting Al Qaeda’s plot to crash commercial airliners into the World Trade Center and the Pentagon. Analysts later concluded that separating intelligence from law enforcement contributed to the surprise attack. To rectify the problem, Congress passed legislation permitting sharing between law enforcement and intelligence. Despite the legislation, President George W. Bush created the Terrorist Surveillance Program, a top secret policy whereby the National Security Agency, the agency assigned to handle national security electronic surveillance, intercepted communications entering or leaving the United States from nations hosting suspected terrorists. The program’s disclosure renewed debate about government electronic surveillance, which culminated in amendments to FISA, permitting more surveillance without immediate judicial approval.

The history of electronic surveillance in the United States is that of attempts to balance the need for law enforcement and national security with the desire for privacy and protection from government eavesdropping. For the most part, this debate has been resolved through judicial supervision. However, on multiple occasions, presidents have assumed the power to covertly conduct electronic surveillance outside established judicial procedures, sparking renewed debate.

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See Also: Bush, George W. (Administration of); Defendant’s Rights; Espionage; Federal Bureau of Investigation; Homeland Security; Hoover, J. Edgar; *Katz v. United States*; *Olmstead v. United States*; Omnibus Crime Control and Safe Streets Act of 1968; Prohibition; Supreme Court, U.S.; Terrorism.

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Elkins Act of 1903

The Elkins Act of 1903 expanded the Interstate Commerce Act of 1887 by addressing the issue of how to regulate the practice of rebates used by the railroads in the United States. The legislation signed into law by President Theodore Roosevelt ended the practice of special rates and rebates that hindered commerce and also placed the railroad industry under further regulatory surveillance by the Interstate Commerce Commission. The initial legislation sponsored by Stephen B. Elkins, Republican senator from West Virginia, also became known as the Elkins Anti-Rebating Act of February 19, 1903. A major influence behind this bill was the Pennsylvania Railroad and its president, Alexander Cassatt, who long opposed the increasingly expensive practice of special rates and rebates and recognized the weakness of the current law under the Interstate Commerce Act of 1887. Another influence was state legislation written by James A. Logan, the solicitor general of Pennsylvania in 1902. Many people claim responsibility for the text of the Elkins bill, but ultimately it was a compromise version of the bills that passed the Congress.

The first version of the Elkins bill was proposed as Senate Bill 521 in 1902, sponsored by Elkins, and was largely based upon Logan's ideas. Elkins proposed that the Interstate Commerce Commission set the rates, created legalized pooling with a review process, made it punishable by fine for both the corporations and individuals to give or accept rebates, abolished imprisonment as a punishment, and gave circuit courts the right to review cases at the commission's request. This

version of the bill did not have the support of the members of the commission because the commission already proved powerless. Alternately, the Corliss Nelson bill, proposed as Senate Bill 3575, received the support of the commission members. The bill written by Michigan Republican Senator John Corliss and Minnesota Republican Senator Knute Nelson offered the same strict opposition to rebating practices, with additional provisions that the commission could set rates for two years if a complaint is filed against a railroad, followed by judicial review by the circuit courts. The main difference between the two bills was whether to legalize pooling.

Legislators opted to propose a compromise bill named the Elkins bill (Senate Bill 7038). The final version came to a Senate vote in February 1903 and passed unanimously, followed by a vote of 250–6 in the House. In its final version, the Elkins bill made both individuals and corporations liable for any violations of the law. The penalty for illegal activity was reduced to fines not to exceed \$20,000 and no prison time. The Interstate Commerce Commission and state attorneys general could request that a circuit court try a case and enforce rates if they deemed the grounds existed for intervention. Railroads could establish joint rates and file them with the commission for violation tracking. Anyone who violated the rates, either giver or receiver, was liable under this new law.

President Theodore Roosevelt signed the Elkins Act into law on February 19, 1903, and thus updated the Interstate Commerce Commission Act of 1887, making it more effective in enforcing rates with the railroads. The act did not fix all of the problems between merchants and the railroads, but it did accomplish what the railroads sought—an end to rate fixing and pooling. It further federalized the railroads and attempted to strengthen the weak Interstate Commerce Commission. Railroads often kept information from the commission's investigators and thus stalled investigations by withholding evidence. Large railroads could then keep their costs down while maintaining control of the major commercial and passenger routes in the country. Smaller railroads could not compete, nor could small businessmen and farmers. The law improved their situation and gave them a course of action to make business practices more fair.

The law remained in effect until further amendments under the Hepburn Act of 1906 strengthened the commission and its powers while addressing the weaknesses that remained in the Elkins Act. This legislation also had the unforeseen impact of leading to a devaluation of railroad securities, contributing to a depression in 1907. The Elkins Act increased the influence of the Interstate Commerce Commission and helped further regulate the American railroad industry.

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See Also: Antitrust Law; Interstate Commerce Act of 1887; Roosevelt, Theodore (Administration of).

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Elmira Prison

The history of Elmira as a prison has two discrete periods. The second period is well known to criminologists; the first period, almost not at all. But it was in Elmira's period of infamy as a prison camp for Confederate prisoners of war that the adjacent community discovered the profitability of prison as industry. The primary attraction of its location was that it was near an important railroad junction and that the prisoners could not be freed by a sudden Confederate lunge into Maryland, where most prisoners had previously been housed. Prisoners were confined at Elmira from mid-1864 through mid-1865. Food and adequate clothing were apparently deliberately withheld as abundant provisions existed in the area and in the north during the latter part of the war. Accordingly, Elmira had the highest death rate of any Union prisoner of war camp; 25 percent of those



A memorial for the nearly 3,000 Confederate prisoners who are buried at Elmira, New York. They died because of harsh conditions in the original prison camp, which was demolished.

held there died. Families of prisoners flocked to the area during and after the war, and prison guards' free spending and camp provisioning helped the local economy.

The Reformatory Period

When the war ended, the community was highly enthusiastic about a new "reformatory prison" that was planned for the area. At the National Prison Association Meeting in Cincinnati, Ohio, in 1870, the concept of *reform* was advocated as a primary goal of imprisonment, and the focus of that meeting was on creating a prison at Elmira with this in mind. Reformers planned to use vocational education, parole, and a sentence of indefinite duration (indeterminate) to give

inmates the skills they needed to successfully return to society. Zebulon Brockway, a noted reform advocate and warden, planned to employ ideas first used by Sir Walter Crofton in Ireland. This “marks system” was based on accumulation of positive points and could be called a merit-based system. It was confidently believed that in the process of accretion of points, inmates would learn that work was rewarding in itself and that virtue was its own reward. This was very much in tune with late-Victorian ideology about work and morality.

Accordingly, Brockway initiated a system in which inmates progressed through three stages. Brockway was successful in excluding from the program all but first-time youthful offenders; it was thought that these neophytes to the system would be more amenable to reform than would be recidivists. After an interview with Brockway, inmates were assigned to the second grade. Inmates who responded well to classes and vocational efforts after six months would earn a specified number of marks and be promoted to the first grade. Inmates in the first grade could earn a parole hearing after a year of full marks. Those who transgressed or otherwise did not get with the program were demoted to the third grade. Third grade involved quasi-solitary confinement and was manifestly unpleasant. Only through earning positive marks for a month could inmates hope to be restored to second grade, whereupon they would have to work their way into the first grade all over again.

Brockway was an energetic self-aggrandizer and tireless self-promoter. In his many speeches and publications, he promulgated four rules for sound correctional practice. His first maxim was that custody should be so secure as to defeat any attempt at escape. His hope was that inmates would stop thinking about escape and focus on getting with the correctional program. His second rule was to exclude outsiders (like family and ministers) as he felt they were a distraction and, moreover, that they seemed to imply that the institution itself was insufficient to accomplish the goal of correction. Third, he believed that the state had given him a grant of discretion and that he should have great latitude in matters administrative and disciplinary. Finally, in keeping with Victorian positivism, he believed in

keeping prisoners fully occupied; thus, they were kept hopping from dawn to dusk.

Though Brockway claimed an 80 percent success rate for Elmira’s parolees, few contemporary criminologists give that figure much credence. Most modern criminal justice academics posit that the prison was a failure because of its status as a total institution. Institutions of this type have conflicting goals and simply do not perform as one would hope or expect. Another problem was the constant attention paid to forcing Victorian middle-class Protestant standards of behavior, ambition, and demeanor on a captive population that was non-Protestant, non-Anglo Saxon, and poor. Exhortations to work hard for the sake of work itself were not bound to have much salience once the inmate returned to his native milieu—the streets, his subculture, and his family. Also, the pseudo-scientific approach itself was counterproductive and brutal. Prisoners were often beaten by guards and sometimes were slapped in the face by Brockway himself. Guards did not accept the goal of treatment and subverted it by unreasonable custody demands and excessive punishments. Finally, the inmate subculture proved to be an insurmountable obstacle. Brockway was eventually moved aside in 1900 but continued to defend his practices and system for another two decades. His biggest defense was that the inadequacies of the system were the result of prisoners being released prematurely.

Conclusion

The Elmira system emerged as the primary exemplar of the reformatory system—the system that, for good or ill, constituted the rationale for modern corrections throughout the nation and the world. The word *reformatory* itself has come to mean a prison for juveniles, or at least for first-time offenders. This reflects society’s superficial disposition to accept vocational training and education as goals. But even Elmira abandoned those goals by the 1930s; even when the goals were in place, the resources devoted to their realization were pitiful and demonstrated a lack of societal commitment to attaining them. But probably the most destructive factor was the problematic linkage between street culture and institutional inmate culture: a vicious and caustic nexus noted especially in today’s ineffective prisons.

Elmira State Correctional Facility stills exists today as a maximum-security facility for male inmates and holds about 1,800 inmates.

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See Also: Brockway, Zebulon; Corrections; National Congress on Penitentiary and Reformatory Discipline; Penitentiaries; Prisoner's Rights; Rehabilitation.

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Embezzlement

Embezzlement is a form of white-collar crime that involves the misappropriation of assets by an individual or group of individuals to whom those assets have been entrusted. Embezzlement typically involves the abuse of power that results from one's position within an occupational structure. Many examples of embezzlement involve bank employees who were responsible for handling transactions, issuing loans, and other bank functions, and who were entrusted to do so with little supervision or oversight. Nonetheless, by definition, embezzlement involves some degree of motivation on the part of the offender, and the primary motivation appears to be material self-interest or greed.

From a legal standpoint, embezzlement is the fraudulent conversion of another's property by a person who is in lawful possession of the property. Through the early 20th century, U.S. law enforcement rarely concerned itself with the investigation of embezzlement or with other forms of white-collar crime. Though laws prohibiting embezzle-

ment were enacted by this time and were enforced in some cases, the general public did not consider white-collar crime to be a serious problem. The change in attitudes regarding the importance of these crimes appears to have occurred in 1939, when Edwin H. Sutherland coined the term *white-collar crime* and urged a shift of attention away from more traditional forms of street crime, such as homicide and burglary, in his presidential address to the American Sociological Society. At this time, people began to recognize the magnitude of costs imposed upon society as a result of white-collar crime.

Incidents of embezzlement are rare compared to other forms of crime. This remains true, even when comparing it to other forms of white-collar crime. For example, in 2009, official data from the Federal Bureau of Investigation (FBI) indicates that there were 210,255 arrests for fraud and 85,844 arrests for forgery and counterfeiting, while there were only 17,920 arrests for embezzlement. Though the numbers vary slightly from year to year, this trend has remained consistent throughout modern U.S. history. The fact that the crime of embezzlement requires some degree of opportunity to commit may contribute to this observed infrequency.

Although rare, embezzlement schemes often span several years and result in the theft of large sums of money. In most cases, embezzlers go to great lengths to evade detection and mask their schemes by maintaining an upstanding image in the community. Often, the embezzled funds are utilized to bolster their status. Many members of the community, including some of the victims, tend to be sympathetic to the embezzler, believing that the acts were not committed with malicious intent.

Nevertheless, two unique features distinguish embezzlement from other forms of crime and highlight the seriousness of these embezzlement offenses. First, the duration and complexity of embezzlement schemes suggest that criminal intent is well established. That is, in most cases, the embezzler knew that his/her actions were illegal and continued to commit them regardless. *Mens rea* is present. Second, embezzlement often involves the theft of millions of dollars. This both deprives individual clients of their property and devastates the employing institution.

Many institutions victimized by embezzlers file for bankruptcy or are forced to close because of the losses incurred.

The Evolution of Embezzlement Law

Historical accounts of embezzlement date back at least to the time of the ancient Greeks, when Andocides (ca. 400 B.C.E.) detailed the fraudulent acts of Agyrrhius, who was reportedly imprisoned for several years after embezzling public money in the region of Attica. Despite this long and well-documented history, embezzlement was not a primary concern in the development of Western law through the late Middle Ages and into the early modern period. While English common law, which serves as the basis of modern law in U.S. society, dealt with the closely related crime of larceny, it did not contain explicit provisions for how to deal with the crime of embezzlement.

Perhaps the earliest legal case related to embezzlement was *Rex v. Bazeley*, which occurred in 1799 in England. In this instance, Joseph Bazeley, a bank clerk, received a deposit from George Cock, a servant of William Gilbert who was a customer at the bank. After recording the deposit, Bazeley pocketed the money, for which he was later charged with larceny. However, because Bazeley was in lawful possession of the money at the time, he was not convicted. This prompted Parliament to pass legislature that held employees liable for embezzlement, a misdemeanor at the time. The key elements introduced by this case were the conversion of property rights and the notion that embezzlement involves a violation of trust by persons in legal possession of the property of others—elements that are included in modern U.S. laws regarding embezzlement.

Though no uniform definition exists, embezzlement is considered a statutory offense within the context of U.S. society, and punishments range from misdemeanor to felony depending on the value of the embezzled property. Despite variations in the definition of embezzlement from state to state, five principal elements distinguish this form of crime from others and are incorporated into most contemporary statutory laws: (1) the act is fraudulent, (2) the act involves conversion of property rights or ownership, (3) the act involves property that is subject to law, (4) the specified

property is owned by a person or entity other than the accused, and (5) the accused individual is in lawful possession of the property at the time of conversion due to his/her position of trust.

The requirement of fraud suggests that the act was committed purposefully, with the intent to deceive another. Deceit entails a certain degree of trust between individuals and often involves concealment or misrepresentation of information by one party to the other. As it pertains to embezzlement, the fraud requirement means that the conversion of property rights did not result from a mistake. That is, the embezzler intended to take ownership of another's property without legal claim.

Because the crime of embezzlement pertains specifically to situations in which an individual or group is entrusted to handle the assets of another, the conversion requirement is related to the issue of ownership. In this instance, conversion suggests that the true owner's property rights have been significantly impinged upon. More specifically, this means the true owner is unable to use his/her property as a result of embezzlement.

The property requirement relates to the types of property that are subject to embezzlement. Under most statutory laws, various forms of personal property and decision making are subject to embezzlement. However, real property and land holdings are typically excluded. In general, statutes follow the law of larceny when determining the types of property subject to embezzlement. Additionally, an individual accused of embezzlement must be in lawful possession of the property at the time of conversion. This again relates to the position of trust held by the embezzler. As opposed to larceny, which involves the trespassory taking of another's property, the perpetrator is in lawful possession of the property, which has been entrusted to him or her, at the time when the fraudulent conversion of ownership occurs.

Famous Embezzlers in Modern U.S. Society

In the past century, the social history of the United States has been marked by a number of high-profile embezzlement cases. These cases share many similarities. Namely, they typically involve fraudulent schemes that last several years, deprive



Wachovia bank tellers with a delivery of brand new bills and silver dollars ordered to meet demand over the holidays in December 1962. Embezzlement requires opportunity and is relatively rare; in 2009, there were 17,920 embezzlement arrests.

others of substantial sums of money, and are conducted by individuals who are generally trusted by other members of the communities in which they live. Despite the similarities between their offenses, there is great variation in the individual characteristics of the offenders. High-profile embezzlers vary in terms of age, race, and gender, as well as other characteristics.

Gilbert H. Beesemyer was the secretary and general manager of Guaranty Building and Loan Association in Hollywood, California. In 1930, Guaranty maintained a clientele of nearly 24,000 depositors, including several actors and others involved in the movie industry. It was discovered in 1930 that Beesemyer had embezzled nearly \$8 million. He accomplished this by overdrafting client accounts. These acts came shortly after the onset of the Great Depression and had a devastating impact on the victims. Many were institutionalized in mental health facilities; others committed suicide, apparently from the stress of the times and the burden of these unexpected financial losses.

Beesemyer confessed to being a “dirty crook” during his trial, and indicated that he had intended to pay the money back at a later date to those he had defrauded. Because he was a trusted member of the community, several people, some of whom had suffered losses as a result of Beesemyer’s embezzlement scheme, came to his defense during the trial and believed that he deserved a second chance. Nonetheless, Beesemyer was found guilty and was sent to San Quentin Prison to serve a 44-year term. He was paroled after serving 10 years.

Minnie Mangum was a trusted employee of the Commonwealth Building and Loan Association in Norfolk, Virginia, for more than 30 years. In 1955, it was discovered that Mangum had embezzled close to \$3 million from the bank. Her scheme lasted for 22 years and initially involved small sums of money, which she skimmed from the bank’s reserve accounts. Because she was responsible for nearly all aspects of the bank’s operation, including hiring, Mangum surrounded herself with inexperienced bookkeepers who could not detect her fraudulent acts. Eventually, she resorted to stealing larger amounts, taking cash directly from the bank’s drawers. Mangum reportedly embezzled \$600,000 in 1955 alone.

In the fall of that same year, Mangum hired Esther Marie Cannon, who had previous accounting experience. Cannon began to question the bank’s bookkeeping practices, which prompted Mangum to fire her. Shortly afterward, Cannon provided an anonymous tip to authorities and an investigation was quickly opened. The subsequent discovery of the extent of Mangum’s theft shocked the Norfolk community, who viewed her as a kind and generous woman. Over the years, she had distributed most of the stolen funds to family and friends in the form of gifts and through the financing of businesses and other large purchases. At her 1956 trial, Mangum pleaded guilty to embezzling from her employer and was also found guilty by a jury of issuing false bank reports to state agencies. Mangum was sentenced to 20 years in the Goochland State Prison for Women. She was paroled after serving nine years.

Lloyd Benjamin Lewis was an operations officer at the Beverly Drive branch of Wells Fargo Bank in Los Angeles, California. In 1981, it was discovered that Lewis aided Harold Rossfields

Smith, a boxing promoter and head of Muhammad Ali Professional Sports, Inc. (MAPS), in the embezzlement of more than \$21 million. By the time of discovery, Lewis had been an employee of Wells Fargo for 10 years and was also a board member of MAPS. The MAPS organization held several accounts with the bank, and Lewis's scheme involved routinely issuing false credits and debits to those accounts from 1978 to 1981.

Following one of these fraudulent transactions, the bank's computer system noted suspicious activity in the MAPS accounts, which led to an internal investigation. It was quickly revealed that Lewis had been taking advantage of the delay involved with updating accounts when transactions occurred across several of the bank's branches, which gave Lewis the opportunity to mask the embezzlement. The fraudulent acts appeared as corrected transaction errors. For his efforts in this scheme, Lewis received a reported \$300,000, along with other gifts. At his trial, Lewis pleaded guilty to conspiracy and embezzlement. He also agreed to testify against others involved, which led to a reduced sentence of five years. In 1982, Smith was found guilty of embezzlement, along with various other offenses, and was sentenced to 10 years.

Ricardo S. Carrasco was an employee of the international private lending division of BankBoston in New York City. He had worked at BankBoston, initially in his native Uruguay, since 1977, and had relocated to the United States in 1988. In 1998, Carrasco went into hiding when it became clear to bank officials that he had issued approximately \$73 million in fraudulent loans. His embezzlement scheme was simple: Carrasco disbursed the loans to Oldemar C. Barreiro Laborda, an Argentinean with a scattered criminal past, who had no intent of repaying the debt.

When Carrasco's fraudulent acts were discovered, BankBoston dismissed or reprimanded 20 employees for their negligence in the matter. While much of the theft was covered by the bank's insurance policies, neither the stolen money nor Carrasco were recovered. He abandoned much of his property and told family members of his intent to disappear. Carrasco is still considered a fugitive.

Melissa G. King was the benefit funds administrator for the Sandhogs Union Local 147 in New York City. In 2008, it was discovered that

King had embezzled more than \$40 million from the nearly 1,000 construction workers who were members of the union at the time. Her scheme lasted from 2002 to 2008. King's company, King Care LLC, was initially hired by the union to provide administrative services, for which the union paid \$540,000 annually. However, King utilized this position of trust to transfer in excess of \$40 million from the union's accounts to those held by King Care, from which she could directly withdraw funds.

King reportedly used the stolen money to fund her lavish lifestyle. This included the purchase of high-end commodities, from designer clothes and jewelry to luxury automobiles. Additionally, King used a substantial proportion of the money to advance her children and her career in the equestrian industry and to build an elite stable of horses. Though she gained much respect in the horse industry, several people noted the quickness of her ascent through the purchase of expensive horses, many of which cost several hundreds of thousands of dollars. King still awaits sentencing, which could involve up to 115 years in prison, and is also facing civil charges from the Sandhogs Union, which is attempting to recover the losses brought about by King's alleged embezzlement.

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See Also: Confidence Games and Frauds; Fraud; Larceny; White-Collar Crime, Contemporary; White-Collar Crime, History of; White-Collar Crime, Sociology of.

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Emergency Quota Act of 1921

Also known as the Emergency Immigration Act of 1921, the Emergency Quota Act of 1921 proved to be a highly controversial piece of legislation, placing, for the first time, a direct quota on nationalities for immigration into America. Proponents of the measure cited anarchist and unlawful elements of the migrant population as well as adverse impacts of foreign labor influxes on American workers. Some even spoke of the “poisonous” influence of European and other migration that threatened American ideals. The act primarily targeted European immigrants, who had flooded into America following World War I and the subsequent economic depressions in Europe, severely curbing immigration from those countries. The term *emergency* was used since the legislation was meant to be a stopgap to reduce the problem of mass immigration while other options could be considered. However, in reality, the quota approach persisted and was tightened in the subsequent 1924 act. A key figure in the passing of the act and more generally within the immigration debates of the period was Congressman Albert Johnson.

Justification for a stringent check on immigration came from different quarters. Some have linked the demand for restrictions on immigration to racism and xenophobia, and it is possible to identify elements of these attitudes in the politics and interest groups of the day; Albert Johnson, for example, was associated with such circles. The way in which the quota operated, allowing more populous settled groups to continue immigration on a greater numerical level than less populous groups, served to exacerbate racial tensions; more established white western European settlers had prominence over southern European and other immigrants.

There were opponents to such radical checks on immigration, and one participant of the congressional debate on immigration restriction in April 1921 claimed that such efforts were a continuation of the “war against humanity.” Others noted the foundation of immigration upon which America had been built. The act had been considered for some time prior to its enactment; however, it was not until 1921 that such a piece

of legislation could be passed. The act stipulated that in a given year, immigration totaling a maximum of 3 percent of a given nationality’s population size already settled in America would be permitted. This was based on data from the 1910 census. There were some exceptions to the quota; for example, government officials and their families were excluded.

Such a decision to restrict immigration must be considered in light of the isolationist mood within America during the period and the wider pressures of unchecked immigration after World War I as Europeans flocked to America in search of a better life. A central issue was the pressure placed on wages by large influxes of postwar immigrants, particularly those from Europe. In effect, this served to drive down wages for native-born Americans and served as a catalyst for extremism. Thus, such a reform of immigration policy is perhaps understandable, given the wider context, even though influxes of labor had been fueling the American economy. Additionally, the threat against law and order posed by alien groups was cited by some commentators of the period, some questioning the purpose of allowing the “criminal classes” from Europe to enter the country.

The Emergency Quota Act of 1921 became the basis of American immigration policy that lasted until the 1960s. The 3 percent quota stipulated in the 1921 act was subsequently reduced to 2 percent through the Quota Act of 1924. When viewed together, the two acts had a significant impact on immigration in America. Kristofer Allerfeldt has commented on the collective ramifications of the 1921 and 1924 acts, in stating that following these quotas

Immigration as an issue lost much of its potency. The spectacle of massive trans-Atlantic liners daily depositing huge numbers of immigrants at Ellis Island was gone forever.

The acts served to greatly reduce immigration into America. They dictated that annual arrivals never reached more than 1 million until much later in the century, when the total population of America was much greater.

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See Also: Alien and Sedition Acts of 1798; Immigration Crimes; Racism; Xenophobia.

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Enforcement Acts of 1870–1871

The Enforcement Acts of 1870–71 were passed to safeguard the voting rights of African American voters following the ratification of the Fourteenth and Fifteenth Amendments to the U.S. Constitution. These amendments served to recognize civil rights and voting rights for freedmen as part of the wider process of reconstruction following the Civil War. African American voters were often subject to intimidation and violence as part of the growing political violence in the postwar south. The legislation sought to stop the Ku Klux Klan and other white supremacists who perpetrated the intimidation. However, despite the intentions of the legislation, the first Enforcement Act in 1870 was inadequate, and victims often failed to testify because of the intimidation they faced. Subsequently, other Enforcement Acts were passed to prop up the original, the key aims of which were essentially the same as the first. In all, the acts outlawed a range of behaviors directed at intimidating voters and perverting the course of voting. Despite a high number of enforcement cases in the first few years, the legislation became ineffective by 1874, and the number of successful convictions plummeted. Ultimately the enforcement agenda was a failure.

The Fifteenth Amendment was ratified in 1870, and it formally recognized the right to vote for

all Americans. However, this was in the context of the postwar Reconstruction, which had failed to heal the country’s divisions, prejudice, and segregation. After passage of the Fifteenth Amendment, African American citizens had the right to vote but suffered intimidation and even violence on trying to exercise that right. The role of the Ku Klux Klan within this is well documented. The Enforcement Acts between 1870 and 1871 were a response to the problems African American voters faced. Initially, a prime motive was the destruction of the Ku Klux Klan; however, the legislation also served to stop election fraud.

Protecting the Right to Vote

The first act in 1870 addressed officials, discriminating against voters on the basis of race and color in the application of election law, outlawed the use of intimidation and violence against voters, and addressed the issue of depriving citizens of employment in order to control voting. The second act strengthened federal control of voting processes by the use of supervisors in cities where malpractice was suspected. Their role involved overseeing registration and voting procedures. The third act, commonly known as the Ku Klux Klan Act, made it an offense to seek to prevent persons, holding office, serving on juries, receiving equal protection of the laws, and voting.

Thus the acts came to define a series of new offenses, which included failure to register and receive lawful voters and failure to prepare accurate returns. The 1870 act also made it an offense to use violence or threats in order to prevent voters’ exercising their right to vote; penalties for such tactics included a fine, a custodial sentence, or both; later legislation related to persons’ grouping together for the same purpose and attracted a much greater level of fine and a possibility of up to 10 years in prison. Additionally, the legislation made provisions for the president to suspend habeas corpus and use military force in order to enforce voting rights.

However, African American electoral participation and African American civil rights more generally continued to be violated. Attorneys and other officials tasked with working on enforcement cases were themselves often subjected to intimidation and attacks from the Ku Klux Klan and other groups challenged by the acts. Despite



This illustration from a February 1872 issue of Harper's Weekly depicts Ku Klux Klan harassment of an African American family at home. Two hooded Klansmen appear in the doorway aiming a rifle at the unsuspecting family, while another looks in through the window. Violence and voter intimidation by the early incarnation of the Ku Klux Klan in the late 1860s and early 1870s led to the signing of the Enforcement Acts of 1870–71, although their effectiveness was short-lived.

a high number of Enforcement Act cases being brought before the courts and a high indictment to conviction rate in the first few years, enforcement cases yielded a much lower ratio for convictions after 1874. The government took a more moderate stance after this period, and a number of unfavorable court rulings made successful prosecutions almost impossible after 1874.

The fiscal and wider resource demands created by the number of enforcement cases became problematic, and decisions by the Supreme Court in 1876 were catastrophic, marking the failure of the enforcement agenda. Everett Swinney has noted that a combination of what can be termed “southern intransigence” and “northern apathy”

meant that the enforcement program capitulated. White extremism and African American disenfranchisement continued.

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See Also: Habeas Corpus, Writ of; Ku Klux Klan; *Mississippi v. Johnson*; Race-Based Crimes; Racism.

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English Charter of Liberties of 1100

The English Charter of Liberties, also known as the Coronation Charter, was promulgated at the ascension of Henry I to the throne of England. The charter was adopted by Henry I as a way to build support for his claim to the English throne among the nobility. The charter was essentially an oath given by Henry to enforce the laws of England as his father, William the Conqueror, had done. Subsequent charters stating English rights can be traced back to this proclamation as the first postconquest charter of liberties.

Henry I was the youngest son of William the Conqueror and was not expected to rule in either England or Normandy. Instead, his brother Robert inherited the dukedom of Normandy and his brother William Rufus was crowned William II of England. In August 1100, William was accidentally killed while hunting. With his brother Robert away on crusade, Henry seized the crown of England and was coroneted in Westminster Abbey five days after William II's burial. The Coronation Charter was issued as a way for Henry to solidify the allegiance of the nobles by promising to enforce the laws of the realm, which his brother William II had eroded during his reign.

The charter gives the king's assurance that he will not tax or take land from the church or its leaders, a practice implemented by his brother William. In the mediaeval period, the lands of a nobleman reverted to the king upon his death for redistribution. It was practice for the king to simply grant the lands to the next male heir; however, there was a pernicious practice by William II to charge fees for heirs to regain their land. In the charter, Henry promised not to charge any fees to regrant the lands to heirs of barons or earls. He also promised to end the practices that had started under William II to charge nobles for approval of the marriages of their children. Indeed a key

aspect of the charter is Henry's releasing all persons from debts owed to the Crown, except for lawful taxes. The key criminal elements of the charter were a full pardon to all persons who had committed murder before the coronation of the king. The granting of pardons, of varying degrees, was a common practice among English monarchs upon their coronation as a way to gain favor with the populace and as a sign of mercy. In addition, the crime of theft from the king was to be forgiven as long as the property was returned.

The Coronation Charter was printed the following year, which accounts for it sometimes being referred to as the Charter of 1101, and was distributed around the realm. Henry periodically republished the charter during his reign. Subsequent Norman and Plantagenet kings offered their own charters of rights culminating with Magna Carta, issued under the reign of King John.

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See Also: Bodie of Liberties; Common Law Origins of Criminal Law; Magna Carta.

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Enron

Enron Corporation was an American corporation based in Houston, Texas, that was a leading energy, commodities, and services company. After its bankruptcy and collapse in 2001, Enron served as a synonym for corporate greed, corrupt accounting practices, and deceit. Enron's collapse was historic in its scope, as it had been considered an innovative "blue chip" corporation and

remains one of the largest U.S. business entities to fail. The Enron scandal, the largest audit failure in U.S. history, also brought about the demise of Arthur Andersen LLP, then one of the “big five” global accounting firms. Enron’s demise, which cost shareholders approximately \$11 billion in equity, was the largest bankruptcy filing ever at the time, as Enron had assets of \$63.4 billion. Enron’s failure brought calls for increased federal regulation of corporations and accounting firms and resulted in legislation intended to better control corporate accountability.

Background

Enron was descended from the Northern Natural Gas Company, which was founded in Omaha, Nebraska, in 1932. Reorganized as part of the holding company InterNorth, Inc., in 1979, the organization specialized in natural gas pipelines, plastics, and exploration for and production of coal and petroleum. In 1985, InterNorth acquired Houston Natural Gas Company (HNGC), and HNGC’s chief executive officer (CEO), Kenneth Lay, became InterNorth’s CEO, changing the corporation’s name to Enron later that year. Lay moved Enron’s headquarters to Houston and began a program of rapid expansion for the corporation. To reduce debt, Lay sold off various Enron businesses, choosing to concentrate on natural gas pipelines and the operation of power plants. In 1990, Lay hired Jeffrey Skilling to serve as CEO of Enron Finance Corporation after serving briefly as a consultant. Skilling immediately hired Andrew Fastow to work with him, having been impressed with Fastow’s knowledge of asset-backed securities acquired while working for Continental Illinois National Bank & Trust Company. Together, Lay, Skilling, and Fastow would make many of the decisions that would later lead to Enron’s demise.

During the 1990s, the federal government and many states deregulated the natural gas and electricity markets, permitting Enron to grow rapidly. Lay encouraged the creation of energy markets, which allowed electricity to be sold at market prices, and in 1992 Congress passed laws that deregulated the sale of natural gas. These changes allowed Enron’s revenues and profits to soar. Enron was able to sell energy at higher prices, and by 1992, it had become the largest

seller of natural gas in North America. Deregulation caused increasing price volatility for energy, and many began demanding increased regulation to end this. Enron and other energy companies, however, lobbied against the proposed changes and were ultimately successful in retaining the free market approach. Between 1990 and 1998, the price of Enron’s stock increased by over 300 percent, beating market indexes and proving a lucrative windfall for Enron executives, who were paid bonuses based upon the stock’s performance.

Scandal and Downfall

Enron’s growth during the 1990s was largely fueled by its rapidly increasing stock value. Enron had some businesses, such as its pipelines, which were highly profitable. The soaring value of its stock, however, was built upon financial statements that obfuscated the true condition of its operations and its financial condition. Reported income and cash flow were kept high, while asset values were inflated and liabilities were hidden. Together, this caused Enron to be highly touted by analysts, allowing the company to be regarded as a model corporation and winning accolades as highly innovative and a great place to work. Skilling was appointed CEO of Enron Capital & Trade Resources, the subsidiary responsible for energy trading. Under Skilling, Enron adopted market-to-market accounting, which permits a corporation to account for the fair market value of an asset based upon the current market price of an asset. Fastow, working under Lay and Skilling, devised a series of shell companies, known as special purpose entities, which did business only with Enron. Fastow used these shell companies to make it appear as though Enron had no debt, although in reality, the shell companies hid over \$30 billion of liabilities. Fastow had a financial interest in several of the shell companies and is estimated to have made tens of millions of dollars in profits from their operation.

Skilling was named president of Enron in 1997, and was appointed CEO (succeeding Lay, who remained chairman) in 2001. Fastow had served as chief financial officer (CFO) since 1997. By 1998, Enron employed over 20,000, many of whom had invested in the corporation’s employee stock ownership program. Annual revenues increased from approximately \$13.3 billion in 1996 to over \$100



A 2008 view of the former Enron headquarters building in Houston; construction began on the building in 1999 and was not complete at the time of the company's bankruptcy in 2001, the largest filing ever at that time.

billion in 2000, a 750 percent increase. Much of this increase was later discovered to stem from Enron's practice of using a "merchant model" for reporting revenue, which included costs of goods sold as well as services provided.

Arthur Andersen LLC, Enron's auditors, was also working for the firm as consultants, which was later decried as a conflict of interest. Andersen did not question Enron's special purpose entities, even after it became obvious that they would never turn a profit and should be written off as losses. Enron pressured Andersen not to do so, threatening to take its auditing business to Andersen's rivals. Although Enron's board of directors had an audit committee, this group seldom met and never questioned the financial statements the firm generated.

By early 2001, Enron's stock was trading at 55 times earnings. In August of that year, Skilling resigned as CEO of Enron, a position he had held for six months. In October, Enron announced adjustments to its earning statements from 1997 through 2000. Enron's stock plunged 50 percent in a week, and rumors of a cash shortage caused credit agencies to lower its credit rating. Although Enron explored a possible merger with Dynegy, Inc., this fell through because of concerns regarding Enron's books and financial condition. Another correction of Enron's earnings in years past was announced in November, its stock price plunged to 40 cents per share, and the company entered bankruptcy in December. Criminal charges were brought against Lay, Skilling, and Fastow, with Fastow entering a plea agreement with prosecutors in exchange for a six-year sentence, while Lay was convicted of securities and wire fraud, although he died before he could be sentenced. Skilling was also found guilty and sentenced to 24 years in prison, and over 20 other individuals pled guilty or were convicted of infractions related to Enron's collapse. Arthur Andersen LLP was also charged with obstruction of justice regarding the shredding of documents, found guilty, and forced to surrender its certified public accountant (CPA) license, causing the firm to go out of business and costing 85,000 employees their jobs. In response, the U.S. Congress passed the Sarbanes-Oxley Act, which created new reporting requirements for public corporations in an effort to protect investors.

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See Also: 2001 to 2012 Primary Documents; Corruption, Contemporary; Embezzlement; Fraud; Securities and Exchange Commission; White-Collar Crime, Contemporary. White-Collar Crime, History of; White-Collar Crime, Sociology of.

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Entrapment

Entrapment is considered an affirmative defense primarily in criminal cases when government officials induce an individual to commit a crime that she/he was not predisposed to commit, but for which he/she is consequently prosecuted. Entrapment law bars the government from invoking the criminal process to get a conviction because those who are entrapped are not criminally liable. The purpose of entrapment law is to prohibit government agents from coercing a person to commit a crime and then arresting that person for committing that crime.

The prosecution bears the burden of proof, namely, “proof beyond a reasonable doubt,” that the defendant was not entrapped by government agents. That is, the person charged was not predisposed to commit the crime for which he/she is charged, but rather violated the law as the direct result of encouragement from government agents. However, if government officials simply present a person with the opportunity to commit a crime, which he/she then commits, the entrapment defense may not be used. Further, government agents do not need reasonable suspicion before choosing the person upon whom their efforts are targeted. The distinction between inducement and opportunity makes the entrapment defense difficult to prove. At the core of the entrapment defense is inducement and deception by government agents. However, prior involvement in a similar criminal act for which a person is charged, which resulted in a conviction, makes the success of an entrapment defense highly unlikely.

Entrapment History

Both civil and criminal cases have been addressed by U.S. courts as early as the 1800s. The first few cases to officially recognize the entrapment defense were *U.S. v. De Bare*, 1874 and *Woo Wai*, 1915. While few offenses are exempt from entrapment efforts by overzealous government agents. In the

1900s, Prohibition violators were often targeted. *Sorrells v. United States*, 1932 was the first entrapment case to be heard by the Supreme Court. Today, common crimes with an entrapment defense are vice crimes such as the sale of illegal drugs, prostitution, or gambling. More recently, Internet-based crimes of fraud, child abuse, child endangering, embezzlement, blackmail and forgery have become common types of crimes involving entrapment.

Entrapment Tests and Due Process

In the United States, it is through the evolution of both state and federal case law that the boundaries were developed that establish when a defendant may use the entrapment defense. These boundaries are grounded on a variety of circumstances. The three conditions exemplifying the circumstances that must exist for the entrapment defense are (1) the idea for committing the crime originated with government agents, (2) the government agents persuaded, induced, or coerced the person into committing the crime, and (3) the person was not predisposed or inclined to commit the crime.

The first two circumstances are referred to as the objective test. That is, the focus is on the aggressive actions of the government agents who convinced the otherwise law-abiding citizen to commit the crime. This test is a matter of procedural law because of the manner in which the defendant was coerced by government officials, affecting his/her legal responsibility or culpability. Although government agents are legally permitted to use deception, trickery, or other undercover techniques; on the state level, the boundaries are decided by a judge or a jury. The normative standard would be that of “fundamental fairness” of the government agents to carry out their duties. In this case, the predisposition of the defendant would not be considered.

The third criteria is the subjective test: predisposition or inclination to commit the crime; it considers the state of mind of the defendant. In these cases, the focus is on the individual’s predisposition to commit the crime and thus the states have the latitude to decide whether the defendant was entrapped. This test is a matter of substantive law, where the lack of the defendant’s predisposition to commit the crime does not make him/her culpable or criminally responsible. These

decisions are most often made by a jury. Most states have chosen the subjective test with regard to the entrapment defense. If it is proven by the prosecution that the defendant was predisposed to commit the crime(s), it does not matter what government officials did to coerce the commission of the crime(s). Both objective and subjective tests for entrapment have at their core the issue of the defendant's legal responsibility and culpability.

Beyond the subjective and objective tests, the federal courts consider the "outrageous conduct defense," focusing on government's behavior. This defense is similar to the objective test and claims as a defense a violation of the due process clause of the Fifth Amendment), even if the defendant was predisposed to commit the crime. In this case, government agents may be prosecuted. This exemplifies the federal court's supervisory role over law enforcement, with a purpose much like that of the exclusionary rule. The exclusionary rule is a tool used by the courts to limit law enforcement from illegal search and seizure. This parallels the court's use of entrapment law to limit law enforcement methods to induce the commission of a crime. This defense is successful in sting operations, where contraband is bought from a government agent, or in reverse sting operations, where contraband is sold to a government agent. Anytime the behavior of government agents violates the standards of fundamental fairness and by the extent of their temptation puts in question the defendant's predisposition to commit the crime, the entrapment defense is appropriate.

As long as there is the possibility that government officials behave in such a way to mitigate the defendant's predisposition to commit a crime, the entrapment defense is a necessary part of a just legal system. The nature of case law is its flexibility to redefine law to coincide with society's current standards. Entrapment law is no exception. As with all case law, the issue is that of fundamental fairness. It is the nature of this defense that makes the roles of law enforcement, the prosecution, and the defense vital in the pursuit of justice, as it is rare that a defendant worthy of the entrapment defense is aware of the covert operations that affect the appropriateness of this defense.

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See Also: 1941 to 1960 Primary Documents; Ruby Ridge Standoff; *State v. Heitman*; Supreme Court, U.S.

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Environmental Crimes

Few subspecialties of American law reveal this nation's swiftly evolving ethos as well as environmental law. Over the past four decades, this nascent subspecialty of law has progressed as surges in both the human population and technology have precipitated unprecedented environmental harms. From 1950 to 1970, the U.S. population jumped from 151 million to 203 million people, and per capita energy use sharply increased. With no comprehensive national environmental policy, environmental concerns captivated the American public's interest. Rachel Carson's *Silent Spring* raised America's consciousness in and around issues of pollution in 1962. Such awareness inaugurated the annual celebration of Earth Day in 1970. In 1971, biologist Barry Commoner published *The Closing Circle*, which imparted ecological values to Americans. Such work initiated new ethical and moral questions regarding the previous notions of smokestack emissions or sewage discharge as inconvenient externalities or technical problems.

Although the term *environmental crime* now permeates 21st-century vocabulary, this concept must not be taken for granted. The concept of "crime" itself has a history and a myriad of meanings. Environmental crime now emerges with the violation of an array of statutes and is enforced and penalized in a complex and contentious legal atmosphere.

Definitions and History

Ways of knowing environmental harms qua crime are ever changing. Under a legalist perspective, a



These workers equipped with full hazmat gear were dredging samples from the New Bedford, Massachusetts, harbor Superfund site in 1998 in order to measure the levels of contaminants, most notably PCB, that had collected for over 40 years at the site.

crime is a behavior that violates a law. But what sort of law must be violated? Some argue that the violation must be of criminal law. Those who study corporate, white-collar, or environmental crimes argue that violations of laws and codes of a non-criminal nature (e.g., administrative and regulatory law) commit environmental crime when such behaviors inflict significant harm to the environment. Anthropocentric, biocentric, and ecocentric values and interests suggest different priorities regarding criminalizing environmental harms. Environmental crime is more broadly defined by environmental justice, which advocates the fair treatment and meaningful involvement of all people with respect to law development and enforcement, while ecological justice emphasizes justice between human and nonhuman nature. Affluent oil, chemical, pharmaceutical, and automobile companies seek to influence the fashioning of

environmental law or regulations to promote their interests. Public media and perception also help forge legal definitions of environmental crime. High-profile media coverage of hazardous waste dumping at sites such as the Love Canal, New York, and Times Beach, Missouri, played a considerable role in the criminalization of environmental harms. As environmental law is a relatively recent construction, it is constantly being reevaluated and modified by new legal precedence or the scientific identification of new harms.

Until 1970, environmental laws and regulations designed to protect the air, water, and land, and hence public health, were overseen by dispersed federal and state programs. The violation of such laws was not rigorously punished. Claims of environmental harm usually went to court as torts or civil law was applied. The resulting civil fines and penalties provided minimal deterrent effect to mitigate future environmental degradation. Many corporations regarded civil fines as a cost of doing business. With rampant pollution by 1970, including rivers that literally burned and flowed with human and industrial waste and towns built upon toxic waste sites, President Richard Nixon set up a cabinet-level Environmental Quality Council as well as a Citizens' Advisory Committee on Environmental Quality. They asserted the need for uniform and strong enforceability, which would be impossible unless the government could fuse the air and water programs as well as those for pesticides and radiation into one effective, working entity. In 1970, the Environmental Protection Agency (EPA) was established to enforce environmental protection standards. The EPA currently has a primary national role in environmental regulation and crime enforcement.

From 1969 to 1979, the establishment of the EPA, passage of 27 environmental laws, as well as hundreds of administrative regulations began a paradigm shift in American environmental law. The U.S. Department of Justice (DOJ) took the unprecedented action of criminal prosecution of environmental laws. In 1982, the DOJ created the Environmental Crimes Unit in its Land and Natural Resources Division and there was a subsequent robust increase in criminal prosecution of environmental laws. In 1981 the EPA formed the Office of Criminal Enforcement and hired its first criminal investigators in 1982. In 1988, Congress endowed

the EPA with full authority to enforce environmental laws. The EPA now delegates certain statutory permitting and enforcement programs to individual states to administer and enforce. As a result of those delegations, as well as independent state environmental requirements, state agencies also play a critical role in environmental enforcement.

Today, the criminal enforcement program of the EPA successfully prosecutes hundreds of significant violations across all major environmental statutes, including data fraud cases (e.g., private laboratories submitting false environmental data to state and federal environmental agencies); indiscriminate hazardous waste dumping that results in serious injuries and death; oil spills that cause significant damage to waterways, wetlands and beaches; and illegal handling of hazardous substances such as pesticides and asbestos. Penalties can include multimillion-dollar fines and prison sentences.

Major U.S. Environmental Statutes and Regulations

After tumultuous decades of defining, quantifying, and punishing environmental harms, the EPA and federal and other agencies now monitor and enforce eight major environmental statutes: the Clean Air Act (CAA), Clean Water Act (CWA), Safe Drinking Water Act (SDWA), Toxic Substances Control Act (TSCA), Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Resource Conservation and Recovery Act (RCRA), Environmental Response, Compensation, and Liability Act (CERCLA), and the Endangered Species Act (ESA).

Although in the 1880s New York City passed the nation's first air regulations of industrial smokestack emissions, the 1963 Clean Air Act (CAA) was the nation's inaugural air quality law. The original act set few enforceable standards. The act provided for federal abatement action in egregious air pollution problems, but by 1970, only one case was prosecuted as a criminal CAA violation. The 1990 Clean Air Act Amendments followed, creating permit requirements for air emissions and establishing clear enforcement standards for stationary and mobile hazardous air pollutants. The 1990 amendment also established that criminal violations can be prosecuted as felonies.

The Rivers and Harbors Act of 1899 is often considered the first environmental criminal statute because it rendered the discharge of refuse into navigable waters without a permit a misdemeanor. The 1948 Water Pollution Control Act was amended in 1972, and again in 1977, creating the Clean Water Act (CWA). The CWA bolstered the role of federal government by establishing the basic structure for regulating discharges of pollutants into the waters of the United States and creating quality standards for surface waters. The CWA made it unlawful to discharge any pollutant from a point source into navigable waters without a permit. Section 404 of the CWA established a permit program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands. Regulated activities that require permitting include fill for development, water resource projects (such as dams and levees), infrastructure development (such as highways and airports), and mining projects. The 1987 Clean Water Act amendments included felony provisions.

The 1974 Safe Drinking Water Act (SDWA) established nationwide domestic water quality standards and oversees the states, localities, and water suppliers that implement those standards. The law was amended in 1986 and 1996 and requires many actions to protect drinking water and its sources. Under SDWA, states may play a pivotal role in enforcement. Compliance is encouraged, but formal enforcement actions including civil and criminal court cases are possible.

The 1947 Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) implemented federal regulation of pesticides via a registration process. Before the EPA may register a pesticide under FIFRA, the applicant must document that the pesticide will perform without unreasonable risks to people and environment. During the 1970s, public alarm about the safety of new organic compounds mounted when it became apparent that many of these substances had deleterious health effects. This concern yielded the 1976 Toxic Substances Control Act (TSCA). The 1976 TSCA regulates existing chemicals as well as the introduction of new compounds to market, and addresses the production, importation, use, and disposal of several classes of chemicals. While it requires full disclosure of available testing and safety data, it

prescribes no specific protocol for methodically testing newly invented compounds.

Several agencies were created in the 1970s to regulate the energy industry, although few statutes are enforceable as environmental crime. The 1990 Oil Pollution Act (OPA) broadened the liability of responsible parties involved with oil spills. It streamlined and strengthened the EPA's ability to prevent and respond to catastrophic oil spills by establishing a trust fund financed by a tax on oil that is available to clean up spills. In April 2010, the oil rig Deepwater Horizon, under lease to British Petroleum (BP), exploded and released a tremendous amount of oil into the Gulf of Mexico. The DOJ announced civil suits against several corporations, but Attorney General Eric Holder indicated a criminal investigation was under way as well. Wary environmentalists noted that BP had previously been convicted of two felonies, but the financial sanctions were insufficient to modify corporate behavior.

Until 1976, the federal government regulated the disposal of neither solid nor hazardous waste. The 1976 Resource Conservation and Recovery Act (RCRA) addressed these issues by giving EPA the authority to control hazardous waste. The Federal Hazardous and Solid Waste Amendments (HSWA) are the 1984 amendments to RCRA that expanded the scope of criminal culpability for RCRA violations by adding false statements and recordkeeping violations to the list of RCRA felonies. The HSWA permits stricter criminal penalties to be administered to the guilty party who treated, disposed of, or stored waste in a manner that posed imminent danger to another. A convicted individual can be sentenced to up to 15 years in prison and given a \$250,000 fine, while a company can be fined up to \$1 million.

The 1980 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly referred to as the Superfund Act, sought to clean up hazardous waste sites. The act imposes liability on parties responsible for the presence of hazardous substances at a site and provides a federal "Superfund" for the cleanup of hazardous waste sites. Superfund also requires hazardous waste notification. If a manager of a waste treatment facility dumps hazardous waste onto the ground without a permit, the dumping constitutes illegal disposal of the waste

in violation of RCRA. If the amount of waste is a reportable quantity, the release of the waste triggers a CERCLA duty to notify authorities. Failure to report the release is a felony under CERCLA. Thus, the illegal disposal charge (RCRA) dovetails with the failure-to-notify charge (CERCLA), and both violations could logically arise in a single prosecution.

The 1973 Endangered Species Act (ESA) sought to protect species from extinction. The ESA prohibits the "taking" (defined as the harassment, harming, pursuit, hunting, shooting, wounding, killing, trapping, capturing, or collection) and the interstate or international trade of listed plants and animals, except under federal permit. The ESA is administered by the U.S. Fish and Wildlife Service, which is responsible for terrestrial and freshwater organisms, and the Commerce Department's National Marine Fisheries Service (NMFS), which is responsible for marine wildlife.

Environmental Crime Enforcement

Law enforcement is integral to management of public lands such as the national forest, national wildlife refuge, and national park service lands, and locally owned natural areas such as parks. Agency-based law enforcement officers investigate and enforce applicable laws, regulations, rules, orders, and codes that are designed to protect public safety, prevent resource damage, preserve particular area use objectives (such as nonmotorized use), or protect wildlife populations. For example, the secretary of agriculture regulates the occupancy and use of developed recreation sites on national forest system lands. A violation of these regulations with actions such as unpermitted forest product removal or leaving a fire without completely extinguishing it can be penalized with up to \$5,000 or six months incarceration or both.

Federal statutes that are enforced across all federally managed public lands include the 1979 Archaeological Resources Protection Act (ARPA), the 1964 Wilderness Act, and the Wild Free-Roaming Horse and Burro Act of 1971 (WHBA). The ARPA established civil and criminal penalties for the unauthorized excavation, removal, damage, or trafficking of archaeological resources. To preserve the untrammeled, primeval character of federally designated wilderness areas, the Wilderness Act prohibits uses of mechanical transport



After the BP Deepwater Horizon oil spill in the Gulf of Mexico that began in April 2010, birds and other animals had to be cleaned of oil by hand at four wildlife rehabilitation centers established for that purpose. This Northern Gannet was being washed at the Theodore, Alabama, Oiled Wildlife Rehabilitation Center on June 17, 2010. The U.S. government investigated and, in a report issued in September 2011, found that the companies Halliburton, BP, and Transocean were all at fault in the oil spill.

and prohibits road establishment or structure installation with some established exceptions. The WHBA establishes civil and criminal penalties any person who willfully removes or attempts to remove or maliciously causes the death or harassment of wild-free-roaming horses or burros.

Prior to the 1970s, tort law was the prevalent legal means whereby American society mobilized against escalating environmental degradation. Under tort law, the action brought to control pollution is a nuisance case in which a landowner sues for unreasonable interference with the use and enjoyment of their land. Historically in the United States, courts often awarded individuals money damages in these cases but were loath to grant injunctions. With the establishment of the EPA, the prevention and enforcement of

environmental crime was institutionalized with established process. While compliance with environmental laws and regulations became the ultimate objective, enforcement was a vital part of motivating regulated entities to meet their environmental obligations. Most environmental laws such as the CWA depend upon honest self-reporting of permitted discharges, and EPA uses various methods to achieve compliance and to increase voluntary and self-directed actions. In 1995, the EPA began to provide incentives for regulated entities to come into compliance with the federal environmental laws and regulations. It encourages regulated entities to discover, promptly disclose, and correct noncompliance, making formal EPA investigations and enforcement actions unnecessary. With violations, however, federal

and state enforcement entities can use a set of enforcement mechanisms (as established in the environmental statutes) at their discretion. Three such enforcement tools dominate: administrative enforcement actions, civil judicial enforcement cases, and criminal prosecutions.

The EPA's Office of Enforcement and Compliance Assurance (OECA) houses both EPA headquarters lawyers and headquarters enforcement personnel. It is broadly divided into two offices: an Office of Regulatory Enforcement, which has a lead role in developing enforcement cases; and an Office of Compliance, which is responsible for investigation and inspection targeting, compliance monitoring, and compliance assistance. In addition to the OECA, the DOJ plays a major role in environmental crime enforcement. Since 1977, the EPA uses the DOJ in all civil cases to file judicial actions on its behalf. The DOJ's role in environmental criminal cases is even more substantial. Environmental crimes cases begin with EPA criminal investigators, who develop evidence that provides the basis for a prosecution. Criminal cases are then initiated in federal court—either by indictment of the defendants or by information—and they are negotiated and (as needed) tried by assistant U.S. attorneys.

Administrative Enforcement Actions. Administrative enforcement actions are frequently used actions taken by the EPA or a state under its own authority, without involving a judicial court process. An administrative compliance order (referred to in some states as a cease and desist order or an abatement order) is a potent administrative enforcement device, and is typically enforceable in court with monetary penalties. If not complied with, these orders allow a government agency to require a regulated party to take specific steps to achieve compliance. The elements that the government is required to prove in civil enforcement actions vary among statutes, although most violations may be proven by showing the defendant's noncompliance.

Civil Judicial Enforcement. Civil judicial actions, used less frequently than administrative enforcement actions, are formal lawsuits, filed in court, against persons or entities that have failed to comply with statutory or regulatory requirements

or with an administrative compliance order. Such actions have high public visibility and can be pursued against more serious infringements and violators who are perceived to be recalcitrant. They can also be employed where legal precedents are sought or where prompt judicial action is needed to stop an environmentally damaging activity.

Administrative enforcement and civil judicial violations generally result in a settlement, which is generally an agreed-upon resolution to an enforcement case, or in civil penalties, which are monetary assessments. Civil penalties act as an incentive for coming and staying in compliance with the environmental statutes. Civil violations may also result in injunctive relief, which consists of the tasks that a violator must carry out to come into compliance, or in Supplemental Environmental Projects (SEPs). As opposed to civil judicial actions, criminal actions are usually reserved for violations that gave rise to serious harm to public health or the environment, where the defendant has engaged in the false reporting of environmental data, or where the defendant's conduct reflects willfulness, bad faith, or recalcitrance. Criminal actions can result in a court conviction, with fines or imprisonment. In addition to fines, a judge may impose an order of restitution, where a defendant is ordered to pay those affected by the violation a monetary amount.

Criminal Prosecutions. Congress categorized criminal actions as misdemeanors in the major environmental laws when they were enacted during the 1970s. They resulted in relatively few prosecutions, as the laws were new and the legal norms they created were not sufficiently well established to justify criminal enforcement except in the most egregious cases. Federal prosecutors and investigators rarely prosecuted misdemeanors. Criminal actions surged when Congress amended the CAA, CWA, CERCLA, and RCRA during the 1980s and 1990s to include felony provisions. The number of environmental criminal cases increased even more dramatically after Congress passed the Pollution Prevention Act of 1990, which required the EPA to hire 200 criminal investigators.

Under most environmental legislation, to prove criminal intent, the government must prove that the defendant "knowingly" violated the law. The courts usually define that term as requiring the government to demonstrate (beyond a reasonable

doubt) that the defendant was aware of its actions that violated the law. The government need not show that the defendant knew that these actions were unlawful. In contrast, criminal violation of some environmental laws impose strict liability, relieving the government of the burden of proving that the defendant acted with fault or with an intent to break the law. Environmental criminal enforcement actions are problematic in that environmental standards, unlike most traditional crimes, present questions of degree rather than of kind. Murder and burglary are simply unlawful. There is no threshold level below which such conduct is acceptable. In contrast, some pollution, in many circumstances, is acceptable. It is only pollution that exceeds certain proscribed levels that is unlawful.

Congress imposed few limits on which environmental regulations could be subject to criminal enforcement. This vagueness gave prosecutors broad discretion to determine what is criminal. While Congress may have intended to provide the government a range of enforcement options (administrative, civil, and criminal remedies), similar violations can be treated differently depending upon who investigates the matter and who decides how the violation should be addressed. With broad discretion comes the risk that criminal prosecution will occur in circumstances where criminal enforcement may not seem appropriate. Some safeguards ensure that prosecutors do not abuse their discretion. First, due process concerns preclude criminal prosecution when the meaning of the law is unclear in “void for vagueness” requirements. The “rule of lenity” reinforces the void for vagueness doctrine by requiring courts in criminal cases to resolve ambiguities about the meaning of the law in favor of the defendant.

In addition to these legal safeguards, the EPA requires its criminal investigators to focus on matters involving significant environmental harm and culpable conduct, with culpability defined to include repetitive violations, deliberate misconduct, and acts of concealment or falsification. Likewise, DOJ prosecutors must follow the DOJ's Principles of Federal Prosecution, which require prosecutors to consider the nature and seriousness of the offense, the deterrent value of the prosecution, and the availability of noncriminal alternatives to prosecution. No factor is more

decisive than deception in making a criminal case out of what might otherwise be a civil matter. Fair and effective administration of the environmental laws, like other regulatory programs, cannot occur if the government does not have complete and accurate information.

Federal environmental statutes usually subject “any person” to criminal sanctions, a term that is often broadly defined to include individuals as well as corporations, partnerships, associations, states, and political subdivisions of states. With respect to corporate entities, the knowledge and actions of individuals who act on the corporation's behalf (aside from independent contractors) are imputed to the corporation through the doctrine of *respondeat superior*. The 1985 case *United States v. Mottolo* found that a corporate executive may be personally liable for relevant violations, and this Superfund criminal suit began a concentrated effort among EPA and DOJ enforcement to target white-collar (corporate) environmental crime.

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See Also: 1961 to 1980 Primary Documents; 1981 to 2000 Primary Documents; 2001 to 2012 Primary Documents; Fish and Game Laws; White-Collar Crime, Contemporary; White-Collar Crime, History of; White-Collar Crime, Sociology of.

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Equality, Concept of

While equality before the law is often considered the bedrock of the United States' legal system, the concept is relatively new and was not guaranteed in the Constitution until the enactment of the Fourteenth Amendment. In fact, the famous statement "We hold this truth to be self-evident, that all men are created equal" appears in the Declaration of Independence and, it would seem, was purposely left out of the Constitution—due to tension around the issue of slavery. Even the phrasing in the Declaration of Independence explicitly excludes women, regardless of race, and implicitly excludes blacks and Native Americans.

From the country's founding until the civil rights revolution, people of color were excluded from even formal equality before the law through the triple mechanisms of exploitation (of black labor under slavery), expropriation (of Mexican and Native American lands), and exclusion (of Asian immigrants). During this period, the laws in the United States, including but not limited to criminal laws, mandated unequal treatment.

Nonetheless, equality before the law has unfurled from the time of the country's founding to the present—beginning, perhaps, with the enactment of the Thirteenth, Fourteenth, and Fifteen Amendments in the 1860s and continuing with civil rights laws enacted in the 1960s. As the United States approaches a policy, if not yet a practice, of equality before the law, activists and scholars have begun to articulate fear that equality, particularly defined as it is in current case law, will not succeed in engendering justice.

Unequal Before the Law

In slaveholding states, the code that simply bore the state name was in fact only applicable to whites; a separate code, the slave code, was applicable to blacks. The slave code governed, among other things, the punishment of slaves accused of "wrongs." According to both these legal codes and the courts' interpretations of them, slave owners were legally free to punish their slaves for any offense without intervention from the judiciary. This meant that punishment of blacks was generally inflicted on the body and that a conviction, or any legal process, was not necessary as a precursor to punishment. On the rare occasions when blacks were tried for their offenses, generally slaves whose alleged offenses bore upon the larger (white) community and free blacks, they were often subject to separate legal codes. These codes mandated different punishments for the same offenses and blacks were subject to some punishments that whites were not. In Virginia, it was typical for slaves who ran away to be sentenced to castration or hobbling, while no such crime existed for whites. Likewise, there was no crime for which whites could be sentenced to either of these punishments. Moreover, prescribed punishments for many crimes were lighter for whites than for blacks. Virginia decreed imprisonment for whites but death for blacks convicted of a variety of felonies, ranging from buying or receiving a stolen horse to rape. Blacks were tried in separate courts without juries, comprised of county justices and often slave-owning assessors.

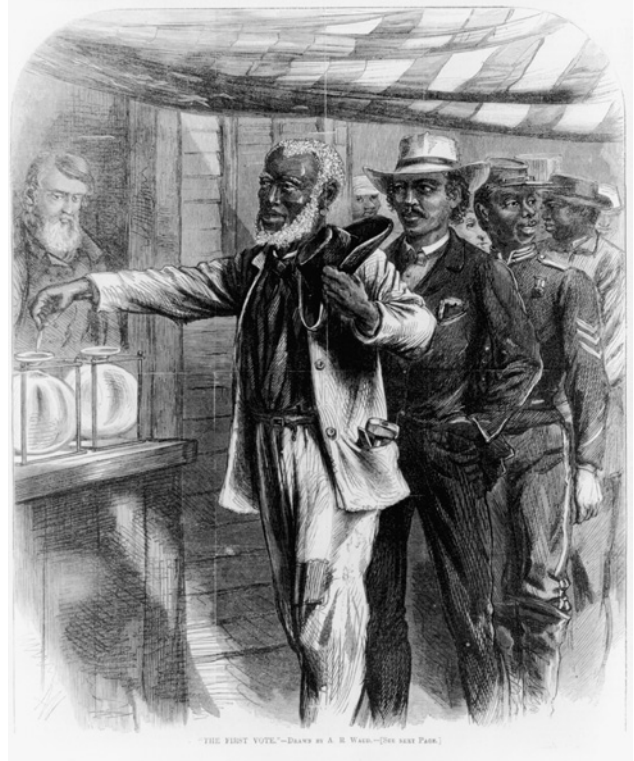
While state laws mandating unequal treatment of slaves, free blacks, and whites proliferated, it was the infamous *Dred Scott* decision of 1857 that provided federal sanction for these laws. After failing to purchase the freedom of his family and himself, Scott sued his master, John Emerson, for his freedom in 1846, claiming that his and his wife Harriet's presence and residence in free territories and their daughter's birth on a steamboat between free and slave territories should be all that was required for emancipation. The Supreme Court found against Scott and argued, among other things, that black people were racially ineligible for citizenship. Chief Justice Roger Taney wrote the majority decision, declaring most infamously that "The negro has no rights which the white man is bound to respect." From the *Dred Scott*

decision in 1857 until at least the enactments of the Thirteenth, Fourteenth, and Fifteenth Amendments, state and federal laws not only permitted but also required unequal treatment before the law, in criminal and other realms.

Eight years after the *Dred Scott* decision, in 1865, the Thirteenth Amendment was enacted, abolishing slavery except as punishment for a crime. In the same year, every former slave state enacted Black Codes, which controlled the labor, migration, and other activities of newly freed men and women, who were emancipated but not yet full citizens. Black Codes granted black people certain rights, such as legalized marriage (although not to whites), ownership of property, and limited access to the courts, but simultaneously denied them the rights to testify against whites, to serve on juries or in state militias, or to vote. And in response to planters' demands that freed people be required to work on the plantations, the Black Codes declared that those who failed to sign yearly labor contracts could be arrested and "hired out" to white landowners. Similar to the slave codes, Black Codes mandated that black people could be arrested for behaviors, such as failure to obtain work, for which white people were not subject to arrest and that black people were subject to punishments, most notably legally enforced work arrangements, to which whites were not. But Black Codes did not last long.

Toward Equality

A year after emancipation, the Civil Rights Act of 1866 was passed by Congress over Andrew Johnson's presidential veto; the act states that all persons born in the United States are citizens. Two years later, the Fourteenth Amendment was enacted, Section 1 of which requires due process and equal protection. Finally, in 1870, the Fifteenth Amendment was enacted, guaranteeing the right to vote to all adult men who are citizens of the United States "regardless of race, color, or previous condition of servitude." With the enactment of the Thirteenth, Fourteenth, and Fifteenth amendments, the promise—if not the practice—of equality before the law became enshrined in the United States' Constitution. Fortifying these federal changes, Republicans put the South under military rule, beginning the period of Reconstruction. Each former Confederate state held new



This illustration titled "The First Vote," which depicts African American men from various professions lined up to cast their first ballots in an election, was published on the cover of Harper's Weekly on November 16, 1867.

elections in which both freed men and poor white men, who were also previously excluded from the franchise, could vote. The freshly enfranchised black and poor white men elected new governments, each of which repealed their state's Black Codes by 1870.

While Black Codes were never reenacted, they were replaced with a complex jurisprudence called Jim Crow. These laws continued the practice of legally mandated unequal treatment before the law for black people, and in some states Mexican and Native Americans as well. Nonetheless, during the period from the late 19th century to the mid-20th century, states were shifting to a model wherein inequality in punishment was produced both legally and extra-legally.

Convict lease systems, which were in place from 1865 to 1927, were emblematic of this new method. In these systems, states "leased" prisoners to private individuals or companies, for whom prisoners labored in a variety of highly

exploitative contexts, from plantations to mines. This system was even more profitable for plantation and mine owners and even more deadly for blacks than slavery. In 1850, Alabama's state prison held 167 white men, three white women, and four "free colored people." By 1888, 85 percent of prisoners in the state were black. While white prisoners were generally left in prisons and taught a trade or used on chain gangs to make and maintain roads, black prisoners were leased to mining companies. These convicts mined five tons of coal per day, making Alabama's leasing system the most profitable in the country. Nine percent, or nearly one in 10, of leased prisoners died each year.

This system relied on the pairing of the enactment of vacuous laws—such as those against dead falls, or selling goods after sunset—purportedly applicable to all, but only blacks were arrested for the new "crimes," paid a system of fees and fines, and fell into a (racially and gendered) selective process that determined to whom inmates were leased. The racialized practice of convict lease existed in the absence of explicitly racialized laws. The methods used to produce the convict lease system were, in fact, strikingly similar to those used to produce mass racialized incarceration during the last quarter of the 20th century. Thus, the period of convict lease represents a turning point in the concept and practice of equality in punishment.

The movement toward increased formal equality in punishment stagnated from the 1920s to the 1950s, but then picked up speed again during the civil rights era, when groups of committed black activists and their allies fought for inclusion into the United States' political and civil society. While claims for restorative and other forms of justice were present throughout the movement, it was claims to equality—defined as the right of non-white people to be treated like similarly situated white people—that were legitimated through the Civil Rights Act of 1964, the Voting Rights and Immigration Acts of 1965, and the Fair Housing Act of 1968. Concurrent with Congress's enactment of these landmark legislations, the Supreme Court, led by Earl Warren, issued a tripartite of momentous decisions that increased the rights of defendants and, thus, the practice of equality before the law in the realm of criminal punishment.

First, in *Mapp v. Ohio* in 1961, the court ruled that it was unconstitutional for prosecutors to use evidence seized in illegal searches. Two years later, in *Gideon v. Wainwright*, the court held that the Sixth Amendment requires that all indigent criminal defendants receive publicly funded counsel. Finally, and perhaps most famously, in *Miranda v. Arizona* in 1966, the court ruled that police were required to explain a number of inviolable rights to people being interrogated while in custody, including the right to an attorney.

However, while rights to equality before the law and to due process have increased, racial disparities in criminal punishments have not faltered. Moreover, while scholars have unearthed racial disparities in punishment outcomes at nearly every juncture of criminal processing—the decision to deny a defendant bail, the setting of bail type and amount, the decision to grant a nonfinancial pretrial release, and the decision to sentence an offender to incarceration—the court, in *McCleskey v. Kemp* in 1987, opined that statistical evidence of patterned racially based disparities in criminal processing was not sufficient as evidence of discrimination. In particular, the court wrote that the "racially disproportionate impact" in the Georgia death penalty indicated by a comprehensive scientific study was not enough to overturn the guilty verdict without showing a "racially discriminatory purpose."

Critiques of Equality

While contemporary sentencing policies are formally race and gender neutral, they nonetheless punish noncriminal behaviors and traits, like being in or on public housing or having a prior record, that correlate closely with race. Proponents of determinate sentencing rely on color-blind discourse when they argue that in a nondiscriminatory criminal legal system every defendant with the same legal characteristics receives the same criminal legal outcome. In contrast, critical race scholars and others argue that contemporary discourses about discrimination provide no language with which to critique the assessment of social acts as criminal. Since some people arrested for white-collar (white) crime are black and some people arrested for street (black) crime are white, these laws do not classify on the basis of race. Thus, even if sentencing policies could

alleviate all racial disparities in punishment that occur when members of a group receive more or less beneficial criminal legal decisions because of their group membership, those disparities stemming from racialized notions of merit, criminality, and threat would still remain. As such, eliminating group membership-based distribution of criminal legal outcomes may alleviate the most egregious forms of discrimination, but it cannot eradicate racial stratification in criminal legal outcomes.

Similarly, determinate sentencing systems that increase formal equality may simultaneously disproportionately impact women in several ways. These policies make it difficult for judges and other criminal justice officials to consider socially relevant and highly gendered characteristics, such as child-care responsibilities. Additionally, mandatory terms and sentencing enhancements treat marginally and substantially

involved offenders as legal equivalents, thus glossing over traditional questions of culpability. Finally, these policies increase the weight given to the gendered behavior of prosecutorial assistance. Since women are generally less culpable, they often simply do not have “substantial” information to trade; as a result, prosecutors are more likely to help men avoid new mandatory terms and sentencing enhancements than they are women.

In regard to the racialized and gendered nature of putatively race- and gender-neutral sentencing policies, scholars argue that since the statutes and courts have defined equality as “treating likes alike” and require disadvantaged groups to prove that they are similarly situated. Similarly situated requirement laws that promote equality will not necessarily promote justice. In fact, the more manifest the results of historical and present discrimination are, the less likely this equality principle



Armed guards watch as prisoners in striped suits clear land at the McNeil Island Prison in Puget Sound around 1890, a time when convict leasing to mines and plantations was a common practice. The convict lease system, which was even more deadly to African Americans than slavery, lasted from 1865 until 1927. The mass racialized incarceration that resulted, and which continues today, can be seen as a turning point in the concept and practice of equality in punishment.

is to promote the undoing of systematic privilege and oppression. As such, sentencing policies that are formally race and gender neutral, but which are nonetheless race and gender salient, will not only fail to undermine the systems of privilege that leave criminal defendants dissimilarly situated but in fact disproportionately burden people of color and white women by ignoring the racialized and gender-specific situations of people in conflict with the law.

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See Also: 1851 to 1900 Primary Documents; African Americans; Chain Gangs and Prison Labor; Civil Rights Laws; Convict Lease System; *Dred Scott v. Sandford*; Gender and Criminal Law; Morality; Race, Class, and Criminal Law; Racism; Segregation Laws; Sentencing; Slavery; Slavery, Law of.

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Espionage

Espionage has been a part of the human condition since time immemorial. It is frequently referred to as the second-oldest profession, after prostitution. Being so closely linked with prostitution raises a number of interesting moral questions about espionage, but this article is not an ethical critique of espionage but, rather, a brief history and examination of the dark art of espionage and the social and political effects of espionage in the United States of America.

Espionage is a popular topic for action and thriller novels and movies in modern society. This popularity is aptly illustrated by the incredible success of the James Bond novels by Ian Fleming and the continuing series of movies focused on Bond. Although Bond is a fictional character, some authorities have suggested that he was based on real-life spy Sidney Riley. Regardless, modern fiction and cinema have created a common public understanding of a spy and espionage as engaging in all sorts of covert activities, including sabotage, kidnapping, assassination, and foiling the nefarious plans of various evil psychopathic geniuses from either ruling or destroying the world. Although related to such activities, espionage itself is in fact much more limited.

Espionage is primarily concerned with information. Specifically, espionage involves secretly obtaining secret information from an opposing person, entity, or nation. The information sought is usually secret in that the opposing party, entity, or nation does not want it revealed to the seeker, for whatever reason. The reason can involve any number of considerations, such as industrial secrets, political secrets, military secrets, or national security. Furthermore, the actual obtaining of the information must also be kept secret so that the person, party, or nation in the possession of the secret information does not discover that the seeker has obtained the information. The reason for this requirement is that if the person, entity, or nation in possession of the secret information discovers that it has been compromised, then that person, entity, or nation will take steps to counter the effect of the revelation and loss of secrecy of the information. For example, assume one nation were able to discover the defensive plans of another nation in the event of a military

attack by the first nation. If the second nation discovered that the first nation had obtained the secret plans, then the second nation would change the plans, making the previously secret information of significantly less value. When such espionage operations themselves are meant to be kept secret, they are commonly referred to as clandestine operations.

Counterespionage is simply those activities designed to detect, prevent, and defeat espionage. There are numerous ways that counterespionage is undertaken. One of the most obvious is physical security. Denying access to those facilities that are intended to be kept secret is a basic step in counterespionage. Access to information raises other questions. The basic step to protect the secrecy of information is to enact laws that prohibit the revelation of such information. This is usually accomplished by the classification of information according to the level of security needed to protect it. In the United States, the three basic levels of information classification are confidential, secret, and top secret. Of course, there are higher levels of security for the classification of highly secret information. Another method of counterespionage is the use of codes and encryption. Communications and electronic records can be encoded to prevent unauthorized access to them. Cryptography, which is the science of codes and encryption, is one of the most important fields of counterespionage.

Classifications of Targets of Espionage

There are four major classifications of information that is usually sought and gathered through the use of espionage. These classifications are HUMINT, SIGINT, IMINT, and open source intelligence. Generally speaking, open source intelligence is not, strictly speaking, obtained by espionage. Open source intelligence is when one person, entity, or nation can deduce certain secret information about an opposing person, entity, or nation through the use of material, publications, broadcasts, and information that is publicly available. This publicly available material may include books, journals, and newspapers. Such information does not need to be gathered in a clandestine manner. However, the subsequent analysis of such publicly available information may lead to (hopefully) accurate conclusions

about the opposing person, entity, or nation that would otherwise be secret. Of course, the conclusions gained through publicly available sources would not be revealed to the opposing person, entity, or nation.

HUMINT is an acronym for the phrase *human intelligence*. Human intelligence is the information that is directly gathered or collected by human beings. In the military, this is usually accomplished by special operations units, such as the Special Forces (Green Berets) or the long-range surveillance units. These units are sent behind enemy lines to secretly observe enemy military activities and report them to their military commanders to assist in the successful execution of military missions. In the nonmilitary context, human intelligence is usually gathered or collected by spies. A spy can be anyone. A spy can be a professionally trained intelligence operative who is directly employed by an intelligence agency. A spy can be a foreign national who is recruited by an intelligence case officer working directly for an intelligence agency. A spy can be a diplomat in a foreign nation who uses his position to gain the needed secret information. A spy can also be an average citizen who travels to or works in a foreign country and has access to the needed secret information. The methods used to gather or collect secret information are varied and can include theft, burglary, eavesdropping, blackmail, and even assassination.

SIGINT is an acronym for the phrase *signal intelligence*. Generally, signal intelligence is the information that is gathered or collected by intercepting the communications of an opposing person, entity, or nation. The communications are usually electronic, such as transmissions on telephone lines or radio signals. Usually, these secret communications are encoded or encrypted in an effort to keep them secret. Once the communication has been intercepted, it is usually sent to a specialized agency that will try to break the code or cipher, thereby being able to read and understand the secret communication. The encoding of communications is usually called cryptology, and the breaking of codes is usually called cryptanalysis. The methods of accomplishing such interception of electronic communications include the tapping of telephone lines, the installation of electronic eavesdropping devices, the tapping of

transoceanic telephone cables by submarines, or the monitoring of radio communications by communication dishes. SIGINT also encompasses the identification of certain technology by detecting and identifying that technology's electronic signature. For example, a particular type of submarine might have a distinctive sound based upon the type of its engines. Using this type of SIGINT, the type of submarine can be identified.

IMINT is an acronym for the phrase *image intelligence*. Image intelligence is usually used to describe information gained through the use of photography. It is especially useful when trying to determine the nature and purpose of secret foreign military and intelligence installations and facilities. For example, a spy satellite, using highly advanced and specialized photographic technology, can take very detailed photographs of installations and facilities in foreign nations by merely orbiting many miles above it, without violating the geographical borders of that nation. Spy planes can accomplish the same type of mission by flying at extremely high altitudes but not going into space. IMINT can be gathered by human intelligence operatives but it is more commonly associated with the use of either spy planes or satellites.

What Is a Spy?

Modern literature and cinema have placed in the current culture the image of a spy as the strong, daring, bold, courageous, and colorful person who always gets the better of the evil villain. These spies of the imagination and fiction are not the people who, in real life, are spies. To be a spy, no doubt, requires intelligence, training, and courage. However, intelligence agencies generally do not want the type of person who will make a large splash as a spy. The essential nature of espionage operations is that they are clandestine and meant to be kept secret. People who are perceptive about other people, who are inquisitive, who are intelligent, who have a high degree of ingenuity, who work well under stress, and who can keep a secret make the best spies.

Every nation has laws prohibiting and criminalizing espionage. Espionage, in the context of national security and national survival, is rightfully considered to be a fundamental danger that must be prevented. Espionage is prohibited

by U.S. law and is defined as a crime in Title 18 United States Code §§ 792–98. Punishments for espionage are usually quite severe, especially where the harm to the nation is significant.

General History of Espionage

Espionage existed and was practiced long before the founding of the United States. It has a long, dangerous, bloody, and oftentimes secret history. Many times, successful espionage operations are not revealed until decades or even centuries later, if at all.

As previously stated, espionage is one of the oldest professions. Not only has it been practiced for thousands of years, but it has been the subject of scholarly works. As long ago as the 5th century B.C.E., Sun Tzu, a famous Chinese philosopher and general, wrote *The Art of War*. In this rather amazing text, Sun Tzu devoted an entire chapter to explaining the different types of spies, how to employ them, and how to operate an intelligence operation.

However, spying in the ancient world was not limited to Asia. One of the first records of spying in the Western world is in the Bible. Moses sent spies to investigate the land of Canaan before he brought the Jewish people to settle there. Further, before the attack on Jericho, Joshua sent spies to discover the weaknesses of the city.

The ancient Greeks and Romans were also not strangers to the effective use of espionage. In 480 B.C.E., when the Greeks and the Persians were at war, the Greeks sent spies to determine the size of Xerxes's military force prior to battle. In turn, Xerxes also employed spies.

During the 15th and 16th centuries, the famous Italian political philosopher Machiavelli gained renown for his rather harsh philosophy of politics in *The Prince*. However, he also wrote on the employment of spies and the techniques of espionage in his work *The Art of War*, which coincided with his stark recognition of “realpolitik” in *The Prince*. During this time period, the Catholic Church was also known to employ spies in its fight against Protestantism and in support of its fight against heresy, showing that espionage was not beneath any entity, including the church.

During the 16th and the 17th centuries, Europe saw the rise of nationalism and religious wars. At this time true professionals in the art of intelligence

and formal intelligence services began to appear. One of the most famous was Sir John Walsingham, who was the secretary of state for Queen Elizabeth I. After the time of Elizabeth I, during the 17th century, Oliver Cromwell, during the course of his rule, established one of the first formal intelligence agencies in the Western world.

Early American Espionage

Any history of espionage, no matter how extensive, will have numerous gaps. This is because the essential nature of espionage involves secrecy, and many espionage operations, especially the failures, will be kept secret, if for no other reason than to protect the reputation and funding of that agency. However, over time, some espionage operations, both successes and failures, can and do come to light.

Generally speaking, espionage operations in early America were informal operations. During the American Revolution, General George Washington extensively employed spies. The most famous American spy during the Revolutionary War was Nathan Hale, who is famed for his statement that he regretted that he only had one life to give for his country. After the loss of Hale, Washington organized an intelligence organization that gathered a significant amount of information on the British forces. Further, Washington engaged in counterespionage, which resulted in the capture of British spy Major John Andre. There is little doubt that without this information, it would have been much more difficult for the colonists to win the Revolutionary War. Although there are few records of these espionage activities, Washington's financial records show that he spent \$17,000 on espionage during the Revolutionary War, which was a large sum in those times.

Espionage was practiced during the Civil War but was not very effective. According to a number of authorities, no major battle during the Civil War was won or lost because of espionage, although there were a number of famous spies for both sides, which included Belle Boyd and Pauline Cushman. However, there are several circumstances that warrant specific attention. Allen Pinkerton, who gained notoriety working for the railroads providing security, was competent at counterespionage and was instrumental in protecting President Abraham Lincoln during the

early part of the Civil War but had little success at the gathering of information from the Confederate forces. Pinkerton resigned after General George McClellan was relieved by President Lincoln. The Union organized an intelligence unit after the departure of Pinkerton known as the Bureau of Military Information. Although this organization was successful at gathering intelligence, it was woefully inadequate at counterespionage. One of its agents became head of the agency to protect the president, which obviously failed when President Lincoln was subsequently assassinated. Balloons were also used to gather information about the opposing military forces. This activity foreshadowed the use of airplanes and satellites in the late 20th century to gather secret information.



Confederate Civil War spy Belle Boyd, shown here in a photograph taken sometime between 1855 and 1865, conveyed intelligence about Union movements to General Thomas "Stonewall" Jackson and others fighting in Virginia.

After the end of the Civil War, in the 1880s, the United States began to develop its own military intelligence services. The Military Information Division was created for the army and the Office of Intelligence was created for the navy. Also, during this time period, the United States began to assign military attachés to foreign embassies so that they could gather military information about foreign nations using their status as diplomats to facilitate their espionage activities.

Unfortunately, during the succeeding period up to World War I, intelligence services were not supported and they dwindled. With the entry of the United States into World War I, it might be assumed that intelligence would regain its prominence but such was not the case. As the United States had entered World War I late, it relied on the intelligence services of the French and British. There was no pressing need for the United States to increase its own intelligence capabilities. However, the United States did enact the Espionage Act of 1917, which increased the penalties for espionage and included the death penalty. There is one espionage event that occurred during World War I that had a significant effect on the United States. The British intelligence service had decoded a German telegram, which is now known as the Zimmerman Telegram. It revealed how the Germans were trying to get Mexico to enter the war on its side in the event that the United States entered the war on behalf of the Allies. The effect on America was profound. Approximately a month after the Zimmerman Telegram was made public, the United States declared war on Germany. Regardless of the lack of espionage activity by the United States during World War I, the United States did maintain its intelligence branches in both the army and the navy and created a particularly important entity, the Black Chamber.

The Black Chamber was a highly secret organization that operated under the aegis of the State Department and developed a significant expertise in cryptography. The Black Chamber continued to operate after World War I, until 1929, when Secretary of State Henry Stimson made the now infamous statement, "Gentlemen do not read other gentlemen's mail." Despite the obvious naïveté of Secretary Stimson, the military continued with the cryptography started by the Black Chamber. The groundwork that was laid by the

Black Chamber and the subsequent work of the military resulted in the breaking of the Japanese naval and diplomatic codes, which proved invaluable during World War II.

World War II—Era Espionage

With the advent of World War II, the United States recognized the need for espionage services. During the war, the Office of Strategic Services (OSS) was formed to conduct espionage, sabotage, and guerrilla operations behind enemy lines. The OSS was very successful. Although it was disbanded at the end of World War II, its success was so great that the continuing need for the particular services offered by such an intelligence organization were recognized. The OSS is considered the forerunner of the U.S. Army Green Berets and the Central Intelligence Agency (CIA). The CIA, was formed by the National Security Act of 1947. The CIA was tasked with espionage and covert operations overseas. The CIA was forbidden to conduct intelligence operations within the United States. Domestic counterintelligence operations were left to the Federal Bureau of Investigation (FBI). The primary espionage role of the CIA is the gathering of HUMINT.

Prior to the outbreak of the Korean War in 1950, SIGINT was handled by specialized agencies in each branch of the military, which were coordinated under the Armed Forces Security Agency. SIGINT was less than adequate during the initial phase of the Korean War. In response, the National Security Agency (NSA) was formed on October 24, 1952, by presidential directive. The NSA is one of the most secretive intelligence organizations in the United States. Its basic mission was and continues to be the interception and analysis of foreign communications.

With the start of the cold war between the Soviet Union and the Western powers, espionage gained a much greater importance in national policy. One of the most important secrets was atomic weapons. Julius and Ethel Rosenberg were indicted in 1950 and were subsequently convicted of passing atomic secrets to the Soviet Union. The trial and the verdict were marred with controversy. Not until 1995, when secret material was released, was it accepted that Julius Rosenberg had been a Soviet spy, but serious doubt was cast upon whether Ethel Rosenberg was guilty.

The Rosenberg case was a watershed in political and espionage history, as it led to the McCarthy era. Also involved in passing of atomic weapons secrets to the Soviet Union was Klaus Fuchs.

The McCarthy era was a time during the 1950s when the nation was caught in a frenzy of witch hunts for Communist spies. The major progenitor of this era was Senator Joseph McCarthy from Wisconsin, who held numerous hearings investigating allegations of Communist espionage and sympathy among American citizens. The lives of thousands of American citizens were ruined by innuendo, investigations, employment black lists, and denunciations by friends and family. It was a dark time for America, and since that time, the use of the phrases *McCarthyism* and *witch hunts* has been synonymous in America with tyrannical government behavior.

However, through the 1950s, the espionage ability of the United States increased. The United States was starting to collect IMINT through the use of high-altitude spy planes, known as U-2s, taking pictures of installations and facilities in the Soviet Union. Unfortunately, in 1960, one of these planes was shot down by the Soviet Union and the pilot, Gary Francis Powers, was taken captive. He was convicted by the Soviet Union of espionage and was sentenced to prison, although he was later repatriated in a prisoner exchange. The U-2 incident was politically damaging to the United States and foreshadowed later foul-ups by the American intelligence community. In contrast, a success involving IMINT in the 1960s was the spy plane photographs of Soviet nuclear weapons in Cuba, which resulted in the Cuban Missile Crisis, in which the world came to the brink of worldwide nuclear war.

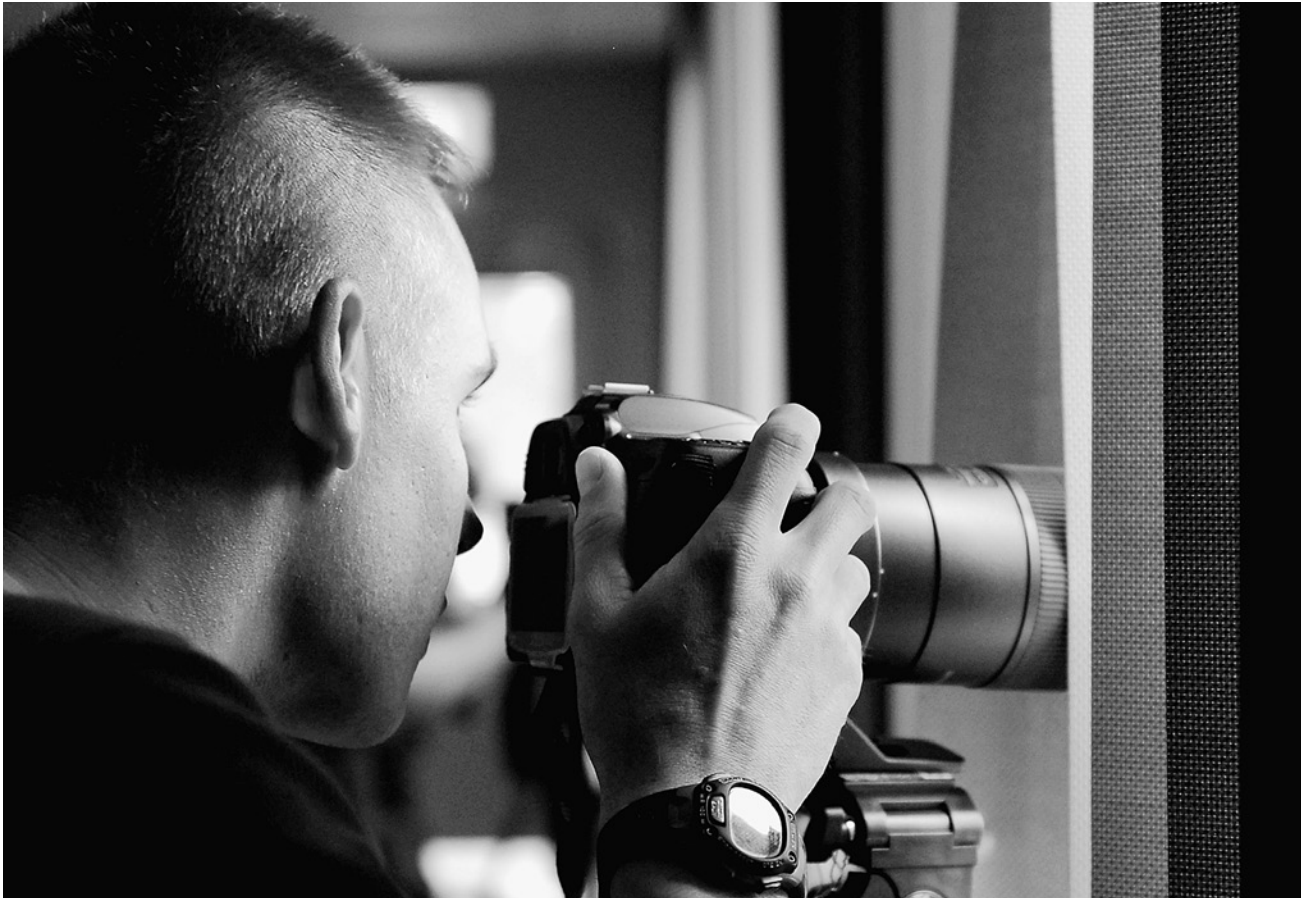
Modern-Era American Espionage

During the 1960s, American espionage activities generally did not generate high-level publicity, which suited the intelligence community. Unfortunately, complaints and leaks of information on the activities of the CIA and the FBI combined with the involvement of CIA personnel in the Watergate scandal led to the formation of the Church Committee in the U.S. Senate in 1975. The Church Committee was a disaster for the American intelligence community, although many people consider it to be a great success for protecting American

citizens from the abuse of power by intelligence agencies. The Church Committee found that the FBI, the CIA, and the U.S. Army were engaging in illegal political surveillance of American citizens. One of the most infamous operations was COINTELPRO by the FBI. The Church Committee also found that the CIA was engaging in the attempted assassinations of foreign leaders and engaged in the subversion of foreign governments. Although much of the Church Committee report is still classified, what was revealed shocked the nation. As a result, extensive limitations and oversight were placed on the intelligence community. One of these limitations was the creation of the Foreign Intelligence Surveillance Act (FISA) of 1978 courts, which are secret courts that can approve or disapprove warrants for the surveillance of people. Because these courts operate in secret, they were subjected to a great deal of criticism, which increased after the terrorist attacks of September 11, 2001.

Unfortunately for the CIA, 1975 also saw another disaster for the intelligence community with the publication of the famous book *Inside the Company: A CIA Diary*, which was written by former CIA agent Philip Agee. Agee's book was an exposé of CIA operations and agents that did serious harm to CIA operations in the world. As a result, laws were enacted that limited the ability of former intelligence agents from publishing their activities or knowledge concerning intelligence operations.

In the following years, the CIA, the NSA, and the many other intelligence agencies saw the arrival and departure of various directors. These years were considered a time of rebuilding to recover from the Church Committee. Unfortunately, the subsequent years saw the exposure of a number of American spies who had severely compromised the United States. In the 1980s, Jonathan Pollard, an intelligence analyst, was arrested for spying for Israel. John Anthony Walker, a naval chief warrant officer who specialized in communications, spied for the Soviet Union from 1968 to 1985. It is estimated that he helped the Soviet Union decrypt more than 1 million secret communications. Aldrich Ames, a CIA counterintelligence officer, spied for the Soviet Union from 1985 until his arrest in 1994. It is believed that Ames was responsible for the disappearance of



A soldier with the U.S. military police in Germany training in advanced surveillance photography techniques in 2009. For use in criminal investigations, image intelligence (IMINT) may come from traditional photography such as this, but surveillance of secret foreign military and intelligence installations more often comes from spy satellites or planes today.

many American spies. Robert Hanssen, an FBI agent, was arrested in 2001 after it was discovered he had spied for the Soviet Union for 22 years from 1979 to 2001. But not all arrests of alleged spies were successful. The FBI arrested a nuclear weapons physicist, Wen Ho Lee, in 1999 on suspicion of spying for the People's Republic of China. Wen Ho Lee had been working at Los Alamos National Laboratory. The case fell apart and despite being indicted on numerous counts, he was only convicted of one minor charge. He was eventually awarded more than \$1 million in damages from the government for the attempted prosecution.

Espionage in the Twenty-First Century

Prior to September 11, 2001, the intelligence community began to gain back some of the power

and public respect that it had lost after the release of the Church Committee report. For example, in 1994, the FBI introduced the concept of Internet data mining with a program known as CARNIVORE. The project was strongly criticized, and the FBI responded by merely changing its name. Essentially, the same functions of Internet data-mining are still being performed. Since that time, the government has been attempting to expand data mining on the Internet with programs such as Total Information Awareness (TIA).

A problem arose for the NSA in the early part of 2001 when the existence of a secret project known as Echelon was revealed. Echelon was reputed to be a highly advanced system to conduct surveillance of satellite communications and was supposedly started in the 1960s, though it had been upgraded since that time. European community

nations complained that it was being used improperly by the United States to engage in industrial espionage on behalf of defense contractors and that it violated European Union privacy laws. Little is known about Echelon, and the complaints have reportedly not been addressed. This incident raised public awareness about the omnipresence of the NSA and the ability of the government to surreptitiously violate individual privacy at will.

With the terrorist attacks of September 11, 2001, which killed thousands and destroyed the World Trade Center, the intelligence community gained a new lease on life and an extraordinary increase in its powers. With the passage of the USA PATRIOT Act of 2001, the intelligence agencies were granted extensive powers. These powers included being able to access library and bookstore records to see which books were being read by people, and greatly expanded search and surveillance authority, even bypassing the FISA courts in some cases. Although the act was subject to severe criticism by civil rights activists, the 9/11 attacks provided sufficient impetus to allow the passage and even renewal of the act. An additional result of the 9/11 terrorist attacks was the formation of the Department of Homeland Security, which concentrated all of the major security functions of the government under a single agency. Another result was the creation of the Office of the Director of National Intelligence to help coordinate all of the intelligence activities of the various intelligence agencies in the government. The reason for the creation of the Office of the Director of National Intelligence was that the 9/11 terrorist attacks arguably could have been prevented if the various intelligence agencies had shared information. However, the creation of this office has been viewed as a failure because it has not met its goal of agency coordination and cooperation. These new creations illustrated a fundamental change of the attitude of the American nation about civil rights and privacy.

In 2005, the NSA was caught illegally intercepting the communications of American citizens within the borders of the United States. Because of a courageous whistleblower, it was discovered that the major telecom corporations had been cooperating with the NSA in these illegal interceptions. A public uproar ensued, and a number of lawsuits were filed. As a result, bills were filed in Congress to grant the telecom corporations retroactive

immunity from the lawsuits. These illegal violations of privacy by the NSA have brought the issue of espionage against a nation's own citizens to the attention of all.

Problems With Espionage

As has been so obviously illustrated by the brief history of espionage in America, there are many problems with espionage. First, it involves secrecy and deception. Second, it can be extremely dangerous. Spies who are caught will be prosecuted and may even face the death penalty. This leads to a third issue, which is legality. All nations have laws against espionage but almost all nations practice espionage against other nations. Perhaps it is just a calculated risk that the information gained will be worth the lives of the spies. Finally, there are the moral issues. But this article is not an analysis of the morality of espionage but merely a brief review of it and some of the issues and social and political effects surrounding espionage.

Conclusion

Espionage is a fact of life. Whether it should be done, the fact remains that it is practiced and it will continue to be practiced, despite the potential pitfalls and dangers. From a social and political perspective, at least in the last half of the 20th century and the beginning of the 21st century, espionage has had a significant impact on the United States. In the 1950s, the issue of potential espionage, no matter how farfetched, led to massive witch hunts, political paranoia, and the destruction of the lives of numerous American citizens. In the 1960s and the 1970s, the espionage failures and fiascos only aggravated the civil rights issues that were affecting American society. In the 1980s and the 1990s, the activities of the intelligence agencies in America were not as conspicuous in the American consciousness, except for the number of foreign spies caught and prosecuted. However, with the turn of the century, espionage has once again come to the forefront. It is especially relevant because espionage, especially against a nation's own population, can have a significant—and even devastating—effect on criminal prosecutions. Espionage and its associated covert operations are being touted as the solution to many of America's problems of national security, leading to a fundamental crisis

in American political philosophy: Will America become a police state, where civil rights belong to a bygone era and citizens become informers on each other, and the police and intelligence agencies have almost complete access to the private lives of its citizens? Or will America return to the ideals fostered by the founding fathers and enshrined in the Bill of Rights?

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See Also: 1941 to 1960 Primary Documents; Bill of Rights; Declaration of Independence; Detection and Detectives; Electronic Surveillance; Espionage Act of 1917; McCarthy, Joseph; Political Policing; USA PATRIOT Act of 2001.

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Espionage Act of 1917

The Espionage Act of 1917 was created to protect the United States from subversive activity but was used to suppress opposition to World War I

and U.S. involvement in Russia following the war. Despite its suppression of dissent, the Espionage Act survived several constitutional challenges. After the war, it fell into disuse but it remains a tool for the United States as it seeks creative ways to fight the war on terror.

In 1914, Europe began fighting what would become World War I. Primarily, the war involved Great Britain, France, and Russia against Germany. Both sides sought the support of the United States and other neutral nations. For three years, the United States officially remained neutral and attempted to broker peace agreements. At the same time, the government adopted policies favoring the Allied powers of Great Britain, France, and Russia.

While the government opted for one side, the increasingly diverse citizenry of the United States never selected a side. This diversity created concern for President Woodrow Wilson and his administration. They feared that citizens of German descent would align themselves with Germany against the United States. They also feared that Germans would enter the United States and undermine its efforts to prepare for war. In 1916, explosions at munitions factories in Jersey City, New Jersey, and Seattle, Washington, cemented the idea that the United States required a law to prohibit subversive activity within its borders.

Resolute in its desire for a new law, the Wilson administration began drafting the proposed legislation. The Justice Department attorneys who drafted the statute were concerned with the potential for abuse that a law prohibiting subversive activity brought with it. Improper drafting or implementation would curtail freedom of discussion. Despite their concern, the drafters wrote the statute so that it covered an array of activity. They believed that carefully scrutinizing the facts in individual cases would prevent unjust application. Congress agreed and in 1917 passed the Espionage Act.

Provisions and Application of the Law

The act created four new crimes. The first two crimes prohibited the disclosure of national security information, making it an offense to communicate war information, plans, or operations to any foreign nation opposing the United States. The third new crime prohibited interference with

the war effort by persuading people not to enlist in the armed forces or making false statements about the United States. The final crime prohibited conspiracies to commit any of the previous three crimes.

The Espionage Act was one of three new statutes designed to protect the nation's internal security. The other two were the Trading with the Enemy Act and the Sedition Act. The latter was passed in order to strengthen provisions of the Espionage Act. A federal judge in Montana had interpreted the Espionage Act to restrict its application to instances in which a person spoke with the specific intent to undermine the government's war efforts. Believing this unduly restricted the government's ability to prosecute offenders, the Wilson administration drafted the Sedition Act. Over the next two years, the government initiated approximately 2,200 cases involving the three statutes.

With so many cases entering the system, it was inevitable that the law would be applied to cases involving minimal potential for actual harm. People throughout the nation were prosecuted for conversations in which they questioned administration policy or sympathized with Germany. While this went beyond the Department of Justice's intent, it had no control over the U.S. attorneys. Many U.S. attorneys prosecuted nearly every case brought to them that fell within the statute's technical language. Others prosecuted marginal cases to send a message to the larger population.

By 1919, several Espionage Act cases reached the U.S. Supreme Court. In each instance, the Supreme Court upheld the constitutionality of the act against First Amendment challenges. Through these cases, Justice Oliver Wendell Holmes announced the "clear and present danger" test and began refining it. Although not accepted by the court at first, the test eventually became the standard for judging whether a law violated the First Amendment.

Following the war, the Espionage Act fell into disuse. At the time, the United States lacked an organized intelligence community. Therefore, there was little basis for prosecuting Espionage Act cases when there was no formal war. Following World War II, the United States created a permanent intelligence community and, with it, a system for protecting national security informa-

tion. The increased emphasis on national security information made the Espionage Act relevant again. Use of the statute, however, has been limited because of concerns that prosecutions may be nullified because the conduct to which the act applies remains vague.

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See Also: *Abrams v. United States*; Bill of Rights; Holmes, Oliver Wendell, Jr.; Political Dissidents; *Schenck v. United States*; Sedition Act of 1918; Supreme Court, U.S.; Wilson, Woodrow (Administration of).

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Estes v. Texas

The First Amendment to the U.S. Constitution provides for freedom of the press. The Sixth Amendment guarantees a public trial by an impartial jury for the criminally accused. The U.S. Supreme Court extended freedom of the press to the criminal justice systems of the states through the due process clause of the Fourteenth Amendment in 1931. The court did the same with respect to public criminal trials in 1948 and trials by an impartial jury in 1966. In three cases decided in the early and mid-1940s, the justices considered how to resolve competing claims about the scope of these potentially conflicting liberties. In each instance, the freedom of the print media was vindicated despite anticipated violation of a criminal defendant's right to a fair trial attributable to judicially proscribed newspaper publication.



*Defendants in an organized crime case shield their faces from a New York World-Telegram & Sun newspaper photographer's camera that was present in a Brooklyn courtroom during jury selection in 1941. The presence or absence of cameras in the courtroom continues to cause controversy in state and federal courthouses nationwide nearly 50 years after the *Estes v. Texas* case.*

With the advent of electronic communication technology—radio in the 1930s and television in the 1940s—the likelihood of collision between these fundamental constitutional principles increased significantly. When confrontation occurred in the 1960s, the court's about-face was dramatic. In four consecutive cases—*Irvin v. Dowd* (1961), *Rideau v. Louisiana* (1963), *Estes v. Texas* (1965), and *Sheppard v. Maxwell* (1966)—the Fourteenth Amendment claims of the defendants prevailed over the freedom of the press.

Media Coverage and Jury Bias

Billie Sol Estes was charged in 1961 by the state of Texas and the U.S. Justice Department with committing multiple criminal counts of financial fraud and theft by swindle. Selling nonexistent anhydrous ammonia fertilizer tanks to farmers and

purchasing nontransferable acreage allotments for planting cotton from farmers allegedly produced millions of dollars of illegal income. Estes's conviction in state court in October 1962 was reversed by a 5–4 vote of the U.S. Supreme Court on June 8, 1965.

Justice Tom Clark wrote for the majority that Estes had been deprived of his Fourteenth Amendment guarantee of due process of law. Unfettered access by broadcast journalists and television cameramen to the Tyler, Texas, courtroom during pretrial hearings in September and the less conspicuous presence of the press during the subsequent trial were decisive, despite a change of venue from Reeves County, where Estes resided, to Smith County, some 500 miles distant.

The two-day pretrial hearing was broadcast live by multiple television and radio stations. News

photographers moved freely about a crowded courtroom as arguments by opposing counsel on a pair of defense motions ensued. The presiding judge rejected the motion to restrict television coverage, radio broadcasts, and news photography of the upcoming trial. The motion seeking a continuance to allow additional time for preparation for the trial was granted. During the nearly monthlong interval, because of renewed defense objections, the courtroom was altered to make the television cameras and operators less conspicuous. All live broadcasts of witness testimony were banned, and photographers were restricted to only those locations in the courtroom open to members of the public.

These differences between unrestricted press access to the pretrial hearing and the limitations in effect during the jury trial fragmented the justices' reasoning: (1) Clark acknowledged the differences but asserted that the guarantee of due process of law at trial must necessarily apply also to pretrial proceedings because those events may deeply affect opinion as to guilt or innocence in the community from which the trial jury was drawn; (2) Chief Justice Earl Warren, concurring, minimized the differences while finding the presence of electronic media personnel and equipment during the trial still to have been too intrusive to satisfy due process of law; and (3) Justice Potter Stewart, dissenting, drew a vivid contrast between the media presence during the hearing and the trial. But in sharp disagreement with Clark, he declared that the constitutional issue in this case pertained only to the trial. In contrast to Warren, Stewart concluded that the trial did not deprive the defendant of his liberty without due process of law.

At the time of Estes's trial, the appellate court of last resort in all states except Texas and Colorado had endorsed Canon 35 of the American Bar Association (ABA) Model Rules of Judicial Ethics that prohibited televised court trials. In Texas, the applicable rule, Judicial Canon 28, permitted the televising of trials at the discretion of the trial judge. The presence or absence of cameras in the courtroom continues to generate controversy in state and federal courthouses across the country nearly 50 years later.

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See Also: *Chandler v. Florida*; Fraud; News Media, Crime in; News Media, Punishment in; *Sheppard v. Maxwell*.

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Ethics in Government Act of 1978

The Ethics in Government Act of 1978 established the Office of Government Ethics, allowing for the investigation of high-level government officials. The act was signed into law on October 26, 1978, by President Jimmy Carter. This act is also known as the Independent Counsel Act. The root of this legislation begins with the Watergate scandal during the presidency of Richard M. Nixon, which ultimately led to his resignation in August 1974. Until Watergate investigations fell under the responsibilities of the attorney general, however, the fact that the president appointed the position and Nixon actually fired the prosecutor investigating him led to a change in procedure. The American public needed reassurance that investigations would be carried out without interruption from government officials. After Nixon fired Archibald Cox and his presidency began to unravel, Congress decided to initiate hearings to seek a solution to prevent abuse by the executive branch in the future. After five years of hearings, the Ethics in Government Act became law in 1978, beginning a 20-year period of controversy related to the law.

The law authorized the attorney general to request a judicial panel composed of judges from the U.S. Court of Appeals to appoint a special prosecutor, later called an independent counsel,

to investigate the government official in question. The counsel was called on to remain independent and impartial when investigating the person in question. Prosecutors were called on to investigate persons in the four presidential administrations during the law's existence. Lawrence Walsh led the investigation of the Iran-Contra affair during the administrations of Ronald Reagan and George H. W. Bush, investigating the illegal sale of arms to Iran and the money going to the Nicaraguan Contras. Walsh convicted two administration officials, Admiral John Poindexter and Lt. Colonel Oliver North, who later successfully appealed the decisions. The investigation ended, and President Bush pardoned the remaining suspected officials.

In 1992, Congress allowed the law to lapse because Republicans in Congress found the office to be expensive and it created an agency that fell outside of the system of checks and balances. The Supreme Court reviewed a number of cases challenging the law, but found it constitutional every time. In 1994, Congress passed a revised version of the Independent Counsel Law that was supported by President Bill Clinton and his attorney general, Janet Reno. At that point, Reno had already appointed Robert Fiske to investigate the Whitewater investment deal.

Pursuant to the new law, Fiske was replaced by Kenneth W. Starr, who expanded the investigation. Starr's investigation into the Whitewater land deal investments by the Clintons expanded over time to include a charge of perjury in *Clinton v. Jones*. Reno approved the additional investigation, which focused on whether Clinton lied in his deposition in the sexual harassment lawsuit filed against him by Paula Jones. The main emphasis of this case was a revelation of an affair with White House intern Monica Lewinsky that he denied in his deposition. Starr took this issue and published his findings in the Starr Report, which convinced Congress to pursue impeachment proceedings. The House voted to impeach Clinton, and the Senate later acquitted him in February 1999 by a party line vote, allowing him to complete his term of office.

Around the same time as Clinton's impeachment proceedings, Congress was considering the reauthorization of the Independent Counsel Act that would expire in June 1999. Consensus between

both parties, the attorney general and the most recent counsel, was to let the law expire. Experiences with the Iran-Contra affair and the Whitewater investigation proved that the law did not work. Investigations in both cases were costly, exceeding \$40 million each to conduct. Additionally, the goal of the law was that the appointed counsel would truly be independent of politics. The Starr investigations, report, and the subsequent partisan support of the investigation by the Republicans made it apparent that a counsel could not remain impartial. The outcomes of Iran-Contra and Whitewater did not reassure the public that it could trust executive branch officials to be honest, nor could it count on a nonpartisan investigation from an independent counsel. Congress has not found a solution to replace the role of the independent counsel because it was difficult to define the role to the satisfaction of both parties while making sure it met constitutional requirements.

After 20 years of investigations led by the independent counsel, the Justice Department resorted back to the process used during the Nixon administration, where counsels are appointed by the attorney general when needed. Given the partisan nature of investigating executive branch officials and the firing of investigator Cox during the Watergate investigations, Congress attempted to solve the problem by creating a position appointed by a panel of judges. However, this proved to be a more divisive solution, because the appointees to these positions failed to remain independent and nonpartisan. The current system of attorney general appointees for investigations is not the solution, so it remains a congressional challenge to find a replacement for this law that will be able to truly investigate executive branch members without bias.

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See Also: Clinton, William (Administration of); Nixon, Richard (Administration of); Political Crimes, Contemporary; Reagan, Ronald (Administration of); Watergate.

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Everleigh Sisters

The Everleigh sisters, Ada (February 15, 1864–January 5, 1960) and Minna (July 13, 1866–September 16, 1948), operated the Everleigh Club, a famous high-class brothel in Chicago, Illinois, from 1900 until 1911. The club was described by Chicago’s Vice Commission as “the most famous and luxurious house of prostitution in the country.” The sisters’ notions of prostitution positioned harlots not as lost women devoid of virtue but as investments, deserving nutritious meals, thorough education, expert medical care, and competitive wages. The sisters’ biographies, long-accepted as factual, were publicly debunked when Karen Abbott published *Sin in the Second City: Madams, Ministers, Playboys, and the Battle for America’s Soul* in 2007.

Ada and Minna Everleigh were born in Virginia, to Montgomery Simms and his wife, who died shortly after their birth. The Simms family was wealthy but lost much of their wealth, including the family plantation, during the Civil War. The sisters left home hoping to become actresses. Stranded by a theater company in Omaha, Nebraska, the sisters changed their last name to “Everleigh,” adapted from their grandmother’s correspondence often signed “Everly Yours.” They opened successful brothels in Omaha and then decided to relocate to a more affluent city. The sisters toured brothels in cities around the country and agreed that Chicago offered the most opportunity.

They bought a brothel south of the city’s downtown on Dearborn Street from a retiring madam, fired all of the women, and redecorated with the most luxurious appointments they could acquire. Silk curtains, damask chairs, oriental rugs, mahogany tables, gold-leafed china, perfumed fountains, mirrored ceilings, fine art, and gold cuspidors graced the rooms. Gourmet meals and live musicians also added to the ostentatious atmosphere. When the Everleigh Club opened, admission was \$10, dinner was \$50, and private time with any working girl started at \$50.

High standards governed employees of the Everleigh Club. The sisters demanded that their girls have pretty faces and figures, be in perfect health, be polite, and dress in lavish evening clothes. The sisters banned underage girls, pimps, white slavers, desperate parents looking to sell their children, knockout powders, thieving, and drug use from the house. They also regulated the clientele, which included wealthy businessmen, politicians, and celebrities, such as Marshall Field, Jr., Theodore Dreiser, Jack Johnson, John Rockefeller, Jr., John Barrymore, and Prince Henry of Prussia.

While the Everleigh sisters were working to improve their industry, reformers were working to eradicate the exploitation, crime, and disease that often accompanied prostitution. In 1901, Chicago hosted the National Purity Congress, which drew reformers from around the world to the city eager to purify a place so “great in sin.” In 1904, reformer William Stead published *If Christ Came to Chicago*, which exposed much of the city’s political corruption, underground economy, and vice establishments. The Chicago Vice Commission was appointed in 1910 to study the issue of prostitution and make recommendations for its continued legalization or prohibition. The commission determined that the tradition of segregation—containing prostitution to a designated area, or vice district—was ineffective, and that all vice districts needed to be permanently abolished. In 1911, Mayor Carter Harrison, Jr., ordered the Everleigh Club closed. Minna Everleigh responded, “If the Mayor says we must close, that settles it ... I’ll close up shop and walk out with a smile on my face.” The sisters determined that they had approximately \$1 million in cash, \$200,000 worth of diamonds, \$150,000 in

antique furnishings, and \$25,000 in client IOUs to fund their departure from Chicago.

Ada and Minna Everleigh moved to New York's Upper West Side. They went by Ada and Minna Lester and denied any suggestion that they could be connected to their famous brothel from Chicago. When young writer Irving Wallace contacted the sisters about their history, Minna declared that she and Ada were socialites whose names had been co-opted by the famous Chicago madams. They explained their wealth with stories of rich ancestors and only privately entertained Chicago visitors. Minna died in 1948, at the age of 82, though publicly she maintained she was only 70. Ada followed in 1960, just weeks before her 96th birthday. The Everleigh sisters are buried together in Alexandria, Virginia.

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See Also: Chicago, Illinois; Illinois; Prostitution, History of; Vice Commission; Vice Reformers.

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Executions

Capital punishment came to the United States along with the first colonists. The first recorded execution in colonial America was of Captain George Kendall in the Jamestown colony of Virginia in 1608. His crime, as an alleged spy for Spain, was treason. Though treason remains a capital offense in most jurisdictions, people were executed for all manner of crimes, including stealing grapes, trading with the Indians, "buggery" (Joseph Ross, December 20, 1785, Westmoreland County, Connecticut), "witchcraft" ("Manuel," June 15, 1779), and "aiding a runaway slave" (Starling Carlton, 1859, South Carolina) in the



William Henry Johnson, an African American private in the Civil War, was hanged in front of other Union soldiers near Petersburg, Virginia, on June 20, 1864. He had been accused of desertion and the attempted rape of a white woman.

early republic. Despite the irregularities of the application of the death penalty as to the rule of law, the practice itself remained relatively unchallenged through the 19th century. Instead, the history of execution describes the shift from public to private, from punishment to reform, and finally, from execution to mitigation.

Public Executions

At its outset, public execution emphasized the recuperative effect death might have, not on the criminal, but on the public that he or she had presumably wronged. Along with the public death of the criminal came a promise that civic order would be affirmed and restored. Though accepted as commonplace, the death penalty had early opponents, many of whom identified the

use of capital punishment with British rule. The text most responsible for generating arguments among Americans against the use of the death penalty was Cesare Beccaria's 1764 *Dei Delitti e delle Pene*. Translated as *An Essay on Crimes and Punishment*, it was published in London in 1767 and in the United States in 1777. In addition, many newspapers serialized Beccaria's essay. As historian Louis Masur explains, "The timing and content of the movement against the death penalty in the early Republic must be examined as a product of a social context shaped by the Revolution and an intellectual context governed by republican ideology and liberal theology." Thus, though execution was an accepted form of punishment and an ordinary fact of life, postrevolutionary America was ready to abandon executions in part as a way to distinguish republican values from those of European monarchies.

In addition to the death penalty's presence in political and legislative debates, it has been amply represented in the arts. According to historian Stuart Banner, public executions drew larger crowds than any other public gathering. Thus, it is not surprising that executions from the early colonial period generated all kinds of gallows literature—from sermons made on the occasion to conversion narratives and confessions. These were sold on execution day and were circulated broadly throughout the community. Some were more sensational than others, sometimes containing the last words and confession of the convict. Louis Masur points out, however, that many of these stories follow a formula of the cautionary tale, diminishing their value as historical documents.

Yet as attitudes toward capital punishment changed, so too did its literary treatment become more critical of the practice. Perhaps one of the most haunting depictions of a public execution is Herman Melville's poem about the hanging of the abolitionist John Brown. In its sparseness, his 1859 poem "The Portent" captures the eerie quality of a public execution once it has been shorn of the sensational glare created in much of the gallows literature that circulated in broadsides and the penny press. Melville marshals all of poetry's rhetorical power to condemn the act that foretold the war. The poem also emphasizes the absence of redemption, echoing a popular argument against the death penalty for vacating the promise

of redemption. Melville further underscores the degenerative social effect of capital punishment as both the title and the poem's last lines indicate that this hanging—John Brown's shadow and then streaming beard—cast a shadow: the harbinger of war.

Private Executions

Although the last public execution to take place in the United States was that of Rainey Bethea in Owensboro, Kentucky, on August 14, 1936, the change from public to private had already begun in the 1800s. Social critics, politicians, and other architects of the new republic, including Alexander Hamilton and Thomas Jefferson, saw that watching another person die had toxic effects on the human psyche. Far from creating a sense of deterrence, many believed that witnessing the state-sanctioned death of another human being undermined the possibility of reform and encouraged the baser instincts. A just society rehabilitates its members rather than disposes of them. Efforts to reform the penal code and abolish the death penalty resulted in the development of the modern-day penitentiary. An emphasis on rehabilitation of the convict coincided with public recognition that the effect of shame—what we might think of as "the scarlet letter" approach—did not create positive change in criminal behavior. Since then, executions have taken place strictly within the privacy of the prison with the use of solitude as the preferred method of punishment. As executions moved from the public square to death row, from the gallows noose to lethal injection, the spirit behind capital punishment also changed.

More and more in the 19th century, as evidenced in John Greenleaf Whittier's 1843 poem "The Human Sacrifice," the public began to see capital punishment as a violation of not just republican values but of civilized principles more broadly. "The Human Sacrifice" portrays capital punishment as ghastly and barbaric. With no redeeming features, this waste of human life makes a mockery of law by ritualizing murder. Whittier joins a larger cadre of civil rights activists like William Lloyd Garrison, Wendell Phillips, and Theodore Parker, all of whom supported the abolition of both slavery and the death penalty. Today, the movement to end the death penalty still retains its roots in social justice in part

because capital punishment has been inflicted on the socially marginal.

For instance, the largest single execution in U.S. history was the hanging of 38 Native Americans who had been convicted of murder in the 1862 Dakota War. They were executed at the same time in Mankato, Minnesota, on December 26, 1862. According to statistics assembled by Amnesty International, the focus on the disenfranchised has continued: “The death penalty is used disproportionately against the poor, minorities and members of racial, ethnic and religious communities.”

A U.S. government report confirms that, since 1976, 77 percent of cases in which the death penalty was applied for murder involved a white victim. Long before these statistics were assembled, Richard Wright, in his 1940 novel *Native Son*, called attention to the racial dynamics of crime—and punishment—through his unforgettable character Bigger Thomas. Importantly, Bigger Thomas’s story anticipates the broader arguments of the 20th and 21st century, especially as they have their roots in the fight to abolish slavery. Bigger’s doom is a socially constructed one, as the novel makes plain. Bigger only did what he had been destined to do by a society that placed little or no value on him as a human being.

Contemporary Views

Members of the contemporary movement to abolish the death penalty, such as Angela Davis, focus on both the social murder of incarceration and the state-sanctioned killing performed at the time of execution. Likening the big business of slavery to the big business of incarceration, opponents of the death penalty refer to the criminal justice system as “the prison-industrial complex.” The term is meant to emphasize the legacy of slavery as it has reconstituted itself in the economy of punishment. For a short time after the Supreme Court ruling in *Furman v. Georgia* (1972), the death penalty was abolished, in part in recognition of the fact that those who suffer the death penalty tend to be the real-life Bigger Thomases of their time: black and poor. Through a link to the Eighth and Fourteenth Amendments, the death penalty was ruled “cruel and unusual punishment.”

This judicial abolition of the death penalty brought about a renewed focus on the procedures

and methods of administering the death penalty. Training attention on the mechanisms of death allowed states to reinstate the death penalty by assuring “humane” practices in carrying out the sentence. In most states lethal injection, or more properly, lethal injections, is the preferred method. As of 2011, the controversy about execution in the United States has turned, once more, to the mechanism of death. Currently, most prisons use a set of three drugs, in combination, to deliver the lethal injection. The drug delivery method, as with the earlier debate over public versus private executions, focuses not on the moral right to take another life but rather on the moral imperative to make death the primary result by reducing the physical discomfort involved. According to state regulations, lethal injections commonly involve a sequence of three drugs that is set by state regulations: an anesthetic—sodium thiopental in every state but Oklahoma—intended to prevent pain, followed by a muscle relaxant and a drug that stops the heart.

In 2011, the drug company that makes sodium thiopental has stopped production in the United States, in part in protest of its use in the administration of the death penalty. A shortage resulted that has threatened to slow down scheduled executions. The company, Hospira, planned on resuming production at its factory in Italy, but this plan has reopened the debate regarding the death penalty, as Italy (and other European countries) have refused to allow the export of drugs for the purpose of the death penalty. The drug that could be used as an alternative—pentobarbital—is less preferable, in part because this drug is tainted by its history in veterinary medicine and physician-assisted suicide.

In any event, state procedures require a legal process be followed to change the protocol for lethal injection, thus a simple substitution cannot just be made. Officials at various penitentiaries have adopted an informal “supply and demand” system through which they circulate the remaining supply of sodium thiopental, but this practice—as with any possible substitutions for the drug—violates policies adopted to regulate state practices.

As a legal term, *execution* refers to the formal process by which a contract is made valid and put into binding effect. The death penalty, however, entails a multiplicity of possibilities, not all of

which result in death—what law professor Stuart Banner terms its most “binding effect.” Banner notes that there were “degrees of death” in operation under the death penalty. For instance, Banner reports one case in 1676 in which Elizabeth Rainer was taken to the gallows and had a noose put around her neck. For the crimes of fornication and infanticide, she was to stand on the gallows for a half hour to suffer a symbolic hanging for her actions and serve as a cautionary figure to the public. The notion that death need not be the only way to punish capital offenses has returned to the forefront of the debate.

Currently, efforts to abolish the death penalty have given way to more successful work in mitigation. Mitigation emphasizes not the innocence but the humanity of the person convicted. Mitigation has gained the upper hand in averting the death penalty in part because of the two-phase trial that was instituted for capital offenses. Attorneys whose focus is mitigation need not argue for the accused’s innocence; rather, the focus is on the complex human story that brought him or her to the moment of the offense. Mitigators succeed in convincing juries to change the sentence from death to life in prison without parole (LWOP) in part because of DNA exonerations as well as other factors that can contribute to a wrongful execution. Thanks to organizations like the Innocence Project, at least 17 inmates have been released from death row. As a punishment, LWOP is the modern-day solution that had already gained favor with the death penalty’s earliest opponents. Those reformers—from Thomas Jefferson to Benjamin Rush and beyond—saw life imprisonment as a “living death,” capable of invoking greater horror in potential criminals than mere death, especially once executions were taken out of the public view.

Portrayals in Media

Not surprisingly, the death penalty has been central to several riveting literary treatments in the 20th century. *In Cold Blood* by Truman Capote (1968) described the killers Richard “Dick” Hickock and Perry Smith, their crimes, conviction, and ultimately, their execution. Norman Mailer’s *The Executioner’s Song* (1980) is the Pulitzer Prize-winning nonfiction treatment of Gary Gilmore’s crimes, trial, and execution. This story has been

revisited by Gilmore’s younger brother Mikal in *Shot in the Heart*. Mikal Gilmore’s book was later made into an HBO movie of the same title.

The subject has received prominent attention on the wide screen. In 1995, filmmaker Tim Robbins took the death penalty as his theme in *Dead Man Walking*. This full-length feature film focused on Sister Helen Prejean, achingly played by Susan Sarandon, and her relationship with death row inmate Mathew Poncelet, played by Sean Penn. The film garnered much praise. Sarandon won the Oscar for her performance; Penn and Robbins were both nominated.

More recently, and very powerfully, the full-length feature film *The Life of David Gale* (2003) directed by Alan Parker and starring Kevin Spacey takes on one of the most difficult facts abolitionists have to face. Unlike those who battled to abolish slavery and won in part through the focus on the good works of enslaved people, those who want to put an end to the death penalty must work through widespread public scorn for the men and women whose crimes have landed them on death row. As one of the characters in *The Life of David Gale* put it, there are no truly innocent people sentenced to death. The film explores that problem through its main character, a philosophy professor and abolitionist called David Gale.

Somewhat ironically, Gale finds himself facing the death penalty for murdering a colleague and close friend. As the plot unfolds, his conviction—and refusal to appeal—perplex a reporter who has been given the opportunity to interview Gale prior to his execution. She is convinced that he is innocent and yet is frustrated in her efforts to save his life. The film’s conclusion, and without spoiling the dramatic twist that animates it, offers viewers an opportunity to rethink the death penalty from an entirely different vantage point.

Though the death penalty still exists in the United States, the number of people who are given the death penalty and the number of executions is on the wane. On December 2, 2010, Kenneth Lee Boyd became the 1,000th person to be executed in the United States since the death penalty was reauthorized in 1976.

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See Also: 1851 to 1900 Primary Documents; 1961 to 1980 Primary Documents; 1981 to 2000 Primary Documents; Capital Punishment; Cruel and Unusual Punishment; Death Row; Electric Chair, History of; Film, Punishment in; *Furman v. Georgia*; *Gregg v. Georgia*; Hanging; Literature and Theater, Punishment in; Lynchings.

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Famous Trials

In the United States, most legal cases are settled and never go to trial. This is true of both civil and criminal cases, in both state and federal judicial systems. Available data suggest that fewer than 20 percent of civil cases are decided by trial and that fewer than 4 percent of criminal cases are so decided. Jury trials are even rarer (most trials are judge-only bench trials). Most of the trials that do occur take place in the nation's local and state courts; only a fraction of all cases are filed in federal court, and the U.S. Supreme Court hears oral arguments in less than 100 cases each year. Despite the relative infrequency of the trial in contemporary courts, it plays an essential role in American society. Criminal trials exemplify the American spirit of independence from government interference: in order to convict a defendant, a prosecutor (representing the government) must prove each element of the crime beyond a reasonable doubt to a neutral fact finder (whether judge or jury). The jury trial in particular operates as an expression of democracy and as a check against despotic government.

While most trials occur with little or no fanfare, some trials become famous. People rely upon stories to make sense of the world. And, at root, trials are stories in which two protagonists struggle for control of the narrative. In trials, an audience

(judge or jury) is built in, and dramatic tension is assured since in an adversarial system of justice one party must win and one must lose (like in a sporting event). Those who forgo the advantages associated with settling a case do so because they believe they have a winning story to tell. Trials also provide the public with morality-affirming rituals. Transgressing offenders, by violating the laws of the community, become enemies who, through trial and punishment, evoke solidarity and restore normative equilibrium.

Trials also become famous because they simultaneously reflect and shape culture. For example, in the landmark case *Brown v. Board of Education*, the Supreme Court considered the accumulated evidence on the relationship between race and education in the United States before unanimously holding that segregated schools violated the equal protection clause of the Fourteenth Amendment. That decision served as the foundation for American desegregation and fomented the civil rights movement. Because it both captured the zeitgeist of the country and influenced the social and legal events that followed, *Brown v. Board* has become a household name.

Not all trials have the impact of *Brown v. Board*. Many trials become famous simply because a noteworthy person has committed an offense or because the crime is especially disturbing. This occurs with some frequency. Gerald



The Nuremberg Trials were an international military tribunal for World War II European Axis criminals held at Nuremberg, Germany, from November 20, 1945, to October 1, 1946. The Office of the U.S. Chief of Counsel, led by Supreme Court justice Robert H. Jackson, worked alongside the British, French, and Soviets to indict 24 wartime leaders and six German organizations. They found 19 defendants guilty. From top right, defendants Hermann Goering, Rudolf Hess, Joachim von Ribbentrop, and Wilhelm Keitel appear in the front row.

Uelmen identified 37 different 20th-century trials that were touted as the “trial of the century.” In 1999, NBC’s *Today* show conducted a public survey of the “trial of the century” in which nearly 4,000 people responded.

The five most common selections were (1) O. J. Simpson (24 percent), (2) Nuremberg war crimes (21 percent), (3) Clinton impeachment (20 percent), (4) Scopes evolution (14 percent), and (5) Lindbergh kidnapping (7 percent).

Trials become famous in three different ways. Trials sometimes become famous because a celebrity or famous figure has become involved in a legal proceeding (either as a defendant or a victim) that,

but for the involvement of the celebrity, would not be particularly newsworthy. Examples of this include the tabloid coverage of actor Hugh Grant’s trial for lewd conduct with prostitute Divine Brown, actress Winona Ryder’s trial for shoplifting, and actor Tom Sizemore’s trial for engaging in domestic abuse against Heidi Fleiss. Other trials become famous because an offender’s crime is especially egregious. Notorious serial killers sometimes become celebrities in this way. Political trials can be notorious, as well. Still other trials become famous because they establish a legal principle or rule. Members of the public may or may not know the precise legal issue that was disputed but may

use the name of the trial as cultural shorthand to denote a principle (e.g., references to *Miranda* rights) or to reference a fault line in sociocultural values (e.g., *Roe v. Wade* with respect to legalized abortion). A single trial can include two or even three of these paths to fame.

Celebrity Trials

Trials sometimes become famous by virtue of their association with celebrity. Some trials become famous because celebrities or their relatives are victimized, such as when musician John Lennon was killed by Mark David Chapman in 1980; when actress Jennifer Hudson's mother, brother, and nephew were murdered in 2008; or when heiress Patty Hearst was kidnapped by the Symbionese Liberation Army (SLA) in 1974 (although Hearst is known not for her kidnapping but for joining the SLA and robbing a San Francisco bank). When the 20-month-old son of famous aviators Charles and Anne Morrow Lindbergh was kidnapped from his home and later found dead, German ex-convict Bruno Hauptmann (named the most hated man in the world) was tried in a "trial of the century," found guilty, and executed in New Jersey's electric chair in 1936.

Political assassinations belong to this category: While John Wilkes Booth never went to trial for the 1865 assassination of President Abraham Lincoln (Booth was shot), eight of his co-conspirators were tried and convicted. John Hinckley, Jr., attempted to assassinate President Ronald Reagan in March 1981 in an attempt to prove his love for actress Jodie Foster. Reagan survived the attempt, and in a high-profile trial, Hinckley was found not guilty by reason of insanity. In the wake of the decision, many jurisdictions amended their insanity statutes, and three states (Idaho, Montana, and Utah) abolished the insanity defense altogether.

Other trials become famous because of celebrity offenders. Often, these crimes are minor and would not attract media attention but for the involvement of the celebrity. Cases of public intoxication, driving under the influence (DUI), possession of drugs or firearms, and simple assault occur with regularity among actors, musicians, politicians, and athletes. These cases, however, are like catnip to media paparazzi and constitute an important part of tabloid entertainment news. Commentators

have raised questions about the fairness of the justice system when it involves celebrities.

Occasionally, the charges against a celebrity are more serious, and these trials often draw significant media attention. America's homemaker Martha Stewart was convicted in 2004 of conspiracy, obstruction, and making a false statement in association with a stock sale; she served five months in a West Virginia federal correctional facility. Celebrities are sometimes charged with high-profile sex crimes: in 1977, director Roman Polanski was charged with six sex crimes and pled guilty to statutory rape, avoiding punishment by fleeing to France (Polanski later settled a civil suit with his victim); after boxer Mike Tyson's 1992 rape trial, he served three years in prison; basketball player Kobe Bryant was charged with sexual assault in 2003, and while the charges were dropped after preliminary hearings, Bryant settled in a civil suit for an undisclosed amount. In 2003, musician Michael Jackson was charged with seven counts of child molestation and two counts of intoxicating a minor (13-year-old Gavin Arvizo). In June 2005, Jackson was acquitted by a jury on all counts.

Sometimes celebrities are tried for homicide. In Hollywood's first great scandal, actor Roscoe "Fatty" Arbuckle was charged with manslaughter in 1921 in connection with the death of actress Virginia Rappe. Three trials followed (two mistrials of hung juries and an acquittal). In 2002, actor Robert Blake was charged with first-degree murder of his wife, Bonnie Lee Bakley. He was acquitted in 2005 but was found liable for \$30 million in a wrongful death suit filed by Bakley's children. Songwriter and record producer Phil Spector was arrested in 2003 for the death of actress Lana Clarkson. After a mistrial in 2007, Spector was tried again, found guilty of second-degree murder in 2008, and sentenced to 19 years to life.

None of these trials, however, were as famous as the O. J. Simpson trial. In 1995, in the most publicized criminal trial in American history, football player and actor O. J. Simpson was tried for the 1994 stabbing murders of his ex-wife Nicole Brown Simpson and her friend Ronald Goldman. The televised trial lasted for nine months and made celebrities out of many of the lawyers and witnesses. Simpson's "dream team" of high-profile defense lawyers succeeded



Sharon Tate and four houseguests were murdered by Charles Manson and his "family." During the trial's opening statements, Manson appeared with a freshly cut bloody "X" on his forehead but his bizarre actions did not save him from a guilty sentence.

in raising reasonable doubt in the minds of the jury, and on October 3, 1995, he was found not guilty. Public reaction to the verdict revealed racial differences in the perception of the justice system. While whites overwhelmingly believed that Simpson was guilty, fewer blacks believed in his guilt, indicating distrust of the police and the courts. In 1997, a civil jury found Simpson liable for \$33.5 million in compensatory and punitive damages for wrongful death.

Notorious Trials

Some trials become famous because they involve particularly disturbing crimes or because the offender or victim is especially attractive. They do not feature celebrities; rather, they make celebrities. Lorena Bobbitt, for example, became a household name throughout America in 1994

after a jury found her not guilty by reason of insanity for cutting off her husband's penis. Serial killers frequently achieve this celebrity of infamy. For example, after the 2003 publication of Erik Larson's *The Devil in the White City*, there has been renewed interest in the 19th-century trial of H. H. Holmes. Many contemporary serial murderers are also well known: Ted Bundy, Jeffrey Dahmer, John Wayne Gacy, Richard Speck, and Aileen Wuornos. Other killers become known by the names conferred by the press: "Son-of-Sam" David Berkowitz, "Boston Strangler" Albert DeSalvo, "Columbine Killers" Dylan Klebold and Eric Harris, "D.C. Snipers" John Allen Muhammad and Lee Boyd Malvo, and "BTK Killer" Dennis Rader. The 1970 trial of Charles Manson and three members of his "family" for the murder of seven victims in the Tate-LaBianca murders made *Helter Skelter* into a household phrase. Although not a serial killer in any traditional sense, Dr. Jack Kevorkian's 1999 trial for physician-assisted suicide reinforced his celebrity status in America.

Sometimes, controversy is sufficient to make a murder trial famous, such as the trial of Dr. Sam Sheppard (convicted for killing his wife in 1954 but acquitted on retrial in 1966), the televised 1993 trial of Lyle and Erik Menendez (convicted for killing their parents), or the 2004 trial of Scott Peterson (sentenced to death for the murder of his wife and her unborn child). In 1924, in another "trial of the century," Nathan Leopold and Richard Loeb faced the death penalty for the kidnapping and murder of 14-year-old Bobby Franks. Clarence Darrow's eloquent closing argument is considered to be one of the most masterful rejections of the death penalty in history.

The murder of attractive young girls (e.g., Jon-Benet Ramsey) sometimes draws national media attention to a trial, such as the 1996 trial of Richard Allen Davis for the murder of Polly Klaas. And when mothers kill their own children, the trials are often well publicized: Susan Smith was sentenced to life in prison in 1995 after drowning her two children in a car; Andrea Yates was found not guilty by reason of insanity in 2006 after drowning her five children in her bathtub.

Political Trials

Political trials can reveal the temper of the time. The 1770 trial of eight British redcoats for killing

five civilian men during the Boston Massacre helped to precipitate the American Revolution and is still re-enacted each year. A trial was held in 1859 for revolutionary abolitionist John Brown and his failed raid on the Harpers Ferry Armory and Brown was executed for treason. It is generally agreed that Brown's raid played a major role in precipitating the Civil War, and he has been called the most controversial figure of the 19th century. The 1925 trial of biology teacher John Scopes involved Tennessee's Butler Act, which prohibited the teaching of evolution in school. Scopes was found guilty and fined \$100. On appeal, the Tennessee Supreme Court upheld the sentence and the constitutionality of the act in 1927.

Political trials also punctuated the 20th century: The 1920 murder trial and 1927 executions of Italian immigrants Ferdinando Sacco and Bartolomeo Vanzetti can be traced to anti-Italian sentiments. The 1951 trial and 1953 executions of Julius and Ethel Rosenberg revealed as much about America's anti-Soviet hysteria as about the Rosenbergs' involvement in an espionage conspiracy. The mood of the country also explains the 1950 perjury conviction of Alger Hiss, whose testimony before the House Committee on Un-American Activities contradicted the assertion of Whittaker Chambers that he and Hiss had been involved in Soviet espionage. The 1913 murder trial of Leo Frank revealed a great deal about anti-Semitism in America, although not as much as his 1915 lynching death. The 1931–37 trials of the Scottsboro Boys, black teenagers charged with raping white women, reveal a great deal about the corrosive effect of racism on justice. In one early trial, the jury took just five minutes to decide on the death penalty and returned to the courtroom laughing. In 1967, Cecil Price was tried for his role in a Ku Klux Klan conspiracy to violate the civil rights of the three civil rights workers who were murdered in Mississippi in 1964. He was never charged with murder. His trial expressed the country's ambivalent attitude toward race and civil rights. Similarly, the 1969 trial of the Chicago Seven, arrested at a 1968 Democratic National Convention rally and charged with conspiracy to cross lines to incite a riot, reveals the antigovernment sentiment that boiled in the United States at that time. So, too, did the 1977 conviction of American Indian activist Leonard Peltier for the murder of two Federal

Bureau of Investigation (FBI) agents on the Pine Ridge Indian Reservation. Numerous critics have suggested that political motives drove the prosecution against Peltier. The most famous political trial of the century was the impeachment of President Bill Clinton. Stemming from Independent Counsel Kenneth Starr's Whitewater investigation, Clinton was impeached by the U.S. House of Representatives in 1998 on charges of perjury and obstruction of justice. The Senate vote, however, fell short of the two-thirds majority required to convict.

Sometimes, trials become famous because of doubts about the propriety of conduct of government agents, such as in the 1993 Ruby Ridge trial of Kevin Harris and Randy Weaver or in the 1994 trial of the Branch Davidians involved in the standoff at Waco, Texas. Similarly, the 1991 videotaped beating of motorist Rodney King by four Los Angeles Police Department officers led to a high profile trial for excessive force. The jury's acquittal of all four officers precipitated a massive riot that led to 53 deaths, 7,000 arrests, and more than a billion dollars in property damage.

Sometimes, government actors are portrayed as "bad apples." For example, in 1970, Lieutenant William Calley was court-martialed for the murder of Vietnamese civilians during the 1968 My Lai massacre; between 2004 and 2006, 11 U.S. soldiers were convicted for their roles in the prisoner abuses at Abu Ghraib. Sometimes, criminals use their trials as a forum to attack the government that prosecutes them, as in the 1997 Oklahoma City bombing trial of Timothy McVeigh or the 2006 trial of 9/11 conspirator Zacarias Moussaoui.

Nonpolitical trials

Nonpolitical trials can reveal much about the temperament of a situation, as well. The moral panic of the Salem witch trials, for example, says a great deal about the isolationism and extremism that affected Massachusetts during 1692. Similarly, the mass hysteria associated with the 1987 McMartin Preschool trial, in which it was alleged that day care operators sexually abused children as part of their satanic rituals, led to the longest and most expensive trial in American history but produced no convictions.

The jury's acquittal of "Subway Vigilante" Bernhard Goetz for his 1984 shooting of four men who

intended to mug him tells a great deal about the attitudes of crime-weary New Yorkers and serves as a lens through which that time and that place may be understood.

Principle-Establishing Trials

Some trials become famous neither because of celebrity involvement nor because they feature an egregious or controversial crime. They become famous because they establish a legal principle or rule that assumes cultural significance. *Roe v. Wade* and *Brown v. Board* are excellent examples of this phenomenon. A number of famous trials have shaped the course of criminal law in America; for example, two English trials: *M'Naghten* (establishing the most influential American standard for insanity), and *Regina v. Dudley and Stephens* (a lifeboat cannibalism case that outlined the limits of the necessity defense). A number of American cases have also been incredibly influential.

Ernesto Arturo Miranda's confession to kidnapping and rape changed the landscape of U.S. criminal procedure. The U.S. Supreme Court held that suspects in custody must be clearly informed of their right to remain silent and that anything they say can be used in court; they must also be informed of their right to have a lawyer present during interrogation. Many subsequent cases have refined the holding in *Miranda v. Arizona*, establishing exceptions and clarifying its application, but the case stands as a landmark in American criminal procedure.

When Charles Katz used a public telephone to make illegal gambling wagers, he did not realize the telephone had been bugged by the Federal Bureau of Investigation (FBI). When the U.S. Supreme Court heard his appeal in *Katz v. United States*, the court held that Katz had a legitimate expectation of privacy in the telephone booth and could rely upon the Fourth Amendment's protections against unreasonable searches and seizures. The *Katz* decision serves as the basis for most modern Fourth Amendment litigation and is central to the conception of a legal right to privacy.

In 1961, Clarence Earl Gideon was sentenced to five years in a Florida prison for breaking and entering the Bay Harbor Pool Room with intent to commit petty larceny. Gideon could not afford

a lawyer, although he asked for one. Writing to the U.S. Supreme Court on prison stationery, Gideon argued that he had been denied counsel in violation of the Sixth Amendment. In 1963, in *Gideon v. Wainwright*, the U.S. Supreme Court held that the right to counsel is fundamental and requires that indigent criminal defendants must be afforded counsel at trial. Gideon's conviction was overturned and he was granted a new trial: the jury acquitted him after one hour of deliberation.

The Supreme Court's decision in *In re Gault* extended the right to due process to juveniles accused of a crime, and in *In re Winship*, the court held that when a juvenile is charged with an act that would be a crime if committed by an adult, every element of the offense must be proved beyond a reasonable doubt, instead of the preponderance of evidence standard that had prevailed in juvenile courts. Today, *Winship* stands for a far more sweeping proposition: that in any criminal prosecution, every essential element must be proved beyond a reasonable doubt in order to secure a conviction.

Some principle-establishing trials involve the limits of cruel and unusual punishment. In *Harmelin v. Michigan*, the court revealed the legislatively deferential nature of its Eighth Amendment proportionality analysis, upholding a sentence of life imprisonment without parole for possession of 672 grams of cocaine. In *Gregg v. Georgia*, the court upheld the death penalty conviction of Troy Leon Gregg, who while hitchhiking had killed two men in 1973. The impact of the court's decision was profound. In 1972, in the case of *Furman v. Georgia*, the court had struck down the death penalty as unconstitutional because the death penalty was imposed in a wanton and capricious manner. With *Gregg*, the court indicated that states' death penalty statutes could survive judicial scrutiny if they simultaneously limited death penalty eligibility, narrowed the discretion of the sentencer, and allowed for individualized consideration of the defendant. Subsequent cases have narrowed the categories of offenders who are eligible for capital punishment (e.g., excluding the insane, the mentally retarded, and those who were juveniles at the time of their crimes) and the categories of death-eligible crimes (e.g., holding that capital punishment for the rape of an adult woman was unconstitutional, and later

holding that capital punishment for the rape of a child was also unconstitutional).

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See Also: 1921 to 1940 Primary Documents; 1961 to 1980 Primary Documents; 1981 to 2000 Primary Documents; 2001 to 2012 Primary Documents; *Brown v. Board of Education*; *Buck v. Bell*; Bundy, Ted; Chapman, Mark David; Chicago Seven/ Democratic National Convention 1968; Darrow, Clarence; DeSalvo, Albert; *Dred Scott v. Sandford*; *Furman v. Georgia*; Gacy, John Wayne; *Gideon v. Wainwright*; *Gregg v. Georgia*; Hauptmann, Bruno; *Katz v. United States*; Kevorkian, Jack; King, Rodney; Klebold, Dylan and Eric Harris; *Korematsu v. United States*; Kunstler, William; Leopold and Loeb; *Loving v. Virginia*; Manson, Charles; McVeigh, Timothy; Menendez, Lyle and Erik; *Miranda v. Arizona*; M'Naghten Test; Mudgett, Herman; Muhammad, John Allen; News Media, Crime in; News Media, Punishment in; Peterson, Scott; *Plessy v. Ferguson*; Rader, Dennis; *Roe v. Wade*; Sacco and Vanzetti; Salem Witch Trials; Scopes Monkey Trial; Scottsboro Boys Cases; Sheppard, Sam; Simpson, O. J.; Smith, Susan; Wuornos, Aileen; Yates, Andrea.

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Fear of Crime

Fear of crime is an indirect form of victimization and a serious social problem that is related to, but distinct from, crime itself. It is an emotional response that may be a reaction to personal victimization, witnessing a crime, or being exposed to images of crime and victimization (e.g., through television). Fear of crime is a multidimensional concept that until fairly recently did not receive a great deal of attention from the research community. Recent theoretical advances into the causes of fear of crime suggest that fear can be triggered by perceptions of risk and vulnerability, both at the individual and contextual levels. From a policy perspective, it is important to foster a balance between objective and perceived risks of victimization, thereby encouraging appropriate crime prevention activities, without inciting fear.

Defining and Measuring Fear of Crime

Since it became an area of significant research interest among criminologists and victimologists in the mid- to late 1970s, those interested in studying fear of crime have struggled with how best to define, conceptualize, and measure the phenomenon. Early work into the study of fear of crime generally relied on indicators found in the general social survey (GSS) and what is today the

National Crime Victimization Survey (NCVS). For instance, the GSS measure of fear is based on the following survey question: “Is there any area right around here—that is, within a mile—where you would be afraid to walk alone at night?” This measure of fear and others like it have been criticized for failing to differentiate between perceptions of risk and fear of crime, two distinct but related concepts. Despite potential flaws, these measures of fear of crime were used by researchers for years and served as the basis for measuring fear of crime in several studies.

Today, most fear of crime research makes this distinction by measuring two distinct elements of fear of crime: one emotional and one cognitive. The emotional component of fear is characterized by a state of worry or anxiety. During a criminal event, this aspect of fear results in bodily changes (e.g., release of adrenaline, increased heart rate, and rapid breathing) and may trigger a primal fight-or-flight impulse in the interest of self-preservation. The cognitive aspect of fear is based on individual perceptions of risk (i.e., likelihood of victimization). Contemporary research into fear of crime has advanced a great deal in the past few decades, and today, fear of crime research is more consistent with a definition provided by K. F. Ferraro, one of the leading scholars to study the subject. Ferraro defines fear of crime as “...an emotional response of dread or anxiety to crime or symbols that a person associates with crime.”

Explaining Fear of Crime

Over time, as definitions and measures of fear of crime have developed, so have theoretical explanations for the phenomenon. The current state of the empirical literature highlights two pathways toward explaining fear of crime: one individually based and one contextually based. The former focuses on individual-level vulnerability based on indicators of actual victimization risk. An individual’s perceptions of vulnerability may be either physical or social. For instance, one’s age may be a reflection of physical vulnerability in that older persons may judge their ability to defend themselves from attack to be minimal. Further, the shadow of sexual assault hypothesis suggests that women generally report greater fear of victimization than men because of the pervasive threat that victimization can escalate into sexual assault. This



Some of the microenvironmental site features most likely to create fear of crime are illustrated by these stairs: low prospect (limited view ahead), high refuge (hiding places for offenders), and low escape (few avenues for escape from trouble).

possibility of escalation has the effect of driving up levels of fear for other types of crime among women, as well as increasing perceived risks of sexual assault.

With respect to social vulnerability, researchers hypothesize that certain groups (e.g., minorities and immigrants) may judge their ability to prevent or withstand criminal victimization to be reduced by the nature of their status in society. For example, immigrants may experience feelings of uncertainty about the law, language barriers to reporting, or confusion as to the best course of action if they witness or are victims of a crime, thereby increasing feelings of fear. Socially vulnerable populations may also believe that their risks of victimization are higher. The extant research on fear of crime supports the idea that these

dimensions of physical and social vulnerability are strong correlates of fear of crime.

The second explanation for fear of crime focuses on the environmental context (e.g., streets, neighborhoods, and communities). Within this context, explanations of fear of crime have focused primarily on the concepts of disorder, social cohesiveness, and environmental site features. Signs of community disorder can be either physical (e.g., abandoned cars, litter, or graffiti) or social (e.g., presence of homeless people, prostitutes, or drug dealers) and signal to users that the environment may be conducive to crime and therefore unsafe. Social cohesiveness refers to the ability of community residents to regulate behaviors within their environment or community context. For instance, in a socially cohesive community, residents will challenge congregating youth and ask them to go home, while in a disorderly community, residents have withdrawn from the streets and such congregations go unchallenged.

Community disorder and social cohesiveness are key elements of broken windows theory. According to the theory, physical incivilities such as an untended broken window lead to more broken windows and other signs of physical disorder, which take hold and spiral out of control. Gradually, these cues of physical disorder signal would-be offenders that the area is a facilitating environment for crime, because no one is addressing these community problems. Community members begin to feel that the area is unsafe, and feelings of fear cause them to retreat into their homes. An unwillingness to intervene in neighborhood problems (i.e., lack of social cohesiveness) allows crime to flourish in the area. From this theoretical perspective, fear of crime is a key factor in explaining community crime.

The third explanation for fear of crime at the contextual level focuses on micro-environmental site features, namely, those that indicate to users the site's relative danger or safety. These site features include prospect, refuge, and escape. Prospect refers to the openness of the site; refuge represents potential hiding places within the site; and escape indicates that there are pathways or avenues to avoid danger should it present itself. The combination of site features most likely to elicit fear among site users, including fear of crime, would exist in an environment with low prospect, high refuge,

and low escape. For example, a dark, narrow alley offering a limited view of what lies ahead, potential hiding places for likely offenders (e.g., behind dumpsters), and few avenues for escape if trouble is encountered would signal to potential travelers that the alley is unsafe and hence engender feelings of fear. Other important site features or environmental cues include darkness, shadow, curvature, length, mystery, and entrapment. Currently, researchers are expanding the scope of fear of crime research to examine whether explanations of fear are congruent for males and females (i.e., gendered approaches), age-graded and developmental explanations of fear, fear of crime across contexts (e.g., college campuses and secondary schools), and fear of cybercrimes.

Policy Implications

As M. Warr has pointed out, fear of crime can be beneficial to society, especially if a balance between objective and perceived risks of victimization can be struck. In this ideal scenario, individuals will exercise appropriate levels of cautionary behaviors to protect themselves from victimization without unduly constraining their daily routines. However, an imbalance is more likely. This relationship can be imbalanced in two ways. First, if individuals perceive their victimization risks to be higher than their objective risks, they will alter their daily routines, possibly to the point of unnecessarily constraining their behavior (e.g., staying home at night and avoiding certain places), and in a worst case scenario, living in fear. Conversely, when objective risks are higher than perceived risks, appropriate cautionary behaviors will not be taken, and individuals may be more vulnerable to victimization. From a policy perspective, encouraging this balance may be accomplished by educating the public regarding the objective risks of crime. The public tends to overestimate the prevalence and therefore the risks of rarer forms of crimes (e.g., homicide) and underestimates the prevalence and risks of more common crimes (e.g., theft). This may be because of media emphasis on these rarer, more serious forms of crime. Policy makers may well consider counterbalancing media influences with crime awareness and education programs.

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See Also: Crime Rates; Criminology; News Media, Crime in; Rape, Sociology of; Theories of Crime; Violent Crimes; Wilson, James Q.

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Federal Bureau of Investigation

The Federal Bureau of Investigation (originally the Bureau of Investigation) dates from President Theodore Roosevelt's request that Congress authorize a detective force for the Department of Justice. After failing to overcome fears that the detectives would be political spies, Roosevelt created the Bureau by executive order in 1908. The 20th century saw the explosion of American cities, factories, and transportation systems. As the disparity between the wealthy and the poor grew, robber barons and monopolies also expanded. The public began calling for a responsive federal

government, particularly during the Progressive Era, and prior to Bonaparte's men, the federal government called on Secret Service agents to investigate federal matters. Since they reported to the head of the Secret Service, communications often lagged with the Department of Justice. In July 1908, Bonaparte appointed 34 agents within the Department of Justice, ordering them to report to Chief Examiner Stanley W. Finch. In 1909, Attorney General George Wickersham named the force the Bureau of Investigation.

Early History

In the early years, agents had little to investigate. The bureau's own history noted that it focused on banking, naturalization, antitrust, and land fraud. Yet as industry grew and laws like the Eighteenth Amendment passed, the bureau found itself with more work. In June 1910, the Mann Act (prohibiting the transportation of women over state lines for sex) passed, causing the first real growth in bureau activities. Within a decade, the bureau had more than 300 employees. The Mexican Revolution, the rise of drug trafficking, and U.S. entry into World War I also placed pressure on the bureau to increase its force and operations. During the war years, it enforced the Espionage, Sabotage, and Selective Service Acts. Immediately postwar the Bureau had a reduced workload because of the lack of federal crimes, but by 1921, Prohibition and the rise of gangsters gave rise to the agents.

Prohibition fell under the Department of the Treasury, but the bureau investigated gangsters and moonshiners as federal witnesses and for other crimes. This period also saw the rise of racism in the United States, as some perceived blacks as having gained too much standing. The bureau investigated elements of the Ku Klux Klan (KKK). In this postwar period, J. Edgar Hoover appointed as assistant director of the bureau, and he and Attorney General A. Mitchell Palmer led a series of raids to flush out anarchists, radicals, and socialists. The bureau, turning its focus toward political dissidents and so-called radicals, mirrored social fears about the threat of socialism and communism, as Russia pulled out of World War I because of its own Bolshevik Revolution. Of course, social anxieties grew as the public feared a secret police system, corrupt agents, and that vigilante campaigns would ensue.

Abuses of power did occur, but as the bureau's history attests, it attempted to learn from past mistakes to reform itself against public pressure and changing times.

The Hoover Era

In 1924, Hoover took over the bureau, which had about 441 special agents with a total of 650 employees. Within a decade, the bureau had 30 field offices throughout the country. Additionally, Hoover homogenized the organization with standardized performance reviews (removing the seniority system for promotion), mandated that incoming agents be between 25 and 35, and implemented a training program for incoming agents. Aside from training agents, Hoover began the process of collecting data and creating a database on known criminals. Fingerprint records were kept, and methods of tracking felons via identification tools had been in practice since the 19th century.

Franklin Roosevelt encouraged Congress to expand federal jurisdiction as crimes rose during the Great Depression, and in 1932, Hoover played on the public's thirst for sensationalized crime with the first "wanted" fugitive list. More so, Congress responded to crimes captured in the media. In 1932, responding to the kidnapping of the Lindbergh baby, it passed the federal kidnapping statute. In 1934, Congress expanded the bureau's jurisdiction with the rise of violent gangsters like John Dillinger. Also, the media frenzy surrounding Bonnie and Clyde (Bonnie Parker and Clyde Barrow) embarrassed the federal government because these criminals seemed to keep getting away. Agents now had the authority to carry weapons and make arrests, and the bureau was adjusting from an organization primarily focused on financial crimes to one focused on felonies of human violence.

During this expansion of powers and growth and adjustment to new crime trends and waves,



Early Federal Bureau of Investigation agents shooting at targets from a car in the 1930s. The bureau experienced significant growth and professionalization in the 1930s under the leadership of J. Edgar Hoover. By 1934, there were 30 field offices and Congress moved to expand the bureau's jurisdiction that same year in response to crime sprees by notorious criminals such as John Dillinger.

the bureau became the U.S. Bureau of Investigation in 1932, but a year later the Department of Justice experimented with a Division of Investigation and Bureau of Prohibition. Finally, in 1935, the bureau became the Federal Bureau of Investigation, and its training academy was born. A large factor behind the rapid growth of the FBI stemmed from Hoover's leadership and sensationalized journalistic and fictional accounts of crimes. Novelists like Theodore Dreiser sensationalized crimes by fictionalizing them in novels. The motion picture industry began honing in on the public's desire for crime dramas, and the FBI acted in response to changes in modern society.

Espionage

During World War II the FBI investigated Nazis, and indeed caught some spies. Even though the Soviet Union was America's ally, the United States continued its scrutiny of Communists. Further, the cold war, McCarthyism, another "red scare," and the rise of civil rights campaigns in the United States saw the FBI expand its control, surveillance, and covert operations. J. Edgar Hoover's book, *Masters of Deceit* (1958), highlighted post-war—and Hoover's—growing concerns about the threat of communist infiltration in the United States. Critics have questioned his leadership as using the FBI to illegally obtain files and evidence on political dissenters, politicians, and so-called radicals. Most notably, the FBI instituted its COINTELPRO program.

COINTELPRO began as a method of side-stepping U.S. Supreme Court decisions curtailing the FBI and the Justice Department from prosecuting individuals for political opinions. In this program—launched in 1956—FBI agents infiltrated groups like the Communist Party, the Black Panthers, and the Southern Christian Leadership Conference. COINTELPRO is said to have forged documents, started false rumors, and even committed murders. In 1975, the U.S. Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities deemed COINTELPRO illegal and unconstitutional. Yet during the program's tenure, it collected numerous files on politicians and activist groups throughout the country.

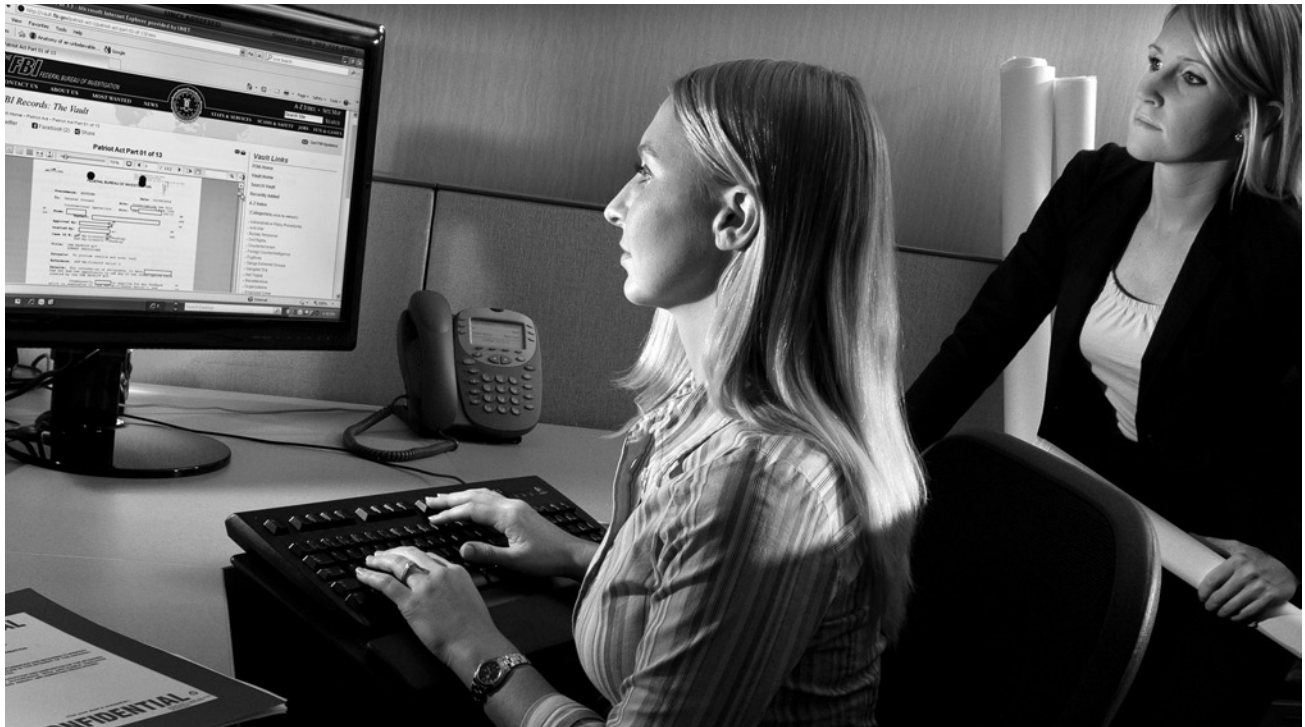
Alongside programs like COINTELPRO, Hoover's FBI targeted civil rights leaders. In 1956, T. R. M. Howard publically spoke out about the

racial murders of George W. Lee, Lamar Smith, Martin Luther King, Jr., and Emmett Till (in Mississippi). Howard said the FBI failed to fully investigate the murders, and Hoover responded with public statements saying these proclamations were irresponsible. In turn, Hoover's FBI remained reluctant to engage in civil rights issues. Instead, the agency used a large percentage of its efforts to spy on communists and to obtain blackmail on prominent politicians. In 1959, only four agents investigated organized crime while 489 spied on communists.

Throughout the 1960s the FBI played a key role in helping blacks obtain the vote, serve on juries, and obtain a sense of equality because the expansion of federal authority began to usurp local ordinances. As the postwar years progressed, civil rights flourished, and the Vietnam War and protests began; at the same time, the FBI gained more power through federal legislation. Particularly after mob insiders began testifying about the national and organized nature of the Mafia, pressure mounted to quell the rise in organized and violent crimes. Also, critics argued that the laws needed to keep up with technology. The FBI later played a part in collecting the evidence for Watergate, and its focuses have expanded to cover most crimes on the federal level, greatly assisted by the Racketeer Influenced and Controlled Organizations Act (RICO) of 1970.

FBI Modernization

Hoover retained his tenure with the FBI until his death in 1972, at which time the FBI was forced to change its tactics and advance its probing for crimes. Most specifically, in 1972, a counterterrorism unit was launched in reaction to the bombings at the 1972 Summer Olympics in Munich, Germany. In 1984, Hostage Rescue Teams and the SWAT (Special Weapons and Tactics) team formed. Alongside the rising threat of terrorism—domestic and foreign—the FBI began reassigning agents from foreign to domestic duty in the 1980s. The expansion of counter-violent crime initiatives redirected much of the FBI's activities. Also, the ending of the cold war gave a temporary lapse in the threat of terrorism, and the FBI became more accessible to local police departments. FBI laboratories are also credited with developing DNA testing during this period.



Modern Federal Bureau of Investigation (FBI) analysts at work. The FBI addressed the growing threat of computer crime by creating a new Computer Investigations and Infrastructure Threat Assessment Center and the National Infrastructure Protection Center in 1998. The bureau's work on crimes related to identity theft and hacking has increased substantially since then.

The 1993 World Trade Center bombing provided a direct need for a resurgence of counterterrorism units, and the 1995 Oklahoma City bombing showed the threat of domestic terrorism. The 1990s saw the FBI greatly expand its counterterrorism initiatives, and in 1996, the agency came under scrutiny for the botched investigations of the Atlanta Olympic Games bombing. By 1998, the FBI launched the Computer Investigations and Infrastructure Threat Assessment Center (CITAC) and the National Infrastructure Protection Center (NIPC) to assess and quell computer threats. These programs began as a countermeasure to viruses, worms, and hackers. They have now increased to fight identity theft and the growing number of crimes connected with the Internet. These changes to the FBI internal structure continue to exist, as most recently the FBI (along with other federal agencies) found itself under scrutiny in the aftermath of the September 11, 2001, attacks. Since then, the FBI and the Central Intelligence Agency (CIA) have admitted partial blame for not pursuing terrorist evidence,

and the agency has continued to adjust its internal structures and task forces to suit the needs of the modern era.

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See Also: 1901 to 1920 Primary Documents; 1921 to 1940 Primary Documents; 1941 to 1960 Primary Documents; 1961 to 1980 Primary Documents; 1981 to 2000 Primary Documents; Bureau of Alcohol, Tobacco, Firearms and Explosives; Drug Enforcement Administration; Federal Policing; Homeland Security; Hoover, J. Edgar; Justice, Department of; Prohibition; Terrorism; Wickersham, George.

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Federal Common Law of Crime

The federal common law of crime carries different meanings based on the time period in which one uses the term. Its initial meaning, covering the first two decades under the U.S. Constitution, refers to the ability of federal courts to decide cases involving common law crimes. Whether federal courts had this authority was a question left unanswered by the Constitution and the Judiciary Act of 1789. Later, during the 20th century, as the federal courts' caseload dramatically increased, the federal common law of crime became judicial interpretations of legislation. With the increase in federal cases, there was a corresponding increase in opinions for other judges to draw upon when making decisions. The collection became the common law of crime.

The Early Republic

When drafting the Constitution, the framers created a government whereby the three functions of government—legislative, executive, and judicial—would be divided among three branches. While providing details about the legislative and executive branches, the convention failed to provide much detail about the judicial branch, leaving the task to the first Congress. This occurred because the Constitution's drafters could not resolve disputes about the scope of federal judicial power. Some did not want any federal courts,

fearing that a federal system would favor only those who could travel to the nation's capital. Others argued that federal courts were essential for enforcing federal law.

The first Congress dealt with the problem during its first session. While the House of Representatives crafted the Bill of Rights, the Senate wrote the Judiciary Act. The amendments addressed many concerns that emerged during debates on ratifying the Constitution. The Judiciary Act addressed most others and designed a hierarchical system of lower federal courts. In its next session, Congress passed legislation creating punishments for certain offenses. While doing this, however, they did not define the crimes nor state the extent of federal criminal jurisdiction.

The extent of federal criminal jurisdiction was important for enforcing the new government's laws. For example, some argued that if an importer assaulted a customs official attempting to collect import duties, there would be no recourse for the government unless Congress defined the act as a crime. However, with common law criminal jurisdiction, the importer could be prosecuted in federal courts. Those opposing this authority believed that state courts provided the appropriate forum for resolution. Supporters, known as Federalists, countered that state courts would favor local merchants against the federal officer.

During the George Washington and John Adams presidencies, the Federalist view prevailed. An initial test occurred in 1793 after President Washington declared neutrality in the war between Great Britain and France. Soon after the declaration, Gideon Henfield, an American citizen, arrived in Philadelphia as the prize-master aboard a French war ship. Henfield was arrested and indicted federally, although no federal statute prohibited his conduct. The government based its case on the theory that Henfield had disrupted the peace of the United States, a common law offense. While the jury acquitted Henfield, the government claimed victory because the court had not dismissed the indictment.

Despite the relative success of Henfield's case, support for common law criminal jurisdiction failed to materialize, even among Federalists. In 1798, as relations between France and the U.S. government deteriorated, the Adams administration feared France's influence on those who

opposed Adams. To counter the opposition, the Adams administration sought to prosecute publishers who criticized the administration for libel. Rather than risk common law prosecutions, the administration persuaded Congress to pass the Sedition Act to provide a basis for the prosecutions.

The ensuing prosecutions benefited Adams's opponent, Thomas Jefferson. In 1801, when Jefferson assumed the presidency, he ended sedition prosecutions. However, prosecutions for common law libel continued, this time against Federalists. In one case against Connecticut newspaper editors, the U.S. Supreme Court settled the question of federal common law criminal jurisdiction. The court summarily dismissed the case, stating that no one seriously believed that the federal government possessed common law criminal jurisdiction. The decision was not without its detractors, however, because it left congressional statutes as the only authority for federal criminal prosecutions. At the time, Congress was unwilling to criminalize much behavior.

Modern Federal Common Law of Crime

Congressional reluctance to criminalize behavior eventually dissipated to the point where people argue Congress has now criminalized too much. The large number of federal criminal offenses has caused an increased number of criminal prosecutions. The large number of prosecutions has resulted in a large number of judicial opinions interpreting these statutes. Along with the increased number of federal offenses, Congress has drafted their statutes so that they apply to a wide range of conduct. Innovative prosecutors have taken statutes designed for one type of problem and have expanded their scope to address other conduct. As a result, the courts have had to define which conduct the statute covers and which it does not.

The combination of increasing cases and broadly worded statutes has led to a federal common law of crime. Judicial opinions have addressed both the meaning of words used in criminal statutes and limited the conduct to which they apply. These opinions serve as precedent for future cases, thereby limiting statutes and creating legal boundaries, much like legislation. Some scholars argue that the courts need to do more to limit the scope of criminal statutes. Others counter that it is not the judiciary's place to legislate. The three

branches of government have yet to resolve this debate. Ultimately, the debate about the proper role of the federal judiciary as it relates to a federal common law of crime remains. Despite the Supreme Court's deciding that federal courts lack jurisdiction over common law offenses, practice, coupled with changes in the federal government's role, has led to the creation of a federal common law of crime.

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See Also: Adams, John (Administration of); Alien and Sedition Acts of 1798; Bill of Rights; Common Law Origins of Criminal Law; Constitution of the United States of America; Courts; Jefferson, Thomas (Administration of); Judiciary Act of 1789; Neutrality Enforcement in 1793–94; Supreme Court, U.S.; *United States v. Hudson and Goodwin*; Washington, George (Administration of).

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Federal Policing

The organization of law enforcement in the United States is based upon the concept of federalism, or the division of responsibilities between federal and state-based agencies, each with its own unique, clearly defined legal jurisdiction (the set of laws it is assigned the task of enforcing) and

geographic jurisdiction (the physical boundaries of its authority). In practice, however, when there are criminal matters that involve multiple jurisdictional interests, the lines between federal agencies, or between federal and state agencies, can sometimes be blurred; this might occur, for example, when one federal agency temporarily delegates certain authorities to another, or federal agents are deputized so that they are given the authority to enforce state laws.

American policing is highly decentralized, with thousands of independent, autonomous agencies of various sizes at the federal, state, county, and municipal level. As most of the activities defined as crimes exist within the penal codes of the states and the vast majority of police agencies operate at the local level, law enforcement is viewed as a primarily local phenomenon. The U.S. Constitution did not establish any federal-level policing agencies but does give the federal government the power to enforce certain criminal laws. Investigating any activities defined as crimes under federal law and enforcing such legislation, as well as responding to criminal activity that occurs on federal property, are wholly the responsibilities of the federal government, and since the 18th century, numerous law enforcement agencies have been created to direct these efforts.

Federal law enforcement is defined as any agency or organization employing sworn officers or agents with the authority granted by the United States Code (USC) to enforce a specified set of federal laws, make arrests, carry firearms, and conduct investigations of various levels of complexity. (This is to distinguish law enforcement entities from organizations at the federal level, such as the Central Intelligence Agency (CIA), whose agents collect information but do not have arrest powers; furthermore, some law enforcement agencies may employ intelligence officers who don't have inherent arrest powers.) Some federal agencies are primarily concerned with preventing criminal activity, securing particular locations, and interdicting illicit and/or dangerous materials and persons, whereas others have an investigative focus in addition to or instead of these tasks. Agents and officers may be uniformed or plainclothes (or, occasionally—if performing an investigative role—undercover) during the performance of their duties. There is no single agency

with the responsibility of enforcing all federal law; rather, there are dozens of distinct federal law enforcement agencies (or law enforcement divisions within a larger agency that is not primarily concerned with law enforcement matters), employing more than 100,000 law enforcement agents or officers, operating under the auspices of numerous different cabinet departments. The largest agencies—employing the vast majority (approximately 75 percent) of nonmilitary federal law enforcement agents and officers—are found within the Department of Justice or the Department of Homeland Security, but many other agencies or divisions exist within the Department of the Interior (such as, for example, the Bureau of Indian Affairs Police—with the responsibility of law enforcement on reservations or in tribal communities that do not have their own police agencies—and the U.S. Park Police), the Depart-



A team from the U.S. Coast Guard Deployable Operations Group prepared to combat terrorism and other coastal threats in 2008. In wartime, the U.S. Coast Guard becomes a military organization under the Department of the Navy.

ment of State (including the Diplomatic Security Service, which protects the secretary of state and visiting foreign dignitaries), the Department of the Treasury (including the Criminal Investigation Division of the Internal Revenue Service, which investigates income tax fraud), the U.S. Postal Service (which includes the U.S. Postal Inspection Service, responsible for investigating the criminal misuse of the mail system and any attacks against its employees and facilities), and elsewhere.

U.S. Department of Justice

Established in 1870 and headed by the U.S. attorney general, the Department of Justice (DOJ) has the responsibility of enforcing the majority of existing federal laws, and within it are some of the largest and most prominent law enforcement agencies in the country.

The Federal Bureau of Investigation (FBI), which began operations in its earliest incarnation in 1908, has perhaps one of the broadest legal jurisdictions of any federal law enforcement agency, in terms of the scope of its interests; among its responsibilities are the protection of the United States against terrorist attack and foreign espionage, the investigation of public corruption and civil rights violations at all levels of government, and the combating of white-collar and organized crime. The Drug Enforcement Administration (DEA), established in 1973 to spearhead President Richard Nixon's declared "war on drugs," enforces federal drug law, with a particular interest in combating trafficking activity and eradicating illicit drugs, whether they be cultivated or synthesized; as such, the agency operates offices in numerous countries around the world in order to collect intelligence on illicit drug exportation and to provide technical assistance in crop eradication and drug enforcement efforts. The U.S. Marshals Service is one of the oldest federal law enforcement agencies in existence, with its earliest incarnation—the position of U.S. marshal—established by the Judiciary Act of 1789. The activities of marshals ranged from enforcing the Fugitive Slave Law of 1850, chasing moonshiners in the late 19th century, fighting outlaws in the old west, to protecting African Americans trying to integrate southern schools during the civil rights era. Today, it has a close relationship with the federal court system, with the responsibility of protecting federal courthouses, judges, prosecutors, and jurors;

escorting federal detainees to and from federal court; serving bench warrants issued in federal court; operating the Witness Security Program; and apprehending fugitives.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has a complex history that is characterized by numerous organizational changes. Its earliest incarnation was a laboratory that was established in 1986 within the Bureau of Internal Revenue for the purpose of detecting the adulteration of foodstuffs; it gained prominence in the 1920s because of its responsibilities enforcing the Volstead Act and the Eighteenth Amendment's prohibition of alcohol manufacture and sale. It was eventually assigned the task of federal firearms laws enforcement in the early 1940s and the responsibilities of bombing and arson investigations after the passage of federal laws regarding those offenses in 1970. The agency operated as a division of the Internal Revenue Service (and its precursor) for many years due to its responsibilities regarding the collection of tax revenue from alcohol and tobacco sales; it was established as a separate agency within the Department of the Treasury in 1972. It moved to the Department of Justice in 2003 as a result of the Homeland Security Act of 2002. Today, the ATF is concerned with the enforcement of federal laws relevant to firearms and explosives, including the regulation of firearms markets and the investigation of firearms trafficking and regulation of explosives sales and the investigation of bombings and arsons. The ATF also investigates persons involved in the trafficking of alcohol and tobacco products who employ schemes to avoid paying taxes on those items, although it no longer collects tax revenue itself (this task became the responsibility of the Alcohol and Tobacco Tax and Trade Bureau, established in 2003 for that purpose and administered within the Department of the Treasury).

Department of Homeland Security

Headed by the secretary of homeland security, the Department of Homeland Security (DHS) was created in direct response to the terrorist attacks of September 11, 2001. Established by the Homeland Security Act of 2002 and beginning operations in 2003, DHS consists primarily of pre-existing and reorganized agencies that were transferred there from elsewhere within the

federal government. All entities within the DHS share a general mission of preventing terrorist attack within the United States as well as minimizing damages from potential attacks and natural disasters. As such, not all agencies within the DHS are concerned with criminal law enforcement, but many of the agencies that do enforce laws are among the largest within the federal government.

Customs and Border Protection and Immigration and Customs Enforcement. U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) were created by essentially dismantling and reorganizing existing federal law enforcement agencies such as U.S. the Customs Service and the Immigration and Naturalization Service (which had been administered by the Department of the Treasury and the Department of Justice, respectively). Both agencies commenced operations in early 2003. Today, they are both concerned with enforcing laws relevant to customs and immigration. CBP officers are stationed at formal ports of entry (including locations along the borders with Canada and Mexico and international airports and seaports) into the United States as well as facilities that receive mail originating from outside the country. They have the goal of detecting and interdicting suspicious persons, plants, animals, illegal goods such as illicit drugs, and any other items that represent either an effort to violate customs or immigration laws or an attempt to undermine homeland security. The Border Patrol (which was established in 1924 and operated for many years within the Immigration and Naturalization Service prior to its dissolution) was placed under the operation of the CBP when the latter was established and has the same responsibilities but is a mobile uniformed unit that travels between ports of entry. ICE, meanwhile, is purely investigative in focus, with the task of uncovering smuggling and human trafficking operations, as well as identifying and apprehending individuals who have managed to enter the country illegally.

Secret Service. Prior to its move to the DHS, the U.S. Secret Service was administered within the Department of the Treasury because its sole responsibility at the time of its founding in 1865 was the

investigation of counterfeiting. It is still involved in counterfeiting investigations and other crimes that threaten the nation's financial infrastructure (including credit card fraud, wire fraud, and identity theft) but is perhaps most prominent in the public imagination because of its role in protecting the president and vice president (a role it was formally assigned in 1902 following the assassination of President William McKinley), their immediate families, and visiting heads of state, as well as investigating any threats against those individuals.

Transportation Security Administration. The creation of the Transportation Security Administration (TSA) in 2001 was one of the most dramatic additions to the nation's landscape, as it symbolized the federal government's post-9/11 concerns regarding the vulnerability of U.S. transportation infrastructure (and air travel in particular) to terrorist attacks. Originally managed by the Department of Transportation, the TSA was transferred to the DHS in 2003. The TSA works in cooperation with state and local law enforcement to safeguard various facets of the transportation system, including highway, rail, and mass transit, but it is most widely recognized for its role in aviation security. Not all employees of the TSA are law enforcement agents per se, but within the TSA is the Federal Air Marshal Service (FAMS), which is considered to be the most prominent law enforcement division of the agency. The FAMS has existed since 1968 (created in response to a rash of "skyjackings" during that period) but was moved from the Department of Transportation to the DHS in 2003. Federal air marshals are entrusted with responsibility of detecting and deterring criminal activity on aircraft and terrorist behavior recognition in particular, and are trained in techniques to neutralize violent behavior in the close quarters of an airplane with minimum collateral damage to passengers and crew.

U.S. Coast Guard. The U.S. Coast Guard, which has been in existence since 1790, is one of the nation's uniformed services but has a unique dual status. It functions as a law enforcement agency within the DHS during peacetime and as a military organization during times of war, when it operates under the authority of the Department of the Navy. As a law enforcement agency, its responsibilities primarily involve enforcing federal law along coastal

waterways and protecting maritime borders from criminal activity in general—with drug and illegal immigrant interdiction among its most important tasks—and terroristic threats in particular.

Federal-Level Police Forces

At the federal level, there are numerous agencies that exist primarily to provide physical security to specific federal properties. These policing agencies patrol their assigned locations and are expected to proactively deter, as well as retroactively respond to and investigate, any criminal activity that might occur therein. These agencies vary in size and often incorporate specialized units and response teams. Examples of such agencies include the Federal Protective Service (responsible for patrolling the thousands of federally owned and leased buildings throughout the country and protecting the federal employees working within), the U.S. Capitol Police, the U.S. Mint Police, the Bureau of Engraving and Printing Police, the Postal Police Force, the Veterans Affairs Police (with the task of patrolling facilities operated by the U.S. Department of Veterans Affairs and the Veterans Health Administration), the Uniformed Division of the U.S. Secret Service (which physically protects the White House, the vice president's residence, and embassies in Washington, D.C.), Amtrak Police, and the U.S. Supreme Court Police.

Most federal agencies typically have their own Office of Inspector General. These are designed to be autonomous units within their respective organizations that are analogous to a police department's internal affairs division, in that they have the responsibility of monitoring and auditing programs within that agency in order to combat waste, fraud, corruption, and abuse perpetrated by employees.

The Department of the Air Force, Department of the Army, Department of the Navy, and the Marine Corps are all responsible for policing themselves and their properties and investigating criminal activity (as well as breaches of military codes of conduct) among, and against, their personnel. These agencies include civilian as well as military police corps, as well as special offices of investigations.

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See Also: Border Patrol; Bureau of Alcohol, Tobacco, Firearms and Explosives; Customs Service as Police; Drug Enforcement Administration; Federal Bureau of Investigation; Homeland Security; Immigration Crimes; Internal Revenue Service; Judiciary Act of 1789; Justice, Department of; Native American Tribal Police; Smuggling; Tax Crimes; Terrorism.

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Federal Prisons

Since the American colonies were first established by European imperialists, colonists have made use of incarceration or incapacitation as methods of punishment to deal with social deviants and criminal behavior. In the wake of the Revolutionary War, the method of incarceration focused primarily on using tight, stationary housing to lock away prisoners of war, those guilty of general deviance and criminal mischief, and eventually those convicted of federal crimes against the United States.

Beginning Federal Imprisonment

No federal offense could be possible without the existence of a unified government to identify such boundaries and definitions. Therefore, federal prisoners did not explicitly become such until



A 1936 view of snow-covered Mount Rainier from the ferry dock at the isolated McNeil Island Prison in Washington State. The facility began operating as a prison in 1875 but was not recognized formally as a federal penitentiary until 1909. When it finally closed in 2011, McNeil, then a state penitentiary, was the last island prison still in use in the United States.

1776 and the independence of the United States from England. During the 1770s, the Continental Congress began to realize that with the declaration came many who did not agree with the decision to cut ties with the English government. Among them were people with various amounts of political clout, such as governors. One in particular was William Franklin, once the governor of the New Jersey colony and son of Ben Franklin. With William Franklin loyally siding with the British, the Continental Congress had him arrested under the charge of treason and he was among the first of many (especially political officials) to be in federal custody during the war of independence.

Federal imprisonments for treason quickly became commonplace throughout the 1770s, as did military crimes and maritime cases, including crimes regarding sea vessels, such as their cap-

ture. Under the Constitution of 1787, these crimes necessitated more custodial facilities to aid in the federal trial processes in coordination with the newly established Bill of Rights. To remedy this, Congress recommended that the states pass laws authorizing that federal offenders be housed in the few state and county prisons and jails that already existed. One facility, the Walnut Street Jail in Philadelphia, was completely sequestered by Congress specifically for federal offenders, technically making it the first federal prison. Walnut Street Jail was eventually returned to state operation, became dilapidated, and was closed in 1835 because of overcrowding and a dearth of funds. Federal marshals and courts alike began utilizing New York's newly built Auburn penitentiary by 1819 and continued to use it for the remainder of the 19th century. During this time, prisoners were also sent

to Sing Sing and Pennsylvania's Eastern State Penitentiary as they were constructed and the federal offender population grew.

There was also the need for a department to oversee the matters involving the processing, treatment, trial, and conviction of pressing matters. It was not until 1849, when the Department of the Interior was created, that federal imprisonment was actually under the jurisdiction of a distinct governmental entity. The secretary of the interior remained the position responsible for most issues regarding prison selection and construction. Finally, in 1870, the Department of Justice was created and headed by the already existing, yet underused, position of attorney general, who would thereafter be in charge of the control and distribution of all federal prisoners. With this position eventually came supporting "agents" and "examiners" whose job it was to inspect and report on matters involving federal prisoners and their housing arrangements.

In the following decade, the attorney general began receiving reports and complaints of physical beatings and whippings, particularly in the New York system, which included the Auburn, Albany, and Sing Sing penitentiaries. Similar issues of inmate abuse were found in California's penitentiary, San Quentin, as it received many federal prisoners during the gold rush era. As a result, the Department of Justice sought more humane facilities in other states; however, as the federal inmate population continued to grow, many of the state facilities had dwindling space to provide for federal need.

Meeting the Need for Federal Prisons

Much of the appeal for states to take federal prisoners outside of prison was grounded in the use of inmate labor. The practice of contracting out prisoners to profit on unpaid labor was common in the late 1800s. Aside from overcrowding, the states would not find much problem in taking in federal prisoners. This changed, however, in 1887 when Congress passed a law that barred all federal inmate labor from being contracted out for profit. This act was not popular among many prison administrators and state governments. Subsequently, fewer and fewer states were willing to accept federal prisoners. As federal offender populations continued to rise, so too did the cost

of trips for U.S. marshals to transport prisoners. With the reality of the space problem coupled with horrific conditions of confinement provided by many state facilities that would still accept federal prisoners (much of the exposure of which can be attributed to the work of George Washington Cable for prison reform), the Department of Justice was forced to consider the notion of building federal prisons.

Even though the U.S. government owned five territorial facilities, they were infrequently used due to their remote and primitive location (Boise, Idaho; Deer Lodge, Montana; Salt Lake City, Utah; McNeil Island, Washington; and Laramie, Wyoming) as well as a severe lack of basic amenities and security. It was not until 1891 that Congress passed the Three Prisons Act that ordered the Department of Justice and the Department of the Interior to purchase three sites for the construction of federal prisons. As prescribed, one site was chosen in the north, east of the Rocky Mountains in Fort Leavenworth, Kansas. Originally used for prisoners during the westward expansion in the 1820s, Leavenworth was the first of the three prisons, annexed from the military and constructed virtually entirely by inmate labor. Though Leavenworth routinely took prisoners, it was not until two and a half decades later, in 1929, that the facility was finally completed. The second, southeastern site was purchased from the city of Atlanta, Georgia. Designed to have 1,200 cells in four wings, the Atlanta site began admitting prisoners in 1902. The third prison was to be west of the Rocky Mountains. To fulfill this need, the Department of Justice maintained McNeil Island, Washington, after the state declined the prison upon receiving statehood in 1899. McNeil Island was eventually recognized formally as a federal penitentiary in 1909.

Life in the U.S. penitentiaries was harsh, with intense institutional control and physical labor. Methods for controlling the inmates were often chosen by the acting warden. Systematic control in graduated processes of trust, escape, and problem prisoners often drove the different tactics, and the still frequent dependence on solitary confinement as a punishment mechanism. One consistent method of control in the late 1800s and early 1900s involved the use of mindless work to maintain security. A common practice was to have the inmate break rocks to a certain strict

size. The inmate's performance quality would determine if he received lunch and dinner. If the quality was poor, then there would be no food for that inmate. Another common method was to have the prisoners build and maintain any portion of the prison's structure. From cleaning the premises to the construction of a new office or cell, inmate labor, while not used for profit and did not resort to abuse, yielded a cost-effective method for asserting authority over offenders while keeping up on maintenance of the prison.

Maintenance was particularly difficult for McNeil Island and later facilities like it, such as Alcatraz, because they lacked self-sustaining resources such as running water and plumbing, a steady connection to food and medical supplies, as well as communication lines to state and federal authorities in cases of emergencies. In the same capacity, natural elements such as storms and floods would often exile such facilities more so than their physical location already allowed.

First Rapid Expansion

Because of the Secretary of the Treasury's ability to account for the number and circulation of federal inmates beginning in 1846, by the time the Bureau of Prisons was established in 1930 (which was the bureaucracy responsible for overseeing all federally run custody settings), there was a reliable estimate as to the total population under federal supervision. With this estimation, it was possible for administrators to recognize patterns in the population and the potential impacts of laws such as the implementation of parole and probation. Perhaps more important to the Bureau of Prisons was the fact that the facility capacities and population growth could now be properly assessed. These estimates enabled the bureau to devise and integrate a new method of classification that would connect offender needs to the advantages of each of 11 institutions in the 1930s.

Along with the specific facets of each institution came the recognition of special programming that targeted education and vocational training. Vocational training was especially enticing to the bureau administrators because the training and programs were used to create certain products, such as furniture, that would be sold to the general society or to other organizations. While there was a ban on contracting out federal prison labor to outside

entities, the selling of inmate products was and is still permitted with exceptions that may negatively impact certain industries. The utilization and selling of prisoner-made products became so enticing, in fact, that once a systematic approach was proposed by the bureau's director, James Bennett (in spite of much opposition by independent manufacturers), it was endorsed by Congress and signed into law by Franklin D. Roosevelt in 1934, creating the Federal Prison Industries, Incorporated.

As the population count continued to rise throughout the 1930s for a number of reasons, including longer sentencing practices, more institutions and responsibilities were added to the Bureau of Prisons' oversight. Much of the expansion was to accommodate the prisoner population as it doubled from just over 14,000 inmates in 1930 to over 24,000 inmates in 1940. However, the expansion of institutions was also used to combat the economic depression with jobs, as President Roosevelt authorized approximately \$14 million to aid in the construction of a number of new facilities in 1938, going from 14 institutions in 1930 to 24 institutions in 1940. Many of these facilities were not solely for incarceration, as more were geared toward education, vocational training, and psycho-social treatment programs.

Treatment in Federal Prisons

Though treatment programs were emphasized throughout the 1940s and 1950s, the most notable change occurred in the 1960s. During this time, there was a new overarching belief that social science experts could identify criminality in individuals and subsequently develop methods to correct the behavior through specific treatment program options. Displaying many forms of creativity in programming, the movement gained much momentum as the Bureau of Prisons changed directors from the innovative, yet administratively focused mind of James Bennett as director, to the newly appointed, academically and theoretically based Myrl Alexander in 1961. Quickly, programs began by Bennett were further developed and expanded by Alexander and later by Norman Carlson, director of the Federal Bureau of Prisons in the early 21st century.

Several novel and extended initiatives were seen during the Alexander era that showcased the new priority in terms of federal corrections and



An inmate in a federal prison hospital ward in 1933. The prison system expanded over the decade of the 1930s, with the number of inmates nearly doubling from just over 14,000 to over 24,000 in 1940. By 1938, President Franklin D. Roosevelt had authorized about \$14 million for construction of new federal facilities, which increased from 14 institutions in 1930 to 24 institutions in 1940.

programming. For instance, newly constructed institutions such as the facility in Butner, North Carolina, emphasized specially designed treatment for offenders with personality disorders and violent perpetrators. Another example of programmatic change was exemplified when wardens were hired who did not necessarily have the heavy background in administrative and managerial experience gained through years as a staff member, rather they were academics, scientists, and doctors. Still another was the implementation of halfway house programs, particularly for youth and other eligible offenders. However, the treatment movement as well as the continuing erection of new institutions became a political issue. Encompassing the backlash of an angry public highly sensitive to racial disparities with regard to mass imprisonment, coupled with the debate over whether treatment was effective and the prison

riots beginning in the early 1970s, the philosophy began to shift yet again toward emphasizing safety and security over treatment and reentry.

Second Rapid Expansion

As trends that relied on treatment, also known as the “medical model,” began to diminish during the early 1980s to switch toward a more “balanced model” incorporating equal portions of institutional control as well as programming, prison construction was forced to continue despite the efforts of the National Moratorium on Prison Construction, due to the prisoner intake surge of the time. From a 40-year trend of a steady population of approximately 24,000 inmates in 1980, the federal prison population spiked to over 65,000 by 1990, with 66 institutions. Much of the surge was a result of sentencing reform from indeterminate to fixed or determinate sentencing, the abolishment

of parole, reducing good-time, the establishment of mandatory minimums, as well as the eventual incorporation of detaining illegal aliens for the Immigration and Naturalization Service.

Due to the increasing difficulties in prisoner volume, the sentencing, and diversified practices embodied, various political and criminal enforcement initiatives were also adding to the total population. Accompanied by the “tough on crime” approaches in law-making in the 1990s and other new enforcement tactics, the federal prison population saw yet another dramatic increase to over 145,000 in 2000. In contrast to the early years of the federal incarceration system where there was little effort put into planning for the future, under the direction of Kathleen Hawk Sawyer and eventually Harley Lappin, the Bureau of Prisons implemented the Forward Thinking Initiative, which was specifically designed to anticipate future systemic, managerial, and population needs. Throughout the 2000s, the bureau has been updating the now 115 institutions to incorporate more technological advancements to encompass the standards set by the Prison Rape Elimination Act and new trends in counterterrorism. These changes will not only aid in the managing of staff and inmates, but also provide a safer, more humane facility by relying on new, evidence-based techniques.

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See Also: 1941 to 1960 Primary Documents; 1961 to 1980 Primary Documents; 1981 to 2000 Primary Documents; 2001 to 2012 Primary Documents; Alcatraz Island Prison; Corrections; Leavenworth Federal Penitentiary; Penitentiaries; Sentencing; Mandatory Minimum Sentencing.

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Federal Rules of Criminal Procedure

In 1946, the Federal Rules of Criminal Procedure were implemented to simplify and streamline the federal criminal justice process. At the time, these rules were praised by the legal community for both their simplicity and practicality. With only 60 (expanded to 61 in 2008) rules, the Federal Rules of Criminal Procedure provide a single set of procedures to be used in all aspects of the federal criminal justice process, from initiation of charges through appeal.

History

American legal procedure began with little legislative interference. However, as American democracy evolved in the 19th century, legislation was enacted that impacted or dictated both civil and criminal legal procedures. As a result, lawyers in the 20th century were faced with a complicated system of rules and procedures defined through multiple statutes and judicial interpretations. Variations across federal districts further complicated the criminal process.

The first effort to simplify the criminal process, in part as a response to a perceived increase in crime but lack of comprehensive statistics, was undertaken in 1925 by the American Law Institute to create a Code of Criminal Procedure. In response to this trend toward simplicity, Congress began investing the judiciary with the responsibility to determine procedures. The Criminal Appeals Rules Act of 1933 authorized the U.S. Supreme Court to determine the rules for the criminal appellate process. As a result, the Criminal Appeals Rules provided a single source of procedures for the criminal appellate process. In 1934, the Civil Rules Act was passed, which authorized the judiciary, as represented by the Judicial Conference of the United States, to simplify the civil law procedures. The result was the Federal Rules of Civil Procedure. Based on the success of these two efforts, Congress focused next on simplification of the criminal process.

Simplification

The first step was to bring the federal courts under a single administrative unit. The Federal

Administrative Office Act of 1939 united the federal courts under a single administrative unit and allowed self-regulation. The simplification of criminal procedures was addressed next with the Criminal Rules Act of 1940. With this act, the U.S. Supreme Court was authorized to establish a single set of procedures for the criminal legal process. The process involved creating an Advisory Committee to draft the procedures, review of the procedures by the legal community, approval of the procedures by the Supreme Court, and final approval and enactment by Congress.

The 18 members of the Advisory Committee included well-respected judges, lawyers, and academics who considered a broad range of laws, practices, and judicial interpretations to determine the best practices. Procedures used in U.S. criminal courts as well as criminal courts in other countries were studied. The myriad of laws and judicial decisions that were in existence at the federal, district, and state level were reviewed. The committee assessed the extensive research findings against its established standard of fairness and simplicity.

Drafting and Development

In developing the Federal Rules of Criminal Procedure, the Advisory Committee adhered to four objectives: simplify existing procedures by eliminating work and delay, improve the objective assessment of facts, realize democratic values, and improve uniformity across federal courts. As they drafted the rules, the Advisory Committee relied on seven existing legal sources: the Federal Rules of Civil Procedure, the Criminal Appeals Rules, state statutes, the U.S. Code, federal court decisions, common law, and the American Law Institute Code of Criminal Procedure. Yet, the Advisory Committee realized that these sources could not meet the standards of simplification or fairness in all situations and, therefore, created some new procedures.

The first draft of the Federal Rules of Criminal Procedure was completed in May 1943 and distributed throughout the legal community for comments. Responsibility for reviewing the draft rules was taken seriously by all within the legal community. In total, the Advisory Committee completed 10 drafts of the rules. The final draft was sent to the Supreme Court for its approval in

August 1944. In December 1944, the chief justice of the Supreme Court forwarded the rules to the attorney general, who submitted them to Congress. The Federal Rules of Criminal Procedure were officially enacted in March 1945.

Although the Supreme Court ultimately approved the rules, it was neither unanimous or without changes. Each draft reflected changes made by the Supreme Court. Notably, the Supreme Court eliminated provisions for the alibi defense (which was added by amendment in 1974) and pretrial conferences (which was added by amendment in 1966). It also made findings of fact (i.e., the decision of the court based on the facts of the case) mandatory for cases tried without a jury, and limited the time available for the filing of a motion for a new trial when new evidence is discovered. Even with these changes, Justice Hugo Black refused to approve the rules, without providing a reason. Justice Felix Frankfurter also refused to approve the rules, citing three reasons. First, Justice Frankfurter felt that the Supreme Court's workload was too heavy to allow adequate review of the rules. Second, he felt that the judges of the Supreme Court were too far removed from the trial process to provide adequate and appropriate insight into the rules. Finally, Justice Frankfurter noted that since the rules may be challenged before the Supreme Court, it would not be appropriate for the court to approve the rules.

Results

The resulting Federal Rules of Criminal Procedure covered the criminal legal process from start to finish. They incorporate and supersede the Criminal Appeals Rules, although separate appellate rules were again introduced in 1967 (since that time, the full process requires a combination of the Federal Rules of Criminal Procedure and the Federal Rules of Appellate Procedure). The rules are applicable to criminal cases tried in any federal court as well as cases that are begun in state courts and transferred to federal courts. State courts, however, are not bound by the rules.

Because the rules combined federal statutes, common law, state law, and rules of courts, they introduced few procedures that were not in practice in a court. However, three changes were seen as immediately noteworthy. First, the rules

simplified the procedure for change of venue to be more consistent with practices between states. Before this change, venue changes between divisions within federal districts required judicial proceedings, resulting in both costs and delays. Second, the rules regarding evidence reflected *Funk v. United States* (290 U.S. 371, 1933) because they would be governed by common law as interpreted at the time unless otherwise indicated by statute or rule. Finally, the rules simplified the process of filing for appeal by extending the time limits within which an appeal could be made and eliminating the intermediary step of having to put the disputed point of law on record through a bill of exception.

Even at their introduction, limitations were seen to the Federal Rules of Criminal Procedure. Although the simplicity of the rules allowed flexibility, they would not cover all cases, and constant interpretation and amendment would be required. In addition, statutes would still be required to respond to creative abuses in such areas as bail and jury selection. Finally, while these rules presented a uniform federal procedure, each state would still require their own criminal law procedures to accommodate differences in law, custom, and judicial interpretation.

Rules

Consistent with covering the criminal legal process from start to finish, the Federal Rules of Criminal Procedure are organized according to legal actions. The first section, applicability, explains the courts and proceedings covered by the rules and how the rules are to be interpreted. This section also defines key terms, such as *attorney* and *petty offense*, which are used in the rules. Preliminary proceedings are covered in the second section, including complaints, arrest warrants, and initial court appearance. The next step in the process, indictment, is covered in the third section. This section includes rules for the grand jury and the indictment. It also provides procedures for issuance of an arrest warrant or summons after an indictment has been issued and handling of situations where there are multiple offenders or multiple offenses. Arraignment and trial preparation are covered in the fourth section. This section also covers pleas, defenses, and discovery. Determination of venue is covered in the

fifth section. The trial itself, including juries, witnesses, and verdicts, is the topic of the sixth section. Procedures that occur after conviction, such as sentencing and correcting errors, are covered in the seventh section. The eighth section covers special proceedings, including criminal contempt. This section originally covered the appeals process, but this was changed in 1968, reflecting the introduction of the Federal Rules of Appellate Procedure in 1967. The last section covers a broad range of topics, including calculation of time and dismissal.

Updates and Modifications

Since their enactment in 1945, the Federal Rules of Criminal Procedure continue to be updated yearly. Recent changes have involved incorporating the Crime Victim Rights Act of both 2007 and 2009. The Crime Victim Rights Act of 2009 was reflected in the 2010 amendments to the Federal Rules of Criminal Procedure, which eliminated automatic disclosure of a victim's telephone number and address and provided that a change of venue decision include consideration of the convenience of the victim. Incorporation of the Crime Victim Rights Act of 2007 necessitated the addition of a new Rule 60 (and moving the existing Rule 60 to Rule 61) to address victim's rights. Rule 60 covers notifying victims of hearings, allowing victims to attend proceedings, and allowing victims to be heard at plea, sentencing, and release hearings. This rule also provides that only victims or their lawful representatives may exercise these rights and, if multiple victims are involved, the court may proscribe a method that does not complicate or prolong legal proceedings. Furthermore, failure to accommodate the victim will not necessitate a new trial.

In 2002, the Federal Rules of Criminal Procedure were modified both stylistically and substantively. The rules were rearranged and reformatted to improve understanding and ensure that terminology was consistent. The substantive changes included requiring a judge to issue an arrest warrant for a defendant who fails to respond to a summons only at the government's request, allowing defendants to appear by video teleconferencing for initial appearance and arraignment, allowing the defendant to waive the right to appear at arraignment, requiring the defense to supply

telephone numbers for alibi witnesses, bringing the discovery requirements for the defense in line with those for the government, and allowing filing by e-mail.

Notable additions to the Federal Rules of Criminal Procedure include the provision for foreign law added in 1966, procedures on the preliminary hearing added in 1972, procedures for the closing argument added in 1974, procedures to produce a witness statement added in 1979, the public authority defense added in 1988, procedures for criminal forfeiture added in 2000, procedures for a mistrial added in 1993, and the disclosure statement added in 2002.

One trend that has been noted in the amendments to the Federal Rules of Criminal Procedure is the erosion of secrecy surrounding grand jury proceedings. As originally drafted, the Federal Rules of Criminal Procedure afforded a high degree of secrecy to the grand jury proceedings. The original intent was that information from grand jury proceedings could only be disclosed to government lawyers or at the direction of the court. Exceptions to the prohibition on disclosure of grand jury information were introduced as early as 1983, but the rules maintained the practice of only disclosing to other government attorneys or with court approval. In 2002, the exceptions to disclosure were further expanded to include Indian tribes, government attorneys or banking regulators for use in civil suits, and armed forces personnel.

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See Also: 1961 to 1980 Primary Documents; Appeals; Common Law Origins of Criminal Law; Habeas Corpus, Writ of; Insanity Defense; Interrogation Practices; Judiciary Act of 1789; Juries; Legal Counsel; Plea; Probation; Sentencing; Supreme Court, U.S.; Trials; Victim Rights and Restitution.

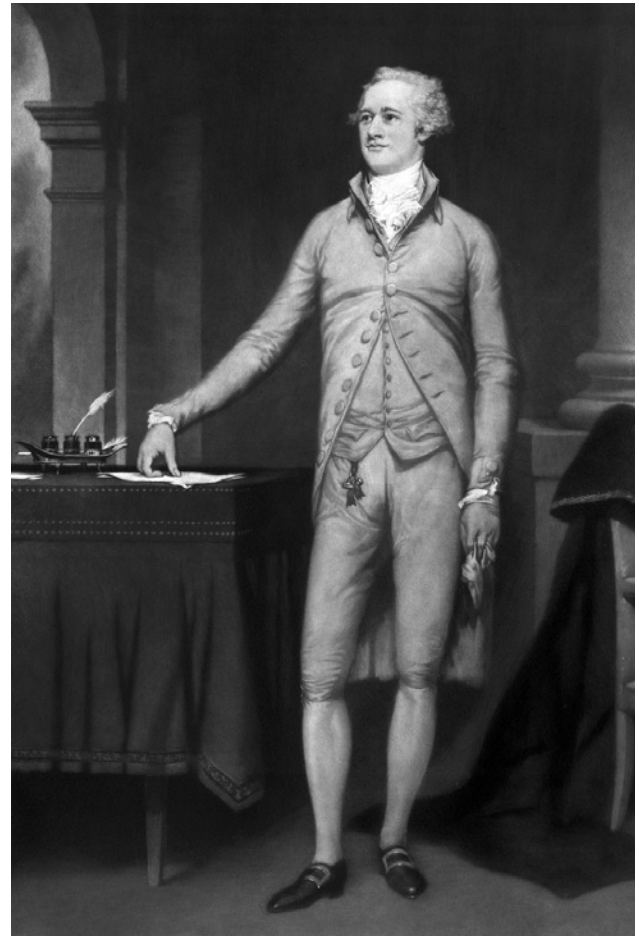
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Federalist Papers

After the American Revolution, when the thirteen colonies revolted against the oppression of English rule, the founding fathers wrote the Constitution in an effort to create a more fair and equitable form of government than the monarchies then prevalent in Europe. However, when the founding fathers wrote the Constitution, there was not unanimous agreement among the states as to whether it should be ratified.

At that time, there were two main factions among the founding fathers: the Federalists and the Anti-Federalists. Essentially, the Federalists advocated a strong central government and were led by Alexander Hamilton. The Anti-Federalists favored a less centralized government and were led



A portrait of Alexander Hamilton, the leader of the Federalists. Hamilton is believed to have written the majority of the articles that make up The Federalist Papers.

by Thomas Jefferson. One of the other major differences between the Federalists and the Anti-Federalists was that the Anti-Federalists wanted a Bill of Rights added to the Constitution and the Federalists did not. The reason for this disagreement was that the Federalists thought that if a written document were created listing the rights of the people, then the government would likely recognize only those written rights, whereas the Anti-Federalists wanted a written list of rights, otherwise they thought that the government would not allow the people any rights. Given these differences, ratification of the Constitution was not certain.

A Colonial PR Team

Thus, the Federalists mounted a public relations campaign to help their cause for ratification of the Constitution by the various states. This campaign included, of course, advocacy within each state's legislature. Further, the articles were published to attempt to answer the objections to the Constitution raised by the Anti-Federalists. However, it also included a series of articles published in several newspapers—the *Independent Journal*, the *Daily Advertiser*, and the *New York Packet*—between October 1787 and August 1788. These articles presented a series of arguments about the potential benefits of the Constitution. Each article addressed certain issues concerning the Constitution. A total of 77 articles were published. In 1788, these articles were compiled and published under the title *The Federalist*. When they were published, a few more articles were added, bringing the total number of articles to 85. *The Federalist* was widely published and read and was considered one of the most important expressions of the underlying political philosophy of the Federalists and the proposed Constitution. It was not until much later that this compilation of articles became more commonly known as *The Federalist Papers*.

The articles were published under the pseudonym Publius, which has been thought to be in honor of Roman Consul Publius Valerius. Some authorities consider the use of Publius as a pseudonym to reflect the idea that the author was a “friend of the people.” Although secret at the time of their publication, it has been subsequently revealed that the authors were Alexander Hamilton, James Madison, and John Jay, all ardent Federalists. Most authorities have concluded that

Hamilton wrote the majority of the articles, Madison wrote approximately a third of the articles, and Jay wrote only a few of them. However, there is some dispute as to which of the three authors wrote a few of the articles.

Some of the articles were considered to be more important and fundamental than the other articles. For example, in Number 84, Hamilton argues against the Anti-Federalist call for a Bill of Rights by arguing that the Constitution itself provides for sufficient protection for liberty. In Number 10, Madison discusses how a majority can be prevented from gaining power under the proposed Constitution. In Number 70, Hamilton argues for an executive function vested in a single man. In Number 78, Hamilton presents the principle of judicial review of both legislative enactments and executive actions. And in Numbers 39 and 51, Madison defines what “Federalism” under the proposed Constitution means and argues for the necessity of government.

In the context of crime and punishment, the most important articles were Numbers 78–83. These articles dealt with objections concerning the courts and trials under the Constitution. Article 78 is probably the most important of them and has been called the most cited article of the *Federalist Papers* by the U.S. Supreme Court. In this article, it is recognized that the judicial branch of government is the weakest of the three branches, although it recognized the power of judicial review. Article 79 highlighted that the power of federal judges could be controlled through the impeachment process. And Article 83 addressed the concern that jury trials in civil matters were not specifically addressed.

Conclusion

Although *The Federalist* was primarily published in New York, it was sent to and reprinted in other states during the ratification process of the Constitution. *The Federalist* has been considered to be the most important document to understanding the intent of the founding fathers concerning the writing of the Constitution and the meaning of the Constitution in its application. *The Federalist* has been quoted by the U.S. Supreme Court hundreds of times. It is interesting to note that the Federalists and the Anti-Federalists came to a compromise concerning their disagreement over

the inclusion of a Bill of Rights by later ratifying such a Bill of Rights but also including the Ninth Amendment to express the principle that the written Bill of Rights does not mean that the people do not have other rights.

Thus, historically, in the context of crime and punishment in the United States, it can be stated with little quibbling that the *Federalist Papers*, which arguably helped in the ratification of both the Constitution and the Bill of Rights, had a profound effect on crime and punishment, especially with the Fourth, Fifth, Sixth, and Eighth Amendments, which provide a series of constitutional protections for persons accused of crimes, which would likely not otherwise be present in the American criminal justice system.

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See Also: American Revolution and Criminal Justice; Anti-Federalist Papers; Bill of Rights; Constitution of the United States of America; Hamilton, Alexander; Jefferson, Thomas; Madison, James (Administration of).

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consequences to society. A person convicted of a felony is often referred to as a felon. In the United States, substantive criminal law, which defines crimes and sets forth penalties, describes a felony as a crime punishable by one year or more of incarceration in prison or in a penitentiary or by death. Examples of felonies include but are not limited to murder, rape, robbery, arson, aggravated assault, and burglary.

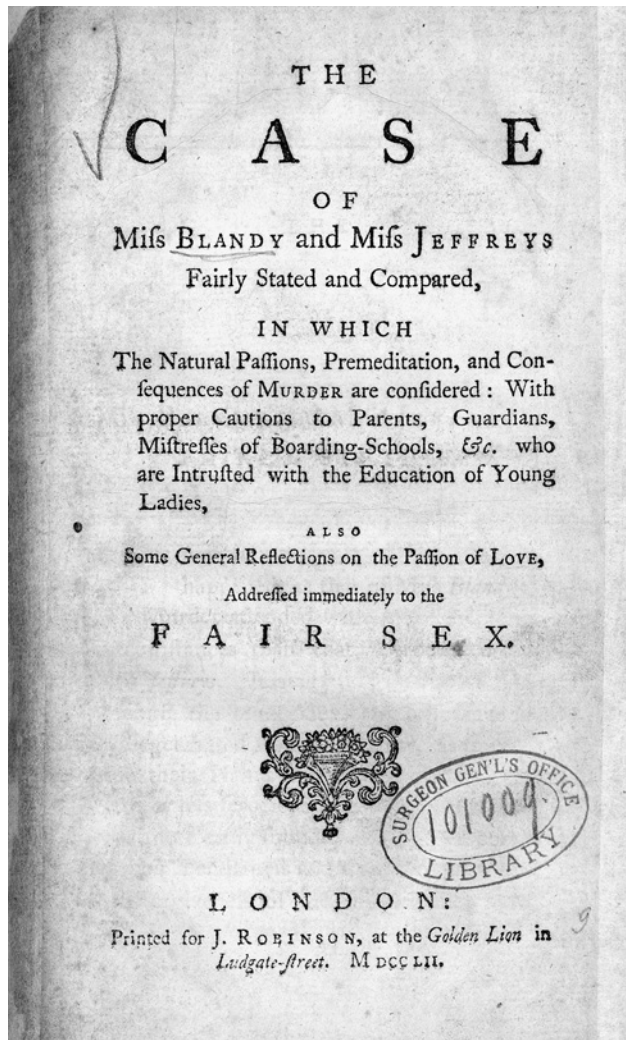
In contrast to felony crimes, misdemeanor crimes are considered to be less severe in nature and encompass many more illicit acts. Examples include disorderly conduct, public intoxication, vandalism, trespassing, and shoplifting or petty theft. Some misdemeanor crimes have been the subject of debate by members of society as to whether they should even be crimes at all (e.g., prostitution, marijuana use or possession of small quantities of the drug, underage drinking). Misdemeanors are punishable by fines and/or incarceration in a local jail for less than one year. Thus, the classification of a crime generally corresponds to the sanction imposed on that crime. The distinction between misdemeanors and felonies exists in U.S. courts as well as court systems abroad, although the distinction is absent in some legal systems abroad. In unusual cases, misdemeanors may be classified as felonies, especially for chronic offenders.

Early English Law

Historically, individuals in power would enforce their own ideals and impose punishment on those thought to be deserving of it. Justice was also administered in various ways, many of which would be considered cruel and unusual punishment by today's standards. Later in time, a unified system of law formed in England under the reign of King Henry II during the 12th century. The system aimed to be just by announcing law "common" to the land and developing a structured court system to hear disputes and resolve cases. The king's judges would make decisions and record them for other judges to follow in order to provide precedent and prevent arbitrary or unjust practices. English law eventually grew to include three core classes of crime: treason, felony, and misdemeanor. Treason was considered the most serious crime, followed by felony crime, then misdemeanor crime.

Felonies

Originating from early English common law, a felony is a serious crime in the system of criminal law. Most individuals regard felonies as harmful and inherently dangerous acts with profound



This pamphlet on the case of Mary Blandy, who was hanged in 1752 for poisoning her father with arsenic in Oxford, England, considers circumstances of the murder, such as "passion" and "premeditation," which are still used to help classify murders.

Treason involves a serious act of betrayal against one's nation or land. In 1351, the English parliament passed legislation against treason. Threatening or injuring the king or his court, having sexual relations with the queen or the unwed daughter of the king, attempting to overthrow the sovereign, waging war against the governance, and providing aid to an enemy are examples of acts that had been classified as high treason. Other acts of treason deemed less serious in nature were labeled as petty treason. This included the murder of individuals other than the king and his kin who were deemed to

be superior in social standing. Someone found to commit an act of treason was known as a traitor. Traitors were punished by asset forfeiture (i.e., taking away the offender's land or property to give to the king) and were prohibited from inheriting any land or property from relatives. Relatives were also forbidden to take a traitor's land. As a crime, treason was considered so grave that traitors were punished by death. Male offenders were hanged while female offenders were burned at the stake. Beheadings were also used as a method of execution.

Like treason, felony crimes were considered to be severe offenses. A felon was subject to asset forfeiture and even the possibility of death. During this time, felony crimes included homicide, mayhem, arson, rape, robbery, burglary, and larceny. Misprision of a felony—when a person aware that a felony has taken place fails to report it to authorities—was also a crime. Those guilty of felony crimes were mandated to give up property and belongings to an overlord and could also face death. However, it was possible for an offender to avoid death as punishment for certain felonies if the offender pled "benefit of clergy." This request for mercy subjected the offender to a lesser form of punishment and was made available in the 14th century. In the case of mayhem (e.g., maiming, mutilating, or disfiguring an individual), however, offenders were inflicted with violent forms of punishment.

In contrast to felony crimes, misdemeanor crimes were minor offenses. Misdemeanor crimes consisted of any transgressions other than those that fell under the felony crime or treason classifications. These crimes did not place lawbreakers at risk of death.

Law in the United States

The English system of law implicitly served as a model for U.S. criminal law. In the late 17th and early 18th centuries, American colonies began to establish criminal law with the hope of setting social values and providing citizens with stability. Courts were given power to create law, define criminal offenses, establish classifications of crime, and set forth punishments for a given criminal offense. They followed much of what was rooted in the English tradition to structure and develop their own legal system. Shortly after, however,

courts came under attack. The trouble resided in the fact that the U.S. Constitution gave Congress the power to make law, but granted the judiciary the power to interpret it. Thus, the courts did not dominate the entire system. This eventually gave way to the distribution of authority in the federal system where Congress was responsible for creating law and federal courts were responsible for construing it. In time, state legislatures were granted the capacity to set forth law, with each jurisdiction being responsible for defining crime and identifying appropriate punishment. Courts were tasked with their analysis.

Today, crimes are enumerated in the Constitution as well as in state statutes. In most jurisdictions, legislatures define crime and set forth the respective punishment for each offense; they also pass laws, amend laws, and repeal laws. The distinction between felony and misdemeanor classifications of crime originating in English common law has largely been retained in the contemporary legal system. These traditional concepts have been codified in the Model Penal Code, created by the American Law Institute in 1962, which provides a framework for criminal law and helps states discern the gravity of offenses. Where a crime falls is more often than not based upon punishment for that particular act. Crimes that fit the felony classification or are *mala in se* (i.e., inherently wrong) as defined by common law are punished by one year or more in prison or in a penitentiary or even by death. Crimes that fall into the misdemeanor classification or are *mala prohibitum* (i.e., wrong because they are prohibited by law) are punished by no more than one year of incarceration. States like New Jersey, New York, and Pennsylvania have adopted a vast majority of the provisions in the Model Penal Code for their own law.

Rather than stating whether a crime is a felony or misdemeanor in the actual definition of each crime, nearly all jurisdictions differentiate on the basis of such punishment. For instance, murder in the first degree is defined as the unlawful killing of one person by another that was premeditated and deliberate with malice aforethought. It is punishable by life imprisonment or the death penalty. Although not specifically stated, it is considered to be a felony given the level of punishment. However, there are a few offenses clearly classified in

law such as “felony-murder” and “misdemeanor manslaughter.” Nonetheless, the distinction plays an important role in shaping today’s law across all jurisdictions. It also carries substantive and procedural implications.

Despite its following, the U.S. system of criminal law has slightly shifted away from some English common law crimes. For instance, treason was dropped as a unique category of crime and replaced by separate “high crimes” targeting those who undermine the government (e.g., attempting to overthrow a country, aiding an enemy, or committing perjury). Additionally, crimes relating to infidelity have been discarded. The punishments prescribed for crimes in contemporary law are thought to be less draconian when compared to earlier law. A wide range of sanctions also now exists outside the cruel and unusual punishment that was inflicted in earlier times (the death penalty may be viewed as an exception).

In addition to felony and misdemeanor crime classifications, infractions now exist. These trivial offenses typically violate city ordinances or administrative regulations. For instance, disturbing the peace, littering, jaywalking, and violating building codes are common infractions in the United States today. While some may be criminal, others are not. Infractions are often punished by a fine or warning rather than by incapacitation or incarceration.

Classifications of Felonies

The list of felonies in U.S. law is quite extensive and incorporates both violent and nonviolent crime typologies. Violent felony crime generally involves crime against a person or persons. For instance, criminal homicide (e.g., first-degree murder, second-degree murder, and manslaughter), kidnapping, rape/sexual assault, robbery, and aggravated assault (i.e., assault that causes serious bodily injury/harm; common law’s equivalent of mayhem) are considered violent felony crimes. Nonviolent felony crime typically consists of crime against property: burglary, arson, destruction of property, grand theft including auto theft, embezzlement, counterfeiting, forgery, bribery, and some drug-related offenses (e.g., drug possession of a certain amount, drug manufacturing, and drug trafficking).

Felony crimes are now classified into various degrees and classes representing the seriousness of the offense as well as prescribed punishment, but these degrees and classes can vary from state to state. Common classifications in U.S. court systems include capital crime, first-degree felony, second-degree felony, and third-degree felony. Capital crime represents the most severe type of offense. It is this crime that can result in the death penalty. Following capital crime are first-, second-, and third-degree felonies. A first-degree felony involves a crime whereby a person commits a felony, although it is not as extreme as a capital felony offense. A second-degree felony is considered a lesser offense and includes an attempt to commit a serious felony or involves acts where one operates as a facilitator at the scene of the crime. A third-degree felony is a less severe but still serious offense that often encompasses behavior whereby a person functions as an accessory to the crime. This was taken from the common law of misprision. Some states classify a third-degree felony as a crime that occurs when one acts as an accessory to a crime before it happens, and a fourth-degree felony as a crime that occurs when one acts as an accessory to a crime after it happens.

In contrast to degrees of offenses, some jurisdictions classify felonies into classes determined by the gravity of the crime. Class A felonies are the most serious, followed by Class B, then Class C, Class D, and Class E. Class A felonies are punishable by death or lifelong incarceration and a substantial fine. Class B felonies are punishable by a shorter but still extensive sentence and a fine. Class C felonies are punishable by an even shorter sentence and a fine, and so forth. New York is an example of a state that uses such classes to represent the gravity of the offense, with Class A-I being the most serious and Class E being the least. These classes can also be represented by numbers. For example, Virginia places felonies into numerical classes. The more distant the number is from 1, the lesser the sanctions are. Interestingly, the Uniform Crime Reports (UCR) and the National Incident-Based Reporting System (NIBRS) collect data on crimes classified based on numbers and letters. The UCR breaks down crimes into Part I and Part II offenses while NIBRS breaks down crimes into Group A and Group B offenses. Part I and Group A crimes are considered the most

serious offenses. Part II and Group B crimes are not deemed as severe in nature and are only recorded/reported when arrests are made.

Type of Crime and Degree or Class

When examining the type of offense and degree or class of crime, law can get rather complex. To clarify how these are used in our judicial system, the example of homicide is considered. Homicide is the killing of one human being by another. This term is broad in scope in that it includes murder, manslaughter, excusable homicide, and justifiable homicide. Murder is a narrow concept of homicide. It is viewed as the single most serious offense one can commit. Taken from common law, murder is defined as the unlawful killing of another human being with *malice aforethought* (i.e., a premeditated and deliberate act). This differs from other unlawful homicides like manslaughter, which holds an offender less culpable for his/her actions. A person who commits murder is dubbed a murderer. Murder is a capital crime or life felony deemed worthy of the highest and harshest sanction: life incarceration or death. Some states use also use long-term incarceration with the possibility of parole. The punishment often depends on the nature of the offense as well as jurisdictional practices.

Murder has been and still is divided into various degrees. Pennsylvania became the first state to pass legislation specifying the degrees of murder in 1794, and other states followed shortly thereafter. The degrees of murder have been infused into contemporary American law in an effort to restrict the death penalty to wicked and obscene cases of murder (i.e., murder in the first degree). First-degree murder involves premeditated and deliberate behavior with malice aforethought, or the malicious intent to kill. Premeditated behavior involves elements of planning, whether years or just seconds, while deliberate behavior involves the intention of causing harm upon someone. The most brutal and extreme cases of murder fall here, particularly those designed in advance that use torture or cruel methods. These are seen as aggravated forms of murder. Additionally, felony-murder may fall into this category, although it varies from state to state. This is when someone is killed during the commission of a felony crime. Although premeditation and deliberation

for a murder may be lacking in this instance, the premeditation and deliberation of the felony (e.g., robbery or burglary) are transferred to the homicide. Fatality results from the act in which one is implicated can also result in this charge. Any participants in the felony can be charged for the murder. If police mistakenly shoot someone, those involved in the felonious act can be charged for that death. Some states like New York have also added special circumstances that permit one to be tried for first-degree murder. Taking the life of a police officer, killing a witness to a crime, or being involved in multiple murders can place one at risk of being tried for first-degree murder. Second-degree murder, in contrast, lacks premeditation but holds an element of malicious intent whereby the offender purposely set out to inflict serious injury, serious bodily harm, or death on another person. The act is spontaneous and is commonly committed under the influence of alcohol and/or drugs or even during a verbal altercation.

Manslaughter is a classification of homicide that lacks premeditation but encompasses reckless disregard for another's life. There are two common classifications of manslaughter: nonnegligent and negligent. The classifications for manslaughter vary greatly from state to state. Some states consider nonnegligent manslaughter to be a form of murder in the second degree while others categorize it as a third-degree offense. Similarly, some states consider negligent manslaughter to be a third-degree offense while others see it as a fourth-degree offense. Nonnegligent manslaughter, also known as voluntary manslaughter, is the intentional killing of another, often triggered by emotions or in the "heat of passion," under extenuating circumstances. Provocation (e.g., catching someone in an act of infidelity or being demeaned by another person), self-defense, and diminished capacity underlie this. For provocation, an individual does not have a cooling-off period in order for his/her crime to be classified as nonnegligent; if he/she did, it would be classified as a higher degree of murder. For self-defense, the actions must have been caused by the reasonable belief that lethal force was necessary. Diminished capacity refers to an abnormal state of mind but not insanity. In contrast, negligent or involuntary manslaughter is when negligence is involved whereby someone engages in an

unlawful act with wanton disregard for the person's life. This "depraved heart" offense includes vehicular homicide as in the case of running a red light or operating a vehicle under the influence of alcohol and/or drugs, which results in another's death. Some states have upgraded the latter to third- or second-degree offenses (e.g., California, New York, and Wisconsin). Misdemeanor manslaughter also falls here, which is when the death of another results during the commission of a misdemeanor crime.

Forms of homicide considered noncriminal include excusable homicide and justifiable homicide. Excusable homicide is when an unintentional death occurs. In this case, a death may have resulted from an accident or legal activity surrounding the situation. Malice and unlawfulness are absent at the time of the incident. Justifiable homicide, in contrast, refers to an intentional death where one takes responsibility for the homicide but argues that the act took place to prevent a greater harm. This form of homicide limits criminal responsibility for committing a homicide. Police, corrections officers, or other authoritative personnel may commit a justifiable homicide in the course of their duties. In some cases, homicide resulting from self-defense is justifiable when lethal means are needed to prevent imminent harm.

Depending on the severity of the crime and whether the offender has committed the crime before, misdemeanors can be upgraded to felonies, and grades of the felony can change. The nature and circumstances of felonies are taken into consideration. For example, while driving under the influence is a misdemeanor for the first offense in many states, subsequent convictions place it as a felony. Further, sexual assault may be graded as a lesser degree of a felony, but subsequent charges can upgrade this to a first-degree offense with the possibility of life behind bars.

Extent of Felonies and Characteristics of Felons

The United States has one of the highest rates of felonies when compared to other Westernized countries. Criminologists use records of government agencies such as police departments, prisons, and courts in order to determine the extent of felonies and felony characteristics. The Federal Bureau of Investigation (FBI) collects the

most important crime record data from local law enforcement agencies and publishes them yearly in the Uniform Crime Report (UCR). This includes data on the number of Part I or Index crimes, which are considered the most serious offenses (i.e., homicide and nonnegligent manslaughter, rape, aggravated assault, robbery, burglary, larceny/theft, arson, and auto theft) and data for Part II crimes, which are considered less serious crimes and misdemeanors; however, the most serious offense in an incident is recorded in the UCR, and Part II crime information is only included when an arrest is made. The published data includes figures by jurisdiction, city, county, metro area, and geographical division. In recent years, the FBI has also implemented the National



Crime scene tape at an arson site in Oregon in 2008. Nonviolent felony crime typically consists of crimes against property, such as burglary, arson, or destruction of property. There are an estimated 9 million such crimes per year in the United States.

Incident-Based Reporting System (NIBRS), which collects more detailed information on crimes (e.g., victim-offender relationship, types of offenses included in an incident, etc.) and attempts to address some shortcomings of the UCR.

According to the UCR, NIBRS, and even self-reports of criminal behavior, the vast majority of individuals who commit and have been convicted of felonies are males (about 80 percent). Males disproportionately commit violent crimes compared to females, while females are more commonly found to commit nonviolent crimes rather than violent crimes. The FBI has estimated that there are more than 1 million violent crimes and more than 9 million property crimes committed in the United States each year. Examining crime types, aggravated assault is the most common violent crime while larceny/theft is the most common property crime. State courts tend to sentence men to prison or jail at higher rates than women, and African Americans at a slightly higher rate than whites but without significant difference in sentence length. Examining macro-level aggregates, data have shown that large urban areas, which are more populated, have higher rates of felonies than rural areas. While some of these crimes are expressive (i.e., a reaction to stress, anger, or rage), a large portion consist of instrumental crimes (i.e., crimes designed to improve one's financial or social position). Southern and western states also have the highest rates of felonies. Additionally, states that support harsh punishment and use capital punishment for crimes have also been found to have higher rates of violent crime.

The availability of firearms correlates with felonious actions. These lethal weapons have been used in the majority of murders as well as other violent crimes like robberies, assaults, and rapes. Most are handguns, but other models have been used. People of all races/ethnicities are equally likely to use a gun, and the presence of one increases chances of serious injury/death. As a result, there is an ongoing debate about gun control in order to reduce the amount of serious crimes or felonies that exist. Some feel the high number of guns and their likelihood to cause injury is the reason the United States, compared to any other country, has such high violent crime rates. Yet others argue guns are needed for protection from crimes.

Processing

Procedural law is important to examine in the processing of felony crimes, particularly with the courts. State and federal courts are responsible for reaching verdicts and imposing sentences on offenders. A state court of general jurisdiction is slightly above a state court with limited jurisdiction. State courts of general jurisdiction differ from those with limited jurisdiction in that they hear more serious cases. This includes superior, supreme, county, or circuit courts. They handle felony cases as well as civil cases that exceed a specified amount, and also hear appeals from the lower courts. Federal courts like U.S. district courts, on the other hand, handle cases involving the violation of federal law. In felony cases, each defendant has the right to a court-appointed attorney if he/she cannot afford a lawyer; this does not typically hold for other, less serious crimes. The felony also requires one to be present in court proceedings, which is not always the case for some misdemeanor crimes.

The process from arrest to sentencing can take as little as a few days or longer than one year; the more serious offenses take longer, but the majority of people go through the system within one year. State court systems process about 94 percent of felonies whereas federal court systems process about 6 percent of felony cases. State court systems convict more than 1 million individuals each year; about three-quarters of offenders are sentenced for a single felony while others are convicted of two or more. The majority of the felonies consisted of drug-related offenses, but more than 200,000 individuals were involved in violent crimes.

Most individuals who commit felonies are sentenced to prison or jail, yet about one-fourth are sentenced to probation without any form of incarceration. Violent offenders typically receive the longest sentences. The majority of offenders plead guilty, with the rest being found guilty by a jury or by a judge during trial. Those who go to trial and are found guilty receive longer sentences than those who plea-bargain. Capital or life sentences account for less than 1 percent of the felony sentences. Many felons also pay fines as a part of their sentence. When examining federal offenses, federal courts sentence about 70,000 felons every year. On average, federal

courts impose longer sentences for felonies than state courts do.

Punishment

Since the law prescribes a range of possible punishments for a given crime, judges are able to use discretion to impose a particular punishment on an offender. Punishment for felonies, whether in state or federal court, takes a host of factors into account prior to prescribing punishment. These are referred to as mitigating and aggravating circumstances. These factors can make a less serious offense more severe or a more serious offense less severe. Mitigating circumstances tend to produce lighter punishment, while aggravating circumstances give way to harsher punishment. Having a prior criminal record, engaging in an offense with malice or reckless disregard for another life or safety, targeting a victim belonging to particular class (e.g., minors, minorities, or disabled or handicapped persons), and demonstrating a lack of remorse can yield harsh punishment. Conversely, acting out as a result of stress or adverse circumstances and having remorse may yield a lighter sentence.

Although felonies have traditionally been punishable by death, legislatures have regarded death sentences to be an excessively harsh and draconian measure. Consequently, they moved to limit capital punishment to the most violent and horrific cases of murder, which is often premeditated. The use of capital punishment has accordingly diminished and is no longer applied as commonly as it was in the past. In the current era, the death penalty is reserved for first-degree and felony murder in the United States, although some states have added additional offenses (e.g., attempted murder, espionage, terrorist-related activities, repeat sexual offenses against minors, previous conviction of other serious offenses) while others have abolished this form of punishment altogether.

Incarceration is commonly imposed for individuals found guilty of a felony crime. The length of a sentence may vary based on the crime itself as well as prior criminal history. Besides a period of incarceration, individuals convicted of felonies may face alternative forms of punishment. Intermediate sanctions are commonly imposed on felons. These involve a range of sanctions between prison and traditional probation, many of which



Capital or life sentences account for less than 1 percent of felony sentences, leaving released felons to live with the lasting consequences of their status as felons. Among the many ramifications of a felony conviction is the likelihood of being deported from the United States if one is not a legal citizen. Above, a Mexican citizen being deported by U.S. Customs and Border Protection.

take place in the community. They have grown to include intensive supervision probation (ISP), electronic monitoring, home confinement, and work release, to name a few. Lighter forms may involve day reporting centers, restitution, and community service. Individuals convicted of felonies may also receive court-mandated orders to partake in rehabilitative programs. Cognitive skills training in anger management and conflict resolution may be prescribed for violent offenders, and residential treatment for alcohol and substance abuse may be ordered for nonviolent offenders. Other forms of treatment also exist.

Collateral Consequences

After serving their sentences, felons encounter numerous social and legal consequences, known as the collateral consequences of crime. These are costs and deprivations that accompany formal punishment. They continue to impact offenders

over time. Felons lose the right to vote and participate in democratic elections, referred to as felony disenfranchisement. Nearly 5 million individuals are barred from voting because of their criminal records. Felons also lose the right to serve on a jury, hold political office, obtain certain licenses, gain employment in certain professions (e.g., law and medicine, or governmental jobs), buy firearms and ammunition, and receive government assistance in housing and welfare. Additionally, felons are barred from obtaining visas and may face deportation if they are not legal citizens.

Along with the civil disabilities felons face, they also encounter a copious amount of challenges and life-altering consequences associated with their convictions. Incarceration often hampers relationships and may result in family dissolution as well as offer grounds for divorce. Thus, upon re-entry to society, felons may find themselves alone or with limited social support. They

may also face social stigma associated with being a criminal. Felons can experience various obstacles that make it difficult to adjust to living on the outside. For instance, parole commonly requires felons who are released into the community to maintain steady employment and housing. However, this is of utmost difficulty for many felons given that employers as well as rental agencies are legally permitted to discriminate against individuals on the basis of felony convictions. Consequently, obtaining legitimate income and maintaining housing proves troublesome. Many felons are also at a disadvantage because they may not be able to obtain medical or other types of services that they had received while incarcerated. Such obstacles have been thought to contribute to the nation's high rates of recidivism.

However, some felons can have their status reverted through appealing their convictions, being granted clemency, or being given a presidential pardon. These techniques seek to restore some of the civil disabilities imposed on offenders. Some states have also allowed felons to obtain some of the rights after a long period of time has passed (e.g., 10 years). The Second Chances Act of 2009 is working toward providing relief and the ability to expunge records for certain nonviolent criminal offenses, but federal felons cannot have their records expunged: it is something that will stay with them for the rest of their lives.

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See Also: Appeals; Capital Punishment; Codification of Laws; Common Law Origins of Criminal Law; Counterfeiting; Crime in America, Types; Crime Rates; Mandatory Minimum Sentencing; Sentencing.

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Ferguson, Colin

Colin Ferguson (1958–) is a Jamaican immigrant who was convicted of murdering and critically wounding passengers onboard the Long Island Railroad in 1993. Ferguson's criminal trial and, in particular, his behavior and actions during the trial, attracted public and media attention and resulted in significant political and legal changes.

Colin Ferguson was born on January 14, 1958, in Kingston, Jamaica, to Von Herman Ferguson and Mary Ferguson. He attended Calabar High School, one of the most prestigious learning institutions in Jamaica, where he graduated at the top of his class. After the death of both of his parents, Ferguson obtained a visitor's visa and moved to the United States. Early experiences with racism, in conjunction with his inability to obtain high-skilled, high-paying employment, left Ferguson frustrated and angered. Ferguson was particularly troubled by the racism he perceived within American society, which he believed had prevented him from obtaining employment and limited his success. Prior to the Long Island Railroad murders, Ferguson was involved in a number of violent, criminal incidents, which included an arrest for

harassing and threatening a woman on the subway. His behavior during these incidents suggested that Ferguson was becoming increasingly paranoid and obsessed with the idea of using violence and revolution to resolve racism.

On December 7, 1993, after nearly a week of planning, Ferguson opened fire onboard the Long Island Railroad commuter train. Ferguson murdered six and critically wounded 19 passengers before he was tackled and stopped by a group of fellow passengers. In January 1994, Ferguson was declared mentally stable to stand trial despite attempts by his defense attorney to prove that Ferguson suffered from and was driven by severe mental illness. Shortly before his trial, Ferguson fired his original defense attorney and sought the services of William Kunstler and Ron Kuby, who were known for taking on unpopular and difficult cases.

As a result of public outrage over the railroad murders, there was significant public and media attention devoted to the Colin Ferguson trial. This interest was heightened by the novel defense strategy used by Kunstler and Kuby to argue Ferguson's innocence. The defense argued that at the time of the murders Ferguson suffered from "black rage," a form of insanity, which resulted from years of racial prejudice. By adopting this strategy, the defense acknowledged that Ferguson was the shooter; however, they argued that he should not be held criminally responsible because of his mental instability.

The public's interest in the trial was increased by Ferguson's peculiar behavior. For example, throughout the trial, Ferguson maintained that he was not the shooter and rejected his attorney's "black rage" defense. Ferguson's unwillingness to accept his attorney's strategy ultimately led him to fire his attorneys and represent himself. By doing so, Ferguson became responsible for questioning the witnesses to the railroad murders and the police officers who had investigated the incident, arrested, and questioned him. Ferguson's use of third person during cross-examinations and his theory that a white man had stolen his gun and committed the murders were viewed by the public as proof of Ferguson's paranoia, guilt, and danger to society.

On February 17, 1995, Colin Ferguson was found guilty of six counts of murder and 19 counts

of attempted murder, and was sentenced to 315 years in prison. The Long Island Railroad murders and the Colin Ferguson trial had a significant effect on American society and politics. Specifically, government officials in New York and gun control advocates used the incident to demand stricter gun control laws. New York Congresswoman Carolyn McCarthy, whose husband was murdered on the Long Island Railroad, is one of the most vocal opponents of New York's current gun control laws. The Colin Ferguson trial also led to a significant debate among psychologists and legal professionals over whether Ferguson's right to represent himself should have been questioned and revoked.

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See Also: Gun Control; Kunstler, William; New York; Race-Based Crimes; Serial and Mass Killers.

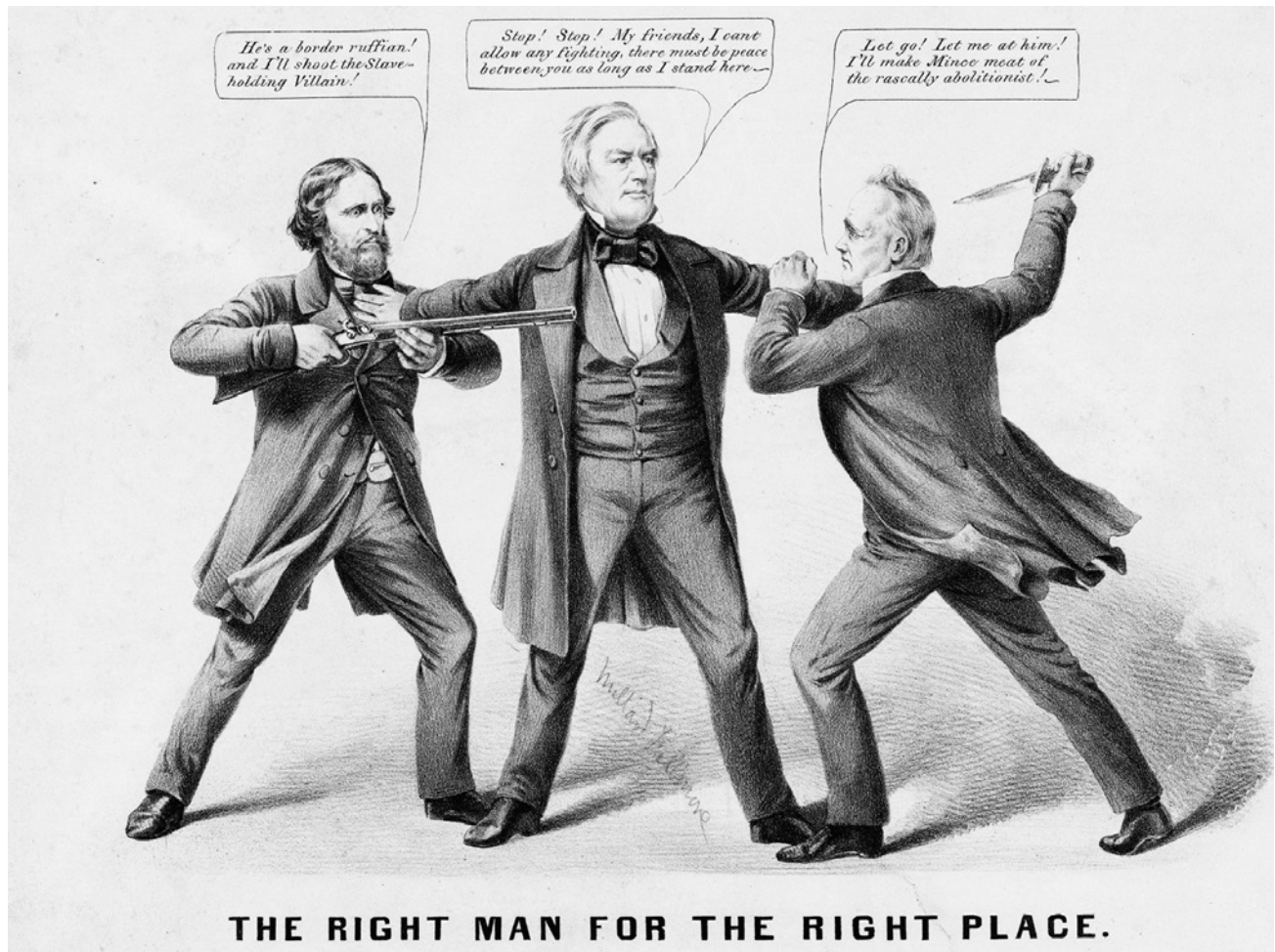
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Fillmore, Millard (Administration of)

Millard Fillmore (1800–74) was born in a log cabin at Moravia, Cayuga County, New York. He was apprenticed at age 14 to the cloth-making trade; however, he was able to gain enough education so that he could read for the law. He was admitted to the New York bar in 1823. He served in the New York militia during the Mexican–American War.

In 1828, Fillmore won election to the New York State Assembly as a member of the Anti-Masonic Party. While in the assembly, he promoted a bill



Millard Fillmore ran in the presidential election of 1856 as the American Party's candidate. While he won 21 percent of the popular vote, he garnered only eight electoral votes. This 1856 cartoon in support of Fillmore suggested that he was "the right man" to stand between the slave owners and the abolitionists. He is shown breaking up a fight between Republican John C. Fremont (left) and Democrat James Buchanan, who is being associated here with violence against antislavery settlers in Kansas and with slaveholders.

that would improve bankruptcy procedures and would also eliminate New York's debtors' prisons. In 1832, he won his first election to Congress as a member of the Whig Party, which opposed slavery. In 1844, Fillmore lost his bid to become governor of New York. Between 1848 and 1849, he served as New York state comptroller. While in office, he helped to revise New York's banking laws. The issue of slavery was an important factor in the Whig national convention in 1848. The presidential nominee Zachary Taylor was a slave owner, so Millard Fillmore was nominated as the vice presidential candidate from a non-slave state to balance the ticket. In fact, Taylor was opposed to the extension of slavery to the new western

territory, while Fillmore supported allowing slavery in order to gain southern support.

Taylor and Fillmore won the election of 1848 and took office in 1849. As vice president, Fillmore was the presiding officer of the Senate, where he endured the debates on the Compromise of 1850. Close to the end of the debates, he intimated to President Taylor that he would cast the tie-breaking vote if necessary; however, President Taylor died suddenly on July 9, 1850, requiring Fillmore to assume the office.

Fugitive Slave Act

As president, Fillmore mollified southerners to prevent secession by supporting the Compromise

of 1850. His support of the compromise created animosity for him among anti-slavery northerners. Ultimately, the compromise was sent to Fillmore as five separate bills drafted by Senator Stephen Douglas. The one that most afflicted Fillmore's future was the Fugitive Slave Act ("Bloodhound Law"), which he endorsed without trying to seem to be supporting the south.

The Fugitive Slave Act (1850) created special commissioners with concurrent jurisdiction with the federal courts and the territorial courts. Trial by jury was not allowed in cases before the commissioners, and accused fugitives did not have a right to testify. Federal officers who refused to help the commissioners or who allowed slaves to escape or individuals who aided escaping slaves were subject to serious penalties. Cash bounties were granted to those who brought in escaped slaves. Fees were paid to marshals for each slave captured that were twice the fees for those who were found not to be slaves. The decisions about individuals held as runaway slaves was purely ex parte, so free blacks could easily be enslaved on the testimony of a slave hunter.

The effect of the Fugitive Slave Act's abuses was to increase the number of abolitionists helping the Underground Railroad with fugitive slaves. Many northern states passed personal liberty laws that ordered state judges not to recognize claims arising from the federal act. In some states, the rights of habeas corpus and jury trials were given to alleged fugitives. In 1854, the Supreme Court of Wisconsin declared the Fugitive Slave Act unconstitutional.

In some states such as Pennsylvania, opposition to enforcement of the law turned violent. On September 11, 1851, in Christiana, a riot to defend a fugitive slave turned into the Battle of Christiana, in which the locals engaged in a gun battle with federal officers. A slaveholder was killed during the shooting. Fillmore's signature on the Fugitive Slave Act was unforgivable in the minds of some Whigs. They were able to deprive him of the 1852 Whig Party presidential nomination.

In 1856, the Whig Party disbanded because of strife among its members over the slavery issue, most notably over the Kansas-Nebraska Act of 1854. Many former Whigs joined the new Republican Party; however, Fillmore joined the American Party, which represented the anti-immigrant,

anti-Catholic Know-Nothing movement. He ran in the election of 1856 as the American Party's candidate for president. He captured 21 percent of the popular vote, but just eight electoral votes.

Between 1861 and the 1870s, Fillmore commanded the Union Continental, a home guard unit from upstate New York, opposed President Abraham Lincoln and Reconstruction, and supported President Andrew Johnson. He died March 8, 1874, at Buffalo from the effects of a stroke.

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See Also: Fugitive Slave Act of 1850; Lincoln, Abraham (Administration of); Slavery, Law of.

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Film, Crime in

Films have been enjoyed by audiences for decades, and the portrayal of criminals and crime has played an important role in the film industry since its inception. Prison life, gangsters, homicide, and the police are all elements that have captivated audiences and contributed to the way in which people view both crime and the criminal justice system. Crime is either committed by individuals the audience supports during the movie, or it is committed by the villain that the audience hopes is brought to justice. Such films allow individuals to experience crime within the confines of a theater or their own homes. People enjoy being frightened, as long as there is a sense of security, which films provide. Films often sensationalize crimes and make them more elaborate than the typical crime. This may cause audiences to have



Part of a still from a famous scene in *The Great Train Robbery* (1903) in which an actor shoots a gun at the camera. The moment was referenced in films throughout the 20th century.

a skewed view of crime, but for the most part, it serves its ultimate goal of entertaining individuals and allowing them access to a different, albeit brief, situation.

What is interesting to note about crime in film is that crime films are not technically a subgenre of film. Instead, many movies that could be viewed as crime films are often classified as dramas, psychological thrillers, or comedies. This can be argued about other types of films, but crime in film has lasted as an ever-popular area and could arguably have its own subgenre within Hollywood. Another interesting point about crime in film is that crime has been portrayed in film essentially since films first became popular. For example, the 1903 silent film *The Great Train Robbery* depicted a robbery by Butch Cassidy and the Wild Bunch that had happened only a few years prior. The fact that crime films have lasted for so long indicates that individuals have always been preoccupied with crimes and criminals, and this trend shows no sign of stopping.

Dramatic Crime Films

In classic crime films, the criminals are depicted as the tough guys who grew up in hardened neighborhoods and turned to crime for a better life or because they lacked any other choice. The 1931 classic *The Public Enemy* tells the story of two friends who become involved in the gangster world at a young age, despite the main character's father being a police officer and his brother joining the armed services. Gangster movies date back to silent movies and have always been a favorite. Many well-respected actors made an enviable career starring in gangster movies, including James Cagney and Humphrey Bogart. The appeal is the characters' macho personality; typically, their crimes are less serious to be more palatable to audiences. Hollywood experienced a shift in character portrayal after the Motion Picture Production Code was enacted in 1930. Although not more thoroughly enforced until 1934, this code restricted the sexual innuendos so frequently included, as well as the drug use and levels of violence to which moviegoers had previously been exposed. Nonetheless, audiences found the movies of this time captivating and an escape from the routines of their daily lives.

Film noir is an entire subgenre of crime films that was extremely popular post-World War II and displayed a much darker side of Hollywood. *Film noir* is a French term that translates to "black film," but it largely represents American films. These films focused on crime, corruption, and overall deviant behavior and were indicative of the changes in American filmmaking. Often, audiences were left feeling uneasy or distressed about a film, or even a particular scene within the film. The crimes may confuse audiences who are trying to figure out the "whodunit" during the movie, and film noir does not always give audiences the orderly ending films typically provide.

Often, movies such as *The Godfather* (1972) and *Goodfellas* (1990) glamorize the life of a mobster, showing a life of luxury and extreme wealth, while still portraying the downfalls of those involved. Crime is portrayed as an exciting and fruitful endeavor, with the men and women wearing expensive clothes, drinking the best champagne, and smoking the best cigars. The crimes committed in films are also often elaborate and well planned. Movies such as *Die Hard* (1988)

portray the criminals, in this instance Russian terrorists, as the bad guys. Others, such as *Ocean's 11* (2001), portray the criminals as the heroes of the film. The audience finds itself rooting for the "bad guys," because they are suave, smart, and committing crimes for a valid reason. Much of the movie focuses upon the planning of the crime more so than its execution, and it shows intelligent and systematic criminals.

True crime stories are presented to the American public through films as well. Often, these films are given a "Hollywood touch" in order to make the stories more appealing and sympathetic to audiences. The 1967 film *Bonnie and Clyde* depicted the true story of Clyde Barrow and Bonnie Parker and presented it in a more romantic way, highlighting the love between the two protagonists. Their death, in a shoot-out with the police, was also portrayed in a romantic way, when they embrace each other one last time before being shot multiple times and finally dying. Although they were bank robbers who were not afraid to kill, audiences were more moved by their deaths than by the crimes they committed. Part of the appeal of the characters in the movie was that the audience in the 1960s supported characters who went against the law and government, regardless of the crimes they committed. Although they were wanted criminals, the focus was more on the social statement of their actions as opposed to their misdeeds.

Another such movie is *Butch Cassidy and the Sundance Kid* (1969), which portrays the crime spree of two robbers in the late 19th century. Although both men commit murder, the audience grows a fondness for the two criminals, and the shootout scene at the end has people perhaps hoping for an alternate ending. Westerns are a great example of portrayals of crime in film, and they also encompass the role of the tough guy that is so prominent in classic films. They often portray robbers, thieves, or kidnappers, but in a time of the past that provides solid entertainment.

Other crimes that have been portrayed in film include terrorism and sex trafficking. These crimes are focused upon less than other types, but still exist. Terrorism is still a very relevant issue in America, and this fact is not lost on Hollywood producers. Portraying terrorism must be done carefully, because this is a crime that the whole nation experienced not too long ago, and the

threat of it is still present. Other crimes may not be as topical or threatening and do not require the same amount of attention. As for sex trafficking, this is a crime that is committed on a global level and is not as menacing for some as other crimes. While that is not to say that these crimes are not atrocious, it simply means that because they are a global issue, they are not as threatening and focused upon.

Psychological Crime Thrillers

More recent films have focused upon American's fascination with serial killers or mass murderers. *The Silence of the Lambs* (1991) and *Se7en* (1995) both gave audiences a glimpse into the twisted and calculating minds of notorious killers who found pleasure in the crimes they committed and the hurt they inflicted. Other films, like *Henry: Portrait of a Serial Killer* (1986) and *Psycho* (1960), contain elements of true events and draw from true experiences to make the stories more terrifying and unsettling. They are highly dramatized as well, in order to attract audiences. Murder is not the only crime that is portrayed in movies, though. While it often makes for popular movies that thoroughly frighten audiences, films such as *American Gangster* (2007) and *Blow* (2001) focus upon serious drug dealers and the money and glamour associated with such life choices, until they are caught by the police and their world crashes around them. These are similar to the aforementioned gangster films, but there are slight variations among the films.

Movies such as *The Shawshank Redemption* (1994) and *Escape From Alcatraz* (1979) allow the public to view the life of criminals once they have been brought to justice and are serving their sentences in prison. What these movies do, however, is show the criminals as ordinary men who have met unfortunate circumstances. In *Escape From Alcatraz*, audiences pity the inmate who loses his painting privileges because the warden wants to make an example of him in front of the other inmates. He is a well-liked inmate and a model prisoner, and in this instance, the warden is portrayed as the evil individual who uses his authority to demoralize an inmate. *The Shawshank Redemption* tells the story of a man who is imprisoned for the murder of his wife and her lover, but his love for music and literature overshadows his role as a murderer.

His escape represents the second chance the audience hopes he will receive, although this penchant for second chances is not always experienced for criminals in the real world.

Comedic Crime and Heists

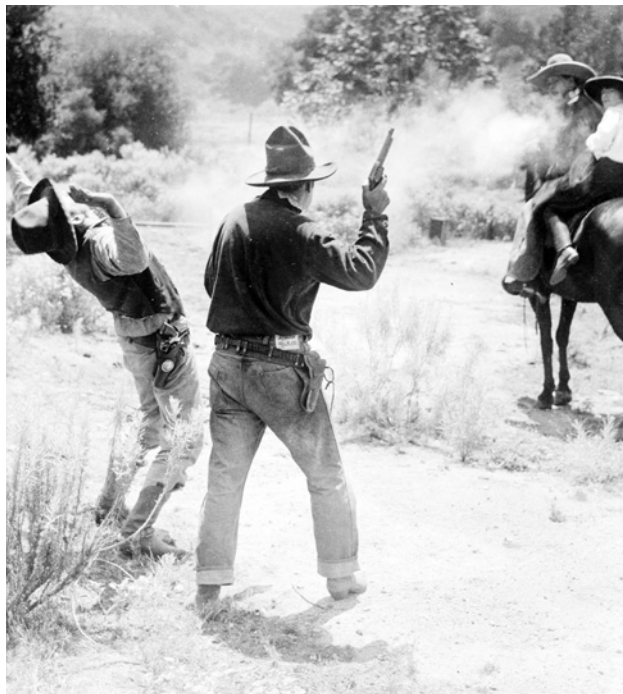
Crime comedies, such as *Fargo* (1996), add a touch of humor to a serious issue. The characters in the movie are completely ridiculous, with the main criminal inept and the main detective disturbingly pregnant. The entire scenario leaves audiences laughing and provides a different angle to a typically dark subject matter. *The Pink Panther* (1964) is another comedic display of a detective trying to solve the mystery of the theft of a rare and valuable diamond. Typically, the crime committed in these comedies is utterly outrageous, and all those involved are comical. Certainly, crime comedies will not succeed in all circumstances. Those who direct such films need to be aware of the attitude of the American public. Crimes such as rape will never be viewed as humorous. As a result, less serious crimes that typically do not harm individuals are something

at which people can laugh and are more often the subject of crime comedies.

Heist movies are another popular subgenre of crime films, often filled with high-speed car chases and amazing stunts and special effects. *Reservoir Dogs* (1992), *The Italian Job* (1969, 2003), and *The Score* (2001) are such films that are typically full of intrigue and action, and while they do not always end in the success of the criminal, they still leave the audience satisfied with the journey. Such crimes are enjoyable for audiences to watch because they are not threatening and rarely occur. If cities like New York and Los Angeles had the number of high-speed chases and major bank or jewelry store break-ins as depicted in films, the police would have little to no time to focus on any other crimes that may be committed.

Women in Crime Films

Female criminals and their crimes have also been portrayed in various films. The “femme fatale” is an often-repeated character, in which the woman is mysterious, seductive, and typically leads the male character to his demise. The term translates to “deadly woman” in French, thus indicating the true nature of such a character. These characters were popular during success of film noir, and Phyllis Dietrichson in the 1944 film *Double Indemnity* is a perfect example of such a character. She seduces an insurance representative into helping her murder her husband in order to inherit the accidental death insurance policy. Women are typically secondary figures in the crimes committed throughout a movie, although films have focused on the crimes directly committed by women. One such film is *Monster* (2003), which tells the true story of female serial killer Aileen Wuornos. Female criminals are rarely the lead character in films compared to male criminals, and for some, their crimes may be more unsettling than their male counterparts. One film that portrayed females in a more lighthearted way was *Thelma and Louise* (1991). The audience follows the two women on their journey after shooting and killing a rapist and is with the characters until their demise at the end of the film.



A shootout between a man and a woman on a horse and two men on foot from a 1926 Western called *The Highwaymen* featuring the actors Jack Hoxie and Helen Holmes.

Conclusion

Hollywood and audiences alike shall see no shortage of crime films in the future. Whether they

depict stories about real events, futuristic crimes, hardened gangsters, or incompetent robbers, the American public is fascinated with the life of crime and all it entails. While crimes typically are not realistically portrayed, audiences may enjoy watching events unfold that are unlikely to occur in real life. Crime in film provides an avenue of entertainment that is safe and nonthreatening. Furthermore, the crimes that are portrayed may be a reflection of the current state of the nation.

Hollywood is aware that changes in opinions and beliefs must be considered when making films. The film industry wants to make money and keep its customers satisfied. As a result, films that focus upon crime must not offend people or scare them to the point that they refuse to see any other crime films in the future. It is important to strike an appropriate balance between fictional and actual crimes in order to maintain the sense of security that is so important to the American public.

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See Also: 1921 to 1940 Primary Documents; Detection and Detectives; Film, Police in; Film, Punishment in; Literature and Theater, Crime in; Literature and Theater, Police in; News Media, Crime in; Television, Crime in; Television, Police in.

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Film, Police in

Police movies are a staple in comedy and action films throughout history. For the American male, little else beats heading to the theater for the newest film that examines the men and women in blue. Whether the movie deals with robotic supercops, old-school disciplinarians, or smart-mouthed newbies, if it involves police, it will always attract a following. Despite the fact that the genre is always able to attract an audience, there is quite a variety of police films. Representing the two ends of the spectrum, comedies and dramas explore different facets of the role of police in society along with what viewers want to see.

Comedies: *Police Academy* and *The Naked Gun*

The beginning of humorous police movies unquestionably starts with the *Keystone Kops* series that were produced between 1912 and 1917 as silent movies. These incompetent police officers—led by Fatty Arbuckle—aimed to have audiences laughing more than feeling protected. Funny police officers have never been more fully brought to screen than they were in the *Police Academy* series. Over the course of eight movies (the first in 1984), viewers follow a series of rag-tag officers as they work honorably to protect the streets. The first movie focuses on a new mayor's policy that all willing recruits be accepted to the police force. As a result, a series of misfits comes into the academy unprepared and unable to conduct themselves like the rest of their classmates. In the second movie, the graduates are dropped into the worst precinct citywide and instructed to clean up conditions there. In this film, the inner battles over rank and control occur as a lieutenant goes out of his way to try to make the idea fail so he can become captain. The third movie in the franchise involves a competition between police academies when the governor announces budget cuts. Movie four introduced large audiences to the idea of citizens on patrol and the idea of average citizens partnering with police to help keep areas safe. Movies five, six, and seven all play on the traditional themes but become more focused: five and six both deal with jewel thieves, while seven sees the group head to Moscow to fight an international criminal. While the movies are intended to be more comedic than anything else,

they still present the world of policing on the silver screen. In particular, viewers are introduced to police training—from classroom settings to driving exams and apprenticeships.

Much like *Police Academy*, Leslie Nielsen developed a cult following of sorts with *The Naked Gun* series of police films beginning in 1988. Playing Frank Drebin, the rambling fool, in all three movies, Nielsen became forever remembered for his police behavior. In the original movie, Drebin and his colleagues work to uncover a plot to assassinate Queen Elizabeth II. Ultimately, it turns out that baseball player Reggie Jackson is triggered via remote control to be hypnotized and kill the queen. Thankfully, Drebin has become home plate umpire and is able to foil the plot. In all of the movies in the series, much like *Police Academy*, we are able to see how disruptive one individual can be to the overall efforts of police forces (even if in this case the disruptive individual ends up being the hero most of the time). Even though comedy is the main goal, the American public still receives truthful glimpses into the life of a police detective and the frustrations fellow officers can feel when standard protocols are not regularly followed.

Comedies: Other Interpretations

Three movies that offer different humorous interpretations of police work are *Turner & Hooch* (1989), *Kindergarten Cop* (1990), and *Paul Blart: Mall Cop* (2009). Released in the immediate aftermath of *K-9* (1989), *Turner & Hooch* focuses on the relationship between obsessive-compulsive detective Scott Turner and untrained, untamed Hooch—the dog of a murder victim. While the movie seemingly uses police work as nothing more than a necessary component of the plot, viewers are exposed to the frustrations of some police officers in towns with low crime levels. Turner is in the process of transferring to a more active police district with more opportunities to demonstrate his skills until he meets Hooch and has the opportunity to work the murder case of his owner. In *Kindergarten Cop*, undercover cop John Kimble takes over a kindergarten classroom in order to help track down a drug dealer before he is able to find his ex-wife and young son. This move highlighted the interaction between a tough-as-nails police officer who is suddenly pushed into a world dominated by small children. Again, police work is not

necessarily the focus of the movie, but the dynamic of a serious police officer forced into a comical undercover assignment provides many snippets of the police frame of mind. In *Paul Blart: Mall Cop*, viewers are exposed to the nature of a different form of policing: mall security. The title character dreams of being a member of the New Jersey State Police but can never gain entrance because of his hypoglycemia. Stuck in his job at the local mall as a result, Blart does everything he can to protect and serve the customers. By the end of the movie, Blart has helped save lives and prevented major theft in the mall and is offered a job with the local police, which he promptly turns down to continue with the job he's grown to appreciate. Again, this movie is not based on the police, per se, but it does raise questions regarding different types of security forces in our country and how they interact.

Comedies: Partnerships

Other comedy police movies do hit at other interesting points of consideration related to the modern police force in America. The *Rush Hour* series, beginning in 1998, shows the importance of partnerships and how officers rely on each other. The movies demonstrate the potential difficulties when differing levels of law enforcement are asked to cooperate. In the first movie, the Chinese consulate decides the Federal Bureau of Investigation (FBI) is likely to be unsuccessful in helping them find a kidnapped diplomat's daughter so they hire a Hong Kong inspector and a street-smart, cocky Los Angeles police officer. The two struggle to get along and are ultimately successful. Their relationship shows the difficulties partners face in the high-stress world of policing.

An earlier film, *Beverly Hills Cop* (1984), follows a similar path as a young, reckless detective from Detroit comes to California to help find his best friend's murderer. While he is talented, the young detective has to overcome his own upbringing to show he can do the job. The movie really demonstrates the difficulties for police officers when there is a personal relationship to a victim and they want to help solve the crime. In this movie, the detective has to take personal vacation time to conduct an investigation because his superiors believe he is too closely related to the victim to be objective. *Lethal Weapon* (1987) follows much the same story line as a serious, middle-aged

cop trying to make a career is partnered with a young, eager rookie partner out to rule the world.

As a final example, the movie *Blue Streak* (1999) involves a criminal going undercover as a police officer to locate stolen jewels that had been confiscated that he wants back. Comically, he attempts to act like a burglary detective while his unknowing partner continually applauds his unconventional methods. In the end, we see how professional police work (which the partner believes in) can be supplemented by street-smart individuals, even if they are not actually police.

Dramas: Corruption

As would be expected, while comedic movies tend to poke fun at police stereotypes and issues, dra-

matic movies instead exploit the potential for corruption or present action-packed scenarios and car chases that pit the stereotypical cops against the robbers. The 1930s police movies, particularly ones examining classic gangster portrayals and private detective films, present a unique debate when it comes to corruption. First, the movies can demonstrate police ineptitude, but more importantly, they show how the individual police officer oftentimes needs to break rules in order to protect society from the organization—which can be seen as corrupt or inept, depending on the particular film. This change in influence takes viewers from seeing corrupt cops to instead witnessing heroic individuals fighting against an overly bureaucratized system.



A teenage boy reads posters outside a theater advertising a double feature, including a Western with a law enforcement theme called *Law for Tombstone*, in 1939. Films featuring the exploits of western sheriffs and both urban and rural police have been drawing large audiences since the days of the silent Keystone Kops films, which appeared between 1912 and 1917.

Bad Lieutenant: Port of Call New Orleans (2009) follows a New Orleans police sergeant who sees his world spiral out of control in the Hurricane Katrina aftermath. After saving a prisoner, hurting his back, becoming a lieutenant, and becoming addicted to both painkillers and cocaine, he is asked to run the investigation into a family's murder. He begins dating a prostitute, losing money gambling, and stealing police property. To help get out of debt, he starts assisting drug dealers. By the end, the murder has gone unsolved and he has gone from bad to worse—showing everything potentially negative about police officers.

Likewise, *Brooklyn's Finest* (2010) shows how corruption can occur as three police officers—Tango, an undercover gang member; Sal, who is willing to do anything to get a bigger house for his family; and Eddie, who is about to retire from the force—work to do their jobs while not letting their personal lives suffer. *Training Day* (2001), on the other hand, does not directly deal with corruption but, instead, with questionable police tactics. The movie focuses on a Los Angeles Police Department detective who works narcotics and is well-known for his willingness to open fire, beat up suspects, and use any means necessary to rid the streets of drugs. As a rookie is introduced to his methods, viewers are left to wonder whether the ends justify the means. Even one of America's all-time favorite police movies—*Dirty Harry* (1971)—shows how very dirty rogues can also be the best police officers on the force.

Dramas: Heroism

The opposite of corruption appears in *Serpico*, a 1970s biopic of a New York detective whose anticorruption efforts led to the creation of the Knapp Commission. After learning early on that the plainclothes cops make more in graft than salary, he refuses to join in the corruption. As a result, he cannot find a partner and is routinely put in harm's way. He ends up shot by a drug dealer when his partner refuses to defend or support him. *Serpico* shows the battle police face when surrounded by corruption and graft. *L.A. Confidential* (1990) also shows the promise of police officers through the lens of 1930s Hollywood. This film is good, in particular, at showing the battle between good and evil that police face. In the film, officers are trying to do what they

believe is right while still succumbing at times to the constant distractions around them.

In *Speed* (1994), a police officer on a bus rigged to explode if it drops below 50 miles per hour does everything in his power to get everyone off the bus safely. While more focused on action than police, there are glimpses of strategy and decision making throughout. Likewise, *Die Hard* (1988) puts a cop in the position to be a hero. A group of thieves, acting as terrorists, take over the office building where a cop is attending his wife's Christmas party. Their goal is to steal \$600 million in bonds from vaults within the building. The movie focuses on the lone cop's efforts to take down all 12 terrorists on his own.

RoboCop (1987) presents a different type of hero cop. After being killed by a criminal, Alex Murphy returns as a crime-fighting robot owned by the company running Detroit at the time. The movie traces the steel-shelled RoboCop as he attempts to clean the city of crime while also seeking revenge on the man who killed him. While futuristic, the movie does raise many points related to police force and revenge. *The Border* (1982) focuses on border patrol agents and presents an agent who feels like he has no meaning in his job. That is, until he is given the opportunity to save a child sold on the black market, if he is willing to all but sell out in the process. Surrounded by corruption, the border agent works through what he really views his moral purpose to be. *Cop Land* (1997) does much the same when examining the life of a New Jersey sheriff who grew up dreaming of a job with the New York City Police Department. Once he learns how corrupt the police can be, however, he is faced with determining the best way to correct their misdoings.

Dramas: Realism

Bullitt (1968) is one of the more realistic police movies created as it traces a cop trying to get payback for a witness who was killed under his protection. The movie is packed full of car chases and demonstrates realistic criminal procedures throughout, and also ties in some of the political constraints that officers must worry about as they attempt to do their jobs.

Another film considered to be on point in how it represents police work is *The French Connection* (1971), which traces how officers work to

foil the largest drug shipment ever attempted. It has been routinely heralded as the most realistic police movie to ever be made. The film *Heat* (1995) encapsulates a regular police film theme: a tortured cop and the criminal he never seems to be able to catch. Throughout the film, viewers feel sympathy for both parties as they continually attempt to stay one step in front of the other.

Conclusion

Overall, all of these movies come together in an attempt to entertain the viewing public through plot lines that focus on police officers and police work. Ultimately, none are spot-on in terms of their depictions. Numerous police documentaries have emerged over time, yet many are written with a particular purpose in mind. For example, the documentary *The Thin Blue Line* (1988), while well made, uses the screen to show how the police work together to frame someone as a cop killer to ease public sentiments. Just like any other element of bureaucracy, it is easier for the public to notice and fixate on the negatives with police officers. Movies that routinely praise their work are generally not made because excellence is expected. Instead, police movies typically involve corruption and ineptitude, and one can only hope that the general public is aware enough to remember that these films are created to entertain, not to inform.

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See Also: Detection and Detectives; Film, Crime in; Film, Punishment in; Literature and Theater, Crime in; Literature and Theater, Police in; News Media, Crime in; News Media, Police in; Television, Crime in; Television, Police in.

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Film, Punishment in

Cinematic images of the formal criminal law and punishment for its transgression provide insight into the web of cultural and social practices that shape and maintain boundaries between “criminals” and the rest of society. The prison movie is arguably quintessential and is certainly one of the most accessible modes through which we imagine, understand, and construct myths about the nature of discipline in contemporary society. Consequently, this article focuses on the canonical cinematic representation of discipline: American prison movies from the early 20th century to the mid-1950s, when cinema began to be displaced by television (which took over, until fairly recently, as the dominant form through which myths and assumptions about discipline have been circulated).

On one level, prison films reveal some of the brutalities of incarceration and elicit empathy for criminalized men and women. On another, they offer audiences a form of escapism by inviting identification with outlaws, titillation through contradictory modalities of repressed sexuality and nonnormative eroticism, a rare opportunity to enact a certain kind of surveillance, and a venue through which to problematize gender roles. On another level still, they are a conduit to explore long-standing philosophical questions about the human condition. Punishment, and confinement within prisons especially, works as a metaphor for social boundaries and the danger and possibilities that emerge when they are broken, irritated, or even dismantled.

Much scholarly attention to cinematic renderings of the disciplinary prison has engaged in content analysis and measured the veracity of the depictions of crime and “criminals.” Fewer accounts grapple with the role of punishment and prison in films as a vehicle for interrogating broader social themes such as inclusion and exclusion, workers’ rights, women’s emancipation, slavery, and other modes of systemic racism. Both methods of inquiry can be explored through a discussion of the prison film’s generic conventions, how these films have shifted over time, and the ways in which these conventions can be better understood when approached through the lens of social history.

Early Cinema and Pre-Code Movies

Many formative American prison films were short melodramatic films or documentaries that emerged during cinema's "silent" era (a misnomer, as sounds, whether music, live narration, or other effects, had, since the media's **emergence**, accompanied film screenings). As a new art form, cinema took up many of the questions raised in the novels, plays, and paintings of the time; however, by 1915, cinema had far surpassed these other art forms in accessibility, appeal, and popularity. Moreover, unlike these other artifacts, film was believed and was deployed as a newspaper with moving images. For instance, the films of Edwin Porter were marketed by the Edison Company as authentic live documentation of key moments in history. *The Execution of Czolgosz ith Panorama of Auburn Prison* (1901) is actual footage of the prison where the electric chair was invented and first used to kill a prisoner. However, the execution itself is a re-enactment. Theatricality aside, many of the prison films released in the early 20th century revealed anxieties over national identity; child labor and unions; attitudes about ethnicity, class, and gender; racial conflicts; and the spread of diseases. The prison institution was sometimes used as a narrative path to such questions.

Some denounced the exploitation of prisoners through work houses, as in *Convict's Parole* (1912, directed by Edwin Porter); others called for humane treatment of prisoners or suggested the transformative potential of treating prisoners with care and humane kindness, as in *Intolerance* (1916, D. W. Griffith). Usually, films told the story of someone erroneously or wrongfully charged and convicted, as in *Within the Law* (1923, Frank Lloyd). Indeed, characters' factual and moral innocence became a conduit to argue against the existence of capital punishment. *The People v. John Doe* (1916, Lois Weber), for instance, tells a story of corrupt police using police brutality to force a young, unemployed father to confess to a murder that he did not commit. The man is found guilty, but while he is on death row, a young lawyer who is convinced of his innocence collects new evidence. While John Doe is ultimately cleared of all charges, the film expresses a deep disquiet about state executions. In many of the prison movies of the era, when the protagonist has actually committed an offense, the criminal act was usually

located within broader structures of inequality and poverty and often (in the fictional accounts, in any event) bookended by acts of bravery, extreme generosity, and kindness toward strangers, as in *The Ex Convict* (1905, Edwin Porter) and *Capital Punishment* (1925, James Hogan).

However, other iterations of the prison film that were released around the same time exhibited a contradictory mix of classical and positivist criminology's assumptions about criminal behavior and its punishment: On the one hand, crime was a result of rational choice by individuals who commit crime for hedonistic, thrill-seeking, or other self-interested motivations. Consequently, the purpose of punishment was to prevent further crime through deterrence. The documentary *Life in a Western Penitentiary* (1913) used gruesome images of prison life as a fear-generating tactic directed at younger male audiences. On the other hand, positivists believed that individuals could be born with criminal drives and thus crime was the result of biology (often race), atavisms, and physical or moral degeneration. Punishment, as a result, was best served when it was a means of treatment and reform. For instance, *Exposure of the Delaware Whipping Post* (1914) promoted the use of lashing as a stepping-stone to rehabilitation. In the 1920s, an era characterized by conservatism and repression, prison films tended toward the comedic shorts, such as Buster Keaton's *Convict 13* (1920, Buster Keaton and Edward Cline) and Laurel and Hardy's *Hoose-Gow* (1929, James Parrott).

The Production Code Era

Despite these earlier configurations, only in the 1930s did the prison movie—as a genre—develop and solidify its conventions, elements, and rules (with recurring symbols, stock characters, narrative structures, and similar settings) through "social problem" films. The release of *The Big House* (1930, George Hill), *Numbered Men* (1930, Mervyn LeRoy), and *I Am a Fugitive From a Chain Gang* (1932, Mervyn LeRoy) establish the genre's codes, conventions, and major themes. Produced at a time when Americans were still feeling the full effects of the Great Depression, these prison films reflect the political consciousness, the social purpose, and the overarching ethos of reform. During the 1930s, the incarceration

rate in America was 137 per 100,000 (up from 79 before the economic crisis in 1929); of those people sentenced, there was (and continues to be) a gross overrepresentation of African American men (who often were targeted as vagrants during the Great Migration to the industrial cities of the north and the midwest).

Nevertheless, the gallery of characters in prison films tended to be white and to include the middle-class protagonist (a “born” but often unassuming hero); the hardened and often brutalizing lifer; the “square John” who does his time and minds his own business; the weakling, victimized by guards or fellow prisoners; the informer; the ineffectual but often well-meaning/tough-but-fair warden; the nasty guard who exacts arbitrary punishment; and the “kid” for whom the protagonist takes on a fatherly role. Key narrative moments include the development of friendship and loyalty between men and especially the (white) protagonist and his more weathered “buddy” (in more recent incarnations, usually an African American), the buildup of tension in a repressive space,

and the prison riot or escape. Prison films also contain a number of formulaic scenes such as the “new fish’s” introduction to the prison via guard or fellow prisoner, shivs passed under the dining hall table, cockroach races, and rumbles during recreation time. The overall aim is to engage the good/bad binary and emphasize the humanity of the prisoners juxtaposed against the inherent oppressive nature of institutionalized punishment rather than of the men behind bars or the (often justifiable or excusable) crimes they committed.

In social problem films, larger social conflicts are embedded and are interrogated through individual conflicts between characters, often who occupy different social locations based on class and sometimes race. Protagonists are often morally innocent, or at least ambiguously so, such as in *20,000 Years in Sing Sing* (1932, Michael Curtiz), in which a hardened criminal takes the rap for murder to protect his girlfriend and is ultimately sentenced to death. As a result, many prison films of the 1930s can be read as an explicit and implicit critique of institutionalized punishment. *I Am a Fugitive From a Chain Gang* (1932) is an insightful study that suggests the possibility of mutually constitutive relationship between popular images and public perceptions of acceptable modes of discipline. The story was based on actual facts; the film exposed the conditions on the chain gang, and is widely believed to have played an instrumental role in the mobilization and mass public upheaval and protest for their eradication in 1937.

The depiction of sympathetic outlaws was in direct contravention of the Motion Picture Producers and Distributors of America’s (MPPDA) Production Code adopted in 1930. The code stipulated that all films receive a certificate of approval from its Studio Relations Office (SRO); it also included a proviso that “sympathy of the audience shall never be thrown to the side of crime, wrongdoing, evil, or sin.” As a result, in to comply with code regulations, the protagonist of prison movies was meant to “get it” by the end of the film—whether by execution or by serving a life sentence to term. In practice, the narrative conventions developed through allusion, allegory, and double entendre or through characters whose motivations did not meet the code’s standard of propriety but who were by any



This photoprint of a scene from a motion picture called *The Lost New Year's Dinner*, copyrighted by the Edison Company around 1908, is part of an early prison-themed movie and shows a man and woman sharing a meal together inside a jail cell.

account moral, or at the very least sympathetic, beings. Consequently, the depiction and critique of institutionalized punishment was in direct contravention of the code. In 1934, amendments were made to the Production Code's enforcement structure. According to a familiar narrative around Hollywood and censorship, a confluence of stakeholders in the industry—economic, political, and religious—pressured the code's drafters to vigilantly regulate the content of films in order to protect vulnerable groups (including women, children, and the destitute) from the harms of exposure to morally questionable images. Prison films released while the code was in full effect often included redemption stories—though, as is most evident with the distaff version of prison films, that redemption comes through the love of a “good man,” not through institutionalized punishment.

Women in Prison Movies

With World War II mobilization, the United States mounted mass-scale propaganda campaigns that urged women to take paid employment in war industries and replace the thousands of men (and some women) who were leaving to fight. Some took industrial work, but those who were already earning wages in low-paid service sector jobs as waitresses and domestic workers could find higher-paid jobs (hitherto held by men), earn sufficient wages to be self-sufficient, and aspire to new modes of social, cultural, and physical mobility. At the same time, new configurations of the “dangerous” seductive woman—one who lured soldiers through sexual wiles into spilling military secrets—emerged in popular media. “Victory girls” and prostitutes became special targets of punishment, and some jurisdictions built special detention facilities for women who committed these “moral” offenses. These themes are foregrounded in films that take place in women's prisons.

Women in prison (WIP) films are most often subsumed within the more popular and more widely recognized prison film genre. While many of the conventions are reflected and reproduced in WIP movies, to reduce WIP films to a female version of prison films ignores the specificities of the WIP subgenre. By using women characters, WIP films can be read as critiquing certain hegemonic

forms of masculinity and normative heterosexuality, as well as the total prison institution itself.

WIP films of the 1930s to the 1950s were primarily popular melodramas or “women's films” with a backlight of social protest about the conditions of women's prisons. They followed a (redomestication/redemption story—and by extension, the recuperation of the threat posed by independent women—about a young, attractive, often naïve woman who moves from being a criminal subject to a love interest and eventually becomes “big house angel” ready for marriage upon release. There are cause-and-effect connections (“good” girl is innocent); loose ends are tied (“good” girl is redeemed); and the main characters form a romantic heterosexual union. Despite variations in the cinematic vocabulary, the protagonist has usually been framed, often by her gangster or otherwise unsavory boyfriend, as in *Lady Gangster* (1943, Florian Roberts), or is wrongfully convicted, as in *Women Without Names* (1940, Robert Flory). Alternatively, a sympathetic working-class protagonist is sent to jail for a minor offense such as vagrancy, as in *Condemned Women*, (1938, Lew Landers). Upon arrival at the women's prison, she is confused, overwhelmed, and disembodied. She may discover that she's pregnant or unable to find a guardian for her child while she completes her sentence. She is often forced to hand her baby over to child and family authorities. In another cycle, she discovers corruption within the institution, as in *Caged* (1950, John Cromwell), is subjected to cruelty by a matron or another prisoner when she tries to speak up, and becomes increasingly hardened to her surroundings. More often than not, her bitterness subsides through the love or kindness of a good man, whether a chaplain or a minister who wants to save her soul, a doctor who teaches her life lessons, a reporter trying to expose corruption and cruelty within the prison, or a lawyer/district attorney convinced of her factual or moral innocence. Examples of this narrative can be found in *Ladies They Talk About* (1933, William Keighley and Howard Bretherton), *Acquitted* (1929, Frank Strayer), and *Girls of the Big House* (1945, George Archainbaud).

Post-1950s Prison Film

While our discussion ends in the mid-1950s, suffice it to say that by the 1960s, audiences were

less inclined to expect that prison films would tell a story about tough though sympathetic individuals whose experiences in oppressive and hostile environments generate the conditions in which they redeem themselves for past wrongs.

The ethos of the sixties and seventies was one of uncertainty and of breakdown of discipline and social order on the one hand, and celebration of possibilities on the other. The general anxiety was in part due to dramatic changes and political upheaval from social movements (the new left, prisoners' rights, second-wave feminism, civil rights, gay and lesbian rights, environmentalism), the rise of postmodern and post-structural theories in the academy (and their challenge to entrenched understandings of authority and truth), the Vietnam War, the Watergate scandal, and a debilitating economic recession. Further, given the decreased popularity of cinema generally, filmmakers and production companies shifted toward narratives—of sexual exploitation such as *Caged Heat* (1974, Jonathan Demme) and escape and revenge movies such as *Escape From Alcatraz* (1979, Don Seigel)—and visual structures, especially television and direct to video programs that attracted a new audience base and ultimately raised questions of a different nature around the concept of crime and the function of punishment in contemporary society.

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See Also: Alcatraz Island Prison; Film, Crime in; Literature and Theater, Crime in; Literature and Theater, Punishment in; Punishment Within Prison; Television, Crime in; Television, Punishment in; Women in Prison.

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Fingerprinting

The practice of fingerprinting has been utilized for centuries as a source of identification that ranges in use from business transactions to the identification of human remains. Since as early as the 14th century, fingerprints have been used to identify individuals based on the accepted idea that no two are alike. In relatively recent years, fingerprinting has been one of the main sources used in the identification of criminals and the recording of criminal histories. The reason fingerprinting has become such a popular form of identification stems from the fact that fingerprints do not change over time, as physical characteristics do. Some scholars and practitioners say this practice has surpassed other human identification systems such as DNA. Fingerprinting has evolved over time to the practice it is today. Techniques will continue to change and grow to ensure the validity and reliability of fingerprinting and the use of this sound forensic tool by the police and court system.

Origin and History of Fingerprinting

Although the use of fingerprinting has become mainstream, the practice has not always been widely accepted. Before the use of fingerprinting for identification purposes arose, the Bertillon



FBI analysts individually examining fingerprint records stored in hundreds of numbered file cabinets in a federal armory during World War II. The FBI uses 10 points of comparison to make a positive identification of a fingerprint, but the traditional number of points used to determine whether the prints are indeed from the same person is generally 12, as established by Edmond Locard. The court system has not yet established a definitive number of points that must be used to determine identification of a fingerprint.

system was used. This system measured and recorded the dimensions of certain bony parts of the body. It was believed that this formula matched only one person and would not change over his/her lifetime. The use of the system was discontinued circa 1900 with the discovery of two individuals who had the same measurements. Will West was sentenced to the U.S. Penitentiary in Leavenworth, Kansas, where it was found that there already existed a prisoner, William West, with identical measurements. Therefore, the Bertillon system was suspended, and fingerprints were substituted for identification purposes.

The origins of fingerprinting are difficult to pinpoint directly; however, prehistoric pictures were discovered in Nova Scotia with detailed writings

of ridge patterns of fingerprints. In ancient Babylon, fingerprints were discovered on clay tablets that were used for business transactions, showing that the ancient civilization viewed the prints as an identifying characteristic. Ancient Chinese artifacts show thumbprints on clay seals used for various business and personal purposes. In 14th-century Persia, various official government documents were found to have fingerprints and impressions. A government official of the time, who was also a doctor, noticed that no two fingerprints were alike. This was the first time it was recorded that individuals have distinctive and unique fingerprints.

From this discovery in the 14th century, the idea of unique fingerprints has been studied throughout history. Marcello Malpighi noted in his 1666

treatise that there appeared to be ridges, spirals, and loops in different configurations in fingerprints. He did not realize at the time that this could be a tool used for identification purposes but did discover a layer of skin that was 1.8 millimeters thick. This layer of skin was later named the Malpighi layer. John Evangelist Purkinji published his thesis, stating that there were nine different fingerprint patterns that existed. However, he too did not hypothesize that these patterns could be used for identification of individuals. Nevertheless, England started using fingerprints for identification in 1858 with the aid of Sir William Herschel. In India, Herschel used fingerprints on native contracts, requiring that the individual put his/her palm/handprints on the back of every contract. Based on their superstitious beliefs, this practice scared the natives, preventing them from going back on their word. This method was also used to prevent pension fraud by assembling files of pensioners' fingerprints. From his work with these impressions, Herschel noticed that the impression could be used to prove or disprove identities. There was no scientific backing for this practice at the time.

In 1880, Henry Faulds studied skin furrows (grooved or deep wrinkles) that were found on prehistoric pottery. From his study, he devised a method for classification for fingerprints and realized their identification power. His classification system was published in *Nature* (Nature), where it explained how fingerprints could be used in identification and the use of printer's ink. He was credited with the first fingerprint identification of a greasy fingerprint left on an alcohol bottle.

Faulds passed his classification system on to Charles Darwin for continuation; Darwin in turn passed on the system to his cousin Sir Francis Galton for prolongation. Galton published his own book *Fingerprints* showing the first classification system where the main focus was on determining heredity and racial background. His book scientifically proves that both Herschel and Faulds were correct. Fingerprints do not change over time, and no two individuals have the same fingerprints, the odds of which he found was 1 in 64 billion. In his classification system, which is still used today, Galton described characteristics by which prints can be compared. These characteristics were called Galton ridges at the time and

were described as line-like structures on the skin of the palm side of the finger past the last joint (now called minutia).

In the United States, Gilbert Thompson was the first individual to use his own fingerprints to prevent forgery during his geological survey of New Mexico. The first use of fingerprinting as an identification tool in criminal matters was by Juan Vucetich in 1892. Vucetich had been filing fingerprints following the teachings of Francis Galton. When a bloody fingerprint was found at a murder scene, Vucetich used the fingerprint to identify the killer. From there, Henry P. DeForrest pioneered the widespread use of fingerprinting as an identification resource in the United States.

In 1902, the first systematic use of fingerprints in the United States by the New York Civil Service Commission for testing was implemented. A year later, the New York state prison system began the first systematic use of fingerprints for criminals. A student of Bertillon, Edmond Locard, established the first rules for the minimum number of minutia (Galton ridges) necessary for identification: A minimum of 12 points must be established between the known and unknown prints in order to make an accurate identification. The use of fingerprints for identification purposes had already become mainstream in the United States, however, as evidenced by their inclusion in the identification of a murderer in the 1883 book *Life on the Mississippi* by Mark Twain (Samuel L. Clemens).

Collection and Comparison

Traditionally, fingerprints are detected using powder that sticks to the sweat, oils, and grease left after an individual touches an object. A technician, using a light hand, spins a fingerprinting brush that has been dipped in powder over the area in question. When a latent (unseen) print appears, the technician uses lifting tape to lift the print and place it on a print card for analysis. Collecting fingerprints has evolved over the years to involve chemical agents, such as ninhydrin and a cyanoacrylate mixture. Ninhydrin is a small particle reagent that reacts with the amino acids that are secreted from pores in the fingertips, turning the print a light purple/pink color. This chemical is mainly used on porous materials, such as paper or money. A cyanoacrylate mixture is used to fume an object for latent prints. Cyanoacrylate (superglue)

is mixed with baking soda and sawdust to create a superglue mist that covers the object, gluing any prints that may be on said object and protecting them from disruption. From here, the technician can powder the print to lift and analyze.

The comparison of fingerprints is considered an art form mastered through practice and patience. To become a certified fingerprint technician, extensive training is required along with career-long maintenance training. To start a comparison between a known print and an unknown print (fingerprint lifted from an area of interest), an individual compares the cores. There are three main core patterns: arch, loop, and whorl. The arch pattern originates from one side of the print and moves laterally into a point. From here, the pattern falls back to the opposite side of the print, giving the pattern a parabolic shape. The arch pattern has two separate styles: plain or tented. The tented arch pattern differs from the plain arch by having an angle or upthrust within the arch. The loop pattern consists of the majority of ridges entering at one side of the print, recurving, and exiting on the same side as they entered. Two subgroups are associated with the loop pattern: ulnar and radial. The distinction between these subgroups can be made by determining the side in which the loop enters and exits the print (ulnar or radial side).

The last fingerprint pattern is the whorl pattern, consisting of four subpatterns: plain, accidental, double loop whorl, and central pocket loop whorl. The whorl pattern, or plain whorl, generally is described as looking like a bull's-eye starting in the middle of the print and making concentric circles that curve around themselves, moving outward. Whorl patterns generally contain two deltas (collections of ridges that form a triangular shape). The accidental whorl pattern contains two different types of patterns but excludes the plain arch pattern. The double loop whorl pattern is distinctive because it contains two loop formations and two deltas. The last subpattern, the central pocket loop whorl, must contain one recurving ridge within the pattern.

Once the fingerprint technician has determined the central core pattern, minutia points are determined to match the prints to one another. There exist a number of different minutia points, but the most widely used are as follows: delta, ending, island, bifurcation, enclosure, dot, bridge, double-

bifurcation, trifurcation, spur, and crossover. As described above, a delta is a collection of ridges that form a triangular shape, as in the triangular shape of soil deposits when several rivers collide. An ending ridge steps abruptly and never picks up again. An island ridge has a starting and stopping point (most ridges do not have definitive beginnings and endings). A bifurcation involves a single ridge that divides into two ridges. An enclosure involves the splitting of a ridge into two ridges that eventually come back together. A dot is a short ridge that does not continue in any direction, with the appearance of a small dot. A bridge involves two ridges that are connected by another ridge, as in a bridge connecting two streets. A double bifurcation point involves a single ridge that divides into two ridges, then divides once again. In relation, a trifurcation point is where a double bifurcation divides a third time. A spur is a short ridge that extends off a longer ridge, as in a spur to a highway in relation to roads. A crossover point is where two ridges cross over one another.

Technicians use these minutia to compare known and unknown prints to one another to determine if they are from the same individual. Comparisons are made by picking a point on the known print to start from and finding the same point on the unknown or lifted print. From this point, another point is found on the known print and marked. The technician counts the ridges from the new point to the original point. He/she uses this number to determine if the second point of comparison exists on the unknown print as well. The technician continues to determine points of comparison and matches them to the unknown print to determine if the two prints are from the same individual. The traditional number of points used to determine whether the prints are indeed from the same person is generally 12, as established by Edmond Locard. However, the Federal Bureau of Investigation (FBI) uses 10 points of comparison to make a positive identification. There is no definitive number of points that must be used to determine identification of a fingerprint established by the court system as yet.

Flaws and Mistaken Identification

The admissibility of fingerprints as scientific/forensic evidence was debated within the court system for a number of years. However, in 1993,

the Supreme Court case *Daubert v. Merrill Dow Pharmaceutical* determined the admissibility of scientific evidence in the court system by establishing five characteristics. The theory or technique must (1) have been or be able to be tested, (2) been subjected to peer review or publication, (3) have in existence standards controlling the use of the technique as well as maintenance, (4) have general acceptance in the scientific community, and (5) have a known potential rate of error.

Despite the best efforts of fingerprint technicians and the advancement of technology, mistakes can be made in fingerprint comparisons. Many factors can contribute to these errors, such as distortion, small segments, or the absence of a core. Sometimes when a print is lifted from an object, it is distorted because of the angle at which the print was positioned on the object. If distortion occurs, it is hard to accurately match minutia points because they may be missing or stretched. If only a small segment of the print exists or the core is missing, orientation of the print is almost impossible to determine.

Because of these distortions and errors, technicians and software used to compare fingerprints statewide and nationally can make mistaken identifications. There have been several cases involving the mistaken identification of individuals with the use of fingerprints. For instance, in 2004, Brandon Mayfield was originally identified as a participant in the Madrid bombings by a latent print found on the bomb. It was later discovered that a misidentification of fingerprints led to his detainment in relation to the bombings. In 1998, Stephan Cowans was convicted of the attempted murder of a police officer while fleeing a robbery in Massachusetts. He was acquitted six years later with DNA evidence that showed the fingerprint comparison to be flawed. In 1997, the fingerprint of Shirley McKie (an American citizen) was found at a murder scene in Scotland. Experts in the United States compared the prints found to McKie's and testified on her behalf, and she was cleared of suspicion.

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See Also: 1921 to 1940 Primary Documents 1941 to 1960 Primary Documents; Bertillon System; Crime

Scene Investigation; Federal Bureau of Investigation; Forensic Science; Technology, Police; Trials.

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Fish and Game Laws

The purpose of fish and game laws is to protect wildlife resources and habitats. Among the principal objectives of these laws are the protection and replenishment of endangered and threatened species, regulation of public harvest of fish and game species, conservation of migratory wildlife, protection of habitat and fisheries, and containment and eradication of invasive species. The earliest laws were often antipoaching initiatives at the local or state levels, designed to punish trespassers who took fish or game from private lands without permission or from public lands out of season or in excessive quantities. Formalized bodies of fish and game laws in the United States originated from justified public concern that wildlife resources and habitats faced increasing levels of strain from overuse. By the 19th century, in many areas of the United States, wildlife and wildlife habitats were threatened with eradication because

of overuse occurring in part because of lack of governmental intervention such as the establishment of codified regulations. As the U.S. conservation movement became more prevalent, so did the number and scope of laws designed to safeguard American wildlife and many of its habitat areas.

National Regulation

While fish and game laws have existed in some form at the local and state levels almost since the nation's inception, substantive formal federal involvement with wildlife regulations can be traced to the 19th century. In 1869, Congress designated Alaska's Pribilof Islands as a national wildlife reservation with the objective of protecting fur seals. Two years later, congressional legislation created the U.S. Commission on Fish and Fisheries, the first federal agency responsible for wildlife resources. One of the principal purposes of the creation of Yellowstone National Park, the first national park in the United States, by act of Congress in 1872, was the protection of wildlife within its boundaries. Congress passed the U.S. Forest Reserves Act in 1891, granting the president executive authority to establish and maintain forest reserves on federal lands.

By the 20th century, the U.S. government had assumed an active role in the creation and maintenance of federally protected parks and wildlife refuges and in the creation of federal laws related to fish and game resources. The Lacey Act of 1900 was the first federal law designed to protect wildlife resources. It prohibited the interstate shipment of illegally obtained game and was expanded in 1935 to ban international trade in illegally taken wildlife. A spate of new federal legislation was implemented in the 1970s and 1980s, perhaps the best-known example of which is the Endangered Species Conservation Act, which banned commercial trade in all species threatened with extinction.

State Regulation

In the United States, most implementation and enforcement of fish and game laws occurs at the state level. Although significant coordination exists between federal and state efforts to protect and regulate wildlife, individual states assume most of the responsibility for preserving and regulating the use of fish and game within their

jurisdiction. For example, the issuance of permits to hunt, trap, or fish recreationally and the limit concerning how many fish or game animals can be taken in a particular season is regulated primarily at the state level. Most wildlife officers who enforce fish and game laws are state officers who often work in conjunction with federal wildlife and environmental authorities as well as local law enforcement. Interjurisdictional cooperation in the establishment and enforcement of fish and game laws is customary practice and is necessary to, among other things, help address manpower shortages in fish and game law enforcement. For example, the U.S. Fish and Wildlife Service has only around 200 special agents and little more than 100 wildlife inspectors at its disposal nationally, making active cooperation with state and local authorities essential.



A U.S. Fish and Wildlife Service staffer holding a family of formerly endangered Aleutian cackling geese in Alaska in 2008. Successful conservation efforts led to the geese being taken off the endangered species list in 2001.

Advocacy groups have historically played an important role in helping to implement and monitor fish and game laws. From the founding of the Audubon Society in 1885 and the Sierra Club in 1892 up to the present day, many non-governmental organizations (NGOs) and private citizens have worked, often in conjunction with government wildlife or environmental agencies, to implement and enforce laws related to fish and game conservation. A recent example of the latter was the 2007 creation of a new federal rule mandating that “circle hooks” be used in certain fishing tournaments in lieu of more traditional “J hooks.” The National Marine Fisheries Service and the International Game Fish Association determined that circle hooks, in that they could be removed more easily and subsequently caused less physical trauma, significantly decreased fish mortality in catch-and-release settings and thus helped to ensure a stronger and healthier game fish population.

International Regulation

Fish and game laws and regulations can often have international scope. Many species of plants, animals, and fish, including threatened and endangered species, are traded internationally and are thus subject to import-export laws. Most countries protect indigenous flora and fauna through their own domestic laws, and most cooperate with and uphold the import-export laws of other nations as related to fish and game, meaning that if a species is banned from sale/export in one nation, most others will correspondingly ban its importation.

The United States has established numerous treaties that facilitate multilateral cooperation in laws related to wildlife conservation, examples of which include migratory bird treaties with several nations, including Canada, Mexico, and Japan, that are designed to protect species via cooperative enhancement of habitat, collaboration in research, and joint regulation of hunting. The United States and more than 160 other nations are signatories to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which supports sustainable trade in many nonthreatened species while safeguarding some 33,000 species of animals, plants, and fish that may be imperiled. The large volume of wildlife trade in the United States, approximately \$2.8

billion in 2008, necessitates such formal governmental regulation.

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See Also: Blood Sports; Cruelty to Animals; Environmental Crimes; Livestock and Cattle Crimes; Rural Police; Smuggling.

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Fletcher v. Peck

Fletcher v. Peck (1810) is a seminal Supreme Court decision written by Chief Justice John Marshall. Holding a state law unconstitutional, the decision reinforced the stability of legal contracts and expanded judicial review to include acts of state legislatures.

After the Treaty of Paris ended the American Revolution in 1793, the state of Georgia claimed 35 million acres of the Indian reserve to its west known as the Yazoo lands. Two years later, as the result of a bribery scheme involving nearly every state legislator, the state passed a grant for the sale of the territory for a bargain price of 1.4 cents per acre. The Yazoo lands, which would eventually become Alabama and Mississippi, were sold to four private land companies, bringing in a modest total of \$500,000.

The subsequent public outrage resulted in the ouster of most incumbent legislators, and in 1796, the newly elected legislature hastily rescinded the

law, voiding the property rights deriving from it. The repeal, however, was met with considerable opposition. The original purchasers refused to recognize the rescission and continued to sell the lands to third parties. As a result, the issue became more complicated as increasing numbers of Yazoo claimants lived outside Georgia and alleged to be innocent buyers unaware of the fraudulent 1795 grant.

The controversy over the Yazoo lands persisted for years, as every title was called into question. In an attempt to quiet the Yazoo claims, Georgia ceded the territory to the federal government in 1802. But after repeated petitions to Congress to enforce their rights failed, Yazoo claimants turned to the courts, making a case out of Robert Fletcher of New Hampshire and John Peck of Massachusetts, filing in federal court on diversity grounds in 1803.

A Case of Complicated Ownership

Fletcher purchased 15,000 acres of land for \$3,000 from Peck, who bought the tract from another third-party buyer. In a collusive case, Fletcher brought suit against Peck for breach of warranty of title, arguing that Peck had no legal right to sell the land because the original title was annulled by the 1796 repeal. Fletcher also objected to the title granted by the state on the grounds that it was still subject to right of occupancy by the Indians. Both land speculators, Fletcher and Peck, brought the suit with the objective of invalidating the legislative rescission and quieting Indian title to the land. The case reached the Supreme Court in 1809.

Fletcher v. Peck put the Supreme Court in a difficult position. To bolster confidence in land purchased under state grants, the court needed to uphold the original fraudulent Georgia grant while voiding the uncorrupt repeal. Although the case centered on whether the contract between Fletcher and Peck could be nullified by an act of the Georgia legislature, the court considered generally whether vested property rights granted by an earlier law could constitutionally be invalidated by a subsequent law.

In a unanimous decision written by Chief Justice Marshall, with Justice William Johnson concurring, the court held that Peck's title was valid and that the Georgia state legislature's repeal of the land grant was unconstitutional. Marshall's

opinion delineates two reasons for the decision: The Georgia rescission violated Article I, Section 10, Clause 1 of the Constitution (the contract clause) and undermined natural property rights.

Marshall held that the 1795 land sale was a binding contract and as such was protected under the contract clause, which prohibits states from passing ex post facto laws and laws impairing the obligation of contracts. Marshall explained that each third-party buyer of Yazoo land had a good title at law, even if the original grant had been fraudulently secured. Annuling contracts or grants made by previous legislative acts amounted to an unconstitutional ex post facto law, penalizing bona fide buyers for the wrongs committed by those from whom they were purchasing. Although the court acknowledged that a legislature may repeal any act of a former legislature, this did not apply where actions taken under the previous act were still valid.

Interested in safeguarding the stability of contractual obligations, Marshall also relied on natural law to justify his opinion. Connecting the natural law doctrine of vested rights to the rights protected by the contract clause, Marshall asserted that once absolute rights vested under a law contractual in nature, a repeal of that law cannot divest those rights. Marshall hoped to demonstrate that the Constitution's positive law was based on fundamental ideas of justice, the validity of which did not rely on explicit textual reference.

By ruling the 1796 Georgia repeal unconstitutional, *Fletcher* expanded judicial review to include acts of state legislatures, thereby reinforcing the Supreme Court's authority as the final interpreter of the Constitution. As a result, the contract clause became a chief means of bringing state legislation under the review of federal courts.

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See Also: *Marbury v. Madison*; Marshall, John; *Martin v. Hunter's Lessee*; Supreme Court, U.S.

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Florida

Florida became a U.S. possession in 1821 and formally a territory in March 1822; statehood followed in 1845. During the territorial era (1821–45), Florida was a sparsely settled frontier and a veritable rogues' paradise, which attracted escaped slaves and fugitive debtors, thieves, and other lawbreakers from neighboring states. As northeastern states retreated from the use of public punishments, Florida's territorial justice system retained fines, short confinement in county jail, whipping, and the pillory for white offenders, and cropping, branding, nailing to a post by the ears, and death for slave/free black offenders. In 1822, the legislative council mandated public hanging for those convicted of murder, rape, and arson, and this continued after 1845. Executions were to take place in the county of conviction and were performed by the local sheriff for a fee of \$10.

Early Statehood

Statehood brought rapid economic and population growth, as the number of residents doubled between 1845 and 1860 to 140,000, 40 percent of whom were slaves. The convergence of the southern honor ethic, frontier conditions, continuing threats of Native American violence, slavery, ethnicity, ineffective law enforcement, and alcohol made antebellum Florida a dangerous place. Town marshals and constables were employed in emerging cities. A police department and a uniformed patrol were established in Tallahassee in 1841, but the main law enforcement officers in Florida were the county sheriffs. They were popularly elected (except during the Reconstruction period, when they were appointed) and their wide-ranging roles included tax collector, process server, court officer, prison-transport, and public auctioneer. Throughout the antebellum years,

hard-pressed sheriffs struggled to apprehend lawbreakers and to keep hold of them because of the scarcity of secure jails.

Prior to 1861, indictments for crimes against people were far more frequent than those for crimes against property, but punishment for those convicted of property crimes was more severe than for those found guilty of violent crimes, excluding murder. There were also frequent prosecutions for crimes against public order and morals. However, more than half of all indictments never went to trial. Black offenders generally did not go to trial unless charged with the most serious offenses, but when they did, judges seem to have treated them fairly. Fines and corporal and capital punishments were the main forms of punishment in a criminal justice system more concerned with the resolution of disputes than the prevention of crime. James M. Denham suggests that the judicial system, particularly the courts, served as a unifying agent, albeit a not very effective one. Florida witnessed an explosion of violent outlaw gangs and extra-legal activity in the 1850s against a background of national abolitionism and the intensification of sectional politics, and continued legislative and law enforcement ineptitude within the state. In response, Floridians formed secret regulator bands to lynch lawless gangs of thieves, particularly those involved in stealing slaves.

In January 1866, in the aftermath of Confederate defeat, state legislators passed Black Codes, harsh and discriminatory laws against the recently emancipated black population, which emphasized offenses such as rape, insurrection, and vagrancy, which were particularly associated with African Americans. Soon ruled unconstitutional, their main provisions and purpose—social, economic, and political control of freed people—appeared in other statutes. The Reconstruction years (1866–77) were a particularly violent period in Florida history but there were also significant changes to the criminal justice system. A new criminal code accompanied the 1868 constitution, the first state prison was established, and major cities adopted or expanded their uniformed police forces. Five black police officers were elected in the Jacksonville municipal elections in 1876.

The sparseness of the white population and state income partly explain why Florida failed to



Crew members from the Coast Guard cutter Thetis in Miami standing guard over 62 bales of seized cocaine with an estimated wholesale street value of \$48 million. The drugs were intercepted on December 17, 2010, by the U.S. Coast Guard. Miami and other parts of southern Florida have long been a hub for the cocaine trade and money laundering. In the 1980s, drug smuggling and related crime contributed to Florida's suffering from the highest crime rate in the United States.

build a penitentiary before the Civil War, while the “problem” of rising numbers of black law-breakers and precarious state finances explain its subsequent closure. In the last third of the 19th century, 90 percent of state convicts were black. Ad hoc convict leasing arrangements existed prior to 1879 but in that year, the legislature abolished the state prison and authorized the leasing to private contractors of all state convicts as a more profitable means of dealing with offenders. County prisoners were also leased out to private business operators who paid the state a set fee for convict labor.

Over the next 40 years, thousands of mostly male and black inmates, both state and county prisoners, labored in phosphate mines, naval stores, and lumber operations. From the 1890s, capricious enforcement of Jim Crow laws,

vagrancy statutes, and the use of the criminal justice system to shore up white supremacy ensured a steady stream of convict laborers. Similarly, in turpentine camps deep in the pine forests, thousands of noncriminal black workers were kept in debt peonage and subjected to forced labor, and were beaten and sometimes killed.

Twentieth Century

State prisoners were gradually withdrawn from the convict lease beginning in 1914. Starting in 1919, Florida operated a dual system of punishment for noncapital state felons, whereby Grade 1 prisoners were sent to the State Convict Road Force (SCRF) or chain gangs, and Grade 2 prisoners were sent to the state prison farm, which began as a temporary stockade in November 1913 and was officially designated as the Florida State Prison

in 1927. Inmates worked as agricultural laborers or in prison garment, shoe, and tag factories.

The murder of Martin Tabert, a northern white male short-term prisoner, by a convict guard in a Dixie County lessee camp in 1921, its exposure in 1923, and the resulting condemnation of Florida's penal practices, spurred key reforms, including the abolition of convict leasing, the abolition of corporal punishment of all prisoners, and the adoption of the electric chair rather than hanging as the preferred method of execution. Starting in the 1870s, executions were increasingly carried out within county jail yards, and the adoption of the electric chair, located at the state prison farm, completed an important shift to private execution. Yet the state led the nation in lynchings in the early 20th century. Sheriffs continued to perform legal executions until a state executioner was appointed in 1941.

Despite major enforcement problems during Prohibition and the fears over rising youth crime rates in the early years of the Great Depression, Florida's crime rates remained fairly stable in the first half of the 20th century. By 1955, there were five major prison facilities, including one for youth offenders, and the first women's prison was fully operational. Able-bodied inmates still performed road labor, although the chain gangs had been replaced by smaller close-custody permanent road prisons. Exponential state population growth beginning in the mid-1950s, rapid urbanization, civil rights protests and violent white backlash, and rising ethnic tensions, particularly in the southern counties, stretched law enforcement, the courts, and prisons. At the same time, the judicial revolutions of the 1960s owed much to key legal challenges that originated in Florida, including discriminatory treatment of female offenders by all-male juries in *Hoyt v. Florida* (1961) and the right to counsel in criminal cases for poor or indigent defendants in *Gideon v. Wainwright* (1963).

By the 1980s, Florida's crime rate was the highest in the nation, and by 1989, the state had the fourth-largest prison population and second highest number of people on death row. Acute prison overcrowding meant inmates often served less than 40 percent of their sentences prior to release. Drugs and the violence that accompanied the turf wars over their control and distribution

generated intense fear of crime and criminals. For most of the decade, Miami was a leading center in the importation of drugs, particularly cocaine, and associated money laundering operations. The appearance of crack cocaine led to further financial and political pressures on police, courts, and prisons as they struggled to cope with rising numbers of offenders.

Crime rates began to stabilize in the 1990s. Nevertheless, Florida's prison population is now approaching a total of 101,000 persons, who are housed in 146 facilities that range from 62 major correctional institutions to 33 work-release centers and five road prisons. In mid-2011, there were seven privately operated prison facilities in the state. Florida remains an active execution state, with more than 390 persons waiting on death row.

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See Also: Chain Gangs and Prison Labor; *Chandler v. Florida*; Convict Lease System; Drug Abuse and Addiction, Contemporary; *Gideon v. Wainwright*; Hispanic Americans; Miami, Florida; Sheriffs.

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Floyd, Charles Arthur

Charles Arthur Floyd (1904–34) was an American gunman, bank robber, and murderer. He used various aliases, including Jack Hamilton, Frank Mitchell, and George Sanders, but he is best known by his nickname “Pretty Boy” Floyd. In his day, many poor farmers in Oklahoma regarded him like Robin Hood. He made it to the top of the Federal Bureau of Investigation’s (FBI’s) Most Wanted list.

Charles Arthur Floyd was born February 3, 1904, near Adairsville in Bartow County, Georgia. In 1911, his family moved outside Hanson, Oklahoma. His father was a tenant farmer who moonlighted as a bootlegger. At 20 years of age, Floyd married 16-year-old Wilma “Ruby” Hargrove; they had a son, Jack Dempsey Floyd, born in 1922. In 1922, Charles Floyd was apprehended for a post office robbery, but there was insufficient evidence for conviction. Floyd had a reputation for getting drunk on Saturday nights on a local concoction known as Choctaw beer; for this he was nicknamed “Chock.” His first known serious criminal offense occurred in 1925 when he purchased a pistol that he used on September 11, 1925, to commit a payroll robbery at a Kroger store-warehouse in St. Louis, Missouri. He was found and convicted for this robbery and on December 19, 1925, began serving his five-year sentence in the Missouri State Penitentiary in Jefferson County, Missouri. Floyd was paroled back to Oklahoma in 1929 and on his return learned that his father had been killed by Jim Mills. The Floyds and the Mills had carried on a blood feud for generations back in Kentucky. Mills was not convicted of the murder based on a claim of self-defense. Mills was never seen again. Floyd, immediately after the disappearance of Mills, fled to Kansas City, Missouri, and became a part of the Pendergast Machine, a crime organization led by Johnny Lazia. Floyd took refuge in a whorehouse run for Lazia by Ann Chambers. It was Chambers, upon seeing Floyd, who gave him the nickname “Pretty Boy.”

In Kansas City, “Pretty Boy” Floyd began using his trademark submachine gun; there he also hooked back up with Red Lovett—they had served together in the Missouri State Penitentiary. The two recruited Jack Atkins and Tom Bradley and from late 1929 to early 1930 this gang

robbed several small banks in Ohio. On March 11, 1930, the gang robbed a bank in Sylvania, Ohio, and sped out of town. They were pursued by a motorcycle officer, Harlan F. Manes, whom Bradley killed with a submachine gun fired out of the smashed rear window of the getaway car. However, the driver, Atkins, smashed into a telephone pole. Police arrived shortly and pried out Floyd, Atkins, and Bradley; Lovett had disappeared. Bradley was sent to the electric chair for killing Officer Manes; Atkins received a life sentence; and, Floyd was given a 15-year sentence for bank robbery. However, on May 25, 1930, while being escorted to the Ohio State Penitentiary, Floyd escaped.

He then robbed several banks in Michigan and returned to Kansas City, where, on March 23, 1931, he killed three plainclothes detectives and then on July 21, 1931, he killed Curtis Burks, a federal prohibition agent. On April 9, 1931, Floyd and accomplices drove into Bowling Green, Ohio, in a stolen car; local police approached the vehicle and Floyd killed Officer Ralph Castner. Floyd fled to Oklahoma. On April 7, 1932, Erv A. Kelly, a special state investigator, tried to arrest Floyd in Bixby, Oklahoma, but Floyd, wounded by Kelly, managed to put several bullets into Kelly, killing him. On June 17, 1933, Floyd, based on fingerprints, was involved in the murder of three policemen and an FBI agent in a botched attempt to free Frank Nash, who was also killed in this Kansas City Massacre outside Union Station. Floyd denied involvement in the incident. Floyd then joined up with John Dillinger and George “Baby Face” Nelson to rob the Merchants National Bank of South Bend, Indiana. After the FBI killed Dillinger, who had been listed as Public Enemy Number One, Floyd garnered the top spot on the FBI’s Most Wanted list.

Charles Arthur Floyd died on October 22, 1934, in East Liverpool, Ohio. It was later related that Special Agent Melvin Purvis of the FBI had ordered Agent Herman Hollis to shoot Floyd. He was immortalized in the ballad “Pretty Boy Floyd” by Woody Guthrie and also mentioned in John Steinbeck’s classic 1939 novel *The Grapes of Wrath*.

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See Also: Dillinger, John; Federal Bureau of Investigation; Great Depression; Kansas City, Missouri.

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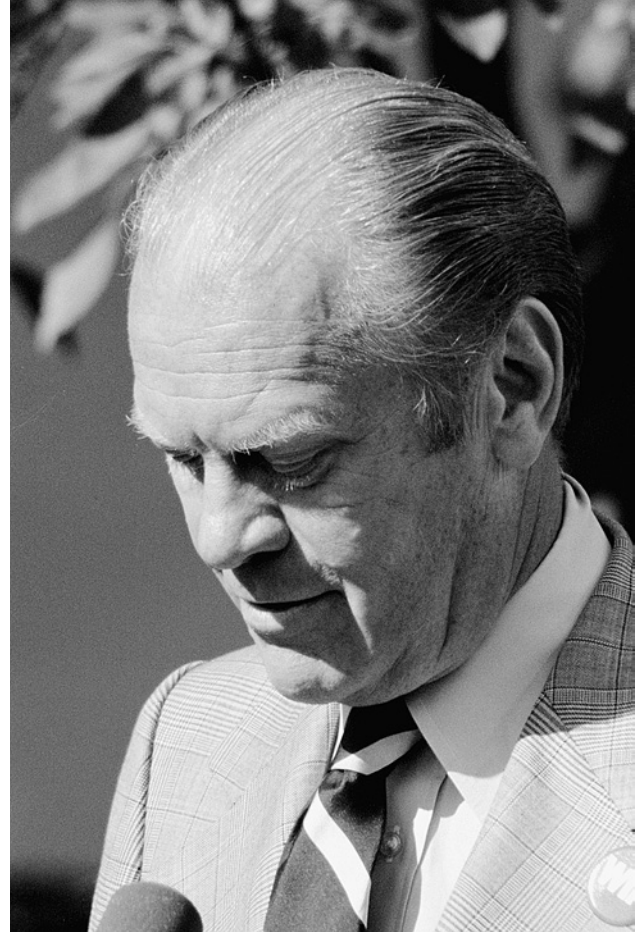
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Ford, Gerald (Administration of)

Having spent his entire Washington career as a member of Congress building a reputation as a courteous and polite politician, Gerald Ford became president at a time when Americans were frustrated and distrustful of government. He sought to restore Americans' faith in their president and deal with a Congress skeptical of presidential power in the wake of Watergate, a scandal riddled with implications of government wrongdoing and presidential misconduct. On August 9, 1974, Gerald Ford became the first president to ascend to the position due to resignation. He was also the first candidate who was not previously vetted in a national election for president or even vice president. Only nine months earlier, on November 27, 1973, the Senate confirmed the nomination of Representative Ford (R-MI) to fill the vice presidency position vacated by Spiro Agnew's resignation. In his time as vice president, the investigation into the Watergate scandal implicated Richard Nixon, forcing him to resign or face certain impeachment.

President Ford effected two important acts of leniency. His administration is known not as much for crimes or punishment for crimes but rather for two reprieves. On September 8, 1974, in an effort to bring the Watergate scandal to a close, Ford pardoned his predecessor, Richard Nixon, of any wrongdoing he might have done while serving as president. Though Ford's action stopped all investigations into Nixon's conduct, suspicions turned to Ford. However, these theories are baseless, as



President Gerald Ford faces reporters at a White House press conference in Washington, D.C., on October 9, 1974, a month after his controversial pardon of former president Richard Nixon.

no proof ever emerged to confirm that Nixon and Ford conspired to trade elevation to the presidency for a pardon.

Though American ground troops were out of Vietnam before Ford took office, the question remained in America of what ought to be done about those who refused to serve. To these young Americans, the impact and ramifications of the war continued long after the troops left the battlefield. Some served jail time, while others fled into exile, forced to live abroad or lurk in America's shadows. Two weeks after Ford pardoned Nixon, he announced his Presidential Clemency Program. Ford's program allowed Vietnam War resisters to earn reentry into American society by performing alternate service. Nevertheless, Ford's plan was not a pardon, a fact that angered

doves and received critiques of hypocrisy from Democrats still frustrated with Ford's full pardon of Nixon. A pardon for draft dodgers (but not deserters) would only come three years later when Ford's successor, Jimmy Carter, did so as his first act as president.

Within Ford's first month in office, he set the tone of his presidency. However, these actions had strong repercussions for his political capital and ability to govern. Two months later, based in large part on frustrations over the twin traumas of the Vietnam War and the Watergate scandal, but also Ford's acts of leniency, the Democratic Party made significant midterm election gains in the House of Representatives and the Senate. Rallying around these new members—known as the Watergate class—Ford's agenda and the plans of his administration often ended up at loggerheads with the Democratic opposition in Congress. Their skepticism of existing presidential power and their paranoia about the abuse of power translated to a fine line Ford had to walk. Moreover, Ford's leniency irrevocably damaged his political capital and was one of the reasons he lost the 1976 election.

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See Also: 1961 to 1980 Primary Documents; Carter, Jimmy (Administration of); Clemency; Nixon, Richard (Administration of); Presidential Proclamations; Selective Service Act of 1967; Watergate.

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Forensic Science

From the etymology of the word *forensic* comes a greater understanding of the term's relationship to crime investigation and prosecution. The Latin root, *forensis*, roughly translates to "of the forum." In one way, to mark something as "forensic" means to use evidence and testimony collected with the express purpose of being presented in a public legal forum. In another way, the term *forensic* is bound to notions of public argumentation. "Forensics" is a debate surrounding a question of wide public interest, where two sides of an issue are offered to listeners, and the winner is determined by the compelling selection and presentation of evidence. Beyond these definitional boundaries, forensic evidence or forensic science is more colloquially understood as physical evidence as well as the collection, testing, and identification of that evidence within the context of a criminal prosecution. Thus, "forensics" indicates a type of physical matter as well as the means by which that matter is made probative and admissible in a courtroom through legal and scientific scrutiny.

In one basic definition, forensic science means the application of scientific principles and methods to legal problems or to satisfy legal requirements. Throughout its historical development, forensic science has been caught between the two disciplinary frameworks of law and science. Scientific truth is determined through hypothesis, standardized experimentation/testing supported by technological developments with findings subject to rigorous peer review, and further testing before the theory becomes widely accepted or transformative of previous knowledge. The reproducibility

of results is a key component scientific research. The field of science, however, can be perceived as a closed circuit of knowledge production and dissemination, which makes it difficult to communicate complex and sometimes contradictory findings to a larger public with ease and continuity. Such a process is exacerbated in the courtroom, where rules of argumentation dictate the admissibility of testimony and evidence emerges as truth within the course of a legal proceeding.

Against this backdrop, forensic scientists operate, explaining what things are and interpreting what things mean. The discipline is an applied science with the goal of determining truth through what Roger Koppl and Lawrence Koblinsky call a “rule-governed competitive process.” While at first glance, the ideas of rules and competing truth link science and law together, the variability of the governing rules and the depth of influence regarding competing interpretations illustrate core tensions among the disciplines that emerge in particular ways within forensic domains. Recent studies have found that these tensions between legal and scientific protocols have allowed forensic science and scientists to operate in a vacuum, bolstered by the air of infallibility conferred upon them by popular-culture crime narratives, without national standards to govern training, testing, and testimony. In other words, forensic science in the United States operates without standardized and rigorous means for officers of the court, not to mention the public at large, to determine which disciplines represent strands of legitimate science and which are using terms and technology borrowed from but not subject to scientific scrutiny to argue their forensic value.

History

It seems logical to locate the beginnings of U.S. forensic science discourse in the rapid expansion of scientific and jurisprudence fields in the late 19th century. The scientific revolution and the increasing reliance upon the scientific method offered fertile ground for experimentation relevant to the development of forensic sciences, particularly in the fields of pathology, chemistry/toxicology, and physical anthropology. By the mid-19th century, medico-legal domains—from the development of an organized and trained police force to the use of “expert” witnesses to consult on cases during

investigation and court proceedings—were evolving and developing new technologies and grappling with professional protocols and standards. In the United States, practices regarding scientific criminal investigation were scrutinized by the public through the lens of the rapidly expanding domain of mass media. Such simultaneous development also inspired skepticism and controversy about the scope and accuracy of what would become known as “forensic science.”

Large urban centers such as New York and Chicago incorporated from and capitalized on discoveries made by European experts such as Pierre Nysten (a physician who conducted in-depth studies of rigor mortis in 1811), Mathieu Orfila (who linked decomposition and etymology in the early 1830s), Henry Faulds (a Scottish physician who published articles in the 1880s describing fingerprint identification and analysis), Alphonse Bertillon (the father of the criminal photography and measurement classification system known as anthropometry), Ludwig Karl Teichmann (the Polish anatomist whose 1863 test based on color-change reactions to show the presence of blood on an object was used until the mid-20th century), and Hans Gross (a self-taught jurist in 1870s Austria whose view of crime as a scientific problem to be solved by a well-trained observer employing refined research and technical tools became the foundation for the discipline of criminalistics). Perhaps the most foundational forensic concept came from Edmond Locard, the director of the Police Scientific Laboratory of Lyon, France (established in 1912). “Every contact leaves a trace,” or Locard’s principle, as it came to be known, relates to microscopic trace evidence such as dust, hair, fibers, and soil. Almost 75 years later, the belief that forensic scientists can uncover and analyze physical matter no matter how obscure and degraded and conclusively connect it from victim to suspect still holds sway in the public perception of the power and certainty of forensic science.

In the early 19th century, much of the focus in the United States was on developing the field of legal medicine. In 1813, the College of Physicians and Surgeons of New York City established the first Chair of Medical Jurisprudence. In 1867, the Medico-Legal Society was organized in New York. By the turn of the 20th century, however,

forensic focus turned to standardizing and professionalizing police forces and building upon scientific developments to standardize techniques of investigation and incarceration. The proliferation of scientific “experts” with their dramatic but largely untested and unchallenged claims of identification and authenticity fed the public’s imagination, which was already whetted by the stories of Sherlock Holmes and Chevalier Auguste Dupin (Edgar Allan Poe’s fictional French private investigator). From this time to today, the intermingling of known and developing forensic science innovations and theories with popular culture and mass media narratives has shaped public consciousness about the power and persuasiveness of techniques labeled “forensic science,” regardless of whether they employ the rigors of scientific testing, peer review, and reproducibility.

Urban centers with exploding populations and greater financial resources led the way in developing forensic professions and protocols. In 1903, the New York state prison system began collecting and categorizing fingerprints as part of other anthropometric measures and photographs of suspects and prisoners. In 1905, newly elected president Theodore Roosevelt (a former police commissioner of New York City) established the Federal Bureau of Investigation (FBI). In 1910, August Vollmer, the self-educated chief of police in Berkeley, California, organized that city’s first public crime lab. Under Vollmer’s stewardship, new technologies (the polygraph) and techniques (such as an early prototype of a fingerprint database) were merged with new training practices. In Chicago, Calvin Goddard, a significant figure in the field of ballistics, had greater success



Calvin Goddard, a ballistics pioneer who created the first private crime lab at Northwestern University, went on to establish the Federal Bureau of Investigation's (FBI's) first lab in Washington, D.C. In the 1990s, the FBI moved the lab to Quantico, Virginia, to join the Forensic Science Research and Training Center. The photo shows an FBI laboratory scientist at work in the early years of the FBI lab.

establishing the first private crime lab at Northwestern University, which had its own publication, *American Journal of Police Science*, to report new findings and techniques to the wider forensics community. Goddard's expertise, particularly his comparison microscope study of the bullets and casings that upheld the convictions of Nicola Sacco and Bartolomeo Vanzetti, made him the perfect candidate to oversee the development of the FBI's own technical laboratory. This lab's first site was Washington, D.C., but it was moved in the 1990s to Quantico, Virginia, where the FBI had created, in 1981, its Forensic Science Research and Training Center.

Evolution of Modern Forensics

By the early 20th century, an explosion of new forensic techniques and experts deluged unprepared courtrooms across the United States. Without unified standards to guide rulings or educate judges, prosecutors, or defense attorneys about which applications stood up to scientific or industry scrutiny, rulings were dependent upon the persuasiveness of expert witnesses and the resources of labs and lawyers. Some guidance was given in 1923 with *Frye v. United States*. In the case, the appeals court upheld the ruling of the trial judge, who denied the defendant's request to admit expert testimony regarding his results from a systolic blood pressure deception test (an early prototype of the lie detector). The judge denied the testimony on the grounds that a community of relevant experts had not established the validity and reliability of the test. As a result, the "Frye Standard" would guide rulings regarding expert testimony on forensic science techniques and technology in American courtrooms for the next 70 years.

In 1965, Supreme Court Chief Justice Earl Warren created a committee of lawyers and legal scholars to draft uniform federal rules of evidence. After much delay and redraft by Congress, these rules were adopted in 1975. The 1993 Supreme Court case *Daubert v. Merrell Dow* would turn to Part 702 of the Federal Rules of Evidence to supplant the Frye Standard. The "Daubert Standard" gave the trial judge the task of evaluating the admissibility and relevance of scientific evidence and expert testimony. *Daubert* specified the factors judges must consider when determining whether a scientific methodology is valid, particularly

whether the theory or technique in question can be and has been scientifically tested, its known or potential error rate, and the existence of industry or disciplinary standards controlling its operation.

One particular strain of forensic science, DNA analysis, appeared to fulfill the stringent demands of the Daubert Standard. DNA fingerprinting, a technique credited to the 1984 accidental discovery of British geneticist Alex Jeffreys, emerged out of academic science research. Unlike other forensic fields, which developed out of or in conjunction with criminal investigation, developers touted DNA "fingerprinting" as an objective and infallible means to identify a suspect. In reality, identification is not the same as individuation, although these two terms are frequently interchanged in public understandings of forensic science. Many forensic scientists promote the idea of individuation, a set of characteristics and traits (some genetic or biological, some culturally or socially encoded) that are unique to an individual, thus tying physical evidence to a specific suspect definitively.

Private genetic firms (such as Lifecodes and Cellmark Diagnostics, two early industry leaders) found it profitable to promote this probabilistic science as capable of providing desired individuation. Industry publicity coupled with compelling data and claims made DNA a particularly potent weapon in the courtroom. Public failures of forensic evidence, especially DNA evidence, however, dramatized the continued tension between scientific certainty and legal argument.

Perhaps the greatest failure of "certain" DNA evidence happened during the 1995 trial of O. J. Simpson. There were many factors that led to Simpson's acquittal, not the least of which was the background of two members of his defense team: Barry Scheck and Peter Neufeld. Under the auspices of their legal clinic, the Innocence Project (founded in 1992), Scheck and Neufeld championed the accuracy of DNA evidence to overturn wrongful convictions motivated by faulty eyewitness identifications or incompetent or corrupt legal practices. Arguing for Simpson's defense, however, Scheck and Neufeld led the attack on lax standards, testing imperfections, and faulty chains of evidence in the Los Angeles crime lab. They also employed their own forensic expert, Henry Lee (then the chief criminalist for the state of Connecticut), whose dramatic yet understated



Federal Bureau of Investigation forensics students recovering remains at a "body farm" where donated bodies are left to decompose for research and teaching purposes and for comparisons to actual crime-scene conditions. In 2009, a report found that the relatively new field of forensic pathology suffered from a lack of necessary funding and training of personnel, lack of lab accreditation, and the disparity of coroners (who are not always medical professionals) versus medical examiners overseeing autopsies.

testimony supported the defense's interrogation of the statistics that accompanied blood-typing evidence and ultimately undermined what was believed by prosecutors to be a solid case built on persuasive forensic evidence.

Since the Simpson verdict, the public face of forensic science has changed dramatically due in part to the popularity of television crime stories. The Daubert Standard left the assessment of forensic science validity and relevance of expert testimony to the trial judge, a presumed nonscientist. The general public had shows like *CSI: Crime Scene Investigation* (CBS) to help them visualize the technology and techniques behind crime science (e.g., ballistics, toxicology, DNA analysis). In that popular-culture domain, the crime narrative tends to reinforce the notion that forensic science

is infallible; heartily funded by local, state, and federal institutions; and that there are legitimate, vetted hypotheses behind tests and conclusions drawn by scientists always in service of (but never manipulated by) the legal system.

Soon after *CSI*'s debut and dominance in the ratings, articles began to appear in the mainstream press arguing about a growing "CSI effect." This effect took one of two trajectories. One was positive for the prosecutors: There was no case that could not be uncovered and successfully prosecuted. One was positive for defense attorneys: Jurors who followed *CSI*-like programs would expect prosecutors to provide reams of physical evidence for cases as basic as shoplifting or as complex as serial murder. Spectators have been characterized as susceptible to largely unproven forensic methods such

as handwriting analysis, “voice print” comparison, and psychological profiling, which, despite its continued use as a plot device in myriad films and television shows, has no solid foundation in actual case law or scientific testing. Emerging media studies scholarship challenges these characterizations; however, public prosecutors have seized upon the presumed existence of the “effect” to argue for greater funding and training for forensic personnel at the local, state, and federal level.

Criticisms

In 2006, under the terms of the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, Congress authorized

... the National Academy of Sciences to conduct a study on forensic science ... [via] an independent Forensic Science Committee. [...] including members of the forensics community representing operational crime laboratories, medical examiners, and coroners; legal experts; and other scientists as determined appropriate.

This study produced the 2009 report *Strengthening Forensic Science in the United States*, which found that despite the impression given by popular culture, the state of forensic science was anything but sound. The authors noted the shocking lack of standardization for forensic practices across specialties. The findings reinforced the post-Daubert state of the field where DNA analysis has led the way for rigor and sound scientific principles; however, the backlog of genetic material for testing grows each year, and there remain unacceptable disparities in efficient and accurate testing from state to state. Even the recently established field of forensic pathology was found in relative disarray because of a lack of necessary funding and training of personnel, lack of lab accreditation, and the disparity of coroners (elected positions not necessarily filled by medical professionals) versus medical examiners overseeing autopsies and collecting and testing trace evidence. In 2011, there is no nationally administered test, board of certification, or training for forensic scientists in the United States on par with those required for licensure of doctors or lawyers.

As one step to remedy this state of the field, Senator Patrick Leahy (D-VT) introduced the Crimi-

nal Justice and Forensic Science Reform Act in January 2011, with the stated goal of establishing

... a [Federal] Office of Forensic Science and a Forensic Science Board, to strengthen and promote confidence in the criminal justice system by ensuring consistency and scientific validity in forensic testing.

Until the act becomes law, increasing financial and bureaucratic pressures on local, state, and federal law enforcement agencies will hamper the development of coherent systems of forensic science training, testing, and testimony, even as public demands grow louder that the rigorous and regulated forensic science world of *CSI* should be a reality.

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See Also: 1981 to 2000 Primary Documents; Ballistics; Bertillon System; Crime Scene Investigation; Detection and Detectives; Famous Trials; Federal Bureau of Investigation; Fingerprinting; Poe, Edgar Allen; Sacco and Vanzetti; Simpson, O. J.; Television, Crime in; Vollmer, August.

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Fornication Laws

Although the term *fornication* derives from the Latin word for brothel, *fornix* being the vaults under which prostitution was practiced in ancient Rome, the term typically refers to illicit sexual intercourse. The Bible warns against fornication, and the New Testament lays down the principles of Christian sexuality that had been zealously disseminated by Paul in the Christian circles of the 2nd century. Fornication was not a common law crime, and it has been traditionally associated with morality and religion, although it is formulated and punishable in a variety of ways following different sociocultural contexts.

The Anglican Church punished illicit sex with prison, and adulterers were often executed. In the 17th and 18th centuries, fornication was punished by the Ecclesiastic Courts of the Church of England, the so-called bawdy courts, allegedly exported to the United States by Puritans. Canon law still punishes fornication with the *sbattezzo*, an Italian term indicating the procedure of deregistration or disassociation of the culprit from the registry of the church. However, most secular countries nowadays do not have fornication laws. The United States inherited from the United Kingdom the common law principle on the basis of which consensual sexual intercourse between majors is a matter of privacy and therefore not punishable.

Illicit sex, variably defined as sodomy, adultery, and fornication, was heavily prosecuted in the early colonies—execution and hanging for adultery and other infamous punishment such as being branded with an “A” on the forehead, or being stripped and whipped publicly. Furthermore, as late as the 1970s, 14 states and a district in the United States passed statutes prohibiting fornication: Alabama, Florida, Georgia, Idaho, Illinois, Massachusetts, Missouri, North Carolina, North Dakota, Rhode Island, South Carolina, Utah, West Virginia, Wisconsin, and the District of Columbia. The notion of fornication as an offense has been articulated with concomitant legislation on sodomy, adultery, premarital sex, and cohabitation outside marriage. The application of these laws did not proceed, it should be noted, without debate on both the nature of the offense and the reasons for punishment.

Surveys of case law on fornication usually start with *Poe v. Ullman* (1961), a U.S. Supreme Court case in which Justice John M. Harlan argued the unconstitutionality of a Connecticut statute that declared contraception by married couples to be a crime. The argument, however, was not successful because the law had never been enforced. Four years later in 1965, the same court, in *Griswold v. Connecticut*, ruled that such a statute was an invasion of the right of privacy protected by the Fourteenth Amendment. Since then, the hope of successfully challenging fornication laws on the basis of the right of privacy encouraged the blossoming of legal arguments advocating the rights of sexual privacy. However, the U.S. courts never accepted the right to sexual privacy as a specific right different from the right to privacy.

Legal doctrine reasoned on several occasions that laws prohibiting fornication and cohabitation were not explicitly forbidden by the Constitution; that the right to engage in consensual heterosexual intercourse between adults could only be argued as a right to privacy; but that even in presence of a fundamental right to privacy, fornication laws would be admissible if they served a state interest. Moreover, even Justice Harlan had reasserted the state’s right for criminal inquiry in cases of adultery, homosexuality, and fornication. Although the decision on the unconstitutionality of the prohibition of contraception by married couples does suggest that the state should be cautious with attempts to regulate the sexual conduct of its citizens, subsequent case law shows instead that the regulation of sexual conduct has been regarded as a state’s prerogative.

Until 2003, attempts to assert the right to sexual privacy were unsuccessful for unmarried couples. However, as many of the statutes punishing fornication affirm “when any man and single woman have sexual intercourse, each is guilty of fornication, a misdemeanor,” one could wonder if fornication laws only targeted heterosexual couples. Furthermore, in *Lawrence v. Texas* (2003) the Supreme Court declared unconstitutional the laws prohibiting sodomy, but since fornication laws were still in force, this had curious implications on the notion of fornication by suggesting that fornication may only be related with vaginal sexual intercourse. *Martin v. Zihlerl* in 2005 constituted a crucial turning point regarding the legitimacy

of fornication laws. The background of the case was that Martin and Zihlerl lived together as an unmarried couple when Martin was diagnosed with herpes. She filed a case against her partner, Zihlerl, for failure to inform her of the danger of being exposed to a contagious disease.

The precedent had ruled that damages could not be recovered for injuries caused by participation in a criminal offense. The Virginia Supreme Court, however, declared that fornication laws constituted a violation to the Fourteenth Amendment, allowing, as a consequence, Martin to proceed against her partner. The Supreme Court accepted the argument that sexual intercourse is part of the private and personal relationship of any couple, and that the state does not have any legitimate interest in criminalizing it, unless it involves minors, nonconsensual sexual activity, prostitution, and/or it is done in public.

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See Also: 1600 to 1776 Primary Documents; Adultery; Bible; Bigamy/Polygamy; *Caminetti v. United States*; Incest; *Lawrence v. Texas*; Obscenity Laws; Prostitution, History of; Puritans; Sex Offenders; Sodomy.

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Fraud

In a legal sense, fraud is defined as intentionally misrepresenting facts with the ultimate intention of cheating another person out of something of value, particularly money or property. The use of



The Federal Trade Commission estimates that around 9 million people are the victims of identity theft every year. In a credit card fraud, thieves may open new credit cards in someone else's name or may change the billing address on an existing account.

the term can be traced back to the 14th century. Fraud may involve force of some kind and may include trickery, embezzlement, or larceny. Under the common law system used by the federal government and by all states except Louisiana, four elements must be present for fraud to occur: (1) the perpetrator must make a material false statement, (2) the statement must be made with knowledge that it was false, (3) the victim must have taken the false statement as truth and relied on it, and (4) the victim must have suffered some damage as a result of the action. The word *fraud* may also refer to one who commits such acts. The Federal Bureau of Investigation (FBI) reports that fraud is the fastest-growing crime in the United States, claiming almost a fourth of its resources.

According to the Federal Trade Commission, most fraud crimes concern credit cards, utilities, banks, employment, loans, and government documents or benefits. In the first case, either a card or

the cardholder's identity is stolen. At least 80 percent of all utility frauds target telecommunication providers. In the case of bank frauds, the most common crime is for a perpetrator to empty a victim's bank account and abscond with the money. Banks are a frequent target of frauds by criminals who open accounts in someone else's name or secure loans using false identities. Government documents are used fraudulently to establish false identities or to prove citizenship, and some criminals have long records of receiving government benefits based on false identities or information.

Frauds are often described as confidence schemes because they are perpetrated by con artists who excel at convincing would-be victims of their honesty and legitimacy. Fraud may be committed in person, over the telephone, in a letter, or, increasingly, over the Internet. It may occur without the victim even being aware that a crime has been committed, as in the case of identity theft. Those who commit fraud may also be individuals or businesses that cheat the government, employers, or insurance companies. Fraud committed on a large scale tends to capture the media's attention, and such perpetrators become household names.

The late 20th and early 21st centuries have produced a plethora of financial frauds that range from money laundering, kickbacks, and insider trading to hedge fund, mass marketing, and securities and commodities fraud. An increase in the number of these crimes is often a response to an uncertain market or to the political environment. During the economic crisis of 2009, for instance, the FBI investigated 592 cases of fraud that entailed more than \$1 billion in losses. Many of the crimes under investigation involve large corporations that are engaged in manipulating financial data to either hide assets or to indicate large profits in order to drive stocks up. The FBI is the chief governmental agency that bears the responsibility for investigating financial frauds at the federal level and has created the Financial Crimes Section (FCS) to carry out this function. Within the FCS, specific units such as the Asset Forfeiture/Money Laundering Unit, Economic Crimes Unit, Health Care Fraud Unit, Forensic Accountant Unit, and National Mortgage Fraud Team are comprised of expert investigators in their fields.

Experts have identified a "fraud triangle" in which the perpetrator or fraud is under perceived pressure, seizes an opportunity, and develops the ability to rationalize the fraudulent behavior as acceptable. Research indicates that those who commit fraud have different profiles from most criminals. They are older than the average criminal. They are better educated, more religious, and are less likely to abuse drugs or alcohol or to have previous arrest records. Personality-wise, they tend to be more optimistic, have higher self-esteem, are more motivated than the average criminal, and are more likely to live in well-adjusted families. Perpetrators of fraud are also less likely than other criminals to be caught. If they are found out, they are less likely to be arrested, convicted, or incarcerated. Those who do end up in prison rarely serve long prison terms.

Common Frauds Reported to the FBI

The FBI reports that the most common types of fraud committed in the United States are telemarketing frauds, the Nigerian letter fraud, identity theft, and advance pay schemes. Telemarketing fraud usually begins with a telephone call in which a victim is informed that he/she is being offered a once-in-a-lifetime opportunity or has won a free gift, vacation, or prize. The caller states that a specified amount of money should be sent to the caller, and the transaction requires the target to furnish a credit card or bank account number.

The Nigerian letter, also known as "419" fraud because of the habit of emptying a victim's bank account, has been in operation for a number of years, but perpetrators continue to find victims willing to send them money. A letter or e-mail, purportedly originating in Nigeria, offers the recipient millions of dollars to help the sender transfer money out of Nigeria. In order to take part, the target must provide items such as blank letterhead stationery or the name of his/her bank and account number. The victim's "initial output" is to be dispersed in designated installments. Information gained in this way is sometimes used to steal the victim's identity.

In advance pay schemes, criminals convince their victims that they will receive a loan, contract, investment, or gift in return for an outlay of varying amounts identified as "finder fees." Once the fees are paid, the victims discover

that they are ineligible for the promised return on their investments. Variations of this scheme include the work-at-home advance fee scheme, in which the victim must pay a small amount on a credit card to obtain information about jobs that purportedly offer large payments for tasks such as stuffing envelopes, and the cancer research advance fee scheme, in which cancer patients or their families are hoodwinked into paying for a mythical cure for cancer. Healthcare and health insurance fraud schemes also find ready victims. These ploys vary from charging insurance companies for products and services that were touted as free and that were never received to “rolling lab” schemes that offer fake health tests in public places and then bill insurance providers or Medicare for the cost. The elderly are particularly vulnerable to fraud, losing more than \$2.6 billion each year as a result of scams perpetrated by either family members or strangers.

Con artists have also become adept at using the government and legitimate businesses to commit fraud. One way of doing this is through the redemption/strawman bond fraud, in which victims are convinced to pay large amounts of money for a kit intended to teach them how to recover money from the federal or state government. Letter of credit frauds have also been successful, with perpetrators offering enormous annual interest rates on investment in a letter of credit or erroneously convincing a bank to release a letter of credit in response to false documentation that goods have been shipped. Some Americans have fallen victim to prime bank note fraud perpetrated by international fraud artists who offer large returns on investing in fraudulent bank guarantees through payments transmitted to foreign banks.

Some of the most notorious frauds committed in the 20th and 21st centuries have concerned Ponzi schemes in which the perpetrator appears to be a legitimate member of the business community. Early investors receive dividends on schedule, but they are paid out of funds submitted by subsequent investors. Eventually, the scheme falls apart because no money is left to pay investors. Italian-born Charles Ponzi perpetrated the first of these scams in the United States in the early 1920s. Ponzi’s grand scheme involved buying up vouchers for postage in one country and selling them in another country, where the postage was

considerably more expensive. Ponzi used investments of newer investors to pay dividends to initial investors. Pyramid schemes are somewhat similar to Ponzi schemes in that initial investors are paid according to schedule. As these investors in distributorships or franchises spread the word about their successful investments, other investors eagerly come on board. When the pool of investors dries up, the scheme falls apart. The market manipulation fraud, also known as “pump and dump,” manipulates the market to increase trading volume on a targeted security in order to garner profit for those involved in the scheme and produce losses for innocent parties who buy the artificially inflated stock.

Cybercrime and Telecommunications Fraud

Two of the most common types of cybercrime are auction fraud and identity theft. Criminals have become extremely adept at perpetrating fraud through rigging Internet auctions. One common ploy is using shills to drive prices up. Perpetrators also engage in a host of investment scams and confidence games. As computers became more commonplace in the last five years of the 20th century, identity theft became a major issue. Generally, all that is needed to establish credit is a name, an address, a date of birth, and a Social Security number. Confidence artists set up bogus e-commerce sites or hack into legitimate e-commerce sites, providing them with credit card information and giving them access to personal information that allows them to establish false identities. Perpetrators explain that the address on the account will be different because they are in the process of moving, preventing mail from going directly to the person whose identity has been stolen.

A person’s identity can also be stolen without using the Internet. Information can be obtained through stolen wallets or by rifling through garbage cans for personal information. In some cases, the identities of dead people have been used to commit identity theft. Criminals can then easily open bank accounts, procure car loans, and negotiate mortgages in the names of their victims, who may only learn of the crime when they view their credit reports or apply for credit. It may take up to \$1,000 for a victim to restore damaged credit after his/her identity is stolen. Merchants who

are taken in by the cons are usually the ones who absorb the loss of fraudulent transactions.

The sheer brazenness of these cybercrimes has ensured their initial success in a number of instances. For example, Carlos Salgado, Jr., a 36-year-old freelance computer technician operating out of San Francisco, managed to steal more than 100,000 credit card numbers using widely available computer intrusion software and amassed a credit line of \$1 billion. He was caught in an FBI sting in May 1997, when he tried to sell the information for \$260,000. One of the most far-reaching hacking schemes occurred in April 2011, when rogue members of the hacking group Anonymous operating out of Spain hacked into Sony's PlayStation Network, giving them access to credit card numbers and personal information on approximately 70,000 people worldwide. The service was down for several weeks so that it could be rebuilt. It is still uncertain how much damage was caused by the stolen credit card numbers.

By the early 21st century, cybercrime had reached epidemic proportions. Congress passed the Identity Theft and Assumption Deterrence Act, making it a violation of federal law to engage in identity theft. In 2000, financial institutions reported approximately \$2.4 billion in losses and expenses incurred as a result of identity theft. More than 90 percent of all government agencies reported that they had experienced security breaches in 2001. The majority of those breaches were perpetrated by hackers or con artists, but a large number were the work of disgruntled employees. With partial funding from the Department of Justice, the FBI has partnered with the White-Collar Crime Center to establish the Internet Crime Complaint Center (IC3).

In 2001, IC3 reported that Internet auction fraud was the most common type of cybercrime, comprising 42.8 percent of all complaints. Slightly over a fifth of all complaints dealt with nondeliverable merchandise and payment accounts. Nigerian letter fraud accounted for 15.5 percent of the total complaints received. Victims of this fraud lost approximately \$5,575 each, compared with \$1,000 lost in investment fraud incidences. According to IC3's profile of victims of cybercrime, they are most likely to be individuals, rather than business, are predominately males between the ages of 30 and 50, and are likely to live in California, Florida,

New York, Texas, or Illinois. Losses incurred tend to be higher for businesses than for individuals and for males than for females. Most contact between perpetrators and victims takes place either through e-mail or via a Web page.

According to statistics released by the National Fraud Information Center (NFIC), some \$5 billion was lost to telecommunications fraud alone in 2000. The NFIC identifies the 10 most commonly perpetrated frauds as work-at-home schemes (16 percent), prizes/sweepstakes (15 percent), telephone slamming (15 percent), advance-fee loans (11 percent), magazine sales (10 percent), telephone cramming (9 percent), credit card offers (5 percent), travel/vacation frauds (3 percent), credit and loss protection frauds (2 percent), and investment fraud (2 percent). Telephone slamming is the illegal practice of switching someone's telephone service from one company to another without their consent, and telephone cramming is the illegal practice of charging customers for unwanted or unauthorized services.

Government-Targeted Frauds

In the minds of much of the public, welfare fraud is one of the most common types of fraud committed in the United States, and public pressure was in large part responsible for the passage of the Personal Responsibility and Work Opportunity Reconciliation Act by the Republican-controlled Congress in 1996 as part of their Contract with America. The law required recipients to work 30 to 35 hours a week and placed time limits on the receipt of benefits. Some social workers contend that the lion's share of welfare fraud is committed not by con artists, but by recipients, most of whom are single mothers working for minimum wage, who either knowingly or inadvertently underreport or fail to report income that affects their welfare payments. In San Diego in 2007, the welfare fraud diversion program was created as an alternative to prosecuting first-time, low-level offenders through criminal courts.

The National Health Care Anti-Fraud Association estimates that the United States loses about \$15 billion each year to healthcare spending fraud and suggested in a congressional hearing in 2011 that actual losses are more likely from \$75 billion to \$250 billion per year. The Government Accounting Office suggests that fraud may

often be involved in the \$48 billion that medical insurers improperly pay each year. Most of those frauds are committed through the Medicare program, which critics point out has few checks in place to prevent fraud. Some of those frauds are committed by individuals receiving benefits to which they are entitled, but most involve physicians and others who bill for services not needed or never performed.

Occupational Fraud

Offenses classified as occupational fraud cover a wide range of behaviors that may not seem like fraud to those who commit them. Put simply, it is enriching oneself through the misuse of an employer's or company's resources. In 1996, in its first *Report to the Nation on Occupational Fraud and Abuse*, the Association of Certified Fraud Examiners (ACFE) attempted to clarify the exact meaning of occupational abuse by noting that to qualify as fraud, a behavior must be clandestine, violate an employee's fiduciary duties to the organization in question, either directly or indirectly benefit said employee, and cost the employer assets, revenue, or reserves. By 2004, "skimming" was identified as a major subgroup of occupational fraud. ACFE defined the practice as removing cash without entering it into an employee accounting system. Skimming was generally accomplished by failing to record sales, understating sales and receivables, stealing checks directly from the mail, conducting business after hours, or short-term "borrowing" of funds with the intention of replacing them. "Lapping" is a form of skimming that involves subtracting money from one account to hide the fact that money has actually been taken from a second account.

Experts on fraud have identified three major types of occupational fraud: asset misappropriation, corruption, and fraudulent schemes. At least 85 percent of all cases of fraud deal with asset misappropriation. It is estimated that occupational fraud occurs millions of times each day in the United States and generates losses of at least \$600 billion every year. More than half of all cases of occupational fraud are uncovered through tips from other employees. When tips to hot lines, many of which are anonymous calls from fellow employees, are added to the mix, approximately two-thirds of occupational fraud

cases are reported by coworkers. Audits unearth 22.6 percent of cases of occupational fraud, and another 5.4 percent are discovered in the course of management reviews. Only 1 percent of all cases are discovered through an employee's lifestyle drastically changing as a result of fraudulent behavior. The 2002 ACFE report suggests that 30 percent of occupational fraud occurs in publicly traded companies, 31.9 percent in privately held companies, 24.7 percent in government agencies, and 13.4 percent in not-for-profit organizations.

At the lower end of the occupational fraud continuum are behaviors such as using company property for personal reasons, payroll and sick pay abuses, taking supplies to be used at home, filing false claims for overtime, or ringing up "no sale" when removing small amounts of cash from a register. At the higher end, occupational fraud may involve slick, sophisticated schemes intended to cheat employers out of large sums of money, making false financial statements, or setting up dummy companies for the purposes of channeling company profits into other accounts. Fraud dealing with representation of company funds may be the result of hiding inventory or profits to underrepresent total profits, or it may be concerned with making a company appear more profitable than it actually is to attract investors. Fraud perpetrators frequently manipulate income by recording revenue before it is earned, creating fictitious revenue, boosting profits through non-recurring transactions, shifting expenses to later periods, or failing to report liabilities accurately. Vendor and customer fraud are associated with occupational fraud and may occur simultaneously. Vendor fraud occurs when customers are intentionally overcharged for goods, when inferior goods are shipped, or when goods are not delivered, even when the customer has paid for them. Customer fraud takes place when customers do not pay for goods or when they illegally receive services or goods at no cost.

Historical Examples of Fraud

The history of notorious frauds is legendary. According to FBI records, there were extraordinarily large numbers of land frauds committed in the United States in the 19th and early 20th centuries. Many of these involved buying up lands cheaply and luring investors with false promises

of finding oil or precious gems, but others enticed potential buyers by convincing them that they would find the perfect lifestyle in places like California or Florida. The southern areas of both states attracted Americans interested in warm climates, outdoor sports, and the lure of celebrities. One of the most notorious land frauds that took place in the American west occurred in Oregon in 1905. Land areas that were rich in timber surrounded the newly built Oregon and California Railroad. Even so, the price of the land was set at \$2.50 an acre in order to entice new settlers to the area. Ned Harriman, a railroad official, devised a plan whereby he sent men to buy the land and then sell it to his accomplice, who then sold it to the highest bidder for timber rights. A falling out between the partners led to exposure, and more than 1,000 people were eventually indicted. The best known of those convicted of fraud was four-term U.S. Senator John H. Mitchell, who was convicted of accepting bribes to expedite the fraudulent land sales. Representatives John N. Williamson and Binger Hermann were also indicted in the scheme.

Because of the lure of untold riches, the field of mining was ripe for fraud, and the Comstock mine in Nevada was particularly associated with this crime. The name derived from Henry “Pancake” Comstock, who tricked his way into a share of the original silver mine discovered by prospectors in 1859. San Franciscans quickly lined up to invest in the Comstock mine. At one point, more than 400 mining corporations were formed and almost none of them sold land that actually contained silver. The complexity of the enterprise led to the creation of the San Francisco Stock Exchange Board, which locals dubbed “the 40 thieves” because of all the chicanery involved. Other mining schemes involved “salting” designated areas to trick victims into investing in non-existent mines. One of the most elaborate of such schemes, the “Great Diamond Hoax of 1872,” was the brainchild of Philip Arnold, who worked as a bookkeeper for a drill company and was familiar with industrial-grade diamonds. In 1870, Arnold added uncut garnets, rubies, and sapphires obtained from Native Americans to a bag of uncut diamonds, and he and his cousin, John Slack, launched a lengthy campaign to defraud a large group of investors that eventually included Civil War heroes General George B. McClellan

and Benjamin “Beast” Butler, as well as Horace Greeley, the editor of the *New York Tribune*. Arnold eventually garnered some \$550,000 from his schemes, minus the cost of gems purchased in London that were used to salt the mine. The fraud was eventually uncovered by geologist Clarence King, who went public with his findings.

During the Gilded Age, the United States was growing rapidly, fueled in part by expanding railroads. Between 1865 and 1890, railroad mileage expanded from 35,000 miles to 163,000 miles. Railroad tycoons like Cornelius Vanderbilt and Thomas Clark Durant demonstrated that large fortunes could be made rapidly. Monopolies became common, promoted by men like Jay Gould, Jim Fisk, and Russell Sage, who became known as “robber barons,” because of their “innovative” business practices. Gould, the president of the Erie Railroad, was known as the “prince” of the robber barons and was the most vilified of them all. He bought railroads that were going under, improved them, and sold them for huge profits. He also developed a reputation for manipulating insider stock trading and using corporate funds to pay for personal speculation. He was known for bribing everyone from the brother-in-law of President Ulysses S. Grant to members of the New York state legislature.

Fraud has continued as a major part of doing business in the United States, and new scandals are constantly reported on by the media and surface on the Internet.

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See Also: 1921 to 1940 Primary Documents; Confidence Games and Frauds; Embezzlement; Identity Theft; Larceny.

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Freedom of Information Act of 1966

The Freedom of Information Act (FOIA) of 1966 is a piece of landmark legislation regarding the ability to obtain information from government agencies that previously was not accessible to the public. This act became law in 1966 over the objections of President Lyndon B. Johnson. The law has been amended several times and is still a powerful tool for Americans who are doing research for both personal and public interests.

Prior to the passage of this legislation in 1966, the public had very limited access to federal government information; over time this has changed, although the information can still be restricted under later amendments to this law. The impetus for the FOIA dates back to 1953 when the book *The People's Right to Know: Legal Access to Public Records and Proceedings* was published by Harold L. Cross at the request of the American Society of Newspaper Editors. During this period, the press found it difficult to obtain information from government sources because most everything was considered classified and related in some way to national security.

In response to the book's publication, Representative John Moss (D-CA) began a debate in Congress in 1954 that continued for the next

12 years. A series of hearings took place in those years that led to the proposal of Senate Bill 1160 in 1965, which revised Section 3 of the Administrative Code, which until that point was used as the reason for keeping all information secret.

The final version of the bill satisfied Congress, the president, and those who sought government information. The 1966 version called for the publication of key documents like federal laws, regulations and notices of changes to regulations, presidential documents, and even descriptions of each federal agency and its organization, programs, and staff. Also, the public could get copies of court case opinions, agency policy, and manuals, among other items. Ultimately, the purpose of the act was to give citizens access to public records unless the information in them was considered private, a threat to national security, or inaccessible for other reasons. Agencies that opted to deny access to the information had to provide a reason for the denial within 10 working days, and the denial could be appealed. This satisfied the needs of the press, who often wrote articles requiring government information that was often not available because it was "secret."

Amendments and Impact

President Johnson expressed some concerns about the law but was satisfied with the final version, signing it on July 4, 1966; the legislation went into effect a year later. The law received its first update in 1974 with the passage of the Privacy Act, which allowed individuals to inquire about investigations relating to them personally. This was in response to news reports that individuals who disagreed with government policy may be under investigation or may have been investigated by either the Federal Bureau of Investigation or the Central Intelligence Agency. In addition to allowing access to these records to make corrections, the act also called for individuals to be able to sue the government for letting others view information about them. In recent years, this has been expanded to include information held by educational institutions, libraries, workplaces, and physicians, among others. The Privacy Act allows individuals to designate who has access to their information and who can talk with others about their case.

The FOIA gained some credibility in 1974 after President Richard Nixon argued both executive

privilege and national security as reasons why Congress and investigators should not have access to White House transcripts and other information related to the Watergate scandal; Congress amended the law in 1974 to force federal agencies to release records. President Ronald Reagan used Executive Order 12356 issued April 2, 1982, in an attempt to limit which information could be obtained under the FOIA, calling for close review of the requests weighing national security against the public's right to information. In 1986, further revision to the FOIA by Congress added limitations to what could be released. President Bill Clinton further restricted what could be accessed with his declaration that the National Security Council does not fall under the FOIA because it holds presidential papers that come under different release guidelines. In 1996, the FOIA was amended by Congress with the addition of the Electronic Freedom of Information Act, which addresses electronic formats like discs, Websites, and other electronic forms not in existence in 1966. In 2002, after the 9/11 attacks, Congress passed further restrictions that would prevent foreigners from viewing files held by security agencies in the United States. Access to information is a major issue in today's society, and legislation must address how to keep it secure and how to verify authenticity, particularly in the case of government information.

While the FOIA has increased access to information from government agencies by the public, it remains a subjective process. The release or denial of access to information often depends on who is asking for the information and what it will be used for. The FOIA also allows people to get information that used to be restricted to them, thus putting great strain on the agencies and their resources. Another concern is how to monitor the information that has been released while protecting the individuals involved. Still, the FOIA and its amendments have increased access to information. Researchers can access materials in a timely manner and contribute to the scholarship about politics and historical events without having to wait extended periods for the information to be declassified and released. This law fulfills the founding fathers' wish of having a truly informed public.

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See Also: Clinton, William (Administration of); Nixon, Richard (Administration of); Reagan, Ronald (Administration of); Watergate.

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Frontier Crime

The imagery of frontier violence is pervasive in the American consciousness. From the dime novels of the 1800s to classic western films and TV shows of the 1930s to the present, the cowboy as symbol of the American west is encountered at every turn. The fact the most cowhands were toothless, semi-literate, foul-smelling men who were almost lame and were riddled with health issues such as chronic urinary disorders (from a life in the saddle and sexually-transmitted diseases) is, however, not as cinematic. Also, it is not popularly understood that frontier violence occurred at places other than the scenic environment of John Ford's iconic Monument Valley, and that John Wayne or Clint Eastwood were not invariably present.

The frontier was never static and was really only in the far west for perhaps a generation; the frontier began in the east in colonial times and shifted continually westward. The "frontier" was defined in the 1770s as the Alleghenies, shifted to the Mississippi (the "old southwest") around 1800, then to Texas in the 1830s, and gradually, well after the Civil War, to the area we would all recognize as "true west," the southwest and California. Alaska, of course, touts itself as the "last frontier," and that is largely accurate. Frontiers or border areas are almost always magnets for crime and vice, and all the regions previously mentioned experienced higher rates of crime before or after their respective booms, or frontier eras. Some areas, usually clustered around international borders, literally remained frontiers; some state borders, having earlier been borders between sovereign nations,



This 1937 photograph by Dorothea Lange shows a sign outside Tombstone, Arizona, that lists some of the condemned criminals and murder victims of that town's boomtown era who are buried in Boothill Graveyard. It was said to be called "Boothill" because most people who ended up buried there died "with their boots on" during violent incidents rather than from natural causes.

continued to enjoy frontier conditions and carried on violent traditions. One of the most infamous frontiers was the Sabine Strip, which ran along the Texas-Louisiana border and harbored outlaws, runaway slaves, and ne'er-do-wells from the days when Texas was part of Spain and Louisiana was part of an infant republic. Through Texas's days as an independent nation, through statehood, and even after the Civil War, the area remained a criminal refuge, and violence was common. State legal institutions remained weak in these areas, and they were never successfully cleared of criminal elements and a "frontier mentality."

Conditions Favorable for Crime

The general rule of violent crime on the frontier is that it flourished under certain conditions. One

factor was the presence of large numbers of young men, often drawn to the area by economic boom conditions. The second factor was large numbers of available firearms. Men in frontier situations were often armed for a number of reasons, including hunting and defense from animals, snakes, hostile native people, and each other. Alcohol and other drugs such as opium were freely available and promiscuously consumed in supportive group settings, that is, saloons or opium dens (after the 1840s). The bachelor culture of the era put a premium on honor and on defending one's autonomy and self-respect. This led to many quarrels and altercations over personal space, women (always in short supply), and mining claims. Finally, the lack of respectable influential women and the presence of prostitutes contributed to making the

west really “wild.” The combination of youth, armament, alcohol, (mostly) loose women, and an exacting code of honor was potentially lethal. It is interesting that in all significant situations where violent frontier episodes are known, the above elements are all present. Boomtowns like Sacramento and San Francisco were so disrupted by criminal and civil disorders that businessmen and miners created vigilance committees, formed private armies (militias), and had kangaroo courts. In these venues, thieves and other offenders suffered swift and harsh justice under the iron hand of vigilantes.

Frontier boomtowns in contemporary South America and Siberia have endured similar criminogenic conditions, and there, too, vigilantes appeared. Again, booming economic conditions, young men, alcohol/drugs, arms, and sexual commerce, when combined, create a context for increased criminal and violent behavior, even transculturally. Significantly, it has been argued that these same conditions to one extent or another prevail in the urban frontier of some inner cities today. That is, drug sales and markets represent the economic boom, young men are armed and touchy, and drugs and prostitutes (e.g., “crack whores”) are accessible. Additionally, in the recent past, some communities that adjoined large military bases in the United States have enjoyed reputations as vice-ridden boomtowns. That is, bars, prostitution, and other vice industries flourished to exploit young men, many away from home for the first time. The combination keeps the MPs on the go.

The Old West

Much of the development of the ever-westward-moving frontier was the product of sudden economic booms caused by land speculation, gold or silver rushes, or the movement of commodities such as cattle. In the early days of the republic, canal building pushed the development and settlement westward and created frontier conditions that were ideal for crime. River traffic on the Ohio and Mississippi rivers made cities like St. Louis, Natchez, and New Orleans into frontier towns anew. Buffalo, New York, was a frontier boomtown due to the Erie Canal. Rowdy flatboatmen, gamblers, prostitutes, and bars and saloons were known features of these communities. Railroad

building rekindled this same pattern as the tracks moved westward in the 1860s, 1870s, and 1880s. Where railroads intersected with the terminal points of cattle drives, the possibilities for violence were compounded.

In fact, many of the most celebrated examples of frontier violence occurred in cow towns or mining communities. The former were boomtowns buoyed by their proximity to the track or to the end of cattle drives. Small towns like Fort Worth, Texas, and Dodge City and Abilene, Kansas, expanded with new businesses to deal with the cattle trade. The latter included places like Tombstone, Arizona, and Sacramento, California. Gambling establishments, saloons, and brothels became prevalent. Law enforcement was problematic, and these nascent cities were forced to hire such shady characters as Wyatt Earp in various policing capacities.

Earp, though often portrayed as heroic (as in *Gunfight at OK Corral*), stoic, and strictly law-abiding, was actually engaged in gambling, and possibly in procuring. He was a careerist and political hack who warred with Democrats, especially in Tombstone, carried on violent feuds, and associated with the thuggish and infamous gambler and reprobate “Doc” Holliday. The cinematic portrayal in the revisionist serio-comic *Tombstone*, in which Earp is portrayed as a gambler living with a drug-addled prostitute common-law wife, is much closer to the reality of boomtown law enforcement. Indeed, much of the dialogue carefully tracks that which we know to have really been uttered by principals in the events of that era. In many respects, the association of law enforcement personnel with hired guns, the criminal element, and political/mercantile interests was the norm. A significant portion of the business community was heavily invested in commercialized vice. This created a continuous criminogenic climate.

To deal with the issue of ongoing drunken violence, not a few frontier boomtowns and cow towns, such as Dodge City, Kansas, established and enforced “deadlines.” Firearms were not allowed beyond this arbitrary point. Weapons had to be checked in with a deputy on the scene or in the town marshal’s office. The gun owner would be given a metal token, which he would return upon leaving the restricted area, and his firearm

would be restored to him. This allowed municipal officials to disarm all and sundry, thus reducing the probability of alcohol-fueled lethal violence.

Brothels, casinos, and saloons were, thus, often protected by lawmen. Indeed, as in the case of Earp, the officer might have a personal pecuniary interest in these establishments. Prostitutes were often very young and not particularly attractive but found many eager customers. Upon retirement, they frequently found equally ardent suitors and vanished into reputability as businesswomen (perhaps running brothels or “hotels” themselves) and wives. But while “in the life,” they could provoke fights and were often diseased and the victims of brutality from customers, pimps, and thugs who maintained order in the bordellos. Brothels were often concentrated in areas (red-light districts) that were defined by informal or even legally specified boundaries.

Bars and casinos were in the same areas and were frequently contained within the self-same establishments. As one might imagine, professional gamblers were as problematic as were prostitutes. While attracting “suckers”—inexperienced yokels and gamblers—to the house with their higher level of play, professional gamblers sometimes provoked violence from losers. Occasionally, they provoked mass outbreaks of violence. In 1835 in Natchez, then very much on the frontier, an antigambling vigilance committee lynched five gamblers for the killing of a local citizen. But the city’s vice district, Natchez-Under-the-Hill, remained an attraction for travelers along the Mississippi until after the Civil War.

“Doc” Holliday, who had to leave post-Civil War Georgia because of a violent incident, when not acting as a hired gun for large mining corporations, supported himself by gambling. Living with an infamous prostitute in Tombstone, Holliday was in a series of violent incidents culminating in the shoot-out that newspapers of the time, and subsequent books and films, magnified and mythologized into “the gunfight at O.K. Corral.” In reality, this was comparable to an armed brawl over turf or drug markets in a dozen contemporary American cities, that is, one gang of toughs simply prevailed over another. So it can be seen that gamblers, even when allied with law enforcement of the day, further destabilized boomtowns, thus contributing to the violence of frontier areas.

Conclusion

Some have argued that the “violent” frontier imagery that is so much a part of the national narrative is a media-fostered myth. However, this construct may have been exaggerated by fiction, cinema, and popular culture; recent scholarship disputes such revisionism. The Wild West may have actually been much wilder than was previously thought. Archaeologists, for example, have unearthed much evidence of violence and trauma in graves along wagon-train trails. Moreover, the historical record is replete with examples of interpersonal violence and collective violence such as shoot-outs, ambushes, massacres, and vigilantism. In the absence of an effective state, private justice was often perceived as the only option open to individuals and communities.

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See Also: 1851 to 1900 Primary Documents; Arizona; Earp, Wyatt; History of Crime and Punishment in America: 1783–1850; History of Crime and Punishment in America: 1850–1900; Kansas; Lynchings; Prostitution, History of; Sheriffs; Vigilantism.

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Frontiero v. Richardson

Frontiero v. Richardson (1973) heralded the Supreme Court's willingness to consider gender issues seriously, because for the first time, it held a number of federal statutes in violation of the due process clause of the Fifth Amendment. Also significant was the fact that a plurality of the court endorsed gender as a suspect classification. Prior to the 1970s, laws permitting discrimination on the basis of gender were typically upheld by the courts. However, in *Reed v. Reed*, 404 U.S. 71 (1971), the Supreme Court held unconstitutional, on Fourteenth Amendment equal protection grounds, a state statute requiring probate judges to assign males in preference to females as the administrators of decedents' estates. Applying the "rational basis" test, also known as "minimal scrutiny," the court found the differential treatment arbitrary. In choosing this standard of review, the court refused to apply the "compelling state interest" or "strict scrutiny" test, as it would place gender in the same category as race, ethnicity, and religion.

Sharon Frontiero was an officer in the U.S. Air Force who sought to have her husband classified as a dependent so that they, along with other married couples, might qualify for increased housing allowances and so that he, along with other spouses, might receive comprehensive medical and dental care. Pursuant to the congressional statutory scheme, women service members were required to demonstrate that their contribution to their husband's support was in excess of 50 percent, while male service members, in order to secure the same benefits to their spouses, were not. Frontiero brought suit alleging that this difference in treatment was unconstitutional under the Fifth Amendment's due process clause.

While holding the differential treatment unconstitutional, the individual justices did not agree upon the proper standard of review. Only four justices settled upon gender as a suspect classification deserving of strict scrutiny and requiring the government to show both a compelling interest and a narrowly tailored application. Four other justices agreed that the statutory discrimination was invidious and unconstitutional but thought it better to retain the rational basis test for the reasons articulated in *Reed*.

Additionally, they thought it the proper role of the judiciary to await the ratification of the Equal Rights Amendment. The final justice, Justice William Rehnquist, found no discrimination whatsoever. Subsequently, the court, in *Craig v. Boren*, 429 U.S. 190 (1976), adopted an "intermediate scrutiny" standard of review for gender discrimination. Under that standard, gender-based classifications must serve important governmental objectives and must be substantially related to the achievement of those objectives.

Frontiero, to some degree, addressed the social and political goals of the feminist movement of that era to end what they defined as the paternalistic, separate, and unequal treatment of women in the male-dominated society of the time. Post *Frontiero*, legislative drafting had added Fifth Amendment due process limitations in the civil context. In this way, it transcended the issue before the court as the cases of discrimination against African Americans had in earlier cases. In 1996, the court established a standard of review for sex discrimination cases, heightened or skeptical scrutiny, in an opinion by Justice Ruth Bader Ginsburg.

In the criminal law context, *Frontiero* and its progeny prompted state legislatures to evaluate gender in sexual offenses. Rape law reforms in many states accomplished not only gender neutrality within the statutes but also expanded the definition of the crime to include a larger range of conduct and contact. Penetration by the penis of the vagina, the historical definition, was expanded to include penetration by objects of other orifices. In some states, the term *rape* was replaced with sexual assault, sexual battery, or criminal sexual conduct. These statutes commonly grade the offense based upon injury to the victim, age of the victim, number of assailants, and use of weapons in the commission of the offense. While some of the goals of the reformers were met, gender neutrality and expanded definitions failed to achieve the most important goal, deterrence.

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See Also: Civil Rights Laws; Gender and Criminal Law; Sex Offender Laws.

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Fugitive Slave Act of 1793

Among the early structural legal supports for American chattel slavery, Article 4, Section 2 of the U.S. Constitution provided that "[n]o Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, But shall be delivered up on Claim of the Party to whom such Service or Labour may be due." However, the Constitution did not provide any mechanism to enforce the recovery of escaped slaves or indentured servants. Slavery, particularly within the southern states, had become an essential piece of agrarian plantation economies. Opposition to recovery in Northern states, unwillingness on the part of northern citizens and officials to participate in what some considered kidnapping, and confusion on what they were required to do contributed to escalating tension between regions.

The Fugitive Slave Act of 1793, signed into law by President George Washington, constructed that enforcement mechanism for interstate and territorial cooperation on fugitives from justice and escaped servants and slaves. The act criminalized assistance to escapees, imposing a \$500 fine and imprisonment for up to one year for aiding a criminal fugitive. The penalty for aiding an escaped slave or servant was \$500. Moreover, the act empowered slaveholders and their authorized



The cover of the sheet music for "The Fugitive's Song," published in Boston in 1845, depicts Frederick Douglass during his escape from slavery in 1838. It is dedicated to Douglass and to "the fugitives from slavery in the free states and Canada."

agents and attorneys to seize alleged slaves and petition the courts for removal to the home state. The act ignored the standard elements of due process and merely required appearance before a judge or magistrate and proof to his satisfaction through oral testimony.

After the act was passed, state laws still varied. Some states specified which judicial officer had to hear claims against alleged escapees and fugitives. Others set high evidentiary standards for the oral testimony, and in some cases the act was balanced by substantial penalties for the crime of kidnapping. Although Pennsylvania vacillated on protections for African Americans, it did require that

a judge hear fugitive cases. It also enhanced evidence requirements. The 1793 act is also notable for giving birth to the soon-bustling industry of slave catching. Professional kidnappers roamed northern cities, often seizing both enslaved and free blacks. Historical evidence suggests that they were not discriminating in whom they captured. In 1841, Solomon Northup, an educated New York free man, was enticed by the promise of lucrative work to travel with men who drugged him and turned him over to slave catchers. His kidnappers threatened his life if he revealed his true name and history, and he remained enslaved until 1853. He later sued his kidnappers in New York courts.

African Americans in the north formed vigilance committees, perhaps most notably that headed by David Ruggles in New York, who received the young Frederick Douglass upon his escape from Maryland. The vigilance societies kept up surveillance on slave catchers, drew attention to seizure cases, protected free blacks, and struggled to force jury trials for seized blacks. In some cases, African Americans resorted to violence to free those seized. In the 1842 case of George Latimer, a Virginia fugitive, even Frederick Douglass became involved, arguing to listeners at a New Bedford, Massachusetts, speech that blacks should come to Latimer's aid. He even wrote later to William Lloyd Garrison of the case, but Latimer's case was eventually settled by his purchase into freedom.

The Fugitive Slave Act of 1793 had attention from the Supreme Court that same year in *Prigg v. Pennsylvania* (1842). The court eventually affirmed the supremacy of the act over state laws. Prigg had sought to recover Margaret Morgan, a Maryland slave who had mostly lived in freedom but who had not been formally emancipated. In doing so, Prigg ran afoul of the 1788 and 1826 Pennsylvania laws that protected escaped slaves and regulated the action of slave catchers. In many ways, the *Prigg* decision helped set the stage for the 1850 Fugitive Slave Act. Even though it prohibited state laws and state officials from interfering with the recovery of slaves, it also gave states a way to wash their hands of enforcement and leave it up to federal officials. With this new support for the act, African American opposition and white abolitionist forces were pressed to take

bolder and more provocative action on the issue of slavery.

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See Also: 1777 to 1800 Primary Documents; African Americans; Constitution of the United States of America; Fugitive Slave Act of 1850; Kidnapping; Slavery; Slavery, Law of.

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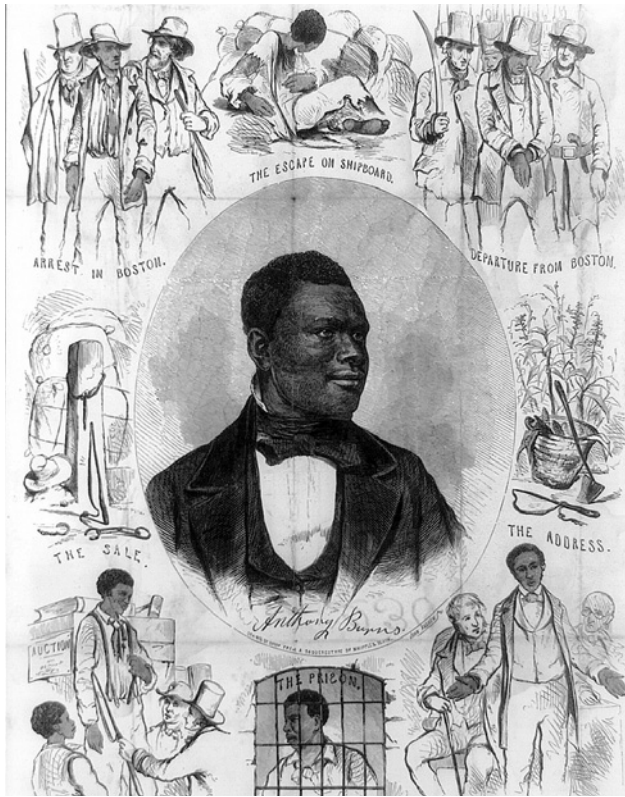
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Fugitive Slave Act of 1850

With a vibrant abolitionist movement, an active Underground Railroad, increasing northern opposition to slavery, and powerful escaped slave orators and authors decrying bondage, southern states faced formidable obstacles to sustaining their system of bondage. The Fugitive Slave Act of 1793 had given teeth to the constitutional right of slaveholders to recover property, but the Supreme Court decision in *Prigg v. Pennsylvania* (1842) had served to both affirm the supremacy of the federal rule over any state resistance and provide states with the ability to leave the massive undertaking up to federal officers. This state of affairs certainly did not serve to reduce the conflict between northern and southern states, and a political battle seemingly heading toward southern secession was only resolved by the Compromise of 1850. This legislation, crafted by Henry Clay and negotiated by Stephen Douglas, settled caustic debates over the extension of slavery to California, Texas, and future states carved out



An engraving of illustrations from the life of fugitive slave Anthony Burns, published in Boston in 1855. Burns's May 1854 arrest in Boston and trial under the Fugitive Slave Act of 1850 sparked riots by abolitionists and other Boston citizens.

of territorial areas. It also settled land claims by Texas and determined the disposition of Texas's debt. Notably, the compromise also ended the slave trade in Washington, D.C., which housed an enormous slave market. However, slavery itself still existed in the capital. The most controversial provision of the Compromise of 1850 was a strengthened Fugitive Slave Act that sought to give greater assurances to southern states that their escaped human property would be returned, even over northern state political opposition and the individual scruples of officials.

The Fugitive Slave Act of 1850 targeted official resistance in particular. Federal marshals who refused to enforce the act and arrest suspected runaways could be fined \$1,000. A force of commissioners was authorized to specifically enforce the act. These commissioners were given broad discretionary powers, including the ability to compel locals to pursue escaped slaves. Intransigence by

local officials and state officials and citizens was countered by the requirement that all citizens aid in the seizure of alleged runaways when properly requested. As before, no form of due process existed for African Americans seized under the act. Anyone claiming a person as a slave only had to provide sworn testimony to the arresting officer. African Americans could not demand a trial by jury, and only an affidavit was required of slaveholders as evidence of servitude in the brief judicial formality. Since suspected slaves had no rights in court, free blacks seized under the act could not offer testimony about their status. The only penalty for mistakenly seizing a free person was a \$5 fee. The processing fee for a captured slave was \$10. The act also targeted the various groups and individuals who had joined together to combat the professional kidnappers. Anyone who offered food or shelter to an escaped slave faced a penalty of six months in jail and a \$1,000 fine. Slave catchers roamed free states incessantly, seizing escaped slaves and reportedly ensnaring free African Americans as well. One prominent slave narrative, that of New York's Solomon Northup, chronicles the experience of one such free man kidnapped into slavery under the older act. The evidentiary restrictions placed on accused fugitives made it difficult to ascertain the truth of claims of freedom under the new act. The alleged fugitive was not allowed to testify at the hearing, and a sworn affidavit was sufficient as proof. Since everyone, including the judge, was made an interested party because of the system of fees and fines, the integrity of the courts could not be relied upon. However, by the 1820s, organized kidnapping rings operated in cities like Philadelphia, often targeting children. That established industry suggests the likely truth of claims of free men and women being kidnapped under the Fugitive Slave Act of 1850. In 1852, white abolitionist and author Harriette Beecher Stowe was inspired to write *Uncle Tom's Cabin* by the passage of the Fugitive Slave Act.

The Supreme Court's decision in *Dred Scott v. Sandford* (1857) virtually ended major antebellum legal challenges against slavery, stripping African Americans of citizenship, civil rights, and court standing. With increasing tensions between pro-slavery and antislavery forces, the course toward the American Civil War was largely set. The Compromise of 1850 might have averted an

earlier 19th-century secession, but it served to incense northern populations. Vermont reacted by instituting due process requirements that made it difficult to legally remove escaped slaves, and in abolitionist strongholds elsewhere, dissenters on juries disrupted attempts to prosecute slave supporters who protected runaways. Frederick Douglass, who had published his *Narrative* in 1845, fled America for Europe after its publication, fearing the earlier Fugitive Slave Act of 1793, and he returned to America only after his freedom had been purchased. In 1851, Douglass, spurred partly by the Compromise of 1850, the Fugitive Slave Act of 1850, and southern threats of secession, intensified his rhetoric against slavery and the south, illustrating the south's departure from the principles of the founders.

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See Also: African Americans; *Dred Scott v. Sandford*; Fugitive Slave Act of 1793; Kidnapping; Racism; Slavery; Slavery, Law of.

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Furman v. Georgia

In *Furman v. Georgia* (1972), the U.S. Supreme Court held that the imposition of the death penalty in the case constituted cruel and unusual punishment in violation of the Constitution. The case, decided along with *Jackson v. Georgia* and *Branch v. Texas*, essentially suspended the death penalty in the United States until 1976. The court's 5–4 majority decision demanded a degree

of consistency in the application of the death penalty, which it found lacking in the Georgia statute at issue. While the decision did not ban the death penalty, it did force states and the national government to enact procedures to ensure that the death penalty would not be carried out in an arbitrary or discriminatory manner.

On the night of August 11, 1967, William Henry Furman broke into a house in Savannah, Georgia, with the intent to commit robbery. The owner of the house, William Micke, awoke in the night and went to investigate. He found an armed Furman in his kitchen. As Furman fled the house, he fired the gun that killed Micke instantly. Before his trial, Furman was committed to the Georgia State Central Hospital for psychological testing where he was found to be mentally deficient and suffering from psychotic episodes. Despite this, his insanity plea was refused. Furman received a court-appointed attorney and his trial lasted one day. It took the jury less than two hours to return a guilty verdict and a death sentence against Furman.

In the companion cases of *Jackson v. Georgia* and *Branch v. Texas*, both men were convicted of rape and sentenced to death. Similar to Furman, Branch was judged to have a below average IQ, though this was not seen as a mitigating factor by the juries that convicted them. In each of the cases, the decision regarding whether to impose the death penalty was placed solely in the hands of the juries that had heard the cases. In rendering its decision, the U.S. Supreme Court issued a 5–4 decision, ruling that the Georgia and Texas laws violated the Eighth and Fourteenth Amendments' protection against cruel and unusual punishment. Although Justices William O. Douglas, William Brennan, Peter Stewart, Byron White, and Thurgood Marshall concurred in the outcome, there was no agreement on the legal rationale for the court's decision to invalidate the Georgia and Texas laws nor was there any agreement among the four dissenters (Warren Burger, Harry Blackmun, Lewis Powell, and William Rehnquist). As such, the justices delivered nine separate opinions in the case.

Justice Douglas, after offering a historical view of the Eighth Amendment prohibition on cruel and unusual punishment, found the laws to violate this principle due to the discriminatory manner in which they were often applied. Justice

Douglas located a promise of equal protection within the ban on cruel and unusual punishment and declared it the duty of legislatures to supply laws that are nondiscriminatory and the responsibility of judges to ensure that they are applied in a fair and evenhanded manner. Justice Stewart, joining the court's majority opinion, also condemned the wide disparities in the application of the death penalty, pointing to the countless numbers that had committed the same crimes but had not received the death penalty.

Justices Marshall and Brennan, concurring with the court, were the only two justices to declare the death penalty as cruel and unusual and therefore unconstitutional. Justice Brennan concluded that times had changed to such an extent that contemporary society now rejected capital punishment as antithetical to ideas of human dignity. Justice Marshall found the death penalty to be wanting on almost every level, from its discriminatory application to its excessiveness and failure as a deterrent, and he concluded that the punishment had become morally unacceptable to the American people.

None of the justices in dissent—Burger, Blackmun, Powell, and Rehnquist—felt that capital punishment ran afoul of the Constitution. Justices Powell and Rehnquist argued for defer-

ence to the state legislatures that had enacted the death penalty statutes, while Chief Justice Burger was reluctant to remove the decision to impose the death penalty from juries that he described as the cornerstone of the judicial system. With the court's ruling in this case, capital punishment was essentially halted in the United States until 1976, when the Supreme Court in *Gregg v. Georgia* approved a two-stage system for juries to impose the death penalty.

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See Also: Brennan, William J., Jr.; Capital Punishment; *Coker v. Georgia*; Cruel and Unusual Punishment; Death Row; Electric Chair, History of; Executions; Famous Trials; *Gregg v. Georgia*; Hanging; Prisoner's Rights; Sentencing; Supreme Court, U.S.

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Gacy, John Wayne

John Wayne Gacy, Jr. (1942–94) was an American serial killer who was responsible for the sex-related slayings of 33 young men and teenage boys between 1972 and 1978. A successful and civic-minded businessman, Gacy was a gregarious and outgoing attention seeker who was heavily involved in local Democratic politics and in organizations such as the U.S. Junior Chamber (Jaycees)—characteristics and attributes that may have enabled Gacy to avoid detection for so long. In addition to hosting elaborate street parties for friends and neighbors, Gacy assisted at local community activities and projects and performed as “Pogo the Clown,” a character that he had created for himself, at fund-raising events, parades, and children’s parties. Later, he became known as the “Killer Clown.” Most of his victims were buried in the crawl space of his home at 8213 Summerdale Avenue in Norwood Park, Illinois—the far northwest side of Chicago.

Crime Spree

Some of Gacy’s victims were teenage male runaways or male prostitutes whom Gacy would pick up from Chicago’s Greyhound Bus station or New Town—the formerly used community name for the gay-friendly area of Lakeview on the north side of Chicago. Gacy frequently lured

teenage boys and young men to his house with either the promise of a job with PDM Contractors, his construction company, or with an offer of drugs or money for sex. At other times, Gacy would invite one of the young men who worked for him back to his house for a drink.

Regardless of the means of enticing his victims, once back at his home, Gacy would tie up his young victim. Sometimes, Gacy accomplished this by rendering the teenagers and young men unconscious with a chloroform-soaked cloth or getting the teenagers and young men inebriated and then overpowering them—Gacy was a strong and corpulent man. On other occasions, Gacy would deceive his victims by claiming to want to show them a stunt with a pair of trick handcuffs that he used in his clown act. Gacy would claim that there was a secret method to unlocking the handcuffs and would challenge the victim to try to figure it out. Once Gacy’s victims were restrained, he sexually assaulted them. Death by asphyxiation or strangulation would occur after, during, or even before sexual assault and rape. Gacy then buried the bodies under the floorboards of his home; he often used lime to hasten decomposition of the corpses.

Gacy was apprehended in December 1978 following an investigation into the disappearance of a 15-year-old Des Plaines pharmacy employee, Robert Jerome Piest, to whom Gacy

had offered a job with his construction company. After the owner of the pharmacy named Gacy as the contractor with whom Piest had spoken, the Des Plaines Police Department checked Gacy's record and learned that he had served a prison sentence in Iowa for sodomy. An initial search of Gacy's home yielded suspicious items, including other people's driver's licenses, a high school class ring with someone else's initials, dozens of books on homosexuality and pederasty, a pair of handcuffs and keys, and a photo receipt from the pharmacy where Piest worked. An ensuing search of the crawl space under Gacy's home revealed human remains.

Gacy subsequently confessed to murdering at least 30 people and was brought to trial in February 1980, having been charged with 33 murders, including that of Piest—Gacy's last victim. In March 1980, after deliberating for less than two hours, a jury found Gacy guilty of each murder (although not all of his victims were identified). He was subsequently sentenced to death.

Punishment

Gacy was incarcerated at the Menard Correctional Center in Chester, Illinois, where he spent 14 years on death row. While in prison, Gacy began to paint. Although the subjects of Gacy's paintings varied, many were of clowns and some depicted himself as "Pogo." Gacy also devoted his time in prison to studying law and filing numerous appeals—none of which was successful.

On May 10, 1994, Gacy was executed by lethal injection at the Statesville Correctional Center in Crest Hill, Illinois (although clogging of one of the lethal chemicals in the IV tube that led into Gacy's arm forced the execution to be halted for about 10 minutes). He did not express remorse for his crimes.

Ongoing Controversy

Even after his death, Gacy continued to attract attention and spur controversy. In 1996, Plug In Gallery in Winnipeg, Manitoba, Canada, proposed to exhibit three paintings by Gacy as part of an extensive group show called "The Moral Imagination," curated by Wayne Baerwaldt. Following a public outcry—especially from victims of violence and pedophilia—Baerwaldt decided not to exhibit the Gacy paintings. Instead, he

framed and displayed two pages from the tabloid *Winnipeg Sun*, which had reproduced one of Gacy's paintings in full color on the front page of its September 17, 1996, issue. The paintings were never displayed at Plug In or anywhere else in Winnipeg. Many have been destroyed by individuals who purchased them for the purpose of burning them.

In May 2011, the Sin City Gallery at the Arts Factory in Las Vegas, Nevada, briefly displayed Gacy's paintings in an exhibition titled "Multiples: The Artwork of John Wayne Gacy." (The exhibition reopened at the larger Contemporary Arts Center Gallery at the Arts Factory in September 2011.) More than 70 pieces were put up for sale, with several fetching between \$1,500 and \$15,000. While the exhibition was intended to generate funds for those who have been hurt by crime, the National Center for Victims of Crime refused to accept the proceeds.

In October 2011, the Cook County Sheriff's Department resumed efforts to identify the eight unidentified Gacy victims using new DNA technology. In addition, controversy continues to surround the identification of Michael Marino as one of Gacy's victims.

Three films have been made about Gacy: *To Catch a Killer* (1992), starring Brian Dennehy as Gacy, about the investigation of Gacy following the disappearance of Piest; *Gacy* (2003) with Mark Holton as Gacy and Adam Baldwin as his father; and *Dear Mr. Gacy* (2010), starring William Forsythe as Gacy and chronicling the interaction between college student Jason Moss and Gacy, with whom Moss was obsessed. In addition, Gacy has served as the inspiration for *Gacy House* (2010) (also known as *8213: Gacy House*), a mockumentary about a film crew setting out to find the ghost of Gacy, and *Dahmer vs. Gacy* (2010), a comedy horror film about a fictitious competition between Jeffrey Dahmer and Gacy to see which of them is a "better" serial killer. *Dahmer v. Gacy 2: In Space* is in development with a tentative release date of 2013.

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See Also: Capital Punishment; Chicago, Illinois; Famous Trials; Serial and Mass Killers.

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Gambling

Gambling has undergone a considerable evolution in the United States; while it was once almost universally considered a crime, many forms of gambling are now considered businesses and receive sanction from states that are active partners via their tax collections, which can range from 7 percent to as much as 75 percent of the total take. Additionally, many states own lottery operations outright, making states agents of promoting gambling. This shift from criminality to co-option took place over the second half of the 20th century and was the result of both social and economic changes in the United States. Loosening social mores and economic necessity both contributed to turning several American jurisdictions from policing to promoting gambling in many forms.

What is Gambling?

Most authorities define gambling as the act of placing stakes on an unknown outcome with the possibility of gain. They include: betting on the outcome of contests between animals (horse racing, cockfighting) and humans (betting on team and individual sports), betting on lotteries, and betting on games of chance played with cards, dice, and other randomizing elements. Some of the best-known games fall into this latter category,

poker, blackjack, baccarat are played with cards, and craps with dice. Slot machines, which were originally mechanical (but are now electronic) devices that award prizes based on the random stopping of the reels, are another popular form of gambling, and today many forms of gambling, most prominently poker and sports betting, can be accessed from the Internet. Betting on games of chance—be they cards, dice, or slot machines—is usually subsumed under the rubric of casino gambling, which may or may not take place in a structure originally intended as a gambling hall.

Often, a single jurisdiction will promote one or more of these gambling forms while continuing to criminalize others. For example, the state of Nevada permits, and at times enthusiastically encourages, casino gambling in a variety of settings, from tourist-oriented casino resorts to small neighborhood gaming taverns, and is the only state in the nation to permit full sports betting, but it does not have a state lottery. Some states sign compacts to permit Indian tribes to run full-fledged casinos without commercial competition. So, it is frequently difficult to trace the evolution from criminal to state-endorsed gambling, since it is often a question of competing forms of gambling receiving sanction rather than a blanket move from total prohibition to complete authorization.

Generally speaking, most gambling was prohibited in most states before 1960, when the development of public-interest gaming, which began in the 1920s, truly flowered. Gambling was legalized for public policy purposes to combat illegal gambling, create jobs, and enhance state revenues. Today, 48 out of 50 states no longer consider gambling a criminal activity but rather one that is subject to regulation and taxation.

Gambling as Crime

From the earliest days of European settlement in North America, gambling policy was ambiguous. In general, gambling was legal, but disturbances arising from gambling—particularly cheating and fighting over the outcome of a bet—became criminalized. It was not until 1646 that Massachusetts passed the colonies' first law banning gambling in public houses. Other northern colonies ranged from strictly antigambling (Quaker Pennsylvania) to nearly indifferent (New York) when it came to gambling at cards and dice. Lotteries, however,

were found in every colony except Pennsylvania. Approved by colonial legislatures, these privately run draws funded the construction of roads, colleges, defensive fortifications, and even churches.

Independence from Britain did not much change either gambling behavior or gambling law. Houses devoted exclusively to gambling, a step toward the professionalization of the activity, first appeared in the 1820s and were widespread by the 1830s, particularly in cities like New Orleans, Washington, and New York. Outside of New Orleans (where they alternated between legal and illegal until 1835 when they were outlawed), gambling houses were illegal. Gradually, states began to turn against legal lotteries, revoking charters to operate them. Great Britain, France, Germany, and many other countries also enacted prohibitions against gambling.

American gambling, however, continued to flourish, as its operators merely bought the complicity of local police and political authorities. In the period after the Civil War, as American cities grew, these illegal gambling halls continued to flourish. Starting in the 1870s, gambling on horse racing also grew dramatically, with over 300 tracks open by 1897. At the same time, some states experimented again with lotteries, though a reaction against legal gambling soon began to sweep the nation. This brief flowering of legal gambling did not last. By 1895, the last legal state lottery, that of Louisiana, was shuttered, and in the same period, laws against bookmaking forced tracks to close in many states. In addition, states that had experimented with legal card and dice games, particularly Nevada, criminalized commercial gambling in these years. As a result, by



Spectators watching the one-mile race on Derby Day in 1901 in Louisville, Kentucky. By 1910, the only legal gambling in the United States was betting on horse races in Kentucky or Maryland. Forty years earlier, however, gambling on horse racing had spread rapidly across the country and toward the end of the century, by 1897, over 300 tracks had been open.

1910, the only legal gambling in the United States was betting on horse races in two states, Maryland and Kentucky.

Illegal operators, however, continued to thrive. Illicit lotteries, called both “policy” and “the numbers” boomed in most American cities, particularly among poorer residents. Illegal race betting was even more popular, and it provided an early form of remote entertainment via a national telegraph network called the “race wire” that linked tracks to betting rooms. This lucrative franchise became the object of gang warfare both before and after the better-known battles over liquor distributorship during Prohibition. Following Prohibition’s 1933 repeal, many former bootleggers seized upon gambling as their new moneymaker. Although some groups operated or financed illegal casinos, most of the money was to be made in race betting, illegal lotteries, and slot machines. These devices, which had been developed in the 1890s, were found throughout most American cities, though they were usually illegal. By the 1940s, gambling was a thriving business in most American states, often linked to ancillary crimes.

Rise of Public-Interest Gambling

The persistence of gambling despite its official prohibition led some public officials to reconsider its legal status. The “Straus totalisator,” invented in 1928, allowed racetracks to mechanically compute the odds that a win, place, or show ticket should pay, thus cutting bookmakers out of the equation. It greatly sped the American adoption of pari-mutuel betting, in which the pot was automatically divided among winners, at the expense of traditional bookmakers, who would set the odds themselves and often profit exorbitantly by interfering with the race’s results. Pari-mutuels also allowed states to take a share of the pool. Race betting was thus promoted as both honest and a source of public revenue—a balm to many states during the Great Depression. Horse racing began to spread across the United States, with 24 states legalizing race betting by 1949. In the same years, bingo, hailed as small-stakes gambling for a good cause, also grew. Pari-mutuel betting and bingo were the first fruits of what would become a massive American industry—public-interest gambling.

While pari-mutuels and bingo were in their infancy, another, higher-stakes gambling industry developed in Nevada: legal casino gambling. In 1931, legislators authorized a resumption of the “wide open” commercial gambling that had marked the state from 1869 to 1910, as a way of encouraging tourism. There was initially no state oversight of gambling. In both Reno and Las Vegas, small clubs offering slot machines and table games like craps, roulette, and blackjack appeared. But Nevada gambling set off on a new course in 1941, with the opening of the El Rancho Vegas, the first casino resort on what would become the Las Vegas Strip. As a self-contained resort with fine dining, entertainment, and gambling, the El Rancho Vegas appealed to casual tourists in a way that the smoky downtown gambling halls did not. Within a decade, a half-dozen other resorts joined the El Rancho Vegas, and the Las Vegas Strip was sprawling south of Las Vegas city limits, welcoming at first thousands, then millions of tourists and gamblers a year.

The balance of commerce in Nevada shifted to the south by the 1950s, chiefly due to the growing success of the Strip’s casinos, now numbering more than a dozen. In response to organized crime penetration of the industry and as a way to forestall federal intervention, the state legislature created a regulatory body, the Gaming Control Board, to oversee the industry. Its taxes were increasingly important to the state. Many of the financiers, managers, and employees of casinos, however, had extensive experience in illegal operations in other parts of the country and varying connections to those still active in organized crime. The tension between economic development and keeping the industry free from “undesirables” would mark Nevada casinos for much of their early life.

With a national monopoly, however, and Americans becoming more tolerant of gambling, particularly in the vacation milieu of Las Vegas, the industry grew. Thanks to amendments to the gaming code, publicly traded corporations were allowed to own casinos outright in 1967, leading to more mainstream investment in the industry. With its casinos becoming full-fledged, multipurpose resorts, catering to gamblers, leisure travelers, and convention groups, Las Vegas cemented its dominance in the state, and Las Vegas-style



The 1931 decision to resume “wide open” commercial gambling in Nevada led to the development of the Las Vegas Strip, starting with the El Rancho Vegas resort in 1941. A half-dozen similar resorts opened in the city within just 10 years.

resorts became closely associated with gambling in the public consciousness. Today, casinos in Clark County, which includes Las Vegas and its environs, account for more than 85 percent of all state gambling revenues.

Casino gambling remained taboo in other states throughout the 1960s, but lotteries, which had been vilified in the late 19th century, returned. In 1964, New Hampshire started the lottery boom with a semiannual draw game. Three years later, New York legalized its own weekly game, and in 1970, New Jersey began offering weekly drawings and more modestly priced tickets. The success of the Garden State Lottery spoke volumes, and other states, no less pressed for cash, listened. Within a decade, daily draws became the norm. Then instant games, also known as “scratchers,” provided instantaneous lottery play and another revenue source.

With states now actively involved in promoting a form of gambling—daily lotteries—that had

once been vilified as criminal and parasitic, taboos against other gambling forms began to waver. Legal pari-mutuel betting reached almost complete acceptance in the United States, and, though sports betting remained off limits, some states began considering the economic engine that appeared to be working wonders in Las Vegas, casino gambling. After a failed 1974 referendum, New Jersey voters in 1976 legalized casino gambling in Atlantic City. Two years later, the first legal casino on the east coast opened, to be followed by about 10 others within the next half-decade. The state’s success at keeping organized crime out of the industry, and the inarguable economic benefits of casino gaming—jobs, economic development, and revenue enhancement—broadened the casino debate. By the early 1990s, limited gambling in Colorado and South Dakota; riverboat gambling in Iowa, Illinois, Mississippi, and several other states; and gambling on Indian reservations, spurred by the 1987 Supreme Court *Cabazon* decision and 1988’s Indian Gaming Regulatory Act, underscored the growing acceptance of gambling throughout the United States. Slots at racetracks, known as “racinos,” served to bail out the struggling horse-racing industry, which began to wilt in the face of generational changes and increased competition from casinos. Cities like New Orleans, Detroit, and Philadelphia permitted one or more urban casinos to open, and, in 2010, New York’s Aqueduct race course was poised to bring casino gambling to the nation’s largest metropolis.

Despite all of this expansion, some forms of gambling remained criminal. In 1992, Congress passed the Professional and Amateur Sports Protection Act, which forbade states without existing legal regimes to authorize new sports betting. As a result, Nevada remains the only state where full-blown sports betting is legal (Delaware, thanks to its 1970s-era sports lottery, is permitted parlays on several games, but not straight-up betting). Today, illegal sports betting is a large and thriving industry, though there is not even an official estimate of its annual revenues. In addition, online gambling remains an illegal frontier, with Congress criminalizing the use of financial instruments for gambling transactions with the Unlawful Gaming Enforcement Act of 2006. In many cases, those who operate “offshore” gambling sites are breaking no laws in the jurisdictions they

are located in; several nations actively court Internet gambling businesses. The U.S. Justice Department, however, prosecutes those it can, usually operators with any kind of domestic exposure.

So, despite the growing American appetite for legal gambling, it continues to inhabit an anomalous position in many states: though it is relied upon to fill public coffers, legislators and law enforcement officials continue to insist that some forms of gambling remain harmful to the public health and do not enjoy the sanction of state regulation. For some, gambling is still a crime, even while it is a thriving legal business.

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See Also: 1921 to 1940 Primary Documents; 1961 to 1980 Primary Documents; Computer Crime; Corruption, History of; Corruption, Sociology of; Criminalization and Decriminalization; La Guardia, Fiorello; Las Vegas, Nevada; Nevada.

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Gangs, Contemporary

In contemporary American society, the Office of Juvenile Justice and Delinquency Prevention (OJJDP)—a leading state authority on street gangs—defines a street gang as groups of individuals ranging from 12 to 24 years of age. These groups vary in their size and their level of organization and are engaged in criminal and violent

behavior. The contemporary street gang is often categorized by economic, communal, or symbolic considerations, including homicide, drug trafficking, burglary, robbery, and auto theft. Over time, communities in America have reacted with increasingly more fear to gang activities, even as law enforcement authorities have reacted to some gang crime by attempting to rid the country of threats, forcing some to leave through deportation decrees. Technology has also made gang activity more interconnected as groups use the Internet to recruit, to intimidate, and to conduct business.

Overview

Gangs can be found in a variety of locales throughout American society. For instance, shifting, changing, and transitional neighborhoods of larger cities such as Los Angeles, Seattle, Denver, Chicago, Nashville, and other locales have traditionally been considered the areas most commonly populated by gangs and are therefore more affected by gang activity. These same cities also comprise neighborhoods, where families remain for generations, that are considered stable slums. The environment of the stable slum is such that it helps to facilitate and maintain the patterns of decay and social disorganization that are conducive to gang activity. In the late 20th and early 21st centuries, gangs have spread from inner city and urban areas to incorporate suburban spaces that have succumbed to decay and disorganization. Though it has been determined that youth gang activity has found its way into suburbs, and even into some rural areas, the inner city and urban neighborhoods of large cities still experience higher rates of youth gang activity because of strong associations with low socioeconomics. Some of the best-known gangs in the United States make their home in these larger inner city and urban areas. Of these gangs, the more infamous include the Crips, the Bloods, the Vicelords, the Latin Kings, Mara Salvatrucha (MS-13), and 18th Street Gang (M-18). The data indicate that the contemporary gang problem in America reaches from the eastern and western to the southern and northern coasts of the country.

The OJJDP reports that data on street gangs is often unreliable, at times because of the inherent secretiveness that characterizes gangs as organizations, and at times because there are

definitional discrepancies as to what constitutes a gang; researchers, as outsiders, run the risk of missing or misinterpreting information. Though it has proven challenging to settle conclusively on the total number of gangs at work nationwide, some researchers rely on the National Youth Gang Survey (NYGS), which takes its data from policing agencies countrywide. At the national level, based on the 2004 NYGS, there was a total of 24,000 street gangs with an estimated 760,000 members. These gangs were estimated to be active in approximately 2,900 jurisdictions. The numbers represent a decline from the decade before.

On the regional level, Los Angeles has the highest number of gangs as well as the highest number of gang members of all the states in the Union; there are a reported 600 gangs comprising 100,000 members. Furthermore, 35 percent of homicides in Los Angeles are committed by gangs. Gang membership in Los Angeles has taken on both cross-country and transnational elements, adding a unique nature to that city's gang involvement and contributing to elements of concern for law enforcement and those others who are aware of the complexity of the cross-national and transnational nature of membership in groups like MS-13 and M-18. The alarm is attributed to the spread in the popularity of these two gangs with disaffected Latino youth nationwide, in inner city, urban, suburban, and rural spaces in places such as New York, Texas, and Nashville, Tennessee. Nationwide in 2005, M-18 boasted approximately 30,000 members alongside MS-13's approximately 8,000–10,000. In response to what the media and Congress have deemed a growing threat, the federal government has deported gang members who are not American born. However, this reaction has been identified as contributing to the transnational element cited as an equally, if not more, pressing concern. Links between members who have been deported are reportedly still strong; these links are notable because these gangs are made up of individuals from multiple countries in Central America (El Salvador, Mexico, Honduras, and Guatemala), who when deported continue with the activities in which they had taken part in America. This has raised concerns about illegal re-entry into the United States for the purpose of narcotics trafficking, smuggling, and other criminal activities,

including terrorism. Other cross-border relationships of concern include Canadian-based Chinese and Vietnamese gangs that maintain ties with counterparts in the United States. They are said to be responsible for high-potency marijuana supplies to the United States. The use of technology by gangs within the United States has made it possible to see how transnational connections can be made and maintained.

Increasing Fear of Gangs

Street gangs are a source of great concern for contemporary American society. Delinquency, hooliganism, and self-deficiency are often used to explain their activity. These delineations fit squarely within the category of undesired difference. Some major issues that inspire this alarm include the high levels of violence that are often manifested in the activities in which members take part. For instance, gang members commit levels of crime that are said to be disproportionately high compared to other crimes committed by delinquent young people who are not involved in a gang. One OJJDP self-report survey testifies that 86 percent of serious offenses were committed by gang members. This is true even though gang members represented only 30 percent of the overall respondents in the study.

The 2006 "National Report on Juvenile Offenders and Victims" intimates that street gang activity alarms American society because of an increased level of sophistication that has come to characterize their activities. For instance, gang members have become more efficient in the commission of their activities. Access to resources such as cars and a shift from street fights that involved fists to the use of more lethal weapons such as guns have seen a change in the character of gangs. According to the OJJDP, an increase in the availability of guns has made the commission of crimes by gang members more sensational, which on the surface makes it appear that gangs are committing more crimes. Though the public alarm in response to gangs suggests that criminal activity has increased in absolute terms, the OJJDP recommends that it would be more reasonable to conclude that it is the increased usage of firearms that makes it appear that gangs are committing more crimes; instead, they are taking part in fewer, but more serious, infringements.

According to the 2009 National Gang Threat Assessment, the threat posed by street gang crime has proven significant, since these gangs are represented in all areas (inner city, urban, suburban, and rural spaces) of the country. Serious crimes include firearm distribution, homicide, armed robbery, drug distribution, and theft. Records show that in July 2008, members of the Crips were arrested for 119 counts of firearm distribution. These weapons were sold within and between groups for the purpose of homicides and armed robberies.

Reasons for Gang Activity

One major question explored in the literature looks at why youth join gangs. Some answers incorporate multiple behavioral or environmental characteristics that indicate the probability (likelihood) of future association with a gang.

These factors can be determined by the individual youth, the family, the school, the peer group, and the community living space that youth inhabit. The first reason for joining gangs identifies individual risk. Youth who fall within this category tend to have been introduced unnaturally early to drugs, sex, and alcohol. This might or might not lead to trouble fitting in with others of the same peer grouping—from reportedly as early as the first grade. Similarly, as they struggle to fit in, these youth tend to partake in violent acts of delinquency and are more likely to form an affiliation with a gang when the opportunity presents itself. The second factor identifies family mismanagement—where there is limited or no parental supervision. Some of the fallout of family mismanagement includes child abuse, neglect, poverty, limited supervision, and sometimes a family history of gang involvement. The third risk looks



One of 30 arrests made during an antigang sweep of Atlanta, Georgia, on March 8, 2011. The U.S. Marshals Service worked with the Atlanta Police Department's gang task force and other law enforcement, netting a number of guns and a significant amount of drugs. As of 2004, there were thought to be about 24,000 different street gangs in the United States, with an estimated 760,000 members.

at the school environment and identifies poor academic achievement as a major predictor. In addition, the fear for personal safety is also a factor within the school environment. There is thus said to be an increased likelihood of this factor leading to behavior such as truancy—all of which points to a high probability of eventual gang membership. The fourth factor looks at peer group pressure. This is said to be one of the strongest predictors of gang association. An affiliation with peers who themselves are engaged in delinquent activity—whether during adolescence or later on—can serve as a gateway into gang membership. The fifth and final factor that influences the probability of youth joining gangs identifies the community living space. Some of these risk factors include high numbers of neighborhood youth who are in trouble; accessibility to drugs; poor integration in, and attachment to, community surroundings; and little or no informal or formal social controls. These factors do not necessarily exist alone, nor do they necessarily work together. However, it is not uncommon to see evidence of these dynamics manifested in any given youth gang member.

Race and Gender in Gangs

The makeup of a street gang is also an important point for exploration. For instance, a street gang is more often than not composed along racial and ethnic lines. Among racial groups are Hispanics, African Americans, whites, and Asians. Among these racial groupings, Hispanics are said to comprise the largest percentage of youth in gangs; African American youth comprise the second-highest percentage; next come whites, followed by Asians. Only 2 percent of youth who join gangs are racially undetermined. The literature indicates that hate groups are not counted among those youth who make up the percentage in the racial category of “white.”

The racial composition of a street gang can also often be an indication of the kinds of activities in which members take part. These activities might include the sale of drugs, property crimes, or fighting over turf. Along with questions of composition come discussions on the language with which specific gangs identify. This phenomenon manifests itself in forms of communication that include a range of things, from the colors gang

members wear to the kinds of hand signals they use. Dress codes, symbols such as street art or graffiti, and hand signals can all indicate membership in a particular group. For example, Hispanic gangs are linked to graffiti characterized by three-dimensional designs that indicate power and cultural pride; African American gangs display graffiti around themes of money, weaponry, profanity, and/or power.

Alongside racial distinctions comes gender diversity. When one thinks of street gang membership it is important to think broadly in terms of gender composition, giving consideration to the nature and extent of female gang involvement. Female gang membership is said to account for approximately 10 percent of total numbers nationwide. However, the numbers for female-only gangs are on the rise. This means that previous to this rise in female-only groups, girls who joined gangs were often integrated into mixed-gender crews.

The rise in the instances of female-only gangs alerts us to an important trend: The rate of female youth gang crime has increased. Discussions on female membership include concerns about the initiation techniques that are used in mixed-gender gangs. For instance, male gang members are required to take part in a range of tests that are most often criminal acts intended to prove their loyalty and resilience. These tests could include theft or acts of violence such as inflicting physical assault on another or being physically assaulted by another. Meanwhile, for female gang members, it is often requisite to be tested sexually by the male members of the gang they intend to join.

Impact

In contemporary times, the reaction to street gangs in America has been influenced by the increasingly high levels of criminality and the associated sophisticated and sensationalized levels of violence. This is to say that even though statistics show a decline in the total number of street gangs and street gang membership, the contemporary street gang is now equipped to operate with increased efficiency—given increasingly sophisticated criminal techniques and weaponry. This has revealed a change in the character of the street gang and in how they are perceived by law

enforcement, as well as by those who are attuned to their existence.

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See Also: 1941 to 1960 Primary Documents; Crime in America, Causes; Crime in America, Distribution; Gangs, History of; Gangs, Sociology of; Gender and Criminal Law; Juvenile Delinquency, Sociology of.

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Gangs, History of

Many contemporary experts on gangs, focused as they are on dealing with the present gang problem, seem to think that serious street gang issues began around 1900. Obeisance, to be sure, may be paid to the gangs of mid-1800s New York—but is as if they existed in a vacuum. Most criminologists ignore the context of the American narrative and the fact that in other cities, gangs were more known, more prevalent, and certainly at least as problematic as those of New York. Perhaps the more or less exclusive focus on New York expresses a discipline-specific ahistoricism, ignorance, or regional bias. It is likely that most experts assume that the past, in this case, does not inform the present in regard to gang history in or outside New York as important or relevant.

Gang Prehistory and Context

Incipient urban gangs in the United States arose from two sources in the early 1800s: neighborhood

boy gangs and fireboy gangs. The first were simple congeries of boys, hanging on street corners for lack of better things to do. There they protected their turf from incursions by other boy gangs. This kind of gang usually constituted undersupervised lower-class and occasional middle-class boys. Before the advent of television, video games, and organized sports, recreational opportunities for such street boys were scarce, unsupervised, and often unwholesome. The second type of gang was made up of boys who frequented the environs of firehouses.

Firemen were exciting figures, and the firehouse was a male preserve where masculine values and bachelor culture reigned supreme. Frequently, firemen were allied with political figures and factions. Violence frequently broke out between rival engine companies as they fought over the right to fight specific fires (and loot the premises) but they also fought over political issues. Boy gangs in close proximity to firehouses often evolved into fireboy gangs. While these boys were regarded as potential firemen, they were also seen as junior members of the male adult group and were involved in their rivalries and street fights.

Politicians had much to gain by allying with gangs. Gangs were used as private armies to block voters' access to polls. Alternately, they could be employed to get out the vote and to encourage voters, or even transients, to vote in different polling places for their candidate. Gang members were awarded with patronage jobs in municipal government agencies, a fact that made controlling them all the more problematic. Police, for example, could be gang members in good standing, or tied to a common political boss or party. This process was at work in most east-coast cities beginning early in the 1800s and reached its apotheosis in the 1850s.

Civic Wars

In the 1840s and 1850s, organized street gangs coalesced with civic groups and political parties, such as the American Party that opposed the immigration and naturalization of the Irish. This put them in conflict with the Democratic machines in cities such as Philadelphia, New York, Baltimore, and New Orleans. The rise of white workingmen was troubling to elites not only in the south but throughout the country. Gang-led civic unrest and

electoral violence followed in all these areas. Riots and extreme violence occurred on election days in New Orleans, New York, Washington, D.C., and other cities in the 1850s. A full-scale coup was attempted by Democratic gangs led by planter elites in New Orleans in 1859. They were, however, unable to topple the elected Know-Nothing municipal government. In Baltimore, they were more successful.

Gang Activities

The politicized gangs of mid-century were products of a highly masculine culture. They often drank heavily in places of commercialized vice. Cockfights, fistfights, gambling, and prostitution were normal recreational activities in their world. They were routinely contemptuous of other races and especially prickly about "honor." In particular, they rejected the ongoing Victorian emphasis on domesticity and the "gentling" of masculine pleasures.

Young unmarried men had been abandoned by the apprentice system and lacked support from traditional families and found themselves reduced to living on the street or in boarding houses. Working largely as wage-slaves, if they had work at all, they joined fire companies, political clubs, and gangs out of boredom and in hope of making political connections. For the young American of British extraction, immigrants were rightly seen as competitors for jobs. In this highly masculine honor-based context, it was regarded as appropriate to challenge the newcomers' pretensions and obstruct their progress by all means possible. This included preventing them from exercising their voting franchise but also involved street fighting and overt violence and intimidation. Opportunistic crimes such as thievery and pickpocketing were specialties of some of these gangs, as well.

Baltimore was known as "mob town" in mid-century due to the sheer intensity of its gangs' activities and prominence. Such gangs as the Plug Uglies, Rip Raps, American Rattlers, and Blood Tubs arose in reaction to Irish immigration. The appellation *Plug Ugly*, taken from the name of a Baltimore gang, became synonymous with a particularly unappealing type of urban tough: Specifically, it meant a politicized urban thug. The most famous of the gangs were anti-Catholic and allied with the American Party and its affiliated

fire companies. This linkage was so problematic that the city council, in order to prevent gang violence, attempted to ban "half-grown" boys from hanging around firehouses or following firemen into action. These gangs attacked German and Irish immigrants, sometimes dumping them in tubs of blood, and also singeing their beards with torches. At times, they would imprison Catholics and force them to vote for American Party candidates, a practice called "cooping." Not surprisingly, Irish and Democratic fireboy gangs arose to meet the nativist threat and committed similar outrages. Numerous street battles were held in which revolvers were used and small cannons were fired. Casualties were common; in the elections of 1856, more than 30 were killed and 350 were wounded. In 1858, electoral violence between the factions lasted over a week.

In the 1850s, there were at least 1,000 gang members in 40 different gangs in Baltimore. These gangs, frequently wearing their "colors," attended political and civic rallies, parading in stirring and dramatic fashion. The fire companies were particularly colorful and made an attractive tableau to impressionable youth. All carried pugnacious and frequently obscene banners and often brandished weapons. The awl was seen as a workingman's weapon, and many were made and handed out at rallies. They were used to "plug" Democrats "ugly" and to prevent them from voting. They were also used in street fights and to intimidate the populace in general. American Party gangs and firefighting companies visited other cities and fostered electoral violence there as well. Additionally, "ride-by shootings," from horseback or carriages, were not unknown.

Baltimore's violent political reputation was so firmly fixed in the national consciousness that Abraham Lincoln, fearing violence from Democratic gangs, skulked through the city in disguise on the way to his inauguration in 1860. In 1861, Democratic gangs and citizens stoned Union troops on the way to Virginia and were fired upon. A full-scale riot ensued in which both soldiers and citizens were killed. Union troops occupied the city and put down the gangs and political violence. The gangs never recovered, though politics continued to be corrupt for years.

New Orleans had criminal gangs, to be sure, but its political gangs were in many respects similar to



*Wary residents in the "Bandit's Roost," part of gang-controlled Mulberry Bend in the Five Points section of New York City, in 1888. This photograph by Jacob Riis was published in his influential 1890 book *How the Other Half Lives*. While the Irish Dead Rabbits and Anglo Bowery B'houys gangs had waged war in the Five Points neighborhood around mid-century, by the 1880s, German and Jewish gangs had joined the mix and were struggling for control of the area.*

those of Baltimore, though not nearly as violent or as infamous. Gangs allied with both factions were noted in the 1840s and 1850s. Election-oriented violence was common, and some street fighting occurred on those days. The unsuccessful coup of 1859 was an example of these factions finally coming to blows. The Civil War ended this rivalry but new violence broke out between supporters of Reconstruction and gangs of Confederate veterans in 1866, and more notably in 1874, when a full-scale insurrection occurred. More problematic and criminologically significant was the emergence of Italian American gangs beginning in the 1860s. After the Civil War, they began an ascendancy that lasted until the rise of African American gangs in the mid-1980s. Italian Ameri-

can organized crime has been a dominant force in New Orleans life and politics for a century.

An exception to the highly politicized gangs of other coastal cities was the case of Richmond, where simple boy gangs prevailed from the 1820s to the 1920s. These gangs, whose activities were often violent—stoning each other, slaves, and passersby—moved on to more serious armed violence after the war. Like classic Chicago-era gangs, the boys in these gangs often had parents who worked in Richmond's meat packing district. Others, however, were scions of some of the city's first families, such as the son of Jefferson Davis. When brought into court, usually for throwing stones in battle-like daylong wars, they were generally released into the custody of their families.

These rock battles were organized and had elaborate rules and etiquette. It is a certainty that these wars were at least partially inspired by the battles at Manassas and those around Richmond in that era. Some of these boys were involved in the infamous Bread Riot of 1863, when they stole commodities while the business district was in chaos.

The gangs of New York, made immortal by the eponymous book and film, were formidable. The Dead Rabbits and Bowery B'houys kept the Five Points neighborhood and surrounding area in a state of war during the mid-century. Allied with fire companies as were gangs in Baltimore, the Bowery B'houys were nativists and fought with the Irish Dead Rabbits for turf and for kicks. Both gangs and others were also involved in a wide range of criminal activities. Various other ethnic gangs were involved in the Draft Riots of 1863, mainly as looters. In the 1880s, Irish, German, and Jewish gangs linked to social and political clubs struggled for prominence, and Chinese tongs emerged, mainly to prey on their countrymen. Italian gangs emerged in earnest in following decades, and these syndicates displaced most other gangs for decades. In the early 1900s, Jewish and Italian gangs made alliances and fought for prominence. Irish gangs such as the Five Pointers were still prominent but faded as Italian American syndicates, who did not relish competition and street fighting, became more prominent.

Recent Gang History

Urban gangs became primarily African American or Hispanic as these groups migrated in large numbers to the cities of the north and west. Such gangs in the south were unreported, or perhaps underreported, until the mid-1980s. While black gangs were noted in New York City and Chicago in the 1930s, it was in the 1950s that their impact was first felt. This led to a veritable wave of criminological speculations on the attraction of gang life in that decade and in the 1960s. Hispanic gangs also came to dominate certain neighborhoods in these same decades. During the 1960s, it seemed as if street gangs had receded from the scene but that proved to be incorrect. The media was more concerned with civil rights, the war in Vietnam, hippies, drugs, and the women's movement, and gangs were simply not on the media's front burner. Research conducted in the 1970s

demonstrated that gangs were very much in evidence in ethnic neighborhoods and had never gone away as had been thought. The marketing of crack cocaine brought gangs back into the public consciousness in the mid-1980s as gang wars over drug markets broke out nationwide. The names of gangs from southern California such as the Crips and Bloods became part of the national lexicon. Their distinctive slang, "colors," and hand gestures became boundary maintenance mechanisms with which their neighborhoods and the nation became familiar. Hispanic and Mexican gangs became similarly commonplace. Both African American and Hispanic gangs were involved in local, and sometimes national, drug trafficking. Thrown into the mix were Russian gangsters, Haitians, Dominicans, and Asians, all fighting for a piece of the drug market pie and/or turf and respect. Girl gangs have emerged in small numbers as well. White racist gangs and remnants of a few old Irish and Italian street gangs struggle for daylight, relevance, and life itself in a few urban locations. But their function is mainly for protection from minority gangs while imprisoned. Outside the walls of prison, the day of the European American street gang is mainly over.

Gangs today dominate neighborhoods, creating a climate of "no snitching" zones where law enforcement is not able to operate. While this was somewhat true in the 1800s, gangs today seem to exert a fear-based hegemony that transcends rationality and what would seem to be obvious self-interest of those in the neighborhood. Gangs are more sophisticated and technologically savvy than in the past and will continue to be a major social problem into the future.

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See Also: 1851 to 1900 Primary Documents; 1941 to 1960 Primary Documents; Gangs, Contemporary; Gangs, Sociology of; History of Crime and Punishment in America: 1850–1900; Juvenile Delinquency, History of.

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Gangs, Sociology of

The dominant alternative discourse on contemporary gangs arises from criminology, following the criminal turn in gang studies after the 1960s. Large portions of federal, state, and local law enforcement budgets are devoted to gang suppression, and the 2009 Federal Bureau of Investigation's (FBI) report *National Gang Threat Assessment* attributes as much as 80 percent of crime to gang activity. Criminology is not where gang studies began, and a sociological explanation might ultimately provide a better purchase on the gang phenomenon than a priori criminological assumptions.

Writing a foreword to John Hagedorn's book *A World of Gangs*, Mike Davis makes the point that a profound intellectual fallacy is reflected in

the U.S. Library of Congress bibliographic classification of gangs as a subset of social pathology. A more appropriate classification should place them within urban history or street politics. Davis went on to explain that gangs establish a form of social capital (or street capital) for their members, usually deprived, relatively marginalized young people in their communities. Relative monopolies over key spaces and activities allowed gangs some measure of entrepreneurial activity and local prestige. He concluded with the bold claim that, while some gangs might be vampire-like parasites on their communities, others resemble Robin Hood or employer of last resort. It is in this dualistic appreciation of gangs, as both predators and producers, that a sociological approach to gangs exceeds the more limited criminological paradigm.

The Gang

This dual insight is also where gang studies began, back in the 1920s, with Frederick Thrasher's study *The Gang*, published in 1927. Much influenced by the Chicago school sociology of Burgess and Park and the model of urban ecology they developed, Thrasher's analysis has a surprisingly contemporary feel. The book, his editor Robert Park argued, was a study not just of the gang but also of gangland, its habitat. This habitat was a city slum, and it is here that the sociological study of the gang began. Gangs comprised of "predacious adolescents" and "undomesticated males" grew up "like weeds" among the "shadows of the slum" and on the "frontiers and fringes" of civilization.

By firmly setting the study of the gang within the urban context that produced it, Thrasher claimed his subject for urban sociology. What the gang did, morally or legally, was of secondary significance; he was primarily interested in how they were formed and shaped by circumstances. The tone was investigative, not condemnatory: the gang was a protean manifestation, and no two gangs were alike; some were good, others bad; they had to be considered on their own merits. He went on to compare gangs with other, more "wholesome" community institutions such as churches, schools, clubs, and banks. It was this attention to specifics—to context and habits and the role played by the gang—that made them sociologically interesting. Gangs were

social institutions embodying social relationships, offering some reassurance that they were neither incorrigible nor uncontrollable.

Thrasher went on to describe the many varieties of gangs forming in the slums of Chicago, divided by socioeconomic status, employment, race, and nationality. Common to understanding them all, however, was an insight from social ecology that the raw material of the gangs (under-occupied adolescents and young men) were the product of deprived and dysfunctional social arrangements that cast off their surplus youth, as so much waste product, and left them to gather unregarded (except to the extent that they caused trouble for the community or attracted the attention of the police) in the interstices, the cracks and crevices of the urban arena. In this sense, the gang members were interstitial in the social order (not children, but not yet men) and interstitial in the urban geography of the city (occupying wild spaces, living “beyond the pale of civil society” in the “poverty belt” or “no-man’s land”).

According to Thrasher, the gang was little understood, even misunderstood, when viewed solely in terms of the consequences, crime, or violence of its activities. He argued that although conflict, crime, and violence periodically played upon the public consciousness, the places from which gangs emerged had only been poorly understood. Thrasher claimed that sociologists must investigate how gangs arise and develop, what they do, the conditions that produce them, and the problems they created. All this was to equip a practical sociology to supply better methods for dealing with gangs. An especially important question entailed understanding young people’s motivation for joining gangs. A whole series of factors were seen to be pushing young people out of mainstream social institutions and relationships. These included the disintegration of family life, educational failure, poor (or only dull, low-waged, and monotonous) employment opportunities, exclusion from social and political processes, and externality to available leisure and recreational options. In such diminished conditions of life, the gang represented a substitute for what society failed to give, while giving relief from drudgery, boredom, and poverty. In Thrasher’s terms, gangs represented the efforts of boys and young men to create a society and culture for themselves where

none existed. Gangs provided for the “thrill and zest” of daily life. Conflict with other gangs and the police furnished the gang with many exciting group activities and stories to tell.

Street Corner Society

And yet gangs were, in this account, only transitional entities. Age, maturity, responsibility, female companionship, and then, later, employment and families led to a withdrawal from gang activities. Marriage was a significant cause of the disintegration of gangs. At this time, older gang members were relatively uncommon. Even so, a second important contribution to the sociology of the gang, William Whyte’s *Street Corner Society* (1943), one of the classic texts of American sociology, provides early insight into the more criminal and harmful aspects of gang life, especially concerning the ways in which the youthful, transitional gang might become more established and intergenerational, a permanent feature of the life of the slum.

Whyte’s research, demonstrating the importance of ethnographic methods, was undertaken during the 1930s and revealed in considerable detail how gang members insinuated themselves into the illegal opportunity structures of a poor Italian community in post-Prohibition era Boston. Gangs thrived upon rivalry and opposition; conflict with the police and other gangs became opportunities for young men to gain respect, allowing the establishment of hierarchies of reputation. Very much implicit in this work lies what more contemporary writers might refer to as the construction of a competitive masculine identity, with its hair-trigger sensitivity to imagined slights and perceived disrespect. One of Whyte’s key protagonists, Doc, the self-styled leader of the “cornerboys,” outlined his appreciation of this social dynamic of the street: He knew that other kids wouldn’t like him, but through fighting he’d get their respect. These issues—the violence of competitive masculinity, the illegal economies of the underworld, and the ever-present wary eye of the police—also point toward alternative criminological readings of the gang. They also reinforce a strong sense that this world was inescapably masculine. Perhaps because gang researchers were, almost without exception, men themselves (a situation that, with relatively few exceptions, still



The child labor activist and photographer Lewis Hine identified this group of boys as a street gang after photographing them in June 1916. They were gathered together smoking and playing with a rifle or toy gun (held by the boy second from left) in the late afternoon on a streetcorner in Springfield, Massachusetts. The Federal Bureau of Investigation (FBI) attributed as much as 80 percent of all crime to gang activity in its 2009 report [FBI] National Gang Threat Assessment.

prevails) and feminist ideas had scarcely entered the academy, the behavior of these men, as masculine performance, is scarcely deemed worthy of remark. Even where the behavior of the gang members toward women became abusive (instances of rape, coerced sexual intercourse, and sexual assault are documented), it is represented, as if through a filter of anthropological detachment, as the entirely routine and familiar behavior of the gang boys. For the gang members, women occupied relatively few roles: as mothers, sisters, and fiancées they embodied family and respectability; as girlfriends they were property and sources of status; as local girls and prostitutes they were for sex and amusement; or they could be “trouble” and sources of conflict.

Delinquent Boys: The Culture of the Gang

By the 1950s, when Albert Cohen published *Delinquent Boys: The Culture of the Gang*, the

delinquent activities and criminal consequences of gang activity harnessed the attention of social science. Nevertheless, Cohen approached gangs from within a sociological frame of reference, drawing upon Robert Merton’s “strain theory” (1938) to explain gang activity as an adaptive and challenging response to the supposed American Dream. Gangs, he argued, emerged as an underprivileged and largely working-class adjustment to the lack of opportunities in mainstream culture. Through conflict and shared experiences of law breaking, gangs fostered a culture of collective peer support (street capital), turning their frustration, anger, and resentment onto the society that had denied them. In place of education, employment, deferred gratification, control of aggression, and respect for order and property, the delinquent culture of the gang promoted instant gratification, living for the moment, and fierce local loyalties.

Subsequent debate with other sociological commentators on the gang, especially Richard Cloward and Lloyd Ohlin in *Delinquency and Opportunity*, made it clearer that gang membership and delinquency were not just oppositional reactions to the values of mainstream American culture but also a lower-class adaptation to it. In this sense, tough masculinity, conflict, and criminal aspiration were as much a part of the American dream as apple pie and hard work. Delinquency was not a reaction against middle class values but rather a means of achieving status within dominant but class-specific cultural expectations about toughness and street-smartness. Within this cultural milieu, gang membership could bring high status. Cloward and Ohlin developed this analysis by showing that criminality was just one of a number of forms of cultural adaptation possible, depending upon the material circumstances and “opportunity structures” facing people: Some might make criminality pay (career criminality), others might thrive through conflict with mainstream norms and values (using violence to control illegal markets such as the drug trade, gambling, or prostitution), still others might fail and retreat into addiction, alcoholism, or vagrancy. But, above all, what this marked was an increasing tendency to study gangs from the perspective of their violent and criminal consequences rather than their social origins, organization, and purpose.

People and Folks

By the 1980s and the publication of John Hagedorn’s important revisionist study of gangs in Milwaukee, *People and Folks*, the “criminal turn” in gang studies had largely been completed. Hagedorn’s express ambition was to draw gang scholarship back from criminology and to contest law enforcement and media-led discourses of the gang. He developed an analysis, drawing particularly upon Thrasher’s work, to explain the simultaneous criminalization, racialization, and institutionalization of gangs in poor communities. Like Thrasher, he went back to context and opportunity, the deindustrialization and urban decline of the rust belt cities in the wake of Reaganomics, the establishment of an ethnic underclass, white flight, and the social and economic collapse of the ghetto. Furthermore, neoliberal

policy making, replacing welfare with workfare in a job-scarce economy, meant that gangs were no longer merely transitional entities; instead, they became institutionalized features of poverty communities reproducing a particular lifestyle. Young people no longer matured out of gang membership, especially when criminal enterprise, in particular drug dealing, offered an exciting and potentially more lucrative alternative to often nonexistent, boring, and low-paid work. Gangs became institutionalized in poor neighborhoods, not only as an adolescent adaptation, but increasingly also as a means for young adults to cope socially and psychologically with a jobless reality. Marginality was further entrenched into a gang lifestyle by the attentions of the local police, while the fact that gangs were overwhelmingly minority and most police departments overwhelmingly white allowed for racism to contribute to these stereotypes and foment even greater hostility and division on the street.

Code of the Street

Compounding this toxic mix, the material circumstances of the hyper-ghetto, the advent of crack cocaine in the 1980s, the toughening of the war on drugs, and a profound weaponization of street culture leading to unprecedented levels of violent death served to strengthen criminology’s handle on the gang question. Yet, even in the face of such adversity, sociologists have continued to reassert the value of a sociological and ethnographic approach to understanding gangs and gang members. Central to this work has been a series of debates about identity formation, affiliation, performance, and respect, the establishment of street capital, and the social relations and negotiations of dangerous street environments. Elijah Anderson’s work on the *Code of the Street* has been especially important in these discussions.

Anderson’s work was designed to penetrate beyond the crude and radicalized stereotypes of an inhumane, hyperviolent gangland culture peopled by thugs and murderers and to insist upon a sociological understanding of how street violence was regulated and negotiated as a social relationship. Rather than violence being random and senseless, Anderson’s research suggested that it was governed by an unwritten and yet well-understood set of rules, street etiquette centered upon relations of

respect, belonging, and hierarchy, allowing inner-city residents to negotiate dangerous spaces more safely. In other words, knowing and living the code of the street could keep you safer.

However, since the publication of Anderson's work, his conclusions have been challenged by a variety of qualitative sociological and ethnographic researchers. For example, in contrast to Anderson's claim that street codes mediate potentially dangerous encounters and help avoid violence, others have argued that street knowledge of dangerous contexts creates expectations of violence that, while they allow agents situated choices, on some occasions this choice might be to resort to violence. Furthermore, street codes might also provoke violence by requiring gang members, on occasion, to confront one another to reassert their demand for respect.

Yet, aside from the particular conclusions reached by these differing sociologies of the gang, what they have in common is an essential grasp of gang activity and behaviors as situated in social relations, which become understandable in terms of culture, context, and opportunities. Thrasher, nearly a century ago, like a number of contemporary scholars, insisted upon the importance of an ethnography-informed, sociological understanding of the gang as a necessary prerequisite for comprehending the full range of its influence within a community. Many criminologists are also aware of this, and also that flying too close to the enforcement paradigm, eyeing only the criminological consequences of the gang, offers relatively little in the way of understanding and still less in the realm of policy responses.

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See Also: 1941 to 1960 Primary Documents; Criminology; Gangs, Contemporary; Gangs, History of; Juvenile Delinquency, History of; Juvenile Delinquency, Sociology of; Juvenile Justice, History of; Juvenile Offenders, Prevention and Education; Urbanization.

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Gardner, Erle Stanley

Erle Stanley Gardner (1889–1970) was an American attorney and prolific crime fiction writer. He is best known for creating Perry Mason, his popular champion legal character of print, radio, television, and film media.

Erle Stanley Gardner was born in Malden, Massachusetts, the second of three sons of Charles W. Gardner and Grace Adelma Waugh. The family moved several times, settling briefly in Oregon, Alaska, and California. In 1906, Gardner was suspended from Oroville Union High School; in 1909, he graduated from Palo Alto High School in the San Francisco Bay area. Gardner then attended Valparaiso University School of Law in Indiana for about a month before being suspended. He then worked as a typist in the law office of E. E. Keech in Santa Ana, California, taught himself the law, and passed the California bar exam in 1911. He then briefly operated his own law office in Merced, California, but closed it shortly thereafter and worked as a lawyer in the law office of I. W. Stewart in Oxnard, California, from 1911 to 1918. During this time, he defended many Chinese and Mexican clients. From 1918 to 1921, he was employed by the Consolidated Sales Company as a tire salesman.

In 1921, Gardner married Natalie Frances Talbert; they had one daughter, Grace. From 1921 to 1933, he resumed his legal career, working in Ventura, California, at the firm of Sheridan, Orr, Drapeau, and Gardner. Gardner and

Natalie separated in 1935; in 1968, he married his second wife, Agnes Jean Bethell, who had long been his secretary and who many have suggested served as the model for Della Street, Perry Mason's secretary.

Writing Career

Gardner began writing mystery and western stories for pulp magazines in the early 1920s to supplement his income. He initially had many stories rejected, but he kept working to perfect his craft. By the early 1930s, Gardner was making very good money as a writer for pulp magazines. In 1933, Gardner published his first two novels, which were the beginnings of his Perry Mason series. His writings sold very well, and he ceased full-time law practice in 1933 to become an even more prolific writer. The first Perry Mason novel, *The Case of the Velvet Claws*, sold 28 million copies in the first 15 years after being released. During the middle of the 1950s, Perry Mason novels were selling at a rate of about 20,000 copies per day.

Gardner wrote crime fiction stories for many pulp magazines such as *All Detective*, *Argosy*, *Black Mask*, *Clues*, *Detective Action Stories*, *Detective Fiction Weekly*, *Detective Story*, *Dime Detective*, *Double Detective*, and *Flynn's Detective Fiction*. Gardner created more than 35 protagonists for these crime fiction pulp magazines. Many were recurring characters such as in the series of six short stories published in *Black Mask* featuring Ken Corning, a crusading defense attorney whom many have cited as a prototype for the Perry Mason character. Another crusading lawyer character created by Gardner was Lester Leith, a wealthy attorney who scammed and swindled myriad blackmailers, thieves, and confidence men and then donated most of the proceeds to charity; the Lester Leith stories appeared mainly in *Detective Fiction Weekly*. However, many of Gardner's leading characters were on the other side of the law from lawyers, such as his Ed Jenkins, "The Phantom Crook," who appeared in 73 short stories, most of which were printed in *Black Mask*.

Gardner wrote in genres other than crime fiction. He wrote many western stories for pulp magazines such as *West Weekly*, *Western Round-Up*, and *Western Tales*. He also had pieces that appeared in magazines like *Cosmopolitan*, *Country Gentleman*, and the *Saturday Evening Post*. Gardner also

published several nonfiction books, including 13 travel books, mostly focusing on his beloved Baja California region, as well as two true crime books, *Cops on Campus and Crime in the Streets* and *The Court of Last Resort*, which garnered an Edgar Award for Best Fact Crime. Gardner was a founding member of the Court of Last Resort, which was a project to reopen cases in which a defendant might have been wrongly convicted.

It is an understatement to refer to Gardner as a prolific writer. He published more than 190 short stories and more than 120 novels. Many of his novels, like his short stories, were written about recurring protagonists; 82 of these novels featured his iconic Perry Mason. Gardner wrote 29 novels in his Bertha Cool and Donald Lam series, which featured a private detective firm. Gardner was such an abundantly productive writer that he published many of his stories under several pseudonyms, including Kyle Corning, A. A. Fair, Charles M. Green, Grant Holiday, Carleton Kendrick, Charles J. Kenny, Robert Parr, and Les Tillray. Profits from his writing made him a multimillionaire. Gardner gained international success as a writer, as many of his works were translated into other languages; his Perry Mason novels alone have been translated into more than 35 languages. Gardner died at age 80 on March 11, 1970, at his home in Temecula, California; his cremated remains were scattered over the Baja Peninsula.

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See Also: Dime Novels, Pulps, Thrillers; Literature and Theater, Crime in; Literature and Theater, Punishment in.

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Garfield, James (Administration of)

James Abraham Garfield (1831–81) was the 20th president of the United States. However, he had the second-shortest presidential service, with only 200 days in office before he was assassinated. He was the second U.S. president to be assassinated.

James Abraham Garfield was born in a log cabin in Orange, Ohio; he was the last of the so-called log cabin presidents, and his birthplace was later incorporated as Moreland Hills, Ohio. He was ambidextrous, and in his early studies he mastered ancient Greek and Latin. In 1856, he graduated with honors from Williams College in Williamstown, Massachusetts. After graduating college, he became a professor of classics at Western Reserve Eclectic Institute, which was later renamed Hiram College; Garfield served as presi-

dent there from 1857 to 1861. For a brief period from 1857 to 1858, he served as a preacher at Franklin Circle Christian Church. On November 11, 1858, he married Lucretia Randolph; they had two daughters and five sons.

Garfield distinguished himself with careers in public service, in both the military and politics. From 1859 to 1861, he served as an Ohio state senator; during his tenure as state senator, he was admitted to the Ohio bar. From 1861 to 1863, Garfield served in the Union army, leading the 42nd Ohio Volunteers. In 1862, at age 31, he became the youngest brigadier general in the U.S. Army. He led his troops victoriously at the Battle of Shiloh (1862) and at the Battle of Chickamauga (1863). He was made a major general of volunteers after Chickamauga. In 1862, while serving in the army, he was elected to Congress. President Abraham Lincoln convinced Garfield to resign his military commission so that he could

serve as a Republican representative. He served in the U.S. House of Representatives from 1863 to 1880 during the presidential administrations of Abraham Lincoln, Andrew Johnson, Ulysses S. Grant, and Rutherford B. Hayes. In 1876, he became the Republican floor leader; that same year, he served on the Electoral Commission that decided the election between Rutherford B. Hayes and Samuel Tilden.

A Shortened Term

During the 1880 Republican Party convention, Garfield was managing the campaign of Secretary of the Treasury John Sherman (1823–1900). The leading Republican candidates trying to secure the party nomination that year were former U.S. President Ulysses S. Grant and Senator James G. Blaine. John Sherman, brother of Civil War General William Tecumseh Sherman (1820–91), was hoping to become a compromise candidate. However, on the 36th ballot at the convention, James Garfield became the actual nominee. Sherman felt betrayed; nevertheless, he had a distinguished political career. Chester Alan Arthur was nominated as Garfield's vice presidential candidate. On the advice of President Rutherford B. Hayes, Garfield refrained from much campaigning, and he won the election with a total of 214 out of 369 electoral votes.

These were pivotal times with respect to the role of government in law enforcement. Reconstruction in the south was largely being abandoned, and southern states were beginning to establish legal restrictions on African Americans. Federal revenue bureau officers were clamping down on moonshiners, and the U.S. Secret Service was vigorously pursuing counterfeiters, but perhaps, in retrospect, was not sufficiently concerned with what would soon become their main purpose: protecting the president.

James Garfield's term of office as president was from March 4, 1881, to September 19, 1881. However, during the last two months of his presidency, he lingered on his deathbed. Patronage, ironically as it turned out, was one of the major issues Garfield dealt with during his brief period as president. The Star Route Scandal was a major investigation conducted during Garfield's tenure. It involved the fraudulent awarding of mail route contracts with misappropriation of funds by officials, including members of Garfield's own party.

This scandal eventually, after Garfield's death, resulted in major civil service reforms, such as the Pendleton Civil Service Act.

On July 2, 1881, at 9:20 A.M. at the Baltimore & Potomac railroad station in Washington, D.C., Garfield was shot twice in the back by Charles Guiteau with a .44-caliber revolver. Charles Julius Guiteau (1840–82) was an attorney with the delusion that a speech supporting Garfield's campaign that he had written, but never delivered, was responsible for Garfield's victory. Guiteau sought a consular post and was bitter at not getting it. Surgeons, including Dr. Willard Bliss, were unable to locate the bullets lodged in Garfield's body. Alexander Graham Bell, the inventor of the telephone, was called to the White House to help. Bell designed an induction-balance electrical device, essentially a primitive metal detector, for the crisis but was unsuccessful. Garfield died on September 19, 1881, in Elbberson, New Jersey, of blood poisoning, related mainly to the probing of his body by physicians. Chester Arthur was sworn in the next day as the 21st president and he served out the remainder of Garfield's term, but Arthur was never elected to the presidency. Guiteau was convicted of the murder of President Garfield and was hanged on June 30, 1882.

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See Also: Arthur, Chester (Administration of); Guiteau, Charles; Slavery, Law of.

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Gates v. Collier

This case, heard in 1972, is one of the first prisoners' rights cases in American corrections. The case effectively created minimum standards of

confinement for inmates in the United States. No longer was it acceptable for states to incarcerate inmates in conditions violating their constitutional rights. Furthermore, the *Gates* decision eliminated the last remaining form of indentured servitude, more than 100 years after the abolition of slavery. The *Gates* case was filed by inmates at Parchman Farm, which was one of the only correctional institutions in Mississippi in the early 20th century. The institution is located on 19,000 acres in northwestern Mississippi and housed approximately 1,900 inmates at the time the suit was filed. Parchman Farm was intended to punish law violators with hard labor on a state-run farm. The institution was designed to minimize the states' correctional expenditures and maximize the severity of punishment.

The conditions at Parchman Farm were so harsh that many equated the prison with a slave-era plantation. The harsh working and poor living conditions resulted in the untimely death of a number of inmates. An investigation into the conditions at Parchman Farm was launched after the death of a white inmate, Danny Bennett. Although the official cause of death listed for Bennett was heat stroke, a postmortem inspection revealed that Bennett was beaten to death. As a result, the state began making policy and procedural changes at Parchman Farm.

Through inmate interviews, civil rights attorney Roy Haber compiled a 50-page, single-spaced list of civil and constitutional rights withheld from inmates. In February 1971, Haber filed law suits for four inmates (Nazareth Gates, Willie Holmes, Matthew Winter, and Zachary Holmes) in federal court alleging that conditions at Parchman Farm violated the inmates' First, Eighth, Thirteenth, and Fourteenth Amendment rights. Judge William C. Keady determined that the suit qualified as a class-action law suit and extended the suit to include all inmates at Parchman Farm. In August 1971, the state of Mississippi admitted to the constitutional violations alleged by the inmates in order to prevent further public embarrassment from a trial; however, this forced the state to comply with all changes set forth by the court.

Several changes were mandated to correct the problems identified by the court. First Amendment rights were ensured by preventing the censoring of inmates' mail by correctional staff except in condi-

tions of extreme necessity. Fourteenth Amendment rights were restored by mandating due process rights for inmates during disciplinary hearings. Eighth Amendment rights were restored by requiring Parchman Farm to more closely regulate the maximum security unit, secure adequate medical treatment (including personnel and facilities) for inmates, implement a classification system separating hardened offenders from nonviolent first time offenders, improve physical facilities (including the degraded housing, sewage, and drinking water infrastructure), eliminate severe corporal punishment, and eliminate the "trustly system" (arming inmates and charging them with guarding other inmates) in favor of trained and paid civilian guards. Finally, Fourteenth Amendment rights were restored with the elimination of racial segregation on Parchman Farm. Prior to the *Gates* decision, African American inmates, comprising two-thirds of the inmate population, were forced to reside in worse conditions solely because of their race. The state of Mississippi began correcting these deficiencies with the assistance of a \$1 million grant from the Law Enforcement Assistance Administration. These changes provided inmates with minimal constitutional protections, now treating them as citizens and no longer as state-controlled slaves.

The impact of the *Gates* decision continues to directly influence corrections in the United States. The three most notable changes attributable to the *Gates* decision are elimination of the trustly system, elimination of corporal punishment, and elimination of racial segregation in prisons. Although the *Gates* decision served as a powerful start to combat many of the adverse conditions of confinement, evidence suggests that racial discrimination and corporal punishment continue to plague corrections in the United States.

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See Also: Chain Gangs and Prison Labor; Corporal Punishment; Due Process; Mississippi; Prison Privatization; Prisoner's Rights.

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Gender and Criminal Law

Laws regarding criminal behavior are generally defined as codified regulations that are established to regulate the behaviors of individuals within society. Laws are socially constructed by groups of individuals who hold the highest degree of power within society and thus often reflect the social values of society's elite classes. Thus, socially dominant groups possess the power to define what types of behaviors and groups of people are perceived as criminal and the negative, along with socially sanctioned ramifications for violating the legally codified rules. Throughout history, laws have been applied to and affect various groups differently, including but not limited to gender groups. Gender, as opposed to sex, refers to the ways men and women are expected to behave based on the socially assigned gender category they represent, namely, male and female. Generally in our society, masculine behaviors are characterized by strength, dominance, power, and aggressiveness. Conversely, feminine behaviors are characterized by inferiority, docility, weakness, and dependency. Thus, through societal attributions of appropriate behaviors, inequalities between men and women in society are created and reinforced in all areas of social life, including the areas of crime and criminal law.

Prior to the late 1970s, women were rarely included in criminological studies and theories of crime. Criminal behavior and involvement in the criminal justice system were socially conceptualized as primarily male spheres of life. However, after the ideas of feminism, particularly second-wave feminism, became more widely accepted, researchers and criminal justice practitioners began to understand that gender differences in

criminal offending, victimization, and experiences in the criminal justice system exist and are influenced by social, political, and historical occurrences. While contemporary scholars and practitioners acknowledge that men and women engage in different types and amounts of criminal behavior, to some extent, crime and criminal law continue to be perceived as masculine. Correspondingly, the legal responses to criminal behavior are also, generally, based on a masculine standard. Therefore, previous and current criminal laws often fail to take into account the gendered nature of criminal offending and the role that the social construction of gender plays in the commission of crimes and their associated legal responses.

Women and Crime

Women generally commit fewer and less serious crimes than men. On average, women account for less than 20 percent of arrests for violent crimes and less than 25 percent of the total arrests that occur. Women's less frequent and less serious criminality as compared to their male counterparts is not a new phenomenon but a trend that has persisted throughout time. What has changed over time are the types of crimes for which women have been arrested and processed through the criminal justice system.

In the early 1800s, women had few legal rights, worked inside the home, and were subjected to well-defined views regarding appropriate feminine behavior. During this time, women were primarily arrested for petty larceny and theft, especially during the Civil War because of the resulting economic deterioration. With their husbands at war, many women had to steal to survive. Additionally, social concerns regarding female sexuality existed. Thus, many women were arrested for prostitution because this behavior was viewed as violating the normative standards of feminine conduct regarding sexuality.

During the 19th century, women generally were not associated with violent crimes, such as murder. However, notable examples exist. For example, in 1843, Polly Bodine was accused of murdering her sister-in-law and infant niece by breaking many bones in their bodies, including their skulls, and subsequently setting their house on fire in an attempt to cover up the murder.



Laura Bullion, a female member of the notorious 19th-century gang the Wild Bunch, dressed in men's clothing in an early mug shot created by Pinkerton's National Detective Agency after an arrest on November 6, 1901, in St. Louis, Missouri.

After three trials, Bodine was eventually acquitted for the murders due to a lack of evidence and the invalidation of witness testimony by her attorney. However, she continued to be viewed as an infamous female criminal of her time. Not only was she accused and tried for the murders of her sister-in-law and young niece, but she also deviated from acceptable notions of femininity in various spheres of her life. Prior to the murders, Bodine engaged in sexual behaviors out of wedlock and had several abortions, which, at the time, were not socially accepted. As previously asserted, the behavior of women in the 1800s was guided by well-defined standards, many from which Bodine violated.

In the mid-20th century, women continued to be arrested, charged, and incarcerated for nonviolent and victimless public order offenses, particularly prostitution. Arresting and charg-

ing women for public order sex crimes illustrates the idea that criminal law works to maintain and reproduce a gendered social organization. Thus, in both the past and today, the criminalization of prostitution is more about social morality and gendered values than about criminal offending, and is one example of the criminalization of behaviors that violate traditional societal expectations of femininity. By creating and enforcing laws against nonviolent, victimless crimes, such as prostitution, the message conveyed is that law-abiding and moral women should not engage in public sexual acts and, if caught doing so, they will be socially sanctioned through the law.

By the late 20th and early 21st centuries, women's representation in the criminal justice system began to increase. The types of crimes women were arrested for and charged with also began to change. Now, women were primarily arrested for minor property offenses, such as larceny, fraud, and substance abuse charges. In addition, the number of women under correctional supervision, including jail, prison, probation, and parole, increased substantially. For example, from 1990 to 2000, the number of women under correctional supervision more than doubled. Currently, well over 1 million women are under some type of criminal justice system supervision. While women have consistently been less likely than men to be incarcerated in the United States, the rate of incarcerated women has increased more precipitously than the number of incarcerated men over the same time period.

As with men's crime, race and economic class play a significant role in women's criminal behavior and experiences with the criminal justice system. Being economically disadvantaged affects one's ability to survive in a society that is based on financial exchange and limits one's opportunity to engage in lawful employment that provides the financial requirements necessary to meet personal needs. Thus, individuals who are financially disadvantaged may turn to crime to help support themselves and their families, particularly women. Generally, women make less money than men and are less likely to be employed in professions that provide opportunities for advancement. Thus, property crimes such as fraud and larceny are some of the most common types of criminal offenses committed by women.

Women of minority racial groups are often overrepresented at various stages of the criminal justice process. Black women make up more than 50 percent of the total number of women who are currently incarcerated, but only a fraction of the total female population, generally about 6 percent. From 1980 to 1991, the percentage of incarcerated black women increased more quickly than that of incarcerated black men. However, women commit less crime and less serious crime than their male counterparts. Thus, negative, racist attitudes that exist within the criminal justice system and within society as a whole seem to affect black women more than black men.

Evolution of Criminal Law Applied to Women

Despite these numerical increases, there is little indication that women have become more criminal over time. Most female offenders commit nonviolent offenses, which, as previously illustrated, has been consistent throughout history. Additionally, most women are arrested, charged,

and under some type of correctional supervision for nonviolent property and drug offenses, not more serious violent offenses like their male counterparts. Of incarcerated offenders released from U.S. prison institutions, the proportion of women who recidivate or reoffend is less than the proportion of men who commit future criminal offenses. Thus, the increase in the proportion of women under correctional supervision over the past several decades is more an effect of structural and political factors, than of women's increased criminality.

Over the past several decades, law enforcement agencies have shifted their attention in terms of the types of crimes on which they focus. Law enforcement practices have moved toward targeting nonviolent, less serious types of offending and thus have effectively broadened the opportunity for women to be arrested for minor offenses. One example of the shift in law enforcement practices and objectives is female prostitution. Studies suggest that women continue to engage



This 2011 arrest of suspected drug gang members in Georgia included three black men and one woman. While black women make up only a fraction of the total female population, around 6 percent, they represent more than 50 percent of the total number of women who are currently incarcerated in the United States.

in prostitution and other victimless sex offenses as often as in previous time periods. However, female arrest rates for these crimes have dramatically decreased. Now, as opposed to focusing on female prostitution, law enforcement officials are increasingly focusing on crimes such as female drug offending. While it may seem that women are committing fewer minor sex offenses than in the past, this is most likely only a reflection of the types of crimes that law enforcement officials are targeting, not a reflection of the types of crimes women are committing.

Recently, federal and state government agencies have increased spending for services related to corrections, while funding for health services, education, and other public needs has diminished. For example, the War on Drugs that was implemented by the U.S. government during the politically conservative 1980s increased legal attention toward nonviolent drug offenses. Thus, women who would not have previously come into contact with the criminal justice system were often punished for minor drug offenses. Additionally, the implementation of mandatory sentencing, particularly as it relates to drug offenses, has increased the number of incarcerated women and men in society. Mandatory sentencing laws place limits on judicial discretion, thus requiring judges to rule in favor of more harsh sentences than they probably would have otherwise, particularly for nonviolent offenses.

Gender Bias in the Law

Women primarily commit nonviolent crimes. Of the relatively low proportion of women who do commit violent crimes, approximately 75 percent commit acts of simple assault. Domestic violence, also known as intimate partner violence, is generally defined as acts of violence or patterns of abusive behaviors committed by individuals in an intimate relationship, such as a family members, romantic partners, or friends. Various scholars and activists argue that many current domestic violence laws have patriarchal and misogynistic origins in which women are viewed as subordinate to men and are treated in ways consistent with this idea. Thus, laws that are virtually prejudiced against women such as domestic violence laws produce, reproduce, and maintain patriarchal social organization and elucidate how

women are controlled in society. While the perpetual disadvantage of women based on domestic violence laws often occurs unintentionally, the unconscious internalization of societal gender roles maintains and reproduces the subordination of women through the criminal justice system's imposition of these legal practices. For example, historically, women were viewed as the familial property of their husbands. For centuries, husbands were legally allowed to use violence against their wives in an effort to socially control them.

In terms of women and criminal law, a relatively large proportion of the violent acts committed by female offenders are committed in self-defense against continuing patterns of intimate partner abuse or domestic violence. Thus, domestic violence laws also offer an example of criminal law in which gender plays a salient role, and their use reveals another reason why women's increased involvement with the criminal justice system is primarily a result of structural and political changes.

A body of research exists that examines women who use force against their intimate partner as a reaction to being abused. Many scholars argue that violence is often gendered in nature, and that women who are arrested for acts of intimate partner violence based on mandatory arrest policies are disadvantaged because law enforcement officials neglect to take into account the context in which the acts occurred. More specifically, when women commit acts of violence against intimate partners, it is often in self defense and occurs as a reaction to a long-standing history of domestic violence. Additionally, battered women who use self-defensive violence often get entangled in domestic violence laws that are intended for abusers, specifically, male offenders. Women who are arrested for domestic violence as a method of self-defense contest the charges brought against them less often than men for fear of losing their children or families. As a result, these women are often mandated to attend batterer treatment programs, which assume that the problem of violence was solely the fault of the female victim. In this way, treatment programs maintain and reproduce the larger issues of power and control in society that aid in sustaining violence against women. The previous examples illustrate how criminal law is shaped by social factors such as gender, race, and

economic class and the ways in which women as offenders are positioned in a criminal justice system that primarily views crime and criminal law from a patriarchal perspective.

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See Also: Domestic Violence, History of; Domestic Violence, Sociology of; Women Criminals, Contemporary; Women Criminals, History of; Women Criminals, Sociology of; Women in Prison.

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Genovese, Vito

Born in Risigliano, near Naples, Italy, Vito Genovese (1897–1969) immigrated with his family to the United States as a young man and became one of the most powerful American organized crime figures of his era. He was a member the ambitious cohort of criminals born between 1892 and 1900 that historian Mark Haller identifies as ascending in power in the criminal underground during Prohibition, courtesy of their youth and determination. Within this group of predominantly Italian and Jewish immigrants and first-generation American slum-dwellers, Genovese assumed an influential position, though he was decidedly a rung below leaders like “Lucky” Luciano and Frank Costello. During Prohibition, Genovese proved a brutal

and effective enforcer, and his star rose along with those of his peers. Following Luciano’s 1931 rise to power, Genovese was, some observers believed, third in the underworld hierarchy, behind Luciano and Costello. Following Luciano’s 1936 imprisonment on prostitution-related charges, Genovese expected to occupy a position of greater influence. However, Genovese faced indictment for a gangland murder the following year and fled the United States rather than stand trial.

Returning to Italy, Genovese settled near Naples and reputedly became an ally of Italian leader Benito Mussolini, receiving decorations from the Duce for his services to the fascist republic. He may even have used his contacts in the New York criminal underworld to aid Mussolini. In 1943, Genovese allegedly engineered the murder of Carlo Tresca, a New York-based Italian American antifascist publisher, who was gunned down by unknown assailants in Manhattan. The



Vito Genovese, the leader of the Genovese organized crime family, in 1959, the year of his conviction for conspiring to sell heroin. He may have continued to direct criminal activity while serving his sentence in the Atlanta Federal Penitentiary.

commencement of hostilities between the United States and Italy only enriched Genovese, who reportedly masterminded an immense black-market smuggling operation in southern Italy. As Mussolini's hold on power slipped, Genovese reached a rapprochement with American military authorities. Working as an interpreter, he helped U.S. forces apprehend several rival black marketers. Meanwhile, he extended his own smuggling operations. In 1944, he was arrested on a warrant for a 1934 New York homicide. When the chief witness died while in custody as Genovese was awaiting extradition to the United States, the case collapsed, and Genovese was acquitted of the charge in 1946.

From there, he resumed his place in New York's organized crime hierarchy. In 1957, he reportedly masterminded a failed attempt to murder presiding "boss" Frank Costello, a shooting that nonetheless precipitated Costello's "retirement" from active involvement in criminal activities. In that same year, he reputedly organized the ill-fated "La Cosa Nostra summit" at the home of Joseph Barbara in Apalachin, New York. When many of its participants, reportedly high-profile mobsters from around the country, were apprehended after they failed to elude a police roadblock; public fears of a national criminal syndicate, now specifically identified as the "Mafia," grew. Though he faced no charges connected to the Apalachin meeting, Genovese found himself the target of intense police investigation. In 1959, he was convicted for conspiring to sell heroin after a drug smuggler implicated him and several of his associates. He reportedly continued to direct criminal activity from his cell in Atlanta Federal Penitentiary.

After a falling-out with former underling Joseph Valachi in prison, Genovese is believed to have ordered Valachi's murder. Valachi, learning of the plot, sought federal protection and became the first high-level mob informant to speak freely to investigators about organized crime in America. His 1963 testimony before Senator John McClellan's Permanent Subcommittee on Investigations provided an unprecedented inside look at the organization Valachi called "La Cosa Nostra." Valachi provided details of the structure of New York's five organized crime "families" and described a series of rituals and mores that bound

members to the secretive criminal organization. Valachi's testimony buttressed then attorney general Robert F. Kennedy's efforts to "destroy" organized crime in the United States by making the public aware of the extent and power of organized crime families. Thus, Genovese was indirectly responsible for some of the most damning insider revelations about American organized crime. Genovese passed away from heart disease on February 14, 1969, still in custody at the U.S. Medical Center for Federal Prisoners in Springfield, Missouri. He was interred at St. John's Cemetery in Queens, not far from the crypt of former associate and rival Luciano.

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See Also: Gambling; Italian Americans; Luciano, "Lucky"; Organized Crime, History of; Rothstein, Arnold; Schultz, Dutch.

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Georgia

The last of the original thirteen colonies, and one of the original seven Confederate states, Georgia is a southern state with a body of law extending back to the colonial era and the English common law tradition.

Crime

Slavery remained legal in Georgia until the Civil War. Although importing new slaves to the state was prohibited in 1817, that law was repealed 12 years later. At the same time as its repeal, the rights of both free and enslaved blacks were restricted by outlawing teaching blacks to read or write, and by imposing a 40-day quarantine on free blacks on board visiting vessels, during which it was illegal

for other free blacks to communicate with them. Abolitionist texts were criminalized, and the law against teaching blacks was enhanced to include allowing a black person to transact any business in writing on behalf of a white. Perhaps the strictest laws came in 1859, when it was made illegal to free a slave upon the death of the master or to bring free blacks into the state.

During Reconstruction, the Ku Klux Klan was formed as a vigilante group targeting Republicans, blacks, and their allies. Founded in Tennessee, the Klan quickly spread through the south, and the Grand Dragon of the Georgia Klan is believed to have been Confederate general and failed gubernatorial candidate John B. Gordon. The Klan's first apparent action in Georgia was the murder of radical George Ashburn, a delegate to the southern Loyalists' Convention who supported Reconstruction and the Fourteenth Amendment. Ashburn was killed upon his return to his Columbus home.

The white "redeemers" who took control of Georgia after Reconstruction in 1872 enacted vengeance on the black legislators who had come to power during Reconstruction, several of whom were whipped and beaten by mobs. Jim Crow laws were enacted to restrict the rights of blacks and segregate public spaces in order to institutionalize white supremacy in a new form, which lasted until the efforts of the civil rights movement in the 1950s, 1960s, and 1970s.

The Klan soon died out, though the name was revived in the 20th century. This second Klan, founded in 1915, was inspired by the glorification of the Klan in the movie *Birth of a Nation*, and by the lynching in Atlanta of Leo Frank, a Jewish man whose death sentence for the rape and murder of white Mary Phagan had been commuted to life in prison. Many of the new Klan's founders were members of the Knights of Mary Phagan, an Atlanta organization, who were gathered up by former Methodist preacher William Simmons. A number of the Knights accompanied Simmons to Stone Mountain, outside Atlanta, along with two elderly members of the original Klan, to burn a cross and announce the formation of the new Klan. The second Klan was as anti-Catholic and anti-Jewish as it was anti-black, a response not to the ills of Reconstruction as in the first Klan but to the racial tensions caused by urbanization

and immigration. The new Klan remained powerful in Georgia, and in many parts of the country was considered an innocuous fraternal organization like the Elks or the Shriners. The violence remained, though, and in the early days of the new Klan it was often aimed at black veterans returning from World War I.

The second Klan gained a great deal of political influence, which the first had lacked, but declined by the end of the 1920s and died out completely in 1944, when the organization was unable to pay its back taxes. During the civil rights movement, numerous anti-black groups throughout the country, especially the south, formed with Klan references in their name, but unlike the first two Klans, there was no single hierarchical organization guiding them.

Police and Punishment

The oldest law enforcement agency in Georgia is the Chatham County Sheriff's Office, established in 1732. In many communities, a single sheriff was the only official enforcer of the law, though he was in times of need assisted by male volunteers from the community, who might or might not be officially deputized for a special purpose. Even when they grew in the 19th century, many sheriff's offices consisted only of a sheriff, a permanent deputy, and a jailer. The sheriffs have continued to have an important role in the state, as county government is more powerful and significant in Georgia than in much of the country. In the 20th century, some counties established county police departments, supplementing but not replacing the sheriff.

The first state prison in Georgia was built in 1811 and opened in 1815. Called Prison Square, it was an all-white facility in practice; there were few free blacks in Georgia at the time, and the punishment of black slaves was generally handled under separate laws and administered by slave owners. Prison Square was one of the first state prisons built in the south, which generally preferred cheaper alternatives to imprisonment.

Georgia was the last state to end the practice of prisoner chain gangs (before their 1990s revival), in 1955. While corporal punishment like floggings had been a way to administer punishment without the expense of imprisonment, chain gangs—like prison industries that used prisoner



An armed guard watches over convict laborers in Oglethorpe County, Georgia, in May 1941. Georgia did not end the practice of prisoner chain gangs until 1955, making it the last state to continue the practice until it was revived in the 1990s. Georgia also practiced convict leasing, beginning with the May 11, 1868, lease of 100 black prisoners to the Georgia and Alabama Railroad. That system, however, was phased out in the first decades of the 20th century.

labor for simple manufacturing—were a way to offset the cost of imprisonment. Groups of prisoners restricted by ankle shackles were used for manual labor, either for government jobs such as highway maintenance or for the private sector under convict leasing programs. The 1930s movie *I Am a Fugitive From a Chain Gang*, based in Georgia and adapted from a convict's memoir, turned public opinion against the practice because of the treatment of prisoners and constitutional concerns over forced labor. Further, although both black and white prisoners were put in chain gangs (called “work” gangs when no shackles were used), it was widely recognized that convict leasing had begun in response to the emancipation of slaves, when black prisoners were rented out as laborers by prisons to private businesses,

which no longer had slave labor to depend on. In Georgia, convict leasing began with the lease of 100 black prisoners on May 11, 1868, to the Georgia and Alabama Railroad. The system was phased out in the first decades of the 20th century, and until it was abolished completely, chain gang labor was used only for government and local community projects.

Georgia is a capital punishment state (for capital homicide, aircraft hijacking, and treason) and in fact has been key in the history of capital punishment through the two Supreme Court cases that shape modern death penalty statutes. The 1972 *Furman v. Georgia* decision effectively found all extant death penalty statutes to be unconstitutional, forcing those states wishing to keep the death penalty to draft new laws.

Numerous problems were found with the death penalty. Justices William Brennan and Thurgood Marshall believed it to be unconstitutional in all circumstances, constituting cruel and unusual punishment. Other justices found that the problem was the inconsistency of its application, the fact that it was disproportionately used against black defendants while white defendants were more likely to get a lesser sentence, and the lack of any apparent correlation between the severity of a crime and the use of the death penalty. As Justice Potter Stewart wrote,

These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual. For, of all the people convicted of rapes and murders in 1967 and 1968, many just as reprehensible as these, the petitioners are among a capriciously selected random handful upon whom the sentence of death has been imposed.

Two other death penalty cases had been combined with the *Furman* case, both of them having applied the death penalty in rape cases, and thus the decision in essence ended the use of the death penalty for rape as well, as a disproportionate punishment.

The death penalty statutes that followed had to find ways to avoid these complaints—to be applied more consistently, to make every effort to ensure that the defendant was guilty and to make use of every available legal recourse, and to use the death penalty only for the most heinous crimes. The subsequent 1976 decision, *Gregg v. Georgia* (which was combined with cases from Florida, Texas, North Carolina, and Louisiana), affirmed the constitutionality of the death penalty when properly applied; the decision invalidated some of the death penalty statutes legislated in the intervening time but made clear how states should draft their capital punishment legislation in the future. In particular, in order to address Justice Stewart's complaints, the process must ensure an appellate review of the criteria for applying the death sentence and must take into account the character and record of the defendant. This second requirement was affirmed by later decisions to exempt juvenile and mentally handicapped defendants from the death penalty. In Georgia, the post-*Gregg* capital punishment stat-

ute reserves the death penalty for defendants older than 16, requires delaying the execution of a pregnant defendant until after she is no longer pregnant, and suspends the death penalty for the mentally incapacitated.

Modern Georgia has been criticized for the harshness and disproportionality of its sex offense laws. In the 2002 case *Georgia v. Allison*, for instance, Janet Allison was convicted of a sex offense, was entered into the sex offender registry, and was forced to put three of her children into foster care. Her crime had been to permit her pregnant 15-year-old daughter to have sex with her boyfriend (later husband). The court further forbade Allison from any contact with her daughter or grandchild, and because of being a registered sex offender, she was forced to relocate to a new home in order to not be near a church or school.

The *Allison* case and a similarly disproportionate ruling in *Georgia v. Wilson*, in which a 17-year-old was sentenced to 10 years in prison for aggravated child molestation after having consensual oral sex with a 15-year-old, have been used by legal reform advocates to demonstrate the problems with the sex offender registry and with sex offense sentencing guidelines that do not take sufficient context into account.

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See Also: 1851 to 1900 Primary Documents; African Americans; Atlanta, Georgia; Capital Punishment; Chain Gangs and Prison Labor; Convict Lease System; *Furman v. Georgia*; *Gregg v. Georgia*; Ku Klux Klan.

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German Americans

The influence of German Americans can be found in virtually every facet of American society, from agriculture to business, industry, social life, family life, religion, education, music, art, architecture, politics, military service, journalism, literature, and language. Dwight Eisenhower, Albert Einstein, Babe Ruth, and John Steinbeck are a few of the many prominent German Americans who played a leading role in shaping the United States.

Up until the 19th century, the reputation of German Americans was largely one of respectability and productivity. By the early 1900s, however, the prohibition of alcohol and a world war put some German Americans at odds with the criminal justice system in the United States. While individuals such as John Dillinger and “Dutch” Schultz, the son of German Jewish immigrants, took on the role of the gangster, others were the victims of crime in the form public outcry and anti-German sentiment.

Early German Americans

The history of German Americans can be traced back to 1608, when a small group of German immigrants arrived at the English colony of Jamestown, Virginia. These Germans came to Jamestown as contract laborers, and their contributions exemplify the profound role that German settlers played in the shaping of America. These original settlers marked the beginning of the multiethnic and multicultural society that defines the United States to this day.

Between 75,000 and 100,000 Germans immigrated to America during the colonial period, but the mass of German immigration to the United States took place from 1815 to 1914, as more than 5 million Germans crossed the Atlantic in search of new opportunity. Since the end of World War I in 1918, more than 1.5 million have immigrated. The overall estimate of German immigration to America is more than 7 million.

Given the large number of German immigrants, it comes as no surprise that numerous German Americans have been perpetrators or victims of crime. Examining the German American history of crime is not as clear-cut as that of some other ethnic groups. While crime as related to Italian and Russian Americans can be

explored through the extensive crime networks of highly organized and infamous mobsters and racketeers, the German American experience is more general to the essence of America. In other words, German Americans were normalized to such a level in American society that their relation to crime is somewhat akin to that of English immigrants. Despite this commonality, German Americans were a unique ethnic group that numerically held the largest share of immigration. In relation to the greater transcontinental migration, however, Germans made up a mere 15 percent of total immigration to America. The ethnic identity of German Americans led to unique experiences with crime and society in the United States.

German Americans who were born abroad experienced many hardships common to most immigrants. Emigrant travel reports provide a good description of the challenges and vulnerability to crime faced by German immigrants. Francis Daniel Pastorius, founder of Germantown, Pennsylvania, set sail from England on June 6, 1683, and docked in America on August 20. He spent 74 days at sea.

The typical German immigrant received only minimal food aboard ship. They had to cook for themselves and bring along any extra provisions that would be needed. Crowded, dimly lighted decks provided little shelter for the passengers. Medical care and formal security aboard the vessels was virtually nonexistent, save for the captain and crew, who would help in case of emergency, given they had the skills or means to do so. The high stress of being at sea for an unpredictable amount of time sometimes led to a shortage of food, which led some to steal the personal stashes of fellow passengers.

During periods of greater immigration, captains simply allowed more passengers to come aboard, which further crowded the already tight passenger quarters. Crew members and the captain sometimes abused passengers. Overcrowded ships, in addition to being breeding grounds for deadly diseases, were prime environments for petty crooks in search of a pocket to pick, as well as fraudsters looking to capitalize on vulnerabilities of fresh immigrants in need of assistance. In Germany, there were even campaigns aimed at thwarting emigration. Political authorities and

the church warned of the risks and dangers of being victimized that accompanied emigration.

The American reaction to the many incoming Germans varied. While at times, new flocks of immigrants were welcomed, there were other times when Americans feared being overrun by foreigners, which led to the victimization of German Americans through both criminal intimidation and harsh legislation. In the 1855 Lager Beer Riot of Chicago, German immigrants took to the streets in opposition to the increase of already costly liquor license fees and the strict enforcement of laws against opening saloons on Sunday. While no one was killed during the protest, a Chicago police officer shot and wounded a young German man. Restrictive legislation such as Sunday closings and liquor license fees also led to violence in other cities. In July 1857, several thousand German Americans in New York City clashed with police over the closing of numerous saloons in lower Manhattan's Little Germany neighborhood. The following day, some 10,000 people assembled on Broadway to commemorate a German immigrant worker who had lost his life during the riot. By 1860, American society had shifted its focus from the prohibition of alcohol, to the problem of slavery.

German Americans of the 19th century, like other ethnic groups, had to deal with adjusting to a new society while attempting to maintain the heritage of their homeland. Perhaps the hardships unique to German life in a foreign land, among other things, can help explain the particularly high murder-suicide rate of Chicago Germans compared to other ethnic groups living in the city at the turn of the century. From 1857 to 1910, German Chicagoans committed murder-suicide at rate that more than doubled their proportion to the city's population. While in 1910, German immigrants represented a mere 8 percent of Chicago residents, they accounted for some 23 percent of the city's murder-suicides. One explanation of this overrepresentation rests in the concentration of German immigrants who earned their living as skilled craftsmen, an occupation that was largely undercut by the expansion of factories and industrial production methods.

Prohibition

Beer, an important element of German culture, placed German Americans at odds with the

criminal justice system in 1920. The United States passed the National Prohibition and Enforcement Act and went dry. At midnight on January 16, 1920, the manufacture and sale of intoxicating liquors, which ultimately included beer and wine, was outlawed in the United States. Prohibition was partially a result of anti-German sentiment resulting from America's entrance into World War I, during which Germany was an archenemy. Citing that German Americans owned many breweries, some proponents of Prohibition defended the law as a patriotic and necessary wartime measure, while others argued that grains used to make beer would be better utilized to produce bread to feed the hungry American troops who were fighting the war against Germans in Europe.

Prohibition forced many German Americans to close the breweries, pubs, and biergartens on which they depended for the income to support their families. Given that many Americans, not just German Americans, enjoyed alcoholic beverages despite the new law, demand fueled a new underground industry for beer and liquor in an illegal black market. The illegal branding of breweries had criminalized the livelihood of numerous Americans, many of whom were German Americans. The high profits that resulted from the high demand in this newly illicit market for alcohol led many to take criminal action, which led to a newer, stronger level of organization in crime as depicted by the gangster era of the 1920s.

One of New York's leading Prohibition-era bootleggers was a German-Jewish American named Arthur Flegenheimer, better known as "Dutch" Schultz. While serving a short prison sentence for robbery when he was a teenager, Flegenheimer decided to go by the name of a 19th-century German American gangster from the Bronx known as Dutch Schultz. While little is known about the first Dutch Schultz, his namesake proved to be among the most brutally successful gangsters of his time. Following Prohibition, he opened several illegal but highly profitable bars in the Bronx area. Schultz used intimidation and violence to gain control of the gambling operations in Harlem. He increased revenues of the already profitable gambling houses through innovations such as illegal slot machines with step stools to ensure that children could reach the levers.

While his involvement in organized crime was common knowledge of the day, Schultz paid off police and made cover investments to successfully avoid jail. After Schultz was acquitted of tax evasion in 1933, former U.S. Attorney Thomas Dewey was tasked with organizing a new case for indictment. Concerned that Dewey's experience and determination might actually land him in prison, Schultz and his men planned an assassination. Upon hearing news of the assassination plan, gangster "Lucky" Luciano, who believed that killing a prosecutor would bring too much heat from law enforcement, took action to stop the hit. Schultz and three of his men were gunned down in October 1935 at the New Jersey restaurant from which they ran their operations. In his last moments, Schultz refused to give names of associates or enemies to police. He is thought to have died a multimillionaire; however, most of his money was hidden in cash hoards, so his total wealth remains unknown.

World Wars

During World War I, German Americans faced oppression as many Americans questioned their loyalty at a time when the United States was at war with Germany. This period has been deemed the darkest hour of German American history. Numerous anti-German governmental and volunteer groups sprang up across the country. Such groups expressed anti-German hysteria through various crimes and injustices. Targets included the German language, the German American press, German lessons in schools, German materials in libraries, and German American organizations. Violence, intimidation, and harassment became a reality for German Americans. Some accused of disloyalty faced beatings or even death at the hands of paranoid mobs. More than 6,000 German Americans were placed in internment camps at this time. The repression of German American culture and the decrease of immigration during World War I accelerated the decline of the towns called "Little Germanys" that had been formed in the 1830s.

In 1933, the establishment of the Third Reich prompted more than 1 million Germans to leave their homeland; some 200,000 came to the United States. This is known as the intellectual migration, as it included many artists, doctors, scientists, and writers. German intellectuals such as Albert

Einstein and Thomas Mann enriched American society in fields from science and technology to the arts and politics. In contrast to the intellectual enrichment in the United States, World War II brought yet another wave of anti-German hysteria upon German Americans. American paranoia of German espionage resulted in more than 10,000 German Americans being forced into internment camps throughout the United States. The hysteria of World War II never quite took on the mob-like qualities of the World War I paranoia.

The latter half of the 20th century in America was marked by an ethnic heritage revival, during which time the German American element of America received long-overdue recognition. This trend has continued to the present day. Commonplace throughout the United States are German heritage organizations, which promote German culture through various festivals and activities.

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See Also: 1901 to 1920 Primary Documents; 1921 to 1940 Primary Documents; Dillinger, John; Great Depression; Luciano, "Lucky"; Prohibition; Schultz, "Dutch."

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Gibbons v. Ogden

In 1824, the U.S. Supreme Court held that the power to regulate interstate commerce was provided to Congress by the commerce clause of the Constitution (found in Article I, Section 8). The case involved determining whether a congressionally approved federal license or a state-

supported license took precedence in operating steamboats between New York and New Jersey. Through the case, Chief Justice John Marshall and the Supreme Court made a classic statement of nationalism—finding that competing steamboat operators were protected by a federal license approved by Congress to engage in trade along coastal waters from a New York state license that had been awarded to two individuals.

In 1807, Robert Fulton successfully ran his steamboat up the Hudson River toward Albany, and in response the state of New York granted a monopoly license to Fulton and Robert Livingston to navigate all waters within the state for a period of years with boats moved by fire or steam. Aaron Ogden received a required license from Livingston and Fulton. Thomas Gibbons, on the other hand, ran a competing steamboat service that was licensed by Congress in regulating coastal trade between New York and New Jersey. They came before the Supreme Court to determine whether Gibbons had a right to continue his business or if his license was invalid under the Fulton-Livingston licensing monopoly in New York.

When it came to questions of state and federal relations, Gibbons's attorney, Daniel Webster, believed there to be four options: exclusive national power, fully concurrent powers, partially concurrent state power, or supremacy of a national statute over a contrary state statute. In Ogden's argument (presented by Thomas Addis Emmitt and Thomas Oakley), he contended that states should have fully concurrent powers with the national government on issues related to interstate commerce. Webster and William Wirt (arguing for Gibbons), on the other hand, believed that Congress had exclusive rights to the regulation of interstate commerce through constitutional provisions. Further, they argued that leaving the regulation of commerce to states would lead to conflicting and confusing statutes that would weaken trade throughout the country.

National Versus State Authority

Both the trial and appellate courts had ruled in favor of Ogden. But Chief Justice John Marshall, an ardent nationalist, found in favor of Gibbons (6–0) and the national government's ability to regulate commerce from its perspective. Since an appropriate federal law already existed that

appeared to regulate vessels and coasting trade, New York State did not have the ability to enact monopoly regulation on the same general area. The decision of the court was predicated on answering two key questions: (1) Did “commerce” include regulating navigation? and (2) Did Congress hold an exclusive power to do so?

To the first question, the court clearly accepted a broad understanding of commerce, stating in the majority decision that commerce is more than traffic and includes all kinds of business and trade even within nations. This definition, in the court's eye, includes navigation. Marshall wrote: “All America understands, and has uniformly understood, the word ‘commerce’ to comprehend navigation.” To the second question, the majority opinion demonstrates a strong preference to the national power of Congress, saying, “The power over commerce with foreign nations and among the several states is vested in Congress as absolutely as it would be in a single government.”

While the Supreme Court's decision was a clear victory for national powers, an interesting nuance was that the Marshall Court opted to not decide the case on grounds of exclusivity despite Marshall's preference. Because of the potential impact of a broad ruling in this case that demonstrated favor toward national exclusivity across the board, Marshall instead was somewhat more direct in his ruling. William Johnson, a South Carolinian nationalist, wrote a concurring opinion that was far more expansive in prescribing national supremacy on all areas of interstate commerce.

The court failed to resolve some issues in the case. First, it did not rule on whether states had the ability to regulate areas of commerce Congress had not regulated. Second, there was no discussion of whether states could concurrently regulate areas of commerce that Congress was also regulating. These issues were decided in later years. *Gibbons v. Ogden* stood until 1895, when the court started to limit congressional power in *United States v. E. C. Knight Co.* The basic precedent set in the case, however, paved the way for future federal regulation of commerce, with little economic activity today being outside the regulatory power of Congress.

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See Also: Constitution of the United States of America; Marshall, John; Supreme Court, U.S.

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Gideon v. Wainwright

In the case *Gideon v. Wainwright*, the Supreme Court established the right of indigent defendants in felony cases at the state level to be provided with an attorney. The right extended the right to counsel found in the Sixth Amendment to the Constitution to defendants at the state level via the due process clause of the Fourteenth Amendment. In doing so, the court overturned the special circumstances rule established by *Betts v. Brady* (1942), which stated that state courts only had to provide attorneys to the indigent if the lack of defense council would render the trial unfair. The right was subsequently expanded in *Scott v. Illinois* to defendants in all criminal trials where imprisonment is a possible punishment.

Clarence Earl Gideon, a 51-year-old, semi-employed, white male was convicted of breaking into the Bay Harbor Pool Room in Panama City, Florida. At his arraignment, Gideon requested that the court appoint counsel to help him prepare his case. At the time, Florida law only required that defense counsel be appointed in capital cases; in all other cases it was left to the discretion of the court to appoint counsel. The trial court denied Gideon's request for counsel and proceeded to trial. At trial, the prosecution called only two witnesses: one who testified that they had seen Gideon leaving the pool hall with a gallon of wine,

and the pool hall owner who testified that he had locked up the hall at midnight. Gideon called six witnesses, but failed to sufficiently examine them to bring forth much exculpatory evidence. He was convicted and sentenced to five years in prison.

In his appeal to the Florida Supreme Court, Gideon claimed that his rights to due process of law had been violated by the failure of the trial court to appoint counsel for him. The Florida Supreme Court rejected his argument, stating that the trial court had the option, but not an obligation to provide counsel at its discretion. Gideon filed a writ of habeas corpus claiming that the denial of counsel denied him his rights guaranteed in the Bill of Rights of the United States. The Supreme Court granted certiorari and appointed counsel to assist with his case in order to reconsider its earlier ruling in *Betts v. Brady*, which rested on similar facts. Abe Fortas appeared on behalf of Gideon, arguing that a requirement for counsel to all criminal defendants would be less intrusive to states than a review of the circumstances of the case as suggested under *Betts*. The attorneys for Florida invited the attorneys general of other states to file amicus curiae briefs; however, all but two of the states that filed briefs that supported Gideon, bolstering his cause.

The court described the *Betts* ruling as aberrant in the course of the court's application of the Sixth Amendment to the states. Justice Hugo Black, writing for the unanimous court, stated, "in our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him." The court further pointed out that the government, state and federal, hires attorneys to prosecute defendants, and that any defendant who can afford a lawyer procures one. Justices John Harlan and Tom Clark concurred in the holding and Justice William O. Douglas wrote a separate opinion to emphasize that the rights itemized in the Bill of Rights do not decline when applied to the states via the Fourteenth Amendment. The ruling in *Gideon* represented a major step in securing due process rights for criminal defendants. Although Gideon was not a minority defendant, the ruling would assist marginal and minority defendants to prepare their cases and ensure due process at trial. In his retrial with

the assistance of counsel, Gideon was found not guilty by a Florida jury.

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See Also: Constitution of the United States of America; *Miranda v. Arizona*; Trials.

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Former New York City Mayor and Republican candidate for president Rudolph Giuliani addressing the Republican National Convention in front of a giant image of lower Manhattan without the Twin Towers on September 3, 2008, in St. Paul, Minnesota.

Giuliani, Rudolph

Law school graduate, chief of Narcotics Unit for the Office of the U.S. Attorney, associate attorney general, U.S. attorney, and most notably, mayor of New York City, Rudolph W. Giuliani (1944–) was born in Brooklyn, New York, the child of Harold Angelo Giuliani (1908–81) and Helen C. D'Avanzo (1902–2002). He attended Catholic school in Garden City South, graduated from high school in 1961, and from Manhattan College in 1965. He went to New York University Law School in Manhattan, where he graduated magna cum laude in 1968. He married Regina Peruggi (his second cousin) that same year, but they divorced in 1982. He then married Donna Hanover (a local television personality) in 1984. They had two chil-

dren together (Andrew in 1986 and Caroline in 1989). They divorced in 2002, and Giuliani married Judith Nathan (a sales manager) in 2003.

Giuliani began his career as a clerk in the U.S. District Court for the Southern District of New York. He then joined the U.S. Attorney's office in 1970. In 1975, he became associate deputy attorney general of chief of staff to the deputy attorney general in Washington, D.C. He returned to New York to practice law from 1977 to 1981, working for Patterson, Belknap, Webb & Tyler. He became associate attorney general in 1981, and was appointed U.S. attorney for the Southern District of New York in 1983, where he was very successful at fighting corruption and organized crime. He was credited with the prosecution of Wall Street executives, and with patenting the "perp walk," in which suspects are paraded in front of the media.

Political Career

In 1989, Giuliani ran for mayor of New York City, but lost the election. He worked at the law firm White & Case until May 1990, and then joined Anderson Kill Olick & Oshinsky. He ran for mayor again in 1993, and he won, becoming the 107th mayor of New York City. During his tenure, overall crime was reduced, the streets became safer, and the quality of life was improved for New Yorkers. Giuliani cleaned up public places and created a surplus out of the budget deficit. He implemented a welfare-to-work program and was responsible for an innovative law enforcement strategy. Via CompStat, police were able to monitor criminal activity on street corners, and a proactive stance was taken in reducing criminal activity. He created the Administration for Children's Services to monitor and protect children and initiated HealthStat, which enrolled children in health insurance programs.

He worked to raise the standards of the city's schools through improved student-teacher ratios and special education programs while instituting innovative instructional programs to assist with reading skills. He pushed for libraries in schools, computers in classrooms, and arts education in the school curriculum. He served as mayor until 2001 (two terms). Interestingly, he ran on the Republican and Liberal lines, yet he was a Democrat and an Independent in the 1970s.

It should be noted that some critics did not give Giuliani as much credit as his supporters; although some said the drop in New York City crime surpassed that of the nation, critics claim the crime rate was already dropping when he began his administration, and that federal funding and the hiring of additional police officers decreased the crime problem. Further, there was an improvement in the economy and changing demographics, which contributed to the drop in crime. Giuliani ran for U.S. Senate in 2000 but withdrew once he was diagnosed with prostate cancer (at age 55). In 2001, he was credited for his leadership in response to the September 11 World Trade Center attacks. He became known as "America's Mayor," was named *Time* magazine's "Person of the Year" in 2001, and received honorary degrees and public service awards. He received an honorary knighthood from Queen Elizabeth II and made cameo appearances in a number of movies.

In 2002, he founded Giuliani Partners, a security consulting business. He then joined the Bracewell & Giuliani law firm in 2005. In 2006, he started a Website to help elect Republican candidates. He ran for the Republican Party nomination in the 2008 presidential election, but withdrew from the race after a poor finish in the primaries. He returned to work at Giuliani Partners and Bracewell & Giuliani. He considered running for governor and U.S. Senate but decided against both. Today, he is a frequent political commentator on television and remains politically active, campaigning for Republican candidates.

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See Also: New York; New York City; Organized Crime, Contemporary; Violent Crimes.

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Glidewell v. State

Robert Earl Glidewell was convicted of first-degree murder after having participated in the robbery of a local convenience store, which resulted in the death of the store clerk. On February 1, 1978, a convenience store was robbed in Oklahoma City around the early morning hours. David Devol, the store clerk, was talking on the phone with an acquaintance who overheard the commotion and the moment the victim was shot. Upon hearing the gunshots, the acquaintance ran from her home to the store, where she identified Robert Glidewell's car. On the night of the shooting, Robert Glidewell entered the store with three other men (Dennis Glidewell, Charles Moseley, and Kenneth Boutwell) to rob the clerk.

It was decided between them that there could be no witnesses because the Glidewells were familiar with the clerk. One of the men, Kenneth Boutwell, agreed to do the shooting. Once they entered the store, the victim was shot five times. The last shot was to ensure that the clerk was dead. Robert Glidewell proceeded to open the registers and safe and to empty them. Soon after, they were all arrested.

When Robert Glidewell took the stand, however, he claimed that he did not expect the clerk to be shot, despite having admitted to discussing the need to kill the victim. Ultimately, the court found Glidewell guilty, beyond a reasonable doubt, of murder in the first degree; he was sentenced to death.

The appellant (i.e., Robert Glidewell; the person seeking to have the decision reversed) presented various assignments of error for the Oklahoma Court of Appeals to review. The first assignment of error was associated with six veniremen who were excluded for not being able to impose the death penalty. The appellant argued that one of the jurors did not clearly state that he would be opposed to the death penalty; however, he was still dismissed. Glidewell also disagreed with the basis on which a juror can be disqualified. More specifically, jurors should not be disqualified based on their views on capital punishment. The appellant argued that the court committed an error by admitting a color photograph of the victim lying dead on the floor. Further, a supposed illegal search was conducted in which the cash and rifle used during the crime were confiscated.

Glidewell also disputed the constitutionality of Oklahoma's death penalty statutes, citing the statutes were a violation of his Eighth Amendment protection against cruel and unusual punishment and his Fourteenth Amendment right to due process and equal protection of the law. However, the court decided that the constitutionality of the death penalty had been established by the decision in *Gregg v. Georgia*. The most significant error presented happened to be Glidewell's argument that the trial court erred by submitting as an aggravating circumstance that the murder was committed in exchange for a reward or ordered to be committed with the promise of a reward.

Upon having read all of the assignments of error presented by the appellant, the Oklahoma Court

of Appeals only recognized the potential influence of the aggravating factor on the sentence. Along with this recognition, the court identified three courses of action they could take: (1) convert the death sentence to life imprisonment by remanding the case, (2) determine that the error could be deemed as having no real consequence on the outcome, and (3) remand the case so that a new jury could resentence Glidewell. In order to make their decision, the justices examined the "weighing process" that guides the jury (upon having been presented with the mitigating and aggravating circumstances in the case) in determining whether a defendant should receive the death penalty.

Ultimately, the court decided that the trial court's mistake in presenting an erroneous aggravating circumstance to the jury could not be deemed harmless because the rendering of a death sentence is dependent upon the existence of at least one aggravating circumstance in the case. As such, the notion of having committed murder in exchange for a reward or order to be committed with the promise of a reward would automatically qualify the defendant for the death penalty. For this reason, the court was ordered to conduct a resentencing trial before a new jury.

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See Also: Capital Punishment; Juries; Robbery, Contemporary; Robbery, History of; Robbery, Sociology of.

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Gotti, John

Boss of New York's Gambino crime family, John Gotti was born on October 27, 1940, in New York, the fifth of 11 children of Fannie and John J. Gotti

Sr. Gotti was also known by two nicknames: “the Teflon Don” for his ability to evade several criminal charges lodged against him over the years and “the Dapper Don” for his natty and meticulous appearance, expensively tailored clothing, and an opulent and flamboyant public persona. Gotti was raised in an impoverished neighborhood in the South Bronx, but his family moved to Brooklyn when Gotti was about 12 years old. He had the reputation of a tough fighter with a perpetual chip on his shoulder and he soon became involved in petty street crime with two of his brothers and others in the neighborhood, running errands for local neighborhood mobsters. He did poorly in school and was often truant, quitting in 1956 at the age of 16. Gotti soon became a member of the Fulton-Rockaway Boys, a local teenage gang, where he rose through the ranks to become one of the gang’s leaders.

At about 20 years old, Gotti met and fell in love with 18-year-old Victoria DiGiorgio. They were married in 1962, after the birth of their first child, a daughter. Gotti made two attempts at legitimate employment, once as presser in a coat factory and once driving a truck, but stuck with neither. He continued his career as a petty criminal and did a couple of short stretches of jail time. Through Angelo Ruggerio, a friend from his Fulton-Rockaway days, Gotti became involved with a Mafia crew headed up by brothers Carmine and Daniel Fatico. The Faticos’ crew worked under Aniello Dellacroce of the Gambino crime family, specializing in hijackings, particularly out of Kennedy International Airport (JFK). In 1967, Gotti was arrested for his part in hijacking \$30,000 worth of merchandise from United’s cargo area at JFK and was implicated in another theft for which he was also arrested. While out on bond on those charges, Gotti was arrested a third time for hijacking a load of cigarettes in New Jersey worth almost half a million dollars. Gotti’s lawyer struck a deal, and Gotti pled guilty to one charge, another charge was dropped, and the remaining sentence was served concurrently with the first. In all, Gotti served less than three years in federal prison.

Gotti continued to climb through the ranks of the Gambino family. After Carlo Gambino’s nephew was kidnapped and killed, Gotti was convicted as part of the hit squad that retaliated

and killed one of the kidnappers, for which he was sentenced to seven years. After serving a portion of the sentence, Gotti was released and was rewarded by Gambino with privilege and position in the family. By the late 1970s, Gotti had become an underboss under Dellacroce. When Gambino died of a heart attack in 1976, Paul Castellano was handed the reins of the family. Gotti, loyal to Dellacroce, felt that Dellacroce deserved the position and not Castellano, but Dellacroce kept him in check. Two weeks after Dellacroce died of cancer in 1985, Paul Castellano was gunned down in Manhattan. Within days, Gotti moved in and took over the family, at that time one of the largest and most powerful Mafia families in the United States.

With intense scrutiny by authorities, several attempts were made at prosecuting Gotti on various charges. Each time, Gotti escaped prosecution, earning him the “Teflon Don” moniker, as criminal charges did not stick against him. His luck finally ran out when he was convicted of 13 murders and other charges in 1992, with the aid of wiretap evidence and the testimony of his former underboss Sammy (“the Bull”) Gravano. Gravano agreed to testify against Gotti and Gambino family consigliere Frank Locascio in exchange for a guilty plea to only one charge to be leveled against him and for admission into the witness protection program. Gotti was sentenced to life without parole and began serving his sentence at the federal penitentiary in Marion, Illinois. In 2002, Gotti was diagnosed with throat cancer. He died on June 10, 2002.

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See Also: Italian Americans; New York; New York City; Organized Crime, History of; Organized Crime, Sociology of.

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Grafton, Sue

Sue Grafton (1940–), author of the popular Kinsey Millhone detective novels, has been a pioneer in the tough female private investigator (PI) genre. With others such as Marcia Muller and Sara Paretsky, Grafton was one of the first female authors to write about a “hard-boiled” female private eye. Featuring a lead character who was both independent and self-sufficient, Grafton’s books have been tremendously successful, influencing other novelists, screenwriters, and video game creators.

Born Sue Taylor Grafton in Louisville, Kentucky, in 1940, Grafton was the daughter of crime novelist Cornelius Warren Grafton. Grafton studied English literature at the University of Louisville, graduating with a B.A. in 1961. Beginning writing at age 18, Grafton completed seven early novels, two of which were published in the late 1960s. Due to her novels’ relative lack of success, Grafton began working as a screenwriter in Hollywood. For the next 15 years, Grafton wrote screenplays for a variety of television movies, including adaptations of Agatha Christie’s *Sparkling Cyanide* and *A Caribbean Mystery*. Grafton’s screenplays were successful, and she was able to work steadily. This experience honed Grafton’s ability to write tight dialogue, structure fast-moving plots, and depict realistic action sequences.

In 1982, while continuing to work as a screenwriter, Grafton published her first novel featuring Kinsey Millhone. Millhone was portrayed as being in her early 30s when the Alphabet Series began and lived in the fictional California city of Santa Teresa. In choosing the location of the series, Grafton was paying homage to Ross Macdonald, whose fictional detective Lew Archer first worked in the fictionalized version of Santa Barbara in the

mystery *The Moving Target* (1949). Grafton considered Macdonald’s stylized Southern California settings, literate style, and tough but compassionate detective as significant influences on her own writing. Grafton is an aficionado of detective fiction, with characters as diverse as Christie, Macdonald, and Nancy Drew influencing her work. All of the titles in the series begin with a letter of the alphabet. Grafton has stated that the series will end once she reaches the letter “Z.” Titles in the series range from *A Is for Alibi* (1982) to *V Is for Vengeance* (2011).

All of the Alphabet Series books feature Millhone, a single woman who is self-employed, informal in her dress, and an ardent jogger. An orphan since age 5, when her parents were killed in an automobile accident, Millhone’s maternal aunt, Virginia, raised her after the death of her parents. Aunt “Gin” was the lone member of Kinsey’s mother’s family who overlooked a socially disadvantageous marriage. The rapprochement with her extended family is a continuing theme throughout the series.

By her own account something of a rebel in high school, Millhone spent several semesters in community college before dropping out to join the Santa Teresa police department. Several years later, she became a PI, first working with a mentor, later striking out on her own. Unlike other female hard-boiled PIs, Millhone never achieves great wealth or success in her career. To this end, Grafton purposely manipulates the passage of time in the series, so that while *Alibi* is set in 1982, later novels are still set in the 1980s. Grafton has stated that when the series concludes with “Z,” Millhone will be 40, which would occur in 1990. Millhone has several intimate relationships during the course of the series, but gains needed emotional support from other friends, such as her octogenarian landlord, Henry Pitts, a retired baker, and his siblings. Late in the series, Millhone reconnects with her mother’s family, the Kinseys, from whom she had long been estranged.

Popular with both the public and critics, Grafton’s books have sold millions of copies and won three Anthony Awards, given at the annual Anthony Boucher Memorial World Mystery Convention (Bouchercon), three Shamus Awards, given by the Private Eye Writers of America (PWA), the Cartier Dagger from the British

Crime Writers' Association, and the Grand Master Award from the Mystery Writers of America (MWA). Despite repeated offers, Grafton has declined to have the Millhone novels turned into motion pictures. Grafton's work has influenced a host of other writers, such as Linda Barnes, Karen Kijewski, Wendi Lee, and J. M. Redmann.

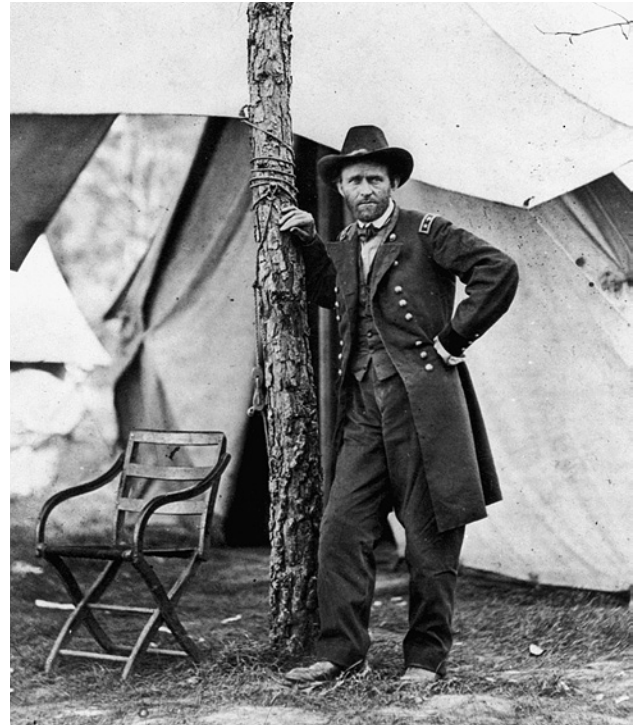
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See Also: Christie, Agatha; Hammett, Dashiell; Hillerman, Tony; Literature and Theater, Crime in; Literature and Theater, Police in.

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General Ulysses S. Grant outside a tent at his headquarters in Cold Harbor, Virginia, in June 1864 during the Civil War. Early in his administration, he used the Enforcement Acts of 1870–71 to counter Ku Klux Klan harassment of African Americans.

Grant, Ulysses S. (Administration of)

Noted Civil War Union general Ulysses Simpson Grant (1822–85) was the 18th president of the United States, serving two terms from 1869 to 1877. His Reconstruction-era administration was primarily concerned with the restoration of sectional harmony, the readmission of southern state governments, and the protection of African American civil rights. Grant presided over the 19th century's largest federal law enforcement efforts. Grant petitioned Congress for passage of the Fifteenth Amendment and the Civil Rights Act of 1875 to guarantee federal protection of civil rights, and for passage of a series of enforcement acts granting the federal government judicial authority to prosecute groups such as the Ku Klux Klan (KKK) that sought to prevent the exercise of those rights. He also sent federal troops into the south to suppress violence and protect elections. Grant's accomplishments

were marred by a series of scandals involving administration officials.

Grant established his national reputation through a military career, rising to the rank of general and commanding the Union army in the last years of the Civil War. He was known for his strategic abilities and strong will as well as his strong stand against secession. After the war, Grant served briefly as President Andrew Johnson's interim secretary of war in 1867 but disagreed with Johnson's approach to the Reconstruction issues of readmitting the southern state governments to the Union while overlooking the civil rights of the newly freed slaves. Grant sided with the radical Republicans dominating Congress in their battle against Johnson's conciliatory policies.

Grant's status as a war hero helped secure the Republican nomination for the presidency in the 1868 election as well as his subsequent victory over Democratic candidate Horatio Seymour. Grant served two terms in office, defeating Horace Greeley to win reelection in 1872. He successfully

appointed Joseph Bradley, William Strong, Ward Hunt, and Morrison Waite to the Supreme Court while three other appointees were never confirmed, including Edwin Stanton, who died after his Senate confirmation but before taking office. Grant vacillated on the subject of civil service reform. Reconstruction politics and scandal, however, dominated the Grant administration.

Civil Rights

Grant sought to balance the often-conflicting goals of ending sectional tensions while enforcing the civil rights legislation benefiting the emancipated slaves, commonly known as freedmen. He actively promoted congressional passage of the Fifteenth Amendment in 1870 and the Civil Rights Act of 1875 while seeking to enforce the Fourteenth Amendment granting African Americans rights as citizens. Voting rights were a key concern, as southerners opposed to African Americans' voting used violence and intimidation to keep them from the polls. Grant sent federal troops into the south on numerous occasions to protect the polls.

Grant also utilized the powers of the federal government to suppress the Ku Klux Klan, a vigilante group formed by Confederate veterans and wealthy planters to terrorize and intimidate African Americans and their white supporters. Grant successfully lobbied Congress for passage of a series of enforcement acts in 1870–71 to target the KKK, as well as for the creation of the Department of Justice and the Solicitor General's office to try federal cases. Attorney General Amos T. Akerman was also known for his vigorous prosecution of offenders. Later in his administration, Grant backed off this strong promotion of African American rights as political and social circumstances shifted public attitudes and military troop reductions left fewer men available for federal intervention in the south.

As concerns mounted over economic difficulties, the enthusiasm of northerners for racial issues waned. Southern Democrats, meanwhile, had largely "redeemed" their state governments from Republicans and began passing Jim Crow legislation designed to restrict African American rights. They also began demanding an end to federal military intervention. Grant dismissed Amos Akerman, failed to seek additional enforcement legislation, and refused to send additional federal troops to police southern elections. The Civil

Rights Act of 1875 suffered from lack of enforcement before the Supreme Court ultimately struck it down in 1883. Despite this ultimate failure of the Grant administration's Reconstruction policies, they represented the 19th century's most significant federal law enforcement effort.

Scandals

Grant's lack of political experience, poor choice of administration officials, and personal loyalty led to the numerous scandals for which his administration became notorious. These scandals were motivated by the greed of administration officials and did not involve Grant personally. The first big scandal involved administration officials who aided the scheme of financiers Jay Gould and James Fisk to monopolize the gold market by keeping federal gold supplies off the market. Vice President Schuyler Colfax and others were involved in the *Crédit Mobilier* scandal involving the Union Pacific Railroad and its construction of the transcontinental railroad, accepting stock bribes to overlook improprieties. Private secretary Orville E. Babcock was involved in the Whiskey Ring plot between distillers and Internal Revenue Service agents to avoid collection of federal alcohol taxes. Grant's testimony helped win his acquittal. Secretary of War William W. Belknap resigned after charges of accepting bribes from Native American post traders surfaced.

The numerous federal interventions in the south and scandals hurt both Grant and the Republican Party, allowing the Democrats to regain control of the House of Representatives in 1874. Grant left office in 1877 after apologizing for his administration's mistakes in his farewell address. After a failed candidacy for the 1880 Republican presidential nomination, Grant spent the remainder of his years traveling abroad and becoming involved in an investment firm. A swindle that damaged the firm forced Grant to declare bankruptcy, and throat cancer threatened his health. He worked with friend and renowned author Mark Twain to complete his memoirs to raise funds for his wife and children upon his death. Ulysses S. Grant died on July 23, 1885, in Mount McGregor, New York. His New York City tomb is a national memorial.

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See Also: Civil Rights Act of 1875; Enforcement Acts of 1870–71; Ku Klux Klan.

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Great Depression

The Great Depression was an era marked by worldwide economic turmoil, including high rates of unemployment, decreasing gross national products (GNP), and declining stock markets. In the United States, the Depression lasted from 1929 until 1941. Scholars reason differently as to the main factors contributing to the Depression, including bank failures, contracted money supplies, and failure of the free market. While reasons for the Depression continue to be debated, the catalyst of the Depression is not. It began in the United States with the stock market crash on October 29, 1929, also known as Black Tuesday. During the next few months, industrial production fell, unemployment increased, and the Depression was under way.

Effects of Prohibition

The decade prior to the crash was one of prosperity that witnessed the creation of the American consumer culture but also a culture of lawlessness. The National Prohibition Act (Volstead Act) was passed on October 28, 1919, and on January 17, 1920, the Eighteenth Amendment was enacted to begin the era of Prohibition. A prohibition commissioner under the National Prohibition Bureau was given power to enforce the Volstead Act, and a small force of officers was established. The prohibition commission was not well staffed or well funded. Within a week of Prohibition's passage, illegal bars known as speakeasies were

established, and liquor was stolen from government warehouses. The growth of criminal activity related to Prohibition began. Urban gangsters were able to create syndicate crime organizations that took control of bootlegging and other industries and were easily able to fund the corruption of political and law enforcement officials.

The National Commission on Law Enforcement and Observance (Wickersham Commission) was established by President Herbert Hoover in May 1929 to hold hearings throughout the country on enforcement of Prohibition. The most notable points of the Wickersham Commission were that it exposed the rampant corruption, fraud, violence, and bribery taking place among law enforcement and public officials with respect to enforcing Prohibition; the report concluded that Prohibition was potentially a factor exacerbating harsh economic conditions faced by the country. While the Wickersham Commission exposed the problems with enforcement of Prohibition, the public was enthralled with urban gangsters such as Al Capone, Charles Luciano and Louis Buchalter, who ran syndicates in high style. While it was federal law enforcement that eventually took down Capone, it was a state prosecutor and future presidential candidate who took the anti-syndicate crime reins to battle gangsters such as Luciano and Buchalter.

Alphonse “Scarface” Capone ran a crime syndicate in Chicago that focused on bootlegging, gambling, and prostitution, crimes that during Prohibition were not always frowned upon by the public. Capone engaged in bribery and generally had Illinois law enforcement and public officials in his pocket. Capone was a popular figure for some time, even garnering a front-page photograph on the cover of *Time* magazine in 1930. However, many in the public lost their love of Capone after the 1929 St. Valentine Day’s Massacre where seven rival gangsters were killed. Eventually, the federal government went after Capone in a strategy led by Prohibition agent Eliot Ness, and Capone was convicted on charges of income tax evasion in 1931.

Charles “Lucky” Luciano was a New York gangster who organized bootlegging, prostitution, and racketeering. Luciano developed connections with mob leaders across the country and developed a nationwide criminal syndicate of mobsters.



Prohibition began on January 17, 1920, and almost immediately, illegal bars known as speakeasies were established. The photo shows New York City deputy police commissioner John A. Leach, right, watching his agents dump seized alcohol into the city sewer following a speakeasy raid around 1921. Franklin D. Roosevelt took office in March 1933 and quickly repealed Prohibition, which some thought was making the Great Depression even worse.

The power Luciano developed was based on the numerous gang connections and small-time gangsters in his employ, along with political connections such as to the Democratic political machine Tammany Hall. In 1935, special prosecutor Thomas Dewey was appointed in New York to help clean up crime. Dewey was eventually able to get a number of prostitutes to testify against Luciano, who was convicted on June 7, 1936.

Louis “Lepke” Buchalter ran extensive extortion rings against industries in New York, alcohol and drug smuggling, and ran Murder Incorpo-

rated, a gang handling enforcement for crime syndicates. In 1937, Thomas Dewey set his sights on Buchalter, and after a false deal was made where Buchalter believed he was turning himself over to the Federal Bureau of Investigation (FBI) for a minimum deal, Buchalter was taken in, tried, and convicted. Buchalter was charged with the 1936 murder of candy store owner Joe Rosen. Buchalter was executed in 1944 for the murder. Thomas Dewey, who became governor of New York, later ran campaigns for president but lost to both Franklin D. Roosevelt and Harry S. Truman.

Crime Control

The winter of 1932–33 is considered the darkest period of the Depression. In 1933, unemployment reached an all-time high of 25 percent. The public took a stand against President Herbert Hoover and the administration's policies and elected Franklin Roosevelt in November 1932. Roosevelt took office in March 1933, and the first 100 days of his term saw a barrage of legislation quickly passed. A major step in crime control came when Roosevelt repealed Prohibition. While it was expected that repeal of Prohibition would do away with the type of criminal syndicates that developed during Prohibition, these organizations merely shifted focus and were able to shield themselves from the limelight as other types of crime took center stage, most notably kidnapping and bank robbing.

President Hoover had not wanted to engage in policies that would empower the federal government, including law enforcement. Thus, it was not until the kidnapping of the Lindbergh baby that President Hoover took any federal law enforcement initiative. On March 1, 1932, the son of American aviator and hero Charles Lindbergh was kidnapped from his home. The child, only 20 months old and named after his father, was later found dead. While not the only person kidnapped, the Lindbergh baby was fodder for public news and made national headlines, reaching President Hoover. Unfortunately, the federal government did not have legal authority to take action as no federal laws existed at the time regarding kidnapping. Because of Lindbergh's status, President Hoover pushed for involvement of federal agencies, including the Bureau of Investigation (renamed the Federal Bureau of Investigation [FBI] in 1935) that was within the Department of Justice. After the deceased child was found, Congress passed the Federal Kidnapping Act (Lindbergh Law), which allowed the federal government to intervene in kidnapping cases where the victim was taken across state lines. The man later convicted of the Lindbergh kidnapping, Bruno Hauptmann, was arrested on September 29, 1934, with some of the ransom money but maintained his innocence up through his execution.

The first kidnapping case where federal law enforcement was actively involved was the kid-

napping of oilman Charles F. Urschel on July 22, 1933, by George "Machine Gun" Kelly (1895–1954) and accomplice Albert Bates in Oklahoma City. Urschel was released after a ransom was received, and on September 26, 1933, Kelly was captured in Memphis, Tennessee. During this arrest, Kelly supposedly shouted the now-famous words "Don't shoot, G-men. Don't shoot!" referring to government men. J. Edgar Hoover, director of the FBI, was a master publicist who was able to use the exploits of agents to increase public acceptance of federal law enforcement.

Crime and Criminals

In the early years of the Depression, certain crimes such as bank robbing were romanticized by the public. Newsreels, competitive reporting, and detective magazines were a growing form of entertainment. The narrative of the bank-robbing bandit was a story the public could relate to. While bandits were generally young white males, women referred to as "molls" sometimes accompanied them as spouses and lovers, and at other times as active participants. The extent of involvement of the molls varies case by case, and the extent of involvement of particular women such as Bonnie Parker has been disputed.

Bonnie Parker and Clyde Barrow, known by the public simply as Bonnie and Clyde, were a notorious couple who used stolen automobiles to commit robberies of banks and stores, killing several people, including law enforcement officers. The couple met in 1930 and formed a loosely constituted gang of five. Public focus was placed on the couple and their crimes for the amount of violence and guns used as well as the couple's desire to be in the limelight. On May 23, 1934, Bonnie and Clyde drove into a trap near Gibsland, Louisiana, and were killed in a hail of 167 bullets by a Texas posse led by former Texas Ranger Frank Hamer. It was assumed that the FBI was going to intervene in the hunt for Bonnie and Clyde; however, they had sent their resources to aid in the capture of another fugitive, public enemy number one John Dillinger.

John Dillinger was a bank robber who made a number of escapes from prison. Dillinger gained additional notoriety when his picture was taken with prosecutor Robert Estill, whose jail in Crown Point, Indiana, he broke out of on March

3, 1934. The jailbreak, originally believed to be accomplished by a wooden pistol, was achieved through a series of bribes. The escape allowed the FBI to enter the picture when Dillinger drove a stolen vehicle across state lines. Dillinger was killed by the FBI on July 22, 1934, led by agent Melvin Purvis, outside of the Biograph Theater in Chicago.

The era of bandit crime closed with the end of the Barker-Karpis gang. The Barker-Karpis gang was supposedly controlled by Kate “Ma” Barker, who was the mother of four sons involved in the gang that enlisted other bandits such as Alvin Karpis. Scholars disagree with the version of Ma Barker’s role in the gang as officiated by the FBI. The Barker-Karpis gang came to an end when Ma Barker and one of her sons, Fred Barker, were killed in a shoot-out in Florida on January 16, 1935, by the FBI. The FBI’s capture and killing of the various members of the Barker-Karpis gang solidified the FBI as a crime-fighting organization.

Tensions Run High

In the early Depression years, people were passive in their reaction to the Depression, as many believed they were at fault for their unemployment situation. As the Depression ensued, there was some indication that people were becoming more active in their reactions to the economic and social conditions of the Depression. Farmers engaged in minor acts of rebellion, such as refusing to give up land. In 1932, the Bonus Expeditionary Force (BEF), a group of World War I veterans, set up camp in Washington, D.C., to secure bonuses they had been promised for war-time efforts. President Hoover had the FBI investigate BEF members in an attempt to gather information about the veterans. In late July, Hoover ordered the BEF removed. The first morning of the removal went without incident; however, in the afternoon, violence erupted. Several police officers were injured, and two BEF veterans were killed. While Hoover wanted to avoid use of the military to remove the BEF and placed the local police force in charge, General Douglas MacArthur entered the area with a small force, including tanks. The ensuing militaristic removal of the BEF by MacArthur cast a negative light on the decisions made by the administration.

Another incident that took place in 1932 that showed the changing social climate involved a group of strikers in Dearborn, Michigan, who organized a march against the Ford Motor Company. In response, company security and local police teamed up to stop the demonstrating strikers. What ensued was a violent outburst involving tear gas, water hosing of strikers, and shots being fired into the crowd. Dozens were wounded, and four people were killed. The handling of the demonstrators combined with other instances of the mishandling of those suffering from the Depression were believed to be the result of government-initiated action.

Economic and political conditions were not the only areas impacted by the Depression. Racial conditions were exacerbated as well. There was a growth in the Ku Klux Klan and a rise in the number of lynchings in the south. However, as the plight of African Americans became more apparent, the Roosevelt administration realized some action had to be taken. It would have been politically damaging to include lynching as a federal crime, so in 1935, the administration began to provide employment and housing to African Americans under various federal programs. Roosevelt’s position on race may, of course, have been politically motivated as he saw an opportunity to gain the black vote by bringing them into the New Deal coalition.

In 1939, while the United States was still struggling through its economic woes, international issues gained importance. In September 1939, Germany attacked Poland, beginning World War II. While the United States did not enter the war at this time, the 1940 Selective Service Act was passed by Congress, followed two months later by the reelection of Roosevelt to a third term as president. Military spending grew rapidly and helped to start a fast-paced economic turnaround. The country left the Depression behind and entered a new era of economic growth, international intervention, increased federal law enforcement, and eventual leadership as a world power.

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See Also: 1921 to 1940 Primary Documents; Bonnie and Clyde; Dillinger, John; Hoover, Herbert (Administration of); Luciano, “Lucky”; Prohibition;

Roosevelt, Franklin D. (Administration of); Volstead Act; Wickersham Commission.

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Green, Anna K.

Anna Green (1846–1935) was an American dramatist and author of poetry, short stories, and novels. She is best remembered as one of the first American detective fiction writers and is often credited with being among those who pioneered significant features that led to the popularity of the genre. She was born in Brooklyn, New York, to James Wilson, a prominent attorney, and Catherine Ann (Whitney) Green but was raised by her father and stepmother Grace Hollister in Buffalo, New York, following her mother's death when Anna was only an infant. She attended the Ripley Female College in Vermont, where she earned a B.A. in 1867. Immediately following her graduation, she returned to her beloved New York. There, she crafted poetry early in her writing career, but when her verse failed to gain public attention, she turned to detective fiction rather than forgoing a writing career. It was not until 1878, at the age of 32, that she published her first novel, *The Leavenworth Case: A Lawyer's Story*, which gained popularity and attention among a broad readership and marked the beginning of a successful and lengthy career as a detective novelist.

In addition to a busy professional career, Green was a devoted wife and mother. In 1884, at the age of 38, she married Charles Rohlf, a stage actor and artist, who was seven years her junior. Green

gave birth to their first child, a girl named Rosamond, a year later, followed by two sons, Sterling in 1887, the same year the family moved to Buffalo, New York, and Roland in 1892. Rohlf, who became a famed artisan in his own right, and Green, who honed her craft while also attending to her domestic duties, remained in Buffalo for the remainder of their lives.

Green's first novel, *The Leavenworth Case*, remains among her best-known works, but it was only the first of 35 detective novels that Green wrote during her 45-year publishing career that included collections of poems and short stories. Her entry into the detective genre was met with both admiration and consternation. According to published accounts of the period, the fact that a woman had crafted such an interesting tale based on what appeared to be intimate and accurate accounts of a coroner's inquest was hard to believe. Her portrayal of the intricacies of the legal system and the use of medical and ballistics experts had much to do with the close relationship she had with her father. With the publication of her second mystery novel, *A Strange Disappearance* (1880), she further developed her style, earned a devoted following, and established important features of the genre that were taken up later by other detective fiction writers, both men and women, including Agatha Christie.

Among the most noted of her contributions to American detective fiction was the creation of a series investigator, a central figure who became as important, and in many instances more important, than the case under investigation. Green's first series detective was Ebenezer Gryce, a weathered member of the New York Metropolitan Police department. Green's Gryce preceded the better-known Sir Arthur Conan Doyle's detective Sherlock Holmes by nearly a decade. Green also created two female serial investigators: Amelia Butterworth, a spinster whose curiosity rather than well-honed skills helped her unravel the mysteries she faced, and Violet Strange, whose youth and tenacity became a model for protagonists in later detective fiction specifically targeting a young, female audience.

Her mysteries often negotiated the complex social terrain of New York life, where individuals who crossed class and ethnic barriers came into contact in the course of their ordinary lives, sometimes with deadly results. Her novels were



Anna K. Green, one of the first American detective fiction writers, in a portrait from between 1870 and 1890. She wrote 35 detective novels, among other works, over a 45-year career.

populated with ordinary people and the people they dreamed of becoming, for whom she believed readers had a natural curiosity. She also believed readers were more interested in exploring the complex motivations that led people to commit criminal acts. Among her other works are *Hand and Ring* (1883), *Behind Closed Doors* (1888), *Marked Personal* (1893), *The Affair Next Door* (1897), *The House in the Mist* (1905), *The Woman in the Alcove* (1906), and *The House of the Whispering Pines* (1910).

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See Also: Christie, Agatha; Detection and Detectives; Literature and Theater, Crime in; Literature and Theater, Police in; New York.

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Gregg v. Georgia

Gregg v. Georgia (1976) was the landmark U.S. Supreme Court case that reinstated the death penalty following the moratorium effectively imposed four years earlier in *Furman v. Georgia*. The *Furman* Court had found the use of the death penalty—as it was then being implemented by the states—to be cruel and unusual punishment in violation of the Eighth Amendment to the Constitution. A majority of states responded to the *Furman* decision by rewriting their capital punishment statutes in attempts to address the Supreme Court's concerns with the use of the death penalty. With *Gregg*, the court declared that the death penalty schemes could comport with the requirements of the Constitution so long as capital punishment laws (1) provided objective criteria to direct and limit the sentencing discretion of judges and juries who decided to impose the death penalty, (2) ensured appellate review of all death sentences, and (3) allowed the sentencing judge or jury to take into account mitigating aspects of the defendant's character.

In *Furman*, a deeply divided court had struck down the death penalty on the basis of a number of concerns. While Justices William J. Brennan, Jr., and Thurgood Marshall argued that any imposition of the death penalty violated the cruel and unusual punishment clause of the Constitution, the other justices did not go so far as to say that the death penalty could never again be constitutional. Rather, the justices expressed concern over the way the death penalty was being imposed (four justices dissented from *Furman*, finding no problems with the implementation or use of the death penalty). Justice Potter Stewart wrote that

imposition of the death penalty was arbitrary and capricious and likened getting a death sentence to being struck by lightning—there were no statutory measures in place to ensure that only the most egregious offenders received the death penalty. Due to the arbitrary imposition of death, Justice Stewart and four other justices voted to declare the death penalty unconstitutional for the time. States responded quickly, and by the time *Gregg* reached the court just four years later, 35 states and the federal government had passed new laws aimed at remedying the problems identified in *Furman*.

The *Gregg* case arose after Troy Gregg was found guilty of robbing and murdering two individuals and was sentenced to death under Georgia's new statute. The *Gregg* Court, by a vote of 7–2, upheld the new Georgia death penalty law. Writing the lead opinion, Justice Stewart noted that the death penalty had a long history of acceptance in the United States. The fact that over two-thirds of the states had made efforts to remedy the problems highlighted in *Furman* suggested that public support for the ultimate sanction was still strong. The new Georgia law addressed concerns over the arbitrary imposition of the death penalty, for example, by requiring the jury to find at least one aggravating circumstance accompanying the murder before allowing imposition of death. In addition, the law mandated that all death sentences undergo appellate review and gave the defendant the right to present mitigating evidence of his character to the jury. These measures were sufficient to remedy the concerns expressed in *Furman* and exemplified the new requirements for a constitutional death penalty scheme: (1) laws must direct the discretion of the decision maker by providing objective criteria, (2) laws must ensure appellate review of all death sentences, and (3) laws must allow the defendant to offer mitigating character evidence. Justices Brennan and Marshall dissented, once again asserting their view that the standards of decency in the United States had evolved, and that the death penalty, under these modern standards, was always cruel and unusual in violation of the Constitution.

On the same day the court decided *Gregg*, it also ruled on death penalty cases from four other states, upholding new death penalty schemes in Florida and Texas and finding that new laws in

North Carolina and Louisiana did not meet the new criteria for constitutionality. The North Carolina and Louisiana laws had attempted to address *Furman*'s arbitrariness concerns by providing a mandatory sentence of death for specified crimes. The court found that requiring mandatory death for all offenders convicted of a particular crime was also capricious, since these laws did not allow decision makers to consider the individual circumstances of each case.

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See Also: Capital Punishment; *Coker v. Georgia*; Cruel and Unusual Punishment; Death Row; Electric Chair, History of; Executions; Famous Trials; *Furman v. Georgia*; Hanging; Prisoner's Rights; Sentencing; Supreme Court, U.S.

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Griffin v. California

Griffin v. California, 380 U.S. 609 (1965), was a U.S. Supreme Court case in which the court ruled that it is a violation of a defendant's Fifth Amendment rights for the prosecutor to comment to the jury on the defendant's refusal to testify, or for the judge to instruct the jury that invoking the Fifth Amendment protection against self-incrimination is evidence of guilt (the "no comment" rule). The ruling specified that this applied to the states through the due process clause of the Fourteenth Amendment.

Background

Edward Dean Griffin had been convicted of first-degree murder and sentenced to death in the death of a woman named Essie Mae Hodson.

At trial, the prosecutor, in his summation, said: “Essie Mae is dead. She can’t tell you her side of the story. The defendant won’t.” The trial court judge, in his instructions to the jury, stated that a defendant has a constitutional right not to testify. However, he went on to say that

As to any evidence or facts against him which the defendant can reasonably be expected to deny or explain because of facts within his knowledge, if he does not testify or if, though he does testify, he fails to deny or explain such evidence, the jury may take that failure into consideration as tending to indicate the truth of such evidence.

This jury instruction was consistent with the California state constitution, “comment practice” clause (Article I, § 13,), which stated that

[I]n any criminal case, whether the defendant testifies or not, his failure to explain or to deny by his testimony any evidence or facts in the case against him may be commented upon by the court and by counsel, and may be considered by the court or the jury.

The California Supreme Court affirmed the conviction, and the U.S. Supreme Court granted certiorari to determine

... whether comment on the failure to testify violated the Self-Incrimination Clause of the Fifth Amendment which we made applicable to the States by the Fourteenth in *Malloy v. Hogan*. 378 U.S. 1 (1964).

History

Historically, defendants in criminal trials in the United States were not allowed to testify, since it was believed that they could not be expected to testify truthfully if it were not in their interest to do so. From 1864 to 1900, most states, beginning with Maine, began to allow defendants to testify, leaving only Georgia still barring the practice at the end of the 19th century.

In 1878, Congress enacted a law declaring criminal defendants competent to testify. The statute included the “no comment rule,” prohibiting prosecutors from commenting on the failure to

testify, and prohibiting any presumption against the defendant based on his failure to testify (18 U.S.C. § 3481.). This federal law applied only to the federal courts, and the states made their own decisions on this matter. The California constitution explicitly permitted counsel and the judge to comment on the failure to testify.

In two earlier cases, *Twining v. New Jersey* (1908) and *Adamson v. California* (1947), the Supreme Court upheld state laws allowing adverse comments, holding that even if adverse comments did violate a defendant’s Fifth Amendment rights, the Fifth Amendment did not apply to state action. In *Malloy v. Hogan* (1964), the court overruled the earlier cases, concluding that the due process clause of the Fourteenth Amendment extended Fifth Amendment protections against self-incrimination to state trials.

The case was one of a series of rulings handed down by the Warren Court during its “Due Process Revolution,” when the court “incorporated” many of the rights of the accused in the Bill of Rights, and applied them to the states.

Ruling

The question before the court was whether or not the judge’s instructions to the jury constituted a reversible error. Associate Justice William O. Douglas, writing for the majority, observed that

... a prosecutor’s or judge’s comment to the jury about a defendant’s refusal to testify constituted a penalty imposed on the defendant for exercising a constitutional privilege. By making such comments, the court limited the privilege by making its assertion costly to the defendant.

Douglas acknowledged that a jury might find it “natural and irresistible” to infer the guilt of a defendant who refused to testify while possessing facts about the evidence against him, and so a judge’s commenting upon the refusal did not “magnify that inference into a penalty for asserting a constitutional privilege.” However, Douglas believed that a judge’s comments “solemnizes the silence of the accused into evidence against him.”

Concurrence and Dissent

Justice John Harlan concurred because, while the “no comment rule” was part of a federal statute,

he believed the rule was a “nonfundamental” part of the Fifth Amendment and therefore should not apply to state action. However, because of the precedent established in *Malloy v. Hogan* (Justice Harlan dissented), he concurred with the majority. Justice Harlan did believe that the court’s ruling did undermine federalism because state and federal courts need not run by the same rules and that the decision here reflected the tendency of the federal courts to override state courts, which was contrary to the basic idea of federalism. He went on to state that he hoped “that the court will eventually return to constitutional paths which, until recently, it has followed throughout its history.”

Associate Justices Potter Stewart and Byron White dissented. Stewart wrote that the Fifth Amendment states that no person “shall be compelled in any criminal case to be a witness against himself,” and that California’s “comment rule” did not “compel” the defendant nor anyone else to testify. Also, “the California procedure is not only designed to protect the defendant against unwarranted inferences which might be drawn by an uninformed jury; it is also an attempt by the State to recognize and articulate what it believes to be the natural probative force of certain facts.” Stewart wrote this rule “is properly a matter of local concern.”

Following the U.S. Supreme Court’s reversal of Griffin’s conviction and remand, he was tried again for murder. It ended in a mistrial because the jury was deadlocked. Finally, in a third trial, Griffin was found guilty of first-degree murder and was given a death sentence. The verdict and sentence were upheld by the California Supreme Court in 1967.

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See Also: Appeals; California; Constitution of the United States of America; Supreme Court, U.S.

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Griswold v. Connecticut

The Supreme Court decision in *Griswold v. Connecticut* (1965) was the first successful challenge to a state version of the federal Comstock Law. The court had avoided reproductive issues with the exception of sterilization (see *Buck v. Bell*, 1927, and *Skinner v. Oklahoma*, 1942). In *Griswold*, the court invalidated a 19th-century Connecticut law that regulated sexual morality among married couples. For the first time, the court used the Ninth Amendment to find an unenumerated, substantive right of marital privacy.

Similar to many states, Connecticut passed a law in 1879 that prohibited the use of, and counseling about, contraception. By the late 1950s, Connecticut was the only state that still banned contraception, even if a woman’s health was at risk from possible pregnancy. In November 1961, Estelle Griswold, executive director of the Connecticut Planned Parenthood League, challenged the law by opening a birth-control clinic in New Haven. Dr. C. Lee Buxton, professor of obstetrics and gynecology at Yale University, served as medical director of the clinic and medically examined wives prior to dispensing contraceptives. Ten days after the opening of the clinic, the police arrested Griswold and Buxton, charged them with providing illegal contraceptives, and fined them each \$100. The circuit court, superior court, and state supreme court of errors upheld their convictions.

In the state, a Catholic majority fought to keep contraceptives illegal in the face of mounting activism to repeal the antiquated law. Nationally, this time period witnessed a struggle to define privacy and the rights entailed therein. When the matter reached the Supreme Court, Joseph B. Clark argued for the state, while Thomas I. Emerson argued for the appellants with amicus briefs from Planned Parenthood Federation of America, Inc., the Catholic Council on Civil Liberties, and the American Civil Liberties Union. In a 7–2 decision, the court struck down the statute because it failed the strict scrutiny test whereby a state must prove the compelling necessity of the law. The court found a constitutional guarantee of a “zone of privacy” for married couples.

Justice William Douglas wrote the majority opinion. State-endorsed marriage contained the right to family privacy, including the right to contraceptives within marital relations. Douglas found this right “within the penumbra of specific guarantees of the Bill of Rights.” The First Amendment’s right of association extended to marriage. The Third Amendment’s prohibition of quartering troops in private residences without the owner’s permission established a right to privacy in one’s home, including married couples’ right to practice contraception. The Fourth Amendment’s freedom from search and seizure in private homes protected this notion of a “zone of privacy.” As Douglas concluded, “Would we allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives? The very idea is repulsive to the notions of privacy surrounding the marriage relationship.”

Two concurring opinions located the marital privacy right elsewhere. Justice Byron White found it in the Fourteenth Amendment’s due process clause, which protected marital privacy from state action. Justice Arthur Goldberg’s argument proved somewhat controversial. Goldberg found the “fundamental right to marital privacy” in the Ninth Amendment, which protects citizens’ rights not explicitly delineated elsewhere in the Constitution. While this amendment does not generate rights, it provides guidance that unenumerated rights exist.

Griswold was not the first time the legal realm discussed privacy. The earliest claims for privacy were based on common law tort. In the late 19th century, Boston lawyer Louis Brandeis co-

authored with Samuel D. Warren a pivotal article titled “The Right to Privacy” in the *Harvard Law Review* (1890), which lay a basis for a specifically recognized right to privacy. As a Supreme Court justice, Brandeis enunciated this right in *Olmstead v. United States* (1928) based on the Fourth and Fifth Amendments, which he believed the founders intended to be “much broader in scope” than the text implies. He argued that the founders had conferred “the right to be let alone—the most comprehensive of rights and the rights most valued by civilized men.” In 1963, the Ninth Circuit Court of Appeals found that police photos of a nude woman in suggestive poses, allegedly taken to show her bruises, violated her privacy. These actions set the stage for *Griswold*. Two justices dissented from this case. Justices Hugo Black and Potter Stewart contended that no written text existed to support the right to privacy. While they considered the Connecticut law to be “uncommonly silly,” they did not see where it violated the Constitution. The Ninth Amendment was to be a restraint on the federal government and a guide to the construction of the first eight amendments. They feared this unprecedented use of the Ninth Amendment would cause unforeseen complexity for future justices trying to define new rights.

Griswold is significant for numerous reasons. It placed the burden on the government to justify when it can interfere in citizens’ private lives and laid a foundation for cases dealing with sexual intimacy and reproductive rights recognized by the Constitution. Some feminists used the zone of privacy in *Griswold* to argue for the right to legal abortions. By increasing civil liberties, the case set a precedent expanded upon in *Eisenstadt v. Baird* (1972) and *Roe v. Wade* (1973). It also paved the way for additional cases trying to refine privacy on issues such as the right in one’s home to possess obscene materials, use drugs, or engage in homosexual sodomy. In 2003, the basis laid in *Griswold* came to fruition in *Lawrence v. Texas*, where the court struck down state sodomy laws.

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See Also: 1851 to 1900 Primary Documents; *Bowers v. Hardwick*; Comstock Law; *Eisenstadt v. Baird*; Fornication Laws; *Lawrence v. Texas*; *Roe v. Wade*.

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Grutter v. Bollinger

Grutter v. Bollinger (2003) is a U.S. Supreme Court case in which the affirmative action admissions policy of the University of Michigan Law School was upheld. The ruling was rendered in

a 5–4 decision on June 23, 2003. A Caucasian law school applicant with residence in Michigan filed the lawsuit against the law school. In the case, the plaintiff, Barbara Grutter, alleged that the law school had violated her Fourteenth Amendment right by denying her admission on the basis of race. Specifically, Grutter argued that the law school used race as the predominant factor in admissions policy decisions, thus giving certain minorities a considerably greater chance of admission than those with similar records from the majority group.

The district court ruled in favor of Grutter, finding the law school's use of race in the admissions policy to be unconstitutional. The 6th Circuit Court later reversed this decision. The 6th Circuit's majority opinion found that the law school's use of race in admissions was narrowly tailored, because it was only being used as a "potential 'plus' factor," an admissions factor that was found to be



The library of the University of Michigan Law School, the school that denied admission to Barbara Grutter, setting in motion the case that became Grutter v. Bollinger (2003). While the majority opinion found that the Constitution does not prohibit the narrowly tailored use of race to further the compelling interests of educational benefits, it was suggested that the decision may have a limited life span.

legal in the landmark Supreme Court case *Regents of the University of California v. Bakke* (1978). When admissions committees use the “plus” factor, they are taking race into account along with other factors (e.g., GPA, admissions essays) in making admittance decisions. Following this ruling, the plaintiff asked that the Supreme Court hear the case, and it agreed. On April 1, 2003, oral arguments were heard in *Grutter v. Bollinger*.

A Shift in Affirmative Action

The majority opinion, issued by Justice Sandra Day O'Connor, found that the U.S. Constitution does not prohibit the narrowly tailored use of race to further the compelling interests of educational benefits that are acquired through a diverse student body. However, O'Connor explained that within 25 years, the court expects that race-based affirmative action policies will no longer be necessary to promote diversity, thus giving the decision a potentially limited life span.

The ruling was consistent with the decision in the *Bakke* case, which allowed race as a consideration (i.e., a “plus” factor) in admissions because it furthered the compelling governmental interest of correcting historic discrimination against minority groups, but found that a quota-based admissions policy in regard to race was illegal. In the majority were Justices O'Connor, John P. Stevens, David Souter, Ruth Bader Ginsburg, and Stephen Breyer. The dissenters on the case were Chief Justice William Rehnquist and Justices Antonin Scalia, Anthony Kennedy, and Clarence Thomas.

Chief Justice Rehnquist, along with Justices Scalia, Kennedy, and Thomas, found that there was little validity in the law school's claim that its race-based admissions policy was necessary to create a “critical mass” of minority students. Additionally, citing admissions statistics, Rehnquist noted that the close correlation between number of minority applicants and number of admittees of a given race was far too precise, inferring that the law school had used some sort of race-based quota system in making admissions decisions.

Following this ruling, Michigan residents circulated petitions in an attempt to outlaw affirmative action admissions by changing the Michigan state constitution. Eventually, the petitioners succeeded and passed Proposal 2 in November 2006, which prohibits race-based admissions decisions in public

institutions in Michigan. Proposal 2 is comparable to California's Proposition 209 and Washington's Initiative 200, which are other state-based laws passed in an attempt to eliminate affirmative action admissions policies in public universities.

There was some concern that the decision substantially altered the definition of affirmative action. In the past, affirmative action had been understood as necessary to eliminate the effects of historic discrimination against protected classes, a definition upheld in the *Bakke* case. However, in the majority opinion, Justice O'Connor explained that affirmative action was important because of the “compelling state interest” of educational benefits that spawn from a diverse student body. The redefining of affirmative action in *Grutter v. Bollinger* seems to move the focus from the minority students themselves to the student body as a whole, a nuanced change that is important for the interpretation of affirmative action.

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See Also: Equality, Concept of; Racism; Supreme Court, U.S.

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Guiteau, Charles

On July 2, 1881, Charles Julius Guiteau (1841–82) shot President James Garfield in the Washington, D.C., train station. Garfield died September 19, 1881, in New Jersey. Guiteau's trial began November 14, 1881, and concluded January 25, 1882, with a guilty verdict. An appeal was denied and Guiteau was hanged on June 30, 1882.

Charles Guiteau was one of 11 children born to Luther Wilson Guiteau and Jane Howe. The Guiteaus were French Huguenots. Both Guiteau's mother and father had mental problems, as did Charles and some of his siblings. Luther was a successful businessman, but he also spent some time in a mental hospital and was captivated by the religious teachings of John Humphrey Noyes, the founder of the Oneida community in upstate New York. This community was a utopian-inspired religious commune that encouraged, among other things, a variant eugenics policy, called stirpiculture. A committee would determine which man to unite with a woman, for the purpose of procreation only; each man and woman could be married to someone else. Luther never stayed at Oneida, but he forced Charles to join just before he was about to enter a preparatory school. Charles stayed there 1860–65.

After leaving Oneida, he tried to start a religious magazine but it failed, and he rejoined the community. He left after less than a year. From 1870 to 1875, Guiteau worked in the insurance business, mostly collecting debts and incurring his own. It was also during this time that he took an axe to his sister, for no apparent reason. A doctor pronounced Guiteau insane, but no action was taken. Guiteau then became a preacher. In 1879, he wrote a book called *The Truth: A Companion to the Bible*. His preaching was ridiculed, however; mainstream religious persons thought him insane.

By 1880, his thoughts turned to politics. At the time, the Republican Party was split between two factions. The Stalwarts, represented by Ulysses S. Grant, New York Senator Roscoe Conkling, and soon-to-be Vice President Chester Arthur, favored maintaining patronage and machine politics. The Half-Breeds, represented by Maine Senator James G. Blaine and by Congressman (and soon-to-be president) James Garfield, advocated civil service reform. Guiteau favored the Stalwarts and believed that he could save the Republican Party from factionalism. When Garfield was elected president, in March 1881, Guiteau sent him letters, asking to be his ambassador to Vienna or to Paris. Garfield's secretary of state, James Blaine, told Guiteau to stop writing such letters. In May of 1881, Guiteau began to have ideas of killing the president. On June 8, Guiteau purchased a gun. After a month suffering from what he called "Divine pressure," Guiteau sought out the president and shot him.

Some 36 doctors who specialized in mental illness, called "alienists," were called in as witnesses for both the prosecution and the defense. About 30 thought Guiteau sane and responsible. Some of the original defense witnesses switched sides just before the trial. The ones who stayed could not fit Guiteau into any pre-existing classification of mental illness. The prosecution's medical team insisted that Guiteau knew what he was doing and, despite the fact that Guiteau had syphilis, found no physical basis for his erratic behavior.

The rule governing the case was the M'Naghten rule, named after Daniel M'Naghten, who in 1843 tried to kill the prime minister of Britain, Robert Peel, but missed and killed his secretary. M'Naghten was found not guilty by reason of insanity. After the trial, the House of Lords issued a report that defined what constituted insanity in a criminal case. The M'Naghten rules require that the defendant prove that he knows the difference between right and wrong and that he knows what he did was wrong. It does not account for volitional or impulsive acts. Yet, Guiteau's defense was that he could not resist the impulse to kill Garfield, comparing the assassination to Abraham's sacrifice of his son, Isaac. But in so doing, he demonstrated his awareness of his crime and that he knew it was wrong. After he was hanged, Guiteau's body was removed to the National Museum of Health and Medicine, in Washington, D.C., for further study. Moreover, following Guiteau's execution, Congress passed the Pendleton Civil Service Reform Act, which outlawed patronage for the federal civil service.

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See Also: Booth, John Wilkes; Czolgosz, Leon; Garfield, James (Administration of); Insanity Defense; M'Naghten Test.

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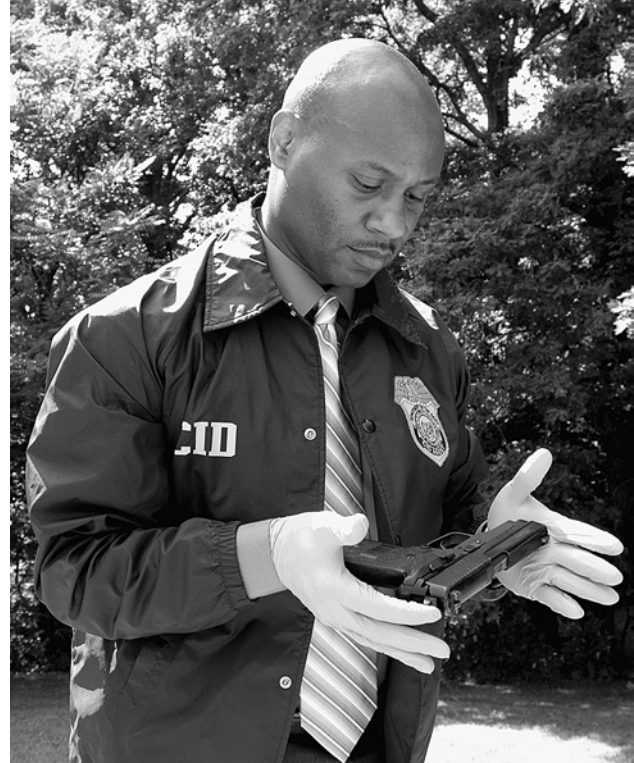
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Gun Control

The debate on gun control has become inextricably entwined with the debate on the Second Amendment, although these issues have not always been so directly engaged. How this has come about serves as a wider but indispensable backdrop to the more specific examination of the evolution of gun control laws in the United States. Much of the early history of gun control can be seen as largely event driven; in recent years, however, the growth and influence of the U.S. National Rifle Association (NRA) and its partner gun rights organizations have been much more significant. First formed in the 1870s as a special interest firearms membership and training organization, the NRA evolved in the 1970s and 1980s into a much more hard-nosed political lobby, using the courts and the political system to press the case for shooters' rights. Supreme Court judgments in 2008 and 2010 ultimately reflect this more assertive firearm rights advocacy and the fact that the parameters of U.S. gun control policy and even the very meaning of "gun control" have themselves been fundamentally altered.

Second Amendment Rights

Any discussion of gun control must also deal with both the intense political controversy now surrounding this issue and the loaded philosophical character of the concept. Contemporary interpretations of the Second Amendment now emphasize the second part of this much-contested statement—"The right of the people to keep and bear arms, shall not be infringed"—in what is referred to as the standard or individualist interpretation. Even so, it is often acknowledged that there are as many as 20,000 gun control laws, regulations, and ordinances at federal, state, and municipal levels regulating the ownership, possession, purchase and transfer, carriage, and use of firearms. Many such laws are relatively uncontroversial and are designed to restrict the access to firearms of children, convicted felons, or persons with a history of mental illness. Such laws would today be regarded as laws against firearm misuse rather than gun control. This distinction has become vitally important. Gun control, in this sense, is not considered incompatible with widespread but responsible gun ownership: On the con-



A U.S. Army Criminal Investigation Command special agent examines a handgun during crime scene investigation training. As handguns became more widespread in the 1960s, gun homicide increased, rising 89 percent from 1964 to 1968.

trary, responsible ownership is seen as the most important form of gun control. More guns, it is claimed, can mean less crime, although the evidence remains intensely contested.

The issue has not just preoccupied contemporary social scientists; historians have also entered the fray. For example, intense debate has surrounded the question of the extent of civilian firearm holdings in the antebellum era and likewise concerning the differences between American and European cultures and patterns of gun ownership. Demonstrating widespread ownership of firearms before the Civil War lends credence to a claim that those responsible for the drafting of the Second Amendment sought to give constitutional protection to individual, as opposed to militia-based, ownership and use of weapons. However these thorny questions are resolved (refer to the intense debate surrounding Michael Bellesiles's *Arming America* research), the notion of the U.S. citizen's unique and unrestricted right to possess

firearms still requires qualification. Even though, after the Civil War, widespread firearm ownership had become established, white Americans were still keen to prevent African Americans (former slaves) and others from owning firearms. While firearms ownership in old Europe was overlain by restrictions of rank and religion, in America, it was colored by race, ethnicity, and social class.

Following the Civil War, many new and disorderly frontier towns established regulations forbidding the carrying of weapons within the town limits. Ordinance #9, introduced in Tombstone by Wyatt Earp on April 19, 1881, is an example. Such measures, anticipating the “police powers” public safety and crime prevention provisions later adopted in many local jurisdictions, were not initially seen to contradict firearm rights but were simply viewed as restrictions on the places and occasions firearms might be lawfully and safely carried. Such questions have lately become more controversial, with some commentators seeing any restriction as an infringement of Second Amendment rights. Thus, debates have arisen concerning the legitimacy of restricting firearm carriage in shopping malls, on college and university campuses, in the vicinity of schools, at airports, and at leisure and entertainment venues. Given the fact that large numbers of Americans now carry firearms for self-defense and that more than 40 states permit concealed firearm carriage, NRA-backed campaigns have lately begun to question whether it is right or lawful to ask citizens to risk going unarmed when visiting such locations.

Early Legislative History

One significant piece of conventional gun control legislation in the early 20th century was the Sullivan Law (named after its sponsor, state Senator Timothy Sullivan) passed in New York State in 1911 following the shooting of the city mayor and amid a wave of anti-immigrant and criminal gang hysteria. Although passed as a crime prevention measure, which was typical of many similar provisions, the law closely reflects the social prejudices implicit in earlier gun prohibitions. It put control of firearm licensing in the hands of the local police and allowed them to discriminate against undesirables, the underclass, immigrants, and non-Americans. An underlying problem was the ready supply of cheap pistols, so-called Niggertown Saturday

night specials, in high-crime, slum neighborhoods, establishing an urban gun culture in poorer areas that have preoccupied law enforcement ever since. The Sullivan Law has subsequently drawn criticism that it is both un-American and unconstitutional. It may yet encounter the fate of similar restrictions in Washington, D.C., and Chicago.

Until the late 20th century, gun control was not a particularly important policy area for federal legislators. The 1919 War Revenue Act had established a federal manufacturer’s excise tax on firearms, which marked the first use of fiscal measures to serve public safety goals by restricting firearm distribution and placing responsibility for this area of policy within the Department of the Treasury. Reflecting state and municipal concerns about criminal access to cheap handguns, the first federal gun controls were introduced in the 1920s and 1930s. These bills initially sought to restrict the sale and transfer of weapons by mail order. Later came bans on the private ownership of machine guns and other “gangster” weapons (National Firearms Act, 1934) and on interstate weapons trafficking (Federal Firearms Act, 1938). Passed shortly after the repeal of Prohibition, the legislation reflected growing disquiet about the violent activities of organized criminal bootleggers and gangsters (including the St. Valentine’s Day Massacre in 1929), but they also drew support from an unlikely source: major gun manufacturers, who were keen to avoid being undercut by cheaper competitors.

A Supreme Court case in 1939, the first and, for a long time, the only Supreme Court judgment on gun control and the Second Amendment, *United States v. Miller* (the outcome of which is still subject to contrasting interpretations) appeared to uphold the prohibition against “gangster” weapons (in this case, a short-barreled shotgun transported across state lines) by adopting the “police powers” interpretation that sensible crime prevention measures did not interfere with Second Amendment rights. In more recent years, this interpretation has been stretched to its limits—some might say broken—by a renewed phase of gun rights activism.

Gun Control Act of 1968

The next federal gun controls, which prompted criticism that the process was largely event

driven, occurred in the late 1960s following the assassinations of President John F. Kennedy, Robert Kennedy, and Martin Luther King, Jr., in 1963 and 1968. The Gun Control Act of 1968, much watered down after five years of debate, sought to establish a federal firearms licensing system for dealers, manufacturers, and importers through which to regulate interstate sales and distribution of firearms. It became illegal for any person without a license to engage in any substantial firearm sales business. In addition, a number of groups (minors, convicted felons, persons with a history of mental illness, and users of illegal drugs) were prohibited from owning or possessing firearms. Finally, the importation of surplus military firearms was prohibited unless they were considered to have a primary “sporting purpose.” Enforcement of these provisions was vested in the Alcohol, Tobacco, and Firearms Division of the Internal Revenue Service (which became the Bureau of Alcohol, Tobacco, and Firearms in 1972).

The act itself was something of a compromise, and by the time it passed, the social context had changed dramatically. Rising crime, riots, and disorder prompted growing demand for self-defense firearms; sales of handguns had quadrupled to 2.4 million weapon purchases per year by 1968. Existing doubts about the ability of the IRS to exercise effective oversight of firearms commerce were renewed. Even though additional resources were allocated, the ATF lacked capacity to scrutinize more than 2 percent of the total annual trade in firearms.

Criminologist Franklin Zimring made a detailed study of the impact of the Gun Control Act of 1968, a time when the market for cheap handguns was expanding rapidly and gun violence was increasing. Between 1964 and 1968, gun homicide increased by 89 percent in the United States. By 1969, a majority of urban homicides were committed with handguns. Even so, Zimring concluded that despite the limitations of the 1968 act, it had curtailed, somewhat, the supply of cheap handguns and could be said to have moderated the steeply rising trend in handgun violence evident during the 1960s. Following these developments, some liberal commentators, Zimring included, predicted that the 1970s would begin to see an end to America’s gun violence problems as public safety policy making gained

the upper hand. In 1977, following New York’s lead, Washington, D.C., banned handguns and established licensing arrangements for rifles and shotguns. In 1982, Chicago followed suit, banning handguns (both laws have since been struck down by the Supreme Court). The commentators could hardly have been more wrong. During the 1970s, the gun lobby began to shift the focus of its gun rights advocacy toward the defense of civilian ownership of personal protection handguns, and this became a key gun control battleground in the final decades of the 20th century—although not the only one.

Into the Twenty-First Century

A further catalogue of largely event-driven issues surfaced during the 1970s and 1980s and preoccupied the federal government. Congress began to reflect the new political contours of the gun control battle. Tougher penalties were established for the use of firearms in crime and for firearm possession by prohibited persons (the Armed Career Criminal Act of 1986) and for banning the sale of so-called “cop killer” bullets capable of penetrating bulletproof vests (the Law Enforcement Officers Protection Act of 1986). Finally, following the killing of five children in Stockton, California—school shootings became a growing issue after 1999—the late 1980s and early 1990s saw the first rounds of a debate about the appropriateness of civilian ownership of so-called military assault rifles. California banned these weapons in 1989, and federal legislation followed in 1990 (the Crime Control Act of 1990), banning the manufacture or importation of such weapons for the civilian market in the United States. The Violent Crime Control and Law Enforcement Act of 1994 banned a series of specified military assault weapons. This federal assault weapons ban expired in 2004, and although new bills have been introduced from time to time, these assault weapon prohibitions have not been reinstated.

Concurrent with these developments, the main gun control debate of the 1980s and early 1990s followed the shooting of President Ronald Reagan in March 1981. It concerned the campaign to introduce a national instant firearms sales check system (NICS) for would-be purchasers of handguns from federally licensed firearms dealers. The

campaign was named in honor of James Brady, Reagan's press secretary, who was seriously wounded during the assassination attempt. After years of debate, the Brady Handgun Violence Prevention Act was eventually passed in 1994, requiring a national instant check system to be established by 1998; in the interim, a five-day waiting and checking period was established. An immediate weakness was that the law impacted only the primary handgun sales market; subsequent sales (around 40 percent of handgun sales annually), including firearms sold at gun shows, went largely unregulated.

A second weakness was that the funds and facilities to enable the appropriate checks to take place were often either unavailable or insufficiently prioritized by police departments. Furthermore, record systems were not always fit for this purpose. The 1997 Supreme Court case *Printz v. United States* deemed certain aspects of the Brady Act unconstitutional. By then, however, not only had many states implemented their own versions of a gun purchase check system, but the long-awaited National Instant Check System hosted by the FBI was almost ready. NICS now operates in more than 30 states (some states retained their own system), checking on would-be firearm buyers. In the decade since 1998, the FBI reported having run more than 100 million checks resulting in some 700,000 gun sale refusals.

Gun Rights Campaigns

In the 1980s, during the Reagan presidency, gun control began to develop its contemporary twin-track character. While debates about NICS and assault weapons bans rumbled on, a number of parallel developments were taking shape. Embodying this approach, at the federal level, the Firearms Owners Protection Act of 1986 relaxed some 1968 restrictions on gun and ammunition sales while introducing tougher mandatory penalties for use of firearms during the commission of a crime. A number of states began to pass legislation to permit the carrying of concealed firearms for personal protection. More than 40 states now issue concealed carry permits to entitled applicants, with some requiring prior participation in gun safety courses. This trend toward liberalizing gun availability, further embodied in so-called Castle doctrine

laws (which state that attacked persons have no "duty to retreat" before resorting to potentially lethal force), was accompanied by laws demanding greater responsibility from gun owners, for example, requiring guns to be sold with trigger locks or kept in domestic gun safes and strengthening penalties for firearm misuse. Law enforcement-led initiatives such as Project Exile and Operation Ceasefire, both of which addressed firearm involvement in criminal gang violence, also embraced this underlying twin-track strategy seeking to control gun crime rather than control guns and permitting responsible citizens to keep guns for their own personal protection.

A further development in the 1990s saw gun control groups and victim representatives bringing class action cases against particular gun manufacturers, retailers, or dealers for irresponsibly producing, marketing, or otherwise supplying firearms in ways that were alleged to have facilitated their uptake by offenders. Such lawsuits have not generally been very successful and have more recently faced congressional opposition.

Three final strands in the contemporary debate over gun control require mention. One concerns the supposed gun show loophole. The NICS system largely targeted gun sales in the primary market involving federally licensed dealers; private sales and sales at gun shows (40 percent of the market, around 3 million sales per year) were often exempt. Gun control advocates have attempted to bring gun shows further into the regulatory system: The Gun Show Loophole Closing Act was introduced in the House of Representatives in 2009, although, in fact, many states already regulate gun show firearms purchases in various ways.

A second issue concerns school shootings, which have increased in prominence, especially after the Columbine (1999) and Virginia Tech (2007) atrocities (although there have been dozens of other incidents with smaller death tolls). Such tragedies inevitably raise questions about school security; they have also brought gun control and Second Amendment politics head to head. Schools and colleges have long been places where carrying a weapon has been prohibited. In the wake of such tragedies, in a context in which a majority of states permit concealed weapon carrying, firearm advocates have come to question



These stones make up part of the memorial for the 32 students and teachers killed by a single gunman at Virginia Polytechnic Institute and State University in Blacksburg, Virginia, on April 16, 2007. The tragedy led to strengthening of the National Instant Check System managed by the FBI. From 1998 to 2008, the over 100 million checks run through the system resulted in about 700,000 refused sales.

why college campuses should be places where the claimed benefits of Second Amendment protection do not apply. An NRA-supported student campaign, Concealed Campus, has begun to campaign on this issue.

Finally, two recent rulings of the U.S. Supreme Court have pushed this question wider by striking down the handgun bans in both Washington, D.C., and Chicago. With the gun lobby in political and legal ascendancy, further legal attacks on handgun prohibitions in other cities, including New York, are anticipated. For the foreseeable future, protection from the criminogenic consequences of widespread firearm availability in the United States seems likely to be sought only via control of the criminal or the irresponsible misuse of firearms rather than via control over firearms themselves.

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See Also: Bureau of Alcohol, Tobacco, Firearms and Explosives; Federal Bureau of Investigation; Guns and Violent Crime; Klebold, Dylan and Eric Harris; School Shootings; Serial and Mass Killers.

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Guns and Violent Crime

Violent crime around the world has remained remarkably constant over both place and time. The United States has often been the location of gun violence studies because of the relatively high prevalence and availability of firearms. Much of this research, however, has been criticized for potentially being designed to make an ideological point as opposed to providing an accurate picture of the extent and nature of gun violence. Furthermore, the extant research has oft-times been misused in the gun debate to support the positions of either the pro-gun or anti-gun lobbies.

Extent of Guns in the United States

There are approximately two million firearms in the United States. Every day in the United States, guns claim 84 lives and wound nearly 200, resulting in more than 30,000 people dead and over 70,000 wounded by firearms each year. Gun violence in the United States has been estimated to cost over \$20 billion per year; between 50 and 80 percent of the cost is borne by taxpayers. Research on gun violence shows that the greater the density of guns in a population, the greater the level of gun injury and gun death, other things being equal.

Gun crimes have been increasing as a percentage of all violent crime; however, throughout the 1990s, the number of homicides decreased by 36 percent and the numbers of murders by guns decreased by 41 percent. Over this time, the revolver has fallen out of use in favor of semi-automatic pistols that have a greater number of bullets that can be fired before reloading is necessary. Such pistols can have 20 or more rounds in their removable magazines. Semiautomatic pistols also tend to have larger caliber bullets, which, in turn, increase the potential for more

serious injury in a shooting incident. In California, sales of guns to people with at least one prior misdemeanor conviction were six times more likely to be followed by a violent offense than sales of guns to people with no prior criminal history. Even removing these purchases by criminals, however, the United States would still have the highest rate of gun violence of all advanced countries because the majority of gun-using criminals have no prior convictions.

Demographics and the Nature of Gun Crime

Gun violence is not evenly spread throughout American society, with gun violence geographically concentrated in the areas of greatest inequality in the nation—the poverty-stricken areas of inner cities. Half of all homicides occur in the 63 largest cities, which contain only 16 percent of the population. Most of those homicides are committed with handguns. Gun violence experienced a downward trend during the 1990s as the rate of other crimes also dropped. During this time, gun crimes declined more rapidly than other crimes. Firearm violence decreased by 63 percent between 1993 and 2001. Those 12–14 years old experienced a 97 percent decline in firearms violence. In general, minority males (primarily blacks and Hispanics) aged between 15 and 24, and those with the lowest household income are the most vulnerable to being the victims of gun crime.

Blacks are nine times more likely to be victims of a firearms-related homicide than whites. Blacks represent 54 percent of the victims of firearm homicide in the United States, while only making up 12 percent of the population. Firearm homicide is the leading cause of death for black men ages 15–34 and is the leading cause of death for all African Americans aged 15–24. The rate of violent firearm victimization for blacks and Hispanics is approximately twice the rate for whites. For both black and Hispanic victims, the greatest rate of victimization was found in the 18–20 years old category. Both whites and blacks aged between 18 and 20 were more likely than whites and blacks of other ages to have been the victims of firearm violence. For blacks, whites, and Hispanics, the victims of gun violence have an average age that is lower than that of the general population. Among all victims, blacks are older than Hispanics at the



These guns were taken from gang members by the U.S. Marshals Service and the San Antonio, Texas, police department in August 2011 as part of a larger operation that led to 212 gang member arrests and the seizure of 38 weapons. The Kansas City Gun Experiment in 1992 found that a 65 percent increase in gun seizures by the police resulted in a 49 percent reduction in crimes committed with guns.

time of victimization. American Indians have a 43 percent higher victimization rate than blacks, 78 percent higher than Hispanics, and 184 percent higher than whites. Males are more likely to be victims of gun crime (about one-third of all violent crimes), whereas females are victims in about one-fifth of crimes.

The effect of household income (which may suffer from a degree of colinearity with race) is also a factor in victimization rates. Individuals who have a household income of less than \$7,500 experience gun violence at a rate three times higher than those with a household income of over \$50,000. Blacks at all income levels are more likely to be victimized than whites; but, both blacks and whites are more likely to be victimized in the “less than \$7,500” group than those in the “more than \$50,000” group.

Variations of Violent Gun Crime

Crimes committed with guns are 3.5 times more likely to cause serious injury or death than crimes committed by an unarmed assailant. Roughly 16,272 murders were committed in the United States during 2008. Of these, about 10,886, or 67 percent, were committed with firearms. Based on survey data from the U.S. Department of Justice, roughly 5,340,000 violent crimes were committed in the United States during 2008. These included simple/aggravated assaults, robberies, sexual assaults, rapes, and murders. Of these, about 436,000, or 8 percent, were committed by offenders visibly armed with a gun. The time of the crime seems to influence the probability of a gun being used in a violent incident. Three out of every five violent gun crimes are committed at night. Over 25 percent of all gun crime victimization occurs when

the victim is traveling either to or from work. The most common location for gun violence is on the street, which accounts for 30 percent of all gun crime. Victims were confronted with a firearm by strangers at a rate three times higher than by an intimate partner.

Gun Use in Self-Defense

A 1993 nationwide survey of 4,977 households found that, over the previous five years, at least 3.5 percent of households had members who had used a gun for self-protection or for the protection of property at home, work, or elsewhere. This amounts to 1,029,615 such incidents per year. A 1994 survey conducted by the U.S. Centers for Disease Control and Prevention found that Americans use guns to frighten away intruders who are breaking into their homes about 498,000 times per year. Further to this positive picture of defensive gun use, a 1982 survey of male felons found that over 34 percent had been scared off, shot at, wounded, or captured by an armed victim; 40 percent had decided not to commit a crime because they knew or believed that the victim was carrying a gun, and 69 percent personally knew other criminals who had been scared off, shot at, wounded, or captured by an armed victim.

One study showed that when an offender has a gun, the probability that a threatening situation will result in a homicide is 176 in 10,000 incidents. This is five times higher than the overall risk of 36 homicides in 10,000 threatening situations. Other studies, however, have shown that a threatening situation is less likely to lead to a physical attack when the offender has a gun. Also, when a threatening situation does escalate to an attack, there is a lower probability that the victim will sustain an injury if the offender used a firearm. At first, this seems a risk reduction; but it must be borne in mind that there is a much higher probability that any injury will be fatal when a firearm is involved.

Policy Responses

President Bill Clinton signed the Brady Handgun Violence Protection Act into law in 1993, also known as the Brady Bill. The enactment of the Brady law required that every gun sale be subject to a background check carried out by law enforcement. So far, this law has successfully

blocked nearly two million attempts by dangerous people to purchase a gun. After the passing of the Brady Act in 1993 and the Assault Weapons Ban in 1994, the United States saw a reduction in both gun crime and gun violence. From 1993 to 2003, gun homicides dropped by 37 percent and other gun crimes dropped by 73 percent. The 1994 Assault Weapons Ban led to requests for Alcohol, Tobacco, and Firearms (ATF) traces of the banned assault weapons. Their use in crime dropped by 20 percent in the first year, steeper than the 10 percent drop in all homicides. Gun murders also dropped 11 percent below projected levels in the 38 states that had not previously passed a similar ban. Gun murders did not drop in the states where such weapons were already banned. Further, there was a reduction in the rate at which police were murdered with firearms. Subsequently, the administration of President George W. Bush allowed the assault weapons ban to expire, despite opposition from many law enforcement agencies at the local, state, and federal levels. In addition, the Bush administration, via federal legislation, gave the gun industry protection from liability lawsuits. This resulted in an increase in gun crime and gun homicide.

The first formal test of uniformed police patrols against guns was the Kansas City Gun Experiment in 1992. Police in a high-crime area worked overtime to increase gun seizures by 65 percent, and found a 49 percent reduction in crimes committed with guns. This study found no change in either gun seizures or gun crimes in a similar area several miles away. A modified replication of the Kansas City study was carried out in 1996 in Indianapolis. Two target areas either maintained or increased the level of gun seizures, while gun seizures dropped in a comparison area by 40 percent. According to one evaluation, gun assaults, armed robberies, and homicides dropped by 50 percent in one area and 25 percent in the other area, even though crimes rose 22 percent in the control area.

Boston's Operation Ceasefire carried out in 1996 and 1997 was part of a collaborative, comprehensive strategy to address Boston's escalating rates of violent crime. It was a citywide operation that used state and federal laws to crack down on gun crime. The program was a focused law enforcement response to illegal gun

traffic in Boston to limit the availability of guns, thereby preventing further homicides and injuries. Homicides in Boston decreased after the program's inception. To determine if the program was associated with this decline, researchers carried out an evaluation of the program's effects on gun violence in the city. They found that the interventions resulted in a 63 percent decrease in youth homicides per month, a 25 percent decrease in gun assaults per month, and a 44 percent decrease in the number of youth gun assaults per month. All of these were in the district in Boston with the highest crime rate. Operation Ceasefire Los Angeles was based on Boston's program. The Los Angeles model was used in an area that had a high level of gun violence. The intervention used intensive law enforcement activity to deter gun crime and offered gun and gang prevention services. The operation also sent a strong message that all gang members would be held accountable if any one of them engaged in violence. The results of this program were inconclusive.

In 1999, Florida (followed by several other states) enacted the 10-20-Life law, which was accompanied by the public service announcement slogan "Use a gun, and you're done." This law ensured a mandatory minimum sentence of 10 years for brandishing a gun during certain felonies, a 20-year mandatory minimum for firing a gun during the commission of certain felonies, and a sentence of 25 to life for shooting someone during the commission of certain felonies. Between 1998 and 2004, Florida's violent gun crime rate dropped by 30 percent, a finding that authorities held up as a vindication of the tough-on-crime legislation.

The Supreme Court has also been involved in the gun control issue. In *District of Columbia v. Heller* (2008), the court addressed the central meaning of the Second Amendment and its relation to gun control laws. After the District of Columbia passed legislation requiring licenses for all pistols, and that all legal firearms must be kept unloaded or trigger locked, a group of private

gun owners brought suit, claiming the laws violated their Second Amendment right to bear arms. In a 5–4 decision, the court held that the Second Amendment protects an individual's right to possess a firearm unconnected with service in a militia, and to use that firearm for traditionally lawful purposes, such as self-defense within the home. Writing for the majority, Antonin Scalia addressed the problem of gun violence in the United States in ruling against the District of Columbia statute. He stated, "We are aware of the problem of handgun violence in this country, and we take seriously the concerns raised by the many... who believe that prohibition of handgun ownership is a solution ... Undoubtedly some think that the Second Amendment is outmoded in a society ... where gun violence is a serious problem. That is perhaps debatable, but what is not debatable is that it is not the role of this Court to pronounce the Second Amendment extinct."

There is a link between guns and violent crime in the United States; however, the nature of that link and its magnitude is still a matter of considerable debate. In a country where the right to bear arms is such an embedded part of its culture, any drastic reform remains unlikely. This will continue to be an issue with which both policy makers and the public must wrestle for the foreseeable future.

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See Also: Bureau of Alcohol, Tobacco, Firearms and Explosives; Crime in America, Causes; Federal Bureau of Investigation; Gun Control; Violent Crimes.

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Habeas Corpus, Writ of

The writ of habeas corpus, Latin for “you have the body,” requires a jailer to exhibit the live body of the prisoner to a court and to explain why the prisoner is being held. A writ is a command, usually issued by someone with jurisdiction to issue a writ. In the United States, both state and federal prisoners can apply for habeas corpus in federal courts. Federal law and Supreme Court precedent control the petitioning and issuance of the writ at the federal level. State prisoners can also petition state courts for habeas corpus, which is controlled by state law and practice. Habeas corpus appears in the U.S. Constitution in Article I, Section 9. Most prisoners in the United States, whether state or federal, do not use Article I, Section 9 when applying for a writ. Article I, Section 9 confers no power on any court and it suggests, by its placement in an article concerned with congressional power, that only Congress can suspend habeas corpus and only during times of invasion or rebellion. During the Civil War, President Abraham Lincoln suspended the writ three times. Supreme Court justices ruled twice against the suspension, and in 1863, Congress passed the Habeas Corpus Act, which granted the president the power to suspend the writ where the military was in control.

Prior to the Civil War, convicted state prisoners had limited access to writs of habeas corpus.

State prisoners alleging unlawful confinement had to attack their convictions in their state’s judiciary first and, if unsuccessful, in the Supreme Court on a writ of certiorari, which is a petition for judicial review. The Supreme Court rarely granted such petitions, because the first 10 amendments to the Constitution did not apply to state citizens until the beginning of the 20th century, and again until the Warren Court (1953–69) incorporated the criminal justice provisions of the Bill of Rights through the Fourteenth Amendment’s due process clause. Moreover, before the Civil War, the writ of habeas corpus was unavailable to state prisoners because the Judiciary Act of 1789, which contained a habeas corpus provision, applied only to federal prisoners.

In 1867, Congress passed another Habeas Corpus Act. Unlike the 1789 Judiciary Act, this law allowed “any person ... restrained of his or her liberty” in violation of the Constitution to petition the federal courts for habeas corpus. The act also allowed prisoners to file for writs after conviction, whereas the tradition was that prisoners filed for habeas corpus before conviction.

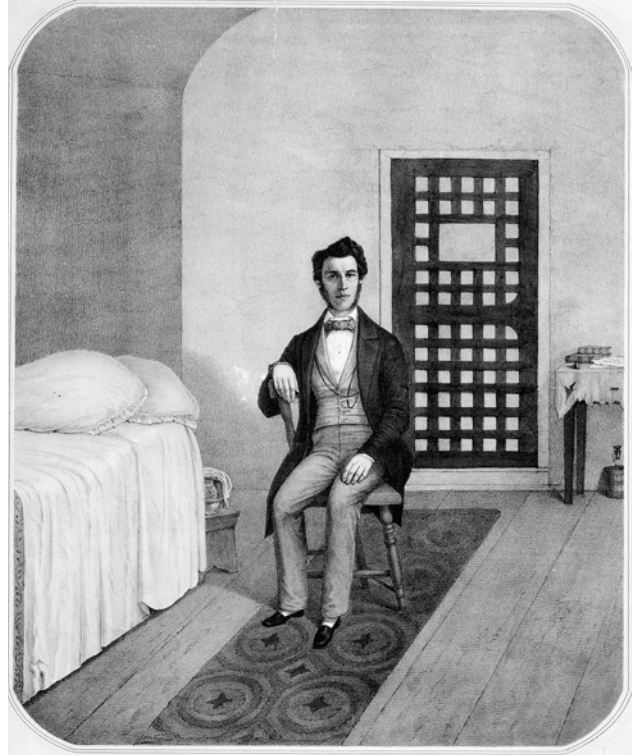
By allowing for post-conviction attack, the act of 1867 contained an implicit criticism of state criminal justice policies. In an 1886 case, however, the Supreme Court restricted the act’s power to release prisoners. First, it held that state prisoners must exhaust all state procedures

before applying for the writ in federal court. Second, it held that the writ did not issue as a matter of right. The first duty of a federal court on a habeas petition from a state prisoner is to determine whether the state court's judgment was without jurisdiction, not to inquire into the constitutionality of the petitioner's claim. These procedural enactments set up a policy of federal deference to state court judgments, which lasted until the Warren Court era. In *Fay v. Noia* (1963), the Supreme Court held that federal courts were not required to deny a habeas claim based on a failure to exhaust all state remedies. By 1969, the Warren Court had applied all the criminal justice amendments to the states through the Fourteenth Amendment's due process clause. Habeas corpus now appeared as an extension of a prisoner's right to due process.

Out of a regard for federalism and a concern over the failure of the criminal justice revolution of the 1960s, the Supreme Court throughout the 1970s reimposed restrictions on state habeas petitioners, such as eliminating Fourth Amendment claims from habeas petitions and requiring federal courts to show more deference to state court judgments. In the 1996 Antiterrorism and Effective Death Penalty Act, Congress ratified many of the restrictions the Supreme Court had imposed on habeas petitioners since the 1970s. For example, the AEDPA imposes a one-year limit on filing habeas petitions, whereas before there was no deadline, and it limits the number of habeas appeals to one, whereas before state prisoners could file unlimited appeals.

The war on terror has brought new attention to habeas corpus, particularly on the question of what constitutes the suspension of the writ under Article I, Section 9. The Bush administration held combatants captured in Afghanistan and Iraq at Guantanamo, Cuba, because they believed that Guantanamo Bay was outside the jurisdiction of federal courts. In *Rasul v. Bush* (2004), however, the Supreme Court held that federal courts have jurisdiction to issue habeas corpus to foreign nationals held at Guantanamo.

The Supreme Court also ruled, in *Hamdi v. Rumsfeld* (2004), that American citizens detained in the war on terror must have access to federal habeas corpus. In 2005 Congress passed the Detainee Treatment Act, which, among other



Passmore Williamson, the secretary of the Pennsylvania Abolition Society who had helped free slaves belonging to a Philadelphia visitor, in prison in 1855. He was sentenced for contempt of court after "evasive testimony" in response to a writ of habeas corpus.

things, prohibits Guantanamo detainees from petitioning for habeas corpus in U.S. courts. In 2006 Congress passed the Military Commissions Act (MCA). This act, among other things, forbids foreign nationals from petitioning federal courts for habeas corpus. But in *Boumediene v. Bush* (2008), the Supreme Court struck down portions of the MCA and reaffirmed the right of foreign nationals detained at Guantanamo to petition federal courts for habeas corpus. The Supreme Court has not yet decided if prisoners held by American forces in other countries can apply for the writ.

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See Also: Bill of Rights; Constitution of the United States of America; Due Process; Habeas Corpus Act of 1679; Habeas Corpus Act of 1863; Judiciary Act of 1789; Terrorism.

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Habeas Corpus Act of 1679

The writ of habeas corpus originated in the early English writ system as the writ of habeas corpus ad respondum. Ironically, it was initially used to compel defendants to appear but evolved by the 15th century into one of several writs that could be used to challenge imprisonment during the medieval era. The validity and scope of the writ were in dispute until the passage of the Habeas Corpus Act of 1679, which finally extended it to most defendants being held in criminal cases. Although not the first act of Parliament to address the writ, it firmly established the writ as a way for judges to ensure that criminal defendants were not being held against their rights.

The act arose out of the political turmoil surrounding the Popish Plot of 1678 in which false rumors were spread by two men, Titus Oates and Israel Tonge, that there was a Jesuit plot to assassinate King Charles II and thereby bring his Catholic brother to the throne (later James II). The accusations culminated in the execution of 16 men, including the Viscount Stafford and an attempt to exclude the Catholic James from the throne. The act seems to have been proposed because of a series of complaints about jailers ignoring the writ or moving prisoners around and even to Scotland to avoid producing them before a magistrate. The passage of the act was surrounded by turmoil in which the House of Lords added several editions to the bill in an attempt to have it defeated in the House of Commons. Despite these attempts, the act passed both houses of Parliament and was approved by Charles II the same day.

The Habeas Corpus Act provided that people held in all criminal matters except treason and felonies, or a third party on their behalf, could apply to the Lord Chancellor, justices on King's Bench, and the Barons of the Exchequer of the jurisdiction for a review of their imprisonment. The jailer was given three days in which to produce the person if within 20 miles, otherwise 10 days up to 100 miles distant and 20 days if more than that. The act also prohibited jailers from moving the prisoner from one prison to another in an attempt to evade the writ or from sending them to Scotland, where the writ of habeas corpus along with the rest of the Common Law did not apply. The act also enabled a writ of habeas corpus to be filed during recess periods.

Once the prisoner was before the judge or magistrate, it was at their discretion to release on recognizance, determine the number of sureties, and the bail amount in order for the prisoner to be released. It was to be based on the crime of which the defendant was accused and their likelihood to appear at the next assize, but the language of the act was vague on the details. The act also established a statute of limitations of sorts: the defendant had to file the writ within two terms of their imprisonment or forfeit the use of the writ. The strength of the act lay in the harsh penalties set out for jailers who failed to produce the prisoner. For the first failure to produce the prisoner, the jailer was fined 100£, and 500£ for the second failure. In addition, the fine was to be paid to the prisoner and could be pursued as an action of debt by the prisoner, which meant that it was not pardonable by the king. Failure to produce the prisoner was also supposed to prohibit the jailer from holding any future office in the realm.

The major defects of the act were that it gave full discretion to judges who held their office at the pleasure of the king. Under James II, this led to excessive bail being given in cases involving his political opponents. The act also failed to encompass the numerous other persons who were being held in prison on civil charges, such as debt. Although, the act did not solve all of the defects in common law criminal procedure, it did mark the beginning of the modern form of the writ.

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See Also: Constitution of the United States of America; Habeas Corpus, Writ of; Habeas Corpus Act of 1863.

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Habeas Corpus Act of 1863

The Habeas Corpus Suspension Act of March 3, 1863, authorized President Abraham Lincoln’s suspension of the writ of habeas corpus during the Civil War. Lincoln’s suspension of the writ permitted the military to arrest and imprison without trial anyone threatening public safety. Congress protected federal officials from being sued for arresting citizens and for enforcing conscription and emancipation policies during the war. Lincoln suspended the writ of habeas corpus at least seven times beginning in 1861. His suspension was criticized as an unconstitutional expansion of presidential power. Article I, Section 9 of the U.S. Constitution seems to convey the power to suspend the writ to Congress alone. “The Privilege of the Writ of Habeas Corpus shall not be suspended, unless in cases of Rebellion or Invasion the public Safety may require it.” The writ of habeas corpus, Latin for “may (or let) you have the body,” is the traditional legal method to prevent the imprisonment of the innocent and to prevent the government from harassing its critics.

The only common law privilege found in the original Constitution, it establishes an individual’s right to a hearing before a judge before imprisonment. Absent such a privilege, a person can be held without trial indefinitely.

The Confederate states attacked Fort Sumter in April 1861, barely a month after Lincoln was sworn in as president. This rebellion posed the gravest military and political crisis in American history. Virginia had seceded, and Maryland, a slave state, was threatening to join the Confederacy, thereby separating Washington, D.C., from the rest of the Union. The first casualties of the war were Union soldiers killed as they fought through the streets of Baltimore on their way to Washington on April 19. Eight days later, Lincoln ordered the suspension of habeas corpus along the Philadelphia and Washington rail route.

Massive resistance to the first ever military draft in July 1863 caused the president to suspend the writ throughout the nation. It is estimated that as many as 38,000 civilians were arrested under the suspended habeas corpus writ. Arrests occurred in states facing little serious threat of insurrection, such as New Hampshire, Iowa, and Illinois. Some were arrested for merely opposing the draft. Many were arrested for burning bridges and raising troops and money for the South.

Congress considered bills to authorize suspension at least three times but did not act until 1863. Congress also imposed limitations on the president’s authority to do so. The arresting officer had to supply the names of those detained to the local circuit or district judge and those arrested had to be released if a grand jury failed to indict them.

The first legal challenge to Lincoln’s orders came in *Ex parte Merryman* (1861). John Merryman recruited and drilled Maryland soldiers to serve in the Southern army. When the military arrested him, Merryman’s attorney petitioned U.S. Supreme Court Chief Justice Roger Taney to issue a writ of habeas corpus to the military. Taney, sitting as a circuit court judge in Baltimore, criticized Lincoln’s action, asserting that only Congress had the constitutional power to suspend the writ. Lincoln ignored his decision, as did Congress. Whether Lincoln’s actions were constitutional was never brought before the whole Supreme Court. Later cases such as *Ex parte Milligan* (1866) held

that when civilian courts were available, citizens could not be tried and convicted in military courts. *Mitchell v. Clark* (1884) upheld the immunity granted to federal officials abiding by Lincoln's suspension order.

The writ has been suspended a handful of times since the Civil War. President Ulysses S. Grant suspended it during his 1870s campaign to suppress the Ku Klux Klan. The Hawai'i governor suspended it when he placed Hawai'i under martial law during World War II. President George W. Bush ordered the indefinite detention of non-citizens accused of terrorism or of assisting terrorists after the September 11, 2001, terrorist attacks. The U.S. Supreme Court held unconstitutional Congress's effort to support the president by stripping the habeas corpus rights of Guantanamo detainees in *Hamden v. Rumsfeld* (2006). It also declared unconstitutional congressional efforts to deny court jurisdiction over such appeals in *Boumediene v. Bush* (2008). The United States' experience in the Civil War and in the war on terror poses a difficult choice. A crisis may require a strong executive equipped with the authority to act decisively to protect the national existence. The necessities of a national emergency, however, must be weighed against government officials' temptation to expand their powers to a potentially abusive degree.

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See Also: Constitution of the United States of America; Habeas Corpus, Writ of; Habeas Corpus Act of 1679; Lincoln, Abraham (Administration of).

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several reasons: leadership during the Revolutionary War, advocacy of a centralized government structure on a national scale, and service as the first secretary of the treasury. Hamilton's eminence was preceded by a wretched childhood and followed by violent death.

Born to unmarried parents on the Caribbean island of Nevis, Hamilton was orphaned in 1768 after the death of his mother. His paternity is uncertain, although his surname assumes that James Hamilton was his father. Hamilton's fortunes changed in 1773 when he emigrated from St. Croix to the North American British colony of New York. Matriculation at King's College (now Columbia University) followed. After military confrontation with Great Britain began, Hamilton became General George Washington's closest wartime adviser.

As a delegate from New York to the Philadelphia Convention in 1787, Hamilton realized that his call for national consolidation of the 13 states was shared by few others. Hamilton also recognized that the proposed constitution was the best that existing political and economic conditions would allow. New York may have numbered among the nine ratifying states only because Hamilton recruited James Madison and John Jay to write 85 newspaper articles prior to the Poughkeepsie assembly. Now known as *The Federalist Papers* and still read by millions, these essays cemented Hamilton's reputation as a political theorist.

Political Career

Washington nominated and the Senate confirmed Hamilton as secretary of the treasury in 1790, a post he held until his resignation in 1795. While holding that cabinet post in 1794, Hamilton organized military suppression of the so-called Whiskey Rebellion in western Pennsylvania. Hamilton had supported congressional enactment in 1791 of a federal tax on domestic production of whiskey. Armed resistance by economically marginalized farmers to payment of the federal excise tax ensued.

Also in 1791, Hamilton's father-in-law, Philip Schuyler, had lost his U.S. Senate seat to Aaron Burr. Hamilton lashed out at the New York legislature and at Burr personally. Hamilton sought unsuccessfully to prevent the nomination of

Hamilton, Alexander

Alexander Hamilton (1755–1804) is immortalized as a founding father of the United States for



Alexander Hamilton served as secretary of the treasury from 1790 to 1795. In 1794, he organized the military suppression of what became known as the Whiskey Rebellion in western Pennsylvania, which was an armed uprising by farmers protesting a federal excise tax on domestic production of whiskey, a tax Hamilton had supported in 1791. Hamilton was known as an engaging speaker and is shown above addressing a panel of three judges in a courtroom in front of rapt spectators.

fellow Federalist John Adams for the presidency in 1796. In 1800, Hamilton tried again by circulating among Federalist leaders a strident criticism of Adams. Burr, a Republican, obtained a copy and embarrassed Hamilton by having it published. Finally, Hamilton's intemperate opposition to Burr's candidacy for governor of New York in 1804 found its way into print in the *Albany Register*. Smarting from repeated injury to his reputation and political career, Burr challenged Hamilton to a duel.

Dueling as practiced in late 18th- and early-19th-century America originated in Europe a century before. In Europe and the United States alike, dueling occurred outside the court system as a way of seeking restitution for personal insult harmful to one's honor.

On July 11, 1804, near Weehawken, New Jersey, Burr's single shot from a .56-caliber dueling pistol mortally wounded Hamilton. He died the following day. Multiple criminal charges were brought against Burr in New Jersey and New York. No warrant for Burr's arrest was issued to enforce the New Jersey murder indictment or a New York misdemeanor charge for participating in a duel. By fleeing the jurisdiction of both states for the next eight years, Burr avoided prosecution.

By 1800, a regional disparity in public sentiment about dueling was taking hold. Northern law enforcement efforts to prosecute such conduct, while sporadic and inconsistent, were increasingly prevalent after 1804. The Hamilton-Burr duel fortified public distaste, hastening

adoption of legislation in Pennsylvania, Illinois, and New England that proscribed causing injury or death of another in a duel as homicidal behavior. Today, 29 states could apply homicide statutes to such conduct.

In the south, dueling continued largely unabated prior to 1840. Governor John Wilson of South Carolina published an official adaptation of the Irish “Code Duello” to his state in the late 1830s. The pamphlet was reprinted until 1858. Twenty-one states now have a provision in their criminal code that defines dueling as a nonhomicide crime punishable by a fine or imprisonment. Notably, eight of them (Alabama, Arkansas, Florida, Mississippi, South Carolina, Tennessee, Texas, and Virginia) were among the 11 Confederate States of America.

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See Also: Adams, John (Administration of); Federalist Papers; History of Crime and Punishment in America: 1783–1850; Murder, History of.

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Hammett, Dashiell

Samuel Dashiell Hammett (1894–1961) was a crime novelist known for creating such classic characters as Sam Spade (*The Maltese Falcon*), Nick and Nora Charles (*The Thin Man*), and the Continental Op (*Red Harvest*). Hammett was employed as a Pinkerton private detective and later in life spent five months in a federal penitentiary. He was a hard drinker, a womanizer with money problems, and the veteran of two world wars. He is also widely considered to be one of the greatest writers of hard-boiled detective fiction to ever live.

Hammett's Writing

Over the course of his career, Hammett produced five novels (*Red Harvest*, *The Dain Curse*, *The Glass Key*, *The Maltese Falcon*, and *The Thin Man*), approximately 90 short stories, and more than 100 reviews. He also published several poems, contributed to radio shows, and created a daily comic strip (*Secret Agent X-9*). His writing is known for being spare and gritty, realistic and fast paced. In *The Simple Art of Murder*, Raymond Chandler praised Hammett for taking murder out of the drawing room and putting it in the alleyway.

Hammett's first story, “The Parthian Shot,” was published in 1922 in *The Smart Set* and was followed that year by “The Road Home,” published in a new pulp magazine titled *Black Mask*. In 1923, Hammett debuted one of his iconic characters (an unnamed detective from the San Francisco branch of the Continental Detective Agency: the Continental Op) in a *Black Mask* story titled “Arson Plus.” Between 1923 and 1930, Hammett published more than 30 Continental Op stories in *Black Mask*, including the four stories collected and published as the novel *Red Harvest*. Between 1929 and 1930, *Black Mask* also published *The Maltese Falcon* as a five-part series.

By 1934, however, Hammett's career was effectively over: He repeatedly failed to deliver promised manuscripts to his publishers, repeatedly failed to deliver screenplays to the studios that hired him, and although he hoped to create something important with his semiautobiographical novel, *Tulip*, that work was never completed.

Hammett's talent, however, distinguished him from other pulp writers. Nobel Prize-winning novelist André Gide proclaimed that the greatest American writers of his age were William Faulkner and Dashiell Hammett. Gide's acclaim has been borne out. *Time* magazine named *Red Harvest* as one of the 100 best English-language novels published between 1923 and 2005. In 2010, *World Literature Today* ranked *The Maltese Falcon* as one of the 10 greatest crime novels of all time (alongside works such as Fyodor Dostoevsky's *Crime and Punishment* and Umberto Eco's *The Name of the Rose*).

Hammett's work has been adapted in a variety of media, including radio, television, and film. In film, Humphrey Bogart's portrayal of Sam Spade in *The Maltese Falcon* is iconic, and William

Powell and Myrna Loy's depictions of aristocratic detectives Nick and Nora Charles sustained five *Thin Man* sequels.

The Pinkerton Agency

In 1915, Hammett joined the Baltimore branch of the Pinkerton National Detective Agency as an operative. He worked in this capacity until enlisting in the army in 1918. After contracting tuberculosis (a condition that plagued him throughout his life) and being discharged, Hammett rejoined the Pinkerton agency in San Francisco. In this capacity, he provided protection to Fatty Arbuckle during the actor's scandalous rape case. He also organized strikebreakers at the Anaconda mine in Butte, Montana. It has been suggested that Hammett was offered money to kill labor organizer Frank Little (who was later lynched) and that these events fomented his leftist views.

Political Controversy

A staunch antifascist, Hammett became politically active during the 1930s, joining the Communist Party in 1937. In 1942, after Pearl Harbor, Hammett, then 48 years old and suffering from tuberculosis, enlisted as a private in the army. He was stationed in the Aleutian Islands, where he edited the camp newspaper *The Adakian*. In 1946, he was elected president of the leftist New York Civil Rights Congress (CRC), but the political climate was changing in the United States. In 1947, the CRC was designated as a communist front group on the Attorney General's List of Subversive Organizations, and in 1951, Hammett was subpoenaed to testify in the trial of four Communists accused of advocating the overthrow of the U.S. government in violation of the Smith Act. Hammett refused to answer any questions about the CRC, invoking the Fifth Amendment. For this, he was found in contempt of court and incarcerated for five months. After his release, he was investigated as part of Senator Joseph McCarthy's anti-communist investigations but refused to cooperate with the Senate Permanent Committee on Investigations and was blacklisted.

Personal Life

While Hammett was an unquestionably talented writer, his personal life was extraordinarily turbulent. Throughout his life, Hammett suffered

from serious money problems, frequently running up debts he could not pay, and facing lawsuits from creditors. He often failed to meet the term of his contracts with publishers and film studios, and for this, he was occasionally taken off salary. In 1930, he was also sued by actress Elise De Vienne for battery and attempted rape. Hammett's 1921 marriage to Josephine Dolan was marred by a lengthy series of affairs (most notably with playwright Lillian Hellman), and in 1937, Dolan and Hammett were divorced (although this mail-order divorce proceeding was later deemed illegal). Although he had served in World War I and World War II, his involvement with the CRC had led to his incarceration and his blacklisting. By the 1950s, Hammett was no longer writing, his titles were out of print, and he owed the Internal Revenue Service more than \$100,000. His health was poor—he suffered from lifelong tuberculosis and serious alcoholism—and in 1961, he died from lung cancer.

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See Also: Dime Novels, Pulps, Thrillers; Literature and Theater, Crime in; McCarthy, Joseph; Private Detectives; Smith Act.

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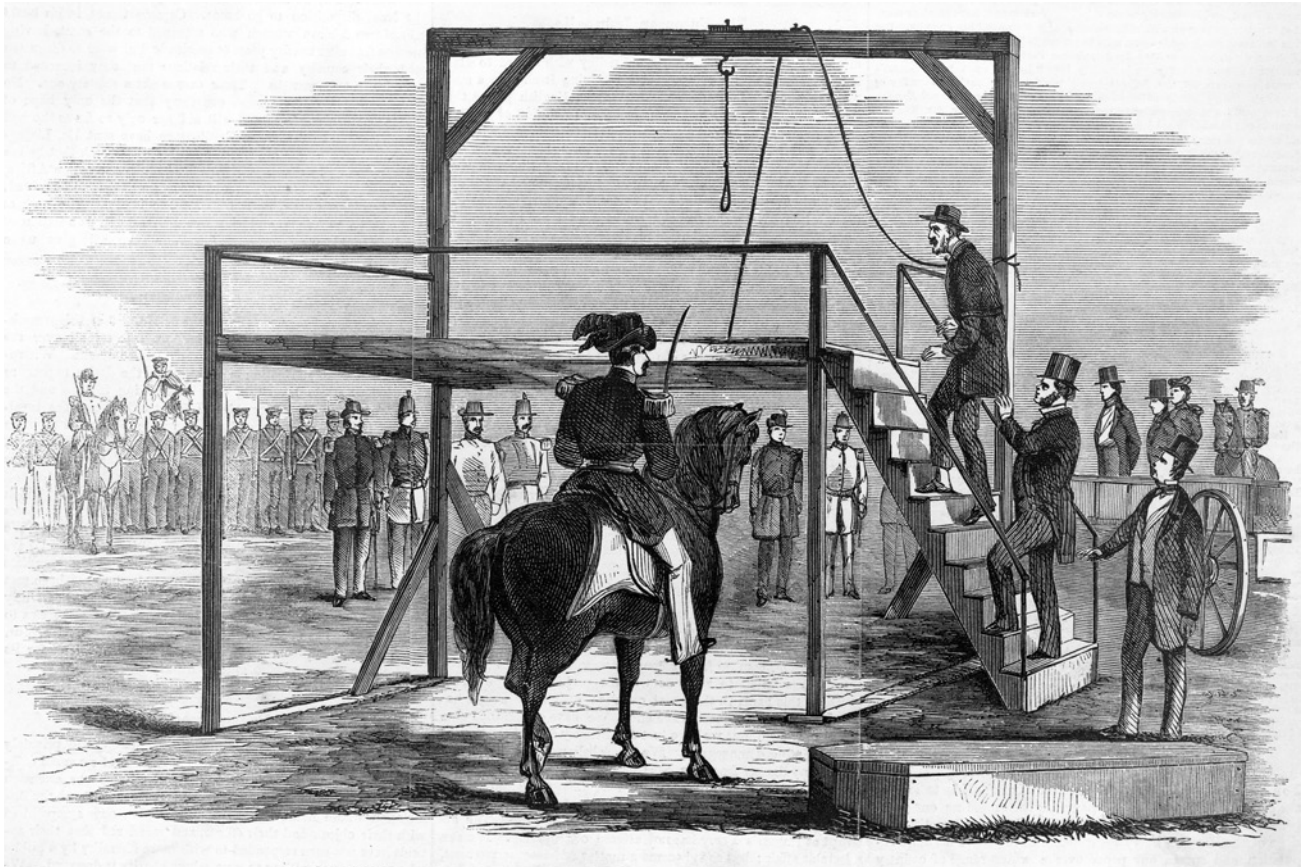
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Hanging

Brought to the United States from England by colonial settlers, hanging as a method of state execution has put more offenders to death than any other method of execution in the history of the United States. Accounting for more than 16,000 executions, hanging was once employed by 48 states. However, with the advent of quicker,



This newspaper engraving from 1859 shows abolitionist John Brown ascending the steps on a wooden scaffold built for the purpose before his public hanging. Scaffolds with trap doors were meant to improve upon early hangings, which were conducted with just a length of rope, a ladder or horse and cart, and a tree branch. More people have been executed by hanging in the United States than by any other method. An estimated 16,000 such executions have taken place in 48 states.

more aesthetically sanitized, and supposedly more humane execution technologies, hanging fell into disfavor over the course of the 20th century and survives now as a method of execution in only two states: as a fallback method, should lethal injection ever be “impossible to administer” in New Hampshire and as an optional method of execution for condemned inmates in the state of Washington.

Procedure of Hanging

To conduct a contemporary hanging execution, the condemned is typically weighed the day before to determine the length of drop necessary to cause a rapid dislocation of the neck and ensure an instantaneous death. If the drop is too long, the offender risks decapitation at the end of the rope; too short, and the offender slowly strangles to death. At the time of the execution,

the offender is led to the scaffold and stands on the trap door. His arms and legs are pinioned. His head is placed into a hood and the noose is placed around his neck with the knot behind the left ear. The rope used is between one-quarter and one and one-quarter inches in diameter. Prior to the execution, the rope is boiled and stretched to eliminate any spring or coiling, and the knot is lubricated with wax, or soap, to ensure a smooth, sliding action. At the order of the warden the trap door is released, the offender drops, and if the procedure has been followed correctly, his neck is broken.

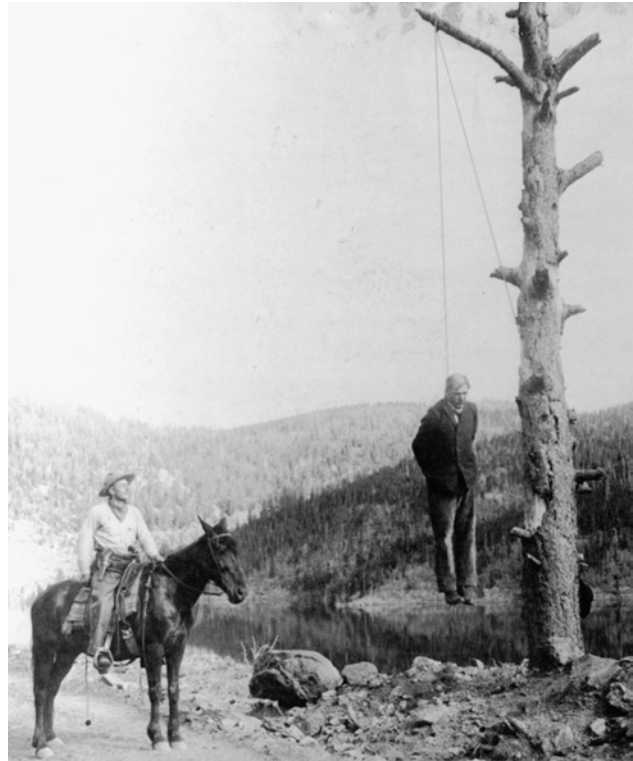
History of Hanging

Since revised death sentencing schemes were upheld by the U.S. Supreme Court in *Gregg v. Georgia* (1976) and states were authorized to

resume executions, only three people have been put to death by hanging in the United States. The first was Westley Allan Dodd on January 5, 1993, in Washington State, the first execution there in 30 years. Dodd volunteered for execution and chose to be hanged rather than be put to death by lethal injection; however, the American Civil Liberties Union opposed the use of the method and sued the state in an effort to stop the execution. The effort was unsuccessful, however; the Washington State Supreme Court upheld the use of hanging and the execution went ahead as planned. In the following year, May 27, 1994, Charles Campbell was also put to death in Washington State. Campbell failed to choose lethal injection as the method by which he would be executed so, in accordance with state law, he was put to death by hanging. Following the execution, however, the state's death penalty legislation was amended to stipulate lethal injection as the execution method to be used if the inmate fails to make a choice.

The last hanging in the current death penalty era took place in Delaware on January 25, 1996, with the execution of Billy Bailey. In June 1986, legislation had been enacted in Delaware that made lethal injection the primary method of execution in the state with the provision that offenders sentenced before the act were free to choose hanging. However, in 2003, as the last inmate eligible to choose hanging as his method of execution won a new trial and was resentenced to a life term, Delaware dismantled its gallows. All executions in Delaware are now carried out with lethal injection.

That only three hangings have occurred in the current death penalty era is representative of a decline in the compatibility of the method and the evolving standards of decency that have come to govern the mechanics and imposition of capital punishment. Hanging is inherently a relatively crude method of execution, yet even with many of the same tools, the contemporary hanging is markedly different from those conducted in previous centuries when hangings were public spectacles and when the execution was particularly liable to be botched. There were numerous examples from around the country throughout the 18th and 19th centuries of the condemned being left to slowly strangle to death at the end



A photograph titled "What the Sheriff Found" taken in Colorado around 1911 purports to depict a sheriff on horseback discovering a thief hanging from a tree.

of the rope or being decapitated as a result of the executioner, often untrained and unskilled in his role, miscalculating the drop or placing the knot in the wrong place. Early hangings required nothing more than a length of rope, a ladder or horse and cart, and a sturdy tree branch. While hangings have evolved, and executions and executioners have become somewhat more skilled, with the use of gallows built with trapdoors for example, the hanging execution was and is an imprecise science.

Hanging Days

No matter the imprecision of its infliction, hangings of previous centuries were originally structured to be ceremonial events. Hanging days, as they were known, which were common for over two centuries across the country, would frequently bring in spectators far from the locality in which the execution was taking place, with crowds numbering well into the tens of thousands. The execution was underpinned by themes

of religion and morality designed to save the soul, not only of the condemned, but also of those in attendance. Like the modern execution, hangings of previous centuries were proclaimed for reasons of deterrence and retribution, but the role played by religion was central. Ideas of repentance and salvation made hanging days wholesome family days to be “enjoyed” by the whole community. Often, hymns would be sung, a sermon given by the minister in attendance, and, providing the condemned played his part in the way sought by the state, the offender would recount how his crimes led him to his execution and how a life of virtue and morality could spare others the same fate. However, themes of morality and religion were slowly subsumed by scenes of drinking and revelry, and hanging executions became a spectator sport for a bloodthirsty crowd.

Slowly, the middle classes began to reject public hangings as distasteful, and the edifying rationale for their continuation slowly lost ground, providing ammunition for the anti-capital punishment movement. This was sustained by the brutality of hangings: upon those in attendance and that inflicted on the condemned by an unskilled executioner. Still, public hangings continued well into the 20th century, the last recorded instance of which was carried out in Owensboro, Kentucky, in 1936 before a crowd of thousands.

Private Hangings and the Movement to Different Forms of Execution

Once hangings were moved behind prison walls and the raucous ceremony disbanded, the process was no more certain to be quick or painless. Like all modern executions, in contemporary hangings the state tried to sanitize the process toward the ideal of a clean, quick, and painless execution, with a minimal amount of ceremony. However, reports from Washington to California, by prison wardens and witnesses alike, recount numerous instances of offenders being slowly strangled to death and, in one instance in Washington, witnesses attending a hanging were sprayed with blood when the drop was miscalculated and the offender’s head was nearly detached from his body. It was that risk of the execution being botched, and one in which the infliction of pain was lent credence by the brutal aesthetics of the event, that formed the basis of the suit filed by

the American Civil Liberties Union to prevent the hanging of Westley Allan Dodd. As the use of a hood in contemporary hangings hides any facial contortions or distress, it is impossible to know in each execution when the offender loses consciousness or to gauge any experience of his suffering. Descriptions of the effects of hanging, however, regularly include tearing of the cervical muscles and skin, rupturing of blood vessels, engorgement of the face, protrusion of the tongue, micturation, and defecation.

It was the widely circulated stories of hangings that had been botched that threatened the very propriety of capital punishment and underpinned the search for a more humane method of execution that was to see the repeal of hanging across the United States. The trend began in 1885, when the governor of New York, believing that hanging was a relic “handed down from the dark ages,” announced to the state legislature that science could provide a more humane and efficient method by which to conduct executions. In the following year, the governor appointed a commission to investigate new possible means of conducting executions and then make recommendations to the legislature. Records of accidental deaths and crude scientific experiments supposedly demonstrated that an offender could be killed quickly and painlessly through the application of electricity.

After consideration of various execution technologies, in 1888, the commission recommended the adoption of electrocution to replace hanging. In 1889, the New York legislature enacted the Electrical Execution Act, which stipulated that anyone capitally convicted after January 1 that year would be put to death by electrocution. Then, in 1890, at Auburn State Prison, William Kemmler became the first person in the United States to be executed by electrocution. Although the execution itself was botched, the legislature remained undeterred and maintained electrocution as its preferred method of putting offenders to death.

Soon after, several other states questioned their retention of hanging as a means of execution, and within 15 years of New York’s adoption of electrocution, 14 other states had followed suit; 24 others by 1949. For those states that did not adopt electrocution, the search for a more humane

method of execution to replace hanging resulted in the adoption of lethal gas after Nevada first tested the method in 1921. By the time the U.S. Supreme Court struck down existing capital punishment statutes as unconstitutional in *Furman v. Georgia* (1972), only seven states still provided for hanging as a means of execution.

Although hanging as a method of execution has never been reviewed by the U.S. Supreme Court, it has been upheld as constitutional in several state courts: in Iowa (*State v. Burris*), in Delaware (*DeShields v. State*), and in Oregon (*State v. Butchek*). The highest level of judicial review of hanging was the case of *Campbell v. Wood* (1994), in which the Court of Appeals for the Ninth Circuit rejected a claim that hanging was cruel and unusual punishment in violation of the Eighth Amendment. In a 6–5 decision, the court held that any pain inherent in a judicial hanging was not unnecessary and wanton and therefore comported with evolving standards of decency.

That no method of execution has ever been found unconstitutional by the U.S. Supreme Court, and that hanging was the dominant method of execution at the time the American Constitution was drawn up, means that hanging is likely to remain constitutionally acceptable. However, the sanitization of the execution, with methods mimicking those of euthanasia, will surely prevent legislatures from ever returning to hanging. It is in Washington State that any future example of hanging in the United States remains—and will most likely perish.

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See Also: 1901 to 1920 Primary Documents; Capital Punishment; Cruel and Unusual Punishment; Death Row; Electric Chair, History of; Executions; Lynchings.

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Harding, Warren G. (Administration of)

President Warren Gamaliel Harding (1865–1923) was born in the small village of Blooming Grove, Ohio. Little is known of his early years. In 1882, he graduated from Ohio Central College in Iberia with training to be a rural schoolteacher. In 1885, Harding and several friends purchased the *Iberian Spectator*, a nearly defunct newspaper. They changed the paper's name to the *Marion Star*. It rapidly expanded its readership to become an important area newspaper.

In 1920, Harding emerged as the Republican presidential candidate, with Massachusetts Governor Calvin Coolidge as his running mate. The economic and social conditions in the first post-war years contributed to Harding's resounding victory in November 1920. The Harding administration was soon staffed with a mixture of some of the best and some of the worst of choices; the latter seemed to have been better suited for appointment in other positions. The transition between Wilson and Harding at the White House was immediately exciting to the public because the White House was much more open. To many, it seemed as if small town Main Street had come to visit.

Corruption

Harding's personality contributed to the political corruption that marred his administration. He was a very friendly and engaging man who was kind and generous. His kind nature was what prevented him from being hard toward those who were seeking to take advantage of his generosity. He loved golf, playing cards, tobacco, and alcohol. These "vices" were exaggerated in later years to the detriment of his reputation, especially because his consumption of alcohol in the White House took place during Prohibition.

The tolerance of Harding for backroom drinking was mirrored in the emerging public morality that rejected Prohibition (established by the Volstead Act of 1919) and accepted the consumption of bathtub gin and other illegally secured alcohol. The Harding years laid the foundation of the emergence of bootleggers and criminal gangs because of growing public tolerance for the illegal

consumption of alcohol. It also nearly killed the American cruise ship industry because American ships went dry and lost their passengers to wide-open drinking on foreign ships.

Harding appointed William J. Burns, a former Secret Service agent and head of the William J. Burns International Detective Agency, to head the Bureau of Investigation. Burns used bureau agents, who were often political hacks, to continue investigating labor union members. His record on enforcing Prohibition was spotty at best. This was in part because of the lack of enforcement funds and the indifference of local officials to a federal law many despised. He eventually involved the bureau in the Teapot Dome Scandal. Probably Burns's most important act was the appointment of J. Edgar Hoover as an assistant: With the succession of Calvin Coolidge as president, Hoover became the head of the bureau.

As president, Harding was faced with numerous postwar problems. Attempts to gain the support of congressional leadership required enormous effort. Between 1921 and 1922, he succeeded in seeing tax reduction bills, farm bills, reduced soldier bonus bills, and other legislation through Congress.

Harding's generous nature was exhibited by his pardoning of Eugene V. Debs in 1921. Debs, along with others, had been imprisoned for antiwar activities. Harding also granted a general amnesty to many people jailed during the Red Scare.

Scandals

In 1922, scandals began to emerge that hurt the Harding administration. A congressional investigation of Attorney General Harry Daugherty found nothing, but this was fuel for the fire of Harding's enemies, who alleged that the probe just had not dug deeply enough.

Real scandal emerged when it was discovered that Charles Forbes, director of the Veterans Bureau, had been selling government medical supplies illegally for personal gain. His henchman in this political corruption was Charles F. Cramer, general counsel of the Veterans Bureau. Harding summoned Forbes to the White House and told him to resign, which he did when he was safely out of the country. Cramer committed suicide on March 14, 1923.

Another scandal involved Jess W. Smith, a part of the "Ohio Gang," and a private secretary to

Attorney General Daugherty. Smith lived in the same apartments as Daugherty. He was a severe diabetic who may have been depressed when he committed suicide. Smith used his relationship with Daugherty to sell liquor licenses, paroles, and other "fixes." Eventually, Colonel Thomas W. Miller, alien property custodian, was convicted of accepting bribes arranged by Smith in order to illegally transfer German property to American companies. Others also went to prison.

Harding was called upon shortly after his inauguration to suppress labor violence in the coal fields of West Virginia. To stop the fighting in the Blain Mountain Miner War, Harding ordered the aerial bombing of the miners. Soon afterward, he was drawn into suppressing strikers in the Great Railway Strike of 1922 with an injunction that angered many in Congress and suppressed a number of personal liberties. He also supported



Warren G. Harding between 1910 and 1923. His administration has been called the most corrupt in American history and led to the Teapot Dome Scandal, among several other scandals.

antilynching legislation (Dyer Bill) that passed the House of Representatives, but was defeated in the Senate.

On August 2, 1923, Harding was resting in a hotel room in San Francisco when he died instantly from a stroke. Not long afterward, the worst scandal of his administration, the Teapot Dome Scandal, emerged. The Teapot Dome Scandal was unknown to Harding. It involved Harding's secretary of the interior, Albert B. Fall, who accepted bribes from oil companies for leases in the naval oil reserves in the Teapot Dome oil formation in Wyoming and the Elk Hills formation in California.

In the years following Harding's death, his reputation was further degraded by Nan Britton's book *The President's Daughter*, which claimed Harding had fathered her daughter. Rumors also spread that Harding had had extramarital affairs with several women. At least one of these rumors was probably true. These scandals have earned Harding's administration the reputation of being the most corrupt in American history.

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See Also: Coolidge, Calvin (Administration of); Corruption, History of; Political Crimes, History of; Prohibition; White-Collar Crime, History of.

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Harrison, Benjamin (Administration of)

Benjamin Harrison (1833–1901), the 23rd president of the United States, was born near North Bend, Ohio, on the farm of his grandfather, William Henry Harrison (1773–1841), who was the 9th president of the United States. Benjamin Harrison's great-great-grandfather, also named Benjamin Harrison (1726–91) was a signer of the Declaration of Independence.

In 1854, Harrison opened a law practice in Indianapolis, Indiana. Between 1862 and 1865, he recruited and commanded the 70th Regiment of Indiana Volunteers, rising to the rank of brevetted brigadier general. After the Civil War, he returned to his law practice, where he gained increasing recognition and prestige.

In 1888, Harrison earned the Republican nomination for president. He won the election, defeating incumbent Grover Cleveland with a crushing victory in the Electoral College; however, he was a plurality president, with a popular vote total of 100,000 votes less than Cleveland had. The election was marked by massive vote buying on both sides. It was the result of a system that used ballots that could be secured for wholesale vote-buying purposes. Harrison opposed this type of electioneering, declaiming against it with serious moral concern. Yet without the voting corruption, he would not have won. Cleveland's loss to a plurality presidency was the catalyst for major electoral changes that reduced the ability to buy votes in 38 states.

Harrison himself made no political bargains to gain support; however, many of his top supporters did. These pledges were ignored by Harrison, who offered cabinet posts and other important offices to men of integrity rather than to those who had supported his campaign. This further weakened him politically.

Taking office in 1889, Harrison enjoyed a Republican majority in both houses of Congress during the first two years of his term. The Republican legislative strength enabled him to be an activist president, working to achieve an extensive legislative program; however, he was often faced with disgruntled members of Congress over matters of patronage in the civil

Harris, Eric

See Klebold, Dylan, and Eric Harris.



President Benjamin Harrison around 1896. Harrison's support for business interests during the Homestead Strike and other labor disputes helped cost him a chance at a second term.

service. His legislative majority ended in 1892 when the Democrats took control of the House of Representatives and began to stall his legislative agenda.

Important legislation adopted included the Sherman Antitrust Act (1890), which sought to deal with monopolistic business practices that were defined as corrupt combinations hindering commerce. In response to populist demands for an increase in the money supply he supported the Sherman Silver Purchase Act (1890), which required the U.S. Treasury to purchase large quantities of silver. Unfortunately, the treasury notes issued to purchase the silver could be redeemed in either silver or gold. This feature of the law stimulated a financial panic in 1893.

In October 1890, New Orleans Police Chief David Hennessey was murdered. A group of Italians who were tried for his murder were acquitted. Outraged citizens then lynched most of the

accused men in the "Mafia Affair." The lynching evoked national concern and talk of war with Italy. Harrison, recognizing that it was a state matter, still appealed to the governor of Louisiana for protection for Italians.

In foreign affairs, Harrison promoted the building of a strong two-ocean navy, the development of a stronger merchant marine, and the negotiation of reciprocal trade agreements that reduced tariffs between the United States and some countries. He promoted an expansion of the Monroe Doctrine with the hosting of the first Pan-American Conference in Washington, D.C., in 1889. He also negotiated a mutual governing agreement of the Samoan Islands with Germany and Great Britain. His attempt to have Hawai'i annexed to the United States in 1893 before leaving office was unsuccessful.

Harrison was nominated for a second term in 1892; however, farmers, upset over low commodity prices, turned to the new Populist Party while working men turned to the Democrats because of the support Harrison had given to businesses during the Homestead Strike and other labor disputes. Harrison did not win reelection. After leaving the White House in 1893, Harrison returned to his law practice in Indianapolis. He died there on March 13, 1901. He was a very articulate individual, a persuasive public speaker, a Presbyterian elder for 40 years, and a moral leader. There were no hints of scandal in his private or professional life.

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See Also: Antitrust Law; Hawai'i; Roosevelt, Theodore (Administration of); Sherman Antitrust Act of 1890; Strikes; Taft, William Howard (Administration of).

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Harrison Act of 1914

The U.S. Congress passed the Harrison Narcotic Act on December 17, 1914. It effectively made the possession and distribution of opiate and coca-derived products illegal, although the actual provisions of the bill were not worded so directly. The Harrison Act required anyone who imported, manufactured, prescribed, or sold opiates or coca leaves to register with the federal government, pay an annual tax, and keep a record of all drug transactions. Those who failed to register or pay the tax were in violation of the law and could face criminal penalties. Since the act involved the paying of a tax, the enforcement of the new law fell under the auspices of the Treasury Department, within the Bureau of Internal Revenue. Before this law, opiates and cocaine were mostly unregulated products. The act was the culmination of various state and local laws attempting to control these substances as well as international conferences on regulating the trafficking of opiates. While this bill did not directly call for a “war” on drugs, many regard its passage as the actual start of the contemporary war on drugs, since it has become the legal foundation for all drug prohibition.

The precursor to the Harrison Act was the Foster Bill, introduced in 1910 by Representative David Foster of Vermont. The bill attempted to control drug traffic through federal taxation; every drug merchant would need to register, pay a small tax, and record all transactions. Failure to follow these regulations would result in serious criminal penalties. Pharmaceutical industries opposed this bill because they wanted to see certain medical professionals exempt from the bill and less severe criminal penalties. As a result, the Foster Bill did not pass. The discussion around the bill, however, as well as two international conferences on opium, did increase pressure on the federal government to enact a law that would control the sale and distribution of narcotics. President Woodrow Wilson also pushed for a federal narcotics law.

Representative Francis Burton Harrison, a New York Democrat, proposed a 1913 bill that was similar to the Foster Bill, but also alleviated some of the concerns the medical and pharmaceutical industries had about the previous bill. This bill, which became known as the Harrison Narcotic Act, eventually passed both houses of Congress



Bureau of Internal Revenue agents inspecting and destroying seized narcotics around 1920 as a result of enforcement requirements created by the Harrison Act of 1914.

and was signed into law on December 17, 1914. The Harrison Act specifies that

... every person who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away opium or coca leaves or any compound, manufacture, salt, derivative, or preparation thereof shall register with the collector of internal revenue of the district his name or style, place of business, and place or places where such business is to be carried on.

The initial annual tax the person had to pay when registering was \$1. Anyone who registered under the bill also had to record all of their transactions regarding opiates and coca-derived products. The

law gave the federal government the ability to determine who could legally deal with these substances. While physicians were explicitly named as a group who could obtain the license, the bill also required physicians and dentists to register the names of their patients and the amount of drugs dispensed to them.

After the law was passed, doctors used the ambiguous wording of the bill to justify their ability to continue prescribing drugs for the purpose of addict maintenance. Those working in the newly created narcotics division of the Bureau of Internal Revenue, who had the charge of enforcing the new law, interpreted it to mean that physicians could not prescribe narcotics for the sole purpose of addiction maintenance. This controversy resulted in two Supreme Court decisions in 1919 (*Doremus v. United States* and *Webb v. United States*) that upheld the provisions of the bill and prohibited doctors from prescribing narcotics to their patients for the purpose of addiction maintenance. The court interpreted the law to mean that the prescription of drugs for addict maintenance was not a “legitimate” medical purpose and therefore not legal. The law also prohibited consumers from registering under the act. Thus, the Harrison Act and the subsequent Supreme Court decisions resulted in the development of a huge illicit drug economy to accommodate the growing number of addicted persons who had previously obtained their drugs from physicians.

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See Also: Narcotics Laws; *Webb v. United States*; Wilson, Woodrow (Administration of).

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Hauptmann, Bruno

Bruno Richard Hauptmann (1899–1936) was a German immigrant and carpenter. He was convicted in what was called the “Trial of the Century” and executed for the kidnapping and murder of Charles A. Lindbergh, Jr. Bruno Richard Hauptmann was born November 26, 1899, in Saxony, Germany. He served in the German Army from 1917 to 1918 during World War I operating a machine gun. After the war, he was convicted of various criminal offenses in Germany, including breaking and entering in 1919 and possession of stolen property in 1922. He escaped from prison and after two failed attempts entered the United States illegally. Stowing away on an ocean liner, he disembarked in disguise and used a stolen landing card in September 1923. He married Anna Schoeffler (November 19, 1898–October 10, 1994) on October 10, 1925; they had a son, Manfred Richard Hauptmann, born November 3, 1933.

On the evening of March 1, 1932, Charles A. Lindbergh, Jr., the 20-month-old son of famous aviator Charles Lindbergh and his wife Anne Morrow Lindbergh, was kidnapped. The nursery was on the second floor of the Lindbergh’s home outside Hopewell, New Jersey. A handwritten note was found in the baby’s room demanding \$50,000 ransom. Lindbergh soon received a couple of ransom notes mailed from the same part of Brooklyn. In total, 15 handwritten ransom notes were received; all were identified by the same symbol of three interlocking circles. Due to the media attention, it was decided that a go-between was necessary. Lindbergh selected Dr. John F. Condon, a family friend and retired educator. Condon met with the suspect, and on April 2, 1932, handed over \$50,000 in ransom, much in gold certificates. On May 12, 1932, a house mover discovered the baby’s body with a crushed skull a few miles from the Lindbergh estate.

On September 15, 1934, a \$10 gold certificate with a serial number matching the ransom money was used to purchase gasoline from a gas station located at 127th Street and Lexington Avenue, New York City. The gas station attendant wrote the license plate number of the car on the note and recalled that it was a dark blue Dodge sedan. The plate number was traced to Hauptmann. He was arrested on September 19, 1934. Further, at

the time of his arrest, Hauptmann had in his possession a \$20 ransom bill.

A considerable body of evidence against Hauptmann was collected. Specimens of Hauptmann's handwriting were compared with the ransom notes and related evidence and several experts, including Albert S. Osborn, identified Hauptmann as the writer of the notes. In fact, testimony from eight expert forensic document examiners resulted in 800 pages of the trial transcript concluding that Hauptmann was the writer of the questioned documents. Hauptmann quit working as soon as the ransom was paid and soon began investing in stocks. The wood used to make the ladder used in the kidnapping was forensically analyzed by Arthur Koehler, chief wood technologist of the U.S. Department of Agriculture's Forest Products Laboratory, who found that a piece of wood from the ladder matched by mill markings, grain pattern, and nail holes to a piece of wood cut from Hauptmann's attic. Further, tool marks on the wood matched tools owned by Hauptmann. Hauptmann also appeared to match a composite drawing of the suspect that had been prepared from descriptions by Condon and one of the taxi drivers who had been handed a ransom note to deliver.

On September 26, 1934, Hauptmann was indicted for extortion in the Supreme Court, Bronx, New York; on October 8, he was indicted for murder in Hunterdon County, New Jersey. Hauptmann was extradited to Flemington, New Jersey, on October 19, 1934. His trial began January 3, 1935. The jury of eight men and four women returned a guilty of murder in the first degree verdict at 10:45 p.m. on February 13, 1935, with 11 hours and 24 minutes of deliberation after the 32 court days. An appeal was filed, but on October 9, 1935, the Supreme Court of the State of New Jersey upheld the conviction; an appeal to the U.S. Supreme Court was denied on December 9, 1935. Hauptmann was scheduled to be executed on January 17, 1936, but that day the governor of New Jersey granted a 30-day reprieve and Hauptmann was resentenced on February 17. The Pardon Court of the State of New Jersey denied Hauptmann's petition for clemency on March 30. At 8:47 p.m. on April 3, 1936, Hauptmann was electrocuted.

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See Also: *Chandler v. Florida*; Famous Trials; Federal Bureau of Investigation; Great Depression; Kidnapping; Lindbergh Law; New Jersey.

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Hawai'i

Hawai'i was annexed by the United States in 1898 and became a U.S. state in 1959. Unique among U.S. states, it consists entirely of islands (eight main islands and about 1,500 smaller islands) and is located in the south Pacific Ocean, about 2,000 miles southwest of the mainland United States. The population of Hawai'i (based on the 2005–09 American Community Survey) is 1,280,241. Hawai'i has an ethnically diverse population with the largest ethnic group being Asian (38.5 percent), followed by white (26.9 percent), Native Hawai'ian or Pacific Islander (4.4 percent), and African American (2.4 percent); 16.8 percent of Hawai'ians are foreign born, and 24.4 percent of people age 5 and above speak a language other than English at home. The median household income (in 2009 inflation-adjusted dollars) is \$64,661, higher than the U.S. average of \$51,425, and 9.4 percent of individuals live below the poverty line (as compared to 13.5 percent in the United States as a whole). Honolulu is the state capital and major city (population 377,357 in 2006), while the population of Honolulu County, which includes all of the island of Oahu, was 953,207 in 2010 (almost 75 percent of the state's population).

Before contact with the West, Hawai'i was ruled by chiefs, and law enforcement was governed by the *kapu* system. Offenders against the laws of the gods (*kapu akua*) and the laws of the chief (*kapu ali'i*) were judged before the

chief, who had absolute power to pass sentence, which could include execution. The *kapu* system was abolished in 1819 by Kamehameha II, and in 1840, Kamehameha III established Hawai'i's first constitution and supreme court. In 1847, Hawai'i had a police force of two officers and 34 men. In 1905, after annexation by the United States, Hawai'i created four county governments, each with an elected sheriff and police department (Hawai'i does not have state or local police forces). The fictional character Charlie Chan was based on Chang Apana, a Chinese-Hawai'ian police officer and detective who served with the Honolulu Police Department from 1898 to 1932.

In the 1920s and 1930s, there was an increase in crime, including several high-profile cases, and in 1932, the Honolulu Police Department was reorganized under an appointed chief of police. During World War II, the territory of Hawai'i was placed under martial law, with police officers operating under the orders of the military governor and criminal trials conducted in the provost court by a military judge. After Hawai'i became a state, and with improvement in air travel in the 1960s, the tourist industry grew rapidly, and there was also concern that Hawai'i would be used as a "cooling-off" spot for criminals, so strict anti-vice measures were enacted. Women first joined the Honolulu Police Department in 1975, and in 1997, Barbara Uphouse Wong, one of the first female officers, was promoted to the rank of assistant chief. In the 1980s and 1990s, law enforcement technology was upgraded, including the implementation in 1990 of the Automated Fingerprint Identification System managed by the Hawai'i Criminal Justice Data Center and the implementation in 1997 of a digital mug shot system. Hawai'i does not have the death penalty, and no one has been executed in Hawai'i since it became a state.

In 2008, according to the Federal Bureau of Investigation (FBI) Uniform Crime Report statistics, a total of 3,512 violent crimes were reported in Hawai'i (272.6 per 100,000 population), including 25 incidents of murder or nonnegligent manslaughter, 365 incidents of forcible rape, 1,086 robberies, and 2,036 aggravated assaults. In 2008, 48,004 property crimes were reported (3,571.2 per 100,000 population), including 9,379 burglaries, 31,492 cases of larceny-theft,

and 5,133 cases of motor vehicle theft. The Hawai'i High Intensity Drug Trafficking Area was created by the U.S. Department of Justice in 1999. Most trafficked drugs pass through Honolulu, which serves as the primary drug market area for the state and is also a transshipment zone for drugs bound for the mainland United States and elsewhere. Marijuana is extensively cultivated in Hawai'i (in 2006, Hawai'i ranked fourth among U.S. states in terms of the number of cannabis plants eradicated), while methamphetamine is generally imported rather than created on the islands. Hawai'i does not specifically track drug-related crimes but analysis of available data indicates that more than half of violent and property crimes in the state are related to drug trafficking, primarily methamphetamine. The National Drug Intelligence Center reported in 2002 that Hawai'i had more than 140 street gangs, which controlled most drug distribution in the state. Most Hawai'ian gangs are organized on ethnic lines, with Filipinos, Hispanics, Native Hawai'ians, Samoans, and Tongans all being represented. Besides gang activity originating in Hawai'i, some gang members have relocated from California to Hawai'i, in particular to Honolulu.

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See Also: Chinese Americans; Film, Crime in; Film, Police in; Japanese Americans; Native Americans; Television, Police in.

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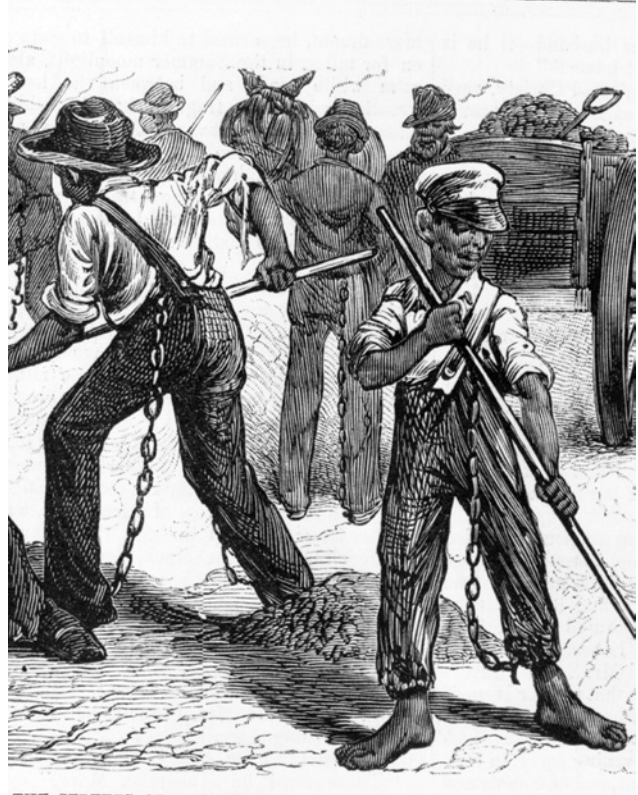
Hayes, Rutherford B. (Administration of)

Rutherford B. Hayes (1822–93), the 19th president of the United States, served one term in a time of political and social unrest during the end of the Reconstruction era. During his presidency, he attempted to rebuild relations with the former Confederate states, reform the civil service system, protect the voting rights of African Americans, and bring honesty back to the government. His efforts were minimized, however, by his controversial election and a sharply divided Congress that did not support many of his proposals.

Hayes graduated from Kenyon College in Ohio in 1842 and Harvard Law School in 1845. He earned a strong reputation serving as a criminal defense attorney, often representing fugitive slaves. He served in the Union during the Civil War and was wounded in battle several times. While serving in the Union army, Hayes was elected to represent Ohio in the U.S. House of Representatives in 1864.

Hayes strongly supported the efforts of his fellow Republicans during Reconstruction, including the passage of the Fourteenth Amendment and the Reconstruction Acts, which placed the former Confederate states under tight restrictions. His popularity allowed him to serve as governor of Ohio from 1868 to 1872 and again from 1876 to 1877. As governor, Hayes supported universal suffrage for African American males and supported the impeachment of President Andrew Johnson. Immediately after he won a third term as Ohio's governor, Republican Party leaders began circulating Hayes's name as a presidential candidate in 1876.

The presidential campaign of 1876 was one of the most controversial in U.S. history. Hayes's opponent, Democratic candidate Samuel Tilden, won the popular vote but did not secure a majority of Electoral College votes. Fraud was rampant, as evidenced by areas where more votes were cast than the number of eligible voters, and bribes were offered to influence vote counts. Congress established a bipartisan Electoral Commission to determine the status of 20 disputed Electoral College votes. After concessions were promised to southern states, the commission, with an 8–7



This detail from an 1877 newspaper illustration shows a young convict in a chain gang helping to clean the streets of Richmond, Virginia, in preparation for a visit by President Rutherford B. Hayes.

Republican majority, awarded the votes to Hayes and ensured his victory.

A One-Term President

Hayes's presidency was influenced by the failures of his predecessor. The administration of Ulysses Grant was marred by scandal and corruption. Hayes championed civil service reform over the spoils system. Entrance examinations were more thoroughly utilized, bureaucrats were ordered not to be involved in overtly political acts, and some offices faced extensive personnel cuts. However, Hayes's attempts at civil service changes were just enough to anger those favoring the old system but not enough to satisfy reformers. His efforts were also thwarted by a lack of support from Congress for reform. While he was largely seen as unsuccessful in these efforts, Hayes's policies laid the foundation for future civil service systems, such as the Pendleton Civil Service Reform Act (1883) and the U.S. Civil Service Commission.

Domestically, Hayes sought to protect minority voting rights in the south. Hayes hoped that southern states would accept African American voting rights, but he was too optimistic in his assessments. He vetoed many bills supported by Democrats that would have removed federal involvement in state elections. A major event during his presidency was the Great Strike of 1877, in which railroad employees in several cities stopped working after repeated salary cuts. Federal troops were dispatched to several areas to quell uprisings and riots. Although federal troops remained out of violent altercations, civilian protesters and state militia members were killed. The strikes showed workers the power of collective action while they also inspired owners to take a harsher stance toward unionization. In addition to strikes, President Hayes also had to deal with Native American unrest, including the Nez Perce War.

Concerning foreign affairs, President Hayes worked out an agreement with Mexico concerning bandits that crossed into U.S. territory, averting conflict between the two nations. Conflicts also arose concerning Chinese immigration, as some whites viewed Chinese immigrants as taking away jobs from native U.S. citizens. Following the Monroe Doctrine, Hayes took a strong stand on the future Panama Canal, stating that no European power should control such a vital U.S. interest.

As he pledged to serve only one term, Hayes did not seek reelection in 1880. Hayes did counsel his Republican successor, James Garfield, helping him win the presidency. Out of the White House, Hayes worked diligently for universal education for the poor, particularly African Americans. He also worked for prison reform and served as an advocate for several universities.

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See Also: Civil Rights Laws; Grant, Ulysses S. (Administration of); Native Americans; Pendleton Act of 1883; Strikes.

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Hays, Jacob

High constable of New York City, Jacob Hays (1772–1850) was born in Bedford, Westchester County, New York, in 1772. Before serving as high constable, Hays served as one of the mayor's marshals from 1798 to 1802. In 1802, Mayor Edward Livingston appointed Hays to the position of high constable. Although the reorganization of the police force in 1844 abolished the position, Hays continued to serve as high constable until his death in 1850. While high constable, he also delivered writs of the court and served as sergeant-at-arms to the board of alderman and crier of the court sessions. By the time of his death, his crime-fighting exploits were known throughout the English-speaking world. During Hays's years as high constable, New York City became the most prominent city in the United States. Its trade, wealth, and population increased exponentially, as did squalor, overcrowding, and crime. As the city changed, Hays's responsibilities shifted from enforcing church attendance on the Sabbath and rounding up vagrants to investigating crimes, detecting forgeries and counterfeits, recovering stolen goods, quelling riots, and arresting countless criminals.

Hays's meticulous record-keeping attempted to impose order on a disordered city and was a forerunner to the official crime statistics and databases of today. In one record book, he noted all the thefts that occurred in the city and described the goods that were stolen. In another notebook, now housed at the Museum of the City of New York, Hays recorded the name, age, race, gender, place of birth, crime, date of conviction, physical appearance, and date of release from prison for every criminal he arrested whom juries convicted and judges sentenced to the New York State Prison in the City of New York, commonly known as Newgate. He also cultivated and maintained a far-flung intelligence

network of informers, which most notably helped him capture one of the alleged robbers of New York's City Bank (1830) in Philadelphia.

In addition to arresting bank robbers, Hays became renowned for his uncanny ability to solve murders and suppress riots and disturbances throughout the city. In 1823, his knowledge of New York City's underworld helped him capture John Johnson, keeper of one of the city's many dockside boardinghouses, for the murder of James Murray. Armed with his constable's staff, great physical strength, and apparently no fear of danger, Hays waded into the middle of street brawls and disturbances to diffuse anger and calm the combatants. He rarely used deadly physical force but instead used his constable's staff to knock combatants' hats off their heads and then pushed the men to the ground when they hunched to recover their fallen headwear. When the troublemakers hit the ground, he detained the instigators of unrest and encouraged the rest of the crowd to disperse. Hays's successes in solving crimes and ending public disturbances made him famous throughout the English-speaking world. His name, contemporaries claimed, struck terror into the minds of all American criminals. Newspapers throughout the nation published notices of his yearly reappointment to the position of high constable, especially when he was in his 70s, and of his death in 1850. His exploits were known by some 19th-century Englishmen, who while witnessing a riot in London, allegedly wished for a man like Hays who could impose law and order.

Historians have written little of Hays's early years or personal life. His biographers speculate that since his father David served in the Revolutionary Army and his childhood home was a meeting place for local patriots, young Jacob may have been personally acquainted with General George Washington. History has forgotten the name of his first wife, but remembers the name of his second, Catherine Conroy, with whom he had three children; and his third, Mary Post, with whom he fathered an additional six children. In 1850, Hays died at the age of 78. He is buried at Woodlawn Cemetery in New York City. Although deceased, New Yorkers did not forget "Old Hays." In 1937, the *New York World-Telegram* published a popular six-part series on his exploits. Most recently, Hays figures as a prominent protagonist in Joel

Rose's novel, *The Blackest Bird* (2008), a fitting tribute to a man whose exploits many antebellum-era New Yorkers followed, celebrated, and mythologized.

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See Also: Detection and Detectives; Livingston, Edward; New York; New York City; Riots.

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Hereditary Crime

Hereditary or genetic explanations of crime date back to the roots of criminology in the 1700s. Early theorists varied considerably on exactly what inherited factors, or combination of factors, were responsible for criminal behavior. They also made little distinction between biological and psychological characteristics. Since virtually all early theorists were trained as physicians, their main focus was on physical features of the human body.

Darwinism and Crime

In 1859, Charles Darwin presented his theory of evolution in *On the Origin of the Species*, which

emphasized inherited traits in both animals and humans. Darwin's ideas inspired additional interest in identifying inherited traits associated with deviant and criminal behavior. One of the first to examine the relationship between crime and heredity was Cesare Lombroso, an Italian army physician. In 1876, Lombroso published *The Criminal Man*, which described the "born criminal" as a genetically inferior throwback to a more primitive stage of human evolution. Lombroso proposed that criminals could be distinguished by certain telltale physical characteristics, including enormous jaws, strong canines, flattened noses, and supernumerary teeth.

Raffaello Garofalo (1851–1934), a contemporary of Lombroso, also believed that criminals were born and could be identified by specific physical traits. Lombroso's student, Enrico Ferri (1856–1929) agreed as well, adding some minor social factors to his explanation. Charles Goring (1870–1919), however, disagreed somewhat with Lombroso, claiming that criminality was primarily the result of "defective intelligence," and proposed that crime be controlled by preventing reproduction in families with inherited traits such as "feeble-mindedness."

Francis Galton was one of the first researchers to conduct systematic studies of heredity and criminal behavior. In 1907, Galton proposed that several criminal characteristics were inherited, including an underdeveloped conscience, vicious instincts, and an uncontrollable temper. In 1913, Charles Goring studied convicted prisoners and their families, reporting significant correlations between the criminality of siblings, spouses, and parents and children. Goring advocated reproductive regulation for people displaying inherited criminal traits.

William Sheldon is recognized for developing the first systematic theory of hereditary crime. In 1942, Sheldon concluded that certain body types were not only correlated with, but caused the development of particular personality styles and temperaments. Sheldon's work was followed in 1950 by a massive study of delinquency by Sheldon and Eleanor Glueck. The Gluecks, like Sheldon, examined the relationship between body type and delinquency in 500 institutionalized, chronic youthful offenders. Both Sheldon and the Gluecks concluded that muscular, mesomorphic males were most likely to become criminals.

In the early 1960s, a new genetic factor emerged in the study of crime. Some high-profile violent criminals, including Richard Speck who murdered eight student nurses in Chicago, were found to have an extra y sex chromosome. This finding spurred additional studies, reporting that compared to the general population, there were a disproportionate number of prisoners with the xyy pattern. These "supermales" were described as hostile, hyperactive, and prone to violence. Later research, however, questioned this conclusion, reporting that xyy males were no more likely than normal xy males to become serious, violent offenders. In fact, each of the early perspectives that concluded that criminality was caused by inherited biological traits and physical features was severely criticized for its faulty methodology and experimental designs and was virtually dismissed.

Family and Twins Studies

Since the work of Lombroso, Galton, Sheldon, the Gluecks, and other early researchers was discredited, there has been continued interest in hereditary crime. In 1985, for example, James Wilson and Richard Herrnstein in their book, *Crime and Human Nature*, criticized the disparaging view of a gene-crime connection and endorsed the association of crime and heredity. This support spurred additional research on hereditary crime that came from four main sources: family studies, twin studies, adoption studies, and studies of the interaction between genes and the environment.

If criminal tendencies are inherited, the offspring of criminal parents will be more likely to commit crimes. Family crime studies date back to 1877 when Richard Dugdale was the first to study an extended family, the Jukes, in which he found a history of arrests in several generations. Since Dugdale, numerous studies have reported significant correlations between parental criminality and that of their children. These studies made it clear that crime follows family lines and that part of this association may be genetic. The major problem with family studies, however, is their inability to determine the relative contributions of heredity and environment.

As a way to overcome this obstacle, twin and adoption studies emerged. Twin studies compared the criminality of genetically identical twins with



This 1884 illustration, meant to emphasize the dangers of drinking, depicted two grown children of a man held in a criminal lunatic asylum visiting their insane father. The caption identifies the young man as a thief and the woman as a prostitute.

fraternal twins who share only half of their inherited genes. These studies typically found a higher crime concordance rate for identical twins. Twin studies, however, are limited because identical twins may have more shared environmental experiences and may model each other more than fraternal twins. To address this problem, researchers began observing the children of criminal parents who were adopted out to parents with no criminal history. Several adoption studies highlighted the influence of gene-environment interactions, uniformly reporting genetic predispositions to criminality that are either enhanced or inhibited by various environmental factors (e.g., socioeconomic status of adoptive parents). In their review of adoption and twin studies, S. H. Rhee and I. D. Waldman (2002) concluded that while heredity was a significant predictor of future criminal behavior, even strong genetic predispositions could be controlled by exposure to certain positive environmental factors (e.g., functional parenting).

An interest in examining the interaction of genes and environment was also spurred in the mid-20th century by contemporary trait theory. This view characterizes genetic factors as predisposing certain people toward criminality rather than determining crime. Trait theory has two main branches; biosocial theory, which proposes

that crime is related to an individual's physical and biological makeup, and a second view that emphasizes genetically influenced psychological traits, characteristics, and illnesses. Both branches propose that people with abnormal biological and psychological traits have more difficulty adjusting to their social environment and, thus, are more vulnerable to crime-producing influences.

Bio-Social Theory

The bio-social view cites certain personality disorders that are associated with criminal behavior and are heritable. These include oppositional defiant disorder (ODD), attention deficit hyperactivity disorder (ADHD), conduct disorder (CD), and antisocial personality disorder (ASPD). These disorders are characterized by behaviors such as non-compliance, aggressiveness, poor impulse control, inability to learn from past behavior, and disregard for social rules. Bio-social theorists also point to studies that have found a higher incidence of genetically influenced mental disorders in criminal populations such as schizophrenia, major depressive disorder, bipolar disorder, and minimal brain dysfunction (MBD). Left unchecked by environmental factors, each of these disorders is thought to increase the likelihood of criminal behavior. For example, youth with both MBD and ADHD have been found to be at extremely high risk for antisocial behavior, which typically persists into adulthood. Bio-social theorists also highlight research that suggests that criminal behavior is influenced by certain neurochemicals such as monoamine oxidase, epinephrine, norepinephrine, serotonin, and dopamine. Low levels of these neurochemicals have been associated with increased aggressiveness and impulsivity, which may increase the likelihood of criminal behavior. Furthermore, arousal theory suggests that the brains of certain people work differently, requiring more stimulation to feel normal or comfortable. Thus, these people may be more prone to taking risks and engaging in stimulating activities that may include criminal acts. Bio-social theorists emphasize, however, that environmental factors may affect gene expression and the neurotransmitters that moderate behavior. Understanding this interaction is essential to more accurately discern the expression of criminal behavior.

Trait theorists propose that individuals with particular traits are more likely to engage in criminal

behavior, often high-rate, chronic offending. These traits, which frequently appear together in certain people, include low verbal IQ, learning disabilities, and the “super traits” of low self-control and irritability. Genetic factors are thought to increase the likelihood that people will develop these traits through their effect on the central and autonomic nervous systems.

Molecular genetic studies, for example, have identified specific genes related to the traits of hyperactivity and impulsivity. These and other crime predisposing traits appear not to be the result of single genes but rather the product of several gene variants, not confined to particular groups but spread out through the general population. Thus, the prevailing view of trait theorists is that people who inherit a particular cadre of variant genes and then encounter certain dysfunctional environmental factors are more likely to develop the traits that increase the likelihood of criminal behavior.

In sum, there is considerable agreement that heredity does influence certain personality traits, learning problems, and mental disorders that may predispose certain individuals to criminal and antisocial behavior. It remains difficult, however, to determine the extent to which the expression of these disorders is attributable to heredity and environment. It is likely that modern brain imaging techniques and the recent sequencing of the human genome will enhance the understanding of hereditary crime. It is anticipated, however, that the importance of heredity in explaining crime will continue to focus on the connection between inherited factors and environmental bases of crime rather than on their direct relationship to criminal behavior.

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See Also: Child Abuse, Sociology of; Crime and Arrest Statistics Analysis; Crime in America, Causes; Domestic Violence, Sociology of; Drug Abuse and Addiction, Sociology of; Juvenile Corrections, Sociology of.

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Hillerman, Tony

Anthony Grove Hillerman (1925–2008), better known as Tony Hillerman, was a leading American crime fiction writer. He is best known for his Navajo Tribal Police mystery novels. Hillerman was a second-generation German American born on May 27, 1925, in Sacred Heart, Oklahoma, a rural town of 50 people. Growing up there during the Great Depression, he was sent to Saint Mary’s Academy, which was a Benedictine missionary school mainly for Potawatomi and Seminole girls. There, he acquired his lifelong respect for Native American culture. He went to college for one year but left to enlist in the military during World War II. He served in the U.S. Army as a mortarman with the 103rd Infantry Division and was awarded both Bronze and Silver Stars for valor as well as the Purple Heart for injuries sustained from a mine explosion.

After the war, he returned to school and graduated with a bachelor’s degree in 1948 from Oklahoma University. In 1948, he married Marie Unzer, and together they raised six children, five of whom were adopted. From 1948 to 1962, he was a journalist, working as a reporter and then editor for newspapers in Borger, Texas, and Lawton, Oklahoma; finally, he served as political reporter in Oklahoma City for United Press International (UPI) and then UPI bureau chief in Santa Fe, New Mexico, and editor of the *New Mexican*, Santa Fe’s leading newspaper. In 1966, he earned a master’s degree in English literature from the University of New Mexico in Albuquerque. Hillerman taught journalism at

the University of New Mexico in Albuquerque from 1966 to 1987.

Hillerman's first novel, *The Blessing Way*, was published in 1970 and initiated his 18 Navajo mystery novels set in the Four Corners region of the American Southwest. His stories often feature conflicts between traditional Navajo conceptions of crime and criminals versus the American criminal justice system. The Navajo appreciation of maintaining tribal harmony as portrayed by Hillerman is often at odds with the legal system. This harmony, known as *hozho*, is, in a sense, the Navajo version of justice; that which destroys *hozho* is, in Hillerman's novels, a crime. The Navajo are generally more sensitive than members of the larger society to moral weaknesses, and they tend to negatively value greed, or efforts to accumulate more than is needed. Hillerman delves into the metaphysical aspects of crime. He draws upon the religious and other cultural value systems not only of the Navajo but also of the Hopi and Zuni peoples. His compassionate efforts to describe people striving to maintain their traditional practices and beliefs in the modern world touched many readers. He wrestled with the discordance inherent in cross-cultural interactions, such as crossing religious taboos.

Hillerman's best-known protagonists in the Navajo crime novel series are Lieutenant Joe Leaphorn and Officer Jim Chee, both members of the Navajo Tribal Police. Lt. Leaphorn was introduced in *The Blessing Way* and is the more experienced policeman of the pair, but he is somewhat skeptical of some of the traditional Navajo beliefs about their rich spiritual world. For instance, although Lt. Leaphorn does not personally believe in witches, he takes reports of witchcraft seriously, because he has learned that the belief in witches can lead to problems. Officer Jim Chee, on the other hand, although younger than Leaphorn, holds a more traditional Navajo worldview. Jim Chee, introduced in Hillerman's 1978 *People of Darkness*, is studying to be a shaman, people called *hathaali* by the Navajo. Signs of witchcraft and other supernatural events are used by perpetrators in several of Hillerman's crime novels to cover up crimes.

Several of Hillerman's works were award winners. His second installment in his Navajo crime novel series was his 1973 *Dance Hall of the Dead*,

which garnered the Edgar Award for Best Novel from the Mystery Writers of America. His 1986 *Skinwalkers* won a Golden Spur Award from the Western Writers of America, while his 1988 *A Thief of Time* was a number one best seller and won a Nero Wolfe Award, as did his 1990 *Coyote Waits*. In addition to his Navajo series, Hillerman wrote over a dozen other books, including two novels for children, works on the history and natural beauty of the American Southwest, and a memoir, titled *Seldom Disappointed*, which won an Agatha Christie Award. He was recognized for his outstanding service to other writers by getting the Parris Award from the Southwest Writer's Workshop. He was inducted into the Oklahoma Journalism Hall of Fame in 1993. In 1987, the Navajo Tribal Council granted him their Special Friend of the Dineh Award, of which Hillerman was particularly proud. Hillerman's stories remind us that there is a cultural context that should be appreciated to better understand crime and punishment. He died of pulmonary failure on October 26, 2008, in Albuquerque, New Mexico.

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See Also: Literature and Theater, Crime in; Literature and Theater, Police in; Native American Tribal Police; Native Americans.

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Hispanic Americans

Throughout history, a number of different factors contributed to the racial tensions between whites and Hispanic Americans. During World War II,

distrust stemming from differences in culture and race led to the imprisonment of Japanese Americans and ill treatment of foreign individuals in the form of segregation and job discrimination. Toward the end of World War II, a surge of patriotism was felt by white Americans, which coincided with an increased fear of Mexican children becoming juvenile delinquents as a result of their believed inability to conform to American standards. The fear was related to the rising popularity of the pachuco style, in the 1940s, which served to anger and further alienate the whites. The appeal of the pachuco style was that Mexican Americans were able to express their sentiments about the segregated norms that were in place. The pachuco style was a subculture to which many Mexican American (Chicano) youth began to adhere, which was seen as an alternative form of American culture that incorporated elements of jazz, slang, and clothing.

The style was associated with the zoot suit, which was publicized by the media as the style of gangsters and rebellious youth. Essentially, whites viewed the pachuco style as a challenge to what were considered established norms. However, the media continued to focus on the pachuco style, thus propagating the gangster affiliation among Mexican Americans. In 1942, the "Sleepy Lagoon murder" further fueled the tension and anger that plagued whites and Mexican Americans at this time. The controversy reached a new high when Jose Diaz, a 22-year-old Mexican American, was attacked on his way home from a party a few days before he was scheduled to leave for war. The attack ultimately led to his death and resulted in widespread hysteria about gang violence within Los Angeles. The attention that this crime garnered resulted in mass investigations in an effort to capture those responsible for the murder; however, the investigations broadened to include all Mexican American and African American communities. In other words, the Los Angeles Police Department (LAPD) used the death at Sleepy Lagoon as a pretense to launch a campaign against zooters, pachucos, and Chicano gangsters.

In 1943, racial tensions erupted between whites and Mexican Americans and resulted in the Zoot Suit Riots. By this point, there was a general fear of uncontrolled gang violence in East Los Angeles, which was fueled by the media.

Riots began erupting throughout Los Angeles in areas frequented by Chicanos and returning sailors. For example, a rumor that a group of Chicanos had stabbed a sailor resulted in the development of a mob and, ultimately, a manhunt. A similar incident occurred when a group of sailors accused Chicano youth of attacking them and thus reported the attack to the police. The police then formed the Vengeance Squad in an effort to find the assailants, but to no avail. However, many groups of sailors took it upon themselves to search throughout downtown and East Los Angeles and beat up any Mexican youth who were dressed in zoot suits.

People began to question whether Mexican Americans were simply too different to coexist with whites within American society. The perceived differences in culture, intellect, and biology led to a mentality that continues to permeate American society to this day. More specifically, immigrant groups were viewed as "biologically deficient," meaning there is a genetic tendency that made this group of people more criminally prone. In other words, it was believed that since they were born outside of the United States, these people were the most likely to commit crimes. This perception led to many political debates that centered on immigration. Nonetheless, the perception of immigrants being criminally prone continued to receive public support.

"Criminal" Immigrants

During the 1980s, large numbers of Hispanics immigrated to the United States from various Spanish-speaking countries, for example, an estimated 125,000 Cubans made Miami their home while seeking refuge. However, their arrival was not well received because of reports of people with criminal records and mental disorders among those that emigrated. Because of their visibility and growing size within the population, the media directed much of its attention at them, especially because the rates of gang and drug-related homicides increased during the 1980s. Even though the rates of Mariel Cuban homicide victims and offending increased to levels similar to those recorded for African Americans, they soon decreased to levels reported for other Latinos and non-Latino whites. However, the belief in an immigrant criminal was still prominent.



Young Mexican migrant workers resting at a filling station in Neches, Texas, while on their way home to the Rio Grande Valley from a job picking cotton in Mississippi in October 1939. Studies of immigration and crime have found that adolescent violence was reduced in neighborhoods with high levels of immigrant concentration and that, while most nonwhite communities had higher rates of violence in comparison to white communities, Hispanic communities did not.

Because of this fear of immigrants, many researchers began conducting studies in order to understand the validity of the criminal immigrant. These studies examined the relationship between immigration, Hispanics, and crime from both individual and community perspectives. Individual-level studies demonstrated that first-generation youth (i.e., individuals born outside of the United States) tended to have lower rates of criminal participation, which included hitting someone, throwing objects at someone, carrying a weapon, being involved in a gang fight, or picking pockets/snatching purses in comparison to second- and third-generation youth (i.e., youth born inside of the United States). Similar results were found when incarceration rates were examined. Overall, incarceration rates for second- and third-generation youth were four times greater

than that for first-generation youth. Also related to these findings was the age of arrival of youth to the United States. More specifically, those youth who arrived at a younger age to this country were more likely to commit the above acts than those who arrived at a later age. Therefore, researchers concluded that there seems to be no support for the belief that Hispanics arrive to this country with criminal tendencies; rather, Hispanic Americans seem to become more involved in crime the longer they live in the United States.

The Latino Paradox

Another topic related to Hispanic Americans is homicide. Dating back to the 1980s and the reoccurring belief in the criminal immigrant, Hispanic Americans have often been portrayed as dangerous and bloodthirsty. For this reason, Ramiro

Martinez, Jr., analyzed homicide rates between various groups to understand whether first-generation Hispanics and second-/third-generation Hispanics are more criminally prone. Ultimately, the results indicated that despite a slight increase in homicide rates for first-generation Hispanics during the late 1980s; first-generation Hispanics had lower rates of homicide than second- and third-generation Hispanics. Other comparisons specifically focused on the Mariel Cubans to determine the validity of the arguments presented by politicians and the media about the criminality of the “Marielitos.” Once again, Ramiro Martinez, Jr., concluded that the homicide rates of the Mariel Cubans in comparison to African Americans, whites, and other Hispanics were high between 1980 and 1984; however, their rates eventually dropped to levels that were even lower than those for whites. Therefore, these studies demonstrate that there does not seem to be much evidence provided for the rationalization behind the criminal immigrant belief.

In an effort to explain these unexpected results, researchers have proposed a concept known as the “Latino paradox.” The paradox stems from the success that Hispanics tend to have among different social and criminal outcomes, despite their socioeconomic status. In other words, considering the social hardships (i.e., poverty, language barriers, lower income, and lower education) that many Hispanic Americans face, they are expected to fare much worse among various outcomes. Within the study of criminology, many of these socioeconomic characteristics aid in the understanding of which people are more or less likely to offend and/or to be victimized. Despite having these characteristics present in their lives, Hispanic Americans actually fare quite well. Examples of these outcomes include health, mental health, and crime. Some explanations for the Latino paradox include heavy emphasis on the family, a strong motivation to work and succeed in a new country, and a desire to not be deported. Aside from being used as an explanation for individual-level differences, the Latino paradox has also been studied within community-level studies in criminology.

To better understand the manner in which communities are studied within a criminological perspective, researchers have implemented social

disorganization theory. The theory of social disorganization was developed by Clifford Shaw and Henry McKay in an effort to explain the presence of high crime rates in specific neighborhoods or communities. In their original study, the results indicated that high levels of residential mobility (residents constantly moving in and out of the community), ethnic heterogeneity (large amounts of ethnically and racially diverse people residing within the same communities), poverty, and structural disadvantage (a concept that encompasses measures of poverty, female-headed families, and jobless males) were associated with increased levels of crime. Therefore, neighborhoods with these characteristics are described as “socially disorganized” and are expected to have higher rates of crime. In other words, Shaw and McKay determined that, despite the importance of individual characteristics for understanding crime, community characteristics are just as important.

In reference to Hispanic Americans, the popularity of the criminal immigrant once again emerges. According to social disorganization theory, increased levels of ethnic heterogeneity (i.e., large concentrations of Hispanics) in communities are believed to be associated with higher rates of crime. However, community-level studies have also provided evidence of the Latino paradox. These studies incorporate the percentage of foreign-born residents to gauge whether large concentrations of Hispanics contribute to crime. Martinez states that much of the research on immigration and violence reports findings suggesting that this relationship is not as it seems. It is in this capacity that the Latino paradox emerges as a puzzling finding within this type of research. It seems that immigration serves to strengthen the social structure of Hispanics and provide support for those within the neighborhood; rather than to weaken the social structure already in place, causing further deterioration leading to crime. In other words, large percentages of Hispanics within a community seem to protect the community.

One topic that demonstrates the influence of immigrant communities is homicide. Martinez compared homicide rates among five specific Hispanic communities within five different cities (i.e., Chicago, Houston, San Diego, El Paso, and Miami) to determine whether more impoverished communities display higher levels of homicide. A

second study examined whether neighborhoods in Miami, El Paso, and San Diego (areas with large immigrant settlements) have high levels of homicide, as did another in San Diego. All three studies concluded that immigration did not increase levels of homicide; instead, it decreased the level of homicide in some cases. These findings challenged the stereotype of a criminal immigrant and the explanation provided by social disorganization.

Similar conclusions have been drawn for other studies of immigration and crime. For example, it was found that changes in crime rates over a period of 10 years were not associated with changes in immigration rates, thereby concluding that reducing immigration is not likely to impact crime rates. Adolescent violence was also reduced in neighborhoods with high levels of immigrant concentration (i.e., larger percentages of foreign-born and non-English-speaking residents). Another group of researchers also recognized that, even after controlling for neighborhood disadvantage, all nonwhite communities had higher rates of violence in comparison to white communities with the exception of one group: Hispanics. Interestingly, the rates for Hispanic communities did not vary significantly from those found in white communities. Therefore, prior research demonstrates that there are elements present within immigrant communities that do not coincide with the expectations of social disorganization.

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See Also: Arizona; Border Patrol; Customs Service as Police; Deportation; Florida; Immigration Crimes; Miami, Florida; Race-Based Crimes; Racism.

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History of Crime and Punishment in America: Colonial

The legal system in British America relied on English legal conventions. Considering the relative autonomy of the colonies, however, their legal codes varied from colony to colony and reflected the unique concerns and beliefs of each. The manner in which colonial authorities enforced laws was meant not only to compensate victims and discourage crime but also to promote specific religious and social ideas.

One of the major factors in colonists' perception of crime was their tensions with Native Americans, which often erupted into full-fledged wars and added much anxiety about crime. The Pequot War (1634–38) and the King Phillip War (1675–76) nearly wiped out the European settlements in New England. The region remained volatile in the 18th century, particularly during the Seven Years War (1756–63) against the French. Accounts of those who survived Indian captivity, such as *The True History of the Captivity & Restoration of Mrs. Mary Rowlandson* (1682), typically

portrayed Indians as incorrigible criminals who menaced Christian settlers. Conflicts of this sort were also common in the southern colonies, most notably in Virginia, where in the 1670s, frontier settlers felt compelled to form a militia to drive Indians from the region.

Threats of unrest and crime also came from within communities. It was widely assumed that the heathenism and wilderness of America could diminish colonists' respect for laws and spark crime. For this reason, colonial authorities were not inclined to tolerate any manifestation of lawlessness. In fact, during their formative years, settlements like those in Virginia were run almost in a military fashion. The fate of John Smith offers a telling example about the anxiety of authorities; although he was an important figure in the 1607 effort to settle Virginia, Smith came close to being executed for simple insubordination. The colony's second governor, Thomas Dale, introduced a set of stringent laws, which warranted severe punishment even for fairly minor transgressions. Dale's laws also allowed capital punishment for almost two dozen offenses, including illegal trading with Indians, blasphemy, and property damage.

Social and Political Unrest

Leaders in New England were equally concerned about signs of social unrest. In the case of the Pilgrims, who established the colony of Plymouth in 1620, their fears were amplified by the fact that they had no legal claim to the land where they settled. Even before they disembarked in the Massachusetts Bay, a group of the Mayflower passengers declared that they were not obliged to follow their leaders. Episodes like this necessitated the need for an assertive government, which was in place in the first decades of colonization; the authorities deported or prosecuted anyone whose behavior could undermine social order. Several people, most famously Thomas Morton, were consequently removed from the colony for what was perceived as unruly behavior.

The efforts of authorities notwithstanding, the colonies were occasionally disrupted by revolts, which highlighted the weakness of social order in British America. Particularly devastating was Bacon's Rebellion in Virginia in 1676. It was started by frontier farmers who believed that the government did not do enough to protect them

from Indians. The rebels burned Jamestown, the seat of the colonial government, and chased the governor away. The rebellion dissipated only after the unexpected death of its leader and the execution of several ringleaders. The anarchical streak of early American culture became even more apparent in the aftermath of the Glorious Revolution in England (1688–89), which saw the overthrow of James II. It inspired several coup d'états and unrests in the American colonies, particularly in Boston, New York, and Maryland.

Slave conspiracies and rebellions started to occur as early as the 1650s and became fairly frequent in the 18th century in both the south and the north. Remarkably, some of the most disturbing revolts took place in New York (one in 1712 and the other in 1741), where the authorities felt compelled to resort to some unusually harsh measures. In 1739–40, South Carolina saw two bloody revolts, one of which, the Stono Rebellion, was the largest in the colonial period.

Crime

Piracy became a serious problem in the early 18th century. It originated in the Caribbean, where Spain's commercial activities created a lucrative environment for English, French, and Dutch outlaws. Some pirate groups flourished with the tacit acquiescence of the English government, which hoped that pirates could keep Spain's empire in check. New York City and other American ports served as safe havens for pirates throughout the 17th century, where they enjoyed some protection from government officials. When piracy started to endanger British trade in the Atlantic, however, the colonial authorities turned against lawlessness of this sort. A number of pirates were publicly executed in New England in the early 18th century.

Most commonly, authorities had to deal with such ordinary transgressions as violations of public order and crimes against property and people. How such crimes were dealt with reflected the religious and political differences among various colonies.

In Pennsylvania, which was established as a refuge for the Quakers, the attitude toward crime and punishment was somewhat different from other British colonies. In contrast to the Puritans and other Protestants, the Quakers never put much

emphasis on the concept of original sin. They did not regard criminal behavior as a manifestation of man's innate inclination toward perversity, and consequently were more inclined to try to rehabilitate criminals. Compared to other colonies, Pennsylvania had fairly few capital crimes. To the extent possible, its system of punishments was designed not only to prevent other crimes but also to reform criminals. This approach ultimately put Pennsylvania at the forefront of penal reform.

In the Chesapeake south, the legal system was designed primarily to preserve the social order. Although religious teachings influenced many colonial legal codes in the 17th century, including Virginia's "Articles, Laws and Orders" (1610), religious concerns did not seem to preoccupy the magistrates. In the early stages of the colony's history, religious rules were indeed widely enforced. Blasphemy was punishable by death. All colonists were required to attend church and faced fairly harsh punishments, such as lengthy service in the galleys, if they failed to comply. Once the colonies were firmly established, however, they became fairly tolerant of religious diversity. The magistrates were then primarily concerned about crimes that threatened the power of wealthy colonists or threatened to upset the social order. For this reason, people of lower classes were likelier to be punished than their wealthier compatriots.

Punishment

The most common form of punishment in the colonies was a fine, which could be used to compensate plaintiffs. Those who were unable to pay the fine were often sold as indentured servants to work off the debt. Long-term incarcerations, which entailed supporting prisoners at the government's expense, were not common. Criminals and suspected criminals were imprisoned only in anticipation of the trial, sentencing, or execution. The first correctional facility, which was designed to contain prisoners for lengthy periods of time, was opened only in 1773 in Connecticut. Magistrates also created elaborate public punishment rituals to discourage crime.

Condemned criminals could be confined to a pillory, whipped in public, or subjected to some other humiliating punishment. The customs of branding and forcing criminals to wear various marks of shame were fairly often used in Virginia



This 1774 print shows the notorious incident of the tarring and feathering of John Malcom, a British customs officer, before the Revolution. He was forced to drink tea and led before a gallows in front of a crowd of 1,200 spectators in Boston.

and New England. Some culprits were adorned with distinct signs, similar to the one described in Nathaniel Hawthorne's novel *The Scarlet Letter* (1850). Others were branded with a hot iron on their hands or faces. The marks were typically letters identifying the crime; "A" for adultery, "T" for theft, and so forth. Such marks of shame reinforced the authorities' prestige for their vigilance and served as constant reminders that crime was a threat to the social order in the colonies.

Religion and Crime

In New England, which was dominated by the Puritans, religion made a far greater impact on the legal conventions than in other British colonies. Although the Puritans nominally believed in the separation of church and state, its leaders were committed to preserving the sense of religious orthodoxy, which affected their attitude toward crime and punishment. In the Massachusetts

Bodie of Liberties (1641), for example, all capital crimes were adopted from the Bible.

Religious tensions were feared because they could have a destabilizing effect. For this reason, religious diversity was to be avoided. In the 17th century, the New England authorities methodically prosecuted and deported individuals who did not share Puritan beliefs, let alone those who showed disrespect for the existing religious order. This was particularly evident in the expulsions of Roger Williams in 1636 and Anne Hutchinson in 1638. The authorities also persecuted entire religious groups, most notably Anabaptists and Quakers, whose religious views were believed to inspire discord in New England. Several Quakers were executed in Boston in 1660–61.

Moral transgressions were considered as serious as crimes against people and property. In the Puritan mind-set, all crimes, regardless of how harmless they were, reflected man's general propensity for sin. This belief was reinforced by the Puritan fascination with the concept of original sin, according to which all people were potentially criminal. What is remarkable about the American Puritans, however, is that they were very successful in exploiting this belief for political purposes. Ministers habitually perpetrated the notion that the colonization of heathen America was a sacred war against Satan, who defended himself by inciting crime among the colonists. They routinely decried manifestations of immoral behavior as signs of the colony's downfall. This strategy was used particularly often at times of crises. In the aftermath of the King Phillip War, which such well-known ministers as Cotton Mather regarded as God's punishment, the synod issued a proclamation that accused colonists of all sorts of crimes: disrespect for the authorities, intemperance, promiscuity, dancing, gambling, idleness, wearing inappropriate clothes, and many other transgressions. It is understandable that this trend obscured crime statistics in New England because religious moralists there tended to exaggerate the extent of crime in order to emphasize the importance of religion.

Executions, which in Massachusetts were warranted for such crimes as idolatry, blasphemy, perjury, adultery, murder, bestiality, homosexuality, and witchcraft, were always conducted publicly. This approach reflected the strategy of exploiting

punishment rituals as occasions for moralizing. In the period leading to punishment, the condemned were usually subjected to repeated visits from ministers, who worked with criminals to explain their spiritual condition and, in case of executions, prepare them for God's judgment. This period also afforded the criminal a chance to repent his or her crime. Criminals were also prompted to write didactic confessions, which were published for the benefit of other people.

Colonists were encouraged to attend execution rituals to contemplate their spiritual condition. The day of execution followed a prescribed format. It generally began with a sermon that included a methodical discussion of the culprit's crime and an explanation of its significance in the larger social and religious context. Since the Puritans believed that everyone was innately sinful, ministers always reminded their congregations that seeds of criminality were planted in everyone. Therefore, the public was expected not to distance itself from the condemned but to relate to the criminal condition. The publication of execution sermons, trial records, and related materials completed the cycle of punishment. To ensure their wide circulation, execution sermons were published as cheap pamphlets. Their popularity was enhanced by the fact that they were aggressively promoted as educational publications.

The Eighteenth Century

The crime trends and the colonial legal systems started to change in the 18th century, when the American colonies found themselves more firmly integrated into the British Empire. Their legal system became more formalized and anglicized, while local religious and social concerns started to lose their significance. What's more, the rapid growth of cities, which created a more cosmopolitan environment in the colonies, contributed to proliferation of new forms of crime. Between 1690 and 1775, the population of New York jumped from 3,900 to 25,000, while Philadelphia grew from 4,000 to 40,000 residents. The latter, famous for its diversity, had a reputation as the most dangerous city in British America. Like other cities, it was plagued by typical urban crimes: burglary, pickpocketing, robberies, and prostitution. Philadelphia was also sporadically ravaged by bloody riots, which were sparked by all sorts of grievances.

In the 18th century, we can also discern the first manifestations of vigilantism and other forms of extralegal violence, which blurred the lines between law and lawlessness. It relied on the notion that people can take justice into their own hands. On some level, this popular trend can be seen as a reaction against formalization of the legal system. The trend began with innocent rituals and celebrations, such as the Pope Night in New England. Organized each year by common people with fervent anti-Catholic sentiment, the Pope Night consisted of parading and insulting an effigy of the pope through the streets. This trend undoubtedly contributed to the growing disrespect toward authority, which became particularly apparent in revolutionary America.

In the 1760s and 1770s, Americans reacted with hostility to what they considered unjust policies of Parliament and the king, particularly the Stamp Act (1765). It gave rise to the notion that laws were not always just and that common people were capable judges of all affairs in their communities. Consequently, many Americans felt free to express their anger through protests and rituals in which people could express their dismay.

Symbolic executions, particularly burning and hanging of effigies, were fairly common. One of the first victims was Andrew Oliver, the Boston official whose position obliged him to enforce the Stamp Act. In the summer of 1765, when Bostonians learned about the provisions of the new law, a mob ransacked Oliver's house, hanged his effigy on the Liberty Tree, and then, in a brazen act of defiance, paraded in front of the town house.

As the situation in the colonies continued to deteriorate, some protesters went beyond burning effigies and started to harass British officials and loyalists directly. American radicals viewed such acts as a form of direct justice, which they enforced with a dramatic flair. In the fall of 1769, a mob got hold of George Geyser, who was suspected of being an informer for the British; Geyser was not only tarred and feathered but was also paraded through the streets of Boston to inspire terror among people. Jesse Saville, another informer, met the same fate the following year. Particularly infamous was the 1773 case of John Malcom, a customs officer in Boston, whose tarring and feathering gathered an enormous and diverse crowd of 1,200 enthusiasts. This trend

helped sustain revolutionary spirit in the 1770s, but in the aftermath of the Revolutionary War, it posed a challenge to the authorities as they sought to re-create the rule of law in the country.

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See Also: 1600 to 1776 Primary Documents; American Revolution and Criminal Justice; Bodie of Liberties; Common Law Origins of Criminal Law; *Laws and Liberties of Massachusetts*; Puritans.

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History of Crime and Punishment in America: 1783–1850

American criminal justice underwent profound transformations in the period between the American Revolution and 1850. At the most basic level, moral or religious offenses so prevalent in colonial penal codes were increasingly rare in the north in the period after the Revolutionary War, though they persisted on the books in the south. During the 19th century, property offenses, especially larceny (and variations of larceny like horse theft), and disorderly conduct (including drunkenness

and vagrancy) dominated the criminal courts in northern states. Policing was also undergoing transition. In most of this period, large towns and cities were still patrolled by night watchmen and constables; however, beginning in the 1830s and 1840s, large cities like New York and Philadelphia began the process of adopting organized police forces with specific city- or countywide jurisdictions but that operated much like constables. Changes to the criminal trial also began to emerge. Throughout colonial history and the early republic, cases were brought by private prosecutors, private individuals who brought the accused to court, often because the individual himself was victimized by the crime. However, throughout the course of the 19th century, this practice gave way to office-holding prosecutors. At around the same time, the portion of trials by jury began to decline. Throughout the east coast, beginning around the 1830s, the number of guilty pleas rose, a disputed portion of which are believed to have been the result of a primitive form of plea bargain. In these various budding transitions, the modern criminal justice system began to take shape.

Capital Punishment

Among the most important changes, however, were the gradual abandonment of capital punishment and the search for alternative punishments culminating in the adoption of the prison. While states experienced change at slightly different times, change generally came in two major bursts the first directly after the Revolutionary War lasting into the 1810s, the second beginning in the 1810s and continuing well into the 1840s. Moreover, those convicted of crimes had very different experiences of criminal justice based on their gender, race, nationality, and region.

Following the American Revolution, but as early as 1776, several states altered their constitutions to include mandates to change their criminal laws by reducing their use of capital punishment. They had been influenced by several factors. First, Cesare Beccaria's 1763 pamphlet *On Crimes and Punishments* had been translated and slowly made its way across the Atlantic by the outbreak of the Revolutionary War. This tract included arguments against the death penalty, which Beccaria saw as an uncertain sanction that occurred too quickly to leave a lasting impression and took place too

long after the crime to be a proper deterrent. Second, as the colonies began to attack monarchy as an institution, they also saw certain practices as monarchical and unfit for a more free and democratic country. The death penalty in particular was attacked as a relic of monarchical excess. Instead of killing its citizens, it was thought that the government's duty was to reform or otherwise improve them. Others suggested that the death penalty was rendered insufficiently useful by jury nullification, the phenomenon in which jurors find an offender not guilty, despite clear evidence to the contrary, simply to avoid sentencing someone to a more severe punishment than thought appropriate or necessary. This was representative of a growing discomfort since the Enlightenment with executing offenders for property crimes, which were becoming more common in the colonies. Finally, others argued that capital punishment was actually counterproductive because it "brutalized" those who witnessed the execution, thereby creating more criminals. There were, of course, some commentators like Benjamin Rush, who advocated the complete abolition of capital punishment; however, they would have to wait until the following century to see real progress on this front. In the meantime, capital punishment was dismantled more slowly.

Thus, as fighting broke out with the British, Pennsylvania (1776), Vermont (1777), and South Carolina (1778) altered their constitutions ordering restrictions on corporal and capital punishments, often in favor of more "proportionate" sanctions. Pennsylvania's law in particular called for the creation of houses of correction to punish previously capital offenders. However, more progress was made in reducing the list of capital offenses than in adopting alternatives. In 1786, Pennsylvania reduced its list of capital offenses by removing robbery, burglary, sodomy, and buggery from capital eligibility. In 1788, Ohio limited capital offenses to murder. In 1794, Pennsylvania went even further and limited capital eligibility to a new category of murder, first-degree murder. This limited capital punishment to murders that were planned or especially heinous, while second-degree murder, including all other murders, would be sentenced to a term of imprisonment at Walnut Street Jail. Many states followed this example, including Virginia in 1796 and Kentucky in 1798.

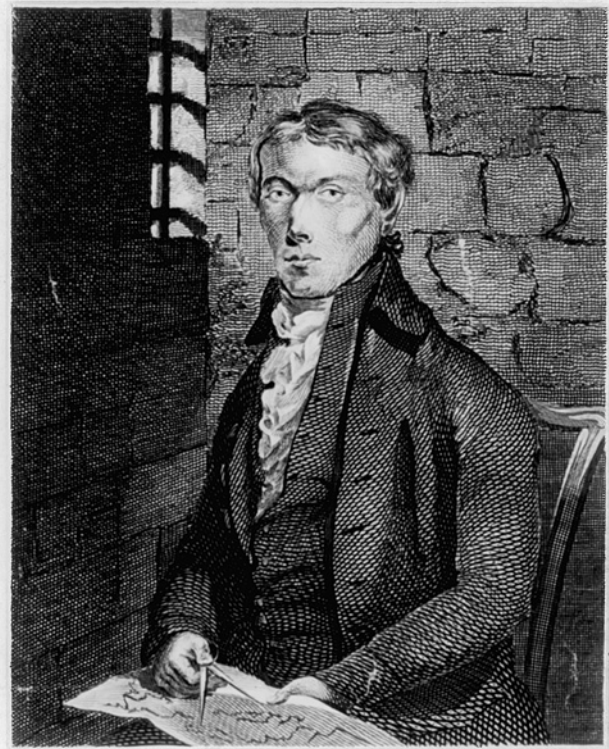
In 1796, both New York and New Jersey limited capital punishment to murder and treason. Thus, in the first decade of the new United States, several states severely restricted their use of capital punishment legislatively.

Jails

By limiting the number of capital offenses, states were left with a void in their penal schemes. States primarily turned to a heavier reliance on the jail, experiments with hard labor, and attempts at disciplining with corporal punishment. Their searches often followed the Beccarian mantra that the certainty of the punishment was more important than its severity. Thus, in 1785, Massachusetts converted a fortress in Boston to hold convicted criminals as its state prison, at which they would work at hard labor. Confinement at Castle Island looked something like the early workhouses found in England, but unlike those workhouses and even American jails, this was the first instance of an institution devoted solely to the confinement of convicted inmates in the United States. This experiment ended in 1789, however, and had minimal impact on subsequent American developments, which were influenced much more heavily by developments in Pennsylvania.

Pennsylvania filled its penal void by adopting the Wheelbarrow Law in 1786. Henceforth, convicted men would publicly labor on the streets of Philadelphia while tied to a cannonball and wearing unattractive clothing in order to deter others and reform themselves into good laborers. At night, they would be housed in jail. The shame and labor elements were thought to be reformatory. This law was soon copied by Rhode Island in 1787, followed by New York, Massachusetts, Maryland, and Virginia. However, this plan backfired when the wheelbarrow men fought among themselves or with the public, were jeered or cheered by passersby, and, in some cases, escaped; the practice was seen as an abject failure. When the law was abandoned, Pennsylvania turned to its Walnut Street Jail in Philadelphia.

Since 1776, comfortably middle-class citizens had been concerned with the state of their jails. Some had read John Howard's 1777 book *The State of the Prisons*, about the grotesque conditions of the local jails in Great Britain. Some citi-



PATRICK LYON,
*who suffered three months severe imprisonment on merely
a vague suspicion for the internal Robbery of the Bank
of Pennsylvania.*

Philadelphia locksmith Patrick Lyon, who in 1798 became a widely known victim of judicial injustice after being falsely convicted of robbery of the Bank of Pennsylvania. A book about his ordeal pled for equal justice for both the rich and the poor.

zens, especially Quaker individuals, experienced American jails firsthand during the revolution when they were jailed for not fighting. However, Quakers generally had a long tradition of concern with incarcerated individuals, in part because of their religious beliefs but also because of a long-standing history of being banished, incarcerated, or executed for their religious affiliation. Thus, in 1776, a group of Philadelphia citizens formed the Philadelphia Society for Assisting Distressed Prisoners, which was later renamed, in 1787, the Philadelphia Society for Alleviating the Miseries of Public Prisons. By 1787, the jails were horribly overcrowded, in part because of recently increased reliance but also because of an increased crime rate following the disbanding of soldiers after the

war. The Walnut Street Jail, founded in 1776, was one such institution.

The Walnut Street Jail was remodeled in 1790, designated a state prison, and experienced some changes reflecting contemporary penological thought. While inmates were held in congregate in large common rooms, they were first classified and kept in different rooms according to their classification. The jail contained 16 cells for solitary confinement, but these were used if inmates violated rules and not as a general punishment to which one was sentenced. Inmates were also provided with work in communal workshops. Moreover, a large number of serious offenders were actually sentenced to lengthy periods of time instead of brief stints, as before. While the penological theory underlying Walnut Street was less developed than what followed, there was a belief that simply moving offenders from their environment, and preventing them from getting worse in the process, would reform them. The institution was also thought (especially by Benjamin Rush) to provide a deterrent to would-be offenders, who would be ignorant of what actually went on inside. However, like previous jails, Walnut Street held those convicted of a range of crimes, from second-degree murder to petty larceny, as well as those awaiting trial, witnesses, some vagrants, debtors, and the feeble. Despite some similarities with previous and contemporary jails, though, this represented a significant break from the past. The Walnut Street Jail is generally regarded as the first important development in carceral punishment in the United States, sometimes even referred to as the first prison, the institution at Castle Island notwithstanding. The Philadelphia model was heavily copied: In 1796, New York allocated funds to build Newgate Jail. In 1797, New Jersey completed construction of its new “penitentiary house,” as these institutions were sometimes called. In 1800, Virginia and Kentucky also completed their structures, while Massachusetts allocated funds for its penitentiary house. By 1810, Connecticut, Tennessee, Vermont, New Hampshire, and Maryland (10 states in all) had a penitentiary house or jail.

However, the experiment with jails in Pennsylvania and elsewhere was generally a failure. States experienced major resistance on the part of inmates, their family members, and guards. Riots

were common. Pennsylvania’s Walnut Street Jail experienced four sizable riots between 1817 and 1821, and Newgate in New York had riots in 1818, 1819, 1821, and 1822. In addition to riots, the jails experienced fires and escapes; the escapes and riots especially contributed to the perception that crime was on the rise and that the new jails were contributing to this increase. Moreover, overcrowding, which had contributed to the disorder in the jails, also made workshop labor impossible. Thus, by the 1810s, several states were looking for another alternative not only to capital punishment but to jail-based incarceration as well, for their more serious offenders.

Development of Prisons and Penitentiaries

This search led to the adoption of the first American prisons. The first of these was Auburn State Prison in New York. Its construction was authorized by statute in 1816. Following the failure of Newgate, reformers rejected congregate incarceration in favor of true solitary confinement. It was thought that inmates contaminated one another and this prevented them from reforming themselves and their ways; thus, silent, lonely reflection would enable this end. Initially, beginning in 1821, inmates were maintained in very small cells (3.5 by 7 by 7 feet), were not permitted to talk, and were denied visitors. The experiment had devastating consequences, as many inmates died or became insane, and had to be discontinued in 1823. At that point, New York returned to the congregate style of incarceration seen in the early jails; however, inmates were kept in solitude in their own cells at night. During the day, inmates worked in large factory-like workshops in complete silence; they were not permitted to even look at one another for fear of communication. To both maintain order and prevent contaminating communication among the inmates, Auburn’s prisoners were required to walk everywhere in lockstep, a maneuver in which an inmate put his hand on the shoulder of the man in front of him and his foot behind the foot of the man in front of him while his head looked in the direction of the opposite shoulder and foot. Consistent with the theme of order, guards as well as inmates were forced to follow a military kind of protocol, including a strict schedule and uniforms (the inmates wore stripes). Inmates who failed

to comply were whipped. This became known as the congregate or New York model of prison discipline.

Not long after New York's reforms, in 1818, Pennsylvania ordered the erection of Western State Penitentiary in what is now Pittsburgh. In 1821, the legislature also provided funds to build Eastern State Penitentiary outside Philadelphia. In both prisons, the initial plan was to use solitary confinement without labor. Still under construction, Western opened in 1826. It was quickly apparent that the new prison was an architectural disaster not equipped for solitary confinement. The inmates were transferred to work on canals and other public works projects in the western part of the state. The prison closed not long after receiving its first inmate. By contrast, Eastern opened in 1829 and remained open for nearly 150 years. Well before its first inmate arrived, the experiment in New York had proven unsuccessful and, while Philadelphia inmates were still held in cells separated from the other inmates day and night, the Pennsylvania plan had changed to allow inmates to work in their cells. Inmates performed tasks like shoemaking, spinning or weaving, and blacksmithing, all of which could be done solitarily within one's own cell. John Haviland, the architect of Eastern State Penitentiary, had also included other amenities to allow for continuous cellular confinement. Cells, which were much larger than those at Auburn, were equipped with small exercise yards or gardens as well as flushing toilets and plenty of ventilation.

A major concern of Eastern's officials was the privacy of the inmates, whom they wanted to return to the free world unharnessed by a reputation as a criminal and a former prison inmate. They were thus escorted to their cells while wearing hoods through which they were unrecognizable by escorts, and food was delivered through a special compartment that prevented the recipient or deliverer from seeing the other party. Religious services, which the inmates could hear from their cells, were also held roughly every two weeks. However, inmates at Eastern did not go long without seeing another person—the warden, the inspectors of the prison, the physician, local ministers, and members of the local reform societies (as well as prominent European tourists like Alexis de Tocqueville and Charles Dickens) regularly met

with the inmates. Finally, inmates who misbehaved were punished quite severely by corporal punishments aimed at pacifying the offender, including the water bath (something akin to waterboarding) and the iron gag (a device forced into the mouth and connected to the hands wedged behind one's back, making it very painful to struggle against). This became known as the separate or Pennsylvania model of prison discipline.

These two prisons became vastly influential throughout the national and international penal community. Both were among the top tourist attractions and received prominent European visitors. This attention may have exacerbated what became a vicious debate over which form of prison discipline was best that lasted from the time of the first prison's construction to roughly 1850. The lead competitors were members of the Boston Prison Discipline Society (supporting the New York model) and the Philadelphia Society



This 1835 print with a detailed illustration of the iron gag torture device used at the Eastern State Penitentiary attributes one prisoner's death to its use and argues for its abolishment.

for Alleviating the Miseries of Public Prisons (supporting Pennsylvania's model). Each took turns explaining how the other was cruel, ineffective, or too expensive. Indeed, while states rarely made a profit on their prisons, many believed the New York model had the potential for positive revenue because wardens could sell the labor of the inmates to the highest bidder. Moreover, the Pennsylvania model, which was in fact much more expensive, was also perceived to be inhumane by some for its use of solitary confinement; it had few supporters outside Pennsylvania. New York built a second prison, Sing Sing, on its own model in 1828, followed by Connecticut at Wethersfield, Massachusetts at Boston, and Maryland at Baltimore. In the 1830s, New Jersey and Rhode Island also adopted prisons largely based on the Pennsylvania model. By mid-century, however, most American prisons had been built on the New York congregate model while most European countries had built prisons on the Pennsylvania separate model.

Regardless of the model, however, inside the prison, not everyone had the same experience. For most of the 19th century, prisons housed both men and women. However, women represented a very small fraction of prison inmates—at Eastern State Penitentiary, they represented about 5 percent of the prison population, with generally a handful admitted each year. Because of their small numbers, officials were not entirely sure what to do with the women. They were generally provided with a separate wing, a large room, an attic, or a separate little house on the property of the prison proper in which they were left to their own devices, which could be both a blessing and a curse, as there was no one to protect them from each other or from unscrupulous guards. Only around mid-century were matrons hired to supervise the women. Because women were generally neglected, their carceral experiences differed from men's in many ways, including a lack of silence or other separations, little if any work to occupy them, and less available exercise or even fresh air. Moreover, female criminals were considered especially bad because of the high moral standards set for women at the time. Additionally, a large portion of female criminals tended to be African American or recent immigrant, groups to which comfortably middle-class individuals often

ascribed negative moral attributes. Consequently, in a period that embraced rehabilitation or reformation, even if only in rhetoric at some facilities, female inmates were not frequently intended as the objects of reformation as male inmates were, further differentiating their treatment.

Contrasting Experiences

African Americans and new immigrants also had different experiences with criminal justice generally. Immigrants and African Americans ensnared in the criminal justice system were typically found in northern states as they tended to immigrate to northern states and, in the south, criminal justice for African Americans was largely meted out privately on the plantation. In the north, however, these groups tended to be overrepresented in the prison population (and throughout the larger criminal justice system) relative to their population in the jurisdictions from which they were sentenced. This was likely because of a combination of bias as well as the fact that African Americans and recent immigrants (especially the Irish) were disproportionately poor, uneducated, and members of the lower class, a group that has always been disproportionately represented in the criminal justice system.

The largest difference in experience, however, was that between the north and the south. Most of the developments in criminal law and punishment originated and occurred in the north. Criminal justice in the south was quite different. There were essentially two criminal justice systems in the south. Slaves were generally under the jurisdiction of their owner. Masters had few restrictions on how severe the punishments could be, but the value of their human property typically offered an upper limit; thus, corporal punishment was the primary form of punishment meted out by masters. However, if a slave committed an offense considered especially heinous, or if he committed a crime against someone not in his master's household, the official criminal law held sway. Consequently, well into the 19th century, the south maintained a list of capital offenses that the north had gotten rid of in earlier colonial times, including many petty property offenses and several biblical offenses. As whites were rarely punished, these offered both deterrence and retribution for slaves and free blacks. Some

have argued the presence of a sufficiently threatening group—African American slaves—allowed upper-class whites to ignore lower-class whites and the kind of crime threat they were thought to pose in the north. Additionally, the different economic systems—an agrarian slave economy in the south with a more urban, commercial one in the north—led to different goals of the criminal justice system such that the south was less concerned with rehabilitation than the north was. Lacking both a group in need of rehabilitation (like immigrants, lower-class whites, and free blacks in the north) and no economic incentive to have cheap factory-style labor, prisons made less sense in the south. Moreover, southerners saw prisons as antithetical to their celebrated concept of honor, which required men to seek vengeance for crimes against them, and to some extent the southern version of republicanism. Nevertheless, prisons were not unknown in the south. Despite popular opposition to prisons, southern legislators enabled their states to slowly join the north in building prisons, which were primarily reserved for violent white offenders.

Renewed Debate

The emergence of the prison did not entirely quiet the debate over capital punishment. In the early 19th century, reform movements arose against slavery, blood sports, animal cruelty, and other actions considered inhumane, and the movement for the abolition of capital punishment was among them (in some cases, championed by the same sets of individuals). Debates over capital punishment were held live and in the print media of the time. Between 1820 and 1850, states continued to reduce the number of capital offenses. In Maine (1829), Illinois (1832), and Massachusetts (1852), rape was no longer capital eligible. In the north, it was increasingly rare to find anything other than murder or treason listed by 1850. Full abolition was also proposed and was often defeated. The exception was Michigan, which in 1846 abolished capital punishment completely, but only Rhode Island (1852) and Wisconsin (1853) followed suit.

Instead, the major victory in this period won by the anti-capital punishment movement was to relocate executions within the walls of the prison instead of continuing the public spectacle. Not

everyone supporting the move was against capital punishment entirely, however. Occasional stories of pickpockets in the crowds at an execution were mentioned by reformers and other interested parties. Commentators also noted that the crowd could be sympathetic to the condemned. Neither of these phenomena showed capital punishment deterring its intended audience. In the early 19th century, as well, arose the concept of the private sphere separate from the public sphere, and increasingly, middle- and upper-class citizens retreated to their homes, avoiding, among other things, the public executions. This changed the demographics of who attended executions, giving the perception that they were immoral, lewd, or disorderly spectacles. Thus, officials began adopting what were called private executions. While these emerged without legislative fiat in some areas, state legislatures began abolishing the public execution, including Connecticut in 1830, followed by Rhode Island, Pennsylvania, New Jersey, New York, Massachusetts, New Hampshire, Iowa, Mississippi, Alabama, Ohio, Vermont, and Delaware, all before 1850—the move was more common in the north than in the south. However, these executions were not exactly private: They were often attended by several hundred upstanding, wealthy, powerful (typically white) male citizens chosen by the sheriff, while onlookers who could not secure an invitation found positions enabling a peek at the execution from beyond the prison or jail yard's walls.

By 1850, the debate between Pennsylvania and New York over prison discipline had cooled, and New York had won. Likewise, the debate over the death penalty was nearing a temporary cessation of activity as the country prepared for more important debates. In the north, nearly every state now had a prison to punish its most serious offenders, but the death penalty had survived, albeit to punish fewer crimes and in a much less public manner.

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See Also: American Revolution and Criminal Justice; Auburn State Prison; Capital Punishment; Corrections; Eastern State Penitentiary; Penitentiaries; Walnut Street Jail.

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History of Crime and Punishment in America: 1850 to 1900

The Civil War era marked an extraordinary period of escalating collective violence throughout the nation. Conservative vigilantism, both urban and rural, and politically oriented gang-related urban violence were omnipresent in most of the country. In the 1840s and 1850s, militant political groups and militias flourished in both the north and the south. Private armies and political militias proliferated. In the election of 1860, Republicans mobilized an army of thousands of uniformed torch-wielding Wide Awakes, whose very existence alarmed both northern Democrats and southern elites. The latter mobilized local militias in preparation for the bloodbath that was to follow. This breakdown in civic trust destroyed the old union and created

chaos in the years that preceded secession and the war itself. In such a climate, personal violence and civic warfare escalated and intensified.

While the war put a temporary end to the pattern of urban political warfare, the postwar period was marked by extreme personal and collective violence, especially in the south and the west. While much of the southern violence was related to race and politics and to the devastation that the region had suffered (one-fifth to one-third of southern white males had died in the sectional conflict), collective violence in the west was often tied to battles for hegemony over the region's resources, with range wars or management-labor conflict.

In addition, much of the celebrated outlawry that flourished in the postwar period was tied to the war in some manner: Either the participants were veterans nursing a grudge, battling over political ascendancy in the region, or fighting for specific control over water, grazing, or mineral rights. So while urban gangs became less problematic in the postwar era, outlaw gangs and private armies funded by industrial, ranching, and mining interest became dominant political realities. Some historians call the collective violence of the postwar period the "Western Civil War of Incorporation" and present the period as a continuation of Republican–Democratic political violence.

As the century drew to a close, wealthy plutocrats, aided by sympathetic politicians, had achieved political control and virtual hegemony, and the status of the laborer and the small farmer was in decline. The 1901 assassination of President McKinley, the last Civil War veteran to serve in that office, marked the end of the era. The Progressive Era that followed saw substantial verbiage about change and interest in controlling the manifest abuses of corporate capitalism, though Progressive reform efforts were largely superficial.

Gang and Vigilante Crime and Violence

The decade immediately before the war was dominated by politically oriented urban gang violence. Gangs, almost always affiliated with fire companies, dominated the political process and urban life in many large cities such as New Orleans, Baltimore, New York City, St. Louis, and San Francisco. While gangs like New York City's Bowery B'houys were oriented toward the interests of the workingman and improving his lot and espoused

a radical socioeconomic agenda, other voluntary associations like San Francisco's vigilantes were controlled by mercantile interests and were nativist or Republican in focus.

Such political gangs were really private politically oriented and well-organized armies, like the *Freikorps* noted in Weimar-period German history, and fought continuing wars for control of urban politics. They were particularly problematic on election days, when open warfare flourished in some cities. Gangs and allied fire companies marched in uniforms and "colors" featuring patriotic motifs at loud and boisterous political rallies, where overheated and intemperate rhetoric were featured. Voter fraud, bribery, and violent intimidation were the order of the day. For example, during the late 1850s, Baltimore's nativist gangs carried awls with which they intimidated would-be Democratic voters at the polls. Democratic gangs fought back in kind, and both sides continually clashed throughout the decade, using firearms and even small cannons. The city became known as "Mob Town" in the nation's press and developed a fearsome reputation.

Civic warfare was also found in New Orleans, where elected nativists were almost deposed by a

revolt of Democratic "vigilantes," led by locals in 1858. Democratic gangs were in the ascendant and ultimately wrested control from nativists at the dawn of the Civil War. The city's endemic civic violence was only temporarily quelled by wartime occupation by Union forces. After the war, New Orleans was the scene of frequent large-scale battles between Democratic ex-Confederates and Union Army of Occupation-controlled municipal police. An unrelated and unique episode of lynching of 11 accused Italian organized crime figures by an elite-controlled mob occurred in 1891. This incident illustrated the fact of Mafia domination of the city's criminal subculture of the era. The general public reacted to impotence of the courts through organized political violence. Eventually, these Italian American syndicates, along with Jewish and Irish gangs, furnished foot soldiers for the Prohibition wars of the Roaring 1920s in New Orleans, and in many other urban locales.

In California, crime flourished in the interregnum between Mexican and American rule. The U.S. Army was spread too thinly, and the territorial-state and federal criminal justice systems were simply not adequate to deal with the crime that occurred in the wake of the 1848 gold rush.



VIEW FROM THE "DEAD RABBIT" BARRICADE IN BAYARD STREET, TAKEN AT THE HEIGHT OF THE BATTLE BY OUR OWN ARTIST, WHO, AS SPECTATOR, WAS PRESENT AT THE FIGHT.

This wood engraving shows a street battle between the rival gangs the Dead Rabbits and the Bowery B'houys at a barricade in Bayard Street in New York City's Sixth Ward. It was published in Frank Leslie's Illustrated Newspaper on July 18, 1857. Gangs in other cities, such as San Francisco and Baltimore, were often controlled by commercial interests and were more political.

When the world rushed in to capitalize on the mineral riches of the region, chaos ensued. Groups of citizens, usually funded by mercantile interests, stepped in to enforce a kind of order. In gold rush San Francisco, most vigilante violence was directed against legally elected Democratic office holders or criminal gangs of Australian origin, the Sydney “Ducks.” Although civic warfare followed, the mercantile nativist vigilantes prevailed. Their version of what was essentially a seditious rebellion against elected city and state officials prevailed in popular history and mythology. The forces of “law and order” had triumphed over outlawry and corruption. In the nearby gold fields, thieves and violent criminals were subject to the justice of vigilante kangaroo courts and summary execution.

Committees of Vigilance (or Regulators) in the south were instruments of the slaveholding ruling class and were focused on protecting the “peculiar institution” of slavery. This led to using any and all means to reduce the influence of abolitionists and their contrary notions, and quashing real or imagined slave rebellions. Such groups occasionally lynched hapless travelers who muttered reservations about the slave economy, and woe betide slaves who could not give a good account of their actions or whereabouts when questioned by patrols. Actual slave uprisings were suppressed with exemplary medieval cruelty.

The Wild West

Before and after the war, such self-appointed groups, always using extralegal violence, lynched cattle rustlers in Texas and fought range wars such as the Lincoln County War (1878) in New Mexico and throughout the west. Such outlaw luminaries as Billy the Kid and “Doc” Holliday came to notoriety in these conflicts. Holliday, allied with the Earp brothers, was a central figure in Tombstone’s famous Gunfight at the O.K. Corral in 1881, but had a history of working as a hired gun and gambler. This particular incident, really a minor skirmish between mercantile-funded Republican gunslingers and populist-oriented Democratic ranchers, has been grossly distorted and immortalized in cinema, television, and even in science fiction. But it was only one episode in a continuing series of battles between ex-Confederates and Unionists in the territories. Lawmen were often gunslingers hired by merchants to impose a

version of law and order that strictly supported their interests. Opponents, be they farmers, labor unions, cowboys, or other outlaws, were handled with extreme prejudice.

Outlaw gangs such as the celebrated James and Younger brothers prospered in the chaotic postwar period. During the war, they served as Confederate irregulars with William Quantrill in Kansas and Missouri. After the war, they continued fighting Republican and northern interests in Missouri, Kentucky, Arkansas, and Louisiana. Their many bank robberies drew the attention of the press and the Pinkerton Detective Agency, which began its own reign of terror against the families of the outlaws. In one incident, detectives threw a bomb into the James family home, killing a brother and wounding the Jameses’ mother. This only increased their mystique and appeal to southern-oriented farmers who saw the James brothers as latter-day Confederate warriors—a role that the outlaws deliberately fostered and probably believed. On September 7, 1876, the attempt of the James and Younger brothers to rob the First National Bank of Northfield (Minnesota) came to a bad end when they were cut down by armed citizens in the streets. Only the James brothers escaped the shoot-out and the pursuing posse. The Younger brothers were duly imprisoned, while the James gang continued in outlawry but led a low-profile conventional life in Missouri. Jesse James was murdered in 1882, but Frank James lived peaceably until 1915. His passing, coming three years after the admission of old frontier territories Arizona and New Mexico as states, signaled a closing of the chapter of outlawry in the Wild West.

Postwar Racial Violence and Feuding

At the end of the Civil War, much of the south lay in ruins. Many combatants had perished, and their families and dependants were starved, destitute, and demoralized. Additionally, the socioeconomic system had been destroyed, and an army of occupation controlled political and civil institutions. Freed slaves were settling scores within the African American community with unwonted violence. Groups like the Ku Klux Klan (KKK), founded in 1865 in Pulaski, Tennessee, emerged as a source of extreme social control. Its goal was to subjugate newly freed slaves to a status similar to bondage

or peonage. In reality, during their masked night rides, local KKK members (generally not members of any formal or centralized organization) visited violence on blacks, Union sympathizers, and carpetbaggers. Some members also used this opportunity to settle private grudges.

Viewed in a larger perspective, the Klan was a decentralized, poorly organized, extralegal vigilante group intent on enforcing its view of law and order. It was highly effective and not particularly vulnerable to law enforcement efforts because there was no real “head” that could be chopped off by federal efforts, and it was vigorously supported by local whites. Many local sheriffs were supporters or members, and local juries, when primarily comprised of whites, simply would not convict. In some respects, it represented an armed wing of the Democratic Party, and as such, was vigorously suppressed by Union forces and Republican officeholders throughout the Reconstruction period.

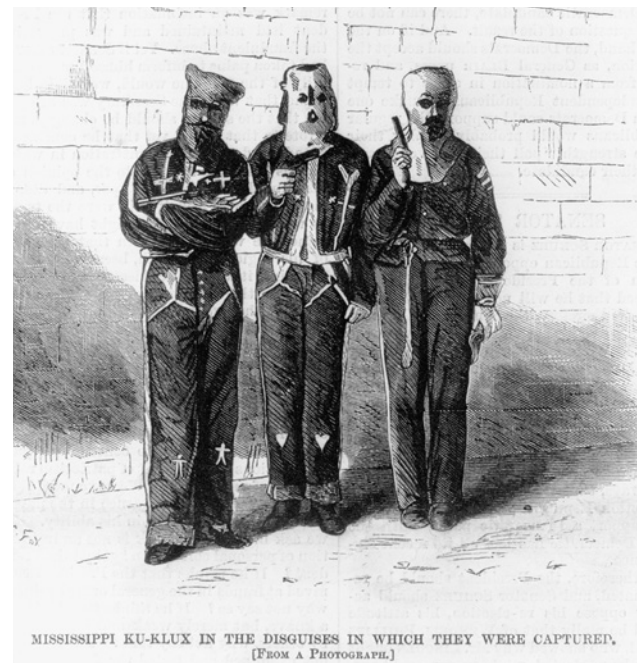
The Civil Rights Act of 1871 was specifically aimed at curbing the Klan, but the many decentralized groups of Klansmen had largely ceased their activities by that date. Federal courts in South Carolina continued to successfully try and convict members of the KKK throughout the 1870s. In part, this led to the formation of other, slightly more respectable groups, such as the Red Shirts. This group was formed to engage in public activity to support Democrats and work against any Republican candidates in South Carolina. The efforts of the Klan and groups like the Red Shirts were largely successful in preserving white supremacy as Union troops were withdrawn from the region by 1877. Even the victorious north was at long last exhausted by the continuation of the sectional struggle.

Native Union sympathizers in the south proved vulnerable to state-level pressure during the course of the war and were ostracized by their neighbors immediately thereafter. Much to their chagrin, they were not given much credence by occupying Union forces, and neighbors had long memories. They were generally caught up in the same chaotic forces as ex-Confederates in the postwar period. While some moved west to the territories, others became involved in the famous feuds that plagued the region. The Hatfield–McCoy feud of Kentucky and West Virginia is illustrative of the bellicose

tendency of border state denizens. Union loyalists in east Tennessee and North Carolina feuded and fought with former Confederates. Something as mundane as shooting a pig could ignite such a multigenerational conflict. Texas and Louisiana were also inundated by Reconstruction era violence and feuding. In Texas, even the renowned Texas Rangers (not traditional lawmen but a state army that was controlled by large ranching interests) proved inadequate to the task of keeping order in east Texas. Killings involving upper-class citizens were common, some even occurring on courthouse steps. Feuds of this nature lasted well into the 1900s, though the killings eventually abated.

Personal Violence in the Civil War Era

The decades from 1850 to 1900 were some of the most violent and tumultuous in American history. The period saw the erosion of national authority on a number of levels, which contributed to a destabilizing of political discourse and civic culture. Before the war, violent mobs raged in urban centers, guerrilla conflicts tore at the wound of “Bleeding Kansas,” and private armies (gangs and vigilantes) kept order by strictly upholding



Mississippi Ku Klux Klan members arrested in 1872 wearing hoods to obscure their identities, but uniforms that are quite different from those used by later incarnations of the Klan.

the interests of the mercantile and slaveholding classes. Moreover, outlawry and violence flourished in California and the territories; in San Francisco, elected officials were overthrown by a commercially funded vigilante coup. Slaveholders believed that the north was intent on eroding their property rights, and some northerners believed that the south would stop at nothing to impose its “peculiar institution” in the territories and would even impose the duty of apprehending and detaining escaped slaves on nonslaveholding states through the Fugitive Slave Act. People of goodwill, north and south, were alienated by overheated secessionist rhetoric of slavery advocates or repelled by absolutist and seditious abolitionist agitation. Slavery and the reaction against it destabilized the already tenuous union between the regions.

Separate cultures and societies had developed and evolved and were moving from a state of cold war into a more militant and less accommodating status. Rumors of slave revolts created a climate of fear and dread among southern whites. The quixotic and bizarre attack on Harper’s Ferry by the self-anointed freedom fighter John Brown, an action encouraged and funded by northern industrialists and intellectuals, intensified the anxiety of southern whites and increased their desire to leave the Union. This created a crisis of confidence, or crisis of legitimacy, that filtered downward to all levels of society. Street-level and personal violence became endemic in areas that had formerly been almost violence free, such as the mountain areas of the south. Formerly peaceful farm communities elsewhere were also torn by personal violence. Urban areas, besides coping with the instability that gang violence encouraged, saw increases in personal violence. Violent rhetoric and incidents on the floor of the Senate and the House of Representatives only served to further destabilize the civic climate. After the war, this atmosphere of violence continued to impact the rural south and west, locales where legal institutions remained rudimentary at best.

Management–Labor Violence

Labor unrest, already noted during the early days of the Industrial Revolution, came to the fore in the years following the Civil War. Mercantile interests,

in the area of mining and manufacturing, aided by ascendant Republican politicians, exploited labor and violently suppressed workers’ efforts to organize. Unions that attempted to obtain humane working conditions and more equitable recompense for their labor were met with lockouts and violent responses from private armies of “detectives,” who were actually hired guns. State militias and National Guard troops were also employed to break strikes and protect management strikebreakers. Management–labor disputes metastasized into battles that broke out throughout the nation. In 1886, a peaceful demonstration in support of an eight-hour workday by Chicago workers ended with a bombing that killed one police officer; police gunfire killed seven in the crowd. Several labor organizers, all of whom were probably innocent, were convicted of murder, and four were executed. The Haymarket riot, or “massacre,” ended in disaster for the unionists, but created a number of proletarian martyrs and enshrined May Day as a holiday among leftists worldwide.

Another strike in this era ignited a violent struggle between the Amalgamated Association of Iron and Steel Workers and the Carnegie Steel Company in 1892, in Homestead, Pennsylvania. After strikers defeated 300 heavily armed Pinkerton agents, 6,000 state militia troops were imported to retake the factory. In a pattern that became familiar in the following decades, unions were broken due to the use of overwhelming force and other union-busting tactics employed by management. This pattern was repeated numerous times in the post–Civil War period, particularly in coal mining areas and in the west.

The Reformatory Movement

Wartime prisons afforded a point of departure and facilities for the reformation of prisons and the beginning of the concept of “corrections.” A former prison for Confederate enlisted men was retooled for the first effort in modern prison reform. The Reformatory movement was a response from the nascent correctional community to increases in crime and the disorders of the era. Begun in the early 1870s at the Elmira Institution in New York by Zebulon Brockway and other penal experts of the era, this movement attempted to build vocational and educationally oriented “reformatories” that would rehabilitate,



A flier calling for a rally in the Haymarket in Chicago on May 4, 1886, in response to the shooting of seven people the day before. Four labor organizers were later executed for the deaths.

rather than merely punish or confine, the young and first-time offender.

The unstated but nevertheless clear goal was to turn lower-class, mainly immigrant inmates into middle-class-oriented, upwardly mobile, upstanding citizens in the Protestant mold. To that end, a specific plan of progressive steps was developed, aimed at preparing the inmate for a manual labor profession, and efforts were made to ensure employment in the larger community. If inmates were successful in their institutional adjustment, they were granted parole. Parole carried with it certain inviolable conditions involving continued employment and avoiding criminal associations and activities and many inmates failed. When parolees failed on release to community, it produced frustration in the larger community, and by 1900, this experiment was in

serious peril. Politicians succeeded in having it so attenuated that true parole and rehabilitation as a goal was effectively abandoned.

Post-Reconstruction Crime and Violence

In the immediate postbellum period, lynching and terrorism were successfully used by some southern whites to reassert political dominance over former slaves. By the mid-1870s, the national government had given up on Reconstruction. After southern whites regained control of the region following the withdrawal of occupying forces in the late 1870s, violent crime rates, like most forms of KKK terrorism, dropped. This was a reflection of a stabilized political climate and the sense, among whites at least, that legitimacy had returned to governance after years of occupation and carpetbag and scalawag rule. The “Redeemers” reestablished Democratic hegemony and white supremacy. This had a calming effect after years of perceived misrule and perceived tyranny. Violence rates among oppressed former slaves continued to be high, however, as they rightly saw the new order as nothing more than old wine in new bottles.

In the years following the Civil War, the use of opiod drugs and alcohol became a major issue in the American narrative for the first time. Racist campaigns against the use of opium by Chinese laborers became a staple of the “yellow press.” It was thought that young women were lured into the “white slave trade” by evil Asian criminals who plied them with drugs. Civil War veterans intoxicated on morphine and an easily available cornucopia of patent drugs containing cocaine, opioids, cannabis, poisons, and alcohol became a matter of grave national concern. Respectable housewives and community leaders became addicted to patent medicines and over-the-counter narcotics. A wide variety of laborers—miners, cowboys, sex workers, stevedores, and sailors—frequently used opioids recreationally and for self-medication. The drug industry was extremely influential, and meaningful drug regulation was decades in the future.

Municipal policing, which had begun in eastern and port cities in the 1830s, was still rudimentary and both urban police departments and rural sheriff’s offices were often staffed with drunks, incompetents, and political appointees. Ethnic rioting in the 1840s and 1850s gave rise to elite concerns about improving police and

putting an end to urban disorder. However, following the war, civil service was not yet a reality and departments were famously inept and corrupt. In fact, one had to bribe politicians in order to get a job as a police officer in some machine-controlled municipalities. Some officers had close associations with urban political gangs. Job security was unknown and officers were at the mercy of elected officials. In some cities, entire departments were fired when a new political party took office. Officers of one ethnicity were typically allied with certain political parties and came to dominate police work. Thus, the Boston and New York Police departments were heavily Irish, while Cincinnati's police were predominately German. Ethnic rivalries were often manifested in police treatment of newly arrived immigrant groups. For example, Jewish merchants were arrested for doing business on Sundays, a violation of Protestant-oriented laws. In addition, police frequently took bribes to protect gambling interests and the sex trade. In general, police were unprofessional and poorly supervised and were not held in high regard by the public.

Cities such as New York, Cincinnati, and New Orleans worked at police reform, but it was only in the first decades of the 20th century that significant change would occur at the local level. On the federal level, agencies such as federal marshals achieved some small successes against racial terrorists in South Carolina in the 1870s and against outlaws on the frontier in that and later decades. In the west, federal marshals were all political appointees and were often heavily influenced by local ranching interests and state-level politicians. Municipal marshal and sheriffs were similarly controlled by state and local elites and business interests, and generally protected vice in their environs. The cinema-fostered image of the local marshal standing up to irrational forces of violence and disorder is belied by the stark reality of corruption, protection of vice, and gross partisanship that typified law enforcement on the frontier.

Federal revenue agents began serious efforts to combat "moonshining" in this period, but were barely able to contain it. Liquor sales were, and remain, a significant source of federal taxable revenue. On the other hand, federal agents were more successful against mail fraud and counterfeiters,

though the Secret Service experienced signal failures in protecting Presidents Garfield and McKinley from assassins.

In the west and throughout the rest of the nation, as old wounds healed and the two-party system returned with a modicum of civility, crime became less problematic as a sense of legitimacy was reestablished. Remaining Native American outliers and dissidents were decimated or pacified; the frontier was secured. Not quite a golden age, as the period experienced depression and labor conflict, the gay 1890s were a period of reconsolidation of the formerly warring regions and a time when ascendant industrialists and ranching interests consolidated control over the vast resources of the west.

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See Also: 1851 to 1900 Primary Documents; Corrections; Drug Abuse and Addiction, History of; Elmira Prison; Enforcement Acts of 1870–71; Frontier Crime; Gangs, History of; Ku Klux Klan; New Orleans, Louisiana; Penitentiaries; Racism; Slavery; Slavery, Law of; Strikes; Vigilantism.

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History of Crime and Punishment in America: 1900–1950

By the early 20th century, urbanization and the advent of new technologies meant rapid changes not only for American society but also for American legal culture. With cars to race across state lines, telephones to keep in touch with faraway accomplices, and access to more dangerous weapons like the machine gun, crime could no longer be contained by small, local police forces. The early 20th century saw the expansion of federal involvement in crime fighting, including the creation of the Federal Bureau of Investigation (FBI), and the understanding that crime was a national issue. With new technologies came new crimes such as traffic law, economic and regulatory crimes (so-called white-collar crimes), and the first American drug laws. And finally, new changes in procedure made accused criminals' experience of the legal system dramatically different from their predecessors and much more like the system we have today. The creation of criminal procedure laws and juvenile courts in the early 20th century dramatically shifted how Americans interacted with the criminal justice system, while the idea of constitutional rights and the growing use of probation and parole rendered the process increasingly humane.

With some exceptions such as the Indian Police, U.S. Marshals, postal inspectors, and Internal Revenue Service agents, criminal justice prior to the 20th century was overwhelmingly the business of the states, not of the federal government. To this day, states remain responsible for most matters of crime and punishment. However, since the start of the 20th century, the federal government has increasingly participated in the prosecution of crimes. During the first half of the 20th century, America saw the creation of significant numbers of new federal crimes such as tax evasion, drug offenses, securities fraud, and a variety of regulatory crimes. The early 20th century also witnessed the beginning of an escalating trend of federal involvement, which included regulating interstate crimes, setting national crime policies, and using federal tax dollars to support local law

enforcement efforts. In the 19th century, crime was a local problem; by 1950, it was decidedly a national issue.

Legislation

One of the first steps in this direction was the creation of the Mann Act in 1911. Also known as the White Slave Traffic Act, this new federal crime campaign put federal law enforcement efforts into policing the sex lives of Americans—a domain that was previously a state and local concern. While campaigns against prostitution were longstanding, in the early 20th century, fears about immorality mixed with fears concerning immigration. False rumors spread, fueled by muckraking journalists, that foreigners were kidnapping women off the streets, drugging them, and then smuggling the women to brothels across the country in vast, immigrant-controlled networks. The Mann Act made it a federal crime to transport a woman or girl across state lines for purposes of “prostitution or debauchery, or for any other immoral purpose.” The broadness of the act and its vague language led to misuse, allowing the prosecution of men for reasons of race or plain old-fashioned adultery. For example, one of the earliest people charged under the act was Jack Johnson, the first African American heavyweight boxing champion, who was found guilty in 1913 of bringing his white girlfriend on a trip from Pittsburgh to Chicago. Another example was the famous *Caminetti v. United States* case decided by the Supreme Court in 1917, in which two young, married men were found guilty of bringing their mistresses on an interstate road trip to California and Nevada.

After the Mann Act, the ratification of the Eighteenth Amendment in 1919 was the next big step in increasing federal involvement in law enforcement. The Eighteenth Amendment made the sale, manufacture, and transportation of alcohol illegal in the United States. While the amendment itself had no teeth, the subsequent Volstead Act or National Prohibition Act packed plenty of bite. The act established the legal definition of intoxicating liquor, as well as the penalties for producing it, and made the sale, distribution, and manufacture of liquor a federal crime. After the passage of the Volstead Act, many states passed their own “little Volsteads,” criminalizing the sale, distribution, and



In a photograph taken at the Treasury Department, a man examines moonshine produced by a still that had recently been confiscated by the Internal Revenue Bureau in the 1920s or early 1930s. While enforcement of the Volstead Act was limited, the 13 years of Prohibition led directly to thousands of felony and misdemeanor convictions.

manufacture of liquor at the state level. During the 13 years of Prohibition, thousands of people were tried and convicted of felonies and misdemeanors related to alcohol.

Crime

While acts such as the Mann Act and the Volstead Act signaled the beginning of federal involvement with crime, the 1930s served as the federal government's debutante ball in the world of crime fighting. In his inaugural address in 1929, President Herbert Hoover was the first U.S. president to address crime, proposing the creation of a federal commission to study the problem. The subsequent Wickersham Commission, otherwise known as the National Commission on Law Observance and Enforcement, published 14 reports in 1931 on a variety of criminal justice issues, including

police behavior, penal institutions, and the various causes of crime. This commission exposed the abuses of the local and state criminal justice systems and boldly accused them of brutality, corruption, and inefficiency.

The interest of the federal government in crime reflected the new national mood. The Great Depression saw American culture becoming progressively national in a variety of ways. Radio stations began playing more national programs, new chain supermarkets featured national brands making shopping a mass-cultural experience, and Americans increasingly turned to the federal government to solve what was a national economic disaster. Further, long-standing corruption in local police departments had left many Americans jaded concerning law enforcement on the local level. While progressive reformers in

this period worked to eliminate police corruption by recommending the centralization of departments, hiring better-qualified personnel through civil service exams and narrowing police functions, the shocking reports of the Wickersham Commission showed how ineffective the efforts had ultimately proven.

Therefore, when on March 1, 1932, the infant son of Charles Lindbergh (the first person to fly solo across the Atlantic and an American hero) was kidnapped and killed by Bruno Hauptmann for ransom, Congress reacted to the national uproar by passing the Lindbergh Act, which created the first federal kidnapping law. Importantly, this act reflected a new national feeling that the federal government and its agencies had a role to play in crime fighting. Further, the rise of national attention to crime syndicates during Prohibition left many Americans with the impression that crime was no longer the mom-and-pop venture it once was. If organized crime was being run along the lines of a business, then America needed a more professional organization to deal with these more professional criminals.

Law Enforcement Professionalization

But when it came to a federal crime-fighting force or facilities, there was little to be found. Prior to 1891, the federal government did not even have any prisons, except for a handful to incarcerate soldiers and sailors in violation of military law. Between 1891 and 1930 only five additional federal prisons were built (one of which was for women.) So in 1930, Congress created the Federal Bureau of Prisons within the Department of Justice and charged it with the management and regulation of all federal penal institutions. Between 1930 and 1940, the federal prison system grew to 24 facilities with 24,360 inmates. The most famous of these new prisons was Alcatraz, built in 1934 in San Francisco Bay. Designed by one of the nation's top security experts, Robert Burge, "The Rock" was as escape-proof as it was forbidding and became the home of such notorious criminals as Al Capone, George "Machine Gun" Kelly, and Robert "Birdman of Alcatraz" Stroud. Even more impressive than the new federal prison system was the start of a new federal bureau to investigate crime. With the expansion of federal crimes in the early 20th century, the head of the U.S.

Justice Department, Attorney General Charles J. Bonaparte, asked Congress for the authority to hire investigators in 1908. When Congress failed to give Bonaparte what he wanted, he issued an order from the Justice Department itself organizing a small investigative staff. With the support of President Theodore Roosevelt, who issued an executive order and contributed eight Secret Service agents to this new Bureau of Investigations, the Justice Department made the first steps toward the creation of what is now known as the Federal Bureau of Investigation.

How this small, pencil-pushing group of men would evolve to become a national crime-fighting force is largely found in the story of J. Edgar Hoover. Appointed head of the Bureau of Investigations in 1924, Hoover was determined to shape the bureau into a professional leader of criminal justice. Under his 42 years of leadership, the FBI came to stand for the latest in forensic science and was represented by the new professionalized agent: highly educated, not subject to patronage, and well trained, Hoover's new FBI agents were marketed as new American heroes, only sporting suits instead of cowboy hats. Besides creating the new crime-busting professional, the FBI of the early 20th century pioneered the use of fingerprinting and blood test technology and created the Uniform Crime Reporting (UCR) program—the first program to gather crime statistics from across the country. Further, the new professional law enforcement model was soon emulated by police departments throughout the country, who began to divest themselves of political ties and to focus exclusively on law enforcement activities.

While the earlier progressive reforms had failed to curb police corruption, the movement for professionalization stemming from within local police headquarters met with far greater success. Outside of the development of the federal system, all over the United States the early 20th century saw dramatic changes in criminal justice. Advances in technology and changes in lifestyle quickly brought about new categories of laws to be enforced. For example, the creation of the automobile and the rise of car culture in America led to a new branch of crime: traffic law. In 1905, California became the first state to make driving an unregistered vehicle a crime (soon followed by driving without a license). Most states very



A Federal Bureau of Investigation (FBI) fingerprint analyst in the 1940s. The FBI's other innovations in the early 20th century included blood test technology and the Uniform Crime Reporting program, which collected crime statistics from across the country. Under J. Edgar Hoover's leadership, the FBI furthered the development of forensic science and raised standards for American law enforcement.

quickly followed suit, enacting laws for speed limits and age of licensure and placing restrictions on who could or could not obtain a license (with many barring the “feeble-minded,” as well as habitual alcoholics and drug addicts). By 1919, the Dyer Act, or National Motor Vehicle Theft Act, made it a crime to drive a stolen vehicle across state lines or to deal in stolen vehicles that had crossed into another state. And in 1926, New York state created the first in a new category of felonies: drunk driving laws.

Regulatory Laws

The early 20th century also saw the expansion of regulatory crimes—laws that concern the environment, labor regulations, finance, and consumer health and safety. For example, following

the stock market crash of 1929, Americans lost most of their faith in Wall Street's ability to police itself. The Securities and Exchange Act of 1934 was designed to restore this faith by demanding financiers “play by the rules” and setting up the Securities and Exchange Commission (SEC) to make sure that they did.

Another of the most important new regulatory laws was the Food and Drug Act of 1906, which made it a criminal act to manufacture and sell dangerous foods or drugs. The act also created the Food and Drug Administration (FDA), although the agency was given little power to criminally prosecute offenders. However, that soon changed as a result of the elixir of sulfanilamide scandal that rocked the nation in 1937. Responding to an outraged public, Congress quickly passed the

1938 Food, Drug and Cosmetics Act, which significantly increased federal authority over drugs by mandating a premarket review of the safety of all new drugs. The act also set new regulatory standards for foods, cosmetics, and therapeutic devices. By the late 1940s, most states had created their own FDAs, and more than 22 states had adopted acts that were patterned after the Food, Drug and Cosmetics Act.

The early 20th century saw the creation of what continues to be some of the most prosecuted crimes in America: drug laws. The very first drug laws were created in local councils and state legislatures, with the first being San Francisco's ordinance against opium dens in 1875. States began regulating drugs under poisons statutes, such as New York's 1905 law that declared cocaine, morphine, and opium to be poisons that could no longer be retailed without a warning label, or California's 1907 amendment of the state's Poison Act to prohibit nonmedical sales of opium and cocaine. However, drugs were quickly picked up as a national concern. In 1909, Congress passed the Opium Exclusion Act, banning the importation, possession, and use of smoking opium. While the act was extremely limited—it banned only opium for smoking but not its use in tinctures and other widely used “medicinal” forms—it was the first federal law banning the nonmedical use of a substance.

Then, in 1914, the Harrison Narcotic Drug Act was passed. Based on the constitutional authority of the federal government to raise revenue as well as tax and to regulate the distribution and sale of narcotics, the act was only a tax statute in form—but its true goal was to end drug trafficking. The act applied to opium and its derivatives as well as to coca leaves and their derivatives and marked the first time that cocaine was placed in the same lethal category as morphine and heroin. Although the Harrison Narcotic Drug Act also included a clause that allowed doctors to continue to prescribe these drugs, the clause was interpreted in the 1919 Supreme Court case *Webb v. United States* as not including prescriptions for those considered to be drug addicts. With the passage of the Harrison Narcotic Drug Act, thousands of Americans who had been legally using narcotics suddenly found themselves labeled addicts and placed on the wrong side of the law. By 1920, an

illegal drug economy had emerged in the United States, particularly around cocaine and heroin distribution. In response, Congress passed the Jones-Miller Act, or the Narcotic Drugs Import and Export Act, in 1922, which provided fines of up to \$5,000 (equivalent to approximately \$65,000 today) and prison sentences of up to 10 years for anyone caught importing illegal narcotics. In 1930, Congress established a Federal Bureau of Narcotics to enforce the Harrison and Jones-Miller Acts. Under the direction of Henry Anslinger, the bureau began a campaign in 1937 against marijuana, modeling the Marijuana Tax Act after the Harrison Narcotic Drug Act. As Anslinger and the bureau stepped up drug enforcement efforts and argued that the illicit drug trade constituted a major national threat, an increasing number of Americans found themselves facing drug charges. By 1935, for example, more than 50 percent of the female inmates in the Federal Industrial Institution for Women in Alderson, West Virginia, were in prison on narcotics charges. The first half of the 20th century was the birth of modern America's war on drugs.

New Takes on Old Crimes

While new crimes were capturing the public imagination, some old crimes were being construed in new ways. One old crime that was “new” again was prostitution. While Congress created the Mann Act to regulate interstate prostitution, reformers in cities across America began vicious crackdowns, which resulted in the destruction of red-light districts and the shutting down of brothels. Prostitution was considered a public health issue, and the tough new stance against it only made the lives of prostitutes more degraded and dangerous. With the closing of brothels, most prostitutes were forced into the streets, where madams were replaced with more brutal male pimps. Labeled as “sex delinquents,” prostitutes faced conviction, with first-time offenders often receiving probation while repeat offenders were sent to either workhouses or reformatories. Their male customers, however, were typically given either a small fine or no punishment at all.

Another example is sedition laws, which were dramatically toughened during the first decades of the 20th century. During World War I, Congress passed an elaborate Espionage Act in 1917 and a

Sedition Act in 1918 that outlawed any written or spoken words that were considered “disloyal, profane, scurrilous, or abusive” about the U.S. government, its flag, or its armed forces, or that could potentially cause others to view the American government or its institutions with contempt. But these laws became caught up in a larger campaign against radicals in the United States, particularly against those considered to be associated with socialists, communists, or anarchists. The Industrial Workers of the World (IWW), an international labor organization founded in Chicago in June 1905, was particularly singled out by the new laws. The first prominent cases concerning the right to free speech came out of the prosecutions for these laws, in particular, the illustrious *Schenck v. United States* Supreme Court case of 1919. Charles Schenck, secretary of the Socialist Party in America, distributed 15,000 leaflets to men throughout the United States who were about to be drafted, urging them to resist. In the court’s decision, Justice Oliver Wendell Holmes created the infamous “clear and present danger” test, which equated Schenck’s assertion of civil rights during a time of war with shouting fire in a crowded theater.

Correctional System

Whether charged with a new crime or an old one, a defendant in the first half of the 20th century faced a different criminal justice system than his or her predecessors. With the increase in federal prosecutions, in 1940 Congress gave the Supreme Court the authority to create procedural rules for the federal courts. Once the federal criminal procedure rules went into effect on March 23, 1946, they were used by states throughout the nation to create procedural regulations of their own. Another feature of the modern criminal justice system was the larger role that constitutional principles, based in the federal and state bills of rights, began to play in criminal law.

Further, dramatic changes had come to fruition in punishment and corrections. While the seeds of parole, probation, and indeterminate sentencing (prison sentences that include a range of time) had been planted in the 19th century, they blossomed in the 20th. By 1925, 46 of the 48 states had adopted parole laws as part of a sweeping national trend to make criminal justice better

suited to the individual case, rather than a one-size-fits-all proposition. While the desire to individualize justice was commendable, the results were mixed: Prison sentences actually increased in length, as judges were willing to let people out sooner, but with a variety of conditions. These conditions varied widely and included such measures as those found in Minnesota that barred parolees from buying goods on installment plans, in the state of California that banned parolees from “public speaking,” or in Massachusetts that prohibited parolees from living with women to whom they were not married.

But even with conditions attached, most convicted criminals gladly took parole over the appalling conditions of early-20th-century prisons. With epidemic levels of overcrowding, disciplinary measures that included routine floggings and water torture, and infestations of vermin and deadly diseases, early-20th-century prisons were truly horrific places. In 1943, an African American man named Leon Johnson tried to sue for his freedom based on the depraved conditions on a Georgia chain gang. Although the case was eventually overturned by the Supreme Court, the lower federal courts did initially grant Johnson a writ of habeas corpus. The court claimed the conditions on the chain gang were so inhumane, they violated Johnson’s Eighth Amendment rights. While overall conditions in prisons did not improve until the 1960s, one reform that did occur during this time was an increase in classifying both prisons and prisoners. The first part of the 20th century saw the rise of maximum-, medium-, and minimum-security prisons, as well as separate facilities for men, women, and children.

Another 19th-century innovation that was realized in the early 20th century was probation. The probation procedure began when either a defendant made a reasonable request for probation or a judge independently decided that probation would likely be the best solution for the defendant. In either case, the judge would turn the case over to a probation officer for investigation. Early probation officers had little to no specialized training, with many states only having vague recommendations that they be over the age of 21, physically and morally fit, and possess a high school education. Probation officers would investigate the prisoner, and often the prisoner’s



Secret Service, White House Police, U.S. Coast Guard officers, and Treasury Enforcement Services staff testing out a new target range that had just been completed in the subbasement of the U.S. Treasury Building in Washington, D.C., in June 1940. Increased enforcement of new drug laws in the early 20th century meant growth in both law enforcement and corrections as the century progressed and more and more Americans were being incarcerated on drug charges.

family, and then file a report for the judge's consideration as to whether he felt the defendant would benefit from probation rather than jail. Although the probation system came with its own set of conditions, which often included the scrutiny of a middle-class do-gooder into the intimate details of the lives of the probationer and his or her family, it was a crucial first step to a more professional justice system, as well as a means by which first-time offenders could avoid the horrors of the prison system.

One of the most important innovations of the early 20th century, however, was the creation of the juvenile justice system. The first juvenile law went into effect in Cook County, Illinois, on July 1, 1899, and quickly became the model for juvenile courts throughout the nation and the world. Based on new scientific ideas concerning

the development of children and adolescents, the juvenile court was designed to see young offenders brought before it as children in need of help rather than as hardened criminals. This meant that juvenile proceedings did not have the trappings of adult procedures, as every person in the courtroom, from the judge to the probation officer, was supposed to have the child's best interest at heart. Unfortunately, the juvenile justice system conflated delinquency with criminality, and children could be sent to reformatories or subjected to long periods of probation for actions that were not, in fact, crimes—such as skipping school, flirting with strangers, or using profane language. Working-class and immigrant parents also co-opted the courts to help control rebellious children. Parents would sometimes turn in their own children to get help in forcing the child to

turn over wages to the family, obey curfew, or act respectfully. For young women, the prevailing sexual double standard meant that most of the girls brought before the courts in the early 20th century were accused of sexual activity, including wearing promiscuous clothing, flirting, and fooling around with boyfriends. Further, probation officers and courts had a highly middle-class perspective of child-rearing and behavior, which often penalized working-class parents and immigrant families who could not conform to their ideals. All this notwithstanding, the creation of the juvenile court system was one of the most important steps to creating a more humane and modern legal system in the United States.

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See Also: 1901 to 1920 Primary Documents; Alcatraz Island Prison; *Caminetti v. United States*; Espionage Act of 1917; Federal Bureau of Investigation; Federal Prisons; Great Depression; Harrison Act of 1914; Juvenile Justice, History of; Lindbergh Law; Mann Act; Prohibition; *Schenck v. United States*; Securities and Exchange Commission; Sedition Act of 1918; Uniform Crime Reporting Program; Volstead Act; *Webb v. United States*; Wickersham Commission.

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History of Crime and Punishment in America: 1950–1970

Between 1950 and 1970, official crime rates in the United States increased dramatically. During this period, the media brought attention to organized crime and police corruption. In the 1960s, acts previously thought of as private family matters were redefined as domestic violence crimes. Awareness of the victim as the forgotten person in the criminal justice system grew in society, and the victim's rights movement was established. The civil rights movement brought attention to the discriminatory treatment of African Americans by the criminal justice system.

The social response to crime changed in some notable ways. Academics and the general public began questioning the benevolence of the government and the three elements of the criminal justice system—police, courts, and corrections. Police were impacted by several landmark Supreme Court decisions, which dictated that procedural rights be guaranteed to the defendant. In the area of corrections, the prison population grew. Rehabilitation was a dominant approach to treating criminal offenders in the 1960s, and community-based correctional programs grew. Public support for the death penalty dropped, as did the number of convicted offenders sentenced to death.

The Nature of Crime 1950–1970

According to the Uniform Crime Reports (UCR), the rates of both violent (murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault) and property crime (burglary, larceny-theft, and motor vehicle theft) more than doubled between 1960 and 1970. The violent crime rate rose from 160.9 per 100,000 in 1960 to 363.5 per 100,000 in 1970. Over this 10-year period, the murder rate increased from 5.1 per 100,000 to 7.9 per 100,000. The rate of property crimes skyrocketed from 1,726.3 in 1960 to 3,621 in 1970. Pre-1960 UCR data is not comparable to that collected after 1960. Therefore, UCR statisticians strongly discourage use of these data to compare trends over years prior to 1960.

Criminologists noted that the “official” crime figures from the UCR only counted crimes known to the police. Since many crimes may be unreported, criminologists concluded that the UCR likely underestimated the volume of crime. One approach to understanding the extent and nature of underreporting was to construct victimization surveys, which asked individuals about their criminal victimizations instead of relying on crimes known to the police as the sole source of information about criminal victimization. In 1966, the National Opinion Research Center gave a victimization survey to 10,000 households in the United States for the President’s Commission on Law Enforcement and the Administration of Justice. A considerable percentage of persons who told interviewers that they had been victims of crime also told them that they had not reported their victimization to the police. These unreported crimes were labeled the “dark figure of crime.” Subsequently, moves to supplement the UCR figures with victimization survey data expanded. These culminated in the development of the National Crime Survey in the early 1970s and the current National Crime Victimization Survey.

Crime and Social Movements

Stemming from the increase in crime rates, the law and order movement of the 1960s emerged. Americans were bombarded with images of political assassinations in the 1960s. Americans became aware of mass murders, as gruesome killings by Richard Speck and the Manson family were broadcast into their living rooms. The law and order movement considered a strong criminal justice system to be the answer to the crime problem. The movement’s criticism of the criminal justice system, if any, was that it wasn’t harsh enough on criminals. The law and order movement called for various strategies, including strengthening police forces and ensuring that convicted criminals are punished appropriately for their crimes. Their focus was on protecting law-abiding citizens, and they opposed the lenient treatment of criminals that they perceived to be occurring in the United States.

Toward the end of the 1960s, the women’s movement formed to advance the rights and roles of women in American society. Part of the mission of the women’s movement during this time

was to bring attention to the criminal justice system’s treatment of women victims of domestic violence and rape. Historically, domestic violence incidents had been viewed as a family matter in U.S. society, and police rarely made arrests in spousal assault cases. In 1965, Morton Bard received a grant from the U.S. Justice Department to advance a method of police response to domestic calls that utilized mediation, not arrest. Bard’s work involved the creation of a Family Crisis Intervention Unit that would handle all domestic disputes in a precinct in New York. Officers working in this unit underwent counseling training. When called to a domestic dispute, officers tried to mediate the conflict by separating the couple and speaking to each party separately. Afterward, the couple was reunited as officers tried to have them discuss the situation together and come up with an informal resolution. The training did not involve a directive to arrest the offender (who was usually a male). It was not until the 1980s that arrest was considered an appropriate or preferred strategy for dealing with domestic disputes.

During the 1960s, the women’s movement began to bring attention to the crime of rape. Members challenged many myths surrounding the crime and educated the public about the nature of rape. This included dispelling the notion that rape is an act of uncontrolled passion and defining it as a crime of violence. Many feminist groups pointed to a patriarchy and other societal factors as contributing to the prevalence of rape in the United States. A general questioning of male and female roles and the empowerment of women were common themes in the women’s movement. The women’s movement had a great impact on the definition of crimes and the way the criminal justice system now treats female victims in our society.

Many suggest that it was in the mid-1960s in the context of the children’s movement that child abuse was “discovered.” Society began to define abuse against children as a social problem. States also enacted legislation outlining the limits to which a child could be physically “disciplined.” Children’s bureaus within criminal justice agencies were established or expanded to deal with the maltreatment of children. Advocates of the children’s movement helped provide living opportunities for children who suffered from abuse

in their families. In the 1960s, runaways gained publicity as a serious social problem. During this time, children's rights groups also established runaway shelters in big cities to help youth trying to escape abuse and neglect.

The focus of the civil rights movement was moving toward racial equality in the United States, with a focus on the rights of African American individuals. American history showed overt and covert racially discriminatory practices. The civil rights movement helped educate society about the violence and victimization that African American people have endured, including lynching and other hate-motivated crimes. Like the women's movement, the civil rights movement questioned the legitimacy of our criminal justice system. Both scholars and civil rights activists brought to light racially discriminatory practices of police, courts, and correctional agencies. Research showed how criminal acts against blacks had been ignored by law enforcement and how black victims were in essence devalued. Studies showed that offenders who committed crimes against black victims were given lighter sentences, compared to offenders who victimized white victims. Civil rights activists demanded equal justice, regardless of race. During the 1960s, intraracial crime was "rediscovered," and the impact of rising rates of violent predatory crime was more obvious in black neighborhoods than in white neighborhoods.

The foci of the above movements overlapped with those of the victim's rights movement, which developed in the late 1950s and early 1960s. Social scientists, journalists, government officials, and some members of the criminal justice system brought to light that the victim had become the forgotten person in the criminal justice system, as crime rates continued to rise. At the same time, the Warren Court was handing down one case after another that was viewed by many as letting offenders "get off on a technicality." Victims and their families were dismayed by the lack of attention and respect afforded the crime victim. The victim's rights movement began with several different groups trying to bring attention to the plight of the crime victim and advancing remedies to alleviate the suffering brought on both by criminal victimization and the treatment of victims and their families by the criminal justice system. President Lyndon Johnson appointed a

commission to examine crime and the criminal justice system. Victim issues were an important focus of the 1967 President's Commission report. Suggestions for community programs aimed at providing victim services followed.

In the 1950s, legal scholars and criminologists introduced the notion that victims of crime should be compensated financially for the losses they suffered as a result of their criminal victimization. This idea was compatible with the common sentiments in society that the government should aid those suffering from social problems, in this case, crime. Andrew Karmen has noted that public support for victim compensation was triggered by society's outrage to brutal predatory violent crimes happening in the country, which were presented by the mass media during this time. The first state to establish a victim compensation fund was California in 1965. Congress considered arguments for and against establishing federal assistance to state victim compensation funds in 1965.

Police and Corruption

In 1950, a major police scandal was exposed to the general public. On May 10 of that year, a Senate Crime Committee was created and chaired by Senator Estes Kefauver of Tennessee. The Kefauver Committee, as it became known, conducted a widespread investigation into organized crime. Their findings included the revelation that a nationwide crime syndicate existed in the United States. The Kefauver Committee interviewed hundreds of witnesses who testified before them, and people such as Joe Adonis, Frank Costello, and "Lucky" Luciano became known to the general public. Evidence showed that this syndicate was run by the Mafia. The Kefauver Committee also found evidence in many cities across the United States that law enforcement officers were taking bribes to protect gamblers and prostitutes from prosecution. Tales of "gifts" (including thousands of dollars and even a limousine) being given to police chiefs and sheriffs from gamblers outraged Americans who watched the committee's hearings on television. The information gathered by the Kefauver Committee showed the ease with which the underpaid police forces in the nation could be corrupted. The Kefauver Committee called for the end of political domination of police forces.

During this time period, William Parker was appointed chief of the Los Angeles Police Department (LAPD) in 1950. Parker gained a reputation for demanding professional conduct by his officers, and his leadership style served as a role model for many other municipal departments in the United States. In efforts to remedy brutality and corruption by officers in the LAPD and gain public confidence, Parker fired more than 40 officers when he became chief. He also revised selection procedures for police officers, requiring a competitive written examination, physical fitness, and psychological testing. The innovations that William Parker brought to the LAPD were modeled by other American police administrators, whose images had also been tainted by corruption scandals. These strategies included the formation of internal affairs units, the separation

of police discipline from politics, the creation of intelligence and research units, the improvement of community relations through innovative programming, and the enactment of a firearms review policy that would review a situation in which weapons were discharged.

Despite significant efforts to professionalize police departments, even toward the end of the 1950s, good police administration concepts applied only to some cities. Community relations programs were lacking in many urban areas. Lingering was mostly white male police officers patrolling predominantly black inner-city neighborhoods.

Although Parker's supervisory style was looked upon favorably overall, the hierarchical form of the department and military style that characterized the police force did receive some criticism.



Frank Costello testifying in 1951 before the Kefauver Committee, which was created and chaired by Senator Estes Kefauver of Tennessee in order to investigate police corruption and organized crime. The committee exposed the existence of a nationwide Mafia syndicate and interviewed witnesses such as Costello and "Lucky" Luciano, who became known to the public because of their testimony.

During the Watts riot in 1965, issues of institutionalized racism and brutality came to the forefront and highlighted lingering problems in police-community relations.

The Civil Rights and Antiwar Movements

The civil rights movement and antiwar movement in the 1960s brought new challenges to police across the nation. During the 1960s, civil rights demonstrations escalated, and riots and civil disturbances often ensued. Student unrest manifested itself in protests of the war in Vietnam and American social conditions and often turned into violent protests on campuses and city streets.

The police were the most visible representatives of formal social control. The way police handled demonstrations and riots was an issue for police departments throughout the country; police across the nation came across as unprepared. The police were ill trained and badly equipped to handle riots. They were criticized by conservatives for being too permissive and accused by liberals of police brutality.

One of the most notable riots was the 1965 Watts riot. The Watts community in Los Angeles suffered from unemployment, substandard schools, high crime rates, and drug problems. In August 1965, Watts was likened to a war zone. It took 16,000 police, highway patrol officers, and National Guard troops to stop the violence. More than 4,000 rioters were arrested in five days; 1,000 people were injured and 34 were killed. There were millions of dollars in property damage, including 250 buildings that were completely destroyed. The Watts riot was not an isolated example of rioting. In 1966, at least 38 major riots occurred in the country. Cities including Chicago, San Francisco, and Cleveland experienced riots. The American public saw police openly discriminating against African Americans in race riots and rarely arresting white perpetrators.

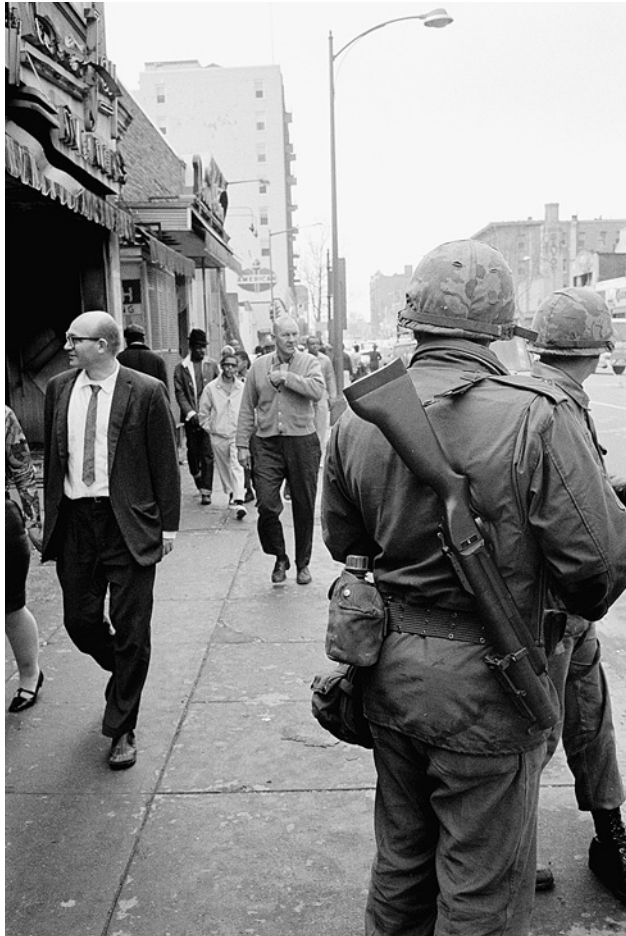
In 1964, a student sit-in demonstration at the University of California, Berkeley, exploded into mass civil disobedience as 830 police officers from a variety of agencies arrested more than 700 people. The students were parts of various groups that held a common goal to protest the Vietnam War. Some groups and individuals went underground and engaged in isolated terrorist tactics. Explosions of governmental buildings killed

several innocent people. Violent student unrest swelled, and thousands of demonstrators clashed with the police during the Democratic National Convention in Chicago in 1968. Conservatives blamed student protest movements for problems, and liberals complained of abusive and excessive police action.

The Columbia University protests in April 1968 involved multiple student demonstrations that incited police response. One involved the Students for Democratic Society (SDS) protesting Columbia University's ties with the Institute for Defense Analysis, which conducted research on weapons and was associated with the U.S. Department of Defense. The other involved the construction and design of a university gym that was close to the university in Morningside Park, which protesters (Columbia students and the African American Harlem community) believed was designed to limit access by neighborhood residents and was interpreted as promoting segregation. Both protests escalated to students' occupying several buildings on campus, and counterprotests also developed. On April 30, 1968, several days after the occupation of university buildings, the New York Police Department (NYPD) used violence and tear gas and stormed university buildings. Police response resulted in more than 100 students, four faculty members, and a dozen police being injured and more than 700 students being arrested.

Law enforcement's response to political dissidents was not confined to just local police. Several Federal Bureau of Investigation (FBI) counterintelligence programs, with the acronym COINTELPRO, operated from the mid-1950s until they were revealed publicly in early 1971 by the Citizens Committee to Investigate the FBI in 1971. The activities of COINTELPRO included the covert surveillance and sabotage of political activity that the FBI deemed threatening but that was protected under the U.S. Constitution. Targeted groups included, but were not limited to, the American Indian movement, the Community Party, the Socialist Worker's Party, and black nationalist groups.

Because the Communist Party was illegal in the United States in the 1950s, the Senate and House of Representatives set up committees to investigate and "out" communists. Senator Joseph McCarthy headed the House Committee on Un-American



In the aftermath of riots in Washington, D.C., in April 1968, these National Guard soldiers patrolled the streets. In 1966, at least 38 major riots broke out in cities such as Chicago, San Francisco, and Cleveland, Ohio.

Activities and the Senate Internal Security Subcommittee. When the Supreme Court rulings in the mid-1950s challenged the work of these committees and the constitutionality of the prosecutions related to the Smith Act was questioned, COINTELLPRO was established. The FBI was involved in more than 2,000 COINTELLPRO missions before it was dismantled in April 1971. When the activities of this domestic counterintelligence program were exposed, there was public outcry, which served to question the benevolence of law enforcement on the federal and local levels.

The Courts

Several landmark decisions concerning the actions of criminal justice actors were handed down by

the Supreme Court in the 1960s. Earl Warren served as chief justice of the U.S. Supreme Court from 1953 to 1969 as a liberal majority formed on the highest court in the land. The “due process revolution” described many court decisions that dictated that state and local law enforcement officers and prosecutors be bound by the specific provisions in the Bill of Rights. The decisions made by the court during this period have guided the actions of police officers in arrest and investigation stages and have dictated the circumstances under which evidence can be considered by the courts. Many decisions of the Warren Court ensured the rights of those accused of crimes, and the decisions directed policies of those working in the criminal justice system, as due process became a paramount concern.

Under Chief Justice Earl Warren, the Supreme Court sent a message that criminal convictions would be voided if they were obtained in violation of key amendments to the Constitution. Evidentiary rules concerning the admissibility of evidence involve the Fourth Amendment, which protects against unreasonable searches and seizures, and the Fifth Amendment, which protects the accused against self-incrimination.

In *Mapp v. Ohio* (1961), the Supreme Court overturned Dollree Mapp’s conviction, citing the Fourth Amendment’s prohibition of unreasonable search and seizure. In this case, the evidence against Dollree Mapp was gathered without a proper warrant, and the court decided it should have been excluded from state trial. This represented the first time the Supreme Court imposed detailed constitutional restrictions on the actions of state law enforcement officials. *Mapp* held that the Fourth Amendment of the Constitution applies to all the states through the due process clause of the Fourteenth Amendment.

In *Gideon v. Wainwright* (1963), the court required that states must appoint counsel for indigent defendants in both capital and noncapital cases.

In *Miranda v. Arizona* (1966), the Supreme Court held that police must advise suspects of certain constitutional guarantees in order to make a confession admissible as evidence. The *Miranda* case involved a 25-year-old mentally handicapped man who was arrested in Arizona and charged with kidnapping and rape. After the police asked

him questions for about two hours, he signed a written confession. He was convicted of the crimes and sentenced to 20–30 years in prison. During an appeal, attorneys claimed that Miranda was not told that the statements he made would be used against him. The Supreme Court decided that the statements that Miranda made while in custody and deprived of freedom were inadmissible. Citing the Fifth Amendment provision that no one should be compelled to be a witness against himself (or herself), the majority in a 5–4 decision overturned Miranda’s conviction. If the suspect is not warned, subsequent evidence given (spoken or written) can’t be admissible in trial.

The implication of this case for law enforcement is that the Miranda warnings must be read to the accused before custodial interrogation and include informing the accused of the right to remain silent, that his or her statements may be used as evidence against him or her, that he or she has a right to an attorney, and that if he or she is unable to afford an attorney, one will be provided.

Police actions in many of the earlier landmark cases had been considered legal by lower courts and appellate courts. Usually by a 5–4 vote, these Warren Court decisions negated earlier precedents and lower court rulings. A police action that was legal one year was often ruled illegal retroactively a year or so later by the Supreme Court. By the 1970s, public opinion polls showed that a most Americans felt that the “pendulum had swung too far to the left,” and that court was in effect “coddling criminals.”

Imprisonment

Between 1950 and 1960, the prison and probation populations rose, yet prisons offered few professional programs to prisoners. Overcrowding was a major concern within prisons, and the conditions of many prisons were deplorable. Between 1950 and the mid-1960s more than 100 major disturbances or prison riots erupted in U.S. prisons.

Until 1964, the Supreme Court did not rule on the rights of people confined in prison but instead adopted a “hands-off” approach. This followed *Ruffin v. Commonwealth of Virginia* (1871), a Supreme Court decision that established the slave of state doctrine, which characterized inmates as slaves of the state who had no rights, other than those granted to them by the state in which they

were incarcerated. Between the time of this ruling and the mid-1960s, the Supreme Court did not accept lawsuits regarding violations of the constitutional rights of inmates.

It wasn’t until 1964 in *Cooper v. Pate* that the Supreme Court intervened in the treatment of inmates. This case dealt with religious freedom. Black Muslim inmates said that they were not being allowed to congregate, eat their prescribed religious diet, or wear distinctive clothing. These were important parts of their religion, and prison actions violated Section 1983 of the Civil Rights Act of 1871. The court said that because they are an organized religion and their practicing did not pose a clear and present danger to the security and running of the prison, they should be able to practice. This case signified an end to the hands-off doctrine and recognized that inmates could sue prison officials for violation of their rights under the Constitution. Since this ruling, federal courts have heard many cases on prison conditions.

Between 1960 and 1970, the dominant goal of corrections was rehabilitation. Corrections followed the medical model, in which the offender was viewed as sick and in need of treatment. The focus of rehabilitation is on treating the offender, as opposed to punishing the criminal. Rehabilitation assumes that there are treatment modalities that work to, in effect, “cure” the offender from what caused him or her to commit crime. Some rehabilitation programs focused on individual-level causes of crimes, such as alcoholism, drug addiction, or anger issues.

Alcoholics Anonymous, Narcotics Anonymous, and group therapy programs were instituted in prisons throughout the country during this time. Some prisons offered educational programs ranging from GEDs to college degrees. Others implemented different individual and group counseling programs in an effort to understand and treat the psychological problems that may have contributed to the individual’s criminality. The emphasis was on giving the offender tools to become a productive member of society so he or she would not return to crime upon completion of his or her sentence.

Rehabilitation programs go hand and hand with indeterminate sentencing strategies, which were also the norm between 1950 and 1970. Upon conviction for a serious crime, the judge

could sentence between a minimum and maximum range, which was often very wide. For example, an offender convicted of robbery could face a sentence of 10 to 20 years. The exact length of the sentence, whether it be 10 years, 20 years, or somewhere in between, would depend on the offender's behavior within prison, plans for the future, and evidence that he or she had been rehabilitated. A discretionary parole board would make this decision and ultimately determined the exact length of the sentence.

Community-Based Corrections

The term *community-based corrections* was introduced in the 1960s. As the term implies, offenders could serve their sentences in the community, under some form of probation supervision, instead of behind bars. The growth of community supervision grew in the 1960s and was compatible with the sentencing goal of rehabilitation, as offenders could take advantage of a wide range of occupational and educational programs and services that were available in the community. Sentenced offenders could also avoid the stigma of “prisoner” by avoiding incarceration. This was a desirable goal in the 1960s, when labeling theory was popular among criminologists. The secondary deviance hypothesis of labeling theory suggests that once an offender is labeled as “prisoner,” he or she will internalize that label and act in a way to live up to that label. Serving one's sentence in the community is less stigmatizing for the offender than serving time in prison.

Capital Punishment

The general trend from 1950 to 1970 was a decrease in the number of executions carried out in the United States. While there were 715 executions in the 1950s, only 191 executions were carried out in the 1960s. Public support for the death penalty began to decline in the 1950s and dropped to its lowest level in 1966. A Gallup poll that year indicated that only 42 percent of Americans supported the death penalty.

Challenges to the legality of the death penalty arose in the 1960s. The question of whether the death penalty was per se, or in and of itself, cruel and unusual punishment unconstitutional under the Eighth Amendment was explored in the early 1960s. In *Trop v. Dulles*, a non-death penalty case

decided in 1958, the Supreme Court concluded that the Eighth Amendment contained an “evolving standard of decency that marked the progress of a maturing society.” Advocates of abolishing capital punishment tried to apply this decision to the use of capital punishment in modern society and suggested that society should no longer tolerate the death penalty.

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See Also: Civil Disobedience; Civil Rights Laws; Corrections; *Gideon v. Wainwright*; *Mapp v. Ohio*; *Miranda v. Arizona*; Organized Crime, History of; Riots; Violent Crimes.

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History of Crime and Punishment in America: 1970–Present

Crime and punishment became fundamental issues in national politics during the 1960s and early 1970s. Amid deep social and economic change and increases in crime, contending political forces sought to change criminal justice policy: Liberals argued that crime was a social phenomenon

and that the criminal justice system reproduced and deepened social stratification. Conservatives countered that crime was a matter of individual will and that the system coddled criminals. By the 21st century, incarceration had increased sixfold from its 1973 level, despite the fact that crime rates had returned to pre-1970 levels. Grappling with how this world of crime and punishment emerged is one of the major tasks for those who hope to understand the recent past.

Changing Crime Patterns

Violent crime multiplied in the 1960s and 1970s, with the homicide rate—the most reliable crime statistic—doubling from 1958 to 1974. The belief that violent crime continued to rise unabated thereafter until the 1990s is probably a product of crime statistics, especially the Uniform Crime Report (UCR), rather than reality. The UCR consists of crimes known to the police, collected by the Federal Bureau of Investigation (FBI) from local police. From 1973 to 1994, the total number of UCR crimes doubled, driving this rate steadily upward. This increase was at least in part the ironic product of efforts to professionalize law enforcement that made crime reporting more accurate but also—on paper—made crime rates appear higher. The increased attention to crime led to the 1972 development of the National Crime Victimization Survey (NCVS), which provides more accurate estimations of national crime trends by using surveys of crime victims and sampling techniques. Nonetheless, because only the UCR provides statistics for individual cities, it remains widely relied upon by law enforcement and is a benchmark for most crime reporting.

Homicide statistics and the NCVS show that crime rates were stable between the mid-1970s and mid-1990s. Homicide peaked in the 1930s at a rate of 10 per 100,000 persons; it fell to less than half that level by the end of the 1950s; and it rose back up to the same level in the early 1970s. From 1970 until 1995, the homicide rate fluctuated only 22 percent from its 1980 peak of 10.7 per 100,000. It fell by 20 percent between 1980 and 1984, before it rocketed up again following the arrival of crack cocaine in the mid-1980s to a relative peak rate of around 10 in 1991. Thereafter, a new decline began before it stabilized around 6 per 100,000 persons from 1999 to 2006 (excluding 2001)—55

percent of its peak. Similarly, the nonfatal NCVS violent crime rate varied less than 20 percent from a maximum of 52 violent victimizations per 1,000 persons age 12 or older from 1973 to 1994, with the trends loosely tracking the oscillations of the homicide rate. It peaked from 1979 to 1981, followed by a decline of 20 percent over five years. In the mid-1980s, victimization increased for eight years to a second relative peak near a rate of 50 in 1994, when the present decline began. By 2000, crime was reduced to less than 55 percent of its 1994 high; by 2009, it was less than 33 percent of that high. The rate of property crime as measured by the NCVS (burglary, theft, automobile theft) decreased approximately as much as nonfatal violent crime but demonstrated a slightly different pattern: It declined slowly and steadily from the mid-1970s until it stabilized at less than 30 percent of its high in 2001.

These aggregate trends obscure a host of changes for subsections of the population. The spike in homicide that began in 1958 corresponded with a 42 percent increase in the number of people age 15 to 24 from 1958 to 1967—the young men who would commit and suffer a disproportionate amount of the increased violent crime. Since 1980, there has been an ongoing downward trend in violence among what has become a much larger population of people over age 35 (baby boomers).

As baby boomers aged out of crime, a new group aged in; the rise in violent crime after 1984 consisted almost entirely of an extraordinary increase in violence committed by and against young men.

Over the next 10 years, the homicide rate for African American adolescents age 14 to 17 more than doubled; the rate for African American men from 18 to 24 increased nearly as much. For African American men over 25, however, the rate stayed nearly the same. 1991, the peak homicide year of this period, illustrates the interplay of age, race, and gender. As has been true since 1974, African American victims accounted for 50 percent of all homicides, despite being about 12 percent of the population. The homicide rate was much higher among African American men than white men (71 per 100,000 persons versus 9); much higher among African American men than African American women (72 versus 14);

and much higher among white men than white women (9 versus 3).

The Politics of Criminal Justice

Even the most prescient observer could not have imagined the changes in criminal justice policy after 1970. In 1970, the United States was a world leader in criminal justice reform. Building on an understanding of crime as a by-product of residual social inequalities, Lyndon B. Johnson's Great Society programs sought to reduce crime by incorporating racial minorities and the poor into mainstream society. Government acted to rationalize and professionalize various aspects of criminal justice: protecting the rights of suspects during evidence-gathering by police; passing new criminal laws in areas ranging from reproductive and sexual choices to partner battery; improving the conditions and nature of confinement; and eliminating the death penalty. Many of these actions were the culmination of social movement organizing that demanded the extension of constitutional guarantees to all people, including those in prison. They were supported by growing efforts at criminal justice experimentation and research to provide new evidence on which to base policy choices.

By contrast, crime, riots, and civil disobedience made "law and order" a potent theme for Ronald Reagan in California in 1966 and Richard Nixon nationally in 1968. Opponents of civil rights had long believed that African Americans were predisposed to criminality. As victories against Jim Crow delegitimized outright racism, promoting law and order became a way of identifying racial liberalism and civil disobedience with social disorder. To this chorus were added the voices of criminologists who doubted rehabilitation, and others who believed that "root cause" solutions that saw social reform as the key to reducing crime were incompatible with the continued rise in crime. As conservatives re-evaluated the government's basic capacity to address social problems and called instead for the rollback of the social state, they announced punishment and control, rather than the care and rehabilitation of offenders, as the legitimate aims of penal policy.

This debate over the proper role of the state in social life took place in a moment of dramatic transformation. Over the second half the 20th

century, new patterns of inequality were created as racial and class differences became embedded in increasingly sprawling metropolises. Even as the civil rights movement brought gains for some African Americans, including increased political power and new pathways into the middle class, changes in the national (and global) political economy also produced, intensified, and concentrated poverty.

In 1973, wage inequality began to grow for the first time since the 1930s as real wages stagnated for those in the bottom quintiles. Amid these new patterns of stratification, increased social distance, and rising crime rates, Americans engaged in a course of political struggle that transformed the nature of contemporary crime control and criminal justice.

One consequence of the polarization of the 1970s was a punitive turn in public opinion. Just as important, though, was how the political system channeled this change. The weakness of the American social state left the nascent victims' rights movement to focus on punishing offenders, rather than on other methods of redressing crime victims' injuries (like compensation or social assistance). Rights were imagined as a zero-sum game: Criminal procedure decisions that enforced suspects were criticized as injurious to crime victims. Sociological understandings of crime—especially the claims of some prisoners' rights advocates that cast incarcerated people as victims of social injustice—came under withering attack. Within the institutional matrix of American politics, even the efforts of political projects traditionally associated with the political left, such as the women's movement's efforts to reduce domestic violence and rape, were channeled toward punishment-oriented solutions.

Elections of prosecutors and judges similarly focused on punishment as they became increasingly politicized and expensive. Labeling one's opponent "soft on crime" became a devastating tactic, as illustrated by the defeat of California Supreme Court justice Rose Bird, a 1977 appointee of Jerry Brown, in her 1986 retention election. Although it is unusual for judges to lose retention elections, Bird received only 34 percent of the vote after a series of political groups, including one called Crime Victims for Court Reform, spent between \$7.5 million and \$10 million to defeat

her with ads that focused almost exclusively on her opposition to capital punishment.

Expanded crime control and federal involvement were intertwined. The number of congressional hearings on crime each term more than tripled over the second half of the 20th century, and budget allocations grew sevenfold. Federal legislation worked both by giving monetary assistance to the state and by broadening the scope of federal crime control. The Omnibus Crime Control and Safe Streets Act of 1968 marked an unprecedented level of involvement with local crime control. Its administrative creation, the Law Enforcement Assistance Administration, awarded more than \$8 billion in grants over 12 years. Since 1968, there have been three omnibus crime bills: the Comprehensive Crime Control Act of 1984, the Crime Control Act of 1990, and the Violent Crime Control and Law Enforcement Act of 1994. Each of these offered financial assis-

tance to state and local government. The 1994 act provided them with more than \$30 billion in financing, including almost \$9 billion for additional police officers.

Narcotics regulation has been the most important area of federal criminal enforcement since President Nixon declared a “war” on drugs. The organization of federal regulation was set out by the Controlled Substances Act of 1970, which organized drugs into five categories (“schedules”) and placed heroin, marijuana, and LSD in “schedule one,” as having a high potential for abuse with no legitimate use. Nixon also created the Drug Enforcement Agency in 1973, which saw its budget increase from \$74.9 million in 1973 to \$1.4 billion in 1999. Illustrating the more fluid politics of the early 1970s, Nixon also passed the Comprehensive Drug Abuse Prevention and Control Act (1970), which reduced penalties for possession of a controlled substance for one’s own use to



An arrest in San Antonio, Texas, during a crackdown on gangs and drugs in the city in 2010. Incarceration rates for drug crimes since the mid-1980s have increased by a factor of 10 in the United States. In the state of California alone, the number of prisoners incarcerated on drug charges rose from 115 in 1950 to 3,609 in 1985 to 13,741 in 1990.

a misdemeanor. By contrast, in 1973, New York's famously liberal Governor Nelson Rockefeller took the approach that would eventually come to dominate: mandatory minimum sentences of 15 years to life for selling (two ounces) or possessing (four ounces) common street drugs. Mandatory minimums only emerged in federal law more than a decade later out of furor over crack cocaine in the Anti-Drug Abuse Act of 1986 and the Omnibus Anti-Drug Abuse Act (1988).

Federal gun regulation and, since September 11, 2001, fighting terrorism have also been important areas of crime control. Gun regulation began during the Johnson administration and was continued by his successors, including President Reagan. Although the growing political strength of the National Rifle Association was unable to prevent a ban on assault weapons from inclusion in the 1994 Violent Crime Control Act, it prevented the provision's reauthorization a decade later. Changes in constitutional interpretation have further made such regulation more uncertain. The USA PATRIOT Act addressed perceived shortcomings in intelligence gathering and sharing. It authorized the attorney general to intercept communications pertaining to terrorism and allowed greater sharing of matters of foreign intelligence and counterintelligence among agencies. The creation of the Department of Homeland Security in 2002 transformed the organization of federal law enforcement.

Diversity and Innovation

Local police were central to the explosive criminal justice politics of the 1970s, and they remain a focus of conflict today. Police generally have faced two different demands since the 1970s. The first grew out of decades of civil rights activism that accused them of racial bias and sought greater African American control over police departments. These efforts resulted in increased diversification, even if few departments reached parity with the African American or Latino populations of their cities. African American officers now make up 18 percent of policemen, up from 6 percent in 1960. In cities of more than 250,000 residents, officers are 20 percent African American and 18 percent Latino. For women, the story has been more dramatic: from less than 2 percent of officers in *any* major department in 1970, they

now comprise 12 to 13 percent of officers. The police have adopted new tactics to address these concerns as well. Strategies like "team policing" in the 1970s and community policing in the 1990s and 2000s developed greater rapport and cooperation between officers and the neighborhoods they police.

Despite improvements, survey research demonstrates that there are still wide gaps in the way whites and blacks view the police, with Latinos falling in the middle. The video recording of Rodney King's beating by Los Angeles Police Department (LAPD) officers in 1991 provided a public demonstration of the excessive use of force about which police critics had complained for years. Although civilian review boards have been proposed since the 1960s as a method of controlling such excess, they have proven largely ineffective and often sustain fewer claims than internal review agencies. The departments that have been most successful at limiting excessive use of force—especially firearms—have been those with strong internal procedures and leadership that is intolerant of brutality. Racial profiling is another persistent issue. Some studies since 2000 have discovered racial profiling in the stopping of cars, while others have identified black drivers as more likely to be given citations, pat-downs, and longer than average stops.

The second demand has been for police to control crime. The past two decades have seen a fervor for police innovation. Although all police departments continue to rely on the standard model of reactive policing to some extent, some have tried new approaches and have demonstrated openness to empirical observation. These include public order policing, such as zero tolerance, in which minor problems are addressed in order to show community intolerance of disorder, and the use of real-time data analyzed by computers (Compstat) or graphic information systems mapping to organize resources and target hot spots. A growing body of evidence supports the effectiveness of various forms of focused policing that target specific types of crimes and locations in reducing crime.

Crime control has also moved out of the criminal justice system and is increasingly practiced by a variety of other institutions. Private police forces, such as corporate security guards, are one such manifestation. The extension of surveillance

into the social body includes neighborhood watch groups that began in the late 1960s and multiplied in the 1980s, the proliferation of gated residential communities, and the spread of closed-circuit cameras. Following the spike in adolescent and young adult violence that began in the mid-1990s, other grassroots programs like Operation Cease-fire have tried to prevent youth gun violence.

The Rise of Mass Incarceration

Undoubtedly, the most striking transformation of the period beginning in 1970 is the vast expansion in the number of incarcerated people. For the five decades before 1970, the rate of imprisonment in the United States remained relatively steady, hovering around 100 per 100,000 persons. By 1970, there were more than 300,000 individuals under carceral control in American prisons and jails. Within institutions, prisoners rebelled and used violence to demand changes. These prisoners and their allies used litigation to challenge incarceration and the conditions of confinement, with the belief that they might end the practice altogether. They were highly successful in convincing the federal courts that the constitution did not stop at the wall of the state penitentiary. As recently as 1993, 40 states were under court orders to reduce overcrowding or eliminate unconstitutional conditions.

Such litigation did not result in decarceration. Instead, by 1980, the incarceration rate doubled. More than 25 years later, it had risen more than sixfold, eclipsing 750 per 100,000. Today, there are more than 2.3 million people in prison and jail. More than 7 million people are either in prison, on parole or probation, or under some form of community supervision. Around 8 percent of state and federal inmates are currently incarcerated in privately run prisons, reflecting a precipitous growth rate of more than 1,600 percent since 1990. These institutions are disproportionately concentrated in the south and west. Women make up only 7 percent of inmates, but their rate of incarceration increased twice as fast as men's from 1980 to 2008, growing from 11 to 69 per 100,000. The rate of incarceration in the south is 180 percent of that in the northeast (with the west and the mid-west falling between). At the extremes, Louisiana incarcerates its residents at a rate five-and-a-half times greater than Maine. Spending has tripled nationally since the early 1970s.

The great paradox of the post-civil rights era is why African American incarceration has expanded so disproportionately to that of whites after 1970, such that the ratio is now seven to one. This is particularly evident since 1980: At the then prevailing rate of imprisonment, only one-third the number of African Americans would be incarcerated today. Among African Americans, class and likelihood of imprisonment are increasingly intertwined. From the 1970s to the 1990s, the chance that an African American man without a high school education would go to prison by age 35 rose from 17 to 59 percent; with some college education, it fell from 6 to 5 percent. Whites show similar shifts: a high school dropout's chances of going to prison expanded from 4 to 11 percent; with some college, it fell to 0.5–0.7 percent. Latinos are incarcerated at rates lower than African Americans but the rate is still disproportionate to their percentage of the population.

Three mechanisms drove this growth: more imprisonment, longer imprisonment, and changing drug policies. The growth in incarceration rates during the 1980s was caused largely by an increasing likelihood that an offender would receive prison time. More complaints resulted in arrests, and, for violent crimes, the chances that an arrest would lead to time in prison doubled between 1980 and 2001. Later increases were the product of longer sentences. Whereas the ideology of rehabilitation once advised vesting almost complete discretionary authority with trial judges and parole boards, determinate sentencing schemes, such as the federal sentencing guidelines, now dominate. The attack on discretionary sentencing came from liberals, who attacked arbitrary disparities—especially racial disparities—in punishment, and conservatives, who charged that nothing worked in penal rehabilitation and called for greater emphasis on incapacitation. Until the Supreme Court declared mandatory guidelines schemes unconstitutional in 2005, they had become the rule in 17 states since 1978. Other sources of discretion, such as parole, no longer exist in a dozen states beginning with Maine in 1975. Mandatory minimum sentences are widely used, including the mandatory minimums for habitual offenders that flourished in the 1990s. The harshest of these 24 state laws is California's three-strikes provision, which imposes an almost



With the increase in incarceration rates throughout the country, Mule Creek State Prison, a California state prison in Lone, California, has suffered from serious overcrowding. This photograph from July 19, 2006, shows bunk beds set up in a common area in order to house some of the prison's population of 3,769. It was originally designed to house only 1,700 prisoners when it was built in 1987.

de facto life imprisonment for a third felony conviction. Truth-in-sentencing laws proliferated after Congress passed the Violent Crime Control and Law Enforcement Act of 1994, providing financial incentives for states to incarcerate prisoners for at least 85 percent of their sentences. Prior to the act, only four states would have achieved its benchmark; this increased to 17 in 1995 and to 27 in 1998.

Prosecution and incarceration for drug crimes since the mid-1980s increased dramatically. Despite public health studies showing decreasing drug use since 1980, the incarceration rate for drug offenses has grown by a factor of 10. In California alone, the number of prisoners incarcerated on drug charges went from only 115 in 1950 to 3,609 in 1985 to 13,741 in 1990. While drug arrests increased 17 percent from 1980 to 2001, prison admissions increased sixfold. Parole revocation because of drug violations doubled as

well. Drug offenders are also serving more time. As a result, although drug courts and other programs to divert offenders from incarceration exist, an increasing number of prisoners—more than 20 percent of state prisoners and more than 50 percent of federal prisoners—are now drug offenders.

Racial disparities in incarceration for drugs are a particularly troubling phenomenon. Unlike homicide, where African American men are more likely to be in jail for murder but are also more likely in equal ratio to have committed homicide, increases in drug arrests have little to do with drug usage. African Americans are arrested for drug crimes more often than white people, despite higher rates of drug usage among whites. The ratio of black-to-white arrest rates for drug crimes grew from two to one around 1974 to more than four to one in 1989 before dropping to a little more than two and a half to one in 2000. The increasing predominance of drug offenders

among prisoners, their longer sentences, and rates of racial disparity have meant disproportionate increases in African American incarceration.

The Death and Life of Capital Punishment

The course of American criminal justice is perhaps best symbolized by the disappearance and re-emergence of the death penalty. Americans were once world leaders in death penalty abolition, with Michigan being the first sovereign to outlaw it in 1846. While capital punishment remained in use throughout the 20th century, the number of executions steadily declined, from a high of 199 in 1935 to just 21 in 1963. Public opinion turned against it, with support falling from 70 percent in 1953 to just 42 percent in 1966. In *Furman v. Georgia* (1972), the Supreme Court declared the death penalty unconstitutional in its current application and cast its future into deep doubt. Instead, *Furman* opened the door to refining but preserving the maximum penalty. In its aftermath, 38 states reinstated the death penalty, and the Supreme Court found many of these schemes to be constitutional in *Gregg v. Georgia* (1977). A decade later, the court turned back the strongest remaining challenge to capital punishment when it rejected the argument in *McCleskey v. Kemp* that the death penalty was racially discriminatory because it was imposed on people who killed white victims at a disproportionate rate. Post-*McCleskey* challenges have merely rationalized the usage of capital punishment, limiting it to murder and outlawing it for juveniles and the mentally disabled.

Federal and state governments have consistently sought to limit the appeals process in order to make execution quicker and easier. But putting someone to death remains a complicated and expensive process, and states have to be willing to fight in court for years for the right to do so. Since Gary Gilmore's execution on January 17, 1977, American governments have put more than 1,200 people to death. Yet the number executed is a mere fraction of those sentenced to death, which eclipsed 7,700 by the end of 2009. As with other aspects of crime and punishment, state-by-state variation is notable. Texas executes far more often than any other state, with 464 executions since 1977. Virginia (108 executions) and Oklahoma (93 executions) follow closest behind, with

the latter executing people at a higher rate per capita than Texas. There remains perhaps some hope for abolitionists. After rising to a post-*Furman* high of 98 in 2000, executions have declined in almost every year. As well, state political and judicial processes have added four states and the District of Columbia to the ranks of the 12 that never reinstated the death penalty.

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See Also: 1981 to 2000 Primary Documents; Capital Punishment; Clinton, William (Administration of); Community Policing and Relations; Crime and Arrest Statistics Analysis; Drug Enforcement Administration; Gun Control; Homeland Security; Johnson, Lyndon B. (Administration of); Nixon, Richard (Administration of); Prisoner's Rights; Reagan, Ronald (Administration of); Sentencing: Indeterminate Versus Fixed; Terrorism; Victim Rights and Restitution; Wilson, James Q.

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Holden v. Hardy

Holden v. Hardy was a Supreme Court case argued before the court on October 21, 1897, and decided on February 28, 1898. In this case, the Supreme Court upheld a Utah state law that limited the number of work hours for miners and smelters as a legitimate exercise of the state's police power. The

majority held that such a law is legitimate, provided there is a rational basis, supported by facts, for the legislature to believe particular work conditions are dangerous. In making this decision, the court distinguished *Holden* from other cases it had decided up to that time concerning state efforts to limit "liberty of contract." In prior cases, the court had often held such statutes unconstitutional, finding that they violated "liberty of contract" under the due process clause of the 14th Amendment. The opinion was written by Associate Justice Henry Billings Brown (joined by Chief Justice Melville Fuller, John M. Harlan, Horace Gray, George Shiras, Edward D. White, and Joseph McKenna).

The act of March 30, 1896, c. 72, of Utah, provided that "the period of employment of workmen in all underground mines or workings shall be eight hours per day, except in cases of emergency where life or property is in imminent danger." The statute also provided for "the period of employment of workmen in smelters and all other institutions for the reduction or refining of ores or metals shall be eight hours per day, except in cases of emergency where life or property is in imminent danger." The law also provided that "any person, body corporate, agent, manager or employer who shall violate any of the provisions of sections one and two of this act shall be deemed guilty of a misdemeanor."

On June 20, 1896, a complaint was made to a justice of the peace of Salt Lake City that Albert F. Holden had unlawfully employed John Anderson as a miner in the Old Jordan mine in Bingham Canyon, in Salt Lake County, for 10 hours a day, in violation of the statute. A second complaint involved Holden employing William Hooley to work as a smelter for 12 hours a day.

Holden was arrested and admitted to employing Anderson and Hooley for more hours than permitted under the statute. However, he argued that he was not guilty because the men had voluntarily agreed to the arrangement, and that the act of the state of Utah establishing the maximum hours limit was unconstitutional. A trial court found Holden guilty, imposed a fine of \$50 and costs, and sentenced him to a term of 57 days in the county jail or until the fine and costs were paid.

Holden sought a writ of habeas corpus from the Supreme Court of Utah. The state supreme court denied his application and remanded him to the

custody of the sheriff of Salt Lake County. Holden then appealed to the U.S. Supreme Court, seeking a writ of error by challenging the constitutionality of the state law, contending that it deprived him of his property and liberty without due process of law.

In rejecting Holden's petition, Associate Justice Henry Billings Brown wrote that

This court has not failed to recognize the fact that the law is, to a certain extent, a progressive science; that, in some States, methods of procedure which, at the time the Constitution was adopted, were deemed essential to the protection and safety of the people or to the liberty of the citizen have been found to be no longer necessary; that restrictions which had formerly been laid upon the conduct of individuals or classes had proved detrimental to their interests; and other classes of persons, particularly those engaged in dangerous or unhealthy employments, have been found to be in need of additional protection.

The court concluded that

Upon the principles above stated, we think the act in question may be sustained as a valid exercise of the police power of the State. The enactment does not profess to limit the hours of all workmen, but merely those who are employed in underground mines or in the smelting, reduction or refining of ores or metals. These employments, when too long pursued, the legislature has judged to be detrimental to the health of the employees, and, so long as there are reasonable grounds for believing that this is so, its decision upon this subject cannot be reviewed by the Federal courts.

As to Holden's argument that the law violated his employees' liberty of contract, the court responded

It may not be improper to suggest in this connection that, although the prosecution in this case was against the employer of labor, who apparently under the statute is the only one liable, his defense is not so much that his right to contract has been infringed upon, but that the act works a peculiar hardship to his employees,

whose right to labor as long as they please is alleged to be thereby violated. The argument would certainly come with better grace and greater cogency from the latter class. But the fact that both parties are of full age and competent to contract does not necessarily deprive the State of the power to interfere where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself.

While the case established the precedent for states to limit the hours of workers in dangerous occupations, the Supreme Court did not necessarily defer to the states to determine whether danger existed. In a subsequent case, *Lochner v. New York*, 198 U.S. 45 (1905), the court struck down New York state law limiting the working hours of bakers, holding that New York had not demonstrated how longer hours for bakers either harmed them or the public at large.

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See Also: *Lochner v. New York*; *Muller v. Oregon*; Utah.

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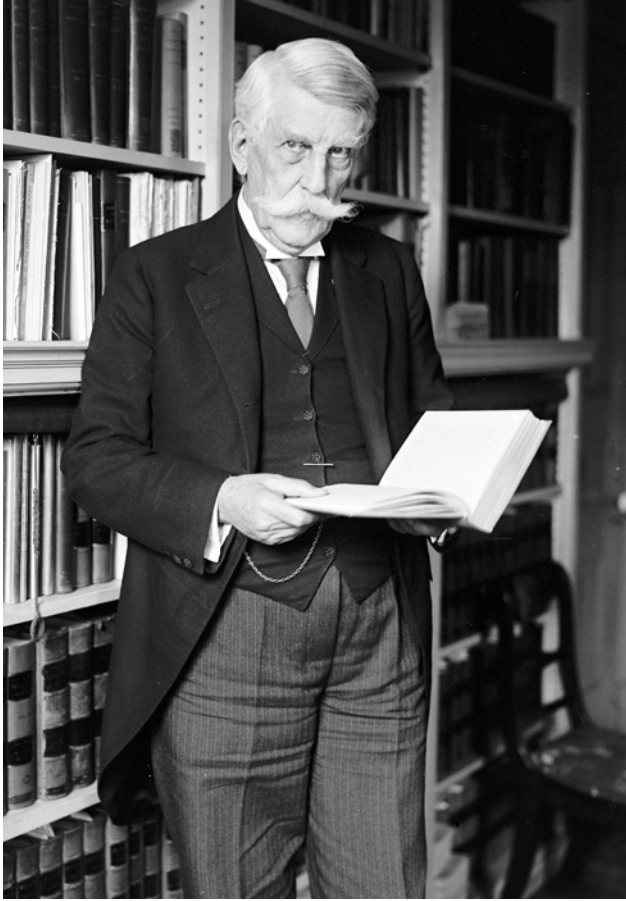
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sources of American common law. After serving as an associate and chief justice of the Massachusetts Supreme Judicial Court of Massachusetts and as Weld Professor of Law at Harvard Law School, Holmes served as an associate justice of the U.S. Supreme Court from 1902 to 1932. In these roles, Holmes shaped thinking about crime, punishment, and criminal justice institutions. A proponent of legal realism, Holmes opposed the doctrine of natural law, marking a profound shift in American jurisprudence. A popular figure with American Progressives, Holmes retired from the U.S. Supreme Court at the age of 90, making him the oldest justice in the court's history. His opinions and dissents influenced a great deal of subsequent American legal thinking regarding pragmatism and critical legal studies, both areas that have shaped how criminal justice is conceptualized.

Holmes was born on March 8, 1841, in Boston, Massachusetts, the son of Oliver Wendell Holmes, Sr., an influential writer and physician, and Amelia Lee Jackson, an abolitionist. After studying literature at Harvard University, where he was elected to Phi Beta Kappa, Holmes graduated in 1861 and enlisted in the 4th Battalion of the Massachusetts Militia, then was commissioned as a first lieutenant in the 20th Regiment of the Massachusetts Volunteer Infantry. Holmes saw action in the American Civil War. At the conclusion of hostilities, Holmes again enrolled at Harvard to study law, was admitted to the bar in 1866, and went into private practice in Boston. Holmes's practice focused primarily upon admiralty and commercial law, and he frequently traveled to London, where he became acquainted with the founders of the sociological school of jurisprudence. The sociological approach favored incorporating diverse perspectives, such as sociology, psychology, economics, and political science, into discussions regarding jurisprudence. Holmes became an editor of the *American Law Review* in 1871, and published widely on the common law. During this period, Holmes also formed his view that judicial decision is the only source of law, with the judiciary forced to sometimes draw on premises from outside the law. Holmes briefly served as a professor at Harvard Law School, resigning in 1882 to accept an appointment as an associate justice of the Massachusetts Supreme Judicial Court, of which he was named chief justice in 1899.

Holmes, Oliver Wendell, Jr.

Oliver Wendell Holmes, Jr., (1841–1935) was a jurist and scholar, and one of the most influential



Supreme Court justice Oliver Wendell Holmes, Jr., challenged many traditional views of the U.S. Constitution and although he retired in 1932, his influence over American law continues.

While serving on the Massachusetts Supreme Judicial Court, Holmes consistently followed legal precedents, buttressing his views of the common law. When writing about criminal law during this period, Holmes demonstrated his sensitivity to diverse perspectives when contemplating sentencing. Although the law had traditionally supported the position that criminals must be punished, Holmes queried whether the quest to punish criminals might not have the result of degrading them and plunging them further into crime. Holmes suggested that in determining sentences, it might be advisable to focus on the criminal rather than the crime, as traditional methods of punishment and deterrence had little effect upon the “degenerate,” yet served chiefly to harm the weak and impressionable. These ruminations, frequently posited in articles or dissents, had great influence.

In 1902, Theodore Roosevelt nominated Holmes to replace Justice Horace Gray on the U.S. Supreme Court. Holmes was unanimously confirmed by the U.S. Senate two days later and has been seen as one of the few such appointments based solely upon the nominee’s merits rather than political considerations. Holmes wrote numerous opinions and dissents, many of them relatively short and frequently quoted by lower courts. An ardent supporter of the right to free speech, Holmes limited that right with his opinion in *Schenck v. United States*. The *Schenck* case involved a leader of the Socialist Party of America who had mailed 15,000 leaflets to prospective military draftees entreating them to resist the draft. After being convicted of violating the Espionage Act of 1917, the defendant appealed, asserting that his constitutional right to free speech protected his actions. A unanimous Supreme Court affirmed the conviction, asserting that during wartime, the government possesses extraordinary rights to prevent a clear and present danger that would bring about substantial evils. The following year, however, in the case of *Abrams v. United States*, 250 U. S. 616 (1919), Holmes dissented when the majority of justices upheld the conviction of defendants who had thrown two leaflets denouncing American involvement in World War I from an open window. Holmes explained the difference between the cases as centering on the defendants’ requisite intent to cripple the United States’ war efforts. He emphasized his belief that the First Amendment only allowed the government to suppress free speech where an imminent threat existed. Although a dissent, Holmes’s views have had a wide range of authority.

Holmes challenged many traditional views of the U.S. Constitution, believing that law must develop along with society and that judicial restraint was necessary so that the judiciary would not interpret the Constitution according to their own social philosophy. Holmes felt that for constitutional interpretation, judges must consider experience, including the necessities of the time, the prevalent moral and political theories, and public policy considerations to determine the rules by which the citizenry should be governed. These ideas resonate today, and Holmes remains one of the most influential arbiters of American law. Retiring from the Supreme

Court in 1932 at the age of 90, Holmes died on March 6, 1935.

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See Also: *Abrams v. United States*; Blackstone, William; Massachusetts; Roosevelt, Franklin D. (Administration of); Roosevelt, Theodore (Administration of); *Schenck v. United States*.

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Holt v. Sarver

Holt v. Sarver was a landmark court case that produced a lasting effect on the administration of prison systems in the United States. In the case, the inmates of an Arkansas prison farm filed suit against the state over conditions at the prison, charging that they were exposed to beatings for insubordination, were forced to live in unguarded communal sleeping arrangements, and were supervised by unpaid guards and staff who were themselves prisoners. After years of legal and political wrangling, the federal district court found the Arkansas State Penitentiary System unconstitutional in its administration of the prison and called for striking reform in three specific areas: the trusty guard system, the barracks-style housing of inmates, and the use of isolation cells as punishment. Ultimately, the outcome of the case served to modify how inmates are housed and guarded, and the case represents a significant step in the prisoners' rights movement.

Prior to the decision in *Sarver*, the vast majority of the staff and guards running the prison farm at the Cummins unit, and the smaller but linked Tucker unit, were inmates themselves. Called "trusties," these inmates were in charge of almost every aspect of the prison's day-to-day operations (e.g., monitoring inmates as they worked the farm and preventing escape through the threat of harm). In fact, the criteria for choosing an inmate for trusty status was not based on his criminal record or good behavior, but rather on his willingness to obey the "free-world" staff and employ violence to prevent escape. The control maintained by trusties in the prison over regular, powerless inmates led to an environment in which the trusties could take advantage of other prisoners. Some trusties were even allowed to guard other inmates—occasionally while armed. Extortion, thievery, and sexual assaults were perpetrated and tolerated by trusties with impunity, as they vastly outnumbered the paid, free-world staff. Another problem with the trusty system was that it allowed inmate trusties to restrict access to services and authority figures. Trusties' control of things like phone time or granting access to medical services led to further abuse and victimization of inmates of the Arkansas prison.

Eighth Amendment Rights

The idea of violent inmates guarding other inmates, some of whom were certainly less violent and dangerous, produced an additional problem for the court. In this situation, nonviolent criminals could be housed alongside murderers, rapists, or other violent criminals. A clear example of this was the barracks-style sleeping arrangements referred to in *Sarver*. In open bunkhouses, all sleeping prisoners were at the mercy of their fellow inmates. This placed a great deal of importance on diligent guardianship on the part of the prison staff. Yet at the Cummins and Tucker farms, 90 percent of the staff was made up of inmates, and at night, only two paid civilian guards were on duty. Perhaps not surprisingly, the risks to a sleeping inmate in such a situation were manifested in the form of a high number of stabbings and sexual assaults.

A final specific area of constitutional concern for the federal court was the use of isolation cells as punishment. After a previous court case declared

the use of whippings unconstitutional, the isolation cell became the new preferred method to punish poor behavior, refusal to work, or insufficient production. This led to so-called isolation cells that were actually crowded with inmates—sometimes 10 men in a 10-by-8-foot cell. With one concrete, lidless toilet, and men sleeping on cot mattresses on the floor, conditions at such capacities approached cruel and unusual punishment for the court.

The bottom line for the court in *Holt v. Sarver* was inmate safety. The court acknowledged that prison administration is not a simple or pleasant task, that reform takes time, and that insufficient funds are always an issue. Although it was also recognized that prison is inherently a dirty and dangerous place, the findings in *Sarver* established the idea that state governments (as well as prison officials) are obligated to take actions to prevent dangerous situations and unsanitary conditions. In short, *Holt v. Sarver* was at the forefront of a reconsideration of modern correctional justice by emphasizing inmate safety within the conditions of their confinement.

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See Also: Arkansas; Corrections; Prisoner's Rights; Reports on Prison Conditions.

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Homeland Security

Homeland security is a generic term used to refer to efforts designed to protect the American people from terrorist attacks within the United States.

Following the 9/11 terrorist attacks, the administration of George W. Bush placed a renewed emphasis on homeland security as a key component of the administration's war on terror. Extensive government resources were poured into the homeland security effort in an attempt to prevent future terrorist attacks. In 2002, the U.S. Department of Homeland Security (DHS) was created to serve as a focal point for federal government actions in this area. Still, homeland security remains an issue that federal, state, and local government officials all must address. The concept of homeland security continues to evolve and now also encompasses government efforts to respond to large-scale natural disasters (e.g., hurricanes and earthquakes) that might also raise security issues on U.S. soil. Homeland security also remains a controversial topic as Americans debate which policies should be adopted to maximize security while still protecting the civil liberties of American citizens.

Institutionalizing Homeland Security

The concept of homeland security did not originate with the 9/11 terrorist attacks. The same functions that today's DHS performs were instead highly decentralized and spread across dozens of federal agencies with little overall coordination. The 9/11 attacks forced the United States to rethink this decentralized approach. Eleven days after 9/11, President George W. Bush announced that he would create an Office of Homeland Security within the executive branch and that it would be led by Pennsylvania Governor Tom Ridge. Bush also proposed a Homeland Security Council staffed by cabinet-level officials that would function as the domestic equivalent of the National Security Council. Senators Joe Lieberman and Arlen Specter introduced a bill in October 2001 designed to establish a Department of Homeland Security, but the bill, opposed by the Bush administration, never passed. Several months later, President Bush came out in support of a cabinet-level DHS. Its main missions would be (1) border and transportation security, (2) emergency preparedness and response, (3) chemical/biological/nuclear countermeasures, and (4) information analysis and infrastructure protection. In June, the Homeland Security Act of 2002 was introduced in Congress and the act was signed into law on November 25, 2002.

While homeland security is a coordinated effort by all levels of government, the focal point at the federal level has become the Department of Homeland Security. DHS began operations in 2003. The government reorganization that created the department was the largest overhaul of the federal bureaucracy in decades. The new department absorbed the functions of 22 agencies and houses such familiar names as U.S. Customs, the Coast Guard, the U.S. Secret Service, the Transportation Security Administration, and the Federal Emergency Management Agency (FEMA). With over 200,000 employees, it consti-



Observers marking the first anniversary of 9/11 in New York City on September 11, 2002. The terrorist attacks and a move toward centralization led to the creation of the Office of Homeland Security within the executive branch 11 days after the attacks.

tutes the third-largest cabinet department behind the Department of Defense and the Department of Veterans Affairs. DHS is also responsible for the Homeland Security Advisory System, a color-coded threat level assessment tool ranging from severe (red) to low (blue). The advisory system is designed to provide public awareness when intelligence indicates that terrorist attacks may be more likely to occur.

The creation of DHS has not been without controversy. The agency's budget has grown at an extraordinary pace since its inception. This was especially true in the wake of the 9/11 attacks when safety was at a premium and the government was willing to spend considerable sums of money on homeland security. In 2003, the agency's budget was \$29 billion, while the proposed budget for 2011 approaches \$45 billion, an increase of roughly 50 percent in a few short years. DHS has been criticized for disorganization and wastefulness. In 2008, Congress estimated that DHS had wasted over \$15 billion in agency contracts where services were delayed, over budget, or never delivered at all. Other critics take issue with the allocation of agency resources, worried that the agency focuses too much on defending against civilian air attacks while largely ignoring other potential threats.

One of the most important balancing acts that the United States must consider as it develops homeland security policies is doing so in a way that protects the constitutional liberties of its citizens. Officials are forced to address the question of whether the country is truly at war. To what degree should the military be used in the name of homeland security? Can conventional law enforcement agencies and mechanisms be the primary means to prevent terrorist attacks and bring terrorists to justice? Historically, the United States has primarily treated terrorism as a law enforcement matter. However, since 9/11, Presidents Bush and Obama have used all the government's military and law enforcement resources to identify, apprehend, and punish suspected terrorists. Americans are still engaging in a debate about whether conventional constitutional protections (e.g., warrants for searches, and the right to counsel) should be reduced or even eliminated when individuals are suspected of terrorism.

Failed Terrorist Attacks

While there have been no successful major terrorist attacks on U.S. soil since 9/11, there have been a number of attempts. Among the more noteworthy is the attempt by Richard Reid, often referred to as the “Shoe Bomber.” In 2002, Reid’s failed attempt to detonate explosives hidden in his shoes resulted in a life sentence in federal prison. On Christmas Day 2009, Umar Abdulmutallab attempted to detonate plastic explosive hidden in his underwear. Authorities foiled the plot of the “Underwear Bomber” and he remains in federal custody. Government agencies have also been quite active in attempting to identify and apprehend domestic terror groups. One of the more publicized successes involved the capture of the “Lackawanna Six,” a group of Yemeni Americans who had attended an Al Qaeda training camp together in 2001. All pled guilty to terrorism-related charges. Some officials have argued that these captures and the lack of another 9/11 is a sign that the United States has been successful in its homeland security policies, while critics often emphasize how these episodes expose many of the flaws in the government’s homeland security programs.

Legislation and Government Policies

In the immediate wake of 9/11, the U.S. government passed a number of laws designed to enhance homeland security. On September 14, only three days after the attacks, Congress passed the Authorization to Use Military Force (AUMF). This broad, open-ended mandate authorized President Bush to use force if/when he believed necessary to bring the perpetrators of 9/11 to justice and prevent future terrorist attacks on the United States. The AUMF was subsequently invoked in a war against the Taliban government and Al Qaeda in Afghanistan. The U.S. objectives were to prevent Afghanistan from being a base for future terrorist operations and to capture Al Qaeda leader Osama bin Laden, who was thought to be hiding in the country. Arguing that the federal government needed expanded investigatory powers to fight the terrorist threat, the Bush administration convinced Congress to overwhelmingly pass the USA PATRIOT Act of 2001. The act greatly expanded the power of many government agencies to obtain telephone, electronic, financial, and other records of suspected terrorists. It also eased restrictions

on foreign intelligence gathering in the United States while at the same time greatly enhancing the ability of different agencies to share information with one another.

In addition to the new antiterror laws passed by Congress, President George W. Bush’s administration also adopted a host of controversial policies as a part of its war on terror. These policies were controversial both because of their subject nature (e.g., warrantless wiretapping and interrogation) and because they were often adopted by the administration unilaterally and in secret. In addition to launching wars in Afghanistan and Iraq, the Bush administration unilaterally decided to use the American naval facility at Guantanamo Bay, Cuba, to house suspected terrorists. The interrogation policies practiced at that facility generated a firestorm of criticism by those who argued that the United States was torturing many of the detainees. Despite repeated public denials, substantial evidence emerged documenting mistreatment of detainees by U.S. personnel. A similar problem at the Abu Ghraib prison in Iraq also revealed the mistreatment of detainees. The Bush administration also adopted a secret warrantless electronic surveillance program shortly after 9/11. The Terrorist Surveillance Program (TSP), as it came to be known, allowed executive branch agencies great leeway to gather electronic foreign intelligence without any judicial supervision or legislative oversight. The program was eventually discontinued when its existence became public.

Sometimes antiterror policies were unilaterally initiated by the Bush administration and then subsequently endorsed by Congress. In November 2001, President Bush announced that some suspected terrorists would be subject to trial before a newly created military tribunal system. Critics of the new system argued that it was a system rigged to produce convictions for the government and that the military tribunals contained insufficient protections for potential defendants. In *Hamdan v. Rumsfeld* (2006), the U.S. Supreme Court struck down this system of tribunals, concluding that they violated both domestic and international law. Congress responded to the court’s decision by passing the Military Commissions Act of 2006, creating a military tribunal system that was in many ways similar to the one the court had struck down.



President Barack Obama (center) meeting with the Homeland Security Council at the Federal Emergency Management Agency (FEMA) headquarters on May 29, 2009. He is accompanied by council president John O. Brennan (to his right), Department of Homeland Security secretary Janet Napolitano, and FEMA administrator W. Craig Fugate. Obama was briefed on response and recovery plans for the upcoming 2009 hurricane season.

Future of Homeland Security

For years after 9/11, the focus of homeland security has been the prevention of another terrorist attack with a special focus on Osama bin Laden and Al Qaeda. However, time is likely to change the nature of the threats. Al Qaeda may remain an important threat, but others may emerge as well. For this reason, DHS is slowly transforming its focus from preventing Al Qaeda attacks to a more generic “all hazards” approach to homeland security, which includes responding to large-scale natural disasters such as Hurricane Katrina. Many of the agencies absorbed by DHS have functions that have little to do with terrorism. Emergency management is, and will continue to be, a crucial part of homeland security. This means that DHS and other federal agencies will need to work extensively to integrate their security efforts with state and local institutions and actors. Since 2001, billions of dollars in federal grants have been distributed to state and local agencies to improve their emergency response capabilities. Defining roles and coordinating efforts among different govern-

ment, nongovernment, and military groups will continue to be an important component of homeland security in the future.

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See Also: 1981 to 2000 Primary Documents; Bush, George W. (Administration of); Obama, Barack (Administration of); Terrorism; USA PATRIOT Act of 2001.

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Homestead Act of 1862

The Homestead Act of 1862 established one of the most influential models for disposing of public land in American history. Signed by President Abraham Lincoln on May 20, 1862, the Homestead Act entitled settlers to enter a quarter section of undeveloped federal land (160 acres), resulting in the eventual transfer of some 285 million acres of the public domain to private citizens over the course of nearly 125 years. Any head of a family or individual 21 years of age, including both citizens and immigrants filing declarations of intention to become such, were eligible under the act, provided they had never borne arms against the government or aided its enemies. Women who were heads of families, unmarried women, freed slaves, and Native Americans who abandoned tribal affiliations were also eligible to homestead when the act became effective on January 1, 1863.

Prospective homesteaders paid filing and commission fees totaling \$14 to claim 160 acres temporarily, after which they were required to continually occupy the land for five years. During this period, the land could not be encumbered and taxes could not be collected, but the homesteader was required to build a dwelling and cultivate the surrounding land. After the payment of a final \$4 fee and the voucher of two witnesses attesting that the homesteader had actually resided on the land, the homesteader was granted a title deed for a total amount of \$18. Although individuals were entitled to only one homestead under the act, families regularly acquired larger plots by using older sons and daughters to claim adjacent homesteads. In 1872, Congress modified the act, allowing veterans to count up to four years of military service toward the five-year residency requirement. In 1912, Congress reduced the residency requirement to three years. Homesteaders could alternately purchase the land from the government, after six months of residency, for \$1.25 per acre.

Like many national policies in the first half of the 19th century, homesteading was embroiled in regional controversy. By 1850, the federal government had gained 1.2 billion acres of public domain land through land purchases and cleared Indian lands. Although the federal government initially used sales of these lands to help bolster

the federal treasury, the demand for free land from those hoping to settle the west soon overwhelmed the government's plan. By the mid-1830s, early versions of homesteading legislation had been introduced to Congress. The first bills, however, were met with considerable resistance from the south, which opposed homesteading as unwelcome competition to plantation farming. When homestead legislation finally passed in 1860, the sectional division was clear: In the House, only one supporting vote came from a slave state, and only two free states voted against the bill. Every Republican voted for the bill.

In an attempt to pacify the south, President James Buchanan vetoed the bill. Additionally concerned about the financial stability of the United States, Buchanan justified his veto by alleging the unconstitutionality of the homesteading bill: The low price for the public land was tantamount to giving the land away, a power Congress lacked. Buchanan's veto became an important campaign issue in the subsequent presidential election and was one of the first issues addressed when the next congressional session began in 1861. Although southern opposition remained robust, the secession of several states from the Union following Lincoln's election enabled the Republican majority to pass the final version of the Homestead Act, which became effective the same day the Emancipation Proclamation became law. Notably, the act excluded southern settlers from free lands until after the end of the Civil War.

By prompting the population of rural regions, supporters argued that homesteading would help combat the evils of urban indigence and vice. The act was also considered a remedy for economic harms, in part by benefiting the working class. By producing a new class of small farmers, the provision endeavored to eliminate excess labor and stabilize wages while promoting the economic development of the nation.

Opponents of homesteading feared that giving away vast expanses of land would result in mass migration from the east, leading to an insufficient workforce and depressed land values. Many in the west, conversely, worried eastern states would unfairly profit from their public lands. Others feared that immigrants, whom town developers recruited directly from Europe, would soon overrun the newly available land.

Settlers, too, criticized homesteading, complaining that the 160-acre quarters could not be successfully ranched or farmed.

By the late 19th century, much of the desirable land had already been claimed by war veterans and settlers from eastern states. The remaining quarters lay largely in the arid west, far from water, woods, and markets and transportation. Furthermore, because claims were not systematically evaluated under the Homestead Act and witnesses could easily be bribed, the potential for abuse was high. Land was often claimed to control resources, especially water, and speculators, railroad barons, and swindlers exploited the act to gain control of much of the public domain. In addition to the harsh climate and poor soil, homesteaders also faced hardships from Native Americans, pests, and natural disasters. As a result, only 40 percent of homestead claims resulted in the successful transfer of title. To make farming and ranching more feasible, Congress eventually increased land claims in arid regions to 320 and then 640 acres of public land in 1909 and 1916, respectively.

Notwithstanding the difficulties, homesteading helped expand the western growth of the nation. In all, the Homestead Act made the expansive public domain available to more than 1.5 million people, who claimed and settled a total of 285 million acres, or 10 percent of the landmass of the United States. The Homestead Act remained effective until 1976, when the Federal Land Policy and Management Act was passed, except for Alaska, where homesteading was permitted until 1986.

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See Also: Buchanan, James (Administration of); History of Crime and Punishment in America: 1850–1900; Lincoln, Abraham (Administration of); Livestock and Cattle Crimes; Native Americans.

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Herbert Hoover was the first American president to mention rising crime rates in an inaugural address. Delivered on March 4th, 1929, the speech paid homage to the efforts of Calvin Coolidge's administration to make the United States an influential and respected nation around the world. After the tragedy of World War I, Hoover praised the United States for its achievements in restoring hope abroad and creating a new civilization at home. However, he also expressed concern for the increasing "disregard and disobedience of the law" and the parallel decreasing "confidence in rigid and speedy justice." The president called for a wide-scale investigation in the "entire Federal machinery of justice" and a speedy "reform, reorganization and strengthening of [the] whole judicial and enforcement system."

Only two months after this speech, Hoover appointed George W. Wickersham, the former attorney general in President William Howard Taft's administration, to lead the National Commission on Law Observance and Enforcement (NCLOE). This commission remains Hoover's most significant legacy to the American legal system. Although the president had the merit of proposing a task force to promote a scientific approach to the study of the judicial system and law enforcement, the federal government failed to adopt the findings of the commission as guidelines in a possible reform strategy. In addition, Hoover's judicial appointment of Judge John Parker to the Supreme Court, his constant refusals to accept appeals for anti-lynching laws, and the patent contradictions in the Scottsboro Trials revealed the president's acceptance of a justice system that was discriminatory against African Americans.

Prohibition and the Great Depression

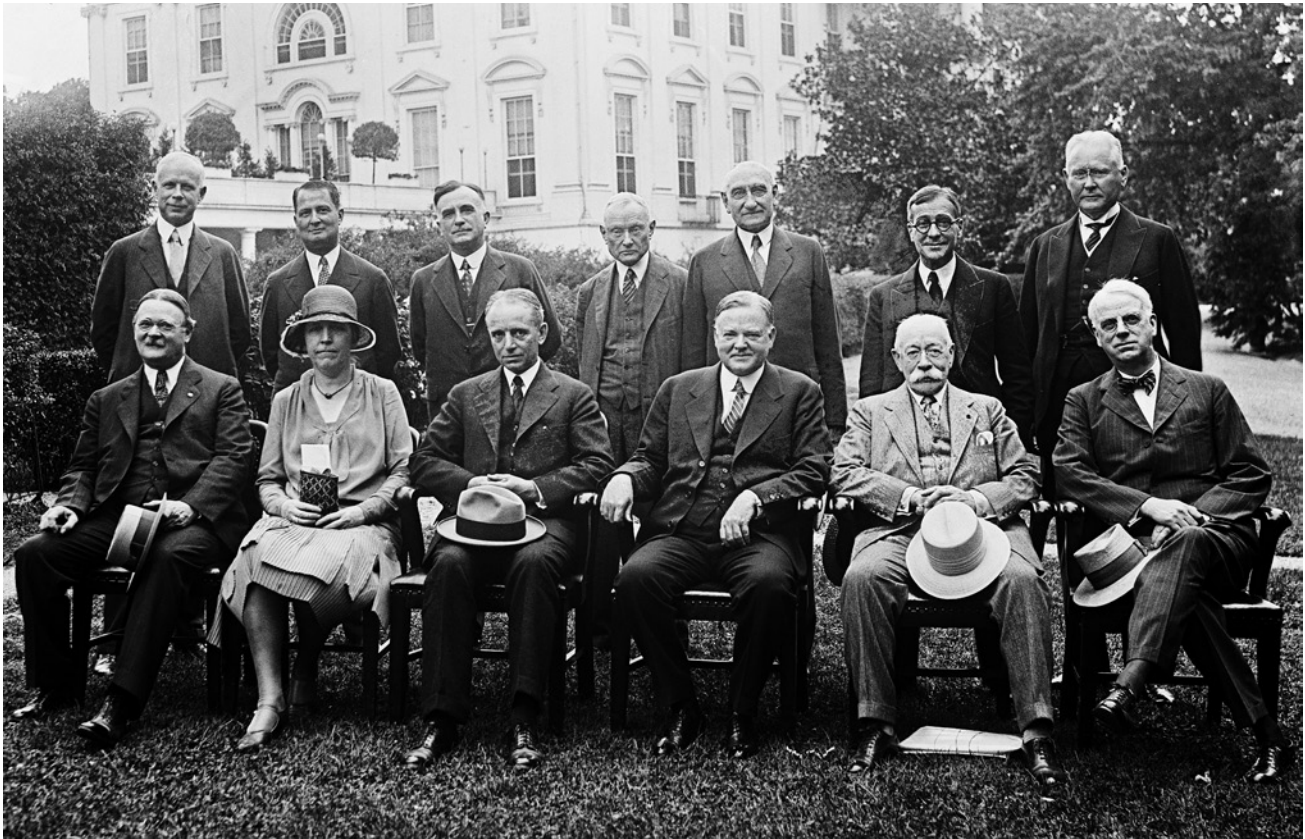
The 1920s and 1930s have been widely referred to as "the lawless decades" or "the crime control decades" because crime became a major political and social concern. The Eighteenth Amendment, which prohibited the making, selling, and possession of alcoholic beverages, and the onset of the Great Depression were largely responsible for making crime and the failure of enforcing existing

legislation an obsession for Americans. Historians have concluded that what rose in the 1920s and 1930s was not so much the actual homicide rate or the numbers of property offenses but the perception of these in the minds of American citizens. Because the concentration of famous criminals and their exploits was so great, gangsters, bootleggers, and public enemies became the focus of media and popular attention through highly publicized cases such as the Lindbergh kidnapping and the St. Valentine's Massacre. Although in his inaugural address Hoover maintained that the confidence of American citizens in law enforcement had been declining well before the passing of the Eighteenth Amendment, Prohibition was a big blow to the credibility of the justice system. Not only criminals but also the general public found ways to overwhelm weak enforcement; as with other businesses with eager customers, such

as gambling and prostitution, drinking was difficult to outlaw. The attempts to enforce Prohibition unintentionally helped criminal organizations exploit public demand.

Wickersham Commission

Hoover initially formed the Wickersham Commission to investigate ways to more effectively enforce Prohibition. The commission, formed of 11 members, mostly educators and legal experts, soon addressed other important issues in its 14 official reports published throughout 1931. These included the growth of organized crime, abuses in law enforcement practices, deportation laws, child offenders, the American justice system, criminal procedure, penal institutions, the financial burden of crime, and the causes of crime. Although the reports made some recommendations, such as the use of uniform criminal laws and crime statistics,



President Herbert Hoover (third from right in front) with his crime commission in May 1929. The commission went on to publish 14 official reports through 1931, covering such topics as the growth of organized crime, deportation laws, child offenders, the American justice system, criminal procedure, penal institutions, the financial burden of crime, and the causes of crime. The reports made some innovations in their attention to police brutality and their challenge of the presumed connection between foreign citizens and crime.

the commission avoided interpretation of the data in favor of a mere presentation of statistics. The reports were innovative in their criticism of police brutality and in their challenge of the equation between foreign citizens and crimes. However, they failed to suggest ways in which the judicial system could be made fairer and more efficient. In addition, they stubbornly supported the enforcement of the Eighteenth Amendment, even if its poor results were apparent, and the commission denounced abuses linked to Prohibition. The commission also devised the Mooney-Billings Report, which was published privately in 1932 due to political pressures not to make it public. The report denounced the grave violations in the investigation, trial, and conviction of labor activists Thomas J. Mooney and Warren K. Billings for a bomb explosion in San Francisco in 1916 that killed eight people. Although the commission did not claim that the defendants were innocent, it did argue that the law practices to which they had been subjected to were unfair.

Entrenched Racism

After encouraging the establishment of the Wickersham Commission, Hoover and his administration largely ignored its call for a fairer justice system for all citizens. When, at the beginning of the first Roosevelt administration in 1934, the attorney general's Conference on Crime took place, the statistics of the commission went mostly unnoticed. Hoover's administration also showed little attention to the legal protection of African American rights. In 1930, the president appointed Judge John Parker of North Carolina to the Supreme Court, in spite of the judge's endorsement of the disenfranchisement of blacks 10 years earlier. The joint opposition of the National Association for the Advancement of Colored People (NAACP) and the American Federation of Labor (AFL) succeeded in making the appointment so controversial that the Senate rejected it. The Scottsboro Trials, which began in 1931, also provided evidence that the American justice system and society were still deeply racist. The nine African American defendants collectively known as the Scottsboro Boys were accused of raping two white women and were imprisoned for years, although medical evidence showed that the women had been lying and their guilt could not be established irrefutably. Herbert

Hoover's State Department had to start an investigation in the face of international outrage and petitions from communists, civil rights activists, and liberals in the United States and around the world. Hoover refused to pardon the defendants.

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See Also: African Americans; Prohibition; Racism; Scottsboro Boys Cases; Wickersham, George; Wickersham Commission.

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Hoover, J. Edgar

J. Edgar Hoover (1895–1972) was born in Washington, D.C., to Anna Marie and Dickerson Naylor Hoover, Sr. He attended George Washington University, where he received his law degree in 1917. Hoover never married and had no children and lived at home with his mother until her death in 1938. Hoover was romantically linked to both Dorothy Lamour, an actress, and Ginger Rogers's mother, Lela Rogers. Many believe Hoover was romantically involved with Clyde Tolson, who was his sole heir and worked for him in the Federal Bureau of Investigation (FBI). These two men rode to and from work together daily and frequently dined and vacationed together. Critics of the homosexual rumors reported that the two men were more like brothers.

Hoover was a member of the Freemasons for 52 years, beginning in 1920, and was awarded several honors by that organization, including being made Master Mason shortly before his 26th birthday. As a lasting tribute, the J. Edgar Hoover Room within the Masonic lodge in Washington, D.C., contains many of Hoover's papers. During

World War I, Hoover went to work for the Justice Department. He was quickly moved to head of the Enemy Aliens Registration Section. He then took over running the General Intelligence Division of the Bureau of Investigation, which would later become the FBI. At the age of 29, Hoover was appointed director of the Bureau of Investigation by President Calvin Coolidge. He remained director until his death on May 2, 1972.

The Ultimate G-Man

Bank-robbing gang members like John Dillinger crossed state lines in stolen cars, opening the door for Hoover and the FBI to investigate them for federal crimes. The FBI did not do a particularly clean job in these investigations, and at least once, the robbers escaped while multiple people were injured and two were killed. When Hoover realized he might lose his job, he paid more attention to the situation, and Dillinger was eventually killed in 1934. During this same time frame, while Hoover denied that organized crime existed, Mafia shootings increased due to the Volstead Act, which prohibited the making, moving, and selling of alcohol throughout the United States. Even into the 1950s, Hoover denied the need for the FBI to focus on the Mafia, which led to much criticism. Jack Anderson, a columnist, exposed the huge crime network. Anderson's reporting linked Hoover to the Mafia as well, for which Hoover harassed him for the next 20 years.

Hoover had the Bureau of Investigation renamed the Federal Bureau of Investigation and given more power in 1935. This was a result of the publicized killings and captures of gangster bank robbers. Within four years of these changes, the FBI excelled in domestic intelligence. Under Hoover, the FBI assembled the largest collection of fingerprints in the world. He also grew the FBI Laboratory, which was created for evidence examination in 1932.

Hoover maintained detailed and controversial secret files on politicians, coworkers, acquaintances, and a number of other powerful people. Because of these files and their possible political repercussions, it is reported that Presidents Harry Truman, John F. Kennedy, and Lyndon Johnson were all leery of firing Hoover. Also contained within these files was the result of surveillance conducted on Eleanor Roosevelt in an attempt

to prove she was a lesbian. These files were key in Hoover's ability to gain promotion and avoid negative consequences for his sometimes questionable behavior.

Hoover was obsessed with the idea of subversion. In 2007, documents belonging to Hoover were declassified. In these documents, there was a list maintained by Hoover of approximately 12,000 Americans he suspected of subversion. He had plans to arrest or detain them by suspending the writ of habeas corpus; however, there is no evidence that President Truman accepted his plan.

Hoover believed that citizens should be punished for political affiliations no matter the means of prosecution. To this end, he formed COINTELPRO, or Counter Intelligence Program, which utilized covert operations against American groups that were suspected of subversion or disloyalty. The FBI frequently forged documents or presented false propaganda to aid in this program until 1971, when it became public. Organizations that were infiltrated included the Communist Party, the American Nazi Party, the Ku Klux Klan, the Southern Christian Leadership Conference and Martin Luther King, Jr., the Black Panthers, Students for a Democratic Society, and anti-Vietnam War groups

Espionage

In the late 1930s, the FBI's priority became counterespionage. The FBI began collecting information on German spies, culminating in arrests beginning in 1938. These activities continued during World War II. The FBI was even able to stop a group of Nazi agents when one of these men contacted the agency about a plan to land German U-boats at Florida and Long Island in the Quirin Affair. The Verona Project was a joint endeavor between the FBI and the British government to spy on Soviet spies. The project led to the ability to break some Soviet codes and established that the Soviets were involved in espionage. Hoover reportedly kept the deciphered intercepts from the FBI. He kept them in a safe in his office and only disclosed them in 1952 to the Central Intelligence Agency (CIA).

In 1958, Hoover penned the book *Masters of Deceit: The Story of Communism in America and How to Fight It*. The book was written during the cold war and has a slightly paranoid feel to it with statements such as:

The Party's attack is geared to the wide variety of American life. Communism has something to sell to everybody. And, following this principle, it is the function of mass agitation to exploit all the grievances, hopes, aspirations, prejudices, fears, and ideals of all the special groups that make up our society, social, religious, economic, racial, political. Stir them up. Set one against the other. Divide and conquer. That's the way to soften up a democracy.

This passage only further illustrates Hoover's obsession with subversion and gives a unique insight into his mind.

President Johnson made an exception for Hoover to remain director of the FBI for the rest of his life, waiving the mandatory retirement age of 70. This waiver took place just before Hoover testified in the hearings held regarding the Warren Commission, which was the name by which the investigation of President John F. Kennedy's assassination was known. The FBI, under Hoover's leadership in this investigation, was criticized by the House Select Committee on Assassinations in 1979 for failing to properly investigate any possibility of a conspiracy to kill President Kennedy.

Recognition

J. Edgar Hoover received many awards and honors throughout the years from various agencies. These included but were not limited to an honorary doctorate from Oklahoma Baptist University in 1938 and an honorary knighthood by King George VI in 1950. President Dwight Eisenhower gave him the National Security Medal in 1955, and President Johnson gave him the Distinguished Service Award in 1966.

Hoover had requested that he be interred in a Masonic ceremony; however, this request was ignored at the time of his death. In fact, Congress voted that Hoover be allowed to lie in state in the Capitol Rotunda. At Hoover's funeral in 1972, Tolson accepted the folded American flag. Upon Tolson's death, he was interred close to Hoover in the Congressional Cemetery.

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See Also: 1901 to 1920 Primary Documents; 1921 to 1940 Primary Documents; Dillinger, John; Espionage; Federal Bureau of Investigation; History of Crime and Punishment in America: 1900–1950; History of Crime and Punishment in America: 1950–1970; Political Dissidents; Uniform Crime Reporting Program.

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Hurtado v. California

Hurtado v. California (1884) is an important piece of Supreme Court jurisprudence dealing with the doctrine of incorporation, due process, and the Fourteenth Amendment. The facts of the case surround Joseph Hurtado, who first assaulted and then later killed José Estuardo for an alleged affair Estuardo was having with his wife. Charges were brought up against Hurtado by the state of California, not the federal government, an important fact because Hurtado was eventually convicted by the state and sentenced to death without the initial grand jury indictment that would accompany a federal charge of a capital offense per the Fifth Amendment. Instead of a grand jury proceeding, the state of California had indicted Hurtado under its constitutional provisions that prosecutions as such could proceed based on a prosecutor's statement of information, a procedure that the Supreme Court would later rule is a sufficient substantiation for a grand jury indictment.

Hurtado brought his case to the Supreme Court, arguing that the state of California had denied him his grand jury protections under the Fifth Amendment to the Constitution. At this time, the Bill of Rights did not apply to the states and were binding restrictions only on the federal government. States

at the time relied on their own constitutions and legislatures to delineate criminal procedures and rights of the accused. It was not until the early 20th century that the Supreme Court started to incorporate the Bill of Rights onto the states, affirming that the Fourteenth Amendment intended to do as much. *Hurtado* argued for the doctrine of incorporation, a legal argument dating back to the early 1800s in a Supreme Court case law. Stronger arguments for applying the Bill of Rights to state governments gained more traction after the passage of the Fourteenth Amendment in 1868 but still did not strongly capture the court's attention until the Warren Court (1953–69), known for its protection of civil rights and criminal procedure, began to rule that parts of the Bill of Rights did apply to the states.

The basic argument behind the doctrine of incorporation rests on the language of the Fourteenth Amendment, which emphasizes explicitly that no state shall deny its citizens due process along with the “privileges and immunities” and equal protection of the law. Supporters of the doctrine of incorporation argue that the phrase *no state* by implication meant that state governments were now bound by the Bill of Rights and that this was the intent of the Fourteenth Amendment's framers. Others argue to the contrary and assert that the original purpose of the Fourteenth Amendment was to protect freed slaves from abuse by state and local governments who tried to alienate their black citizens through Jim Crow laws designed to uphold de jure segregation, restrict voting rights, and reaffirm the inferiority of the black race.

Early Supreme Court rulings on the doctrine of incorporation sided with the latter argument. In *Barron v. Baltimore* (1833), for example, the court denied a claim made by a man who had lost business due to actions by the city government on the grounds that there was no indication that the Bill of Rights applied to the states. Even after the

passage of the Fourteenth Amendment, the court still did not buy into the doctrine of incorporation argument, ruling in 1873 that the Bill of Rights only applied to the states after a group of butchers filed suit under the Fourteenth Amendment when they had been forced by the City of New Orleans to consolidate their individual slaughterhouses into one central operation.

Hurtado's specific argument was that the grand jury indictment of the Fifth Amendment was incorporated onto the state of California and, additionally, the state had violated the due process clause of the Fourteenth Amendment that clearly applied to states. The majority opinion in *Hurtado*, authored by Justice Stanley Matthews, found that California's provisions for indicting *Hurtado* were sufficient “due process” to satisfy the Fourteenth Amendment, and the Fifth Amendment separated “grand jury” from “due process” in its language, thus implying the two could be read as mutually exclusive and a grand jury trial was not necessarily a part of due process per se. Also, without an express declaration that the grand jury provisions applied to the states, there was no basis for incorporating them. The dissent in *Hurtado*, written by Justice John Harlan, argued that due process did not mean one thing to the states and another to the federal government and that due process means the same rights are protected in every context.

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See Also: *Barron v. Mayor of Baltimore*; California; Due Process.

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Idaho

A northwestern state admitted to the union in 1890, Idaho is one of the largest and most sparsely populated states in the country. It originated as the Idaho Territory, a remnant of the Oregon Territory after a large chunk of that territory was turned into the state of Oregon. Crime in Idaho is fairly low, in large part because of the small population. In the territorial days, the territory—like the frontier in general—had a reputation for lawlessness, but the sort of frontier chaos detailed in dime novels really depended on some kind of dense settlement like Deadwood or Tombstone, or a disproportionate amount of people and wealth like in gold rush towns, in order to provide sufficient opportunity for crime. Idaho, even in its early statehood, did provide a good hideout for outlaws, rustlers, and train and stagecoach robbers because of its sparseness.

Police and Punishment

The Old Idaho State Penitentiary, also known as the Idaho Territorial Prison, was constructed in the early days of the territory in 1870 and continued to operate for the next 100 years. Originally a single-cell jailhouse to serve the sparsely settled territory's occasional need, it was expanded into a complex of multiple buildings within a sandstone wall built by inmates. The architecture of the new

buildings reflects the Romanesque Revival then popular in the country. Its maximum capacity after expansion was 600 inmates. When living conditions in the prison degraded, two violent prison riots in 1971 and 1973 prompted the state to close the Old Pen down, relocating the 416 inmates then incarcerated there to a new, modern penitentiary. The Old Pen was closed at the end of 1973, was placed on the National Register of Historic Places, and is now managed by the state's historical society.

Idaho's sparse population distribution has influenced the development of its police forces, as many settlements, especially in the first decades of statehood, lacked the resources to staff and fund their own modern police department. Even today, most rural communities depend on state agency assistance to handle serious crime when it occurs; the Boise and Coeur d'Alene areas, with the greatest concentration of population, are the exceptions. In 1919, the new state Department of Law Enforcement included the Bureau of Constabulary, which was tasked with criminal investigations, dealing with public nuisances and riots, enforcing court orders, and preventing wrongs to children and animals. The Idaho State Police (ISP) was created 20 years later, with both a patrol division and an investigation division. ISP detectives typically investigate the state's major crimes, like murders, kidnappings, and

large-scale drug operations. Other divisions deal with computer crime (Cyber Crimes Unit), commercial trucking laws (Commercial Vehicle Specialists), liquor laws (Alcohol Beverage Control), and forensics support to both state and local police. Only five Idaho state troopers have died in the line of duty since the force's 1939 inception, and of those, one died of a heart attack and two in vehicular accidents.

Crime

During the Progressive era of the late 19th and early 20th centuries, a conflict grew in Idaho centered around the emerging labor unions. In 1896, Frank Steunenberg was elected governor of Idaho, nominated by both the Democratic and Populist parties and supported by the labor unions. He was re-elected in 1898 and oversaw a period marked by labor disputes; because of his administration's support for the unions, many corporations increased wages and gave in to other labor demands because they feared that the government would support the unions in the event of a strike. The Bunker Hill Mining Company was one of the exceptions, and the mining industry in general was the most marked by unrest; when strikers destroyed one of the company's mills, Steunenberg declared martial law and used federal troops to quell the uprising. The unions considered it a betrayal of his promises and ideals, and he did not seek a third term.

Four years after leaving office, Steunenberg was assassinated when a bomb was set off at his front gate. Pinkerton agent James McParland led the investigation at the request of Chief Justice Charles O. Stockslager. A man named Albert Horsley, aka Tom Hogan and Harry Orchard, had set the bomb and had not attempted to flee arrest, but McParland suspected an "inner circle" in the miners union and pitched the Pinkerton agency's services to the mining companies. The subsequent investigation led to the arrest of three of the Western Federation of Miners union leaders using falsified extradition papers, but no case could successfully be made against them, and Horsley was the only one convicted of any crime connected to the assassination.

Idaho made headlines in the 1990s for its sodomy laws, first for the case *Idaho v. Limberhand*, in which a man was arrested for masturbating in



Western Federation of Miners general secretary Bill Haywood and president Charles Moyer with Idaho miner George Pettibone waiting outside the Boise, Idaho, sheriff's office during their trial for the murder of ex-Governor Frank Steunenberg in 1907.

a closed toilet stall by police without a warrant patrolling a rest stop for homosexual activity. The court of appeals ruled that the closed restroom stall constituted sufficient privacy that no crime had been committed. In 1992, the court of appeals evaluated the decision in *Idaho v. Hayes*, in which Brian Hayes had been sentenced to 5–12 years in prison for consensual homosexual sex. Idaho was the only state that still permitted a life sentence for sodomy, and that maximum sentence had impacted the sentence given to Hayes. The appellate court ruled that it was appropriate to issue such a sentence for consensual sex because the wording of the law made no mention of violence or harm but rather was grounded in the premise that homosexual sex is harmful to society inherently, and that the century in which the law had stood on the books without change demonstrated that it represented the wishes of the citizenry of Idaho.

The American Civil Liberties Union (ACLU) began an attempt to repeal Idaho's sodomy law, without success. In fact, subsequent sex offense laws in Idaho reinforced the law's condemnation

of homosexuality, including sodomy, on the list of crimes requiring the offender to register with the sex offender registry for life.

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See Also: American Civil Liberties Union; Sodomy; Strikes.

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Identity Theft

Identity theft has become a major crime in the United States, negatively affecting individuals and businesses alike. The Federal Trade Commission (FTC) estimates that around 9 million victims are affected annually. According to the FTC, identity theft is the unauthorized use of ones personally identifying information such as name, Social Security number, and credit card number by someone to commit frauds or other crimes. Identity theft can cause major disruptions to a person's health, business, finance, and life. It is important to detect identity theft as soon as possible by monitoring one's credit report regularly. Identity theft will require a great deal of time, energy, and resources for the victims to recover from the theft.

While there is no established record of the first case of identity theft, the *Oxford English Dictionary* notes that the phrase was coined in 1964. Identity theft can happen in different ways. The thieves can use the victim's name to rent housing, set up phone lines, or open a credit card account. Unless one monitors credit reports diligently, the victim might not know about the theft until a debt collector contacts them or he or she receive bills for charges they did not make.

Identity theft has become a lucrative business, and causes adverse financial burdens for its victims. Some victims might have to pay hundreds of dollars and spend days recuperating their credit and life from the theft. As a result of identity theft, some victims can also be denied housing or job opportunities, education loans, and the like.

Methods

Identity thieves have several ways to obtain a victim's information. The FTC lists the following methods: dumpster diving, skimming, phishing, address changing, old-fashioned stealing, and pretexting. With dumpster diving, the identity thieves search through garbage for bills and other documents with the victim's personal information on it. The thieves can also use skimming to extract information from ones credit or debit card numbers with a special storage device when processing your card. In phishing, they are disguised as financial institutions or businesses sending the victim spam or pop-up messages to get he or she to give out their personal information. The thieves can also change a victim's address to redirect billing statements to a different location by filing a change of address. Thieves also use old-fashioned stealing, including misappropriating wallets, purses, bank and credit card statements, preapproved credit offers, new checks, or tax information. They can also steal personal records or bribe those with access to them. Pretexting takes place when thieves make false pretenses to acquire personal information from financial agencies, telephone companies, and other places.

After the thieves have stolen the victim's personal information, they can use it in a multitude of ways. Some of the most common ways include credit card fraud, phone or utilities fraud, bank/finance fraud, and government documents fraud. In a credit card fraud, the thieves may open new credit cards in the victim's name, whose bills they might not pay, resulting in delinquent accounts listed in your credit report. They may change the billing address on the victim's credit card and incur charges. Since the victim no longer receive bills, he or she would not notice the problem immediately.

Phone or utilities fraud takes place when an account is opened in a victim's name or when charges take place in an existing account without his or her knowledge. The thieves can use

this name to sign up for utility services such as electricity, heating, cable TV, or gas. Bank/finance frauds involve the thieves' creating counterfeit checks with a victim's name and account number, or opening a bank account in his or her name and writing bad checks. They might also clone ATM or debit card and withdraw money from bank accounts, or get a loan in the victim's name. Thieves can use personal information in government documents fraud, to get a driver's license or official ID card issued in the victim's name but with the thief's picture, to get governmental benefits, or to file a fraudulent tax return.

Identity thieves may use a victim's information to get a job using his or her Social Security number, rent a house, get medical services, or to give personal information to the police during an arrest. When they fail to show up for their court date, a warrant will be issued for the victim's arrest.

Consumer Sentinel Network

Once a person suspects that he or she is a victim of identity theft, his or her credit report needs to be investigated. If such is the case, the victim should issue a fraud alert on his or her record. In particular, to protect consumers from identity theft, the FTC has established measures to help the organization detect, deter, and defend against this crime. These three steps help consumers take charge of the situation and prevent or battle identity theft effectively. The Consumer Sentinel Network (CSN) is a secure online database with millions of consumer complaints available only to law enforcement. Besides storing complaints received by the FTC, the CSN also keeps tracks of complaints filed with the Internet Crime Complaint Center, Better Business Bureaus, Canada's PhoneBusters, the U.S. Postal Inspection Service, the Identity Theft Assistance Center, and the National Fraud Information Center, among others. Law enforcement partners, wherever they may be in the nation and around the globe, can access the database for investigations.

The CSN was set up in 1997 to collect fraud and identity theft complaints and has received more than 5.4 million complaints. In 2009 alone, the CSN received more than 1.3 million consumer complaints. Since the CSN also stores complaints transferred from other organizations, the total number of complaints is usually higher than that found in the initial annual reports.

Federal Efforts

Because of the extensive impacts that identity theft has had on the American public, President George W. Bush established the President's Task Force on Identity Theft by Executive Order 13402 on May 10, 2006. The task force was to spearhead the combat against identity theft and to help ease the tremendous financial and emotional burden that identity theft victims experience. The task force was also to work with other governmental agencies to eradicate this crime.

The task force aims at crafting a strategic plan to optimize federal government's efforts in creating awareness about, forging prevention against, instigating detection of, and carrying out prosecution against identity thefts. The task force is chaired by the attorney general and cochaired by the chairman of the FTC.

The task force focuses on various areas, including law enforcement, education, and government safeguards. In the area of law enforcement, the task force looks at the legal tools that can be used in preventing, investigating, and prosecuting identity theft crimes. The task force also examines ways to recover the proceeds of these crimes and to make sure that the punishment of identity thieves is just and effective.

In the area of education, the task force reviews the education efforts carried out by governmental agencies and the private sector on how individuals and businesses can protect their personal information. In the area of government safeguards, the task force works in tandem with several federal agencies in determining how the government can augment the regulations to maximize the security of personal data kept by the government and private businesses.

The task force also engages in a wide range of activities to involve and inform the public in the fight against identity theft. The task force organizes meetings, talks with stakeholders, and solicits public comments on major issues pertaining to identity theft. The strategic plan aims to strengthen efforts of federal, state, and local law enforcement officers; to inform individuals and businesses on how to deter, detect, and defend against identity theft; to aid law enforcement officers in capturing and prosecuting identity thieves; and to amplify the measures employed by federal agencies and the private sector to guard the personal data they hold.

As part of its responsibility to help resolve problems caused by identity theft, the FTC has developed the Guide for Assisting Identity Theft Victims, which can be found on the task force Website, to aid attorneys and victim service providers when working with pro bono clients.

Internet-Based Crime

Of all the methods employed by identity thieves, phishing—also known as Web spoofing or carding—is the most current and is likely the most prevalent in the future given the usage and business activities conducted online. Looking at client-side defense against Web-based identity theft, Neil Chou et al. from the Computer Science Department at Stanford University predict that phishing will continue to be a problem in the years to come.

Web spoofing is a major form of Internet crime, affecting as many as thousands of individuals on a daily basis. Typically, a bulk e-mail will instigate the fraud, urging unsuspecting consumers to click on a link that leads them to a spoofed site. The consumer will then be asked to log in, and once username and password are entered, the identity thieves can access the consumer's account, usually to make withdrawals or to cause other harm.

It is necessary to pay special attention to Web spoofing because phishing can become more sophisticated in the future, while nonexpert Internet users might not be up to speed with the new tactics employed by spoofers. There has also been an exponential increase in phishing cases over the years. The agents of the U.S. Secret Service San Francisco Electronic Crimes Task Force received more than 75,000 complaints in 2002, three times the amount filed the previous year. The estimated monetary loss was \$54 million, compared to \$17 million in 2001. Most of the \$37 million increase in loss in 2001–02 was attributed to Web spoofing.

Victim Advocacy

Several nongovernmental organizations have stepped in to assist identity theft victims in restoring their identity. The Identity Theft Assistance Center (ITAC) provides assistance to victims at no charge. The ITAC has helped tens of thousands of victims defend against identity theft. According to the ITAC, it is not possible to eradicate identity theft, but it is possible to manage it.

A consumer advocate on identity fraud and the financial services industry's identity management solution center, the ITAC is affiliated with the Financial Services Roundtable and is supported by the industry as a free service to its clients. Since 2004, ITAC has aided tens of thousands of consumers in restoring their identity.

Members of the ITAC provide free ITAC victim assistance service to those who surmise that their identity might have been stolen. ITAC minimizes the time to resolve a case by assigning a single point of contact to each case. A trained agent will help the customers recognize questionable transactions and inform all the companies with possible frauds. The client will receive documentation of the related incidents, which can be useful to law enforcement or other account holders. Because of its quality services, the ITAC has a 98 percent rate of customer satisfaction.

With ITAC Sentinel, consumers can be proactive in protecting their identity. This service alerts consumers to changes in their credit report, signaling them to act before serious harm takes place. The ITAC Sentinel includes ITAC Victim Assistance and gives immediate help to those who need it but are not a customer of an ITAC member company. ITAC Sentinel subscribers receive ongoing protection.

ITAC Sentinel is a useful way to manage the risks found in data breaches. Because of its services, the ITAC is seen by law enforcement as an important resource in combating identity theft. The ITAC has data-sharing agreements with the FTC and the U.S. Postal Inspection Service, hence making relevant information about identity theft available to investigators and prosecutors across the states.

To equip its customers with the right knowledge and skills to combat identity crimes, the ITAC emphasizes consumer education. On this front, ITAC partners with national education initiatives, including the Alliance for Consumer Fraud Awareness, National Cyber Security Alliance, the Identity Theft Council, and Protect Your Identity Now.

As a source of fact-based information on identity theft, ITAC offers news, information, and opinion through its consumer Website and the official ITAC blog. The blog provides a space for the exchange of opinion, ideas, and best practices among industry professionals, policy makers, attorneys,

information security and privacy experts, law enforcement, and academics.

In spite of the availability of services such as the ITAC, the best defense for each consumer is knowledge and awareness about identity theft. Consumers should also be aware of their rights in order to protect themselves and to take the proper actions toward having a credit report free of fraudulent accounts.

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See Also: 1921 to 1940 Primary Documents;
Computer Crime; Embezzlement; Fraud; Larceny.

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Illinois

Early European settlement in Illinois clustered around the riverine lands that form a U shape at the state's tip and was tied to the commercial life of the Mississippi River system. Beginning in the mid-19th century, canal, railroad, and automobile transportation continually shifted the state's center of population north. While Chicago's gangsters, molls, notoriously corrupt policemen, and politicians have stolen most of the headlines, inhabitants in the rest of the largely rural state long have faced criminal justice challenges based on their distinct demographic, social, political, and institutional realities.

By the 1850s, advances in communication and transportation helped to integrate rural Illinois

into the vast system of exchange that was developing around the Empire City of the west. This provided the means by which the state's population grew and spurred the building of institutions of criminal justice. The 1818 state constitution set up four judicial circuits with legislatively appointed, circuit-riding judges; to hear lesser criminal cases, the legislature soon created a system of justices of the peace for each county. In 1848, a new constitution established a supreme court, nine circuit courts with elected judges, and county courts with jurisdiction over lesser criminal cases (justice of the peace courts persisted). Appellate courts were added in 1870. For all counties except the Chicago area, this overlapping warren of courts persisted until 1964, when the state consolidated all trial courts into unified circuit courts.

While the legislature pared down capital offenses to only the most egregious crimes in the 19th century, it continually expanded the law's criminal provisions. By one count, offenses multiplied from 131 in the 1850s to 460 nearly a century later. By the early 1960s, there were 800 sections of substantive law and more than 300 sections of procedure. The Criminal Code of 1961 shrank the substantive law to less than a quarter of that size. A characteristic change was the repeal of 74 sections dealing with theft in favor of a single comprehensive offense. A new code of procedure was adopted two years later. Nevertheless, codification has not restrained subsequent legislatures.

Law Enforcement

In early Illinois, sparse settlement left geographical gaps in the authority of state and federal law. Prior to the coming of the steamship, for example, the notorious pirates at Cave-in-Rock along the Ohio River preyed on Illinois travelers. The existence of other sovereigns posed another challenge. Although European settlement led to the diminution and displacement of native peoples, there was more than a century and a half of cohabitation. In cases of cross-cultural homicide, peace required negotiation. In 1811, Pottawatomie leaders refused to hand over a group of native men to face trial in Illinois courts or to kill the warriors themselves, on the grounds that the Euro-Americans refused to reciprocate by handing over white suspects. This was an important factor that led the territorial governor to make war on the

recalcitrant tribe in 1811 and 1812. By contrast, when two Winnebago suspects were handed over to the Illinois authorities and executed 10 years later, the U.S. War Department paid reparations to their kin in an improvised version of the indigenous practice of “covering” the dead.

Even after questions of sovereignty were resolved, limited institutional capacities and a reliance on popular sentiment presented challenges for law enforcement in Illinois. In the late 1860s, a family feud known as the Bloody Vengeance resulted in a spate of murders in Williamson County—the first in a long series of lawless tragedies that gave the county the nickname “Bloody” Williamson. In this case, the county sheriff could rely on a few employees and the ability to call out

a *posse comitatus*, with only the nonprofessional state militia in reserve, and was effectively powerless to intervene.

In other cases, thorough integration into broader political and criminal networks compromised law enforcement. By the last third of the 19th century, the Chicago Police Department was part of a ward-based system of political authority that typically tolerated—instead of fought—the city’s many gambling dens, houses of ill repute, and criminal syndicates. To mitigate the outcry of the city’s middle classes, vice districts were located in the city’s immigrant (and later, African American) neighborhoods. The most notorious of these districts was the Levee, located within the south side First Ward, which flourished in the two



This 1851 print published in New York depicts the June 27, 1844, murder of Mormon leader and founder Joseph Smith by a mob who broke into Carthage Jail in Hancock County, Illinois, where Smith was being held on charges of treason. The Mormon leader and his followers had only recently moved to Illinois after suffering harassment in Missouri.

decades around the turn of the century under the watchful eyes of aldermen Michael “Hinky Dink” Kenna and “Bathhouse John” Coughlin. While prospering from the graft paid by saloons, brothels, and gambling halls, they also sponsored the rise of Chicago’s first big mob boss, “Big Jim” Colosimo. Of course, corruption was not exclusive to Chicago. A gang war between “Bloody” Williamson’s rival bootleggers, Charlie Birger and the Shelton brothers, resembled nothing so much as Chicago’s beer wars of the 1920s, in which Colosimo’s former lieutenant, Johnny Torrio, and his protégé from Brooklyn, Al Capone, rose to bootlegging prominence. In both cases, the decentralized infrastructure of law enforcement left individual officers and police districts vulnerable to outside influence. When vice interests corrupted local ward (or county) officials, there was no centralized authority that could effectively prosecute.

The enforcement of the will of majorities against minorities in violation of law represented a problem of a different order. Joseph Smith and the Mormons created Nauvoo in 1839 after fleeing from Missouri. Almost immediately, they became embroiled in conflict with their Hancock County neighbors, who feared Smith’s political domination. In 1844, a mob consisting of many of the county’s best citizens stormed the jail where Smith was being held on treason charges and murdered him.

Similarly, in Williamson County, conflicts over the unionization of coal mines repeatedly spurred deadly violence from the 1890s through the 1920s. The worst of these battles, outside the town of Herrin in 1922, began when 500 striking union miners pinned down 50 professional strikebreakers and prison guards in a gun battle in which two union miners were killed. When the owner’s men surrendered, based on a promise of free passage out of the county, the angry strikers took their vengeance. On the march to town, they killed and mutilated 18 prisoners. Elected to office by the unionized miners, the sheriff did little to stop them; moreover, juries condoned the massacre by finding everyone who was prosecuted not guilty.

Black history, as first charted by Ida B. Wells’s studies of lynching, recapitulates this theme. Wells recorded three lynchings in Illinois in 1893 and 11 others from 1893 to 1924. During 20th-century race riots, black people were indiscriminately

murdered by whites in Springfield in 1908 (seven dead), twice in East St. Louis in 1917 (at least 48 dead), and in Chicago in 1919 (38 dead). These acts resembled the Herrin massacre in the frenzied nature of the violence and in the failure of authorities to hold anyone responsible.

Moral conflicts have divided the populace and hamstrung law enforcement. Between 1830 and 1850 in Massac, Pope, Ogle, and DeKalb counties, armed citizen groups calling themselves “the Regulators” took the law into their own hands. They justified their actions by claiming that criminal justice officials in their counties were affiliated with lawless elements, including murderers and horse thieves. The line between the just and the criminal blurred quickly. Temperance and prohibition movements produced similar divisions, as advocates attempted to impose greater restraint on a masculine subculture of violence. In Williamson County, skepticism about the sheriff’s willingness to enforce Prohibition led the Ku Klux Klan to take matters into its own hands. Many Klansmen were at one point deputized by S. Glen Young, a former federal agent. However, Young far exceeded his minimal authority, leading Klansmen into a virtual war with bootleggers, Catholics, and others, before dying in a drugstore shoot-out. Unlike spasms of popular violence, the Regulator and Klan wars stymied law enforcement by pitting popular factions of equal strength against one another.

When crimes have made it into the courts, they have rarely gone to trial. This is well known for Chicago’s overburdened courts, but it is also true in rural Illinois. From 1870 to 1960, less than 15 percent of criminal cases went to trial in the courts of rural Menard and Bond counties. Prosecutors dropped a plurality of cases (46 percent in Bond, 45 percent in Menard); a quarter ended in guilty pleas (28 and 23 percent, respectively). While the number of guilty pleas rose considerably over time, this was in large part because of the changing composition of charged offenses. In the 1870s, criminal dockets were dominated by moral offenses and interpersonal violence, which declined over time in favor of property and public safety offenses, including serious traffic violations.

Punishment

In early Illinois, the scarcity of labor augured against imprisonment as punishment in favor of



The Blue Ribbon mine in Williamson County, Illinois, in 1939. The county was plagued by violence and labor conflicts in the 1920s. In the most violent incident of that era, a strike by 500 union miners led to a gun battle in which two miners were killed, and 18 guards and strikebreakers were then murdered in retaliation. Local juries later acquitted everyone who was prosecuted.

the pillory and public whippings, accompanied by fines. Officials auctioned the labor of offenders who could not pay. The building of Alton prison in 1833 reflected the settling of the state. Beginning with the conviction of Sally Jefferson in 1835, women were imprisoned in the same institutions as men; after 1896, women's prisons were built. At Alton, the state leased the entire prison to a contractor, with license to use the labor of its prisoners for profit. Convict labor was used to build a new prison at Joliet, which opened in 1860. When Joliet became too small, a second state penitentiary was built at Menard in 1878—a particularly advantageous location because it could be reached by water in the event of a railroad strike. The convict-leasing system came under attack in the 1860s, when the legislature put the prison under the control of a commission that had no financial interests in the prisoners. This led to a massive increase in expenses and destroyed the basic system of prison discipline, heretofore oriented around work.

In the 20th century, prison wardens employed diverse strategies to control their institutions. In building Stateville in 1925, the state employed architecture as a medium of authority. All prisoners in the round, four-deck structures could be observed from a central point. The awarding and withholding of benefits were common solutions. The 1922 Classification Act was intended to separate offenders by type, according to their treatment needs. By integrating the entire system, the act created a threat—transfer to a less desirable location—that wardens could use as a tool of control. Indeterminate sentencing provided incentives as well. From 1833 until 1872, the jury decided sentence length. Thereafter, Illinois adopted “good time” credits and, in 1895, went to a scheme of indeterminate sentencing in which prison officials could release prisoners at any time. Though the system was occasionally modified, it remained in place until 1978, when the state created a system of determinate sentencing. This change was later

reinforced by a truth-in-sentencing law that permitted less use of “good time.” Finally, punitive segregation and other highly authoritarian forms of discipline, like that imposed by Joseph Ragen at Stateville from 1936 to 1961, played an important role. Control strategies reached their apex with the invention of the “supermax” at the federal prison in Marion. Built in 1963, the prison went into total lockdown after an eruption of violence in 1983 in which an inmate killed two officers. Pioneering a model that subsequently has been adopted all over the country, Marion isolated its prisoners in their cells for 23 hours a day. The state of Illinois opened up its own supermax facility, Tamms Correctional Center, in 1998.

Although Illinois prisons were often overcrowded, the rate of incarceration was relatively stable before 1970. Thereafter, the number of prisoners grew from 7,300 to 47,000 by 2005, at an incarceration rate of more than 370 per 100,000 persons. Moreover, this was a fraction of all people under state supervision: 188,000 were in county jail, state prison, or on probation or parole. By 2005, blacks were imprisoned in state prison at a rate more than nine times that of whites (2,020 per 100,000 compared with 223), and Latinos nearly double the rate of whites (415 to 223). Since 1990, the female inmate population has grown at more than double the rate of the male, largely because of the drug sentences that by 1999 made up 40 percent of all Illinois prison sentences (up from 17 percent in 1988). To handle this growth, the Department of Corrections built nine new facilities in the 1990s, raising to 48 the total number of facilities, of which 35 are for confinement.

In the past decade, the death penalty became a major subject of controversy. Between 1818 and 1962, Illinois executed 348 people. Following the Supreme Court’s ruling in *Furman v. Georgia* (1972), the state almost immediately enacted a new capital punishment statute, although there were no executions until 1990. Over the next decade, 12 prisoners were executed, before Governor George Ryan declared a moratorium in 2003 following a rash of exonerations of innocent people and concerns about the role that torture by Chicago police commander Jon Burge played in securing the convictions of others. In 2005, Ryan commuted the sentences of the

remaining 167 death row prisoners. In 2011, the Illinois legislature abolished the death penalty.

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See Also: 1801 to 1850 Primary Documents; Chicago, Illinois; Ragen, Joseph; Strikes; Supermax Prisons.

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Immigration Crimes

U.S. immigration has gone through the following four distinct periods: colonial, mid-19th century, the beginning of the 20th century, and post-1965. Each of these waves differs by the racial and ethnic groups migrating to the United States. During the colonial period of migration, most immigrants were from Europe and arrived as indentured servants. During the mid-19th century, there was a sharp increase in migration from northern Europe. In the next period of immigration, there was an increase in migration from eastern and southern Europe. Finally, during the last period of immigration post-1965, the majority of immigrants came from Asia and Latin America.

During periods of migration, there have been restrictions placed upon who is admitted into the United States. During U.S. history, there have been quotas based on national origins. Other restrictions have included excluding anarchists and polygamists.

Entering a country without legal authorization is a crime against immigration laws. Those who enter a country illegally the first time can be charged with a misdemeanor. Committing

that same offense more than once can result in a felony. Another type of immigration offense includes evading inspection by an immigration official. Misleading immigration officials in an attempt to enter the country is also an immigration offense. These offenses are punishable by fines or incarceration.

Penalties for immigration violations increase once a person who has been deported reenters the United States illegally. Those who are deported on criminal grounds face imprisonment for 10 years should they choose to reenter the United States illegally. Under United States Code (U.S.C.), those who are convicted of an aggravated felony and reenter the United States illegally after being deported face a 20-year prison sentence. Using false documents, harboring undocumented immigrants and falsely claiming U.S. citizenship are also punishable by incarceration. Once apprehended, undocumented immigrants are more at risk of being incarcerated because of their treatment by the criminal justice system.

Enforcement

The federal government has jurisdiction over immigration policy. Policies set at the federal level must be enforced at the state and local levels. State and local agencies are obligated to set up programs designated by the federal government with little to no financial support from the federal government. Federal immigration policies have a direct impact on government spending and resource allocation at the state and local level. States and local governments take on numerous costs because of the regulations created at the federal level.

There has been a debate over whether state and local law enforcement agencies should enforce federal immigration laws. Those opposed to law enforcement taking on the role of immigration enforcement include people in the immigration community and local law enforcement officers. Local law enforcement officials work extremely hard to build a relationship with the immigrant community. The immigrant community needs to have a level of trust in law enforcement to report crimes and to serve as witnesses. One of the other worries regarding state and local law enforcement agencies aiding in immigration enforcement is that it can create the potential for racial profiling



U.S. Customs and Border Protection agents searching an offender, whose face has been obscured, during a drug-related arrest at Arizona's border with Mexico. In 2003–04, there were 9,500 border agents like these protecting the U.S. borders.

and civil rights violations because of their lack of training. Even though the agencies that participate in immigration enforcement receive some training, it is not to the extent that they need. They do not have the experience or knowledge of how to approach immigration enforcement. In order to address some of the training issues, the Department of Justice (DOJ) proposed that state and local agencies who wanted to enforce immigration laws could enter into a Memorandum of Agreement (MOA) with the DOJ.

As of early 2007, numerous counties and states, including the Arizona Department of Corrections, enlisted in an MOA with the DOJ. Agents who are given additional immigration enforcement authority are only permitted to investigate someone under typical law enforcement duties.

Law enforcement officials are not supposed to stop people for the sole purpose of investigating their legal status. Some believe that if state and local officials are trained by federal officials, it will reduce the likelihood of racial profiling.

In communities where state and local agencies have taken on the role of immigration officers, there has been controversy surrounding this partnership. Racial profiling has been a claim asserted by many in communities where state and local law enforcement have been enforcing immigration laws. Discrimination and abuse of power have both been alleged against numerous state and local agencies assisting in this cause. Racial profiling by law enforcement for purposes of immigration enforcement can lead down a dangerous path. Racial profiling can lead to negative stereotypes about a particular race and ethnicity. Even though racial profiling does not increase efficiency, studies have shown that it is actively used by many state and local law enforcement agencies.

Legal residents and citizens have felt targeted by these programs simply because of their race or ethnicity. This can lead to feelings of resentment against all agencies of law enforcement. As these types of programs continue in some communities, those who feel targeted may decide to leave their communities because of feeling discriminated against. In some states, there is a target group; in Arizona, the target group is Hispanics. Groups of undocumented immigrants will resort to living in the shadows.

Historical Perspective

One of the earliest U.S. immigration policies targeted Chinese immigrants. In 1882, the Chinese Exclusion Act, set by Congress, limited immigration from China, prohibited Chinese immigrants from acquiring legal status, and mandated the deportation of Chinese workers. One of the consequences of the mass deportations of Chinese workers was that it created a shortage of low-skilled workers. In the southwest region of the United States, where Chinese workers had been predominantly employed, growers in the agricultural industry began to look for other sources of cheap labor. Growers began recruiting Mexican laborers to take the place of recently deported Chinese workers. During the 1920s, Americans

began to express concerns over illegal immigration from the southern border.

The 1920s were marked by the introduction of legislation aimed at decreasing immigration altogether. The 1924 Immigration Act required anyone who wanted to enter the United States to obtain a visa, and also set a quota system for immigrants from every country. Public and political concern began to grow over immigration. In response to immigration concerns, the U.S. government founded the Border Patrol Agency (BPA) in 1924. The BPA became responsible for guarding the border in order to deter illegal immigration. During the 1920s, there were countless deportations of Mexican undocumented immigrants. The concern over undocumented immigrants did not last long because in 1942, the U.S. government initiated the Bracero (temporary worker) program to provide agricultural labor.

Border Security

Most of the attention and resources allocated by government have gone toward securing the U.S.-Mexico border. Securing land borders is a complex and expensive task. There are several issues that need to be addressed when examining current border security measures. Perhaps one of the most influential factors in the way that border security measures are implemented and carried out is through immigration policy. Immigration policies can be used to potentially mitigate the amount of activity that takes place around the border. Some of the strategies that could be used to lessen activity around the U.S.-Mexico border are to increase security measures, emphasize the legal means of entering the United States, enforce the laws already in place, and support economic activity in Mexico.

Border security is one of the central issues at the forefront of national security. Securing the borders plays a significant part in maintaining protection from unauthorized individuals and other potential threats. Increasing security measures around the southern border has not deterred immigrant motivation to cross the border; additional security measures only make the journey more difficult for them. Deaths around the border have increased over the past decade because in order to avoid detection, undocumented immigrants attempt to cross the most dangerous,



A Mexican contract worker weighing cotton picked in Perthshire, Mississippi, in 1939. After a crackdown on undocumented immigrants in the 1920s, waves of new workers would still be occasionally invited when labor needs dictated.

unguarded, treacherous mountain and desert terrain. Strict border security measures along the California and Texas borders have resulted in increased activity along Arizona's most notorious terrain. The increase in the number of deaths along the U.S.-Mexico border has caused both national and international human rights groups to declare this a humanitarian crisis.

Workplace Enforcement

Immigrants are vilified for trying to obtain employment while bypassing the visa program, but their employers typically escape with little or no punishment for hiring them in the first place. American businesses are partly to blame for the current state of the broken immigration system. Jobs are part of the reason that individuals

immigrate illegally. Many employers do not do enough to investigate an employee's legal status. Businesses who hire undocumented workers need to be held to higher standards. Politicians choose to punish immigrants while turning the other way when big businesses break the law. Congress does not want to disrupt the economy, so instead it focuses attention on immigrants.

Border security is given higher priority than workplace enforcement. From 2003 to 2004, the Immigration and Customs Enforcement Agency requested \$23 million for worksite enforcement and received only \$5 million, while the BPA received \$74 million. There are substantial staffing differences between border and workplace enforcement agencies. There were a total of 124 full-time employees assigned to workplace enforcement while there were 9,500 border agents assigned to border security from 2003 through 2004. Government agencies have not shown that worksite enforcement is as much a priority as border enforcement or that American businesses should be held as accountable as undocumented immigrants for breaking the law.

The current law simply states that employers are not permitted to knowingly hire undocumented workers. The claim of ignorance allows employers to escape without suffering many consequences. In 2007, only 2 percent of workplace arrests were of employers and the other 98 percent of arrests were of undocumented immigrant employees.

E-Verify is an employment verification program that is administered by the U.S. Citizenship and Immigration Services and supported by the Social Security Administration. In April 2008, an estimated 61,000 of the 7.4 million nation's employers had registered for the program but only half of those actively used it. E-Verify is a voluntary program but in Arizona and Mississippi, employers are mandated to use the system when determining the eligibility of potential employees. There has been some discussion about making E-Verify a mandatory nationwide program. There are estimates that using the E-Verify program from 2009 through 2012 would cost approximately \$765 million if recently hired employees were the only ones checked.

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See Also: Border Patrol; Chinese Americans; Customs Service as Police; Deportation; Hispanic Americans; Racism; Xenophobia.

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Incapacitation, Theory of

Incapacitation refers to physical restrictions used to mitigate or eliminate a person's ability to commit a criminal offense. It is generally recognized as constituting one of the four primary justifications for the use of punishment in criminal justice systems—the other three being deterrence, retribution, and rehabilitation. Along with deterrence and rehabilitation, it is a "forward-looking" philosophy that seeks to prevent future offenses, whereas retribution is used to redress social inequity caused by past offenses. Unlike deterrence or rehabilitation, however, incapacitation is aimed at not merely dissuading would-be offenders, nor mitigating the likelihood of crime through rehabilitation, but at physically restricting the possibility of an individual to commit criminal activity.

Rehabilitative Model

Historically, the use of incapacitation dates back to the earliest recorded uses of punishment. However, prior to the modern age, the logic of incapacitation was less prevalent than that of retribution, although forms of punishment such as banishment, physical amputation and branding, and capital punishment frequently served dual

purposes. In the 18th century, the emergence of deterrent uses of punishment was popularized by the Italian Cesare Beccaria, who argued that imprisonment was a more effective form of deterrence than torture or death. Incarceration became an increasingly common form of punishment throughout the 19th century in Europe and the northern United States, influenced first by deterrence theorists and later by reformers and physicians who believed that criminals were a product of poor social environments and thus could be reformed given the proper motivation and guidance. This rehabilitative model of punishment became the dominant one, at least in northern states, by the middle of the 19th century. Under this approach, it was common for criminals to receive wide-ranging sentences; for example, five years to life, and the use of such indeterminate sentencing was standard in the United States throughout much of the 20th century. Beginning in the 1970s, however, criticism of this model had begun to grow, both from conservatives who argued that rehabilitation was ineffective and from liberals who argued that it led to wide racial disparities in sentencing. In the late 1970s and 1980s, several states as well as the federal government adopted the use of determinate sentencing, which replaced indeterminate-range sentences with much narrower ranges or fixed terms. This constituted in part a return to a more retributive approach to justice, characterized, for example, in the rise of "just deserts" that took the position that punishment should reflect only the seriousness of the offense. However, determinate sentences were also supported by criminologists such as James Q. Wilson, who argued that increasing the use and length of incarceration would reduce crime by incapacitating a larger number of offenders for longer periods of time.

Determinate Sentencing

This general incapacitation effect was popular among many conservatives and was a central part of their support for determinate sentencing. However, it was also criticized by policy makers, prosecutors, and judges who viewed such a strict use of incapacitation as a blunt and costly means of crime control. A primary criticism was that offenders who posed little risk of reoffending were given similar sentences to those who posed much

greater risks of reoffending. A shift in the use of incapacitation emerged in the 1980s, partially as a result of Marvin Wolfgang's earlier cohort research that had suggested a smaller number (roughly 6 percent) of individuals were responsible for a much higher number of serious crimes. Following this logic, other research, particularly that of Peter Greenwood and his colleagues in the 1980s, found that the early identification of such serious offenders would allow for a more precise, or selective, use of incapacitation to the degree that offenders more at risk to recidivate could be identified and given longer sentences or more intensive supervision. Greenwood's research has been criticized for several reasons, most directly for methodological errors that may lead to false positives in the identification of high-risk offenders. However, the use of risk prediction in sentencing was already passively employed in some determinate sentencing models that took into account the number and type of past offenses (long recognized as a strong predictor of future recidivism) in determining the length of sentences. In the 1980s and 1990s, several states moved to adopt more refined sentencing schemes such as "three-strikes" or "habitual offender" laws that graduated the seriousness of sentences according to past criminal histories.

Selective Incapacitation

However, the future of selective incapacitation lay not in the use of sentencing schemes that responded to past offenses but rather in the rise of risk-assessment models that sought, as Greenwood did, to more accurately predict future offending. The use of risk-assessment instruments is today commonplace within juvenile and adult justice systems, where offenders are assessed on a range of demographic, social, environmental, and behavioral factors to determine the degree of supervision required for incarcerated offenders, the possibility of community corrections in lieu of incarceration, and the provision of treatment or rehabilitation services for offenders. Risk assessments are also used in many states without determinate sentencing schemes to determine eligibility for parole. Yet, perhaps the most decisive turn in the use of selective incapacitation exists in the rise of what is called "actuarial sentencing," which moves beyond determining levels of supervision

or parole eligibility toward the determination of sentences based on risk of serious future or violent offending. Currently, three states—Missouri, Pennsylvania, and Virginia—are using some form of this type of sentencing, and it is likely other states will follow.

Today, the most prevalent form of incapacitation is the use of incarceration. Other commonly used methods include the use of "house arrest," accompanied by an active monitoring device. The use of alcohol monitoring and ignition interlock devices is also common. The use of chemical castration for repeat sex offenders has been a controversial application of the use of incapacitation. It has been used for repeat offenders convicted of child molestation in California since 1996 and in Florida since 1997. More recently, Louisiana has allowed for its use for convicted rapists since 2008. It has also been used in varying frequencies within the last 10 years in Argentina, England, Germany, Israel, Poland, and Russia. Finally, the ultimate



An ignition-interlock breath analyzer from 2004. As a form of incapacitation, such devices require a driver to pass a breath alcohol test before they can start their car and also makes a record of the driver's blood alcohol level from each test.

incapacitant remains that of capital punishment, which has been discontinued in most Western industrialized countries but remains in use (with strong public support) in the United States.

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See Also: Capital Punishment; Deterrence, Theory of; Electronic Surveillance; Parole; Rehabilitation; Retributivism; Sentencing: Indeterminate Versus Fixed; Three Strikes Law; Wilson, James Q.

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Incest

The legal definition of incest is the act of sexual relations between two individuals who are related by blood or affinity. Incest is a sexual crime. Most states prohibit incest under criminal law and marriage law. Marriage unions between parent and child, siblings, uncle and niece, and aunt and nephew are prohibited in the United States. The laws for marriage between cousins vary by state. Twenty-six states allow first-cousin marriages, and all states allow marriage between second cousins. Maine allows first cousins to marry if they submit to genetic counseling. The United States is the only Western country that prohibits cousin marriage. Cousin marriage is legal in both Canada and Mexico, as well as throughout Europe. In the United States, criminal penalties for incest range from fines to incarceration depending upon the state.

Theoretically, the discourse concerning incest is divided along two lines. The first, historically older perspective is represented by bloodlines and the newer perspective on incest is defined by desire. Michel Foucault's definition of sexuality helps to construct the older perspective. He describes a definition of sexuality wherein the

family is solely defined by biological relationships. Therefore, the goal of sexual relations is procreation to expand the family. According to this perspective, incestuous behavior crosses the boundaries of kinship and its inherent goal. The contemporary perspective of organizing sexuality frames incest within broadening definitions of family relations and pleasurable sexual acts. The recent changes in kinship and family structure have led to many questions regarding the definition of incestuous behavior. Increasingly, the family structure has changed so that the definition of family is not solely based upon bloodlines. The diversity of the family unit now includes adoptive parents, stepparents, and informal ties.

Sibling Incest

Types of incest include parental and sibling incest. Contrary to popular belief, research has found that cases of sibling incest are more common than parental incest. Sibling incest has been defined as a range of behaviors that can include touching, indecent exposure, masturbation, oral sex, anal sex, digital or object penetration, and intercourse between brother and sister or same sex siblings. Sibling incest is sometimes difficult to differentiate from developmentally normal exploration and sexual curiosity. Several factors need to be considered in order to decide if the crime of incest has occurred, such as the age difference between parties, the type of sexual behavior including frequency and duration of this behavior, motivation of the offender, and voluntariness of the parties. Specific prevalence rates of sibling incest are difficult to determine because there is a dearth of research on this phenomenon, and the information that has been gathered is mainly from case studies and clinical files. Additionally, research has found that cases of sibling incest are underreported. The typical age difference between the victim and offender involved in sibling incest crimes ranges from two to 10 years. The most common pairing found among incidents of sibling incest is the brother-sister dyad, and the majority of these crimes are initiated by the brother. One possible explanation that sexual relations among siblings are more common than parental incest is that the taboo against sibling incest is weaker. Taboos against incest are generally found in most cultures throughout the world.

Phillip Jenkins, noted sociologist, argues that crimes involving children, particularly those deemed immoral by the public, are eminently newsworthy. Crime stories that focus on child victims are said to be morality campaigns that serve to ensure the media's commitment to the preservation of the ideal image of the archetypal family. Crimes committed by adults against children seemingly cross a higher threshold of perception of victimization than adult-on-adult crime. Nonetheless, research has found that sexual crimes against children are underrepresented by the media, compared to other crimes involving children, thus preserving the image of the model family. Public abhorrence of incest and the assertion that this crime only occurs among families of low social status is reflected by the popular media.

Effects of Sexual Abuse

Sexual abuse behavior has been documented by mental health professionals as both serious and traumatic. Incest as a type of sexual abuse is particularly damaging because it disrupts the victim's primary support system, which is the family. The victims of incest typically experience profound psychological, sexual, and relationship problems. Severe depression, increased anxiety, suicidal thoughts, and sexual promiscuity are very common among sexually abused women. Victims of sibling incest endure continuing difficulties such as mental health challenges, low self-esteem, and subsequent sexual, emotional, and physical victimization. Research has found a connection between incest victimization and future incidents of abuse later in life. Victims of sibling incest experience a greater likelihood of victimization as an adult compared to other non-abused children. Studies have found up to 75 percent of incest victims report incidents of abuse after the age of 18.

Recent literature has linked incest and self-mutilation behaviors. Incidents of self-mutilation among incest survivors range from a low of 17 percent to a high of 58 percent. Self-mutilation can be viewed as a psychological adaptation behavior among incest survivors. Self-mutilation, while punishing the body, helps to counter the dissociative tendencies found among these victims. Moreover, incest survivors sometimes have

difficulty establishing trust in relationships. Cognitive behavior therapy (CBT) techniques have been suggested to aid survivors. The characteristics of sibling incest and the linked psychological problems among victims are similar to those found among victims of father-daughter incest. Therefore, the psychological costs of sibling incest should not be construed as less severe than those experienced by victims of parental incest. In addition to the psychological issues associated with incest behavior, scientists have raised concerns about the offspring of partners in an incestuous blood relationship and the possible biological deficiencies that result from this sexual behavior. Higher incidences of birth defects are found among this group.

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See Also: Child Abuse, Sociology of; Children's Rights; Rape, Sociology of; Sex Offender Laws; Sex Offenders.

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Indecent Exposure

Indecent exposure, often referred to as public indecency, is bodily exposure or parts of bodily exposure within a public domain. Specifically, A. Young states that "indecency laws apply to conduct or misconduct taking place in a public or quasi-public domain whereby individuals are

invited to or pay for admission.” However, the complexity of understanding indecent exposure is arguably rooted in defining the term and the shifting of perspectives. As early as the 1700s, societal norms viewed the exposure of legs, ankles, and shoulders as an indecent act—an act against the moral fabric of the prevailing cultural norms. These beliefs were upheld by the status quo throughout the Victorian period (1837–1901).

Throughout the 20th to the 21st century, the laws of public indecency predicated on both social and sexual tolerance. The transformation of sexual imagery and tolerance is predicated on what society deems sexually appropriate or inappropriate in a time-laden and cultural context. Often, what is considered by a society to be indecent is rooted in the social stigmas adhering to, reflective of, and defined by traditions, morals, and the religious genesis of that society. As such, the concept of indecent exposure is variable, culturally sensitive, and relevant.

What is considered indecent, inappropriate, sexually deviant, or offensive in one culture may not mirror the expectations and tolerance levels of another culture. For example, the definition of indecent exposure has evolved throughout history from the revealing of ones’ genitalia to one or more person in a public domain to evoke shock, to the exposure of any female body part (i.e., the public exposure of a female breasts), which is deemed unlawful in ultra-conservative states. In New York, the law extends to those who willfully expose themselves and urinate in public.

Consequently, the media has also played a visible role in carving the public’s perception of and attitudes toward indecent exposure. Contemporary platforms of communication such as social networking forums, coupled with traditional forms of communication such as television and print media, have embodied other avenues that have heightened awareness in the public domain of defining lewd and indecent acts globally. For example, while Canada does not provide a statutory definition of indecency, the law denotes that the exposure of genitalia or female nipples to anyone under the age of 14 is decided by judicial discretion and thus variable in nature. Moreover, the mere act of public nudity is not considered indecent within the general population.

The Role of Media

Media, particularly social media, facilitates shaping the landscape of how society and individuals view and react to public indecencies. Reactions to indecency are contingent on whether a particular act receives high or low visibility and coverage. When public domains such as YouTube, Facebook, and Twitter sensationalize such acts, the lens of the public tends to shift and subsequently frames judicial attitudes. Hence, laws are codified by judicial officers to define the parameters of what is deemed unlawful and harmful to the general public. For example, Young argues that three types of harm have been established supporting a finding of indecency: “(1) harm to those whose liberties have been violated when confronted with inappropriate conduct; (2) harm to society given the predisposition to others via anti-social conduct; and (3) harm to individuals participating in the conduct.” Given the inadequacy of the aforementioned constructs, recent studies have particularly focused on indecencies involving minors, although women historically have been most often impacted and victimized.

Patrick Pflaum conducted a study on indecent exposure, “Shocking and Embarrassing Displays Online: Recent Developments in Military Crimes Involving Indecent Conduct via Webcam,” and found that the military fails to provide the protection of a minor under what laws have been established and deemed harmful for minors in the general public. Pflaum further argues that the military’s defining characteristics of indecent exposure are peppered with ambiguities requiring the physical presence of an exposure with a minor, yet ignoring the harmful nature such acts have on minors. Consequently, the laws that currently embody the military justice system are suffering from a cultural lag by not maintaining a technological stride with the epoch of the Internet. Additionally, the challenge of defining indecent exposure is currently in the wake of another paradigmatic shift whereby public breastfeeding by women is categorized in some Western cultures as indecent exposure, which challenges and questions (as feminist would argue) the social freedoms of women.

Conclusion

Indecent exposure greatly reflects cultural ideologies and practices within a societal perspective.

While the definition of indecent exposure is tautological in nature and is sculpted by the evolution of societal values and the passage of time, D. Finkelhor posits that society and lawmakers would benefit by contextualizing the offense within the parameters of a given society, not by just examining the idiosyncratic nature of individual offenders.

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See Also: 1921 to 1940 Primary Documents; 1941 to 1960 Primary Documents; Children's Rights; Juries; News Media, Crime in; Sex Offender Laws; Sex Offenders.

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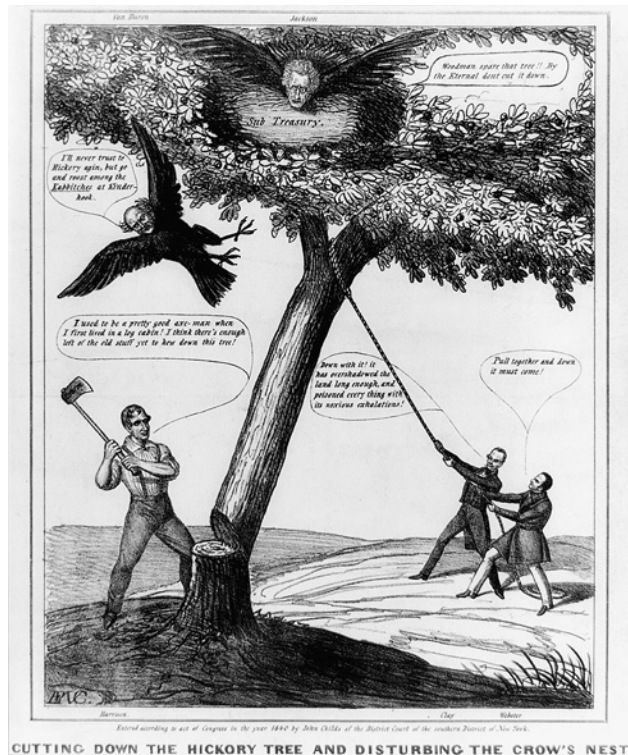
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Independent Treasury Act

The Independent Treasury Act, first passed in 1840 at the urging of President Martin Van Buren, and again in 1846, formally separated the U.S. Treasury and its policies from commercial banking. It required all federal revenues to be placed into several regional depositories, called subtreasuries, rather than in national, state, or private banks as had generally been federal practice since



This 1840 cartoon uses the figure of a woodcutter chopping down a hickory tree to portray the opposition to the independent treasury system and its subtreasuries, which Andrew Jackson originated and Martin Van Buren continued.

the 1790s. The measure also required that future payments to the national government be made in specie (gold or silver) only. Paper currency such as banknotes would no longer be accepted. This federal treasury system would generally stay in effect until the establishment in 1913 of the Federal Reserve System, which again tied the federal treasury to commercial banking. The last subtreasuries were closed in 1920.

Creation of the Independent Treasury System resulted from a long-standing political argument between Whigs and Democrats over the merits of the Second Bank of the United States (commonly called the National Bank). Besides acting as an agent of the Treasury Department and a repository for federal revenues, this semiprivate institution conducted commercial business as well. While Whigs viewed the National Bank as essential to financing national economic development, preventing dangerous financial bubbles, and sustaining a stable currency, Democrats believed it

constituted an unconstitutional, powerfully corrupt, and sinister threat to democracy and determined to eliminate it.

The conflict came to a head when Democrat Andrew Jackson assumed the presidency. Determined to “kill the monster,” Jackson vetoed the National Bank’s charter renewal in 1832, four years prior to its expiration, and then effectively defunded it by withdrawing federal revenues and placing them in numerous private state-chartered banks (derisively dubbed “pet banks” by Jackson’s opponents). Congress followed with a Distribution Act that required all surplus federal funds be distributed to the states each year.

Soon after the National Bank’s demise, the nation witnessed a dangerous overspeculation in federal land sales and certain commodities. The state banks, recently fattened with federal deposits, which they used to increase their lending capacity, fueled this behavior. Through speculative lending, they flooded the economy with paper currency. Land and commodity prices were rising dangerously and without the defunct National Bank to rein them in. Recognizing the danger of a growing financial bubble that could result in economic collapse, in 1836 Jackson issued an executive order, called the Specie Circular, requiring all payments to the federal government to be in gold or silver. Rather than head off a crisis, as Jackson had hoped, the new policy led to a drain of specie from the banks and eventually to a severe economic collapse and depression, dubbed the Panic of 1837.

A New Federal System

Jackson’s Democratic successor, Martin Van Buren, proposed that Congress create a new method for maintaining federal funds that would be totally divorced from the banking system. He reflected a desire of many Democrats for an alternative to either reestablishing the National Bank as Whigs were demanding or continuing the policy of depositing revenues in state banks as some “soft money” Democrats (those who favored inflating the currency with paper money) allied with state banking interests preferred. The onset of severe economic distress convinced many Democrats to end the policy of depositing federal revenues in state banks.

After several failures, Congress passed and Van Buren signed the Independent Treasury Act

in 1840. It created the system that, except for the Civil War, generally governed the handling of federal funds until the creation of the Federal Reserve System in 1913. All federal revenues would be maintained by the Treasury Department in several regional vaults called subtreasuries and thereby would be unavailable for speculative ventures by bankers. The measure also included a specie clause requiring payments to the federal government to be only in specie. The Whigs successfully repealed the law in 1841, after briefly winning control of Congress for one term, but the Democrats reenacted it in 1846.

Although it helped to limit excessive financial speculation, the Independent Treasury System seemed to create new problems for the economy. The specie requirement and the stockpiling of specie in the subtreasuries often served to freeze up currency circulation, resulting in excessive credit tightening. The Lincoln administration temporarily suspended the requirements of the Independent Treasury Act, finding it nearly impossible to finance the Civil War while adhering to its restrictions. Rapid industrialization of the later 19th century seemed to require a more flexible financial system while distressed debtors, particularly farmers, sparked the Populist movement, demanding relief through increasing the currency in circulation. Many blamed the severe depressions of 1893 and 1907 on lack of currency flexibility.

In 1913, Congress replaced the Independent Treasury with the Federal Reserve System, again tying the U.S. treasury to the banking system. The government gradually transferred federal funds from the subtreasuries to Federal Reserve district banks.

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See Also: Corruption, History of; Jackson, Andrew (Administration of); Lincoln, Abraham (Administration of); Securities and Exchange Commission.

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Indian Civil Rights Act

The Indian Civil Rights Act of 1968 (ICRA) applies many of the provisions of the U.S. Bill of Rights to Indian tribes (U.S.C. 25, sections 1301–3). Growing out of concern for Native Americans abused by both non-Indian and tribal agencies, the ICRA ostensibly gave federal courts jurisdiction to hear civil rights claims against tribal nations. Ten years after its enactment and considerable litigation under the act, the Supreme Court found that the court lacked jurisdiction to hear ICRA cases, considerably limiting the reach of the ICRA.

Prior to 1968, tribal governments were exempted from the limitations outlined in the Bill of Rights based on the notion that tribal sovereignty predates the Constitution. During the 1960s, however, the perceived lack of legal protections for tribal members garnered increasing attention. Abuses by federal and state non-Indian agencies, including the Bureau of Indian Affairs and local police departments, prompted several Indian organizations to voice concern for civil rights. Federal lawmakers also expressed an interest in securing rights for tribal members but focused on violations by tribal governments. Fearing that tribal governments, not bound by the Bill of Rights, might restrict the freedoms and rights of citizens under tribal jurisdiction, Congress began drafting the ICRA. Because the ICRA seeks to limit tribal self-government to reflect the Bill of Rights, some representatives of Indian tribes opposed the act, protesting that the ICRA was an infringement on tribal sovereignty. In response to this objection, the final version of the act does not incorporate the Bill of Rights in full.

Several guarantees of the Bill of Rights are modified or excluded in recognition of the diverse cul-

tural and political practices of the various tribes. The establishment clause of the First Amendment, for example, was omitted from the ICRA to respect the religious-based governments of some tribes. Unlike the Bill of Rights, the ICRA also does not guarantee the right to appointed counsel or the right to a jury trial. Moreover, the act originally prohibited tribes from imposing sentences of more than six months in prison and \$500 in fines. Since its enactment, the ICRA has been amended twice: in 1986 to increase sentencing limitations, and again in 1991 to overturn the Supreme Court decision in *Duro v. Reina*, 495 U.S. 676 (1990), holding that tribes did not have criminal jurisdiction over nonmember Indians. As a result, the ICRA now includes the exercise of criminal jurisdiction over all Indians (members and nonmembers) in the powers of tribal self-government.

Following the passage of the ICRA, federal courts began hearing cases involving civil rights violations by tribal governments. In the decade after its enactment, federal courts decided nearly 80 cases covering a wide array of civil rights issues, including civil and criminal proceedings in tribal courts, tribal voting, tribal police activities, and equal protection cases. The first case to reach the Supreme Court, *Santa Clara Pueblo v. Martinez*, 149 U.S. 49 (1978), challenged tribal membership decisions. Instead of addressing the merits of the case, however, the court disposed of the case on a jurisdictional basis. The Supreme Court held that the ICRA did not grant federal courts broad jurisdiction to review tribal government civil rights claims except those complaints arising under section 1303 as writ of habeas corpus actions. The Supreme Court's decision thus greatly circumscribed the impact of the ICRA. As a result, tribal courts are the only forum in which most ICRA protections can be enforced.

Tribal courts, therefore, bear the primary responsibility for enforcing the civil rights protections set forth in the ICRA. Although the Supreme Court's decision in *Martinez* is considered a victory for the recognition of tribal sovereignty, the case also prompted concern that there might not be a judicial forum to enforce the ICRA because tribal sovereign immunity prohibits a tribe from being sued in tribal court. As the U.S. Commission on Civil Rights noted in its 1991 Report on the Indian Civil Rights Act, the vindication of rights

guaranteed by the ICRA is contingent upon the extent to which tribal governments waive their immunity from suit. Tribal governments have accordingly been called upon to acknowledge the civil rights of their tribal members by passing legislation explicitly waiving their sovereign immunity from suit under the ICRA or by passing additional tribal civil rights laws. After *Martinez*, many tribes began amending tribal constitutions to incorporate their own version of the Bill of Rights.

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See Also: Bill of Rights; Civil Rights Laws; Courts of Indian Offenses; Indian Removal Act; Native Americans.

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Indian Removal Act

The Indian Removal Act of 1830 authorized the president of the United States to exchange unorganized land west of the Mississippi River for Indian-held land within existing states and territories. The act granted Indians perpetual title to the western land and compensated Indians for improvements made to the exchanged land in the east. In addition, the act provided for the aid and assistance of the relocated Indians for the first year of removal. All expenses associated with transportation to the west were to be assumed by the federal government, for which the act appropriated \$500,000. The act itself did not order the forced removal of the Indians or sanction the abrogation of treaties that guaranteed land rights to Indians within the states but simply empowered the president to



This 1838 print depicts Sauk leader Black Hawk, who led an unsuccessful 1832 uprising in an attempt to push back against white incursion into Native American lands in Ohio. He was taken prisoner and displayed in New York as a prisoner of war.

negotiate such exchanges. Accordingly, removals of specific Native nations were concluded by individual treaties.

The wholesale removal of the Indians was not a new idea in 1830 but had been proposed as early as 1803 by President Thomas Jefferson. Although the earliest land exchange and removal was concluded in 1817, America's policy had largely been to allow Indians to remain within the states if they assimilated or became "civilized." Increased contact, especially between the Five Civilized Tribes—the Chickasaw, Choctaw, Creek, Seminole, and Cherokee—and white settlers in the southeast, however, exacerbated existing tensions between Indians' claims to sovereignty and states' rights.

Cherokee Claims of Sovereignty in Georgia

The adoption of a federal act to address the conflict was precipitated by the Georgia legislature, which in 1828 extended Georgia's jurisdiction

over Indians within the state. After ceding lands to the federal government in 1802 for a pledge to extinguish all Indian titles to land within the state, Georgia began to doubt whether the federal government would uphold the deal when, in 1827, the Cherokee adopted a constitution asserting the independence and sovereignty of their nation. The Cherokee had negotiated treaties with the United States protecting their right against encroachment by Georgia. Like other southern states, however, Georgia claimed that Indians did not have a right to occupancy and sought to expropriate Indian lands, despite the constitutional provision authorizing the United States alone to make treaties with the Indian tribes and to acquire their territory. The Georgia legislature delayed enforcement of the policy until June 1, 1830, giving Congress and the president time to devise a plan.

In his 1829 State of the Union address, President Andrew Jackson discussed the constitutional issues raised by the Cherokee claims to political sovereignty within Georgia, expressing his belief that Indians were subject to the laws of the states in which they resided. Recommending new legislation, the president concluded that removal to western territory was the only action that could save the remaining tribes from extinction. The ensuing debate in Congress over Jackson's proposed legislation quickly divided along political and geographic lines, with Democrats and southerners supporting the act. The opposition argued that treaties with the Native Americans were the law of the land and that the Jackson administration, by refusing to enforce existing treaties, was violating the Constitution. In addition to protesting the unfair treatment of the Indians, opponents also insisted that Jackson's active participation in the legislative process was an attempt to control congressional affairs and was therefore an assault on the constitutional system.

Political Support for Removal

Proponents of the act argued that removal was the only way of ending violence against the Indians and defended the constitutional right of the states to exercise sovereignty over all residents within their borders, including Indians. Pointing to a clause in the proposed act guaranteeing that no provision would be construed as authorizing the violation of any existing treaty between the

United States and Indian tribes, Jackson and his supporters maintained that Indians were welcome to remain behind as citizens of the states, where they would be both protected in persons and property, and subject to all state laws. Emigration, while championed as the best solution for the Indians, would be voluntary.

In the end, the act narrowly passed and was signed on May 24, 1830, by President Jackson, who immediately began negotiating with the tribes. Indian removal was ultimately carried out on a forcible basis as treaties with Indians were often negotiated under duress and fraud. While some tribes peacefully relocated, many resisted the relocation policy through both legal channels and violent measures. After Georgia extended state jurisdiction, the Cherokee and Creek rejected negotiation talks with President Jackson, choosing instead to take their case directly to the Supreme Court. When the Mississippi legislature, following Georgia's lead, voted to exercise jurisdiction over Indian lands in the state, the Chickasaw similarly sought legal recourse. Forbidden from exercising tribal power and threatened with fines and imprisonment, the Chickasaw protested the contravention of treaties ratified by the United States, appealing to President Jackson to enforce federal law. In response, the Chickasaw were told that they had no alternative to submitting to Mississippi law but to move. Other tribes, including the Seminole, waged guerrilla wars against federal authorities.

Trail of Tears

In September 1830, the Choctaw in Mississippi became the first tribe to formally conclude a land exchange and removal treaty. Less than two years later, the Creek abandoned their legal challenges, the Seminole consented to relocation, and by 1832, the Chickasaw decided they could no longer live under Mississippi law. By the end of Jackson's first term, all of the Five Civilized Tribes had moved but the Cherokee. Although in 1831 the Supreme Court ruled in *Cherokee Nation v. Georgia* that the Cherokee had no standing in court to appeal Georgia's seizure of their lands, Chief Justice John Marshall wrote one year later in *Worcester v. Georgia* that the Cherokee nation was a distinct community, occupying its own territory in which the laws of Georgia had no force. Nevertheless, President Jackson continued pursuing his removal

policy and the Cherokee were forcibly evicted from their lands in Georgia by federal troops. Under increasing pressure from American intrusion and settlement, the Cherokee were finally forced to undertake a forced march west, joining the mass migration of Indians known today as the Trail of Tears of the 1830s and 1840s.

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See Also: 1801 to 1850 Primary Documents; 1851 to 1900 Primary Documents; Indian Civil Rights Act; Jackson, Andrew (Administration of); Marshall, John; Native Americans.

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Indiana

Originally a French territory in the Midwest, Indiana became a state in 1816. In the 19th and early 20th centuries, it had a perennial problem with vigilante groups and lynchings. The term *White Caps* is used to refer to several Indiana groups that lynched known and suspected criminals after the Civil War. The first famous incident involving the White Caps was the lynching of 10 members of the Reno Gang, which ended the gang's activities in 1868; the gang had begun its train robberies during the Civil War and continued in the years following, inspiring other train robbery gangs. Two of the gang members were in federal custody when they were taken away by a White Cap mob and lynched—the only time in American history that federal prisoners have been lynched before a trial.

Further White Cap activities ranged beyond violent criminals like the Reno Gang and included

lynching of horse thieves (one such group was called the State Horse Thief Detective Association). Other “moral groups” apprehended and flogged public drunks, the unemployed, and men unwilling to provide for their families, in order to encourage better behavior among the populace. As the reputation of such groups grew, they got bolder and even harassed women thought to be straying from their home and domestic duties, as well as truant schoolchildren. White Cap groups died out toward the end of the century, as the state and local sheriff's departments made it a higher priority to punish members.

Police and Punishment

One reason vigilante groups arose in Indiana is because law enforcement was sparsely distributed, and the proximity of the frontier—with its outlaws and Indian wars—was a constant source of concern for settlers. Town marshals became more common after the 1853 passage of the second Indiana constitution; while serving the same role as the modern local police force, town marshals were elected officials, not professional law officers. In many places, especially growing cities like Indianapolis and Lafayette, they were supplemented with private “merchant police,” who could be compared to either security guards or mercenary soldiers, depending on the situation. Cities and large towns typically had a formalized city watch as well, and over the course of the 19th century, paid police forces were eventually adopted, their jurisdictions overlapping with those of the county sheriffs and in some cases township constables. Early police departments were overseen by the town marshal rather than a dedicated police chief, but this changed by the end of the 19th century in most jurisdictions.

Indiana's first state prison opened in 1821 in Jeffersonville and was later known as Indiana State Prison South, in contrast with State Prison North, built in 1860 in Michigan City. Both prisons expanded their capacity over time, and from 1897 to 1918, State Prison South was used to house male inmates age 16–30, in the belief that young men should not be kept in the same prison as older career criminals. When a 1918 fire damaged most of the prison, it was replaced with a new, more centrally located prison in Fall Creek Township, near Pendleton. The new prison served



The Jefferson County Jail in Madison, Indiana, was built in 1848–50 and survived nearly unchanged into the late 20th century as a prime example of a 19th-century American jail. The photo shows its heavy cellblock doors and iron catwalk.

as the Indiana Reformatory until 1996, when it was renamed the Pendleton Correctional Facility. One of the most famous inmates of the prison was bank robber John Dillinger, who was sentenced to 10–20 years for the robbery of a grocery store and beating of its owner.

Around the turn of the century, police departments throughout Indiana began to be modernized. In 1893, Lafayette established a Metropolitan Board of Police Commissioners to run the department independently of the Lafayette mayor. The commissioners appointed and oversaw a superintendent and two captains (one to run the night shift, the other the day shift). This was a significant shift in sophistication of organization and bureaucracy from the loosely organized city watch overseen by the town marshal,

which had been the norm only 30 years earlier. The Indiana State Police was created in 1921, originally as the 16-man Motor Vehicle Police Force (MVPF), given statewide jurisdiction over traffic laws. In 1933, the MVPF was turned into the Indiana State Police.

Ku Klux Klan

The second Ku Klux Klan, inspired by the portrayal of the first in the movie *Birth of a Nation* and responding to Protestant white fears of Catholic immigrants and the Great Migration of blacks, was founded in Georgia in 1915 but quickly spread. While the original Klan had been a vigilante group fighting against those then in power in the south, the second Klan was treated by many as a fraternal organization like the Elks, and amassed considerable political power—despite its role in lynchings, cross-burnings, property destruction, harassment, and other acts of violence. It was also strongly allied with the temperance movement in the years before Prohibition.

Nowhere was the second Klan more influential than in Indiana, which had rapidly industrialized in the preceding decades and become home to an influx of newcomers of many ethnicities previously unrepresented in the state. The Indiana Klan broke away from the national organization in 1923, led by Grand Dragon D. C. Stephenson, and quickly reached its peak of power, with 30 percent of white men in the state members of the Klan, as well as half of the legislators, many government officials, and Governor Ed Jackson, who served 1925–29. Many former White Caps were now Klansmen, but the Klan had a political influence not seen in the state before or since.

The Klan's efforts in Indiana were aimed primarily at Catholics, and they used their political power to shut down numerous Catholic schools. Street fights broke out regularly between Klansmen and minority groups. The group's power waned quickly after Stephenson was arrested for the rape and second-degree murder of Madge Oberholtzer, an Indiana teacher who was in charge of the state's literacy programs. The night of Jackson's inauguration, Stephenson repeatedly raped Oberholtzer on a train ride, until she poisoned herself in order to induce an illness that would convince him to return her home. After

telling several people what had happened, she died, either of the poison or the injuries Stephenson had given her. He was immediately arrested.

Because Jackson had been elected only because of Stephenson's support, Stephenson assumed he would be pardoned, but no pardon came (in fact, he spent the next 30 years in prison). So Stephenson himself, out of apparent spite, undercut the Klan's power by revealing to reporters many instances of the Klan's bribes and behind-the-scenes work in Indiana politics. Jackson was brought to trial, which resulted in a hung jury, and he refused the many demands for him to resign, but his political career ended decisively when his term as governor did. Attempts to revive the Klan in Indiana when Klan groups in the south were founded in response to the civil rights movement failed.

Crime

In the 1960s, Indiana was home to one of the worst child abuse cases in American history. Gertrude Baniszewski was a divorced woman who agreed to take in two teen sisters as boarders while their parents, traveling carnival workers, went on the road for work. When their parents' payment failed to show up on time, she beat the children for a minor infraction, and over the course of the summer, the abuse grew. She enlisted her own children and their friends in the neighborhood to torture and abuse the eldest sister, Sylvia Likens, who was kept naked in the basement. She was sexually abused with Coke bottles and red-hot needles, doused with scalding hot water, beaten regularly, and eventually killed.

In 2010, the first comprehensive review of Indiana's criminal code since the 1970s was conducted, with the goal of both reducing recidivism and reducing the cost of imprisonment to taxpayers by enacting prison reforms. In particular, community-based programs and stronger rehabilitation programs—giving long-term inmates skills to embark on a crime-free life after prison—were emphasized, along with more sensible sentencing guidelines. The call for reform had increased after a spike in Indiana's prison populations and the realization that \$1 billion would be needed to build new prisons from 2011 to 2018 in order to address the system's growing needs. Many of the recommended changes in sentencing dealt with

reducing the jail sentences for nonviolent drug offenses, which accounted for a sizable portion of the prison population.

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See Also: 1921 to 1940 Primary Documents; Child Abuse, History of; Frontier Crime; Ku Klux Klan; Lynchings; Women Criminals, History of.

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Infanticide

Perhaps one of the most underreported causes of death in the United States, infanticide takes the lives of between 100 and 300 infants annually. Despite the availability of contraceptives and abortion, as well as new laws in all 50 states that allow parents to abandon without legal repercussion unharmed infants within seven days of birth, cases of infanticide have remained fairly constant. Nearly every civilization has practiced infanticide, from ancient Greeks and Persians to medieval Europeans. Parents used it to control family size as a means to avoid starvation. The economic stress and social disorder of the American colonial period led to an increase in infanticide; officials reacted with harsh laws that included the death penalty to prevent the practice.

By the 19th century, judges and juries were often lenient toward single women who committed infanticide, considering them as seduced and abandoned victims. In Chicago between 1870 and 1930, 185 cases of infanticide occurred. Police solved 21 cases, and prosecutors brought 11 cases to trial; courts convicted only one woman. This attitude reflected a societal view of women that

had evolved from the colonial lustful temptress to the 19th-century woman of Republican virtue and morality who fell prey to male sexual behavior. As society developed an increasing sense of the centrality of motherhood to women's identity, infanticide increasingly came to be seen as unnatural. Some medical professionals deemed mothers who killed to be temporarily insane, while others saw their actions as an abomination against nature.

Perceptions of these women varied according to circumstances. Evidence of preparing for the infant's arrival often led to acquittals based on the assumption that the death was accidental. Women who had made no preparations often faced charges because officials believed they had planned to kill the infant at birth; some women deflected such accusations by claiming that the infant came a month earlier than expected. Married women tended to avoid prosecution more than single women: With husbands to support them, officials often believed these women had no excuse to commit infanticide and thus deemed the death unintended.

Proving infanticide was difficult. An infant could have been strangled accidentally by the umbilical cord or intentionally with string. Bruising could have been caused by the woman going through a difficult birth alone or by premeditated blunt force trauma. The hydrostatic test, introduced into American courts in the 19th century, was unreliable. The test could be useful if doctors did not draw unwarranted conclusions from it; the test, for example, could prove a false positive for live birth if decomposition had accumulated gases in the lungs.

Over time, the reasons for infanticide remained relatively constant. Many women feared social ostracism: Pregnancy was a visible sign of premarital sex. Others faced dire economic circumstances: Unwed pregnant women had difficulty holding respectable jobs. As such, many hid the pregnancy and gave birth alone. Some women denied the pregnancy, leading them to deliver in bathrooms because they had convinced themselves that the cramping of labor pains was caused by a need to defecate. Others simply panicked. A minority suffered from postpartum psychosis, a diagnosis that emerged in the 19th century and divided professionals into the 21st century.

Punishment

The American legal approach to infanticide differed from that of Europe; 15th-century courts in France and 18th-century courts in German states often granted leniency to women based on mental disturbance. Austria abolished the death penalty for infanticide in 1803. The British M'Naghten Rule of 1843 stated that defendants could not be held responsible for their actions based on their mental state; Parliament specifically applied this principle in the Infanticide Acts of 1922 and 1938, which stated that women who killed their infants within 12 months of birth were mentally ill. The German code of the early 20th century mandated no more than three years' hard labor for mothers who killed illegitimate infants. By 2000, 29 countries had separate laws governing infanticide, with most mandating treatment versus punishment. In the United States, no separate law applies to mothers. With no presumption of mental illness, defense attorneys must prove mental illness. Although the American Psychiatric Association recognized postpartum disorder in 1994, no formal diagnostic criteria exist for it.

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See Also: 2001 to 2012 Primary Documents; Abortion; Child Abuse, History of; Child Abuse, Sociology of; Children, Abandoned; Gender and Criminal Law; Prostitution, History of; Smith, Susan; Women Criminals, Contemporary; Yates, Andrea.

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Insanity Defense

The insanity defense is one of the most controversial and misunderstood topics within criminal law, raising difficult questions about whether, and to what extent, mental illness should absolve a defendant of criminal responsibility. When defendants are found “not guilty by reason of insanity” (NGRI), it means that mental illness or defect prevented them from possessing the “guilty mind” (*mens rea*) required to hold them legally responsible. Thus, insanity is a legal term, not a medical one. Those acquitted on grounds of insanity are normally committed to psychiatric facilities (for rehabilitation and treatment) instead of being incarcerated (for punishment). In many states, commitment to a mental facility is automatic upon the rendering of a NGRI verdict. In some states, commitment is discretionary. In these states, trial judges have the authority to detain insane individuals for examination and observation (to determine whether they should be committed). The insanity defense has an extensive history in Anglo-American law. Despite this long tradition, the insanity defense is viewed with suspicion by the public, and after the 1982 insanity acquittal of John Hinckley, Jr., several jurisdictions either modified or abolished it.

Historic Evolution of Insanity Tests

The insanity defense has been traced to the works of Homer and Aristotle. Under ancient Roman law, insane persons were treated like wild beasts: they could not be held responsible for their actions, but their keepers could be liable in tort for failing to restrain them. Lenience for the insane was sometimes justified on the grounds that “the madman is sufficiently punished by his madness” (*furiosus satis ipso furore punitur*). In England, precursors to the insanity defense appeared as early as the 10th century, and insanity became recognized as a complete defense during the early 14th century. Over time, in England and later in the United States, a number of influential legal tests for insanity were developed.

One of the earliest tests for insanity was the “wild beast” test, developed from the writings of eminent 13th-century jurist Lord Bracton. This test was applied in the 1812 attempted homicide case, *Rex v. Arnold*, where Justice Tracy

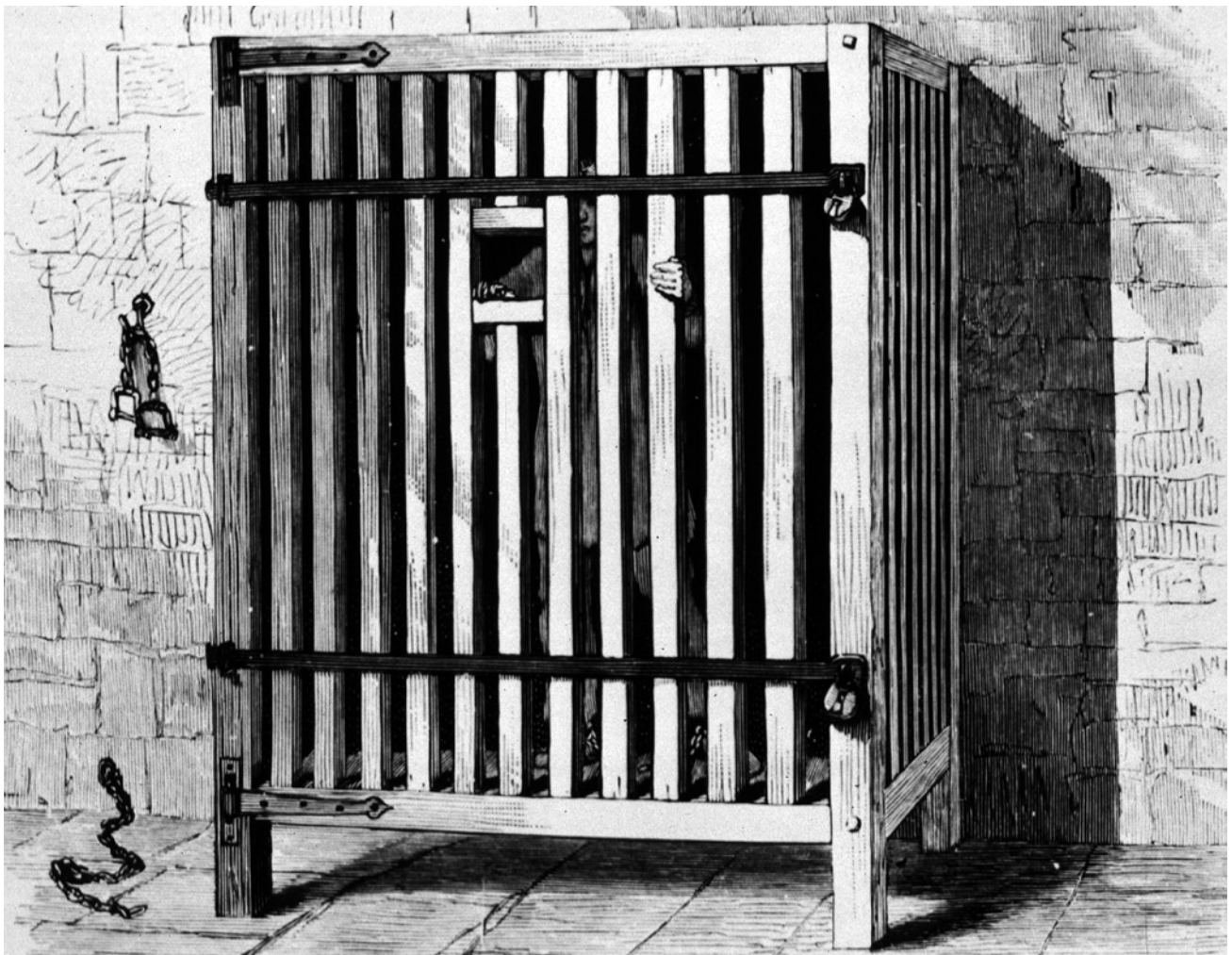
told the jury that when a man is totally deprived of his understanding and his memory and does not know what he is doing, he is like an infant or a wild beast and not an appropriate object for punishment. The “child of 14” test, developed by 17th-century jurist Matthew Hale, was an attempt to address the jurisprudential dilemma of “partial insanity” (conditions where the reason is impaired, but not entirely absent, such as in cases of severe depression). Hale suggested that if the afflicted person possessed the understanding that an ordinary 14-year-old has, then punishment was appropriate. Absent such understanding, an insanity acquittal was appropriate.

The insane delusion test was articulated in the 1800 case *Rex v. Hadfield*. James Hadfield, a former soldier who had sustained brain injuries, believed that Jesus Christ was returning to Earth to save humanity, but that in order to precipitate Christ’s return, Hadfield had to die. A devout Christian, he could not commit suicide. Hadfield’s solution was to fire a shot at King George III, allowing himself to be arrested and executed. Under the prevailing wild beast test, an insanity acquittal looked unlikely. After all, Hadfield knew what he was doing, knew that treason and murder were wrong, and planned his offense. He appeared rational. But Hadfield was defended by brilliant lawyer Thomas Erskine, who argued that the total incapacity required under the wild beast test does not in fact exist, and that actual insanity is different. Reason is not absent in cases of insanity but is compromised by distraction. The court agreed with him, stopping the proceedings to instruct a compliant jury that Hadfield was unequivocally insane and that an insanity acquittal was in order.

Forty years later, in the case of *Regina v. Oxford*, the irresistible impulse test was formulated. In some ways, the case resembled *Hadfield*. Like James Hadfield, Edward Oxford fired a shot at a royal (Queen Victoria, in this case). But unlike Hadfield, Oxford was not trying to trigger a global event. In fact, he could not even say why he fired a pistol at Victoria, whom he considered to be a very nice lady. Because the court found that, at the time of the offense, Oxford lacked the will to control his actions and acted from an irresistible and uncontrollable impulse, he was found not guilty by reason of insanity.

It is generally agreed that the M’Naghten (McNaghten) rule has been the most influential test of insanity. In 1843, Daniel M’Naghten, believing that he was being persecuted by the English government, attempted to assassinate Prime Minister Robert Peel. But M’Naghten did not what know Peel looked like and killed Peel’s secretary, Edward Drummond, by mistake. M’Naghten had excellent lawyers who persuaded the court to stop the trial and effectively direct the jury to acquit. M’Naghten was acquitted, but the House of Lords took the unusual step of requiring the justices in the case to explain their reasoning. Their answers collectively yielded the now-famous M’Naghten

test: “To establish a defense on the ground of insanity it must be clearly proved that, at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong.” Although the M’Naghten test was widely adopted throughout the United States as the de facto standard, it was criticized on at least three grounds. First, it is entirely cognitive, focusing upon what the defendant knows. It ignores conditions that impede volition. Second, it does not recognize degrees of incapacity, but requires a total



This wooden cage invented in Belgium to restrain the severely mentally ill reflects some of the historical attitudes toward the insane, which equated them with “wild beasts.” However, insanity had been recognized as a complete defense in England as early as the 14th century. While the “Belgian Cage” was demonstrated as a curiosity at a national exhibition in Brussels in 1880, it had not been legal for use since a government overhaul of insane asylums in 1850.

lack of awareness. Third, it does not define its key terms (e.g., “know,” “nature,” or “wrong”), and different jurisdictions have applied these terms in very different ways.

In the 1954 case *Durham v. United States*, Judge David Bazelon formulated the product test. Judge Bazelon rejected the M’Naghten rule and developed an expansive new test: If the defendant’s actions were the product of a disease or defect of mind, the defendant was to be found not guilty by reason of insanity. While noteworthy for its break from M’Naghten, the product test was scrutinized and criticized (for conferring too much authority on psychiatric experts, among other things), and was replaced by the 1962 Model Penal Code test developed by the American Law Institute (ALI). The ALI test drew upon the M’Naghten and irresistible impulse tests and bears some resemblance to the product test, but it combined them and used new terms to express the core concepts. The ALI concluded that a defendant is not responsible for his criminal conduct if at the time of the act he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the law as a result of mental disease or defect. The ALI standard is more expansive than the M’Naghten rule, since “appreciating” implies emotional as well as intellectual understanding. It is also more precise, since the term *criminality of his conduct* specifies a legal breach, whereas M’Naghten’s reference to “wrong” was ambiguous as to whether it implied moral or legal wrongness. The ALI test was adopted by most federal courts and approximately half of the state courts.

Hinckley and the Call for Reform

In 1982, however, the U.S. landscape changed. After John Hinckley, Jr., attempted to assassinate President Ronald Reagan on March 30, 1981, in a bid to impress actress Jodie Foster, a high-profile trial took place, and Hinckley was found not guilty by reason of insanity. The verdict resulted in public outrage. People felt that Hinckley had beaten the rap and that the insanity defense had been abused. Research, however, suggests that such suspicion is misplaced: The insanity defense is rarely invoked (in only about 1 percent of felony cases and even fewer misdemeanor cases) and when insanity is claimed, the plea does not usually succeed (it is rejected in about 75 percent of cases). Even then,

when it is successful, the victory is pyrrhic. Most NGRI defendants spend about twice as much time in psychiatric facilities than they would have spent in prison, had they been convicted of the crime.

But the post-*Hinckley* public was incensed, and around the United States, legislatures responded. Jurisdictions restricted the defense, shifted the burden of proof to the defendant, or modified their rules of evidence, and three states (Idaho, Montana, and Utah) abolished the defense entirely. Kansas later abolished it in 1996. In abolitionist states, defendants may introduce evidence of mental disease or defect to rebut the prosecution’s claims that they possessed the requisite mens rea to be found guilty of the crime. Thirteen states adopted an alternative verdict, “guilty but mentally ill” (GBMI). If a defendant was guilty of a crime, was sane at the time of the offense, but is “mentally ill” during the trial, juries can return a GBMI verdict. If this verdict is imposed, the defendant receives the sentence that would normally be imposed (e.g., incarceration in a prison) but may receive psychiatric care while in the correctional setting. One exception to this general rule would be the execution of a defendant after committing a capital crime. In 1986, in *Ford v. Wainwright*, the Supreme Court held that executing an insane person violates the Eighth Amendment.

The federal government reacted to the Hinckley case. In 1984, Congress passed the Insanity Defense Reform Act, creating a new standard for federal courts. This statutory test is different from, and stricter than, the ALI test. Under this standard, the burden of proof rests with the defendant. Additionally, the defendant must prove that he suffered from a severe mental disease or defect when he committed the crime and that his mental disease or defect prevented him from appreciating the nature and quality or wrongfulness of his conduct. Both prongs of the test must be proven by clear and convincing evidence. Any other proof of mental disease or defect does not constitute a defense. By requiring “severe mental disease or defect,” the test excludes conditions that might have been exculpated under the ALI’s substantial capacity standard and approaches the wild beast standard. Similarly, by eliminating the volitional prong of the ALI test, the statute established a test resembling the purely cognitive M’Naghten rule.

Research suggests that these legislative reforms, while ominous sounding, did little to change actual outcomes. Even in states that abolished the defense, mentally ill defendants continued to claim that they lacked the requisite mental state for criminal responsibility (rebutting the prosecution's claim of *mens rea*). Instead of finding them not guilty by reason of insanity, many of these defendants were found incompetent to stand trial. Most (two-thirds) were committed to the same psychiatric facilities where patients who had been found NGRI were housed. It seems as if post-*Hinckley* legislative reforms changed legal labels but did little to change underlying actual practices.

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See Also: 1941 to 1960 Primary Documents; 1961 to 1980 Primary Documents; Capital Punishment; M'Naghten Test; Rehabilitation; Trials.

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and enforcing provisions of the Internal Revenue Code. While its primary charge is to act as the revenue service for the federal government, failure to pay taxes on income is a crime, and the IRS frequently becomes involved in criminal prosecutions against those who have acquired monies by illegal means, because this is sometimes the most efficacious approach to punishing wrongdoers. With its thousands of agents and enormous access to financial data relating to individuals, corporations, organizations, and other entities, the IRS is in a prime position to instigate, or assist with, investigations of financial crimes. The IRS has recently been involved with the national security community in an effort to address and prevent terrorist threats associated with illicit finance and the international financial system.

Background

In 1862, during the administration of President Abraham Lincoln, the U.S. Congress authorized the Office of the Commissioner of Internal Revenue and created an income tax to assist with expenditures incurred as a result of the American Civil War. Although the Revenue Act of 1862 was passed as a temporary and emergency solution to a wartime exigency, the position of commissioner of internal revenue has continued to the present day. The Revenue Act of 1862 was modeled upon the British system of generating revenue from income, rather than taxing trade or property. The initial rate of taxation, passed in 1861, was a 3 percent assessment on incomes over \$800 per year, which exempted most Americans because they earned an annual income below this amount. In 1862, this was changed to a 3 percent assessment on incomes between \$600 and \$10,000 per year, with the taxation rate increasing to 5 percent on incomes in excess of \$10,000. By the end of the Civil War, approximately 10 percent of households in the Union states had paid this income tax, and this source of revenue allowed the federal government to raise slightly more than 20 percent of the funding needed for the war cause. The Revenue Act of 1862 also created a host of excise taxes, with those imposed on liquor and tobacco surviving the wartime income tax. Much of the activity of the Bureau of Internal Revenue in the latter half of the 19th century involved enforcing these laws against bootleggers, moonshiners, smugglers, and others

Internal Revenue Service

The Internal Revenue Service (IRS) is an agency of the U.S. Department of the Treasury, and is charged with collecting taxes and interpreting



After the Harrison Act of 1914 gave drug enforcement authority to the Department of Treasury, the Internal Revenue Service kept laboratories such as this to use in enforcing restrictions on narcotics, which were based on taxation, not criminal punishment.

who conspired to evade paying taxes on liquor. Prior to the imposition of the modern income tax, the tax on liquor trailed only the tariff as the federal government's primary source of revenue.

Although income tax revenues were used after the Civil War to finance Reconstruction, railroads, and other government projects, the temporary income tax provisions were permitted to expire in 1872. Income taxes continued to be seen as an important source of revenue, and in 1894, Congress authorized a new income tax, which was ruled unconstitutional by the U.S. Supreme Court in *Pollock v. Farmers' Loan & Trust Co* (1895). As a result of this ruling, the federal government was unable to impose an income tax again until passage of the Sixteenth Amendment to the U.S. Constitution, which permitted Congress to assess taxes on incomes, "from whatever source derived." The Sixteenth Amendment was quickly ratified by 42 of the then 48 states, and the IRS created its first Form 1040 in 1913, instructing all of those with incomes in excess of \$3,000 per year to file. The IRS publishes an enormous number of tax forms from which taxpayers can choose the proper documents and calculate and report their federal tax liability. Although the IRS collects

withholding tax from many workers' paychecks and has other ways to gather revenue, it requires individual taxpayers to file an annual tax return stating their income and any deductions permitted under the tax code. Failure to file correct information with the IRS is a criminal offense.

The IRS has grown into an enormous government agency, with its headquarters in Washington, D.C., and service offices located in Austin, Texas; Cincinnati, Ohio; Fresno, California; Kansas City, Missouri; and Ogden, Utah. The IRS collects more than \$2.4 trillion in revenues (exclusive of refunds) and processes in excess of 170 million income tax returns every year. Although in 2011, the IRS had a budget of \$12.8 billion and more than 105,000 employees, it estimates that the U.S. Treasury is owed more than \$350 billion more in tax revenue than the IRS is able to collect. The IRS is authorized to pursue those individuals and entities who cheat on their taxes and is permitted to enforce liens and seize assets without obtaining a judgment in court. Since the failure to pay income taxes is a crime, the IRS is often involved in criminal investigations of those it suspects are illegally withholding revenue owed the federal government.

IRS Response to Tax Evasion

The IRS possesses the authority to investigate those who do not pay the appropriate amount of taxes for tax evasion, which is a federal crime. Occasionally, the federal government chooses to pursue tax evasion charges against criminals who would otherwise be difficult to prosecute, since this is often easier to prove than other allegations. One of the most famous prosecutions involving charges of tax evasion concerned mobster Al Capone, who was in charge of an organization known as the Chicago Outfit, and who was involved in bootlegging, gambling, prostitution, and other criminal activities. In 1928, Frank J. Brown, a former accountant, was assigned by Elmer L. Irey, the chief of the Enforcement Branch of the Bureau of Internal Revenue (the predecessor to the IRS), to investigate Capone on allegations of tax evasion. While Capone had successfully defended several racketeering prosecutions, Irey believed that he might be susceptible to tax evasion charges in light of a 1927 U.S. Supreme Court holding in *United States v. Sullivan* that income from criminal activities was subject to income taxes.

Capone's behavior made the tax evasion investigation complex and challenging because it was difficult to account for his income. Capone did not file federal or state tax returns, maintain a bank account, endorse checks, own property, or provide receipts. Wilson arranged to have federal agents infiltrate the Chicago Outfit to document Capone's dealings. After three years of gathering evidence, Wilson was able to document that Capone had earned millions of dollars that he had not declared, resulting in his 1931 prosecution by the U.S. Department of Justice. Capone was convicted and sentenced to 11 years in prison.

Unreported income in the United States is estimated by the IRS to amount to approximately \$2 trillion per year, nearly 20 percent of total reportable income. The IRS has developed a profile of the typical tax evader who does not, contrary to stereotypes, generally earn his or her living through illegal activity. Instead, the typical tax evader is male, under the age of 50, a member of the highest tax bracket, and files a complicated return, frequently with many overstated charitable contributions. An individual meeting this profile has a higher than normal chance of being audited by the IRS. Since the failure to pay the proper amount of income tax is a crime in the United States, individuals and corporations who purposefully or inadvertently evade taxes are, if found guilty, subject to fines, penalties, and in extreme cases, imprisonment.

The IRS's role in investigating and dealing with alleged tax evaders has been criticized. In 1998, for example, the U.S. Congress passed what is popularly known as the Taxpayers Bill of Rights III. This legislation shifted the burden of proof from the taxpayer to the IRS in certain situations and ordered the IRS to engage in more taxpayer-friendly behaviors. Recently, the IRS has also been condemned for allowing plea agreements for some involved in a tax shelter scheme, while vigorously prosecuting others engaged in the same activity.

Combating Terrorism and Financial Crimes

Although the IRS works with other government agencies to investigate criminal activity, it is primarily focused upon collection of revenue owed the U.S. government, pursuant to the tax code. In an effort to combat terrorism and global financial crimes, the U.S. Department of the Treasury

established the Office of Terrorist Financing and Financial Crimes (OTFFC) to better coordinate efforts between law enforcement agencies, financial institutions, and the IRS. The OTFFC serves as a policy development and outreach office and works with all elements of the national security community.

The undersecretary for terrorism and financial intelligence supervises the OTFFC. Law enforcement agencies, regulatory groups, policy organizations, members of the diplomatic corps, and intelligence operatives work with the OTFFC to examine financial data provided by the IRS, financial institutions, and foreign governments to detect and prevent threats and all forms of illegal finance from being hidden by the international finance system.

The OTFFC and its partners are most concerned with money laundering, weapons trafficking, terrorist financing, drug smuggling, and financial crimes. The IRS, which collects massive amounts of data regarding possible financial irregularities, sometimes cooperates with the OTFFC to provide evidence of financial malfeasance. As a result of these initiatives, global standards have been developed for combating money laundering and terrorist financing.

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See Also: 1921 to 1940 Primary Documents; 1941 to 1960 Primary Documents; 1961 to 1980 Primary Documents; Bootlegging; Bureau of Alcohol, Tobacco, Firearms and Explosives; Capone, Al; Drug Enforcement Administration; Federal Bureau of Investigation; Harrison Act of 1914; Ness, Eliot; Organized Crime, History of; Tax Crimes; White-Collar Crime, History of.

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Internal Security Act of 1950

The Internal Security Act of 1950, also referred to as the McCarran Internal Security Act of 1950 and the Subversive Activities Control Act of 1950, became law on September 22, 1950, by congressional resolution. The act required that all communist and related political organizations be registered with the U.S. attorney general. Because of the constitutional questions with requirements of the act, President Harry S. Truman vetoed the law and sent it back to Congress. The law went into effect after both houses voted to override the veto.

In the early 1950s, at the beginning of the cold war, Americans feared the spread of communism into the United States. Congressional hearings under the Dies Committee and the House Un-American Activities Committee kept the anti-communist rhetoric in the public consciousness. In 1950, Congress chose to resurrect the Mundt-Nixon legislation proposed in the previous session. Hearings were held for almost two weeks with testimony from opponents of the legislation. However, the mood in Washington was influenced by the Korean War and the outcome of the Alger Hiss trial. Congress looked to a revised version of the Mundt-Nixon act proposed by Republican Senator Patrick McCarran (Nevada) as the solution. The act would ultimately become known as the McCarran Internal Security Act.

Title one of the act on controlling subversive activities calls for the registration of communist-action and communist-front organizations with the U.S. attorney general. Recognizing the failure of prior laws to enforce this mandate, McCarran alternately required the registration of the officers of non-compliant organizations. Other prohibited acts concerned government employees, conspiracies against the government, properly communicating classified information, and the penalties associated with these crimes. The State Department could not issue passports to registered party members once the law went into effect. Communist parties also had to submit annual reports to the Board of Communist Activities, including a statement of address for individuals, accounting of all monies received, and other membership details. These records had to be kept, and the attorney general was required

to notify persons listed. They also had the opportunity to deny membership. The law required annual reports by the attorney general to Congress and the president. The act also amended the Immigration Act of 1917 and the Nationality Act of 1940, where it referred to persons who sought citizenship who had affiliation with the communist government or promoted the spread of communism in the United States in any form.

Concerned about potential problems with the legislation, President Harry Truman asked Congress to only strengthen the espionage and sabotage laws and to caution that any other proposals would be vetoed if they endangered basic constitutional freedoms covered by the First Amendment. Congress did not heed Truman's warning and passed the McCarran Act by large margins in both houses of Congress. Truman vetoed the law, and Congress overrode the veto by the required two-thirds majority in the House and Senate. The McCarran Act would not go into full effect because of immediate challenges brought against the law in the courts. In 1953, President Dwight Eisenhower appointed members to a five-man Subversive Activities Control Board, and all were approved by the Senate. Soon after, the Communist Party was the first to appeal the registration requirements, lost in the Court of Appeals, and spent the next few years going back and forth between the appeals court and the U.S. Supreme Court. In June 1961, the Supreme Court ruled against the Communist Party and determined in a 5–4 vote that the registration requirement was constitutional.

During this same time, another court case concerning 10 individuals was brought to the courts by the attorney general. In May 1962, charges were filed against 10 Communist Party members who refused to register when their party did not. The Supreme Court ruled in 1965 that the party members did not have to register and could not be required to because it might lead to further prosecution under other federal laws. These two decisions resulted in no individuals or groups registering under the law's mandates. During this 15-year period of litigation, Congress continued to investigate espionage cases and kept the country focused on the communist threat with the McCarthy hearings and the House Un-American Activities Committee hearings. In 1968, major amendments to the McCarran Act became law.



Major Pedro Luis Díaz Lanz, the former commander in chief of the Cuban airforce before the Castro takeover, testifying on the communist threat to the United States before a Senate subcommittee on the Internal Security Act in July 1959.

Most of the Title 1 section was repealed in 1968 after court decisions ruled them unconstitutional.

Parts of the McCarran Act are still in effect today. The law revised the quotas for those wanting to immigrate to the United States as established in the Immigration Act of 1940. The major influence was the change from emphasis on admission of Europeans and broadening the definitions to include people from any country, each with an established quota limiting the number of people accepted each year.

In 1965, Congress revised the section of the McCarran Act with the Immigration and Nationality Act of 1965. This legislation abolished the quota system and replaced it with a system that stressed skills of immigrants and gave preference to those who already had relatives in the United States. Seven criteria were established for immigrants from Eastern Hemisphere countries allowing them to immigrate to this country. The law also set a restriction on visas to 170,000 per year, with quotas for each country, with some exceptions for persons from Western Hemisphere countries and those related to American citizens.

Other sections govern federal employees and how they are screened for various security-sensitive positions. When Congress passed the McCarran Act over Truman's veto, they were reacting to events at the time. In 1950, a midterm congressional election saw a trend toward more conservative members. The investigation and conviction of Alger Hiss and the invasion of South Korea by North Korea caused concern about persons with communist leanings getting involved in government and other positions of authority. The intent was to make these groups and individuals register so that their actions could be traced and so that the communist threat would be limited.

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See Also: 1941 to 1960 Primary Documents; Eisenhower, Dwight D. (Administration of); McCarthy, Joseph; Political Dissidents; Political Policing; Truman, Harry S. (Administration of).

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International Association of Chiefs of Police

Today, the International Association of Chiefs of Police (IACP) serves as a global nonprofit leadership organization of more than 20,000 police executives from more than 100 countries, as well as a resource and advocate organization for advancing police technology, operations, and services.

Established in 1893 as the National Chiefs of Police Union, the founding organization of the IACP was created primarily to locate, apprehend, and return wanted persons who had fled local agency jurisdiction to escape the law, which was an increasing problem during this time. As such, in November 1892, Webber S. Seavey, police chief of Omaha, Nebraska, mailed invitations to 385 heads of the major police agencies in the United States requesting them to convene as a matter of urgency the following year in Chicago, Illinois, with the aim to form a national police organization and to “explore ways in which they could join together to fight crime and improve police services.” Fifty-one accepted and subsequently worked together over three days in 1893 to create this new organization. Renamed in 1902, the IACP over the decades has evolved and expanded considerably to include an array of other activities, services, and responsibilities. In the United States and globally, the IACP embraces a rich and respected reputation for improving police practices.

In rising to their motto—“global leadership in policing”—the IACP’s mission encompasses a number of key objectives pertaining to all facets of policing. On the whole, this organization works to professionalize and advance the science and practice behind police services in a number of ways. For example, the association seeks to develop and disseminate new methods to improve police organizations internally, technologically, and operationally—for example, in areas of administration, leadership, and management—and well as to provide police with new, sophisticated methods, expertise, and technology for investigating crime and locating offenders. It also helps foster police cooperation and communication on many levels—local, statewide, federal, and international—in order to facilitate the exchange of information and experience among police administrators and agencies. Additionally, the IACP establishes standards for recruiting and training of qualified candidates, including ethics for police professionalism and community interaction. In terms of legislative activity, the IACP has historically taken a conservative stance on drug policy and reducing both the minimum drinking age and availability of firearms, and has long supported legislation in areas to improve policing—for example, through advanced technology, research, and community

and partnership initiatives—along with new laws on hate crime, identity theft, and child protection in order to enhance public safety.

Achievements

Since its inception, the IACP has made a number of key achievements in American policing. In 1904, the association helped to encourage the science of using fingerprints as a means of identification through exhibits in various member communities around the country. The IACP played an imperative role in the early days of the Federal Bureau of Investigation (FBI), having created the Uniform Crime Reports in 1922, thus providing the foundation work for the creation of the FBI’s Identification Division in 1924. The IACP eventually turned over these files to the FBI in 1930, and then in 1934, began working with the FBI to establish the FBI National Academy. In the same year, the IACP was officially recognized as a source of information for legislators, which helped to establish 12 laws through its recommendations. In 1935, the IACP began to offer consultant services to police agencies and in 1940, established official headquarters in Washington, D.C. The International Police Academy was developed in 1955, followed by minimum training standards for police officers in 1960. The association also played a key role in World War II with the creation of mobilization plans and guidelines for handling disorders, sabotage, and transportation of troops and materials.

After Quinn Tamm became executive director in 1962, the IACP embarked on an extensive expansion campaign. During the 1970s, international training programs were developed, police apparatus was tested, and police organization research was conducted. Additionally, two centers were established—the Police Assessment Center and National Bomb Data Center—the latter of which was eventually handed over to the FBI. The United Nations also conferred consultative status to the IACP in recognition of work performed in various member states. In the 1980s, the World Regional Division was opened in Europe, and a number of International Policing Executive Seminars were conducted there and in Asia. In the United States, the IACP collaborated with the Bureau of Justice Assistance to establish the National Law Enforcement Policy Center and

the Commission on Law Enforcement Accreditation in collaboration with the National Organization of Black Law Enforcement Executives, the National Sheriffs' Association and the Police Executive Research Forum. Since the 1990s, interests have centered on international drug trafficking, drunk driving, police use of force, civil disorder, illegal aliens, community policing initiatives, nonlethal weapons training, and operations strategies for managing police agencies. In 1992, the IACP moved its headquarters to a historic five-story building located at 515 North Washington Street in Alexandria, Virginia.

Structure

A number of offices and services make up the IACP. An 85-page constitution and an eight-member elected board of officers govern the association. These officers are both experienced former police chiefs of large municipalities and nationally recognized leaders in law enforcement. As of April 2011, the chief executive of the IACP is Mark A. Marshall, chief of police in Smithfield, Virginia. Presently, 41 committees are devoted to a number of specialized topics, crimes, and practices of relevance to policing and the IACP itself. Similarly, 19 sections embody a number of specialized staff—analysts, instructors, counselors—and various groups—retired, transportation, and university police—associated with law enforcement. There are also divisions devoted to representing both state and international police agencies, which hold meetings annually to develop relationships, foster communication, share information, identify problems, and explore solutions in their respective jurisdictions. In 1986, a psychological services section was created, which today includes more than 100 recognized experts in various areas of police psychology. Although the IACP is largely funded through federal grants, other sources of income—membership dues, conference fees, and public and private donations—also help finance the organization.

The IACP engages in a number of activities. Mainly, the association exists to share good practice, techniques, strategies, and tools utilized by police agencies, in order to improve police services and investigation of crimes. Annually, the IACP convenes a five-day conference both nationally and internationally as a vehicle to achieve

these objectives, which brings together thousands of police executives from all over the globe who attend presentations, training workshops, and exhibitions of tools and services for policing provided by hundreds of manufacturers. Similarly, the IACP provides training seminars more frequently on a variety of policing topics, which are supplemented with many published guides and resources. It also provides other services such as mentoring, guidance, and information resources to new police leaders; performs research surveys on behalf of agencies to evaluate services and operations; assesses candidates for promotion through job simulations, interviews, and examinations; and maintains a police search database to advertise executive-level positions for profiling, recruiting, and screening candidates. The IACP's monthly magazine, *The Police Chief*, dates back to 1934 and provides a voice for the global law enforcement community.

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See Also: Fingerprinting; Professionalization of Police; Training Police; Uniform Crime Reporting Program.

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Internment

Internment has been a subject often overlooked in texts that examine criminal justice issues. Despite this omission, internment has implications for a central component of the criminal justice system: due process. In times of emergency, the United States has detained aliens and citizens without having to face a court of law.

The Cherokee experienced internment into various military forts and eventual forced removal. For the Cherokee, in the 1830s, multiple stockades were utilized for forced confinement, and then they were forced into three “emigration depots” for forced removal west. Unsanitary conditions aided the spread of disease in these facilities and increased the number of deaths. Many died in detention before embarking upon the Trail of Tears.

Similarly, the Navajo also experienced an atrocious event known as the Long Walk, which by Navajo accounts, resulted in numerous extrajudicial executions. After being forcefully relocated near Ft. Sumner, New Mexico, into an area of 40 acres, the Navajo were closely monitored in the mid-1860s. Under this “controversial experiment,” food rations were inadequate or rotten, and the Navajo had to shelter in small pits covered with branches for a period of four years. During the same time period, the Apache were interned at San Carlos, Arizona; early in the

internment, movement was restricted, daily roll calls were utilized, and neck tags were assigned for administrative purposes.

Effects of War

During World War I, President Woodrow Wilson issued two sets of regulations in 1917 that required males to report to the post office, obtain a registration card, and report any address changes. During World War II, more than 100,000 Japanese, most of them U.S. citizens, were interned. This was conducted under Executive Order 9066, signed February 14, 1942. The Supreme Court affirmed such action with its decisions in *Hirabayashi* in 1943 and *Korematsu* and *Endo* in 1944.

Before this, however, aliens of Italian, German, and Japanese nationality were subject to arrest and internment. Immediately after the Japanese bombings in 1941, President Franklin Roosevelt declared under sections 21–24 of Title 50 of the U.S. Code (USC) that aliens were subject to arrest and detainment. The result was that thousands of



Apaches lined up outside the San Carlos agency building in Arizona in 1899. Native Americans and Americans of German, Italian, and Japanese descent all experienced internment within the United States either in the 19th century or during wartime. The issue of internment has returned with the detention of suspected terrorists at Guantanamo Bay in Cuba after the terrorist attacks of 2001.

Germans and Japanese, and a few hundred Italians, were interned in the United States. Roosevelt also interned “subversive” or “potentially subversive” Germans from Latin America within the United States. Only a small percentage of the Latin American Germans interned had loyalty to the Nazi cause.

After World War II, the threat of the Axis powers shifted to the Red Scare. Because of the supposed threat of communist “domestic subversion,” the McCarran Act, passed by the U.S. Congress in 1950, allowed the denial of habeas corpus and for U.S. citizens to be interned during an “internal security emergency.” Such an emergency could be enacted during invasion, war, or national threat to public safety. The act allowed the detention of persons where there is a “reasonable” belief that person will engage, or “probably will conspire with others to engage in, acts of espionage or sabotage.” The act was unique and without statutory precedent since it allowed the indefinite detention of U.S. citizens who had not committed crimes, but might because of their political beliefs. The U.S. government maintained six camps for mass internment as envisioned by the act, until the act was repealed in 1971. These six facilities were expected to hold thousands of U.S. citizens, if deemed necessary.

Operation Garden Plot

During the 1960s, Operation Garden Plot, a master martial law plan, was created. It was first discovered in 1971 by Senator Sam Ervin’s Subcommittee on Constitutional Rights. The intention was to develop contingency plans in the event of civil unrest. This plan was practiced through exercises known as Cable Splicer, in which military and local police were coordinated to contain and suppress civil insurrection. In the simulated scenarios, violence erupted simultaneously in 25 cities, and coordinated measures were taken by police and military forces. These observers and participants were addressed directly by California Governor Ronald Reagan in 1969.

The plans were partially disclosed, but only recently have the documents been declassified. Both the U.S. Army and Air Force had procedures under Garden Plot. Accordingly, arrest and detainment could occur in conjunction with local authorities, and officials would be able to

operate, maintain, or provide for detention facilities in extreme emergencies.

Garden Plot was a plan developed by the U.S. Air Force and Army; a very similar plan was practiced by the Federal Emergency Management Agency (FEMA). Before the signing of Executive Order 12148, by President Jimmy Carter, on July 20, 1979, these military organizations would have been the agencies to respond to civil unrest and detain people if necessary. Under Jimmy Carter, FEMA was established to coordinate with the Department of Defense and implement plans for civil emergencies. FEMA would be the agency to detain groups under a presidential order.

Mass internment of U.S. citizens was a dormant issue until the Iran-Contra hearings. While Oliver North was being questioned about illegal supplying of arms to Iran, the sales of which were used to supply material support to the Contras in Nicaragua, a couple of newspaper stories appeared that disclosed plans to intern certain American groups in the event of civil unrest. When Oliver North was questioned about the plans by Representative Jack Brooks on July 13, 1987, the representative was admonished by committee chair Daniel Inouye. The next day, Senate Intelligence Committee Chair David Boren reported the “so-called Martial Law Plan” had been discussed in executive session. Oliver North denied the existence of any plan, and no official disclosure was presented.

One newspaper that initiated this inquiry was the *Miami Herald*. One component of this plan, Readiness Exercise 1984, or Rex 84, was detailed in a memo dated June 30, 1982, by FEMA’s deputy director of national preparedness programs, John Brinkerhoff. Supposedly, the *Miami Herald* was able to secure a copy of the memo, which discussed the possible internment of African Americans. This plan resembled a document authored by the chief of FEMA, Louis O. Giuffrida, “National Survival—Racial Imperative,” at the U.S. Army War College, which examined the feasibility of interning African Americans in the event of urban unrest.

Another component of the plan, as Ross Gelbspan (1991) of the *Boston Globe* addressed, was a joint exercise with the Immigration and Naturalization Service (INS), FEMA, Pentagon, and state and local agencies that would be ignited

into action by a major U.S. intervention in Central America, in which thousands could be detained. These activists included environmentalists, nuclear energy opponents, and refugee assistance advocates. Fifty state defense forces, which consisted of local law enforcement and military reserve units, would be deputized.

Contemporary Issues

The internment issue was dormant until the events of September 11, 2001. Afterward, hundreds of aliens were detained indefinitely and were denied access to an attorney. Many were deported. There were several problems noted by the Office of the Inspector General in 2003: indefinite detention, notice of charge a month after arrest (the usual procedure requires 72 hours), a “no bond” policy was implemented, terrorism and illegal alien distinction was not met, many were held in lockdown for 23 hours per day, inconsistent phone access was granted, and lights were illuminated 24 hours a day. In addition, those who inquired about detainee confinement were told by the Metropolitan Detention Center (MDC) in New York City, that he/she was not at the facility, when the detainee was actually being held there. These abuses were also noted by the United Nations Working Group on Arbitrary Detention.

The issue of internment has been highlighted with the detention of suspected terrorists at Guantanamo Bay in Cuba. Central to this issue has been the denial of habeas corpus and other minimal protections as presented in the Geneva Convention. Habeas corpus allows the courts, either domestic or international, to evaluate the lawfulness of their detainment. The Supreme Court ruled in *Hamdan v. Rumsfeld* (2006) that detainees were allowed such minimum safeguards. Many of the prisoners released have alleged that various forms of torture were used at the facility.

Other public internment concerns have been raised through the granting of a contingency contract to Halliburton to build internment facilities within the United States for immigration and other programs. Also, there was some public alarm that HR 645, the National Emergency Centers Establishment Act of the 111th Congress, would have allowed a number of military bases to become FEMA detention centers. In addition,

S. 3081, the Enemy Belligerent, Interrogation, Detention, and Prosecution Act, also of the 111th Congress, would have allowed the possible detention of U.S. citizens, if connected to terrorist organizations. Neither of these bills made it out of committee, and hence were not enacted into law. However, the National Defense Authorization Act was signed into law December 31, 2011, by President Barack Obama, allowing U.S. Citizens to be detained, indefinitely if it is believed that he or she has a connection to terrorist activity.

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See Also: Due Process; German Americans; Habeas Corpus, Writ of; Indian Removal Act; Internal Security Act of 1950; Japanese Americans; *Korematsu v. United States*; Native Americans; Terrorism.

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Interrogation Practices

Throughout history, from the religious inquisitions and witch hunts of old to modern-day DNA exonerations, interrogations have been a key component of the criminal justice system. The power of the police to interrogate suspects in order to investigate crimes is a crucial tool for their ability to clear cases and thereby protect citizens from further victimization. But pressure on police to solve crimes and put offenders in prison can lead to overzealous interrogation practices that may have unintended negative effects. As a way of limiting this discretion, Supreme Court decisions during the 1960s such as the now-famous 1966 decision in *Miranda v. Arizona* limited the autonomy of police interrogators and required police to inform suspects of their rights regarding interrogation. Subsequent Supreme Court decisions have tended to cut away at the protections provided by cases like *Miranda*, and subtle loopholes accompanied by a diverse interpretation of these protections have created variation in their implementation. Emerging trends like the increasing frequency of exonerations because of exculpatory DNA evidence, as well as heightened interrogation practices employed in the fight against terrorism, have kept interrogation practices at the forefront of criminal justice topics.

Suspect Rights and Interrogation

Corporal punishment and harsh interrogation tactics were legitimately employed by American police and prison officials well into the 20th century, perhaps most famously by New York City chief of detectives Thomas Byrnes in the 1890s. But although the Wickersham Commission's report of 1930 detailed many problems with so-called "third-degree" interrogation tactics, little changed with regard to police procedure until a series of precedent-setting court decisions during the 1960s added to the protections of criminal suspects. Specifically, under Chief Justice Earl Warren, the Supreme Court initiated the requirement of police to inform suspects of their rights regarding police interrogation in adherence to the spirit of the Constitution. The court also required investigators to stop interrogations if a suspect invoked his or her right to counsel by attorney and obligated trial courts to appoint

lawyers to represent indigent defendants in serious criminal cases.

Many Supreme Court decisions under Chief Justice Warren, and the policies that emerged from them, were a product of the social and political upheaval of the 1950s and 1960s. During this time, the civil rights movement was initiated by African Americans as a counteraction to segregation and discrimination in the south. As African American civil rights groups lobbied, protested, and sued for equal inclusion into American policy, the court increasingly found that the Fourteenth Amendment extended constitutional protection to every citizen of the United States. Since then, the idea that each American is worthy of equal protection and due process under the law (as provided by the Fourteenth Amendment) has been extended to other political, ethnic, and social groups—including suspects of crime and convicted criminals.

Generally speaking, the decision in *Miranda* was indicative of the broader context of social justice and equality commonly associated with the African American and youth movements of the 1960s. Specifically, the Supreme Court enacted *Miranda*'s limitations on police and prosecutorial power in a reaction to third-degree interrogative tactics employed against suspects of crime. As indicated above, third-degree tactics include high-pressure and violent actions designed to frighten and brutalize a suspect into compliance, such as threats of violence, aggressive confrontations, and badgering, as well as beatings with fists, rubber hoses, or other weapons. Prior to the 1960s, police—especially in poor, crime-ridden neighborhoods—could employ third-degree tactics with almost absolute impunity and little risk of reprimand.

Surely, aggressive, confrontational interrogations may be appropriately called for in dealing with violent crimes and brazen criminals. To the extent that such interrogations elicit usable information without violating the constitutional (or human) rights of the suspect, they may be viewed as valuable investigative tools for investigators. Nevertheless, simply beating, badgering, or torturing a confession out of a suspect may not only be unconstitutional but might not render accurate, reliable information.

The decision in *Miranda* signaled the start of a reconsideration for proper police procedure



A U.S. Border Patrol agent reads the Miranda rights to a Mexican national arrested for drug smuggling. The 1966 decision in *Miranda v. Arizona* limiting the autonomy of police interrogators and requiring police to inform suspects of their rights regarding interrogation was one of several Supreme Court decisions from the 1960s that have had a lasting impact on how interrogations are conducted.

and led to the now-famous recitation of Miranda rights to each arrested suspect as one means of limiting capricious police behavior. Today, the idea of informing a suspect of his or her rights before initiating interrogative questioning seems elementary. The right to remain silent during questioning, the right to have an attorney present during questioning, and the idea that anything said by an interrogated party can and will be used against that party in court are now established in American legal and social lexicons. The court's decision in *Miranda* placed a spotlight on police tactics and procedures and led to more stringent requirements of police in the field. In many ways, this can be seen as the implementation of reform recommendations suggested by the Wickersham reports three decades earlier. Subsequent cases, however, have increasingly limited the scope of *Miranda*'s protections.

Subsequent Court Decisions

The first right mentioned in the well-known and often-cited *Miranda* litany is the right to remain silent, but the Supreme Court found in *Michigan v. Moseley* (1975) that police interrogators (upon a suspect's invocation of this right) need not permanently discontinue the interrogation. Instead, the court ruled that the interrogation could resume after a time, as long as the interrogators continue to adhere to *Miranda*'s requirements. This allows room for a level of police discretion in interpreting the intentions of a suspect under interrogation. Similarly, in *Edwards v. Arizona* (1981) the court found that police questioning must stop immediately if a suspect states that he wants an attorney present on his behalf during the questioning; yet *Davis v. United States* (1994) clarified that the invocation of the right to counsel must be clear enough so that a reasonable

interrogator in the same context would interpret the request for attorney as just that. The decision in *Davis* is thus another example of limitations placed on the reform instituted by *Miranda* and again illustrates an increase in police discretion in regard to criminal interrogations. In some television representations, police questioning stops immediately upon the mere suggestion by a suspect of an attorney. In practice, however, suspect requests for an attorney that are posed in the form of a question, are mumbled, or are otherwise not forcefully and repeatedly stated may legally go ignored by police interrogators.

From the time an officer places a suspect under arrest, during the drive to the police station, and throughout the following processing and interrogation, the rights afforded by *Miranda* are interpreted by the arresting and investigating officers. The reading of the *Miranda* rights might be recited by an officer in an articulate, informative manner, or they may be quickly rattled off to an agitated and uncooperative suspect. Likewise, a request for attorney or invocation of the right to remain silent may be accepted at face value, or the true intention of the invocation could be questioned by officers—allowing the interrogation to continue virtually endlessly. Savvy interrogators, intent on eliciting information that might help close a case, may intentionally prolong an interrogation for hours in an attempt to exhaust the resistance of a suspect to police questioning. In the worst cases, interrogators may even threaten violence or the arrest of family members in an effort to dislodge useful information from unwilling suspects.

The Influence of DNA Evidence

One current example of the power of interrogation techniques to impact criminal justice outcomes is the growing number of exonerations of individuals falsely convicted of violent crimes. Over the past 20 years, as DNA technology has expanded and improved, there have been a growing number of convictions that have been reversed once bodily fluid or tissue evidence from old, closed investigations has been processed or reprocessed with techniques not available at the time of the original investigation. While faulty eyewitness testimony and intentional perjury are among the most common causes of false convictions in America, it has

been suggested that as many as 15 to 20 percent of DNA exonerations are the result of false confessions due to police coercion and overaggressive police interrogations. To be sure, false confessions can often be the product of the aggressive interrogation of at-risk populations such as young or mentally ill suspects over long periods of time.

The increasing frequency of exonerations of individuals convicted of serious violent crimes because of exculpatory DNA evidence has shed light on modern police interrogation and investigation tactics. Law enforcement agencies and officers generally operate with considerable latitude and discretion over the particulars of an investigation. The intricacies of a criminal investigation are many, and the benefit of the doubt is often given to officers in the performance of their duty. Nevertheless, care must be taken to keep in check the power of police to unilaterally detain, aggressively interrogate, and possibly coerce information from suspects of crimes. In addition to the ongoing interpretation of the protections granted to suspects by the Constitution, there is the risk that overly abusive, prolonged interrogation will render information that is neither useful nor accurate.

Serious violent crimes such as rape and homicide are the cases most likely to include DNA evidence, which is partly because of the often personal and physical nature of the act. Another component, however, is that the seriousness of violent crimes elicits a strong reaction from law enforcement that encourages the unfettered use of agency resources. In short, serious violent crime investigations are those most likely to be fully pursued from an investigational and forensic standpoint.

For example, semen samples are often taken routinely during rape investigations, yet lesser sexual offenses may not produce a fluids exchange between victim and offender. Similarly, blood and tissue samples are collected and stored at agency expense where warranted by a homicide scene whereas blood from a domestic dispute or other assault may not be collected for analysis. The broader point is that only the most serious crimes are available to exoneration by DNA. Given this limitation, and the growing rate of convictions based on false confessions that have been overturned, it is plausible that

many less serious crimes that have been officially cleared by police via interrogation and confession have been wrongfully prosecuted. This represents an inconsistency between high American ideals of due process, by which all people are afforded equal protection under the Constitution, and the economy of justice, which requires the speedy and cost-effective resolution of criminal offenses. Overall, then, it could be expected that the increased use of DNA evidence will only serve to further question the appropriateness of aggressive interrogation techniques in the American criminal justice system.

Terrorism and Interrogation Techniques

Another contemporary example of the high-stakes nature of modern interrogations is the use of “enhanced interrogation” techniques by the Central Intelligence Agency (CIA) and other agents of the U.S. government in the ongoing effort to

combat terrorism. In the wake of the terrorist attacks of September 11, 2001, President George W. Bush authorized American interrogators and their agents to use tactics such as sleep and sensory deprivation, verbal and physical humiliation, and simulated drowning as a means of obtaining valuable information from suspected terrorists. While the use of such methods clearly contradicts some of the constitutional concepts and protections referred to previously, the administration justified their use on terrorists by defining them as “enemy combatants” instead of prisoners of war. With no uniforms, no organized rank and file, and no official country of residence, the United States deemed Al Qaeda members and other terrorists not to be legally entitled to the protections of the Geneva Convention or the U.S. Constitution. The use of these heightened interrogation tactics was therefore viewed by the administration as both legal and justified.



A forensic scientist at the U.S. Army Criminal Investigation Laboratory at Fort Gillem, Georgia, processing evidence in a DNA extraction room. It is thought that as many as 15 to 20 percent of DNA exonerations are connected to convictions that were the result of false confessions made because of police coercion and overaggressive police interrogations.

The use of enhanced interrogation tactics divided Americans ideologically when the public became aware of their existence. Some believed that American ideals of due process and human rights should apply to all American actions—both at home against suspected criminals as well as abroad in the fight against terrorism. Others believed that the fluid, unpredictable nature of modern, large-scale terrorist operations like Al Qaeda, combined with their proven willingness to kill civilians, justified the use of the most severe interrogation techniques as a means of securing usable intelligence and foiling would-be terrorist attacks. Similarly, there is disagreement as to whether the use of these tactics has elicited any useful information. While proponents asserted that these techniques prevented further terrorist attacks during the period following 9/11, opponents contended that it was not clear that any specific attack was averted by the use of enhanced interrogation tactics. Whatever the arguments for or against the use of such methods, it is clear that efforts to thwart terrorism have had a major impact on interrogation practices in America.

When President Barack Obama took office in 2009, he ended the official use of enhanced interrogation techniques in the fight against terrorism. This did not, however, ease the conundrum presented by the nonmilitary combatants captured by coalition forces in places like Iraq and Afghanistan and detained indefinitely by the United States. A military tribunal for these terrorists would contradict their established status as nonmilitary “enemy combatants.” Prosecution in a civilian court would avail the defendants of many rights, such as due process and a protection against cruel and unusual punishment, and could cause the trials to drag on for years. While some domestic and lower-level terrorists have been successfully tried in civilian courts, having high-level international terrorists tried in civilian courts and housed in domestic prisons is troublesome for many, both in government and in the public. For others, trying terrorists in the fairest, most humane way possible offers a chance to display both the effectiveness and impartiality of American justice on a world scale.

The legal, social, and moral complexities indicated by the interrogation of accused terrorists and the increase in DNA exonerations in modern

criminal justice highlight the fact that interrogation practices are close to the core of the American criminal justice system. Americans rely heavily on the police and the government to maintain order and social stability by solving crimes and sanctioning offenders. However, it is important that a collective, implicit insistence on the speedy, economical clearing of crimes does not lead to overzealous or abusive interrogations, which contradict the American Constitution and ideals. It is also important that the interrogation practices that are allowed law enforcement agents are proven to be effective at rendering valid, usable information. Ultimately, interrogations are, and always have been, an integral component of law enforcement. But through the evolution of interrogation practices over time, there is presented a view into ongoing legal and social culture and the competing values of security and freedom in America.

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See Also: Confession; Due Process; *Mapp v. Ohio*; *Miranda v. Arizona*; Suspect's Rights.

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Interstate Commerce Act of 1887

The Interstate Commerce Act of 1887 became law on February 4, providing regulation for the

railroads in the United States that, prior to the law's passage, had no established form of regulation at the national level. The legislation created the Interstate Commerce Commission (1887–1995) to oversee and investigate violations of the law by individuals and companies.

The origins of the Interstate Commerce Act go back to 1869, when railroads connected the United States from coast to coast. Prior to passage of the law, the regulation of the railroads came under state control, making it a confusing and costly process as railroads crossed state lines. An even greater problem was the competition between railroads for long-haul routes and the lack of competition for short routes. A serious problem of monopolies developed, leading to rate differences, special rebates, and unfair business practices. States could not keep up with the policing of the railroads, and in many cases, the practices of state officials were as corrupt as those of the railroads. In 1877, the Supreme Court decision in *Munn v. Illinois* ruled that the states had regulatory authority over the railroads. Between 1871 and 1887, over 100 bills were introduced in Congress seeking to federalize regulation of the railroads. Legislative proposals from Congressman John Reagan (D-Texas) and Senator Shelby Cullom (R-Illinois) contributed to the final version of the 1887 act.

Reagan's proposals, beginning in 1878, featured four key areas that needed regulation. Under his version, discriminatory rates and rebates would be prohibited and the market fairly divided. He also addressed the issue of fair pricing on long hauls versus short hauls, making them proportionate, and required that railroads post their rates for the public. Reagan opposed the establishment of a commission to regulate the industry and he sought penalties from the various companies when found in noncompliance. The second version considered by the Senate originated with Senator Cullom in 1883. He sought the creation of a commission appointed by the president and approved by Congress, but this measure failed. A committee was formed to study the issues, and their findings led Cullom to sponsor another version of the bill in 1883. The railroads preferred this bill to Reagan's because it allowed them more freedom with only government oversight via the commission. Ultimately, the two bills caused great debate in Congress but no final resolution devel-

oped until the Supreme Court handed down the *Wabash* decision in 1886, which declared that the states did not have the power to regulate the railroads—a reversal of the *Munn* decision.

With the removal of regulation from the states, it became necessary to establish a regulatory organization for the railroads. Congress reached a compromise and used the short- and long-haul clause and the anti-pooling guidelines from the Reagan bill and established the commission recommended by Cullom. The Interstate Commerce Commission (ICC) was made up of five people appointed by the president with approval of the Senate. It became the first independent agency under the federal government. It quickly became necessary to amend the law to increase the authority of the ICC, including two laws enacted in the early 1900s. The ICC regulation powers were increased and railroad rates were placed under the commission's purview under the Elkins Act of 1903. Commission powers were increased further under the Hepburn Act of 1906, which allowed the ICC to set railroad rates. The commission continued to regulate the railroads and later the trucking industry until the 1970s and 1980s, when Congress deregulated the railroad industry and reduced the powers of the ICC. The Interstate Commerce Commission ceased as an independent agency in 1995 and its remaining duties were transferred to the Surface Transportation Board.

The Interstate Commerce Act of 1887 was the first legislation to regulate an industry at the national level in the United States. Through regulation, railroads were forced to end unfair business practices that included bribery, special rates and discounts based upon the length of routes, and allowed increased competition in the markets. Amendments strengthened the agency's power and it continued until 1995 when deregulation made the Interstate Commerce Commission obsolete.

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See Also: Antitrust Law; Elkins Act of 1903; Federal Policing; *Munn v. Illinois*.

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Intolerable Acts of 1774

Also referred to as the Coercive Acts, the Intolerable Acts of 1774, enacted under King George III, were crucial in the process of America gaining independence from Britain. The four acts represented a punitive response from the British to the events of the Boston Tea Party. Colonists

destroyed cargos of tea in response to the taxation without representation imposed on them. There was common resistance to the arrival of the tea and payment of the threepence duty imposed by the British; however, resistance developed into action in Boston.

Far from achieving the intended outcome of putting down the rebellion, the series of coercive measures that followed the Boston Tea Party served to unite the American colonies and proved pivotal in the buildup to the American War of Independence and eventual independence. The four acts were the Boston Port Bill, the Massachusetts Government Act, the Administration of Justice Act, and the Quartering Act. The Boston Port Bill was a punitive measure aimed at closing the port until the East India Company had been remunerated for the tea that had been destroyed.



The able Doctor, or America Swallowing the Bitter Draught.

This cartoon, published in London in 1774 and titled "The Able Doctor, or, America Swallowing the Bitter Draught," satirizes the Intolerable Acts. The scene centers around a female Native American figure who represents America and is being forced to drink tea by British lawmakers, while another female figure representing Britannia stands in the background hiding her face in her hand.

The act was also intended to close the port until order resumed. The effects of this served to punish all of the port workers and impacted the local economy. This duly angered colonists, and many saw this as a needless breach of their rights and an example of indiscriminate punishment.

The Massachusetts Act was highly controversial because it changed the government within Massachusetts, dictating that members of the council were to be appointed by the governor as opposed to being elected. This effectively brought Massachusetts under the control of the British government. This further strained tensions between Britain and the colony. The Administration of Justice Act enabled officials to have their trials moved from Massachusetts in order to receive a fair trial, which was not deemed to be the case in Massachusetts. This was perceived by some as allowing the British to escape justice for their crimes. Finally, the Quartering Act required colonists to feed and even accommodate British soldiers. This piece of legislation related to all colonies, but in America it was most problematic. An additional piece of legislation, the Quebec Act, is also often linked to the Intolerable Acts.

Jack Sosin has written authoritatively on the matter, demonstrating that history has had a tendency to frame the acts as exercises in capricious infringements of civil liberties and repression of the Boston population. However, such a position can be questioned. For instance, in relation to the Boston Port Act, Sosin remarks that the British government's aims were limited; to "legally put down what appeared a revolutionary movement aimed at overthrowing its authority." Also, "The ministers did not act arbitrarily or order arbitrary use of military force. Nor did they attempt to 'render the military independent of and superior to the Civil Power' as the Americans were to charge in the Declaration of Independence."

Through the establishment of the First Continental Congress, delegates from the American colonies met to discuss appropriate responses to events in Boston. One such response was the boycott of British trade; this included a refusal to import, consume, and export goods, and this was successful in greatly reducing British imports. From this position events escalated. The acts were intended as a tough response to events in Boston in 1773, in effect to stamp out unrest and enforce

rule. King George III and his advisers, including the commander in chief in America, General Thomas Gage, believed that "resolute action" was required; otherwise the colonists "will be lyons, whilst we are the lambs." This was in the context of the recently repealed Stamp Act and Townshend Acts, which had already weakened the British position. However, the acts served to do the exact opposite of what the British had hoped. The Intolerable or Coercive Acts of 1774 united the American colonies against Britain. The American War of Independence followed in 1775, and subsequently independence was declared.

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See Also: American Revolution and Criminal Justice; History of Crime and Punishment in America: Colonial; Proclamation for Suppressing Rebellion and Sedition of 1775; Stamp Act of 1765; Townshend Acts of 1767.

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Iowa

Deep in America's heartland, the landlocked state of Iowa has been a central player in American agriculture since shortly after the Louisiana Purchase. Close to the middle whether states are listed by area, population, population density, or median income, settled by both southerners and northerners, Iowa is the picture of middle America. It is frequently praised as one of the safest states in which to live. Despite this, in the late 20th and early 21st centuries, the state was also central to the growing meth epidemic throughout exurban America.

Despite staunch opposition to the Civil War by the vocal Copperhead minority, Iowa was long a

progressive state in civil rights matters, outlawing slavery in the state in the very first decision of the Iowa Supreme Court, in 1839. Interracial marriages were legalized in 1851, and segregation (in public schools and public accommodations) was ended in theory in a series of court decisions from 1868 to 1875. In practice, discriminatory practices against African Americans continued at state universities until the mid-20th century. Similarly, women's rights were granted early—the first public university admitting women and men on an equal basis was the University of Iowa in 1847. In 1869, Iowa became the first state to rule that women had the right to practice law—but until the Nineteenth Amendment, women's right to vote was limited to ballot issues, not the election of officials. In the 21st century, the state became the first midwestern state and the third in the country to legalize same-sex marriage.

Iowa also led the Union in Prohibition, passing its first laws restricting the sale and consumption of alcohol in 1847. The Whigs pushed through a law against “dram shops” (bars) in 1851, and in 1882, Iowa was briefly made a dry state—the following year, the Supreme Court ruled the state's law against the manufacture and sale of alcoholic beverages unconstitutional. But Iowa laws continued to strongly restrict alcohol, with a local option adopted in 1893 and a strong statewide prohibition law adopted in 1916, shortly before federal Prohibition.

Police and Punishment

The Iowa court system began with the establishment of the territorial government of Iowa by act of Congress in 1838, which established the territory's supreme court, probate court, district courts, and justices of the peace. The first Iowa Supreme Court judges, of which there were three, also served as district judges. A fourth judicial district was added after statehood in 1846, during the Iowa General Assembly's first legislative session. The constitution adopted subsequently in 1857 increased the judicial districts again, to 11, to account for the population spike after statehood.

The earliest town and city police in Iowa, outside of the federal marshal presence and the county sheriffs, were town marshals and night watchmen. In many Iowa towns, the holder of

one of these jobs might hold several other town government positions, like jailer, clerk, treasurer, dogcatcher, and so on. Over time, as the state became more populated, police departments were modernized and the position of police officer was professionalized. The sparseness of law enforcement coverage in the 19th century led to occasional bursts of vigilante justice, and in the 1880s and 1890s, Iowa was one of the states where the “White Cap” movement was popular—vigilante justice in the form of lynch mobs, often but not always directed against African Americans or transients.

The Iowa State Penitentiary, patterned after the Auburn Penitentiary in New York, was established in 1839, the year after Iowa was made a territory. It remained the state's primary corrections center, and today is a maximum security men's prison with a maximum capacity of 550 inmates. The old design was modernized in 1982, when unitization was introduced.

In 1982, the Iowa Department of Corrections began a restitutions program that it has successfully defended in both state and federal court. Initially, the state deducted a small amount from allowances paid to inmates for work they'd done, in order to fund restitutions paid to victims. In 1992, these deductions were extended to include credits deposited into inmates' accounts from the outside; the following year, the Department of Corrections also began making deductions in order to collect on legal debts from inmates as ordered by federal courts.

That was the first of Iowa's victim and restorative justice programs. Other programs have been established since, including a victim notification program (established in 1986) to notify the victims of violent crimes when their offender is released from prison, if a request has been registered in advance; a 1995 policy to notify victims of sexual assault if the offender, while an inmate, tests positive for human immunodeficiency virus (HIV); and victim impact panels, which since 1994 have been held as part of classes in which inmates are taught the effects that their crimes have had on their victims and the victims' families.

In 1993, the Department of Corrections began its Victim Offender Intervention Sessions (VOIS) program. In this program, a safe, controlled environment is provided, mediated by a trained

facilitator, in which an inmate's victim may meet face to face with his/her offender. The program is aimed to help victims with closure and, to a lesser degree, to help rehabilitate criminals by forcing them to confront the consequences of their actions. However, not every victim petitioning for participation in the program is approved; it is considered a program to be handled with extreme care.

Crime

In 1985, Lone Tree farmer Dale Burr was one of many who had gone broke during the farm crisis that had hit rural America harder than any economic crisis since the Great Depression. Over \$500,000 in debt, he was pressured by the bank to sell his livestock and machinery in order to pay off a portion of his debts, and to rent his land out to pay the rest—to abandon the farm the 63-year-old farmer had inherited from his father and grandfather. Instead, he snapped, killing the bank president, a fellow farmer (Richard Goody, who had won a judgment from Burr's son in a land dispute), and his own wife before turning his gun on himself. While shocked, many Iowans worried that the shooting spree would be the first of many—indicating that on some level Burr wasn't a lone psychotic but a symptom of the region's larger problems.

Increasingly, Iowa, like much of the midwest, has had a methamphetamine problem of epidemic proportions. Declining briefly after 2004—having made national news and been the focus of several books and magazine news programs—meth use and manufacture began rising again, as meth manufacturers ("cooks") found ways to skirt the law. Limits of pseudoephedrine purchase quantities, for instance, were circumvented by visiting a succession of pharmacies and buying the maximum amount at each. Further, a technique from money laundering called smurfing could be used, in which many individuals each make small purchases on behalf of another party amassing large quantities. Meanwhile, with the help of the Internet, new formulas for meth were adapted and circulated. Meth cooks dealing with pseudoephedrine purchase limits could simply manufacture smaller amounts of meth at a time, for instance, and as large-scale meth dealers declined, the prevalence of small-scale meth cooks increased to meet

the demand—often their own. Many small-time cooks had learned to manufacture the drug simply to meet their own needs for the drugs, selling any excess to friends in order to fund their habit and operating expenses. In 2010, Iowa pharmacies began reporting pseudoephedrine sales in real time to an electronic system monitored by law enforcement authorities.

In 2011, a new "one pot" meth cooking technique began to catch on in Iowa, using ammonium nitrate—from fertilizing stakes or cold compresses, for instance—as a precursor, instead of anhydrous ammonia or red phosphorous. The one-pot technique cooks meth in a two-liter soda bottle, and as more of the one-pot labs were discovered in the summer, officials worried that the combination of flammable chemicals, pressurized cooking, fragile containers, and drug use could lead to serious residential fire problems.

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See Also: Drug Abuse and Addiction, Contemporary; Drug Abuse and Addiction, Sociology of; Victim Rights and Restitution.

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Irish Americans

In the early 19th century, the Irish people lived in squalor and servitude at the behest of the British Crown. They worked the land for British landlords with no property ownership or social mobility. From 1845 to 1855, the Great Potato Famine forced thousands of Irish to immigrate to

the United States. The potato famine was a desolation of Irish culture, was severely mishandled by the British government, and reduced the Irish people to subhuman levels of existence. During the 10 years of the potato famine, 1 million Irish people died and another 1.5 million left the country for survival, many to the United States.

Early Struggles

Upon arrival in the United States, Irish immigrants faced negative stereotypes imported from England characterizing the Irish as pugnacious, drunken semi-savages. The Irish Americans were seen as boss-controlled, violent, voting illegally, prone to alcoholism, and dependent on criminal street gangs. These stereotypes endured through the 19th century as terms such as *paddy-wagons*, *shenanigans*, and *shanty Irish* gained popularity. The Irish Americans faced rampant discrimination with a plethora of signs and job postings stating “No Irish Need Apply.” The Irish were often forced into low-paying and extremely dangerous occupations and were often arrested simply for being drunk or disorderly.

Despite the effects of offensive stereotypes, discrimination, and poverty, Irish immigrants possessed great numbers, the ability to speak English, and a western European culture similar to American culture. A turning point for negative Irish American sentiment was the Civil War. Irish units, including the all-Irish 69th New York Regiment, participated in monumental battles at Bull Run, Antietam, and Gettysburg, earning them a reputation for dependability and bravery. Following the Civil War, Irish laborers provided the hard work for the expansion of industrial America. The Irish Americans ran factories, built railroads, and worked in the mines. The Irish organized the first trade unions and fought for better wages, shorter hours, and safer working conditions.

Many Irish Americans also found themselves working as police officers and firefighters. Irish Americans became an urban cultural icon, one that was dedicated to public service, keeping the peace, enforcing the laws, and providing public safety. Even though these occupations were harsh, offered low pay, and lacked benefits during the 19th and early 20th centuries, many believe that if not for the Irish, organized and fully functioning fire and police departments would not be in

existence today. For example, in the 1860s, more than half of those arrested in New York City were of Irish descent, but nearly half the city’s law enforcement officers were also Irish. By the turn of the 20th century, five out of six New York Police Department officers were Irish American. Today, virtually every major police and fire department in the United States has its own Emerald Society to celebrate and honor police officers and firefighters of Irish heritage.

Tammany Hall and Five Points

Irish Americans also became involved in politics and organized crime in the United States. The Irish brought with them a natural sociability and an understanding of the importance of human interaction. They found social advancement and political involvement in the saloon, parish hall, and political clubhouse. One such place was Tammany Hall. Tammany Hall was a political organization established in New York in 1786. It was a Democratic political machine that sometimes distorted the democratic process but played a crucial role in controlling New York City politics and helping Irish immigrants advance in American politics from the 1790s to



An Irish American policeman in New York’s Central Park in September 1942. By 1900, as many as five out of every six New York City Police Department officers were Irish American.

the 1960s. Tammany Hall's electoral base was primarily with New York's growing immigrant constituency, most notably the Irish. Tammany Hall offered public welfare to Irish immigrants in exchange for patronage and votes, and Irish immigrants were more than able to work their way into the Tammany political machine. The first gangs of New York City worked on behalf of Tammany Hall—they were the force behind the Tammany apparatus bullying for votes on Election Day. According to T. J. English, the criminal rackets that surged from the everyday workings of the Tammany machine became the basis of organized crime in the United States.

The term *mob boss* originated in the Irish-dominated Five Points from a type of political activity known as a mob primary. According to English, mob primaries comprised the most basic form of political organization known to man. Basically, an aspiring political leader orated until he gathered a crowd or mob willing to sign his petition for candidacy. The mob pledged loyalty to the orator, who was also usually a saloonkeeper, willing to offer his rough and unsavory constituents room, food, and drink. Thus, the mob boss became the leader of a gangster constituency that was a powerful force in many elections and often operated at the behest of political organizations such as the Tammany Tiger.

John Morrissey could arguably be considered the first Irish mob boss in the United States. Morrissey arrived in Five Points, New York, the infamous slum neighborhood that dominated the Sixth Ward at the lower tip of Manhattan Island in 1849. He was a brawler, a troublemaker, and a gangster, and by the age of 18 had been indicted for burglary, assault, and assault with intent to kill. His first job was to greet new immigrant arrivals and direct them to kitchens and boarding houses controlled by the Rynders organization. Captain Isaiah Rynders was a local political fixer for the Democratic Party. Morrissey developed a reputation as a tough though fair man who directed desperate immigrants to food and lodging, and in exchange, they signed voter cards and pledged their support to the political organization Morrissey represented (i.e., Tammany Hall). By 1851, John Morrissey had established himself as an honest immigrant runner, political organizer, saloonkeeper, and professional boxer,

and was the people's champion in Five Points. He had fought William Poole ("Bill the Butcher") to a standstill, and eventually two of Morrissey's henchmen gunned down Poole.

During Morrissey's time, Five Points was well known for licentiousness and depravity with saloons, speakeasies, organized thievery, and prostitution. However, the physical environment was nothing compared to its reputation for gangs and gangsters. The mostly Irish gangs were a salient feature of Five Points. The Irish gangs included the Forty Thieves, Kerryonions, Shirt Tails, Chichesters, Patsy Conroys, Plug Uglies, Roach Guard, and the notorious Dead Rabbits. The rival native-born American gangs—the Bowery Boys, True Blue Americans, and American Guard—were in constant battle with the Irish gangs of Tammany Hall.

Organized Crime

Within this framework of criminal enterprise and politics, both Irish criminal organizations and prominent political figures continued through the following decades. Below is a truncated list of the most notable and notorious Irish gangsters, mobsters, and criminal syndicates.

In the years following Morrissey's death to the end of the century, the Whyos were by far the most notorious gang in New York. The Whyos, who were predominately Irish, were led by Danny Lyons and Danny Driscoll and presided over Lower Manhattan. The Whyos were racketeers. The term itself comes from the word *racket*, which was a public function held by criminals under the pretext of being an event for a worthy cause. Ultimately, the term was extended to include the use of physical intimidation or political pressure to procure protection money out of the merchants. Lyons and Driscoll were both hanged in 1888 for murder. The Whyos communicated with a variety of bird and animal sounds, and their name was derived from a sound made by a bird or owl.

Timothy Daniel "Big Tim" Sullivan (1862–1913) was a New York politician and prominent figure of Tammany Hall who controlled Manhattan's Bowery and Lower East Side districts. He is credited as being one of the earliest ward representatives to use his position to enable the activities of criminal street gangs. Sullivan owned four local bars, one of which he opened on Christie Street,

just east of the Bowery. One of Sullivan's bar customers was Thomas "Fatty" Walsh, a notorious ward leader in Tammany Hall. Sullivan fell under Walsh's political wing, and in 1894, Sullivan was elected to the Third District's State Assembly. Sullivan was involved in illegal activities in the Lower East Side, including prostitution, gambling, loan sharking and "voter influence." He also had legal endeavors, including a partnership in the MGM and Loews cinema operations. Sullivan passed the Sullivan Act in 1911, which made it illegal to carry guns, unless you could afford a registration fee. In 1911, Sullivan contracted syphilis, was judged mentally incompetent, and was removed from his senate seat. In 1912, his family placed him in a mental institution.

Michael "King Mike" Cassius McDonald (1839–1907) made his fortune in Chicago through gambling, specifically faro, and the success of Mike McDonald's faro game energized gambling operations in Chicago unlike anything seen before. An Irish immigrant, King Mike ran Chicago's first crime syndicate. He oversaw the construction of a gigantic, four-story gambling house. This casino-like palace, "the Store," was located close to city hall, and it provided a gathering place for Democratic politicians as well as gamblers. McDonald obtained the cooperation of the police force, politicians, and an army of skilled confidence men to run his rigged games. McDonald's criminal activities predated those of Al Capone and other Chicago gangsters.

Dean O'Banion (1892–1924) was an Irish American mobster and the main rival of Johnny Torrio and Al Capone during the Chicago bootlegging wars of the 1920s. The O'Banion mob, known as the North Side Gang, ruled the North Side and Gold Coast areas of Chicago. At the height of his power, O'Banion was supposedly earning \$1 million a year in alcohol sales. Although O'Banion had an agreement with Torrio and Capone over bootlegging control in various parts of the city, an eventual rift between Torrio, O'Banion, and the Genna Brothers led to his murder on November 10, 1924. The O'Banion murder sparked a five-year gang war between the North Side Gang and the Chicago Outfit that led to the killing of seven North Side gang members in the St. Valentine's Day Massacre in 1929.

Owen Vincent "Owney" Madden (1891–1965) was a gangster and underworld boss in New York City in the 1920s. Born in Leeds, England, to Irish parents, he rose to lead Hell's Kitchen's most violent gang, the Gophers. By the late 1920s, Madden was a millionaire, chief of an underworld empire that included real estate, boxing, gambling, bootlegging, breweries, and entertainment. With Frank Costello and other mob figures, he organized a "crime commission," or syndicate, whose objective was high profits, a businesslike operating style, and a minimum of bad publicity.

The Westies were an Irish American gang originating in Hell's Kitchen on the west side of Manhattan, New York. The Westies' most notorious members included Eddie McGrath, James Coonan, Mickey Featherstone, and Edward "Eddie the Butcher" Cumiskey. According to English, although never comprising more than 12 to 20 members, the Westies became tantamount to the last generation of Irish gangsters in the birthplace of the Irish mob.

The Winter Hill Gang

The Winter Hill Gang is a confederation of Boston-based organized crime figures. Members of the Winter Hill Gang have included such infamous Boston gangsters as Howie Winter, James McClean, James "Whitey" Bulger, and Stephen "The Rifleman" Flemmi. The Winter Hill Gang originated in the 1960s and derives its name from the Winter Hill neighborhood of Somerville, Massachusetts. The Winter Hill Gang has been involved in criminal activities such as murdering rival mobsters, illicit gambling, protection for hijackers and bookmakers, rigging horse races, and drug trafficking. Leaders of the Winter Hill Gang have included James "Buddy" McClean (1960–65), Howard "Howie" Winter (1965–78), James "Whitey" Bulger (1978–95), Kevin Weeks (1995–2000), and George "Georgie Boy" Hogan (2000–present). Kevin Weeks became a cooperating witness in 2000 and was released from federal prison on 2005. James "Whitey" Bulger, perhaps the most infamous of Irish mob bosses, fled Boston in 1994 pending a federal indictment. Bulger was on the Federal Bureau of Investigation's (FBI's) Ten Most Wanted list with a \$2 million reward for information leading to his capture until June 22, 2011, when Bulger was

arrested outside an apartment in Santa Monica, California. Arrested with him was his longtime girlfriend, Catherine Greig. Bulger was 81 years old at the time of his arrest.

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See Also: 1801 to 1850 Primary Documents; Boston, Massachusetts; Italian Americans; New York City; Organized Crime, Contemporary; Organized Crime, History of; Organized Crime, Sociology of.

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Italian Americans

The people of the Italian peninsula have come to America since its earliest days as English colonies. Although they came from every region and every province of Italy, most of the immigration from Italy has been from southern Italy and Sicily, the so-called *mezzogiorno*. Most occurred during the period of the great, or “new,” migration period that lasted from about 1880 to the 1920s. Italian Americans, as with every other immigrant group that has arrived on America's shores, have been useful, productive, and law-abiding citizens in their new homeland, and the list of notable accomplishments by prominent Italians and Italian Americans is a long and respectable one. However, as with every other immigrant group, a small number of immigrants and/or their descendants have been involved in criminal activities. For most people, this fact conjures up images of the Mafia and

organized crime that they have acquired through the popular media, such as *The Godfather*, *The Sopranos*, *Goodfellas*, and other movies and TV programs. These images and negative stereotypes do not tell the entire story of Italian American immigrants or the criminals who came with them. By the late 19th century, millions of *contadini*, or peasants, began leaving southern Italy and Sicily in search of new opportunities overseas, many of them coming to the United States to realize their dreams. More Italians (4.6 million), in fact, came to the United States between 1880 and 1930 than from any other country.

Life in the Mezzogiorno

To understand those who came to the United States from Italy, it is necessary to understand the sociohistoric context from which they came, particularly southern Italy and Sicily, or the region now called the *mezzogiorno*.

With its subtropical climate, Italy for much of the year is the object of intense and scorching heat in the afternoon. The word *mezzogiorno* in Italian means noon, or literally “half-day.” The origin of the term as applied to southern provinces remains murky; however, it was in common usage by the late 1800s, after the unification of the kingdoms of Italy. One version of the term as applied to southern Italy is that culturally, the afternoon in Italy, especially in the south, is the time for shops to close for the afternoon respite, a time for inactivity until the heat begins to pass in the late afternoon. The word *mezzogiorno*, then, came to be associated with the south of Italy (including Sicily), when not much was accomplished and the people relaxed and did not do much. In time, the term took on a pejorative connotation, applying to the southern provinces and the people.

From ancient times, southern Italy and Sicily were coveted areas, strategically important both militarily and commercially because of their geographic location, jutting out into the middle of the Mediterranean Sea. As such, southern Italy and Sicily was a frequently invaded and often-conquered land, coveted for its strategic location. Going back some 3,000 years, this part of Italy was conquered and held by Greeks, Romans, Spanish, Arabs, Normans, and Carthaginians, to name just a few. This series of conquerors had several effects that made the *mezzogiorno* unique. One was that,



Italian markets in New York City's Little Italy in the late 20th century, one of which boasts that it has been there for "over 100 years." From 1880 to 1930, Italian immigrants, of which there were 4.6 million, outnumbered those from any other country.

after intermarriage with many of the conquering nations, over time, the people became of mixed ethnic heritage. Particularly through the influence of Greek, Spanish, Arab, and North African blood, the people became swarthy in appearance—dark hair and eyes and dark complexions, which was seen as inferior by the people of the north, who tended to be lighter skinned and influenced more by the peoples of northern Europe. The north was also the cultural, industrial, and academic center of Italy, influenced by the art and music of the Renaissance, the religious influence of Rome, and later, by the Industrial Revolution that swept through Europe. The south, on the other hand, was rural, agricultural, feudal, and geographically isolated for much of the same time. In turn, the people were seen as ignorant and uneducated by many in the north. The unification of Italy in the 1860s at first held promise for the people of the *mezzogiorno*. Hopeful of achieving equality, the

peasants of the south soon came to see the government of the north as just as oppressive as the foreign governments from the outside that they had dealt with for millennia. At worst, they were maltreated, and at best, they were ignored by the government; they were taxed and conscripted into the military at higher rates, with fewer and poorer schools, and with less recourse in the law and its enforcement than their northern counterparts had. The vendetta, then, became the norm—dealing with one's enemies oneself, rather than taking the dispute elsewhere.

The occupation of foreign armies also affected the culture of the people of the *mezzogiorno*. One such effect was the distrust of outsiders, who were all seen as potential oppressors. In the south, the concept of *campanellismo* became the norm—the distrust of anyone who came from outside the sound of the church bells. *Omerta*, often incorrectly labeled as a formal code of silence in the Mafia, also emerged from this culture of distrust. Originally, the code of *omerta* carried a similar connotation as the Hispanic value of *machismo*—a “real man” took care of his own problems and needed no help or interference from outsiders. Further, he minded his own business and did not repeat anything he heard from others. Later, after immigration began en masse, this was a trait seen as clannishness among those of the host country. The family, the primary unit of most societies, took on an extra special meaning to the peasants of the *mezzogiorno*. Inside the family, one could find protection, trust, and insulation from outsiders.

National allegiance was rarely seen among the peasants of the *mezzogiorno* as well. Even after the unification, people generally gave their allegiance to their local cities and regions, and not to the national government. Thus, they saw themselves more as citizens of Palermo, or Naples, or Bari; of Sicily, Calabria, or Puglia; and less as “Italians” in the national sense. It is often noted in the academic study of Italy and Italian immigration that Italians did not even know they were Italians until they came to the United States (or to other countries), when they were labeled as such by their hosts.

The Mafia

The origin of what is now called “the Mafia” began with the end of feudalism in the early 19th century and was centered on the island of Sicily,

specifically the western portion. Much of the island was transformed into large private estates. Owned by the aristocracy who eventually began leaving their land, the peasants, or *contadini*, depended on the overseers appointed and hired by the former feudal lords to look over their interests. These overseers, or *gabelloti*, over time became powerful and important people in the former feudal society. With few opportunities available to them, people turned to the *gabelloti* to lease small parcels of land to farm for their subsistence or for a sharecropping arrangement. One needed to curry the favor, then, of the *gabelloti*, who often took advantage of the peasants who were dependent upon them. The relationship of the *contadini* and the *gabelloti* came to be a symbiotic network of favors, tribute, and patronage, with the advantage and power on the side of the overseers. In time, the *gabelloti* became men of power who were owed the deference and respect of the peasants.

They also became power brokers of sorts, who provided protection and subsistence to the peasantry in exchange for loyalty and the ability, for many of them, to take unfair advantage of the peasants. Many of the overseers hired henchmen to help protect their interests and insulate themselves from potential opposition by disgruntled peasants seeking revenge, or from the government, seen as interlopers by peasant and overseer alike. It was this system of patronage and power that many scholars and criminologists now see as the origin of what we now call the Mafia, more, in its original sense, a method or a way of doing things than a formal criminal organization.

The etymology of the word *mafia* is unclear. Theories abound that the term may have originated in the many different dialects of Italy, or the languages of the many conquerors that once occupied the *mezzogiorno*, specifically. It appears that original connotation of the term meant “bold,” “daring,” or “exciting,” and a *mafioso* (*mafiusu* in the Sicilian dialect) grew to mean a person who displayed those characteristics. The term then evolved to mean what, in the vernacular of modern English, would mean “an attitude,” not originally applied to one with a criminal background but rather to those who exhibited the characteristics of boldness, daring, and excitement. Those were characteristics certainly displayed by the *gabilloti* as they grew in power and strength and

demanding the respect and evoked the fear of the local peasantry.

Coming to America

As the end of the 19th century drew near, the peasants of the *mezzogiorno* began to see a way out of the bigotry and oppression they had suffered for years, first at the hands of foreign governments, then from their own, and eventually from the patronage system of the *gabelloti*. As the technology of sea travel improved, the importation of crops and other farm goods from far-away lands such as America became cheaper than those that could be grown locally. This began to lead to economic collapse of the largely agricultural south. The same technology, however, made it easier for any peasant who could scrape together the fare to travel and move to other lands with more promise of opportunity. The great migration thus began.

The peasants of the *mezzogiorno*, most of whom had lived in small and isolated mountain villages and farmed the plots of land leased or shared with the *gabelloti* for their subsistence in the old country, became urban dwellers when they arrived in the United States. With no ties to the land or to farming, they settled wherever they had the promise of work or moved to the places where relatives and friends had already settled and could help them get established. For the most part, they crowded into urban tenements and became city dwellers, a much different existence than the rural village life from whence they came. A majority settled into the large cities of the northeast, particularly in New York. With them they brought their customs, food, and culture—and the patronage system, the “mafia” method of doing things that they learned in the *mezzogiorno*.

Most of these immigrants worked at low-paying manual-labor jobs. Sometimes their children, who in the old country had played with cousins and friends on narrow cobblestone streets or courtyards under the watchful eyes of parents, relatives, or neighbors, roamed the streets in urban neighborhoods with little or no supervision. Some of the immigrants, who had grown up unschooled themselves, saw little practical value for their children in schools that taught subjects like literature or history. Left to their own devices, the mischief of boys and their schoolyard chums could easily grow into youth gangs, with boyhood pranks

escalating into skirmishes with the police and the legal system.

The Black Hand (*la mano nera*), often described as “the” precursor to the Mafia, in reality were groups of independent extortion gangs rather than a single unified and monolithic criminal organization. Relatively unsophisticated, Black Hand gangs would extort money from their fellow immigrants, particularly those who were doing well financially, in exchange for “protection,” or being left alone. Black Hand gangs were relatively small, ranging usually from 3 to 20 members, who were able to, or perceived to be able to, carry out their threats.

As the sons of the immigrants grew and their playgroups coalesced into gangs, they became involved in various criminal activities. These gangs were usually profit driven rather than territorial. Often they were involved in burglary, robbery, or other forms of theft involving stolen goods that could be easily resold for a profit. In 1920, the Eighteenth Amendment, and the Volstead Act, which enabled its enforcement, provided the groundwork for what eventually would become the Mafia. Passed largely as a response to and under the pressure of the temperance movement in the United States, Prohibition created an unprecedented money-making opportunity for criminal entrepreneurs who satisfied the thirst of a large part of the American public that was unwilling to do without alcohol. It also required a great deal of organization in order to provide the service, putting the “organized” into organized crime.

Italian American Crime: New York and Chicago

In New York, the early gangsters were primarily Irish and Jewish, with the Italians arriving on the scene as latecomers. With the opportunity provided by Prohibition, the Italians soon rose to either push their Irish and Jewish counterparts out of the picture or began to cooperate and work with them, dividing the Prohibition pie up among all. Still, during the 1920s, there was no unified structure among the groups involved in bootlegging activities. As such, rivalries and disputes were common.

By the late 1920s, war had broken out in New York between the two most powerful of these groups, one led by Joe “the Boss” Masseria and

the other by rival Salvatore Maranzano. In 1931, with the war beginning to take its toll, Masseria henchmen Charles “Lucky” Luciano and Vito Genovese met with Maranzano and agreed to betray Masseria in a plot to bring an end to the war and allow Maranzano to ascend to leadership as the “boss of all bosses” over everyone in New York. Maranzano, by all reports, made an insufferable boss and was soon killed as well. With Luciano as the impetus, the position of boss of all bosses was eliminated, the five-family structure was set up, and “the commission” was put in place to settle disputes, establish rules, and ensure cooperation between the New York families and other families across the country. This is usually considered the beginning of the Mafia as an organization, rather than as the method brought from the *mezzogiorno*, with the same basic structure that remained in place throughout the years and up until today.

The organization in Chicago, usually referred to as “the Outfit,” evolved a bit differently. James (Big Jim or Diamond Jim) Colosimo had risen to the top of the Chicago underworld primarily by managing the prostitution enterprises of his wife. Colosimo, who also owned a prominent restaurant/nightspot, enjoyed a flashy and opulent lifestyle and soon attracted the attention of a local Black Hand gang that attempted to extort money from him. Colosimo sent for a distant relative of his wife’s from New York, John Torrio. Torrio arrived and, with the help of gangster associates from New York, had the Black Handers killed. With extraordinary business acumen, Torrio remained in Chicago as an aid to Colosimo and soon was running the entire operation, allowing Big Jim to move in the legitimate social circles of Chicago. To assist him, Torrio brought in a former protégé from New York named Al Capone. When Prohibition took effect in 1920, Torrio, with his talent for business, quickly recognized the enormous profit potential that awaited in bootleg liquor. Colosimo, however, content with his prostitution enterprises, would have none of it. Unable to convince him, Torrio set Colosimo up to be killed, again by former associates from New York, and along with Capone set up alcohol manufacturing and distribution in Chicago and throughout the region. Other gangs, however, again primarily Irish and Jewish, also availed

themselves of the opportunity afforded by Prohibition and competed with the Torrio-Capone organization for the profits to be made in alcohol. Torrio and Capone were soon involved with rivals in a war for domination of Chicago. When North Side leader Dion O'Banion was murdered in his florist shop, the North Siders retaliated with a planned hit on Torrio. Torrio was severely wounded in the attack but eventually recovered and decided that he had had enough. Torrio officially retired, leaving the entire organization in the hands of Capone. Capone built his criminal enterprise into a multimillion-dollar business, with income not only from bootlegging, but also prostitution, gambling, usury, and other criminal activities. In 1932, Capone was convicted on income tax evasion charges and was sent to prison, where he later died. The Outfit continued throughout the years under the leadership of such notorious gangsters as Frank Nitti, Paul Ricca, Tony Accardo, and Sam Giancana.

Italian American Crime in the United States

Similar social conditions affected the immigrants from the *mezzogiorno* in similar ways, no matter where they settled. As in New York and Chicago, most of the immigrants who came to America along with their descendants led normal, productive, and law-abiding lives. Also in a similar fashion, the sons of some immigrants grew into organized crime groups in urban areas in similar, although not identical, ways. The Federal Bureau of Investigation (FBI) eventually identified 26 Mafia "crime families" in various cities throughout the country. While the history and evolution of each is unique, it is fair to say that at one time the Italian American Mafia had a ubiquitous presence in the United States.

As with other European ethnic groups, however, ethnic identity as "Italian" has changed over the years, affected by the passage of time, intermarriage with other ethnic groups, and assimilation into the mainstream culture, now

a century or more removed from the great European migration of their grandparents and great-grandparents.

These changes have also affected Italian American organized crime, held together more by profit and less by the bonds of ethnic identity. Italian organized crime, while still in existence, has been considerably weakened by this lack of ethnic unity, the rise of organized crime groups of other ethnicities, the passage of anti-organized crime laws such as the Racketeer Influenced and Corrupt Organizations Act (RICO), and concerted efforts by both federal and local law enforcement authorities.

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See Also: 1941 to 1960 Primary Documents; 1961 to 1980 Primary Documents; 2001 to 2012 Primary Documents; Capone, Al; Chicago, Illinois; Irish Americans; Jewish Americans; Luciano, "Lucky"; New York City; Organized Crime, Contemporary; Organized Crime, History of.

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Jackson, Andrew (Administration of)

Andrew Jackson (1767–1845) was the seventh president of the United States (1829–37). Jackson's two terms ushered in a new era of American politics with an ideology known as Jacksonian democracy. His presidency encouraged more government participation by the population. At the same time, he expanded executive power. Jackson's presidency occurred during an era when state penitentiaries were established, and his opponents, the Whigs, were working for prison and punishment reform. Jacksonian democracy, however, influenced judiciary reform at the federal and state levels and helped to establish city police forces.

Jackson believed that it was the president's job to defend the Union, even if he supported states' rights. This belief was demonstrated during the Nullification Crisis in 1832. The crisis emerged over disagreements over tariffs and compounded the growing sectional tension between the northern and southern states. Southern planters believed the tariffs that placed high taxes on imported European goods, making them more expensive than goods produced by northern industrialists, benefited the northern states at the expense of southern farmers. John C. Calhoun supported his home state of South Carolina, resigning as vice

president in December 1832 and saying that states had the power to nullify a federal law that hurt the state's interests. South Carolina threatened to secede if the national government tried to enforce the new tariff in 1832. To protect the nation, Jackson signed a Compromise Tariff in 1833, which stalled further discussion of secession.

President Jackson further demonstrated executive power through his use of vetoes, successfully vetoing 12 bills in eight years. The use of the presidential veto is notably recognized in Jackson's dispute with the Second National Bank, an issue that came to be known as the Bank War. In July 1832, Jackson vetoed a bill that would renew the charter for the National Bank four years before the existing charter was scheduled to end. Jackson disliked the bank in part because it concentrated the national wealth in a single institution, made the rich richer, and favored the northern states over those in the south and in the west. With this veto, Jackson argued that a president should be able to veto any bill that he felt would be detrimental to the nation. As a result, legislators had to begin to factor into their negotiations how the president might feel about a bill. After his reelection to a second term, Jackson decided to abolish the National Bank. In 1833, he removed the federal government's deposits and put them in numerous state banks. The subsequent rise of credit and speculation eventually

led to high inflation and created a demand for specie that could not be met. The new banks collapsed, and the nation descended into a deep depression after the Panic of 1837.

Jackson's policy of Indian removal is one of his administration's more controversial stances and shows how presidential authority tangled with the federal judiciary. In 1830, he signed the Indian Removal Act to relocate Native American tribes west of the Mississippi River. The president was authorized to make land exchange treaties with the tribes in order to facilitate removal. The Cherokee took their case to protect their land to the U.S. Supreme Court. In 1831, in *Cherokee Nation v. Georgia*, the court stated that the Cherokee were a sovereign nation. The 1832 case *Worcester v. Georgia* declared that the state had no jurisdiction on tribal lands. Jackson refused to enforce the court mandate of *Worcester v. Georgia* that would have removed Georgia's authority from tribal lands. Jackson also denied that as president, he had the power to enforce laws against individual states. This stance is interesting considering how Jackson handled the Nullification Crisis. In 1835, a small faction of Cherokee signed the Treaty of New Echota with the U.S. government, resulting in the forced removal of the Cherokee from the southeast in 1838 in what was called the Trail of Tears.

Jacksonian Democracy

While Jackson and his fellow Democrats had respect for American law, they also wanted to protect the autonomy of the American public. Jacksonians believed that the power of judges and lawyers came from legal ambiguities, so Jacksonians wanted to simplify legal codes and procedures to eliminate a judicial aristocracy. Jackson's friend, Edward Livingston of Louisiana, pushed for codification of common law and statutes, and his ideas for legal reform became important to the Democratic Party. Several states, including Pennsylvania, Ohio, and Massachusetts, revised their legal codes in the 1830s as a result of Livingston's efforts. When new western states were admitted to the Union, their constitutions were influenced by Jacksonian legal reforms. Jackson also signed the Judiciary Act of 1837, setting the number of justices on the Supreme Court at nine, and adding two new appeals circuits to cover the growing number of western states.

The rise of Jacksonian democracy led to more rioting in the United States in the 1830s. Riots occurred as a result of elections, racial and ethnic relations, and labor unrest. Hundreds of riots in American cities occurred in the 1830s and 1840s. In response, cities created professional police forces. New York City organized its first professional police force in 1845. Democratic politicians controlled the police department, as well as many aspects of the city's government, causing the state legislature to create a state-run police force for the city in 1857 in an attempt to quell Democratic power.

Jackson's administration expanded the presidential power in many ways, as illustrated by his use of the veto, his stance on nullification, his policy on Indian removal, and reforms to the judiciary. The executive power exhibited by his administration shaped the presidency for the next several terms, and the ideals of Jacksonian democracy influenced American society for decades.

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See Also: 1801 to 1850 Primary Documents; Adams, John Quincy (Administration of); Independent Treasury Act; Indian Removal Act; Livingston, Edward; Native Americans; Riots; Supreme Court, U.S.

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Jackson, Mississippi

Jackson, founded in 1821, is the state capital and largest city in Mississippi. In 2006, the population



James Meredith, the first African American student to enroll at the University of Mississippi, is seen here flanked by U.S. marshals while he walks to class in October 1962. Meredith later led a march from Memphis, Tennessee, to Jackson, Mississippi, in June 1966 as part of a drive to register African American voters and build support for civil rights legislation.

of Jackson was 176,614, a 4.1 percent decrease from 2000. The majority (70.6 percent) of the population of Jackson is African American, and 27.8 percent is white, with smaller numbers of other ethnic groups. Median household income in 1999 was \$30,414, slightly below the state average of \$31,330, and 23.5 percent of the population lived below the poverty line. After the Civil War, Jackson (and Mississippi as a whole) resisted the efforts of Reconstruction, remaining segregated into the 1960s. A variety of measures, from a violent paramilitary organization called the Redshirts to administrative measures such as poll taxes and literacy tests, were used during these years to deprive African Americans of the right to vote and thus of political power. In addition, an estimated 500 African Americans were lynched in Mississippi between 1800 and 1955.

Jackson was significantly damaged during the Civil War and earned the nickname “Chim-

neyville” after being burned in 1863 by Union forces. After the war, Mississippi exerted considerable resistance to Reconstruction, passing restrictive “Black Codes” meant to control the newly freed African Americans (including vagrancy laws and laws against intermarriage). Violence was also used to suppress the rights of African Americans; this violence was often aimed at institutions (e.g., schools and churches) serving African Americans as well as toward individuals. The city government was notable for its corruption in the post-war period but the city continued to grow, aided by the increase in railroad activity near the end of the century and the discovery of natural gas in the early 20th century. Jackson was a center for the civil rights movement in Mississippi, with some of the earliest efforts to defy segregation made by students from the historically black Tougaloo College. In 1961, more than 300 Freedom Riders were arrested in the city, and many boycotts and

acts of civil disobedience took place in Jackson in the early 1960s. On June 12, 1963, civil rights activist Medgar Evers was shot and killed in his driveway in Jackson by Byron de la Beckwith, a member of the White Citizens' Council (a white supremacist organization founded in Mississippi in 1954). Evers's murder (or assassination) drew national attention to the civil rights cause in Mississippi. De la Beckwith was tried twice for Evers's murder, both times with all-white juries, but both ended as mistrials as the juries were unable to reach a verdict (he was retried in 1994, based on new evidence, and he was convicted of murder). In June 1966, James Meredith, the first African American student to enroll at the University of Mississippi, led a march from Memphis, Tennessee, to Jackson to register African American voters and gain support for civil rights legislation. In 1967, the Ku Klux Klan bombed the Beth Israel Congregation in Jackson as well as the home of Dr. Perry Nussbaum, rabbi of Beth Israel and a civil rights worker who founded the first city and state interracial organizations in Mississippi. In May 1970, two African American students at the historically black Jackson State College (now Jackson State University) were shot and killed by state police during a Vietnam War protest.

The first state prison in Mississippi was built in Jackson in 1843, but it was heavily damaged during the Civil War and was not rebuilt because of a lack of funds. Until the construction of the Mississippi State Penitentiary in Sunflower County (also known as Parchman after its first warden, J. M. Parchman) in 1901, convicts were leased out to farmers and other private individuals. The Jackson Police Department was established in 1822, one year after the founding of the city of Jackson. Uniforms and badges for police officers were introduced in 1873, and specialization began in 1878 when the first police detective was appointed; further specialization such as patrol officers and desk sergeants were later introduced. The Police Training Academy was constructed in 1965. In 1972, the first female police officer was sworn in, and in 2006, Shirlene Anderson became the first female chief of police for Jackson. Today, the Jackson Police Department is comprised of about 430 officers and 250 civilian support personnel.

According to the CQ Press rankings, based on Federal Bureau of Investigation (FBI) statistics

from 2009, in 2010, Jackson had the 14th-highest crime rate in the country with a score of 218.91 (where 0 would indicate an average crime rate and a positive number a higher than average rate) and the ninth-highest crime rate among cities with a population of 100,000 to 499,000. According to FBI statistics, in 2008, 1,515 violent crimes were reported in Jackson, including 37 murder or non-negligent manslaughters, 124 forcible rapes, 958 robberies, and 396 aggravated assaults. There were 13,182 property crimes reported in that year, including 4,569 burglaries, 6,994 larceny-thefts, 1,619 motor vehicle thefts, and 113 cases of arson.

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See Also: African Americans; Ku Klux Klan; Mississippi; Race, Class, and Criminal Law; Race-Based Crimes; Racism; Segregation Laws.

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James, Jesse

Jesse James (1847–82) was an infamous outlaw of the American West in the 1860s through the 1880s. He committed dozens of robberies and murdered at least six men. Jesse Woodson James was born in Centralville, Missouri, which is now known as Kearney. His father, Robert James (1818–50), was a Baptist minister who left the

family in 1850 to minister to gold miners in California, but died soon after arriving there. Jesse's mother, Zerelda Elizabeth Cole (1825–1911), remarried twice and thus Jesse, his two brothers, Alexander Franklin (1843–1915) and Robert Jr. (1818–50), and their sister, Susan Lavenia (1849–89), gained two half-brothers, two half-sisters, and a stepbrother. The James family had its origins in Kentucky, and they were slave owners and southern sympathizers; James's father owned seven slaves. With the outbreak of the Civil War, James became a member of the notorious Confederate guerrilla unit led by William Quantrill and William "Bloody" Anderson; they allegedly perpetrated brutal acts against the Union army along the Kansas-Missouri border.

While surrendering at the end of the war, James was shot through one of his lungs. He had a long, slow recuperation and was nursed mainly by his first cousin, Zerelda Mimms. On April 23, 1874, after a nine-year courtship, Jesse and Zerelda married; they had two children, a son, Jesse Edwards, and a daughter, Mary Susan, as well as twin boys who died soon after birth.

Life of an Outlaw

After the end of the Civil War, Jesse and Frank James returned home, but they found that Missourians were bitter and belligerent toward former Confederates, particularly former guerrilla fighters, and terrorized the James brothers and their families, robbing them of their material possessions in retribution. Accordingly, in 1866, the James brothers joined with the Younger brothers to form an outlaw band. Thomas Coleman "Cole" Younger had initially ridden with Quantrill's Raiders, but later left to join the regular Confederate cavalry, just like Frank James had done. The example of the James brothers has been cited by criminologists as evidence in support of the violent veteran model of the theoretical relationship between war and violent crime, which suggests that the experiences of warfare make soldiers more accepting of violence, as well as more proficient at it. Jesse James certainly became very proficient with pistols and was an accomplished horseman as a result of his wartime activities.

The James-Younger gang robbed banks, stagecoaches, trains, and a fair in Kansas City. On



A portrait of Jesse James from around 1882. That year, Missouri Governor Thomas T. Crittenden offered \$10,000 for the capture of the James brothers. The reward led to his shooting on April 13, 1882. His killer was sentenced to death but was pardoned.

February 13, 1866, they robbed the Clay County Savings Bank in Liberty, Missouri; on October 30, 1866, they robbed the Alexander Mitchell Bank in Lexington, Missouri. In March 1867, the gang unsuccessfully tried to rob a bank in Savannah, Missouri. On May 22, 1867, they robbed the Hughes and Wasson Bank in Richmond, Missouri, and on March 20, 1868, they robbed Nimrod and Cin banking house in Russellville, Kentucky. On December 7, 1869, they robbed the Daviess Savings Bank of Gallatin, Missouri, where Jesse James shot and killed a cashier. On June 3, 1871, they robbed the Ocobock Brothers Bank in Corydon, Iowa. On July 21, 1873, the gang conducted the first successful train robbery in the Old West by getting away with about \$3,000 from the Chicago and Rock Island Express train near Adair, Iowa. They had removed part of

the tracks to stop the train, and during the heist Jesse James shot and killed the train engineer. On January 15, 1874, they held up the Concord Stagecoach near Malvern, Arkansas. Other train robberies included the St. Louis Iron Mountain and Southern Railroad (January 31, 1874) and the Missouri-Pacific Railroad (July 7, 1876). On September 7, 1876, the gang attempted to rob the First National Bank of Northfield, Minnesota; after the manhunt that followed this raid, only Jesse and Frank James were free—the rest of the gang were dead or captured.

In 1882, James and his family were living in a rented home in St. Joseph, Missouri. James had recruited brothers Robert and Charles Ford to help with a planned robbery of another bank. The governor of Missouri at the time, Thomas T. Crittenden, had offered the substantial reward of \$10,000 for the capture of the James brothers, dead or alive. This reward allegedly tempted Robert Ford on April 13, 1882, to shoot James in the back of the head and kill him as he was climbing onto a chair to straighten a picture. Jesse James was buried on the James family farm, but in 1902, he was reinterred at Mt. Olivet Cemetery in Kearney, Missouri. Robert and Charles Ford were convicted of James's murder and were sentenced to hang, but were pardoned by the governor of Missouri. Two years later, Charles Ford committed suicide; in 1892, Robert Ford was killed in Creede, Colorado, in a barroom brawl.

Conclusion

Journalists and writers of pulp fiction have portrayed Jesse James as a romanticized Robin Hood figure. James helped to cultivate this heroic image of himself and his deeds, including sometimes even writing letters to newspapers attempting to justify his actions. Former southern sympathizers commonly rallied to his defense. Rumors persisted that Robert Ford had not actually killed James, but someone else. One J. Frank Dalton, who died in Granbury, Texas, in 1951 at age 103, claimed to be Jesse. However, in 1995, the body buried in James's grave in Missouri was identified by forensic specialists using mitochondrial DNA as highly likely to be that of Jesse James.

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See Also: 1851 to 1900 Primary Documents; Dime Novels, Pulp, Thrillers; Frontier Crime; Missouri; Robbery, History of.

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Japanese Americans

Japanese Americans are a racial, ethnic, and cultural group making up part of the landscape of U.S. citizenry. While distinguished by their perceived cultural and geographical tie to Japan, Japanese Americans are also identified as part of a broader Asian American community. Historically, Japanese American difference from, and sameness to, other Asian American ethnic communities (like Chinese Americans) has fluctuated depending on the political climate. U.S. law and policy as well as social attitudes have shaped Japanese Americans into a distinct and marginalized category that was historically criminalized and racialized as perpetual foreigners, and later as wartime enemies, despite citizenship status.

Immigration

The category of Japanese American was in part created and defined through the policing of early U.S. immigration and citizenship laws. Immigration laws passed during the late 19th century restricted entry and naturalization along racial lines, helping to distinguish Japanese Americans as outside the boundaries of U.S. citizenship. The Page Act of 1875 is one notable immigration law that in application targeted Japanese and Chinese women hoping to gain entry into the United States. This law identified morally suspect character as a reason for denial, detention, and deportation, and enforcement of the law often targeted Japanese women. Japanese immigrants during this period

occupied a tenuous position. They were welcomed as an undervalued labor force (especially in agriculture on the West Coast and on plantations in Hawai'i) even as they were targeted by nativists as threats to the nation, for instance in San Francisco, where the board of education ruled to segregate Japanese students from white students in 1906. Criminalization of Japanese Americans in this early period thus hinged on their perceived racial and cultural difference, which was understood by immigration officials, politicians, and ordinary (white) citizens as a marker of immorality and sexual deviancy.

However, the relative strength of the Japanese government helped Japanese Americans gain ground as U.S. residents in contrast to Chinese immigrants. With passage of the Chinese Exclusion Act of 1882 prohibiting almost all persons of Chinese origin from entry into the United States, Japanese immigrants, encouraged by the Japanese government, attempted to distinguish themselves from the Chinese. Constructing Japanese immigrants as ambassadors rather than laborers, Japanese immigrant leaders pushed Japanese Americans to adopt so-called American clothes and customs. The Gentleman's Agreement (1908) negotiated by the Japanese government allowed Japanese immigrant men already in the United States to send for wives and thus enabled Japanese American hetero-family formations, further differentiating Japanese from Chinese immigrants and residents. The agreement ended immigration and legal entry of laborers from Japan; however, it was conceived of by the Japanese government as a measure to help protect Japanese already in the United States. The resulting wave of "picture brides" from Japan during the early 20th century was not without anti-Japanese and nativist activism, nor was it without accompanying anxieties over perceived immoral sexualities. Much of the public discourse of the time played on anxieties over Asian immigration in general (and Japanese in particular) by casting the Japanese "picture bride" as a potential prostitute in hiding. Furthermore, nativist concerns over Japanese women immigrants also involved fears that once allowed entry, Japanese mothers would rear inassimilable Japanese American children who were loyal not to the United States, but to Japan.

These immigration laws were not just about regulating and policing entry; they were also

a means through which "Japanese American" emerged as a distinct and criminalized category. Laws over entry and citizenship were applied unevenly across racial, national, and class categories, where the criminalization of some groups in contrast to others not only justified their legal exclusion but helped fuel (and was shaped by) popular sentiments around criminal physiology. For example, author of several pamphlets and publisher of the *Sacramento Bee* newspaper V. S. McClatchy was one prominent figure in the anti-Japanese movement during the early 20th century. McClatchy was a member of the Japanese Exclusion League, one of several such groups dedicated to the exclusion and deportation of Japanese and Japanese Americans on the basis of their assumed racial, cultural, and psychological inferiority.

Publishing such views of Japanese American inferiority and criminality in venues like the *Bee* helped shape public sentiments that eventually enabled passage of Alien Land Laws in California, which targeted Japanese (and Chinese) Americans, keeping them from owning land (1913). Anti-Asian and anti-Japanese sentiments on the national level helped pass the 1917 Immigration Act, which established the Asiatic Barred Zone. With the subsequent passage of the Cable Act (1924), immigration of peoples from this geographic region (the Asiatic Barred Zone), which included Japan, was ended. The ban was not lifted until passage of the Immigration Act of 1965.

Citizenship

Thus for Japanese Americans, citizenship and naturalization served as key sites through which the community was shaped during the late 19th and early 20th centuries. Testing existing naturalization laws as well as challenging stereotypes of Japanese Americans as criminally suspect and inassimilable, Takao Ozawa, a 26-year resident of the United States born in Japan but educated in California, filed what eventually became a Supreme Court case challenging the racial clause for naturalization. In his case, Ozawa argued that "at heart I am a true American," defining himself as a "free white person" who was "without negro blood," the requirement for naturalization. Decided in 1922, *Ozawa v. United States* denied

Ozawa's claims to being a "free white person," restricting the definition of *white* to those persons of the Caucasian race.

Internment

The criminalizing of Japanese Americans as unworthy of U.S. citizenship extended beyond immigration and naturalization bans. Japanese Americans who were native-born citizens also experienced similar policing around their identity. Japanese Americans were racialized as what Lisa Lowe terms *foreigners-within*; both the U.S. government and white, nativist citizens questioned Japanese American claims to citizenship and national loyalty. Such suspicions formed the crux of government action during World War II to contain Japanese Americans living on the West Coast in designated internment camps out of fear that Japanese Americans were potential spies of the Japanese government. The Federal Bureau of Investigation (FBI) arrested and detained many first-generation Japanese American community leaders during World War II on suspicion of working for the enemy.

By 1942, Executive Order 9066, adopted by Franklin Roosevelt at the suggestion of General John Dewitt, instigated the removal of all peoples of Japanese descent from the west coast. Executive Order 9102 and Public Law 503 implemented what the government then termed "voluntary relocation" by assigning a war relocation authority and establishing criminal sanctions. Criminalized for being inassimilable immigrants and unpatriotic U.S. residents, more than 120,000 Japanese Americans residing on the west coast were evacuated from their homes and relocated into 10 internment camps situated in rural, often desolate locations (often, camps were located on Native American reservations).

U.S.-born Japanese American citizens were included in these orders, and several Japanese Americans challenged the legality of the removal orders in court. Notably, *Hirabayashi v. United States* (1943) and *Korematsu v. United States* (1944) challenged the constitutionality of the relocation orders. As U.S. citizens, Japanese Americans like Korematsu argued the violation of their rights. The decisions in these cases rationalized that the need to protect the nation during war overrode the individual rights of citizens like Korematsu. After he refused to relocate, Korematsu was sent to

one of three FBI prisons established to hold those refusing Executive Order 9066. Ironically, the fear of Japanese American disloyalty did not dissuade the U.S. government from recruiting detainees to fight in the U.S. Army.

Internment of Japanese Americans began to wind down in 1944, with the relocation order rescinded in 1945 as the war ended, though it was not until 1976 during the civil rights era that Order 9066 was formally repealed. The loss of property that resulted from internment left many Japanese Americans to resettle in new places. Psychological studies of the time found that the trauma of internment impacted many Japanese Americans, and the period after World War II saw the rise of stereotypes of Japanese



Japanese American Corporal Jimmie Shohara, who served in the U.S. Army during World War II, was visiting his interned U.S.-born parents at the Manzanar internment camp in California in 1943 when Ansel Adams took this photograph of him.

(and Asian Americans more generally) as “model minorities” who were characterized as quiet and hardworking. Even though the model minority figure emerged in state and media discourses as a wartime tool to distinguish Chinese Americans (as allies) from Japanese Americans (as enemies), the impact of internment on the social, political, and economic position of Japanese Americans quickly shifted the association of the model minority stereotype to Japanese Americans. The figure of the model minority emerged as a way to decriminalize Asian Americans, and for many Japanese Americans, the geographic dispersal, economic loss, and psychological impact of internment resulted in internalized pressures to assimilate.

Additionally, U.S. national guilt over internment after the war (when internment was quickly paralleled to Nazi practices) created a national sentiment of victimization and decriminalization toward Japanese Americans, which further solidified the stereotype of the Japanese American model minority.

One of the political outcomes of the model minority stereotype was to provide rationalization for the criminalizing of African Americans against Asian Americans in the state’s efforts to resist structural changes being advocated as part of the civil rights movement. However, the bifurcating of Asian Americans as model minorities against African Americans as “monitored minorities” fails to recognize the active participation of Asian Americans in the civil rights movement, for instance, the work of Japanese Americans in establishing redress for internment, which was both influenced by and influential to other kinds of organizing around equal access and rights taking place during the 1960s and 1970s.

The criminalization of Japanese Americans has historically shared many similarities with Chinese and other racialized minority American populations in that racial and cultural differences worked as external indicators of internal propensities (toward immorality or criminality). However, the legal treatment and cultural representations of Japanese Americans was often a result of the contrasting of Japanese Americans against other ethnic and racial categories. The category of Japanese American continues to be shaped in relation to Chinese and other Asian

ethnic (as well as African American, Latino, and Native American) difference as well as through decriminalization.

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See Also: Chinese Americans; Internment; *Korematsu v. United States*; Racism; Xenophobia.

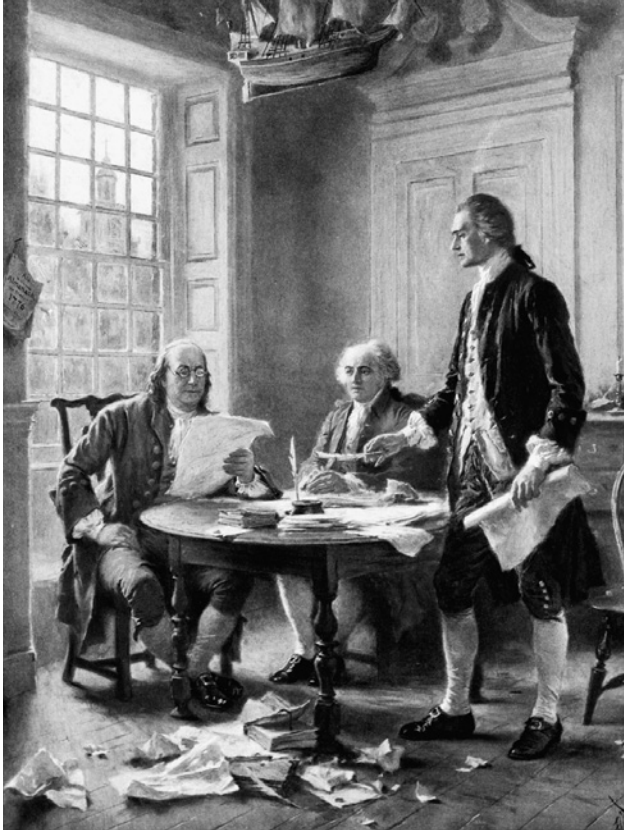
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Jefferson, Thomas

Thomas Jefferson’s legacy to subsequent generations has been vast, including political theory, philosophy, architecture, and education. Jefferson’s influence on American thought regarding crime and punishment has been especially great. Conceptualizing crime and punishment as a consequence of the social contract under which citizens live, Jefferson believed that punishments must be carefully related to the crime committed. His strong belief in public service informed his commitment that government’s most sacred duty is to provide equal and impartial justice to all citizens.

Jefferson was born April 2, 1743, in Shadwell, Virginia. His father, Peter Jefferson, was a planter and his mother, Jane Randolph, was descended from one of Virginia’s most distinguished families. Thomas Jefferson inherited a significant estate, including slaves, from his father. At age 26, Jefferson began building his estate, Monticello. For most of his adult life, Jefferson owned about 200 slaves. After serving as a delegate to the Second



A painting depicting Thomas Jefferson (standing), Benjamin Franklin (left), and John Adams working on drafts of the Declaration of Independence in Philadelphia in 1776.

Continental Congress from 1775 to 1776, where he drafted the Declaration of Independence, Jefferson was elected to the Virginia House of Delegates. In that role, he drafted 126 bills, many dealing with issues of crime and punishment. For example, Jefferson attempted to simplify the judicial system, believing that too often, needless delays obstructed justice in criminal cases. Jefferson also sought to abolish the death penalty in Virginia for all cases excepting those involving murder or treason. Although unsuccessful in this attempt, Jefferson was elected governor of Virginia in 1779, serving until 1781. Primarily focused on the Revolutionary War, Jefferson was instrumental in moving the state capital from Williamsburg to Richmond, a more central location, so that all residents of Virginia would be better heard. Jefferson also served as the second vice president and third president of the United States. After his retirement, he founded the University

of Virginia in 1818. Jefferson died on the 50th anniversary of the signing of the Declaration of Independence, on July 4, 1826.

Toward the end of the 18th century, the death penalty's use in the United States had grown exponentially. Murder and other conventional law offenses were mostly punished by hanging. Certain minority groups, such as blacks and Indians, were routinely punished by burning or lynching for even minor infractions. Petitions and forgiveness for any defendant facing the death penalty were unusual. For example, slave policies in the south encouraged the use of the death penalty for many crimes, including those that, if committed by a white person, would have been punished less severely. Many freed slaves were denied a trial and faced mob justice. This inequity bothered Jefferson, who argued for accommodating the sternness of a punishment to the magnitude of the crime—this led him to oppose the death penalty for all crimes except murder and treachery. He believed that cruel and sanguinary laws defeated their own purpose, encouraging society to withhold prosecutions, smother testimony, or listen to testimony with bias. Thus, Jefferson sought to reform sentencing laws, and was especially concerned with prosecutions related to crimes such as rape and the punishments that accompanied them. Jefferson was also skeptical about imposing harsh sentences for crimes that relied upon the testimony of a single witness, such as rape or assault, as he believed some prosecutions could stem from impure motivations on the part of a disgruntled former lover or friend. Such ambiguity in evidence caused Jefferson to oppose the use of capital punishment for all but the most severe crimes: murder and treason. Although he was unable to secure passage of these reforms, they shaped subsequent generations' efforts.

Jefferson believed that harsh punishments should be meted out only rarely. If used, harsh punishments should only occur in those few cases where the circumstances merited their implementation. Jefferson asserted that punishments should match and fit the executed crime. Many modern discussions related to sentencing guidelines are predicated upon Jefferson's belief that criminals deserve accurate and proper justice even when they have committed an infraction. Jefferson maintained that justice is served only when

convicted defendants' punishment corresponds to their crime. Jefferson believed that the law is effective only when it restores order. That is, the law can only punish the people involved in crimes justly, as dictated by the circumstances surrounding their crimes. Jefferson thus felt that imposing the death penalty for a wide variety of actions was inhumane and considerate only of the law's makers and not the law-abiding citizens who were often silenced through fear of capital punishment.

Jefferson believed that the human conscience works with individuals' instincts to guide citizens in making the right choices. Laws and regulations that do not provide this guidance to assist individuals to shape their own lives and be responsible for their actions were consequently ineffective. As a believer in the individual's power and ability to choose right over wrong, Jefferson believed a major purpose of criminal laws must be to educate the public regarding the reasonable consequences for violating those laws. Although Jefferson believed that punishment was an effective means of deterring crimes and criminal behavior, he felt that those in power too often misused and overused punishment. Jefferson's writings regarding crime and punishment have resonated throughout American history, and his philosophy of crafting appropriate sentences to specific actions has affected sentencing guidelines and discussions about the purposes of the penal system.

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See Also: 1777 to 1800 Primary Documents; American Revolution and Criminal Justice; Bill of Rights; Declaration of Independence; Jefferson, Thomas (Administration of); Slavery, Law of; Virginia.

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Jefferson, Thomas (Administration of)

The influence of the legal and political thought of Thomas Jefferson (1743–1826) was felt by America in its earliest days. Lawyer, landowner, and slave owner Thomas Jefferson began his political career as a representative for Albemarle County in the Virginia House of Burgesses. There he served from 1769 to 1774, during which time he began to argue in favor of independence from Britain. In 1775, Jefferson began his participation in the Second Continental Congress, where he was named, along with John Adams, Benjamin Franklin, Robert R. Livingston, and Roger Sherman, to write to the British government a declaration of independence. The draft of the Declaration of Independence is attributed to Jefferson where, following theorist John Locke, he wrote of unalienable rights and consent of the governed and outlined complaints the colonists had against King George III of Britain. Jefferson's document was ratified by Congress on July 4, 1776. In 1776, Thomas Jefferson was elected as a member of Virginia's House of Delegates, where he advocated religious freedom and opposed primogeniture. He remained a member of that body from 1776 until 1779, when he prevailed in an election for governor of Virginia.

In subsequent years, Jefferson served in a variety of other offices, including member of Congress, minister to France, and secretary of state under George Washington. Throughout the latter half of the 1770s, Jefferson emerged as a leader of the Democratic-Republicans. This led to his nomination by the Democratic-Republicans for the presidency; he ran against John Adams in the election of 1793. Despite Jefferson's loss to Adams in that election, he placed second in the Electoral College vote count, which, at the time, meant he would serve as his opponent's vice president. As vice president, Jefferson opposed the highly unpopular Alien and Sedition Acts enacted by the Federalist incumbent, Adams. The election of 1800 resulted in a tie between Jefferson and his running mate, Aaron Burr. A tie enabled the Federalist-controlled House of Representatives, which opposed both Jefferson and Burr, to ultimately choose Jefferson to be the third president of the United States.

First Term

The early years of Jefferson's presidency were focused on foreign affairs. During his first few months in office, Tripoli declared war on the United States, alleging that the United States owed them tribute for the prevention of piracy of American ships. President Jefferson refused payment, and Congress followed with a formal recognition of the war against Tripoli in 1802. Consistent with his interest in academics and foreign affairs, the president established the West Point United States Military Academy in the midst of the international disputes and negotiations of the time.

Of particular note is that in 1803, President Jefferson received news that Napoleon Bonaparte of France was willing to sell the Louisiana Territory to the United States for roughly \$15 million. On April 30, 1803, Jefferson agreed to the exchange that came to be known as the Louisiana Purchase. Later that year, Jefferson sent Meriwether Lewis and William Clark on an expedition to chart the new territory. Just before the completion of Jefferson's first term, Congress amended the U.S. Constitution and added the Twelfth Amendment, stipulating that the Electoral College could cast votes for president and vice president as separate offices. The election of 1804 was conducted according to the new law of the land.

Second Term

Thomas Jefferson won reelection in 1804 against Federalist Charles Pinckney of South Carolina and continued his presidency in 1805 with a new vice president, George Clinton of New York. Also spanning the years 1804 and 1805 was the impeachment of Supreme Court justice Samuel Chase, who had been nominated to the court in 1796 by President George Washington. Justice Chase was thought by many to be a devout Federalist. This was exhibited by his strong and public support of Jefferson's predecessor, President John Adams, and by his criticism of the Democratic-Republican policies of the Jefferson administration. In 1804, the House of Representatives voted in favor of Justice Chase's impeachment on the grounds of misconduct and bias. Ultimately, the members the Senate acquitted Justice Chase; he remained a Supreme Court justice throughout the remainder of the Jefferson presidency. To date,

Samuel Chase is the only Supreme Court justice to have been impeached by the House.

In midyear 1805, the war with Tripoli came to an end with the Treaty of Tripoli. As the war with Tripoli ended, hostilities over territory and trade with Spain, France, and Britain arose over the following few years and continued until the end of Jefferson's presidency. In 1806, Jefferson lobbied Congress successfully to place a ban on slave trade to begin in 1808. In 1807 Jefferson signed the controversial Embargo Act, which restricted trade even further so as to completely prevent all ships from going to foreign ports. This act and others that followed were precursors to the War of 1812.

Also in 1807 was the dramatic trial of Jefferson's first vice president, Aaron Burr, for misdemeanor and treason. Just years after Burr killed Alexander Hamilton in a duel in 1804, he was brought to court in front of Chief Justice John Marshall. In 1807, Burr was charged with conspiring to commit acts of war against the Spanish-owned territories to the south of the United States. The case forced new legal questions of what constitutes treason and war, and of the evidentiary responsibility the president of the United States has when subpoenaed. In the end, Burr was acquitted and left to exile in Europe. Soon after, in the election of 1808, it was determined that President Thomas Jefferson would be succeeded by Democratic-Republican James Madison, fourth president of the United States, who continued federal governance with Vice President George Clinton.

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See Also: 1777 to 1800 Primary Documents; Declaration of Independence; Jefferson, Thomas; Madison, James (Administration of).

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Jewish Americans

Jewish Americans, once distinguishable as an ethno-religious group of immigrants from primarily European ghetto communities, initially sought out social and economic niches at the periphery of urban American society. They have since found success in shaping certain critical moments in social activism, the criminal underworld, and urban culture more broadly. Now largely assimilated, most Jews in the United States have lost ties to European immigrant communities and are now firmly rooted in American culture and politics.

Prior to the middle of the 19th century, the United States' Jewish population was relatively small and concentrated largely in urban areas. Germany, eastern Europe, and Russia were the main centers of Jewish settlement. As a result of increased persecution and anti-Semitism beginning in the 1870s, European Jewry began a long period of immigration, primarily to Palestine and the United States. This occurred in the same period as other large migrations to the United States, including German, Irish, and Italian immigrants. This influx of immigrants led to a large expansion of the American population and caused some Americans political and social discomfort. This political and social discomfort on the part of the American populace created a generally hostile environment against immigrants of all types, including Jews. Popular media played on the participation of small numbers of Jews in criminal and radical political endeavors to bolster anti-Semitism and xenophobia.

Immigration and the Mafia

The early experience of Jewish immigrants to the United States followed a similar pattern of that of other immigrant communities: In the face of discrimination and limited socioeconomic opportunity, insular communities developed and, within them, underworld activity became prominent. Especially in the New York area, Jewish Americans organized into gangs engaged in low-level illicit activities such as racketeering, prostitution, and gambling. One of the most prominent members of the Jewish Mafia, Arnold Rothstein, had a significant impact on the development of organized crime in the United States. In addition to his alleged role in fixing the 1919 World Series—the Black Sox Scandal—Rothstein is credited as one



Jewish American gangster Meyer Lansky leaving court in Manhattan in February 1958. At the time he was fighting a ban on his return to his gambling operations in Havana, Cuba. He also worked with "Bugsy" Siegel on casinos in Las Vegas.

of the pioneers of organized crime, among the first to transform underworld activity into a business venture. Rothstein and other Jewish American gangsters were among the first to synthesize capitalism with crime and, in the context of Prohibition and the Roaring Twenties, fused them into ventures not unlike corporations in terms of profitability and top-down control.

As the 20th century progressed, other names rose to prominence in the Jewish American

underworld, and new forms of criminal ventures were created. Under the guidance of men like Meyer Lansky and Benjamin “Bugsy” Siegel, the original fissures that existed between the underworlds of immigrant communities were bridged, resulting in greater cooperation between Jewish and Italian organized crime groups. This increased cooperation ultimately contributed to the growth of crime organizations throughout the United States, particularly during the Prohibition era. As Prohibition came to an end, the partnerships that had sustained the ties between Jewish and Italian crime groups persisted and evolved into new forms. In the mid-20th century, Siegel and Lansky became involved in ventures in establishing casinos in Las Vegas, a higher-stake version of some of the very gambling endeavors that had spurred the emergence of Jewish American criminal organizations.

Radical Politics

By the mid-20th century, like other immigrant communities, Jewish Americans found themselves more integrated within their country; there was one feature, however, in which the Jewish American experience was markedly different. Many of the European Jews who immigrated to the United States brought with them a tendency toward countercultural political traditions. The Pale of Settlement, a broad territory in modern-day Poland and Ukraine, was one of the primary homes of the Zionist movement. Similarly, some European and Russian Jews, unable to participate in the daily political life of their countries of birth, became involved in a number of reformist or revolutionary movements, especially forms of anarchism or communism. The involvement of Jews in such movements was overstated by anti-Semitic propaganda in post-Bolshevik Russia and Nazi Germany, but some tradition of involvement in radical politics, especially Zionism, did exist among European Jewry, and both the tradition and the stereotypes moved to the United States with Jewish immigrants.

Some Jewish Americans continued these links to radical politics; Jewish American intellectuals especially developed a reputation for supporting communist ideals. In the mid-20th century, with the rise of the Red Scare and McCarthyism, major Jewish organizations made an attempt to repudiate such connections. The specter of anti-Semitism

rose as the investigations of the House Un-American Activities Committee proceeded. Though Jews were never a specific target of McCarthy, some organizations were concerned about association with communism, especially after the execution of Julius and Ethel Rosenberg. These attempts were largely successful in avoiding a direct association between Jewish Americans and communist parties, allowing Jewish Americans to instead become involved in new causes more oriented toward social justice and civil rights reform.

Civil Rights Movement

Jewish Americans, cognizant of their recent history as oppressed minorities, fought alongside African Americans for racial justice throughout the civil rights movement. The earliest example of the Jewish-black alliance was Joel Spingarn and his brother Arthur, who dedicated their professional careers to making the National Association for the Advancement of Colored People (NAACP) a viable advocacy group in the 1910s and 1920s. Arthur served as the president and Joel the legal adviser for the nascent organization, which would have many more Jewish allies in its long life span.

As the civil rights movement gained ground and the stakes grew higher, Jewish activists continued to fight for equality with their black brothers and sisters. The majority of the white students who traveled to Mississippi in the 1964 voter registration drive were of Jewish descent, and many of them either witnessed or experienced the police brutality and vigilante violence that was directed against civil rights protesters in the south. That summer, two of the students, Michael Schwerner and Andrew Goodman, were reported missing along with their African American colleague James Chaney, and their bodies were later found in a ditch. Jesse Jackson later invoked the triple murder to indicate the solidarity that bound together the struggles of Jewish and African American activists in the civil rights movement. Other individuals who figured prominently during this period included Howard Zinn, a historian and author of the *People's History of the United States* who worked with the Student Nonviolent Coordinating Committee (SNCC); Stanley Levison, Martin Luther King, Jr.'s friend and speechwriter; Kivie Kaplan, president of the NAACP; and Marvin Rich, fundraiser and coordinator for

the Congress of Racial Equality (CORE). Rich was later persecuted for being a member of the Communist Party. Older and wealthier Jews also contributed significant sums of money to SNCC, CORE, and the Southern Leadership Christian Conference (SLCC), among other organizations working for racial justice in the south.

Mainstream American Identity

Despite the successes of the civil rights movement, Jewish Americans did not continue to ally themselves in significant numbers with the struggles taking place in communities of color. Resegregation of urban and suburban residential areas, as well as gentrification within the Jewish community, caused solidarity with African Americans to wane, with New York neighborhoods in particular becoming sites of tension. Jewish teachers, who had replaced African American teachers during desegregation, launched strikes that were seen as a threat to certain schools; Orthodox Jewish residents protested public speeches by Nation of Islam leader Louis Farrakhan; and the Crown Heights neighborhood witnessed in rapid succession both the tragic death of 7-year-old Daren Cato and ensuing murder of Yankel Rosenbaum.

On a national level, conservative Jewish leaders spearheaded a number of efforts that served to distance themselves from communities of color, including legal challenges to affirmative action; dismissal of Ambassador Andrew Young for meeting with the Palestinian Liberation Organization; and the escalation of anti-Islamic rhetoric in the neoconservative movement of the late 1990s and early 2000s. While citizens of Jewish heritage continue to support racial justice movements in large numbers and anti-Semitism continues to paint Jews as outsiders, cultural assimilation and socioeconomic advancement have led Jewish Americans into a more mainstream, white American identity. Though centuries of life on U.S. soil have rendered Jewish Americans a less culturally distinct group than they once were, their history tells much about the dynamics of immigration and assimilation of newcomers in American society.

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See Also: African Americans; Immigration Crimes; McCarthy, Joseph; National Association for the Advancement of Colored People; Organized Crime, History of; Rothstein, Arnold; Xenophobia.

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Johnson, Andrew (Administration of)

Few presidents have been as poorly understood and regarded as Andrew Johnson (1808–75). Born in poverty in North Carolina, Johnson moved to eastern Tennessee with his family as a boy. He was apprenticed to a tailor in South Carolina and learned that craft in his teens but never received any formal education. Until his marriage, he was completely self-taught but his wife encouraged him to read more widely and taught him mathematics and some computational skills. As a result of his hardscrabble childhood and continuing struggle, Johnson came to identify intensely with the plight of the white workingman and dislike the planter elite in the south. He believed in the manifest necessity of white supremacy and had a distrust of policies imposing racial equity. A strong advocate of states' rights, he opposed big government and postwar federal interventionism in principle. He was a Jacksonian Democrat who celebrated the common (white) man and held utopian prescriptions for reconstituting the postwar south in ill-disguised contempt. He stood foursquare against extending full constitutional rights to freed slaves and was against federal policing of the South. As president, he used executive power to obstruct congressional attempts to force Republican ideologically based retributive policies on the defeated

southern states. He was also a stubborn and difficult man with whom to deal and was ill-equipped to compromise.

Rise to Power

Johnson's political career began with a stint in the Tennessee House of Representatives in 1835. Thereafter, he served in various capacities in state elective office until 1843, when he was elected to the U.S. House of Representatives. After 10 years of service in that office, he was elected governor of Tennessee. He served as U.S. senator from 1857 until 1862, when he became the only senator from a seceding state not to resign. His reasoning was that although a state's rights were paramount, they did not include secession. Therefore, the seceding states were fictitious entities, and all acts under secession governments were null and void. Johnson viewed secession as a fiction and saw himself as continuing to represent the legal government of the state of Tennessee. This "unionism" did not make him a Republican, however. He remained a staunch Jacksonian "War Democrat"—Andrew Jackson also opposed secession. Johnson stubbornly held these views through his life. Both his views and his obstinacy brought him into conflict with Radical Republicans in Congress. Though he was a Democrat, Johnson's opposition to secession brought him to the attention of President Abraham Lincoln, who appointed him occupation governor of Tennessee, a political move that carried with it the rank of brigadier general. In another political move, Lincoln chose Johnson as his running mate in the election of 1864 because of his status as a pro-Union "War Democrat." Inaugurated as vice president on March 4, 1865, Johnson became president when Lincoln was assassinated just a few weeks later. His presidency got off to a rocky start when it was alleged that he gave his inaugural address in a state of intoxication. Recovering from a bout with typhoid fever, he unwisely used some spirits medicinally and appeared to be drunk. Most historians reject the notion that Johnson was an alcoholic, as some of his opponents alleged at the time.

Presidency

As president, Johnson initially took a hard line toward former Confederates and secessionists.

But he soon began granting wholesale pardons and refusing to support or endorse more draconian retributive prescriptions proposed by the Radicals in Congress. He also reined in the Freedman's Bureau and reversed confiscations of lands owned by some southerners. Furthermore, the policy of some Union generals and officials of granting of seized lands to former slaves was rescinded. Johnson's view was to restore property and political rights to poor and yeoman whites while hindering the former planter class from dominating the politics of the former Confederate states. Again, Johnson regarded secession as having never really occurred, and he felt that the status quo that existed before the war—minus slavery and the planter aristocracy—should be restored as much as possible. He later saw that restoring certain elites from among Unionists in the old elite class would be necessary to restore order and confidence in any new state government.

Thus, the utopian plans of Radical Republicans, based on creating a completely free market-based economic system in the south that was devoid of the vestiges of the paternalistic plantation economic order, were in substantial conflict with the more "restorative" Reconstruction foreseen by Johnson. Johnson vetoed a Civil Rights Act in 1866 but his veto was overridden. He then tried to block the passage of the Fourteenth Amendment, which gave voting and civil rights to freed slaves. In the midterm election of 1866, Johnson made a disastrous campaign journey through the north—the "swing around the circle." The subsequent elections were viewed as repudiation, as the Republicans took control of Congress and dominated Reconstruction.

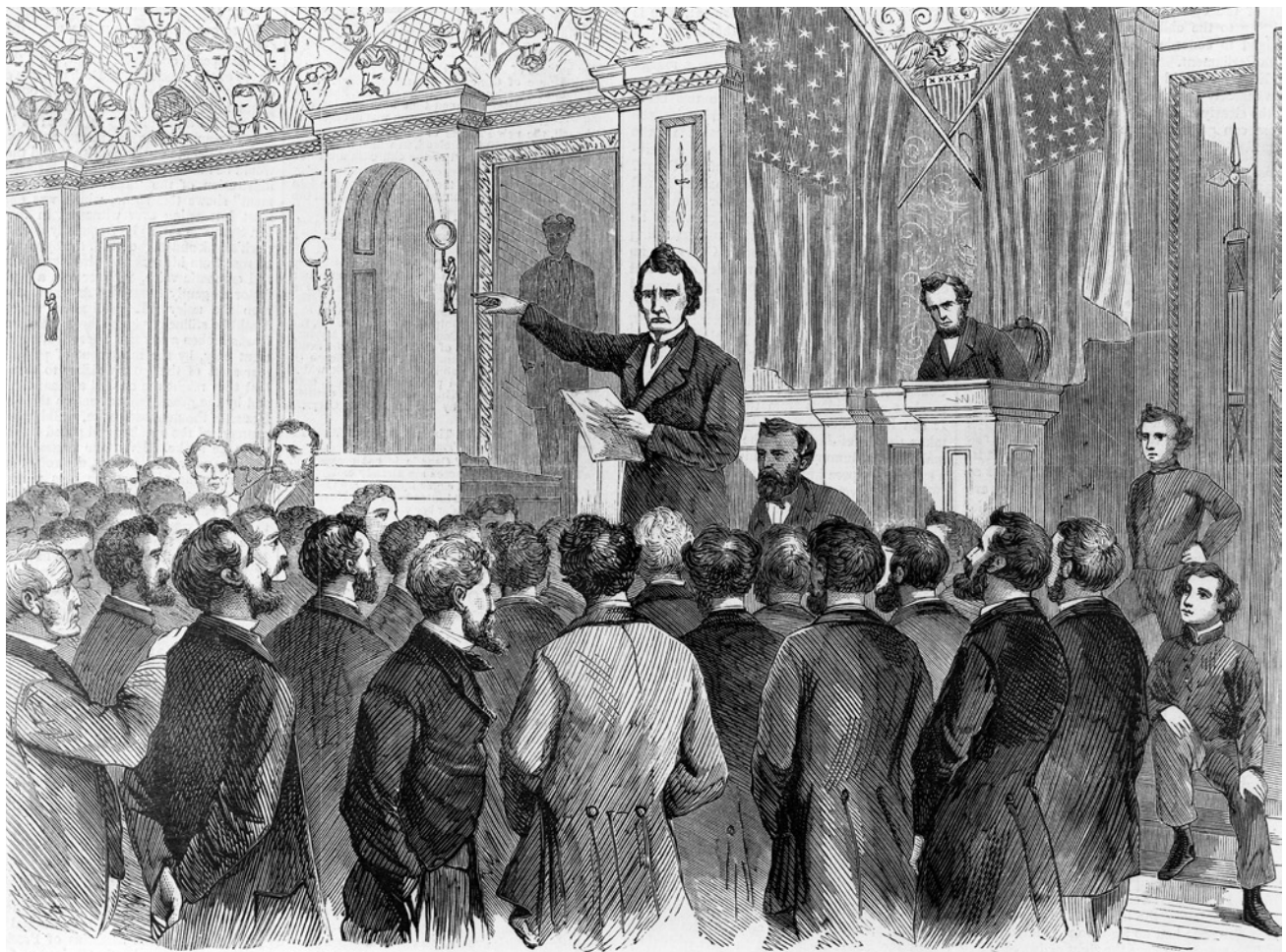
A major structural break occurred when Johnson replaced Secretary of War Edwin Stanton, an ally of the Radicals, against stipulations of an act passed by Congress, the Tenure of Office Act. Johnson alleged that it was unconstitutional (the U.S. Supreme Court supported his contention in *Myers v. United States* in 1926) but at the time, Congress disagreed. On March 5, 1868, impeachment proceedings against Johnson began in the Senate with 11 articles enumerated against him. The trial, which lasted three months, was ultimately decided by one vote—Johnson was not convicted. The unabashedly political nature of this

trial exhausted the Congress, the executive, and the nation and is regarded as a blot on the history of Reconstruction and of the presidency itself.

In his last year in office, Johnson was forced to stand by as the Republican Congress took a harder line toward the south. Johnson had rejected federal policing of racial conflicts in the south. Much of Congressional ire was aimed at white supremacist gangs such as the Ku Klux Klan (KKK), which began a reign of terror in the mid-1860s. Many of Johnson's efforts at rebuilding the region's political culture were undone. Military occupation and Republican attempts to control elections through fraud were met with more political and terroristic resistance. Violence flourished as the KKK, local affiliates, and other

militia-type groups created chaos and restored white supremacy through intimidation and terror. Northern political elites eventually tired of this "fool's errand," as one writer called it, and allowed the southern elites to return to power. Toward the end of Reconstruction, Johnson was elected to the Senate in 1874; he died in 1875.

Andrew Johnson has been regarded among the worst of American presidents, though some historians admire his uncompromising devotion to certain principles. It was, however, that very inability to compromise that earned him the enmity of his contemporaries and the condemnation of most historians. The Radical Republicans took control, and their candidate, General Ulysses S. Grant, won the next election and presided over



This wood engraving depicts the powerful chairman of the House Ways and Means Committee Thaddeus Stevens delivering a final speech on Andrew Johnson's impeachment in the House on March 2, 1868. When the proceedings against Johnson began in the Senate on March 5, 11 articles were enumerated against him in a trial that lasted three months.

one of the most corrupt administrations in American history.

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See Also: Grant, Ulysses S. (Administration of); Lincoln, Abraham (Administration of); *Mississippi v. Johnson*.

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Johnson, Lyndon B. (Administration of)

In convening the President's Commission on Law Enforcement and the Administration of Justice on September 8, 1965, Lyndon B. Johnson declared to its members, "Crime is a sore upon the face of a nation. It is a menace on our streets. It is a drain on our cities. It is a corruptor of our youth. It is a cause of untold suffering and loss. ... [L]et the nation know today that we have taken a pledge not only to reduce crime but to banish it." With no intention to intervene in this local matter when he unexpectedly took office in 1963, the increasing political salience of "street crime" led him to address crime control on multiple fronts. His most important action was the passage of the Omnibus Crime Control and Safe Streets Act of 1968, which inaugurated the contemporary regime of criminal justice and federal involvement in criminal law.

Johnson was not the first president to intervene in criminal justice issues. The federal government periodically expanded its institutional capacity through its enforcement of the Mann Act and Prohibition, the growth of the Federal Bureau of

Investigation (FBI) and Department of Justice, and President John F. Kennedy's programs to combat juvenile delinquency and organized crime. Johnson built upon his predecessor's record, but he also laid the groundwork for a vast expansion of federal spending and assistance to states and localities.

Johnson came to crime control defensively. George Wallace and Barry Goldwater, his presidential opponents in 1964, distilled a concatenation of political and social forces into a new politics of law and order. The power of their rhetoric derived from its blending of distinct issues of crime, civil disobedience, and urban racial disorder into a general framework of lawlessness. Increased crime was a real phenomenon, even if its perception was exaggerated. The number of violent crimes reported to the police used to make up the FBI's Uniform Crime Report far outpaced the growth of more definitively measureable crimes, such as homicide. To this, Wallace and Goldwater added the argument that the government helped create lawlessness by accepting civil disobedience. Goldwater lamented that American citizens had come to accept as normal the use of a variety of pressure tactics in order to influence national debate, including civil disobedience, demonstrations, and boycotts, but extending as well to violence, civil disorder, and riots. Both charged liberals, especially the Supreme Court, with coddling criminals. These arguments became more potent when redoubled government efforts in civil rights and the war on poverty were followed by the long, hot summers of 1965 through 1968.

Preconceptions of black criminality were part of the rich vein of fear tapped by law-and-order politics. Conflation of the "Negro problem" and the crime problem was a long-standing staple of social analysis, and the black freedom struggle only intensified this association for the opponents of civil rights. The most virulent southern opponents of integration made black criminality a straightforward argument against integration. But there were also more subtle versions of this association. For example, many moderate, northern, urban white homeowners opposed the integration of their neighborhoods, articulating racial difference in ways that embraced the growing fear of crime.

Johnson's rebuttal sounded themes that in retrospect increased his vulnerability to criticism

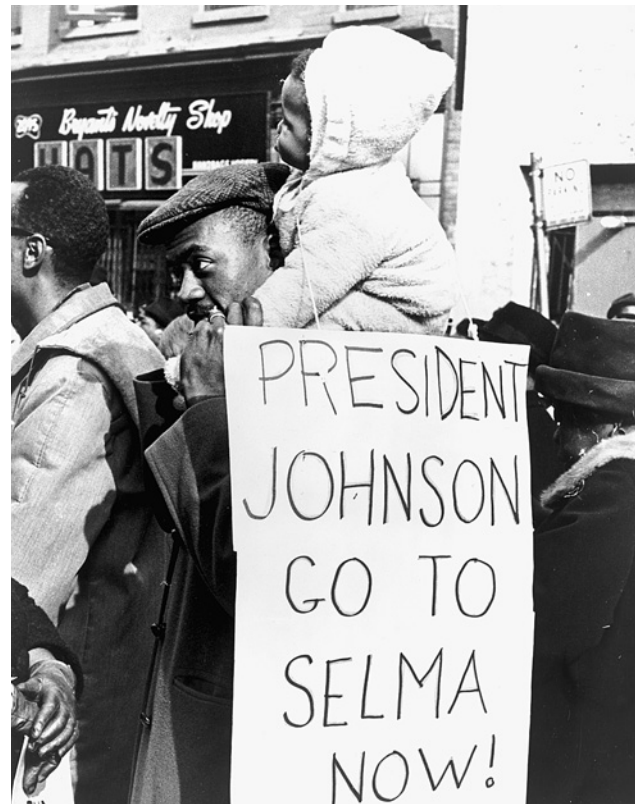
over the next four years. In Dayton, Ohio, on October 16, 1964, he criticized Goldwater, who “bemoans violence in the streets but votes against the war on poverty, votes against the Civil Rights Act, and votes against major educational bills that have come before him as a legislator. The thing to do is not to talk about crime; the thing to do is to fight and work and vote against crime.” Johnson incorporated crime reduction into the aims of his Great Society. By demanding that the federal government act to end crime, Johnson complicated his own task and helped spawn the disillusionment with federal action that would follow.

Johnson made the first of four major addresses on crime to Congress on March 8, 1965. His plans recognized the states as the “right and proper” repository of police authority but also claimed, “crime is a national problem.” He proposed new efforts in four areas under federal control. While he acted with less zeal than Kennedy in one of these areas—organized crime—he expanded the federal role in the three others. New drug laws tightened control on depressant and stimulant drugs, coupling greater penalties for drug sellers with treatment for heroin addicts. The comprehensive Federal Gun Control Act of 1968 prohibited interstate handgun shipment, restricted firearms sales for certain categories of individuals, required dealer licensing, created a gun registration system, and restricted ownership of certain weapons. In the District of Columbia, direct federal control allowed the administration to test crime control policy. Over the course of his tenure, Johnson added to these four issues the reform of the federal bail system and greater use of federal criminal law to prosecute white southern vigilantes.

Johnson also created a new role for the federal government in assisting states. This began with the creation of the Office of Law Enforcement Assistance by the Law Enforcement Assistance Act of 1965, which was funded with \$20 million for demonstration projects. The federal government spent additional millions in the area of juvenile justice. But it was the President’s Commission on Law Enforcement and the Administration of Justice that did the heavy lifting in the name of reform. Over the two years of its existence, the commission engaged in groundbreaking research; for example, it pioneered the use of surveys of

crime victims to provide a more accurate assessment of the nature of the crime problem. It issued *The Challenge of Crime in a Free Society* in 1967, with more than 200 recommendations to improve law enforcement and the administration of justice, providing a foundation for the Safe Streets Act that Johnson proposed in 1967.

By the time Congress considered this crime control proposal, Johnson’s legislative power had begun to unravel with his credibility. Although Johnson ultimately signed the bill that Congress passed in June 1968 as the Omnibus Crime Control and Safe Streets Act, it differed in important ways from his ideas. Only the fourth of the bill’s four titles, addressing the sale of handguns, was substantially in accord with the administration’s intention. His disagreement with congressional modifications to Titles II and III of the act was particularly vehement. The former challenged the Supreme Court’s rulings on the admissibility



This March 1965 photograph shows an African American man carrying a child on his shoulders and holding a sign telling President Johnson to go to Selma, Alabama, to show support for civil rights marchers confronting violence and intimidation there.

of confessions, substituting the rule that preceded the Warren Court's announcement of the prophylactic warning requirement in *Miranda v. Arizona*; the latter loosened the rules governing federal wiretaps.

The core provision of the bill, Title I, created the new Law Enforcement Assistance Administration, and Congress also revamped it. Southern Democrats and Republicans in the Senate swapped out a grant-in-aid program that would have given money directly to police departments and other institutions in exchange for a block grant scheme that anticipated the new federalism of Richard Nixon. Under the new Title I, money was placed under the control of state planning agencies that would pass it on to local institutions. As well as being grant makers, these new state agencies were to engage in comprehensive criminal justice planning to end the Balkanization of the various elements of their criminal justice systems—courts, law enforcement, and corrections—identified by the president's commission.

Johnson left a mixed legacy. Although the Law Enforcement Assistance Administration has been criticized as a failure in many ways, it did inaugurate a new era of federal assistance to state and local governments for crime control. Beginning with a little more than \$300 million of grants in its first two years, which went largely toward the purchase of riot control equipment for the police, the agency would go on to grant over \$8 billion in 12 years. By and large, the state planning agencies did not have the leverage or clarity of ideas to wholly reform criminal justice institutions. Nonetheless, the programs were responsible for aspects of modernization in many different areas. For criminal justice study and planning, the act's creation of the National Institute of Law Enforcement and Criminal Justice (now the National Institute of Justice) spurred greater standardization and rigor in the gathering of crime statistics. Perhaps most significant was the political inheritance left by Johnson's opponents. Lawlessness became a major plank in Richard Nixon's campaign in 1968 and his legislative policy and judicial appointments reflected a desire to definitively break with the root causes approach espoused by Johnson.

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See Also: Civil Rights Laws; Law Enforcement Assistance Act; Law Enforcement Assistance Administration; President's Commission on Law Enforcement and the Administration of Justice.

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Johnson v. Avery

Johnson v. Avery (1969) was a landmark case for "jailhouse lawyers"—prisoners who engage in legal actions on their own behalf or on behalf of fellow inmates. In *Johnson*, the Supreme Court held that prisoners have the right to give legal advice to other prisoners and to receive legal advice from other prisoners, unless the prison system provides a reasonable alternative means by which illiterate prisoners can obtain assistance with their legal actions. *Johnson* also established that prisons can restrict such rights to limit abuse and can limit jailhouse lawyering to certain times and places. Limitations must have legitimate penological foundations and may not be imposed in an arbitrary manner. Jailhouse lawyers have standing to challenge prison regulations that restrict them from assisting other prisoners.

The *Johnson* case stemmed from regulations imposed by the Tennessee State Penitentiary that prohibited inmates from assisting one another with writs or other legal matters. In 1965, William Joe Johnson was transferred to a maximum-security facility for violating this regulation. Johnson then filed a motion for law books and a typewriter and was again disciplined by the penitentiary system. The Supreme Court's decision in *Johnson* is based on its respect for the importance of the writ of habeas corpus and the need to maintain it

unimpaired. The primary function of habeas corpus is to enable people who are wrongly imprisoned to win back their freedom; hence, prisoners must have access to the courts in order to ensure their ability to protect their constitutional rights.

The *Johnson* decision cited precedents that prohibited prisons from charging prisoners to file a writ, or from compelling prisoners to submit their writs for approval to prison officials before filing them. It mandated that the state provide prisoners with transcripts of prior hearings to refer to in future proceedings. These precedents implied the existence of a right to engage in jailhouse lawyering on one's own behalf. The *Johnson* decision also states that it is unconstitutional for the state to enforce regulations that forbid illiterate or poorly educated prisoners from filing writs of habeas corpus. However, if Tennessee prevents literate prisoners from assisting illiterate prisoners with writs, then—in the absence of any other means of legal assistance—the state has effectively denied illiterate prisoners access to habeas corpus.

There is no constitutional right to counsel for postconviction proceedings. Some states do provide access to public defenders or law students to assist prisoners in postconviction proceedings. However, in states that do not provide such resources, inmates who lack the financial wherewithal to retain a lawyer must rely on their own efforts to file writs of habeas corpus or on the resources available to them within the prison itself. Thus, without jailhouse lawyering, potentially valid constitutional claims might never be heard by a court, and people who are wrongly convicted may have no means of winning their freedom.

Wolff v. McDonnell (1974) expanded the rights established in *Johnson* to include civil rights actions brought by prisoners. *Ervin v. Ciccone* (1977) bounded the rights established in *Johnson* by holding that a prisoner's complaint citing *Johnson* failed because he did not allege that prison officials had never established alternate means of legal assistance other than jailhouse lawyering. In *Bounds v. Smith* (1977), the court held that habeas corpus requires prisons to assist prisoners in filing legal papers by either providing adequate law libraries or assistance from trained personnel. However, *Lewis v. Casey* (1996) upheld Arizona's severe restrictions on prisoners' access to law library materials and held that prisoners must

demonstrate injury in order to sustain a complaint about adequacy of prison law libraries or about restrictive access to legal research materials. *Lewis* creates a potential catch-22 for inmates. If their access to legal research is inappropriately restricted, they may not be able to bring and win an effective complaint, because they lack the access they need to research such a complaint in the first place.

Courts since *Johnson* have noted that the rights to receive and to give legal assistance are related and that unreasonable restrictions on the right to give assistance may infringe on First Amendment liberties. The rights established in *Johnson* still prevail today and are acknowledged to exist in order to protect habeas corpus for prisoners who do not have the capability to engage in legal research and legal actions on their own behalf.

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See Also: Habeas Corpus, Writ of; Legal Counsel; Prisoner's Rights; *Procunier v. Martinez*.

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Judges and Magistrates

Judges and magistrates, who are vested with the authority to hear and decide legal matters brought to a court or other venue, are public officials who are either elected or appointed to their positions. In the United States, judges and magistrates may serve at the federal, state, county, or municipal level. Judges and magistrates have since colonial times worked to resolve disputes and to enforce the law. While some judges and magistrates are appointed by presidents or governors, others are elected. Judges and magistrates serve terms set by their local jurisdiction, which in the case of the federal judiciary are appointments for life. Depending

upon the type of criminal matter heard, judges and magistrates may rule on motions made before or during trial, make determinations regarding the admissibility of evidence, craft jury instructions, and in some cases make determinations of guilt. Judges and magistrates are also involved in the sentencing of defendants convicted of crimes. The American jurisprudence system varies somewhat from the civil or common law systems in place in other parts of the globe—this can cause some confusion for defendants not familiar with the U.S. policies and procedures.

Colonial Judges and Magistrates

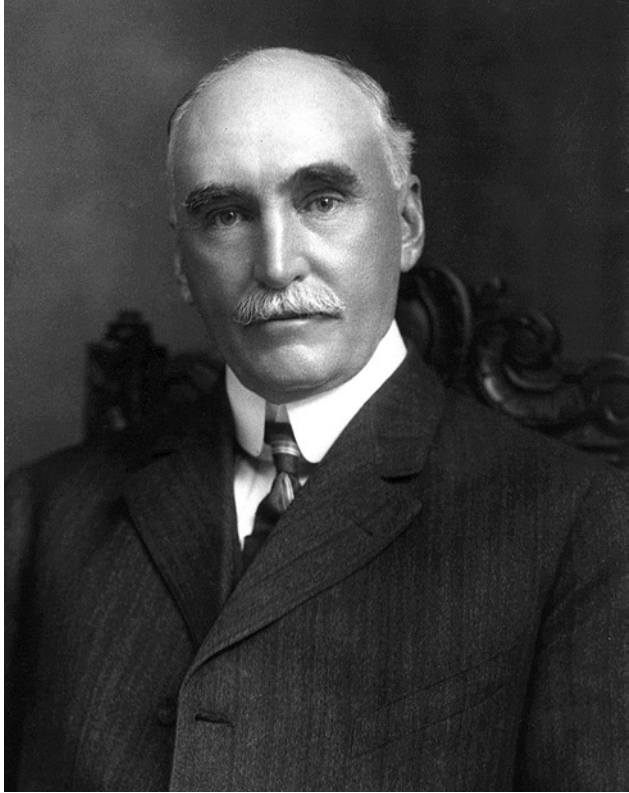
Soon after colonists settled in North America, judges and magistrates began working to help solve disputes, including those that involved allegations of criminal behavior. After the establishment of Jamestown, the Virginia colony was the earliest to adopt a criminal justice system and practices, based on the English system, including establishing a series of judges, doing so in the early 17th century. Virginia established a system of county courts that were similar to the English system, with each court having a sitting judge. Judges assisted with establishing traditional English practices and procedures for dealing with criminal proceedings, including arrest, indictment, bail, trial, juries, judgment, and execution. Beginning in 1623, the House of Burgesses also established a five-member appellate court to hear appeals from lower courts, also known as the Quarter Court, as it met four times per year. Although not all judges had legal training, most were from business or farming backgrounds and had experience in dealing with disputes.

Farther north, in New Holland, which was established in 1614 by the Dutch West India Company, a different sort of justice system evolved. The Dutch West India Company gave certain of its large stockholders, called patroons, large tracts of land, called patroonships. In addition to land, the patroons were given manorial rights and privileges that permitted them to set up civil and criminal courts and to appoint judges. These courts were quite a bit more liberal in their administration of justice than those in Virginia, and indeed the rest of the colonies. While New Holland permitted slavery, slaves were allowed to sign legal documents, could bring legal actions against whites,

and were allowed to testify in court. Even after the colony became known as New York in 1674, some of these more liberal practices persisted. More restrictive were Puritan magistrates in the Massachusetts Bay Colony, established in 1630. When allegations of criminal mischief arose, Puritan magistrates heard the pleas of the defendant, and if satisfied that charges were grounded, suspects were handed over to a superior court, which then called a grand jury. Since many of the Puritan magistrates were clergymen or respected members of their congregation, they tended to adopt a non-sense, clerical approach, which proved problematic during the Salem witch trials.

Origins of the Federal Judiciary

American experiences during the Revolutionary War and the period immediately preceding it resulted in tremendous interest in the rights of those charged with criminal offenses. In particular, Americans felt many of their compatriots had been ill-treated by British authorities seeking to quell rebellious acts. Protections for criminal defendants were memorialized in the Articles of Confederation, the U.S. Constitution, and the Bill of Rights. After American independence, and even before, citizens became much more ready to disregard English legal precedents and rules in an effort to improve the implementation of the criminal justice system. Interest was great in providing a judiciary who would ensure the efficiency and equity of the judicial system, especially with regard to the independence of judges and magistrates. As a result of these concerns, Article III of the U.S. Constitution established a judicial system that was to coexist with the executive and legislative branches of the federal government. While the Constitution itself is rather vague about the powers and scope of judges within the judiciary, stating only that the judicial power shall be vested in one supreme court and other unnamed inferior courts, the Judiciary Act of 1789, which established the federal courts, was much more specific regarding these issues. Article III did, however, provide federal judiciary with lifetime appointments, which was seen as necessary to establish their independence. This was conditioned on the judges exhibiting “good behavior,” which means that members of the federal judiciary may be impeached, although this has seldom occurred.



William McAdoo, whose previous career included serving in Congress in the 1880s and as New York City police commissioner, was appointed chief magistrate of the New York City magistrates' courts and served from 1910 to 1930.

The congressional leaders who drafted the Judiciary Act of 1789 were most familiar with the British judicial system, which was organized into three separate divisions, Admiralty, King's (criminal), and Chancery. Instead of using this model, Congress chose to establish a system of federal trial courts (known as U.S. District Courts) with broad jurisdiction permitting these to hear both civil and criminal matters. The act also created the U.S. Supreme Court, which originally was comprised of a chief justice and five associate justices, and circuit courts, which heard appeals. Justices and judges of the federal judiciary were appointed by the president and confirmed by the U.S. Senate. The Judiciary Act of 1793 modified the earlier act slightly, mandating that only one, instead of two, Supreme Court justices needed to sit on circuit court panels, reduced the number of circuit courts from 13 to 3, and also authorized courts to create and promulgate their own rules,

which was a codification of extant practices. The Judiciary Act of 1801, sometimes referred to as the Midnight Judges Act, was an attempt by the Federalists to assert power over the federal courts after their defeat in the elections of 1800. The act reduced the number of Supreme Court justices from six to five upon the next vacancy on the court, an issue that proved moot. The act also increased the number of circuits from three to six and created a number of new circuit judgeships, all for Federalist appointees of John Adams. The landmark case *Marbury v. Madison* (1803) was heard as a result of the Judiciary Act of 1801 and established the Supreme Court's right to invalidate a law by declaring it unconstitutional, thereby establishing the practice of judicial review.

After Thomas Jefferson succeeded Adams, the Democratic-Republicans worked to diminish the effects of the Judiciary Act of 1801, which resulted in the passage of the Judiciary Act of 1802. This later act maintained the structure of six circuit courts and assigned a Supreme Court justice to each circuit. Unlike the earlier act, however, the Judiciary Act of 1802 created no new circuit judgeships, so justices were forced to resume riding circuit, a practice that was to continue technically until the creation of the U.S. Court of Appeals in 1891, although the practice had informally ended by the 1840s. The number of justices serving on the Supreme Court also was adjusted periodically during the 19th century, growing to seven in 1807, nine in 1837, and 10 in 1863. In 1866, the U.S. Congress passed an act reducing the number of justices to seven, and two were removed by 1867, but the Judiciary Act of 1869 returned the number of justices to nine, where it has remained. Although members of the federal judiciary have been appointed continuously since 1789, at times there have been efforts made to have elected judges, most notably during the terms in office of Andrew Jackson. Jackson, a great populist, believed that the people should directly elect judges. Although he was unsuccessful in persuading Congress to make this change, he was able to convince the Georgia state legislature to permit the direct election of state judges there. Although there has never been a successful effort to have federal judges and magistrates elected, the issue does arise from time to time

and continues to be an issue of contention in various states.

At times, the political goals of various administrations have clashed with the outlook of the majority of Supreme Court justices, often when great change is happening. For example, during the administration of Franklin Delano Roosevelt, a great many programs were set up to deal with the Great Depression facing the nation. Many pieces of the Democratic Roosevelt's New Deal agenda were ruled unconstitutional by a Supreme Court majority who were largely conservatives appointed by Republican presidents. In an effort to circumvent these rulings, in 1937 Roosevelt suggested that the number of justices serving be expanded to as many as 15, as he would appoint one justice for every justice who reached the age of 70. This scheme, often referred to as the "court packing plan," was ultimately unsuccessful, although a wave of retirements permitted Roosevelt to nominate justices who were more sympathetic to his agenda. Occasionally since Roosevelt's plan, expressions of discontent have been made regarding perceived prejudices of the federal judiciary, such as when many southern members of Congress took issue with certain civil rights decisions during the 1950s and 1960s.

Federal Courts

The U.S. Supreme Court comprises a chief justice and eight associate justices. The U.S. Court of Appeals is divided into 13 circuits, 11 of which are numbered, the DC Circuit, and the Federal Circuit. The 179 judges of the court of appeals are, like all members of the federal judiciary, nominated by the president and confirmed by the Senate, and have lifetime tenure. The various courts of appeal hear more than 10,000 cases per year, of which roughly 100 per year are selected by the Supreme Court for further hearing. Courts of appeal hear disputes arising from the district courts within its boundary. The U.S. District Courts comprise 89 districts spread across the 50 states and an additional five districts in the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and the Northern Mariana Islands. All states contain at least one district, and the following states have two or more districts: Alabama, Arkansas, California, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, New York,

North Carolina, Ohio, Pennsylvania, Tennessee, Texas, Virginia, Washington, West Virginia, and Wisconsin. The 94 districts are served by the 678 district court judgeships that are authorized by Congress. U.S. District Court judges hire magistrate judges, who hear certain preliminary matters, for eight-year renewable terms.

Judges and magistrates working within the federal system must frequently make rulings regarding jurisdiction, as their power to hear cases and controversies is limited by statute. Congress has granted the federal courts subject matter jurisdiction over the following types of cases: criminal prosecutions brought by the United States against defendants; actions involving disputes arising under the U.S. Constitution, laws, and treaties; certain civil actions involving the citizens of different states; actions within the admiralty jurisdiction of the United States; and many other assorted cases and controversies.

In many of these actions, litigants could have also brought their actions in state courts. In these cases, judges and magistrates must determine whether the federal court is the proper venue for the case and will remand the case to state court if improper. In recent years, the district courts with the most federal felony filings were the District of New Mexico, the Western District of Texas, the Southern District of Texas, the District of Arizona, and the Southern District of California. All five of these districts share a border with Mexico, and an upsurge in illegal immigration has caused such filings to multiply. In 2007, for example, these five district courts amounted for 75 percent of the criminal cases filed in the entire district court system.

State Courts

All of the 50 states have judicial systems that hear criminal and civil cases. While all states have both trial and appellate courts, not all of these use the same terms to identify these. Many states mirror the terms used by the federal courts and have district courts for trials, a court of appeals, and a state supreme court. Others use different terms, however, such as California where trials are heard in the superior court and New York, the trial court of which is known as the supreme court and the highest appellate level known as the court of appeal. Several state court systems use magistrate courts, which are sometimes called justice of the

peace courts. Magistrate and justice of the peace courts typically have jurisdiction to handle small civil matters, applications for bail, petitions for arrest and search warrants, and the adjudication of petty or misdemeanor criminal offenses.

A majority of states allow judges to be selected through elections, a decision that is controversial insofar as many critics believe it pressures the judiciary to make decisions that align with popular opinion. Elections in some states are fully partisan events, including all the trappings of television and radio advertisements, banners, and campaign literature. Many states also use appointments by the governor, although these selections are subject to confirmation by members of the state legislature. To address dissatisfaction with either of these approaches, a third method of judicial selection has arisen, known as the Missouri Plan. The Missouri Plan attempts to reduce partisan considerations, to give more control of the process to the state bar association, while maintaining a measure of popular control over the selection of judges. The plan uses an independent nominating committee that screens candidates and then submits a short list of qualified candidates to the governor or other appointing authority. The governor then selects one person from the submitted list, who becomes a judge for a limited time. At the conclusion of this period, the judge stands for reelection for a longer term, running not against other candidates but as part of a vote that asks whether the judge should be retained. The system pleases many because it strikes a balance between judicial independence and democratic accountability.

Most state judges have legal backgrounds, although a number of states use lay judges, magistrates, and justices of the peace to hear preliminary pleas and set bail; most trial judges, however, are members of the bar. At trial, judges make evidentiary rulings, provide jury instructions, and sentence those defendants found guilty. Unlike the continental system, where a panel of judges asks questions of witnesses, judges in the United States allow the American adversarial system to do this, even in cases where the judge, not a jury, is making the determination of guilt.

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See Also: Constitution of the United States of America; Federal Common Law of Crime; Federal Rules of Criminal Procedure; Judiciary Act of 1789; Juries; Jurisdiction; Sentencing; Supreme Court, U.S.

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Judiciary Act of 1789

Creation of a national court system as well as establishing a federal Office of Attorney General and the U.S. Marshals Service were the objectives achieved when the Judiciary Act was signed into law in 1789. While Article III of the U.S. Constitution had suggested that a federal judiciary should be created, the framers did not dictate a specific structure, nor did they designate jurisdictional authority for new courts. The intent of Article III would be addressed later by the U.S. Congress when it would create courts of original, trial, and appellate jurisdiction and would specify the numbers and locations of federal courts. The specific wording in the act was crafted primarily by Senator Oliver Ellsworth of Connecticut with assistance from William Patterson of New Jersey and Caleb Strong of Massachusetts. However, the concepts embodied in the legislation resulted from a compromise between Federalists and Anti-Federalists, who had disagreed bitterly over the necessity for a dual court system.

Ratification of the U.S. Constitution had been a prize sought by the Federalists, but the Judiciary Act, as the first bill under consideration in the new Congress, created another opportunity for Anti-Federalists to oppose the diminishment of state court powers. The drafters of the Judiciary Act had the challenge of coming up with a charter that would ensure the supremacy of federal laws within a dual court system. Anti-Federalists like

Richard Henry Lee and William Grayson from Virginia pushed to restrict all the powers of any new national courts. Samuel Livermore, from New Hampshire, moved to limit jurisdiction in the federal courts to only questions of admiralty law. But the Federalists prevailed. Final approval of the bill was completed without a recorded vote and the Judiciary Act of 1789, titled “An Act to Establish the Judicial Courts of the United States” was officially signed by President George Washington on September 24.

Effects

The act created three tiers of national courts. A U.S. Supreme Court was to assemble in the nation’s capital and would have original trial jurisdiction in cases involving controversies between two or more states, ambassadors, public ministers, consuls, and their domestics. It would have appellate jurisdiction for cases received from the federal district and circuit courts. The Supreme Court would be staffed with a chief justice and five associate justices according to the original act.

Thirteen district courts were also created by the act. These courts would hear cases regarding admiralty and maritime, revenue collection, misdemeanors, and civil actions involving federal matters. Three circuit courts were also created. These courts were to have trial court jurisdiction over serious criminal cases and three types of civil matters, including cases where the United States was a plaintiff, cases where at least one party in the suit was an alien, and cases between parties of different states (diversity cases) for litigation over \$500. Diversity cases could be reviewed concurrently by federal circuit courts or state courts.

The circuit courts were designated to meet twice annually in each state. Thus the term *riding the circuits* evolved because each circuit was to be staffed with two Supreme Court judges plus the local district judge. Some historians contend that this was done to ensure that even Supreme Court justices stayed in touch with local issues and did not become too distanced from citizens. To appease the Anti-Federalists and their followers, the Judiciary Act provided that litigation arising from the U.S. Constitution, federal laws, and treaties should be heard in state courts.

As the United States later increased in size and complexity, the number of circuit courts was

increased by Congress, and judges were added to reduce the requirement that Supreme Court justices serve in these courts. The number of Supreme Court justices was also increased to nine in 1869. Similarly, the structure of the other federal courts was expanded.

Today, federal district courts handle all federal cases and the former circuits are now referred to as U.S. courts of appeals and no longer have any trial functions. The number of circuits is fixed at 11. The Judiciary Act also established the Office of Attorney General and provided for the appointment of a lawyer. The new attorney general was to prosecute and conduct all litigation in the U.S. Supreme Court to which the United States was a party as well as give advice and counsel on legal questions posed by the president or other heads of U.S. agencies.

The act did not make the attorney general a cabinet level officer, but then President George Washington asked the attorney general to appear so often at cabinet meetings that by custom, the office gained cabinet rank. Today, the attorney general is appointed by the president and is subject to confirmation by the U.S. Senate. Finally, the act also created the U.S. Marshals Service, which is the enforcement arm for federal law and provides security services to the federal court system.

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See Also: Anti-Federalist Papers; Federal Rules of Criminal Procedure; Federalist Papers; Supreme Court, U.S.; United States Attorneys.

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Juries

Being judged by a jury of your peers is a central tenet of the American criminal justice system. One reason the settlers originally chose to flee England and seek refuge in America was that King George III failed to allow juries the ability to function effectively in the English legal system. Once settlers arrived and formed the colonies, King George III continued his assault on their legal rights by filling colonial juries with royal sympathizers or sending them back to England to face juries. As a result, the existence of juries has always been a concern for many Americans. Even during the witchcraft trials of the 1690s, Americans still attempted—to varying degrees—to preserve due process rights and the ability of the accused to receive a fair treatment.

Types of Juries

A jury is a group of individuals brought together to make an impartial ruling on the guilt or innocence of someone or to set a judgment or penalty. According to Article III and the Sixth Amendment of the U.S. Constitution, criminal cases must be tried by a jury of peers. Upon the passing of the Fourteenth Amendment, this requirement was also passed on to all states. While criminal trials were covered, civil trials were originally not. In response to immediate public pressure, the Seventh Amendment was added to the proposed Bill of Rights and required jury trials for civil cases involving disputes over \$20. The Seventh Amendment, however, has not been incorporated to the states through the Fourteenth Amendment. Despite not legally being required, all states except Louisiana have provisions for civil juries in monetary cases. The importance of impartiality originates from early 18th century Britain, where sheriffs were charged with appointing juries. Realizing the issues with such a system, the British opted to attempt to guarantee impartiality through selection methods. The debate on whether jurors should be unaware of a case or locally acquainted with it has lasted nearly as long. Consider that in 1807, Aaron Burr's attorney argued to the court that it was impossible to get a fair jury because of the publicity surrounding his client's treason case.

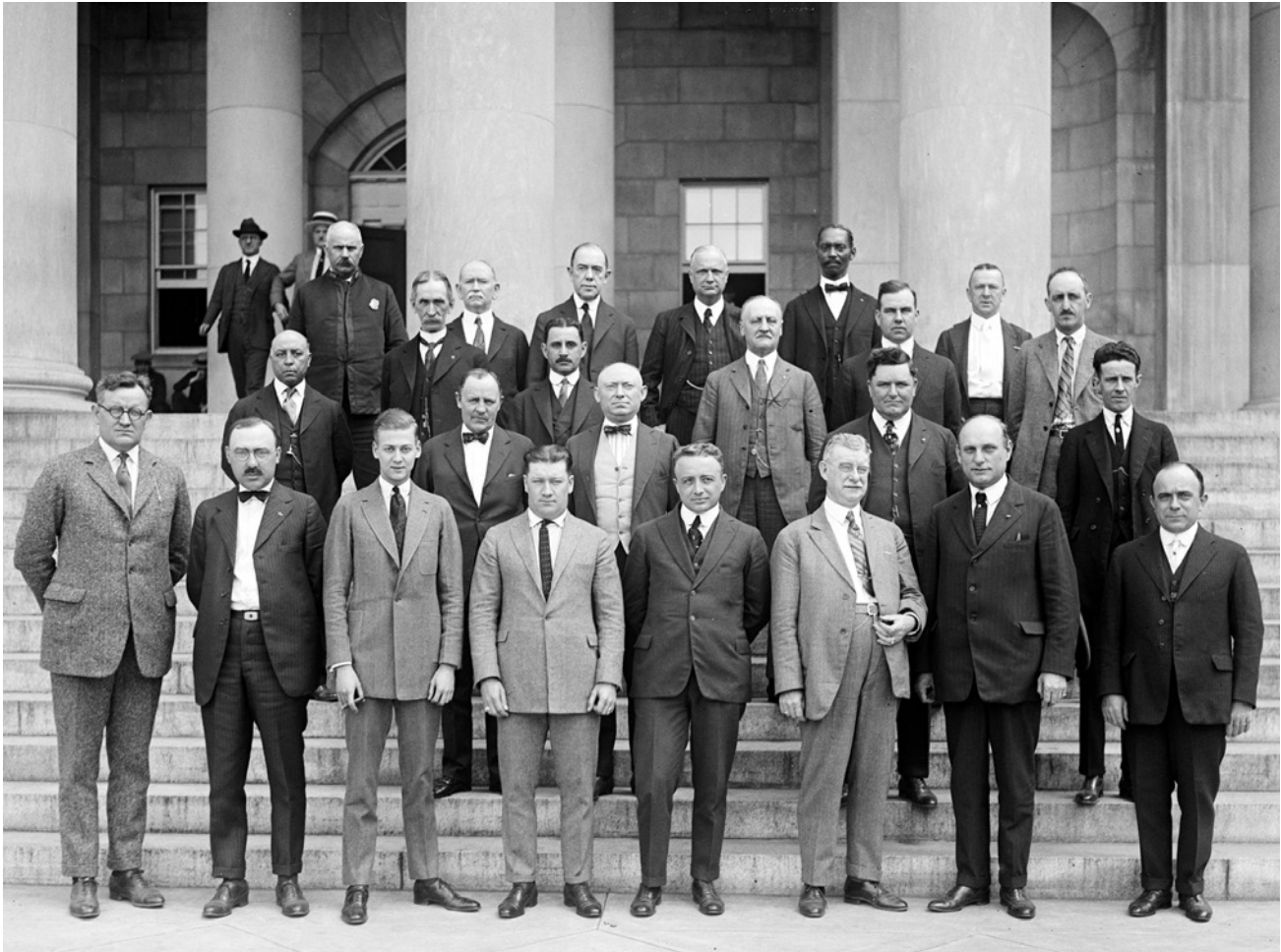
Modern juries find their roots in the ancient Germanic tribes, in which groups of men would

come together and judge individuals accused of committing crimes. As time went on, the role of juries evolved in different geographic areas. For example, in Anglo-Saxon England, juries were actually used to investigate crimes in lieu of the police. Modern juries actually emerged in 12th-century England. Rather than being neutral citizens, however, jurors were pulled from around the area of the dispute or crime and heard very little—if any—evidence. Instead, they relied on what they already knew, what they investigated on their own, and rumors. From these traditions, the current American system of juries developed.

While the existence of juries is viewed as a paramount protection in the United States from potential judicial indiscretions, it is worth noting that most criminal cases and a vast majority of civil cases never go before a jury. On the criminal side, the trend toward plea bargaining has removed juries from the decision-making process in more and more cases every year. Plea bargains are more efficient in the criminal justice system but opponents believe the deals remove the ability of the public (through juries) to ensure justice is being served. Civil cases see even fewer cases going to jury. In many cases, civil affairs end up being settled or decided by a single judge or mediator. Regardless, Americans still appear to firmly believe in the importance of trial by jury.

At a most basic level of consideration, there are two types of juries in the American system of justice: grand and petit. Grand juries have become less prevalent over time—today being constrained to select state and federal cases. The job of the grand jury is to decide whether enough evidence exists to bring charges. However, depending on the state, not every case must go through a grand jury. If a grand jury believes there is enough evidence to indict, the case is sent to trial before a petit jury.

The grand jury—typically between 16 and 23 jurors—decides based on evidence presented solely by the prosecution. In a grand jury, there is no defense, and all proceedings are *ex parte*. If jurors believe the prosecutor has made a strong enough argument, they issue an indictment for the arrest of the suspect(s). In terms of burden of proof, a juror must only believe that there is probable cause to vote to indict. The individuals facing indictment do not need to be notified of



In certain cases, a grand jury is first convened in order to decide whether enough evidence exists to bring charges. Grand juries like this all-male one seen in a May 1922 photograph are larger than petit juries and are typically made up of between 16 and 23 jurors. Grand jurors need only believe that there is probable cause in order to issue an indictment for the arrest of the suspect(s).

grand jury proceedings as grand juries can issue sealed indictments to be served by police at the time of arrest. If a grand jury opts not to indict, it is known as a “no bill” while the decision to indict involves the jury returning a “true bill.” A vast majority of grand juries vote to indict. Even if a no bill comes back from a grand jury, it is important to note that double jeopardy does not apply to grand jury proceedings.

Petit juries are the seated juries at the time of trial (both civil and criminal). In this setting, the jury hears from both the prosecutor/petitioner and the defendant/respondent. They hear evidence and instructions before deliberating among themselves. In most cases, there are 12 members of a trial jury in the United States. Depending on

the jurisdiction, different majorities are required to reach a verdict. It can be a simple majority, some form of supermajority, or possibly even a unanimous verdict. If a verdict cannot be reached, the jury is said to be “hung.”

Composition, Size, and Selection of Juries

In the United States, jury duty is required of all eligible citizens. To be eligible, citizens must be 18 years old. Most locations pull jurors from voter registration records (which allows some individuals to skirt service), while others look to property records, phone books, and vehicle registration lists. In terms of requirements, individuals who understand English, are able to be neutral, and are capable of analyzing the facts

of the case are suited to sit on juries. The ability to avoid jury duty depends on where a potential jurist is located. Some jurisdictions grant exemptions for individuals in school, individuals with health problems, or individuals who are sole care providers for children or adult relatives. Others offer almost no exemptions and will instead only delay a reporting date until a potential juror has the ability to undertake jury duty. Jurors typically receive token payment amounts for their service. Failure to appear in response to a summons for jury duty can lead to a warrant being issued for the potential juror's arrest.

The Supreme Court ruled in 1898 that there had to be at least 12 individuals on a jury, although this requirement never fully trickled down to the state level. In 1978, the court revisited the issue in *Williams v. Florida*. Florida had sat a jury of only six individuals, and the defendant filed suit that he had his Sixth and Fourteenth Amendment rights violated. The Supreme Court disagreed, finding that the requirement of 12 jurors was nothing more than a historic accident and not a legal requirement. Small juries, however, remain quite controversial. The Supreme Court has ruled subsequently that five-person juries are too small, but has declined to require any set number larger than that. Smaller juries are largely believed to be more efficient and quicker to reach a decision. Opponents, on the other hand, believe these smaller juries can suffer from groupthink and make decisions that fluctuate from case to case. In the end, they may reach verdicts in less time, but that does not necessarily equate to the best outcome.

Original jury pools are chosen at random from the eligible population. Depending on the size of the jury that is needed for the trial, between 15 and 40 jurors are selected from the pool and called to the courtroom to undergo the voir dire process. Voir dire is used to allow both sides to question jurors and ensure they can be unbiased, fair evaluators of the proceedings. The judge asks each prospective juror for some basic information, including items like occupation, income, and potential time conflicts. More than anything, these questions are used to see if any biases, relationships, or experiences may make it impossible for a juror to be neutral. Once the general questions have been answered, attorneys can ask follow-up questions of their choice to as many jurors as

they choose. Through these questions, attorneys hope to determine how a potential juror is likely to view aspects of the case. Each side is given a certain number of peremptory strikes that it can use to remove prospective jurors from consideration without offering an explanation as to why. Historically, attorneys had an unlimited ability to strike potential jurors, but the Supreme Court has issued decisions explaining that there are limits to the usage of peremptory strikes in jury formation. If a juror does not get seated for the case for which he/she has undergone voir dire, he/she is returned to the jury pool and subject to going through the same process for another case.

The selection of jurors is an oftentimes tense process—particularly for high-profile trials or trials of more serious acts. In these cases, lawyers are also attempting to determine how much the potential jurors already know of the actual crime in question. If a potential juror has already established an opinion regarding the potential guilt or innocence of someone, the opposing side will quickly ask for that juror to be removed. But what actually constitutes a reasonable objection once peremptory strikes have been used is not clear. Demographic traits like race, education, and income cannot be used legally against someone outside of peremptory strikes. For example, if a Caucasian male shoots and kills a Hispanic police officer, a Caucasian male potential juror cannot be told he is ineligible to serve based solely on those factors.

Role and Behavior

The role of a judge in a jury trial is to interpret appropriate laws and instruct the jury accordingly. The jury, however, is supposed to determine the facts of the case and render an appropriate ruling based on those facts. In criminal cases, jurors decide whether a defendant is guilty or innocent, while in the civil arena they determine liabilities. Historically, juries were supposed to understand community norms and be able to apply them appropriately to the case at hand. The issue remains that juries are determiners of facts. One jury can hear a case and decide a defendant is guilty. A separately selected jury in the same location, however, could hear the same case verbatim, come to the opposite conclusion, and still technically be correct in its decision. Unlike the

decisions of the Supreme Court, there is no binding precedent created by juries.

Given the goal of jurors to be impartial fact-finders, most courts have clear rules regarding what kinds of outside information jurors are allowed to access during a trial. It is the decision of the judge what jurors are allowed to do and who they are permitted to talk to. Typically, they will be told not to learn about anything related to the case from outside sources—particularly from the media. Likewise, they will often be told not to conduct their own independent investigations. Jurors have been found visiting crime scenes, calling family members of individuals involved, and consulting with uninvolved attorneys regarding facts of the case. All of these scenarios could potentially lead to mistrials being declared or to jurors being dismissed. There can be no contact

between jurors and anyone affiliated with the trial outside of the foreman and the judge. If a judge is concerned that a case is too high profile or important to risk potential outside influences on jurors, he/she has the option of sequestering them for the length of the trial. In this circumstance, jurors have no outside contact and typically live in hotels until a verdict is rendered.

While jurors are expected to not be influenced by outside factors during a trial, they are likewise expected to keep all information confidential from others not affiliated with the case. For the system to operate as intended, the media and general public are not supposed to be aware of what the jury is thinking or how deliberations are proceeding. If the goal is blind justice, the less outside parties know, the less likely the system is to experience any type of jury tampering. If juries



The jury box in the East Courtroom of the Howard M. Metzenbaum U.S. Courthouse in Cleveland, Ohio, in 2009. There are no set standards or format for jury deliberation so it is up to each set of jurors to determine how best to reach a verdict. One method many juries use is an anonymous poll taken during deliberations to determine how close they are to a verdict and what areas of the case present the most questions. The initial reactions to the case revealed during polling may predict how deliberations will proceed.

are not being tampered with, the system will run more smoothly and public confidence will remain intact for this portion of the criminal justice system. As discussed above, there are benefits to having juries with between six and 12 individuals on them. If they function properly, multiple jurors means multiple perspectives and hopefully a more careful and critical analysis of the facts. If there are 12 people sitting around the table, chances are increased that all possibilities will be presented by someone present. Twelve people can work to formulate their individual perspectives into a collective idea before delivering a verdict.

On each jury, there is a foreman or presiding juror. This individual is typically selected prior to the trial or at the beginning of deliberations, and it is his/her job to ask questions, facilitate discussion, and, depending on the jurisdiction, to read the decision of the jury. In a sense, he/she is the spokesperson for the jury and the only member permitted to seek clarification of legal questions from the judge during the trial and deliberations that follow. Many times, a court will opt to seat a small number of alternate jurors (one to three) who will hear the entire trial but will not partake in deliberations unless one of the jurors must leave or is dismissed prior to the rendering of a verdict.

In 1897, the Supreme Court ruled in *Springville City v. Thomas* that unanimous verdicts were necessary to convict a suspect. Almost a century later, however, in *Apodaca v. Oregon* (1972), the court overturned its precedent. To begin, the court found that the Sixth Amendment guarantee of a jury trial—made relevant to the states by the Fourteenth Amendment in *Duncan v. Louisiana* (1968)—did not require unanimity and only an appropriate proportion of a jury comprised of a cross-section of the community. One novel argument raised in *Apodaca* was that nonunanimous verdicts would violate the Fourteenth Amendment requirement that racial minorities not be systematically excluded from the jury selection process. It was argued that if verdicts did not have to be unanimous, minority members of a jury would not have their opinions taken as seriously (especially if they were not in agreement with the majority of the jury). The Supreme Court, however, saw no merit as to why that would be the case and ruled that unanimous verdicts would no longer

be required. At the turn of the 21st century, all states except Oregon and Louisiana still require unanimous decisions by juries when considering criminal cases. Almost 40 states, however, have provisions that allow for less than unanimous decisions in civil cases. When a jury cannot reach the required majority in either circumstance, the case results in a hung jury. With a hung jury, a mistrial is declared and the case can be retried with a new jury.

There have long been questions regarding the appropriate role of judge and jury in a trial. Traditionally, the jury determined guilt and the judge determined the appropriate penalty/punishment. While this has not been abandoned, there have been Supreme Court rulings that alter this relationship. For example, in *Ring v. Arizona* (2002), the court ruled that the jury must decide on aggravating factors that may lead to a defendant being subject to the death penalty. Previously, the judge had made such rulings in Arizona. In many states, though, the jury merely gives an advisory sentencing opinion, which the judge can choose to accept or alter. Some states go a step further—particularly with death penalty cases—and seat a new jury to determine the penalty. This serves as another check on the system and ensures that defendants are given a group of jurors not already invested in the decision.

Deliberation and Nullification

Each jury deliberation is different. With no set standards or format, it is up to the particular jurors to determine how best to reach a verdict. Deliberations can run from minutes to weeks. Jurors oftentimes will take anonymous polls during deliberations to determine how close they are to a verdict and to help determine what areas of the case present the most questions. By measuring the initial reaction to the case, the jury can often tell how deliberations will proceed. If the initial poll reveals the jury is split 11–1, it will likely take less time to determine a verdict (if one can be reached at all) than if the initial split is 6–6. Ultimately, a decision is typically reached once jurors agree on the most reasonable interpretation of the case. At that point, a verdict is rendered and that portion of their work is complete.

Some juries have taken the law into their own hands rather than simply determining the facts of

the case and properly determining guilt or liability accordingly. Through the process of jury nullification, juries have the ability to make a law void through their decisions. They can acquit a defendant even if they believe he/she is guilty because they do not believe the action should be criminal. In short, the jury becomes a form of legislative veto. Typically, jury nullification occurs when sympathy or bias drives decisions rather than the instructions of the judge. The more infamous examples in American history involve issues of slavery, freedom of the press, and freedom of religion.

Jury nullification tends to become a popular media topic when it appears in cases. Nullification has occurred throughout American history. It began with juries refusing to convict for violations of the Fugitive Slave Act prior to the Civil War and became even more prevalent during Prohibition, when juries nullified alcohol control laws more than half of the time. In the 1980s, nullification made the news as a series of juries in urban areas acquitted African American shooters despite clear evidence on the grounds that African Americans were treated more negatively in the criminal justice system than their Caucasian counterparts. Morally, many wonder about the implications of jurors choosing to willingly allow someone they believe to be guilty to walk away free on a case because of their beliefs about the law they have pledged to uphold. While the concept of jury nullification often is viewed negatively, it is acceptable according to the Fourth Circuit U.S. Court of Appeals. In *United States v. Moylan* (1969), the appellate court held that jurors were permitted to practice nullification and that courts must abide by the decision. It should also be noted, however, that in *Sparf v. United States* (1895), the Supreme Court ruled that a judge had no responsibility to tell jurors about their right to nullify laws through their decisions. Judges can even go further and remove jurors who they believe are looking to nullify.

Conclusion

Juries will forever remain a heavily examined portion of the American criminal justice system. Through juries, common citizens come together and determine the fate of their fellow citizens in criminal and civil matters. Studies have shown that juries tend to come to the same decision as

the median juror, meaning that extreme jurors rarely have as much sway as some may believe. Looking back at the goals of the system, the fact that the median juror's opinion is typically in line with the jury's verdict shows that common citizens have an appropriate say, as the Sixth and Seventh Amendment direct.

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See Also: 1941 to 1960 Primary Documents; 1961 to 1980 Primary Documents; Bill of Rights; Citizen Participation on Juries; Courts; *Duren v. Missouri*; Trials.

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Jurisdiction

Jurisdiction in general refers to the authority or legal power to decide cases or to issue decrees. In the context of criminal law, it refers to the power of the courts to hear and decide an action brought by the state or federal government against an individual for a wrongdoing classified as a felony or a misdemeanor. Valid criminal judgments require (1) subject-matter jurisdiction, (2) personal jurisdiction, and (3) territorial jurisdiction. States enjoy sovereign immunity from criminal prosecution, and visiting foreign government officials are exempt from the criminal jurisdiction of the host country. In both cases, immunity may be waived. Special considerations aside, every state has personal jurisdiction over those within its territory, and criminal proceedings may be brought only in the state where the criminal acts were committed.

History

Fairly early in the nation's history, the case of *Baron v. Baltimore* separated clearly the jurisdictional

role of the states in the nation's governance. Holding the Bill of Rights inapplicable to the states, the jurisdiction of the federal courts was circumscribed until the passage of the Fourteenth Amendment extending the jurisdiction of the federal courts over governmental threats to the rights and privileges defined in the Bill of Rights. Political and social counterforces to expanding federal power, grounded in federalism and the Ninth Amendment, resolved into the principle of dual federalism, the notion that the state and national governments were coequal, each operating autonomously within separate jurisdictions.

Dual federalism dominated jurisdictional thinking through the economic crises of the 1880s, even though the federal government began to exercise broad regulatory power over large business enterprises engaging in practices or agreements that restrained commerce unduly by way of forming trusts. With the economic collapse of the 1930s, however, the federal government, by way of Franklin Roosevelt's New Deal policies, worked in tandem with state and local governments to address economic decline. The formerly distinct jurisdictional divisions of authority blurred first into what was termed a *layer cake* federalism and then into a cooperative federalism, which distributed grants in aid to states and localities, expanding federal government control over state and local government. At the state level, courts were generally considered to lack jurisdiction absent service of process upon a defendant while within the geography of the rendering state in order to protect state sovereignty from incursions by other states, and to protect the defendant's right to be heard. Jurisdiction was eventually expanded over cases where the property of an absent nonresident regardless of whether the suit dealt with the property so long as the claim could be satisfied out of the property. For practical reasons, jurisdiction was expanded eventually to include any person with minimum contacts with the state, a rule under which jurisdiction could be exercised regardless of a party's territorial location, so long as the party could have been reasonably brought into court were he or she present in the state.

Subject-Matter Jurisdiction

Subject-matter jurisdiction refers to a court's constitutional authority over particular *actus rei*, the

statutorily defined behavioral elements of particular crimes. A court acquires subject-matter jurisdiction in criminal cases once a subpoena, indictment, or information issues from a court sitting within the geographic locale wherein an alleged crime occurred. The subpoena or accusatory instrument must set forth the basis for subject-matter jurisdiction, including the nature and the statutory penalty for the offense. While defective subpoenas or accusatory instruments do not deprive the court of jurisdiction, a court may dismiss a case on its own initiative for lack of subject-matter jurisdiction.

The federal district courts have original and exclusive subject matter jurisdiction in federal criminal cases. The general jurisdiction of most state courts includes the authority to prosecute violations of state-enacted criminal laws. At both the state and federal level, however, some courts may have specialized jurisdiction as defined by statute. For instance, federal bankruptcy cases, including criminal offenses arising from bankruptcy issues, have proper subject matter jurisdiction only in federal bankruptcy courts per 28 U.S.C. § 1334.

Because of the federal system in the United States, courts may have concurrent personal jurisdiction over a defendant. In such situations, either court has the legal authority to hear the case. For instance, a person accused of a drug-related offense might face state drug charges as well as federal drug trafficking charges for the same course of conduct. Normally in such circumstances, the relevant law enforcement agencies will come to an agreement about which agency takes primary jurisdiction. It is possible, however, that the defendant could face prosecution in both federal and state courts.

Personal Jurisdiction

Personal jurisdiction refers to a court's constitutional authority over those accused of engaging in some particular *actus reus* while in some particular territorial locale and includes the court's power to compel the attendance of witnesses at trial. In conspiracy cases, the courts of several states may have personal jurisdiction over the same individual as the agreement to engage in illegal behavior may involve two or more persons residing in separate states, and as the agreement would then occur in both states simultaneously. While subject-matter jurisdiction may not be

waived, the parties to a case may grant personal jurisdiction voluntarily.

Territorial Jurisdiction

Territorial jurisdiction refers to a court's constitutional authority to enforce criminal laws that apply to *actus rei* that are accomplished within its territorial boundaries. State and federal court territorial jurisdictions are determined by the due process clauses of the Fourteenth and the Fifth Amendments, respectively. Politically, jurisdiction is a means of dividing up power among the states and between the states and the federal government. Accordingly, the power to define crimes and their punishment is generally reserved to the states under the Tenth Amendment. However, the Constitution does invest Congress with the power to define crimes and to provide for their enforcement under several clauses, including the commerce clause, the taxing and spending clause, its power to regulate the mail, and its power over locales reserved as federal property.

While territoriality continues as a primary consideration in much of the criminal law, its workability in the context of growing areas of contemporary criminal conduct is in question. International terrorism, environmental concerns, drug trafficking, genocide, and Internet crime, for example, have spawned a number of exceptions. These include (1) the effects doctrine whereby criminal conduct by people outside a state's territorial jurisdiction may be tried by that state's courts if the conduct generates an "effect" within the state's territory, (2) the protective principle whereby a state may have jurisdiction to try acts performed outside its territory yet aimed at overthrowing the state or threatening the integrity of its governmental functions, and (3) the universality principle whereby any state may prosecute alleged crimes that are recognized universally as crimes against humanity.

Extraterritorial Jurisdiction

One state is generally precluded constitutionally from enforcing the criminal laws of another state. However, a state may define behaviors as criminal offenses when committed beyond its territorial jurisdiction, though they are unenforceable against the offenders so long as they remain outside the state. There are two theories

of enforcement when the *actus reus* is committed in more than one territorial locale, as when a citizen of one state murders a citizen of another by firing across a state line. The initiatory theory claims jurisdiction where the *actus reus* begins. To avoid prosecuting conduct that does not constitute a complete *actus reus* (e.g., the mere firing of a pistol at a legal time and place), the sequence of behaviors constituting the *actus reus* must be defined statutorily either as activities undertaken when the harm occurs (e.g., speeding in one state that extends across a state line) or in terms of the consequences of the behavior (e.g., making false representations by e-mail that are relied upon by a person online in another state, to their detriment). Inchoate offenses, crimes committed in preparation of another crime (e.g., conspiracy), are considered to continue across time and borders until the failure of the criminal act intended.

The terminatory theory claims jurisdiction when the injury affects a citizen within the territory of a state. As no initiating action defining the *actus reus* is taken within the territorial locale, the wording of the *actus reus* must permit jurisdiction explicitly under the theory that a wrongdoer should not be able to escape prosecution by intending harm only to those outside the state where the *actus reus* is initiated. This justification weakens when the harm's locale is accidental.

Concurrent and Special Jurisdiction

Some behaviors are defined as criminal by both federal and state statutes. Either might defer to the other but, alternatively, an accused might be tried in both state and federal trial courts. Concurrent jurisdiction applies most notably in any action seeking to declare a state law unconstitutional.

Some courts are accorded by statute or the Constitution a particular limited jurisdiction. Military courts have jurisdiction over specific cases involving military personnel, tribal courts have jurisdiction over offenses occurring on tribal reservations, and most states provide separate juvenile courts. Some states provide special courts for drug offenses, and most states direct all matters relating to the administration of decedents' estates to special probate courts.

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See Also: 1961 to 1980 Primary Documents; Courts of Indian Offenses; Criminalization and Decriminalization; Environmental Crimes; Fraud.

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Justice, Department of

Established in 1870, the Department of Justice (DOJ)—otherwise referred to as “Justice Department” or “USDOJ”—is the legal executive branch of the U.S. federal government. As the combined law, policing, and justice workhorse of the nation, it is tasked with three main functions—upholding federal laws, administering justice, and safeguarding American society—with the overall mission:

To enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans.

Other key areas of work include protecting and promoting civil rights and liberties, collecting and

recording crime statistics, and providing funding for training and research. The head of the DOJ—the attorney general—is currently Eric H. Holder, Jr., who assumed office on February 3, 2009, and is the 82nd official to fill this position. The second in command and chief operating officer—the deputy attorney general—is currently James M. Cole, who assumed office on December 29, 2010. Both officeholders are appointed by the president and confirmed by the Senate. Headquarters are based in Washington, D.C., in the Robert F. Kennedy Department of Justice Building at 950 Pennsylvania Avenue between 9th and 10th Streets. The building was renamed in 2001 in honor of the 64th attorney general of the United States—Robert F. Kennedy—although it is still informally referred to by many as “Main Justice.” Appearing on the official seal of the Department of Justice, the Latin motto *Qui Pro Domina Justitia Sequitur* has often been debated, however, many experts have interpreted the phrase to mean “who prosecutes on behalf of justice (or the Lady Justice).”

The Department of Justice is one of the oldest branches of the federal government, dating back to the late 18th century—nearly a century before it officially came into existence. Held in New York City on September 24, 1789, the first session of the U.S. Congress convened to sign the Judiciary Act of 1789 and thus established the federal judiciary for the country. Among other things, this statute created the first Office of the Attorney General, which was to be filled by a person “learned in the law” in order to serve as the chief law enforcement officer for the United States. The purpose of this position was to provide “advice and opinion upon questions of law when required by the president, or when requested by the heads of any of the departments, touching any matters that may concern their departments.”

Additionally, this officeholder was to prosecute cases, both civilly and criminally, “in which the United States shall be concerned,” and in exceptional circumstances, to appear in person before the Supreme Court to represent the federal government. Appointed by the president and thus a member of the executive cabinet, this office was a one-person, part-time position during its infancy, with incumbents typically holding private law practices while executing public duties.



The U.S. Department of Justice is headquartered in Washington, D.C., in the Robert F. Kennedy Department of Justice Building, shown here. The Department of Justice has 43 specialized departments and the two largest, the Federal Bureau of Investigation and the Bureau of Prisons, had employees totaling 34,926 and 37,485, respectively, in September 2010. As the country's chief combined law office and policing agency, its total annual budget is greater than \$27 billion.

In addition, the Judiciary Act of 1789 created several assistant attorneys general and established district attorneys for each federal district, thus laying the new legal framework for the nation while also granting the attorney general with supervisory authority over these offices and others, such as those of clerks, marshals, accountants, and other court officers.

Origin

Understandably, the attorney general's position involved years of dedicated work before an established office took shape. Edmund Randolph, previously the second secretary of state, was first to serve in the office, from September 26, 1789, to January 26, 1794, appointed by President George Washington. Randolph and his six immediate successors—William Bradford, Charles Lee, Levi

Lincoln, Sr., John Breckinridge, Caesar Rodney, William Pinkney, and Richard Rush—all undoubtedly made noted contributions to further develop this office. However, and perhaps as a consequence of the increasingly growing workload, they all devoted limited efforts to maintaining detailed and accurate records and notes of the daily workings and services provided by the office during their respective terms, which presented a challenge for successors. As such, the first “great” attorney general was William Wirt, who held office from November 13, 1817, to March 4, 1829—the longest term since inception, spanning two presidencies—who made record maintenance a priority, primarily as a duty to help successfully guide future incumbents after he found there was limited information to work with. Over the following decades, extensive archives began to

accumulate as the country began to experience rapid growth and expansion, which naturally resulted in an escalating workload. Consequently, a new problem arose—there was no established executive government department to effectively and efficiently perform many of the orders, services, and activities required of this office, which led to an overburdened staff and a lack of uniformity in the administration of law and the delivery of justice.

Nearly a century later, the idea was born to establish a justice department. The mounting workload was exacerbated by another dilemma—the influx of litigation overwhelming the federal government during Reconstruction following the Civil War, which ravaged the United States from 1861 to 1865. This required a “very expensive retention of a large number of private attorneys to handle the workload,” and perhaps only helped to facilitate creation of the new executive branch.

On December 12, 1867, the U.S. House of Representatives formally instructed the Judiciary Committee to “consider the propriety of reporting a bill to consolidate all law officers of the government into one department.” In response, Congressman William Lawrence of Ohio was charged to lead an inquiry on the matter of creating a new Department of Justice, which would be headed by the attorney general. Shortly after, Lawrence introduced a bill to the U.S. House Committee on the Judiciary on February 19, 1868, for the creation of the Department of Justice. Initially, this bill was unsuccessful, leading another member of Congress—Republican representative Thomas Jenckes of Rhode Island—to introduce an amended bill two years later.

On April 29, 1870, both the Senate and the House of Representatives approved the bill, which was signed into law by President Ulysses S. Grant on June 22, 1870. Following this, Congress then passed the Act to Establish the Department of Justice, with operations officially commencing on July 1, 1870. This act also created the Office of the Solicitor General, tasked specifically with supervising and conducting all litigation in the Supreme Court on behalf of the United States, as well as to oversee all litigation for federal appellate courts. Appointed by the president in the same year, Benjamin Bristow was the first official to hold this office, from October 1870 to November 1872.

Early Challenges

In the early days, the Department of Justice, of all things, was plagued by instances of corruption. Mainly, this stemmed from the freedom of the attorney general to employ staff of his own political party, which presented him with a frequent conflict of interest between serving the administration of government and the political ambitions of his party. As such, when a new president was elected, existing attorneys were normally replaced with those of members of the successor’s own political party. These political distractions thus laid the ingredients for cases of corruption, for example, when two attorneys general, Wayne MacVeagh and Benjamin Brewster, who each served separate terms between 1880 and 1883, faced investigation and prosecution for bureaucratic wrongdoing. In response, MacVeagh resigned, which allowed Brewster to take office. Ironically, after assuming duties, Brewster discovered a DOJ slowly being defrauded by corrupt marshals and commissioners. In light of this, he appointed his nephew Brewster Cameron to investigate and prosecute department officials engaged in misconduct, which led to a high-profile case in which U.S. Marshal Paul Strobach and fellow deputies in Alabama were convicted of committing frauds and falsifying charges on arrested citizens for purposes of collecting fees. Naturally, tension began to ensue among political parties, which led President Chester Arthur to remove Brewster from his cabinet due to “political necessity.” Still, in 1884, an extensive investigation conducted by the House Committee on Expenditures and chaired by Democrat William Springer of Illinois concluded to blame the attorney general’s administration for the corruption. A number of reforms were subsequently implemented such as requirements for maintaining detailed records of daily office activities, submitting financial reports, instituting an employee merit system, and establishing fixed salaries to eliminate the need for officers to make frivolous charges on arrested citizens for the sake of collecting fees.

From the late 19th century onward, new problems began to plague the DOJ. During Reconstruction, the emancipation of thousands of black slaves enraged some patriotic nationalists of the former Confederacy. Consequently, a new group began to emerge—the Ku Klux Klan (KKK)—

beginning in 1867 in Tennessee, with members working to overturn Reconstruction efforts by the DOJ through acts of violence, rioting, assassinations, as well as torturing and killing of black people. The Department was on the front lines of the Grant administration's efforts to suppress the Ku Klux Klan in 1871–72. At first, the district attorneys and marshals were successful, capturing hundreds of Klansmen, but continued Southern resistance and growing northern apathy failed to eliminate white supremacist vigilantism.

The Department of Justice acquired its own Detective Force in 1908, the Bureau of Investigation, through an executive order of President Theodore Roosevelt. At first, it had little to do because of the lack of federal crimes, but the 1911 Mann Act, World War I, and Prohibition with its mobsters and other criminals, gave the bureau considerable work. In 1924 J. Edgar Hoover became director of the bureau (Federal Bureau of Investigation, or FBI, after 1933) and launched a war against bank robbers, kidnappers, and other public enemies. Generally the FBI stayed away from organized crime and focused on communists and other “subversives.” The bureau was hesitant to enforce 1960s civil rights laws, even though the DOJ established a Civil Rights Division in 1957, which made the department responsible for combating racial discrimination. Hoover actually tried to destroy Martin Luther King, Jr., whom he believed threatened a revolution. Finally, another hallmark of the DOJ—the Attorney General's List of Subversive Organizations (AGLOSO)—dating back to 1903 and used during World Wars I and II, was a compilation of organizations regarded as threats to the federal government, such as the KKK and the Nazi Party. From 1947 until it was abolished in 1974, administrations publicized these lists, which had damaging effects for the more than 300 organizations listed with no advance notice, evidence, or hearings.

Evolution

As with any organization, the Department of Justice has faced challenges over the years and has evolved considerably to include new offices, divisions, and positions in order to effectively deal with a multifaceted workload while standing firmly on the foundations established in 1870. Comprising 43 specialized departments, powered by an annual

budget exceeding \$27 billion, and armed with a staff of more than 116,000 highly trained lawyers, investigators, and agents as of September 2010, the DOJ today essentially serves as the nation's chief combined law office and policing agency. Specifically, two components—the Federal Bureau of Investigation and the Bureau of Prisons—comprise the bulk of the DOJ's manpower, with employees totaling 34,926 and 37,485 respectively, as of September 2010.

Today, the DOJ is managed through leadership offices—the attorney general, deputy attorney general, and the associate attorney general—all of whom are nominated by the president and confirmed by the Senate, and the solicitor general, who is nominated by the Supreme Court and confirmed by the Senate. These offices are supported by five separate divisions responsible for legal policy, legislative affairs, tribal justice, intergovernmental and public liaison, and public affairs. According to the Department of Justice's strategic plan, priority areas today “reflect the reality of law and justice these days,” which includes detection and prevention of terrorism as a chief concern; combating crimes of violence, especially crimes committed with firearms and gang violence; computer crime, especially child pornography, obscenity, and intellectual property such as online piracy and identity theft; drug trafficking and substance abuse, especially of methamphetamines, including drug diversion; and white-collar crimes such as corporate fraud and public corruption. The DOJ also promotes civil rights and civil liberties, for example, by eliminating discrimination and human trafficking.

A number of services and operations of the Department of Justice are executed through the following departments. For state and local assistance, there are offices dedicated to community-oriented policing services, community relations services, violence against women, and justice programs, the latter of which houses the Bureau of Justice Assistance; Bureau of Justice Statistics; Community Capacity Development Office; National Institute of Justice; Office of Juvenile Justice and Delinquency Prevention; Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking Office (SMART); and Office for Victims of Crime. Legal representation and advice is provided by a variety of offices: Office

of Legal Counsel, Tax Division, Environment and Natural Resources Division, Antitrust Division, Civil Rights Division, Office of Dispute Resolution, National Security Division, and Executive Office for the U.S. Trustees. Law enforcement operations are conducted through the FBI; Drug Enforcement Administration; Bureau of Alcohol, Tobacco, Firearms and Explosives; U.S. Marshals Service; National Drug Intelligence Center; Interpol's National Central Bureau, Criminal Division; Executive Office for U.S. Attorneys; Executive Office for Organized Crime Drug Enforcement Task Forces; and Office of the Federal Detention Trustee. Prisons are overseen through the Federal Bureau of Prisons (includes National Institute of Corrections), Office of the Pardon Attorney, and U.S. Parole Commission. Finally, the Department of Justice is managed and overseen through the Justice Management Division, Office of the Inspector General, Office of Professional Responsibility, and Professional Responsibility Advisory Office.

As of March 2003, the U.S. Immigration and Naturalization Service was transferred to the newly established Department of Homeland Security, although other similar offices—Executive Office for Immigration Review and Board of Immigration Appeals—are still under DOJ command. Other offices include Foreign Claims Settlement Commission and Office of Information Policy. During World War II, a specially created war division operated in order to help coordinate war-related activities but ceased operations in December 1945.

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See Also: 1901 to 1920 Primary Documents; 1921 to 1940 Primary Documents; 1941 to 1960 Primary Documents; 1981 to 2000 Primary Documents; 2001 to 2012 Primary Documents; Drug Enforcement Administration; Federal Bureau of Investigation; Federal Policing; Federal Prisons; Homeland Security; Judiciary Act of 1789; Supreme Court, U.S.

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Juvenile Corrections, Contemporary

As the United States entered the 21st century, it faced a crisis in juvenile corrections. Due to get-tough sentencing policies enacted in the 1980s and 1990s, juvenile incarceration was at an all-time high. On any given day, there were over 100,000 youths held in juvenile correctional facilities. Reports began to surface, indicating that abuse and poor conditions were endemic in many of these facilities. Court-mandated investigations in both California and Texas uncovered serious levels of mistreatment and violence. Research revealed three-year recidivism rates as high as 50 percent in many states. Today, while the majority of these problems still exist, there are also a number of hopeful trends.

U.S. Correctional System

Describing the American juvenile correctional system is complex because each state system is unique. For example, some states coordinate their systems through a state-level agency, while others share responsibility for incarceration with localities (generally, counties). There is also variation among states in their level of dependence on

private corporations to run correctional centers. States use different types of confinement; some place youths in large institutions, while others use a cottage model with small groups of youths living together. The population of youths in custody in each state also differs widely. Some states incarcerate high numbers of status offenders (youths who violate laws, like truancy, that only pertain to minors) while others try to reserve incarceration for those who have been convicted of a delinquent act. Similarly, states vary in how they handle youths who violate the terms of their parole. Some rely on incarceration, while others have found noncustodial ways to handle these violations.

Despite variation among the states, it is possible to make a number of generalizations about the American system. About half of all youths who come through the juvenile courts are put on probation. Probation generally involves monitoring, programming, and restrictions. Of the approximately 20 percent of youths who are sentenced to confinement, a full 85 percent are male, although the rate of female incarceration has grown steadily over the last 20 years. Disproportionate minority confinement has led to an overrepresentation of blacks and Hispanics in the incarcerated population. Research suggests that this overrepresentation can be traced partly to racial/ethnic variations in crime patterns, but it is also explained by discrimination embedded in the justice process. Youths who are released from confinement are generally put on parole (called “aftercare” in some states) unless they have aged out of the system. Parole, like probation, involves monitoring along with other conditions. Typical requirements include periodic meetings with an agent, curfews, bans on drugs and alcohol, and restrictions relating to school or work.

Rehabilitation, Education, and Counseling

Because one of the goals of the juvenile justice system is rehabilitation, most correctional facilities offer some form of rehabilitative or educational programming. Virtually all states require that juvenile correctional facilities provide a minimum level of education to those youths who do not have a high school diploma or GED. Unfortunately, many of these programs are mired in problems due to underfunding, overcrowding, and insufficient teacher training. Additionally, the



The Louisville, Kentucky, Metro Youth Detention Services building in 2008. Since 2000, the number of youths held in juvenile correctional facilities like this one has declined from about 100,000 to 90,000 on any given day.

incarcerated population is particularly challenging to teach. Most youths arrive in the system considerably behind grade level and many have been diagnosed with learning or behavioral disabilities. As a result of these factors, prison classrooms tend to be chaotic spaces. Special education students have a particularly difficult time because there are insufficient resources to meet their needs.

Most correctional institutions in the United States provide some form of substance abuse treatment, although the type, quality, and amount vary widely. Services to youths on parole or probation, however, are much more limited. The most common forms of treatment within institutions include classes, support groups, and one-on-one counseling. Most correctional facilities also offer general mental health services. Incarcerated youths have disproportionately high rates of mental health problems (particularly, depression and

anxiety). While there has been increasing attention paid to these problems in recent years, reports suggest that there are still high rates of self-injurious behavior among correctional center residents. On an encouraging note, several female-specific therapeutic programs have been created. These programs are a response to research showing that females who have been sexually abused have specific therapy needs and tend to be disproportionately represented in juvenile prisons. Overall, however, this type of gender-specific programming is rare and incarcerated females continue to be overlooked by both researchers and practitioners.

The last 10 years have seen a number of new trends in programming offered to incarcerated and paroled youths, as well as to those on probation. For example, there has been a dramatic increase in the number of classes in anger management and victim awareness. Because youths who are parents tend to be overrepresented in the juvenile correctional system, parenting skills courses have become more popular. In response to research showing that families are an important component of juvenile rehabilitation, some correctional programs have begun to include family members in therapy sessions. This is more common in community-based programs because incarcerated youths are sometimes housed too far from their families to make regular visitation possible.

Decrease in Incarcerated Juveniles

The most notable trend in juvenile corrections since 2000 has been the decrease in the number of incarcerated youths. While juvenile incarceration levels are still extremely high—with approximately 90,000 juveniles in custody on any given day—numbers have consistently declined during the last decade. This is partly a result of decreasing crime rates (particularly among black youth), but it can also be traced to policies enacted at the state level. Because of judicial mandates, outrage over abuse, and large budget deficits, many states have enacted initiatives to lower custody levels. For example, Missouri has developed a highly praised and emulated model of juvenile corrections. Youths are incarcerated in facilities no more than 50 miles from their homes and are placed in small-group settings, rather than in large institutions. Youths wear street clothes and participate in decision making in their residences. Missouri

in particular is having notable success in lowering recidivism as well as custody rates.

Some states are moving toward increased use of performance-based standards. These standards provide a way for institutions to monitor practices inside facilities (like the use of restraints) with the goal of making targeted and rapid changes to policies. It also appears that states are increasingly using risk assessment in youth placement decisions. Finally, states are reducing their use of incarceration as they experiment with community-based programs such as intensive probation, restitution, community service, and outpatient treatment.

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See Also: Children's Rights; Juvenile Corrections, History of; Juvenile Justice, History of; Juvenile Offenders, Prevention and Education.

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Juvenile Corrections, History of

Juvenile corrections is a term that refers to the system and the philosophies behind the system

that detains juveniles who have been processed through the juvenile justice system and found to be delinquent. The evolution of juvenile corrections has historically followed the development of the broader juvenile justice system. One of the most significant factors in the development of juvenile corrections has been how societies have historically defined what it means to be an adult compared to what it means to be a child. Prior to the Industrial Revolution, young individuals were seldom recognized as being different from adults. In fact, they were often treated as little adults. Juveniles were often processed through the justice system and punished in the same manner as adult offenders. This correctional philosophy slowly began to change as societies began to industrialize. The social change that came

about as a result of industrialization not only changed the structure of the labor market; it also changed broader ideologies concerning the roles of young people. These two factors fueled the social change that shapes the juvenile justice system to this day.

Until the early 1800s, correctional policies and practices throughout the world generally did not give consideration to a juvenile's age. The first attempts to change juvenile correctional policies and practices occurred in England in the 1820s and in the United States during the mid-1800s. One of the first accounts of juvenile corrections can be traced back to 1820s England when courts held Warwickshire Quarter Sessions—periodic courts that sentenced young offenders to a single day in prison. Following the completion of their



Uniformed African American juvenile convicts, most of them in chains, at work in a field in an unknown U.S. location in a photograph dated 1903. While these young men and boys may have been treated much like adult convicts of that era in the south, during the 20th century, secure juvenile correctional facilities were eventually reformed through legislation such as the American Law Institute's Model Youth Correction Authority Act and social movements to deinstitutionalize juvenile offenders.

sentence, juveniles were released back into the custody of their parents or another responsible adult.

Some of the first historical records of juvenile corrections within the United States date back to the 19th century. In 1824, New York officials opened the House of Refuge, which was a facility that housed juveniles with the intent to rehabilitate instead incapacitate and punish. The establishment of the New York House of Refuge is one of the first official correctional programs that had the goal of diverting the juvenile away from the adult correctional system.

During the mid-1800s, juvenile justice practitioners from the state of Massachusetts were often tasked with finding juveniles suitable living arrangements and to occasionally visit them to ensure that they were refraining from vagrancy and delinquency. The programs established by the state of Massachusetts are recognized as the first official form of probation. In addition to the efforts of officials in Massachusetts, other states slowly began to recognize the need to separate the punishment of juveniles and adults.

During the later part of the 19th and into the 20th century, societies continued to change how juveniles were seen with reference to roles and responsibilities within broader society. During this time, it became widely recognized that juveniles were historically exploited within the labor market. As changes in industry continued and social reform boomed, the concept of adolescence became popular among citizens of the United States. Officials were beginning to recognize that a gray area existed between childhood and adulthood. The recognition of the period of adolescence allowed juvenile justice advocates to argue for an entirely separate juvenile justice system. Although generally recognized as a positive step in juvenile jurisprudence, the creation of the concept of adolescence led to many dilemmas and raised many questions. For example, who defines juvenile, who defines delinquent, and at what age does one cross from childhood to adolescence and from adolescence to adulthood?

The philosophies behind juvenile corrections were greatly impacted in 1899 when criminal justice practitioners in the United States took the first step toward creating a separate juvenile justice system and established the first juvenile court in Cook County, Illinois. Soon after Illinois cre-

ated the first juvenile court, juvenile courts were created throughout the country. These initial courts established a correctional philosophy that was grounded in the actions of earlier programs established in Massachusetts, New York, Oregon, and other states. The courts approached juvenile corrections according to the legal doctrine of *parens patriae*—the idea that courts should act as parental figures in the absence of capable guardians. In accordance with the doctrine of *parens patriae*, judicial officials were required to consider “the best interest of the child” when assigning correctional treatment. This ideology led to correctional programs that were geared toward correcting adolescent behavior with the goal of returning a rehabilitated, law-abiding citizen to society. The rapid expansion of juvenile courts based on the doctrine of *parens patriae* encouraged the creation of less punitive correctional programs. Despite this approach to corrections, some juveniles have been found to be unresponsive to informal, community-based correctional programs such as probation. This created a two-tiered juvenile correctional system that can be labeled as community-based corrections and more formal or secure corrections.

Community-Based Corrections

Within the juvenile justice system, community-based corrections are favored over more formal treatment in secure facilities. This preference exists because a community-based approach to juvenile corrections is better aligned with the overall philosophy behind the juvenile justice system. Community-based corrections programs became the main line of effort in the juvenile correctional system when the Juvenile Justice and Delinquency Prevention Act was passed in 1974. The act called for the “deinstitutionalization” of all juvenile offenders. After the passing of the Juvenile Justice and Delinquency Prevention Act, advocates for community-based corrections developed a number of programs that allowed for rehabilitation without incarceration. The most common form of community-based corrections is probation.

Probation is a form of correctional treatment that allows a juvenile to remain within the community while being required to follow certain rules and remaining under close supervision by a representative of the state. Probation began in

the United States in the mid-1800s. Probation has been the dominant disposition of juvenile cases since its inception. It has been the correctional treatment of choice by criminal justice practitioners because the conditions established for each individual can be tailored so as to help rehabilitate the individual offender. In addition, probation is a common disposition for less serious crimes such as status offenses. When probation fails or is not an option, other common community-based correctional programs include house arrest, restorative justice, intensive supervision, and residential programs.

Established in the early 1980s, house arrest is a correctional program that requires juvenile delinquents to wear a type of electronic monitoring device. During the assigned period, the juvenile delinquent is not allowed to leave the assigned location. The effectiveness of these programs has long been a point of debate among criminal justice practitioners.

The basic concept of restorative justice has existed for thousands of years, as revealed in the Code of Hammurabi. Contemporary restorative justice programs are typically aligned with the philosophy of juvenile justice in that they aim to “restore” all parties involved to their statuses prior to the offense. Restorative justice approaches are different than other correctional programs in that they involve an intimate collaboration between the victim, offender, and justice officials. Research on restorative justice programs is mixed as far as the effectiveness of the programs. However, studies on restorative justice tend to show that there is a relationship between positive victim satisfaction and future offending.

More restrictive community-based approaches to juvenile corrections include intensive supervision and residential programs. Intensive supervision programs require daily interaction with a probation officer or similar judicial representative. Juveniles are often referred to intensive supervision programs when the only alternative is detention in a secure correctional facility. The main goal of this type of program is to provide rehabilitation to juveniles as a last chance alternative to imprisonment while allowing the juvenile delinquent to remain in the community. Residential programs are one of the most aggressive types of community-based corrections. Examples

of residential programs include programs such as group homes and camps. A typical group home is operated as an open environment where juveniles live, work, and attend school while taking advantage of specialized correctional services such as group counseling. Group homes are typically staffed with a team that includes counselors, probation officers, and educators. Juvenile camps rose to popularity during the 1980s along with “scared straight” programs, including wilderness camps and militaristic boot camps.

Secure Correctional Facilities

Sometimes, a juvenile court decides that community-based treatment is not in the best interest of the juvenile. Another approach to juvenile corrections that became popular during the early 1800s is detaining youthful offenders in a secure youth correctional facility. Prior to this time period, young offenders were housed with adult offenders in adult facilities.

In the early 1800s, the cottage system was established in New York, Ohio, Massachusetts, and Maine. By the early 1900s, a majority of states followed suit and created some sort of secure correctional facility specifically for juveniles. Facilities included in the cottage system operated as secure facilities under the direction of a headmaster. Although some may consider secure juvenile correctional facilities to be punitive in nature, secure juvenile correctional facilities such as cottages still operated under the doctrine of *parens patriae*. The philosophies that drive secure youth correctional facilities are markedly different than those that drive adult correctional facilities. Secure juvenile correctional facilities have historically operated in a militaristic manner with an emphasis on rehabilitation. This has not always been the case with secure adult facilities. During the 20th century, secure juvenile correctional facilities were greatly reformed through legislation such as the American Law Institute’s Model Youth Correction Authority Act and social movements such as the push to deinstitutionalize juvenile offenders.

Today, the major trend in juvenile corrections reflects the “get tough on crime” ideology. Unfortunately, this trend has included the implementation of legislation that allows many juvenile offenders to be waived to adult courts. The

waiver of juveniles to adult courts has revived the age-old questions “How do we define juvenile delinquency?” and “At what age does someone become an adult?” Debates concerning these questions and the current trends in social change will guide practitioners and policy makers throughout the 21st century. The hope is that practitioners and policy makers alike will remember the ideas behind the doctrine of *parens patriae*.

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See Also: 1921 to 1940 Primary Documents; Children’s Rights; Juvenile Corrections, Contemporary; Juvenile Corrections, Sociology of; Juvenile Courts, Contemporary; Juvenile Courts, History of; Juvenile Justice, History of; Juvenile Offenders in Adult Courts; Probation.

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Juvenile Corrections, Sociology of

The sociology of juvenile corrections refers to the systematic application of the knowledge, concepts, methods, and techniques of sociology to the study of juvenile corrections. In broad terms, the sociology of juvenile corrections refers to the ways in which social structures (groups, organizations, communities), social categories (age, class, sex, and race) and social institutions (political,

economic, and religious) affect the development of how society deals with delinquent or status offending minors. The role social factors play in sanctioning and rehabilitation of minors is an important component of the sociology of juvenile corrections. The sociology of juvenile corrections is concerned with the etiology of juvenile corrections along with the impact of social history on juvenile correctional philosophies. It focuses not only on the purposes, structures, and procedures of formal sanctioning of juveniles but also on the practices, historical backgrounds, developments of juvenile corrections, and impact of historical changes in society on how society deals with juvenile offenders.

Children Seen as Adults

The importance of structural functional, interactional, historical, and cultural aspects of society is part of the sociology of juvenile corrections. The evolution of juvenile corrections is embedded in the social structure of any society. A society’s human social interaction, rules, and processes impact the evolution and application of juvenile corrections. This can be seen in the sociological evolution of societies, from mechanical to organic societies. The concept of juvenile corrections focusing on nurturing and protecting the young is relatively new. Historical evidence shows that during the Middle Ages, children were viewed as miniature adults or property and were treated as such. By the age of 5 or 6, children were expected to occupy similar roles as adults in the society. Modern conceptions of the distinctiveness of age did not exist. The juvenile correctional system did not exist, and punishment of minors did not differ from punishment of adults. During this time period, childhood was not seen as a prescribed period in human development. There was no different legal system or correctional system to deal with children who violated societies’ laws.

Development of correctional institutions designed for children did not emerge until the 1600s. These steps were based in socially formulated rationales about the distinctiveness of age and the importance of status differentiations. The change in the social structure of societies as they evolved over time also changed age-connected statuses. As societies evolved, so did definition of age and adolescence.

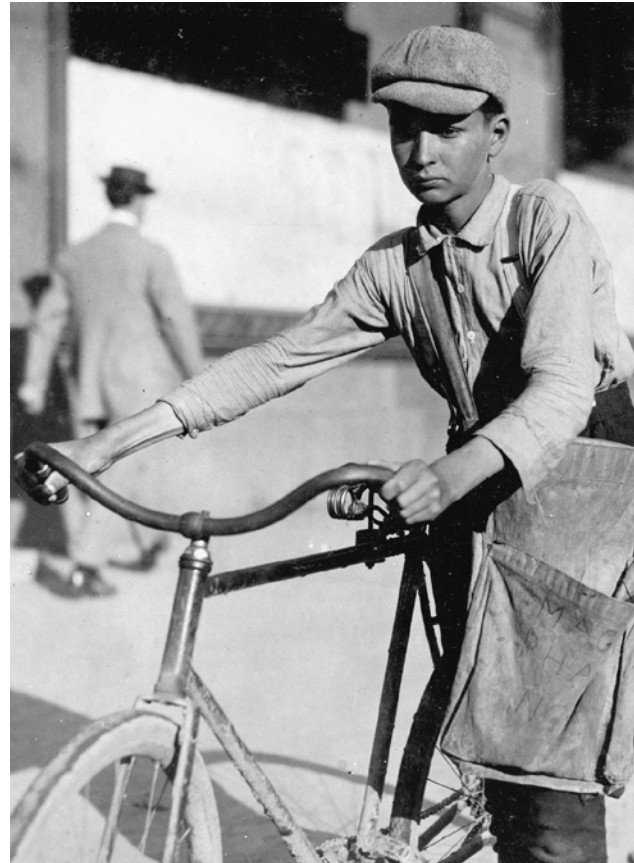
Amsterdam House of Corrections

By 1595, the Amsterdam House of Corrections was created to deal exclusively with wayward youths. The hallmark philosophy of juvenile corrections was instituted in this first juvenile-only correctional institution. This philosophy advocated rehabilitation of minors over punishment. The idea was to try to rehabilitate minors who were delinquent in some manner, and not treat them as adults, because they were malleable and could become productive citizens. This philosophy still guides juvenile corrections today.

Sociology of juvenile corrections is centered on the structural, functional, and cultural aspect of any society. Changes in social organization due to economic, social, and political changes that accompanied the end of the Middle Ages dramatically impacted the definition of childhood and treatment of children. Economics is important in understanding the sociology of juvenile corrections. Political and economic arrangements in a society influence inequality in the society, and this is reflected in differential treatment in juvenile corrections. The rise of the Industrial Revolution contributed to the erosion of certain practices. Most poor children were the occupants of early correctional institutions. Poverty was treated as a crime, and poor children were seen as rogues and vagabonds and usually institutionalized or banished from communities.

House of Refuge, New York City

During the early 1800s, the notion of childhood continued to change, and even poor children were deemed to have qualities that could transform them into productive citizens. Within the United States, there was a movement to create correctional institutions specifically for minors. However, House of Refuge, established in New York City in 1825, focused on the activities of lower-class children. The reform was led by wealthy white men who were concerned with protecting their way of life and particular moral codes. They wanted to separate youths from the influence of adult criminals, but they also wanted their moral values and beliefs to dominate the society. Lower-class children were routinely confined to these institutions based on middle-class morality and not necessarily delinquent behaviors. Not unlike the makeup of the early cor-



A delivery boy for a pharmacy in Houston, Texas, photographed by Lewis Hine in October 1913. He had recently been released after one year in a reform school for an unknown offense.

rectional institutions, class plays a major role in contemporary juvenile corrections. There are continued differences in how poor youths are sanctioned compared to middle-class or more advantaged juveniles. The research shows that lower-class youths' overrepresentation in the juvenile justice system is a factor of institutionalized bias evident in the major social institutions in the society.

Females

The role of gender socialization is important because what happens in society affects juvenile corrections. The difference in the treatment of male and female juvenile offenders has always been evident in juvenile corrections. Historically, there has always been a differential societal response to female and male juvenile offending. There is a differential rate of offending, but

patterns of admission to juvenile correctional facilities have always maintained a chivalrous slant toward women. Males are the majority of offenders, but certain female offenders were treated more harshly than male offenders based on the category of offense. Traditionally, female juvenile offenders have been given harsher sanctioning for moral or values behavior, such as status offending, compared to males engaging in similar behaviors. For example, historically, female status offenders were routinely institutionalized; this was not the case for male status offenders. This is a reflection of the social norms and societal beliefs that influence juvenile correctional policies.

Gender roles are reflected in juvenile corrections as societal expected behaviors for females and males are played out in juvenile sanctioning. Juvenile corrections throughout history have reflected the traditional patriarchal values of the society, highlighting a gender bias. Gender influences juvenile corrections decisions, with the juvenile justice system taking a paternalistic stance toward female delinquents. Exceptions exist, based on race. The literature is consistent that minority females have not been the recipient of this chivalrous treatment. The stereotypical notion of proper female behavior has not been extended to minority female juveniles. The evidence points to juvenile justice personnel adhering to “racialized gender expectations” in which minority girls are more likely to be treated harshly. For example, minority girls are more likely to be detained compared to white girls who are more likely to receive placement in a treatment facility.

Minority Juveniles

The etiology of juvenile corrections is interested in the role race plays in juvenile sanctioning. Minority juveniles at all stages of the juvenile justice process are placed at a disadvantage relative to whites because of court officials’ subjective assessments. Minorities are subjected to greater and harsher social control. Starting with the slave trade, slave children were seen as more threatening and were dealt with as harshly as adults, long after the movement to recognize the importance of childhood and adolescence had become widespread throughout juvenile corrections and the society. Race effects are still prominent in

juvenile corrections. Racial stereotypes that were evident during colonial times as they relate to slave children tend to still be evident in contemporary society.

The idea that minority juvenile offenders are more dangerous is evident in juvenile sanctioning options, such as deferring prosecution or referral to diversion programs. These options are more likely to be given to white juveniles than minority juveniles, taking all legal factors into consideration. Minority juveniles receive more severe sentences and minority juveniles are more likely to be institutionalized in the juvenile justice system. Juvenile court officers view minority juveniles as posing a threat to the middle-class standard. This racial stereotype has been consistent in juvenile corrections and has continued to influence sanctioning decisions.

Within the sociology of juvenile corrections, the values and beliefs of decision makers are impacted by the larger society, and this is reflected in perceptions about minority juveniles. According to the research, this seems to impact sanctioning. Disproportionate minority confinement is an issue that supports researchers’ argument that minority juveniles are treated differently than whites. Minority juveniles detained in detention facilities, secure correctional facilities, jails, and lockups exceed their proportion in the population. At every stage in the juvenile justice process, minority juveniles are overrepresented. The subjectiveness of juvenile justice decision makers and the social construction of realities about minority group members are instrumental factors in the sociology of juvenile corrections.

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See Also: 1921 to 1940 Primary Documents; Gender and Criminal Law; Juvenile Corrections, Contemporary; Juvenile Corrections, History of; Juvenile Delinquency, History of; Juvenile Delinquency, Sociology of.

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Juvenile Courts, Contemporary

Juvenile courts were created and operate on the principle that juveniles are fundamentally and developmentally different from adults. Thus, different forms of intervention techniques are used in the treatment of juvenile offenders. However, various changes in the nature of family units, juvenile delinquency, and the problems that juveniles face today have led to a number of changes in the contemporary juvenile court system. Instead of a one-system-fits-all approach, many juvenile and family courts across the nation are taking a more specialized approach to addressing the needs of delinquent youth.

Juvenile courts vary with each jurisdiction in structure, format, and characteristics. Some juvenile courts focus on therapeutic practices that center on the juvenile, whereas other juvenile courts lean toward a more punitive approach toward juvenile delinquency. Jurisdictions with courts that take a more therapeutic stance on juvenile delinquency employ the use of specialty courts, whereas punitive-based jurisdictions have courts that lean more toward a more formalized version of the juvenile court. At the onset of the 21st century, juvenile courts across the nation were faced with the fallout from increased delinquent activity and violent crime from youthful offenders during the 1980s and 1990s. Public outcry for tougher sentencing, along with criticism of juvenile and family courts

for inappropriate sanctions of the various types of crimes committed by juvenile offenders, prompted the creation of specialty courts to address the specific needs of juvenile offenders.

By 2002, juvenile courts across the United States saw 41 percent more delinquency cases than had been seen in 1985, and in 2005, juvenile courts in the United States processed 1.6 million delinquency cases. The types of cases processed through the juvenile court system were also undergoing a drastic change. Drug offense cases seen by the courts rose 179 percent since the 1990s, public order offense cases rose by 102 percent, and person offense crimes experienced drastic increases as well. As a result of changes in the characteristics of the juvenile offender and the cases processed by the courts, many contemporary juvenile courts began to use specialty courts to address the specialized needs of modern youthful offenders. These specialty courts include drug courts, gun courts, teen courts, and mental health courts.

Juvenile Drug Courts

Drug courts began as a response to the overwhelming number of drug-related offenses appearing as a result of the crack cocaine epidemic of the 1980s. The most prominent and publicized of the new form of juvenile courts is the juvenile drug court. Courts of this nature were developed using a similar format as the adult version of such courts, which first appeared in Miami, Florida, in 1989. The first juvenile drug court, which began as a response to alarming rates of drug and alcohol use among high school-age children, is believed to have appeared in the mid- to late 1990s. In 2006, there were 411 juvenile (up from 172 in 2000), 166 family, and 14 family and juvenile drug courts in the United States. Juvenile drug courts differ across jurisdiction, but they have similar goals and objectives. These courts seek to provide immediate intervention and treatment to juveniles with crimes stemming from substance abuse. Additional objectives of these courts include improving the lives of juvenile substance abusers, addressing the source of the drug problem, providing these youthful offenders with coping skills while strengthening families, and promoting accountability on behalf of the juvenile and his or her care providers.

The general process of the contemporary juvenile drug court begins with the drug-related arrest of the juvenile. Following arrest, eligible juveniles are referred to the drug court and subsequently agree to participate in the prescribed program. Juveniles who refuse the treatment or don't follow the court's rules are transferred to regular juvenile court. Participants in the program attend regularly scheduled court-appointed treatment, drug tests, and court dates. In this type of court, judge and staff serve as a team and support group that is specifically designed to meet the needs of youthful offenders and substance abusers. These programs are not for all juvenile offenders; youth entering these programs must meet eligibility requirements specific to each court. For most of these types of courts, the juvenile must be a first-time offender whose crime is not overly violent in nature. For early juvenile drug offenders, the juvenile drug court serves as a replacement to the normal juvenile and family court that deals with delinquent youth.

Juvenile Gun Courts

A second type of specialty court is the juvenile gun court. Although not as well publicized or widespread as the juvenile drug court, juvenile gun courts serve a similar need and purpose. The juvenile gun court assists regular courts as a form of intervention for youthful offenders who commit gun offenses that do not result in serious injury to others. Unlike the juvenile drug court, which is an alternative to traditional juvenile courts, some juvenile gun courts are a supplement to juvenile court proceedings. As of 2007, there were six juvenile gun court programs in the United States. Although there are only a few of these programs in place, the Office of Juvenile Justice and Delinquency Prevention is taking steps to develop more of these programs. Though primarily for gun-related offenses, juveniles charged with other weapons-related offenses and young offenders involved with gangs, drug dealers, or whose codefendant was armed are also referred to these courts. The general process for these courts is as follows: The juvenile is (1) arrested, (2) sent through court intake and subsequently detained, (3) a youth who goes to trial and does not contest the charge is sent to an intensive boot camp to improve social skills, academics,

and physical ability, (4) parents/guardians are required to attend workshops while the juvenile is in boot camp, and (5) after release from boot camp, the juvenile is placed on close supervision for a specified amount of time.

Juvenile Mental Health Courts

Due to an increasing number of juveniles entering the court system with some diagnosable mental illness, programs that specialize in the needs of these offenders were initiated during the early part of the 2000s. As of 2006, there were a total of 11 juvenile mental health courts scattered throughout the United States, with at least 20 more planned or considered in jurisdictions across the nation. The Court for the Individualized Treatment of Adolescents (CITA), the first of these courts, was implemented in Santa Clara County, California, and it has served as the model for subsequent juvenile mental health courts. Juvenile mental health courts require voluntary participation. Some jurisdictions require the defendant to plead guilty, yet others simply require that the defendant participate in the program and no criminal charges are placed against the offender. Juvenile mental health courts utilize teams of mental health and criminal justice professionals to coordinate and supervise the youth who enter the programs. These teams consist of the prosecution, defense, probation officers, and mental health coordinators.

Teen Courts

Teen courts have been in place the longest of all juvenile specialty courts, and they comprise the largest number of juvenile specialty courts throughout the United States. As of 2002, 900 teen court programs were in operation around the United States. These courts were developed to address minor delinquency issues that were clogging up and slowing down the juvenile justice system. Juveniles who agree to this form of justice are subject to an informal sanction placed on them by a judge or a panel of their peers.

Characteristics of Regular Juvenile Court

While some courts have turned to the therapeutic approach of the specialty courts, many others have answered public outcries to treat juvenile offenders more like their adult counterparts.

Thus, many juvenile courts have undergone a more formalized process, which is a direct result of legislation brought about in previous decades. Formal processing in juvenile courts involves handling a case in a way that leads to a formal court hearing with a formal outcome. Informal processing includes alternative forms of justice such as teen courts. At present, juvenile and family courts are processing more cases formally than informally. As a result of this formalization process, many juvenile court proceedings have offenders who are represented by counsel, and records of the juvenile court proceedings and detailed rights of the youth and parents are made and maintained. Additionally, many contemporary juvenile courts use the same or similar procedural rules as adult criminal courts.

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See Also: Children's Rights; Juvenile Corrections, Contemporary; Juvenile Corrections, History of; Juvenile Courts, History of; Juvenile Justice, History of; Juvenile Offenders in Adult Courts.

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courts, typically organized at the county level and authorized by state legislation that provided juveniles with hearings and detention facilities separate from those for adults. The first was established in Cook County (Chicago), Illinois, in 1899. Juvenile courts typically have had jurisdiction over young people ages 17 and under (although some courts have placed the maximum age at 16 or 15). They handled young offenders accused not only of delinquency—actions that would have been considered criminal for adults—but also offenses defined by the status of being a juvenile, such as truancy or incorrigibility. In some cases, juvenile courts also handled dependency or issues involving financial need or lack of parental support.

Parens Patriae

Juvenile courts originated from a goal—characteristic of late-19th- and early-20th-century social reform movements—of safeguarding young people and thereby improving society. Prior to the creation of juvenile courts, most young people who were arrested were kept in jails together with adults, tried in criminal courts, and potentially subject to criminal penalties. By the 1890s, however, reformers increasingly viewed juveniles as different from adults. They criticized existing courts for mixing young offenders with older ones who could both cause younger ones harm and train them to be more adept at crime. As an alternative, turn-of-the-century reformers advocated the creation of separate courts for juveniles. A basic goal of juvenile courts was diversion, removing young offenders from criminal courts, jails, and prisons. Reformers also saw juvenile courts as a means of resolving the fundamental sources of delinquency.

A coalition of Chicago reformers—including the Chicago Women's Club, attorneys from the Chicago Bar Association, and activists from the Hull House social settlement—sponsored the Illinois Juvenile Court Act in the state legislature beginning in 1898. They interpreted juvenile delinquency as rooted in the social environment. They particularly blamed poverty and family disruption for delinquency, and they believed that the juvenile court would be able to address these problems by helping individual young people. In thinking this, they exhibited characteristic early-20th-century beliefs in the ability of expert social scientific

Juvenile Courts, History of

Juvenile courts were created as innovative legal institutions aimed at protecting young offenders rather than punishing them. They were local

knowledge to assess the source of problems and in the ability of government to provide solutions. The passage of the Illinois Juvenile Court Act in 1899 created the world's first official juvenile court in Cook County (Chicago). As the concept spread, almost every state established some sort of juvenile court for its major cities by 1920.

Juvenile courts were originally designed as protective institutions. They relied on the legal doctrine of *parens patriae*, the concept that the state had the right to intervene in a family if a child's welfare was at risk. Juvenile courts differed from criminal courts both in their broad reach over behaviors that were not necessarily criminal and in their diagnostic and preventive goals. They sought to combine punishment with treatment, seeing dispositions as operating in the best interest of the child. In the early years of juvenile courts, many advocates saw judicial procedure itself as a way to rehabilitate young offenders.

Leading judges of the early 1900s such as Richard Tuthill in Chicago and Benjamin Lindsey in Denver sought to utilize a friendly manner and informal procedure to earn boys' trust and to correct them personally. The courts also relied on probationary supervision—both of young offenders and of their families—to address the perceived social and environmental sources of misbehavior.

Trying to implement these ideals required juvenile courts to gradually accumulate bureaucratic and institutional mechanisms. At first private efforts, mainly by women's groups, supplemented juvenile courts. For example, an offshoot of the Chicago Woman's Club, the Juvenile Court Committee, initially provided 15 probation officers, ran a detention home, and transported youths to the court. Gradually, these functions shifted from private efforts to public responsibilities. Only several years after the establishment of the juvenile court did the Illinois General Assembly



A judge and lawyers surround a small boy in an early U.S. juvenile court around 1902. The world's first official juvenile court began in Cook County (Chicago) after passage of the Illinois Juvenile Court Act in 1899. The concept spread throughout the country, and almost every state had established some sort of juvenile court in major cities by 1920.

authorize Cook County to fund a juvenile detention facility. Similarly, a 1905 amendment to the Illinois juvenile court law allowed the court to hire professional probation officers, supplementing and eventually replacing the volunteers and police officers who had done the job until then. In addition, juvenile courts added systems for filtering the many complaints they received and established closed hearings for juveniles to protect them from public scrutiny.

Early juvenile courts handled both dependency cases and delinquency cases. Dependency cases involved children of all ages, both boys and girls. In these cases, courts administered social welfare services, either providing guidance for families or sometimes removing children from homes to care for them in private facilities or public institutions. The delinquency cases focused largely on teenage boys, often of immigrant backgrounds, accused mainly of minor crimes or status offenses. Again, Chicago is a typical example. Between 1899 and 1909, approximately 80 percent of the Cook County Juvenile Court's delinquency cases involved boys. Of these, theft comprised roughly half of the offenses, while status offenses such as incorrigibility and disorderly conduct made up most of the rest. In a few juvenile cases involving serious criminal offenses, the Cook County Juvenile Court allowed prosecutors to pursue cases in the criminal courts.

In contrast to boys' cases, large majorities of early-20th-century delinquency cases involving girls focused on immorality and sexuality. Girls were accused of behaviors ranging from staying out late to being found in houses of prostitution. Juvenile courts took an interest in these cases even when they did not involve actual criminal violations because court officials—particularly female reformers—envisioned juvenile courts as a means to help protect girls and young women from the temptations and hazards of urban life.

Probation and Reform

Early 20th-century juvenile courts preferred to resolve cases—at least those involving white male offenders—by placing youths found delinquent on probation. In cities that historians have studied such as Chicago, Los Angeles, Memphis, and Milwaukee, courts typically used probation as much to get at the perceived causes of delinquency as to

address particular offenses. They placed a relatively small minority of white male offenders in juvenile correctional institutions. Early-20th-century juvenile courts, however, had fewer options in dealing with African American youth. Because private homes and facilities often refused to accept African Americans, juvenile courts placed disproportionate numbers of African American delinquents in state-run reform schools. Juvenile courts were also more likely to institutionalize girls than boys in order to provide what they saw as appropriate supervision. According to one study, nearly half the girls who appeared before the Los Angeles Juvenile Court on delinquency charges in 1920 were removed from their homes.

Juvenile courts struggled almost from the beginning to balance their idealistic goals with the practical realities of reforming troubled youth. In the 1910s and 1920s, a handful of cities established court-based psychiatric clinics aimed at uncovering the root causes of delinquency—psychological as well as social—and addressing them through individual therapies. The emergence of these clinics highlighted an emerging sense among child welfare advocates that juvenile courts alone were not sufficient to solve the problem of delinquency. In the 1920s, a series of reports and conferences criticized juvenile courts for having high rates of recidivism, maintaining detention facilities that resembled jails, struggling to establish proper jurisdiction for youths accused of the worst offenses, and failing to extend beyond big cities. During the Great Depression of the 1930s, juvenile courts also experienced financial cuts that forced staff reductions and, at least in the case of the Cook County Juvenile Court, increased pressure to make hiring and promotion decisions on the basis of political patronage. In the 1940s, World War II helped prompt a perceived increase in juvenile delinquency that continued into the 1950s. In this context, juvenile court systems grew larger and, in the eyes of their critics, more bureaucratic.

Due Process Rights of Juveniles

In a series of cases in the 1960s, the U.S. Supreme Court constrained the informality of juvenile court procedures and expanded the due process rights of young offenders. The Supreme Court applied a new premise that when cases could lead to institutionalization, all suspects deserved

some constitutional protections. In *Kent v. United States* (1966), the Supreme Court—while aware of the special protective functions of juvenile courts—found the informal practices in juvenile court to be deficient in terms of legal procedure. The Supreme Court's specific decision in the *Kent* case found that suspects were entitled to a waiver hearing before being transferred from juvenile to criminal court, and that in these hearings juveniles were entitled to an attorney and formal rules of due process. The Supreme Court went much further in the case *In re Gault* (1967), asserting that juvenile courts neither offered appropriate treatment for young offenders nor provided adequate due process protections. As a result, the Supreme Court found that, in hearings that could lead to institutionalization, juveniles had the right to notice of the hearing, access to legal counsel, the ability to confront witnesses, and protection against self-incrimination. The *Gault* decision largely rejected the premise derived from *parens patriae* that, because juvenile courts had diagnostic and preventive functions, they were not obligated to follow the rules of due process. Later decisions, however, still distinguished juvenile courts from criminal courts, maintaining a lower standard of proof in status-offense cases and not requiring jury trials.

The outcome of the judicial revolution in juvenile courts was mixed. Critics contend that these reforms delivered neither the protections intended by the juvenile court model nor the due process rights appropriate for a criminal court. Studies showed that many juvenile courts complied poorly with the *Gault* decision's procedural safeguards. Many juvenile courts continued to function with the overt goal of helping young people; as a result, hearings routinely found young people delinquent and focused mainly on what sort of treatment should be provided. The procedural changes in juvenile courts also had little effect on the trend toward disproportionate confinement of minorities in juvenile institutions.

Juveniles in Criminal Courts

Since the 1970s, as the public became increasingly concerned about serious crimes committed by juveniles, states have shifted their laws to facilitate transfer of young offenders into criminal courts. One common method has been automatic trans-



Judge Mary Bartelme, shown here around 1913, was the first woman judge of the Circuit Court of Cook County (Chicago) and the Cook County Public Guardian. While working to reform the juvenile justice system, she also founded group homes for girls.

fer or direct waiver, in which certain categories of offenses by juveniles were handled in criminal courts. In 1978, the state of New York passed one of the first automatic transfer laws following a highly publicized double homicide by 15-year-old Willie Bosket. In 1981, Florida became one of the first states to explicitly give prosecutors the option to file cases against juveniles directly in criminal courts. Other states passed blended sentencing laws, allowing courts to impose juvenile and adult sanctions simultaneously. This trend toward pursuing juvenile cases in adult criminal courts accelerated following a sharp increase in youth violence in the late 1980s and early 1990s. At least 47 states changed their juvenile transfer laws between 1990 and 1999, seeking to impose greater criminal sanctions on juvenile offenders. In many instances, states replaced the earlier stated premise of acting in the best interest of the child

with a more balanced model aimed at also protecting society and victims. Although only a small percent of the total number of possible juvenile court cases were transferred to criminal court, this shift nonetheless led to the number of juveniles in adult prisons roughly doubling in the 1990s.

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See Also: 1921 to 1940 Primary Documents; Children's Rights; Juvenile Courts, Contemporary; Juvenile Justice, History of; Juvenile Offenders in Adult Courts; Supreme Court, U.S.

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Juvenile Delinquency, History of

Juvenile delinquency refers to violations of criminal laws or statute violations committed by youth, usually less than 18 years of age. Unlike adult offenders, in most states adjudicated youth offenders are not sentenced for specific crimes per se but rather given dispositions reflective of their delinquent status that may include diversion, restitution, community service, probation, or even incarceration.

To speak of juvenile "delinquency" in any strict sense prior to this is anachronistic, as with few exceptions young offenders were treated the same as adult offenders, including the use of severe and

even capital punishments. For centuries prior, in both the United States as well as Europe, the "age of culpability" had been as young as 8, which reflected the reality of early adulthood in agrarian and early industrial societies where youth of this age were regularly employed in adult labor and expected to adhere to adult laws. In his dissent of *In re Gault* (387 U.S. 1 [1967]: 1471) for example, Justice Potter Stewart noted that in the 19th century,

... there were no juvenile proceedings, and a child was tried in a conventional criminal court with all the trappings of a conventional criminal trial. So it was that a 12-year-old boy named James Guild was tried in New Jersey for [murder]. A jury found him guilty ... and he was sentenced to death by hanging. The sentence was executed. It was all very constitutional.

One exception in the treatment of younger offenders was the establishment of "houses of refuge," beginning in 1825, for criminal and wayward children. The purpose of these houses was to separate younger offenders from the influence and predation of older criminals in adult prisons. However, these were often nothing more than workhouses, and the abhorrent conditions of many of these facilities were part of the reform movement that began in the late 19th century to establish a separate system of justice for youth offenders.

Aside from the conditions of refuge houses, there were several factors that led to the reform of juvenile justice in the United States. The industrial revolution and growing immigration in the 19th century had led to the common use of forced child labor in factories, in some cases for youth as young as 4 years old. At the same time, however, social attitudes toward children were slowly changing. Increasingly, children were seen as more malleable and easily influenced than adults, and less capable of rational decision making. Theories of crime were also shifting toward explanations that viewed such behavior as a result of both heredity and social environment. Taken together, these factors (harsh refuge houses, child labor, and changing social attitudes toward youth) were instrumental in what Anthony Platt has called the establishment of the "child savers" movement, a

confluence of liberal and religious reformers who sought both to mitigate the social effects of delinquency as well as to establish a separate system of justice focused on the rehabilitation of young offenders.

The first juvenile court in the United States was established in Cook County, Illinois, in 1899, under the common law doctrine of *parens patriae* to invoke states' rights and duties to intervene in the lives of children who were neglected, abandoned, or in need of special care. Juvenile courts in the early 20th century were less formal than adult criminal courts and guided not by the premise of determining guilt but rather by the overriding goal of meeting "the best interests of the child." By 1925, all but two states had established juvenile courts, and compared to adult criminal courts, they differed in several respects. Primarily, juvenile court judges were given wide latitude in assessing the "best interests of the child," including decisions on placement, parental supervision, and rehabilitation. Also, judicial decisions often reflected a heightened role of psychologists and social workers in recommending dispositions. Finally, as juvenile courts were not part of the criminal court system, and in many ways drew their auspices from civil jurisprudence, due process was not afforded to youth offenders.

To the degree that each state's juvenile court system varied, the basic structure and administration of juvenile justice did not change markedly between the 1920s and 1960s. Concerns over juvenile crime rose and fell, sometimes related to real increases in youth crime and other times less so, but it was arguably not until the 1940s that the "problem of youth crime" became framed as a distinct one within American culture. During World War II, while crime rates generally fell due to the number of young men at war and the relatively high employment rate, in 1941, delinquency rates began to rise in relation to massive population shifts, less parental supervision, and decreasing community and social resources. In response to the growing problem of youth crime, the U.S. Department of Labor Children's Bureau issued a report in 1943 that detailed community responses to delinquency.

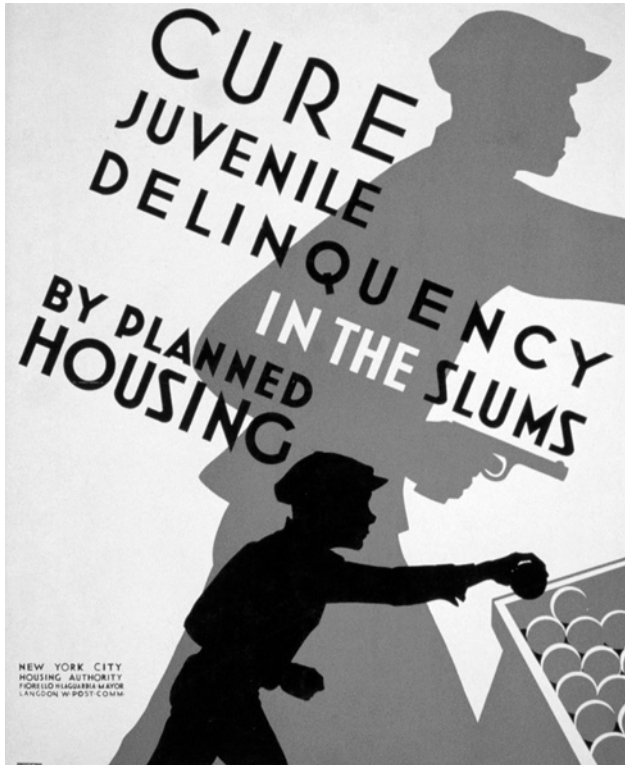
Similar reports and commissions followed throughout the 1940s. However, the 1950s saw a

heightened shift away from concerns over delinquency as a result of wartime conditions or the effects thereof, and toward the emergence of a distinctive youth culture and the perceived influence of mass communication. Rock and roll and comic books, in particular, were targeted for their ability to "seduce the innocent." In 1953, the Senate Subcommittee on Juvenile Delinquency, sometimes referred to as the "comic book hearings," developed into what many sociologists have called a "moral panic" about the content of such works and their purported influence on youth. Yet while juvenile delinquency was seen as an increasing social problem in the 1950s and early 1960s, the overall administration of juvenile justice did not change markedly during this time. The Standard Family Court Act in 1959 functioned in part to standardize the informality of states' juvenile court proceedings.

Rather, the single biggest change to juvenile delinquency came not from policy makers but from the Supreme Court case *In re Gault* in 1967. The ruling in this case afforded youth offenders



This 12-year-old boy photographed in St. Louis, Missouri, in May 1910, had two brothers who were already in reform school. He had begun shoplifting and staying out late himself.



The New York City Housing Authority, under Mayor Fiorello La Guardia, commissioned this poster in 1936 that suggested that new public housing could cure juvenile delinquency. By the 1940s, delinquency was seen as a growing problem nationwide.

certain aspects of due process, including the right to confront witnesses, the right against self-incrimination, and the right to counsel. The effect of this ruling was the beginning of the formalization of juvenile court proceedings in the United States, and later cases such as *In re Winship* (1970), which elevated proof of delinquency to “beyond a reasonable doubt,” and *Breed v. Jones* (1975), which found that transfer to the criminal court after adjudication constituted double jeopardy, only served to further this formalization.

These Supreme Court decisions were premised in part on the long history of arbitrariness in juvenile court dispositions throughout the United States. However, combined with changing public and political views on crime and delinquency that had begun to question the effectiveness of rehabilitation for adults and young people alike, throughout the 1970s and 1980s, juvenile courts increasingly resembled adult criminal courts in many respects. Such changes were more than a

reflection of *In re Gault*. Beginning in the early 1960s, America had begun a long and precipitous rise in crime that lasted until the early 1990s. Much of the blame for this rise in crime was placed squarely on the shoulders of youth: in the rise of social and countercultural movements in the 1960s and early 1970s, in the growing crack epidemic and proliferation of street gangs in the 1980s, and in the rise of the so-called youth superpredators of the 1990s. The effect of these changes resulted in a gradual but ultimately massive shift in legislative responses to delinquency. In 1977, for example, Washington State adopted the use of determinate sentencing for all youth offenders, a move intended to both decrease arbitrary dispositions as well as to hold youth accountable for specific crimes. In response to Willie Bosket, a 15-year-old who killed two people in 1978 and was sentenced to a maximum of five years in a youth facility, New York State changed its laws so that youth as young as 13 could be tried as adults for serious offenses.

Throughout the latter 1980s and early 1990s, in response to growing youth crime rates, state legislatures moved in the direction of harsher punishments. Between 1983 and 1995, the rate of incarceration for youth offenders grew by 25 percent. During this same time, the rate of youth transferred to adult criminal courts doubled in the United States. Many states also moved to expand sentencing discretion for judges and sentencing recommendations for prosecutors and reduced or eliminated confidentiality regarding juvenile offenses and dispositions. In the early 1990s, the Office of Juvenile Justice and Delinquency Prevention predicted a continued increase in youth crime, and youth crime dominated both headlines and political election campaigns at local, state, and federal levels.

Beginning in 1995, however, youth crime began one of its longest and most protracted declines in U.S. history. This decline continued until 2006, rose slightly, and then decreased again in 2008. Explanations for this decrease have been myriad, including the aging of the population, decrease in crack-cocaine markets, decreases in poverty, and increases in the number of police officers and changes in policing strategies, and increases in punitive responses to serious youth crime. The result of this decline has been mixed in terms of

social responses to youth crime. For example, California, which had one of the highest rates of incarcerated youth by the late 1990s, has more recently seen a massive reduction in the number of youth sent to residential facilities. Beginning in the late 1990s as well, the number of youth transferred to adult criminal courts in the United States has rapidly declined. On the other hand, relative to the falling rates of serious youth crime in the latter 1990s and early 2000s, the United States saw an increase in the rates of incarcerated youth.

In this regard, the punitive shift beginning in the late 1970s has arguably begun to swing, however slightly, back toward an emphasis on rehabilitation. Approaches such as restorative justice, which seek to discourage the use of incarceration when possible in lieu of holding youth offenders “accountable” by means of repairing harms caused to victims, have also grown in popularity. However, it is equally clear that this shift has not been equal for all youth. Black youth especially remain highly overrepresented in all facets of the juvenile justice system, particularly in rates of incarceration. Thus, while it may be less punitive today for some delinquents than a decade ago, the juvenile justice system faces the problem of becoming a two-tiered system of justice where the delivery of rehabilitative programs and second chances are routine for some youth populations, but the use of incarceration and largely punitive measures remain routine for others.

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See Also: 1921 to 1940 Primary Documents; African Americans; California; Children’s Rights; Due Process; Gangs, History of; Juvenile Corrections, Contemporary; Juvenile Corrections, History of; Juvenile Courts, Contemporary; Juvenile Courts, History of; Juvenile Justice, History of; Juvenile Offenders in Adult Courts; New York; Rehabilitation.

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Juvenile Delinquency, Sociology of

Juvenile delinquency is defined as criminal and/or deviant behavior that is committed by minors. This includes criminal offending that is prohibited for anyone to engage in as well as status offending, which consists of various acts prohibited only for those under the legal age of adulthood (e.g., smoking cigarettes, drinking alcohol, and running away), usually age 18, that otherwise would be legal if committed by an adult. Any child or adolescent who engages in such behavior is referred to as a “juvenile delinquent.” Various theories have been proposed to explain such offending in an effort to identify, target, reduce, and even prevent its occurrence in society. The study of juvenile delinquency is important because the problems perpetrators face and the damage suffered by its victims raise a growing and serious concern. A significant portion of youth face challenges in the home, school, and neighborhood, which place youth at risk for delinquent behavior.

Social Construction of Juvenile Delinquency

The concept of childhood as it is known today has not always existed. Historically, children were expected to take on adult roles at an early age. They were also treated harshly by both adults and the law. Over the years, the treatment of youth shifted as society became more sensitive to their special needs. Given that youth are still developing cognitively and socially, they have officially been recognized as a distinct group and thought of as less culpable in understanding the consequences of their actions. They have also been seen as malleable and able to change their ways. As a result, a new legal definition of childhood has emerged, and new laws and courts have been created for wayward children under the concept of *parens patriae*, which suggests that the state should act

in the best interest of children in order to guide and rehabilitate them into productive citizens.

In modern days, delinquent juvenile behavior tends to be sanctioned less heavily than adult crime because of the underlying notions that changed the view on what constitutes childhood. In some rare but extreme cases, however, juvenile delinquents can be treated as adults by being waived to adult courts. Nonetheless, the socially defined position of youth today is characterized by certain expectations and duties. Youth are subject to copious rules and regulations across a variety of institutions, but a general norm is that of conforming to the values set forth by adults in mainstream society. However, adolescence is a stressful and tumultuous period in life that often places individuals at conflict with this ideal. Numerous biological and psychological changes are occurring, and individuals are trying to establish an autonomous sense of identity while simultaneously fitting in among their peers. Consequently, risky and adult-like behaviors are often partaken in; first-time alcohol use, drug experimentation, sexual activity, and curfew violations are familiar examples of delinquency.

Nature and the Extent of Juvenile Delinquency

Three primary methods have been used to measure the nature and extent of juvenile delinquency: official data, self-reports, and victimization surveys. Official data includes data that comes to the attention of authorities (e.g., police arrests, court records, and juvenile corrections data). One of the most widely used sources of official data is that of the Uniform Crime Reports (UCR). Each year, the Federal Bureau of Investigation (FBI) compiles information on crime gathered by police departments across the United States in the UCR, which includes information about the number of offenders arrested for a particular crime along with their age, sex, and race. However, this source underestimates the amount of crime, given that not all crime is reported to police and many crimes are not cleared or solved by arrest, namely, for minor forms of delinquency and “victimless” crimes. Nonetheless, it still reveals that over two million juvenile arrests occur each year, with some offenders being arrested on more than one occasion.

Given that the UCR only includes crimes reported to police, a lot of crime is not captured.

Therefore, other methods have been used to get at the “dark figure” of crime. Self-reports are common in the study of juvenile delinquency. This technique asks individuals if they have committed certain crimes or engaged in certain behaviors. The end result is a more accurate estimate of the extent of juvenile offending, especially since self-reports often include minor behaviors that may otherwise be overlooked. Self-reports have also been reliable in eliciting information about unlawful activity, and reports have been validated via comparison criteria (e.g., arrest records, drug tests, and school records), to determine whether individuals are being honest in their reports. Numerous self-report sources exist, and in general, they have found that the extent of juvenile delinquency is much greater than what appears in official sources of data. The vast majority of youth have engaged in some form of delinquency, not only in their lifetime, but also in the past year. The National Youth Survey (NYS) is an example of a common self-report survey. It examines status offenses, minor crimes, and serious crimes.

One more popular source is that of victimization surveys. Victimization surveys, like the National Crime Victimization Survey (NCVS), ask individuals to report on their experiences of crime as victims. Like self-reports, victimization surveys are used to supplement what is known about crime since it is not always reported to police. If individuals report having been a victim of a particular crime, they are typically asked further questions about it (e.g., relationship to the perpetrator, time of day, and other details of the incident). Data gathered using this method have shown that the rates of juvenile delinquency are drastically higher than found in official records. Many youth (as well as adults) have fallen victim to crime.

Further, data from these three sources have yielded important information regarding the characteristics of offenders and the nature of their crimes. Specifically, they have found age, sex, and race to be related to crime. Age is inversely related to crime so that most juvenile offenders will “age out” of crime as they become adults; only a small portion of these individuals will persist. The earlier the age is for the onset of crime, the more likely one is to continue on a trajectory of offending. However, offending is most common for

those between the ages of 16 and 24. In regard to sex, males have been found to commit more delinquent acts than females, although the arrest rates for female delinquents have been rising at a faster rate than that of their counterparts. Racial minorities and those in the lower class have also been found to be disproportionately represented in arrest statistics, even though delinquency has been reported across all racial groups and social classes. Some experts contend that while all groups engage in delinquent acts, it is members of the lower class who are responsible for the majority of serious offenses, which is why arrest rates are elevated for these groups.

The sources of data have also shed light on the nature of juvenile behavior. Juveniles are inclined to co-offend (i.e., act delinquent with other juveniles). They tend to victimize someone of the same sex, someone with whom they are acquainted, and someone who is also a member of their own racial/ethnic group. Often times, youth who perpetrate crime against others have also been victimized by crime, in large part because of their risky lifestyle. Many other correlates exist.

Theories of Crime and Implications

Numerous theories have been proposed to understand the underlying causes of crime. Two general classifications of theories have been commonly used in the study of juvenile delinquency: social process and social structure. These theories focus on external forces that influence crime and they attempt to explain why some individuals are more likely to engage in crime than others. Social process theories argue that criminality is the function of individual socialization or interactions with people surrounding them. This branch is comprised of social learning, social control, and societal reaction theories.

Social learning theories contend that human behavior is learned by others, with the family serving as a primary influence. Here, behavior may be imitated when observed, engaged in when approved, or repeated when rewarded. Alternatively, social control theories maintain that everyone has the potential to be delinquent, so such behavior is not learned; rather, the bonds we have with others inhibit such behavior. Lastly, societal reaction, also known as labeling theory, alludes to stigma-producing encounters as the

reasons for criminal behavior. Once a juvenile acquires a label, he or she will act in a manner consistent with it.

Social structure theories, on the other hand, argue that social and economic forces are responsible for crime. This perspective consists of strain, social disorganization, and cultural deviance theories. Strain theories hold that anger or frustration can lead to offending. There are several sources of strain: when individuals do not have the means to achieve their goals, when they fail to meet expectations, and when there is the presence of something negative or removal of something positive in one's life. One way to cope with strain is through engaging in delinquent acts. Next, social disorganization states that a breakdown of informal social control in a community produces criminogenic forces. Cultural deviance theories combine the concepts of strain and social disorganization. They state that groups form within society that have their own norms and values; when individuals are not adequately socialized and do not meet middle-class standards, they experience strain and may react by forming delinquent groups, particularly in lower-class neighborhoods. These theories can be applied to experiences that occur within the family, among peers, in school, and in the community at large.

Social Groupings and Institutions That Influence Youth

Families, peers, schools, and communities exert powerful influences on juveniles. Youth spend the majority of their time with these social groupings and institutions. Starting with the family, researchers have stated that family dynamics serve as a large determinant of behavior. Families that contain negative features like family violence (e.g., intimate partner violence, parent-to-child violence, and neglect), marital stress, and/or poor parenting practices are much more likely to produce delinquent offspring than families without such characteristics. Research has linked such factors to the inability to regulate one's own behavior, thereby contributing to delinquency, juvenile arrests, and even similar offending later in life. However, experts have suggested that households characterized by stability and parental efficacy (i.e., consistent, adequate, and appropriate parenting practices) are effective in producing children that

refrain from such misbehavior. In addition, family structure has been linked to juvenile delinquency. Families that experience divorce, lose a parent due to death, or are otherwise single-headed households increase the risk for delinquency among youth residing in such homes, although this relationship is less robust than the factors previously mentioned. Reasons underlying delinquency in these homes can include less supervision and more financial strain. Lastly, family criminality has also been linked to juvenile offending. Parents who abuse drugs or alcohol and those who engage in other criminal acts are more likely to have children who do the same; this relationship has also been sustained for sibling criminality.

Peers groups also influence behavior. As children age, peers take on a central part of their lives. They function as a strong source of emotional support and sway their beliefs, attitudes, and conduct. Youth want to be positively regarded by others and accepted into groups. Social success among peers has been linked to conformity, whereas social ineptitude has not. Those who are bullied, rejected, or do not have close friends are often at risk for engaging in delinquent behaviors and experiencing a host of negative psychological consequences.

In some cases, they may engage in such acts in an attempt to fit in (i.e., “peer pressure”) or commit egregious acts as a means of revenge (e.g., fighting or shooting). Conversely, youth with close ties to others are much less likely to engage in delinquency than those without these ties. Nonetheless, the presence of strong bonds does not negate delinquent behavior. Research has found that being attached to deviant youth heightens the risk of delinquency. Thus, the type of youth to whom a juvenile is attached must also be considered, along with the frequency, intensity, and duration of contact.

Peer interaction mostly occurs at school. Youth spend the majority of their time at school with peers as well as with teachers and coaches. Schools aim to foster learning and promote healthy development. They subject students to a variety of rules and regulations, including compulsory school attendance, codes of conduct, and daily schedule routines. Success within school has been identified as a crucial determinant of juvenile delinquency. Specifically, research has asso-

ciated low academic achievement and failure to conform to rules with numerous forms of offending. Students who do poorly are more likely to get suspended, drop out of school, get involved in substance abuse, and engage in other delinquent acts. Along these lines, research has found low IQ to be predictive of delinquent behavior, potentially due to the strain associated with poor performance in school or the weakening of bonds to school, which causes the juvenile to act in a negative manner.

The communities that schools reside in have also been found to influence behavior. Disorganized communities characterized by transient populations, poverty, physical and social disorder, and other incivilities often contain higher rates of juvenile delinquency. Gangs, which are notorious for offending, flourish in schools and neighborhoods with these characteristics. Nevertheless, they have been increasingly found in more rural areas and have numerous consequences for children exposed to them. Therefore, safety has been made a priority in many institutions to quell such activity. Although research has examined the noted social groups and institutions independently, it is often the interaction between all of them that best predicts delinquency. Knowing about social groupings and institutions that influence behavior, along with theoretical explanations, helps to understand the problem and provide a holistic comprehension of the subject matter that can assist in reduction and prevention efforts. With continued research, the threats that underlie adolescent misbehavior can be better addressed.

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See Also: 1921 to 1940 Primary Documents; 1941 to 1960 Primary Documents; Child Abuse, Contemporary; Child Abuse, Sociology of; Child Murderers, History of; Children, Abandoned; Children’s Rights; Hereditary Crime; Juvenile Corrections, Contemporary; Juvenile Corrections, History of; Juvenile Corrections, Sociology of; Juvenile Courts, Contemporary; Juvenile Courts, History of; Juvenile Delinquency, History of; Juvenile Offenders, Prevention and Education; Juvenile Offenders in Adult Courts; School Shootings; Theories of Crime.

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Juvenile Justice, History of

The history of juvenile justice in the United States can be divided into distinct periods, and each can be viewed in relation to a fundamental question: To what extent should the American system of justice view juveniles differently than adult offenders? That question has been resolutely and inexorably tied to how American society has throughout its history viewed “infants,” “children,” “youth,” and “juveniles.”

Child-Saving Movement

American justice has long been influenced by the English common law, which, until the colonies and states passed their own laws, was the law that governed the thirteen colonies. In his *Commentaries on the Laws of England*, Sir William Blackstone, a British jurist, judge, and politician, much admired and read in American judicial circles, wrote that “infants” were incapable of being classified as criminals because they lacked what Blackstone described as “a vicious will.” Blackstone differentiated between “infants” and “adults” and their liability at law on the basis that children were too young to understand their actions and therefore

lacked the necessary “intent” to commit unlawful acts. According to the social and legal conventions of Blackstone’s time (he died in 1780), an infant was a person under 7 years of age, while a child over 14 was punished as an adult if convicted of a crime. Exceptions were made for children between the ages of 7 and 14 who were judged to understand the nature of their actions; these unfortunate youths could and were punished as adults, including for capital crimes permitting execution.

Ideological shifts in American culture’s conception of youth and children, however, at the end of the 19th and early 20th century, saw distinct changes in how the American society and its justice system viewed the rowdy and sometimes unlawful acts of youth. In Manhattan, the Society for the Prevention of Juvenile Delinquency founded the New York House of Refuge for juvenile delinquents



This eight-year-old boy was brought to the juvenile court in St. Louis, Missouri, on May 5, 1910, to answer charges of stealing a bicycle. Judges at that time were making an attempt to keep the courtroom imposing, but also a place of “care and solicitude.”

in 1825. Chicago opened the doors of its Reform School in 1855. The country's first juvenile court was established in 1899 in Cook County, Illinois. Soon, other jurisdictions created their own juvenile justice systems where the focus was on understanding the root causes of offending juvenile behavior, rehabilitation, and helping juveniles avoid a life of crime. A social movement took root that did not separate youth from the economic and social conditions that produced them. The establishment of juvenile courts was a crucial component of the rise of the "child-saving movement" of the late 19th century and early 1900s. The activists and reformers who backed these institutions with their time and finances subscribed to a model that protected juveniles by separating them from adult offenders upon incarceration and viewed their offenses in context.

Young people who ran afoul of the law were considered victims of their circumstances and perceived to be delinquents whose offenses were the result of neglect and poverty; these unfortunate youths were guilty of acts contrary to the public interest, but certainly, they were not guilty at law of criminal acts. At this time in American history, focus on the "indiscretions of youth" was on the root causes of offending behavior, usually indicting parents for inefficiently rearing their children. Middle-class women who believed that the future of society was crucially bound to instilling "proper values" in youth were in large part responsible for promoting these views.

Doctrine of In Loco Parentis

At the same time, the doctrine of in loco parentis, an invention of 19th century patriarchy, governed the relationship between the state and youth, both in the justice system and in schools. The doctrine of in loco parentis was cultivated in various contexts, including the law of wills and estates as well as the law of tort. Derived from the Latin and meaning "in the place of the parent," in loco parentis, both in the context of juvenile courts and schools, served as the doctrinal basis and source of the state's legal authority for many decades and underscored the paternal approaches taken by the state institutions and policies. As Judge Julian Mack, an early judge of the juvenile court of Cook County, observed in 1909 of the juvenile court in the United States, the juvenile

justice system was vital to ensuring that errant youth was treated in such a way as to ensure that he or she did not return to the justice system as an adult. Judge Mack's description of the workings of juvenile court from that time:

The child who must be brought into court should, of course, be made to know that he is face to face with the power of the state, but he should at the same time, and more emphatically, be made to feel that he is the object of its care and solicitude. The ordinary trappings of the courtroom are out of place in such hearings. The judge on a bench, looking down upon the boy standing at the bar, can never evoke a proper sympathetic spirit. Seated at a desk, with the child at his side, where he can on occasion put his arm around his shoulder and draw the lad to him, the judge, while losing none of his judicial dignity, will gain immensely in the effectiveness of his work.

These kinds of reforms were also taking root in Canada. In 1908, the Juvenile Delinquents Act was passed by the federal parliament to deal with the offenses committed by youth, also emphasizing reform and rehabilitation, not punishment. Nonetheless, many commentators have pointed out that the "child saving" origins of early judicial responses to juvenile "delinquents" represented merely one of two contrary lines of thought respecting how best to deal with young people when they engage in criminal behavior that have percolated for decades. The ongoing tensions persist today: Should the emphasis in response favor the protection of youth from the cruelties of culture or the protection of society from the disruptions of antisocial youth? A survey of the historical development of the juvenile justice system reveals this ongoing tension and its persistence today.

While the doctrine of in loco parentis had dominated the development of American law and policy in the early 1900s, its prominence had nearly disappeared toward the last half of the 20th century. Youths were no longer conceived merely as juvenile delinquents not responsible for their own behaviors but as potential threats and possible sources of danger. They were focused targets of "tough on crime" efforts of legislators and politicians.

Juvenile Court System

By the 1960s, juvenile courts across the U.S. Supreme Court adjudicated almost all criminal cases involving young people under the age of 18. Young offenders were rarely transferred to the adult criminal justice system, and only when the juvenile court agreed to waive its jurisdiction. A 1967 decision by the Supreme Court, *In re Gault*, 387 U.S. 1 (1967), made a significant impact on how juvenile cases were administered. The decision of the Supreme Court affirmed that juvenile courts had to respect the due process of law rights of juveniles guaranteed under the Fifth and Fourteenth Amendments to the U.S. Constitution. The ruling was the result of a consideration of Arizona's decision to place 15-year-old Gerald Francis Gault in detention for violating probation by making an obscene call to one of his neighbors.

The Arizona juvenile court ordered that Gault be confined in a state industrial school until he turned 21 or was "discharged by due process of law." The Supreme Court ruled that young offenders had a right to receive fair treatment under the law, including the right to receive notice of charges, the right to legal counsel, the right to confront and to cross-examine their accusers, and the right to the privilege against self-incrimination. When Gault had been apprehended, his parents had not been notified of the charges against their son. In a dissenting judgment, Justice Potter Stewart warned that the court's decision would "convert a juvenile proceeding into a criminal prosecution," preferring the historical purposes of the juvenile justice system, which had up until the *Gault* decision followed a looser model styled after civil proceedings. Justice Stewart presaged that by assuring youth were extended the same due process rights and guarantees in juvenile court as adults in adult criminal court, the majority might very well be transforming juvenile court into criminal courts.

In 1968, Congress passed the Juvenile Delinquency Prevention and Control Act intended to encourage states to develop community-level programs aimed at curtailing juvenile delinquency. In 1974, the Juvenile Justice and Delinquency Prevention Act replaced the 1968 legislation, underscoring the prevention of juvenile delinquency. To qualify for federal funding, states were obliged to maintain a separation between juvenile and adult offenders.

Threats to Society and Superpredators

However, the perception of appreciably rising crime rates among juvenile offenders in the 1980s and 1990s, and the perception that offences committed by youth were becoming increasingly violent, significantly impacted conceptions of juvenile justice. This shift in conception would influence the discussions of juvenile justice in the coming decades and refigure the "hunker down" mentality that would come to inform discussions of juvenile justice ever since. In public consciousness, rehabilitation ceased to be a priority associated with offending youth and the emphasis shifted to "get tough on crime" approaches in which young offenders were no longer perceived as juvenile delinquents free from responsibility for their own actions, but situated young offenders as potential threats and possible sources of danger to the rest of the society.

Discussions about juvenile justice have unfolded in a context of extreme violence. In the late 1990s, a highly publicized series of school shootings and other incidents of extreme violence committed by youths have given rise to a moral panic and a fear of offending youths. No longer portrayed as "juvenile delinquents," some researchers described the rise of the "superpredator" generation in the new millennium. Distinguished from previous generations by the Office of Juvenile Justice and Delinquency Prevention as a generation for whom brutal responses and violence were a way of life, the myth of the superpredator has taken root and will be difficult to turn aside. Recent research disputes these depictions and suggests that youth violence and delinquency was greatly exaggerated in the 1990s; however, the fear experienced at the time resulted in significant changes to the United States' approach to juvenile crime.

As the emphasis on extreme violence and the rise of the superpredator was based in large measure on fear and repeated images in popular culture of youth as perpetrators of ongoing extreme violence, it may be deflected by reference to data that indicate that in the 21st century, youth crime is on the decline and less punitive, and more contextualized measures are needed when it occurs.

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See Also: 1921 to 1940 Primary Documents; Children, Abandoned; Children's Rights; Juvenile Corrections, History of; Juvenile Courts, History of; Juvenile Delinquency, History of; School Shootings.

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today, though its value gets questioned as violent crimes appear to increase and the public seeks more accountability and punishment. Multiple programs attempt to prevent youth from becoming delinquents and from becoming further part of the juvenile justice system.

Evolution of Juvenile Programs

Early examples of juvenile programs included reformatory schools, which brought structure, education, work, and even religious instruction to youth. The first reformatory school opened in New York in 1825, but by the late 1800s, the purpose of such schools was called into question because of suspected abuse, labor exploitation, and their general ineffectiveness. Training schools opened in the later 1800s as alternatives to the overcrowded reformatory schools, and these schools offered education and vocational training in rural areas. They, too, got called into question for their effectiveness. Both of these programs serve as precursors for today's juvenile detention facilities.

More recent programs that remove children from their homes include boot camps and wilderness camps. Boot camps run three to six months, and they use military-style training to shock juveniles into proper behavior, though with mixed results. Wilderness camps, such as Tucson-based VisionQuest or Minnesota-based Thistledeew Camp, teach juveniles to survive in nature and teach them skills in teamwork, leadership, and confidence. Similarly, the Scared Straight programs attempt to frighten juvenile delinquents in behaving.

Community-based programs allow children to remain at home and attempt either to keep them from jail or to keep them from becoming delinquent. Since children spend a significant part of their lives in school, many programs work with schools. Some programs bring officers into schools to work with juvenile offenders. The Pennsylvania Commission on Crime and Delinquency started a program titled the School-Based Probation Services program, which brought full-time officers into Allentown schools in order to connect the institutions better and to confront drug-use problems. Other school-based programs work to prevent delinquency, prevent alcohol and drug use, and handle attitude and conduct problems, truancy, and dropping out.

Juvenile Offenders, Prevention and Education

Juveniles committing criminal offenses at first received the same punishments as adult offenders, but in the late 1800s, courts and groups began to advocate separate considerations for children. Juvenile justice encouraged children's treatment and rehabilitation over incarceration with adults. In part, this attitude continues

Other example programs include the Resolving Conflict Creatively program, established in New York in 1985, and the Violence Prevention Program, established in 1986. One of the most popular school-based programs is DARE, or Drug Awareness Resistance Education. Started in Los Angeles, this program brings police officers into schools to talk about the dangers of drug use. The program uses a combination of techniques, including lectures, role-playing, visual aids, and even program graduation certificates. Starting in Phoenix and targeting primarily seventh-graders, the Gang Resistance Education and Training program focuses on reducing gang membership, and it works much the same way as DARE.

Juvenile Programs by Age and Gender

Other programs attempt to intervene with high-risk groups at various ages. Recognizing the vari-

ety of situations and problems in children's lives, these programs focus on multiple problems in multiple areas by integrating multiple agencies. Programs that focus on preschool youth address both children and their parents, particularly those in low-income, single-parent households. In the 1970s, the Perry Preschool Project pinpointed intellectual and social development in children ages 2–4 as being critical. As part of the program, children also received home visits from teachers. The Prenatal/Early Infancy Project worked with teenage mothers in the Appalachian area of New York. Similar programs included Yale Child Welfare Project and the Houston Parent-Child Development Center.

Other programs centered on children ages 6–12 in the classroom and on the playground by attempting to prevent certain behaviors. Example programs include the Fast Track Program for



Daren the Lion, official mascot of the DARE program, greets children at an elementary school on October 28, 2010. While the DARE program has been popular, critics say that it fails to address the real causes of juvenile delinquency. Programs such as family-school cooperation programs, victim-offender mediation, and social skills development programs appear to have had more success by addressing the problems of more types of juvenile offenders and covering a greater range of juvenile delinquency issues.

kindergarteners, the Seattle Social Development Project, and the Child Development Project. The Fast Track Program addressed both children and parents. Children learned academic and social skills, while parents gained lessons in parenting and building relationships. Using a combination of modeling, role-playing, and rewards, Second Step and PeaceBuilders teach antiviolence messages to middle-schoolers.

Programs for youth ages 13–17 address mentoring, dating violence, and gateway drug use. Big Brothers Big Sisters of America pairs each youth with a single mentor, and the two meet multiple times each month. JUMP, or the Juvenile Mentoring Program, also provides one-on-one mentoring between an adult and an at-risk youth. School-based program Safe Dates raises awareness about abuse and violence that might occur in teen relationships. The Midwestern Prevention Project (now Project STAR) attempts to keep seventh- and eighth-graders away from gateway drugs such as alcohol and marijuana.

Some programs recognize that girls and boys have different needs. Adolescent girls face greater risks of sexual abuse, sexual assault, pregnancy, and teen motherhood. Girls are more likely to run away to get away from violence at home, to steal for food or drugs, and to turn to prostitution. Children of the Night, which began in California in 1979, specifically helped young prostitutes through a phone hotline, a walk-in center, professional counseling, and outreach programs. Other girl-oriented programs include the Center for Young Women's Development, Friendly PEER-suasion; Preventing Adolescent Pregnancy, and Operation SMART, which attempts to build girls' interests in science, math, and technology.

Conclusion

The successes of juvenile programs vary, but research points to some clear failures and successes. For some, DARE fails in addressing the root problems of juvenile delinquency, while area projects, which focus on high-risk neighborhoods and geographical areas, offer recreational programs but also fail to address the deeper influences. Programs that attempt to frighten children into behaving, such as boot camps or Scared Straight, offer some possible short-term corrections but not long-term solutions. The programs

that offer the most successes attempt to avoid incarceration, seek probation first, use community-based programs, and involve the parents or other family members in the process. Programs that address broader ranges of juvenile offenders and juvenile delinquency issues see more success as well, such as family-school cooperation programs, victim-offender mediation, and social skills development programs.

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See Also: 1981 to 2000 Primary Documents; Crime Prevention; Juvenile Delinquency, History of; Juvenile Delinquency, Sociology of; Juvenile Justice, History of.

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Juvenile Offenders in Adult Courts

The modern basis behind trying juvenile offenders in adult court can be traced to the 1966 Supreme Court case *Kent v. United States*, which dictated the process to be followed in juvenile court by the judge to waive, transfer, or certify the matter to an adult criminal court. In other words, the charge(s) against the juvenile would be subject to criminal court procedures and sanctions should the juvenile judge decide in a

judicial waiver hearing that the case was better suited for adult court.

Methods of Transfer

The judicial waiver hearing is a nonjury proceeding in which the juvenile judge essentially addresses the current charges, prior delinquent history, amenability to treatment (if the juvenile remains in the juvenile justice system), and public safety in determining whether the matter should remain in juvenile court or instead be tried in criminal court. The decision has important implications to the juvenile because adult criminal court processing subjects one to potentially harsher penalties and stigmatization. Some states have statutes providing that a juvenile can be waived to adult court at any age, although most cases concern juveniles who are 16 or 17.

Other than the traditional judicial waiver, two other methods of trying juveniles in criminal courts were statutorily established by the 1980s and 1990s in a number of states in a variety of formats, and are commonly known as (1) direct file (prosecutorial transfer) and (2) legislative exclusion (essentially, automatic transfer). Either method bypasses traditional judicial waiver; both were instituted, in part, because of an increase in juvenile violent crime in the mid-1980s through the early 1990s. During the mid- and late 1990s, violent juvenile crime actually decreased nationwide, yet additional states continued to legislate these measures. The media's ability to sensationalize juvenile offender homicide cases contributed to the public and legislative leaders mistakenly perceiving that violent juvenile crime was still escalating.

Direct file provides prosecutors the authority to initiate charges, usually for serious violent offenses but sometimes for property offenses, against juveniles who in their discretion ought to be tried in criminal court. Prosecutors can rather effortlessly accomplish what under conventional judicial waiver is a rather formal procedural process. Florida, in particular, overwhelmingly uses direct file. Under legislative exclusion, the state legislature carves out selected serious crimes for which the juvenile offender will be held accountable in criminal court, without any initial judicial or prosecutorial oversight or discretion. The thinking is that some crimes are so heinous that all such

offenses should be addressed in a criminal court. Of course, even under legislative exclusion, prosecutors always retain the power, under their discretionary authority, to not prosecute such cases.

In many states, a juvenile waived to adult court is thereafter always deemed an adult for any subsequent offenses committed, regardless of age. However, various states permit the criminal courts to send, in their discretion, an initially waived juvenile back to juvenile court in what is referred to as a reverse waiver. The thinking is that the interests of justice are best served in this manner. Additionally, some states provide for a blended sentence whereby the juvenile can be placed in a secure juvenile facility until perhaps age 21 and then incarcerated in an adult prison. Even under this process, juveniles can sometimes be reevaluated and released prior to entry into the adult prison.

The number of juveniles waived to criminal court escalated between 1985 and 1994, when it reached nearly 13,000. From 1995 through 2001, the number dropped significantly, while during the mid-2000s the number increased somewhat, finally leveling off at around 8,000 in 2007.

Arguments For and Against Waivers

Those who support waivers assert that juveniles who commit serious crimes should be held accountable and punishable in an adult court setting, and that the waiver itself will act as a specific deterrent, discouraging the juvenile from engaging in any further criminal behavior. Additionally, proponents believe the waiver will serve as a general deterrent to serious juvenile offender crime. In other words, other juveniles will not contemplate committing serious crimes because of an appreciation of the adult sanctions that can be imposed. An emphasis on crime control and victim's rights, and a strong adherence to maintaining public safety are paramount under this perspective.

Those with reservations about the propriety of waiving juveniles to adult court maintain that too many juveniles are waived for property offenses such as burglary or for drug-related offenses. Further, research studies on the deterrent effect are either ambiguous on this issue or show that juveniles processed in the adult court are more likely than similarly situated juveniles processed in

juvenile court to be rearrested at similar or higher rates. Likewise, opponents argue that adult courts are ill-equipped to deal with juveniles and don't always view such transferred juveniles as being major offenders. In fact, sometimes adult courts sentence juveniles to adult incarceration that is no longer than what would be imposed in juvenile court, and yet at the same time expose them to the risk of severe battery, sexual assault, inadequate juvenile programs, and thoughts of suicide in adult prisons. Additionally, opponents declare that statistics show extralegal factors such as race and ethnicity are improperly considered in waiver decisions; hence, African American juveniles are disproportionately waived. Moreover, opponents argue that juvenile offenders are less culpable for their actions because of decreased cognitive brain development, which results in immature decision making. Hence, they conclude that juveniles are more suitably managed within the traditional juvenile justice system.

Two Supreme Court opinions addressing the significance of decreased juvenile offender brain development were the 2005 case *Roper v. Simmons*, which held that the death penalty for juveniles is unconstitutional; and the 2010 case *Graham v. Florida*, which held that life imprisonment without the possibility of parole for juveniles who committed offenses lesser than homicide is unconstitutional. These cases may have a future impact on the waiver of juvenile offenders to adult court insofar as providing a window of opportunity for revisiting and reassessing when and under what circumstances waiver to adult

court is appropriate and for which particular types of juvenile offenders.

To gain an overall perspective of the historical development of juveniles and the law, an examination of the landmark case of *In re Gault* (1967) is necessary, as it formalized due process procedure in the juvenile court, thus replacing in large part the old paternalistic approach in dealing with juveniles. *Gault* extended due process rights to juveniles charged with delinquent offenses by mandating their right to counsel, to protection against self-incrimination, to confront and examine accusers, and to adequate notice of the charges.

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See Also: 1981 to 2000 Primary Documents; Child Murderers, History of; Juvenile Courts, Contemporary; Juvenile Courts, History of; Juvenile Justice, History of.

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Kaczynski, Ted

Theodore John “Ted” Kaczynski (1942–) is an American domestic terrorist, social critic, neo-Luddite, and anarchist. In 1996, federal agents arrested and a federal grand jury indicted Kaczynski, also known as the Unabomber, for mailing bombs over the course of almost two decades that killed three people and wounded 23 others. The Federal Bureau of Investigation’s (FBI) pursuit of the Unabomber was one of the most famous and costly ones in American history.

Kaczynski pleaded guilty to the charges against him in 1998, although he later claimed the guilty plea was coerced and he requested to have it withdrawn. This appeal was denied. He is currently serving a life sentence without parole in the U.S. Penitentiary Administrative Maximum Facility—the supermax—in Fremont County, Colorado. This facility has also housed such famous prisoners as Timothy McVeigh, Zacarias Moussaoui, Terry Nichols, Jose Padilla, Richard Reid, Eric Rudolph, and H. Rap Brown.

Kaczynski was born in Chicago, Illinois, to Theodore Richard and Wanda Kaczynski. From an early age, he showed a high degree of intelligence and aptitude for academic studies; however, Kaczynski rarely interacted with his peers. At the age of 16, he entered Harvard, where he earned his undergraduate degree. During his

tenure there, Kaczynski took part voluntarily in a psychological, mind-control experiment that measured stress. Kaczynski’s lawyers argued this study had a lasting effect on his emotional stability. Kaczynski ultimately received his doctorate in mathematics from the University of Michigan. In 1967, the University of California, Berkeley, hired the 25-year-old Kaczynski as an assistant professor, but he resigned two years later without explanation.

In 1971, Kaczynski relocated to a remote, one-room cabin near Lincoln, Montana. Here, Kaczynski fashioned a simple and self-sufficient life, learned survival and wilderness strategies, and subsisted without running water or electricity. In spite of this, he found his primitive way of life encroached upon by developers. Seeking the dissolution of what he later called the industrial-technological system, and believing violence to be the only viable method in achieving this collapse, Kaczynski began his terrorist activity.

Initially engaged in minor acts of sabotage on the machines of developers near his cabin, Kaczynski sent his first mail bomb in 1978 to a Northwestern University professor of materials engineering. Suspicious of the package, the professor alerted a campus police officer who opened it and received injuries to his hand from the ensuing explosion. After this first attempt on a human life, Kaczynski began mailing bombs to airline

officials and in 1979 attempted to bomb a domestic airliner. The defective bomb did not explode, but this federal crime made the unknown suspect a priority for the FBI, which created a UNABOM (the code name for university and airline bombings) task force that included the U.S. Postal Inspection Service and the Bureau of Alcohol, Tobacco, and Firearms (ATF).

Between 1978 and 1995, Kaczynski sent home-made explosive devices to various targets. The first casualty—the owner of a computer store—did not occur until 1985. No bombings were attributed to Kaczynski between February 1987 and June 1993. After this interval, however, Kaczynski resumed his bombing campaign and wrote letters to the *New York Times* declaring that his organization, the Freedom Club, was accountable for the attacks. In 1995, Kaczynski contacted several media organizations demanding the publication of his lengthy essay, “Industrial Society and Its Future” (the Unabomber Manifesto), promising to cease his attacks in return. On September 19, 1995, the *Washington Post* and *New York Times* ran the piece, which called for a revolution against industrial society and technology.

The distinctive style and content of this essay convinced David Kaczynski that his estranged brother was the author. David contacted the FBI with older letters Ted had written to newspapers, a search warrant was issued, and agents arrested Kaczynski on April 3, 1996. His lawyers sought an insanity defense plea, but Kaczynski refused this. On January 7, 1998, Kaczynski tried to hang himself, and later that month he was sentenced to life in prison without parole. Since then, Kaczynski has remained a productive writer and a collection of his essays, titled *Technological Slavery*, was published in 2010.

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See Also: 2001 to 2012 Primary Documents; Anarchists; Insanity Defense; McVeigh, Timothy; Montana; Terrorism; Violent Crimes.

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Kansas

The history of crime and punishment in Kansas began with the birth of the state itself. With the Kansas-Nebraska Act of 1854, the people of the Kansas Territory were given the right, under popular sovereignty, to decide whether the territory would enter the United States as a free state or as a slave state. This decision effectively legalized armed conflict between the two sides, which continued until 1859 and resulted in the deaths of 56 people and in the territory remaining a territory. Shortly after the beginning of the American Civil War in 1861, Kansas gained entry as a free state, effectively legitimizing the abolitionist side of what many still viewed as an ongoing issue in Kansas. Those who sided with the Confederacy, such as Quantrill's Raiders, became outlaws and were subject to punishment by law.

Evolution of Law Enforcement

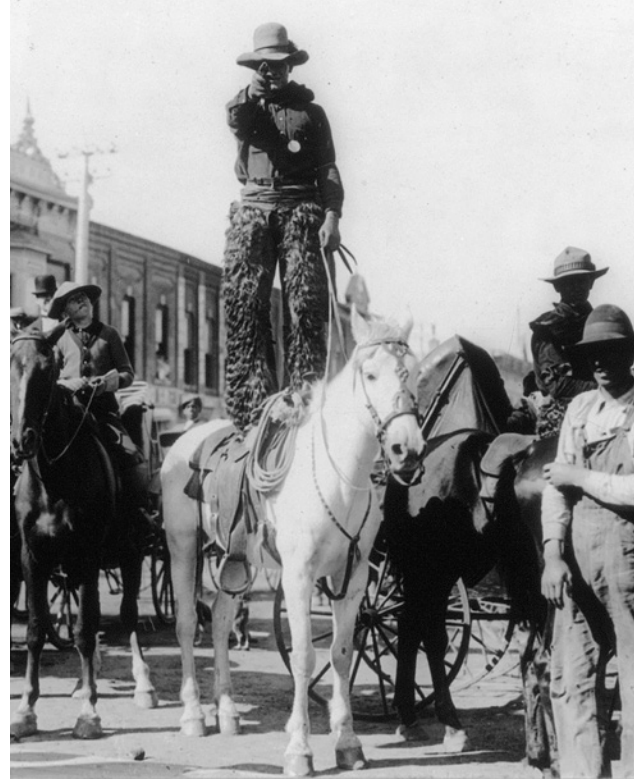
The distinction between lawman and outlaw in frontier Kansas often rested on who possessed the most firepower in a particular area. Many of the most infamous gunfighters spent time in Kansas in some of the most lawless towns known in the American Wild West. People such as Wyatt and Virgil Earp, Wild Bill Hickok, Belle Starr, Billy the Kid, Sam Bass, William Cody, Pat Garrett, Doc Holliday, Bat Masterson, and John Wesley Hardin all played a part in the foundation of the Kansas legal system. Two towns in particular, Abilene and Dodge City, played instrumental roles in the struggle to control crime within the new state. Abilene, an early stagecoach stop, grew into a major cattle town as the railroads pushed west across the plains. The Chisholm Trail ended

in Abilene, bringing thousands of cowboys and trail hands into the small town, quickly garnering it the reputation as one of the wildest towns in the west. “Wild” Bill Hickok served as the marshal in Abilene for a short time but ran afoul of the townsfolk when he accidentally shot his own deputy during a gunfight. Vigilante justice was common, and dueling (gun fighting) was a common form of punishment meted out not just by the marshal and his deputies but also by the average citizen on a number of occasions.

Dodge City, famous today for its setting as the location for the long-lasting television western *Gunslinger*, was founded in 1872 near the Santa Fe Trail, the Great Western Cattle Trail, and the Arkansas River. With the arrival of the railroad, Dodge City became a major shipping point for the cattle trade—the “Queen of the Cow Towns” had a well-earned reputation for lawlessness. The Earp brothers and Bat Masterson began their law enforcement careers in Dodge City, yet it was not until the Kansas state legislature banned longhorn cattle from the state, thus effectively ending the influx of cowboys and trail hands working on cattle drives, that the rampant crime in Dodge City came to an end.

As the “Brass Buckle of the Bible Belt,” Kansas approaches crime and punishment from a conservative viewpoint. The first “blue sky” laws were enacted in 1911 to protect investors against securities frauds and the “blue laws,” designed to enforce religious standards such as Sunday as a day of worship and the restriction of alcohol sales, are still applicable within the state (although each county does have the right to amend the constraints of the laws). Kansas also preceded the federal constraints on the morality of motion pictures by enacting a strict censorship of motion pictures that remained in effect from 1915 to 1966.

Violence was not confined to the frontier settlement towns. Starting in the early 20th century, the DiGiovanni Sicilian mob family brought organized crime to Kansas City. During Prohibition, the family ran the bootlegging operations in town, gaining a reputation and engaging in illegal activities that soon required federal intervention. As with many of the early organized crime figures, federal tax evasion provided the readily available means of punishment for their crimes. Even with federal law enforcement working to bring down



Transient cowboys and trail hands affected the rate of crime in 19th-century Kansas. Above, a man dressed as a cowboy aims a pistol at a photographer in Newton, Kansas, in 1908.

the organization, DiGiovanni family members still managed to gain influence at the state level when their hand-picked candidate, Forrest Smith, was elected governor in 1948.

Statewide statistics on crime in Kansas, available starting in 1960, document the growth of criminal activity throughout the state, even though the population has remained relatively stable. In 2009, Kansas ranked 29th among states for the highest crime levels, down from 17th in 2007.

Controlling the criminal element in Kansas has not come easily or quickly; the enforcement of laws and the sentencing of criminals remained a strictly local affair until the formation of the Kansas Bureau of Investigation (KBI) in 1939. With the origin of a crime-fighting unit with legal jurisdiction throughout the state, the opportunity for criminals to simply move operations to another location decreased significantly, and enforcement became more uniform under the statutes found in Chapter 21 of the Kansas State Legal Code.

Capital Punishment

The controversy surrounding the death penalty remains a major issue in Kansas. As a territory, Kansas passed its first death penalty law in 1859. This law remained intact through the transition to statehood. However, Kansas law forbid public executions, and the hanging of William Dickson in 1870 resulted in a debate over the form of execution that lasted for 35 years, during which time no executions took place; the death penalty was ultimately repealed in 1907. Following the Great Depression and an increase in violent crime in Kansas City, the Kansas legislature reinstated legal executions in 1935.

Two of the most famous criminals executed in Kansas were Perry Smith and Richard Hickock. In 1959, Smith and Hickock, parolees from the Kansas State Penitentiary, killed a family of four in Holcomb, Kansas. The killings provided the story for Truman Capote's best-selling book *In Cold Blood*. The two men were sentenced to death and were hanged on April 14, 1965. George Ronald York and James Douglas Latham, who were both executed on June 22, 1965, were the most recent individuals to be executed in Kansas.

In 1972, the U.S. Supreme Court ruled that current capital punishment laws were unconstitutional under the Eighth and Fourteenth amendments. This ruling effectively halted all executions within the United States. A number of states revised their capital punishment laws to satisfy the high court's guidelines, and executions resumed. Kansas fulfilled these requirements and reinstated execution as a punishment in 1994, with lethal injection replacing hanging as the means of execution.

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See Also: Capital Punishment; Kansas City, Missouri; *National Police Gazette*; Serial and Mass Killers.

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Kansas City, Missouri

Missouri became a territory in 1812 and a state in 1820. After removal of the Osage Indians to west of the state line, Jackson County was organized and Independence was designated as its county seat. Kansas City evolved in 1889 from a tract of land located along the Missouri River. The area expanded throughout the 19th century, first in response to the great westward trails prior to the Civil War and then because of its strategic positioning as a hub of railroad transportation. Kansas City was overwhelmingly populated by descendants of European old stock.

At mid-century came waves of Irish, German, and Scandinavian immigrants, followed by a wide variety of "new immigrants" and Hispanics after 1900. After Europeans, the next-largest group of Kansas Citians were African Americans. Blacks first came to the area as slaves; then, in the years just after Reconstruction, thousands of "Exodusters" fled the south. Though they came with hope, they found themselves mired in prejudice and poverty, living in squalid housing, and enduring high crime rates and police contempt.

Court System

The first county court in 1827 predates both the city and the police department. The first court of common pleas was founded in Kansas City in 1855 with concurrent original and appellate jurisdiction; in 1871, the common pleas court was replaced by a criminal court with jurisdiction over the county, along with separate probate, law and equity, and circuit courts. The number of circuit judges for Jackson County increased to four in 1889, with three located in Kansas City, showing how the legal and population center of the county was shifting from Independence to Kansas City. Moreover, the U.S. Circuit and District Courts of the Western Division of the Western District of Missouri were ordered to conduct their sessions in Kansas City.

The greatest fear of progressive reformers was that jailing youthful offenders with adult criminals would turn them into career criminals. To break this cycle, a juvenile court was created in 1903, complete with facilities for youthful offenders. This attempt to save juvenile delinquents was less than successful. Statistics gathered by the deputy sheriff recorded that 50 percent of those incarcerated at the county jail were males under 23 years old. Judge E. Porterfield, writing on juvenile crime in 1931, cited many causes of juvenile delinquency: the boys were considered physically and mentally subnormal, they suffered from parental neglect, rejected paid labor, and mixed with vagrants and petty thieves. The judge wrung his hands at the sort of influences on youth that people of that era feared. These included smoking, movies, vicious magazines—and the desire to attract young girls with cars and money, both of which they stole to meet those needs.

Police Development

The first Kansas City Police Department (KCPD) was formed in 1874 under the Missouri State Metropolitan Police Law, giving control over the department to the state. Initially, there were 25 officers, and the department was located downtown in the city hall. Mounted patrols were introduced in the 1880s and stayed in existence for five decades. Frontier justice jeopardized the law when a vigilante committee was organized in the 1880s and threatened to hang criminals they captured; the chief responded by purchasing a Gatling gun for riot control. Housing arrested criminals presented another problem. An early log cabin jail could be taken apart by simply removing a log and releasing an inmate. Another jail, made of frame, was dragged down to the river and dumped in.

In 1908, Kansas City was one of the first departments to experiment with motorcycles and automobiles for patrol. That same year, a new charter created municipal courts. In 1911, the city jail closed and a municipal farm opened where prisoners could do agricultural work and/or quarry stone. By 1920, the department occupied 20 stations, mostly up to date with modern construction and cells for both men and women. Early in the 20th century, three officers lost their lives in the line of duty, and a statue honoring fallen

police was erected in front of the department. It has been moved many times but today stands in front of the present police headquarters.

As the century passed, the department continued to acquire modern technology and innovations such as police radios, submachine guns, lie detector machines, radar, a punch-card records system, a new outdoor firearms training center, helicopters, in-car computer terminals, bullet-resistant vests, a new van where prisoners could be separated by gender or age, crime scene investigators, and an ordnance disposal robot. In 1973, women were recruited for the first time and were assigned to patrol duty. In May 2000, the department launched its first Website, and a Professional Standards and Fairness Committee was formed to guard against racial profiling.



This statue stands in front of the Kansas City Police Department above an inscription listing the names of the city's 119 fallen police. The city's police force consisted of 1,400 officers in 2012.

Crime

The darkest mark on the crime scene of Kansas City came with the connections between the infamous Pendergast machine and the presence of the mafia. Brothers Jim and Tom Pendergast started in immigrant neighborhoods of the inner city at the end of the 19th century. Here, they promoted and protected criminal activities that earned Kansas City the reputation for being “wide open” when it came to gambling, prostitution, drinking, and racketeering. Marginal characters were drawn to Kansas City because it was the only area in the vicinity on either side of the state line where liquor could be legally obtained. Moreover, the Pendergast machine demonstrated all the earmarks of urban bossism in America. Not only did the Pendergasts buy the votes of immigrants for the Democrat political machine, they dispensed patronage to family and friends, many of whom were Irish immigrants appointed to the KCPD, an estimated two-thirds of the force by World War I. In return, the police assured a “safe space” for vice activities and customers, while the police themselves were sometimes charged with assaulting prisoners and being intoxicated while on duty. Tom Pendergast’s machine began to unravel when the KCPD went under state control again and he was imprisoned for income tax evasion.

Reliable crime statistics by the KCPD are not available prior to 1910, but between 1910 and 1930, crimes increased by 30 percent. Yet Kansas City’s high crime rate in 1930 dropped by the next year to the lowest of 37 other American cities, illustrating the fluctuating nature of urban crime. Criminal statistics also varied according to the category of crime. By the early 1990s, methamphetamine had taken hold of the Kansas City suburb of Independence and infected the Kansas City area. The Drug Enforcement Administration (DEA) shut down more meth labs in Missouri than in California by the mid-1990s. The 21st century began with the lowest homicide rate since the 1970s and with declining violent and property crimes throughout Kansas City neighborhoods. By 2009, however, ministers in Kansas City were calling for a rally against gangs, drug dealers, and murderers, all criminals who also contribute to property crimes.

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See Also: 1961 to 1980 Primary Documents; Court of Common Pleas; Missouri; Organized Crime, History of; Truman, Harry S. (Administration of).

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Katz v. United States

Katz v. United States serves as the foundation for Supreme Court decisions involving the Fourth Amendment to the Constitution. Decided in 1967, the case involved police recording the defendant’s conversations as he transmitted wagering information over the telephone. The court held that the Fourth Amendment protects people who have a reasonable expectation of privacy, without regard to whether law enforcement made a physical intrusion into a protected area. Though the court divided on its rationale, *Katz*’s legacy has informed Fourth Amendment jurisprudence for 40 years and is the starting point for applying the Fourth Amendment to new technologies.

The government’s case against Charles Katz developed amid the government’s crusade to stop organized crime. Increased dramatically during President John Kennedy’s administration, the efforts continued into the Lyndon Johnson administration. One important target was the proliferation of interstate gambling. Law enforcement

officers learned that Katz was involved in the interstate communication of wagering information, specifically, point spreads on college football games. They followed him as he repeatedly used one of three telephone booths to transmit the information. After repeatedly observing this activity, the agents placed a microphone and recording equipment on top of one of the phone booths. When Katz made a call, they recorded it and, in the process, obtained the necessary evidence for conviction. Following his conviction, he appealed and the Ninth Circuit Court of Appeals ruled that the surveillance did not implicate the Fourth Amendment because the officers did not intrude upon the phone booth.

The Supreme Court considered the case in fall 1967. The case came during the Warren Court's efforts to reform criminal procedure. Earlier decisions had focused on the right to counsel and the application of the exclusionary rule to the states. Later cases would focus on prosecutorial disclosure of exculpatory information and the right to counsel during police interrogation. The court had attempted, in earlier cases, to reinterpret the Fourth Amendment but could not achieve a majority. By 1967, the majority was in place.

The government argued, based on the decision in *Olmstead v. United States*, that the recording was not covered by the Fourth Amendment. Katz had framed the issue for the court as one where the court had to decide whether or not the telephone booth was a constitutionally protected area. Justice Potter Stewart, writing for the court, reframed the issue, stating that the Fourth Amendment does not consider the place searched but focuses on the individual's expectation of privacy.

Therefore, Stewart decided that Katz had an expectation of privacy when he closed the door to the phone booth. Katz did not expect his conversations to be heard by anyone else, so the search and seizure of the conversations violated the Fourth Amendment. Stewart concluded his opinion by examining whether the search was reasonable. Despite the precautions taken by the government to minimize the intrusions, Stewart said that the agents had the option of obtaining a warrant. The judicial review was essential to ensure law enforcement acted reasonably.

Justice Stewart's opinion was not the only one, however, as four other justices filed opinions. Justice Byron White concurred in the judgment but wrote that, in these circumstances, the government needed a search warrant, but he did not see the need to rewrite the Fourth Amendment. He also noted that national security electronic surveillance was exempt from the search warrant requirement. Justice William Douglas also concurred in the judgment but wrote to distinguish his views from White's. Douglas did not think national security searches should be exempt. Justice John Marshall Harlan also concurred but decided the case based on the questions framed by Katz. He, too, did not think that the Fourth Amendment should be revised. Finally, Justice Hugo Black dissented, ruling that Chief Justice William Taft's reasoning in *United States v. Olmstead* should remain the law.

Despite the diverging opinions, *Katz* has remained the foundation for current Fourth Amendment interpretation. Its underlying principle that the amendment protects people and not places has been instrumental in the application of the Fourth Amendment to modern technologies. Current debates about thermal imaging, electronic surveillance, and global positioning systems rest upon the rationale adopted by the court in *Katz*.

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See Also: Bill of Rights; Electronic Surveillance; Gambling; *Olmstead v. United States*; Organized Crime, History of; Warren, Earl.

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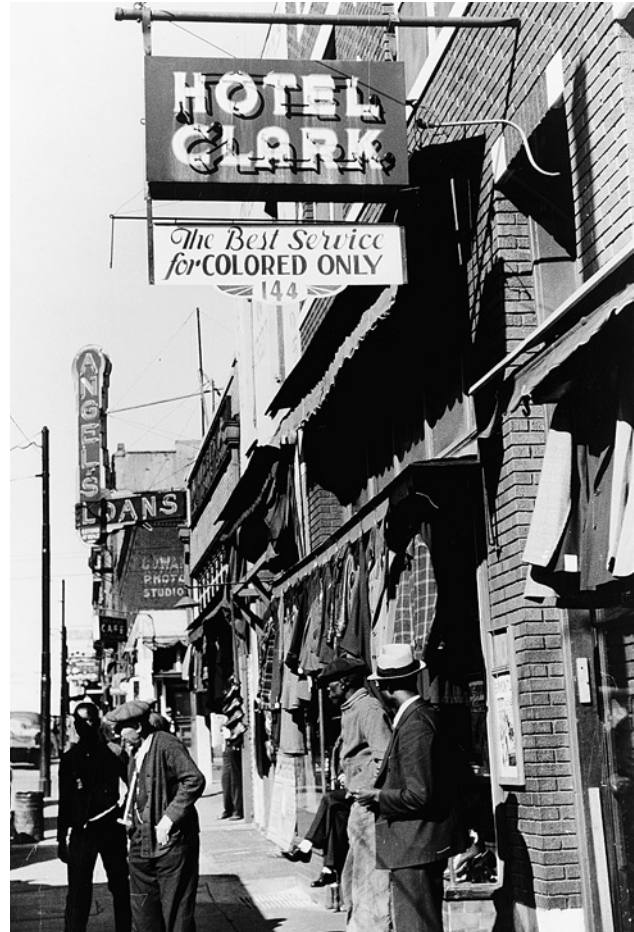
Katzenbach v. McClung

In *Katzenbach v. McClung*, the U.S. Supreme Court upheld Title II of the Civil Rights Act of 1964—which prohibits discrimination based on race, color, religion or national origin in any place of public accommodation—to a family-owned restaurant in Birmingham, Alabama. *McClung* was decided the same day as *Heart of Atlanta Motel v. U.S.*; together, these cases affirmed a broad federal power to regulate local businesses under the interstate commerce clause (Article I, Section 8, Clause 3).

Ollie's Barbecue, established in 1927 by Ollie McClung, Sr., had a 220-seat dining room for whites only as well as a carry-out window that served African Americans. The restaurant was located in a largely African American neighborhood on State Highway 149, 11 blocks from the nearest interstate highway and even farther from the nearest air, bus, or train terminal. During the previous year, McClung purchased about \$70,000 in meat from a local wholesaler that imported it from Hormel, an out-of-state supplier.

After the Civil Rights Act took effect in July 1964, McClung continued refusing to serve African Americans in the dining room. He challenged the law, and an Alabama federal district court found in his favor. It ruled that the Civil Rights Act could not be enforced against Ollie's Barbecue because no customers were from out-of-state and the amount of food purchased by the restaurant did not substantially affect interstate commerce. (In contrast, *Heart of Atlanta Motel* advertised nationally, was located near two interstate highways, and interstate travelers constituted 75 percent of its guests.) When the U.S. Supreme Court decided to hear the appeal in *Heart of Atlanta Motel*, it took the government's appeal in *McClung* on expedited review from the district court.

On December 14, 1964—just six months after Congress passed the Civil Rights Act—the U.S. Supreme Court unanimously upheld its application to *Heart of Atlanta Motel* and to Ollie's Barbecue. (Justice John M. Harlan drafted a dissent in *McClung* on federalism grounds, but eventually joined the majority opinion.) The majority opinion of Justice Tom Clark upheld the law as an exercise of Congress's power to regulate interstate commerce under the “substantial effects” doc-



The photograph shows a sign for a hotel serving black travelers on a street of pawn shops in Memphis, Tennessee, around 1939. In *Katzenbach v. McClung*, the majority opinion of the Supreme Court found that segregation of local businesses obstructed travel.

trine. The amount of meat purchased by McClung was “insignificant” to the national market, he conceded. Citing *Wickard v. Filburn* (1942), *Gibbons v. Ogden* (1824), and congressional testimony, Clark demonstrated that if other local restaurants “similarly situated” to Ollie's Barbecue engaged in racial discrimination, national burdens to commerce and travel would result. “This obviously discourages travel and obstructs interstate commerce,” Clark wrote, “for one can hardly travel without eating.” Title II of the Civil Rights Act, he found, is “plainly appropriate in the resolution of what Congress found to be a national commercial problem of the first magnitude.”

Three justices appended concurring opinions in *Heart of Atlanta Motel v. McClung*, and each

addressed Congress's power to enforce the Fourteenth Amendment's equal protection clause. Justice Hugo Black, from Alabama, wrote that the public accommodations provision is "wholly valid under the Commerce Clause and the Necessary and Proper Clause." He found "no need" to consider the Fourteenth Amendment. Justice Arthur Goldberg affirmed federal authority under the commerce clause, yet noted that "the primary purpose" of the Civil Rights Act "is the vindication of human dignity, and not mere economics." Goldberg found congressional authority under both the Fourteenth Amendment and the commerce clause. In his concurrence, Justice William O. Douglas said "I am somewhat reluctant here ... to rest solely on the Commerce Clause." To Douglas, the guarantees secured by the Civil Rights Act "are clearly within the purview of our decisions under the Equal Protection Clause." Resting on the Fourteenth Amendment rather than the commerce clause

... would have a more settling effect ... thereby putting an end to all obstructionist strategies and allowing every person—whatever his race, creed or color—to patronize all places of public accommodation without discrimination whether he travels interstate or intrastate.

Clear reliance on equal protection would, Douglas said, "finally close one door on a bitter chapter in American history."

Ollie McClung, Sr., was "shocked" at the decision. But unlike Atlanta restaurant owner Lester Maddox, McClung—a Presbyterian preacher—stated "as law-abiding Americans, we must bow down to this edict." Later that week, Ollie's Barbecue began serving African Americans in the dining room without incident. The restaurant moved in 1968 and again in 1999 to a location in Hoover, Alabama, closer to interstate highways. Ollie's Barbecue closed in 2001, but bottles of Ollie's World's Best Bar-B-Q sauce remain on supermarket shelves throughout the south.

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See Also: Alabama; Civil Rights Laws; Equality, Concept of; Georgia; Segregation Laws.

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Kennedy, John F. (Administration of)

Despite serving less than three years as the 35th president of the United States of America, John Fitzgerald Kennedy (1917–63) is one of the most popular and controversial presidents in the country's history. Kennedy succeeded Dwight D. Eisenhower, becoming president on January 20, 1961. Despite Kennedy's civil rights legacy, famous speeches, and high-stakes confrontations with the Soviet Union, he is perhaps best known for the controversy surrounding his own death.

Kennedy was assassinated on November 22, 1963, in Dallas, Texas. Although the official ruling is that Kennedy was shot by Lee Harvey Oswald, which is supported by the findings of the Warren Commission, a number of conspiracy theories have persisted. The assassination itself is one of most iconic crimes of the 20th century. Kennedy's brother Robert served as his attorney general under him and was famously responsible for a war on organized crime. Additionally, the Juvenile Delinquency and Youth Offenses Control Act was also passed in this period, and the infamous Boston Strangler was active during Kennedy's presidency.

The Kennedy family formed a political dynasty, and much of John Kennedy's political motivation emanated from his father, who had served as ambassador to the United Kingdom. Kennedy

is connected with a number of leading universities, including Harvard, Princeton, the London School of Economics, and Stanford. He also had a military career prior to entering politics, serving in the U.S. Navy during World War II. Kennedy served as president during a number of crises at the height of the cold war. The Bay of Pigs Invasion during 1961 is a notable example and is largely seen as a disaster for Kennedy. Another defining episode was the Cuban Missile Crisis in 1962, which ensued as Soviet missile silos were installed in Cuba. The world held its breath, and historians of the period noted that the world was on the brink of all-out nuclear war during the crisis. Eventually, Soviet premier Nikita Khrushchev agreed to remove the missiles in exchange for a guarantee that America would not invade Cuba.

Robert Kennedy's tenure as attorney general is remembered for his associated crusade against organized crime. Until this time, the issue of organized crime had largely been neglected. For example, Federal Bureau of Investigation (FBI) director J. Edgar Hoover had failed to go after the organized crime syndicates and is accused by some of having links to the mob. Despite concerns about his lack of experience, Robert Kennedy was successful in reforming the Justice Department and setting up new organized crime investigations. Subsequently, a marked rise in convictions connected to organized crime activities was witnessed. The events of this period and earlier high-profile Mafia cases helped to create the Mafia's image for the public. Robert Goldfarb, who formed part of Kennedy's team, offers an insider view of the attorney general in his book *Perfect Villains, Imperfect Heroes: Robert Kennedy's War Against Organized Crime*. We can judge the impact of the Kennedy administration's war on organized crime by the extent to which it was hated by such groups.

Kennedy made a number of famous speeches as president, including on his inauguration on January 20, 1961, when he asserted: "And so, my fellow Americans: Ask not what your country can do for you—ask what you can do for your country." These words are woven into the fabric of history and are synonymous with the Kennedy legacy. As a contemporary and supporter of Martin Luther King, Jr., Kennedy's involvement with civil rights is well documented despite the political pressures he faced. In 1963, his civil rights bill

was put before Congress, laying the foundations that his successor, Lyndon B. Johnson, built on. Indeed, many of Kennedy's positions on issues such as civil rights and immigration were later implemented by others. Kennedy paved the way for the crucial Civil Rights Act of 1964, while his brothers Edward and Robert were instrumental in the passing of the Immigration and Nationality Act of 1965. During Kennedy's presidency, the events of the civil rights movement brought a number of challenges and notable events related to riots and opposition to racial integration.

After less than three years as president, Kennedy's period in office was cut short in one of the defining moments of the 20th century. On November 22, 1963, Kennedy was shot by Lee Harvey Oswald as he was traveling in his motorcade through Dallas, Texas, while on the campaign trail. Oswald was himself killed on November 24, 1963, while being transferred to prison, having been arrested for shooting a police officer and subsequently linked to the Kennedy assassination. The Warren Commission under Lyndon B. Johnson concluded that Oswald was responsible for the assassination and that he was the sole perpetrator, rejecting various conspiracy theories. Yet discrepancies exist concerning the number of shots fired and from where the shots were fired. The Congressional House Select Committee on Assassinations in the late 1970s contradicted the findings of the Warren Commission, noting that the assassination was linked to a conspiracy.

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See Also: 1961 to 1980 Primary Documents; Civil Rights Laws; Johnson, Lyndon B. (Administration of); Kennedy, Robert F.; King, Martin Luther, Jr.; Organized Crime, History of; Oswald, Lee Harvey.

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Kennedy, Robert F.

Born into a wealthy and large family, Robert Kennedy was both a liberal reformer and an advocate of law-and-order policies. As a U.S. senator and as the U.S. attorney general, Kennedy was deeply interested in issues relating to crime and punishment. His belief in appropriate penalties for wrongdoers was sometimes controversial, and his positions on enforcing civil rights laws, aggressively prosecuting corrupt union officials, and confronting organized crime made him many enemies. Many of Kennedy's beliefs were shaped by his early experiences. Born into a family that emphasized public service and the importance of helping the downtrodden, Kennedy served as an icon for many who sought to use the government to effect change. Although his political career lasted little more than a decade, Kennedy played a significant role in shaping policy related to civil rights and corruption.

Early Life

Robert Francis Kennedy (RFK) was born November 20, 1928, in Brookline, Massachusetts. The seventh child of Joseph Kennedy and his wife Rose, he was born to a family of tremendous wealth and influence. Joseph Kennedy had wide and varied business concerns, including ownership of the Merchandise Mart in Chicago and interests in several Hollywood motion picture studios. The Kennedy family also was very active politically, with Joseph Kennedy serving as U.S. ambassador to the United Kingdom and as first chairman of the Securities and Exchange Commission, and Rose Kennedy's father having served as mayor of Boston. RFK was educated in public schools from kindergarten through the fifth grade and in private schools thereafter. During World War II, RFK joined the U.S. Navy, serving from 1944 through 1946. After the war ended, he entered Harvard University as a junior, graduating in 1948. After receiving his B.A. in government, he served briefly as a correspondent for the *Boston Post*, writing stories about the division of Palestine and the founding of Israel. In the fall of 1948, RFK entered the University of Virginia Law School, from which he graduated in 1951.

After graduating from the University of Virginia, RFK briefly returned to reporting for the



Attorney General Robert F. Kennedy testifying at a Senate subcommittee hearing on crime in September 1963. Kennedy had an influential 44-month tenure as attorney general.

Boston Post and then embarked on a seven-week tour of Asia with his brother, John F. Kennedy (JFK). In 1951, RFK took a position with the Criminal Division of the U.S. Justice Department. RFK resigned this position the following year to assist JFK in his campaign to be elected to the U.S. Senate seat from Massachusetts. In 1953, RFK was appointed by Wisconsin Republican Senator Joseph McCarthy to serve as an assistant counsel to the Senate Permanent Subcommittee on Investigations. After resigning a year later to assist his father on the Hoover Commission, which made recommendations to President Harry Truman with regard to administrative changes in the federal government, RFK became chief counsel to the Democratic minority in the U.S. Senate, becoming chief counsel to the majority when they regained control in 1955. Serving as chief counsel to the

U.S. Senate Select Committee on Improper Activities in Labor and Management (the McClellan Committee) from 1957 until 1959, RFK gained national recognition in its investigation of International Brotherhood of Teamsters (IBT) executives David Beck and James Hoffa. Specifically, RFK assisted the McClellan Committee's investigation of alleged conspiracy between Hoffa and figures from organized crime to create as many as 15 "paper" local chapters of the IBT, that is, union chapters that existed only on paper. It was during this time that RFK's interest in criminal activity took root and his concerns about union intimidation were initiated.

Attorney General and Later Career

In 1959, RFK again resigned from government service to assist JFK's political ambitions, this time in a run for president of the United States. After JFK was elected president, he nominated RFK to serve as the U.S. attorney general. Although RFK's nomination was criticized because of his age (35) and inexperience, he performed well at his confirmation hearing and was confirmed by the U.S. Senate in January 1961. RFK presided over the Department of Justice for 44 months and was tremendously influential during that time. In addition to being U.S. attorney general, RFK served as an adviser to his brother, giving him a level of influence seldom known to prior holders of that cabinet position. As attorney general, RFK left a lasting legacy with regard to crime and punishment, especially with regard to civil rights enforcement and assaults on corruption and organized crime.

RFK's experiences in and out of the government built his commitment as a civil rights advocate. RFK embraced liberal causes such as civil rights that infuriated many other segments of the United States, including other supporters of JFK. RFK's passion for civil rights and human equality, coupled with his disdain for racial stereotypes common at the time, earned him great respect and support from the African American community and those whites who supported such policies. RFK was not afraid to use the Department of Justice to support the quest for equality. For example, he sent 400 U.S. marshals to protect Martin Luther King, Jr., after a series of death threats were made against King and his family, a move that outraged many southern whites. Similarly,

RFK sent U.S. marshals to Oxford, Mississippi, to enforce a federal court order that James Meredith be admitted to the University of Mississippi. RFK also collaborated with JFK, and after his assassination, President Johnson, to ensure the passage of the Civil Rights Act of 1964, which outlawed the Jim Crow laws then common in the south.

As U.S. attorney general, RFK also maintained the crusade against organized crime and corruption that he had begun as chief counsel to the McClellan Committee. Although disagreements with J. Edgar Hoover, director of the Federal Bureau of Investigation (FBI), prevented a coherent strategy on how to proceed, prosecutions of the Mafia and union leaders increased by 800 percent during RFK's tenure as attorney general. RFK was especially relentless in pursuing his nemesis, James Hoffa. Specifically, RFK ordered investigations into Hoffa's financial dealings with the Mafia and electoral irregularities of IBT elections. Great personal animosity existed between the two men, and RFK and Hoffa frequently traded barbs in the press. This personal enmity culminated in nationally televised hearings during which RFK questioned Hoffa, ultimately leading to Hoffa's conviction on charges of jury tampering.

As attorney general, RFK was also responsible for carrying out the last federal execution in 1963 before the *Furman v. Georgia* case was decided by the U.S. Supreme Court in 1972. Although as a U.S. senator, RFK expressed willingness to support a bill that would abolish the death penalty, as attorney general he felt it was his obligation to support Victor Feguer's execution, despite pleas for clemency. Some have expressed the opinion that this decision reflected RFK's willingness to place political goals over personal beliefs.

After JFK's assassination in November 1963, RFK continued briefly as President Johnson's attorney general, resigning in 1964 to mount a campaign for the U.S. Senate seat for New York, which he ultimately won. Although Johnson and RFK disagreed frequently, both politically and personally, Johnson provided RFK with strong support during the election. Johnson's strong majority assisted RFK in defeating his Republican opponent. As a U.S. senator, RFK was keenly interested in legislation that furthered the civil rights struggle, especially that which called for integration of all public facilities and antipoverty

initiatives that provided better housing, education, and medical care for those Americans traditionally excluded from the political process. RFK also was a strong supporter of the Voting Rights Act of 1965, which established extensive federal oversight of elections in those states that had traditionally excluded African American voters from the election process. RFK remained a severe critic of organized crime and corruption.

RFK's continued attacks on James Hoffa and the Mafia have led some to allege a conspiracy that resulted in his brother's and his own assassinations. While campaigning for president, on June 4, 1968, RFK was shot in a kitchen area in the Ambassador Hotel in Los Angeles while celebrating his win in the California Democratic presidential primary election. Although Sirhan Sirhan was later convicted of the crime, rumors persist that the Mafia was somehow involved. RFK's passion for civil rights and speedy punishment for criminals, especially those who betray the public trust, however, remain his most lasting legacies.

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See Also: 1961 to 1980 Primary Documents; Civil Rights Laws; History of Crime and Punishment in America: 1950–1970; Johnson, Lyndon B. (Administration of); Justice, Department of; Kennedy, John F. (Administration of); Sirhan Sirhan.

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opened fire on unarmed students who had gathered at Kent State University (KSU) in Kent, Ohio, to protest the recent American invasion of Cambodia. During the shootings, four students were killed and nine were wounded. The shootings led to a significant national response, which resulted in the only nationwide student strike in U.S. history. During that time, approximately four million students protested and 900 university campuses were closed throughout the country.

President Richard Nixon, elected in 1968, had promised to end the Vietnam War. However, specific actions, such as the reinstatement of the draft lottery on December 1, 1969, and the invasion of Cambodia on April 30, 1970, seemed to contradict this promise and thus exacerbated an already growing public anger. Additionally, the reinstatement of the draft created a fear among many academics and students that they would be forced to partake in a war that they did not condone. As a result, there was increasing public opposition to the Vietnam War.

In the three days prior to the Kent State Massacre, various protests occurred, some that resulted in vandalism and violence. On May 1, 1970, the Mayor of Kent, Leroy Satrom, declared a state of emergency. On May 2, 1970, Mayor Satrom made a request to Ohio Governor James Rhodes, asking that the Ohio National Guard be brought in for fear that local authorities could not contain the demonstrators. That night, the KSU Reserve Officer Training Corps (ROTC) building was burned, as more than 1,000 protesters surrounded the building and celebrated its burning. The following day, May 3, Governor Rhodes made a passionate speech, accusing the current demonstrators of being among the strongest, most militant, revolutionary group that had ever existed in America.

On May 4, a protest of approximately 2,000 students started in the KSU Commons. At this point, three unsuccessful attempts were made by the National Guard and campus patrolmen to disperse the crowd. When it became evident that the group was not going to leave, 77 National Guard troops with rifles fixed with bayonets were brought in and advanced on the protesters. The protesters decided to retreat to different areas of the campus, which were still in sight of the National Guard. Even though a number of students had left the area, many stayed and angrily

Kent State Massacre

The Kent State Massacre occurred on May 4, 1970, when members of the Ohio National Guard



The Kent State Massacre, which led to an unprecedented nationwide strike by 4 million students, brought about an increased focus on the use of nonlethal weapons that continues today in the U.S. National Guard, police forces, and military. These U.S. Marines were undergoing training in nonlethal riot control techniques, including the use of pepper spray, in 2006.

confronted the guardsmen by throwing rocks and tear gas canisters. At 12:24 p.m., a sergeant fired on the students with his pistol, which prompted the guardsmen nearest the students to fire their rifles at the students. In total, 29 of 77 guardsmen were said to have fired 67 rounds of ammunition in a 13-second period. Four people were killed in the shooting and nine others were wounded. Two of the students killed were shot while simply walking to class.

In 2010, an audio recording of the incident that had been found in 2007 was analyzed by forensic audio experts, who concluded that the National Guard had been given an order to fire. The validity of this finding has been heavily debated, with some members of the National Guard explaining that the language found on the tapes is not language used in the National Guard.

Aftermath

There was an instant national response following the shooting, with millions of students protesting across the nation. This was followed by the closing of hundreds of college campuses. Included in this national response were lengthy discussions as to the constitutionality of banning the protests and as to whether the shooting of American citizens had been justified. Various media sources began referring to the shootings as a massacre, which served to further public discussion.

Following the shootings and the surge of university protests, President Nixon established the President's Commission on Campus Unrest, also known as the Scranton Commission. Their mission was to scrutinize the dissent and civil unrest occurring on college campuses throughout the country. In September 1970, the Scranton Commission published

a report concluding that the Ohio National Guard shooting could not be justified and declaring that the incident must be the last time loaded rifles are used by guardsmen to confront student demonstrators. The Kent State Massacre, coupled with the Scranton Commission's report, forced the National Guard to revise its techniques of crowd control. Afterward, the U.S. Army reformed its crowd control tactics, focusing on avoiding casualties among protestors by developing less lethal weapons (such as pepper spray and rubber bullets). These types of crowd control tactics are still used today by police forces.

Eight of the 29 guardsmen who had claimed to have fired their weapons were indicted by a grand jury. In their defense, the guardsmen claimed to have been using self-defense in shooting at the crowds. Those in the criminal justice system generally accepted this rationale, and in 1974, U.S. district judge Frank Barristi dismissed all charges against the eight guardsmen, citing a lack of evidence by the prosecution.

A federal court civil action for wrongful death and injury was brought by the victims and their families against Governor Rhodes, the president of Kent State, and the national guardsmen. The case ended in unanimous verdicts for all defendants on all claims. However, this ruling was reversed by the Court of Appeals for the Sixth Circuit, which cited a mishandling of an out-of-court threat to a juror as the reason. The civil case was eventually settled through payment of \$675,000 to each plaintiff and agreement that all defendants would publicly state their regret as to the incidents that occurred that day.

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See Also: Civil Disobedience; News Media, Police in; Nixon, Richard (Administration of); Police Abuse; Political Crimes, Contemporary; Riots; Strikes.

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Kentucky

Kentucky is the 37th largest state in terms of total area, and ranks 26th in terms of total population. In 2010, the state's population was 4,339,367, a 7.4 percent increase from 2000. The majority of the population is white (87.8 percent), with African Americans and Hispanics (7.8 percent and 3.1 percent, respectively) represented in smaller measure. Kentucky was originally part of Virginia before becoming the 15th state in the Union in 1792. Kentucky is well known for horse racing and the bourbon industry, as well as for having a dedicated following of college basketball.

Police

The Kentucky State Police (KSP) was formed in 1948, under the State Police Act, making Kentucky the 38th state to create a police force with state-wide jurisdiction. The agency grew from its predecessor, the Kentucky Highway Patrol. The KSP began with only 40 sworn officers; today, there are more than 1,000 sworn officers. Their primary function is to reduce the number of traffic accidents on highways. The distinctive gray uniform first worn in the 1940s is still in use today. The Kentucky State Police formed its first drug enforcement unit in the 1970s. Kentucky's number one cash crop is marijuana; as such, Kentucky has created the Governor's Marijuana Strike Force, under the Cannabis Suppression Branch of the Kentucky State Police, which is dedicated to the eradication and suppression of marijuana-related activities.

Kentucky police were involved in a Supreme Court decision in May 2011 (*Kentucky v. King*). This case involved undercover police purchasing narcotics from a drug dealer, then attempting to make the arrest at the dealer's apartment. However, police went to the wrong apartment, smelled marijuana, and knocked on the door. They then heard sounds inside the apartment. Fearing

destruction of evidence, the police kicked down the door and entered the home, where they found and arrested Hollis D. King, who was in possession of marijuana and cocaine.

The issue was related to warrantless searches conducted in exigent circumstances, and whether said searches violated the suspect's Fourth Amendment rights against unreasonable search and seizure. In an 8–1 ruling, the U.S. Supreme Court found that the police did not create the exigency by violating or threatening to violate the suspect's Fourth Amendment rights. In sum, if the police did not threaten or actually engage in an act that would violate the Fourth Amendment, then the exigent circumstances rule would still be applicable.

In the majority opinion written by Justice Samuel Alito, the court indicated that occupants of a home have other protections against warrantless searches. For instance, the occupants can simply tell the police that they cannot enter the home. If said occupants fail to take advantage of those protections, it is not the fault of the police. Justice Ruth Bader Ginsburg, the sole dissenting justice, stated that the emergency situation in question (i.e., a fear that the occupant would destroy the drug evidence if the police waited to get a warrant) was, in fact, not an actual emergency. Rather, there would be no reason for the occupants to destroy the drugs, unless they had reason to believe the police were coming (to which they were alerted by the police knocking).

Kentucky's first prison was the Kentucky State Penitentiary, otherwise known as the "Castle on the Cumberland." The prison is located in Eddyville, Kentucky, and is the state's only maximum-security male facility. It was completed in 1886. Death row inmates are housed in this facility, and Kentucky State Penitentiary is also where state executions are carried out. The facility has a maximum population of 856 inmates, who are classified based on offense. In the Kentucky State Penitentiary, white inmates constitute 65 percent of the prison population, with African American inmates and other inmates accounting for 34 percent and 1 percent, respectively.

Prison reform in Kentucky happened slowly. Early prisons were known for corruption among the guards and administration, while prisoners were treated poorly and lived in squalor. In 1875, 20 percent of inmates had pneumonia. In

1921, Frankfort prison reported that 41 percent of its prisoners had syphilis, which was attributed to poor sanitation at the facility. Governor Luke Blackburn campaigned on prison reform, and was known as the "Father of Prison Reforms in Kentucky." He granted pardons in an attempt to relieve prison overcrowding, overhauled the contract system by which prisons were built, and ultimately oversaw the development of a parole process.

From 1997 to 2009, the state's prison population expanded by 80 percent. From 1980 to 2010, the corrections budget increased from \$30 million to \$470 million. With an eye toward reform, lawmakers overhauled the state's drug laws, as well as its sentencing, probation, and parole system. This reform is expected to lower prison populations and expand drug treatment. In addition, this legislation is expected to save the state more than \$422 million over the next decade. These savings will be applied to the existing correctional system in the state, with half required to be reinvested in the corrections budget, while the other half will be put toward assisting county jail costs. Governor Steve Beshear signed House Bill 463 into law on March 3, 2011.

Kentucky has a storied history with moonshine. In 1791, a federal excise tax led to an increase in home distilling, specifically of corn whiskey. Even after this tax was repealed in 1802, home distilling of whiskey continued because of the taxes that legitimate distillers had to pay. One reason given for the proliferation of moonshine distillers was the close proximity of legitimate distilleries. Such proliferation led to difficulties in enforcing the laws; when state officials would shut down one home operation, many more were ready to take its place. Moonshine is still made in Kentucky, though not nearly to the extent it once was.

Current Crime Statistics

In 2010, 121,289 serious crimes were committed in Kentucky. Violent crimes were recorded as: murder (180), rape (1,545), robbery (3,732), and aggravated assault (5,691). Property crimes were recorded as: burglary (29,170), larceny/theft (74,185), auto theft (6,075), and arson (711). Rape, aggravated assault, and arson all decreased from the previous year, while murder, burglary, larceny/theft, and auto theft increased.

In 2010, there was a murder every 48 hours, 40 minutes. The murder rate increased by 1.69 percent, and 64 percent of all murders in the state involved the use of a firearm. Rape, which decreased 1.4 percent, occurred every 5 hours, 40 minutes. Robbery, which saw the largest increase rate at 5.75 percent, was committed every 2 hours, 20 minutes. Overall, a serious crime (Part I offenses) occurred every 4 minutes, 20 seconds. The clearance rate for all violent crimes was 50.4 percent, compared to 21.5 percent of property crimes. In 2010, property crimes outnumbered violent crimes 9.9 to 1. There were 351,976 arrests in the state in 2010; 29,917 were for DUI, while 61,413 were for drug violations. Police officers were also victims, with 1,757 sworn officers assaulted during the year. Overall, the crime rate for Part I offenses in 2010 in Kentucky increased 1.26 percent from the previous year.

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See Also: Drug Abuse and Addiction, Contemporary; Penitentiaries; Supreme Court, U.S.

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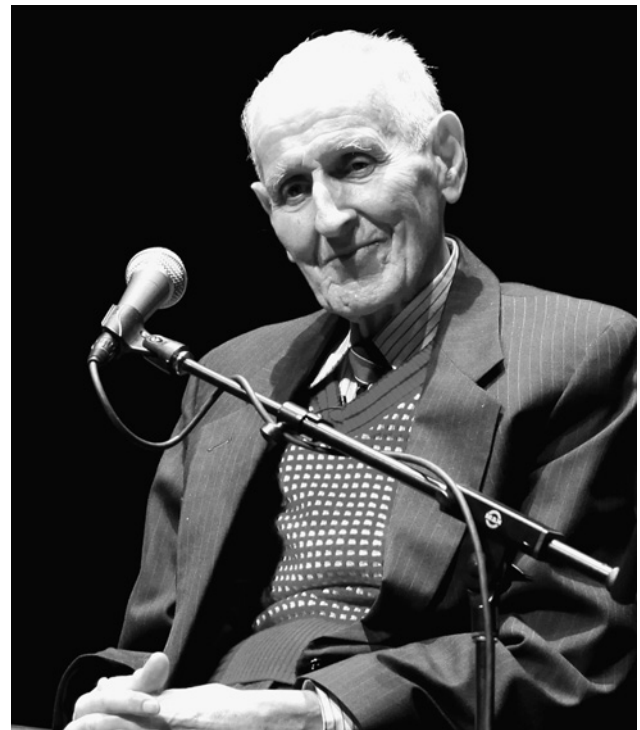
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Kevorkian, Jack

Murad "Jack" Kevorkian (1928–2011) was the second of three children, and the only boy born to Levon and Satenig Kevorkian of Pontiac, Michigan. Although the Kevorkian family was very religious and went to church on a regular basis, Jack was unable to blindly follow the doctrine of faith that he believed Christianity required. He constantly questioned his teachers, and by the age of 12, he had given up on attending church entirely. However, where Kevorkian failed as an obedient Christian, he more than succeeded as an

academic. The same critical mind that would not allow him to accept things on faith continued to aid him in school, to the point where he was considered by his peers to be more intelligent than many of his professors. By age 17, he had graduated with honors from Pontiac High School and been admitted to the University of Michigan.

Although Kevorkian originally intended to become a civil engineer, he found the topic too "boring" and soon had his sights set on medical school. He graduated with his medical degree in 1952, and, after a 15-month detour as an army medic in Korea, became a specialist in pathology. It was during his residency at the University of Michigan Hospital in the 1950s that he originally became fascinated by death and dying, taking photographs of patients' eyes as they died. This soon led him to advocate experimentation on death row inmates while they were still alive. Kevorkian argued that in a method called "terminal human experimentation," condemned convicts could volunteer for "painless" medical procedures that would commence while they were still alive and



Jack Kevorkian speaking at the University of California, Los Angeles, in January 2011. He served over eight years of a 25-year prison sentence for an assisted suicide.

result in fatality. This suggestion earned Kevorkian the nickname “Dr. Death.”

Because of several such radical ideas, Kevorkian became ostracized first by his peers, and then by the medical community at large. Even though he officially became a specialist in 1960, he was unsuccessful at running his own practice and was soon living out of his car and off the government. In 1986, Kevorkian first discovered research from the Netherlands on doctors who helped people to die using lethal injection. Shortly thereafter, he began writing new articles on the benefits of euthanasia. At the same time, he developed a suicide machine he christened the Thanatron. The machine consisted of three bottles that delivered successive doses of fluids: first a saline solution, then a painkiller, and finally, a fatal dose of the poison potassium chloride. It was not until 1990, however, that Kevorkian became truly infamous. That year, he assisted in the suicide of Janet Adkins, a 45-year-old Alzheimer’s patient from Michigan. Kevorkian was immediately charged with murder, but the case was dismissed because of Michigan’s indecisive stance on assisted suicide.

By 1991, Kevorkian was banned by court order from using his suicide machine, and his medical license was suspended. Unable to purchase the necessary medical fluids to work his machine, he simply created a gas mask that used carbon monoxide to painlessly assist suicides. Finally, Michigan passed a law outlawing assisted suicide, and Kevorkian was prosecuted for it four times. However, he was able to escape his charges unscathed, and it was not until the 1998 case of Thomas Youk that he was ever convicted. That year, Kevorkian allowed *60 Minutes* to air a video he had made of the lethal injection of Youk, who suffered from Lou Gehrig’s disease. The difference this time was, instead of the patient being able to administer his own fatal dosage, Kevorkian had to do so instead. Additionally, in the following interview, he brashly challenged the courts to pursue him legally.

Kevorkian was charged with second-degree murder and this time chose to represent himself. On March 26, 1999, a jury in Oakland County convicted Jack Kevorkian of second-degree murder and the illegal delivery of a controlled substance. That April, he was sentenced to 25 years in prison, with a possibility of parole. Although he appealed several times, he was unsuccessful in

those attempts. On June 1, 2007, after serving a little more than eight years of his sentence, Kevorkian was released from prison on good behavior. He also promised not to assist in any more suicides, although he continued to tour the lecture circuit speaking out for assisted suicide until his death on June 3, 2011.

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See Also: Executions; Famous Trials; Michigan; Serial and Mass Killers.

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Kidnapping

Kidnapping, the illegal and/or forcible removal of someone against their will, has a long history in the North American colonies and in the United States. It was an integral part of the institution of slavery from its establishment in British colonial North America in 1619 through its dismantling in 1863–65. The kidnapping of white Anglo women by Native Americans was a stock theme in captivity narratives from the Puritan settlements through to the antebellum years. Kidnapping was frequently associated with lynching in the late 19th and 20th centuries, was a lucrative source of income for criminal bandit gangs in the early 1930s, and most recently was associated with post-9/11 rendition and secret detention programs.

Slavery

The human trafficking of Africans from the continent’s Slave Coast and of persons of African

descent from the Caribbean to North American port cities was outlawed in 1808, but continued as part of a revitalized domestic slave trade anchored in the southern United States. At the same time, northern states such as Pennsylvania passed gradual emancipation laws in the years after the American Revolution, but their growing free black communities remained vulnerable to kidnapping. Free black adults and children were lucrative targets for criminal gangs determined to profit from their illegal sale into slavery as new cotton areas were developing in southern states such as Mississippi and Texas. Early abolitionist and antislavery societies successfully lobbied for antikidnapping statutes in several states, including New York, but local police were often reluctant to ensure effective enforcement, so African American community leaders and white allies organized vigilante societies and sometimes used force to rescue kidnapping victims. In other cases, they relied on the courts.

During the antebellum years, kidnapping of free and fugitive black Americans was reported regularly in the abolitionist press. One of the more famous cases was that of Solomon Northup, who was seized in Washington, D.C., in 1841 and sold in New Orleans, and eventually rescued in 1853, as recounted in Northup's *Twelve Years A Slave* (1853). However, some kidnap cases were more complex than simply white-on-black abductions. For example, in December 1837, John and Sophia Robinson, a free black couple from Boston, were convicted of kidnapping 5-year-old Elizabeth Bright from outside her home in Cambridge, Massachusetts, where she lived with her white guardian, Henry Bright. Formerly a slaveholder from Alabama, Bright had recently emancipated his slaves and moved to his home state of Massachusetts, along with his wife and the orphaned Elizabeth. Doubt over the sincerity of Bright's promise to raise Elizabeth as a free person seems to have motivated the Robinsons (who were linked to the black Garrisonian section of the abolitionist movement in 1830s Boston).

Carol Wilson identified around 100 kidnappings of free blacks between 1830 and 1861. Although the number of cases declined in the 1840s, the Fugitive Slave Act (1850) offered kidnappers some legal protections as state legislatures were obliged to ensure the return of

escaped slaves to their masters, but those who assisted runaway slaves were subject to criminal sanctions. Free black communities in the border states of Maryland and Delaware remained particularly vulnerable.

In the years after the Civil War and Confederate defeat, kidnapping as a prelude to a severe beating or murder was utilized by the Ku Klux Klan against many African Americans and some whites in its attempts to restore the southern political order based on white supremacy and black subordination through terror and intimidation. The Klan retreated in the wake of the Enforcement Act (1871), but terror tactics continued to be a staple of racial, antilabor, and antiradical violence in the south and other parts of the United States. At least 3,500 African Americans were lynched in the southern states between the 1880s and the 1950s, and at least 1,300 persons were lynched mainly in the frontier west in the same period. Many victims were forcibly abducted from homes, workplaces, and jails. Luring and kidnapping were methods of procurement associated with the contract labor systems of lumber and turpentine operators, and with prostitution, for example, with the illegal importation of Chinese women into western states such as California in the late 19th century.

Ransom

The most useful and comprehensive legal and social history of ransom kidnapping in the United States remains Ernest Kahlar Alix's 1978 study. Using the *New York Times* archive as his main source, Alix identified 1,703 cases of kidnapping between 1874 and 1974. He identified 15 types of kidnapping altogether, including "white slavery," or snatching of mainly female victims for commercial prostitution; domestic relations kidnapping, usually of children, by divorced or separated parents or other family members; and abductions for the purposes of murder, sexual assault, robbery, or extortion. In 1874, the abduction of 4-year-old Charley Ross in Germantown, Philadelphia, resulted in the first ransom kidnapping in the United States.

Alix termed 236 of his identified cases as "classic kidnapping for ransom." The typical victim for the 100-year period was an adult white upper- or middle-class male, although child victims were a feature of the majority of cases prior to 1920.

In part, this was because of a series of notorious extortion kidnappings of working-class immigrant children by Italian American criminal gangs in early-20th-century cities such as New York and Chicago. Ransom kidnapping of children in the late 19th and early 20th centuries was framed by fears of urbanization and the dangers of the industrial city, and concerns drew on the context of social purity, educational and moralistic child protection concerns, as well as notions of common community obligations to child welfare.

Several kidnapping studies have focused on specific cases, or as in Paula Fass's study, have adopted a case-study approach focusing on one or two highly publicized kidnapping cases in a particular decade. Fass's examination of various forms of child abduction stretches from the Ross case, through the sensational 1932 Charles Lindbergh, Jr., cases; to the snatching of babies from nurseries by desperate infertile women, and rising 1950s concerns over sexually motivated abductions; to the rise in parental abductions in the later 20th century and the growing missing children's movement. It underlines the extent to which the social context and cultural meanings of kidnapping changed markedly since 1874. Changes in family, marital or divorce, and child custody laws from the 19th century have shaped the rising incidence of parental kidnapping, while 20th-century communication and transportation developments have also dramatically transformed kidnapping, from the ways in which victims are taken to the methods of negotiation between kidnapper, police, and family members. The increasingly aggressive and often salacious journalistic exploitation of violence against children that has come to define the reporting of many child abduction cases is another key theme in Fass's account.

Inevitably, several high-profile kidnapping-murders have received more scholarly attention than others, including the May 1924 Chicago kidnapping-murder of 14-year-old Bobbie Franks by wealthy, elite university-educated teenagers Richard Loeb and Nathan Leopold. Despite a ransom note being sent for Franks' safe return, even though he was already dead, there was no clear economic motive behind Loeb and Leopold's actions. Their families engaged famous criminal lawyer Clarence Darrow to defend their sons, but in a surprise legal maneuver, Darrow had Leopold and Loeb plead



Charles A. Lindbergh (center) after testifying about a \$50,000 ransom payment. The year after the Lindbergh kidnapping, 27 other kidnappings involved ransoms from \$40,000 to \$100,000.

guilty to first-degree murder and kidnapping for ransom. Darrow elected to argue his case for mitigation, for death sentences not to be imposed on his clients, before a judge rather than a jury, which Darrow believed would be irretrievably hostile to his clients. During the three-month hearing, Darrow sought to persuade Judge John R. Caverly that sentences of life imprisonment were appropriate. An array of psychiatric experts testified on behalf of the defendants, that they were not insane but circumstances in their childhood and social development rendered them strange, different, and

immature. Two weeks later, Leopold and Loeb each received life sentences plus 99 years. Caverly based his decision on the age of the defendants rather than the weight of the psychiatric evidence.

Lindbergh Case

The most famous kidnapping in the United States took place on March 1, 1932. The 20-month-old son of aviator Charles A. Lindbergh and Anne Morrow Lindbergh, daughter of a wealthy and socially and politically prominent New Jersey family, was taken from his bedroom in the family home located near Hopewell, New Jersey. Within days, a \$100,000 ransom was demanded, and money was paid, but the child was not returned. Charles, Jr.'s body was discovered only miles from the house on May 12, 1932.

The case provoked an enormous outpouring of public sympathy, anguish, and curiosity within the context of acute economic anxieties in the wake of the Great Depression, weariness with Prohibition-related racketeering and violence, and amid rising fears over bandits and bank robbers. As Claire Bond Potter observes, newspapers consumed kidnapping stories and they became "a form of mass entertainment that compelled a moral reading." They also incited the public to action, for example, in offering their services as amateur detectives in the Lindbergh investigation or in support for increased state and federal law enforcement powers.

In June 1932, Congress passed the Lindbergh Law, which made kidnapping across state lines a federal felony. Many states passed tougher kidnapping statutes, and in many cases this became a capital crime. On July 29, 1933, the creation of a new Division of Investigation (from the bureaus of investigation, identification, and prohibition) within the Justice Department was announced, and from August 10, J. Edgar Hoover became its chief. It was tasked with waging war on racketeers, kidnappers, and other major criminals. It was to fight against the political and law enforcement corruption of the Prohibition years, restore law and order, and return America to the control of the respectable law-abiding American family.

In September 1934, Bruno Richard Hauptmann was arrested for spending a gold certificate marked as Lindbergh ransom money. Several thousand dollars of the ransom money were found

in Hauptmann's garage, and rungs of the ladder used to climb to the child's bedroom window were tied forensically to wood in Hauptmann's attic. In one of the most eagerly awaited trials of the century that was reported in intense detail, he was convicted of first-degree murder and sentenced to death in early 1935. Hauptmann was executed at the New Jersey state prison on April 3, 1936, professing his innocence of the Lindbergh baby kidnapping and murder to the end. Over the decades, questions about Hauptmann's innocence or guilt, possible accomplices among the Lindbergh's domestic staff, and other collaborators continued to preoccupy several commentators and historians.

Other Kidnappings

The early 1930s were the high point of ransom kidnappings in the United States. In the early Depression years, particularly 1932–34, kidnapping was a lucrative source of income for bandit and criminal gangs that usually targeted middle-class and wealthy adult citizens. For example, in 1933, there were 27 major kidnappings, and ransoms of \$40,000 to \$100,000 were demanded and usually paid. These included the June 15 abduction of wealthy brewer William Hamm, Jr., in St. Paul, Minnesota, by the Karpis-Barker gang, and the July 22 abduction of millionaire oilman Charles F. Urschel of Oklahoma City by George "Machine Gun" Kelly and Harvey Bailey. An omnibus crime bill passed Congress in May and June 1934, which dramatically expanded the number of federal offenses. It increased federal crime control powers over interstate kidnapping, and included a 1934 capital amendment to the Lindbergh Law. Kidnappers who survived the Federal Bureau of Investigation (FBI) war and avoided the death penalty were often sent to the new federal prison at Alcatraz to serve out their prison sentences.

There were brief upsurges in ransom kidnappings in the 1950s and in the late 1960s and early 1970s. One of the more famous events was the February 1974 kidnapping of heiress Patricia Campbell Hearst from her home in Berkeley, California, by members of the Symbionese Liberation Army (SLA), a secretive anticapitalist and anti-police group advocating armed retaliation against financial and political elites. Hearst's subsequent transformation into an SLA soldier and participation as

“Tania” in a bank robbery with her captors led to debates over Stockholm Syndrome, the psychological effects of abduction, and the nature of female criminality, as well as FBI tactics. In the late 20th and early 21st centuries, parental or domestic relations kidnapping, kidnapping for sexual purposes often by offenders described as sexual predators, and international terrorism-related kidnappings have tended to attract greater scholarly and journalistic attention.

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See Also: 1600 to 1776 Primary Documents; 1851 to 1900 Primary Documents; 1941 to 1960 Primary Documents; 1961 to 1980 Primary Documents; Famous Trials; Federal Bureau of Investigation; Fugitive Slave Act of 1850; Hauptmann, Bruno; Leopold and Loeb; Lindbergh Law; Slavery.

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King, Martin Luther, Jr.

Reverend Dr. Martin Luther King, Jr., leader of the largest civil rights movement in the United States, was born in Atlanta, Georgia, to the Reverend Martin Luther King, Sr., and Alberta Williams King on January 15, 1929. His grandfather, the Reverend Adam Daniel Williams, was the first of three men in the King family to serve as pastor of Ebenezer Baptist Church in Atlanta. His grandfather served from 1914–31, followed by his father from 1931–60. Reverend Dr. Martin Luther King, Jr., joined his father as co-pastor of the church from 1960 until his death in 1968. The product of a segregated public school system in Georgia, Rev. Dr. Martin Luther King, Jr., started college early, having skipped the ninth and twelfth grades because of his excellent schoolwork. He entered Morehouse College at the age of 15 and obtained a B.A. degree in sociology in 1948. That same year, he was ordained into the Christian ministry by Ebenezer Baptist Church at the age of 19, and thereafter became an assistant pastor at Ebenezer Baptist Church in Atlanta.

Dr. King went on to earn a Bachelor of Divinity degree from Crozer Theological Seminary in Chester, Pennsylvania, where numerous honors were bestowed upon him, including an outstanding student award and a graduate fellowship that paid for the graduate university education of his choice. He also delivered the valedictory address at commencement and, although the vast majority of the members of his class were white, he was elected president of the senior class. In 1951, Dr. King entered Boston University and completed his dissertation titled “A Comparison of the Conceptions of God in the Thinking of Paul Tillich and Henry Nelson Weiman” and was awarded the doctoral degree in 1955.

During his early career, Dr. King grappled with the problems of segregation during the Jim Crow era, that is, the time period after the Civil War when blacks were living free from slavery but suffering harsh treatment under Jim Crow laws that made it difficult for blacks to move around as citizens in their own country. As a member of the executive committee of the National Association for the Advancement of Colored People (NAACP) and as the newly ordained pastor of Dexter Avenue Baptist Church in Montgomery, Alabama, Dr.

King began to mobilize blacks into a movement for change. In 1955, Dr. King assumed leadership of the Montgomery Improvement Association, the organization responsible for the Montgomery Bus Boycotts.

Civil Rights and the Courts

Burdened by the realization that race continued to be a barrier to the social, cultural, political, and economic development of the south, Dr. King forwarded a new social vision for America that placed morality and religion at the center of the struggle for inclusion. He believed that the court system was the perfect place to effect social change, since courts are charged with the responsibility of interpreting the laws of the nation. Therefore, Dr. King believed that the issue of racial equality could be litigated and properly examined within the boundaries of the nation's laws. Dr. King believed that the statement according inalienable rights to humans in the U.S. Constitution already included blacks as humans, but that the particular problem that was preventing blacks from enjoying those rights was the failure of white society to define blacks as having "personhood." The tactic of nonviolence in demonstrations and protests throughout the south, then, was used to force whites to confront the humanity or "personhood" of black citizens.

The *Dred Scott* decision of 1857, whereby the U.S. Supreme Court officially proclaimed that, though free, blacks were still subject to the dictates of their owners, and the *Plessy v. Ferguson* decision of 1896, whereby the U.S. Supreme Court declared that public accommodations could be "separate but equal," became the focus of Dr. King's equality doctrine and the test cases for nonviolence. Drawing on the teachings of Mohandas Gandhi, specifically, the concept of *Satyagraha*, or "firmness in the truth," Dr. King encouraged protesters during the fight for public accommodations to use nonviolent tactics like negotiation against their opponents. In so doing, Dr. King maintained the moral advantage over civil rights deniers who sought to bully, beat, and terrorize protesters into submitting to unjust laws. Nonviolence or passive resistance to violent action undertaken by those in power to subdue the subjugated served to expose the violent perpetrators' immorality in the face of human interaction. Instead of using violence to



Martin Luther King, Jr., stands at a set of microphones on December 3, 1963, a day during which he met with President Lyndon B. Johnson at the White House to discuss civil rights.

force change, Dr. King chose to utilize the court system to obtain access to an integrated public life that was protected by the Constitution.

Nonviolent Tactics

The nonviolent tactics used in the civil rights movement led by Dr. King throughout the 1950s and 1960s relied heavily upon the legal concept of *stare decisis*, which requires courts to act with consistency in interpreting the laws of the land. The principle of *stare decisis* was used to usher in a new era of equality beginning with the *Brown v. Board of Education* decision in 1954 that eliminated the separate but equal criteria engendered by the previous *Plessy* decision.

During the most tumultuous years of the civil rights movement and while serving as the president of the Southern Christian Leadership Conference, Dr. King was arrested more than 20 times.

In a letter written during one of these detainments in response to fellow clergy who questioned the tactics that he used to bring about change in the south, Dr. King created a kind of manifesto for the civil rights movement identifying the goals and means by which to obtain equality. In the letter, famously titled *Letter From a Birmingham Jail*, Dr. King explained his belief in the law and the reasons why he was compelled to act upon some of the injustices that he witnessed taking place in the south.

Also during these years, Dr. King managed to publish several books that explained his philosophy about nonviolence and his vision for a more unified America. *Stride Toward Freedom* (1958), *The Measure of a Man* (1959), *Why We Can't Wait* (1963), *Strength to Love* (1963), *Where Do We Go From Here: Chaos or Community?* (1967), and *The Trumpet of Conscience* (1968), are some of his best-known works. Dr. King received numerous awards for his civil rights work, including a Nobel Peace Prize in 1964, the Spingarn Medal from the NAACP in 1957, Man of the Year by *Time Magazine* in 1963, the John Dewey Award from the United Federation of Teachers in 1964, and several honorary degrees from prestigious institutions such as Morehouse College, Howard University, Wesleyan College, and Yale University.

On April 4, 1968, Reverend Dr. Martin Luther King, Jr., was assassinated on the balcony of the Lorraine Motel in Memphis, Tennessee. He had traveled to Memphis to help organize a protest of the sanitation workers there who were protesting low wages and poor working conditions. Later, his body was entombed at the Freedom Plaza of the Martin Luther King Jr. Historic Site, officially deemed a national historic landmark in Atlanta, Georgia, in 1977.

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See Also: African Americans; Birmingham, Alabama; *Brown v. Board of Education*; Civil Disobedience; Civil Rights Laws; Justice, Department of; Kennedy, John F. (Administration of); Kunstler, William; Memphis, Tennessee; National Association for the Advancement of Colored People; *Plessy v. Ferguson*; Ray, James Earl; Riots; Segregation Laws.

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King, Rodney

Rodney King (1965–2012) was an African American man residing in southern California who was the victim of an infamous videotaped assault by four officers (Sergeant Stacey Koon and Officers Theodore Briseno, Laurence Powell, and Timothy Wind) from the Los Angeles Police Department (LAPD) in March 1991. The beating was filmed by a resident (George Holiday) who observed King being beaten. The video of the beating was broadcast nationwide, fueling public outrage and exacerbating conflicts between members of minority communities and the police. In April 1992, the officers who beat King were acquitted of state charges, which served as the precipitating event for civil unrest throughout the United States, particularly within southern California.

The events on the tape were set in motion when a California Highway Patrol unit attempted to stop King for speeding. King did not stop and continued driving at a high rate of speed, eventually exiting the freeway, where the LAPD joined the pursuit. King eventually ended the pursuit by pulling to the side of the road and stopping. Police ordered King and his passengers out of the vehicle, at which time officers reported that King became uncooperative.

Officer Powell stated in his official report that he was almost knocked off his feet while attempting to force King to comply with commands to lie on the ground. Sergeant Koon (the LAPD supervisor on the scene) stated that King appeared to be under the influence of phencyclidine (PCP, a drug known to make people impervious to pain and difficult to control). Officers Powell, Wind, and

Briseno began striking King with their department-issued side-handle batons after Sergeant Koon attempted to use a Taser multiple times with no effect. Holiday's video shows the barrage of baton strikes from the officers, show Powell striking King in the head, knocking King to the ground. The video shows officers kicking King five or six times and striking him with a baton 56 times prior to being arrested. King was taken to the hospital; he was treated for multiple broken bones and received 20 stitches. Blood samples taken from King revealed the presence of alcohol and trace amounts of marijuana but no PCP.

Public Outcry and Response

The Rodney King incident was brought to the attention of police administrators when the tape produced by Holiday was aired on local television. The savage treatment of Rodney King prompted outrage from local residents, who demanded both answers and changes from the police department. In the wake of the attack, criminal charges were filed in state court against the three officers and one sergeant actively participating in the beating of King—those depicted on the Holiday tape.

The officers were acquitted on all charges, which resulted in riots that in Los Angeles alone killed 53 people and caused \$1 billion in property damage. All four officers were eventually retried in federal court on civil charges; only Koon and Powell were convicted (each received a 30-month prison sentence). Officers Briseno and Wind were both fired from the LAPD after the incident despite being acquitted of criminal wrongdoing. In addition to the federal charges against two officers and the dismissal of the other officers involved, the city of Los Angeles settled a civil suit with King for \$3.8 million.

In response to the public outcry surrounding the King incident, the city of Los Angeles appointed the Christopher Commission to investigate allegations of systemic institutionalized racial bias and mistreatment of African American citizens by police department personnel. The commission's report sustained many of these allegations of racial bias and brutal treatment by a select group of officers; several recommendations were made to correct the deficiencies noted. One of the many recommendations was to change the system for receiving citizen complaints, which was

unnecessarily cumbersome and skewed in favor of the department. This is exemplified by the fact the both King's brother and Holiday attempted, with no avail, to report the King incident to the department in the days following the beating. The commission also recommended several other fundamental changes to correct the deficiencies noted within the organization; most of these changes have now been implemented after delays resulting from political turmoil.

The events captured on video in the early morning hours of March 3, 1991, were horrific. However, despite the deplorable treatment of Rodney King, the event served as the impetus for massive and sweeping positive changes within the LAPD, including the use of video cameras to record officer behavior, and updated policies and procedures for dealing with citizens on the street and complaints made by the citizens. Although many of these changes have taken time to implement, in the end they have benefited all citizens of and visitors to Los Angeles. Additionally, the changes have served as the impetus for drastically improving police community relations throughout the city and improving the reputation of the organization among policing professionals nationwide.

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See Also: African Americans; Compton, California; Famous Trials; History of Crime and Punishment in America: 1970–Present; Los Angeles, California; Police, Contemporary; Police Abuse; Riots.

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Klebold, Dylan, and Eric Harris

Dylan Klebold and Eric Harris were the two high school teenagers who perpetrated the largest mass murder by students at an American school when they shot and killed 12 of their fellow students and one teacher and injured 24 others on April 20, 1999. The attack at Columbine High School in Littleton, Colorado, shocked the nation, and the event was covered live by major national news broadcasts. Both Harris and Klebold shot and killed themselves in the school following the attack. The attack at Columbine followed several other highly publicized shootings at schools in smaller rural or suburban towns in the United States during the mid- to late 1990s. But Columbine was particularly notable, due to the number of victims killed or injured, and the diligent and long-term planning of the two high school attackers. Even more stunning were the later revelations found by the police investigation of Harris and Klebold's actual plans, which were to kill hundreds of students in a devastating attack involving explosives in the school cafeteria.

Klebold and Harris were high school seniors, ages 17 and 18, respectively. Both were from white, middle-class families from the suburbs of Littleton, Colorado. Both youths had relatively uneventful childhoods until their high school years. They became friends and later became involved in one known criminal incident. They were arrested for burglarizing a van and placed into a juvenile diversion program, which both successfully completed. After the shootings, it was revealed that police had other information prior to the attack about the pair, including complaints from parents of one student about threats of violence made by Harris toward their son. This opened up the police to criticism for not being proactive in dealing with Harris, as a diligent investigation might have turned up the weapons and explosives he was stockpiling in his bedroom.

In the late morning of April 20, 1999, Klebold and Harris entered Columbine High with duffel bags filled with propane tanks rigged to explode. They set these duffel bags filled with these explosives strategically in the school's cafeteria, to fulfill their initial plan that the bombs would go

off, collapsing the ceiling and creating mayhem, all occurring while the cafeteria was full of students and staff. Klebold and Harris's initial plan is that they would position themselves strategically outside to shoot students and staff fleeing from the events in the cafeteria. They also rigged their automobiles to explode sometime after the event was over, hoping to kill rescue workers, reporters, police, and others who were gathered outside in the aftermath of the attack. Neither of their car bombs went off.

When the explosives they set in the cafeteria did not detonate, Klebold and Harris held high-powered rifles, homemade explosives such as pipe bombs, and other weapons and began making their way back toward the school. En route into the school they shot at several students, killing or injuring several in the process. Within the school, a teacher named Dave Sanders began to evacuate students, leading some to safety before being shot by the attackers. An armed police officer assigned to the school traded gunfire with the assailants, but did not pursue the gunmen. He did radio dispatchers for additional police assistance, which arrived within several minutes.

Approximately 15 minutes into the attack, Klebold and Harris went to the school library, where some students and staff had taken cover under desks. This is where most of the murders occurred. Gunshot evidence and reports from survivors indicate that Klebold and Harris systematically shot at students hiding under desks in the library. About 45 minutes after beginning the attack, the two gunmen committed suicide in the library.

Aftermath

There was considerable speculation after the Columbine attacks about why Klebold and Harris did it. Many of the early reports about possible factors leading to the killings were erroneous. For example, although early reports indicated that the duo were victimized by bullying, leading to considerable attention to bullying efforts on the part of the U.S. government, later evidence indicates that Klebold and Harris bullied younger students and made fun of others often and were rarely victimized.

Later works also highlight the "perfect storm" of personalities that brought the duo together. Harris has been described by some as a classic sociopath and the architect of the attack. Klebold



A visitor reads about a 16-year-old victim of the Columbine High School shooting at a permanent memorial near the school soon after it was dedicated in September 2007.

was, according to some authors, depressed and suicidal, filled with anger and rage, who became a willing accomplice. One of the key questions after the killings was the culpability of the parents of Klebold and Harris, and how they could not know that their children were gathering weapons and explosives and planning the attack for about one year. Families of those slain or injured in the attack filed lawsuits against the Klebold and Harris parents, which were eventually settled out of court for \$1.6 million in 2001.

The attack led to key changes in how police handle “active shooter” calls such as that at Columbine. Standard practice before Columbine was for police to respond to the scene, set up a perimeter, tend to the injured, and prepare for the inevitable hostage negotiations. This strategy led to great criticism by the victims’ families, who could not understand how armed police could be waiting outside

the school while the shooters were killing unarmed students in the library. Today, many departments have changed their active shooting policy, forgoing setting up a perimeter to immediately enter, pursue, and neutralize any active shooters.

Similarly, because police and medical personnel were not aware that both active shooters were dead, it took several hours to retrieve the wounded. In the interim, despite efforts by students to summon medical care, wounded teacher Dave Sanders bled to death before help arrived, leading to further criticism of the way emergency responders handled the event. Police were also criticized for the way they handled the investigation and report. Victims’ families filed lawsuits, charging that information was continuously withheld or misrepresented.

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See Also: Child Murderers, History of; School Shootings; Serial and Mass Killers; Terrorism.

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Knapp Commission

The problem of police corruption came into the public spotlight when Frank Serpico, a New York City police officer, was shot in 1971 after attempting to report police corruption. The Knapp Commission was the most famous attempt to address police corruption in America. It was formed in 1970 in New York City to investigate the New York Police Department.

Frank Serpico became a New York City police officer in 1959. He worked as a patrol officer and then an identification officer before being assigned to work plainclothes. While working as a plainclothes police officer, Serpico became aware of widespread corruption in the New York Police Department, which included graft, bribery,

extortion, and malfeasance. Serpico attempted to report the corruption through the police chain of command, but he had no success and was harassed because of his efforts. Eventually, Serpico and a fellow police officer, Sergeant David Durk, went to the *New York Times*, which began to report on the problem. Because of the public disclosure, the mayor of New York, John Lindsay, formed the Knapp Commission in 1970 to investigate the situation independently from the police department. He appointed John Knapp to head the commission.

Serpico's Harassment

It eventually became known in the New York Police Department that Serpico was the person who caused the investigation, and he began to experience serious harassment and abuse. On February 3, 1971, Serpico and three other police officers went on a drug investigation. During the course of the investigation, Serpico entered the apartment of the drug dealer, but his fellow officers did not come to his aid. Serpico was shot. His fellow officers failed to place an "officer shot" call for help, and a neighbor called for emergency services. In October 1971, the Knapp Commission began to hold public hearings on the problem of corruption in the New York Police Department. Serpico testified at the hearings and earned lasting fame for his bravery and for his comment that police corruption will never stop until the good police officers no longer fear the evil police officers and will be able to report corruption without fear of reprisal or retaliation.

Knapp Commission's Findings

The Knapp Commission made numerous findings, including the fact that vice officers systematically took bribes to not enforce gambling or narcotic drug laws and overlook gambling activities and narcotic drug trafficking. Further, the commission found that the police regularly overlooked prostitution and failed to enforce laws prohibiting it. Drug dealers and pimps, if they paid for protection, were simply left alone. The commission also found that the police were paid to "protect" grocery stores, construction sites, and bars; and that the police regularly extorted from motorists, tow truck operators, and unlicensed bars. These enforced payments were called "shakedowns."

The commission also found that police supervisors were given shares of the illegally obtained payments. The payments to police officers were usually referred to as the "pad." Further, the commission found that internal corruption was rampant, as police officers could pay for lucrative assignments within the department or for being given medical retirements. Police supervisors were also given a share of any profits from arrests that yielded a large amount of seized money. Further, and most disheartening, the Knapp Commission found that perjury on the New York Police Department was widespread and that fixing cases in court was a frequent practice if the suspect had the proper connections or could pay the expected bribe. The Knapp Commission found that there was no direct evidence linking higher levels of the police command structure in the corruption, but the commission indicated there was circumstantial evidence that commanding officers were involved in the corruption and knew about the problem.

The most famous finding by the Knapp Commission was its distinction between the types of corrupt police officer. Corrupt police officers were labeled either "meat eaters" or "grass eaters." Meat eaters were those who actively pursued opportunities for extortion and graft. They would take active steps to obtain money from people. Grass eaters, on the other hand, were those who simply accepted whatever money came their way. Grass eaters would not directly confront people and demand money, but they would accept the money that was offered from people or other officers to turn the other way or to forget something happened. Although meat eaters were considered more corrupt, the Knapp Commission did not absolve grass eaters from responsibility for their actions.

Methods to Reduce Corruption

The Knapp Commission issued its preliminary report on August 15, 1972, and its final report on December 27, 1972. Its recommendations included reducing the opportunities for police corruption (i.e., changing vice laws), reducing the temptation and increasing the risks of police corruption (i.e., prosecuting those who gave bribes and investigating police corruption), increasing the responsibility of supervisors for enforcement against corruption (i.e., reporting certain activities and enforcing disciplinary actions against

corrupt police officers), changing the procedures that encourage corruption (i.e., changing arrest quotas, use of informants, and gratuities), changing management procedures (i.e., using reports of activity and name tags), reducing susceptibility to corruption (i.e., running background investigations and giving lateral promotions), and enlisting public support in the fight against corruption.

The Knapp Commission Report shocked the public. Many law-abiding citizens had no idea that corruption in the New York Police Department was so widespread. The public was incensed, and there were numerous calls for reform. The New York Police Department instituted a number of reforms. Many New York police officers were indicted, arrested, and convicted for their corrupt activities. It is questionable whether the reforms were sufficient or adequately executed. Just 20 years later, another commission was formed in New York City to investigate police corruption: the Mollen Commission. Ironically, in the Knapp Commission Report, the commissioners asked whether history would repeat itself and if the situation would arise again in 20 years.

Wm. C. Plouffe, Jr.
Independent Scholar

See Also: Code of Silence; Mollen Commission; New York City; Police, History of.

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Korematsu v. United States

The 1930s and the 1940s saw one of the most destructive wars in human history. World War II involved most of the nations of the world and the loss of millions of lives. During World War

II, Germany and Japan engaged in numerous acts that constituted war crimes, for which a number of German and Japanese leaders were tried and imprisoned or executed. Some of these war crimes by Germany and Japan involved the imprisonment of both civilians and prisoners of war in concentration camps. In these concentration camps, inmates were subjected to slave labor, starvation, torture, medical experiments, and genocide.

The war with Japan started after the Japanese sneak attack on Pearl Harbor on December 7, 1941. Initially, there was little anti-Japanese animus after the attack. Some newspapers published statements that thousands of Japanese were, in fact, good hardworking Americans. However, approximately six weeks after the attack, the public attitude changed. A number of civilian and military authorities became fearful of the large numbers of Japanese residing on the west coast of the United States. As a result, on February 19, 1942, President Franklin D. Roosevelt signed Executive Order 9066, which authorized the secretary of war to designate military zones within which a curfew could be declared and from which any or all people may be excluded. By the end of 1942, without any criminal charges being brought or military hearings being held, more than 110,000 Japanese Americans had been forcibly placed into internment camps away from the West Coast.

A few of the Japanese Americans who were subject to the exclusion order tried to fight it. One was Gordon Hirabayashi. Hirabayashi became a conscientious objector and refused to comply with the curfew and when the time came for his transportation to an internment camp, he refused to go and turned himself in to the Federal Bureau of Investigation (FBI). He was convicted of violating the curfew and the exclusion order and sentenced to jail. He then appealed to the U.S. Supreme Court. The Supreme Court, in 1943, affirmed Hirabayashi's conviction for breaking curfew but avoided ruling on the evacuation order, justifying it on the assumptions that Japanese Americans had not become an integral part of the white population and were attached to Japan and its institutions. It was not until many years later that it was discovered that the U.S. government had suppressed an official Office of Naval Intelligence report that found that the vast majority of Japanese Americans were not a threat.



Evacuees of Japanese ancestry line up for lunch at the Santa Anita Assembly center in Arcadia, California, where more than 2,000 meals were served per hour. The Santa Anita Racetrack was requisitioned and the former racetrack grounds and horse stalls were converted to temporary barrack apartments for interned Japanese Americans. Evacuees lived at this center before being transferred to distant inland internment camps. Of the thousands that were forcibly relocated, only a few tried to fight the orders.

Another Japanese American, Fred Korematsu, also opposed his placement in an internment camp. Korematsu did not directly refuse to go but took other steps to avoid placement in the internment camps. He changed his name and underwent plastic surgery. He was eventually caught in 1942. He was convicted and also appealed to the U.S. Supreme Court. At the Supreme Court, Korematsu pressed the issue of the constitutionality of the evacuations, which had been ignored in the *Hirabayashi* case, and argued that by the time of Korematsu's arrest, any danger of invasion of the west coast by Japan was gone. The court rejected his arguments, relying on its previous decision in the *Hirabayashi* case, finding that Korematsu's exclusion was due to military necessity as a result

of war with the Japanese empire and not because of his race.

The *Korematsu* decision has been subsequently and widely criticized as one of the worst decisions in the history of the U.S. Supreme Court. The internment camps have been compared to the concentration camps employed by Nazi Germany during World War II. Even though the medical experiments, torture, and genocide present in the German concentration camps did not exist in the Japanese American internment camps, the conditions were, nonetheless, harsh, with inadequate food, inadequate medical care, and inadequate facilities for housing and hygiene. Moreover, numerous Japanese Americans who had been forcibly placed into

these internment camps lost not only their freedom but also much of their property.

It was not until the 1980s that some justice for Fred Korematsu and the other Japanese Americans who had been forcibly placed into the internment camps was done. Korematsu filed a petition with the U.S. District Court asking for relief. The federal court found that the U.S. government had deliberately omitted relevant information and provided misleading information to the Supreme Court in Korematsu's original case. In 1988, Congress enacted a bill that provided \$20,000 for each victim of the Japanese American internment camps. Unfortunately, 60,000 of them had already died. In the history of American criminal justice, *Korematsu* stands for the practical principle that the Constitution and the Bill of Rights can and will be ignored by the courts when the government claims exigent circumstances, such as war, even when there is no reasonable threat.

Wm. C. Plouffe, Jr.
Independent Scholar

See Also: Internment; Japanese Americans; Race, Class, and Criminal Law; Racism; Supreme Court, U.S.; Xenophobia.

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Ku Klux Klan

The Ku Klux Klan (KKK, or Klan) is an organization that has at times been highly influential in U.S. politics. The group's name is derived from *kyklos* (Greek: circle), and it was originally founded in the aftermath of the American Civil War; since then, the KKK has had three discrete periods of existence. The influence that the Klan held changed over time. In the aftermath of the Civil War, the Klan operated as a secret society of vigilantes. From 1865 until the passage of the

Force Acts, the Klan was involved in a number of violent episodes generally aimed at political opponents of the southern Democratic Party. The most powerful and centralized incarnation was the second, which existed from 1915 until the early 1940s. This Klan was heavily involved in white supremacist rhetoric and eventually evolved to rail against Catholics, Communists, and Jews as well as their traditional targets of violence. The contemporary incarnation of the Klan is only loosely connected and coincided with the civil rights movement beginning in the 1950s.

First Incarnation

Pulaski, Tennessee, was the seat of the first Ku Klux Klan organization. A small group of disgruntled Confederate veterans gathered in 1866 and discussed the creation of a secret group. A number of smaller towns in the south had drastically decreased in both population and economy. Pulaski was one such town. Prior to the outbreak of war, the town had some 3,000 inhabitants. After the war, those who returned found that most of the economic opportunities in either agriculture or business had dried up, and that there was very little work to be done. Frustrated and bored, this group of veterans decided to create the organization as a way to amuse themselves with costumes and night rides on horseback. Old pictures show the first KKK in a variety of uniforms. The white with conical cap and the burning cross is more associated with the second KKK. The night rides were the time for violent attacks, generally against African American residents. Klansmen stated that they were only vigilantes acting in the public interest, although this claim does not hold up to scrutiny. The order's insistence on mythical office names was present from its inception: the Grand Cyclops was the president, the Grand Magi the vice president, on down to Lictors, who were simply doormen at the meeting place.

A desire for entertainment gave way to political coercion. The group increased in size and eventually had members throughout the United States, and a national framework was created in 1867. Nathan Bedford Forrest served as the first Grand Wizard (national president) of the Klan, although he was not affiliated with the group before 1867. Forest officially "dissolved" the group in 1869, but it continued in a loosely organized system.

Although there was a national headquarters, headed by the Grand Wizard, there was little in the way of actual cooperation with local chapters continuing to operate independently. Around this time, the “prescript” was created by George Gordon, a former Confederate brigadier general. This functioned as a belief structure for the organization and reinforced white supremacy. During this period, there were two focuses to Klan violence: Republican politicians, whom the Klan perceived as northerners attempting to remake the south, and African Americans, who, the Klan wanted to terrify into political and social exile. In reaction to repeated coercion and political violence, William Holden, governor of North Carolina, called the state militia to break up a rally in 1870; shortly thereafter, the Force Act (1870) and Ku Klux Klan Act (1871) allowed Klansmen accused of vigilante violence to be tried in federal

court. The Klan faded from the spotlight in the early 1870s, replaced by a variety of other vigilante groups.

Second Incarnation

The second Klan began life in 1915. A number of factors, including the release of D. W. Griffith’s *The Birth of a Nation* and the sensational trial of Leo Frank, a Jewish American factory owner who allegedly raped a young girl in his employ, led to the foundation of the second Klan. William J. Simmons, who lived in Atlanta at the time, brought together a handful of interested individuals, including a few members of the Reconstruction-era Klan, and proclaimed the Klan’s resurrection on top of Stone Mountain on Thanksgiving night, 1915. This Klan was far more organized than its predecessor—the foundation was that of a formal fraternal order. Kleagles (organizers or recruiters) would



Thousands of Ku Klux Klan members, including women (at right) marching within sight of the U.S. Capitol building in Washington, D.C., on August 8, 1925. Klan membership peaked at over 4 million in 1924 but declined rapidly only two years later. Current membership across all chapters is estimated to be between 5,000 and 8,000.

appear in a town, give speeches, and induct new members, who paid membership dues and bought their costumes. The Kleagle kept half of the money and sent the rest on to national headquarters.

While the original Klan resisted Republicans, the second incarnation opposed Jews, Catholics, immigrants, and Communists, and most infamously, African Americans, who they thought represented a danger to their perception of “proper” values and morality. The Klan chiefly spread in urban centers, especially those in places where large numbers of African Americans or immigrants had moved in recent years. The Klan thrived in locales as disparate as Indiana, Michigan, and Texas, although its national headquarters was established in Dallas, where the Women of the Ku Klux Klan existed as a temperance movement for some time. The membership of the Klan at its greatest extent in 1924 has been estimated at more than 4 million individuals.

The coercion tactics used by the second Klan were more public and flashy than those of the first Klan. The infamous burning cross was first used at this time, along with a continuance of night terror activities, lynching, and intimidation at polling places. The second Klan’s greatest accomplishment was the election of Edward Jackson, a prominent member of the Indiana branch of the Klan, to the governor’s chair. Shortly after this, Grand Dragon (state leader) of Indiana D. C. Stephenson was convicted on a rape-murder charge, and the Indiana Klan quickly lost members and power. After 1926, the influence of the second Klan plummeted. Although active into the 1940s, membership was minuscule in comparison to its 1924 heyday. In 1944, after a series of financial problems, a lien against the Klan for \$685,000 was filed by the IRS, and the group dissolved at the national level.

Third Incarnation

From 1944 forward, “Ku Klux Klan” was a name taken by a number of local groups who fought against the civil rights movement. These groups were responsible for a number of deaths, many by bombing or burning, of civil rights activists, including Willie Edwards, Jr., Medgar Evers, and National Association for the Advancement of Colored People (NAACP) leader Vernon Dahmer. These acts of violence continued throughout the 1970s and into the 1980s, but the political focus of

the various Klan groups tended to be on the busing of schoolchildren, the integration of schools and workplaces, and perceived injustices. Large-scale attention to the group is restricted to particular individuals such as former Grand Wizard David Duke, who regularly posts propaganda videos and solicits support on the Internet. Current membership across all chapters is estimated at between 5,000 and 8,000.

Robert W. Watkins
Florida State University

See Also: 1851 to 1900 Primary Documents; African Americans; *Brandenburg v. Ohio*; Civil Rights Act of 1866; Civil Rights Laws; Enforcement Acts of 1870–71; Lynchings; National Association for the Advancement of Colored People; Race-Based Crimes; Racism; Xenophobia.

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Kunstler, William

William Kunstler (1919–95) was a polarizing figure in American legal circles. Kunstler symbolized the archetypal “radical lawyer,” representing clients charged with criminal offenses or fighting for the civil rights of those whom many of his colleagues declined to serve. Although he was popular with those who possessed liberal viewpoints, many conservatives vilified Kunstler throughout his career. Kunstler’s clients included the famous and infamous, including individuals such as Dennis Banks, Lenny Bruce, Stokely Carmichael, Angela Davis, Martin Luther King, Jr., Russell Means, Adam Clayton Powell, Jr., Jack Ruby, and Assata Shakur. Kunstler also

represented the Chicago Seven and was a guiding force in both the American Civil Liberties Union (ACLU) and the National Lawyers Guild. A prolific author, Kunstler helped to shape public perceptions of criminal defense attorneys, to mold the techniques of many practitioners, and to influence the expectations of many criminal defendants.

Kunstler was born on July 7, 1919, in New York City. He graduated from DeWitt Clinton High School and then attended Yale College, graduating Phi Beta Kappa. Serving as a member of the U.S. Army during World War II, he attained the rank of major while deployed in the Pacific. Following his graduation from the Columbia University Law School, Kunstler was admitted to the New York state bar in 1948. Initially practicing business and family law during the 1950s, Kunstler became increasingly interested in criminal and civil rights law, in part because of his involvement with a series of radio programs broadcast on WNEW. In 1957, Kunstler began representing William Worthy, a reporter for the *Baltimore Afro-American*, who was one of 42 American citizens whose passports were seized by the U.S. Department of State after violating a travel ban involving China. Although the State Department offered to settle the case if Worthy would agree to make no further visits to communist nations, Kunstler attracted widespread media attention by refusing.

Freedom Riders

Kunstler, a member of the ACLU, soon became involved in many legal battles involving efforts to desegregate the American south. Kunstler represented members of the Freedom Riders, activists who traveled to the south to challenge segregated restaurants, lunch counters, bus terminals, and other historically separate facilities maintained for African American citizens engaged in interstate travel. Although the U.S. Supreme Court had ruled in *Boynton v. Virginia*, 364 U. S. 454 (1960), that such segregated facilities were a violation of the Interstate Commerce Act and therefore illegal, many Freedom Riders were arrested for challenging what local law enforcement authorities saw as important local laws. Kunstler worked to free those charged with violating segregation laws, building a reputation as a tireless advocate for controversial clients. Kunstler worked to remove

many pending cases from local and state courts to U.S. District Courts, where he perceived his clients would have a better chance at a fair trial. Kunstler was the first attorney to use the removal process delineated under Title IX of the Civil Rights Act of 1964, allowing protesters at the 1964 World's Fair in New York City to be tried in federal, rather than state, court.

Defense of Criminals

Entering into a partnership with Arthur Kinoy in 1964, Kunstler began taking on more criminal defense work. His high-profile clients included filing a successful appeal that resulted in a new trial for Jack Ruby, the killer of Lee Harvey Oswald; and he defended Thomas Ruppert, a 17-year-old arsonist who burned down a New York Jewish community center, killing nine children and three adults. While his representation of such notorious clients gained Kunstler a great deal of enmity, it also made him increasingly famous. As a result, Kunstler was engaged to defend the Chicago Seven.

The Chicago Seven were charged with conspiring to incite a riot during the 1968 National Democratic Convention in Chicago. During the trial,



William Kunstler with defendant Gregory Lee Johnson, then part of the Revolutionary Communist Youth Brigade. Kunstler lectured about *Texas v. Johnson* in 1989, which fought the right under the First Amendment to burn an American flag.

Kunstler engaged in aggressive cross-examination of witnesses, causing a key police witness to contradict earlier testimony. Kunstler also battled with U.S. District Judge Julius Hoffman, and he was ultimately cited for contempt—this was overturned by the U.S. Court of Appeal for the Seventh Circuit. Kunstler's tactics ultimately proved effective, as two of the defendants were acquitted of all charges, and the remaining five were convicted of crossing state lines with the intent of inciting a riot. These convictions, and concurrent contempt citations, were reversed after Kunstler convinced the Seventh Circuit Court of Appeals that Judge Hoffman had erred in refusing to allow defense attorneys to screen potential jurors for cultural and racial biases. Although a new trial had been ordered, the Department of Justice decided not to retry the case.

Wounded Knee

Kunstler next represented Russell Means and Dennis Banks, leaders of the American Indian Movement (AIM) who were involved in the Wounded Knee incident in South Dakota. Members of AIM had held the town of Wounded Knee, South Dakota, for 71 days while engaged in a standoff with special agents of the Federal Bureau of Investigation (FBI) and U.S. marshals. Kunstler was successful in having the trial moved to Minnesota, alleging prejudice were the trial held in South Dakota, and many defendants were acquitted. Kunstler later represented AIM members involved in the slaying of two FBI special agents.

During the 1970s, Kunstler also was involved in defending a prisoner charged with killing a guard during the Attica prison riots. Although Kunstler's client, John Hill, was convicted of murder, he was granted executive clemency by New York Governor Hugh Carey in 1976. Beginning in 1983, Kunstler entered into a partnership with Ronald Kuby and continued to represent high-profile clients, such as Omar Abel-Rahman, charged with masterminding the 1993 World Trade Center bombing in New York City; members of the Gambino crime family; and Qubilah Shabazz, Malcolm X's daughter, alleged to have plotted the death of Nation of Islam leader Louis Farrakhan. Kunstler died of heart failure on September 4, 1995.

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See Also: American Civil Liberties Union; Chicago Seven/Democratic National Convention of 1968; Famous Trials; Indian Civil Rights Act; Lawyers Guild; National Association for the Advancement of Colored People; Oswald, Lee Harvey.

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The Social History of
Crime and Punishment
in America

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Crime and Punishment
in America
AN ENCYCLOPEDIA

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La Guardia, Fiorello

Fiorello Henry La Guardia (1882–1947) was the 99th mayor of New York City (1934–45). He reorganized the police force and restored trust in a municipal government that had been perceived as patronage laden and corrupt during the mayoralty of James J. Walker (1926–32).

La Guardia was born Fiorello Enrico La Guardia in New York's Greenwich Village. His father was Achille La Guardia, a lapsed Roman Catholic who was a bandmaster in the United States Army, and his mother, Irene Coen Luzzato, was Jewish. La Guardia was raised an Episcopalian. His middle name "Enrico" was changed to "Henry" (the English form of Enrico) when he was a child. He grew up in Prescott, Arizona, attending public school and high school there, where his father was posted. When his father became ill during the Spanish–American War, he was discharged from the army, and the family moved to Europe. They lived in Trieste, Austria, his mother's hometown.

La Guardia joined the U.S. State Department's Consulate Service at the age of 17 and served in American consulates in Budapest and Trieste between 1901 and 1904. From 1904 to 1906, he was the American consular agent in Fiume, Hungary. He returned to the United States to study law at New York University, graduating in 1910.

While in law school he was an interpreter for the U.S. Bureau of Immigration at Ellis Island.

Political Career

In 1915, La Guardia entered public service as a deputy attorney general in the New York State attorney general's office. An unsuccessful Republican congressional candidate in 1914, he was elected to the U.S. House of Representatives two years later. Shortly after taking office, La Guardia joined the U.S. Army Air Service in August 1917 as a lieutenant. He commanded a bomber unit on the Italian–Austrian front during World War I in a plane named the *Congressional Limited*. He left the service as a major at the end of the war.

In 1919 Congressman La Guardia was elected president of the New York City Board of Aldermen (the local legislative body), defeating the Democratic incumbent, Robert L. Moran, by 1,300 votes. Defeated for re-election in 1921, La Guardia was elected again to the House of Representatives in 1922, where he served until March 3, 1933. His major legislative achievement was the Norris-La Guardia Act, which he cosponsored with Senator George W. Norris. The 1932 law stripped federal courts of their jurisdiction over the enforcement of "yellow-dog contracts," which prohibited employees from joining labor unions. The act permitted employees to form unions without employer interference and denied

the courts jurisdiction to issue injunctions in non-violent labor disputes. In 1929 La Guardia challenged Mayor Jimmy Walker, losing by more than 500,000 votes. La Guardia charged the Walker administration with corruption but was overwhelmed by the Democratic Party's "Tammany Hall" machine. In 1932 La Guardia lost his congressional seat in the Roosevelt landslide.

Mayor of New York

Walker resigned in 1932 after an investigation conducted by Samuel Seabury found that many of La Guardia's charges against the mayor and his administration were true. La Guardia ran again, this time as a Republican-fusion candidate, making corruption his main issue. La Guardia was elected in a three-way race. Taking office January 1, 1934, La Guardia made ending corruption in government and racketeering in business a top priority. La Guardia's first action as mayor was to

order the police to arrest mobster Charlie "Lucky" Luciano. In a radio address, La Guardia declared war on gangsters, saying, "Let's drive the bums out of town." La Guardia attacked Frank Costello's slot machine empire and had thousands of the machines confiscated by the police. In a media event, the mayor took a sledgehammer to some of the "one-armed bandits" and had them dumped off a barge into the East River. Relying on a provision of the New York City charter that designated the mayor as a "magistrate," La Guardia occasionally heard criminal cases in the magistrate's court, which had jurisdiction over petty crimes. La Guardia also succeeded in shutting down the burlesque theaters, whose risqué shows offended him.

La Guardia's war against Luciano eventually succeeded as Thomas E. Dewey, the special investigator for organized crime, was able to convict the first boss of the Genovese crime family of heading a prostitution ring. Luciano was



At a special session of the executive committee of the U.S. Conference of Mayors in Washington, D.C., on July 14, 1939, Mayor Fiorello La Guardia, the conference's president, sits at a table flanked by the mayors of Cleveland, Ohio, and Milwaukee, Wisconsin, while the mayors of other major cities stand behind him. They were discussing a strike by Works Projects Administration employees.

sentenced to a 30-to-50-year term (he would be paroled in 1946, with the stipulation that he leave the United States for Sicily).

However, despite the mayor's bluster against organized crime, biographer Thomas Kessner observed in 1989 that

incantations against punks and tinhorns won headlines, and La Guardia's support for abusing known criminals encouraged the police, but the fireworks did not significantly impede the growth of underworld racketeering.

La Guardia was re-elected in 1937 and 1941. In 1945, he decided not to seek a fourth term. La Guardia served as president of the U.S. Conference of Mayors (1936–45), U.S. director of the Office of Civilian Defense (1941–42), chairman of the U.S. section of the Permanent Joint Board on Defense (1940–46), special U.S. ambassador to Brazil (1946), and director general of the United Nations Relief and Rehabilitation Administration (1946). La Guardia died of pancreatic cancer at his home in the Riverdale neighborhood of the Bronx on September 20, 1947.

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See Also: *Adair v. United States*; Corruption, History of; Dewey, Thomas E.; Gambling; Luciano, "Lucky"; New York; New York City; Organized Crime, History of.

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Landrum-Griffin Act of 1959

The Landrum-Griffin Act of 1959, officially called the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), became law on September 14, 1959. The purpose of the law is to protect the rights of workers, regulate union finances and activities, and offer some protections for employers.

The corruption in trade unions in the United States was common knowledge from the early 1900s. Congressional investigations by the McClellan Committee, chaired by Arkansas Senator John L. McClellan during the 1950s, examined the practices of labor unions in the United States, particularly those that fell under the umbrella of the American Federation of Labor and the Congress of Industrial Organizations (AFL-CIO). The committee primarily focused on the president-elect of the Teamsters Union, James R. Hoffa, and practices used by the Teamsters. Investigators uncovered both embezzlement of union treasury funds and the violation of the legal rights of some union members. In response, the AFL-CIO dropped the Teamsters and other investigated groups from its ranks in an effort to improve its reputation.

Origin and Passage

Congressional sponsors of the Landrum-Griffin Act included Congressmen Philip M. Landrum (D-GA) and Robert P. Griffin (R-MI), who took the recommendations of the McClellan Committee, as did Senators John F. Kennedy (D-MA) and Barry Goldwater (R-AZ). Various bills were introduced during the 1959 session to address the union issues, including Landrum-Griffin, Kennedy-Ervin, and the Goldwater bills. Each bill had similar provisions but not everyone supported one version.

The Kennedy-Ervin bill and the Goldwater bill contained the regulation of unions and the requirement to disclose financial information to prevent trustees from embezzling monies from union funds. The AFL-CIO supported Kennedy's bill; however, other groups did not like the pro-union stance of the proposed law. Goldwater's bill reflected the interests of the Eisenhower administration. The Kennedy bill was amended to include the bill of rights proposed by McClellan, which led to its passage in the Senate. The Landrum-Griffin bill was introduced after the Kennedy bill vote, and it had the support of the administration and the management groups who questioned the pro-union Kennedy proposal. The Landrum-Griffin Act contained stronger wording than the Kennedy version on picketing, secondary boycotts, and "hot cargo" clauses, which allowed union workers the right to refuse handling goods from companies under a strike. The final conference version of the bill sought to end corruption in unions and placed them under federal regulation, and amended the Taft-Hartley Act of 1947 to strengthen the wording about secondary boycotts.

In its final version, the law set out to protect the rights and interests of union members. The law included a bill of rights for individuals who belonged to unions. Financial issues were resolved by requiring unions to account for all monies in disclosure statements. The procedure for union election of officers was established in the law as well to prevent the shady election practices of union leaders. The final law included civil and criminal penalties for union leaders who violated the finance laws set out in this act. The rights provided for union members did not extend to all union members; public-sector employees, who worked for the government, did not come under this law.

The act also contained amendments to existing labor legislation. The National Labor Relations Act was amended to protect the rights of employers. Labor unions could no longer use secondary boycotts and also lost the right to picket employers to gain representation rights.

The Landrum-Griffin Act passed Congress and became law on October 14, 1959, when signed by President Dwight Eisenhower. The unions, 54 in all, had to revise their constitutions to comply

with the law. Over time, the Department of Labor and its Office of Labor Management, which oversaw the implementation and regulations of the law, saw an increase in the number of complaints against unions. The valid complaints often led to indictments on charges of embezzlement and other illegal acts. The federal government finally reined in the Teamsters in the late 1980s. Union membership and power has been in a state of steady decline since the Federal Aviation Administration strike in 1981, when Ronald Reagan fired the striking workers. Private-sector companies began the same practice of firing union members versus negotiating with the unions. Increasingly global markets and trade agreements have led companies to relocate to other countries rather than pay the higher wages demanded by unions..

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See Also: Corruption, History of; Eisenhower, Dwight D. (Administration of); Organized Crime, History of.

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Larceny

Also referred to as "larceny-theft," larceny deals with the carrying away of a person's property without his/her consent for the purposes of permanently depriving the owner of that property or the benefits of its ownership. Larceny has historically carried connotations of nonviolence. In many jurisdictions, larceny differs from embezzlement in that it must occur without the owner's consent in an illegal manner. In embezzlement

cases, the owner of a company or firm and the criminal may be one and the same. Larceny is distinct from burglary in that it generally does not involve unlawful breaking and entering, and it is considered separate from robbery, which often denotes that property has been stolen by violence. During the 20th century, most states rejected pure larceny statutes in favor of including larceny under general theft statutes because it was considered much easier to win convictions using more specific theft laws. Massachusetts alone retained its separate larceny laws and continues to charge criminals under a number of separate larceny laws that include larceny with intent to defraud, larceny by false pretense, and larceny by embezzlement.

Each state determines for itself whether a particular crime is grand or petty larceny, depending on the value attached to the property. The value assigned to the misdemeanor charge of petty larceny is generally somewhere between \$200 and \$1,000. Other factors may also be taken into account. Virginia, for instance, differentiates between items stolen from a person who is not present and those taken directly from an individual. A perpetrator may be charged with grand larceny for stealing money or any item of value totaling \$5 or more if it is taken directly from a person or when a firearm is stolen, regardless of whether it is taken directly from a person. Grand larceny is a felony rather than a misdemeanor. Grand larceny generally carries a state prison term, while petty larceny convictions may result in a brief stay in a local or county jail.

Some states use the term *felonious larceny*. In North Carolina, for instance, it is felonious larceny to steal items whose value is \$1,000 or more or to knowingly receive such items. It is also felonious larceny to steal firearms, explosives, and incendiary devices, regardless of the value involved in the theft. Michigan also has a felonious larceny statute; and individuals who steal items from residences, offices, stores, gas stations, shops, warehouses, mills, factories, hotels, schools, barns, granaries, ships, places of worship, locker rooms, or any public building may be charged with "larceny in a building." New York's larceny statutes encompass trickery, embezzlement, false pretenses, and acquiring stolen property in addition to the traditional definition of lar-

ceny. Felony larceny in New York involves items valued at more than \$1,000, but there are varying degrees of felony larceny according to values involved and the circumstances of the theft.

Criminals engage in larceny for a number of reasons varying from a perceived need for the item(s) involved or the cash value received from the stolen property to peer pressure or to money to buy alcohol or drugs or to maintain a lavish lifestyle. The typical larcenist plans out a crime beforehand to the point that he/she knows exactly when a homeowner is likely to be away from home or what kind of protection is in place in public buildings. At the domestic level, perpetrators of larceny are more likely to strike when no one is at home, but those who rob public places such as museums have become so brazen that they often commit their crimes in broad daylight when a building is full of visitors. Professional larcenists often have "inside help" when committing their crimes. That help may sometimes be inadvertent, as when a would-be perpetrator strikes up a friendly conversation with a maid, gardener, or chauffeur in order to gather valuable information about a potential target's home and schedules. Homes with alarm systems that ring directly at the local police station are considered somewhat safer than those that notify security companies because security companies are required to follow an established protocol, giving a criminal additional time to complete a theft. Both dogs and dead bolts have also proved effective in deterring would-be thieves.

Larceny at the Federal Level

While the FBI is not usually concerned with misdemeanors, the Uniform Crime Reports specify that larceny theft is defined as "the unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another." The term *larceny* does not encompass all thefts. For instance, motor vehicle theft is not generally identified as larceny because of the value involved in the crime and the tendency for such crimes to include violence. Neither does larceny encompass thefts that occur in conjunction with robberies or burglaries, embezzlement, confidence games, forgery, or check fraud. However, larceny may occur in conjunction with these crimes. When considering occupational crime,

larceny encompasses obtaining ownership of another's property through trickery or fraud.

According to the FBI, criminal actions classified as larceny include the following: pickpocketing, purse snatching, shoplifting, bicycle theft, theft of items from motor vehicles, theft of automobile parts and accessories, theft of items from buildings that are open to the public, and theft from coin-operated devices or machines. According to the Uniform Crime Reports, throughout the United States, some 6,327,230 larcenies occurred in 2004. That figure was a decline of 4 percent from the previous year. Overall, larceny thefts comprised 67.9 percent of all property crimes in 2009, and most of these crimes involved items stolen from motor vehicles, including parts and accessories. More than 27 percent of larceny cases involved items stolen from vehicles with the exclusion of accessories. Shoplifting accounted for another 18.1 percent, and items taken from public buildings amounted to 11.1 percent. Crimes classified under the "other" label comprised 29.8 percent of total larceny crimes committed in 2009. The average loss suffered was reported at \$864, totaling approximately \$5.5 billion in overall value. When larceny is considered in combination with other property crimes such as burglary and motor vehicle theft, property crimes account for 90 percent of crimes reported in the United States.

Historical Aspects

From a historical perspective, the most frequent crime committed in the United States has been larceny by stealth. American common law, which evolved from English common law, is used by the federal legal system and by all states except Louisiana, which uses the Civil Code. The concept of larceny was developed not by the British parliament but by the British courts in the 17th century to describe theft of property by nonviolent means. The courts subsequently identified the offenses of larceny by trickery to describe stealing property through fraud or deceit and larceny by false pretenses to connote occasions when a title to property was transferred from one owner to another based on false information. Grand larceny in England carried a sentence of death, and those convicted of the lesser offense of petit larceny were forced to surrender their property to the Crown. Under common law, the implementation

of larceny laws has sometimes been characterized by what some scholars have labeled "fuzziness," which had led to difficulties in convicting those charged with larceny.

Dating back to ancient Greece and Rome, implementation was sometimes used for political purposes. Following the Civil War, Congress passed the First Reconstruction Act of 1867, requiring southern states reentering the Union to revise their constitutions to prevent criminal convictions from interfering with the right to vote. As power gradually returned to the hands of the same men who had led the southern states in the glory days of the south, southern states began reenacting laws such as those making even petty larceny convictions grounds for keeping former slaves from exercising the right to vote. This practice had two goals: keeping African Americans out of the political system and blocking the rise of the Republican Party in the "solid south."

Early in the 20th century, the code of New York State specified that larceny involved the intention to deprive or defraud an owner of his/her property or benefits from said property for the benefit of the larcenist. The code was challenged in 1906 in the case of an executive who had allegedly taken money out of a company account. He claimed the money was legitimately taken in order to reimburse him for an authorized contribution to the Republican National Committee. His acquittal clarified the interpretation of larceny, stipulating that intention was a major element in determining whether larceny had been committed. The courts held that the executive had not demonstrated a desire to remove company funds for his own use. In 1916, the United Kingdom tried to clarify its own larceny laws with a new Larceny Act. By 1968, however, larceny was eradicated from the English legal system through the enactment of the Theft Act. Larceny statutes were also abolished in Wales and Ireland.

Throughout American history, incidences of larceny have been tied to the social fabric of the period. In the last half of the 19th century, rapid industrialization produced a culture of street children who were some of the most accomplished larcenists of the period. Nowhere was this more evident than in New York City, where large numbers of children known as "rats," "gamins," "Arabs," "urchins," and "gutter-snipes" peopled



Boys stealing coal from a railroad coal yard in Boston, Massachusetts, in January 1917. In the late 19th century, street children may have numbered as many as 10,000–50,000 in New York City alone. After laws were strengthened in 1875, many more of those children involved in pickpocketing and other types of larceny were convicted—as many as 1,500–2,000 a year.

the underworld of pickpocketing. Most of them stole money rather than other items of value. Estimates of their number varied between 10,000 and 50,000. New York's street children were predominantly male (95 percent), between the ages of 14 and 17 (84 percent), and native born (82 percent). Only 15 percent of them lived entirely on the streets. In the absence of child labor laws, many of these children worked at jobs that presented them with a plethora of opportunities to ply their illegal trade. Some of them blacked boots, sold newspapers, or swept sidewalks. Others became expert at salvaging.

While some street children learned their skills at “professional” thief schools, most of them honed their skills by working with other street

children through informal apprenticeships. Originally, these young larcenists were rarely caught because they were so expert at their crime and because they could move extremely quickly. Even those who were caught were generally released for lack of evidence.

Certain areas were known to be the hangouts of the young pickpockets, particularly the Bowery, lower Broadway, and Park Row. They also hung out at post offices, hotels, elevated railroad stations, and ferries. By the 1840s, pickpocketing was rapidly becoming the venue of professional thieves. Between 1859 and 1876, the number of pickpocketing convictions among street children rose from 52 to 242. A toughening of the laws in 1875 significantly increased subsequent conviction

rates. Thereafter, from 1,500 to 2,000 youths were convicted of larceny each year.

The 1960s and Beyond

The drug culture that developed in the United States in the 1960s and continued into the 21st century has often been linked to crimes such as larceny. The same can be said of the gang culture that developed during that same period. Before 1961, there were only 64 cities that reported significant gang activity, and most of them were large cities such as New York, Los Angeles, Boston, and Chicago. By 1980, gang activity had spread to more than 170 American cities, and by 1992, gangs were creating major problems in 766 cities. In some areas, gang members specialized in larceny.

Some historians of criminal behavior believe that larceny was the crime that characterized much of 20th-century America because it occurred at such high levels throughout the century. Some 4.3 million cases of larceny were reported in the United States in the 1970s. By 2002, the rate had risen to 7.1 million. Predictably, attitudes toward larceny and other crimes also shifted during the 20th century. In 1968, for the first time in American history, a Gallup poll revealed that concern over the soaring crime rate was the top domestic issue among respondents. The following year, larceny rates increased 240 percent. As large numbers of larcenists moved to the suburbs, crime rates rose accordingly.

Despite this phenomenon, overall crimes rates have been declining in the United States since the early 1990s, when larceny theft was recorded at a rate of 3,185.1 per 100,000 inhabitants. By 2,000, the rate had dropped to 2,477.3 per 100,000/population; it declined even further to 2,060.9 per 100,000 in 2009. Geographic area may have a significant impact on larceny rates in a given area. In the 1990s, for instance, individuals living in New York City were 10 times more likely to be the victim of thieves than individuals living on Long Island and were six times more likely to be victimized than those living in Westchester County.

For most of the 20th century, personal and business cash and property were likely to appear in physical form and were generally located on the owner's premises or in a local bank or a safety

deposit box. By the early 21st century, fraud had replaced larceny as the most prevalent crime in the United States. This shift from the prominence of larceny to fraud was due in large part to a radical transformation in the ways in which property is owned as a result of the technology and communication explosions. Financial transactions are now more likely to involve credit and debit transactions than cash. Additionally, high-priced items such as automobiles, jewelry, or artwork may be leased or borrowed rather than being owned by the person physically possessing them. Large sums of money and ownership of property are now easily transferred from one owner to the other with a few clicks of a computer mouse over the Internet. Paychecks are digitally deposited, reducing the chances that individuals keep large sums of money on their persons or in their homes. As a result of technological changes, criminals find it much easier than in the past to convert cash to property and vice versa. Unlike the petty larcenist of the past, the present perpetrator of fraud is more likely to be involved with organized crime. Stolen goods are now quickly converted to collateral for drugs or even for illegal arms. Additionally, the returns from fraud are generally much higher than returns on items taken during the course of larceny.

In cities throughout the United States, so-called retail theft gangs are in operation. Professional criminals recruit members to engage in shoplifting. They then provide them with lists of desirable low-volume goods that bring in high value, sending them out to local retail stores to steal such items as razor blades, batteries, over-the-counter drugs, infant formula, and designer clothing. If the thief is caught, he/she is assumed to be acting alone and is likely to be treated leniently by storeowners and the courts.

Notorious Cases

The media can be counted on to keep high-profile or unusual cases of larceny in the public eye. This was true in a recent Texas larceny case that certainly qualified as "unusual." The cattle rustling that was common in the Old West was often prosecuted under larceny laws. A new twist on this practice surfaced in 2004 when it was revealed that Roddy Dean Pippin, a quiet, clean-cut 20-year-old, had been rustling cattle for the

previous 18 months. Like the rustlers of the Old West, Pippin, who has been dubbed the “last rustler,” covered his tracks with broken tree limbs. In all, Pippin stole 130 head of cattle, quickly loading them into his pick-up truck and immediately branding them with a modernized version of the old west branding iron.

While many modern corporate crimes are prosecuted under fraud laws, circumstances may dictate that certain criminals have violated larceny laws instead. In 2004, publishing conglomerate Hollinger, Inc., the owner of newspapers that include the *Chicago Sun-Times*, was faced with the theft of \$400 million over a six-year period by former CEO Conrad Black. The amount stolen roughly equaled the company’s entire assets amassed between 1997 and 2003. There was ample proof of Black’s crimes. He had spent \$1.4 million on chefs, maids, and butlers to work at his four homes. He also laid out \$39,000 for upkeep on automobiles that included a Rolls-Royce and spent \$39,000 in company funds on a birthday party for his wife.

In 2009, New York executives Mark Focht and Gary Katcher were charged with grand larceny in Greenwich, Connecticut, in connection with the misappropriation of some \$8.8 million from hedge funds controlled by Stagg Capital. While initial withdrawals had been made for the purpose of keeping a second company, afloat, Focht was charged with stealing \$840,000 for his personal use. He had attempted to cover his tracks through the purchase of securities that turned out to be bogus.

Some of the most brazen cases of larceny in the United States have dealt with the theft of art objects. This crime is ranked third in black market items stolen, outranked only by drugs and illicit arms. Some 15,000 new art objects are stolen each year, and only about 5 percent of them are ever recovered. Experts say the current upswing in such cases is partially a response to the looting of archaeological sites in Iraq. The items most often taken include paintings, icons, antiques, and rare books. While the most common targets are museums, larcenists also steal art objects from churches, libraries, and private homes. Some of the thieves are so inept that they end up damaging or even destroying art works because they do not have the knowledge to protect them properly

during transport. The most notorious of all art thefts in the United States took place in Boston’s Isabella Stewart Gardner Museum in 1990. Two thieves disguised as police officers were admitted by a night security guard, who was subsequently overpowered and tied up. The thieves then proceeded to steal Rembrandt’s only seascape, *The Storm on the Sea of Galilee*, a Jan Vermeer oil painting, five Edgar Degas drawings, and a bronze Chinese beaker dating to the 12th or 13th century. Despite the lure of a \$5 million reward, none of the items have been recovered.

Even the religious community has not been exempt from having its members identified as larcenists. In July 2010, Father Kevin Gray, the former pastor of Sacred Heart Parish in Waterbury, Connecticut, was arrested and charged with first-degree larceny. Over a seven-year period, the priest had stolen a total of \$1.3 million from his church. The money was used to hire male escorts, buy expensive clothing, stay at luxury hotels, and



Rembrandt’s only seascape, *The Storm on the Sea of Galilee*, which has been missing since it was stolen from Boston’s Isabella Stewart Gardner Museum in 1990, in one of the highest-value property thefts ever.

dine at high-priced restaurants. Gray was subsequently suspended from the ministry.

Larceny has also tainted the entertainment industry. In December 2001, actress Winona Ryder, best known for her roles in quirky films such as *Beetlejuice* (1988) and *Edward Scissorhands* (1990), was arrested at Saks Fifth Avenue in Los Angeles and charged with shoplifting 20 items worth \$4,760. Ryder could have faced a prison term of almost four years. In reality, she took a four-year hiatus from filmmaking and briefly entered rehab. In October 2009, talk show host David Letterman went public with admissions that he had engaged in sexual relations with several women on his staff after being threatened with blackmail. His blackmailer, Robert Halderman, a producer for *CBS News*, was charged with grand larceny for trying to extort \$2 million from Letterman in return for keeping his sexual shenanigans out of the public eye.

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See Also: 1921 to 1940 Primary Documents; 1941 to 1960 Primary Documents; Burglary, History of; Crime in America, Types; Embezzlement; Fraud; Robbery, History of.

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Las Vegas, Nevada

Located in Clark County, Nevada, Las Vegas has been, since the early 1950s, the leading American casino destination. Throughout a crucial part of its history, the city's casino industry was tied to those with connections to organized crime. Founded in 1905 in a land auction conducted by the Salt Lake, Los Angeles, and San Pedro Railroad, Las Vegas was, in its earliest years, a watering stop for that railroad's route. Gambling was, at the town's inception, legal in Nevada; it had been so since 1869. When the railroad laid out the physical plan for the new city, it designated one block, Block 16, for "vice," which translates to gambling, drinking, and prostitution—classic Western saloon diversions. Off the main thoroughfare of Fremont Street yet easily accessible to visitors arriving by train, Block 16 offered relatively low-stakes, unremarkable debauchery.

When, in 1910, commercial gambling became illegal in Nevada, the popular pastime did not disappear from Las Vegas. Instead, it lingered without the sanction of law. This was small-scale and largely "disorganized" crime, and, again, not that exceptional. With the relegalization of commercial gambling in 1931 came greater opportunities for tourism, which was also spurred by the construction of nearby Hoover Dam (1930–35). It was in part because of the increased tourist traffic spurred by the dam (even after its completion, it remained a sightseeing attraction) that the area attracted interest from hotel developers. Gambling in the downtown area, chiefly on Fremont Street, remained relatively small scale. Most of the



Binion's casino, which dates back to the early 1950s, on Fremont Street, where most Las Vegas casinos clustered before the development of larger resort casinos on the Las Vegas Strip. A series of scandals during the 1950s brought to light connections between organized crime and Las Vegas casinos. In 1955, the state legislature created the Gaming Control Board in order to try to maintain a good image for what had become the state's largest business.

“gambling halls” were bars and saloons outfitted with a few gaming tables and slot machines. They were firmly rooted in the small-town milieu of that main street, and attracted mostly curiosity seekers.

El Rancho Vegas

The 1941 opening of the El Rancho Vegas, three miles from downtown and outside the city limits, set the stage for the development of a new kind of gambling tourism. Its developer, Thomas Hull, had operated El Rancho chain motels in most of the major urban centers of California, including San Francisco, Fresno, Sacramento, and Los Angeles, before being lured to Las Vegas by the local chamber of commerce, which had long been seeking a “first-class” hotel to burnish the city’s tourist luster. Tellingly, however, Hull did not build his hotel on Fremont Street, or anywhere easily accessible to the tiny urban core that had developed

over the previous 35 years. He built it on the Los Angeles Highway, then the city’s chief auto link to southern California. Far from the train station, it was nonetheless superbly convenient for visitors driving up from Los Angeles. This was a rejection of the existing urban grid that, to an extent, foreshadowed the national postwar trend toward suburbanization and would have profound implications for the nature of casino resorts and their attractiveness to organized crime.

The El Rancho Vegas’ structure was as groundbreaking as its location, and at least partially dictated by it. It was a direct contrast to the downtown gambling halls, which generally did not offer more than limited entertainment options and scant accommodations; it would have been laughable to suggest to a tourist that she spend her entire Las Vegas stay in a single such establishment. The El Rancho Vegas, however, was

designed as an insular, all-in-one destination, with a hotel, restaurant, dinner theater, swimming pool, and retail shopping. The self-contained casino resort became the model for what became the Las Vegas Strip, stretching southward beyond city limits. The self-contained nature of these establishments was fueled by an appreciation of the laws of probability: The longer the casinos could keep visitors playing games with a small, but definite, bias in favor of the house, the more likely they were to perform well financially. Casinos with added attractions like hotels, dining, and entertainment were simply more likely to succeed than small, stand-alone gambling halls.

The need to build a hotel and to underwrite loss-leading restaurant and entertainment departments boosted the initial investment and continuing operating costs for casino resorts. In the immediate postwar period, with the success of the casino resort concept proven (the El Rancho Vegas was followed by the Hotel Last Frontier and the Flamingo), prospective casino owners began seeking to build. Many of them, however, ran into difficulties; banks would not lend money to projects as risky as gambling casinos, and many other lenders remained dubious. Those involved with illegal gambling operations, however, saw the possibilities, and many of them also had large amounts of undeclared income that they could invest.

Criminals and Casinos

The first coincidence of underworld capital and resort development came with the Flamingo, which had been started by Los Angeles nightclub and media impresario Billy Wilkerson. After running short of construction capital, Wilkerson was amenable to the advances of a group of "eastern investors" who pledged to bankroll his project but remain silent partners. The group's on-site representative, Benjamin "Bugsy" Siegel, soon proved to be anything but silent; before the resort opened, he removed Wilkerson from his leadership position on threat of violence. Wilkerson wisely took Siegel, a founding member of the Murder, Inc. hit squad, at his word. Siegel had used his connections with various organized crime figures to raise capital for the resort; following his June 1947 murder, these figures maintained a degree of involvement in the project through their sponsorship of select managers, who periodically diverted

a share of the casino's proceeds back to their illicit investors, a process known as "skimming."

In the 1940s and 1950s, several men with varying connections to ongoing illicit activities moved to Las Vegas as owners, managers, and employees of casinos. Most of them had been former bootleggers who had moved into gambling with the advent of repeal in 1933. Now mostly middle-aged, they were seeking stability and respectability; Las Vegas was one of the few cities in the nation that would let them have these while practicing a craft they knew—running gambling operations. The Desert Inn was a signature example of such an operation; its ostensible impresario, the personable gambler Wilbur Clark, has his name on the marquee. A group of former bootleggers from Cleveland led by Moe Daltiz actually ran the casino; behind them, some suspected, stood even more secret investors with connections to ongoing criminal activities in the east.

Over the next decade, a slew of casino resorts opened along what became known as the Las Vegas Strip; most of them had some degree of underworld financing. The connections between organized crime and Las Vegas casinos were brought to the fore in several scandals during the 1950s, the most spectacular of which was the attempted murder of reputed Mob boss Frank Costello. Costello, gunned down in Manhattan, was discovered to have on his person a piece of paper with that month's exact take for the recently opened Tropicana casino, along with notations possibly indicating the share of the "skim" diverted to several of his associates. The Nevada Gaming Commission forced the casino's sale, but rumors of the links between casinos and unsavory characters continued to circulate.

To combat such threats (and to forestall federal action), in 1955, the state legislature created the Gaming Control Board, which was tasked with eliminating undesirables from the gaming industry and maintaining the good image of what had become the state's largest business. During the early 1960s, the Gaming Control Board and the Justice Department under Attorneys General Robert F. Kennedy and Nicholas Katzenbach clashed over the extent of skimming in Las Vegas casinos; Kennedy at one point was prevented from conducting a city-wide raid only by the intervention of Nevada Governor Grant Sawyer.

Regulatory and police actions aside, the 1950s and early 1960s saw the maturation of the casino industry on the Las Vegas Strip. As late as 1952, it was believed that federal action might cause the closure of the Nevada casino industry. The Kefauver Committee had focused public attention on organized gambling nationwide in 1950–51, and for a time it appeared that Congress might pass a ruinous excise tax on casino gambling, as it had done to bookmaking. The state of Nevada's greater financial reliance on gambling, however, made it a very interested guarantor of the industry's continued well-being. With the Gaming Control Board forcing the more flagrant "undesirables" out of the industry, casinos in Las Vegas were free to grow.

Growth of Legitimate Industry

Ultimately, that growth would prove the undoing of organized crime in the Nevada gaming industry. Both a generational shift and the shifting nature of organized crime, as well as deeper structural changes in Las Vegas casinos, ultimately drove those with organized crime affiliations from direct involvement in Nevada's gaming industry. Generally speaking, the former bootleggers who provided the human and financial capital to build up the casinos of the Las Vegas Strip in the 1940s and 1950s were, by the 1960s, in their 60s and either retiring or passing away. Their children had, for the most part, not followed them into organized crime, and those who went into the gaming industry largely did so from a business school background, not one in "the rackets."

At the same time, organized crime was changing throughout the nation. Gambling, though still a source of revenue, became less important than narcotics smuggling, labor racketeering, prostitution, and loan-sharking. Those involved with organized crime, therefore, had fewer connections to the business of gambling than the former bootleggers who had made their livings from gambling-related enterprises in the 1930s. The leadership for the next generation of casino managers and owners would not come from organized crime.

The state legislature, sensing the changes in the industry, responded to the need for new investment. In 1967 and 1969, Nevada amended its gaming laws to permit for the first time ownership of casinos by publicly traded corporations.

This, it was hoped, would spur the entrance of new capital into the industry and foster its growing respectability. It largely worked. Following the passage of the Corporate Gaming Acts, some casino companies, like Harrah's in northern Nevada, took themselves public, raising money for improvements and expansions. Other companies, such as Lum's, came from outside the state and purchased existing casinos, like Caesars Palace. Soon, the traditional syndicates, run by those with ties to former bootleggers and reputedly financed by mobsters, were becoming scarcer.

Meanwhile, changes in how casino resorts operated essentially priced organized crime out of their financing. In the late 1950s, the industry, following overbuilding in the middle of the decade, turned to business travel to supplement its existing customer base: gamblers and vacationers. With convention groups booked in the mid-week, casino resorts found they could afford to get bigger. Once, 200-room hotels were the norm. By 1969, hotels had become much larger; in that year, Kirk Kerkorian's International (today the Las Vegas Hilton) opened with 1,500 rooms, making it the largest hotel in the world at the time. With new resorts soon passing the 2,000-room mark, they simply became too expensive for the traditional syndicates of investors to afford. As the International's 1971 purchase by Hilton Hotels demonstrates, large hotel operators began to apply their hospitality management expertise and name-brand identities—two areas in which the older syndicates had no special proficiency—to the casino industry.

There remained isolated incidents of skimming and mob penetration of Las Vegas casinos. In the late 1970s and early 1980s, state and federal investigations uncovered skimming at the Aladdin and Stardust casinos. The 1985 state-mandated sale of the Stardust from its owners, who had been implicated in a Mob-related skimming operation, to the Boyd Group, symbolizes the ultimate passing of the torch. By 1999, the National Gambling Impact Study Commission concluded that organized crime was no longer actively involved in the ownership of casino resorts.

Since then, the casino industry in Las Vegas has grown astronomically. In 1970, Clark County, Nevada, had annual gaming revenues of approximately \$369 million. By 1980, that number had soared to \$1.6 billion; a decade later, it stood at



The Las Vegas Strip in 2009. Because of the ongoing recession that year, a number of construction projects were stalled, leaving idle cranes hovering above the city. Logos for some of the publicly traded corporations that now dominate the city's casino industry, such as MGM Resorts International, and companies owned by private equity funds like Caesars Entertainment, can be seen in the photograph. In spite of the recession, in 2010 casinos in Clark County still reported nearly \$9 billion in revenues.

\$4.1 billion. In 2010, the county's casinos brought in nearly \$9 billion in revenues, a testament to the evolution of Strip casinos from gambling dens run by former bootleggers to lavish resorts. As a result, though Las Vegas continues to host its share of crime, of both the organized and disorganized varieties, its casino industry is no longer synonymous in the public mind with organized crime. Today, the Las Vegas Strip is dominated by large, publicly traded corporations such as MGM Resorts International and companies owned by private equity funds like Caesars Entertainment. Whether a case study in the normalization of deviance or an example of the triumph of the market, Las Vegas casinos are, most observers agree, free from control by organized crime.

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See Also: Gambling; History of Crime and Punishment in America: 1950–1970; Luciano, “Lucky;” Nevada; Organized Crime, Contemporary; Organized Crime, History of; Organized Crime, Sociology of; Prostitution, Contemporary; Schultz, Dutch; Television, Police in.

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Law Enforcement Assistance Act

President Lyndon B. Johnson signed the Law Enforcement Assistance Act of 1965 into law (Public Law 89-197) on September 22, 1965. The act authorized the attorney general to provide grants to state and local agencies for crime control research and law enforcement training. The attorney general created the Office of Law Enforcement Assistance (OLEA) to manage grants issued as part of the program. The act and the OLEA remained effective until 1968 when the program was folded into the newly formed Law Enforcement Assistance Administration. The Law Enforcement Assistance Act represented one of the first attempts by the federal government to address crime through a national program.

The act was passed because of rising fears about crime in postwar America. Federal statistics in the early 1960s showed a dramatic increase in crime, which became an important issue in the 1964 presidential election. In response, President Johnson asked Congress to encourage federal involvement in crime prevention by approving a broad crime study known as the President's Commission on Law Enforcement and the Administration of Justice. He also proposed the Law Enforcement Assistance Act to provide short-term research and funding until the President's Commission completed its full study.

The Law Enforcement Assistance Act gave the attorney general the power to offer grants to private nonprofit and public organizations interested in improving law enforcement, corrections, and criminal justice. The funds were used for demonstration programs, law enforcement training, and research into new methods of crime control at the state and local levels. During its three years of operation, the OLEA gave \$20.6 million to 359 distinct projects. While a number of cities and states benefited from the funds, Washington,

D.C., received the largest share. Spending under the act is credited with professionalizing law enforcement; in total, \$4.4 million was granted to training programs and \$1.4 million to college-level education for police officers.

While the Law Enforcement Assistance Act did represent increased federal involvement in criminal justice, it was not an attempt to federalize crime control. Congress and President Johnson explicitly stated that the act would not put state or local law enforcement under the authority of the federal government. Instead, the Attorney General's Office would simply be offering its expertise and financial support to help modernize and strengthen police forces. Despite these claims, the act did increase the visibility of federal action in the realm of criminal justice, placating those voters who called for the Johnson administration to address rising crime. More importantly, the act paved the way for later federal intervention in crime control. It also increased interest among law enforcement professionals in long-term studies and training programs.

Beyond its significance in federal crime policy, the Law Enforcement Assistance Act, one of the first block grants passed by Congress, was an important political innovation. As opposed to categorical grants, which stipulated exactly how and by whom money would be spent, block grants authorized federal agencies to give large amounts of money to local groups who could then spend it according to their own needs. The successes of the Law Enforcement Assistance Act made block grants an attractive option for lawmakers. As a result, block grants became popular in criminal justice and other areas, such as transportation, health, housing, and education.

When the President's Commission on Law Enforcement and the Administration of Justice completed its study of crime and the justice system in 1967, it supported the continuation of programs like the Law Enforcement Assistance Act. In fact, findings recommended that the federal government increase funding of law enforcement initiatives. Acting on this suggestion, Congress passed the Omnibus Crime Control and Safe Streets Act (P. L. 90-351) in 1968. Under Title I of the Safe Streets Act, Congress established the Law Enforcement Assistance Administration (LEAA) to fund future research and development projects.

The OLEA dissolved upon the creation of the LEAA, and the LEAA replaced the grant program created by the Law Enforcement Assistance Act of 1965.

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See Also: Johnson, Lyndon B. (Administration of); Law Enforcement Assistance Administration; Omnibus Crime Control and Safe Streets Act of 1968; President's Commission on Law Enforcement and the Administration of Justice; Professionalization of Police.

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Law Enforcement Assistance Administration

The Law Enforcement Assistance Administration (LEAA) was a federal agency within the U.S. Department of Justice. The LEAA was established by the Omnibus Crime Control and Safe Streets Act of 1968 and was abolished in 1982. The LEAA worked within the U.S. Department of Justice to administer federal funding to state and local law enforcement agencies and funded educational programs, research, state planning agencies, and local crime initiatives.

In 1964, Lyndon Johnson was elected president of the United States. He created the President's Commission on Law Enforcement and the Administration of Justice. In 1968, Congress passed the Omnibus Crime Control and Safe Streets Act, which then signified the most com-

prehensive crime legislation in the nation's history. Although some sections of the bill applied to federal policing, the real significance of this act was in its goal to better finance local law enforcement and facilitate interagency coordination for crime fighting.

States that formed state planning agencies and created comprehensive programs to improve law enforcement and the operation of the criminal justice system were allocated planning grants from the LEAA. Within each state, regional planning councils formed, and these councils submitted their proposals to LEAA, which funded them through grants. The nature of the funded programs varied and included money for cadet programs, special crime-fighting units, community relations activities, and a statewide uniform crime-reporting system.

The Office of Academic Assistance (OAA) was also established under LEAA to administer the Law Enforcement Education Program (LEEP). LEEP provided financial aid to students enrolled in colleges and universities who agreed to seek careers in criminal justice upon graduation.

Effect on Law Enforcement

In its first year, the LEAA granted \$300 million, primarily to police departments for equipment purchases. The LEAA helped police departments that had wanted to professionalize but could not because they lacked funds. Over the years, the LEAA funded programs to train local bomb squads, pilot programs studying alternatives to incarceration, drug treatment programs, and state court organization and training programs. Significantly, the LEAA was responsible for developing national training programs for state and local law enforcement officers and lawyers, bringing modern techniques to many departments for the first time. In March 1973, the LEAA ordered any police department receiving federal funding to end minimum height requirements, which most women could not meet.

By 1975, the LEAA had awarded more than \$4 billion to state and local governments to improve police, court, and correctional systems to combat juvenile delinquency. By 1981, the LEAA had granted more than \$8 billion in funds. States adopted 70 percent of LEAA-sponsored programs in one form or another. It thus made a

significant contribution to the modernization of local law enforcement.

More enduring was the act's innovation of the National Institute of Law Enforcement and Criminal Justice. The Katzenbach Commission, as it was known, issued dozens of studies on crime and criminal justice. Examining the socioeconomic roots of crime, the commission's recommendations correlated with the policy approaches of Johnson's Great Society. The commission called for more education, better training of law enforcement officers, and increased research on crime.

The National Institute of Justice (NIJ) was created under the Omnibus Crime Control and Safe Streets Act of 1968 to advance law enforcement technology and knowledge through technology and social research grants to academic institutions and other organizations, just like the LEAA. The NIJ and LEAA collectively contributed to the field of criminal justice by collaborating with state and local governments. In 1978, it was renamed the National Institute of Justice. Some functions of the LEAA were absorbed by NIJ on December 27, 1979, with passage of the Justice System Improvement Act of 1979. The act, which amended the Omnibus Crime Control and Safe Streets Act of 1968, also led to formation of the Bureau of Justice Statistics. In 1982, the LEAA was succeeded by the Office of Justice Assistance, Research, and Statistics (1982–84) and then the Office of Justice Programs in 1984.

The LEAA did receive criticisms of the manner in which financial resources and technical assistance were allocated to state and local governments. Some critics believed that its objectives were ambiguous and at times conflicting, and that the program was too broadly defined and lacked meaningful structure. Others pointed to the fact that members of state planning agencies that were to receive the federal funds and disperse them as they saw fit to local areas were dominated by law enforcement agencies and local government units and consequently did not incorporate the ideas of citizen groups or the interests of minorities. Some believed that the control of LEAA funds by law enforcement undermined the chance that other programs that community leaders proposed, such as counseling and therapy, would get funded. Others questioned the actual crime

reduction that followed the implementation of LEAA-funded programs.

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See Also: Johnson, Lyndon B. Administration of; Law Enforcement Assistance Act; Omnibus Crime Control and Safe Streets Act of 1968; President's Commission on Law Enforcement and the Administration of Justice.

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Lawrence v. Texas

To what extent is private sexual conduct between consenting adults protected by the U.S. Constitution? The U.S. Supreme Court was forced to grapple anew with this question in the case of *Lawrence v. Texas* (2003). The case arose in 1998 when police, responding to a reported weapons disturbance, entered the private residence of John Lawrence, who was engaged in intimate sexual conduct with his male partner, Tyron Garner. Both men were arrested, charged, and convicted of violating a Texas statute prohibiting "deviate sexual intercourse with another individual of the same sex." The men appealed their conviction, claiming their rights had been violated under both the Texas and U.S. Constitutions. In upholding



The Texas State Capitol building in Austin, Texas, in 2009. The majority in *Lawrence v. Texas* struck down the Texas law and also overturned *Bowers v. Hardwick*, thereby striking down all remaining antisodomy laws, both heterosexual and homosexual.

their convictions, the Court of Appeals for the Texas Fourteenth District cited the U.S. Supreme Court's decision in *Bowers v. Hardwick* (1986), which upheld a Georgia statute criminalizing sodomy. In granting certiorari in the *Lawrence* case, the Supreme Court focused on whether the Texas law violated the petitioners' interests in liberty and privacy protected by the due process clause of the Fourteenth Amendment.

Justice Anthony Kennedy delivered the court's opinion in *Lawrence*, which was joined by Justices Stephen Breyer, Ruth Bader Ginsburg, David Souter, and John P. Stevens. Justice Sandra Day O'Connor filed a separate opinion concurring in the outcome, while Justices William Rehnquist, Antonin Scalia, and Clarence Thomas dissented. Justice Kennedy's opinion begins by stating, "Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct." The opinion then traces the

relevant case law, including *Griswold v. Connecticut*, *Eisenstadt v. Baird*, and *Roe v. Wade*, noting that in these cases the Supreme Court invalidated statutes that impinged upon both individuals' and couples' rights to privacy regarding marriage, procreation, contraception, and intimate sexual conduct. Justice Kennedy therefore situates the *Lawrence* case alongside others in which the liberty and privacy interests inherent in the U.S. Constitution protect people from "unwarranted government intrusions." But in *Bowers v. Hardwick*, decided only 17 years earlier, the Supreme Court found that a similar statute did not violate the U.S. Constitution. The majority in *Lawrence* therefore revisited the *Bowers* decision, finding two central problems with its reasoning.

First, the majority opinion in *Bowers* begins by stating, "The issue presented is whether the Federal Constitution confers a fundamental right upon homosexuals to engage in sodomy...." In the *Lawrence* opinion, Justice Kennedy argues that such a narrow construction of the constitutional question fundamentally misapprehends the liberty claim at stake. The proper constitutional question is, rather, whether the Constitution confers a fundamental right upon adult persons, regardless of sexual orientation, to engage in private, consensual sexual conduct. Second, the majority in *Bowers* relied on the notion that moral disapproval and criminal prohibition of same-sex sexual conduct has deep roots in American history.

However, in the majority opinion in *Lawrence*, Justice Kennedy cites numerous scholarly contributions from history and gender and sexuality studies to show that in fact the United States has no long-standing tradition of criminalizing same-sex sexual conduct. Rather, the sodomy statutes once common throughout the United States regulated non-procreative sexual behavior of all kinds, regardless of the sexual orientation of those involved. Sodomy statutes significantly predate the notion, which emerged in the late 19th century, that homosexuals and heterosexuals are distinct. In *Bowers*, however, the history of sodomy was rewritten to be essentially and exclusively concerned with homosexuals. Thus, the majority in *Bowers* incorrectly conflated the regulation of sodomy with the criminalization of same-sex sexual conduct, thereby attributing "ancient roots" to the latter.

In an article titled “What Gay Studies Taught the Court,” George Chauncey recounts how the amicus brief filed by historians in the *Lawrence* case demonstrated that the Texas statute in question, adopted in 1973, was characteristic of mid-20th-century laws that specifically targeted homosexuals in a discriminatory manner. In fact, only a year later, in 1974, the state of Texas decriminalized heterosexual sodomy, underscoring how its sodomy law singled out the intimate conduct of homosexuals.

Therefore, the problematic reasoning evident in the *Bowers* decision, combined with the fact that, by 2003, the vast majority of states had already repealed their sodomy statutes, led the majority in *Lawrence* not only to strike down the Texas law but to also overturn *Bowers v. Hardwick*, thereby striking down all remaining antisodomy laws, both heterosexual and homosexual. Citing the Supreme Court’s decision in *Planned Parenthood v. Casey* (1992), Justice Kennedy concludes his majority opinion in *Lawrence v. Texas* by stating

The petitioners are entitled to respect for their private lives. The state cannot demean their existence or control their destiny by making their private sexual conduct a crime ... It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter.

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See Also: *Bowers v. Hardwick*; Due Process; Equality, Concept of; *Romer v. Evans*; Sodomy.

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Laws and Liberties of Massachusetts

The Laws and Liberties of Massachusetts were adopted in 1648 to replace the provisional Bodie of Liberties of 1641. *The Laws and Liberties* did incorporate several clauses from the Bodie of Liberties but represented the first systematic attempt to construct a complete system of governance and law by an English colony in a single code. *The Laws and Liberties* represent an attempt by the leaders of the colony to harmonize the laws of men with biblical law. It also codified several protections for criminal defendants that existed by practice in the common law.

The Laws and Liberties are organized alphabetically by topic covered. They attempt to provide sections for all areas of civil and criminal law as well as establishing the structure of governance for the colony. The code did not change the existing structure of colonial governance but simply codified it. Some colonists had been pushing for a written code of laws that was in line with biblical law since the 1630s, but their request was opposed by Governor John Winthrop, who feared that a codified set of laws that did not conform to the common law of England would provide the king a cause for revoking the colony’s charter. He also feared that a set code of laws would limit the discretion of magistrates to take into account the circumstances of the violation of a law that might mitigate the punishment. The deputies of the colonial towns managed to place enough pressure on the governor and his

counsel to have them agree to adopt a code of laws. It was universally agreed that the laws should reflect substantive biblical law to which were added English common law procedures.

The criminal law set forth in *The Laws and Liberties* was based on biblical law and included capital punishment for witchcraft, blasphemy, bestiality, sodomy, adultery, cursing a parent or being a rebellious son, in addition to murder, rape, and treason. However, capital punishments were rarely, if ever, carried out for cursing a parent, rebelliousness, or blasphemy without another capital charge also lying against the person. In addition, there were lesser punishments contemplated by the code for first-time offenses and the capital punishment was only to be applied to repeat offenders. There were instances of capital punishment being inflicted for adultery, bestiality, sodomy, witchcraft, murder, and rape. *The Laws and Liberties* also proposed community intervention to punish wayward servants and children who were not being sufficiently disciplined by parents.

The Laws and Liberties provided defendant rights, including the right to a jury trial and a prohibition on torture to obtain a confession or information. Capital punishment was prohibited unless two witnesses or equivalent certain testimony was provided against a criminal defendant. In addition, strangers, idiots, and children were to have allowance from the court if they were to violate a law in accordance with their diminished reason or knowledge. *The Laws and Liberties* did not contain some of the more forward-looking defendant rights contained in the Body of Liberties, including the right to counsel and the right for the defendant to compel and swear witnesses on his behalf.

The Laws and Liberties have been cited as a precursor to some of the rights contained within the Bill of Rights of the United States. They governed the colony of Massachusetts Bay for nearly 40 years until the colony was collapsed into the dominion of New England by King James II in 1686. The common law of England was implemented by Governor Edmund Andros during the duration of the dominion.

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See Also: Bible; Bodie of Liberties; Colonial Charters and Grants; Constitution of the United States of America; Massachusetts.

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Lawyers Guild

The National Lawyers Guild (NLG) is a nonprofit legal organization that was founded in 1937. While the association has chapters throughout the nation, the national office is housed in New York City. The NLG attempts to protect the rights of workers, women, farmers, the disabled, and people of color. The NLG aims to eliminate racism, sexism, homophobia, environmental destruction, and xenophobia, and to improve upon labor issues and the rights of workers, voting rights, and people's civil rights and liberties. The NLG continues to use the law to protect the people, advance social justices, and support progressive social movements.

The mission, as stated by the preamble to the NLG constitution states, "The NLG is dedicated to the need for basic change in the structure of our political and economic system. [The NLG] seeks to unite the lawyers, law students, legal workers, and jailhouse lawyers to function as an effective force in the service of the people, to the end that human rights shall be regarded as more sacred than property interests."

Membership and Structure

When the NLG first began, membership was exclusively offered to lawyers. Now, membership

is offered to lawyers, legal workers and aides, legal investigators, and paralegals. Jailhouse lawyers (prisoners who provide legal services to other inmates) are not required to pay dues and have been eligible for membership since 1971. Additionally, law school students are eligible for membership in their school's chapter. The NLG is divided into nine geographical regions and 120 chapters that consist of at least eight members who have paid dues. A regional vice president represents each region at the National Executive Committee (NEC) conference.

The NEC oversees the NLG and meets four times per year to vote on related issues. The NEC is run by a nationally elected president, two executive vice presidents, a treasurer, two law student vice presidents, one national legal worker vice president, one national jailhouse lawyer vice president, nine regional vice presidents, an executive director, a representative of the national office staff, and representatives from 10 of the NLG projects and committees.

History

The NLG was created in 1937 as an alternative to the American Bar Association. The NLG protested against the American Bar Association's policies by allowing African American and Jewish members to join, making it the first racially integrated bar association. The NLG believes in serving the people and protecting their rights as opposed to serving other public or private organizations that may violate the rights and needs of the people. The NLG assisted in the creation of unions and organizations that supported the advancement of human and civil rights, such as the United Auto Workers and the Congress of Industrial Organizations (CIO). One of the NLG's initial causes during the Great Depression was support of President Franklin Roosevelt's economic program known as the New Deal, which focused on relief, recovery, and reform. The NLG came under attack during the 1950s by Wisconsin's Republican U.S. Senator Joseph McCarthy. He accused the NLG of being a front for a political communist organization because of what he called the group's extreme "left-wing" views. The NLG was able to endure these allegations of being a communist front by limiting the types of projects taken on by the organization. Eventually, the NLG began to

shift its focus onto promoting and protecting the civil rights of African Americans.

Lawyers associated with the NLG have assisted in the prosecution of Nazis during World War II and fought racial discrimination lawsuits in cases such as *Hansberry v. Lee*, which argued against Jim Crow laws in the city of Chicago, and in well-known Supreme Court cases for civil rights such as *Dombrowski v. Pfister*, *Goldberg v. Kelly*, and *Monell v. Department of Social Services*. In 1945, the NLG was asked by the U.S. government to represent the American people at the founding of the United Nations. Members of the NLG also assisted in the drafting of the Universal Declaration of Human Rights. Members of the NLG founded the International Association of Democratic Lawyers (IADL), the American Trial Lawyers Association (ATLA), and other institutions that promote human and civil rights, such as the National Conference of Black Lawyers.

NLG members were the first lawyers to open storefront law offices, which offered community-based legal services to low-income clients. Additionally, NLG lawyers have offered support to resisters of the Vietnam War draft, antiwar activists, and Black Panther Party members; the group sued the FBI for illegal surveillance of legal activist organization activities that took place at the NLG national office and the in private offices of important NLG members. The NLG has supported the advancement of social justice internationally by encouraging Palestinian rights, opposing apartheid in South Africa, and offering support for the antinuclear movement. In 2007, the NLG supported the movement for impeachment of President George W. Bush and Vice President Dick Cheney.

The NLG comprises approximately 20 committees, projects, and task forces. They include the Anti-Racism Committee, Anti-Sexism Committee, Disability Rights Committee, Drug Policy Committee, Environmental Justice Committee, Labor and Employment Committee, Legal Workers Committee, Military Law Task Force, Prison Law Project, United People of Color Caucus (TUPOCC), and the National Immigration Project.

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See Also: Civil Rights Laws; McCarthy, Joseph; Roosevelt, Franklin D. (Administration of).

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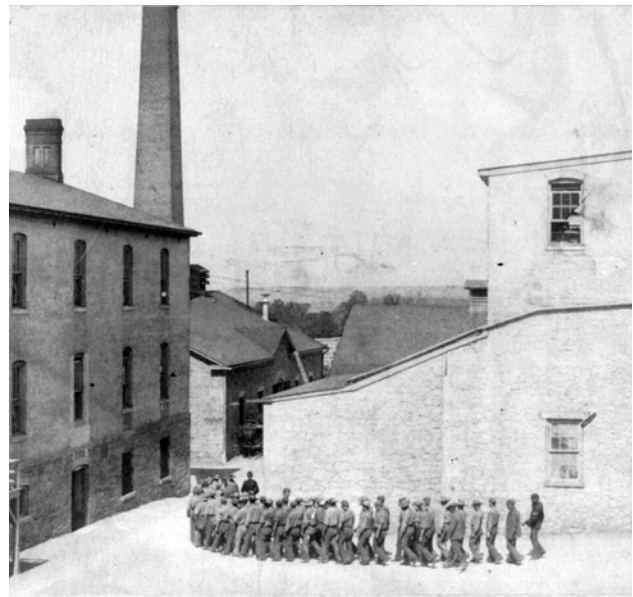
Leavenworth Federal Penitentiary

U.S. Penitentiary Leavenworth, the oldest penitentiary in the federal prison system, is located 25 miles north of Kansas City, Kansas, on State Highway 73. It sits in close proximity to the U.S. Disciplinary Barracks that serve as the sole maximum-security prison for the U.S. military. It has been called the “hothouse” and the “big top” due to its poor ventilation and the domed main building that serves as its administrative area. Prior to its construction, federal inmates were held in state prisons. The Federal Bureau of Prisons, which operates Leavenworth, was established in 1930 with the objective of providing consistent and centralized administration for the 11 federal prisons in existence at that time.

Leavenworth sprawls over 1,580 acres, of which 23 are contained inside its 35-foot-high walls. The walls are purported to extend into the ground another 35 feet to prevent escape. Approximately 12 feet in width and over 3,000 feet in length, the walls contain six gun towers. The use of concertina and electrified wire further ensure that the walls are not breached. Cables are strung between these walls and are suspended above the prison’s yard and recreational areas to prevent escape by aircraft. Currently, Leavenworth houses 1,894 medium-security male inmates. Inmates are held

in four housing units comprised of A, B, C, and D dorms. Dorms are of a five-tiered design—placing the roof nearly 150 feet above the floor. In the 1980s and 1990s, A, B, and C dorms underwent extensive renovation. Today, D cellblock remains the only dorm true to the original design. Complaints have circulated for years about the poor heating, air conditioning, and overall ventilation within these housing units. In 1910, the attorney general approved the construction of an additional cellblock to house female offenders; however, this plan was later abandoned.

Leavenworth was designed by St. Louis architects Eames and Young following the blueprint popularized by the Auburn Correctional Facility in New York. This design arranges cellblocks in large rectangular configurations. These cell blocks were largely self-contained units that typically served as the location for group labor. As the first federal penitentiary, construction on Leavenworth began in 1895. Military prisoners provided the labor and were marched the four miles daily to the construction site, making the return trip in the evening. They also processed and refined lumber, made bricks, and quarried stone to support construction efforts. It wasn’t until 1903 that prisoners were housed in



Prisoners in striped uniforms marching to dinner at Leavenworth Federal Penitentiary in an early photograph of the prison from around 1910. The striped suits were used until 1927.

the completed facility. The construction of the prison lasted for more than 30 years, with the dome added in 1926.

Upon opening, prisoners were required to wear the traditional striped uniform now popularized by the film industry. These uniforms persisted until 1927, when they were replaced with a dark blue uniform. These uniforms were used until the conclusion of World War II, at which time inmates were provided surplus military fatigues. Today, standard uniforms include khaki shirts and pants, with older military coats used during the winter months. On September 5, 1930, Carl Panzram became the first prisoner to be executed at Leavenworth. Claiming to have killed over 21 people (including children) and having confessed to the rapes of 1,000 men, Panzram was eventually hanged for the murder of Leavenworth's laundry foreman. Records indicate that when the noose was placed around his neck, Panzram spat in the executioner's face and urged him to get on with it. Today, Leavenworth operates a large factory system that produces items for sale to government agencies. These items include printed materials, textiles, and furniture. These factories employ over half the inmate population and produce several million dollars in profit each year. Inmates that work in Leavenworth's factories earn prevailing free market wages. Factory wages exceed those paid to inmates with traditional institutional jobs that include janitorial, maintenance, and painting assignments.

In 1960, Federal Prison Camp Leavenworth was opened and houses 477 minimum-security male inmates. Located adjacent to the penitentiary, its inmates help maintain the prison grounds and provide a ready source of skilled workers who repair the prison's aging structure.

Today, Leavenworth is just one prison among 115 other institutions operated by the Federal Bureau of Prisons. In its entirety, the federal prison system is currently responsible for the care and custody of 209,000 inmates. Leavenworth was the largest maximum-security federal prison in the United States from 1903 until 2005. In 2005, Leavenworth's custody level was reduced from maximum to medium security. Its most infamous resident (and arguably the most dangerous prisoner in America) was Thomas Silverstein, who killed several fellow inmates and

a correctional officer. Because of these killings, Silverstein was kept in a specially designed cell with the designation of "no human contact" status. When Leavenworth's security designation was decreased, Silverstein was transferred to ADX Florence, a super-maximum security prison located in Colorado. While most federal prisoners have never seen Leavenworth, its storied reputation persists.

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See Also: Auburn State Prison; Federal Prisons; Kansas; Penitentiaries.

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Legal Counsel

As stated in the familiar Miranda warning, those involved in the criminal process have a right to an attorney, also referred to as the right to legal counsel. This right is afforded to people being interrogated, accused, prosecuted, and convicted of crimes. However, the actions and protections associated with the right vary according to the stage of the criminal process, the punishment associated with the crime, and characteristics unique to the person such as mental capacity and financial situation.

The right to legal counsel is a constitutionally guaranteed federal right. A right to "Assistance of Counsel" for "all criminal prosecutions" is explicitly stated in the Sixth Amendment. The right to counsel is seen as an integral part of both the right to due process before being deprived of life or liberty and the right not to incriminate oneself afforded by the Fifth Amendment. States are also obligated to respect these rights since both amendments have been incorporated to the states through the Fourteenth Amendment.

However, until the 20th century, the right to counsel was available to only the privileged few. There were no guarantees that counsel would be appointed for those who could not afford an attorney. There were no guarantees that a person would be represented by counsel prior to appearing in court. And since people were not informed that they had a right to counsel, those who were unfamiliar with the legal system were left alone through a process that could result in their imprisonment or death.

Through the late 20th and early 21st centuries, the U.S. Supreme Court has developed extensive case law interpreting, applying, and distinguishing the Fifth and Sixth Amendment rights to counsel. The two most famous cases, *Gideon v. Wainwright* (1963) and *Miranda v. Arizona* (1966), have ensured that the indigent have access to legal representation and that those subjected to custodial interrogation are informed of their right to counsel, respectively. However, the right to legal counsel is far more nuanced than these two cases indicate.

Role and Types of Legal Counsel

The right to legal counsel is grounded in the principle of fairness and the adversarial nature of the American legal system. In America, the criminal legal process is adversarial as characterized by the presentation of opposing arguments by the prosecution and defense to an impartial jury. It is expected that the jury will be able to identify the truth and decide the guilt or innocence of the defendant. In this system, the defendant's legal counsel is to act as an advocate for the defendant, challenging the prosecution's case and ensuring that the defendant's rights are protected and the process is fair.

Representation by legal counsel is important to ensure that the criminal legal process remains fair. The criminal legal process is initiated by and driven by government, whether state or federal, action that may be inherently unfair. It is the role of legal counsel to ensure that the defendant is treated fairly throughout the process. Legal counsel is expected to understand the process itself as well as the implication of the defendant's choices and actions throughout the process. As a result, legal counsel is expected to assist and advise the defendant, thus ensuring that the government

actors, such as the prosecution and police, do not take unfair advantage of the defendant or the situation. The principle of fairness also dictates that the government not restrict or impede the ability of the defendant and legal counsel to prepare and present a defense.

It is possible for a criminal defendant to waive the right to legal counsel at any point or for the entire criminal legal process. However, this is not recommended and is rarely done. Few criminal defendants have an understanding of the criminal legal system necessary to adequately protect their rights or ensure fairness. Even when the defendant has some legal training, as in *Crooker v. California* (1958), involvement in the process and lack of experience risks incriminating or detrimental actions that may have been avoided by advice from legal counsel.

Criminal defendants can be represented by either privately retained or publicly appointed legal counsel. If the defendant has the financial means, he/she can choose to retain a lawyer privately. If, however, the defendant cannot afford a lawyer and meets the state or federal considerations for indigence, the court will appoint a lawyer. Financial standards for indigence vary by state, and some states do allow for partial indigence. The financial status of those claiming indigence is verified by the court, and the defendant is required to report any changes in financial status to the court. Courts can require reimbursement for the costs of legal counsel if the defendant's financial status improves.

When appointing legal counsel, the court may appoint a public defender or a panel attorney. Some states have established an office of public defenders. These are lawyers who focus solely on representing indigent criminal defendants. Panel attorneys are lawyers who have a private practice but spend a portion of their time providing legal counsel for indigent criminal defendants. Although, in essence, a court-appointed lawyer is an employee of the government because fees are paid by the government, he/she is expected to represent and advocate for the defendant. The principle of fairness requires that the government not interfere in the defense through the manner of appointing legal counsel, including who is appointed and the time provided for preparation of the case.

Right to Counsel

As mentioned, the right to legal counsel is guaranteed in both the Fifth and Sixth Amendments. There is a difference between these two rights, and the Supreme Court has enforced that difference through its decisions. The right to legal counsel guaranteed in the Fifth Amendment is to ensure the defendant's rights as well as fairness of the process. The Fifth Amendment right to counsel is applicable in processes and procedures before the government has taken formal action to prosecute. Although a person has a right to an attorney during this period, it is not an absolute right because there must be a request for legal counsel. In other words, it is the responsibility of the person desiring legal counsel to take action.

Conversely, the Sixth Amendment right to counsel applies once the government has indicated that it will prosecute and, therefore, has begun criminal proceedings. In this situation, the right to counsel is absolute because the person must take action to waive the right. Even if the person waives the Sixth Amendment right to counsel and chooses to self-represent, the court may deny the request if it is in the best interest of either the defendant (e.g., if the defendant is illiterate or has mental issues) or justice (e.g., if self-representation would significantly impede the trial). The court also has the right to appoint a "standby" attorney in the event that the defendant has a change of mind.

Before the *Miranda* decision, exercise of the Fifth Amendment right to counsel was dependent on the person knowing the right, the police notifying the person of the right, and the person understanding that he/she could exercise the right. Even when the person chose to exercise the right, he/she was not afforded immediate protections. For example, in 1958, the Supreme Court found that there was no violation of a right when the police refused to honor the request for counsel until after a confession was made (*Cicenia v. Lagay*, 1958). On the same day, the Supreme Court found in *Crooker* that there was no violation of right to counsel when a confession was made absent counsel because the person had an understanding of the legal process and had previously refused to exercise his right to counsel. Presaging *Miranda*, the Supreme Court ruled in *Escobedo v. Illinois*. (1964) that denial of coun-

sel during custodial questioning after counsel had been requested and without warning was a violation of the right to counsel.

By 1966, the Supreme Court realized that the variety of procedures in place to make people aware of their Fifth Amendment rights was inadequate. In the *Miranda* decision, the Supreme Court indicated a warning that is to be given before a person is questioned or interrogated or makes a statement that could be self-incriminating. The Supreme Court believed that after this warning, the person could knowingly and intelligently waive or exercise his/her rights, including the right to having legal counsel present.

During the 1970s, the Supreme Court announced two decisions that could be seen as limiting the Fifth Amendment right to counsel. In *Kirby v. Illinois* (1972), the Supreme Court refused to extend the right to counsel to identification by a victim before the prosecutorial process has begun. Reinforcing that the request for legal counsel must be specific, the court, in *Fare v. Michael C.* (1979), determined that the request by a juvenile for his probation officer was a knowing and intelligent waiver of the right to counsel.

The Supreme Court continues to require that exercise of the Fifth Amendment right to counsel requires an explicit request for counsel. For example, the right to invoke counsel could not be established when the person contradicted himself by making limited requests for counsel as well as statements of willingness to speak with authorities (*Connecticut v. Barrett*, 1987). Furthermore, merely mentioning a lawyer or making comments about a lawyer is not sufficient to exercise the right to counsel (*Davis v. United States*, 1994).

In 1981, the Supreme Court clarified and reinforced *Miranda*. In *Edwards v. Arizona*, the Supreme Court held that once a person has requested an attorney, it cannot be considered that the right was subsequently waived because he responded to continued custodial questioning unless the person initiated the communication. Because of the coercive conditions that exist when a person is in the custody of the government (including police stations and prison) there is a risk that the person will be unfairly influenced to provide information that would not be provided in other, less coercive, situations. The Supreme Court agreed to apply this ruling retroactively in



A man being searched during an arrest in Tulsa, Oklahoma, in May 2001. The Fifth Amendment right to counsel is applicable in processes and procedures before the government has taken formal action to prosecute. This means that although a person has a right to an attorney during this period, it is not an absolute right because there must be a request for legal counsel.

situations where it was decided before a direct appeal of a final conviction could be heard (*Shea v. Louisiana*, 1985).

The Supreme Court continues to refine and reinforce *Edwards*. In *Arizona v. Roberson* (1988), the Supreme Court found a violation of Fifth Amendment rights when the person invoked the right to counsel but police interrogated him regarding a separate investigation without the presence of counsel while he remained in custody. In other words, once a person in custody requests a lawyer, that right has attached for the entire time that he/she is in custody. Since the court recognizes that the mental effects of being in custody continue even after release, the right to counsel remains attached for 14 days after release (*Maryland v. Shatzer*, 2010).

However, the Supreme Court also clarified that invocation of the right to counsel is specific

to the offense (*Texas v. Cobb*, 2001). As different offenses require different elements of proof, they also separate invocation of the right to counsel. Therefore, the right to counsel invoked during one custodial interrogation does not extend to another custodial interrogation even if it is on related charges.

The Supreme Court is reinforcing and refining the Miranda warnings in three general areas. First, the Supreme Court has refined what constitutes adequate warnings. In *Wyrick v. Fields* (1982), the Supreme Court explained that in order to determine whether the right to counsel has been waived, the “totality of the circumstances” must be considered. This is consistent with the rulings that clarified *Edwards* because those rulings looked at the impact of the circumstances in which the questioning occurred. Furthermore, a person can waive his/her Fifth Amendment right to

counsel with knowing and understanding without having knowledge of all possible charges or having the consequences of his/her actions explained (*Colorado v. Spring*, 1987). It is also not necessary to explicitly explain that legal counsel can be present during questioning as long as there is an explanation that legal counsel can be consulted prior to questioning and the right to counsel can be invoked at any time (*Florida v. Powell*, 2010).

Second, the Supreme Court has clarified the consequences of questioning after invoking the Fifth Amendment right to counsel. If counsel is requested after the Miranda warning but the person responds to questions before counsel arrives, those responses cannot be used to question the validity of the request for counsel (*Smith v. Illinois*, 1984). In addition, the right to counsel does not end once a person has consulted with his/her legal counsel (*Minnick v. Mississippi*, 1990). Once a person has requested legal counsel, further questioning cannot occur without the presence of the legal counsel unless the person specifically initiates the communication in the absence of counsel.

Third, the Supreme Court continues to reiterate that there is a difference between Fifth and Sixth Amendment right to counsel. To illustrate, the court has ruled that invocation of the Sixth Amendment right to counsel during the first court appearance does not carry the implication that the Fifth Amendment right to counsel had been invoked (*McNeil v. Wisconsin*, 1991).

Sixth Amendment Right to Counsel

When considering the Sixth Amendment right to counsel, the Supreme Court has been concerned with identifying those parts of the criminal legal process that require the presence of counsel. In general, the Supreme Court has applied the Sixth Amendment right to counsel to proceedings associated with conviction beginning with the first judicial appearance. The intent is that the right to counsel attaches when the government has indicated its intention to prosecute. This right extends through the right of first appeal. Although a defendant is allowed to have legal counsel at any time prior to the first judicial appearance and during discretionary appeals, these actions are not covered by the Sixth Amendment right to counsel.

The importance of the Sixth Amendment right to counsel is that it prevents actions and proceed-

ings that could harm the defendant from occurring without legal counsel's knowledge or participation. For example, once the Sixth Amendment right to counsel is in effect, government agents, including police and informants, are not allowed to solicit information or confessions from the defendant without the presence of his legal counsel.

Historically, the Supreme Court afforded defendants charged in capital offenses greater protections under the Sixth Amendment right to counsel due to the severity and irrevocability of the punishment. More recently, Supreme Court decisions have recognized the importance of legal counsel in any case where the defendant may lose his or her liberty. A "critical stage" assessment is used to determine if legal counsel is available at the points in the criminal legal process that directly impact the outcome of the process. This change toward the critical stage assessment began in *Hamilton v. Alabama* (1961). When the Supreme Court viewed the impact of the pleading at arraignment under Alabama law, it ruled that it was a critical stage in the process and, therefore, the defendant required the benefit of counsel. Two years later, the Supreme Court used this same logic to determine that preliminary hearings under Maryland law are a critical stage in the process, thus requiring counsel to ensure that the defendant can plead intelligently (*White v. Maryland*, 1963).

Beyond the critical stage assessment, the Supreme Court found other conditions under which counsel was required beyond the trial process. In *Gagnon v. Scarpelli* (1973), the Supreme Court acknowledged that legal counsel should be available when warranted by the complexity of issues. As a result, the determination of whether legal counsel is necessary should be made on a case-by-case basis. This assessment also applies to probation hearings. Unfamiliarity with the law and mental illness necessitate legal counsel to ensure that the trial process is fair (*McNeal v. Culver*, 1961).

The Supreme Court has since extended right to counsel protections to post-indictment lineups (*United States v. Wade*, 1967), preliminary hearings (*Coleman v. Alabama*, 1970), pretrial interactions with the government (*Kansas v. Ventris*, 2009), identification after initiation of adversarial proceedings (*Moore v. Illinois*, 1977), sentencing

(*Estelle v. Smith*, 1981), a psychiatric exam to determine future dangerousness (*Powell v. Texas*, 1968), suspension of a sentence that could result in loss of liberty (*Alabama v. Shelton*, 2002), a parolee's response to notification of review (*Moody v. Daggett*, 1976), and capital case clemency hearings (*Harbison v. Bell*, 2009).

The Supreme Court has also identified procedures that are not covered by the Sixth Amendment right to counsel. These include post-conviction hearings (*Pennsylvania v. Finley*, 1987), prison disciplinary hearings (*Baxter v. Palmigiano*, 1976), and summary court-martial (*Midendorf v. Henry*, 1976). In making these determinations, the Supreme Court considered such factors as the impact on loss of liberty as well as the impact on the process and its intended goals.

The Supreme Court generally affords fewer rights to prisoners than to those who have not been convicted or who are on probation. However, it also acknowledges and protects the prisoner's rights to make claims. Although prisoners do not have a protected right to counsel after the first appeal, the Supreme Court has mandated that states provide meaningful access to the courts, including stationery supplies, law libraries, and assistance with filing legal papers (*Bounds v. Smith*, 1977).

Appointment of Counsel

In order to ensure protection of the Sixth Amendment right to counsel, both the federal and state governments are required to provide legal counsel to indigent defendants. Historically, this requirement has been subject to several limitations beyond the need to prove indigence. Since the requirement to appoint counsel is grounded in the Sixth Amendment, the government is only required to appoint counsel for those portions of the criminal legal process protected by that right as described above. For example, appointment of counsel is not required for discretionary appeals.

Appointment of counsel has also been limited by the type of case. Indigent defendants charged with capital offenses have historically been appointed counsel because of the consequences of the punishment. Furthermore, the appointment of counsel was originally only available for federal crimes because the Sixth Amendment was not applicable to the states. This position was estab-

lished in *Betts v. Brady* (1942) when the Supreme Court upheld Maryland's limitation on crimes eligible for appointment of counsel. The Supreme Court began to move away from this position in 1956 with the *Griffin v. Illinois* decision that indigent prisoners, even those not convicted of capital offenses, had the same right of appellate review as nonindigent prisoners.

However, it was not until *Gideon* that the Sixth Amendment right to counsel was incorporated to the states. *Gideon* specifically overruled *Betts* and found that the right to counsel is one of the fundamental rights that are applicable to the states through the due process clause of the Fourteenth Amendment. This ruling also extended the right to have counsel appointed beyond capital cases. On the same day, the Supreme Court extended the right to have counsel appointed to the first appeal in *Douglas v. California* (1963). With these rulings, the Supreme Court brought appointment of counsel in line with the Sixth Amendment right to counsel application from first judicial appearance through first appeal.

In its jurisprudence, the Supreme Court continues to grant appointment of counsel in a manner consistent with its rulings on the Sixth Amendment right to counsel. In *Mempa v. Rhay* (1967), the Supreme Court decided that counsel must be appointed for indigent defendants at all parts of the criminal legal process where the rights of the defendant could be affected. Conversely, the Supreme Court has refused appointment of counsel in post-conviction proceedings because these are not considered part of the criminal process (*Murray v. Giarratano et al.*, 1989). However, if the crime occurs in prison, the Sixth Amendment right to counsel, and therefore appointment of counsel, is not triggered until formal charges are filed (*United States v. Gouveia et al.*, 1984).

In *Argersinger v. Hamlin* (1972), the court clarified that the Sixth Amendment right to counsel is based on whether a person will be deprived of his/her liberty, not on the type of offense. Appointment of counsel for indigent defendants, therefore, should be available in all cases where there is a potential for loss of liberty. This ruling has been refined in two respects. Appointment of counsel is not required if loss of liberty is authorized for the crime charged but it will not be imposed by the court (*Scott v. Illinois*, 1979).



New York organized crime figures Louis Capone and Emanuel "Mendy" Weiss during their trial for murder in September 1941. Weiss is consulting with an attorney, while Capone (no relation to Al Capone) looks at the camera. Both were convicted and, after several years of appeals, executed in the electric chair at Sing Sing prison in March 1944 along with another conspirator.

However, if a defendant's charge includes additional punishment as a habitual offender, counsel is required (*Chewning v. Cunningham*, 1962).

Ineffectual Counsel

As the right to counsel and appointment of counsel have evolved to cover a greater variety of cases, concerns about ineffective counsel have been increasingly raised and addressed by the Supreme Court. These claims are based on the principle that the right to counsel implies that legal counsel will be effective. When a claim of ineffective counsel is raised, the burden of proof lies with the person raising the claim.

In 1984, the Supreme Court established the Strickland test as a guide for claiming ineffective counsel (*Strickland v. Washington*, 1984). This is

a two-pronged test. First, the claimant must prove that the actions of counsel fell below an objective standard of reasonableness. Second, the claimant must prove that those actions resulted in prejudice so great that there was reasonable probability that they altered the outcome of the trial.

Proving both criteria of the Strickland test is difficult for three reasons. First, the claimant must specifically state the actions that were not objectively reasonable. Second, the Supreme Court has indicated that there is a presumption that legal counsel acted reasonably. This is based on the understanding that in preparing and presenting a case, legal counsel chooses among a range of strategies and tactics. A hindsight review of these choices can unfairly find fault and impose a biased judgment of actions. Third,

the claimant must prove that a reasonable probability exists that the outcome of the trial would be different if not for the actions of the legal counsel. This requires proving more than just a possibility or an expectation that the outcome would have been different.

The Supreme Court has issued two rulings that have further clarified its position on ineffective counsel. In *United States v. Cronin* (1984), the Supreme Court explained that the right to effective counsel is based on the need for the defense to provide a meaningful adversarial test of the prosecution's case. Most recently, the Supreme Court has reiterated that effective legal counsel is to ensure the fairness of the process. A fair process does not necessarily mean that the outcome will be favorable to the defendant (*Cullen v. Pinholster*, 2011).

Supreme Court decisions since *Strickland* have also provided guidance in meeting the Strickland test. To meet the reasonableness test of Strickland, the Supreme Court has explained that the circumstances of the case must be considered (*Roe v. Flores-Ortega*). In *Bell v. Cone* (2002), the Supreme Court provided three instances where the prejudice standard of *Strickland* would be met: (1) the effect of actions resulted in the complete denial of legal counsel at a critical stage, (2) counsel did not subject the prosecution's case to adversarial testing, and (3) counsel was expected to assist in a situation where competent legal counsel could not provide effective assistance.

This does not mean that the Strickland test is insurmountable. Litigants have successfully claimed ineffective counsel when no pretrial discovery was done (*Kimmelman v. Morrison*, 1986), when the case file was not appropriately reviewed (*Rompilla v. Beard*, 2005), and in cases where counsel failed to discover or present mitigating circumstances at sentencing.

Although it is the intent that the defendant and legal counsel will work together on the case, legal counsel is allowed latitude to act in the best interests of the defendant. For example, legal counsel's authorization is seen as sufficient to allow a judge to preside over voir dire (*Gonzalez v. United States*, 2008), to make trial scheduling decisions (*New York v. Hill*, 2000), and to provide assurances that the defendant was prop-

erly informed of the nature and elements of the charge (*Bradshaw v. Stumpf*, 2005).

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See Also: 1921 to 1940 Primary Documents; Adversarial Justice; Appeals; Bill of Rights; Capital Punishment; Constitution of the United States of America; Defendant's Rights; *Gideon v. Wainwright*; *Miranda v. Arizona*; Prisoner's Rights; Suspect's Rights.

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Leopold and Loeb

On September 10, 1924, Nathan Freudenthal Leopold, Jr. (November 19, 1904–August 29, 1971), and Richard Albert Loeb (June 11, 1905–January 28, 1936) were convicted of the kidnapping and murder of 14-year-old Robert “Bobby” Franks. Franks's death was particularly shocking, in part because of its randomness, but also because the murderers had no motive other than to satisfy their obsession with committing the “perfect crime.” In light of these facts, the prosecution demanded the death penalty, which prompted the defendants' families to retain Clarence Darrow, an outspoken foe of capital punishment.

At the time of the murder, Leopold and Loeb lived in the wealthy, primarily Jewish neighborhood of Kenwood on Chicago's south side. They first met, however, while attending the University of Chicago in 1920. Both were considered child prodigies: Leopold was 16 when he began college,

and Loeb was the youngest graduate of the University of Michigan. Given his intellect, Leopold believed he was a Nietzschean “superman” and convinced Loeb that their actions, the criminal nature of which notwithstanding, were beyond reproach. The two were also lovers; in exchange for his role as Loeb’s partner in crime, Leopold demanded periodic sexual favors from Loeb. This arrangement led to the commission of numerous crimes, from petty theft to burglary, and eventually murder.

On the afternoon of May 21, 1924, Leopold and Loeb drove around Kenwood looking for a victim. They settled upon Bobby Franks, who had been walking home from an after-school baseball game. Loeb, whom Franks knew, offered to give Franks a ride. Though it was never proven who actually delivered the fatal blow, within seconds of driving away, one of the two repeatedly struck Franks on the head with a chisel. When Franks did not succumb quickly, they suffocated him to death. The two then drove for several hours until nightfall, whereupon they poured hydrochloric acid on Franks’s face and genitals and deposited his body in a culvert by Wolf Lake.

The two had planned the murder for several months. Part of the plan involved contacting their victim’s family and demanding a ransom. Immediately after leaving Franks’s body, the two contacted Franks’s parents; however, before they could deliver further instructions, Franks’s body was discovered by a man who had been walking along the railroad tracks that passed over the culvert. Distinctive horn-rimmed, tortoiseshell eyeglasses were found near the body. Police traced the glasses to Leopold, and, after a lengthy interrogation, the two men confessed to the crime.

Contrary to popular belief, the “trial of the century” was actually a hearing that lasted several months, during which time it was the focus of intense nationwide media attention. At Darrow’s behest, both men pled guilty to the charges. Darrow believed this could spare the two from an otherwise certain death sentence. Thus, Judge John Caverly heard mitigating evidence presented by both Darrow and Illinois state attorney Robert Crowe, which included unprecedented extensive psychiatric testimony. Moreover, Darrow’s summation is still considered one of the most eloquent critiques of capital punishment ever given. In it,

Darrow attacked the death penalty as a throwback to a less humane time when retribution was the law of “the beast and the jungle.” At the conclusion of his argument, the judge and several spectators were reportedly moved to tears and a minute or two of silence. Ultimately, Judge Caverly sentenced both defendants to life in prison for murder plus 99 years for kidnapping. Caverly claimed to have been more persuaded by the defendant’s youthful age and the potential contributions to criminology that studying Leopold and Loeb might offer than by any of the other mitigating evidence presented.

Leopold and Loeb were remanded to Illinois’ Joliet Prison. Loeb was killed in 1936 by an inmate who slashed him with a razor, allegedly to resist Loeb’s sexual advances. Leopold was released after 34 years of being a model prisoner. He went on to earn a graduate degree, teach mathematics, and author a book on ornithology. Even though Leopold eventually married, in a 1960 interview, he admitted that he was still deeply in love with Loeb.

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See Also: 1921 to 1940 Primary Documents; Autobiographies, Criminals; Capital Punishment; Chicago, Illinois; Darrow, Clarence; Famous Trials; Kidnapping; Murder, History of.

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Libertarianism

On its face, libertarianism is an ideology of human freedom that promotes the ability of individuals to act and think freely to the extent that they

do not infringe on the rights of others to do the same. Starting from the presumption that humans have absolute control over their own bodies and their labor, a concept known as self-ownership, libertarians conclude that the state is a primary threat to human freedom, often characterizing it as a fundamentally violent or criminal entity. For right-libertarians such as Murray Rothbard, taxation becomes “theft,” conscription becomes “enslavement,” and any nondefensive use of violence by the state becomes “murder.” As such, libertarianism often contends that government should be either abolished (anarchism) or radically minimized (minarchism).

There exist three major camps in libertarian thought: right-libertarianism, socialist libertarianism, and left-libertarianism; the extent to which these represent distinct ideologies as opposed to variations on a theme is contested by scholars. Regardless, these factions differ most pronouncedly with respect to private property. Right-libertarians see strong private property rights as the basis of freedom and thus are—to quote the title of Brian Doherty’s text on libertarianism in the United States—“radicals for capitalism.”

Meanwhile, socialist libertarians view any concentration of power into the hands of a few (whether politically or economically) as antithetical to freedom and thus advocate for the simultaneous abolition of both government *and* capitalism. Meanwhile, left-libertarians try to strike a balance by embracing self-ownership and weak property rights while arguing for egalitarian control of natural resources. While right-libertarianism has been equated with libertarianism in general in the United States, left-libertarianism has become a more predominant aspect of politics in western European democracies over the past three decades.

Right-Libertarianism

Since the 1950s, libertarianism in the United States has been associated almost exclusively with right-libertarianism, which combines an antistatist commitment to individual freedom with strong support for private property rights and free markets. At times embracing the cause of anarcho-capitalism, right-libertarians advocate little to no government control over capitalism

and promote private solutions to public concerns such as health, crime, and education.

Right-libertarian thought draws from an array of political and economic thinkers, most notably Ayn Rand, Isabel Patterson, Rose Wilder Lane, Milton Friedman, Ludwig von Mises, and Friedrich Hayek; perhaps the greatest influence on popular conceptions of libertarianism in the United States, Ayn Rand inspired the Objectivist movement through her novels *Atlas Shrugged* and *The Fountainhead*. Both texts promoted capitalism as the only economic system that could be morally justified on the basis of freedom. By the 1960s, Objectivism had evolved into cultlike status, eventually providing a (albeit conflict-ridden) basis for the emergence of a libertarian movement in the 1960s and the Libertarian Party in the early 1970s. While Rand later alienated herself from popular libertarianism, her ideas continued to inform the libertarian commitment that capitalism and freedom were foundationally linked.

While maintaining their allegiance to capitalism, American libertarians of the 1960s and 1970s broke ranks with conservatives and found alliances with leftists against the Vietnam War draft and other social issues, including the legalization of marijuana and the decriminalization of alternative lifestyles. While libertarians of prior years stressed the importance of disseminating libertarian ideas and serving an educational function, the political shifts in the 1960s and 1970s found libertarians for the first time pursuing explicitly politicized ends. By 1971, the Libertarian Party was officially founded in reaction to President Richard Nixon’s economic policies. Particularly significant in California and Colorado, the party enjoyed a national presence by 1980. According to Jennifer Burns, the party’s shift away from a Randian subculture toward a policy focus facilitated the attraction of educated professionals, many of whom became active in the emergence of key libertarian think tanks, such as the Cato Institute (founded in 1977), the Reason Foundation (founded in 1968), and the Independence Institute (founded in 1985). However, by the early 1990s, the Libertarian Party lacked potency as a serious political force. Given the success and legitimacy of libertarian think tanks, particularly the Cato Institute, Burns suggests that the Libertarian Party had the uncanny effect of making



Right-libertarians carrying signs at a Tea Party tax day protest in St. Paul, Minnesota, on April 15, 2010. They called for smaller government and the repeal of new healthcare laws.

mainstream the libertarian movement by concentrating more extreme libertarians in the less legitimate Libertarian Party. As in the early heyday of libertarianism under Ayn Rand, the most widely influential manifestations of libertarianism today take the form of educational outreach, not politics, eventually leading Burns to conclude that libertarianism is a predominant, though not defining, sensibility within American politics. As such, right-libertarianism in the United States remains a fruitful discourse with which to articulate conservative claims, even as it lacks political efficacy as a separate ideology. However, even without its own movement, libertarian sensibility informs numerous social movements in the United States, including the U.S. patriot movement, the gun-rights movement, and the incipient Tea Party movement.

Left-Libertarianism

In contrast to the United States, where a right-libertarian sensibility dominates, western European nations with strong leftist political parties tend to see the emergence of left-libertarian parties, as detailed by Kent Redding and Jocelyn S. Viterna. According to them, these parties are united by their “critique of the statist and bureaucratic tendencies of modern welfare states ... inequality and environmental degradation produced by capitalist market economies.” This dual emphasis means that while many left-libertarians embrace the notion of self-ownership and agree with right-libertarians that individuals have an absolute right over their own bodies against the encroachment of the state and other social actors, they disagree with right-libertarians with respect to property rights, arguing instead that individuals have no inherent right to natural resources. Namely, these resources must be treated as collective property that is made available on an egalitarian basis. Unlike socialist libertarians, who aim to dismantle private property and the social arrangements that make private property possible, left-libertarians maintain a weak notion of private property rights while advocating for redistributive systems that equalize access to natural resources. Several significant contributions have been made by left-libertarians in detailing their maverick splicing of individualism with redistributive egalitarianism, most notably the two collections *The Origins of Left-Libertarianism: An Anthology of Historical Writings* and *Left-Libertarianism and Its Critics: The Contemporary Debate* (both edited by Peter Vallentyne and Hillel Steiner). In addition to Vallentyne and Steiner, other prominent proponents of left-libertarianism include Michael Otsuka, Allan Gibbard, Baruch Brody, James Grunebaum, Philippe Van Parijs, and Nicolaus Tideman.

The joining of radical, antistatist individualism with egalitarian redistribution of natural resources is both the promise and pitfall of left-libertarianism, accounting for its popularity in political philosophy and much of the criticism directed toward it. The most prominent critiques have either attacked left-libertarianism as an incoherent, contradictory philosophy or argued that left-libertarianism is not fundamentally new—but rather a variant on the traditional, pro-state left in libertarian garb. These objections seem to be voiced

most strongly by American critics; in contrast to its political successes in much of western Europe, left-libertarianism is seen in the United States as either lacking a defensible endorsement of strong property rights (the critique from the right and right-libertarians) or “eating with the devil” (to paraphrase from Barbara Fried’s influential “Left-Libertarianism: A Review Essay”) by capitulating to right-wing notions of individualism.

Socialist Libertarianism

Unlike left-libertarians, who equivocate to some degree regarding the right to private property, socialist libertarians seek an abolishment of private property in addition to an abolishment of the state. Viewing both capitalism and government as modes of domination that pit a powerful elite against a weak and subordinate majority, socialist libertarians are consistent in their demand to obliterate systems of oppression on both economic and political grounds. Indeed, dissolving the state in hope of expanding human freedom would mean little if the system of private property were left untouched; if taxation is “theft,” as right-libertarians would have it, then so is property, according to socialist libertarians.

Socialist libertarianism sounds like anarchy, and for good reason; in fact, anarchists began using the term *libertarian* in the mid-1800s, far before the right-wing usage in the United States that began in the 1950s. While anarchism and socialist libertarians have a rich history of revolutionary thinkers ranging from Emma Goldman to George Orwell, the best-known socialist libertarian thinker of today is probably Noam Chomsky.

Intellectual Property Rights

There is some debate among libertarians about intellectual property rights. On the one hand, some view intellectual property as yet another “product of human labor” (to quote Ayn Rand), while others recognize its distinctiveness from physical property. Those supporting the former view emphasize the role of creation in demarcating “one’s property,” whereas those supporting the latter view emphasize the importance of scarcity in designating property rights. Unless the object of ownership is itself scarce, so the argument against intellectual property rights goes,

property rights are inconsistent with libertarianism insofar as they would infringe on the ability of individuals to exercise freedom (i.e., think).

Crime and Criminal Justice

What constitutes crime? Under libertarianism, human freedom should not be inhibited unless the exercise of freedom limits the ability of others to exercise their freedom. Crime includes any actions that violate this tenet: Stealing is no good, but lifestyle choices that affect no one but the person who practices them should not be regulated. Crime always infringes on another person or his/her property; the terms *victimless crime* and *crimes against the state* are oxymoronic to a libertarian ear. For this reason, libertarians support, for example, the decriminalization of drug use and sexual acts between consenting adults.

Libertarians blame crime on state programs that encourage dependency and discourage individual responsibility, on the one hand, and ill-fated attempts to police victimless crimes, on the other. Right-leaning libertarians in particular argue that government programs have created a culture of dependency that facilitates crime; decreasing crime, therefore, would entail ending welfare and increasing economic opportunity through free market initiatives. In addition, libertarians on both the left and right in the United States argue that the government-led “war on drugs” has been a failure, increasing violent crime by wasting valuable prison and policing resources on victimless crimes such as marijuana possession.

The libertarian approach to punishment is premised on the decriminalization of victimless crimes, on the one hand, and a heightened emphasis on victims and victim’s rights, on the other. Libertarians would significantly scale back state resources spent on housing nonviolent prisoners, reserving prison space for violent offenders. Rather than providing a warehouse for prisoners, the state would generally serve as a mediating entity to ensure that victims receive full restitution for crimes committed against them, including any direct or indirect losses incurred. Libertarians are also concerned with the individual rights of the accused and convicted, opposing laws that would permanently strip rights such as voting. Because of their emphasis on victim rights, on the one hand, and the rights of the accused and

convicted, on the other, libertarians have mixed feelings toward certain criminal justice issues such as the death penalty. While some view it as the highest form of victim-centered justice, others see it as an example of excessive and unnecessary (not to mention expensive) government intrusion and state-sanctioned violence.

Libertarians embrace individualistic approaches to policing. The American Libertarian Party, for example, states that expanding the right to self-defense is “the most effective crime deterrent available.” Libertarians strongly believe that state institutions—particularly the police—are ineffective in protecting individuals from crime and that individuals themselves are ultimately responsible for their own protection from crime. To address these issues, some libertarians support police vouchers. A system popularized by Murray Rothbard for an array of services typically provided by the government, vouchers can be used to provide individuals with tax breaks or direct funds to hire private police forces or organize themselves into police.

In addition to emphasizing free market approaches to policing, libertarians are concerned about the abuse of power by the police and other state paramilitary institutions. The Cato Institute, for example, has published papers on the militarization of American police forces and the rapid increase in often violent “no-knock” police raids under the auspices of the U.S. war on drugs.

The Future of Libertarianism

While left-libertarianism has successfully established itself in the form of political parties in numerous western European countries, the ascendancy of right-libertarianism in the United States remains unclear. While numerous developments suggest that libertarianism as a political doctrine is on the rise in the United States (including most notably the Tea Parties and initiatives such as the free state movement), there are no clear indications that these developments are more than a momentary articulation of libertarian sensibility, to use Jennifer Burns’s terminology.

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See Also: Anarchists; Douglas, William O.; Morality; Political Dissidents; Tax Crimes; Three Strikes Law.

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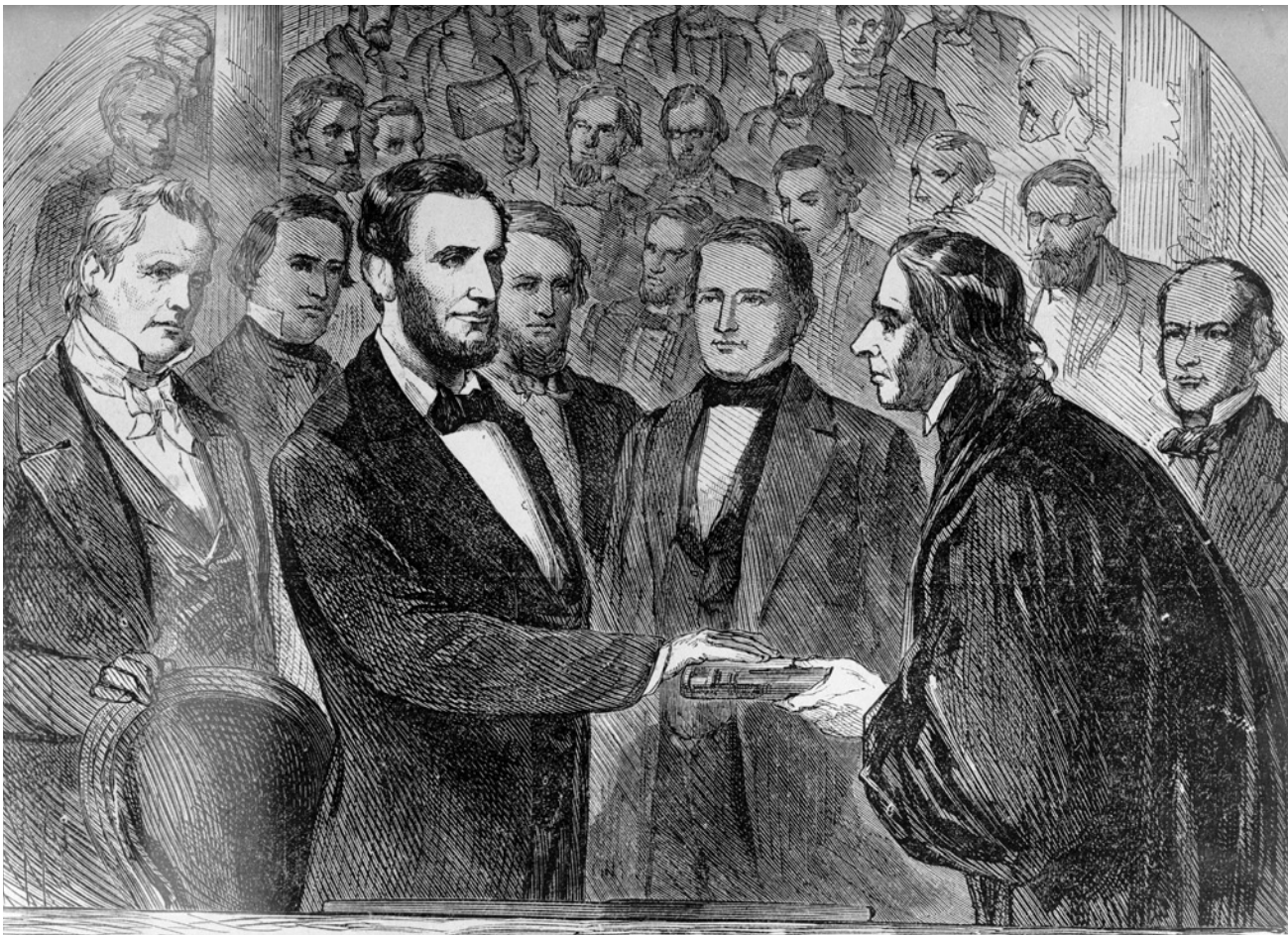
Lincoln, Abraham (Administration of)

Abraham Lincoln, (1809–65) president during the American Civil War, had a deep and long-lasting interest in and impact upon crime and punishment. A self-taught lawyer, Lincoln enjoyed a brilliant legal career before ascending to the presidency, with vast experience as both a trial and appellate lawyer. Although his tenure as president saw him focused primarily upon military matters, Lincoln was forced to deal with many issues involving crime and punishment caused by the conflict facing the United States at that time. Specifically, Lincoln faced decisions related to punishing suspected Confederate sympathizers, balancing war powers with civil liberties, and maintaining stability when definitions of *property*, *citizen*, and *treason* were in flux and uncertain. Lincoln was also able to shape conceptions of crime and punishment through his appointments of justices to the U.S. Supreme

Court and his nominations for the attorney general of the United States.

Lincoln was famously born in a single-room log cabin in what is now LaRue County, Kentucky. Lincoln's father, Thomas, owned several farms at the time of his son's birth, although faulty title to this land caused the family to relocate to Indiana in 1816 to start over. After Lincoln's mother died when he was 9, Thomas Lincoln married Sarah Bush, who encouraged her stepson's educational aspirations. After the family moved to Illinois in 1831, Lincoln moved on his own to New Salem, where he was unsuccessful as a storekeeper. An interest in politics led to Lincoln's election to the Illinois state legislature in 1834 as a Whig. At this point, Lincoln decided to become a lawyer. Rather

than training with a practicing attorney, Lincoln taught himself the law, reading William Blackstone's *Commentaries on the Laws of England* and being admitted to the bar in 1836. Lincoln moved to Springfield, where he entered practice with John Todd Stuart, cousin of Lincoln's future wife, Mary Todd. Stuart and Lincoln were partners until 1841, after which time Lincoln entered into a partnership with Stephen Logan from 1841 to 1844, and then with Richard Herndon beginning in 1844. As a lawyer, Lincoln had extensive trial and appellate experience, handling both civil and criminal cases. Lincoln appeared before the Illinois Supreme Court in 175 cases. Although popular legend focuses on Lincoln's log cabin roots, he enjoyed a highly lucrative practice, with



Abraham Lincoln being sworn in as president by U.S. Supreme Court Chief Justice Roger Taney. When the Civil War began, Taney issued an order holding that neither the president nor his agents could issue an order suspending the writ of habeas corpus and that the military had no right to detain an individual unless a judicial body had authorized such action. Lincoln ignored Taney's decision and continued to suspend the writ of habeas corpus on his own authority for several years.

the Illinois Central Railroad being one of his largest clients.

The Civil War President

In 1846, Lincoln was elected to the U.S. House of Representatives, but chose not to run for reelection. He made two unsuccessful runs for a seat in the U.S. Senate, falling to fellow Whig Lyman Trumbull in 1854 and, running as a Republican, to Democrat Stephen A. Douglas in 1858. Despite these setbacks, Lincoln developed a national following and was elected president of the United States in 1860. Although he won a majority of the electoral votes, Lincoln only carried about 40 percent of the popular vote in a field with four candidates. Lincoln's election was highly unpopular in the south, and those in favor of secession soon began to move to leave the Union. Ultimately, 11 states seceded and formed the Confederate States of America (CSA). On February 8, 1861, Jefferson Davis was named the president of the CSA, and after the Battle of Fort Sumter, which was fought April 12–13, 1861, the American Civil War began. The ongoing war greatly shaped Lincoln's approach to crime and punishment.

Faced with a conflict involving riots, further threats of secession, and independent militias hostile to the Union cause, Lincoln suspended the use of the writ of habeas corpus. The writ of habeas corpus is an order, issued by a court, allowing a prisoner to demand that a public official take that prisoner before a court so that the court can determine if probable cause exists to detain the prisoner. In 1861, Lincoln was faced with pro-CSA mobs attacking federal troops in Maryland. Fearful that Maryland would secede, leaving Washington, D.C., cut off from the rest of the Union, Lincoln ordered increased troops to defend the capital. When Thomas Hicks, governor of Maryland, and George Brown, mayor of Baltimore, asked that the Union army be prevented from crossing the state, Lincoln declared martial law in Maryland and ordered troops to apprehend Confederate agents and others opposed to the Union cause. Lincoln faced heated opposition from a group of northern Democrats known as the Copperheads, who were called such in reference to the poisonous snakes with copper-colored heads. The Copperheads vehemently opposed the policies of the abolitionists and favored political compromise

that would lead to a negotiated end to the war with the Confederate States. To that end, the Copperheads opposed the military draft and Lincoln's attempts to free the slaves or to arrest those who spoke against military policy. Although the Copperheads believed they were exercising their constitutional right to speak out against policies that they opposed, Lincoln and many of his contemporaries asserted that such opposition bordered on treason. Lincoln's actions against the Copperheads, including his attempts to suspend the writ of habeas corpus, were and remain controversial, and some historians maintain that while the Copperheads posed a serious threat to Union efforts, they were in many ways exercising types of free speech first popularized during the era of Jacksonian democracy.

In April 1861, Lincoln asked Attorney General Edward Bates for an advisory opinion regarding suspension of the right to a writ of habeas corpus. Later in that month, as tensions increased, Lincoln told General Winfield Scott, the commander in chief of the Union army, that the writ of habeas corpus was suspended, a decision that was not immediately announced. On May 24, 1861, Lieutenant John Merryman of the Maryland militia was arrested for pro-CSA beliefs and for recruiting and training Confederate troops and engaging in sabotage of telegraph lines and rail crossings. Merryman appealed for a writ of habeas corpus to the U.S. Circuit Court for the District of Maryland, where U.S. Supreme Court Chief Justice Roger Taney was sitting. Taney issued a writ of habeas corpus, but when a U.S. marshal attempted to serve this, the Union army refused to comply. In response, in *Ex parte Merryman* (1861), Taney issued an order holding that neither the president nor his agents could issue an order suspending the writ of habeas corpus and that the military had no right to detain an individual unless a judicial body had authorized such action. Lincoln ignored Taney's decision and continued to suspend the writ of habeas corpus on his own authority for several years, until the U.S. Congress authorized his action through the Habeas Corpus Act of 1863.

As president, Lincoln appointed five justices to the U.S. Supreme Court, including Noah Haynes Swayne, Samuel Freeman Miller, David Davis, Stephen Johnson Field, and, as chief justice, Salmon P. Chase. These appointments greatly changed the

makeup of the court, moving it away from the pro-slavery support it had given appellants under Taney. In 1861, Lincoln appointed Edward Bates as the attorney general. Bates, who had proven instrumental in carrying out the arrests of southern sympathizers, resigned in 1864 because of disagreements with Lincoln regarding the Emancipation Proclamation and the arming of freed slaves. Bates was succeeded by James Speed, an ardent opponent of slavery, who, after Lincoln's assassination on April 14, 1865, became affiliated with the Radical Republicans. Lincoln's legacy with regard to crime and punishment is mixed, as he both worked to extend the rights of many while also suppressing the voices of those who opposed his policies.

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See Also: 1851 to 1900 Primary Documents; 1961 to 1980 Primary Documents; Booth, John Wilkes; Fugitive Slave Act of 1850; Habeas Corpus Act of 1863; History of Crime and Punishment in America: 1850–1900; Illinois.

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Lindbergh Law

“Lindbergh Law” is the name that was given to the Federal Kidnapping Act, which was passed after the kidnapping and murder of Charles Lindbergh's son in 1932. Lindbergh was an aviator and inventor who was known at the time as “Lucky Lindy”

after his successful solo transatlantic crossing in a single-engine plane named the *Spirit of St. Louis*. This feat brought him fame and fortune, and ultimately the loss of his son, Charles Lindbergh, Jr.

In 1932, Charles Lindbergh, Jr., was taken from his bedroom in the family home in East Amwell, New Jersey. A ransom note was left in the room demanding a payment of \$50,000. This was followed by a second ransom note demanding \$70,000, and then a third letter making the same request. There were many theories as to whether the kidnapping was the act of a single person or a group of conspirators.

There were additional ransom demands from others and claims of payments, yet the baby was not returned to the Lindbergh family. Several months after the abduction, the boy's body was inadvertently discovered in a wooded area near the Lindbergh home by a truck driver. Bills from the ransom started to appear in circulation shortly after it was paid, but it was not until 1934 that police were able to identify a person with the money. Bruno Richard Hauptmann was identified as a prime suspect in the case because he passed a \$20 gold note that was believed to be part of the ransom money paid by the Lindbergh family. The investigation led to additional evidence against Hauptmann, including a large portion of the ransom and a source of the wood used to build the ladder found outside the baby's room. In the end, Hauptmann was tried, convicted, and put to death for the crime.

The Federal Kidnapping Act of 1932

Representatives from the New Jersey State Police, the Jersey City Police Department, the New York City Police Department, the Internal Revenue Service Law Enforcement Division, and the Federal Bureau of Investigation (FBI) were involved in the investigation of the abduction. According to the U.S. Constitution, police power rests with the states. The authority of law enforcement officers to investigate crimes ends at their jurisdiction's borders. It has been suggested that state border limitations initially hampered the investigation. Perhaps the results may have been different if a single law enforcement entity had the authority to investigate such crime without consideration of local authorities and state borders. Federal law enforcement agents would

not have such limitations and could pursue kidnappers wherever they might run.

In response to the Lindbergh kidnapping, Congress passed the Federal Kidnapping Act of 1932. The act addresses the unlawful seizure, confinement, or kidnapping of an individual for ransom or reward—a person who was alive when the transportation began. Because the authority of the federal government rests with matters involving interstate activities, the act specifically states that an element of the offense is the willful transportation of the victim across state lines and that the failure of the kidnapper to release the victim within 24 hours of the abduction creates “a rebuttable presumption that such person has been transported to interstate or foreign commerce.” This provides the FBI with the authority to investigate a kidnapping. To ensure that there is not a delay regarding the FBI’s involvement, the section also states that the FBI is not precluded from initiating its investigation prior to the end of the 24 hours.

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See Also: 1851 to 1900 Primary Documents; 1921 to 1940 Primary Documents; Famous Trials; Hauptmann, Bruno; Jurisdiction; Kidnapping.

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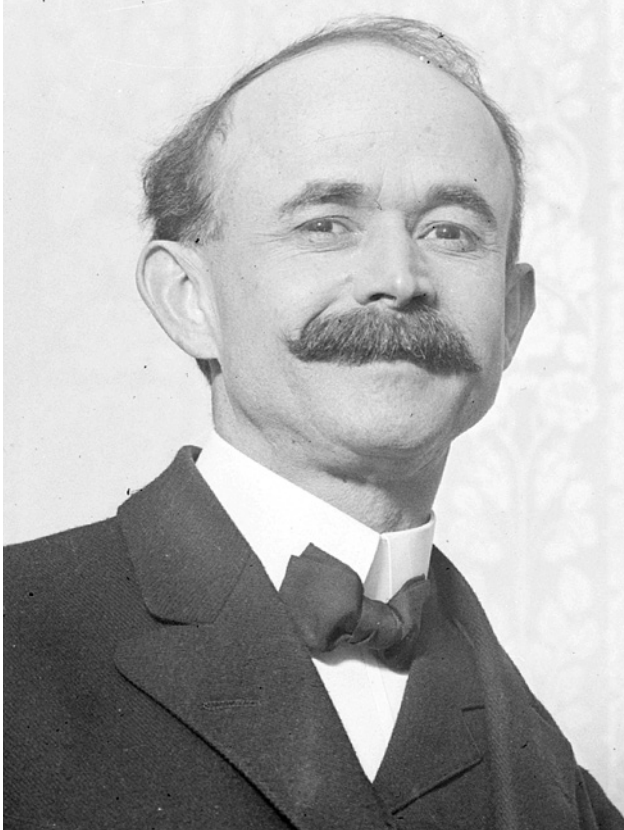
system, Benjamin Barr Lindsey (1869–1943) was born in Jackson, Tennessee, to Landy Lindsey and Leticia Anna (Barr) Lindsey. His father had served as a captain in the Confederate army and worked as a telegraph operator. In 1877, Landy Lindsey moved to Denver, Colorado, to mine, but instead found steady work as a telegraph operator with the Denver and Southern Park Railroad. Two years later, Lindsey, his mother, brother, and sister joined Landy in Colorado. In 1881, Lindsey and his brother began school in the elementary department of Notre Dame University in Indiana, but by 1885, the family had fallen on hard times and Lindsey’s family was sent back to Tennessee where he attended the preparatory school at the Southwest Baptist University.

After three years in Jackson, Lindsey returned to Denver to take care of his family in the wake of Landy’s death. Lindsey found a job keeping records for a real estate company, delivered newspapers, and worked as a janitor in the evenings. Eventually, he found work as an office boy in the law offices of R. D. Thompson, where Lindsey borrowed law books and prepared himself for the Colorado bar examination, which he passed in 1894. Immediately, Lindsey became involved in local Democratic politics and worked for Charles Thomas, the Democratic candidate for governor in 1898. In 1899, a successful Thomas appointed Lindsey as public administrator and guardian of the Denver County Court, an office that showed Lindsey firsthand the problems of underprivileged children. Two years later, in 1901, Lindsey was appointed judge of the Denver County Court, and he soon recognized the need for a special court that dealt solely with the issues of children. His long-time battle on behalf of children led him to create the Juvenile Court of Colorado, which in 1907 became the Juvenile and Family Relations Court.

Lindsey continued to marry his work in the law with politics and, after 1914, was assisted by his wife Henrietta (Brevoort) Lindsey. In his early career, he was instrumental in the passage of Colorado’s child labor law and contributory delinquency laws that held parents and employers responsible for the delinquency of minors. He also helped establish Denver’s public playgrounds, athletic teams, summer outings, and camps for the city’s children, an early version of the Fresh Air Fund.

Lindsey, Ben

Leading American jurist, social and economic reformer, and advocate for the juvenile justice



Benjamin Lindsey, leading American jurist, social and economic reformer, and advocate for the juvenile justice system, in a photograph from between 1910 and 1915.

Lindsey soon decided, however, that the underlying pressures of widespread vice, corruption, and economic injustice were the main causes of juvenile delinquency. During his tenure in Colorado, he helped pass an eight-hour work law, employer's liability law, Mother's Pension law, a new voter registration law, and liberalized the divorce laws—all addressing widespread social injustice. In 1910, he took his first steps into extralegal activity by writing *The Beast*, an exposé of the political and corporate corruption in Colorado. In 1925, Lindsey wrote *The Revolt of Modern Youth*, followed by *The Companionate Marriage* in 1927. In these two publications he presented controversial ideas, advocating such measures as legalized birth control and trial marriage. Through his books, numerous magazine and newspaper articles, and public speeches and debates, Lindsey not only attracted large numbers of supporters throughout the country but also the ire of conservative church

and political leaders, especially the Ku Klux Klan, who succeeded in having him disbarred in Colorado in 1927.

The following year, Lindsey moved to Los Angeles, California, and continued his work toward social justice as a lawyer. In 1934, he was elected to the Los Angeles Superior Court and five years later became the first judge of the California Children's Court Conciliation, a court he helped create. This court not only provided a children's court but also served as the precursor to the present marital counseling agencies. Lindsey was reelected in 1940 and served as superior court judge until his death in 1943 of a heart attack. Two years earlier, in 1941, Lindsey's final book, his autobiography titled *The Dangerous Life* was published, recounting his life of public service in the pursuit of social justice.

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See Also: Children's Rights; Colorado; Juvenile Courts, History of; Juvenile Justice, History of.

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Literature and Theater, Crime in

Crime permeates much literature and theater, although any analysis is inevitably imprecise because the term applies to any work involving detection, criminal activity, or unsolved misdeeds. Crime has been a consistent theme in a variety of literary genres, including literature, detective and crime fiction, thrillers, and children's series.

Although covering similar themes, some books and plays concentrate more on the puzzle aspects of crime, while others delve into the psychological aspects of the criminal's psyche and circumstances underlying the crime. While both approaches are popular, they often attract different types of fans and as a result are frequently marketed differently.

Origins of Crime in Literature

Crime has long been a popular theme in books and plays. Authors such as Edgar Allen Poe, Charles Dickens, Fyodor Dostoyevsky, Joseph Conrad, and Wilkie Collins all used crime as a central theme in a variety of 19th-century efforts. Dickens used crime as a frequent theme in his novels, with works such as *Oliver Twist* (1837), *David Copperfield* (1849), *A Tale of Two Cities* (1859), and *The Mystery of Edwin Drood* (1870) all exploring how crime and punishment reverberate and affect many individual lives. An advocate for social reform, Dickens often addressed social issues of the time in his books and was able to help shape public opinion regarding crime, seeing a variety of law breakers as having been forced into certain behaviors because of societal problems beyond their individual control. Dostoyevsky's *Crime and Punishment* (1866) and Conrad's *The Secret Agent* (1907) are essentially crime novels, but both works focus primarily on punishment rather than crime itself. Although Raskolnikov commits a murder in *Crime and Punishment*, and Verloc plans a terrorist act in *The Secret Agent*, these crimes are little more than starting points for tales that focus on the use and abuse of power and the redemption of the human spirit.

Poe's short story "The Murders in the Rue Morgue," originally published in *Graham's Magazine* in 1841, is often referred to as the first detective story. Poe's detective, G. Auguste Dupin, is an amateur and a devotee of ratiocination, the process of reasoning using conscious and deliberate inference. In "The Murders in the Rue Morgue," Poe established many of the literary devices that would be used by subsequent authors. For example, Poe's story is narrated by the detective's friend and investigative partner, the detective himself is brilliant and eccentric, and the final revelation of the crime is made before the reasoning that supports it is provided. Both Arthur Conan Doyle and Agatha Christie adopted these devices for

their creations, Sherlock Holmes and Hercule Poirot. Dupin is a model for many other fictional detectives in addition to Holmes and Poirot. Not a professional police officer, Dupin solves crimes largely for his own amusement and satisfaction, although he does exhibit a deep desire for truth and values being able to prove an accused man innocent. He has no financial interest in the case and indeed declines a reward at the case's conclusion. Finally, Dupin emphasizes the triumph of brains over brawn. Poe wrote two additional stories featuring Dupin, "The Mystery of Marie Roget," first published in 1842, and "The Purloined Letter," which first appeared in 1844.

The first novel-length work dealing with crime is generally credited to Seeley Regester, the pseudonym of Pennsylvania-born Metta Fuller Victor. Regester's *The Dead Letter* was published as a serial in *Beadle's Monthly* in 1866 and appeared in book form the following year. *The Dead Letter* focuses on the personality and methods used by her detective, Mr. Burton, portrayed as a well-adjusted, industrious, upper-class amateur investigator. Further developments in literary treatment of crime took place at the hands of Anna Katharine Green (1846–1935), a Brooklyn Heights-born author who is credited with writing the milestone novel *The Leavenworth Case: A Lawyer's Story* (1878). In this work, Green introduced such now-familiar conventions as ballistics evidence, a body in the library, a coroner's inquest, a crime-scene sketch, the incipient change in a rich man's will, a locked room, and a partially burned letter. Green wrote 36 detective novels and four collections of short stories, and her work was popular in upscale magazines such as *The Century*, *Ladies' Home Journal*, and *Lippincott's*. Green greatly influenced later writers, including Mary Roberts Rineheart (1876–1958) and Agatha Christie.

Growth in Popularity

In 1887, struggling physician Arthur Conan Doyle introduced the most famous fictional detective, Sherlock Holmes. Holmes's first appearance came in the story "A Study in Scarlet," which was published in *Beeton's Christmas Annual*. Modeled after one of Doyle's medical school professors, Holmes became sensationally popular. Although Doyle continued to publish Holmes stories until

shortly before his death in 1930, he had mixed views about the detective's continued success, briefly killing the character off during the 1890s only to be forced by popular demand to resurrect him in 1901. The Holmes canon consists of 56 stories and four novels, although the stories tend to be more popular, both with readers and as a source for theater, film, and television adaptations. Doyle, a tremendously gifted storyteller, adapted literary devices introduced by Poe and Collins and perfected them in ways that solidified the detective genre. Holmes is portrayed as a brilliant eccentric, a master of disguise, and an able chemist. Holmes uses deductive reasoning to solve crimes, although he is an able and athletic sleuth who is more than willing to go into the field to track down criminals. The criminals Holmes faced represented either criminal masterminds, such as Professor Moriarty, or common offenders who often used supernatural trappings in their pernicious pursuit of pecuniary profit.

While the classical detective story was evolving through the exploits of such detectives as Holmes, who was frequently featured in *Collier's* magazine, other aspects of crime fiction were being developed in the genre known as dime novels. Dime novels originally contained stories related to the frontier and westerns, but after 1880 focused largely on crime, mystery, and detective tales. Unlike the stories featured in *Collier's* and other "slick" publications, which aimed at a middle-class audience, dime novels were pitched at a working-class market, especially boys and men. In such series as Street & Smith's Nick Carter stories, Munro's Old Sleuth tales, and others, many popular conceptions of how detectives operated were sown. Most criminals in dime novels were portrayed as venal, harsh, and interested in pecuniary gain, although the occasional master criminal, with hopes of world dominance, was sometimes used. In many ways, the dime novel could be seen as a harbinger of the American hard-boiled school that would develop later, as the stories dealt with a more realistic portrayal of rough streets and cold-blooded criminals.

The Golden Age

Although crime in literature and theater had been popular for decades, it exploded after 1920, based chiefly upon the work of such writers as Agatha

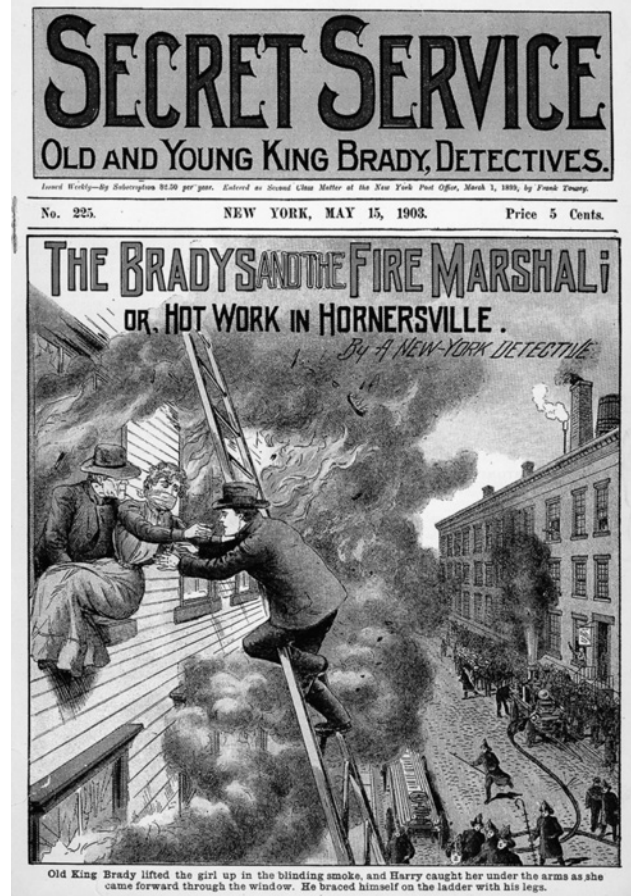
Christie, Dorothy L. Sayers, John Dickson Carr, Raymond Chandler, Rex Stout, Ellery Queen, Dashiell Hammett, and Erle Stanley Gardner. Encompassing the years between World War I and World War II, the "golden age" saw crime fiction dramatically increase in popularity. Interestingly, the popularity of the newer golden age authors work supplemented, but did not supplant, that of earlier writers, such as Poe and Doyle, who continued to enjoy significant sales. Golden age authors depicted all crime in their work, but especially focused upon murders. Murder, and indeed all crime, was seen as an affront against the established order, and the efforts of fictional detectives helped to assure the reading public of the triumph of good over evil.

Beginning with the publication of her first novel, *The Mysterious Affair at Styles* (1920), Christie's career lasted more than 50 years and resulted in 66 novels and five collections of short stories. Her books have sold more than 4 billion copies and have been translated into more than 100 languages, making her the best-selling author of all time. Her fictional detectives include Hercule Poirot, Jane Marple, Tommy and Tuppence Beresford, Superintendent Battle, Mr. Parker Pine, investigator, and Harley Quin. Christie was also well known for her plays, including *The Mousetrap* (1952) and *Witness for the Prosecution* (1953). Among her more influential novels are *The Murder of Roger Ackroyd* (1926), *The Murder at the Vicarage* (1930), *Murder on the Orient Express* (1934), *The ABC Murders* (1936), *And Then There Were None* (1939), *The Body in the Library* (1942), *The Clocks* (1963), and *Curtain* (1975). Christie's works are almost all whodunits, plot-driven detective stories that feature a puzzle regarding who committed a crime. Usually featuring middle- and upper-class characters, Christie's books generally begin with a murder, which the detective either stumbles across or is asked by a client or old friend to solve. The detective next interrogates each suspect, assembles clues, and examines the scene of the crime. In a final denouement, the detective gathers all of the suspects and, over the course of 30 or more pages, unravels the mystery and denounces the criminal. Although some of her work did deal with "super criminals," most of Christie's novels dealt with villains who killed, stole, or blackmailed because they were evil. This

theme, seemingly old-fashioned, may account for her lasting popularity and was a topic that would again become popular in works by contemporary American authors such as Patricia Cornwell and Jonathan Kellerman.

Sayers, Christie's contemporary and acquaintance, was an Oxford-educated poet, theologian, and playwright. An admirer of Collins and Doyle, Sayers is perhaps best remembered for her aristocratic sleuth, Lord Peter Wimsey, who meets, falls in love with, and eventually marries mystery novelist Harriet Vane, a character modeled on Sayers herself. Vane in many ways served as the prototype for female private investigators who became popular during the 1970s and after, such as Marcia Muller's Sharon McCone, Sue Grafton's Kinsey Millhone, and Sara Paretsky's V. I. Warshawski. Sayers's novels are considered classics, with *Unnatural Death* (1927), *Strong Poison* (1930), *Five Red Herrings* (1931), *Murder Must Advertise* (1933), *The Nine Tailors* (1934), and *Gaudy Night* (1935) being especially influential. Sayers's books dealt with criminals who upset the social order through their deeds, including murder, blackmail, extortion, graft, and poison letters. Criminals were usually portrayed as weak, desperate, and venal. Sayers's novels often explore themes unrelated to the mystery, such as the ethics of advertising or the role of women's education.

The popularity of British mystery novels during the 1930s was such that Pennsylvania-born John Dickson Carr wrote more than 70 novels that featured detectives who were English, published both under his name and the pseudonym Carter Dickson. Carr created two major detectives, Dr. Gideon Fell, a rotund cape-wearing consultant who worked with Scotland Yard, and Sir Henry Merrivale, a baronet and former head of the British Secret Service. An American who lived for many years in England, Carr was the master of the locked-room mystery, a subgenre in which a detective solves a seemingly impossible crime that takes place within a space where no murderer could have gained entry or egress. Among his books, *The Hollow Man* (1935), *The Arabian Nights Murder* (1936), and *The Crooked Hinge* (1938), are especially well regarded. Fellow American Ellery Queen, the pseudonym of two Brooklyn-born cousins, Frederic Dannay (1905–82) and Manfred Bennington



The first novel-length work was published as a serial in Beadle's Monthly in 1866 and only later appeared in book form. This popular detective serial from 1903 featured a color cover and purported to be written by a "New York detective."

Lee (1905–71), was one of the most popular and influential of 20th-century mystery writers, writing, editing, anthologizing, and starring in detective fiction. Using a literary convention common since the Nick Carter stories, the name "Ellery Queen" was used for both the author credits and as the name of the detective hero who was featured in a series of books, beginning with *The Roman Hat Mystery* (1929) and concluding with *A Fine and Private Place* (1971). The most popular American crime series of the 1930s and 1940s, Queen also was featured in a series of films as well as a radio program. Modeled in many ways on S. S. Van Dine's Philo Vance, Queen the character began as an Ivy League-educated scholar of private means who investigates crimes, often with his police inspector father in tow, chiefly as a means

of finding intellectual stimulation. As the series progressed, Queen began to display more human emotions, sometimes becoming deeply affected by the individuals in his cases, who often pursued crime because of human frailty or personal circumstances that drove them to make bad choices. Queen the author also became highly influential as an anthologist of mystery fiction and in 1941 founded *Ellery Queen's Mystery Magazine*, a periodical that continues to publish crime-related fiction by new and well-known authors.

Pulps and the Hard-Boiled Genre

In the United States, pulp magazines, also known as “pulp,” also enjoyed great popularity and often featured stories that focused upon crime. At the height of their popularity during the 1920s and 1930s, many pulp magazines sold up to a million copies per issue. Popular titles included *Adventure*, *Amazing Stories*, *Black Mask*, *Dime Detective*, *Flying Aces*, *Horror Stories*, *Marvel Tales*, *Oriental Stories*, *Planet Stories*, *Spicy Detective*, *Startling Stories*, *Thrilling Wonder Stories*, *Unknown*, and *Weird Tales*. Pulp magazines remained popular through the 1950s, when paperback books reduced their popularity. Pulp allowed many new voices to gain a following, and their lack of respect permitted many conventions to be broken. The term *pulps* derives from the cheap wood pulp paper on which the publications were printed. Unlike magazines printed on more expensive paper (known as “glossies” or “slicks”), pulps featured lurid and exploitative stories and sensational cover art. The pulps took advantage of new high-speed presses, low payments to authors, and inexpensive paper to reduce the price of the magazine to 10 cents per issue as opposed to glossies that generally sold for a quarter. Although held in low regard at the time, authors such as Raymond Chandler, Dashiell Hammett, Erle Stanley Gardner, and Rex Stout all began writing for the pulps. During the 1920s, the hard-boiled school of crime fiction originated in the American pulps, featuring as it did the loner sleuth combating violent villains in a corrupt and difficult world.

Raymond Chandler began writing in 1933, after retiring from a business career. Generally credited as a founder of the hard-boiled genre of crime fiction, Chandler wrote in an unsentimental

way about violence and sex. Admired for his lyrical style, Chandler's best work includes *The Big Sleep* (1939), *Farewell, My Lovely* (1940), and *The Long Goodbye* (1953). Chandler set most of his fiction in Los Angeles, and writers such as W. H. Auden, Evelyn Waugh, and William Faulkner spoke warmly of his work. Although sometimes criticized for his portrayals of minorities and women, Chandler is generally acknowledged as one of the greatest writers of the 20th century and one who influenced the genre greatly. Chandler's villains were corrupt and venal, but no more so than the opponents in law enforcement and finance. Dashiell Hammett, a major influence of Chandler's, also contributed greatly to the hard-boiled school. Although his productivity was curtailed by alcoholism and other health conditions, Hammett is regarded as one of the greatest writers of crime fiction of all time. His more famous crime solvers include Sam Spade, Nick and Nora Charles, and the Continental Op. Hammett's novels include *Red Harvest* (1929), *The Dain Curse* (1929), *The Maltese Falcon* (1930), and *The Glass Key* (1931). Hammett also wrote many short stories that were published in the pulps.

Erle Stanley Gardner also began writing after another career, determining that he enjoyed writing more than the practice of law. Although his work never received the critical acclaim of Chandler or Hammett, Gardner was the highest-selling American author for much of the 20th century. Gardner's most famous creations, lawyer Perry Mason and his secretary Della Street, worked to assist clients who were being prosecuted for crimes and getting little assistance from the police. Mason would work to obtain evidence that he often produced in the courtroom, sometimes using illegal means to do so. Gardner was a strong storyteller, but his characters tended to be one-dimensional. Rex Stout, another author who began writing crime fiction later in life, created the nearly 300-pound detective Nero Wolfe and his assistant, Archie Goodwin. Wolfe seldom leaves his brownstone in New York City, relying on Goodwin to interview suspects he cannot get to come to his office. The ultimate armchair detective, Wolfe often seems more interested in dining and raising orchids than solving cases, for which he receives hefty fees. Important works include *The League of Frightened Men* (1935), *And Be*

a Villain (1948), *In the Best Families* (1950), and *Champagne for One* (1958). The books are notable for Wolfe's disdain for the police and his support for the downtrodden.

During the golden age, crime fiction was so popular that series were developed for children. Most popular among these were the Hardy Boys and Nancy Drew books. Produced by the Stratemeyer Syndicate, with authorship attributed to Franklin W. Dixon and Carolyn Keene, respectively, the books were written by a series of ghost authors, with Leslie McFarlane writing most of the Hardy Boys stories and Mildred Wirt penning most of the Nancy Drew adventures. Although the young sleuths solved crimes, including auto thefts, kidnapping, and embezzlement, the books did not include murders, which were seen as too violent for juvenile readers. While golden age novels as a whole are often perceived as adhering to relatively conservative values, insofar as justice must prevail and protagonists work to restore order, this is even more evident in children's series books, which use mystery chiefly to heighten plot interest.

Post-Golden Age Developments

Since the end of the golden age, literature and theater involving crime have changed tremendously in some ways and not at all in others. Some of this is because of the longevity and continued success of golden age writers, many of whom lived into the 1970s and remain bestsellers and household names to this day. Many of the writers who have succeeded the golden age writers have also emphasized refining traditional genres of crime fiction, rather than creating new styles of their own. For example, Ross Macdonald, Robert B. Parker, Marcia Muller, Sara Paretsky, and Sue Grafton all have written in the hard-boiled style first pioneered by Hammett and Chandler. Macdonald's sleuth, private investigator Lew Archer, lives and works in Los Angeles, as did Chandler's Marlowe. Both Archer and Marlowe are single and live in apartments, and Macdonald uses the pithy style of Hammett and Chandler for his books. The differences, while subtle, involve the psychological depth that Macdonald uses to provide insights into his characters' motivations. Archer, much like Parker's Spenser, provides a more sensitive private investigator, one who eschews the machismo and aloof nature of

his predecessors. Archer often sympathizes with the villains he pursues, seeing concepts of *right* and *wrong* as being ambiguous and indistinct in a world that is often evil and corrupt itself. Spenser in particular demonstrates a need for female companionship that is very different from the needs of Spade or Marlowe.

Post-golden age sleuths also are able to more readily embrace feminism, and one of the largest shifts is the number of female private investigators. Muller's Sharon McCone, Paretsky's V. I. Warshawski, and Grafton's Kinsey Millhone have demonstrated that women can thrive in a world corrupted and controlled by men. Moving beyond socially constructed conceptions of gender, this new generation of female private investigators has demonstrated that time can alter deeply rooted stereotypes. Equally significant are the changing roles of ethnic minorities. Golden age writers, when they wrote about non-Caucasian characters at all, tended to reinforce stereotypical prejudices. Indeed, little notice was taken of societal or institutional racism. A new generation of writers has addressed this, introducing characters who are members of ethnic minority groups, such as Walter Mosley's African American private investigator Ezekiel "Easy" Rawlins or Tony Hillerman's Navajo police officers Jim Chee and Joe Leaphorn. The representation of traditionally victimized groups has grown in other ways as well, as evidenced by Steig Larsson's Lisbeth Salander, who has suffered psychological and sexual abuse.

Non-hardboiled mysteries have also been updated. Amanda Cross's Kate Fansler worked as an English professor when not solving crimes, Patricia Cornwell's Dr. Kay Scarpetta works as a medical examiner, and Jonathan Kellerman's Alex Delaware is a child psychologist. Interestingly, the "old-fashioned" view of criminals as evil, popularized by authors such as Agatha Christie, has made a return in the work of authors such as Cornwell and Kellerman. The increasing popularity of crime fiction has led to a wider variety of subgenres, some familiar, such as legal procedurals, and some new, such as mysteries featuring a culinary theme. Even as the number of bookstores nationally has decreased, an increasing number of amateur detectives serve as owners or employees of such shops. As increased media exposure strives to make the public more aware of criminal



Mary Roberts Rinehart, author of the popular crime novel *The Circular Staircase* (1908), along with hundreds of other stories, books, and plays, around 1915.

activity, it seems likely that crime will continue to play an important role in literature and theater.

Theater

Stage productions of crime dramas during the 19th century were, for the most part, imports from Great Britain. Beginning in the 1870s, Americans such as J. J. McCloskey and Harlan Page Halsey brought their dime novel detectives Daring Dick and the Old Sleuth to the stage with some success. Anna Katharine Green also wrote a stage version of *The Leavenworth Case* in 1892, featuring her detective Ebenezer Gryce.

It was William Gillette's play *Sherlock Holmes* (1899), however, that proved to be the breakthrough hit, being revived across America and England for decades. For the first two decades of the 20th century, American stages saw many new plays with a crime focus, including Elmer Rice's *On Trial* (1914), Bayard Veiller's *The Thirteenth Chair* (1916), and Mary Roberts Rinehart's *The Bat* (1920). Beginning in the 1930s, however, imports from Britain began to crowd the American stage, including plays by A. A. Milne, Patrick Hamilton, and, especially, Agatha Christie. During the 1940s, 1950s, and 1960s, some Americans were able to find success on Broadway, including Owen Davis's *Mr. and Mrs. North* (1941), Ira Levin's *Interlock* (1958), and Frederick Knott's *Wait Until Dark* (1966). Since the 1980s, few crime dramas have been successful in the United States, even those that were popular in Britain. The few that have been successful include Warren Manzi's *The Perfect Crime* (1988) and Larry Gelbart's *City of Angels* (1989).

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See Also: Christie, Agatha; Detection and Detectives; Dime Novels, Pulps, Thrillers; Film, Crime in; Gardner, Erle Stanley; Grafton, Sue; Hammett, Dashiell; Hillerman, Tony; Literature and Theater, Police in; Paretzky, Sara; Poe, Edgar Allen; Television, Crime in.

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Literature and Theater, Police in

Intense interest in the operations of police departments and the travails of police officers has resulted in these being popular themes in literature and theater. Unlike detective novels, which usually concentrate on a single crime and its consequences, literature that concentrates on the police often explores investigations into several unrelated crimes. The occurrence of police officers and police departments mirrors, with a short delay, the development of police and law enforcement agencies themselves. Police and law enforcement agencies became common in metropolitan areas during the mid-19th century. Books and plays containing police officers as characters became common during the latter half of that century. Initially, police officers were figures of derision, used in books and plays chiefly for comic relief or as a means to comment upon the inefficiencies of government agencies. By the mid-20th century, however, the reputation of the police had risen sufficiently for them to have become the subject of their own genre, known as police procedurals. As societal changes have affected the United States over the past 50 years, so too have these transformations been reflected in writing about the police. More recent plays and books have examined pertinent social issues, including feminism, race relations, discrimination, and police abuse. Depictions of the police in literature and theater continue to be a popular and prevalent form in which to explore these issues.

Background

Formal policing was relatively unknown at the time of the American Revolution. During the colonial period, watchmen and constables provided law enforcement in villages and towns, while rural areas relied upon sheriffs. By the early 19th century, Boston, Massachusetts, had established independent day and night watches, which constituted a series of patrols to help keep the peace and discourage crime. Only in 1845, however, did the New York legislature establish a modern police department for New York City, using the force in London as a model. The London force, known formally as the Metropolitan Police, had been

formed under Sir Robert Peel in 1829 to respond to rampant crime in the British capital. In the United States, other large cities initiated their own forces shortly after New York—Chicago's police department began operation in 1851, and Boston and Philadelphia started theirs in 1854. The Metropolitan Police, often referred to as "Scotland Yard" in reference to the street abutting the rear entrance of its headquarters, although responsible only for law enforcement within Greater London, had an effect upon policing throughout the United Kingdom, as its representatives were often consulted by local authorities. The United States' vast size, as well as its tradition of local control, ensured that police procedures and practices were much more diverse. Not until the turn of the 20th century were there efforts made to professionalize urban police departments, many of which had been warrens of patronage and graft.

Changes that occurred during the first decades of the 1900s included instituting career administrators, using civil service exams for hiring and promotion decisions, and encouraging education for officers. These changes were accelerated after J. Edgar Hoover became the director of the Bureau of Investigation, now the Federal Bureau of Investigation (FBI), an agency of the U.S. Department of Justice, in 1924. Although often derided today, Hoover moved quickly to establish the FBI as the model crime-fighting organization in the United States. Hoover's FBI stressed academy training programs, data collection, and scientific analysis of evidence, services it made available to local law enforcement agencies. For this reason, the FBI was enormously influential in shaping how local and state police departments thought of themselves and their work. As the civil rights movement of the 1960s developed support from a broad array of the population, many began to criticize law enforcement agencies for violence and for hiring practices that excluded women and members of many ethnic minority groups. During this time, allegations of corruption and graft once again began to be made. A series of decisions by the U.S. Supreme Court between 1961 and 1966, including *Escobedo v. Illinois* (1964) and *Miranda v. Arizona* (1966), affirmed and expanded the constitutional rights of those accused of committing crimes, thereby altering some practices and behaviors of police

officers. In response, during the 1970s, the federal government increased funding for law enforcement initiatives at the national, state, and local levels, raising the profile of police agencies while also providing monetary support for recruitment, training, education, and research. The prevalence of the police in political discussions and in the news media created a corresponding interest in the reading and theater-going public in matters related to law enforcement.

Early Appearances

Depictions of police officers in literature and theater began soon after larger municipalities began to form independent police departments. As might be expected from then-current perceptions of law enforcement, early portrayals of police officers in books and plays depicted them as bumbling, inefficient, and not especially intelligent. Arthur Conan Doyle's fictional depictions of police officers at work in the Sherlock Holmes stories are typical—police officers frequently arrested the wrong person, overlooked exculpatory evidence, and tended to resist offers of assistance. During the 1850s and 1860s, British dramatist Tom Taylor began writing plainclothes officers into many of his plays, as well as private detectives. Taylor's character Hawkshaw represented one of the first and most successful stage detectives and appeared in his highly successful work, *The Ticket of Leave Man* (1863). Scotland Yard officers were depicted on the boards for the first time in Watts Phillips's *Maude's Peril: A Drama in Four Acts* (1867). Many works of Charles Dickens and Wilkie Collins also were made into plays, with those featuring detectives and police officers being especially popular. Although many of these plays originated in the United Kingdom, they also were produced—and well received—in the United States.

During the golden age of detective fiction, which roughly spanned the period between World War I and World War II, mystery novels were extremely popular with audiences on both sides of the Atlantic. Although some of the detectives in these novels were police officers, they usually represented retired members of the force, colorful exotics, or exceptions to the rule. For example, Agatha Christie's Hercule Poirot, who first appeared in *The Mysterious Affair at Styles*

(1920), was a retired Belgian police officer, but he was much more representative of an armchair detective than a member of an active police force. In a similar manner, Earl Dean Biggers's Charlie Chan first appeared in *The House Without a Key* (1925). Chan was a Chinese American who served as a lieutenant with the Honolulu Police Department; despite this, he fit the role of a private detective much more than he did a member of an organized force, often operating alone and traveling out of his jurisdiction to solve crimes. Finally, upon his first appearance in *A Man Lay Dying* (1934), Ngaio Marsh's Roderick Alleyn was a detective-inspector (later chief superintendent) in the Criminal Investigation Department (CID) at Scotland Yard. Although he began his career as a constable, Alleyn is clearly a gentleman detective, the younger son of a baronet who was educated at Oxford University. Although technically a member of the police, Alleyn represented an earlier conceptualization of law enforcement, with members of the rank and file still representing a less intelligent, lumbering, and inefficient approach to law enforcement.

Police Procedurals

In no small part because of the public relations onslaught launched by J. Edgar Hoover and the FBI during the 1920s and 1930s, public perceptions of police forces began to change radically. Under Hoover, during the 1930s, the FBI conducted a well-publicized "war on crime" that led to the capture, conviction, or death of well-known criminals such as John Dillinger, Lester "Baby Face Nelson" Gillis, Kate "Ma" Barker, and George "Machine Gun Kelly" Barnes. Lawrence Treat introduced a genre known as the police procedural to U.S. readers with his work *V as in Victim* (1945), while Maurice Procter brought it to the British with *The Chief Inspector's Statement* (1951). Police procedurals represent a type of crime fiction that attempts to concentrate on the realities of police investigation and routine, rather than merely concentrating on a puzzle to be solved as much detective fiction does. To solve a crime, the protagonists in police procedurals use modern science to gather and interpret evidence, working with other police officers as a team rather than the independent behavior demonstrated by many amateur sleuths.

Many of the advances publicized by the FBI's Scientific Crime Detection Laboratory in films and on radio programs of the 1930s began to appear in police procedurals during the 1940s and following decades. Such venues greatly increased public interest in police officers and law enforcement. These advances included such innovations as recording and matching fingerprints; analyzing chemicals, fibers, bodily fluids, ashes, and other physical evidence; interpreting blood splatter patterns; examining public and financial records; collecting and scrutinizing computer data; and identifying and using informants. These sorts of real-life components of crime solving are at the heart of police procedurals. This focus on practical and realistic procedures is unlike much of detective fiction, in which sleuths instead rely upon intuition, coincidence, and brilliance to solve puzzles. National differences in police traditions, practices, and routines have caused significant differences to exist between police procedurals from the United States, Great Britain, and elsewhere.

American Police Procedurals

Police procedurals developed differently in the United States and the United Kingdom. Lawrence Treat, one of the earliest writers of police procedurals, developed certain literary devices that define the genre. Treat's police procedurals featured three recurring characters: Lieutenant Bill Decker, Detective Job Freeman, and Detective Mitch Taylor. Treat explained and adhered to real-life law enforcement procedures and relied heavily upon Freeman's interpretations of scientific evidence that are analyzed in his police laboratory. Treat's work also emphasized the interpersonal relationships between his characters, portraying Decker's harried role as the administrator of the homicide division of the New York Police Department (NYPD) and Taylor's involvement in graft and corruption, which leads to his demotion and ultimate dismissal from the force. These literary devices greatly affected later writers such as Ed McBain, Joseph Wambaugh, Tony Hillerman, and others.

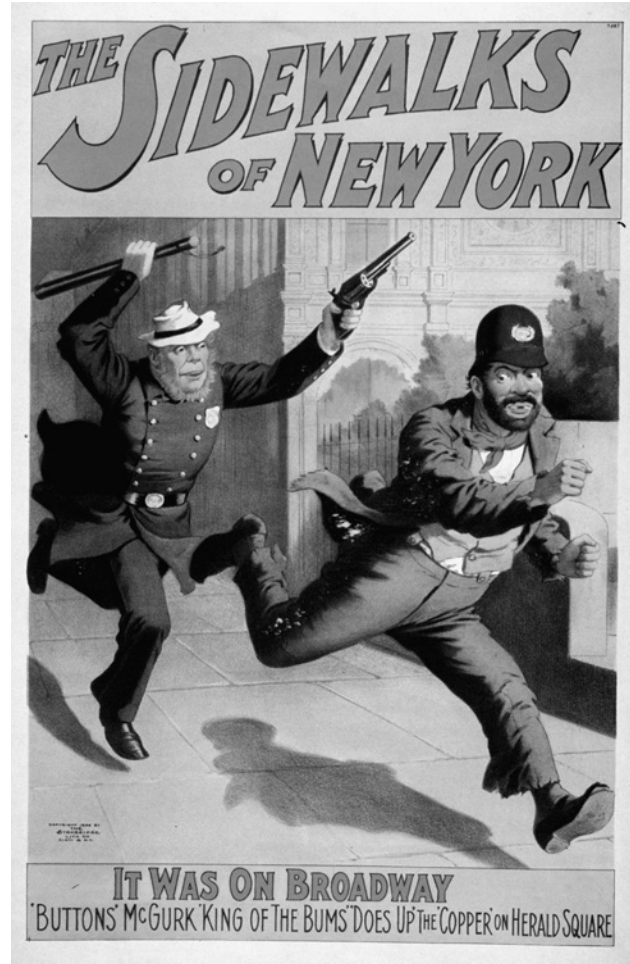
Ed McBain began his 87th Precinct series with *Cop Hater* (1956), and the series continued until his death, with the final entry being *Learning to Kill* (2006). McBain readily acknowledged his

series' debt to Jack Webb's radio and television series *Dragnet*. Early on, McBain established the tone and practices that influenced his series and the work of other authors. All of the 87th Precinct books are set in Isola, a thinly veiled fictional version of Manhattan. The other New York City boroughs are also represented, with Calm's Point representing Brooklyn, Majesta standing in for Queens, Riverhead corresponding to the Bronx, and Bethtown symbolizing Staten Island. Although the entire series focused on detectives of the 87th Precinct, different detectives were featured in different novels. Almost all of the books feature a significant role for Detective 2nd Grade Stephen "Steve" Carella. Colleagues of Carella include Arthur Brown, Eileen Burke, Alex Delgado, Richard Genero, Roger Havilland, Cotton Hawes, Bert Kling, Meyer Meyer, Bob O'Brien, Andy Parker, and Hal Willis. McBain usually began books with a corpse and then shadowed the police investigation as officers attempted to find out how the murder occurred. McBain was especially good at describing the day-to-day operations of the justice system, providing details of police routine, and larding the books with visuals, such as depictions of police forms or handwritten notes. The 87th Precinct series was immensely popular, with individual novels adapted as motion pictures and the series itself running briefly as a television program in the 1960s. Other television series reflect its influence, such as the award-winning 1980s program *Hill Street Blues*.

Many of the literary devices introduced by McBain were continued by Dell Shannon, a pseudonym of Elizabeth Linington, who also wrote as Lesley Egan. Shannon wrote about Los Angeles Police Department (LAPD) central homicide Lieutenant Luis Mendoza for over a quarter of a century, beginning with *Case Pending* (1960). In her day considered the "Queen of Procedurals," Shannon was one of the first women to write police procedurals. Although somewhat out of fashion today because of Shannon's far-right-wing political ideology, her books evoke a simpler era when members of the LAPD were heroes who were determined to protect and to serve the citizens of Los Angeles. Shannon's books contained many technical inaccuracies related to police procedures, although this did not harm their popularity when written.

Other writers who followed McBain and Shannon and who wrote about law enforcement adhered to a focus on police work but augmented their novels with elements from detective fiction as well. For example, Tony Hillerman began his long-running series about Navajo Tribal Police officers Sergeant Jim Chee and Lieutenant Joe Leaphorn with *The Blessing Way* (1970). While Hillerman carefully adhered to procedures and methods officers adhered to in the field, a great deal of his works' appeal focused upon themes and elements present in Navajo culture, religion, and witchcraft. Police officers were thus portrayed much more as individuals than they had been in the past, with Chee's love of traditional Navajo practices contrasting with Leaphorn's pragmatic and cynical worldview. Joseph Wambaugh, perhaps the most prominent former police officer who writes police procedurals, is a former member of the LAPD. Wambaugh began a run of police procedurals and nonfiction works, including *The New Centurions* (1970), *The Blue Knight* (1971), and *The Onion Field* (1973), that drew great interest to the training, perceptions, and realities of police officers in the field. Wambaugh considers the most important aspect of his work to be the conversation sparked regarding how the job of policing affects and changes officers.

Patricia Cornwell, whose series featuring medical examiner Kay Scarpetta, began with *Postmortem* (1990) to explore forensic pathology, a sub-genre of police work seldom before explored. In the Scarpetta series, Cornwell explores the use of forensic technology in solving crimes. In the series' beginning novels, Scarpetta serves as the chief medical examiner for the Commonwealth of Virginia, heading an agency that conducts autopsies and provides forensic services for police departments across the state. Throughout the Scarpetta novels, police are portrayed as human, with their virtues and frailties depending upon the individual. Cornwell's work has been highly influential, inspiring a variety of television programs, such as *CSI: Crime Scene Investigation*, as well as changing jury perceptions regarding the types of evidence that police teams are expected to submit at criminal trials. Other law enforcement personnel in Cornwell's work include Pete Marino, a homicide detective for the Richmond Police Department, and Benton Wesley, a profiler for the Federal Bureau of



This theatrical poster for *The Sidewalks of New York* from 1896 features a police foot chase on Broadway in New York's Herald Square, as "Buttons" McGurk, the "King of the Bums," tries to outrun a policeman wielding a gun and a baton.

Investigation (FBI) with whom Scarpetta eventually becomes romantically involved.

Jonathan Kellerman, who writes about forensic psychologist Alex Delaware, also has provided a different twist on police operations in the more than 20 books he has written featuring the character. Beginning with *Bough Breaks* (1985), which was given an Edgar Award for best first novel by the Mystery Writers of America (MWA), Kellerman has explored contemporary law enforcement practices in Southern California. Delaware frequently helps his friend, Milo Sturgis, an LAPD detective, in his investigations. While Delaware is portrayed as a cool, analytical, and level-headed professional, Sturgis is a career police officer who

is large, blundering, uncouth, and gay. Through Sturgis, Kellerman examines the changing face of American law enforcement, exploring how increasing diversity in police forces has caused old stereotypes to be challenged and created new problems to be addressed. Kellerman's LAPD has African American, Asian, and Latino officers, as well as Caucasians. The varied predispositions, prejudices, and preferences of these diverse individuals permit Kellerman to weave a postmodern analysis of American law enforcement, challenging many stereotypes and labels often applied to police officers.

International Police Procedurals

Although police procedurals from Great Britain and other nations developed concurrently with their American counterparts, significant and substantial differences exist between the two variations of the genre, some of which have influenced American authors and public perceptions. One of the best-regarded police procedurals was *Last Seen Wearing ...* (1952), written by Hillary Waugh, who although British was living in the United States at the time. Indeed, as *Last Seen Wearing ...* was set in the United States, it has been claimed by both Americans and British critics as their own. John Creasey, perhaps the most important contributor to the British police procedural, began writing crime novels during the 1930s. Beginning with *Gideon's Day* (1955), Creasey, writing using the pseudonym J. J. Marric, introduced a series that brought the British police procedural into its own. The Marric books, which featured Detective George Gideon of Scotland Yard, set new standards for accuracy and attention to detail. In the books, Gideon typically supervises his subordinates' investigations into several crimes, usually unrelated. More than any other police procedural, the Marric books began the now-common plot structure where several autonomous story lines are threaded throughout a single novel. The Marric books almost uniformly portray the police as human functionaries of a system designed to protect the common welfare. Wildly popular with the reading public, Creasey's books also garnered great critical acclaim and were largely influential with other writers, especially in the United States.

Colin Dexter also had great success writing about his Oxford-based Inspector Morse. Beginning with

Last Bus to Woodstock (1975), Dexter wrote 13 novels about Morse, concluding the series with *The Remorseful Day* (1999). While Morse exhibits many eccentricities more common to amateur sleuths, such as his love of Wagner, beer, and crossword puzzles, Dexter's focus upon the dull work of routine places the series within the police procedural genre. Morse, together with his subordinate, Sergeant Lewis, juxtaposes qualities of the English gentleman detective with a career as a CID of the Thames Valley Police, one of the largest territorial law enforcement agencies in the United Kingdom. Morse displays many attributes common to workers in any system, including boredom, depression, and frustration with bureaucracy.

Dexter's contemporary, Reginald Hill, also shaped the British police procedural. Hill has written more than 20 novels featuring Detective Superintendent Andrew Dalziel, Detective Inspector Peter Pascoe, and Detective Sergeant Edgar Wield of the Yorkshire constabulary. Hill has introduced various structural devices that have moved the police procedural closer to other genres of literature, including presenting portions of the plot in nonchronological order and alternating sections from a book with sections from another work allegedly written by Pascoe's wife, Ellie. Among Hill's best-regarded works are *Deadheads* (1983) and *Underworld* (1988). Hill's work has been adapted successfully for television, and these programs have been aired in both the United States and the United Kingdom.

Martin Beck, of Sweden's National Homicide Squad, was created by the husband-and-wife team of Maj Sjöwall and Per Wahlöö. Inspired by McBain's 87th Precinct series, the 10 Sjöwall and Wahlöö books were preconceived as part of a 300-chapter indictment of the Swedish welfare system as seen through the eyes of a working police superintendent. Beginning with *Roseanna* (1965), the series commenced as a straightforward police procedural. Over time, however, the leftist sympathies of Sjöwall and Wahlöö emerge. While Beck continues to investigate graft and track murderers, the police work is balanced with social criticism, and Sjöwall's and Wahlöö's indictment of the Swedish welfare state of the early 1970s is fascinating and relevant to the stories. The Sjöwall and Wahlöö books often have two or more plots running concurrently, and are

known for their brilliant plotting. Translated into many languages, the Sjöwall and Wahlöö books were influential across borders, helping to shape police procedurals in the United States, and selected novels were adapted for television and film.

Another Swedish author, Steig Larsson, enjoyed great success with a trio of books known as the Millennium Series, comprising *The Girl With the Dragon Tattoo* (2005), *The Girl Who Played With Fire* (2006), and *The Girl Who Kicked the Hornet's Nest* (2007). The trilogy's primary characters, Lisbeth Salander and Mikael Blomkvist, are not police officers. During the second and third books in the series, however, Jan Bublanski, Sonja Modig, and a team of other officers investigate a series of suspected crimes that are interrelated with other aspects of the plot. While some police officers are portrayed as corrupt, Bublanski and Modig are depicted as honest and human, adept at deciphering cyber information and a grand conspiracy. Originally planned as a 10-volume saga, the series was ended by Larsson's untimely death. The immense popularity of the series, however, and its immediate adaptation into film versions, suggests that the intertwining of the police procedural with other plot strands may continue to be accepted and well liked.

Theater

During the 19th century, American audiences were very keen on plays that portrayed authentic notorious cases, with works by Dion Boucicault, Watts Phillips, and Tom Taylor being especially popular. In these works, police officers were generally shown as stock characters, pursuing villains and upholding the peace. As dime novels increased in popularity, audiences clamored to see a more active sleuth, which resulted in well-liked plays such as J. J. McCloskey's *Daring Dick, the Brooklyn Detective* (1870). Although police officers appeared in other works, it was almost always in a secondary role, which changed only after American William Gillette wrote and starred in *Sherlock Holmes* (1899), which used Arthur Conan Doyle's popular character in a romantic plot that has almost nothing in common with the stories of the canon. After the turn of the 20th century, mystery farces such as Augustin McHugh's

Officer 666 (1912) were very popular, although police in these works were often shown as incompetent, corrupt, and inefficient.

During the mid-20th century, crime-based drama enjoyed a renaissance of popularity on the stage, perhaps inspired by the popularity of the genre on radio and in film. Plays such as Vera Caspary's *Laura* (1947), Alec Coppel's *The Joshua Tree* (1958), and Frederick Knott's *Write Me a Murder* (1961) were successful on Broadway and tended to portray police officers as hardworking, competent, and resourceful. During the 1970s, comedy thrillers became popular, with plays such as Ira Levin's *Deathtrap* (1979) and Rupert Holmes's *Accomplice* (1989) and *Sleight of Hand* (1992) being highly successful. Although police procedurals have been very popular on television and in films in recent decades, for the moment they seem to have disappeared from the stage, perhaps because those media are better able to show the scientific processes that modern police investigations utilize than the stage. As the genre has proven popular in other media, however, it might be premature to assert they will not reappear.

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See Also: Christie, Agatha; Detection and Detectives; Dime Novels, Pulp, Thrillers; Film, Police in; Hillerman, Tony; Literature and Theater, Crime in; Television, Police in.

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Literature and Theater, Punishment in

Punishment has long been a dominant theme in literature and theater. In a literary or theatrical context, punishment often refers to a negative or unpleasant consequence imposed upon an individual or group in response to behavior those in an authoritative position deem wrong or unacceptable. The Bible deals often with conceptions of punishment, as do authors such as Plato, Dante Alighieri, Charles Dickens, Joseph Conrad, and Graham Greene. Classic and modern crime fiction also grapple with and explore punishment, although recently, ways in which this construct is presented have been changing. This change has occurred as more contemporary conceptions of crime, justice, and fairness have affected depictions of and opinion regarding punishment. Long-held opinions regarding punishment, which tended to conceive of the construct as stemming from God or social institutions, have changed so that it is often now seen as a psychological condition. Despite these transformations, punishment remains an important and vital element in much of literature and theater.

Changing Conceptions of Punishment

Human conceptions of punishment are often tied to depictions in literature. While on the one hand, these literary depictions are grounded in contemporary mores and opinions regarding penalties and justice, on the other hand, they also have a tremendous influence in shaping public opinion regarding what punishment represents. Many literary and theatrical representations of justice traditionally had a rather conservative worldview, which led to punishment of wrongdoers being the logical resolution. As time passed, those with a more radical perspective began to question many aspects of the established social order, such as the inequitable distribution of wealth, the lack of suffrage, or the role of women or ethnic minorities. As more radical themes began to be explored, a change in what constituted an appropriate punishment also occurred.

Works such as the Bible, for generations the most commonly read book, portrayed punishment in a vengeful manner, with God compensating evil

deeds by chastisement and castigation. While still conservative, some increasingly diverse perspectives regarding punishment were introduced during the Renaissance. Dante Alighieri worked on *The Divine Comedy* between 1308 and his death in 1321. In this work, set in 1300, the classical Roman poet Virgil serves as a guide for Dante's journey through the inferno and then up the mountain Purgatorio.

In *The Divine Comedy*, Dante depicts Hell as a series of nine concentric rings, each leading deeper into Earth. The deeper one travels into the various rings, the more severe the punishments provided. Dante so arranged his inferno that the different rings represent different levels of infractions. The allegory Dante created suggests that different actions on Earth result in different punishments in the afterlife. Immediately popular upon its publication, *The Divine Comedy* became overlooked during the 18th century, only to enjoy a renaissance during the 19th century, serving as inspiration for a host of authors, including William Blake, Ezra Pound, T. S. Eliot, C. S. Lewis, James Joyce, Dorothy L. Sayers, Samuel Beckett, Seamus Heaney, Robert Pinsky, and John Ciardi.

Novelists such as Charles Dickens also explored themes of punishment, albeit within a more secular context than many earlier works. During the Victorian era, those with a more radical perspective, including Dickens, began to introduce themes that would greatly change perceptions of punishment. In *Great Expectations*, for example, originally published in 1860, crime and punishment are dealt with in ways that emphasize the psychological, rather than the physical, burdens of either. Punishment is meted out to various characters in the novel, as Miss Havisham dies as the result of burns suffered in a fire and Magwitch dies after being captured trying to leave England, but the real punishment suffered is the realization of the characters that they have behaved in inappropriate and self-serving ways. Miss Havisham realizes that she has harmed Pip, while Pip understands that his great ambition has cost him many real and valuable friendships. *Great Expectations* influenced later authors, such as Joseph Conrad and Graham Greene, who examined punishment as being as much a psychological condition as societal retribution. Greene was especially interested in punishment and examined throughout

his work various themes related to punishment, including who determines punishment, for what reasons it is meted out, and what sorts of behaviors are to be censured or lauded. The ambiguity of punishment was examined by Greene in *The Confidential Agent* (1939), *The Ministry of Fear* (1843), and *The Third Man* (1950), all of which heavily influenced later writers, especially Ross Macdonald.

In the United States, dime novels—popular works aimed at working-class readers—began to publish a great deal of crime fiction between 1880 and 1900. In these works, popular series detectives such as Nick Carter and the Old Sleuth pursued criminals who had harmed men and women who were familiar to the readers, such as shopkeepers, widows, and peddlers. While dime novel heroes would sometimes cooperate with authorities, punishment of villains by whatever means was the primary goal. As a result, the capture and punishment of the person responsible for the crime was the primary goal, whether it occurred by turning the wrongdoer over to the police or by private means.

Borrowing from the methods employed by Pinkerton detectives, dime novel sleuths shadowed suspects, eavesdropped on conversations, and used a variety of disguises to discover the identities of criminals. Persistence and hard work were the hallmarks of dime novel detectives, rather than the rational deductions of sleuths such as Holmes, who were more popular with the middle classes. Criminal motives tended to stem from simple greed, and the dime novels helped to shape popular conceptions of detective work.

Traditional and Hard-Boiled Detective Fiction

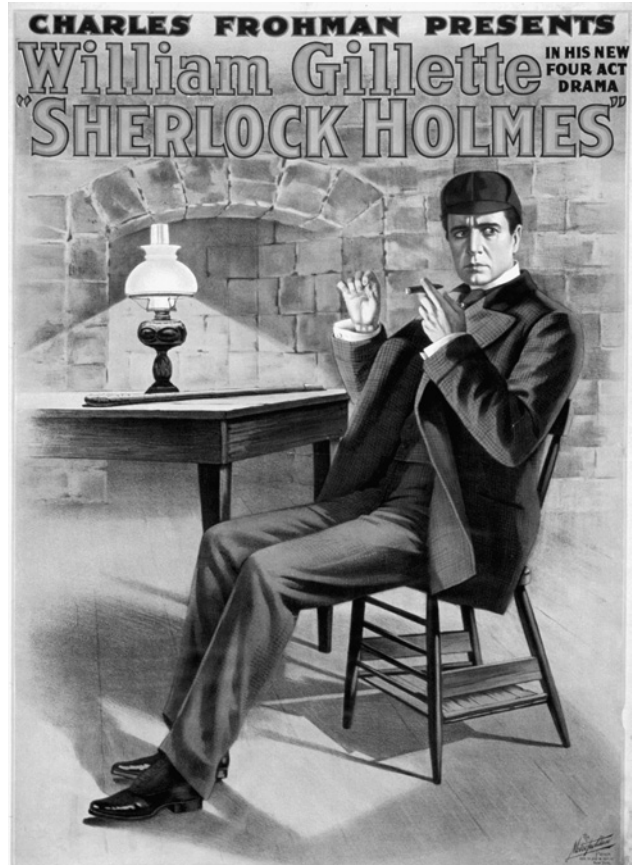
Although punishment as a theme in literature and theater has always been popular, it is especially pertinent to mystery fiction. As a separate genre, certain elements of narrative developed through the works of many authors, which became conventions over time. Conventions serve to undergird the form and provide structure for writers' innovations. Most mystery fiction centers on the portrayal of an investigator, whether professional or amateur. Also present in most mystery fiction is the presence of a problem that the investigator seeks to solve, most often some sort of a crime, with murder, theft, or embezzlement being pop-

ular. The 19th century saw great change, much affected by the Industrial Revolution and the increasing use of technologies that altered patterns of life that had been in place for centuries. In an effort to reassure an uneasy public, mystery writers such as Edgar Allen Poe, Arthur Conan Doyle, Agatha Christie, and many others sought to create worlds in which the evil were apprehended and crimes were punished by official channels. These authors, often referred to as “traditional,” developed a set of conventions by which they dealt with crime and punishment. As readers became more comfortable with many of the changes wrought by the 19th century, a new style of mystery fiction developed, known as “hard-boiled.” Hard-boiled mysteries remove crime from the upper-middle-class settings favored by traditional writers, and move it instead to the realm of shady characters and urban streets. Initiating new conventions, hard-boiled authors such as Dashiell Hammett, Raymond Chandler, and Ross Macdonald set forth as protagonists practical individuals who were not surprised by crime and who were able to fight for justice using considerable firepower and determination. As hard-boiled writers created stories in which corrupt social institutions were the norm and where self-reliant individuals were able to provide the punishment that the system often could or would not, this genre has proven successful with audiences who share some of these disappointments. Punishment is dealt with differently between the traditional and hard-boiled traditions, although there are many similarities.

Agatha Christie's *The Body in the Library*, published in 1942 and featuring her elderly sleuth Miss Jane Marple, uses many traditional conventions. The setting of the book is the small rural town of St. Mary Mead, where a maid discovers the corpse of an unknown young woman in the library of the country home of staid Colonel and Mrs. Bantry. When the police do not immediately arrest someone for the murder, local gossips begin to allege that the tawdrily dressed young woman was having an affair with Colonel Bantry—and Mrs. Bantry, distressed for her husband, asks her friend and neighbor Miss Marple to assist with the investigation. When the victim is discovered to be a dancer at a nearby seaside resort, Miss Marple and Mrs. Bantry check in as guests to look into the girl's past. A second body, that of a

16-year-old missing girl guide, is discovered in a burned car. Miss Marple interviews various suspects and then unmasks the murderers, who are arrested and taken into the judicial system, where they will be put to death. Punishment is intended to restore order and to penalize wrongdoers. In many ways, *The Body in the Library* is an archetype of the traditional genre. Many of the characters are from upper-class backgrounds, and the first victim is a socially climbing interloper. While the murderers are punished at the end of the book for their crime, the victim herself is also punished for her social climbing and inability to accept the limitations of her lower-class background. At the end of the novel, the murderers are turned over to the authorities to meet their fate. Punishment is thus used by the traditional writers to maintain social order and to extract justice for criminal, and social, missteps.

This traditional approach contrasts greatly with that used by the hard-boiled writers. Hard-boiled fiction developed first in dime novels and later in pulp magazines such as *Black Mask*. Writers for the dime novels, which were highly popular during the 19th century, made popular many conceptions regarding how detectives and other crime fighters worked, combining realistic details of the cities in which their sleuths worked with criminals whose motivations and actions were familiar to readers. Becoming popular beginning in the 1920s, the pulp writers focused upon simplicity in language, similar to that employed by Ernest Hemingway and others, and plausible plots where action sprang from characteristics of the protagonist and other characters. By incorporating such techniques, pulp fiction developed an American sense of realism, including perceptions of punishment, which was very different from that of the traditional school. Writers such as Dashiell Hammett, whose Continental Op stories often appeared in *Black Mask*, opened up the style in ways that made it seem more realistic and less exaggerated. Unlike many detective heroes of the era, the Continental Op was short, overweight, and pushing 40. The employee of an established detective agency, the Continental Op balances the goals of his clients against the needs of his employer, and demonstrates the professionalism and persistence needed by a professional detective. This developed a style that was



American stages put on productions of British plays for most of the 19th century, but William Gillette's *Sherlock Holmes* (1899) changed that. The play, advertised here in a poster from 1900, was a great success and played for decades.

clearly American and modern, as opposed to the traditional detective story, which was British and romantic. Hammett viewed punishment as a result, one that might be pursued through official channels but that could also be the consequence of the Continental Op's private actions. In *Red Harvest* (1929), for example, the Continental Op faces off against both the corrupt police officers and gangsters who run Personville, pitting the two groups against each other so that they destroy each other. Punishment thus is achieved without the sanction of the authorities nominally charged with keeping the peace.

In Raymond Chandler's *The Big Sleep* (1939), in which he introduces his private investigator Philip Marlowe, a fresh perspective on punishment and society is provided. The novel begins with Marlowe visiting the palatial home of General

Sternwood, who hires him to intercede with a blackmailer, Arthur Gwynn Geiger. Geiger is attempting to extort money from Sternwood regarding promissory notes his daughter Carmen has signed. Marlowe begins his investigation and is soon embroiled in incidents involving pornography, drugs, blackmail, gambling, and murder. Although Marlowe himself kills several men, he is exonerated by the police. He also provides the police with evidence to arrest and convict several other individuals but refrains from providing evidence related to the illegal actions of the Sternwood sisters, believing he owes his loyalty to his client, their father. At the end of the novel, Marlowe's world is no safer or more orderly than it was before he took the case. Punishment is thus seen as a ramification that occurs for some but not all individuals. The streets on which most individuals live also represent a place where connections and social status play a role in the penalties one may suffer. The concept of punishment is thus represented as arbitrary and capricious, as opposed to the logical repercussion it represents in traditional mystery stories.

American Ross Macdonald, who created private investigator Lew Archer, did much to extend the hard-boiled genre's handling of constructs such as punishment and justice. Archer, who first appeared in *The Moving Target* (1949), had a more nuanced view of evil and the world in which it existed than did Hammett or Chandler. Macdonald, who held a Ph.D. in English literature from the University of Michigan, was especially influenced by Chandler and Greene. Believing that evil acts were situational—and often caused by environment, opportunity, and economic pressures—Archer often is less involved in meting out punishment than in serving as a witness to events that were set into play years before as a result of betrayal, meanness, and greed. In *The Galton Case* (1959), for example, Archer examines a case involving a young man of wealth who is kidnapped from his parents' estate when young and then raised in poverty; while he eventually returns to his family as an adult, the harm of the intervening years has taken its toll on all involved. In the series set in the mean streets of southern California, Macdonald's Archer often sympathized with both victims and wrongdoers, viewing the broken dreams of all involved as a sort of metaphor for

the ecological breakdown being witnessed during the 1960s and 1970s along California's coast. Highly erudite, Macdonald, with Hammett and Chandler, can be credited with elevating hard-boiled fiction to the status of literature.

The distinction between traditional and hard-boiled treatments of justice is not always clear-cut. Christie, in many ways the doyenne of the traditional school, takes liberties with established notions of punishment and justice in several of her works. For example, in *Murder on the Orient Express*, a novel published in 1934, Christie's detective Hercule Poirot is a passenger on a trans-European train journey that gets stopped by heavy snowfall. Another passenger on the train is stabbed to death during the night, and Poirot proceeds to investigate. Discovering the victim's unsavory past, which includes kidnapping and infanticide, Poirot opts to permit the murderers to go free, feeling that the punishment the victim received was appropriate. Similarly, in her 1953 play, *Witness for the Prosecution*, Christie rejected traditional expectations regarding punishment. In the play, Sir Wilford Robarts, a leading barrister, is engaged to handle the murder defense of Leonard Vole, a working-class young man. Vole, who is married, is accused of murdering Emily French, a wealthy older woman who was infatuated with him. Although Vole's German-born wife, Romaine, claims he was with her at the time of the murder, at the time of the trial she is called as a witness for the prosecution and alleges that Vole indeed committed the crime. After a surprise witness casts doubt upon Romaine's testimony, the jury acquits Vole. A post-verdict explanation of the truth leads to Miss French's murderer being killed, which Robarts refers to as an "execution" rather than a "crime." While traditional insofar as both murders were resolved and life returned to normal, they demonstrated a developing notion of punishment that expanded upon the conception that only one resolution—the penal system—is an option. The works also explored the idea that sometimes crime is justified, or at least not completely wrong, especially when in response to evil actions of others.

Social Consciousness

As social consciousness grew during the 1960s regarding some of the harms caused by government agencies and corporations, a new type of

hero emerged, one who sought retribution for clients who had nowhere else to turn. John D. MacDonald created Travis McGee, a character who appeared in 21 novels, beginning with *The Deep Blue Good-bye* (1964). McGee, tall, rugged, and athletic, is neither a police officer nor a private investigator, but instead describes himself as a salvage consultant, who assists those seeking to recover property for a fee. McGee, who lives on a 52-foot houseboat docked at Slip F-18 at Bahia Mar Marina in Fort Lauderdale, Florida, takes new cases only when in need of spare cash or when his moral compass indicates that his assistance is needed, such as when one of his few friends is poorly treated or killed. MacDonald also dealt with issues involving Florida's environment, especially being wary of changes brought about by venal developers and corrupt regulatory bodies that put monetary gain over the public good. McGee seeks to punish those with little regard for the environment, working to thwart their plans in such books as *Bright Orange for the Shroud* (1965). Although MacDonald began as a pulp writer, and the McGee series began as paperback-only publications, his stature grew to the point that *The Green Ripper* (1979) was given the National Book Award.

Building upon the belief that punishment was sometimes best handled outside official channels, authors such as Robert B. Parker, Marcia Muller, Sue Grafton, and Sara Paretsky created private investigators beginning in the 1970s who built upon this theme. Parker's private investigator, Spenser, first appeared in *The Godwulf Manuscript* (1973) and often represents individuals who have nowhere else to turn. Parker, who wrote his Ph.D. dissertation on the works of Chandler, Hammett, and Ross Macdonald, expands traditional conceptions of the hard-boiled investigator when he, for example, has Spenser search for a feminist author kidnapped by right-wing extremists in *Looking for Rachel Wallace* (1980) and negotiating between warring urban gangs in *Double Deuce* (1992). Muller, who introduced female private investigator Sharon McCone in *Edwin of the Iron Shoes* (1977), further stretched stereotypes by developing the first woman who ran her own detective agency, frequently working for single mothers, ethnic minorities, and others who were unable to get a fair hearing from the

system. McCone works to mete out punishment while often confronting prejudice, causing readers to question how justice is defined in an unfair world. Grafton's female investigator, Kinsey Millhone, first appeared in *A Is for Alibi* (1982). Millhone is independent, competent, and more than willing to serve as a champion for the oppressed, whose tormentors would often escape punishment without her assistance.

Although willing to cooperate with the police, Millhone also is unafraid to work independently if that is the only way she can confront criminals. Paretsky's sleuth, V. I. Warshawski, first appeared in *Indemnity Only* (1982), and in many ways adjusts the hard-boiled genre while also maintaining many of its traditions. Warshawski narrates Paretsky's novels and engages in the types of fisticuffs and gunplay that were first explored by Hammett and Chandler. Unlike the earlier exemplars of the style, however, Warshawski worries that the toughness required by her profession impedes her life and strives to maintain a small cadre of friends and intimates in Chicago, where the series is set. Since many of Warshawski's opponents are pillars of the establishment, including insurance and financial companies, organized religion, and the medical field, to obtain punishment she must often operate by stealth, and is willing to accept punishment that occurs behind closed doors.

Theater

In addition to many works of literature that are adapted for screen, stage, or television, punishment has long been a popular theme in many theater productions on both sides of the Atlantic. Ever since the plays of ancient Greece, suspense, murder, mystery, and punishment have entertained theatergoers. While William Shakespeare dealt with murder and punishment in plays such as *Macbeth* and *Hamlet*, it was during the 19th century that crime melodramas, with their focus on capturing villains so that they could receive appropriate punishment, became popular. While these plays initially focused primarily on the search for a wrongdoer, theater producers soon found that adding suspense regarding the villain's identity was a surefire way to build an audience and increase a play's popularity. As a result, playwrights such as Tom Taylor offered a variety of

detectives and police officers in his plays, such as *The Ticket of Leave Man* (1863), which featured the popular detective Hawkshaw. While for most of the 19th century, American stages were happy to import British plays, William Gillette's *Sherlock Holmes* (1899) changed that, and the play enjoyed enormous success for the next three decades.

Plays originally written for the stage by popular authors such as Christie, G. K. Chesterton, and A. A. Milne continued to build interest in the theme of punishment from the 1920s and beyond. Christie especially was a powerhouse of the theater, offering a new play 11 times in 15 years and often having multiple plays running concurrently on both the West End and Broadway. This success was not without its detractors, as evidenced by Tom Stoppard's *The Real Inspector Hound* (1968), which parodied the genre while having two theater critics, Moon and Birdboot, review a ludicrous play set at a country house. The 1970s saw the beginning of increased interest in plays involving punishment, with Anthony Shaffer's *Sleuth* (1970), Ira Levin's *Deathtrap* (1979), John Pielmeier's *Sleight of Hand* (1988), and Rupert Holmes's *Solitary Confinement* (1992) enjoying great critical and box office acclaim. Punishment is and will most likely remain a popular and relevant theme in many theatrical productions.

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See Also: Dime Novels, Pulps, Thrillers; Film, Punishment in; Grafton, Sue; Hillerman, Tony; Literature and Theater, Crime in; Literature and Theater, Police in; Television, Punishment in.

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Livestock and Cattle Crimes

Livestock and cattle crimes include specific offenses: theft, killing, bestiality, and abuse. In 17th-century New England, colonies kept cattle, oxen, sheep, and hogs. Livestock were crucial to the production of agricultural goods; without these animals, it was nearly impossible to successfully farm, sell, trade, and even survive. Livestock crimes reported during the 17th and 18th centuries included theft, killings, and bestiality.

Accusations of livestock theft in New England were brought against both neighboring colonists and Native Americans. Livestock often broke through fences and strayed onto other properties. New England towns held elections for specific offices designed to handle stray livestock. These elected positions included cattle reeve, swine/hog reeve, goat reeve, hay-ward, and pound-keeper. The duty of a reeve was to watch for stray livestock and prevent the animals from destroying crops. Hay-wards were responsible for caring for both fences and cattle. The pound-keeper caught and cared for stray livestock.

Despite the creation of these offices, not all strays were caught. In these cases, the owner of the wandering animal often claimed livestock was stolen and demanded reparation. Killing wild livestock that trespassed was considered theft because these animals were property. Native Americans killed wild and stray livestock that damaged crops and subsequently collected the remains for meat. As a result, Native Americans were often accused of livestock theft. Additionally, livestock killings were utilized by Native Americans as a retaliatory tactic

against the colonists. As colonial dominion spread, Native Americans were concurrently deprived of land. Native Americans who carried out attacks on colonists often slaughtered livestock.

Incidents of bestiality in the colonies did surface in the 17th century. Cases were based upon accusations by individuals claiming to witness the act. Evidence took the form of the likeness in appearance of newborn livestock to the accused person. An individual convicted of bestiality faced a death sentence.

The Eighteenth and Nineteenth Centuries

In the 18th century, the colonies demanded independence from Great Britain. The result was the Revolutionary War. Both British and American military troops took livestock from private properties for their own supply. Theft of livestock by the militaries was a means of survival. There were incidents in which simple destruction of livestock

was a tactic employed by British sympathizers. This was an effort to influence the tide of the war.

In the 19th century, theft of livestock in time of war reoccurred. One example is that of the Beefsteak Raid in 1864. The raid was led by Major General Wade Hampton of the Confederate army during the Civil War. The operation was conducted in response to the Confederate army's dwindled food supply. Major General Hampton was successful in rustling more than 2,000 head of cattle from the Union army.

Outside acts of war, the 19th century saw the rise of laws defining livestock crimes. Behaviors that included rebranding or altering the brand of another individual's animal and slaughtering livestock lacking a brand were criminalized. Such laws were enforced as an effort to foil attempts at theft.

In the 19th century, livestock crime intertwined with range wars/feuds, blood feuds, and cattle wars.



Cowboys branding calves to ensure proof of ownership in case of loss or theft in Colorado around 1900. In the 19th century, new laws were created to more clearly cover many types of livestock crimes, including rebranding or altering the brand of another individual's animal. Slaughtering livestock lacking a brand was also made a crime.

These feuds originated from disputes over ownership of land, water rights, murder, livestock theft, or a combination of these factors. Theft, mutilation, and/or killing livestock were used in retaliation. Cattle, sheep, and other livestock ranchers involved in feuds were at odds with each other, homesteaders, Native Americans, and settlers. Infamous examples include the Sutton-Taylor feud, the Pleasant Valley war, and the Graham-Tewksbury feud. Accusations of rebranding and cattle rustling were brought against those who were perceived as threats against an operation's prosperity and monopolization of the cattle/livestock trade.

Horse and cattle theft carried a death sentence. Individuals caught stealing cattle or horses were often hanged for their crimes. Horse and cattle thieves were lynched if a group of vigilantes was able to capture the accused before the authorities did. Execution for cattle and horse theft was seen as a deterrent.

The Twentieth and Twenty-First Centuries

In the 20th and 21st centuries, livestock and cattle crimes were mainly limited to theft. These latter centuries have seen a trend toward livestock theft throughout the United States. Cattle rustling in particular became problematic in the 20th century. Perpetrators of livestock theft can and do resort to strategies to facilitate the crime and elude capture. These strategies have been deemed inhumane under current law. Abusive treatments that can occur during the course of livestock theft include the use of overly aggressive dogs, inhumane slaughtering, and mutilation of the animals as a means to remove any tags, marks, brands, and other identifiers.

In response to livestock crimes and other agrarian-related offenses, jurisdictions developed law enforcement task forces that specialize in agricultural crimes. These and similar law enforcement units are tasked with investigating livestock crimes and communicating with the agricultural community on how to better protect livestock and prevent future victimization.

Rural/agricultural task forces promote target hardening strategies. Target hardening strategies are tactics employed by potential victims that make committing livestock crimes difficult for potential offenders. Emphasis is placed on marking or branding livestock, securing property enclosures, reporting crimes, and other practices.

Penalties for livestock crimes today vary by state. Fines and/or incarceration (depending on the value of livestock destroyed/damaged/stolen) are the norm. Execution for cattle theft is still on the books in many states; however, these sentences are not enforced.

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See Also: Capital Punishment; Crime Prevention; Deterrence, Theory of; Executions; Frontier Crime; Hanging; Homestead Act of 1862; Larceny; Lynchings; Native Americans; Rural Police; Vigilantism.

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Livingston, Edward

Edward Livingston (1764–1836) was born in Cleveland County, New York, to a prominent family. He represented New York and, later, Louisiana in Congress. From 1831 to 1833, Livingston served as the U.S. secretary of state under President Andrew Jackson. Educated at Princeton University, Livingston graduated in 1781 and was

admitted to the bar in 1785. He practiced law in New York City before representing New York in the 4th, 5th, and 6th Congresses. He is well known for his outspokenness. He joined Andrew Jackson and others in a vote against Jay's Treaty, or the British Treaty. Livingston also opposed the Alien and Sedition Laws. He introduced legislation on behalf of American seamen and vehemently attacked the president when he allowed the extradition to Britain of a man claiming American citizenship who had committed murder aboard a British frigate. Livingston served as the U.S. attorney for the District of New York from 1801 to 1803. He was appointed mayor of New York for the same time period. Following an outbreak of yellow fever in the city, he was noted as performing with courage and valor, despite his own sickness with the disease. Livingston moved to New Orleans, Louisiana, in 1804. There, he practiced law, participated in the real estate business, and authored the famous legal code that bears his name.

In 1820, Livingston served as a member of the Louisiana State House of Representatives and was ultimately elected to represent Louisiana in the 18th, 19th, and 20th Congresses. He served in the House until 1829, when he was elected to the Senate. In 1821, the Louisiana legislature requested the development of a new code of criminal law and procedure. Though never adopted by Louisiana, the Livingston Code was heralded for its simplicity and vigor and focused on reform of sentences, due process, and prison discipline. The code called for the abolition of capital punishment and the application of penitentiary labor as a matter of choice and reward for good behavior, bringing with it better housing accommodations. This was a stark contradiction to the perspective that labor should be used as a punishment forced upon the inmate. This code would influence the penal reforms in many countries, including England, France, and Germany, and ultimately be adopted by Guatemala. The philosophy of the code was not retributive or vindictive but rather focused on reform and remediation. Finally completed in 1824 after accidentally being burned, the Livingston Code was not printed until 1833. Written in both English and French, it consisted of four codes—Crimes and Punishments, Procedure, Evidence in Criminal Cases, and Reform and Prison Discipline. The



Edward Livingston around 1823, when he was serving in Congress as a representative from the state of Louisiana and completing his Livingston Code, which influenced reforms to prison systems in Europe and elsewhere.

code focused on reform within the corrections system, including abolishing the death penalty. Livingston's code provided for the conversion of prison labor to a voluntary system rather than a requirement for prisoners.

In 1831, Livingston resigned from the Senate after he was appointed to the cabinet; he served as secretary of state for President Andrew Jackson until 1833. Edward Livingston died on May 23, 1836, after moving to Montgomery Place, a Hudson River estate he had inherited from his sister.

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See Also: Codification of Laws; Jackson, Andrew (Administration of); Reform Movements in Justice.

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Lochner v. New York

The Supreme Court struck down a New York law limiting the number of hours one could work in a bakery on the grounds that the law violated the freedom of contract implicit in the due process

clause of the Fourteenth Amendment. The case became emblematic of the court's staunch resistance to governmental regulations of the economy from the late 1800s until the New Deal. In 1895, at the urging of the bakers' union, New York passed a law restricting bakers to work no more than 10 hours per day and 60 hours per week. The state claimed the regulation was aimed to protect the health and safety of bakery workers. In 1902, Joseph Lochner, a bakery owner in Utica, was fined for violating the law and appealed to the Supreme Court.

The due process clause states that "no person shall be denied life, liberty, or property without due process of law." Traditionally, the constitutional right to due process had been interpreted to guarantee fair judicial procedures, but the court during this era embraced a theory of substantive due process. Under this doctrine, courts could



New York City bakers carrying a giant loaf of bread in a Labor Day Parade on May 1, 1909, just a few years after the Lochner decision that struck down a New York law limiting the number of hours one could work in a bakery. New York had passed the original law in 1895, restricting bakers to work no more than 10 hours per day and 60 hours per week at the urging of the bakers' union.

nullify laws that interfered with a liberty interest, which the court had interpreted to include the right to make contracts without governmental interference. On a 5–4 vote, the Supreme Court overturned *Lochner*'s conviction because the New York law unreasonably restricted the rights of both bakery owners and workers to negotiate terms of employment. Such a restriction amounted to a denial of the liberty of contract and therefore due process. Justice Rufus Peckham acknowledged that the state had a right to exercise its police powers, which are regulations designed to uphold the health, safety, and morals of its citizens. In this case, however, Peckham dismissed the claim that conditions in a bakery were sufficiently unhealthy to justify government regulation.

Lochner is perhaps best remembered for its two dissenting opinions. Justice John Marshall Harlan quoted at length from evidence submitted by the state describing the health risks bakers undertake at their jobs. These studies convinced Harlan that New York was not abusing its police powers in passing this regulation. Justice Oliver Wendell Holmes, Jr., went further and accused the majority of basing its decision on *laissez faire* economics. Holmes argued that the Constitution was not meant to embody any particular economic theory. Instead, Holmes believed that judges must defer to policy decisions made by the elected branches of government. According to Progressive critics, *Lochner* represented an abuse of judicial power for failing to allow legislatures enough discretion to address modern economic problems. After *Lochner*, states and the federal government attempted other means of economic regulation, many of which the Supreme Court struck down on freedom of contract grounds. This time period in the court's history is often referred to as the *Lochner* era. Facing entrenched judicial hostility to New Deal economic programs, President Franklin D. Roosevelt in 1937 proposed expanding the size of the Supreme Court so he could appoint justices friendly to his agenda.

Though Roosevelt's plan failed, the Supreme Court felt sufficiently threatened that it changed its course that year and overturned *Lochner* in the case *West Coast Hotel v. Parrish*. The next year in *United States v. Carolene Products*, the court announced that it would demonstrate greater deference to legislatures in judging the

constitutionality of economic regulations, which formed the basis on which the current court operates. While the court no longer recognizes freedom of contract as a liberty interest under the due process clause, it does currently extend substantive due process protection to other liberty interests, such as privacy. Many legal scholars have criticized the *Lochner* Court for being out of touch with the changes to the American economy brought about during the Industrial Revolution. Recently, Howard Gillman has attempted to portray *Lochner* in a more favorable light by arguing that the decision is based on Jacksonian values of economic individualism. Paul Kens, however, maintains that the dominant concern of *Lochner* was a commitment to social Darwinism—that market forces alone should be allowed to dictate economic survival.

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See Also: Due Process; *Holden v. Hardy*; Holmes, Oliver Wendell, Jr.; *Muller v. Oregon*.

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Los Angeles, California

Twenty-first-century Los Angeles is California's most populous city (with 3.8 million in 2010) in a gigantic sprawling metropolitan area with 12 million residents in over 80 contiguous municipalities. Los Angeles city, county, and metropolitan areas have provided the locations, backdrops, and story lines for classic and

contemporary works of crime fiction, including Raymond Chandler's *The Big Sleep* (1939) and James Ellroy's *The Black Dahlia* (published in 1987 but based on the unsolved murder of Elizabeth Short in January 1947), police procedural radio and television shows, including *Dragnet* and more recently *Law and Order: Los Angeles*, and numerous Hollywood and independent movies of all genres. Similarly, the city has witnessed sensational and high-profile crimes and trials throughout much of its post-1848 U.S. existence. These include William Edward Hickman's kidnap, murder, and dismemberment of a 12-year-old girl in 1927, the "Red Light Bandit" robberies and rape of Caryl Chessman in the late 1940s, serial "Lonely Hearts" killer Harvey Glatman in the 1950s, the Manson "Family" killings of August 1969, the Menendez brothers' trial in August 1989 for the murder of their parents, the 1995 trial and acquittal of former football star O. J. Simpson for the murder of his ex-wife and her friend in June 1994, and the May 2009 conviction of music producer Phil Spector for the murder of actress Lana Clarkson.

In 2010 Los Angeles experienced the lowest number of homicides since 1967, part of a downward trend since the early 2000s (the 2003 homicide rate was 8.7 percent). There were 297 murders in 2010, compared to over 600 per year during the 1990s. Many commentators attributed the decline to better policing and a more disciplined police force but complex economic, political, demographic, and cultural factors were undoubtedly also important in accounting for the decline. High homicide rates have been part of the city's history since it was a chaotic frontier town in the mid-19th century. Plagued by frontier violence, war between Mexico and the United States, political instability, racial hostilities and lethal interethnic confrontations between Anglos, Hispanics, and Native Americans, disputes over land and wealth, and high tolerance for extralegal violence, Los Angeles County was the most violent county in California from the 1830s to the 1850s. The homicide rate for the late 1830s and early 1840s may have been as high as 100 per 100,000 adults per year, rising to 198 per 100,000 in the late 1860s, linked in part to increased availability of revolvers, but then falling to 23 per 100,000 by the early 1890s.

A more diversified economy, gender-balanced population, greater political stability, and declining proportions of non-Anglos in the population seem to account for the decline. Nevertheless, Chinese and Hispanic residents of Los Angeles continued to experience greater hostility, prejudice, and discrimination and thus higher rates of interracial and intraracial homicide. The gap between Hispanic and Anglo homicide rates continued to widen in the early 20th century as Anglos "benefited from decent urban schooling, better policing, and higher-paid factory jobs and salaried work." As in San Francisco, Chinese residents were often confined to the most dangerous and crime-ridden neighborhoods with high rates of property crime, interpersonal violence, and vice-related offenses. By contrast, the city's smaller African American community, often linked to the service economy and semiskilled job opportunities, had a relatively low homicide rate but were still victims of interracial violence.

1900–1950

During the first half of the 20th century, Los Angeles became geographically more complex and demographically more diverse. As a key transportation hub with extensive rail, increasing road, and later air links, and a growing wage-labor economy, it attracted both native-born migrants and legal and illegal immigrants. The population of the city of Los Angeles had reached 500,000 by 1920. Mexican American arrivals were central to the burgeoning agricultural, manufacturing, and service sectors. The World War II years and related wartime industrial expansion were a watershed in African American migration, while the post-1960s immigration streams of Mexicans, Central Americans, Asians, and Europeans have produced a multiracial and multicultural city in every sense.

Prior to 1979, law enforcement in Los Angeles was overwhelmingly white and male. A volunteer constable force was set up in 1853 and the first paid force of six officers was established in 1869. The Los Angeles Police Department (LAPD) had 130 officers in 1903 and 544 by 1920. It now has over 10,000 officers. The LAPD is generally considered to be the first city police force to hire women, albeit in limited gender-specific duties. Alice Stebbins Wells, a white,

middle-class, 37-year-old assistant pastor and social worker, was appointed in spring 1910 as a police officer assigned to the Juvenile Bureau. In 1914 the LAPD set up a City Mother's Bureau in which female officers specialized in crime prevention, for example, through street patrols and vice investigations, and were central in the protection of adolescent girls and vulnerable children. Wells inspired many female recruits across the country and in 1915 became founder and president of the International Association of Policewomen.

August Vollmer, leading police reformer and advocate of scientific policing and enhanced professionalism during the Progressive Era, became Los Angeles police chief 1923–24 at the behest of the Citizens Anti-Crime Commission, which sought to reorganize a police department that was riddled with corruption and ineffectual at controlling crime, particularly gambling, illegal liquor, and prostitution during the national Prohibition period, and to improve the city's squalid and overcrowded jail system. Vollmer's reorganization of the force and his intelligence-gathering methods were not popular with the rank and file, but the LAPD did undergo improvements in recruitment systems, communications, and technical expertise and in detection and investigation. Its reputation for corruption, partisanship, and conservatism remained.

LAPD relations with Mexican American and Latino communities throughout the 20th century were punctuated with violent confrontations and police brutality. During the 1920s and 1930s the LAPD's long-standing policy of aiding the antilabor business establishment and protecting vice brought it into conflict with non-Anglo communities. LAPD officers generally viewed Mexican Americans with acute suspicion and believed that violence and crime were biological characteristics of this group, often with tragic consequences, as demonstrated in the 1942–43 Sleepy Lagoon case. The murder of José Díaz led to the indiscriminate roundup of 600 Mexican/Chicano youths and subsequent trial and conviction (later reversed on appeal) of 17 members of the 38th Street Gang. Wartime hysteria over a reputed wave of Mexican American juvenile delinquency, altercations between white naval personnel and Mexican American youths, and heavy-handed police tactics contributed to the June 1943 Zoot Suit Riots.

The 1950s and 1960s

Police Chief William H. Parker (1950–66) sought to transform the LAPD into the model for professional big-city police departments, but his administration was also defined by strict authoritarianism, strident anticommunism, and acute suspicion of minority civil rights. Increased heroin use in the barrios and ghettos of Los Angeles from the 1950s also shaped police attitudes and suspicions. In the years after World War II, Mexican American and African American communities grew ever more frustrated with LAPD conduct and tactics. In December 1951, over 50 LAPD officers brutally beat seven young men, five of whom were Hispanic, in their custody at the central city jail. African American residents were increasingly frustrated by poor race relations, Jim Crow discrimination, and police violence, and there were several confrontations between black civil rights protesters, Nation of Islam members, urban black residents, and the police during the 1960s. Police brutality and misconduct became a powerful political organizing focus for activists in the many social protest movements of the decade. The LAPD police infiltrators were accused of engaging in criminal activities in order to disrupt and destroy Chicano and Black protest organizations.

In August 1965, the arrest of a young African American male for drunken driving by a white highway patrolman, followed by a scuffle with arriving LAPD officers, precipitated the Watts Riot in south central Los Angeles that required National Guard intervention, left over 1,000 injured and 34 dead, and resulted in substantial property damage. Complex economic, political, and police brutality factors framed the larger context for such a serious outbreak of urban disorder and further events in 1970–71, including the Chicano Moratorium Riot and the killing of journalist Ruben Salazar. Charges of police brutality and political repression followed the LAPD into the 1970s.

The Rodney King Riots

Late-20th-century attempts to depoliticize the LAPD and improve community relations suffered a major setback in March 1991 when a bystander videotaped four white police officers beating African American resident Rodney King. Images of the officers using a stun gun on King, repeatedly kicking him, and hitting him with batons were



Los Angeles Police Department officers dressed in riot gear in preparation for an immigrant rights march for amnesty in downtown Los Angeles, California, on May 1, 2006. The department had only 130 officers in 1903 and 544 by 1920. In a measure of the city's growth and complexity in the early 21st century, the Los Angeles Police Department is now made up of over 10,000 officers.

broadcast around the world, generating acute public outrage and political denunciation. At the subsequent trial, the four officers were acquitted and the city exploded in violence. There were echoes of 1965 as 60 people died and thousands were injured, and a billion dollars of property damage resulted.

The reputation of the LAPD was tarnished again with the late 1990s Rampart CRASH (Community Resources Against Street Hoodlums) corruption scandal. Street gangs had existed in Los Angeles for much of the 20th century but grew dramatically in number and size from the late 1960s to become alliances of neighborhood gangs that were part of larger networks of Crips, Bloods, and others. Anxieties over gang warfare became more acute in the context of a more vis-

ible globalization of the drug trade, immigrant smuggling, and money laundering. CRASH was an anti-gang program implemented in the early 1990s but became synonymous with unwarranted arrests of largely Latino residents in an area to the west of central Los Angeles, drug dealing by officers, witness intimidation, planting of evidence, illegal shootings, and other problematic activities. The appointment of William J. Bratton in October 2002 as LAPD chief of police signaled a willingness to restore the department's reputation and to implement a robust crime-fighting strategy that many commentators suggest has succeeded as evidenced by the city's declining homicide rate.

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See Also: 1961 to 1980 Primary Documents; African Americans; California; Hispanic Americans; King, Rodney; Police, Contemporary; Police Abuse; Reform, Police and Enforcement; Riots; Vollmer, August.

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at Angola, generally known as Angola, has alternately been called "the worst prison in the United States," "a sewer of degradation," the "bloodiest prison in the south," and "the Alcatraz of the south." In his book *Black Rage in New Orleans*, Leonard N. Moore claims that since World War II, "The New Orleans Police Department has been one of the most brutal, corrupt and incompetent police units in the United States."

When Louisiana became a state in 1812, 66 percent of the population of New Orleans was African American (one-third were slaves). Thus, New Orleans was initially considered a tripartite society (slaves, free blacks, and whites). About 25 percent of its population was French, Irish and German immigrants. With increasing legal restrictions, the free black population decreased, making the city 33 percent black before the Civil War. Jim Crow segregation quickly changed New Orleans into a biracial city: People were categorized as either black or white, both legally and socially. Although Irish immigrants could frequently be found in the criminal courts of antebellum New Orleans, at the same time, major concerns centered on controlling the black population. Issues of race marked the development of crime, policing, and punishment in New Orleans and in Louisiana.

New Orleans maintained a population that was 33 percent black until the black rural migration to the city in the late 1940s and early 1950s. By the year 2000, the city was 66 percent black. Black rural migrants came to New Orleans for better jobs, but they were relegated to the low-paid unskilled sector of the labor force. This second migration to New Orleans, coupled with the ensuing white flight, left poor black citizens bearing the brunt of the city's increasing social problems: increasing crime, corrupt police, and harsh punishments.

Crime

Louisiana's earliest criminal code was the "Crimes and Offences" section of the Orleans Territorial Acts, 1806. Commonly known as the Code Noir, or Black Code, it defined particularly severe and unequal punishments designed to control slaves and free people of color, thereby maintaining the institution of slavery. Many of these codes were reinstated during the late 1800s

Louisiana

Inextricably linked with race, class, and politics, Louisiana has had a colorful and sensationalistic history of crime, police, and punishment. New Orleans has frequently ranked as the "murder capital" of the United States, and Louisiana's prison system, primarily the Louisiana State Penitentiary

and became what are commonly known as the Jim Crow laws. Louisiana did not have a codified criminal code until 1942.

New Orleans, the largest city in Louisiana, has been portrayed as a crime-ridden and violent town since before the Civil War. Antebellum visitors to New Orleans observed that crime was the “ruling element in New Orleans society,” with at least 225 criminal homicides between 1857 and 1860 and a homicide rate of 35 per 100,000, making New Orleans a more dangerous city than others of its size at the time. (By comparison, Philadelphia had a homicide rate of 3.6, and Boston’s rate was about 7.5 during corresponding years.) Lesser crimes also clogged the lower courts. Although prostitution was not a crime, activities surrounding it were. As a result of indirect attempts to control prostitution, women caught up in wholesale sweeps were dragged to court, charged with disorderly conduct, then usually fined and released. Gambling, duels, and vagrancy also kept the lower courts filled, and upon the eve of almost every election, the city braced itself for mob violence in support of or in opposition to the candidates.

Pervasive violence, represented by vigilantism, lynchings, and massacres, characterized Louisiana in the second half of the 19th century: The dominant (generally white) class resisted the enfranchisement of former slaves and often took the law into its own hands to undermine it. During Reconstruction, homicides occurred primarily in the rural areas of northwestern Louisiana. Furthermore, according to Gilles Vandal, Louisiana’s post-Civil War homicides were not black-on-black crime but were mainly white-on-black, a preview of the state’s later pattern of lynching.

Post-Civil War New Orleans also suffered riots, lynchings, and a general deterioration of law and order, especially after Reconstruction. Federal supervision and a racially integrated New Orleans police force both controlled the level of violence during Reconstruction but at the same time created a general disrespect for the law within the upper class. With the dismantling of the integrated force and dwindling funds, vigilantes combated local crime waves. At times, the community effectively reverted to a frontier level of law enforcement. Numerous murders of and by political figures occurred, with the police themselves often perpetrators of the violence. In New Orleans, disrespect

for life and property was so prevalent after Reconstruction that local newspapers were nostalgic for the “safer” previous years. Culminating with the 1890 assassination of New Orleans Police Chief David C. Hennessy, and the consequent lynching of 11 Italians in retaliation in 1891, New Orleans and Louisiana became bywords for political corruption and general lawlessness.

After Reconstruction, lynching was employed as the most brutal form of social control, shaped by economic and cultural contexts in which whites lynched blacks. Louisiana’s per capita lynching rate was ranked second behind Mississippi; the state had the top three lynching parishes (counties) in the United States: Quachita, Caddo, and Bossier. Consistent with the pattern of homicides during Reconstruction, all three ranking parishes were in the northern part of the state. Ending in the 1940s, lynchings did not prevent legal executions, and capital punishment laws had interesting similarities to the original pre-Civil War Black Codes. For instance, in the late 19th and early 20th centuries, the death penalty was possible for not only homicide but also for rape, poison with intent to murder, lying in wait with intent to murder, and assault with a dangerous weapon in perpetration of or attempting to perpetrate arson.

Corruption

The focus of crime in Louisiana intensified on political corruption in 1939, when Governor Richard Leache’s administration was exposed as one of the most corrupt in the history of Louisiana politics. Known as the scandals of 1939—the Louisiana Hayride—Governor Leache, along with scores of lesser government officials, was convicted of a variety of federal crimes such as income tax evasion, embezzlement and using the mail to defraud. The federal government, which led the investigation, also revealed that Leache, along with New Orleans Mayor Robert Maestri and Lt. Governor Earl Long, encouraged the Mafia to continue to expand its illegal activities in Louisiana, mainly in the area of gambling. One of the most shocking revelations of the scandal centered on Louisiana State University (LSU). The university’s president, James Monroe Smith, among other university officials, was found to have illegally used millions of dollars of the university’s funds. President Smith, the only one of

the group to be convicted of state offenses, was sentenced to 8–24 years of hard labor in the Louisiana State Penitentiary at Angola. For his infamy, the former LSU president appeared on the cover of the December 11, 1939, issue of *Life* magazine, garbed in the convict's black and white striped uniform. Despite such sensationalized corruption, Smith later held the position of superintendent of vocational rehabilitation at Angola, where he died in June 1949.

With the exception of an increase from 1989 to 1993, since the 1970s, national crime rates have generally decreased. Louisiana's crime rates have followed the same general pattern. Yet even as Louisiana's murder/nonnegligent manslaughter rate has continued to decrease along with the rest of the nation (from 32.7 in 1995 to 11.8 in 2009 according to the Federal Bureau of Investigation's Uniform Crime Report), New Orleans managed to maintain the dubious distinction of being named the murder capital of the United States at least three times, in 1994, 2000, and 2008.

Police

Policing in Louisiana has always been connected to issues of race, ethnicity, politics, and corruption. One of the earliest policing activities in Louisiana was performed by the members of the slave patrols, designed to control slaves in the rural areas through the use of local ordinances and the directives of the Black Code of 1806. After Reconstruction and during the Jim Crow period, one of Louisiana's main policing functions was to maintain segregation, formally and informally, as depicted in lynchings and in the refusal of the police to support school integration through the 1950s and 1960s.

According to Dennis Rousey, the development of paramilitary municipal police forces in the south predated those of the north (with New Orleans unique in initiating a military-style police force in 1805). Shreveport, situated in Reconstruction's northern "Bloody Caddo" Parish, followed with the establishment of its force in 1839. Baton Rouge, Louisiana's capital, did not create its force until just after the Civil War, with the appointment of its first chief of police in 1865. The Louisiana State Police was created in 1936.

From their inception, Louisiana's police departments were white institutions. Although

during Reconstruction the New Orleans Metropolitan Police Department had a proportionate number of black police with full powers, integration ended with cessation of federal supervision and Republican control of the city in 1877. The decreasing numbers of New Orleans' black police officers led to abusive practices in the African American community by a dominant white police force. By the late 19th century, the New Orleans police force had deteriorated into a notoriously corrupt, undersized, and underfunded organization. Its reputation for brutality against African Americans flourished and was sustained through the 20th century.

New Orleans did not integrate its force again until the 1950s, when two officers were assigned to patrol African American neighborhoods. By 1965, only 3 percent of Louisiana police were African American, and none were in supervisory positions. The New Orleans Police Department was arguably one of the most brutal, corrupt, and incompetent police units in the United States in the postwar period. Reform was a top priority in 1995 when Mayor Marc Morial appointed Richard Pennington of Washington, D.C., as the police chief of New Orleans. Pennington instituted various policies that resulted in a striking decrease in the overall homicide rate, from 363 in 1995 to 158 in 1999.

After a failed mayoral campaign, Pennington left in 2002, and the city's murder rate has escalated ever since. The inefficient, illegal, and corrupt behaviors of the New Orleans police in the aftermath of Hurricane Katrina, coupled with recent convictions of a number of police officers, have not changed the public's impression of this force.

Punishment

Researchers claim that current mass imprisonment in Louisiana is a backlash against the civil rights movement. With respect to the racial proportion of the prison population, the Civil War was the most decisive event for the south in the history of penology because it changed the racial composition of prisons from primarily white to primarily black males. Yet Louisiana was unique. While it is commonly believed that slaves were not found in southern prisons before the Civil War, they made up one-third of the population in Louisiana's first



Prisoners loading lumber onto a riverboat at the Angola State Penitentiary landing on the Mississippi River in Louisiana around 1900. Angola has at times been called the worst prison in the United States. Today it covers 18,000 acres and houses 5,000 prisoners, 90 percent of whom are serving life sentences and will likely die there.

penitentiary at Baton Rouge. As Louisiana turned to imprisonment to control newly freed slaves after the Civil War, the racial distribution of prisoners soon reversed; the population became almost 90 percent black by the 1890s.

In 1835, a penitentiary was built in Baton Rouge for the purpose of saving money that the state had previously paid to Orleans Parish for housing state convicted felons in the parish prison, the local jail in New Orleans. Not realizing the anticipated savings or profit, Louisiana began leasing its prisoners in 1844, a practice that continued until December 31, 1900, with a short interruption during the Civil War. After the war, prisoners were

subcontracted by the lessee, Samuel L. James, to railroads, former plantations, and back to the state to rebuild the levees and the roads that had suffered wartime destruction. Brutality and high death rates were a constant under the lease.

Leased prisoners first appeared at Angola, the location of the future state penitentiary, in 1880; James purchased the former plantation and brought convict women to work in his household, and some men to work the plantation. The state purchased the James plantation at Angola when it resumed control of the prisoners on January 1, 1901. Angola was then a complex of approximately 8,000 acres. When the state

was able to purchase 10,000 more acres in 1922, Angola became the largest prison in the United States. Angola then became the only penitentiary in the state when the Baton Rouge facility closed in 1917. A facility for first offenders was opened in 1957 at DeQuincy in western Louisiana; it was also used to relieve the overcrowding from Angola.

Women were incarcerated at Angola in a camp separate from the men. They were eventually transferred to a women's facility in St. Gabriel, approximately 40 miles southeast of Angola, in 1961; they remained under the administrative control of Angola for another decade, until a brand-new facility was built for them at St. Gabriel.

Because of segregation, the first institutions for juveniles that opened in 1904 and 1926 were for white boys and white girls, respectively. Dependent African American children were found in local jails and the state penitentiary until 1948, when the State Industrial School for Colored Youth opened. This facility became coed in 1956 and desegregated in 1969, when the U.S. District Court ordered desegregation of juvenile facilities.

In 1995, Human Rights Watch issued a critical report of Louisiana's secure juvenile facilities. After a Department of Justice lawsuit in 1998, Louisiana separated the juvenile system from the adult system in 2004, by establishing Youth Services for the state's Office of Juvenile Justice. Youth Services set a goal of decreasing the number of juveniles in custodial facilities, and the result has been a 77 percent reduction in the custodial youth population over the past 10 years. Three secure facilities for boys in different parts of the state and one for girls presently hold a total population of 496 juveniles.

Louisiana Prisons Today

The 18,000 acres that comprise today's Louisiana State Penitentiary at Angola actually consist of multiple plantations, some of which were originally owned by one of the largest slave traders in the south, Isaac Franklin. Angola is considered a model of plantation imprisonment because the work is primarily agricultural. Similar to slaves, prisoners were classified according to their physical abilities and were worked from sunup to sundown. Angola prison laborers grow most of the vegetables for the prisoners living there and for a

number of other penal institutions in the state. A series of investigative reports throughout the 20th century revealed such brutality at Angola that it was labeled the worst prison in the United States. Attempts at penal reform throughout the 1900s were short-lived because the state legislature provided only sporadic financial support for the penitentiary, wrongly believing that it should be self-supporting. In 1974, when Judge E. Gordon West observed that the conditions at Angola "would shock the conscience of a civilized society," the legislature was finally forced to financially support the prison system under federal court order, and meaningful penal reform in Louisiana began. The Louisiana Department of Corrections was the only statewide system accredited by the American Corrections Association in 1996. Angola is known for having the award-winning prison news magazine *The Angolite* and one of the best prison hospice programs in the United States. Angola also has a Bible College that awards associate and bachelor's degrees in Christian ministry.

As of 2010, the Louisiana Department of Corrections consists of 12 adult facilities that hold more than 40,000 prisoners, 70 percent of whom are African American. Women comprise 6.4 percent (2,630) of the total population; half of them are African American. Unique among state correctional systems, Louisiana houses half of its population in local jails throughout the state, under contract with local sheriffs. Louisiana has ranked in the top three for incarceration rates since 1987 and took the lead in 1998 with a per capita incarceration rate of 709 per 100,000. By 2009, Louisiana had the highest incarceration rate (881) in the Western world.

The get-tough movement of the United States has affected Louisiana with the passage of truth in sentencing laws and the elimination of the 10–6 rule in 1974, which had allowed life-sentenced prisoners to be considered for parole after they served 10 years and six months. In fact, it was an almost automatic release. Now, almost 25 percent of Louisiana prisoners serve natural life sentences (without parole). As most of the natural life and virtual life prisoners are housed at Angola, 90 percent of Angola's 5,000-prisoner population is predicted to die there. Meanwhile, recommendations for pardon and parole for the majority of offenders have almost come to a halt compared to

previous eras. The percentage of parole board—recommended releases has decreased from 15.4 percent in 1994 to 4 percent in 2010. A proposed 2009 bill that would have eliminated the pardon and parole boards failed to pass the state legislature. Recognizing the financial costs of such an imprisonment rate, Louisiana has recommended and implemented various corrective actions. However, even the Department of Corrections notes in its 2009 internal analysis that none of the proposed changes that affect prisoner populations at the entry point will have an immediate impact on reducing the current prison population.

With a budget shortfall for the past two years, and facing what legislators have called an “over-the-cliff” budget year 2010–11, the governor recommended that Louisiana sell three of its adult prison facilities to help alleviate financial troubles. After strong opposition by prison employees, this proposal failed. Recommendations by professional corrections administrators and outside experts historically have gone unheeded. Whether Louisiana will implement the most recent penal reform recommendations of national think-tanks such as PEW, the Vera Institute, and the JFA Institute of Washington, D.C., is anyone’s guess.

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See Also: 1851 to 1900 Primary Documents; 1961 to 1980 Primary Documents; 1921 to 1940 Primary Documents; African Americans; Corrections; Lynchings; New Orleans, Louisiana; Prison Privatization; *Roberts v. Louisiana*.

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Loving v. Virginia

Loving v. Virginia was a 1967 U.S. Supreme Court decision striking down Virginia’s anti-miscegenation statutory scheme that banned marriages between white and nonwhite people. The court held that the racial classifications of certain Virginia statutes restricted the freedom to marry and violated the equal protection clause and the due process clause of the Fourteenth Amendment. The racial classifications constituted arbitrary and invidious discrimination because marriage is a fundamental right upon which the state cannot infringe. The case established marriage as a category requiring the highest standard of judicial review.

Richard Loving, a white man, and Mildred Jeter, a black woman, were residents of Virginia who legally married in the District of Columbia. The couple returned to Virginia and resided in Caroline County. A grand jury indicted them in 1958 because of Virginia’s restrictions on interracial marriage. The couple pleaded guilty. The trial judge suspended the couple’s sentence of one year of jail time, provided that they leave Virginia for 25 years. The couple moved to Washington, D.C., where, with the help of the American Civil Liberties Union (ACLU), they sued to set aside the

sentence as offending the Fourteenth Amendment. After procedural delays in state court, the couple instituted a class action suit in federal court, and eventually their case reached the Supreme Court of Appeals of Virginia, which upheld the antimiscegenation statutes. The couple appealed to the U.S. Supreme Court.

Two Virginia statutes were at stake in the holding. The first voided all marriages between a white person and a "colored person." The second prohibited white people from marrying a person of any race that was not white. Section 1-14 of the Virginia Code defined a colored person as "every person in whom there is ascertainable any Negro blood." It defined American Indians as "every person not a colored person having one fourth or more of American Indian blood." The case was argued before the court in April 1967. Chief Justice Earl Warren, writing for a unanimous court in June 1967, reasoned that the Fourteenth Amendment, as one of three Civil War Amendments—the other two being the Thirteenth and Fifteenth Amendments—sought to eliminate state-sanctioned racial discrimination. The Equal Protection Clause of the Fourteenth Amendment therefore demanded strict judicial scrutiny of any statutory racial classification. Thus, to be valid, such a racial classification had to be necessary to achieve a permissible state objective besides racial discrimination.

The Virginia statutes were not necessary to achieve a valid state objective. The purpose of the Virginia statutes was solely to prohibit and punish interracial marriage. Therefore, the statutes were invalidated as unconstitutional pursuant to the Fourteenth Amendment. When the case was decided, 16 states had antimiscegenation statutes on their books. Antimiscegenation statutes were common in America from the colonial period until this court decision. The Warren Court established that although states had rights to regulate marriage under their police power, state power over marriage was not unlimited. The fact that the Virginia statutes applied equally to whites and nonwhites was irrelevant because the statutes contained racial classifications that triggered high levels of judicial scrutiny. The court would not entertain the argument of equal application of the laws because states could not be permitted to equally apply that which violated the U.S.

Constitution. Equal application, in other words, could not immunize statutes from the critical scrutiny of federal judges. Justice Warren found that no overriding purpose justified the Virginia statutes, which were designed to maintain white supremacy. This case is significant because of its effect on the civil rights movement and its interpretation of the Fourteenth Amendment. After this decision, no state could forbid a person from marrying a person of another race.

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See Also: Civil Rights Laws; Constitution of the United States of America; Race, Class, and Criminal Law; Race-Based Crimes; Racism.

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Luciano, "Lucky"

American organized crime figure "Lucky" Luciano (1897–1962) was born Salvatore Lucania in Lercara Friddi, Sicily, near Palermo, and immigrated to the United States with his family in 1906. Lucania quickly became enmeshed with the criminal underworld of New York City's Lower East Side, notching his first arrest (for shoplifting) a year after his arrival. As he reached his teen years, Luciano graduated to shakedown antics and, through physical intimidation, assumed a position of leadership in the junior gangland of his neighborhood. As a teenager, he was imprisoned for six months for selling narcotics; upon his release, he resumed his criminal career. With the advent of Prohibition in 1920, Luciano's horizons broadened. He was at the near-midpoint of the

ambitious cohort of criminals born between 1892 and 1900 that historian Mark Haller identifies as ascending in power during Prohibition. Within this group of predominantly Italian and Jewish immigrants and first-generation American slum dwellers, Luciano distinguished himself quite early. Associating himself with several groups involved with importing—and hijacking—shipments of illegal spirits, Luciano became a rising star in the bootlegging world, associating with notables like Meyer Lansky, Frank Costello, Benjamin "Bugsy" Siegel, Vito Genovese, "Legs" Diamond, "Lepke" Buchalter, Jacob "Gurrah" Shapiro, and Arthur Flegenheimer ("Dutch" Schultz).

In 1927, mob boss Joe Masseria enlisted Luciano as his chief assistant, largely due to his genius for organization. By 1931, however, Masseria, realizing perhaps Luciano's ambitions to be more than a lieutenant, became dissatisfied with Luciano. Learning of his boss's displeasure, Luciano worked with rival gang leader Salvatore Maranzano to engineer Masseria's execution-style murder, clearing the way for Maranzano to assume the top position in New York's tenuous criminal hierarchy. Later that year, Luciano arranged Maranzano's murder, effectively eliminating the last of the old-guard "Mustache Pete" mobsters from leadership and marking the final step in his cohort's assumption of control over New York City's organized crime. For the next five years, Luciano reigned as a power broker in New York's criminal underworld, allegedly earning a fortune, first in bootlegged liquor and, after the repeal of Prohibition in 1933, from narcotics smuggling and wholesaling, illegal gambling, and prostitution. Reportedly, one of Luciano's lieutenants had taken over the "combination" of bookers who controlled much of the city's prostitution under orders from Lucky himself.

In early 1936, a strike force under the aegis of special prosecutor Thomas E. Dewey conducted citywide raids that netted prostitutes, madams, and others associated with the sex trade. Ultimately, Dewey used the testimony of those arrested in the raids to win a conviction against Luciano for a variety of prostitution-related violations. His conviction was upheld on appeal, and he was sentenced to 35 years in prison. After 10 years in prison, Luciano saw his sentence commuted by now Governor Dewey, on grounds

of his wartime service to national security, which likely meant guaranteeing labor peace and security along New York's docks. He was immediately deported to Italy, where, it was alleged, he continued to exercise influence over American organized crime and may even have escalated his narcotics smuggling. Wishing to return to the United States, he settled for a move to Fulgenzio Batista's Cuba, but U.S. government pressure forced his speedy return to Italy.

In Italy, Luciano continued to work for a return to the country he claimed as his true home, but police believed he continued to mastermind a global narcotics-smuggling network. His attempts to return to the United States failed; as his health deteriorated in his later years, he became less close-mouthed about his earlier criminal activities, speaking to reporters and even dictating notes that became the basis of a biography. In January 1962, while meeting with American film producer and subsequent biographer Martin Gosch about a prospective movie project, Luciano suffered a heart attack at Naples' Capodichino Airport and died. At the time, police believed the 65-year-old to still be actively involved in the international narcotics trade. His body was subsequently interred at St. John's Cemetery in Queens, New York.

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See Also: 1941 to 1960 Primary Documents; 1961 to 1980 Primary Documents; Gambling; Genovese, Vito; Italian Americans; Organized Crime, History of; Rothstein, Arnold; Schultz, Dutch.

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Lynchings

A lynching is a form of extralegal violence carried out by a mob. The earliest use of the term in colonial America seems to have been during the Revolutionary War as “lynch law” or “Lynch’s law” to refer to the punishment of British loyalists by Charles Lynch, a Virginia planter and justice of the peace. During the westward movement, vigilantes carried out lynchings, which increasingly involved lethal violence, with Mexicans, Native Americans, Chinese laborers, and white outlaws among the victims.

However, from the Revolutionary era onward, mob violence was also a law enforcement problem in cities. During the Civil War, in 1863, the “draft riots” occurred in New York City. Protesting conscription into the military by the federal government, mobs that included many Irish immigrants engaged in several days of violence, rampaging through the city, destroying property, and setting upon and killing several African American men. Black children were forced to flee when an orphanage was burned down. This violence, which targeted blacks as scapegoats, was a prelude to the racialized violence that became identified with the Deep South.

Between 1889 and 1932, approximately 3,745 people were lynched in the United States. The majority of these lynchings occurred in the southern states that formed the so-called Black Belt rather than in the border states of the upper south. The majority of the victims of these lynchings were African American. Because of their value as property, slaves in the south had been provided some protection from mob violence. In the post-Civil War era, freed blacks were the targets of lethal violence by both mobs and vigilante groups.

Post-Civil War Era

The end of the Civil War saw the rise of white vigilante groups such as the Ku Klux Klan (KKK). Often clad in robes and other regalia, these groups sought to terrorize blacks in the south. The punishment carried out by these groups was directed not only against accused criminals but against blacks who violated established racial etiquette or who challenged white supremacy through attempted social, economic, or political mobility. The propaganda of these

vigilante groups focused on the alleged rise of the “new Negro criminal” who was free to prey on whites because he was no longer controlled by the system of slavery. In this scenario, white vigilantes who enforced traditional southern racial patterns were portrayed as heroes, fighting to preserve the southern way of life that had been disrupted by the Civil War and was now threatened by blacks. Although there was little evidence to support the allegations, the articles and editorials that appeared in southern newspapers depicted lustful black men (“fiends”) preying on white girls and women. This myth of the black rapist spread beyond the region as northerners read accounts of lynchings in the south. The threat of the black rapist was used as a rationale for keeping black men in their “place.” The southern “code of honor” was evoked to justify the use of mob violence in the alleged defense of white womanhood.

As vigilante violence against blacks increased, with the number of lynchings peaking in the 1890s, the ritual characteristics of these events also began to take shape. Lynchings involved the shooting, hanging and/or burning and often the mutilation of the victim. In one such case, widely covered by newspapers, a black man named Sam Hose was lynched in Newman, Georgia, on April 2, 1899. Before he was burned alive, his ears, fingers, and genitals were cut off. After he was dead, his body was allowed to cool and then was crushed to secure pieces of bones and liver, which were sold as souvenirs.

The image of blacks as “beasts” and of “Negro regression” in the aftermath of slavery served as justification for the violence directed against African Americans in the south. Early social science supported rather than refuted images of black savagery. Cesare Lombroso, the “father of positivist criminology,” described Africans as less evolved physically and mentally than Europeans. Social Darwinists echoed this assertion of white superiority.

Twentieth-Century Lynchings

Vigilante violence against blacks had surged in the south during a period when such mob violence was diminishing in other regions of the country. At the same time, southern historians eulogized the happy slaves of the old south. Director D. W.



This photograph of the aftermath of the June 15, 1920, triple lynching of Elias Clayton, Elmer Jackson, and Isaac McGhie, who had been accused of raping a white woman in Duluth, Minnesota, was made into a postcard, as were many other such photos. Between 1889 and 1932, approximately 3,745 people were lynched in the United States, and the majority were African American.

Griffith's *The Birth of a Nation* brought this old south perspective to movie audiences. Acclaimed by critics for its technical achievements, the film was the first Hollywood blockbuster. Based on *The Clansman* (1905) by former minister Thomas Dixon, the film presented a distorted account of federal occupation of the south after the Civil War. Using white actors in "blackface" (theatrical makeup), the film presented black and mulatto characters as villains. In a famous scene, a black soldier, who has been lusting after the white hero's young sister, pursues her through the woods. Fearing rape ("a fate worse than death" for a white woman), she jumps from a precipice before her brother can arrive to save her. Heartbroken, the white hero turns to the white vigilante group that he has formed, the KKK, to free the oppressed whites.

As these lynchings continued into the 20th century, the coverage by newspapers outside the south reinforced negative perceptions of the region. Aside from African American press, the *New York Times* and the *Chicago Tribune* were among the first newspapers to describe vigilante violence in the south as barbarism. This stigma that was perceived as hindering social and economic progress in the south as well as the fact that large numbers of blacks were migrating north, creating a labor shortage, led some white southerners to advocate the suppression of lynching. Some southerners also feared the federal government might intervene on the side of blacks.

African American activists had been engaged in a campaign against lynching since the last decades of the 19th century. Founded in 1909, the National Association for the Advancement of

Colored People (NAACP) documented lynching events, often sending undercover investigators to the scenes. Crusading journalists and editors such as Ida B. Wells (later Wells-Barnett) also reported on the violence of southern mobs. Forced to flee Memphis, Wells later published *Southern Horrors: Lynch Law in All Its Phases*.

African American women, known as “Negro clubwomen” also organized to resist lynching in the south. By the 1920s, they had been joined in their antilynching stance by organizations of white southern women who objected to lynchings allegedly carried out as acts of chivalry for the protection of white womanhood.

Lynching and Legal Action

Over the years, activists attempted to obtain legislation that would make lynching a federal offense. The Dyer Anti-Lynching Bill proposed by Representative Leonidas Dyer (R-Missouri) was defeated by political maneuvering in Congress in 1922 and 1923. In spite of this defeat, the number of lynchings continued to decline each year. However, there were still sensational events such as the lynching of Claude Neal in Jackson County, Florida, in 1934.

Neal had been accused of the rape and murder of a white neighbor. His abduction from the police and the announcement of the time and place of his lynching were reported in newspapers in the north. With no request for help from local authorities, the governor did not intervene by sending militia. An audience of white men, women, and children, some of whom had come from surrounding counties and even other states, witnessed Neal’s lynching.

The execution of Neal in Florida came several years after mob violence had been averted in Scottsboro, Alabama, when nine young black men were accused by two white women of raping them. The accusations in the “Scottsboro Boys” case are now generally recognized as a racial hoax (a false accusation that depends for its credibility on racial stereotypes). The two young women and the nine black youths, ranging in age from 13 to 21, had been “riding the rails” (riding illegally on the train), a practice common during the Great Depression as the unemployed poor moved from place to place seeking work. When the train stopped in Scottsboro, the two

young women were discovered and made their claim that they had been raped.

The Scottsboro Boys case is relevant in a discussion of lynching because during this era, rape was a capital offense. One factor in the decrease of mob violence in the south seems to have been the increase in the number of legal executions of black males accused of crimes against whites. In this case, the Scottsboro Boys were saved from death because the case became an international cause célèbre when the Communist Party and the NAACP intervened, vying for the right to provide a defense team.

By the 1930s, lynchings were viewed as symbolic of biased southerner justice and black oppression. As recent historians have noted, the occurrence of racial violence in other regions of the country was often ignored in this critique of the south. In the aftermath of World War I, during the “Red Summer” of 1919, race riots occurred in cities across the country. The movement of black migrants out of the south placed increasing demographic pressure on established black communities in the north and midwest, and more conflicts along the borders between blacks and whites occurred.

In the 1940s and 1950s, legal action produced some gains for African Americans. In 1954, in *Brown v. Board of Education*, the Supreme Court struck down the doctrine of “separate but equal” and directed the south to dismantle its system of legal segregation. A year later, the case of Emmett Till, a 14-year-old boy from Chicago who was killed in Money, Mississippi, in an act of private vigilantism, brought renewed attention to the south. Although the two white men who were suspected of killing Till were placed on trial, they were acquitted by an all-white jury. They later admitted in a magazine interview that they had killed the boy for showing disrespect to the wife of one of them while visiting their store. The Till case attracted national attention when Till’s mother chose to have her son’s coffin open, displaying his battered and mutilated body to mourners. The photo of Till in his coffin became iconic when it appeared on the cover of an African American magazine. Till’s murder was perceived as a lynching by many of the young activists who would take part in the civil rights movement.

Depictions in Media

In 1960, Harper Lee's novel *To Kill a Mockingbird* was published. As had the "lynching plays" and novels written by African American authors during the late 19th and early 20th centuries, the novel examined the impact of racial prejudice and racial violence on the lives of southerners. However, Lee's novel, set in the 1930s and written as the memoir of a young girl's coming of age, reached a far wider audience. The 1962 film based on the novel starred Gregory Peck as Atticus Finch, the white attorney who takes on the defense of a black laborer accused of raping a young white woman. Before he can defend his client in court, Finch must spend the night at the jail helping the sheriff to protect his client from the mob of white men who come to break him out of jail and lynch him.

In 2000, *Without Sanctuary*, an exhibition of photographs and picture postcards that were souvenirs of lynchings, opened in New York City and later traveled to Pittsburgh, Atlanta, and Chicago. Collected by an antique dealer from flea markets and private sellers, this exhibit highlighted the fact that lynchings were communal events that attracted a cross-section of whites, including women and children. Fearing no legal consequences, members of these mobs had posed with the bodies of their victims. The picture postcards of hanging, burned, and mutilated bodies often carried cheerful messages from the sender to the recipient about the lynching event.

Conclusion

Social scientists and historians have offered a variety of explanations of lynchings in the south and

elsewhere, considering factors such as economic conditions and demographics. The striking aspect of these events is that rather than being spontaneous eruptions of violence, the most horrendous of these lynchings were often planned, announced, and staged as spectacle. The symbolic message of the lynchings was powerful warning to the groups from whom the victims were drawn. The failure of federal, state, and local criminal justice systems to intervene reflected the lack of status of the victims and prevailing racial/ethnic attitudes.

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See Also: 1901 to 1920 Primary Documents; African Americans; Hanging; History of Crime and Punishment in America: 1850–1900; Ku Klux Klan; National Association for the Advancement of Colored People; Race-Based Crimes; Riots; Segregation Laws; *To Kill a Mockingbird*; Torture; Vigilantism; Violent Crimes.

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Macdonald, Ross

Ross Macdonald is one of the pen names of Kenneth Millar (1915–83), a novelist whose specialty was crime fiction. He is best known for his Lew Archer detective novels and is regarded as the successor to Raymond Chandler and Dashiell Hammett in the evolution of the private detective novel.

Millar was born December 13, 1915, in Los Gatos, California, to Jack and Annie (née Moyer) Millar, who took their young son to Vancouver, British Columbia. Millar had a difficult childhood. His parents separated when he was 4, and his mother took him to her hometown of Kitchener, Ontario, where they lived with his maternal grandmother for a year. He was sent to live with various relatives (occasionally spending time with his parents, who attempted to reconcile on two occasions) and returned to Kitchener to finish high school at the Kitchener-Waterloo Collegiate and Vocational School. It was during this time that he began reading Dashiell Hammett's work, which inspired him to become a writer.

In 1932, Millar entered Waterloo College, transferring to the University of Western Ontario the following year. In 1938, after graduating from college, he married Margaret Strum, who also became a crime novelist, writing 16 books between 1947 and 1987. Their daughter, Linda,

was born in June 1939 (she died in 1970). He also obtained a teaching certificate and took a job at the Kitchener high school he had attended.

While working on a doctorate at the University of Michigan (he defended his dissertation in 1951), Millar published his first novel, *The Dark Tunnel* (1944). Millar's second novel, *Trouble Follows Me* (1946), was written during his service in the U.S. Navy (1944–46). *Blue City* (1947) and *The Three Roads* (1948) followed.

During this period, Millar created a character who later appeared in a series of novels (like Chandler's Philip Marlowe and Hammett's Sam Spade): Los Angeles-based Lew Archer, whom he named after Sam Spade's murdered partner in *The Maltese Falcon* (Miles Archer) and the author Lew Wallace. He first introduced the character in the 1946 short story "Find the Woman." Archer appeared in a novel for the first time in *The Moving Target* (1949). Millar decided to use the pseudonym of "John Macdonald." His publisher, Knopf, came up with the idea of an author's photo that depicted a trench coat-wearing Millar in silhouette, smoking a cigarette, in order to generate publicity. There were 17 more novels, the last of which, *The Blue Hammer*, appeared in 1976. Most of the novels were set in Southern California with "Santa Teresa" serving as the pseudonym for Santa Barbara, where Millar and his wife lived for many years.

With *The Drowning Pool* (1950), Millar adopted the pen name “John Ross Macdonald” (to avoid confusion with John D. MacDonald, who created Florida detective Travis McGee). The pseudonym “Ross Macdonald” was introduced with the publication of *The Barbarous Coast* (1955). *The Goodbye Look* (1969) was his first best seller. The 1966 film *Harper*, starring Paul Newman, was based on *The Moving Target*. *The Drowning Pool* became a movie in 1975, also starring Paul Newman as Lew Archer (Newman had used the name “Harper” for the lead character in the earlier film because his two previous films, *Hud*, and *The Hustler*, had started with an H). *The Underground Man* (1971) was made into a 1974 television movie starring Peter Graves.

In 1960, a non-Archer novel, *The Ferguson Affair*, appeared. The protagonist was Bill Gunnarson, a young lawyer. In 1973, Millar published a nonfiction work, *On Crime Writing*, in which he analyzed the genre and offered insight into his own writing. In describing the detective story, he wrote

The nightmare can't be explained away, and persists in the teeth of reason. An unstable balance between reason and more primitive human qualities is characteristic of the detective story. For both writer and reader it is an imaginative arena where such conflicts can be worked out safely, under artistic controls.

The Mystery Writers of America gave Millar their Grand Master Award in 1974 (he and his wife are the only husband and wife to receive this award). The *New York Times* described his Lew Archer novels as “the finest series of detective stories ever written by an American.” In 1981, he was diagnosed with Alzheimer's disease. He died in a nursing home in Santa Barbara at age 67 on July 11, 1983.

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See Also: Dime Novels, Pulp, Thrillers; Grafton, Sue; Hammett, Dashiell; Literature and Theater, Crime in; Literature and Theater, Police in; Literature and Theater, Punishment in; Private Detectives; Spillane, Mickey.

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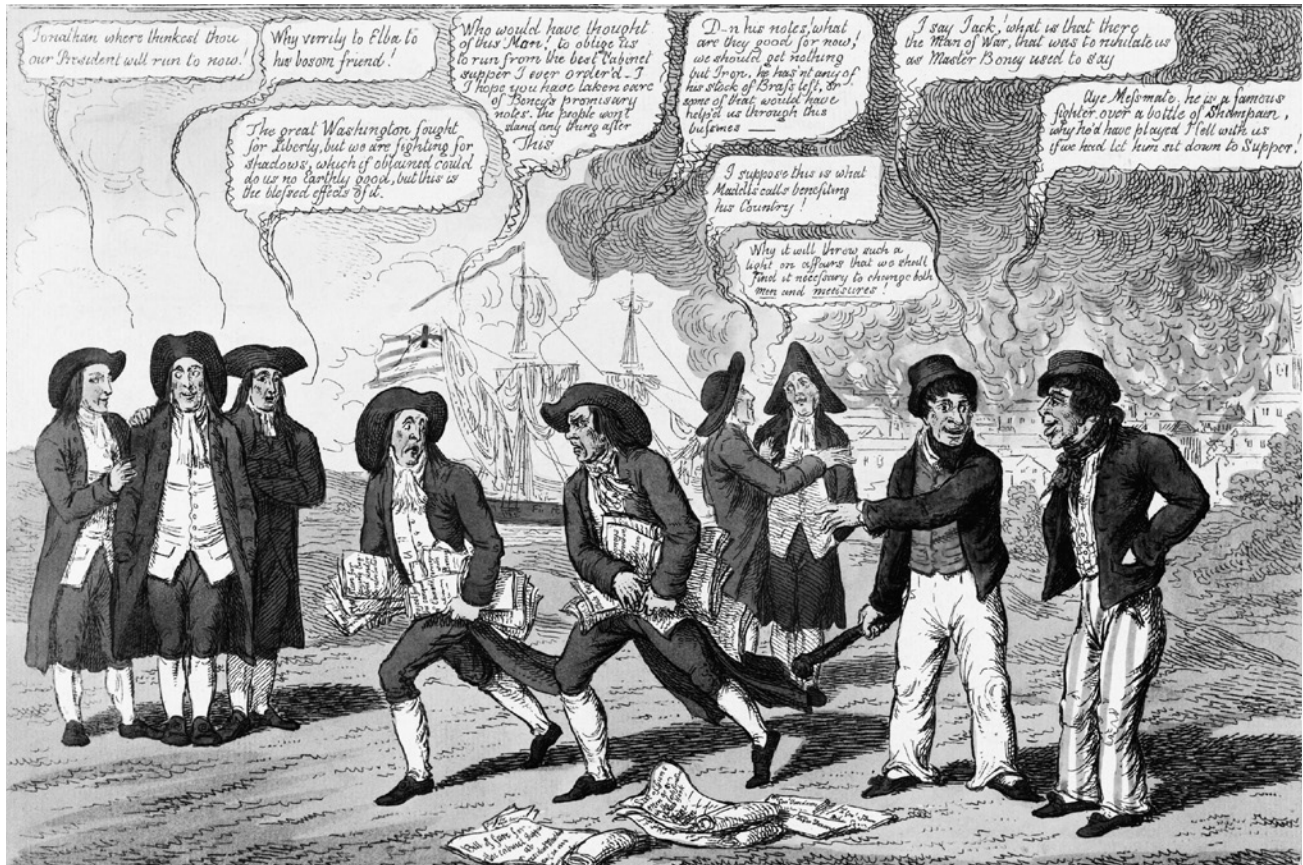
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Madison, James (Administration of)

James Madison (1751–1836) began his political career and influence on American history as an early Virginian politician, having represented Virginia as a delegate to the Constitutional Convention in 1787. Madison, author of the *Federalist Papers*, was an advocate of a strong national government. In debates, he emphasized that the Constitution's protections, particularly government as a system of checks, balances, and separated powers, would prevent tyrannical government and maintain order. While he is most widely famed for his substantial contributions to the framing of the U.S. Constitution, whether through his written work or the offices he held, the significance of James Madison on the political and legal structures of the United States is enduring.

Supreme Court Developments

As secretary of state, James Madison was a party in the landmark case *Marbury v. Madison* argued before the Supreme Court. At the end of his presidency, John Adams appointed William Marbury to serve as a justice of the peace. Yet Marbury's commission paperwork had not been officially delivered to him by John Marshall, then secretary of state, before the Adams presidency culminated. When Madison assumed the office of secretary of state, he did not deliver the commission paperwork to Marbury, which resulted in the lawsuit initiated by Marbury. Ultimately, the unanimous ruling established the power of the Supreme Court to exercise judicial review, which authorizes the Supreme Court to review



S. W. Fores's 1814 cartoon, *The Fall of Washington*, depicts President James Madison and likely John Armstrong, his secretary of war, fleeing the White House, the only president to do so because of a foreign invasion. Early in his presidency, Madison was in constant dispute with other nations over trade and territory. The discord eventually culminated in a formal declaration of war against Britain in 1812; during the Battle of Blandesburg, British soldiers invaded Washington, D.C., overcame its forces, and set fire to public buildings.

the federal constitutionality of laws related to the cases it hears.

A few years after the *Marbury v. Madison* decision, Madison was selected by President Thomas Jefferson to be his successor and to run for president in the election of 1808. The Democratic-Republican ticket ran Madison with George Clinton for vice president against Federalists Charles Pinckney and Rufus King. The primary issue that characterized the election was Federalist opposition to the Embargo Act of 1807. The contentious act, passed under the Jefferson administration while Madison was secretary of state, ultimately did not ruin Madison's opportunity to become president. In fact, James Madison was inaugurated as the fourth president of the United States in 1809.

As secretary of state during the Jefferson administration, Madison was involved in the case that

established judicial review, and later, during Madison's administration, the Supreme Court utilized the newly established power. The decision in *Fletcher v. Peck* declared an act of the Georgia state legislature inconsistent with the provision of the Constitution (Article 1, Section 9) that prohibits bills of attainder and ex post facto laws. Also in his first term, President Madison used the veto to reject two bills that he deemed to be unconstitutional. One bill sought to incorporate an Episcopal church outside Washington, D.C., into the territory of the city. The other vetoed bill would have granted public lands as relief to members of a Baptist church in the Mississippi Territory. For Madison, each of the bills violated the nonestablishment clause in the First Amendment to the U.S. Constitution. Contentions over land continued to define the major events of James Madison's presidency.

Foreign Engagements

The opposition to the Embargo Act that Madison faced in his first presidential campaign argued that the limitations the act placed on trade with foreign nations damaged the shipping and transportation industries that would otherwise benefit from trade exchanges. Within the first few months of his presidency, Madison addressed the issue. He announced that the United States would rescind the embargo placed on Britain with the understanding that Britain would act similarly. The accord, called the Erskine Agreement, fell through after Madison learned that it had been cancelled by the British; he followed suit weeks later.

In the years that followed, the Madison administration was in constant dispute with Britain, France, Spain, and various Native American nations over trade policy and territory. Accordingly, throughout his presidency Madison called for the expansion of American territory and the military. The engagements with Spain, Britain, and Native Americans spanned numerous territories. The disputes led many to call for war against France while a formal declaration of war against Britain was proclaimed in 1812. Later that year, British soldiers invaded and defeated American soldiers in Washington, D.C., during the Battle of Bladensburg. The British set fire to public buildings and forced Madison to be the only president to flee the White House because of a foreign invasion.

In an extremely competitive election, Madison won reelection to the presidency in 1812 against Federalist DeWitt Clinton. With news of Napoleon Bonaparte's failed invasion of Russia and the unraveling of the French Empire, Madison removed the trade embargo with neutral countries. Finally, in 1814, Britain and the United States negotiated and signed the Treaty of Ghent that ended the War of 1812. The First Bank of the United States lost its charter in 1811 under the Madison administration as many Congress members were concerned about British interest in the private bank.

In 1816, the United States chartered a new national bank, the Second Bank of the United States, to deal with war debt placed on the national treasury. President James Madison was succeeded by Democratic-Republican James

Monroe, who was elected in 1816 and inaugurated in 1817.

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See Also: Bill of Rights; Constitution of the United States of America; Federalist Papers; *Fletcher v. Peck*; *Marbury v. Madison*.

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Madoff, Bernard

Bernard “Bernie” Lawrence Madoff (1938–) is believed to have operated the largest Ponzi scheme in history, totaling some \$65 billion (estimates vary). A Ponzi scheme is a type of fraud in which investors are paid returns based on income provided by the investments of subsequent investors and generally attracts new investors by paying returns higher than those provided by more orthodox types of investment. A Ponzi scheme can continue as long as there is sufficient new investment to pay off those already in the scheme, requiring both a steady influx of new cash and the willingness of most of the investors to defer taking cash out of the scheme (e.g., by demanding payment of interest rather than reinvesting it).

Madoff graduated from Hofstra University in 1960. That same year, he founded the Wall Street trading firm Bernard L. Madoff Investment Securities, which became, by the early 1980s, one of the largest independent trading operations in the securities industry. Madoff built this volume in part through the practice of paying for order flow, a controversial but legal practice in which he paid brokerage firms a few cents per order to send orders through his firm, which he could afford

due to the large spread of 12.5 cents between the buy and sell price on each trade (this spread would drop to 6.5 cents in 1997 and to one cent in 2001). By 1989, Madoff's firm handled over 5 percent of the trading volume on the New York Stock Exchange and Madoff was one of the highest-paid individuals working on Wall Street. Not all Madoff investors knew they were investing their money with him: some were invested in "feeder funds" whose assets were invested with Madoff without the knowledge of the individuals whose money was involved. In 1990, Madoff became nonexecutive chairman of NASDAQ, an electronic stock market operated by the National Association of Securities Dealers.

Madoff came under suspicion as early as 1992, when federal investigators suspected he was connected to a Ponzi scheme run by Frank Avellino and Michael Bienes (Avellino had funneled investors to Madoff since the 1960s). However, Avellino and Bienes shut down their firm and no further investigation was directed at Madoff's activities. In May 2000, Harry Markopolos, a private fraud investigator in Boston who had been asked to reverse-engineer Madoff's returns (which were consistently high regardless of the general performance of the stock market), concluded that Madoff was running a Ponzi scheme and sent an eight-page memo regarding this to the Securities and Exchange Commission (SEC) office in Boston. Nothing came from this communication, and in 2005, Markopolos again communicated his suspicions to the SEC, sending a 21-page memo stating in even greater detail why he believed Madoff was running a fraudulent operation. However, the SEC made only minimal investigations and decided there was no evidence to conclude Madoff was guilty of fraud. Madoff's scheme was brought down in part by the financial slowdown in 2008, because his investors started making withdrawals from his fund in large numbers, and he was not able to bring in enough new cash to pay them off. On December 11, 2008, Madoff was arrested, and on June 29, 2009, he was sentenced to 150 years for numerous crimes, including international money laundering, securities fraud, mail fraud, wire fraud, money laundering, and perjury.

Besides being a Ponzi scheme, Madoff's fraud qualifies as an affinity scam because most of his investors were, like himself, Jewish. Madoff was

a well-known philanthropist and served on the boards of numerous nonprofit organizations, many of which invested funds with him. Some major Madoff investors, including well-known figures such as Nobel Prize-winner Elie Wiesel, were members of the Fifth Avenue Synagogue in New York City. Their investments were funneled to Madoff through J. Ezra Merkin, who until 2009, served as president of this synagogue. Wiesel's charity, the Elie Wiesel Foundation for Humanity, also lost almost all of its assets through Madoff's fraud. Other Jewish organizations with major investments with Madoff included Yeshiva University, the Carl & Ruth Shapiro Family Foundation, Hadassah, the Jewish Community Foundation of Los Angeles, and the Picower Foundation.

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See Also: Confidence Games and Frauds; Jewish Americans; Securities and Exchange Commission; White Collar Crime, Contemporary; White-Collar Crime, Sociology of.

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Magna Carta

Many people in America hold the opinion that the political concepts of liberty and freedom originated with the American colonists and the Declaration of Independence. In fact, these concepts came to the forefront during the Enlightenment, which was a

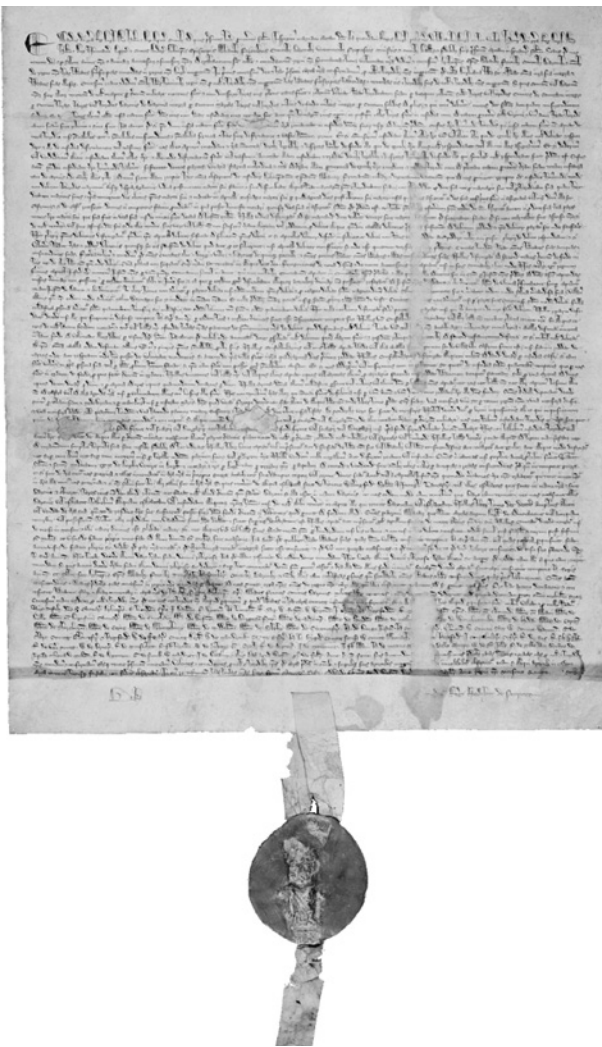
period of time during the 18th century in Europe when numerous philosophers began to seriously present the idea of a free and democratic society as an alternative to the monarchies that were prevalent in Europe at that time. These philosophers included such luminaries as John Locke, Baron Montesquieu, Immanuel Kant, and Jean-Jacques Rousseau. However, even the philosophers of the Enlightenment were influenced by previous writings and political events. One of the more important events was the Magna Carta.

During the 13th century in England, governments was based on the feudal system. The feudal system consisted of a number of lesser nobles,

such as barons, counts, and dukes, who owned land and swore fealty to a king. As feudal lords, these lesser nobles ruled over their serfs and peasants, who were legally bound to that noble—to work for the noble, pay taxes, and perform military service when required. The nobles, in turn, owed their loyalty to the king and had to pay taxes and provide troops in time of war.

In the 13th century, King John ruled England. King John was not a popular king because of the high taxes he leveled against his lesser nobles, his arbitrary treatment of his lesser nobles, and the unsuccessful wars he had conducted. A number of King John's nobles began to conspire against him because of his oppression. On June 15, 1215, at Runnymede, to prevent open rebellion, King John agreed to what is now known as the Magna Carta. At that time, it was called the Great Charter. In exchange, the lesser nobles renewed their oaths of loyalty to King John. The Magna Carta was not the first attempt at liberty and freedom in England. In 1100, the English Charter of Liberties was created and was an influence on the nobles who forced King John to place his seal upon the Magna Carta.

The Magna Carta contained a number of provisions that were remarkable for their time. Although there were over 60 provisions, a few are considered of high importance. First, it mandated that the court be fixed in a particular place. Previously, court had been held where the king was present, which made it difficult to have a case heard when the king was traveling. Second, trials should be held in the district where the dispute occurred. The first and second requirements foreshadowed the Sixth Amendment requirement of the U.S. Constitution to hold criminal trials in the district where the crime occurred. Third, any punishments meted out had to fit the crime and could not be excessive, which provides the historical basis for the Eighth Amendment to the U.S. Constitution prohibiting cruel and usual punishments or excessive fines. Fourth, no free-man could be punished or imprisoned except by a judgment of his peers, which is guaranteed by the Sixth Amendment and foreshadowed the concept of due process in the Fifth Amendment and the right to trial by one's peers in the Sixth Amendment. Fifth, justice could not be bought or delayed, which foreshadowed the requirement for a fair trial. Sixth, corruption by local officials was



The Magna Carta, 1297, is widely viewed as one of the most important legal documents in the history of democracy. At the time of its writing, it was called the Great Charter.

prohibited and just compensation for property seized by the government had to be given, foreshadowing the Fifth Amendment to the U.S. Constitution. And seventh, the Magna Carta provided that if the king did not adhere to the provisions of the Magna Carta, his nobles could revolt and remove him, which is echoed in the U.S. Declaration of Independence and the Second Amendment. However, the most important principle advanced by the Magna Carta was that the ruler (the king) was not above the law.

Even though it was an English document that predated the American Revolution by 500 years, it was a significant influence on the Founding Fathers. Thus, its historical importance and effect on the American criminal justice system cannot be overstated. Although the original Magna Carta was only in effect for a short time, because King John repudiated it shortly after placing his seal on it, leading to his downfall, it was rewritten several times. It was not until the 16th century that it acquired its current name of Magna Carta. Although many parts of it were later repealed, the basic rights it expressed remained in the legal philosophy of England and were carried forth to the U.S. Declaration of Independence, the Constitution, and the Bill of Rights.

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See Also: 1600 to 1776 Primary Documents; Bill of Rights; Civil Rights Laws; Declaration of Independence; Due Process; English Charter of Liberties of 1100; Rule of Law.

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Massachusetts until 1820, when it was made an independent state as part of the Missouri Compromise. Today, it is one of the 16 states without a capital punishment statute. During its colonial, Massachusetts, and early statehood periods, a total of 21 executions were carried out, all but one of them for murder (the exception was a 1780 treason case). The last executed criminal in Maine was Daniel Wilkinson, who had murdered a police officer during an 1883 burglary. When he was executed by hanging in 1885, he died slowly by strangulation instead of the swift death intended; his suffering helped death penalty opponents successfully abolish capital punishment in 1887.

Law Enforcement

There was no separate Maine prison when it was part of Massachusetts; convicts were sent south to the prisons on Castle Island in Boston Harbor and in Charlestown. As in many areas in the early 19th century, enough crimes were handled through punitive measures like flogging or fines that discussion of a Maine state prison does not seem to have begun until a full two years into statehood, despite what might be considered an inevitable need for such.

The Maine legislature passed an act in 1823 to create a state prison, and the Maine State Prison opened the following year. It was located in Thomaston because, as the halfway point between Kittery and Eastpoint, it was more or less the center of population at the time. The original prison design kept the inmates in underground cells and put them to work in the stone quarry. When a fire destroyed much of the building in 1923, the new prison that replaced it was exceptionally modern for the time, making use of recent technological innovations. In 2002, prison overpopulation led to the construction of a larger prison in Warren, replacing the Thomaston facility.

In the early decades of statehood, town police forces were formed to supplement the county sheriffs that had been founded in the colonial era. Over time, an important part of the duties of sheriffs as a result became the provision of law enforcement to rural parts of their counties; Maine has always had numerous small towns and unincorporated areas. The state police helped fill this gap as well when it was founded in 1921, originally as highway police

Maine

The northeasternmost state, Maine has been settled since the early 17th century but was part of

whose duties were expanded several times in the pre–World War II years.

Crime

Maine was one of the first states to pass prohibition laws, as part of the 19th-century temperance movement that eventually led to federal Prohibition. Commonly called the Maine Law, the statute was passed in 1851 and sponsored by Neal Dow, the mayor of Portland and “Napoleon of Temperance.” The law prohibited the sale of all alcoholic beverages, except for “medicinal, mechanical, or manufacturing purposes.” Additionally, the general public was encouraged and empowered to help enforce this prohibition: Any three voters could appear before a judge and request that a search warrant be issued if they suspected someone of selling illegal liquor.

The Maine Law gained international infamy almost immediately. Even decades later, a Manchester, England, street was named Maine Road in honor of the law and its role in the temperance movement. Its reception in Maine, of course, was rather less favorable, and complaints of the working class and the state’s Irish immigrants culminated in the Maine Law Riot, or Portland Rum Riot, on June 2, 1855. Fueled by rumors that the Dow company was storing a large amount of rum (for medicinal uses, to be distributed to pharmacists) and the widespread sentiment that the law had anti-immigrant motives, the riot began with three men exploiting the search warrant component of Maine’s law and applying for a search warrant for the building where the rum was held. Within hours, the crowd grew to at least 1,000—some contemporary accounts claim 3,000 people surrounded the building by the evening. The militia was called to deal with the crowd, and eventually fired upon them, resulting in one death and seven injuries. Dow was in fact prosecuted for improperly acquiring the rum, and although he was acquitted, the law was repealed the following year.

The violent crime rate in Maine is low—122 crimes per 100,000 inhabitants in 2010—but has gradually risen since 2004, after a period of steady decline since a late 1970s peak (224.7 per 100,000 in 1977). Unlike the national crime rate, the Maine crime rate did not rise in the 1990s, at which time it had declined to almost

half of that peak. Most of the decline is owed to the steep decline in burglaries and assaults; the murder rate has remained constant (and low), while rape has actually climbed sharply and steadily (less than 10 per 100,000 in 1976; 29.3 in 2010). Some part of the increase in rape statistics may be because of an increase in victims, reporting their rape, but the statistic should not be blithely overlooked.

During the 1970s (when crime was on the rise), there was a general tendency across the country to enact penal reforms. In 1976, as part of that trend, Maine abolished its parole board, introduced flat sentencing (sentences without minimums or maximums), and split most criminal offenses into multiple categories of seriousness. The overall effect has been that offenders since have served longer sentences on average, with no demonstrable effect on recidivism. Further, an unusually high percentage of Maine inmates are incarcerated for probation violations that in other states would not result in jail time. This has led to prison overcrowding, causing activists and legislators in the 21st century to call for new reforms—in particular, the reinstatement of a parole program and the greater usage of home arrest programs for nonviolent offenders. Some of those calling for prison reform have included former guards and prison chaplains. A number of deaths of inmates in the 21st century stoked the fires of reform activism, as activists claimed the living conditions of overcrowded prisons were creating an unsafe environment.

One small gain in sentencing reform has been the decriminalization of small amounts of marijuana, which is punishable as a violation carrying a fine and no jail time. Despite decriminalization, drug-related crimes, including burglaries and theft, increased from 2009 to 2010, which authorities attributed to rural drug users stealing to fund their habits. Similar spikes had been seen in the previous year. In 2011, 12 years after approving medical marijuana, Maine became the first east coast state to open a medical marijuana dispensary. The first was opened in Frenchville, on the Canadian border, followed by dispensaries in Biddeford, Ellsworth, and Auburn.

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See Also: Penitentiaries; Prohibition; Rape, Contemporary; Riots.

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Malcolm X

Malcolm X (1925–65) was a Black Muslim leader. Though he was born Malcolm Little in Omaha, Nebraska, Malcolm X used several aliases, including Jack Carlton, Detroit Red, Big Red, Malachi Shabazz, and El-Hajj Malik El-Shabazz. His father, Earl Little, was a Baptist minister, born in Jamaica, and a follower of the black nationalist leader Marcus Garvey. In 1931, when Malcolm X was 6 years old, his father was killed. His mother, Louise Norton Little, struggled to raise her eight children but was committed to a psychiatric institution, at which point Malcolm X was placed in a foster home.

At age 13, he was charged with delinquency and was sent to a juvenile detention home. He dropped out of school in the eighth grade and went to live with a sister in Boston, Massachusetts; he became involved in various criminal activities in Roxbury, Massachusetts, including burglary, selling drugs, pimping, and gambling. He also acquired a serious cocaine habit. In 1942, he moved to Harlem in New York City and became more involved in a criminal lifestyle.

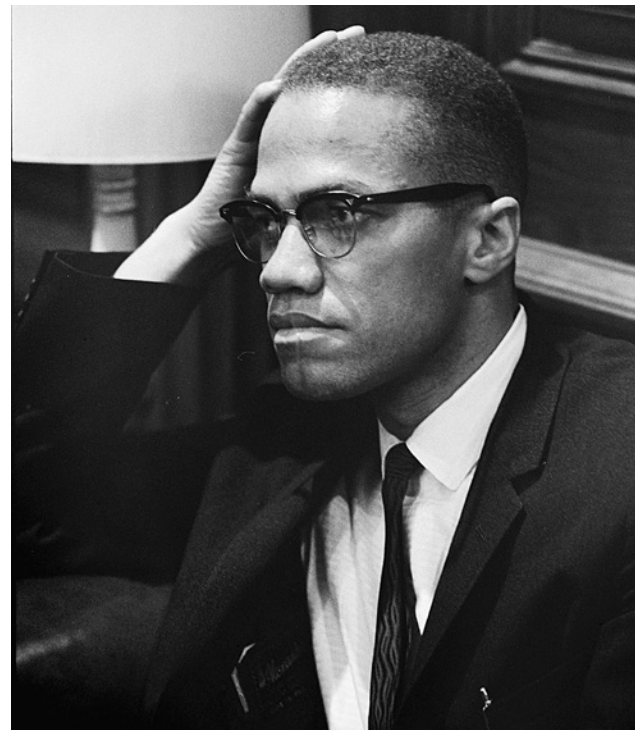
In 1946, when he was 20 years old, Malcolm X was sentenced to 10 years in prison for burglary. While incarcerated in Charlestown, Massachusetts, he became an avid reader and expanded his vocabulary. His brother, Reginald, visited him in prison and told him about the Black Muslims, whom he had joined. While incarcerated, Malcolm X converted to the Nation of Islam led by the Honorable Elijah Muhammad. He dropped "Little," which he referred to as his slave name,

and replaced it with "X," symbolizing that he was an ex-slave, as well as an ex-Christian, ex-pork eater, ex-drinker, and ex-smoker.

Involvement in Black Muslims

Malcolm X was paroled in 1952 after serving seven years. After he was released from prison, he went to Chicago, Illinois, to meet Elijah Muhammad; a close relationship was established between the two. Malcolm X became an assistant minister at the Black Muslim mosque in Detroit, Michigan. After studying personally under Elijah Muhammad, Malcolm X was charged with helping organize a mosque in Philadelphia, Pennsylvania. In 1954, he became a leader of the Harlem mosque. In May 1960, he was appointed minister of Temple No. 7 in Harlem.

In 1957, Malcolm met Betty Jean Sanders, a student nurse. They were married the next year; she changed her name to Betty Shabazz, and they eventually had six daughters. Their second daughter, Qubilah, was arrested in 1995 for hiring someone to kill Louis Farrakhan.



Malcolm X waits at Martin Luther King, Jr., press conference, March 26, 1964, during the Senate debate on the civil rights bill. It was the only time the two men ever met.

Malcolm X served as a charismatic spokesman for the Nation of Islam. He was an articulate speaker and an accomplished debater. He called for black nationalist separation; he spoke out against the prevailing trend of racial integration, criticizing most of the civil rights movement as well as its use of nonviolent civil disobedience. He advocated the use of more aggressive techniques, which he asserted were justified self-defense in response to institutionalized violence by white society against blacks. In 1961, Malcolm X helped create *Muhammad Speaks*, the official newspaper of the Nation of Islam. In 1963, he was appointed national minister of the Nation of Islam. However, Malcolm came to question the integrity of Elijah Muhammad. As a result, on March 23, 1963, Malcolm was placed on a 90-day suspension and could not publicly speak for the Nation of Islam.

Split With the Nation of Islam

On March 8, 1964, Malcolm X, after learning of indiscretions by Elijah Muhammad, announced that he was separating from the Nation of Islam. After his departure, Louis Farrakhan was appointed to his position at Temple No. 7; Farrakhan also assumed the role of national spokesman.

Malcolm X established two new organizations, first the Muslim Mosque, Inc., and then on June 28, 1964, the Organization of Afro-American Unity. He then made several trips to Europe and Africa and in 1964 he went to Mecca, Saudi Arabia, as a pilgrim, where he discovered white Muslims worshipping side by side with members of all races. This moving experience led him to renounce the black separatist ideology and to call for integrated civil rights efforts. After completing his pilgrimage, he changed his name to El-Hajj Malik El-Shabazz.



Bullet holes are circled in back of the crime scene where Malcom X was shot: the Audubon Ballroom stage in Manhattan, where he was speaking on February 21, 1965. Three gunmen rushed the stage and he was shot at least 15 times at close range; he was pronounced dead on arrival at Columbia Presbyterian Hospital. Police intelligence warned Malcom X of the threat, but he ignored it.

The Federal Bureau of Investigation (FBI) infiltrated the Nation of Islam and used an array of surveillance techniques, including wiretaps, audio bugs, and cameras, to monitor the group's activities. There had been well-known death threats against Malcolm X. On February 14, 1965, Malcolm and Betty's home in East Elmhurst, New York, was firebombed, but no one was hurt. On February 21, 1965, while Malcolm X was onstage for a speaking engagement at the Audubon Ballroom on West 166th Street in Manhattan, three gunmen rushed the stage. He was shot at least 15 times at close range and was pronounced dead on arrival at Columbia Presbyterian Hospital. He was buried at Ferncliff Cemetery in Hartsdale, New York. In March 1966, Norman 3X Butler, Talmadge Hayer, and Thomas 15X Johnson, all members of the Nation of Islam, were convicted of first-degree murder. It has been rumored that Elijah Muhammad and Louis Farrakhan ordered the assassination.

The 1965 assassination of Malcolm X illustrates how potentially effective criminal justice intelligence can be, as police intelligence indirectly warned Malcolm X of the impending threat, but he chose to ignore the warning. Some have criticized law enforcement officials for not more directly warning him of the impending danger, but this is difficult to fairly evaluate in retrospect. At any rate, his trusted confidant, Bouza, who was at Malcolm X's side giving first aid, was actually an undercover agent.

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See Also: African Americans; Civil Rights Laws; Racism.

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Mandatory Minimum Sentencing

Mandatory minimum sentencing is a determinate sentencing structure that requires judges to sentence offenders to specific sentence lengths for particular crimes. All states and the federal government of the United States use some form of mandatory minimum sentencing, usually for offenses that involve violence, drugs, guns, drunk driving, and/or repeat offenders. Mandatory minimum sentencing has come with benefits and costs for the court and correctional systems. Current efforts exist to research and examine mandatory minimum sentencing in various states to determine if such laws should be kept or repealed.

Legislative efforts of mandatory minimum sentencing began in the 1970s and 1980s alongside the push for government and the criminal justice system to be tougher on crime and the war on drugs. During this time, the public demanded that judges should have less discretion in their sentencing decisions. In the 1980s and 1990s, many states began shifting from indeterminate sentencing (i.e., loose sentencing structures that allow high amounts of discretion) to determinate or fixed sentencing (i.e., sentencing structures that limit judicial discretion and provide guidelines for sentencing lengths). Mandatory minimums were created with the purpose of being tough on crime, while ensuring that offenders went to prison for specified amounts of times, effectively to reach the goals of deterrence and incapacitation.

All states and the federal government had some type of mandatory minimum sentencing provision by the mid-1990s. Typically, the crimes with mandatory minimum sentences are considered by the public and legislators to be offenses that have the most negative impact on society, victims, and the criminal justice system. Crimes that involve violence, drugs, guns and other weapons, drunk driving, and habitual offenders most often have mandatory penalties. Two of the most used types of mandatory minimum sentencing are three strikes laws and truth-in-sentencing. Three strikes laws require judges to sentence individuals to lengthy prison sentences (e.g., 25 years to life in prison) due to the offender's habitual offender status with a conviction of a third felony offense.

Truth-in-sentencing statutes state that convicted offenders must serve the prison sentence they are assigned without chance of parole; states differ in execution of this law and some state laws require that only 85 percent of the time be served.

Criticisms have abounded about mandatory minimum sentencing structures that include concerns with severe penalties, discriminatory practices, increased prosecutorial power, and increased incarceration rates. Research has suggested that mandatory minimum sentencing has increased the severity of prison sentences, which means that more offenders are in prison for longer sentences, and thus mandatory sentences have been declared a contributing cause to prison overcrowding. Other research has demonstrated that racial and ethnic minorities are more apt to receive mandatory minimums, whereas majorities are more likely to receive reduced charges from prosecutorial discretion. This means that more minorities obtain longer and harsher sentences, and majorities receive shorter prison sentences, reduced charges, and less serious criminal histories. In addition, mandatory minimum sentencing has reduced the discretion and power bestowed to judges during sentencing and displaced it to prosecutors in the charging and plea negotiation stages of trial.

In addition, findings have suggested that the original goals have not been met; mandatory minimum sentencing laws are not deterring individuals from engaging in criminal behavior, however, they work well in incapacitation efforts. In addition, other unintended consequences, such as increased budgets for the courts and correctional systems, have started new arguments over the acceptable use of mandatory minimum sentencing practices. In light of these criticisms, some states and the federal government have begun examining their use of mandatory minimums. States such as Delaware, Maryland, Nevada, and Rhode Island have repealed certain provisions of mandatory minimum sentencing as connected to specific laws. Others, such as Pennsylvania and the federal government, have created task forces to examine mandatory minimum sentencing to determine effectiveness and ways to lower unintended consequences (e.g., increased prison rates and budget expenses). Yet, most states and the federal government do not have plans to repeal

mandatory minimum sentencing laws, but want to ensure these laws are constitutional and beneficial to the system.

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See Also: Discretionary Decision Making; Sentencing; Sentencing: Indeterminate Versus Fixed; Three Strikes Law.

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Mann Act

Also known as the White Slave Traffic Act of 1910, the Mann Act is a federal statute that addresses the interstate and foreign transportation of crimes involving prostitution and human trafficking. The 61st Congress of the United States of America passed the Mann Act on June 25, 1910. Authored and sponsored by Illinois congressman James Robert Mann in 1909, under the direction of federal prosecutors from Chicago, this multi-sectioned federal statute was originally designed to regulate interstate and foreign commerce and

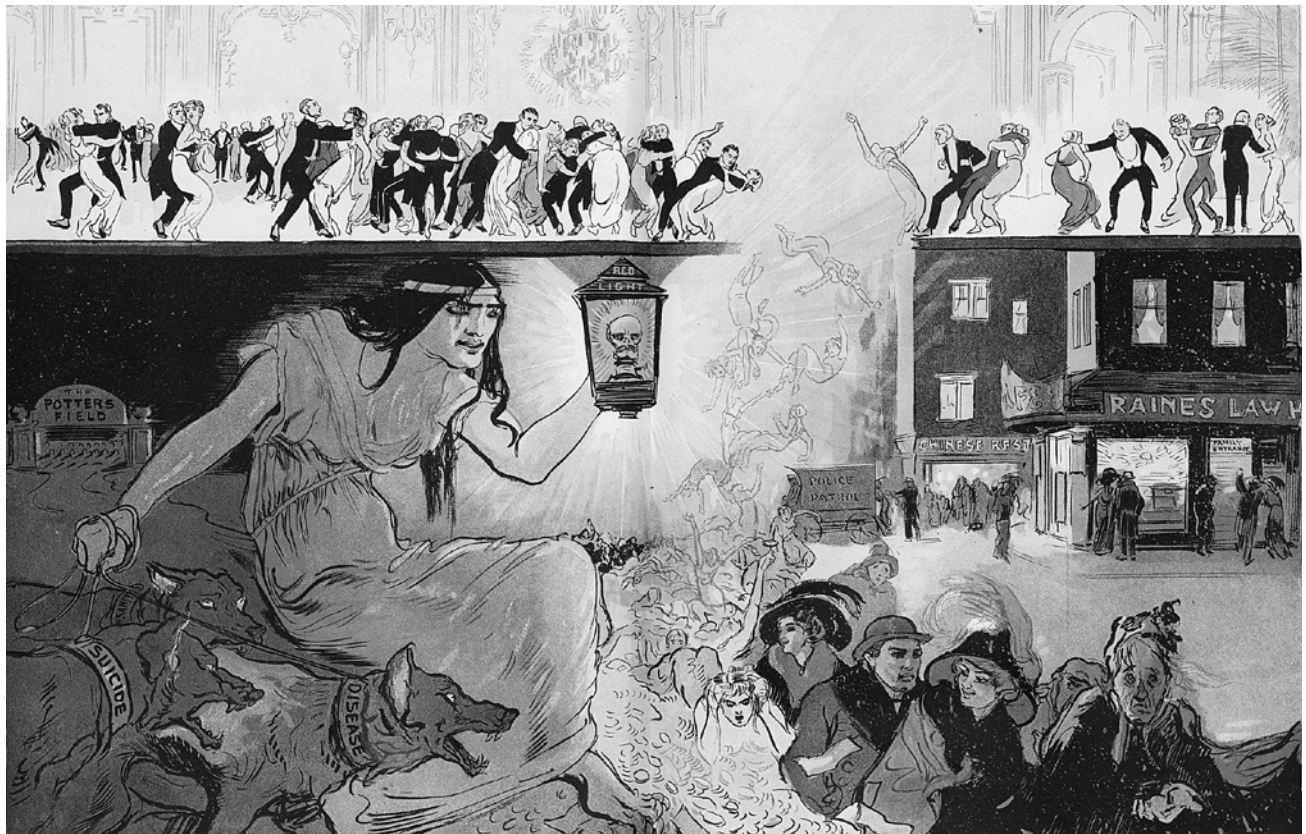
prohibit the transportation of women for any and all “immoral purposes,” with an emphasis on prostitution. Chicago prosecutors believed that women, including underage girls, were being forced into prostitution. The Mann Act stated that any person who knowingly transported or caused to be transported, or aided or assisted in obtaining transportation, and/or knowingly persuaded, induced, enticed, or coerced any woman, including girls under the age of 18, to go from one place to another in interstate or foreign commerce, or in any territory or the District of Columbia, for the purpose of prostitution or debauchery, or for any other immoral purposes, whether with or without her consent, would be guilty of a felony criminal offense and face imprisonment for a term of 5–10 years. President William Taft later signed the bill into law.

In its early stages, the Mann Act was also used as an institutional tool for racial segrega-

tion under Jim Crow. In its first-ever application, Jack Johnson, the first African American boxer to hold the world heavyweight title, was arrested for violating the Mann Act. Johnson was charged in Chicago with transporting a woman whom federal prosecutors described as a prostitute over state lines for “immoral” purposes. In court, federal prosecutors argued that Johnson committed a “crime against nature” for engaging in sexual intercourse with a Caucasian woman. Johnson was later convicted and was sentenced to imprisonment at Fort Leavenworth.

Clarifications and Amendments

The U.S. Supreme Court upheld the constitutionality of the Mann Act in *Hoke v. United States*. In November 1910, Effie Hoke arranged for another female, Annette Baden, to travel from New Orleans, Louisiana, to Beaumont, Texas, for the purpose of prostitution. Both women



This illustration in the January 1912 edition of *Puck* depicts the vices of illicit activities, which were addressed by the Mann Act. A woman holding a “red light” lantern with her dogs, all representing death, disease, suicide, and insanity, lurk underneath a business used as a front for tawdry activities. Men and women spill over the edge near a waiting patrol wagon and form a human river of misery.

were tried and found guilty. Upon appeal, the Supreme Court held that although the U.S. government could not regulate prostitution because the court felt prostitution was an issue for each state to decide, the federal government could regulate travel for “immoral purposes” or purposes of prostitution.

The Supreme Court broadened the scope of the Mann Act in *Caminetti v. United States*. In March 1913, Drew Caminetti and his friend Maury Diggs, both of whom were married and having affairs, took their mistresses by train from Sacramento, California, to Reno, Nevada. Their wives tipped off the police, and both men were arrested upon their arrival in Reno. Caminetti and Diggs were tried and found guilty of violating the Mann Act. Upon appeal, the Supreme Court held that noncommercial and/or consensual extramarital sex acts fall under the broad scope of “immoral purposes.”

Throughout the past 100 years, although various changes have been made, the U.S. Supreme Court has repeatedly ruled that prosecution under the Mann Act is constitutional. In 1978 and 1986, the Mann Act was amended to (1) update the definition of “transportation,” (2) include gender-neutral (male or female) protections against sexual exploitation and child pornography, and (3) replace the terms *debauchery* and *immoral purposes* with the phrase *any sexual activity for which any person can be charged with a criminal offense*. This provided the framework for allowing the U.S. government to remove itself from legislating morality while retaining and strengthening the foundation of the Mann Act as a prosecutorial weapon in the fight against human trafficking.

In one of its most recent and highly publicized applications, in 2008, the Mann Act was used by federal prosecutors out of New York as an investigative tool regarding the criminal activities of an organized prostitution ring, directed at the Emperors Club VIP; the investigation included in its focus then New York Governor Elliot Spitzer.

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See Also: Nevada; Prostitution, History of; Sex Offender Laws.

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Manson, Charles

Charles Manson (1934–) was an illegitimate, unplanned child, born to a 16-year-old mother. His mother was irresponsible, into drugs and criminal activity, and utterly unable to care for a child. She reportedly sold him when he was a young child for a pitcher of beer. As a result, Manson bounced from relative to relative and eventually began practicing the same behavior as his mother. He was first caught stealing at age 9, and his crimes got progressively worse as he was transferred from one “school for boys” to another across the nation. He was found to be emotionally needy, criminally sophisticated, and moderately intelligent, with an IQ of 106. Although eventually he was released from the juvenile placement centers, his patterns of behavior did not change, even after the 1955 birth of his child, Charles Manson, Jr. His offenses ranged from pimping and the theft of government checks to grand theft auto and rape. He was in and out of jails and prisons through March 21, 1967, when he was released and put on a bus to San Francisco.

The “Family”

Proficient with a guitar, Manson was soon able not only to blend into the hippie lifestyle but to collect followers. He kept these individuals, mostly emotionally battered young women, under control by twisting their notions of good and evil and plying them with LSD and other amphetamines. The main idea behind Manson’s infamous Helter

Skelter, named after the Beatles song of the same name, was that Armageddon was soon going to occur: The black populations of the world were going to rise up against the whites and kill and enslave them; however, according to Manson, they would be unable to retain their power, so he and his followers would hide out in a hole in the desert until they had amassed a population of 144,000, at which time they would come out of hiding into a world that was now theirs. Charles Manson was the fifth angel, also known as Jesus Christ. The Beatles were the other four.

Manson decided that he needed to jump-start Helter Skelter and sent his “Family” out on separate occasions to brutally murder high-profile individuals, crimes they hoped would be blamed on the blacks. The most notorious of these was actress Sharon Tate. Tate was eight months pregnant with her husband Roman Polanski’s child. She and her group of friends (Abigail Folger and her boyfriend Voytek Frykowski, and Jay Sebring) were gathered together in a gated ranch house off Cielo Drive, above Beverly Hills. They, along with Tate’s unborn child and Steve Parent, a young man who came to visit the caretaker, were all stabbed, beaten, or shot to death August 9, 1969. When the police arrived, they found “PIGS” hand-painted in blood on the wall. The next night, Manson’s followers murdered Leno and Rosemary LaBianca in much the same way: shooting, then multiple stabbings (approximately 42 to Rosemary, alone). This time, they left a misspelled “HEALTHIER SKELTER” and “DEATH TO PIGS” in blood.

Within a month after the LaBianca murders, a gun matching ballistics was found and turned in to the Los Angeles Police Department (LAPD), and tips had come in from several different sources. However, the entire truth was still unknown until Susan Atkins disclosed a detailed description of both series of murders to two inmates, Virginia Graham and Ronnie Howard. Both inmates managed to inform the proper authorities, and in conjunction with several outside reports about the Manson family, the LAPD felt they finally had a solid case and made the arrests. It took the grand jury only 20 minutes to hand down the final indictments: Charles Manson, Charles “Tex” Watson, Patricia Krenwinkel, Susan Atkins, and Linda Kasabian were each charged with seven counts of

murder and one count of conspiracy to commit murder; Leslie van Houten was charged with two counts of murder and one count of conspiracy to commit murder. On January 15, 1971, after a long, drawn-out trial, during which a lawyer and a witness had been murdered and the judge was violently threatened by Manson himself, the verdict was guilty on all counts.

On March 29, the death penalty was imposed for all the defendants. In 1972, the California Supreme Court abolished the death penalty in the state; all of the defendants are now serving life sentences. Manson has been a relatively unruly prisoner since incarceration, ending up in the Secure Housing Unit (SHU) several times, and always for offenses such as distributing drugs or threatening prison staff. He had been eligible for parole every five years but did not show up for his hearings in 2007 or 2012. The denial of his 2012 bid likely means that he will never be granted parole as he will not be eligible again until 2027, when he would be 92.

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See Also: 1961 to 1980 Primary Documents; California; Capital Punishment; Serial and Mass Killers.

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Mapp v. Ohio

In *Mapp v. Ohio* (1961), the Supreme Court extended its decision on the federal exclusionary rule from *Weeks v. United States* (1914) and overruled the precedent of *Wolf v. Colorado* (1949).

In *Weeks*, the court held that evidence obtained without a search warrant, and, therefore, in violation of Fourth Amendment protections against “unlawful search and seizure,” could not be used in federal criminal prosecutions. The court, however, did not specify whether the exclusionary rule applied to state criminal prosecutions. In *Wolf*, the court held that state courts were bound by the Fourth Amendment and were required to obtain warrants for searches, but, nevertheless, stopped short of extending the exclusionary rule to state courts.

In *Mapp*, the court overruled *Wolf* and held that the exclusionary rule did apply to state criminal prosecutions. This important legal decision firmly established the exclusionary rule in criminal procedure and disallowed the use of unlawfully obtained evidence in criminal prosecutions in the United States. By extending the exclusionary rule to state courts, the court strengthened the Fourth Amendment’s protections of personal privacy and security from official lawlessness. Furthermore, *Mapp* was the first of several cases in which the court re-evaluated the role of the due process clause of the Fourteenth Amendment as it applied to the states. *Mapp* marked a period of change in the court toward greater judicial activism on behalf of civil rights and liberties.

On May 23, 1957, police officers from the Cleveland Police Department received a tip from an informant that a suspect in a bombing case was hiding in the home of Dollree Mapp. The officers also suspected that Mapp was in possession of illegal gambling equipment in her home. Three officers arrived on the scene and demanded entrance into Mapp’s home, but she called her attorney and refused to let them enter without a search warrant. More officers arrived on the scene and then, a few hours later, the officers forcibly entered her home. When Mapp demanded to see the warrant, one officer waved a piece of paper in front of her. She grabbed the paper and a struggle ensued as the officers rescued the “warrant.” The police officers handcuffed Mapp for being belligerent and proceeded to search her home.

Meanwhile, Mapp’s attorney arrived, but the officers refused to let him enter the home or see his client. During the search, the officers did not find the suspect or any illegal gambling equipment;



A 1957 mug shot of Dollree Mapp in Cleveland, Ohio. After police failed to present an authentic search warrant at her home, Mapp’s appeal eventually reached the Ohio Supreme Court.

however, in her basement, they found a trunk that contained sexually explicit books, pictures, and photographs. The officers arrested Mapp for possession of documents that were illegal under Ohio’s obscenity law prohibiting “lewd, lascivious, and obscene material.” At her trial, Mapp’s attorney asked about the search warrant, but the police failed to present a copy of the warrant. Nevertheless, Mapp was convicted of violating Ohio’s obscenity law.

Mapp appealed to the Ohio Court of Appeals, and subsequently to the Ohio Supreme Court, on the basis that Ohio’s obscenity law violated her First Amendment right to freedom of expression and that the police’s warrantless search of her home violated her Fourth Amendment right to privacy and security from police harassment. Her attorney argued that the illegally obtained evidence should not have been admissible at trial. The Ohio courts were not convinced that Mapp’s First Amendment rights had been violated and they used *Wolf* as a precedent to uphold the

admissibility of illegally obtained evidence at trial in state criminal prosecutions. Her appeals were denied.

Mapp appealed her case to the U.S. Supreme Court. The case was argued on March 29, 1961, and after deliberations, on June 19, 1961, the court held that the exclusionary rule did apply to state courts. The court held that the due process clause of the Fourteenth Amendment extended the Fourth Amendment's protections of privacy to the states. Therefore, the exclusionary rule should also be enforceable against the states. Furthermore, the exclusionary rule was necessary to discourage law enforcement from violating the protections of the Fourth Amendment. Subsequent court decisions in *Nix v. Williams* (1984) and *United States v. Leon* (1984), however, have modified the exclusionary rule by creating the "inevitable discovery" and "good faith" exceptions.

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See Also: Federal Rules of Criminal Procedure; Police Abuse; Reform, Police and Enforcement; *Weeks v. United States*; *Wolf v. Colorado*.

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Marbury v. Madison

Marbury v. Madison (1803) was a case decided by the U.S. Supreme Court, and Chief Justice John Marshall's opinion established judicial review. Judicial review is the power of the Supreme Court to review any statute for its adherence to the United States Constitution. Although important in retrospect, the Supreme Court did not use judicial review to strike down a congressional statute again until *Scott v. Sandford* (1857). In the wake of the presidential election of 1800,

in which President John Adams was defeated by Thomas Jefferson, the Federalists in the national elected branches took steps to minimize their losses. With the aid of Congress, President Adams offered more than 200 federal court nominations. Most importantly, Chief Justice Oliver Ellsworth stepped aside, which allowed the president to nominate John Marshall, then secretary of state, to become the nation's fourth chief justice.

Additionally, President Adams nominated several justices of the peace for the District of Columbia. Although the Senate voted to confirm the nominees for these positions, Secretary of State John Marshall forgot to deliver the commissions. James Madison, secretary of state under newly elected President Jefferson, refused to deliver the commissions. William Marbury, whose nomination had been confirmed by the Senate, asked the Supreme Court to issue a writ of mandamus in an effort to receive his commission as justice of the peace. This action was possible under the Judiciary Act of 1789, which allowed the high bench to issue such a writ to anyone holding federal office. In a carefully crafted opinion, Chief Justice Marshall suggested that the court ask itself three questions. First, did Marbury have the right to receive the commission as justice of the peace? Marshall answers affirmatively that Marbury does have such a right. Second, Marshall asks if U.S. law affords Marbury a remedy to having not received his rightful commission. Marshall again answers affirmatively, stating that U.S. law does, indeed, afford him these protections.

Finally, Marshall asks if the correct remedy is "a *mandamus* issuing from this court?" It is the answer to this question, answered negatively, that provides the heart of this opinion. Marshall declared that "[i]f congress remains at liberty to give this court appellate jurisdiction, where the constitution has declared their jurisdiction to be original; and original jurisdiction where the constitution has declared it to be appellate; the distribution of jurisdiction, made in the constitution, is form without substance." In other words, as Article III, Section 2, of the Constitution defines when the Supreme Court will have original jurisdiction, Congress's efforts to expand the court's original jurisdiction under the Judiciary Act, which Marbury used to take his case directly to the Supreme Court, is contradictory to the Constitution. As

such, Marshall continues, “that an act of the legislature, repugnant to the constitution, is void.” And, whose job is it to decide if a law is “repugnant to the constitution?” According to the Chief Justice, the answer is clear. The apex of Marshall’s opinion comes when he announces that “[i]t is emphatically the province and duty of the judicial department to say what the law is.”

Marshall’s opinion does two things. First, it helps to establish the Supreme Court as a co-equal branch of the national government. While this position is taken for granted today, the court did not always enjoy such prestige. For example, before Chief Justice Marshall established the Supreme Court’s legitimacy, some Supreme Court justices retired for what was then considered “higher office,” including Chief Justice John Jay, who resigned to become governor of New York, and Justice John Rutledge, who resigned to become the chief justice for the South Carolina Supreme Court. Another, more important, example of the Supreme Court’s lack of institutional legitimacy was the reaction of President Thomas Jefferson when the court agreed to take *Marbury*’s case. First, Jefferson supporters in Congress began to consider impeaching two sitting justices. Additionally, Congress and the president acted to abolish the 1802 Supreme Court term rather than allow the court to hear the case.

Although not used again against acts of Congress until 1857 in *Scott v. Sandford*, the power of judicial review is a cornerstone power that the Supreme Court has over the elected branches of the national and state governments. Its reach has extended into nearly all areas of national policy, including criminal law and punishment. By the 1990s, the Supreme Court had declared about 150 federal laws and 1,200 state laws unconstitutional. Areas of particular interest include state laws about the civil rights and liberties found in the Bill of Rights and legislation. Recent examples of the use of judicial review to overturn local or state laws are the gun rights case from Chicago, *McDonald v. Chicago*, in which the Supreme Court said that an absolute ban on firearms violates the Second Amendment, and *Lawrence v. Texas*, in which the Supreme Court overturned a Texas state law forbidding homosexual acts, on the grounds that the law violated the due process clause of the Fifth and Fourteenth Amendments.

Marbury is arguably the most important case the Supreme Court has ever heard. It provided the court with its most important check on its co-equal branches at the national level and gave it a tool to keep the states in check. Importantly, the case has allowed the Supreme Court to have an incredible impact in areas of crime and punishment throughout American history.

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See Also: *Cohens v. Virginia*; Marshall, John; *Martin v. Hunter’s Lessee*.

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Marshall, John

John Marshall (1755–1835) was the chief justice of the U.S. Supreme Court between 1801 and 1835. His court opinions during this period provided the foundation for constitutional law in the United States and helped move the U.S. Supreme Court into the center of power in the American criminal justice system, making it capable of overruling Congress. Marshall remains the longest-serving chief justice and is known for reinforcing the principle that federal courts are obligated to exercise judicial review and must examine laws purported by citizens to violate the U.S. Constitution. During his service, he helped establish the Supreme Court as the final authority on determining the meaning of the Constitution in cases and controversies that must be decided by the federal courts.

Marshall is credited with essentially solidifying the third branch of the federal government, the judiciary branch. In doing this, he focused on developing the nation's federal power in the name of the Constitution and the rule of law. These efforts were unpopular to many and brought about great opposition from those who wanted stronger state governments and state control. His tenure in office covered the span of six U.S. presidents (John Adams, Thomas Jefferson, James Madison, James Monroe, John Quincy Adams, and Andrew Jackson). Thomas Jefferson (and the Jeffersonians) disagreed with Marshall's reasoning in many of his cases, arguing that if his growing view of judicial power became common practice, it would be "placing us under the despotism of an oligarchy."

One of the most important impacts Marshall had on the internal operations of the Supreme Court was in changing how decisions were handed down and announced. Prior to his service, each justice would write his own separate opinion (also known as *Seriatim Opinion*). He changed the process into the practice of having the court hand down a single opinion (the opinion of the court), thus allowing a clear and concise ruling.

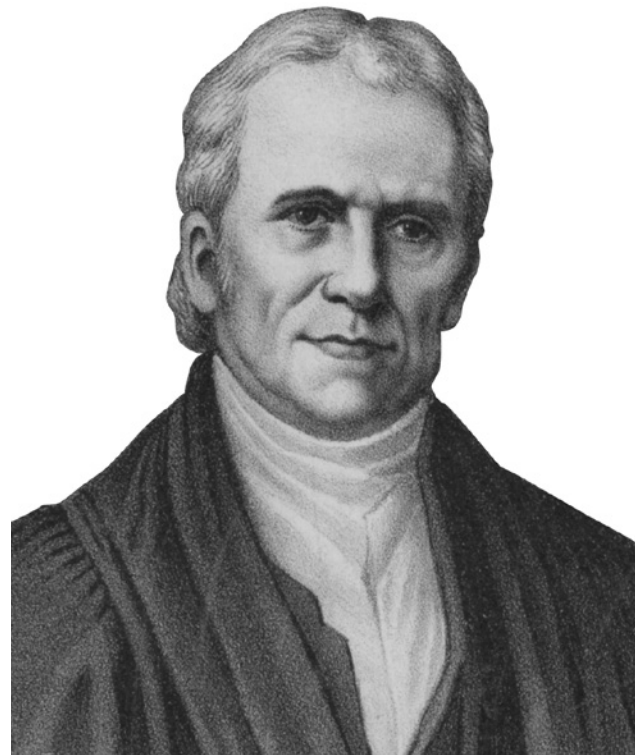
The three previous chief justices (John Jay, John Rutledge, and Oliver Ellsworth) are not perceived as having had the impact that Marshall had on the evolving court. He is credited with giving the U.S. Supreme Court the presence, power, and dignity that would allow it to take an equal place against the other branches of government (executive and legislative). To do this, Marshall used federalist approaches to build a strong federal government over the opposition of the Jeffersonian Democrats, who wanted stronger state governments. By doing this, he established the Supreme Court as the final arbiter of constitutional interpretation. This placed the court as a power that could overrule the Congress, the president, the states, and all lower courts if that is what a fair reading of the Constitution required.

Significant Rulings

While Marshall decided 44 cases in total dealing with constitutional questions, legal scholars argue that four had the most significant impact during his service. In *Marbury v. Madison* (1803), he guided the decision that it was the duty of the court to disregard any act of Congress that

the court thought contrary to the Constitution. In *Cohens v. Virginia* (1821), his court held that Congress could lawfully pass an act that permitted a person who was convicted in a state court to appeal to the Supreme Court of the United States, if he alleged that the state act under which he was convicted conflicted with the Constitution or with an act of Congress. Through this case, Marshall asserted the power of the U.S. Supreme Court to review state supreme court decisions in criminal matters when individuals claim their constitutional rights have been violated.

In *McCulloch v. Maryland* (1819), the court decided that Congress, in the exercise of a delegated power, has wide latitude in the choice of means, not being confined in its choice of means to those that must be used if the power is to be exercised at all. Finally, in *Gibbons v. Ogden* (1824), the Marshall Court held that when the power to regulate interstate and foreign commerce was conferred by the Constitution on the federal government, the word *commerce* included not



John Marshall was the Supreme Court chief justice from 1801 to 1835. He is credited with solidifying the third branch of the federal government: the judiciary branch.

only the exchange of commodities, but the means by which interstate and foreign intercourse was carried out. As a result, Congress had the power to license vessels to carry goods and passengers between the states, and an act of one of the states making a regulation that interfered with such regulation of Congress was, *pro tanto*, of no effect. These cases essentially established the Supreme Court as the final interpreter of the Constitution.

Marshall had the ability to be a judge more than simply a statesman. He felt that his responsibility was not only to decide many historical constitutional questions properly but also to ensure that the people of the United States should be convinced of the correctness of his interpretation of the Constitution. His opinions, therefore, had to carry to those who studied them a conviction that the Constitution, as written, had been interpreted according to its evident meaning. When discussing his rulings, he stated that he simply used logic in making his determinations. He believed that one should look at the question at issue, the guarantees of the U.S. Constitution, and allow the inexorable rules of logic to do the rest. In doing so, he delivered decisions that were simple, clear, and dignified.

Life Outside the Court

Being an author and family man were two other activities on which he worked equally hard. Being an admirer of President George Washington, he published a five-volume biography titled *Life of Washington*. Marshall used this biography of Washington to discuss the history of the American colonies and to reiterate his federalist ideals. His home and family were in Richmond, Virginia. While he was never viewed as being religious and never joined a church, he did help several churches in his hometown build several memorials to lost members. Given his professional responsibilities, he was required to live in Washington, D.C., for a three-month annual term and additional weeks while serving as a circuit court judge in Raleigh, North Carolina.

In 1923, Marshall's outside interests led him to become the first president of the Richmond branch of the American Colonization Society, which was dedicated to resettling freed American slaves in Liberia, on the west coast of Africa. In 1829, he was a delegate to the state constitutional

convention. During his service as a delegate, he spoke strongly to promote the necessity of an independent judiciary. Mary Willis Ambler, his wife of 49 years, died on December 25, 1831. Marshall's ailing health was exacerbated by the stress of this event, and he died in July 1835 at the age of 79, having served as the chief justice of the U.S. Supreme Court for more than 34 years.

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See Also: *Cohens v. Virginia*; *Gibbons v. Ogden*; *Marbury v. Madison*; *McCulloch v. Maryland*; Supreme Court, U.S.

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Martin v. Hunter's Lessee

Martin v. Hunter's Lessee was an 1816 case brought before the U.S. Supreme Court in which the court ordered a state, Virginia, to follow its decrees. In the early years of the republic, during which the fledgling national government was struggling to assert its authority over the established state governments, this case was one of a few seen as having decisive legal authority toward stabilizing the relationship between the federal and state governments in a manner consistent with federal superiority. This case began when a British loyalist, Lord Fairfax, inherited land in Virginia. When the Revolutionary War began, the elderly Fairfax remained in Virginia. When he died in 1781, he left the land to his nephew, a British subject who lived in England. The inheritance was

not allowed by Virginia law, however, because the state said that no “enemy” could be left land in an inheritance. The state confiscated the land, and assigned a portion of property to David Hunter, who began to sell tracts. Denny Martin, Fairfax’s nephew, believing he had inherited the land, began to sell it as well, and Supreme Court Chief Justice John Marshall was among those who purchased land from the inheritance. Because of this transaction, Justice Marshall recused himself from the Supreme Court’s decision, meaning that he did not participate in the proceedings of the court. The case came to the Supreme Court, and the court found that the Virginia law was in violation of the provision in the 1783 Treaty of Paris, which states that the United States would prevent the confiscation of land from British loyalists.

Decision

This case, although related, begs a different question than the one raised in *Marbury v. Madison*, a case in which the question was the expansion of the court’s original jurisdiction by Congress. In *Marbury*, the Supreme Court’s answer was that tampering with original jurisdiction was unconstitutional. In *Martin*, the court, in a decision penned by Justice Joseph Story, allowed that Congress could alter its appellate jurisdiction.

The Virginia Supreme Court declined to follow the U.S. Supreme Court’s order and issued a decision that stated that the state court was not subject to the U.S. Supreme Court’s appellate jurisdiction. Furthermore, according to the state court, the Judiciary Act of 1789 was unconstitutional to the extent that it extended the Supreme Court’s appellate jurisdiction over the state court’s decisions. The Virginia Supreme Court’s decision was appealed to the Supreme Court, which decided that Congress could expand its appellate jurisdiction, such as it had in Section 25 of the Judiciary Act, to review state court decisions that related to federal law.

According to Justice Story, the national judicial branch can serve to overturn presidential or congressional actions, and such a check on state courts should not be considered dangerous to the republic’s system of government. Moreover, with the Supreme Court’s power of judicial review over state tribunals, it can act to ensure a uniform system of law within the constitutional system.

Ramifications

Martin v. Hunter’s Lessee is a foundational case for substantiating the claim that the Supreme Court has jurisdiction over state courts. Although the court was not fully solidified until 1821, when it decided *Cohens v. Virginia*, the *Martin* case was instrumental in impacting the role that the Supreme Court has in its relationship with state judicial systems. The Supreme Court has played major roles in many state cases, including the criminalization of segregation and increases in the protections afforded by the Constitution’s warrant clause.

Some commentators opine that Story was strongly influenced by Chief Justice Marshall, although Marshall had recused himself. No matter which member of the Supreme Court was primarily responsible for the opinion, it is a landmark in American constitutional law. *Martin* played a major role in establishing the federal government’s—and the Supreme Court’s—primacy over state governments. Although the Supreme Court’s appellate role and its ability to exercise judicial review over state judiciaries were not firmly established until 1821 in *Cohens v. Virginia*, the Supreme Court laid its foundations in *Martin*.

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See Also: *Cohens v. Virginia*; *Marbury v. Madison*; Marshall, John.

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Maryland

The fifth most populous state in the Union, Maryland was one of the original Thirteen Colonies, having been founded by royal charter as a haven for Catholics by Lord Baltimore. Though other states

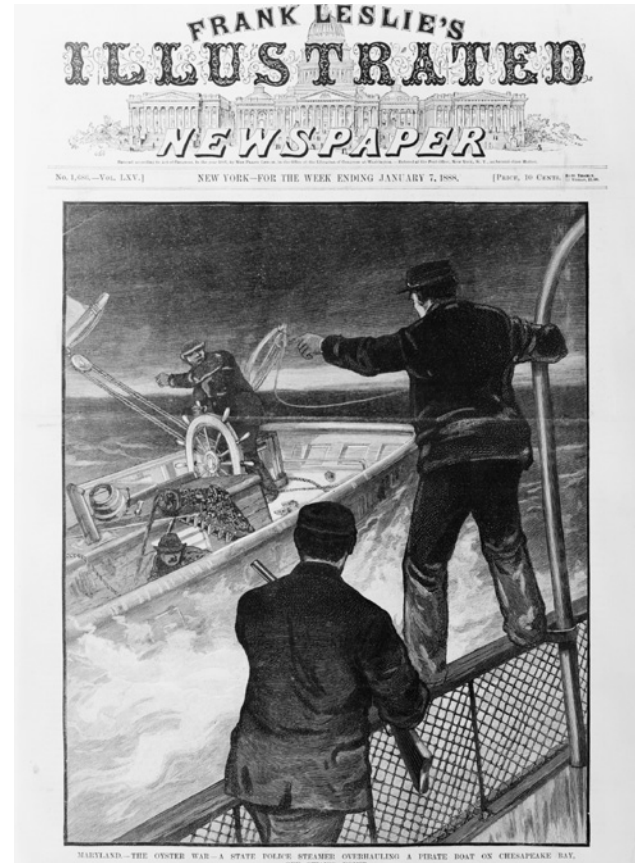
have since become more predominantly Catholic, Maryland is unique among the original colonies in its Catholic origins. In later years, Maryland was famous as the site of Fort McHenry, the bombardment of which during the War of 1812 was the basis for the lyrics of "The Star-Spangled Banner."

The first prisons in Maryland—the Maryland Penitentiary and the Maryland House of Correction—were built in the 19th century and operated autonomously until 1916, when they were reorganized under the State Board of Prison Control (superseded by the Board of Welfare in 1922 and the Department of Correction in 1939). The Maryland Penitentiary was built in 1811 and was intended to house a small number of prisoners who would be used as work gangs during the day and kept in solitary confinement at night. Prior to the building of the penitentiary, convicts were kept in county jails for short periods of time or used in work gangs, spending their nights in guarded workhouses. After the Civil War, the penitentiary was criticized for its working and living conditions, resulting in reforms that included a prison library, night school for illiterate convicts, and the building of the Maryland House of Correction in Anne Arundel County, designed for inmates serving less than three years. From 1921 to 1940, the facility served as Maryland's women's prison, until a new women's prison was opened. For most of Maryland's history, inmates were used as contract laborers in a wide variety of industries. Contract labor was restricted after World War I and eventually eliminated in 1937.

Police and Punishment

The earliest law enforcement in Maryland was handled by town constables and county sheriffs, and as towns grew larger, the constabulary was transformed into a professional police force. The modern Baltimore Police Department was established in 1845 by act of the state legislature. The difference between constable and police officer was not merely semantic: constables were neither trained nor paid as professionals and often held other jobs, especially in small towns or early decades. Further, it was the professional police departments that introduced modern police procedures and technology, like police call boxes and fingerprinting.

Maryland has had a capital punishment statute since the colonial era, and until the latter half of



An 1888 issue of Frank Leslie's Illustrated Newspaper shows a state police steamer overhauling a pirate boat on Chesapeake Bay. After the Civil War, the growing oyster-harvesting industry sparked "oyster wars," clashes between pirates and lawmen.

the 20th century, nearly every execution had been by hanging in public in the county of the crime's occurrence; the exceptions were a female slave burned at the stake, and a soldier shot for desertion. From 1808 (when first-degree murder was statutorily defined) until 1908, death was always the penalty for first-degree murder; after that time, the sentencing judge was given the option of life imprisonment, and beginning in 1916, juries were given the option of returning a sentence of "guilty without capital punishment." The public outdoor hangings of Maryland's early days were eliminated in 1922, which sought to eliminate the unsavory specter of large crowds by moving hangings indoors to the Maryland State Penitentiary. Beginning in 1955, the method of execution changed to a lethal gas chamber. This was changed again in 1994 to lethal injection.

Like the rest of the country, Maryland's death penalty was suspended after the Supreme Court's 1972 *Furman v. Georgia* decision, which required capital punishment statutes to be redrafted in order to ensure consistency in their application. In Maryland's case, this led to the death penalty again being the mandatory sentence for first-degree murder, and the Maryland legislature adopted the method introduced in Georgia and affirmed in its constitutionality by the 1976 *Gregg v. Georgia* decision, that of bifurcated trials, in which the jury first decides guilt, and then punishment, with a review of aggravating and mitigating circumstances, and a mandatory appellate review. In the late 1980s, Maryland's death penalty law was amended to exclude the mentally disabled and juveniles from execution.

In 2002, executions in Maryland were halted by executive order until a University of Maryland-College Park study could be conducted to examine the fairness of the application of the death penalty. The study eventually found both racial and geographic disparities, implying that the statute as applied did not fulfill the requirements for constitutionality established in *Furman*. However, the next governor, Robert Ehrlich, ended his predecessor's moratorium in 2004. Executions were subsequently suspended again in 2006 when the Maryland Court of Appeals found in its *Evans v. Maryland* decision that the protocol for lethal injections had not been adopted via the process mandated by the state's Administrative Procedures Act. This suspension was unexpectedly extended in 2011 when Hospira, the company manufacturing the sodium thiopental used in Maryland's lethal injections, announced it was ending distribution, which required the state to draft new regulations. Governor Martin O'Malley has attempted to use the suspension as an opportunity to end capital punishment in the state, but the legislature has not been amenable; meanwhile, five inmates await eventual execution on death row.

Crime

Maryland's Criminal Injuries Compensation Board (CICB), run by the Department of Public Safety and Correctional Services, is a payer of last resort for financial assistance to the victims of violent crime, including medical and mental health expenses, lost wages, crime scene cleanup expenses, and funerals. Claims must be filed and

are examined for eligibility, particularly including contributory misconduct on the part of the victim. All other means of payment must have been exhausted, and there is a total cap of \$45,000 including category-specific caps. The money paid out to victims is generated by fees collected from criminal offenders, not the state's tax budget. A 2003 internal review of the CICB found that it worked well for those who filed, but only about a quarter of crime victims were familiar with the program, while at least two-thirds had injuries or expenses that seemed to meet eligibility requirements. Further, a quarter of victims elected not to pursue a needed service because of cost concerns that the program might have been able to alleviate.

Maryland is one of the states that has adopted a victim-offender dialogue program, since 2005. Intended to serve the needs of victims, the program arranges mediated encounters between victims and their incarcerated offenders in carefully controlled environments, in order to help victims with the healing process. Only certain types of crime victims are eligible, and the program involves counseling in preparation for the dialogue. Because of the care with which the encounters are handled, less than 10 dialogues have been arranged each year since the program's inception.

Following the national trend, the violent crime rate in Maryland rose steadily after World War II, doubled from 1960 to 1966, again in 1968, and peaked in the 1990s (1,000 violent crimes per 100,000 inhabitants, up from 151 in 1960) before declining again (547 in 2010). The rate remains high relative to the national average (403.6 in 2010); Maryland's violent crime rate exceeded the national average in 1964 and has remained above average since.

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See Also: 1600 to 1776 Primary Documents; Baltimore, Maryland; Capital Punishment; Victim Rights and Restitution.

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Maryland Toleration Act of 1649

Charles I granted Cecilius (Cecil) Calvert, second Lord Baltimore, the proprietary charter for a “palatinate” (feudal government) called Maryland in April 1632. The charter application and settlement plans originated with his father George Calvert, but he died. The charter’s controversy was over George’s earlier conversion to Roman Catholicism and consequent resignation as a royal minister. Protestant opponents thought that Maryland would become a Catholic colony with residents loyal to the pope instead of to the king. Two ships, the *Ark* and the *Dove*, including Jesuit priests, made landfall in March 1634. Most of the 20 gentlemen aboard were Catholic, but the majority of the 200 servants and craftsmen were Protestant. Cecil Calvert left instructions with his brother Leonard, the governor, that Catholics should conduct privately their observances and avoid religious discussions. Cecil Calvert, as lord proprietor, had the power to lay taxes, provide landed estates, designate officials, and set up churches. Early Protestant and Catholic settlers shared a church structure in St. Mary’s, the original capital. Religious liberty and relative tranquility was the norm in Maryland. Puritans fleeing religious persecution in Virginia settled in Maryland and actively participated in political life. This was contemporaneous with the English Civil War (1642–51), when Puritans under Oliver Cromwell beheaded Charles I. English religious and political strife would affect events in Maryland throughout the 1600s.

The Maryland legislature, or General Assembly, formed in 1634, and four years later Cecil Calvert acceded to settler demands to instigate bills. In 1647, there was an unsuccessful Protestant rebellion against the government. In 1648, Cecil appointed as governor a Protestant Virginian,

William Stone. The April 21, 1649, Acts of Assembly contain “An Act concerning Religion,” which later on became popularly known as the Maryland Toleration Act. The act covers four pages and is not subdivided in the modern style, but there are two distinct preambles and two sets of proscriptions subject to punishment. Carl Everstine, Maryland’s legislative reference director, set out the accepted view that the act’s first part originated with the Puritan-led assembly, while the second part was written by Cecil Calvert, reflecting his pragmatic religious toleration. Dr. Everstine’s modern spellings are used in the following statutory quotations.

The first preamble states, “In a well governed and Christian commonwealth, matters concerning religion and the honor of God ought in the first place to be taken into serious consideration and endeavored to be settled.” The act sets out the death penalty and confiscation of lands to the lord proprietor for blaspheming God, cursing or denying “Jesus Christ to be the son of God,” or denying or using “reproachful speeches words or language concerning” the Holy Trinity. There were fines or whipping or jailing for non-payment, for such language regarding the Virgin Mary, the holy Apostles, or Evangelists, or for calling “in a reproachful manner” any person in the Maryland “Province a heretick, Scismatick, Idolator, puritan, Independent, Presbyterian, popish priest, Jesuite, ... Lutheran, Calvinist, Anabaptist, Brownist, Antinomian, Roundhead, Separatist, or [other religious name].” Profaning the Sabbath by intoxication, disorderly recreation, or unnecessary work was fined. The only recorded case of a person capitally charged was Jacob Lumbrozo, a Jewish Portuguese doctor who immigrated to Maryland and became a prominent landholder. In 1658, he allegedly challenged Jesus’s divinity. Before trial, Lord Protector Richard Cromwell provided an amnesty for England and the colonies, possibly sparing Lumbrozo his neck.

The second preamble states, “whereas the enforcing of the conscience in matters of religion hath frequently fallen out to be of dangerous consequence in those commonwealths where it hath been practiced, and for the more quiet and peaceable government of this Province and the better to preserve mutual love and amity among the inhabitants,” followed by the proscriptions “no person

... professing to believe in Jesus Christ shall ... be any ways troubled, molested [i.e., disturbed] or discountenanced for or in respect of his or her religion nor in the free exercise thereof within this Province ... nor any way compelled to the belief or exercise of any other religion against his or her consent, so as they be not unfaithful to the Lord Proprietary, or molest or conspire against the civil government.” This was subject to fine and damages to the wronged party, with whipping and imprisonment for nonpayment. The act was repealed by the 1654 legislature, a pro-English Commonwealth body. This repeal was undone when Lord Baltimore reestablished control in 1658. Following England’s Glorious Revolution,

a Protestant rebellion took over Maryland in 1689, passing anti-Catholic laws and attempting to establish the Church of England.

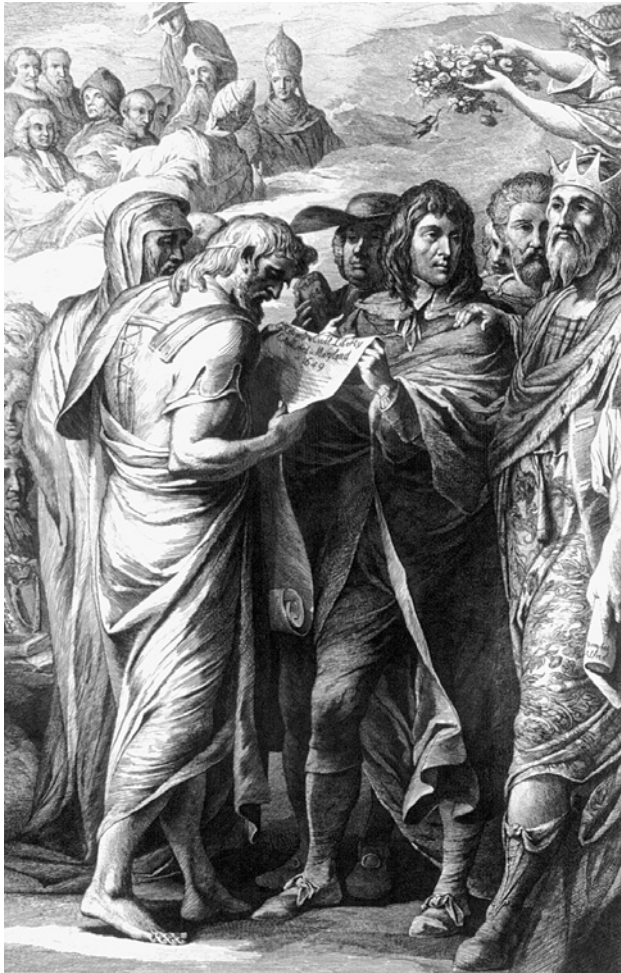
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See Also: 1600 to 1776 Primary Documents; Colonial Courts; Maryland; Religion and Crime, History of.

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In this 1793 engraving, Lycurgus looks at the equal laws of religious and civil liberty as placed in the hands of Cacilius Calvert Baron of Baltimore, who was the original establisher in his colony of Maryland many years before William Penn.

Massachusetts

One of the original thirteen colonies and among the oldest settlements in the United States, the Commonwealth of Massachusetts has long enjoyed cultural and political significance. As the “Cradle of Liberty,” Boston was home of many of the agitators who presaged the Revolutionary War; the Industrial Revolution in the United States began in Lowell and Springfield; the transcendentalist and abolitionist movements of the 19th century centered around Massachusetts; and the Pioneer Valley was home not only to the Reformed Puritan pastor Jonathan Edwards, who catalyzed the first Great Awakening, but is now home to the Five College system, which is considered a bastion of liberal education.

Crime

Massachusetts is one of the states with a number of “blue laws” grounded in religious proscriptions, many of them dating from the Puritan period. For instance, until 1990, off-premises alcohol sales (that is, bottles or cans, as opposed to beverages served in an establishment) were universally banned on Sundays. In 1990, an exception was made for towns within 10 miles of the New Hampshire or Vermont borders. In

1992, Sunday sales were permitted from the Sunday before Thanksgiving until New Year's Day. Since 2004, alcohol sales have been legal on all days except Thanksgiving, Christmas, and Memorial Day.

Organized crime in Massachusetts is dominated by the Boston-based Winter Hill Gang and the Patriarca crime family. The Winter Hill Gang, named for the neighborhood in Somerville (north of Boston), has been active since the 1950s and has included many prominent Boston gangsters. The gang first came to national attention during the Irish Gang War of the 1960s, waged against the McLaughlin Gang of Charlestown, and was at its greatest influence in the 1960s and 1970s. In time, the gang's ability to acquire territory proved superior to its ability to make use of that territory and effectively generate revenues, and by the end of the 1970s, gang leaders were forced to borrow money from the Angiulo brothers. The activities of the Winter Hill Gang have inspired movies like *The Departed* and TV series like *Brotherhood*.

The Angiulo brothers—Donato, Francesco, Gennaro, and James—were associates of the Patriarca crime family and represented Patriarca interests in Boston's North End and the northern New England states from the 1950s to about the 1980s, when their power waned as a result of Winter Hill Gang members "Whitey" Bulger and Stephen Flemmi informing on them to the FBI, leading to Gennaro's arrest. Bulger, after being tipped off by his Federal Bureau of Investigation (FBI) handler about a pending indictment, later went into hiding, and was a fugitive at large from 1994 to 2011, when he was apprehended in Santa Monica, California, and extradited to Massachusetts. The 48 charges for which he awaits trial include 19 counts of murder, multiple conspiracy charges, narcotics distribution, and extortion. The Bulger trial is expected to bring to light many specifics about corruption in Massachusetts.

The Patriarcas began with the criminal organization of Gaspare Messina, a Sicilian immigrant, in Boston in 1916. His successor, Phil Buccola, ran the family from 1924 to 1954, expanding its bootlegging, gambling, and loan shark operations before retiring to Sicily. It was under Buccola's successor, Raymond "Il Patrone" Patriarca, that the family acquired its current name and relocated

its base of operations to the Federal Hill neighborhood of Providence, Rhode Island, where Il Patrone ran the front operations, the National Cigarette Service Company and Coin-O-Matic Distributors.

The violent crime rate in Massachusetts is close to the national average. Once significantly lower than the national average (48.8 crimes per 100,000 people in 1960, compared to the national average of 160.9), it began to catch up to the national average in the 1970s and eventually exceeded it in the 1990s, when both state and national crime rates peaked (804.9 in Massachusetts in 1993). Since that peak, the crime rate has steadily declined (466.6 in 2010), but has remained higher than the national rate.

Police

The Boston Police Department, formed in 1838, is one of the oldest police departments in the United States and was part of the growing trend of professionalization in law enforcement. Founded as the Day Police and operated independently of the night watch, which had operated since 1635, it first supplemented the night watch and then replaced it. In 1854, the Day Police were reorganized as the Boston Police Department and modeled after the Metropolitan Police Service in London.

When Massachusetts-born Robert Kennedy, brother of President John F. Kennedy, was appointed attorney general in 1961, he declared organized crime one of his top priorities, in response to the public attention to the Apalachin meeting of organized crime figures in 1957. Under Kennedy's direction, law enforcement authorities focused not only on increasing arrests but on cultivating informants within criminal groups, including Joe Barboza, a Patriarca hit man who was arrested on a concealed weapons charge in 1966 and who soon agreed to serve as a government witness in cases against many of the high-ranking members of the Patriarca family. Barboza gave false testimony against many Patriarca rivals and was killed by button men for the Angiulo brothers a few months after his 1975 release on parole.

Punishment

The first state prison in Massachusetts was Castle Island, on the shore of the Boston Harbor. First used as a fort by the English, it was converted

to a prison at the end of the 18th century. Castle Island was used to house inmates from all over Massachusetts, including the northern territory that later became the separate state of Maine. The island facility was eventually replaced with more modern prisons. MCI-Concord, the Massachusetts Correctional Institution at Concord, is the oldest functioning prison in the state, having opened in 1878.

Massachusetts is one of 16 states without capital punishment, though there have been several attempts to reinstate it, the most recent by Governor Mitt Romney in 2007. The death penalty had been used in Massachusetts since the colonial era and was infamously applied to 26 people (about 8 percent of the state's total executions throughout history) convicted of witchcraft. Until 1951, first-degree murdered carried a mandatory death sentence; in that year, a new law allowed juries in cases in which murder was not committed in connection to a rape or attempted rape to recommend life imprisonment if there were mitigating circumstances. Interestingly, Romney notwithstanding, there is a long tradition in Massachusetts of gubernatorial opposition to the death penalty. The last executions in the state were of Phillip Bellino and Edward Gertson in 1947; in the decades following, six different governors routinely commuted death penalties to life sentences.

Following the 1972 Supreme Court ruling in *Furman v. Georgia*, death penalty statutes throughout the country were suspended until they could be rewritten to address the court's constitutionality concerns. For years afterward, Massachusetts death penalty advocates worked to pass a working death penalty law in the state, amending the state constitution in 1982 to state, "No provision of the Constitution ... shall be construed as prohibiting the imposition of the punishment of death," in order to help guarantee the compatibility between a death penalty statute and the state constitution. However, the statute passed inadvertently created a circumstance encouraging murder defendants to plead guilty in order to avoid a jury trial, thus avoiding the possibility of a death sentence—a violation of the right to trial by jury as well as the right to protection from self-incrimination. The statute was thus invalidated by the Massachusetts Supreme Judicial Court in 1984, and no subsequent effort to adopt a work-

ing statute has succeeded. The gubernatorial tide turned in 1991 with the election of Republican William Weld; he and every governor since have argued in favor of the death penalty.

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See Also: 1600 to 1776 Primary Documents; 1777 to 1800 Primary Documents; Boston, Massachusetts; Kennedy, Robert F.; Rhode Island.

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Matteawan State Hospital

Matteawan, a state hospital for the criminally insane, was founded in 1893 in Fishkill, New York. The institution was representative of the new practice of creating specific facilities to house mentally ill criminals. Despite its stated goal to "cure" insane patients who had committed crimes, Matteawan suffered from many of the problems typical of late-19th-century penal institutions such as overcrowding and neglect of inmates. After several administrative changes and the creation of new facilities on the Matteawan grounds, Matteawan closed in 1977. The patients were relocated, and the institution was renamed Fishkill Correctional Facility; it presently operates as a medium-security prison.

Housing the Criminally Insane

In the colonial era, mentally ill individuals were cared for by their families or their local communities. This changed in the late 18th century. Special institutions were created to house the insane.



In this undated photograph from Bain News Service, inmates sit in the men's room at the Matteawan asylum. Opened in 1893 in Fishkill, New York, Matteawan housed mentally ill criminals, whom reformers wanted to separate from the populations of both the general prison system and traditional insane asylums. Designed to house 550 patients, it was at full capacity within two years and was overcrowded at 719 inmates six years after opening. Poor care, undertrained staff, and overcrowding led to neglect and deaths.

These were not medical facilities designed for treatment; rather, they were intended to separate those suffering from mental illness from the rest of society. By the mid-19th century, most states were operating insane asylums. However, mentally ill individuals who committed crimes were dealt with by the justice system and were incarcerated along with sane criminals.

The first institution in the United States to house the criminally insane was opened in 1859 at Auburn State Prison in New York. The founding of this facility marked a decisive shift within penal ideology in America. Reformers wanted to separate mentally ill criminals from the general prison population and from those housed in traditional insane asylums. During this era, both the legal and medical definitions of “insanity” were highly debated. The most influential Anglo-American legal guideline was the M’Naghten “right-or-wrong” test: If an individual could not recognize that the criminal act he/she committed was

wrong, he/she could not be found guilty. Although the Auburn facility was originally created for convicts who were supposedly driven mad while incarcerated, by 1870, it housed criminals who were acquitted according to this insanity defense.

Almost immediately, the Auburn facility, like many penal institutions, suffered from overcrowding. The lack of sufficient provisions for inmates forced the opening of a new facility for the criminally insane, located in the town of Fishkill, New York. The location for the new institution was specifically chosen for its pastoral environment; it was a 250-acre site between the Hudson River and the Fishkill Mountains. This isolated rural setting was thought to encourage a peaceful state of mind, aiding recovery. I. G. Perry, the architect hired to design the facility, created the structure according to several provisions: provide enough windows for adequate light and ventilation (which was believed to be therapeutic), and yet place them high enough above the ground to

prevent escape. The institution was named Matteawan State Hospital. It began to accept patients in 1892 and officially opened in 1893.

Matteawan was designed to house 550 patients. Two years after its opening, it was at full capacity. By 1899, the institution housed 719 inmates, which caused many of the same overcrowding problems that had contributed to its creation in the first place. There were not enough beds or chairs for the inmates, forcing many to sleep and eat on the floor. The low pay and poor training of the Matteawan staff led to misdiagnoses and neglect of the patients. Many died while incarcerated.

By this time, New York had changed its statutes regarding the discharge of criminally insane patients. Previously, if an individual had completed his sentence and either showed signs of improvement or was no longer considered dangerous, he was released. However, after 1895, New York ended this practice. Now, inmates who had completed their term were no longer discharged but instead remained at Matteawan until they were no longer considered insane by medical officials. By 1900, Matteawan continued to incarcerate almost 300 individuals who had served their time for the crime they had committed.

In 1904, Matteawan began accepting female inmates, particularly those who had been convicted of a crime and then diagnosed as insane after incarceration. Although prison officials recognized that there were individuals who may have been misdiagnosed, they also understood that in many cases inmates were indeed driven mad by long-term imprisonment.

Evolution of the System

Treatment of the inmates at Matteawan was in general accordance with the treatment of the mentally ill at noncriminal insane asylums. The only major difference was the increased security at Matteawan for patients who were prone to violence. Some of the more capable inmates were prescribed work duties: cooking, farming, making clothing, and carpentry. Others spent their time conversing with other inmates and participating in a variety of games, like cards and chess. Most were allowed daily outdoor exercise. By the mid-20th century, prescription drugs were used extensively, and the facility experimented with hypnosis and electric shock treatments.

In 1926, the New York Department of Mental Hygiene assumed control of Matteawan State Hospital. One year later, the New York Department of Corrections took over the institution. However, in 1961, Matteawan was back under the jurisdiction of the Department of Mental Hygiene. These administrative debates were representative of the indecisiveness that would eventually signal the end of Matteawan.

A new facility was added to the Matteawan grounds in 1966—the Beacon Institution for Defective Delinquents, renamed the Beacon State Institution in 1967. It was designed for mentally ill juvenile offenders who were at least 16 years old. However, just three years later, Beacon began to be closed down, and in 1974, the site was renamed Fishkill Correctional Facility. Matteawan State Hospital continued to house patients in tandem with Fishkill until 1977. In that year, Matteawan was officially closed, and the remaining patients were transferred to other institutions. Currently, Fishkill Correctional Facility operates on the original Matteawan site as a medium-security prison.

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See Also: Auburn State Prison; Insanity Defense; M’Naghten Test.

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Mayflower Compact

Shortly before their disembarkation in the Massachusetts Bay on November 21, 1620, the passengers of the *Mayflower* made a compact that was

meant to promote a sense of unity. The document asserted the signers' commitment to establish a colony, set up a basic framework for its government, and created an important precedent for the new colony's autonomy.

A Change of Plans

The need for the compact arose after some unexpected changes in the *Mayflower's* itinerary. Its passengers had a patent from the Virginia Company to settle near the mouth of the Hudson River, where their voyage was expected to culminate. On the way to America, however, the *Mayflower* drifted too far north and landed in what is now Massachusetts. After some efforts to sail south failed, the passengers made a decision to settle in the Massachusetts Bay. The change of plans essentially invalidated the patent they held, created a legal vacuum, and caused some tensions among the passengers. Most of them were Separatists, or Pilgrims, a closely knit group of nonconformists who came to America in search of religious freedom. But the *Mayflower* also carried a substantial contingent of non-Pilgrims, who did not share the Pilgrim's religious concerns and came to America primarily for economic reasons. Some non-Pilgrims argued that since the circumstances forced them to settle in the area not specified in the patent, they were perfectly free to conduct themselves as they saw fit.

To prevent discord, the Pilgrim leaders drew a compact. Out of 73 men on board, 41 signed the document: 37 Pilgrims and four non-Pilgrims. Among them were the first three governors of Plymouth. Most importantly, the compact was meant to emphasize the importance of laws and establish a temporary, loosely defined government. The move was important in order to dispel the notion that the lack of valid patent allowed colonists to do whatever they pleased. The compact starts with the declaration that the colonists are "loyal Subjects" of the king. To ensure their "better ordering and preservation," they pledge to establish "a civill body politike" by creating "just and equall Lawes, Ordinances, acts, constitutions, [and] offices," to which they promise "all due submission and obedience."

Although the compact asserted the signers' submission to the king's authority, it actually relied on the progressive notion that the government can operate only with the consent of the

governed. The document was drawn without a consultation with the proper authorities, thus suggesting that people had the right to create laws. Furthermore, it emphasized the importance of colonists' involvement in the local government. In fact, right after the signing of the compact, the Pilgrims went on to elect their first governor. The democratic overtones in the compact reflect the Congregational principles that the Separatists embraced—and for which they were persecuted in England. They believed that people were free to separate themselves from the Church of England, the only official church in the country, and form their own congregations.

The compact was not specific enough to create a well-defined government, nor did it have any legal weight, particularly after the Plymouth colony received an official patent from London in 1621. The document, which was not even referred to as the Mayflower Compact till 1793, was hardly mentioned in early American records. Its text was not widely available until the publication of William Bradford's history *Of Plymouth Plantation* (1620–47), which was rediscovered only in the 1850s. Although some parallels can be made between the compact and the U.S. Constitution, there is no historical evidence that the authors of the latter were familiar with the compact. In the 19th century, the compact started to acquire a mythical status in American culture. John Adams, in his 1802 speech, lauded it as a distinctly American document. The compact's importance was further enhanced in the 1850s; it was included in the bas relief encircling the U.S. Capitol rotunda, which commemorates the most significant events in American history. The subject also inspired several well-known paintings, most notably by Tompkins H. Matteson and Jean Leon Gerome Ferris, which reflected the growing fascination with the Mayflower Compact.

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See Also: Bodie of Liberties; Massachusetts; Puritans.

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McCarthy, Joseph

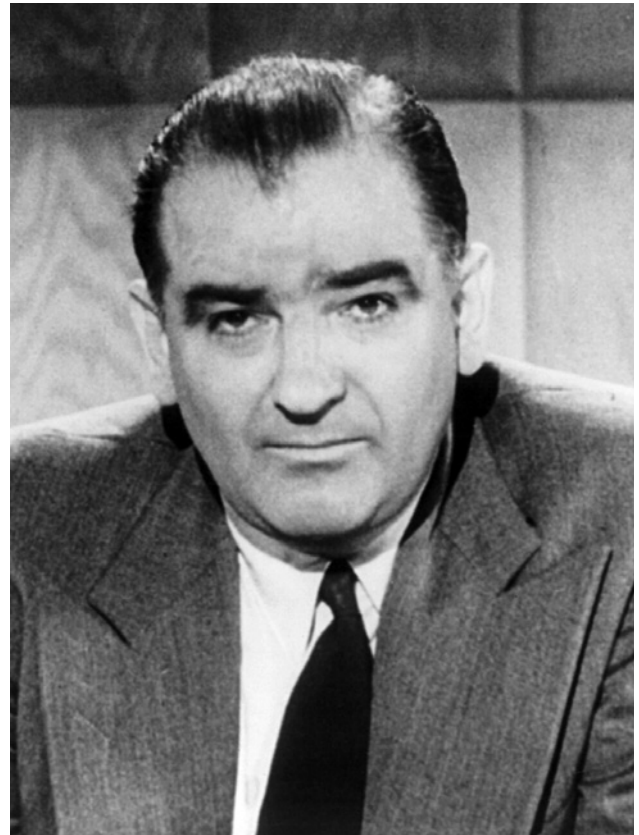
Joseph McCarthy's (1908–1957) controversial political career began with his surprising victory over Robert La Follette for the senatorial nomination; yet, he is perhaps best known for his political focus during the 1950s on the infiltration of communists in American public institutions. McCarthy's anticommunist movement was largely referred to as "McCarthyism."

Joseph McCarthy was born November 14, 1908, on a farm in Appleton, Wisconsin. He was the fifth of nine children and his parents were devout Roman Catholics. McCarthy left high school at age 14 and worked as a chicken farmer before becoming manager at a grocery store in the nearby town of Manawa. He returned to high school in 1928, and after completing the necessary qualifications, earned a place at Marquette University to study law. After graduating, McCarthy worked as a lawyer but was unsuccessful and supplemented his income by playing poker. In 1940, he became a circuit court judge but resigned when the United States entered World War II. McCarthy joined the U.S. Marines where he served in the Pacific, achieving the rank of captain.

In 1946, after the war, McCarthy defeated Robert La Follette for the Republican senatorial nomination and then defeated his Democratic opponent in the subsequent election. McCarthy had criticized La Follette for not enlisting during the war, even though La Follette was already 46 years old when Pearl Harbor was bombed and was too old to join the armed services. McCarthy spent three years in the South Pacific in World War II debriefing combat pilots, yet word got back to Wisconsin that he had fought as a tail gunner and suffered a war wound. McCarthy's experience as a tail gunner included patrols over

islands already abandoned by the Japanese, and the war wound actually occurred when he broke his foot falling down a ship ladder. Nonetheless, McCarthy's victorious campaign for the Senate seat included the slogan, "Congress needs a tail gunner." McCarthy also appeared in campaign posters wearing full fighting gear, an aviator's cap, and multiple belts of machine gun ammunition wrapped around his torso. McCarthy also accused La Follette of war profiteering when his investments had actually been in a radio station. La Follette, deeply hurt by the false claims made against him, would soon retire from politics and later committed suicide.

McCarthy, the youngest member of the Senate at age 38, called a press conference on his first day to propose a solution to a coal strike. McCarthy's proposal called for the coal miners to be drafted into the military, so if they refused



Senator Joseph McCarthy in 1954. He is best known for his zealous anticommunist stance, called "McCarthyism." During the 1950s, McCarthy created committees to interview people suspected of communist sympathies and ties.

to mine coal they could be court-martialed for insubordination and shot. During his first three years, he voted along generally conservative lines, although not necessarily the Republican line; he worked against sugar rationing and fought for housing legislation.

Detractors eventually came forward, claiming that McCarthy had lied about his war record; he also was investigated for tax offenses and for taking bribes from the Pepsi-Cola Co. Fearing he would not be reelected, McCarthy held a meeting with some of his closest advisers and asked for suggestions about how he could retain his seat in the Senate. Edmund Walsh, a Roman Catholic priest, recommended a campaign against communists. In 1950, McCarthy made a speech to a Republican women's group in Wheeling, West Virginia, where he declared that communists had thoroughly infiltrated the U.S. State Department. He further stated that he had a list of 205 names; although, in the following days and weeks, the list decreased to 57 and then increased back to 81. Before the speech that day in Wheeling, McCarthy was still primarily known as the man who had defeated La Follette. Afterward, became daily television viewing.

McCarthyism

During the 1950s, McCarthy created committees to interview people suspected of communist leanings. Many were accused of being disloyal to the United States or spying for communist countries, and those who spoke out against the government were viewed as threats to society. McCarthy's efforts were viewed as indiscriminate and were widely attacked by American liberals and the American political left. He was accused of using sensationalist tactics and unsubstantiated accusations, which gave rise to the term *McCarthyism*. McCarthy was further described as a demagogue, mocked as an offensive example of fascism, and accused of persecuting good, patriotic Americans. A Senate investigation committee under Millard Tydings exonerated the U.S. State Department and labeled the charges a hoax. Pressured to produce evidence, McCarthy refused and continued to make accusations.

McCarthy was reelected in 1952 and continued to exploit the public's fear of communism as he became chairman of the Senate Permanent Invest-

igation Subcommittee. In April 1954, he accused Secretary of the Army Robert T. Stevens and his aides of attempting to conceal evidence of espionage activities that McCarthy and his staff had allegedly uncovered at Fort Monmouth, New Jersey. The army, in turn, accused McCarthy, his chief counsel, and a staff member of seeking to obtain preferential treatment through improper means for a former consultant to the subcommittee. President Dwight D. Eisenhower persuaded the Senate to censure McCarthy's abuse of power, and though he remained in the Senate, he was ignored by the government and the media and died of acute alcoholism in 1957.

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See Also: 1941 to 1960 Primary Documents; Eisenhower, Dwight D. (Administration of); Espionage.

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McCleskey v. Kemp

McCleskey v. Kemp was a Supreme Court decision in 1987 that upheld the use of the death penalty, which was challenged by Warren McCleskey (who was black) as unconstitutional due to racial biases in sentencing and in the administration of capital punishment in Georgia. It is one of the most controversial decisions on the use of capital punishment following the Supreme Court's

reinstatement of capital punishment in *Gregg v. Georgia* in 1976.

McCleskey and three other accomplices entered a furniture store, tied up the customers, and robbed the manager. In response to a silent alarm, a police officer entered the front door of the store and was shot and killed. McCleskey was later apprehended for an unrelated offense and admitted he had participated in the furniture store robbery, although he denied having shot the police officer. At trial, McCleskey was found guilty of two counts of robbery and murder of a peace officer, which made him eligible for a capital sentence under Georgia law. The jury recommended the death sentence for the murder, and the court followed the jury's recommendation.

McCleskey subsequently filed several state-level appeals, all of which were denied. He then appealed to a federal district court. Included in his 18 claims was the argument that the capital sentencing process used in Georgia was administered in a racially discriminatory manner that violated the equal protection clause of the Fourteenth Amendment. Moreover, McCleskey argued, the increased risk of capital punishment on the basis of race also constituted an arbitrary use of this punishment, in violation of the Eighth Amendment.

The basis of these arguments came from research by David Baldus and his colleagues (referred to as the Baldus study) that demonstrated a statistically significant disparity in the application of capital punishment in Georgia based on the race of the victim and, to a lesser degree, on the race of the offender. Baldus and his colleagues analyzed over 2,000 murder cases in Georgia in the 1970s and found that defendants charged with killing white persons received the death penalty 11 percent of the time, while those charged with killing black persons received it only 1 percent of the time. They also found that blacks received the death penalty in 4 percent of cases, while whites received it in 7 percent of cases, which constituted a significant overrepresentation in the racial application of capital punishment.

The district court concluded that there was no *prima facie* case to support McCleskey's argument that his race, or the race of the victim, played a role in the imposition of the death penalty. It also found that there were substantial methodological errors in the Baldus Study

and, on these grounds, rejected McCleskey's Eighth and Fourteenth Amendment arguments. This finding was upheld by the Eleventh Circuit Court, at which point McCleskey appealed to the Supreme Court.

The Court's Opinion

In its opinion, the court ruled against McCleskey 5–4. Delivering the opinion, Justice Lewis Powell noted that McCleskey's appeal under the equal protection clause did not establish that racially unequal application of capital punishment in Georgia specifically impacted McCleskey's sentencing. Even assuming the Baldus study was correct, the court argued, it failed to sufficiently demonstrate discriminatory intent on the part of the prosecutor, judge, or jury. Second, the majority found that McCleskey's appeal on Eighth Amendment grounds of "disparate impact" (as demonstrated by the Baldus study) was permissible in other venues such as jury venues but was not applicable to capital cases. Rather, the court argued, the differing composition of decision makers in individual capital cases made it impossible to know how individual juries might reach such decisions. In this regard, without evidence that established discriminatory intent, the opinion of the court was that juries should be given latitude to bring to their deliberations "qualities of human nature" and "varieties of human experience" that may result in disparities in sentences.

The impact of *McCleskey v. Kemp* was substantial. It was, and arguably remains, the last substantive challenge to *Gregg v. Georgia*. Following the ruling, several legal scholars likened it to earlier Supreme Court rulings such as *Dred Scott v. Sandford* and *Plessy v. Ferguson* for its upholding of racially discriminatory practices. Moreover, in ruling that the aggregate racial effects of capital punishment in Georgia were alone not sufficient to overturn the use of capital punishment, the court's ruling has restricted challenges to this punishment to cases that can show discriminatory intent.

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See Also: African Americans; Appeals; Capital Punishment; Cruel and Unusual Punishment; *Dred*

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McCulloch v. Maryland

In 1819, the U.S. Supreme Court heard the case *McCulloch v. Maryland*, which focused on whether the state of Maryland had the right to tax the notes of the Second Bank of the United States branch in the state per the requirement of state law. The court ultimately concluded that the Constitution does not expressly give Congress the power to create a bank but it does award it the power to tax and spend. As such, the creation of a national bank is an implied power necessary to carry out the ability to tax and spend. Since federal laws have clear superiority over state laws when the two conflict, the state of Maryland had no power to tax the national bank. The previous decision of the Maryland Court of Appeals was reversed.

The debate over whether the national government should create corporations began in 1791 as a battle between Alexander Hamilton and Thomas Jefferson. In 1816, Congress decided to create the Second Bank of the United States to be headquartered in Philadelphia. A year later, the Second Bank opened a branch in Baltimore, where it issued notes, discounted promissory notes, and performed other banking tasks. Maryland then attempted to impede the business of the Maryland branch of the Second Bank of the United States by imposing a special tax on all notes of banks that were not chartered in Maryland. The act was titled “An Act to Impose a Tax on All Banks, or Branches Thereof, in the State



The Second Bank of the United States, founded in 1816 in Philadelphia. James McCulloch, head of the Baltimore branch that opened the following year, refused to pay the special tax on notes of banks that were not chartered in Maryland.

of Maryland, Not Chartered by the Legislature.” While the law was potentially generalizable to any bank, the Second Bank of the United States was the only one not chartered in Maryland at the time of the ruling. It required banks to use a special stamped paper for all notes and to pay 2 percent of the value of the notes as a tax—or a general tax of \$15,000 annually.

At that time, James McCulloch was the head of the Baltimore branch of the Second Bank of the United States, and he refused to pay the tax to Maryland. John James—who was an informer who aimed to collect fines for the state—brought the suit to the court’s attention. Maryland argued that the Constitution of the United States is “silent on the subject of banks.” As a result, the Maryland Appellate Court sided with the state, and a writ of certiorari was issued to bring the case before John Marshall’s Supreme Court.

The Supreme Court unanimously sided with the Second Bank of the United States and deemed Maryland’s law to be unconstitutional. To start, Marshall—writing for the court—reminded the country that the Constitution was a social contract whereby government binds the state sovereignties. He stated there could be no doubt “that the government of the Union, though limited in its powers, is supreme within its sphere of action.”

Hence, national law is supreme to state law when in conflict. Second, Marshall pointed out that it would not be pragmatic, or wise, to list every power Congress has. Just because the word *bank* is not found in the Constitution does not mean that Congress does not have an implied right to create a bank in order to carry out its duty to tax and spend. Lastly, Marshall highlighted the necessary and proper clause and reminded the state of Maryland that this power allows Congress to create the bank to begin with.

The fundamental case established two principles: (1) the Constitution grants to Congress implied powers that are necessary and proper for creating a functional national government, and (2) state action cannot impede valid constitutional exercises of power by the federal government. It was a key moment in the history of federalism, as it began the long process of forming a balance between state and federal power. The decision was controversial in its time as opponents of the bank remained angry, and citizens of Maryland worried that the unwillingness of the federal government to pay the tax demonstrated an attempt to gain too much power over the states—much like the British had previously. The case further served as a clear indication that the Marshall Court would side with federal government in cases against the states so long as the Constitution could be interpreted in an appropriate way. It is important to note that the ruling made in this case has had a tangible impact on crime and criminal justice, particularly since the late 1950s, because it permits the federal government to impose criminal laws on states that are deemed necessary and proper for fulfilling their role.

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See Also: Constitution of the United States of America; Maryland; Supreme Court, U.S.

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William McKinley is more associated with economic and military measures than with important reforms of American legal institutions, although juvenile courts were created during his administration. In spite of this record, McKinley trained as a lawyer, and his political career was launched thanks to the cases that he defended and that allowed him to show a commitment to workers' rights. Yet, McKinley's determined, bold presidential style began to alert many Americans that the president was increasing the authority of his office at the expense of citizens' rights. Although as a young Republican McKinley had campaigned for the enfranchisement of blacks, in the matter of race relation, his administration was unable to challenge the "separate but equal" doctrine that found its first application in the Supreme Court ruling in *Cummins v. County Board of Education* (1899). In addition, his aggressive foreign policy greatly conditioned the lives of people outside American borders. These factors generated a climate of suspicion against the president among radical and anarchist groups that made McKinley the most infamous crime case during his presidency: his own assassination at the hands of Polish American anarchist Leon Czolgosz.

Born on January 29, 1843, in Niles, Ohio, William McKinley fought the Civil War in the Union army, where he eventually became a brevet major of volunteers. After the war, he began working for Charles Giddens, who had one of the most famous legal studies in Poland, Ohio. In 1866, McKinley went to the state of New York to study law at the renowned Albany Law School. He was admitted to the bar in Warren, Ohio, in March 1867 and opened his own practice in Canton, which, with its promising industrial prospects, seemed the

perfect center to launch a political career. McKinley soon became the associate of prominent attorney Judge George W. Belden, and the cases that he discussed gave him the reputation of a calm and rational lawyer and a skillful orator. In 1870, he was elected prosecuting attorney for Stark County, a position that gave him increased visibility and a larger audience, although, for a slim margin, he was not re-elected for a second term. While in charge, McKinley was coherent with his increasing activism in the temperance movement, vigorously prosecuting the illegal sale of liquor to Mount Union College.

The Striking Mine Workers' Case

McKinley had his most famous case as a lawyer in the spring of 1876 when the economic depression engineered by the Panic of 1873 led to labor troubles in the Tuscarawas Valley. The workers in the coal mines in the valley went on strike, demanding better wages and improved working conditions. The mine operators decided to use strikebreakers to continue production, but their presence led to violent clashes with the strikers, and Governor Rutherford B. Hayes was forced to send troops to reestablish order. The strike was quickly terminated by military intervention, and a group of strikers were arrested for disorderly conduct. Although public opinion was strongly unsympathetic to the strikers' case, hearing that no lawyer had accepted it, McKinley took it. He successfully demonstrated that the violent events surrounding the strikes could have been avoided had the mine operators been more sensible. McKinley managed to have all workers but one acquitted and refused to accept a fee for his services.

This case paved the way for McKinley's political career, as even his opponent and mine owner Marcus Alonzo Hanna appreciated the lawyer's thorough approach. A leading Republican, Hanna became one of McKinley's staunchest supporters throughout all his political campaigns. When he became president in 1896, McKinley even offered Hanna a cabinet post, but Hanna refused it. As Ohio governor, McKinley promoted legislation to prevent labor disputes and violent events like those in the Tuscarawas Valley. He sponsored laws to improve the security of dangerous workplaces and created an arbitration system to prevent the exacerbation of strikes.

During McKinley's administration, in 1899, the first juvenile courts were established. Until then, in most states, there was no difference in the prosecution and punishment of adults and children. The establishment of the juvenile court gave the opportunity to begin developing a modern juvenile justice system. Although the first juvenile court was established in Illinois, when McKinley served as Ohio governor, he explicitly demanded from the legislature further appropriations for reform schools and for the creation of a specific penal system for young offenders that could rehabilitate rather than simply punish them.

McKinley was elected president just after the Supreme Court upheld the "separate but equal" doctrine with the ruling in *Plessy v. Ferguson*, which was further confirmed by the court with *Cummins v. County Board of Education* (1899). McKinley had been raised an abolitionist and promoted several African Americans to appointed offices. Yet, for fear of alienating southern voters, his administration did not challenge either the rulings or the segregation laws (commonly known as Jim Crow laws) that quickly proliferated throughout the American south to make African Americans inferior citizens to whites. Although sympathetic to the African Americans' fate in a segregated society, McKinley did not exercise federal power to enforce the Fifteenth Amendment. This state of affairs meant that African Americans' legal rights did not significantly improve until the 1960s.

McKinley was assassinated on September 6, 1901, in Buffalo, New York, while in the city to deliver a speech at the Pan-American Exposition the previous day. His murderer was the deranged anarchist Leon Czolgosz. Although Czolgosz was an assassin acting alone, the murder provoked a national hysteria against immigrants and leftists who became potential terrorists and threats to national security. The perception that Italians and eastern European Jews had radical ideas led nativist groups to campaign to bar them from American soil.

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See Also: African Americans; Czolgosz, Leon; Juvenile Courts, History of; Strikes.

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McNabb v. United States

McNabb v. United States is a 1943 U.S. Supreme Court ruling that requires all persons arrested under federal criminal violations to be brought promptly before a committing federal magistrate for an initial appearance. This decision, along with the U.S. Supreme Court rulings in *Upshaw v. United States* (1948) and *Mallory v. United States* (1957), led to the McNabb-Mallory doctrine, which excludes from federal criminal proceedings confessions obtained after an “unnecessary delay” in presenting a person arrested before a federal magistrate. Although the McNabb-Mallory doctrine is still applied in various jurisdictions, in 1968, Congress passed the Omnibus Crime Control and Safe Streets Act, which allowed the admission of a confession at trial as long as the confession was “voluntary,” making the requirement for persons arrested under federal criminal violations to be brought promptly before a federal magistrate just one element in determining the admissibility of a confession.

Additionally, Title 18 U.S.C. A. § 3501 et seq. provides specific guidelines for the admissibility of confessions in criminal proceedings: In any criminal prosecution brought by the United States or by the District of Columbia, a confession shall be admissible in evidence if it is voluntarily given. Before such confession is received in evidence, the trial judge shall determine any issue as to voluntariness. The trial judge, in determining the issue of voluntariness, shall take into consideration all of the circumstances surrounding the giving of the confession, including (1) the time elapsed between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment; (2) whether such defen-

dant knew the nature of the offense with which he was charged or of which he was suspected at the time of making the confession; (3) whether such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him; (4) whether such defendant had been advised prior to questioning of his right to the assistance of counsel; and (5) whether such defendant was without the assistance of counsel when questioned and when giving such confession.

Untaxed Whiskey

On July 31, 1940, the Chattanooga office of the Alcoholic Tax Unit received information from several informants that members of the McNabb family, a clan of Tennessee mountaineers, were selling whiskey on which federal taxes had not been paid. Federal agents devised a plan in which the informants would meet with members of the McNabb family and obtain an amount of the untaxed alcohol, and agents would then make arrests on the spot. While four agents conducted visual surveillance, the government informants met five members of the McNabb family (Emuil, Barney, Freeman, Raymond, and Benjamin McNabb) and obtained a quantity of untaxed alcohol. As agents moved in and attempted to effect arrests, the McNabbs fled the area; agents decided not to pursue them and instead secured the confiscated untaxed alcohol. Shortly afterward, a gunshot was heard, and federal agents discovered that one of their fellow law enforcement agents had been fatally wounded.

Later the same evening, federal agents entered the McNabb settlement, arresting Freeman, Raymond, and Emuil McNabb. All three were immediately placed in a holding cell in the Federal Building in Chattanooga for more than 14 hours, from 3:00 Thursday morning until 5:00 that afternoon. Benjamin McNabb surrendered to federal agents and was also placed in a detention cell. The McNabbs were never brought before a U.S. commissioner or judge for arraignment. They were provided with food but were not permitted to have visits from family or friends or to seek legal advice from attorneys. Over the 48 hours that followed, federal agents interrogated the McNabbs, obtaining confessions from Freeman, Raymond, and Benjamin. Based primarily

on these confessions, Freeman, Raymond, and Benjamin were convicted of second-degree murder and sentenced to a 45-year term of imprisonment. Emul and Barney McNabb, who made no incriminating admissions, were acquitted during the criminal trial.

On appeal, the U.S. Supreme Court ruled that the confessions of Freeman, Raymond, and Benjamin McNabb should have been excluded from trial because federal agents of the Alcoholic Tax Unit had improperly obtained the confessions by delaying the defendants' appearance before a federal judicial officer. In fact, a federal procedural law (later enacted in the Federal Rules of Criminal Procedure, Rule 5) during this time period required all federal law enforcement officers to take any person charged with any federal crime before the nearest U.S. commissioner or judicial officer for an initial appearance or arraignment. Based upon this procedure, the Supreme Court ruled that the confessions of the McNabbs should have been excluded from evidence at criminal trial. The court noted in its ruling that the arresting federal law enforcement officers had subjected the accused to the pressures of a procedure that is wholly incompatible with the vital but very restricted duties of the investigating and arresting officers of the federal government, which tends to undermine the integrity of the criminal proceeding.

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See Also: Bureau of Alcohol, Tobacco, Firearms and Explosives; *Miranda v. Arizona*; Prohibition; Supreme Court, U.S.

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McVeigh, Timothy

Timothy James McVeigh (1968–2001), an American terrorist and mass murderer who sympathized with the militia movement, was responsible for the Oklahoma City bombing on April 19, 1995, an act that killed 168 people, including 19 children, and injured more than 680 others.

Before his execution by lethal injection in 2001, McVeigh was incarcerated in the U.S. Penitentiary Administrative Maximum Facility—the “Supermax”—in Fremont County, Colorado. McVeigh was born in Lockport, New York, to William and Mildred McVeigh. Those who knew him said McVeigh was withdrawn but showed an interest in computer hacking and firearms. McVeigh joined the U.S. Army in 1988, served in the first Gulf War and was given an honorable discharge in 1992. Shortly thereafter, McVeigh became more and more interested in gun rights and anti-government literature.

Following the confrontation at Ruby Ridge and especially the Waco siege, where he protested the actions of the federal government, McVeigh traveled the country while working at gun shows. During this time, McVeigh became convinced America was on the brink of collapse; this led him to seek out safe areas of the country in which to live as well as to stockpile firearms and other items for survival.

Federal Target

In 1991, McVeigh reconnected with his former army acquaintance and future co-conspirator, Terry Nichols. McVeigh visited Nichols in Michigan and over the following three years they lived and worked gun shows together intermittently. During these years, McVeigh grew increasingly radical and learned from Nichols how to fashion explosives. Initially, McVeigh's anger was directed primarily at specific government officials and he contemplated a series of individual assassinations. He soon decided, however, to target a federal building for the reasons that it would be easier, more effective, and generate immediate attention from the public.

McVeigh and Nichols assembled a bomb composed of 5,000 pounds of nitromethane and ammonium nitrate in the back of a moving truck. On the morning of April 19, 1995, McVeigh

parked the truck in front of the Alfred P. Murrah Building in downtown Oklahoma City and detonated the bomb. In addition to the human victims, the explosion harmed more than 300 buildings in the vicinity and caused over \$650 million in damages. The bombing was the most devastating act of terrorism in American history before the events of September 11, 2001. From a scrap found in the debris, the Federal Bureau of Investigation (FBI) was able to trace the vehicle



On April 26, 1995, crews search for victims following the bombing of the Alfred P. Murrah building in Oklahoma City, which killed 168 people. Timothy McVeigh was charged with 11 federal counts and executed by lethal injection in 2001.

identification number of the rental truck and create a sketch of McVeigh, who had used an alias when renting the truck in Junction City, Kansas. Soon after, McVeigh was pulled over and arrested by a state trooper for driving without a license plate and illegal firearm possession. Days later, the authorities identified their inmate as the suspected perpetrator of the bombing.

In August 1995, McVeigh was charged with 11 federal counts, including use of a weapon of mass destruction and first-degree murder. He was found guilty on each count in June 1997. McVeigh asked for a necessity defense, claiming he was in imminent danger from the government, but his defense lawyers did not ultimately seek this plea. The U.S. Department of Justice requested and the jury recommended the death penalty. McVeigh's death sentence was delayed pending appeals and on June 11, 2001, he was executed by lethal injection. Nichols received 161 consecutive life sentences without parole because the jury deadlocked on the matter of the death penalty. Accomplice Michael Fortier, who aided McVeigh and Nichols in preparing the attack and who had also served previously with them in the same army company, testified as part of a plea bargain and in exchange received a prison sentence of 12 years and a \$200,000 fine. Fortier's wife, Lori, was granted immunity. Upon his release in 2006, Michael Fortier entered into the Witness Protection Program.

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See Also: 2001 to 2012 Primary Documents; Gun Control; Kaczynski, Ted; Oklahoma; Oklahoma City Bombing; Ruby Ridge Standoff; Terrorism; Violent Crimes; Waco Siege; Witness Testimony.

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Memoirs, Police and Prosecutors

Memoirs written by police officers and prosecutors have a long history in Europe and the United States. In the United States, the rise of the modern city created an environment in which the memoirs of tough, crusading criminal justice professionals echoed the narratives in the mass media about crime and crime fighters. Such early literary offerings include books written by George S. McWatters, the New York City policeman who was the author of a number of books about detective work. McWatters's books include *Knots Untied: or, Ways and By-Ways in the Hidden Life of American Detectives* (1871) and *Detectives of Europe and America, or, Life in the Secret Service* (1879). In *Police Records and Recollections of Boston by Daylight and Gaslight* (1873), Boston Police Chief Edward S. Savage examined 240 years of crime and justice in the city, moving from a chronology to episodes in his own career. In a memoir covering the early decades of the 20th century, Arthur A. Carey, chief of the New York Police Department (NYPD) Homicide Bureau, described his 33 years spent investigating suspicious deaths in *Memoirs of a Murder Man* (1930) and his goal not only to detect and apprehend murderers but to engage in the systematic study of homicides. At the same time, small-town police officers and prosecutors, local heroes, wrote their memoirs. These memoirs by police and prosecutors offer a view of the social worlds in which they function—that is, the cop culture or the courtroom work group.

Although the memoirs of the 19th century and early 20th century may seem dated in language and tone to the modern reader, what they share in common with the memoirs of the modern era is the author's attempt to provide the reader with a sense of the challenges faced by criminal justice professionals. This often involves recounting episodes in the career of the cop or prosecutor. In the modern era, when the author is a woman or a racial/ethnic minority, the memoir often offers insight into the issues facing police officers and prosecutors who were often excluded from such positions until the feminist and civil rights movements of the 1960s and resulting equal employment legislation.

Female Officers

In *Armed and Dangerous: Memoirs of a Chicago Policewoman* (2001), Gina Gallo writes about the years she spent on the force. A cop's daughter, Gallo had grown up witnessing the toll his job took both on her father and their family. She had not intended to become a police officer herself. But when her master's degree in psychology turned out not to provide the kind of job security she had hoped for, Gallo ended up taking a friend's suggestion and applying to the police department. The memoir follows Gallo from the academy, where she makes friends that she will have for the rest of her career, through her indoctrination as a rookie cop. As she becomes a veteran policewoman, patrolling some of the toughest neighborhoods in the city, Gallo experiences the emotional toll that dealing not only with people who commit crimes but with their victims can take on a police officer.

Gallo's memoir is one of a number of such works by female officers in the past decade. *Detective: The Inspirational Story of the Trailblazing Woman Cop Who Wouldn't Quit* (2006) is the story of Kathy Burke, who joined the NYPD in 1968, when there were only 10 women in her academy class of 950. Gallo came onto the force at a time when the public, male police officers, and social scientists were wondering if women could do the job. This was a time when women who had formerly been police matrons assigned to work with women and children were moving into the street as patrol officers. By the 1970s, Burke herself had attracted media attention with her exploits as an undercover cop. Writing with journalist Neal Hirschfeld, Burke begins her narrative with her experiences as a rookie cop, struggling to earn the respect of her male colleagues. As an undercover cop, she is involved in drug and extortion cases. She eventually becomes a detective assigned to elite NYPD units and receives an award for heroism before retiring from the force in 1991. In her memoir, Burke looks at the issues of leadership and corruption and at the emotional and physical toll of policing on officers.

In *No Backup: My Life as a Female FBI Special Agent* (2004), former agent Rosemary Dew (writing with Pat Pope) offers a rare view of women in this elite federal law enforcement agency. As the title would suggest, Dew's memoir deals with

discrimination and sexual harassment in the FBI. During her 13 years as an agent, Dew concluded that corruption and the failure of leadership to deal with discrimination made the agency ineffective in responding to problems within the agency.

Memoirs of Administrators

In contrast, in *My FBI: Bringing Down the Mafia, Investigating Bill Clinton, and Fighting the War on Terror* (2005), former FBI director Louis J. Freeh (writing with Howard Means) offers a much more positive view of the FBI. A former New Jersey dockworker, Freeh attended law school and the FBI academy before becoming a U.S. prosecutor and then a federal judge. As a prosecutor, Freeh was involved in the Donnie Brasco case, in which an undercover cop infiltrated and then testified against the Bonanno crime family. Freeh took over as director of the FBI in 1993, shortly after the Branch Davidian standoff near Waco, Texas. He oversaw the investigation of the Oklahoma City domestic terrorist attack on the Alfred P. Murrah Federal Building. In the preface to his memoir, Freeh expresses his pride in the fact that during his tenure, he did nothing to bring disgrace or harm to the FBI or the country. He also notes that he was the only director in 80 years to voluntarily leave a position of such power.

Memoirs by big-city police chiefs examine the role of the police administrator at the municipal level. *Commissioner: A View From the Top of American Law Enforcement* (1977), written by Patrick V. Murphy (and Thomas Plate) is about Murphy's tenure as police commissioner of the NYPD. Murphy, who was born into a family of cops, decided to become a cop rather than a priest. Coming out of the navy after World War II, he found the NYPD offered employment and job security. He retired from the force in 1973 after serving as the commissioner. Murphy notes the bravery and sacrifice of police officers but also bemoans police corruption and rejects the use of "a repressive law-and-order approach to crime." As a former police administrator, Murphy discusses police management and the future of policing.

In a similar vein, in *Beat Cop to Top Cop: A Tale of Three Cities* (2010), John F. Timoney recalls his career. An Irish immigrant, Timoney advanced from a rookie cop to the youngest four-star chief in the NYPD. He was among those involved in

police innovations under Police Commissioner Bill Bratton before moving to Philadelphia to serve as police commissioner there. In his next career move, Timoney went to Miami, where he served as police chief from 2003 to 2010. In his moves from New York to Philadelphia to Miami, Timoney had the opportunity to apply his policing strategies to cities dealing with serious crime problems.

During the same era, Daryl Gates was moving up through the ranks. In *Chief: My Life in the LAPD* (1992), former Los Angeles Police Chief Gates traces his path from the U.S. Navy to college on the GI Bill and then into the Los Angeles Police Department (LAPD). His account of his career covers the Watts riot, a shootout with the Black Panthers, and the deaths of Marilyn Monroe and Robert F. Kennedy. He discusses his apprenticeship with Chief William Parker and the policing tactics of the LAPD. He offers his perspective on the riots that shook the city after the acquittal of the police officers charged in the beating of Rodney King.

Movie Adaptations

Other memoirs have been written by former police officers whose stories have been told by Hollywood. Robert Leuci, whose career inspired the film *Prince of the City* (1981), recalls his 20 years with the NYPD in his memoir titled *All The Centurions* (2004). Serving from 1961 to 1981, Leuci spent much of that time in the Narcotics Division. His career overlapped with that of other well-known NYPD detectives, including Frank Serpico (*Serpico*) and Sonny Grosso and Eddie Egan (*The French Connection*). As Leuci looks back on his life from the vantage point of someone who has become a writer/adjunct professor, he concludes he is a different person now, someone who has learned to live with guilt and regret. *Donnie Brasco: My Undercover Life in the Mafia* (1997), written by Joseph D. Pistone (with Richard Woodley), also inspired a film. "Donnie Brasco" was the name used by former FBI agent Pistone when he was deep undercover in the Mafia. During the six-year-long sting operation, he assumed the identity of a jewel thief and won the trust of high-level mobsters. During the trial, which received intense media coverage, he was threatened with revenge and had his credibility questioned because he had spent years living

a lie. Pistone discusses the impact of going deep undercover on the lives of his wife and children.

Other Subgenres

In another memoir about going undercover, William Queen, an Alcohol, Tobacco, and Firearm (ATF) special agent, tells of infiltrating the Mongols Motorcycle Club (Mongol Nation), a California-based motorcycle club. Titled *Under and Alone: The True Story of the Undercover Agent Who Infiltrated America's Most Violent Outlaw Gang* (2007), Queen's memoir recounts the 28 months that he spent as a bearded biker named "Billy St. John." Queen, who spent 20 years as an ATF agent, went undercover in 1998, gaining access to the biker gang through an informant. He eventually won the trust of gang members and even came to think of some of them as friends. His investigation led to the convictions of 50 Mongols. A few memoirs deal with the less sensational but still heroic lives of decorated urban cops. *The Soul of a Cop* (1992) by Paul Ragonese (with Berry Stainback) is an account of Ragonese's 17 years in the NYPD. During those years, he became one of the most decorated police officers in the country, earning five medals of valor, the 1986 cop of the year award, a letter of appreciation award, two hero of the month awards, and three commendations for saving lives.

Prosecutors

If the memoirs of police officers present them as heroic, if sometimes flawed, humans doing a tough job, the memoirs of prosecutors tend to present them much the same. *Twenty Against the Underworld: An Autobiography of a District Attorney and His Fight Against Organized Crime* (1974) is the autobiography that former New York City district attorney Thomas Dewey was working on at the time of his death. It was edited by Robert Campbell and published in 1974. Dewey was district attorney during Prohibition and went after gangsters, including Charles "Lucky" Luciano and "Dutch" Schultz. The "20 against the underworld" in the title was Dewey's name for his team of prosecutors.

In *Relentless Pursuit: A True Story of Family, Murder, and the Prosecutor Who Wouldn't Quit* (2007), Kevin Flynn, a former prosecutor in the Washington, D.C., U.S. Attorney's office,



Thomas E. Dewey, while governor of New York, leaves the White House after meeting with President Harry S. Truman. Dewey wrote a memoir about his experiences with organized crime while he was New York district attorney during Prohibition (1938–41).

recalls his effort to find justice for a mother and her 13-year-old daughter who were murdered. Flynn's prime suspect is the mother's former boyfriend, with whom she was embroiled in a custody battle for their son. As Flynn is taking the case to trial, he is also dealing with his own father's lung cancer diagnosis. He comes to see that he and the defendant have similar loner personalities, but the defendant is seriously disturbed. Flynn takes the reader through the process of building the case

and going to trial and discusses his relationship with the victim's family. Similarly, in *Convictions: A Prosecutor's Battles Against Mafia Killers, Drug Kingpins, and Enron Thieves* (2009) Assistant U.S. Attorney John Kroger discusses his career path from rookie to confident prosecutor. He discusses the process of building and winning high-profile cases. He also considers some ethical dilemmas faced by prosecutors.

Former Oklahoma County district attorney Wes Lane's memoir, *Amazingly Graced: A Prosecutor's Journey Through Faith, Murder, and the Oklahoma City Bombing* (2010), is somewhat different than most memoirs by prosecutors. Although he discusses his career and the cases he has been involved in, the book is also a meditation on faith. As a lapsed Christian who had become a skeptic about God, Lane found himself going through experiences in his life that brought him back to his faith. He recounts a murder case in the late 1990s when he decided to go forward even though he did not have the victim's body, and how he began to feel God's presence in the workplace.

High-profile cases often produce books by the participants. Often these books are written by the defense attorneys in the case. In the double-murder trial of O. J. Simpson for the murders of his ex-wife Nicole Brown and a young man named Ron Goldman, both of the prosecutors on the case wrote memoirs. *In Contempt* (1996) is by Christopher Darden (and Jess Walter). Darden was a prosecutor who was African American in a murder trial in which the defense attorneys were alleging racism and corruption by the prosecution and the police. In his memoir, he looks at the Simpson trial in the context of the criminal justice system and high-profile media trials. Darden also discusses what he perceived as the mishandling of the trial by Judge Lance Ito and Darden's relationship with the defense team and his coprosecutor, Marcia Clark. In *Without a Doubt* (1998), Marcia Clark (with Teresa Carpenter), the lead prosecutor in the Simpson case, offers her own perspective on the trial proceedings. She concludes that the prosecution's case was strong enough for a conviction; however, the case was tainted by the allegations of racism and the jury's hostile response to the prosecution. However, she does discuss the errors made by the prosecution. On a

personal note, Clark discusses the impact of being involved in a "crime of the century" on her personal life as she too achieved celebrity status and had to deal with the tabloid stories. The memoirs by these two Simpson prosecutors might well be read in conjunction with the memoir by the lead defense attorney Johnnie Cochran (*A Lawyer's Life*, 2004). Particularly in high-profile cases, these differing perspectives provide the reader with a fuller sense of the criminal process.

By the same token, the memoirs of police officers provide the reader with a sense of the "front end" of the criminal justice process as viewed by criminal justice professionals who often share common goals with prosecutors and work closely with them.

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See Also: Adversarial Justice; African Americans; Police, Women as; Simpson, O. J.

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Memphis, Tennessee

Memphis is a city in Shelby County, Tennessee, located on a bluff overlooking the Mississippi River. With a 2006 population of 670,902, Memphis is the largest city in Tennessee. The population is 61.4 percent African American and 34.4 percent white with smaller numbers of other ethnic groups. Thanks to its strategic riverside

location and the construction of three railroad lines leading to the city in the 19th century, Memphis was an important commercial city in the 19th and early 20th centuries (and was a center of the U.S. slave trade in the 1850s, following repeal of a Tennessee law banning the internal slave trade); in the 20th century, it played an important role in the civil rights movement.

Memphis was incorporated in 1826, and that year a sheriff was appointed for Shelby County. In 1848, Memphis was granted a charter making it a city, and the police force was expanded: The office of city marshal was created, and a police station and jail were constructed. The city continued to grow in size and in 1850, 26 men served on the police force, including the city marshal (a title changed to "chief of police" in 1860). Memphis was placed under Union military occupation for three years during the Civil War (beginning in June 1862), which encouraged the growth of smuggling and profiteering. However, the fact that the Memphis police force was populated during these years by men loyal to the Union made Memphis an attractive residence for African Americans, and the African American population of the city quadrupled between 1860 and 1870. Memphis experienced several yellow fever epidemics in the 1870s, and the police department was honored by the city government for remaining on patrol while many other citizens left the city (the epidemics of 1878 and 1879 caused the deaths of about 40 percent of the force).

Crump Machine

Edward Crump ("Boss Crump") was mayor of Memphis in 1910–15 and created a political machine that controlled much of Memphis politics until his death in 1954. The Crump machine was noted for its willingness to overlook vices such as gambling and prostitution and for its disinclination to enforce Prohibition, but it was efficient in providing essential services such as garbage collection and street cleaning and in obtaining New Deal funds for public buildings and infrastructure improvements. Memphis acquired a reputation for violent crime in this period and in 1932 was described as the "murder capital of the world," as 102 homicides were committed in the city that year. The famous criminal George "Machine

Gun" Kelly was a native of Memphis and was arrested there in 1933.

Police Force

After World War II, civil service exams for policemen were reimplemented, and several African Americans were appointed to the force (the department had included African American members as early as 1878, but only sporadically). In 1958, 10 women joined the force, though these commissioned officers were not armed: Women did not begin training in the same classes as men at the police academy until 1970 and were not assigned to patrol cars with male officers until 1973. One of the first women who joined the force in 1958 was Julia Clare Lester, who was promoted to lieutenant in July 1979 and to captain in 1988. The first female African American officer in Memphis was Claudine Penn, hired in 1968; Penn became the first female African American sergeant and then the first African American female captain.

In February 1968, Echol Cole and Robert Walker, sanitation workers in Memphis, were crushed to death by a truck. When the city failed to respond satisfactorily to this incident in the view of African American employees who saw it as part of a long-standing pattern of abuse and neglect, 1,300 African American men employed by the Department of Public Works went on strike, demanding better safety standards, higher wages, and recognition of their union. The strike garnered considerable public support and also drew the attention of national civil rights leaders, including Martin Luther King, Jr., who was shot and killed on April 4, 1968, while in Memphis to address the striking workers. James Earl Ray was convicted of King's murder and died in prison in 1998.

In the riots following the assassination of King, the National Guard and Tennessee Highway Patrol were called in to assist the Memphis and Shelby County forces. Several reforms were made in the police department after the King assassination: A 60-man Special Services Unit was created, a Crime Scene Squad was created to gather scientific evidence, and five four-man Sniper Squads began training. As the department was largely white and male at this time, two predominantly African American recruit classes were put through



This FBI Wanted poster, dated April 19, 1968, seeks the capture of James Earl Ray, who was ultimately convicted of murdering Martin Luther King, Jr., in Memphis, Tennessee. After the assassination, riots prompted police reforms in the city.

the police academy in an attempt to correct this in balance. In 1978, the Memphis police went on strike for eight days after contract negotiations failed, and law enforcement was temporarily provided by the Highway Patrol, the Shelby County Sheriff's Department, and the National Guard.

Punishment and Crime

The 1985 U.S. Supreme Court decision *Tennessee v. Garner* required Tennessee to revise its state law concerning the use of deadly force. The suit referenced a case in Memphis in 1974 in which police, responding to a report of a prowler, shot at a fleeing suspect (in accordance with Tennessee law and police department policy at the time) and killed him. After the Supreme Court decision,

Tennessee law was revised to authorize the use of deadly force to carry out an arrest only if all other means of arrest were exhausted, a warning was given, there was probable cause of a felony involving serious physical harm, and the suspect was believed to pose serious physical harm to the officers or others unless immediately apprehended.

According to the CQ Press rankings, based on Federal Bureau of Investigation (FBI) statistics from 2009, in 2010, Memphis had the 12th-highest crime rate in the country with a score of 236.32 (where 0 would indicate an average crime rate and a positive number a higher than average rate). In 2009, 12,055 violent crimes were reported in Memphis, including 132 murder or nonnegligent manslaughters, 382 forcible rapes, 4,139 robberies, and 7,402 aggravated assaults. In that year, 47,195 property crimes were reported, including 13,943 burglaries, 29,059 larceny-thefts, 4,193 motor vehicle thefts, and 333 cases of arson.

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See Also: African Americans; Civil Rights Laws; Racism; Strikes.

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Menendez, Lyle and Erik

Lyle and Erik Menendez were convicted of murdering their parents, Jose and Kitty Menendez,

in 1996, after two trials. Their parents had been murdered on August 20, 1989, and had received several close-range shotgun wounds. Although the brothers were questioned at the beginning of the investigation, it was only later that they were considered suspects in the crime. After the second trial, the young men were convicted and sentenced to life in prison.

Lyle and Erik Menendez were 21 and 18 at the time of their parents' death. Jose and Kitty were only 40 and 44. Jose was the president of LIVE Entertainment, a video-distribution company partly owned by a movie-production company. Their marriage had not always been ideal, with Jose admitting to having several affairs and sending his wife into serious depression. Jose was adamant that his sons be successful and well rounded. Lyle attended Princeton until he was found guilty of committing plagiarism and was requested to take a year off by the president of the university. Erik often emulated the behaviors of his older brother. Both sons felt extreme pressure to succeed in all aspects of their lives.

From Burglary to Murder

In 1988, the boys began burglarizing homes in Calabasas, California, many of which were owned by their parents' friends. It was estimated that they stole over \$100,000. Their father was outraged, and shortly after the parents learned about the burglaries, Jose moved his family to Beverly Hills, citing harassment by residents in Calabasas due to his sons' transgressions. On August 20, 1989, the Beverly Hills Police Department received a 911 call from Lyle Menendez, claiming that he and his brother had just discovered their parents lying in pools of blood on the floor of their home. Police arrived to find the bodies and took the sons into custody for questioning, although not as suspects. Questioning lasted approximately 20 minutes and was discontinued because Erik was uncontrollably sobbing. They provided police with a timeline of their activity for that evening, establishing an alibi.

The boys began spending their inheritance only four days after the death of their parents. By the end of 1989, they had spent more than \$1 million, thus arousing suspicion from the police. The police discovered that they had hired a computer expert to erase their mother's hard drive almost two weeks

after her murder. On October 31, Erik confessed to the murder of his parents to his psychotherapist, Jerome Oziel, who would become a key witness during the trials of the young men. Lyle was arrested on March 8, 1990, and Erik, who was in Israel at the time, was arrested on March 11, 1990. Erik hired Leslie Abramson as his attorney. Both young men pleaded not guilty and were held without bail on first-degree murder charges. Eventually, Jill Lansing was hired to defend Lyle.

The first trial, which was joined for both defendants for expedience, began on July 20, 1993. Lyle and Erik spent over three years in jail before the beginning of the trial. The prosecution called Dr. Oziel to testify, who spent six days re-creating the murder in the alleged words of the young men who had confessed to him previously. During Erik's testimony, allegations of sexual and physical abuse by both parents surfaced. The jury, after 16 days of deliberation, was deadlocked, thus resulting in a mistrial. The retrial began in August 1995. The prosecution used different attorneys, while Abramson was still the lawyer for Erik. Lyle was represented by the public defender. Again, claims of sexual and physical abuse against the boys surfaced, but this time the jury made a decision within four days. Both were found guilty of two counts of first-degree murder and conspiracy to commit murder. During the sentencing phase, 18 witnesses were called by the defense to testify on behalf of the brothers. On July 2, 1996, both men were sentenced to life in prison without the possibility of parole. They were separated in September of that year and have not seen each other since.

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See Also: Murder, Contemporary; Violent Crimes.

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Miami, Florida

Miami, incorporated in 1896, was always a multiethnic city with large numbers of Cuban, Italian, and Bahamian immigrants and a small Chinese population in the early 20th century, but it was also a southern city that was segmented by race and wealth. African American residents were effectively confined to “Colored Town” or the Central Negro District (later Overtown) by restrictive clauses in land deeds. White immigrants settled in adjoining neighborhoods, while wealthy, usually native-born, white residents lived closest to Biscayne Bay, Miami Beach, and Coral Gables. The City of Miami Police, established as the city was being incorporated, had jurisdiction over Colored Town, but also came into contact with blacks in northern Miami’s unincorporated areas with saloons, gambling dens, and brothels. Black arrests on vice-related, gambling, and drunkenness charges increased sharply in the 1910s and were accompanied by accusations of police brutality. The city had a dual system of justice in which police arrested African Americans but ignored many offenses committed by whites, the courts frequently issued harsher sentences to black offenders, and juries usually exonerated police officers and other whites in black homicides. Beginning in the 1900s, black residents sought unsuccessfully the appointment of black police officers to provide protection in the nonwhite districts.

The summer of 1920 was marked by a series of violent conflicts between black and white Miami-ans following threats of lynching, bombings of black residences, and the murder of a respectable black business owner by a drunken white resident, who was acquitted. In the nativist climate of the 1920s, the Ku Klux Klan established itself as an organization defending law and order in Miami. The city was also enjoying a spectacular real estate boom and thousands arrived, eager to make their fortune—along with grifters, pickpockets, and thieves—but many became victims of fraudulent land and real estate scams. The Miami city police force grew from 40 officers in 1921 to 350 in 1926 but struggled to keep pace with the growing population and rising liquor-related offenses, including smuggling and bootlegging during Prohibition. Greater Miami became increasingly economically dependent on tourism, and so gambling, drinking,

and sex were tolerated. Grand jury reports found the Miami police force was cutting in on the profits of many criminal enterprises. However, the city was also linked to organized crime, including vacationing gangsters (Al Capone bought a house on Star Island in 1927), and as a stopover for those traveling between northern cities and Havana.

The collapse of the boom in 1926 coincided with an increase in homicides in the city, while the death and destruction wrought by the hurricanes of September 1926 and 1928 and the worsening economic situation further exacerbated racial tensions. Harry Kier, a young African American bell-boy, was beaten to death by the city’s police chief in March 1928. Kier had been arrested for speaking directly to a white woman who was staying at the hotel where he worked. This was one of several incidents of police brutality and murder involving black citizens, and where police officers were deemed to have acted in self-defense. Black residents continued to bear the brunt of police brutality in the 1930s. The July 1937 murder of 19-year-old Stafford Dames, Jr., by three policemen, who were acquitted of any wrongdoing by an all-white jury, spurred Dames’s father and others to form a local branch of the National Association for the Advancement of Colored People (NAACP).

The first five African American Miami police officers were appointed in 1944 to protect and serve the black communities and were effective despite having more limited powers and restricted assignments than white officers. The establishment of the Miami Colored Police Benevolent Association in 1946 brought a key protagonist to the fight to end segregation within the police.

Post-World War II Miami

Public anxieties over the infiltration of labor unions, hotels and nightclubs, casinos, and other gambling outlets by gangsters linked to northern syndicates rose after World War II. Miami gained the reputation of a wide-open city, and corruption of police, sheriffs, and local officials reached major proportions. This situation threatened to discourage desirable tourists and settlers. In early 1948, six community leaders, who were instrumental in the formation of the Crime Commission of Greater Miami, hired Daniel P. Sullivan, a former Federal Bureau of Investigation (FBI) agent, as director. The commission conducted well-publicized



An officer with Miami's Special Investigation Section Narcotics Unit watches U.S. Navy sailors, Coast Guardsmen, and agents unload nine tons of cocaine onto a pier at Naval Air Station Key West. Drug trafficking is an ongoing problem for Miami.

investigations into the activities of major crime syndicate figures and the extent of local corruption. Its work was given national exposure in July 1950 when Senator Estes Kefauver, chair of the U.S. Senate Crime Investigating Commission, held hearings in Miami that revealed the wide extent of corruption. This led to the immediate suspension of Dade County sheriff James "Jimmy" Sullivan and other local officials (later reinstated by the governor).

The city was also rocked by bombings in 1951 and 1958 aimed at African American homes and Jewish synagogues that arose partly in response to threats to dismantle residential segregation but were linked more widely to white racism, anti-Semitism, anticommunism, and the arrival of increasing numbers of Puerto Ricans. These events undermined the city's image as being more progressive

than others in the south, as did the 1954 moral panic over homosexuals. Between 1945 and 1955, the greater Miami population grew 126 percent to more than 700,000. The sheriff of Dade County had approximately 11 white deputies and two "colored" deputies to handle all crimes except capital cases, which were sent to the Criminal Investigation Bureau, and traffic cases, handled by the Dade County Road Patrol (with more than 50 traffic officers). There were approximately 700 police officers to serve the Miami and Miami Beach areas. The establishment of a unique "Negro police station and court" between 1950 and 1963, with a black police station, separate detention cells, and a black judge and bailiff in a special municipal court, improved police protection for black residents and ensured the hiring of black officers. However, black officers were denied the same training and promotion opportunities as whites, and this reinforced their secondary status.

In the 1950s and 1960s, threats, intimidation, economic reprisals, and violence were deployed against black civil rights protesters and their Latino, white, and Jewish allies. The Miami Police Department, through intimidation and terror, played a powerful role in maintaining white supremacy and the color line into the 1960s. Miami's black neighborhoods were still characterized by unpaved roads, homes without indoor plumbing, infrequent garbage collections, bars and gambling often situated next to schools and homes, and overcrowding. The immigration of tens of thousands of Cuban refugees after 1959 also increased economic competition between African Americans and Latinos. The 1965 destruction of parts of Overtown to make way for I-95 and the forced removal of many black residents to other segregated districts, anger over white commercial dominance and police brutality, and frustration over slumlords and the paucity of black-owned businesses provided the backdrop to a major disturbance three years later. In August 1968, as the Republican National Convention took place in Miami Beach, the black community of Liberty City erupted into several days of rioting.

Continuing Tensions

Black fears of economic displacement continued to grow in the 1970s and 1980s as Miami underwent dramatic economic and demographic

growth. Between 1960 and 1990, the population of Dade County more than doubled to 2 million people, and Miami became a Caribbean American city because of the large numbers of Latino and Caribbean arrivals. It handled more than a third of U.S. trade with Latin America and more than half of U.S. trade with the Caribbean and Central America and was a major banking center. However, Miami's reputation in the early 1980s was as the crime and murder capital of the United States and as the major entry point for drug traffic from South America and the Caribbean; its banking sector was associated with money laundering. Riots in the 1980s damaged the city's reputation further.

The convergence of the acquittal of four Miami police officers of shooting a black male, renewed waves of Cuban immigration and the Mariel boat-lift, and the influx of Haitian refugees led to an explosion of black violence in Overtown and Liberty City, which spread to other areas and continued for several days. December 1982 saw three days of rioting in Overtown after a Hispanic policeman shot a black youth; when the officer was acquitted by an all-white jury in March 1984, another outbreak of looting and property destruction took place. In January 1989, a fourth major riot erupted after another Hispanic officer shot and killed a black motorcyclist. By this time, the sheriff's department had become the Metro-Dade County Police Department (1981–97), now called the Miami-Dade County Police Department (MDPD). The Miami City Police remains a separate force.

It took more than a decade after the riots for Miami to begin to shed its image as a high-crime city and for its police forces to begin to rebuild relations with the city's different ethnic and racial communities. As that process continued, crime, policing, and forensic investigations in Miami were the centerpieces of slick television productions *Miami Vice* (1984–90) and *CSI: Miami* (2002–), although very little of the latter is actually filmed in south Florida. Nevertheless, the street gang situation in Miami continues to generate community and law enforcement concern. Miami-Dade County has 230 documented gangs. Estimates of membership numbers range from less than 2,000 to more than 5,000.

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See Also: 1961 to 1980 Primary Documents; African Americans; Capone, Al; Florida; Ku Klux Klan; Riots.

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Michigan

Michigan was originally home to various Native American tribes; in the 1600s, French fur traders began settling the state, founding Detroit in 1701. After passing between the French, British, and Americans, and then becoming embroiled in a dispute with Ohio commonly referred to as the Toledo War, the territory now known as Michigan became a U.S. state in 1837. Waves of immigration from Europe (starting in the mid-1800s) and the American south (starting in the 1910s) have marked the development of crime, police, and punishment in the state. Today, Michigan faces problems not of immigration but of population decline; as the only state to depopulate since 2000, Michigan has lost a seat in Congress and finds itself with fewer public funds with which to provide core services. Michigan is a large but unevenly unpopulated state; more than half of its population of just under 10 million live in the southeastern metro Detroit region.

Crime

Michigan's first criminal code was published in 1846, and was limitedly revised in 1931. As noted by legal scholar Ronald J. Bretz, the code is simply a list of crimes with corresponding punishments and is highly dependent on common law; criminal offenses have been historically defined by state courts rather than by the criminal code itself, although the 1974 Criminal Sexual Conduct Act does explicitly define sexual crimes.

The constitution of crime as a social problem in Michigan can be linked to broad social trends facing the state. The mid-1800s saw a rapid increase in the state's European working-class population, particularly in Detroit. As detailed in John Schneider's *Detroit and the Problem of Order*, working-class ethnic enclaves were viewed as suspicious centers of vices such as gambling and prostitution, with police departments in Detroit (1865) and Ann Arbor (1871), for example, founded at the behest of local citizens concerned about so-called "dangerous classes."

While the annual average number of homicide arrests in Detroit rarely exceeded 10 before the turn of the 20th century, new crime trends began emerging in the late 1910s, with as many as 237 homicide arrests in Detroit in 1918. Detroit stood at the epicenter of these criminal changes. As a convenient entry point for bootleggers from Canada who were headed to Chicago, Detroit became home to crime rings such as the infamous Purple Gang, which trafficked illegal liquor into the United States. White and African American migrants from the American south strained Detroit's resources, particularly its housing market. Paired with racist housing practices, many African American newcomers lived in dilapidated conditions, living life on the social and economic margins. These conditions were exacerbated by white-on-black violence as well as policing practices that disproportionately victimized and criminalized African Americans.

Whites began leaving Detroit in the 1920s and then practically evacuated the city after the 1967 riot. This urban exodus of whites to the suburbs created a dynamic of divestment and deindustrialization in which Detroit's relatively low-crime white suburbs were de facto segregated from high-crime African American Detroit. The city soon acquired its reputation as a "murder capital" with more than 700 murders in 1974 alone.

In the 1970s, murder rates peaked in Michigan, with not less than 831 murders per year during that decade (or 9.1 murders per 100,000), and violent crimes remained at alarmingly high levels throughout the 1970s and into the 1980s. While crime has significantly declined starting in the 1990s, Michigan's state-level murder and nonnegligent manslaughter rate of 6.3 per 100,000 is still heavily skewed by Detroit's 40.2 rate per 100,000 (based on 2009 Federal Bureau of Investigation [FBI] data), with more than half of all Michigan murders occurring in Detroit. Though relatively low in population, Flint and Saginaw also exhibit high violent-crime rates. And while data from the past five years shows that crime rates have generally gone down in Detroit and in the state at large, some of the city's predominantly white suburbs have again experienced increases in crime.

Police

As in the rest of the country, local police departments in Michigan were founded in the mid- to late 1800s in growing cities such as Detroit (1865), Ann Arbor (1871), Grand Rapids (1871), and Lansing (1893).

The Michigan State Police (MSP) was founded in 1917 as an emergency replacement for the National Guard; today, the MSP oversees policing protocols throughout the state, provides auxiliary services to areas with limited local police patrol, and maintains state records on firearms, sex offenders, and criminal history.

Upon their founding, Michigan's police departments were predominantly white institutions; as southern African Americans began migrating to Michigan from 1910 to 1930, police departments, particularly the Detroit Police Department (DPD), were tasked with managing not only crime but also racial tensions. This often resulted in clear patterns of police brutality against African Americans by the 1920s. In addition, the DPD also suffered from racial segregation. Even by the late 1960s, only 5 percent of the DPD was non-white. By the 1970s, trust between the department and Detroit residents had all but eroded in the face of flagrant police brutality experienced leading up to and during the 1967 riot together with the notoriously bloody STRESS (Stop the Robberies, Enjoy Safe Streets) program implemented thereafter. The Malice Green beating of

1992 together with rather regular reports undermining the DPD's public legitimacy (for example, the force was first in the United States in citizen deaths, according to 2000 FBI statistics) have also marred the department. Nevertheless, the force has made efforts to address these issues; today, it has one of the highest proportions of nonwhite officers among U.S. police departments, and like other forces throughout the state, the DPD has increasingly adopted a community policing approach over the past three decades. As Michigan police departments pare down their services due to diminished public funding, community policing initiatives are likely to play an increasingly important role in police departments throughout the state.

Punishment

Michigan has experienced a dramatic increase in prison facilities and inmate population since 1970. With only 9,079 prisoners in 1970, Michigan's

inmate population reached an all-time high of 51,554 in 2007. According to legal scholar Ronald J. Bretz, changes in Michigan's parole system in the early 1990s that lowered parole rates together with ramped-up sentences for drug violations under the 1978 Michigan Controlled Substances Act are credited for prison population growth during the 1990s.

Moreover, the 1998 truth-in-sentencing law now requires that all inmates serve their minimum sentences and, for inmates convicted of certain crimes, removes the possibility of early release for good behavior while incarcerated. The prison population declined to 45,478 by 2010 after a decrease of 3,260 prisoners in 2008–09, and the prison population is second only to California's. The Michigan Prisoner Reentry Initiative (MPRI), a program aimed at supporting prisoner reentry into society, is in part credited with this reduction, having successfully lowered parole revocation rates over the past five years.



In May 2010, U.S. Immigration and Customs Enforcement and the Wayne County, Michigan, Sheriff's Office seized nine weapons, 70 grams of cocaine, 145 grams of marijuana, and 150 marijuana plants as part of a suspected drug-growing operation in Detroit. Michigan's reputation as one of the nation's toughest states on drugs includes its lowering of parole rates along with ramped-up sentences for drug violations in the early 1990s and its contentious mandatory life sentence for certain repeat offenders.

Today, Michigan prisoners reside at 34 facilities; as late as 1970, only four prisons were in operation. The state's first prison in Jackson, Michigan, opened in 1839 and expanded until 1924, when it was replaced by another Jackson prison. With a capacity of 5,000 inmates, the new facility became the world's largest walled prison. The renovated facility continues to operate as the Southern Michigan Correctional Facility. The second facility, the Detroit House of Correction, opened in 1860 and moved location in 1920. Female prisoners, along with convicted bootleggers who slept in outdoor tents, were housed at the facility. The Detroit House of Correction was abandoned in 1986, and female inmates are now incarcerated at the Huron Valley Correctional Complex. According to a report from the Institute on Women and Criminal Justice, 4.3 percent of all prisoners in Michigan in 2004 were women, representing a growth rate of 293 percent since 1977.

Juvenile inmates were first held at the Jackson facility in the 1850s; the House of Correction for Juvenile Offenders in Lansing was built in the mid-1850s, followed by the subsequent construction of various facilities aimed specifically at juvenile offenders. Michigan's juvenile justice system was reformed in 1996 through a series of new laws that called for the creation of new juvenile facilities and dramatically modified how juvenile offenders are processed by the criminal justice system. Today, juveniles in various stages of Michigan's criminal justice system are housed at the Bay Pines Center, the Maxey Training School, and the Shawono Center.

As legal Bretz notes, while the state generally follows national trends in terms of prison population changes, various aspects of Michigan's penal system are noteworthy. The state abolished the death penalty with its revised penal code of 1846, and its probation and parole systems were instituted relatively early, in 1885. Other aspects of Michigan's criminal justice system have raised serious concerns regarding the administration of punishment. For example, in the mid-1990s, the state passed a law removing the minimum age for a juvenile to be tried as an adult and required that juveniles as young as 14 years old must be tried and sentenced as adults for certain offenses. Michigan soon thereafter made international

headlines when Pontiac native Nathaniel Abraham was tried and convicted for murder at the age of 11. Another noteworthy aspect of Michigan's criminal justice system is its long-standing prison industries, which began in the mid-1850s. After the end of the contract labor system by the early 1900s, Michigan began operating prison-based factories that continue to operate today. Under the 1980 Correctional Industries Act, the self-sufficient Michigan State Industries uses prison labor to produce goods for governmental and nonprofit organizations.

Looking Ahead

Given Michigan's population decline and poor economy, the public funds available for policing and punishment remain lacking. In the summer of 2009 alone, 100 MSP officers were let go, dwindling the MSP's force to its smallest size in 40 years; similar reductions in police resources have been seen throughout the state. As Michigan explores cost-effective ways of administering these core public services, changes in crime, punishment, and policing are likely to follow.

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See Also: Capital Punishment; Detroit, Michigan; Juvenile Offenders in Adult Courts; Race, Class, and Criminal Law; Race-Based Crimes; Racism.

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Military Courts

In the United States, the military is often regarded as a separate society, one that operates within a unique context and with unique demands. As a result, crime and punishment in the military differ in important ways from civilian courts. Two types of military courts exist: courts-martial and military tribunals. The first represents the criminal justice arm of the U.S. military forces. These courts are charged with maintaining and enforcing criminal law among service members. These bodies try military offenses and have broad jurisdiction over service members as well as civilians attached to the military during times of war and, to a lesser degree, enemy prisoners of war. The second type of military court employed by the United States is the military tribunal (sometimes also known as a military commission). While courts-martial are generally used against service members for criminal offenses and breaches of military regulations, military tribunals are often temporary bodies typically reserved for prosecuting spies, saboteurs, and other nonuniformed combatants.

Courts-Martial

American courts-martial are an outgrowth of the British Articles of War, and the creation of these courts by the Continental Congress predates the writing of the Constitution. However, the American system differs from the British system in one important respect: The creation and revision of the rules regarding military justice were the purview of Congress, while they were to be administered by the executive. During the 19th and 20th centuries, there was a slow but steady growth in the number and types of procedural protections afforded to defendants. Courts-martial derive authority from two sources. The first source is the Uniform Code of Military Justice (UCMJ), the code of military laws legislated by Congress through its constitutional powers to raise, support, and maintain armies and navies and to provide for their organization and discipline. It was created in 1951 in order to provide a greater degree of uniformity in military law among the different branches of the military service. The second source is presidential implementation of the UCMJ through Executive Order 12743, the Manual for Courts-Martial (MCM). As commander in chief of the military,

it is the duty of the president to implement the UCMJ. The MCM not only includes the UCMJ but also establishes rules for courts-martial and rules of evidence for the military. Each military branch has also developed supplemental rules to the MCM that meet its unique needs.

The basic structure of the military criminal justice system would be familiar to most civilians. Courts-martial are capable of trying both civilian offenses, should the military decline to turn the accused over to civilian authorities, and uniquely military offenses such as dereliction of duty or failure to report. Depending on the severity of the offense and the nature of the charges, offenders may be referred to one of three types of courts-martial: summary, special, or general. Summary courts-martial deal with minor offenses and have limited punitive powers. Special courts-martial handle both capital and noncapital offenses, afford the accused access to an attorney, and have broader punitive powers. General courts-martial concern themselves with the most severe offenses and have the broadest punitive powers (including the death sentence).

It should also be noted that courts-martial are not considered to be part of the federal judiciary. While their appellate structure leads to the U.S. Court of Military Appeals and, ultimately, the U.S. Supreme Court, they are more subject to control by political and bureaucratic forces than the Article III judiciary.

Military Tribunals

While courts-martial can be used against prisoners of war, military tribunals are typically reserved for prosecuting spies, saboteurs, and other unlawful combatants. Used with less frequency than courts-martial, such tribunals have recently come under public scrutiny as a result of the wars in Afghanistan and Iraq and the broader war on terror carried out by the United States in the wake of the September 11, 2001, attacks.

Military tribunals have existed in various forms since the American Revolution, when they were used by both American and British forces to mete out justice to spies and prisoners of war. Throughout the 19th century, military tribunals were used in the prosecution of individuals deemed enemies of the state. During the War of 1812, General Andrew Jackson declared martial law in New



The Nazi saboteur trial in the fifth-floor courtroom of the Department of Justice building, Washington, D.C., July 1942, in its third day of proceedings in the trial of eight Nazi agents accused of engaging in sabotage against American war industries. President Roosevelt issued an order creating the special seven-member military commission (back row) because the more politically desirable death penalty would not have been allowable in civilian courts. The tribunal quickly reached a conclusion and issued the death penalty.

Orleans. When a local author suggested this was not appropriate and asserted that civil judges, rather than military tribunals, should hear accusations against citizens, Jackson ordered his arrest. When his arrest was appealed via a writ of habeas corpus, a local judge ordered his release and was subsequently arrested himself. Military tribunals were also used throughout the first half of the 19th century to prosecute British subjects during the War of 1812, combatants on both sides during the Mexican–American War, and Native Americans during the Indian wars. Both Congress and the Supreme Court authorized, reviewed, and occasionally limited the use of military tribunals during this time, considering them primarily within the scope of executive power. It was during the Civil War, however, that military tribunals first became an issue of national importance.

In a famous move during the Civil War, President Abraham Lincoln suspended habeas corpus rights and declared martial law in multiple areas.

The presidential suspension of habeas corpus (an action subsequently approved by Congress) allowed the military detention of citizens without immediate recourse to civilian courts, an act of questionable legality that would come before the Supreme Court in several important cases. The ensuing military trials of civilians and prisoners of war moved suspects out of the civilian criminal justice system and denied them the protections it affords defendants and the principle of trial by jury. The tribunals were challenged before the Supreme Court, but decisions were not issued until after the war. In *Ex parte Milligan* (1866), the justices held that the trial of citizens in military courts was explicitly unconstitutional when civilian courts were still operating, even in areas of martial law. According to *Milligan*, only when the military is the sole remaining authority within an area may military tribunals be used to try civilians.

Tribunals were little used in the period between the end of the Civil War and World War II. One

significant episode occurred in 1942 in a controversial incident commonly called the “Nazi Saboteur case.” Eight German agents, two of whom were American citizens, traveled from Germany to the United States in order to engage in sabotage against American war-building industries and infrastructure. They were quickly apprehended after their arrival, and President Franklin Roosevelt issued an order creating a military tribunal to try the men. He chose to use a tribunal rather than a civil court because the politically desirable penalty—death—would not have been allowable in civilian courts. The tribunal reached a conclusion quickly, issuing death sentences for all eight men. Roosevelt commuted the sentences of the two men to prison terms. Habeas corpus requests were filed with the Supreme Court, which ultimately issued an opinion in support of the military tribunal. Writing in *Ex parte Quirin* (1942), the court declined to issue any writ of habeas corpus, ruling that the military tribunals were a legitimate exercise of both legislative and executive power. Importantly, the court both upheld the precedent of *Milligan* and distinguished between lawful and unlawful combatants. Uniformed soldiers are considered lawful combatants and must be treated as prisoners of war; soldiers and agents of enemy powers who act outside of uniform (e.g., spies and saboteurs) are unlawful combatants and are subject to military tribunals. Other tribunals were also used during World War II, and their use was largely upheld in the immediate postwar era.

Modern Military Tribunals

After the September 11, 2001, attacks, the ensuing war on terror, and wars in Afghanistan and Iraq, a new chapter in the use of military tribunals began. Shortly after the events of 9/11, the Bush administration issued a military order creating a military tribunal system for use against persons designated as “enemy combatants” under the rules of war (i.e., nonuniformed belligerent agents). These tribunals proceeded for some time, but their use was unwieldy and controversial. They were attacked in some quarters as violating basic civil liberties and the humanitarian protections found in the Geneva Conventions. The Bush administration maintained the position that they were a necessary tool in the war on terror. These issues were taken to the

civil courts of the United States, and the Supreme Court responded to these cases with its decision in *Hamdan v. Rumsfeld* (2006).

Salim Hamdan, a former driver for Osama bin Laden, had been designated an enemy combatant by the government and was set to be tried for war crimes by the Bush administration’s new military tribunal system. Hamdan challenged the constitutionality of the tribunal system, a challenge that eventually made its way before the Supreme Court. The court faced two questions: First, could federal courts enforce Geneva Convention protections through writs of habeas corpus? And second, were the type of military tribunals then in use authorized by congressional legislation or the president’s executive powers? The court’s majority found that federal courts could enforce Geneva Convention protections as part of the laws of war; further, the majority also found that military tribunals must obey the laws of the United States and the laws of war, and that the type of tribunal at question was authorized by neither congressional legislation nor executive power. As a result of the *Hamdan* decision, Congress passed the Military Commissions Act (MCA) of 2006, giving the Bush administration the power to reconstitute a new military tribunal system. The new law also limited the ability of federal courts to enforce the Geneva Convention’s through writs of habeas corpus.

The Obama administration continued the use of military tribunals. Some changes have been made to the system in response to the continuing concerns of civil libertarians, but the tribunal system continues to be unwieldy in the face of challenges and changing circumstances. There is an express goal on the part of the Obama administration to close the Guantanamo facility, transferring the enemy combatants there to other facilities or nations. This continues to be an issue of contention, as does the conduct of military tribunals themselves. One example of this continued debate is the Military Commissions Act of 2009, which sought to amend the previous MCA to provide more protections for the accused in military tribunals. It is likely that this debate will continue to be shaped by both domestic political pressures and the course of the war on terror in coming years.

The Judge Advocate General’s Corps (JAG) serves as the legal entity for all branches of the U.S.

armed forces. Though different branches of the armed forces organize their respective JAGs differently, they usually perform similar duties. JAG officers also issue legal advice in any number of substantive areas, including military law, environmental law, administrative law, government contracting, and international relations. JAG members also serve as prosecutors for the military in courts-martial and sit as judges in various military courts.

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See Also: 1851 to 1900 Primary Documents; 1941 to 1960 Primary Documents; Bush, George W. (Administration of); Terrorism.

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Military Police

The military police is the police force under the jurisdiction of the U.S. military. Each branch of the military has a separate military police force: The U.S. Army has the Military Police Corps, the U.S. Marine Corps has the Provost Marshal's Office, the U.S. Navy has the Masters-at-Arms, and the U.S. Air Force has the Air Force Security Force (formerly known as the Security Police and the Air Police). The Army Military Police Corps is the oldest and largest of the U.S. military police forces. It can trace its lineage back to the Marechaussee Corps, a special unit created by General George Washington on June 1, 1778. The term *Marechaussee* was adopted from the French term *Marecheaux*, which were the French provost marshal units dating back to the 12th century. The

Marechaussee Corps was a mounted unit whose primary mission was to apprehend deserters, rioters, and stragglers. In cases of high crimes and desertion, the unit carried out executions. During battle, the unit guarded rear areas, protected baggage and supply lines, and guarded prisoners of war (POWs). At the Battle of Yorktown, the Marechaussee Corps acted as a security detail for General Washington and his headquarters, but at the conclusion of the Revolutionary War, the corps was disbanded. The Marechaussee Corps was the first MP-like organization in the United States, and it performed many duties much like the Army Military Police Corps of today.

Discipline on Continental navy ships during the Revolutionary War was the responsibility of each ship's master-at-arms. The master-at-arms ensured that discipline was maintained on the ship; ensured that no sailors deserted or left the ship without authorization; inspected any and all things that were brought aboard; took care of all prisoners, either naval or POWs; and made sure that the ship's company was familiar with the use of small arms and basic infantry tactics. The master-at-arms tradition dates back to the time of Charles I of England and even today, sailors with the master-at-arms designation continue to serve as military police on U.S. Navy ships and installations.

From the end of the Revolutionary War until the outbreak of the Civil War, there were no formally organized military police units in the U.S. Army. Military commanders were responsible for maintaining discipline and order within their own units. Oftentimes, commanders would detail certain officers and men to perform law enforcement functions within their units; however, this practice proved unsatisfactory during the Civil War. Disciplinary problems within the Union army led to the establishment of the Provost Marshal Corps. These military police units enforced curfews, tracked deserters, protected civilian property from plundering, and when necessary joined in battle. The provost marshal units' jurisdiction was later expanded to include the authority to search citizens, seize weapons and contraband, and make arrests.

During the latter part of the Civil War, the Veteran Reserve Corps (VRC) was established to augment the provost marshal units. The VRC was

comprised of wounded Union veteran soldiers who were unable to serve in a line unit because of injury or illness. The VRC protected commissaries and quartermaster and transportation depots. They also escorted POWs to the prisons in the north. One of the VRC's most significant responsibilities was to guard draft offices. Oversight responsibility of the military police and VRC units was given to the Office of the Provost Marshal General (PMG). At the end of the Civil War, Congress dissolved the Office of the PMG as well as the VRC and other military police units.

Military Police in the World Wars

In 1917, as the United States entered World War I, military commanders again recognized the need for military police units. Military police personnel performed the same duties as they had in

previous wars but with a few significant additions. Military police were responsible for helping move men and equipment from the rear area to the front lines. They made sure that main supply routes were open, and they conducted reconnaissance of alternate routes in the event that the main routes became blocked. Military police personnel conducted rear area security and checked all individuals traveling in leave areas, major cities, and examining points in rear army areas. As in earlier conflicts, military police personnel were responsible for taking control of POWs from forward troops and escorting them to the rear; however, for the first time, POWs were confined for extended periods of time, and military police personnel were needed to provide security at these facilities. Also for the first time, military police were called upon to investigate serious crimes.



Company D, 10th U.S. Veteran Reserve Corps (VRC), in Washington, D.C., in April 1865. During the latter part of the Civil War, the VRC, comprised of wounded Union veteran soldiers unable to serve in a line unit because of injury or illness, was established to bolster the provost marshal units. The VRC served as security guards for railroads and draft offices, provost guards in large towns, and escorts for prisoners of war. They also performed all types of garrison duty. The Office of the Provost Marshal General oversaw the VRC units.

Traditionally, Pinkerton detectives were tasked with investigating serious crimes that occurred among the troops; however, these detectives could not accompany the soldiers to France, so a special group of military police personnel were needed to assume this responsibility. In May 1918, the Army Criminal Investigations Division (CID) was established to fulfill this mandate. Just a few months after approving the establishment of the CID, Congress denied a request from the army to make the military police a permanent branch. World War I ended, and military police units were again disbanded.

On September 26, 1941, shortly before the U.S. entry into World War II, the Military Police (MP) Corps was finally established as a separate branch within the U.S. Army. According to an initial MP field manual, personnel assigned to the branch were responsible for investigating all crimes and offenses committed by persons who were subject to the Uniform Code of Military Justice (UCMJ), enforcing police regulations, reporting violations of lawfully given orders, and preventing the commission of acts that were subversive to discipline or that discredited the U.S. Army in any way. In addition to their law and order duties, military police personnel during the war were expected to perform their traditional support duties: controlling the movement of traffic in the battlefield area as well as in the military installations, relieving combat organizations of custody of prisoners of war, and operating the POW system. After the war, military police personnel remained in Germany as part of the occupying forces. They guarded Nazi prisoners at the Nuremberg Trials and executed condemned Germans.

In October 1945, General Dwight D. Eisenhower established a special constabulary of 38,000 military soldiers to control the U.S. Zone of Occupation in Germany. The new organization, known as the U.S. Constabulary, was tasked with maintaining general military and civil security, assisting in accomplishing the American government's objectives, and controlling the borders of the U.S. Zone of Occupation. The Constabulary was expected to cooperate with local German police forces hunting black marketers and former Nazi leaders and to conduct general law enforcement and traffic control. The U.S. Constabulary was a new type of unit,

designed specifically for policing postwar Germany and guarding the border with the adjoining zones of occupation. It was the primary police authority in postwar Germany until 1952, when it was disbanded.

During World War II, the air corps was still part of the army. Army military police assigned to the air force performed many of the same wartime duties as their counterparts who were assigned to army units. On September 18, 1947, the U.S. Army Air Force became the U.S. Air Force. On that same day, assigned army military police became air police. Later while fighting in Vietnam, the air police had the critical mission of securing air force bases against Viet Cong attack. The name *Air Police* was changed to *Security Police* (SP). After the war, the SP branch was divided into two primary functional areas, law enforcement and base security. In their law enforcement role, SPs perform duties equivalent to a civilian police department. In their base security role, SPs perform limited combat support operations. Other current miscellaneous SP duties are missile security, convoy actions, and the capture and recovery of nuclear weapons. Recently, SPs have augmented army military police personnel in securing prisons and enemy detainees in Iraq and Afghanistan.

Vietnam and Beyond

The Vietnam War brought army military police personnel into direct combat with the enemy. MP corps personnel executed their traditional duties of maintaining good order and discipline but also were called upon to provide dog teams for scout dog duties, to man checkpoints at traffic control points, to provide convoy security, to investigate motor vehicle accidents, to patrol off-limits areas, to protect critical facilities, and to investigate serious criminal offenses involving black market operations, drug offenses, and war crimes.

Following the Vietnam War, the MP corps branch designation was changed from combat service support to a combat support. This redesignation meant that not only did MP corps units receive specialized law enforcement training, but they were also equipped and trained to fight as infantry when required. The dual functionality of the MP corps made it the force of choice for military commanders in contingency and low-

intensity conflict operations. The role of the army military police was again expanded—rather than war operations, their primary focus was the restoration of civil authority, humanitarian assistance, disaster relief, and other similar peacekeeping operations. During the later part of the 20th century, MP corps personnel were employed in a variety of missions throughout the world. Examples include inter alia military police support in Grenada (1983); support of Operation Just Cause in Panama (1989); Haitian refugee support in Guantanamo Bay, Cuba; and peacekeeping operations in Haiti, Somalia, and Kosovo.

The MP corps again assumed its wartime mission during Operation Desert Shield/Desert Storm (1990–91). For the first time, the army had to rely primarily on reserve and National Guard military police personnel to conduct wartime law enforcement and combat support operations. Military police personnel also coordinated defensive support with Arab host nations and other service military police and security elements.

Military Police Today

Since the terrorist attacks on September 11, 2001, military police have played a vital part in wartime operations in the Middle East. Their combat support missions have included protection of ground convoys, area security operations, personal security missions, and the maintenance and administration of detainee internment facilities. In 2004, military police personnel were accused of mistreatment of enemy detainees at the Abu Ghraib prison outside Baghdad, Iraq. International condemnation of the detainee maltreatment forced the army to review relevant doctrine and institute a major overhaul of military police training in that critical area.

The Posse Comitatus Act (PCA) has historically restricted the use of military police in domestic law enforcement. The PCA does not apply where Congress has expressly authorized use of the military to execute the law. Beginning in the early 1980s, drug enforcement concerns led to legal changes that opened a new chapter in U.S. law; military police were allowed to provide a vast array of support for civilian police. The Military Cooperation with Civilian Law Enforcement Agencies Act, enacted in 1981, opened the door for military police to cooperate with civilian police officers.

Military police personnel have been called on to assist domestic law enforcement in counter-drug operations, civil disturbances, counterterrorism actions, and special security operations. Examples include inter alia military police helping civil authorities with disaster relief after the San Francisco earthquake in 1989; riot and looting control in Los Angeles following the controversial Rodney King court ruling in 1992; and providing search and rescue, evacuation, humanitarian assistance, and presence patrols to New Orleans city residents after Hurricane Katrina in 2005.

In recent years, there has been an initiative among military branches to divorce their military police personnel from their historical garrison law enforcement role and to civilianize certain installation security functions. At a growing number of military installations in the United States, civilian contractors have assumed a number of responsibilities previously retained by military police such as pass and ID issuance and gate sentry duty.

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See Also: 1851 to 1900 Primary Documents; 1941 to 1960 Primary Documents; Eisenhower, Dwight D. (Administration of); Military Courts; Police, History of.

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Minnesota

Minnesota is known for progressive politics, civic involvement, and moderate social policies. Crime control programs developed in Minnesota

have been emulated in various other jurisdictions around the country and even to some degree around the globe. Crime in Minnesota is regulated by Minnesota Statute 609, which explains the purpose of the code as follows:

1. To protect the public safety and welfare by preventing the commission of crime through the deterring effect of the sentences authorized, the rehabilitation of those convicted, and their confinement when the public safety and interest requires; and
2. To protect the individual against the misuse of the criminal law by fairly defining the acts and omissions prohibited, authorizing sentences reasonably related to the conduct and character of the convicted person, and prescribing fair and reasonable postconviction procedures.

This statute has grounded Minnesota's history of crime prevention and reflects the state's historical commitment to rehabilitation as a goal of criminal justice. The state legislature has produced model crime victim policies and domestic abuse intervention strategies. In 1974, Minnesota enacted the Crime Victims Reparations Act, which offered for the first time financial reparations to crime victims. This is considered an important expression by the legislature that not only is criminal prosecution an important aspect of crime policy, but the well-being of victims is a high priority. The Crime Victims Bill of Rights was passed in 1983, offering another significant legislative act that recognized the nature of crime and the victim's interests in the outcome of the case. In 1997, the Commissioner of Corrections implemented a victim notification system to allow victims the ability to check on the status of the offender. The 1998 legislature authorized restorative justice programs and gave community-based organizations, in collaboration with local governmental units, authority to implement and promote them.

Crime

Minnesota is a statistically "safe" state. Violent crime rates and property crime rates consistently fall below the national average. This may be predictable because research has shown that



During the 1934 Teamster strike in Minneapolis, police battle with striking truck drivers. The deadly clash lasted for four months and ended in recognition of the union.

the nation's wealthier states, including midwestern states such as Minnesota, generally have crime rates below national averages. While the cause is not certain, and there are multiple variables, this fact remains true over time based on Uniform Crime Reports. In 2010 in Minnesota, violent crime decreased by 2.9 percent, and property crime decreased by 2.5 percent. However, the rates of decline for Minnesota have fallen below the rate of decline for the nation, where violent crime decreased by 5.5 percent and property crime decreased by 2.8 percent that same year. Like much of the nation, Minnesota's violent crime peaked in 1994 and then dropped to a low point in 2008.

In 2010, there were 112 homicides reported in Minnesota. Homicide offenses in Minnesota represented 0.7 percent of the total violent crimes, with an averaged occurrence of one every four days. Of these, at least 63 percent were homicide by someone known to the victim. The age, sex, and race of victims of homicide are most often represented as teens (15–19) at 19 percent, male at 77 percent, and African American at 47 percent. Likewise, the age, sex, and race of offenders is most often represented as young (15–24) at 32 percent, male at 75 percent, and African American at 39 percent. The most famous murder in Minnesota history is the Glensheen murder, named for the mansion in Duluth where it was

committed. This 1977 homicide of the heiress Elizabeth Congdon and her nurse, Velma Pietila, has captured the imaginations of crime watchers for several decades.

Police

Minnesota's law enforcement is under the administration of the Department of Public Safety. The urban centers Minneapolis and St. Paul (known as the Twin Cities) were the first to establish police departments. The state's earliest police department was formed in St. Paul in 1854. Minneapolis established a police unit in 1867. These police departments grew quickly and by 1909, they were adding such technologies as motorcycles, fingerprinting, and telephones. During the 1920s, there was notorious corruption in the police department of St. Paul. During that time, high-profile criminals such as "Machine Gun" Kelly, John Dillinger, and "Baby Face" Nelson were protected by St. Paul police while committing crimes in nearby towns. During the Great Depression, the police functioned to fight gangsters, enforce Prohibition, and quell labor disputes. The 1934 Teamster strike in Minneapolis had the police in a deadly four-month clash with the labor union, ending in recognition of the union. The 1950s postwar politics left the police to deal with the aftermath of urban renewal projects that heavily impacted poorer neighborhoods. The 1960s counterculture revolution posed policing challenges of social unrest in Minneapolis and St. Paul similar to those of other urban centers. The Plymouth Avenue riots in Minneapolis left the police with tarnished community relations and a lack of public trust.

Police efforts in Minnesota, particularly in urban centers, have continued to focus on community relations. Throughout the 1990s, there was increasing demand for police accountability and awareness of racial profiling. A Civilian Review Authority (CRA) was created after public outrage about cases of racism and excessive use of force by police. Many police units, including Minneapolis, voluntarily participated in a statewide study on racial profiling, finding it to be a pervasive policing problem. In 1992, Minneapolis experienced what has been called the "darkest hour" of police-community relations when 30-year veteran cop Jerry Haaf died after being shot in the back.

The shooting followed the Rodney King beating in Los Angeles and the acquittal of police officers in that trial. This gang-related incident, and the larger context of the national debate about police conduct, left not only a legacy of racial tension but also a deeper commitment to renewing community relations.

Minnesota is well known for a 1981 study of police response to domestic violence. The study, called "the Minneapolis Experiment," was conducted by criminological researcher Lawrence Sherman. This research led to widespread changes in police response policies and practices, not only in Minnesota, but also across the nation and even to some degree internationally. In this study, arrest by police was shown to be the most effective deterrent to future domestic assault against the same victim. Subsequently, numerous law enforcement agencies across the country moved to "mandatory arrest" policies, omitting the requirements for warrant. While the Minneapolis Experiment had a massive impact on police response to domestic abuse, it was never scientifically validated through replication and as such has been criticized as shortsighted and unreliable. The debate about the deterrent effect of police intervention and arrest continues.

Punishment

Minnesota's penal system at one time included capital punishment, but it was abolished in 1911. The state's death penalty came under public scrutiny in 1906 when William Williams was set to be executed for the murder of his lover, Johnny Keller. The execution became a public spectacle when the technology of trapdoors and ropes failed. The sheriff had miscalculated the defendant's height, and Williams's feet hit the gallows floor when the trapdoor opened. The subsequent media reports of the deputies' exhausting effort to hold the rope up with their hands to strangle Williams were too much for the Minnesota public to bear. The botched execution of Williams led to success for anti-death penalty advocates in their legislative efforts to end this form of punishment. Minnesota has not reinstated the death penalty despite growing efforts to bring it back.

Minnesota's prison system has been administered by the Department of Corrections since 1959. However, the prison system precedes the

state itself. In 1853, five years before statehood, a territorial prison was established in Stillwater; originally funded through a \$20,000 congressional appropriation, it later became the first state prison. Soon after that time, juvenile detention centers opened, such as the State Reform School and the Orphan Asylum. Over the years, Minnesota's juvenile justice system has become increasingly punitive. During the 1980s and 1990s, Minnesota saw a drastic increase in the number of juveniles tried and punished as adults. For adults and juveniles alike, the state has shifted from a rehabilitative to a "just deserts" approach, and the rates of imprisonment have risen steadily. According to the Department of Corrections, the state's prison population has increased from 1,214 in 1957 to 8,964 in 2007. Changes in drug policies, treatment options, sentencing guidelines, welfare disbursements, and media influence all contribute to the trend. Despite the increase in prisoners, Minnesota has won national recognition for having a cost-effective correctional system.

Minnesota continues to reflect on causes and consequences of crime. Recent studies, particularly by the Minnesota Council of Crime and Justice, show that the increasing focus on criminalization and incarceration has had a disproportionate effect on Minnesota's communities of color. African American men are especially overrepresented in Minnesota's judicial system. According to the reports, the ratio of African Americans to whites in state prisons is roughly 25 to 1, leaving Minnesota with the greatest disparities in black-to-white rates of imprisonment. This fact remains a great challenge to Minnesota's citizens, legislature, and judiciary.

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See Also: 1851 to 1900 Primary Documents; Capital Punishment; Lynchings; Murder, History of.

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Minor v. Happersett

On October 6, 1869, Virginia Louise Minor, the president of the a Woman's Suffrage Association of Missouri, presented a new approach to women's suffrage at the association's first convention. She argued that the U.S. Constitution gave all native-born citizens, including women, the full rights and privileges of citizenship. Her husband, attorney Francis Minor, presented six resolutions that supported Virginia's argument that the original federal Constitution already enfranchised women. The Minors' arguments relied on the Preamble, Articles One, Four, and Six of the original Constitution, as well as section one of the newly adopted Fourteenth Amendment. Moreover, they argued that citizenship included voting rights. Though this argument had been used to support African American enfranchisement, this was the first time it was used to support women's suffrage.

In 1870, Susan B. Anthony printed "The Minor Resolutions" in the National Woman Suffrage Association's (NWSA) newspaper, *The Revolution*. Approximately 10,000 copies of this edition circulated around the country, and later that same year, the NWSA adopted the Minor Resolutions as their official strategy. These resolutions provided the rhetorical backbone to the large scale, direct-action campaign women around the country waged between 1870 and 1872, known as "The New Departure." In 1872, women showed up at registry offices and polling places around the country and demanded the right to register and vote. Though Susan B. Anthony was the most famous woman arrested and charged under this

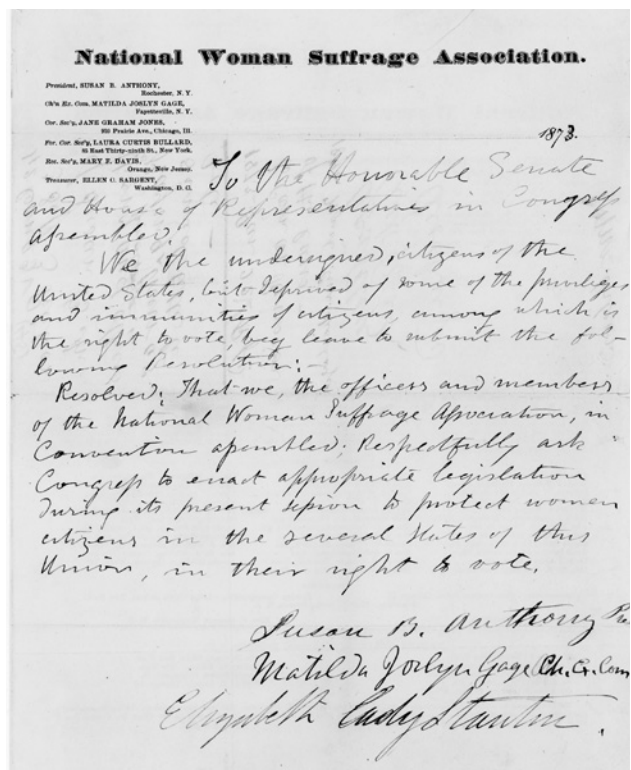
method, Virginia Minor initiated the case that made it to the U.S. Supreme Court.

On October 15, 1872, Virginia Minor appeared before St. Louis registrar Reese Happersett and requested to be registered to vote. Happersett refused, stating, “she was not a ‘male’ citizen, but a woman.” Since Minor was a woman, she could not sue Happersett in her own right, and therefore, her husband sued on her behalf for denying her one of the basic citizenship rights, the franchise. The Minors’ case was first heard in the St. Louis Circuit Court, the same location as the *Dred Scott* case in 1850. The circuit court denied the Minors’ petition in 1872, and the Missouri State Supreme Court upheld the circuit court’s decision in 1873. The following year, the Minors’ case reached the docket of the U.S. Supreme Court. On March 29, 1875, Chief Justice Morrison R. Waite delivered the unanimous opinion that upheld both the circuit court and the Missouri Supreme Court’s decisions. In his opinion,

Waite stated that the court accepted that women were citizens of the United States, but that the franchise was not immediately vested to citizens. Therefore, women could be citizens, but they were disconnected from the franchise. Further, he maintained that it was up to the individual states to grant or deny voting rights. This decision not only separated the franchise from citizenship, but also ensured the need for a federal amendment.

The Minors based their arguments on the belief that state and federal citizenship could not be separated. They believed that custom and tradition, not law, were the only reasons that women were denied the franchise. They argued that at the heart of these customs lay a misunderstanding of the general characteristics of state and federal citizenship. Because Virginia Minor had been denied the right to register to vote in the state of Missouri on the grounds that she was a female, she was subject to a state prohibition to her rights in a federal election. Under Waite’s dual-citizenship theory, she should have been able to register because states had the right to regulate, but not prohibit, the rights granted natural citizens under the Constitution. As federal citizens, women, just like men, were “entitled to all the rights and privileges and immunities of citizenship, chief among which is the one elective franchise.” Instead of securing the franchise for women citizens, however, *Minor v. Happersett* validated the exclusionary voting practices of states and legally endorsed unequal citizenship on the basis of sex until the Nineteenth Amendment in 1920. Set in context with cases such as the *Slaughterhouse Cases* (1873) and *Bradwell v. Illinois* (1873), *Minor* signaled the court’s readiness to significantly limit the legal protections offered by federal citizenship as well as the emancipatory potential of the Fourteenth Amendment.

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The 1873 petition to Congress from the National Woman Suffrage Association requesting legislation granting women—who were legal U.S. citizens—the right to vote. It failed, as did Virginia Louise Minor’s Supreme Court appeal two years later.

See Also: *Dred Scott v. Sandford*; Gender and Criminal Law; Missouri, *Plessy v. Ferguson*.

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Miranda v. Arizona

In 1966, the U.S. Supreme Court, in a split 5–4 decision, ruled that the Fifth Amendment privilege against self-incrimination requires law enforcement officials to explain a suspect's legal and constitutional rights once they have been charged. In particular, the court found that a suspect must be told they have the right to remain silent and the right to an attorney for any statements they make to be admissible before a court of law.

This decision spurred much public debate, with many arguing that this decision would make it so defendants were never willing to speak to police regarding crimes and would make the already taxing job of police officers even more difficult. Ultimately, the case has stood the test of time, and this did not occur. Most Americans are familiar with the case—even unknowingly—due to the reading of Miranda rights at the time of arrest.

Miranda's Case

The *Miranda* case stemmed from the arrest of Ernesto Miranda for the kidnapping and rape of an 18-year-old woman in 1965. The evidence against him at the time was circumstantial at best. Miranda was taken to the police station, interrogated for two hours, and then signed a confession statement saying that he had kidnapped and raped the young woman. The statement read: "I do hereby swear that I make this statement voluntarily and of my own free will, with no threats,

coercion, or promises of immunity, and with full knowledge of my legal rights, understanding any statement that I make may be used against me." While the statement itself indicates a clear waiver of his constitutional rights, Miranda had never been informed of the rights he was choosing to forfeit. At trial, the prosecution offered the written confession into evidence, but Miranda's court-appointed lawyer objected. His argument was that since Miranda was never made aware of his rights, he could not voluntarily waive them. The judge overruled the argument and Miranda was sentenced to 20–30 years in prison.

Upon his conviction, Miranda filed an appeal with the Arizona Supreme Court stating again that his confession had not been fully voluntary because he was never informed of what the rights actually were. The Arizona Supreme Court affirmed the decision of the trial court, however. In its eyes, the fact that Miranda did not ever ask for an attorney led the court to believe he was not concerned about the proceedings and was simply making his confession. Further, the Arizona Supreme Court found that Miranda should have known his written confession could be used against him in future proceedings, and if he was worried, should not have signed the document.

The Outcome

Given the path the U.S. Supreme Court seemed to be taking under Earl Warren, a former prosecutor, most expected a favorable outcome for Miranda. In a 5–4 decision, the court ruled the confession was obtained outside constitutional parameters and should not have been admissible at trial. A dividing topic, the case saw four opinions written on it. Warren wrote for the majority and found that custodial interrogations by police officers are so coercive that no confession should be admitted unless a suspect has been made fully aware of his or her Fifth and Sixth Amendment rights. As Warren stated: "the person in custody must, prior to interrogation, be clearly informed that he has the right to remain silent, and that anything he says will be used against him in court; he must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation, and that, if he is indigent, a lawyer will be appointed to represent him." Warren, on behalf of the court, went even further to

say that “if the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease ... if the individual states that he wants an attorney, the interrogation must cease until an attorney is present.”

Miranda Regulations

While many criticized the decision, following *Miranda v. Arizona*, police departments across the country were required to inform suspected individuals of their rights at the time of arrest if they wanted to ensure that any statements they made would be admissible in proceedings against them later on. Many departments responded by having printed forms that must be signed and dated by a suspect after having their rights explained to them. Any waiver, however, must be knowing, intelligent, and voluntary. For the *Miranda* rule to apply, six criteria must be met. First, there must be evidence. Second, said evidence has to be testimonial in nature. Third, the suspect must be in custody at the time the testimony is taken. Fourth, the evidence has to stem from an interrogation. Fifth, the interrogation has to involve agents of the state. And last, the evidence has to be offered by the prosecution during criminal proceedings. As a result of these rules, spontaneous statements are not protected by *Miranda*. If you are picked up by the police for questioning (but not put under arrest) and claim to have killed eight people, you cannot use the fact that you were not Mirandized as a reason for your confession to be inadmissible. Once a suspect asserts any *Miranda* right, the interrogation must cease until the police have “scrupulously honored” the suspect’s wishes.

Studies of *Miranda*’s impacts have found that there has been little to no effect on whether suspects agree to speak with the police, whether an attorney is present or not. One study has found that approximately 3 to 4 percent of criminal suspects walk away due to defective warnings or defective waivers. Overall, those who argued against *Miranda* have not seen their fears come true, and instead, an additional layer of protection for suspects from potential police misconduct has been added. As for Ernesto Miranda, he was consequently retried without the confession being admitted to evidence and reconvicted. He

was paroled after five years and made a modest living till his death, autographing Miranda cards.

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See Also: Constitution of the United States of America; Interrogation Practices; Police Abuse; Supreme Court, U.S.

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Miranda Warnings

See Miranda v. Arizona.

Mississippi

A heavily forested southern state, Mississippi was formed from territory ceded from Georgia and South Carolina and was admitted to the Union as a state in 1817. Once a wealthy state because of the prominence of its cotton plantations, Mississippi has never fully recovered from the end of slavery and the plantation economy. Until the 1930s, when great numbers of African Americans left Mississippi for northern industrial cities, the state was predominantly black. It has historically suffered from severe race relations problems, occasionally motivating bursts of crime, as with the reactions against the civil rights movement of the 1950s and 1960s.

Police and Punishment

The first modern police department in Mississippi was established in 1822 in Jackson and answered to the city marshal. Professionalization was slow, but the work was full-time—seven 12-hour shifts a week, 365 days a year. The 1870s saw the rise of

specialization in Mississippi police as in much of the Western world; police officers were issued uniforms, badges, and night sticks, and the rank of police detective was introduced. Desk sergeants and mounted police followed at the turn of the century, followed by the Mississippi Highway Patrol in 1938, which has since become the state-level police agency.

The first Mississippi State Prison was built in Jackson in 1843 to hold inmates who were incarcerated for longer terms than the inmates of county jails and whose offenses could not be punished merely with fines, corporal punishment, or other measures. When the Jackson prison was destroyed during the Civil War, Mississippi used the convict leasing system rather than add the cost of a new prison to its already considerable post-war expenses. Under that system, prisoners were leased to private sector businesses or individuals as laborers and were housed on work sites. Convict leasing ended in 1895, and new correctional facilities were built on farms in Rankin and Hinds

counties. The current Mississippi State Penitentiary was built in Sunflower County in 1901.

Mississippi's occasionally harsh sentences came under fire in the odd Scott sisters case, the story of which stretches from 1993 to 2011. The Scott sisters, Jamie (23 at the time of the crime) and Gladys (19), were convicted of the armed robbery of a mini-mart with the assistance of three teenage boys. Despite the robbery netting only a few hundred dollars and a lack of previous criminal records, they both received double life sentences. The conviction was upheld by the appellate court, and the Supreme Court denied the petition for appeal in 1997 and the petition to vacate the conviction in 1998.

In 2010, however Governor Haley Barbour—who had previously denied a petition for clemency—suspended the sisters' sentences on the condition that Gladys donate a kidney to Jamie, whose dialysis was a substantial expense for the cash-strapped state. The sisters agreed and were released in 2011. The requirement of organ donation, particularly



The noncontact visitation center in Unit 32 of the Mississippi State Penitentiary in Parchman. It is the state's oldest institution, opening in 1901. The penitentiary has a capacity of approximately 4,500 in seven different housing units and houses male offenders classified to all custody levels, including long-term segregation and death row. Inmates provide more than 100,000 hours of free inmate labor each year to adjacent municipalities and counties and state agencies.

coupled with the financial motive of the state rather than some motive grounded in principles of criminal justice, has drawn heavy criticism of the state's handling of the case.

Crime

During Reconstruction, as federal authorities forced legal reforms through the formerly Confederate states, the Tennessee-based Ku Klux Klan spread to Mississippi. The first Klan—20th-century groups simply adopted the name in homage—was a vigilante gang whose members concealed their identities while enacting vengeance against Republicans, African Americans, and northern carpetbaggers. The first Mississippi Klan “den” was founded in 1866 and quickly developed into a paramilitary group, a guerrilla force determined to expel northerners and their allies and to punish blacks. The ties between the Klan and the Democratic Party were strong, both groups sharing many of the same goals pursued with different means. Lucius Q. C. Lamar, a former Confederate diplomat and later senator for Mississippi, secretary of the interior, and Supreme Court justice, was one of the Klan's supporters. Klan violence was generally very deliberately directed but could include seemingly random targets for the simple purpose of striking fear into the enemy community. The first Klan eventually died off as federal authorities began taking stronger action against it.

The second Klan, founded in Georgia in 1915, also quickly spread to Mississippi. Though called the “Invisible Empire,” in most communities, the second Klan was less secretive than the first or the modern Klan; often treated as a Protestant fraternal organization, this new Klan recruited from churches and religious fraternities, redistributed some of its cash to Mississippi churches, and maintained that it was a peaceful patriotic group. In reality, its sometimes extreme violence—the burning cross was introduced by the second Klan—targeted not only blacks but Jews, Catholics, and non-Anglo immigrants. Like the first Klan, it often benefited from strong political ties and well-coordinated direction.

Though it is common to speak of “the Klan” in the 1950s through the present, since the dissolution of the second Klan in the World War II era there has been no single hierarchical Klan group, but rather numerous groups—sometimes

coexisting in the same region, sometimes even sharing members—using Klan references in their names, and “the Klan” in this era refers to a Klan movement rather than a single group. The Klan resurgence in 1960s Mississippi was a powerful one, following—or responsible for—a series of violent episodes after the desegregation of Ole Miss (the state university) in 1962. Sympathy for Klan groups in Mississippi was strong, but there was a reluctance to join it that Federal Bureau of Investigation (FBI) investigators found puzzling, which may have evinced a self-consciousness or awareness of a taboo surrounding the group—or even a suspicion that in the long run, Mississippi's efforts to resist desegregation and the other aims of the civil rights movement would be fruitless.

Klan violence in the 1960s exceeded that of the 1920s and rivaled that of Reconstruction, but public sentiment turned against the Klan after the 1967 bombing of a synagogue. Those who considered themselves moderates withdrew their support from the Klan, which quickly lost its footing in the state, dying off almost completely by the end of the decade. Though Klan groups persist in the state as in much of the country, they are small, marginalized groups with none of the political sway or financial resources of previous groups.

Violence in the civil rights era wasn't confined to the Klan. Numerous racially motivated murders occurred in Mississippi in 1955, including that of black voter registration organizer Lamar Smith (shot to death in broad daylight in front of the courthouse, with no witnesses willing to come forward and no one convicted for his murder), civil rights leader George Lee (shot to death while driving his car), and 14-year-old Emmitt Till (beaten to death by a group of men for flirting with the wife of one of them). One of the activists involved both in the attempt to overturn segregation and in the investigation several of the 1955 deaths was Medgar Evers, the National Association for the Advancement of Colored People's (NAACP's) Mississippi field secretary. Evers's increasing prominence, especially after the desegregation of Ole Miss, made him a target for violence, and after at least two failed attempts to kill him in the space of two weeks, he was shot from behind on June 12, 1963, upon returning home from a meeting with NAACP lawyers. Byron de la Beckwith, a salesman and member of the white supremacist group

White Citizens' Council, was arrested for the murder, but sufficient evidence to convict him was not found until 1994, when he was finally convicted.

Mississippi's crime rate is and has generally been well below the national average. Although it followed the national trend of rising after World War II with considerable increases in the 1970s and 1990s before declining, that trend wasn't as smooth in Mississippi as in the nation as a whole. Crime temporarily fell in the mid-1970s, for instance, as well as in the mid-1980s, before climbing to a 1995 peak of 502.8 violent crimes per 100,000 inhabitants. It has tended to fall since then—and in 2010 had fallen to 269.7—with a few temporary rises, notably one coinciding with the 2008 economic collapse.

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See Also: 1981 to 2000 Primary Documents; African Americans; Civil Rights Laws; *Mississippi v. Johnson*; Racism.

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Mississippi v. Johnson

Mississippi v. Johnson is significant because it was the first lawsuit brought against a sitting president of the United States (Andrew John-

son) in the U.S. Supreme Court. The case was one of a series of Reconstruction era cases that came before the Supreme Court in the years after the American Civil War. In this case, the state of Mississippi sought an injunction against the president's enforcement of the laws. The case was argued before the court on April 12, 1867, and was decided three days later. The opinion was written by Chief Justice Salmon P. Chase.

In March 1867, Congress, over President Andrew Johnson's veto, enacted the Reconstruction Acts. These were four separate laws that were passed by the Republican Congress. The law disbanded the state governments established immediately after the Civil War and organized the former Confederate states (with the exception of Tennessee, which had ratified the Fourteenth Amendment and was readmitted to the Union) into five military districts. The president was empowered to appoint a military governor and place troops in the states of the former Confederacy to maintain public order. The states were required to draft new state constitutions granting African American men the right to vote as a condition for readmission to the Union.

An Attempt to Restrain the President

The lawsuit, brought by the state of Mississippi, sought "perpetually to enjoin and restrain" President Andrew Johnson and his officers and agents appointed for that purpose, especially Edward Ord, the military commander of the Fourth Military District (which included the state of Mississippi) from carrying out the Reconstruction Acts. Although President Johnson had vetoed the laws, stating in his veto message to Congress that the "power thus given to the commanding officer over all the people of each district is that of an absolute monarch," he viewed the lawsuit as a challenge to presidential authority. Johnson ordered Attorney General Henry Stanberry to challenge Mississippi's request for an injunction.

The court, in a unanimous decision, held that it could not block the president from using his authority as chief executive to enforce a statute that may be unconstitutional, stating that it had "no jurisdiction of a bill to enjoin the President in the performance of his official duties" The Chase Court relied on the Marshall Court's ruling in *Marbury v. Madison*, 5 U.S. (1 Cranch)

137 (1803). In that case, the Supreme Court had written that the president has two kinds of tasks: ministerial and discretionary. Ministerial tasks are those required of the office, and by failing to perform those tasks, the president could be seen as violating the Constitution. As for discretionary tasks, these were tasks where the president had latitude as to whether or not to act.

In his opinion, Chase wrote that while the court had the authority to command executive branch officials to act, this power only extended to ministerial functions, where the president had no discretion. In this case, Chase concluded that the president's task, the enforcement of the Reconstruction Acts, was "in no sense ministerial." Chase went on to write that if the court attempted to interfere with the president's performance of his discretionary tasks, that such action would be "an absurd and excessive extravagance," since the judiciary lacked the ability to enforce such an order. This became known as "executive immunity," which is based on the Constitution's separation of powers.

While the court could not stop the president from carrying out this responsibility (enforcement of the Reconstruction Acts), once he did, his actions could be challenged on Constitutional grounds in the courts.

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See Also: 1981 to 2000 Primary Documents; African Americans; Enforcement Acts 1870–71; Johnson, Andrew (Administration of); Mississippi; Presidential Proclamations.

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Missouri

Originally acquired as part of the Louisiana Purchase, Missouri was admitted as the 24th state in 1821 as part of the Missouri Compromise. A border state with significant southern and mid-western influences, it has long been the symbolic center of the United States; both the Pony Express routes and the Oregon Trail set out from Missouri, which was the gateway to the western frontier in the 19th century. Today, it is both the mean center of the American population and the most famous bellwether state, considered a microcosm of the country as a whole because of its similar demographic makeup and mix of urban and rural communities.

Police and Punishment

The new state legislature soon voted to construct the Missouri State Penitentiary to incarcerate criminals who were serving terms longer than those accommodated by town jails. It was built in Jefferson City in 1836, then the capital of the state. Prisoners were employed as brick-makers to offset the cost of their incarceration. In 2004, the penitentiary, long known as "the Walls," was replaced with the Jefferson City Correctional Center.

Early Missouri settlements had town constables or were served by county sheriffs. Formal police departments, originally overseen by city marshals, were formed as towns grew bigger; Jefferson City established its police department in 1836, and Springfield's followed in 1858.

Missouri is a capital punishment state. Like other states, following the 1972 and 1976 *Furman v. Georgia* and *Gregg v. Georgia* rulings by the Supreme Court, it was forced to rewrite its death penalty statute in order to ensure that it would be applied consistently. Further, the use of the death penalty for crimes other than murder has been suspended; the last execution for a non-homicide crime in Missouri was that of convicted rapist Ronald Wolfe in 1964. The state's post-*Gregg* death penalty statute was passed into law on May 26, 1977, based on laws already upheld as constitutional in other states, and requires at least one of 14 aggravating circumstances in order to apply the death penalty: prior capital murder conviction or multiple serious assault convictions; a second capital murder committed at the same time; use of

a device in a public place that endangered persons other than the victim; a murder committed for pay (considered a separate aggravating circumstance for the defendant hiring the killer); the murder of a judicial officer or prosecutor, motivated by the exercise of their duties; torture and other “outrageously or wantonly vile” circumstances; the murder of a working police officer, corrections officer, or firefighter; a murder committed while the accused is in custody; a murder committed in order to avoid or prevent an arrest; a murder committed during the commission of a felony; the murder of a witness or potential witness in any investigation or prosecution; the murder of a correctional employee or inmate; a murder committed as the result of transit hijacking.

Since 1988, Missouri executions have been carried out by lethal injection. From 1937 to 1988, the gas chamber had been used, located at the Jefferson City Correctional Center, and before that executions had been public hangings conducted by the sheriff of the county where the crime had transpired.

Missouri’s current death penalty statute has been criticized on the same grounds that caused the Massachusetts Supreme Judicial Court to find that state’s 1982 death penalty statute unconstitutional: because only a jury trial can result in a death sentence, defendants are in a position in which they can take that risk or they can plead guilty, bypass jury sentencing, and accept a life sentence, possibly with parole. In Massachusetts, this circumstance was grounds for nullifying the statute, the court ruling that it violated both the right to a trial by jury and the right to protection from self-incrimination. The Missouri Supreme Court has gone in the other direction: when Patrick Nunley and Michael Anthony Taylor pleaded guilty to kidnapping, rape, and murder, the judge imposed the death sentence, acting on the assumption that the defendants had pleaded guilty only to avoid it. In appeals, defense argued that this was unconstitutional, since a jury must recommend the death sentence. The Missouri Supreme Court’s ruling in 2011 was that the defendants had waived their rights to the jury sentencing, and the death sentence was upheld.

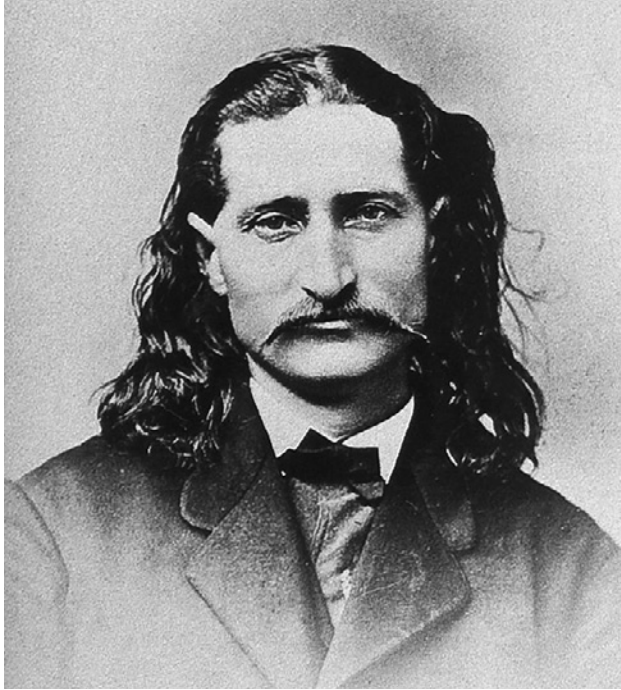
Executions, though, are on hold in Missouri as of 2011. Hospira, the company manufacturing sodium thiopental, one of the drugs used in

the lethal injections in Missouri and many other states, discontinued the drug, and existing supplies expired in March 2011. An alternate source may be found, or a new drug may need to replace it; in some states, using a new drug has required legislation, but it isn’t yet clear whether the Department of Corrections will need legislative cooperation in Missouri.

Crime

At the edge of the frontier, Missouri was home to a number of outlaws and bandits. Springfield has claimed to be the home of the first high noon shoot-out, when Wild Bill Hickok and Dave Tutt drew pistols in the public square, resulting in Tutt’s death, for which Hickok was later acquitted. Marion Hedgepeth, born in Prairie Home in 1856, was better known as the Handsome Bandit or the Derby Kid; by age 20, he was an accomplished train robber and multiple murderer, and after serving a seven-year sentence for larceny, he became a prominent member of the Slye-Wilson Gang of highwaymen, train robbers, and safe crackers. Hedgepeth was eventually apprehended by the Pinkertons and sentenced in 1893 to 25 years in prison—a sentence that was commuted after 14 years when Hedgepeth informed on a cellmate who turned out to be H. H. Holmes (Herman Mudgett), one of the first American serial killers.

More famously, the James-Younger Gang was based out of Missouri, named for Cole Younger and his brothers (Jim, John, and Bob) and Frank and Jesse James. The gang began its criminal activity in 1866, immediately after the Civil War, which had made Missouri a site of guerrilla violence as partisanship was strong for both sides. The original core of the gang, Cole and the James brothers, had fought for the Confederacy in the war. Both were slave-owning families with southern origins; Frank James and Cole Younger fought under bushwhacker William Quantrill until Cole enlisted in the regular Confederate army, and Jesse James joined the fight in 1864 at age 16. The February after the war ended, they began robbing banks, turning their skill for violence into profit. Train robberies followed, and the gang was pursued by the Pinkertons for most of the 1870s before the gang finally fell apart in 1879, though individual criminal careers continued for years to come.



J. B. "Wild Bill" Hickok became engraved in Missouri legend when he shot poker rival David Tutt in Springfield, Missouri, in 1865. This first recorded example of a two-man, quick-draw duel cast the mold for the classic western gunfight story.

During Reconstruction in the former Confederate states, a number of veterans of the guerrilla wars fought in Missouri during the Civil War assisted the Ku Klux Klan of North Carolina. Having originated in Tennessee, the Klan had quickly spread throughout the reconstructed south in an attempt to expel Republicans, blacks, northerners, and their allies. When the war stopped, those who had been engaged in fighting it in Missouri traveled to North Carolina to help their friends and relatives there. Coincidentally, Klansmen fleeing the later federal crackdown on the Klan around 1870 fled from North Carolina to Missouri. Some of them may have been involved in the revival of the Klan in Missouri in the 20th century; the new Klan was a fraternal organization founded in Georgia in 1915, using violence to target blacks, Jews, Catholics, and immigrants.

The modern Klan in Missouri has no formal connection to the first two Klans, the second Klan having been dissolved in the World War II era. A white supremacist group, the Missouri Klan has made headlines for its attempts to "adopt" a

stretch of Interstate 55, south of St. Louis. When the Department of Transportation rejected the application, a U.S. District Court judge found that the refusal was unconstitutional. The state was forced to erect signs announcing the Klan's sponsorship but countered by renaming that stretch of highway the Rosa Parks Highway.

The violent crime rate in Missouri is slightly higher than the national average: 455 violent crimes per 100,000 inhabitants in 2010 (when the national average was 403). It has followed the general national trend of rising steadily from World War II until the 1990s and then falling again, but with some deviations along the way. Crime fell in the early 1980s, for instance, only to rise to a peak of 744.4 in 1993. Before 2010, the post-1993 low was 490, reached in 2000 before rising to 540 in 2001, and then hitting 490 again in both 2003 and 2004 before again rising to 545 in 2006.

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See Also: 1851 to 1900 Primary Documents; Capital Punishment; Frontier Crime; Kansas City, Missouri; Mudgett, Herman; St. Louis, Missouri.

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M'Naghten Test

Through the criminal law, society attempts to develop standards of acceptable behavior that protect its citizens from harm in a manner that is consistent with its fundamental values. American societal values are based in large part on Judeo-Christian beliefs. Justice and fairness are embedded in this framework. The belief that only the culpable should be held responsible for their wrongful acts is at the core of this belief in justice

and fairness. In criminal law, this means that wrongful conduct that is the product of knowledge and intent deserves punishment. Those who are incapable of truly understanding what they are doing are not culpable for their actions. Children and those without sufficient mental faculties, such as those who are mentally retarded or mentally ill, are examples of those who should not be held criminally responsible for their misdeeds. The M'Naghten test was an attempt to create a test to determine when someone should not be held criminally responsible for his or her actions.

Early Cases

The belief that some people should not be held responsible for their harmful acts has existed for well over 2,000 years. One of the earliest examples of this is seen in scholarly commentary on the Torah, dating back to the 6th century B.C.E.



A sketch of Daniel M'Naghten at trial and an engraving of his signature, published in the March 4, 1843, edition of the *Scottish Reformer's Gazette*. The creation of the standard of insanity in criminal proceedings is based on his murder case.

These scholars divided wrongful acts into two categories, one for actions that occur with fault, and another for those wrongs that occur without fault. Those whose actions were considered to be without fault included children and the mentally disabled. These groups were considered to lack the capacity to weigh the moral implications of their wrongful conduct.

In *Beverley's Case*, a 1603 English court decision, the court held that a "madman" could not be held criminally responsible. The court defined a "madman" as "one who does not know what he is doing, who lacks in mind and reason and is not far removed from brutes." Similarly, in a 1724 English court decision, *Rex v. Arnold*, the court ruled that one who is "totally deprived of his understanding and memory, and doth not know what he is doing, no more than an infant, than a brute, or a wild beast" shall not be held responsible for his wrongful conduct. It was not until 1843 that a standard and clearly articulated rule for determining criminal responsibility was developed.

Daniel M'Naghten

The creation of this standard resulted from public outrage over the acquittal by reason of insanity of Daniel M'Naghten, the man who, in an attempt to assassinate the prime minister, of England, Sir Robert Peel, shot and killed Edward Drummond, secretary to the prime minister in January 1843. Descriptions of M'Naghten indicate that he was likely suffering from paranoid schizophrenia, a major mental disorder in which the person's ability to distinguish reality from what is not real is severely impaired. Common symptoms of schizophrenia include hallucinations and delusions. Hallucinations, in which the patient perceives something when no external stimuli exists, can occur in any of the senses, that is, hallucinations can consist of hearing, seeing, smelling, tasting, or feeling a sensation when there is nothing to hear, see, smell, taste, or feel. The most common hallucinations are auditory, in which the patient hears voices or other sounds when those sounds do not exist.

Following the outrage from the acquittal, the English House of Lords established the set of criteria that must be met for a defendant to be found not guilty by reason of insanity. This became

known as the M'Naghten test. The standard established by the House of Lords states that "to establish a defense on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not know the nature and quality of the act he was doing, or if he did know it, he did not know that he was doing what was wrong."

The M'Naghten test is a vast improvement over the "wild beast" standard for legal insanity. The wild beast test called for a purely subjective determination of whether the defendant should not be held criminally responsible for his or her actions. With no objective standard to follow, each juror was free to use his idiosyncratic image of a wild beast when asked to decide this issue. Given the same set of facts, such a standard could result in inconsistent verdicts depending on the makeup of the jury.

Definition of the M'Naghten Test

The M'Naghten test provides jurors with a clear standard for reaching their verdict. For the first time, a universal standard would be used by all English courts to determine whether the accused should be found not guilty by reason of insanity, a standard with clear and coherent requirements. Such a standard better serves the goal that the criminal law should be fair and just. The M'Naghten test has several important components. First, the test requires that the defendant's culpability be determined by his or her mental status "at the time of the committing of the act." Although a defendant's mental state before and/or after the commission of the act may be relevant to proving his or her mental status at the time of the act, they are not dispositive of the ultimate issue. This requirement has been a consistent key element of every version of the insanity defense.

The M'Naghten test states that it must be shown that the defendant was "laboring under (a) defect of reason, from disease of the mind." The term *disease of the mind* is no longer used by modern psychology and psychiatry. It has been replaced by "psychological disorder," "psychiatric disorder," or "mental disorder." The current formal nomenclature for mental disorders comes from the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition: Text Revision*

(*DSM-IV-TR*) published in 2000 by the American Psychiatric Association. A *DSM-IV-TR* "mental disorder" is the modern equivalent to the archaic terminology "disease of the mind."

The M'Naghten test makes clear that simply having a "disease of the mind" is not a sufficient basis for a finding that the accused shall not be held culpable for his or her wrongful acts. The accused's mental disorder must result in a "defect of reason." The requirement that the mental disorder cause a cognitive defect significantly narrows the type of mental disorder that can serve as a basis for a defense based on insanity. Mental disorders that could serve as a basis for the use of the insanity defense include, but are not limited to, psychotic disorders and disorders that can result in psychotic symptoms, dementia, and mental retardation. A psychotic disorder is one in which there is a loss of contact with reality, usually including fixed false ideas about what is taking place or who one is (delusions) and seeing or hearing things that do not exist (hallucinations).

The most common psychotic disorder used in insanity defense cases is schizophrenia. This mental disorder significantly impairs the individual's ability to distinguish between real and unreal experiences, to think logically and coherently, to have normal emotional responses, and to behave normally in social situations. While all subtypes of schizophrenia share these characteristics, the subtypes differ as to the prominence and quality of specific characteristics. For example, in schizophrenia, paranoid type, the dominant theme of the delusions and hallucinations is paranoia. Individuals with this mental disorder tend to believe that specific people or entities are out to harm them or someone they care about and often include the belief that they are the object of a conspiracy.

Another element of M'Naghten requires that the person committing the act must "not know the nature or quality of the act he was doing." This type of cognitive impairment is characteristic of dementia, mental retardation, psychotic disorders, and disorders with psychotic symptoms. However, some disorders, such as schizophrenia, are cyclic. Most people diagnosed with schizophrenia have periods of lucidity. An act done during such a period of lucidity would not fit this criterion, as the relevant time in determining criminal culpability is "at the time of the committing of

the act.” The final element of the M’Naghten test states that “if (the accused) did know (the nature and quality of the act he was doing), he did not know that he was doing what was wrong.” As with the previous element, this type of cognitive impairment is characteristic of dementia, mental retardation, psychotic disorders, and disorders with psychotic symptoms.

The M’Naghten test has been criticized for focusing exclusively on the ability to think, to reason. The rule requires that the accused have a mental disorder that results in a “defect of reason” such that the person does not “know the nature and quality” of their actions or does not “know” that their actions were wrong. Mental disorders can cause serious impairment in a person’s ability to reason. They also can substantially impair one’s ability to control one’s behavior.

One Example

John, a person suffering from paranoid schizophrenia, hears the voice of his deceased great grandfather warn him that students at the local high school have conspired to kill him. Living in constant fear, John keeps a loaded semiautomatic handgun with him at all times. A group of seniors from the high school is selling magazines door-to-door to raise money for their senior trip. He sees a group of high school students approach his door. When one knocks, John believes his death is imminent. He shakily draws his gun and shoots at the door until he is out of bullets. When the police arrive, they discover the bodies of five students, three dead and two wounded. John could not distinguish what was real from what was not real, believed that his deceased great grandfather spoke to him (auditory hallucination), and labored under the false belief that students from the high school were going to kill him (paranoid delusion). He emptied his gun to kill the students before they could kill him. Although he had a defect of reason (delusional; out of contact with reality) from a disease of the mind (paranoid schizophrenia), he knew the nature and quality of his actions (that he was shooting and killing the students at the door). Therefore, John does not meet the M’Naghten test, despite committing his actions because of his mental illness.

The M’Naghten test was a major step in the evolution of the defense of insanity. The principle

that only those who are culpable for their actions should be held criminally responsible can be traced back to the 6th century B.C. The M’Naghten test was the first formulation of that principle in Western jurisprudence that provided jurors with a clear and coherent standard for determining whether a person should be held criminally responsible for his or her actions. Despite being criticized for its exclusive focus on the cognitive abilities of the accused, it has been adopted as the legal standard for the defense of insanity by a plurality of American states.

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See Also: Famous Trials; Insanity Defense; Sentencing.

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Mollen Commission

British historian Lord Acton is known for his famous quote concerning government, politics, and integrity: power corrupts and absolute power corrupts absolutely. Police officers are members of the government, whether municipal, state, or federal. And police officers have enormous power, which includes the power and authority to legally

kill a human being. Police corruption tends to be widespread in large municipal departments that employ hundreds or thousands of police officers. It has been suggested that the size and bureaucratic nature of large police departments inherently fosters police corruption, but there are many other causes besides just departmental size. New York City, which has the largest municipal police department in the United States, is no exception.

Frank Serpico and the Knapp Commission

In the early 1970s, the Knapp Commission was formed in New York City to investigate allegations of widespread corruption in the New York Police Department. The actions of Frank Serpico, a New York police officer who attempted to expose the corruption and who was subsequently shot for his efforts because his fellow officers failed to back him up in a drug raid, were instrumental in the success of the Knapp Commission. The Knapp Commission asked in its final report if history would repeat itself. Sadly, that comment was prophetic. Twenty years later, in 1992, the Mollen Commission was formed to investigate corruption in the New York Police Department (NYPD). On May 7, 1992, New York City police officer Michael Dowd and five other New York police officers were arrested by the Suffolk County police (not the New York police) for trafficking in cocaine. Despite 16 previous internal investigations of Michael Dowd by the New York police, no charges were ever brought against Dowd, and he was never disciplined. Further, Dowd was given superb evaluations and noted to have good career potential. Dowd had been pursued for years by New York City internal affairs investigator Joseph Trimboli, who had been ignored, delayed, harassed, and sabotaged in his investigation of Dowd by the NYPD command. As a result of ensuing scandal, New York City Mayor David Dinkins appointed the Mollen Commission to investigate the situation.

The Mollen Commission, after its creation, began an extended investigation into police corruption. What they discovered was astounding. The commission found that the Internal Affairs Division engaged in willful misconduct to cover up police corruption, including withholding vital information to protect corrupt police officers under investigation. This finding supported

the allegations made by Trimboli. What was extremely disturbing was that the Internal Affairs Division was found to have kept “tickler files” on their own investigating officers without charging them, so that they could be blackmailed at a later date. The commission found that, although the majority of officers in the New York Police Department were honest, there were well-organized groups of rogue officers. These officers skimmed money from crime scenes, dealt drugs, brutalized citizens, and regularly engaged in such crimes as robbery and burglary. New police cadets were taught the “Code of Silence” and that they were not supposed to “rat” on fellow police officers. Like the Knapp Commission, the Mollen Commission also found perjury to be widespread. The police union notified officers when they were placed under investigation so that they could avoid being caught. Essentially, the Mollen Commission found that there was a pervasive attitude in the New York Police Department that valued loyalty to fellow officers over integrity and loyalty to the law. The police commanders were found to have abdicated their responsibilities, engaged in willful blindness to corruption, and were incompetent to police themselves.

Final Report

During the investigation by the Mollen Commission, Police Commissioner Raymond Kelly announced that he would upgrade the Internal Affairs Division to a separate bureau and start holding officers accountable for their investigations. The proposal was viewed as an attempt to stop the investigation and prevent external investigation of the police. The Mollen Commission rejected the change as insufficient. The Mollen Commission issued its final report on July 6, 1994. As a result of the Mollen Commission Report, in 1995, New York City created the Commission to Combat Police Corruption. The entity was permanent and independent of the NYPD and was authorized to conduct its own investigations. Some police officers, including Michael Dowd, were arrested, prosecuted, and convicted. However, there were some criticisms of the Mollen Commission that some top police leaders were protected from the inquiry.

Following the Mollen Commission Report, a new police commissioner, William Bratton, was

appointed. In November 1995, Commissioner Bratton announced a plan in which police officers would be trained to tell the truth. Not a few people were stunned that New York City police officers had to be trained in such a basic ethical concept and essential requirement of the criminal justice system. Unfortunately, the Knapp Commission was correct—history repeated itself and 20 years later, the Mollen Commission had to be created to address police corruption, which the New York Police Department was incapable of doing itself.

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See Also: Code of Silence; Knapp Commission; New York City; Police, History of.

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Monroe, James (Administration of)

James Monroe (1758–1831), fifth president of the United States, distinguished himself through both military and political accomplishments. Born into a modest Virginia farming family in 1758, he led the United States during a time of expansion and prosperity. His administration is best known for setting the Monroe Doctrine, an international policy that has been applied by presidents even in modern times. Despite all of his political and military successes, financial problems and large debts haunted him most of his life, even after leaving the White House.

Monroe began college at William and Mary in Williamsburg, Virginia but did not immediately finish because of the outbreak of war with Great Britain. He volunteered with the Continental army while attending college. Monroe was involved in early open engagements with British soldiers and suffered a near-life-ending wound. He is credited with being the last president to fight in the Revolutionary War. Following the war, Monroe studied law under Virginia Governor Thomas Jefferson. Monroe was elected to the Virginia General Assembly in 1782. He also served in the Continental Congress from 1783 to 1786. Running out of money, Monroe resigned from Congress in order to practice law. Shortly after returning to practice law, he again was elected to the Virginia General Assembly. Although he did not attend the Constitutional Convention, he spoke out in Virginia on behalf of the Anti-Federalists and voted against ratification. Monroe was elected to the U.S. Senate in 1790, served as an ambassador to France and Great Britain, as governor of Virginia, as secretary of state, and as secretary of war during the War of 1812. After leading the war effort, Monroe received national acclaim and won the presidential election of 1816 without campaigning; he won reelection in 1820, running unopposed.

Era of Good Feelings

Monroe's administration served during what has been called the "Era of Good Feelings," a time of limited politically partisan conflict. He began his presidency with a tour of every state, full of pageantry and well-wishes. Monroe was the first president to conduct such a ceremonial trip since George Washington. The early part of Monroe's presidency witnessed expansion of the nation's boundaries, reduction of the national debt stemming from the War of 1812, vast improvements in transportation, and expansion of industry and agriculture. However, controversies did arise, particularly with an economic depression in 1819. National debt accumulated during Monroe's second term, political infighting occurred among his administration and conflicts arose with Russia over lands in the Oregon Territory. On the international stage, Monroe laid the foundation for the Monroe Doctrine in 1823. This policy stated that the United States would not interfere



James Monroe, lawyer and fifth president of the United States. His administration is marked by many Supreme Court rulings that increased federal powers.

with European affairs, including a potential war between France and Great Britain, but that the United States would also not allow further colonization by European or Asian nations in North or South America. While Monroe stated that the United States would not interfere with existing colonies, he clearly signaled to other nations that the Americas were exclusively within the U.S. sphere of influence.

Slavery became a major controversial issue during the administration as well. Monroe held slaves throughout his life, but he strongly supported efforts to settle emancipated slaves on the west coast of Africa in current-day Liberia. The Liberian capital, Monrovia, is named in James Monroe's honor. Disputes arose in Congress over the slavery status of new states admitted to the Union. This led to the Missouri Compromise of 1820, which allowed new southern states to be admitted as slave-holding jurisdictions but banned slavery in new northern states.

This era was also marked by many Supreme Court rulings that enhanced the power of the national government. Monroe's longtime friend, John Marshall, a persistent supporter of a strong

central government, led the Supreme Court in a string of pro-national government decisions, including *McCulloch v. Maryland* (1819) and *Gibbons v. Ogden* (1824). In the case of *Cohens v. Virginia* (1821), the court ruled that it possessed the power to review and overturn a state's proceedings in a criminal case. The opinion, authored by Chief Justice Marshall, opened the door for judicial review of state criminal laws. While Monroe originally supported the Anti-Federalist ideals and espoused a weaker federal government, he nevertheless did not oppose the Supreme Court's pro-national government rulings as he looked to expand his executive powers.

In the years following his presidency, Monroe kept a low profile, declining the invitation to run for governor of Virginia and rejecting the invitation to be part of the presidential nominating convention in 1827. He remained largely out of the political limelight, never publicly voicing his opinion on political matters. He continued to struggle with debt, much of which he incurred during his public service. After being forced to sell his Virginia property to pay his debts, he died nearly destitute on July 4, 1831, in New York.

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See Also: *Cohens v. Virginia*; *Gibbons v. Ogden*; *McCulloch v. Maryland*; Slavery.

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Montana

The fourth-largest state in the Union and one of the most sparsely populated, Montana attained statehood in 1889 after 25 years as a U.S. territory

and about 50 years of white settlement before that. Its sparseness and remoteness contributed to the prevalence of outlaws, both before and after statehood.

Police and Punishment

Early law enforcement was handled by federal marshals, private security forces (especially in mining settlements during and after the gold rush), town marshals, constables, and night watchmen. Formal police departments, modeled after the city police departments elsewhere in the country (which in turn were largely modeled after the London police), barely preceded statehood and initially consisted of a police chief or city marshal overseeing plainclothes patrolmen. Uniforms were introduced around the turn of the century, and full professionalization, including mandatory certification and a six-month trial period for new patrolmen, followed in the first years of the 20th century.

The “Old Prison,” today a registered historic site, was Montana’s territorial prison when it was built by convict labor in 1871, became the Montana State Prison upon statehood, and remained the primary penitentiary until 1979. The building of a prison before statehood is unusual—even in early years of statehood, many states relied on county jails and cheaper nonincarcerating forms of punishment like corporal punishment and fines—and reflects both the era (Montana, becoming a state relatively late in American history, joined a union already rather mature and sophisticated) and the problems of outlawry and vigilantism. The prison suffered many problems of overcrowding and underfunding and was replaced by a new Montana State Prison in 1979.

Montana is a capital punishment state. As in other states following the Supreme Court decisions of the 1970s, homicide is one of the only crimes for which the death penalty may be used. The exception is aggravated assault or kidnapping while incarcerated in a state prison, if the offender is a persistent felony offender or has been previously convicted of murder. Death sentences are suspended in the case of mental unfitness or pregnancy.

Crime

During the territory’s gold rush period of the 1860s, a gang of outlaws called the Innocents arose, focusing their efforts on robbing gold while

it was being transported. The leader appears to have been Henry Plummer, the sheriff of Bannack. The brief-lived town of Hell Gate was settled in 1856 and abandoned as a viable settlement in 1865, though some settlers continued to live in the area for some time after that. During that short period, members of Plummer’s gang settled in the town—probably around 1863, when Plummer’s associate Cyrus Skinner purchased a saloon—and made a show of throwing their weight around. Plummer himself would use a store safe, containing \$65,000 in gold dust, as his seat, leading to the rumor that the gang intended to crack the safe. It’s not clear if the gang actually committed any serious crimes against town residents, but their fear of the gang grew sufficiently that a group of vigilantes was hired in 1864. They were a small portion of the Montana Vigilantes, a vigilante justice group formed the previous year in response to the territory’s rampant crime and at their height included at least 500 men. Thousands more gathered to watch the Vigilantes execute Plummer, while several members of his gang were hanged from trees around town.

In Virginia City, the Vigilantes used the code 3-7-77 to notify individuals whom they would target if they didn’t leave town. The origins of the code are unknown; the oldest known theory is that the criminal was given 3 hours, 7 minutes, and 77 seconds to leave town, while other theories have suggested the dimensions of a grave or a Masonic origin. Today, the Montana Highway Patrol, founded in 1935 (after a two-year period in which Montana led the nation in highway fatalities), long after the heyday of the Vigilantes, includes the code on its uniform patch.

Butte, Montana, experienced rapid growth and prosperity during the heyday of its copper mines in the 1880s, which led to the opening of numerous saloons and gambling halls. The decade also saw the establishment of Venus Alley, Butte’s red-light district, which until 1917 was one of the last openly tolerated (but technically illegal) prostitution districts in a western city. A block-long brick alley in the center of town, Venus Alley included numerous “cribs” and “double deckers,” rooms for prostitutes to conduct their business in, with call boxes connected to the bars and noodle houses nearby. It’s no coincidence that Venus Alley, like many red-light districts, operated during one of

the most sexually repressed periods in Anglo-American history; the prostitutes of Venus Alley were the mirror image of Victorian women in polite society, sexually aggressive, foul-mouthed, sharp-tongued, often drinkers. Hundreds, possibly thousands, of prostitutes of all ages and races worked in Venus Alley.

Madams operating brothels tended to hire white women and expected a greater degree of refinement from them. The most famous brothel in Montana was the Dumas Hotel, which opened in 1890. The three-story building was equipped with skylights and large parlor rooms, in addition to its many basement cribs and tunnels to other buildings in town so that the richer clientele could attend without being seen entering the premises. While most of Venus Alley was closed down in 1917, the Dumas Hotel was influential enough and wealthy enough to persist in its business, largely overlooked by law enforcement until 1982, when income tax violations shut the business down. It was later turned into a museum by new owners and is listed on the National Register of Historic Places.

Montana's crime rate is considerably lower than the national average, at 272 violent crimes per 100,000 inhabitants in 2010. Aggravated assault constitutes most of those crimes (221) with rape (32) a distant second. While in most of the country crime rates climbed steadily after World War II, soaring to a peak in the 1990s before falling, Montana's experience has differed. Montana actually reached its violent crime peak in 2001 (352) and has experienced a series of ups and downs rather than the steady slope of the national crime rate. Crime rose steadily until 1978 (237) before falling to a low of 116 in 1989, climbing somewhat until 1995 (177), falling until 1998 (138), and then accelerating rapidly to the 2001 peak.

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See Also: Frontier Crime; Lynchings; Prostitution, History of.

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Moonshine

Hooch, shine, mountain dew, or white lightning—the names change but one thing has remained constant throughout American history: Moonshine is untaxed and therefore illegal liquor. The history of moonshine predates America and continues to be written. A social history of crime and punishment in America flows through the mountains and rebellions to the speakeasies and gin joints of Prohibition and beyond into moonshine's current commodification for a consumer culture.

Whiskey Rebellion

In America's infancy, distillation of alcohol was widely practiced. As medicine, disinfectant, drink, and even currency, moonshine formed an important part of early American life. Farmers could transport more corn to market in the form of liquor; therefore, the economic aspect of distillation was significant. Shortly after the Revolutionary War, in 1791, moonshine had its first run-in with the law. An excise tax was levied against whiskey in order to help pay for the national debt incurred by the war. Those who resisted the taxes on whiskey referred to themselves as "blockaders." In some mountainous areas, tax collectors were tarred, feathered, and otherwise attacked in response to the "whiskey tax." George Washington raised a militia in Pennsylvania to quell this rebellion, which became the first official test of federal power in the United States. Not long after, as a debated political platform, the Jefferson administration repealed the tax on whiskey.

For nearly a century, aside from a short stint during the War of 1812, whiskey making was legal throughout the expanding United States—

until the Civil War. In 1862, President Abraham Lincoln formed the Internal Revenue Service. Again there was resistance, this time mostly in the form of tax evasion by the continued illicit manufacturing of alcohol. The 1870s and 1890s were periods of increased moonshining activity due to economic depression. Since this practice often occurred under the cover of darkness, it is thought that this is where the term *moonshining* originated. Stories of moonshiners and revenuers have become a large part of mountain lore, and in the early 20th century, moonshining became much bigger business. Organized crime figures like Al

Capone became interested in the mountain spirits with the passage of the Volstead Act in 1919.

Prohibition

Deemed “the noble experiment,” alcohol prohibition in the United States provides a strong example of unintended consequences. Distillation of intoxicating beverages was outlawed as the Volstead Act provided a definition of “intoxicating liquors,” putting the Eighteenth Amendment into effect. The new law did nothing to quell the demand for alcohol, however, and continuing the supply opened opportunities for organized



On April 25, 1923, Prohibition Bureau agents and police conduct a raid on Carl Hammel's lunchroom in Washington, D.C., seizing barrels of liquor stored in the basement, where he conducted his trade in a back room. The 1919 Volstead Act had some unintended consequences. Prohibiting alcohol had little effect on demand and instead opened up opportunities for organized crime, black markets, speakeasies, gin joints, underground clubs—and moonshining, which supplied these operations.

crime in the United States through such figures as Capone. Speakeasies and gin joints, illegally operated bars, and underground clubs conducted business in spite of Prohibition, and moonshiners provided the necessary ingredient for their continued operation. Those who delivered the prohibited product were known as bootleggers or rumrunners, and these drivers built extraordinarily fast cars in order to outrun the police, if necessary, on such deliveries.

From this phenomenon was born the sporting event now known as NASCAR racing. The inability to stop production, distribution, and sale of alcohol spawned not only a black market and organized crime but also significant disrespect for the law. The success of the underground clubs and more social acceptance of alcohol, particularly during the Great Depression, combined with increased violence (culminating in the St. Valentine's Day Massacre in 1929), signaled the beginning of the end for Prohibition. In 1933, the Twenty-First Amendment repealed the Eighteenth Amendment. However, to date, the distillation of spirits is still heavily regulated and economically impractical for most. Therefore, distillation for personal beverage production remains effectively illegal.

Moonshine in the New Millennium

However, as with the rest of American history, this prohibition is widely ignored. Moonshine is still very much a part of the landscape and has even begun to be seen in an entirely new light. Manufacturers of stills for producing alcohol claim they cannot meet demand, and a quick Internet search provides a wealth of information and contacts for those interested in distilling. Even "legal moonshine" has made an impact recently, as the outlaw history of this illicit spirit has been used to commodify, market, and sell the white whiskey legitimately. Despite the changing nature of laws, social norms, crime, and punishment, moonshine remains a part of American history, past and present.

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See Also: Bootlegging; Drinking and Crime; Internal Revenue Service; Prohibition; Volstead Act.

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Morality

Holding offenders accountable for their behavior is a moral responsibility charged to the criminal justice system. From the earliest history of the United States, religious idealism held individuals personally accountable for criminal and deviant behavior. Even as early as the late 18th century and into the mid-19th century, nonreligious idealism altered the nature of the relationship between God and man and used new methods to hold criminals responsible. By the mid-19th century, positivists viewed the world as having influence over individual behavior in an attempt to explain criminal behavior in terms other than free will.

In the late 19th century, pragmatists and psychologists introduced psychological explanations for behavior. Pragmatists altered the concept of humanity, adding the concept of treatment to the concept of punishment. In the first half of the 20th century, existentialists again changed the concept of humanity. The existentialists claimed that every individual has the ability to make meaning of his or her own life. Each person could also determine the meaning of other people, determine the meaning of the universe, and determine the meaning of God. Accordingly, one is primarily responsible to self, but this freedom also comes with responsibility to others. Formal changes in criminal justice made throughout the history of the United States can be linked to these changing concepts of morality.

Informal changes have been influenced by popular ideas, such as social contract theory and utilitarianism. Idealists came in many forms, but

each believed the world of ideas to be more real than the physical world. Positivists also came in many forms, including social positivists, biological positivists, and legal positivists. Some pragmatists emphasize sociological explanations of behavior while others are more closely associated with psychology and education. A wide variety of existentialists also exists with focuses ranging from religion to nihilism. Postmodernists have not formed a united front other than to be analytical and critical. An examination of these formal theories provides myriad explanations about the meaning of morality.

The Meaning of Morality

Morality, defined as a set of normative rules, has controlled undesirable behavior for centuries. Morality, defined as a unique set of principles, has also founded societies for centuries. In both cases, the term *morality* afforded humanity a distinct aura of authority in human development. Initially, moral responsibility linked personal responsibility to religion. Religion provided the authority required for moral certainty. Some still cling to these “original” ideas, believing they are the true foundation of this nation. For some non-religious people, moral responsibility has evolved into ambiguity. Moral uncertainty may produce a lack of clear direction for criminal justice policy. Criminal justice policy and practice may reflect moral controversy in a society. The criminal justice system has always had the responsibility of holding offenders personally responsible for their behavior. How offenders are to be held responsible is a moral issue.

Criminal justice policy makers and practitioners do not always agree upon the meaning of morality. Reasons for adhering to any particular moral rule or moral principle may not be shared by all criminal justice professionals. Yet throughout American history, the connection of morality to the rule of law emphasizes just compensation for victims and fair and equal treatment of offenders. In every case, morality is an overarching concept, with each theory of morality containing similar components: (1) a concept of humanity, (2) a concept of the universe/environment in which humanity exists, and (3) a concept of God. For centuries, the determination of morality has been linked to the perception of reality. The imperative nature of

moral values logically requires no less a base than ultimate reality, that is, God or empiricism. How one recognizes ultimate reality is the process of validating one’s moral position.

Because defining morality is difficult, some have sought easy answers. Others have sought elaborate explanations. Social philosophers endeavor to validate their positions in an attempt to bring about a form of moral certainty. Each of these attempts to validate morality is unique. Consequently, each philosophy bears separate tenets for a societal response to crime and deviance.

Religious Idealism

Religious idealism depends chiefly on the concept of God and God’s relationship to humanity to determine the nature of morality. During the inception of the United States and in the prior colonial period, idealism was the prominent philosophical norm. Idealism, often religious idealism, influenced definitions of deviance and criminal behavior. Idealism also affected the manner in which offenders were treated and shaped the purpose of the courts. Idealism holds that there is a prescribed purpose and intent for humanity. Not all idealistic beliefs are the same. In the early days of the United States, religious ideas dominated specific concepts that affected the concept of morality. Specifically, religious idealism developed the prominent concept of humanity as a creation of a supreme being. Behaviors contrary to the perceived nature of the creatures of God were considered to be either criminal or deviant. Consequently, offenses of witchcraft, drunkenness, or poverty may have met a community’s definition of criminal behavior.

The moral imperative for the religious idealists was to behave in a manner consistent with teachings of God, and with the influence of Puritans and Quakers, the teachings reflected Christianity. Humanity was not only considered to be intelligent animals but also possessors of souls that would be judged ultimately by the Creator. The essence of humanity is the soul. Because impurity in one’s soul justified punishment of wrongdoing, and as God would punish for sins, men on earth could punish wrongdoers for crimes. Through religious idealism, not only was the concept of humanity shaped, but it also formed a teleological purpose of the universe. Religious idealism also

developed the concept of a deity in relation to humanity. Of course, these ideas were not unique to the United States, nor were they original; however, the influence of Puritan beliefs and Quaker theology has had an impact on the necessity of a criminal justice system and its administration.

Some considered the Christian god a vengeful god and consequently they sought revenge for wrongdoing. Many also saw the Christian god as just and fair, and therefore sought to seek retribution in a just and fair manner. The purposes of the punishment were to demonstrate to the wrongdoer that God's order had been violated. The Puritans used forms of public humiliation to shame the offender for the violation of God's order. The Quakers used reform as a method of bringing the wicked closer to God.

The influence of Quakers in the establishment of prisons in the early 19th century is an example

of religious idealism's sway on criminal justice. Under this influence, prisons were designed to house convicts in isolated cells. Offenders were not allowed any personal items. They were expected to work, because Quakers prized the work ethic as a process to bring the offenders closer to God's intended purpose for them. Other than materials needed for their work, the only item an inmate could possess was a Bible. A critical disciplinary rule in the prison was silence. The notion was that the inmate would be contemplative if provided the opportunity. Religious beliefs that God has a purpose for humanity validated prisons. They also supported the notion that every individual could discover this purpose if given sufficient time to contemplate.

The consequences were disastrous for the offenders. Because of the silence and lack of human contact, the sanity of offenders was



Prisoners in the southern United States break up rocks for road construction, circa 1934–50. By the mid-19th century, one of the “cures” for crime and deviance was hard labor, which taught prisoners that crime does not pay and that honest work has value. The “congregant system” of hard labor, work, and a code of silence originated in the Auburn State Prison in New York, constructed in 1816. A portion of the profit from prisoner labor helped to support the prison.

affected. The Quakers, to their credit, recognized the failure of their method and prompted reforms of the prison system. The conditions created in the prison and their unintended consequences shocked the religious idealists. Their sense of morality provided the incentive to proceed in another direction to obtain their goal of moving criminals closer to God.

Religious idealistic morality created ideals for what a human being should be. Additionally, it provided a purpose for what the universe ought to be and an idea of the nature of God. These ideas influenced moral imperatives. Religious idealism remains in American society, and it still influences what many people believe to be moral. Influenced by their religious idealism, these people also believe that this morality should influence policy and practice in criminal justice.

Nonreligious Idealism

Nonreligious idealism was also a prominent factor in early American culture. Nonreligious idealism depended on the development of an ideal society or ideal world as a basis for moral thinking. After the Great Awakening in the mid-18th century, nonreligious idealists took on an influential role in moral development. These idealists believed concepts of justice, equality, and freedom to be more real than the lives and property these ideals defended. Included in this reality were other ideas of the American work ethic and manifest destiny. Certainly, these ideas may have originated with religious figures, but the wide acceptance of these ideas was not dependent upon accepting the Protestant Reformation as sacred. Even nonreligious people accepted the values of these concepts.

As it was for the religious idealists, ultimate reality for nonreligious idealism was not located in the physical world but in the world of ideas. However, for some idealists, material gain validated their beliefs. The importance of the work ethic and a belief in manifest destiny contributed to the richness of the American ideal, and many believed that these concepts would lead to justice, equality, and freedom. In the early years of American culture, criminal behavior and deviant behavior were considered to move America away from its aspirations.

By the middle of the 19th century, one of the “cures” for crime and deviance was hard labor.

Sentencing offenders to prison at hard labor was to teach them lessons: (1) crime does not pay, and (2) honest work has value. Adopting hard labor and silence as standards of the Auburn prison in New York reflects nonreligious ideals replacing the penitence model promoted through religious idealism. In fact, the term *prison* was used to describe Auburn, rather than *penitentiary*. In this time period, morality was more of an overarching idea of society rather than a set of moral dictates. These idealistic concepts of morality influenced the criminal justice system in a more passive manner. The public accepted the criminal justice response to crime as a mechanical process of arrest and incarceration, with the belief that a better society would result. The society was willing to accept the idealism of human beings living in a purposeful universe created by God, even though a specific religious influence had abated.

Other idealistic concepts include the social contract theorists of the 18th and 19th centuries. These idealists argued that humanity is in need of a social contract. The social contract is an agreement to allow government to rule over humanity. Some social contracts claimed to move society toward a natural peaceful state. Other social contracts desired to move society away from a natural warlike stage. This popular idea appealed to Americans of this era because of the dualism and the apparent commonsense applicability. If one could know the true state of nature, then one could create a society that would morally address issues of crime and deviance. The contract denotes social obligations, and one is obligated to obey for the betterment of society.

Utilitarianism applied to crime was another form of idealism. Supporters of this approach did not empirically verify the idea that severe, certain, and swift punishment would deter criminal behavior, but they encouraged the practice of measures that were compatible with the utilitarian ideal of “the greatest good for the greatest number.” Both the social contract theory of the 19th century and utilitarianism remain popular ideas in American society. A criticism of idealism is that the idealist method of validation is sufficient for the individual idealist. However, those who choose not to validate ultimate reality on faith may feel as oppressed by the religious as the religious Puritans felt oppressed by England.

Idealism works in a society where everybody agrees. Faith can bring about such agreement. Those who validate reality on something other than faith will be critical of idealism.

Positivism

Positivism of the mid-19th century altered the concept of morality by challenging the idealistic conception of God, which in turn challenged the idealist conception of humanity and the world. Positivism came from Europe and approached social conditions from a scientific perspective rather than a religious or metaphysical perspective. Positivism is a philosophy that asserts that all problems can be resolved through logic alone. Positivism rejects religious idealism and other metaphysically based ideologies. Human beings are not seen as spiritual beings but as thinking creatures often influenced by their environment in ways not previously considered. For the positivists, personal responsibility for behavior was not a failure to adhere to religious doctrine but rather a failure to understand the logical purpose for orderly behavior.

Perhaps the greatest contribution of the positivists was the development of the scientific study of society. Social situations and conditions could account for individual behavior. This perspective shifted a moral interpretation of the offender's personal responsibility. Instead of the offender making a choice to be evil or unlawful, positivism takes into account the situations in which the offender lived. Hence, criminal behavior may not be just the result of a misguided soul but the result of a reasonable person living in an adverse situation.

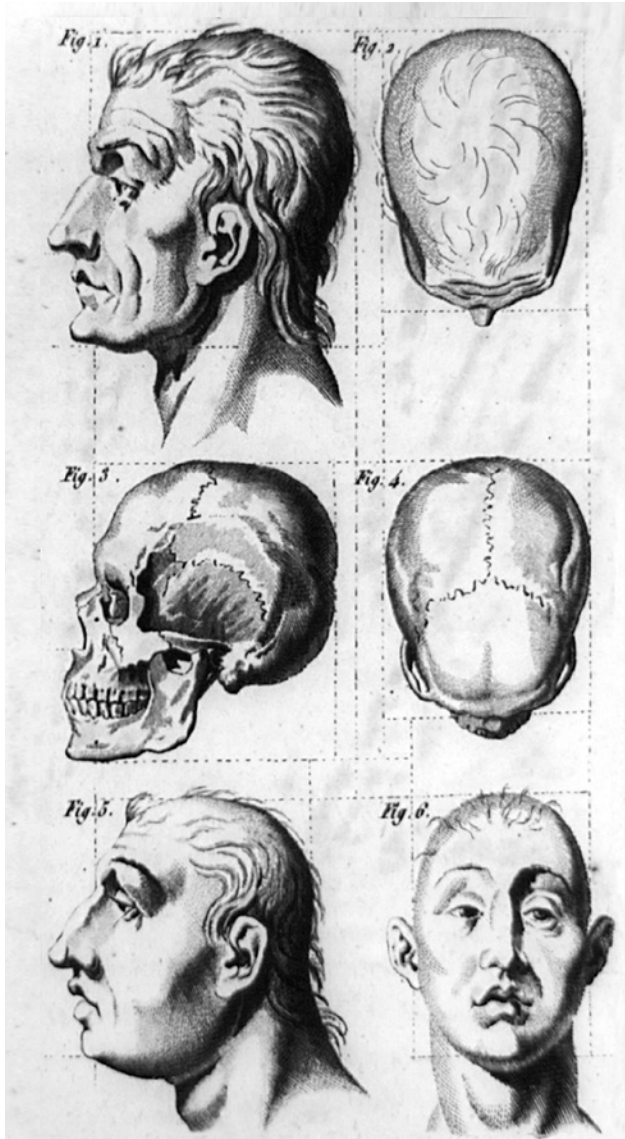
From a moralistic point of view, the significance of positivism was its attempt to explain deviant behavior in an objective and nonjudgmental manner. Acting scientifically, positivists attempted to explain in cause-and-effect terms that criminal behavior did not rely on adherence to a non-empirical belief system or evidence based on faith. However, this scientific method produced quasi-scientific explanations for criminal behavior. In some cases such as phrenology, it was simply a misunderstanding of the scientific method, and in other cases like atavism, it was a vain attempt to associate physical characteristics with deviant and criminal behavior. The consistency was

that positivists believed human behavior could be explained scientifically and be held accountable with empirical standards.

Later criticisms of positivism noted that life is complex. Reducing life to logical considerations alone fails to account for the intricacies of human existence. Religious idealists, who remained steadfast in their ideas of humanity and the universe being divinely connected, assailed positivism. However, from positivism, sociology emerged as a field of study. Sociological studies altered the diagnosis and the treatment of offenders. The influence of positivism continued in America, affecting legal theory and philosophical phenomenology. Positivism advanced in areas of biology, sociology, and law. All these areas influenced society's moral response to crime. Offender behavior could be assessed on the basis of social conditions, including economics, geography, or social status. Biological positivists posed issues of heredity, genetics, and physical characteristics. Legal positivists used logic as the primary determinant in resolving legal conflicts. The influence of positivism remains in America's moral response to crime. The problem for the positivists has been and remains that although the process of validation may be understood, there is no singular definer of a "good" person.

Pragmatism

Pragmatism in the latter portion of the 19th century was yet another philosophical development. Again, the influence of a new philosophy altered the concepts of humanity, universe, and God. Pragmatism, a philosophy developed by Americans Charles Sanders Peirce and William James, among others, altered the course of morality by considering that every individual experiences his or her environment uniquely. The universe was not a purposeful entity. Rather, the universe was something that confounded and confronted problem-solving human beings. The view of God was altered too. God may be relevant for an individual, but pragmatism's concept of God could not endure a God that provided purpose and meaning to all of humanity. Application of the scientific process was also critical to this philosophy, but the importance was not because there was a presumption that all problems could be resolved logically but rather that logic would provide the



Positivism was an attempt to explain deviant behavior in an objective and nonjudgmental manner. To show that explanations for criminal behavior did not rely on a belief system, positivists adopted some dubious scientific approaches, such as phrenology.

most objective possibility in providing insight into a problem. Insight into the problem, however, could not guarantee resolution to every situation.

Pragmatists altered the concept of the individual to that of a problem solver. Unlike religious idealists seeking perfection, and unlike the positivists being benignly logical, the pragmatist lives in a confounding universe. In this confusing world, it is the responsibility of the individual to find answers. Morality for the pragmatist has the

universe as the center of humanity's attention, not humanity as the center of the universe. Yet the world is a confusing place, according to the pragmatist, a place of which the individual must make sense. Compounding this perspective was the notion that individuals do not appear in the universe as mature subjects but develop into mature beings as they experience the universe in a manner unique to them.

From this pragmatic perspective, William James introduced psychology as a developing field of study. Pragmatism embraced the embryonic forms of sociology and tried to explain human behavior from a psychological and sociological point of view. To understand failure of individual moral responsibility, one must understand the psychological development of the individual and the influence of the individual's environment. To understand is not to excuse. From this pragmatic position, criminal behavior was not a condition reflecting flaws in the soul but rather flaws in thinking. If human beings are above all else problem solvers, then criminal behavior is failure to consider all possibilities or the consequences on others. Pragmatism holds to the concept of individual rights consistent with American tradition. Violating another's rights is not excusable, but it can be understood from a sociological and psychological perspective. Incarceration and hard labor provide insufficient treatment of offenders, though imprisonment remained widely used. The criticism of pragmatism for not developing the concept of humanity beyond that of a problem solver surfaced in the early 20th century.

Existentialism

Existentialism, which many scholars believe has roots similar to postmodernism, alters the concept of morality by challenging the role of humanity in the universe. In the late 19th century to the mid-20th century, existentialism rose as an alternative to previous modes of thinking. Existentialism surfaced shortly after pragmatism, again altering the basic components of morality. Existentialists believed that human beings were more than logical problem solvers, and that the universe was not merely discoverable but was open to interpretation by humanity. Existentialists placed importance on the individual. Not only is the individual a problem solver, but the individual gives meaning to his

or her entire existence. The existentialists cannot deny personal responsibility for one's experience. Rather than deciding what God's plan for humanity is, an existentialist asks, "Why would an individual create a concept of God that gives God such power?" Moral responsibility is no longer an externally mandated responsibility. Moral responsibility includes adherence to principles extracted through the experience of human beings living in relation to one another. Understanding morality for the existentialist is not memorizing a set of rules but rather a complex intellectualized process in which the individual is ultimately responsible for behaving reasonably toward others. How existentialists hold one criminally responsible is unclear. They seem to borrow ideas from the pragmatists and positivists. Existentialism, though valued for its criticism of the existing social institutions, offers little in the form of concrete suggestions in asserting the need for personal responsibility in a criminal situation. Existentialism suggests alternatives to criminal justice from an intellectual perspective. However, practical applications of these ideas also suggest new criminal justice institutions. Unfortunately, there is no clear picture of how these institutions would operate.

Postmodernism

Postmodernism, like existentialism, criticizes previous philosophical and moral positions. The criticisms challenge how the individual experiences and interprets the world. Postmodernism also challenges whether one can actually experience reality or whether science can provide a certainty. The concept of reality for the postmodernist challenges other philosophical notions of reality. Rather than knowing reality through experience, postmodernists believe that reality is an interpretation of signs and images and not necessarily external to the mind of the interpreter. These and other challenges posed by the postmodernists have caused stirrings in the intellectual community about what can be claimed as a valid experience. Through rhetoric and other strategies, some postmodernists believe their claim verifies that nothing can be known. Others seem to take this opportunity to revitalize idealism. Perhaps because postmodernism criticizes moral positions better than it creates them, the impact of postmodernism on criminal justice

practice and policy remains unclear. However, if taken seriously, postmodernism may push the next generation of social change in a particular direction. It may also help focus a debate on what value modernity has had for social institutions, including criminal justice.

Twentieth-Century Social Contract Theory

Though utilitarians effectively countered many of the idealistic concepts of the social contract, the social contract resurfaced in the 20th century with the work of John Rawls. Focusing on the concept of justice as fairness, Rawls introduced a method for making moral decisions based on the "veil of ignorance." Moral dilemmas can be addressed in a problematic approach even by those affected by the final decision. In effect, what a person does is to create a state of mind in which one makes a decision without considering how one will be affected. This objectivity should lead to fair decision making. This theory reinforces the notion that anyone is capable of making a meaningful moral decision, if one is able to put aside one's own interest. Rawls encourages the idea of fairness in the concept of justice. Perhaps the most important aspect of Rawls's theory is that it expands the discussion of morality to a discussion of justice.

From this theory of justice comes the question of the purpose of law in socially contractualized society. If the purpose of law is to enforce the agreement, and one does not like the consequence of the decision, why would one agree to it? If the purpose of the law is to enforce the rights of individuals, then what is the source of these rights? Why is the social contract necessary? In spite of criticisms, modern social contract theory requires that criminal justice focus on justice as fairness. Some criticism of Rawls's social contract theory stems from his idea of fairness. The social contract may provide agreement, but the question remains whether the agreement results in fairness. The importance of morality then is the role it plays in understanding justice. This may be Rawls's most important contribution.

Conclusion

Since the mid-20th century, a debate has been raging about how to connect morality and the law, with no final answer. There is no consensus as

to what is moral, nor is there a final solution to how criminal justice should account for personal responsibility of offenders. From the 19th century to the 20th century, law evolved from an entity into a concept. Richard Posner suggests that law is neither, but that in a democracy, law is a human activity requiring participation from the public. If law and morality are related, perhaps morality is an activity as well. The result will be a democracy from civic discourse.

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See Also: 1600 to 1776 Primary Documents; 1941 to 1960 Primary Documents; 1981 to 2000 Primary Documents; Auburn State Prison; Prisoner's Rights; Punishment Within Prison; Puritans; Quakers.

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MOVE

On May 13, 1985, the Philadelphia Police Department ended a day-long siege of a row house occupied by members of the radical group MOVE by dropping a bomb on the roof of the house from a helicopter. The ensuing fire destroyed 6221 Osage Avenue and more than 60 surrounding West Philadelphia homes. During the siege and fire, six MOVE members and five

of their children died; only one woman and one child escaped alive.

John Africa's Commune

Vincent Leaphart, operating under the name of John Africa, created the small group that members described as a religion, and detractors described as a back-to-nature cult, in the early 1970s. MOVE sought total transformation of its members. Members adopted the surname Africa, wore dreadlocks, refused to wash with soap, sucked on raw garlic, and limited themselves to raw food (including raw meat). The group surrounded its communal property at 309 North 33rd Street with a high fence and built a six-foot-high platform from which members frequently broadcast missives through a bullhorn. Neighbors complained that MOVE kept 50 dogs, fed rats raw meat, and disposed of garbage and human feces in the yard.

Existing conflicts metastasized when 18 MOVE members appeared brandishing weapons on their platform on May 20, 1977, to protest their treatment by the Philadelphia Police Department and Mayor Frank L. Rizzo. The city passively cordoned the home and eventually tried to "starve out" its residents (Leaphart was not among them) when negotiations over criminal warrants and health code violations failed. After more than a year of haggling, the police besieged the home on August 8, 1978. The resulting shoot-out left Officer James Ramp dead and eight uniformed services personnel injured. Eleven MOVE members eventually were convicted of murder. The events reinforced Leaphart's belief that the Philadelphia Police would stop at nothing to eliminate his organization.

Sometime in 1982, MOVE reappeared at 6221 Osage Avenue (and two other homes in West Philadelphia). Rather than assisting Osage Avenue-neighbors in dealing with the health and sanitation issues, threats and harangues broadcast over loudspeakers, or physical confrontations that MOVE induced over the next two years, the city pursued a policy of nonengagement. However, worried that MOVE might provoke a confrontation on the sixth anniversary of the August 8 raid, the police formulated a plan to force MOVE out of the house if necessary. The day passed without incident.

The city's inaction over the ensuing months allowed the situation to deteriorate. By the spring of 1985, Osage Avenue's increasingly embattled

residents ratcheted up public pressure for action. MOVE used the interlude to reinforce the basement walls with tree trunks and to create a bunker on the roof that provided a secure position to observe and command the block. On May 7, Mayor W. Wilson Goode authorized the police, under the supervision of his primary deputy, Managing Director Leo Brooks, to prepare a plan to serve criminal warrants on MOVE members. Police Commissioner Gregore Sambor selected an arbitrary date—May 13—for its execution, leaving limited time for preparation.

Action began on May 12, when police evacuated the residents of the 6200 block. Early the next morning, MOVE members rejected an ultimatum to surrender. Two police teams entered neighboring houses around 6:00 A.M. under cover of water hoses, smoke projectiles, and tear gas and MOVE members responded with gunfire. For 90 minutes, police used their vastly superior firepower to engage in an intermittent gun battle with the men and women barricaded in the house. The tactical teams failed to execute the impractical and unpracticed plan to blow holes in the outer walls of 6221 Osage in order to insert tear gas. They did blow off the porch of 6221 Osage, possibly killing Vincent Leaphart in the process.

Working without a backup plan, the police persisted in trying to drive MOVE out of the house. Because the roof bunker complicated all approaches, Commissioner Sambor (in the presence of the managing director and with the mayor's approval) decided to bomb it. Rather than neutralizing the bunker and opening a hole to insert tear gas as intended, the explosion ignited gas on the roof and started a fire. Once 6221 Osage was lit, the police and fire commissioners agreed to let it strategically burn. Firefighters turned on their hoses an hour later to an out-of-control blaze. Two city blocks burned over the next six hours, leaving more than 250 people homeless.

Public Scrutiny

The bombing led to considerable public scrutiny. Reports produced by a special investigating commission convened by Mayor Goode and the county investigating grand jury highlighted the gross inadequacies of police planning, as well as hasty and ill-informed decision making during the day's action. At the heart of these failures was a

leadership void at the top of the city and police hierarchies. Among the most controversial issues were the city's total failure to safeguard the children, the scale of firepower used, and the decision to use fire as a weapon. But although the city did pay significant settlements in response to lawsuits, there were few consequences for the officials who participated or directed the operation. Only the lone MOVE adult who survived, Ramona Africa, was indicted or convicted of a crime.

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See Also: Pennsylvania; Philadelphia, Pennsylvania; Texas.

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Mudgett, Herman

Herman Mudgett, widely considered America's first serial killer, was born in 1861 to Levi and Theodate Mudgett in Gilmanton, New Hampshire. Mudgett developed an interest in medicine at an early age and as a young boy reportedly trapped animals in order to perform surgery on them. Mudgett later married Clara Lovering at the age of 18 and had a son named Robert. Mudgett later left his family after performing an experimental surgery on his son that ended up leaving him disfigured. Mudgett attended medical school at the University of Michigan until he was expelled for stealing corpses in order to experiment on the bodies and file false insurance claims. In 1886, Mudgett took a pharmacist

position in Chicago under the alias Dr. Henry H. Holmes. Although still legally married, Mudgett later married Myrta Belknap while managing a Chicago drugstore owned by the Horton family. In addition to managing the store, Mudgett also assisted Mrs. Horton in caring for her ailing husband. After the death of Dr. Horton, Mrs. Horton sold the store to Mudgett. However, Mrs. Horton eventually filed a lawsuit against Mudgett for failing to make payments on the store. Mrs. Horton vanished under mysterious circumstances shortly thereafter. Mudgett claimed she left him the store because she decided to move out west. In 1890, Mudgett hired a watchmaker and jeweler named Ned Connor. Shortly after, Connor ended up leaving his wife Julia and daughter Pearl after suspecting Mudgett and Julia of having an affair. Mudgett took out life insurance policies on both Julia and Pearl shortly before both of them went missing.

The Murder Castle

Mudgett lured many unsuspecting women from the World's Fair in Chicago to his infamous home dubbed "the Murder Castle." Mudgett hired numerous young women to work in the store and hotel section of his castle. All of the employees were required to name him as the beneficiary on their life insurance policies and, along with several customers, eventually disappeared under mysterious circumstances. Although built on the premise that it would be used for tourists coming to Chicago to visit the World's Fair, it was in reality a murder labyrinth full of elaborate trapdoors, secret passages, and sealed rooms used for torturing and killing. Chicago police discovered many of the rooms contained gas pipes and alarms that would signal when occupants tried to escape. Mudgett kept acid and other chemicals in the castle basement for dissolving the remains of his victims. He would then sell many of the skeletons to local medical schools as a way to earn additional money.

Mudgett's friend Benjamin Pitezel helped him build his castle and was his accomplice in filing fraudulent insurance claims around the country. The two devised a plan for Pitezel to fake his own death in order for Mudgett to obtain the insurance money. Pitezel would then go into hiding until Mudgett had secured the money for the both of them to split. The two later met up and traveled



Herman Mudgett, also known as Henry H. Holmes, is generally considered America's first serial killer. He murdered some of his victims, primarily to collect their life insurance, within a complex labyrinth in Chicago that was dubbed "the Murder Castle."

to various states committing fraud. Mudgett was arrested in Texas for attempting to defraud a drug company and was briefly jailed before continuing his crimes elsewhere. While serving time in Texas, Mudgett met fellow criminal Marion Hedgepeth. Mudgett convinced Hedgepeth to join him in his scheme to defraud an insurance company with his accomplice Pitezel. Mudgett later decided to murder Pitezel before the scheme came to fruition. Police detective Frank Geyer later discovered that Mudgett had also murdered Pitezel's three children: Nellie, Alice, and Howard. The autopsy of Pitezel revealed that he died of chloroform exposure prior to being found at the scene of an explosion and subsequent fire.

Mudgett was sentenced to death by hanging in 1896 after being found guilty of murdering Benjamin Pitezel. Prison officials misjudged Mudgett's weight, which resulted in a botched hanging. Therefore, instead of Mudgett's neck being broken, he was left jerking and writhing for 15 minutes at the gallows before strangling to death. Although Mudgett confessed to being a serial killer, the true extent of his murder trail remains unknown. It is speculated that the murder toll may have been anywhere from 30 to 300 people. Although Mudgett confessed to multiple killings, he maintained it was not really his fault because the devil made him do it.

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See Also: Chicago, Illinois; Murder, History of; Serial and Mass Killers.

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Mug Shots

A mug shot is a photograph taken by the police of someone arrested on suspicion of criminal behavior. Usually the picture is of the suspect's head and shoulders ("mug" being slang for "face") and often two pictures are taken, one from the front (full face) and one from the side (profile). These photographs are used to identify the suspect, to show to crime witnesses, and so on. A collection or array of mug shots is sometimes called a rogues' gallery and may include only known criminals or may also include suspects (the latter is a more controversial practice).

Modern photography was developed in the 1820s and 1830s in several countries, including France and England, but it was not until the late 19th century that photography was used systematically in police work. Alphonse Bertillon, working in the police department of Paris, France, is

credited with being the first to develop a system of criminal identification that included front and side photographs similar to today's mug shots, as well as detailed anthropometric measurements, records of tattoos and scars, and notes of personality characteristics. This information was recorded on cards, which were filed and cross-indexed so they could easily be retrieved. In the United States, Alan Pinkerton and the Pinkerton National Detective Agency pioneered the use of mug shots in criminology and kept files, including photographs and newspaper clippings, on active criminals. The Irish-born policeman Thomas F. Byrnes joined the New York City Police Department in 1863 and served as head of the Detective Bureau for the years 1880–95. Among Byrnes's pioneering techniques in criminology was the compilation of a book of criminal's photographs, which he called the "Rogue's Gallery," to present to crime victims and eyewitnesses to aid in identifying perpetrators. One of the most common uses of mug shots is in the initial phase of investigating a crime. Eyewitnesses may be shown photographs of potential suspects and asked to indicate if any of them is the perpetrator of the crime in question. Mug shots may be presented singly or in groups to witnesses, and research has produced conflicting results on which method produces the most accurate identification. In physical photo spreads (the presentation of actual photographs), the one-at-a-time method of presentation has been shown to produce lower rates of false positives (e.g., falsely identifying an innocent person as the perpetrator), while with computerized mug books, the presentation of groups of photos produced more accurate results.

Mug shots are also used in "Wanted" posters to help identify a suspected criminal whom authorities want to apprehend; for instance, in the United States, such posters are often seen on bulletin boards at post offices, and in some cities they are also posted on billboards in public locations. Germany pioneered the use of television as an adjunct to wanted posters, giving out details of unsolved crimes, including photographs of suspects, with the program *Aktenzeichen XY ... ungelöst* (*File XY ... unsolved*), which began broadcasting in 1967. Similar programs have been produced in other countries, including Great Britain (*Crime-watch*), Ireland (*Crimecall*), and the United States

(*America's Most Wanted*). Mug shots of famous individuals have been printed in tabloid newspapers and are available on Websites such as The Smoking Gun, and have also been used educationally, for instance, to demonstrate the toll of drug use to audiences of students.

Eyewitness Accuracy

Although it is a common belief that “seeing is believing” and that eyewitness identification of a subject is a strong indication of guilt, in fact, eyewitnesses are far from infallible. Being a victim or eyewitness to a crime is a stressful and confusing experience that makes it difficult to form clear and detailed memories of any persons seen. The face of the suspect may also have been obscured during the alleged crime, and the criminal may have changed aspects of his or her appearance (e.g., growing or shaving facial hair) since the mug shot was taken, further complicating identification from photographs. When the practice of taking mug shots was relatively new, some

criminals attempted to complicate the identification process by contorting their faces (again, so their appearance during commission of a crime would not match that of the mug shot) but this is less of a problem today. A review of wrongful convictions discovered through postconviction DNA testing found that more than 80 percent of those wrongfully convicted had been identified by one or more eyewitnesses as the perpetrator of the crime. Even in relatively simple tasks such as matching a live actor to a photograph, under relatively ideal conditions (good lighting, no delay, no interference from the emotional upset of being a crime victim or witness), people have proven to be remarkably unreliable. A series of experiments by A. M. Megreya and A. M. Burton found that accuracy of choosing the correct photograph (from a group of 10) of a live actor was roughly 70 percent, whether the identification was conducted after seeing the live actor or simultaneously. Even when test subjects were asked to match a live person to only one or two photographs, accuracy



An early mug shot of a woman identified as Catherine O'Neill from the Detective Bureau of the New York City Police Department, 1906. The mug shot was part of records kept by the Pinkerton National Detective Agency, which pioneered the use of mug shots in criminology in the United States. Similar to the 19th-century method developed by Alphonse Bertillon in the Paris police department, Pinkerton's cards detailed body measurements, records of tattoos and scars, and notes of personality characteristics.

was only about 85 percent. These results suggest that difficulties in eyewitness identification may reflect difficulties in encoding unfamiliar faces, as well as in recalling those faces later.

The process of memory acquisition, storage, and retrieval is complex, and police procedures may induce a witness to falsely identify someone as the criminal being sought. It is common practice for the police to first show photographs of potential suspects (and others) to an eyewitness to a crime. If someone in the photograph is identified as the criminal, a lineup follows in which the suspect and several people similar in appearance are shown to the eyewitness, who is again asked to identify the criminal. The problem with this procedure is that seeing a person's photograph fixes his/her image in the witness's memory, and it is unlikely that anyone other than that person will be chosen from the lineup. A 1977 study by E. L. Brown and colleagues found that the rate of false identification in a lineup, if the witness had previously seen the suspect's mug shot, was 20 percent. In a second experiment, the false positive rate under these conditions rose to 29 percent, hence the term *photo-biased lineup* is sometimes applied to this method of identifying criminal suspects.

The psychological process at work is that of unconscious transference: A suspect previously seen in a mug shot will be familiar to the witness, and he or she may by mistake relate this familiarity to the crime rather than to the array of mug shots he/she was asked to review. A recent survey by S. M. Kassin and colleagues found that almost all (95 percent) of 64 psychologists known as experts in eyewitness testimony stated that they would be willing to testify in court that witnesses exposed to mug shots of a suspect are more likely to identify that suspect in a lineup. Unconscious transference may also lead an eyewitness to identify an innocent bystander as a perpetrator. Although, in general, accuracy of eyewitness identification has not been shown to be associated with factors such as gender, intelligence, or personality type, an experiment by T. J. Perfect and colleagues found that older witnesses were more likely to incorrectly identify bystanders as perpetrators when young people were involved but to not make similar mistakes when the bystanders and perpetrators were older. For young adults, no difference in accuracy was found with either

older or younger perpetrators and bystanders. Other studies have found that older witnesses are particularly sensitive to the length of time they see the perpetrator's face, and that the greatest deficit in accuracy was in those age 69 and older (as compared to witnesses age 60 to 68).

Identification of suspects from mug shots is also subject to many other variables, including the interval between the crime and viewing the photographs, the amount of stress suffered by the eyewitness, the amount and quality of light at the crime scene, the length of time the suspect was seen, and whether the witness's vision was obstructed. It has been noted that people are generally less accurate in identifying individuals of a different race than their own. The use or presence of a weapon during the commission of a crime also lowers accuracy of identification as the witness's attention is likely to be drawn to the weapon (so-called weapon focus) and away from the perpetrator's face.

Another problem with asking an eyewitness to identify a suspect from photographs is what is known as the problem of relative judgment. Although eyewitnesses should be told that the perpetrator is not necessarily included within the photographs he or she will be viewing, this does not totally counteract the problem that witnesses will often select the best match to the perpetrator from the photographs presented—the person who most closely resembles the eyewitness's memory of the person he/she saw committing the crime. This also speaks to the importance of having photos of people of similar appearance to the description of the suspect (same race, general age, etc.) in the photo lineup.

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See Also: Detection and Detectives; Police, Contemporary; Suspect's Rights.

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Muhammad, John Allen

John Allen Muhammad was born John Allen Williams on December 31, 1960, in Baton Rouge, Louisiana. Perhaps one of the United States' most notorious criminals, Muhammad has been dubbed the "D.C. Sniper" for his role as the mastermind in a string of sniper-style shootings in the Washington, D.C., metropolitan area during October 2002. While Muhammad never admitted to being guilty of the crimes for which he was charged, he was convicted of two counts of capital murder in Virginia and was sentenced to death. Muhammad was executed by lethal injection on November 10, 2009, at Greensville Correctional Center in Jarratt, Virginia. While some have recognized Muhammad's execution as a loss for his family, including his four children, others consider Muhammad's actions to be the very type of crime for which capital punishment is necessary.

John Allen Muhammad was raised in Baton Rouge, Louisiana, by his aunt, who took him in at the age of 4 when his mother passed away. Muhammad fathered four children during two failed marriages and spent nine years in the U.S.

Army. Muhammad had a fairly productive military career, serving in Germany and the Middle East during the Persian Gulf War, but he ended his time with the military in 1994, trying and failing twice to start his own business. After receiving divorce papers from his second wife, Mildred Green, in 1999, Muhammad fled to Antigua with the couple's three children. While in Antigua, Muhammad met Lee Boyd Malvo, who would later become his accomplice in the D.C. sniper killings. When Muhammad and his children were located in Antigua, the children were returned to the United States, and Green and the children moved to Maryland.

Muhammad reconnected with Malvo when Malvo and his mother moved to Washington State. Muhammad and Malvo formed a tight bond, and Muhammad eventually taught Malvo how to shoot a gun. Initially, the pair used tree stumps for target practice, but eventually moved on to targeting people. Before beginning their assault on the Washington, D.C., area, the pair were involved in at least one shooting in Alabama and had also been linked to shootings in several other states including Washington, Louisiana, and Arizona.

While a precise motive for Muhammad's D.C. shootings is unclear, some say that Muhammad chose the area because he planned to kill Green, his ex-wife and the mother of three of his children, citing the random sniper-style killings as a means of making Green's death appear random. Others claim that Muhammad's crimes were terroristic and based upon sympathy for Al Qaeda. Whatever the motive for his crimes, Muhammad and his accomplice committed the first of 13 shootings in the D.C. area on October 2, 2002. The shootings began as a spree, with six fatalities occurring in 30 hours. The pair shot and killed 10 and wounded three in Maryland and Virginia. Authorities had a difficult time profiling Muhammad, initially disclosing that he was likely a young, white man. Muhammad and Malvo were arrested on October 24, 2002, when a call to the sniper task force's tip line linked them to a liquor store shooting in Alabama. Fingerprints on a brochure found at the scene were found to match those of Malvo, leading to the pair's apprehension.

Virginia was chosen as the venue for Muhammad's first trial. The choice of Virginia is notable

because, in 2004, the state was second only to Texas in the number of death row inmates executed since 1976. A capital conviction in Virginia would likely mean a quicker appeals process and a faster imposition of the punishment. On November 24, 2003, Muhammad was convicted of two counts of capital murder in the death of Dean H. Meyers, and a sentence of death was recommended by the jury. On March 4, 2004, Judge LeRoy Millett agreed with the jury's recommendation and sentenced Muhammad to death. Due to his young age at the time of the crimes, Malvo, Muhammad's accomplice, was sentenced to life without the possibility of parole in separate proceedings. After his sentencing, Muhammad spent the majority of his time at Sussex I State Prison in Waverly, Virginia, before being transferred to Greensville Correctional Center where he was executed by lethal injection at 9:00 P.M. on November 10, 2009, hours after Virginia Governor Tim Kaine denied his last-minute petition for clemency.

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See Also: Capital Punishment; Guns and Violent Crime; Serial and Mass Killers; Terrorism; Violent Crimes; Virginia.

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Muller v. Oregon

Muller v. Oregon, 1908, served as a landmark decision in U.S. labor law. In its decision, the U.S. Supreme Court unanimously upheld Oregon State law restricting women's working hours to 10 per a day. The case itself stemmed from Curt Muller, a laundry owner, who appealed his local



Women work in a the shipping department of a salmon cannery, Astoria, Oregon, circa 1904. The U.S. Supreme Court's 1908 Muller v. Oregon decision restricting women's working hours to 10 per day was praised by traditionalists and criticized by feminists.

court's ruling that he violated state law by having a female employee work more than 10 hours.

The Muller case came just three years after the court overturned a New York State law restricting working hours for bakers in *Lochner v. New York* (1905). One of the key factors in deciding the case was the work of Louis Brandeis, additional counsel for Oregon. He gathered data from hundreds of sources supporting the need to restrict the labor hours of women, for which most of the evidence centered upon the need of a woman's role within the home and family. The brief, later dubbed the Brandeis Brief, not only sealed the case as a victory for Oregon, but it also became a landmark in legal debate. This was the first time social science evidence had changed a court's decision.

The Muller case also stood as a watershed for labor and women's rights. Labor organizations gained more recognition with Oregon's gender-based labor code, and even though labor organizations would have to continue to fight for a standardized eight-hour work day, the framework for future debates had been established. On the other

side of the aisle, women's organizations applauded the decision for its support of the woman's traditional role. Yet, the rise of First Wave Feminism criticized the law, saying that it continued to regulate women as second-rate citizens.

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See Also: *Lochner v. New York*; National Organization for Women; Oregon.

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Munn v. Illinois

Munn v. Illinois, one of several pieces of litigation collectively known as the Granger Cases, was a decision announced by the U.S. Supreme Court in 1877. At issue was an Illinois law, enacted in 1871 under power granted by the Illinois constitution, which fixed the maximum price that could be charged by warehouses and grain elevators in Chicago and other Illinois cities with a population exceeding 100,000 residents. Enactment of this and similar legislation came at the insistence of the National Grange of the Order of Patrons of Husbandry, or the Grange, a nonpartisan agricultural interest group formed in the years immediately following the American Civil War. The organization sought to promote the interests of farm families and communities and encourage the development of agricultural industry. In less than a decade after its founding, the Grange had succeeded in lobbying for significant regulation of industries, like the railroads, that had a direct impact on the economic vitality of producers of agricultural commodities.

The case arrived at the Supreme Court on appeal from the Illinois Supreme Court, which had affirmed the decision of the Criminal Court of Cook County fining the Munn & Scott Company \$100 for failing to secure a warehouse operator's

license from the county and also charging rates in excess of those set by the state Grain Act. Munn and his partner argued that the law violated Article I, Sections 8 and 9 of the federal Constitution as well as the due process clause of both the Fifth and Fourteenth Amendments. The court disagreed. Chief Justice Morrison Waite penned an opinion that helped define one side of the late-19th century debate regarding the power of government to regulate the use of private property. Writing for a seven-member majority, Waite distinguished between the regulation of rights that are wholly and exclusively private, an area off limits to the state, and those private rights that, through their relation to the common and public good, may by necessity be controlled by the majority through regulation. An examination of the common law led Waite to conclude, "that when private property is affected with a public interest, it ceases to be *juris privati* [of private right] only." The doctrine established by the court extended the police power of the state to a broad array of public interests in the private sector, greatly expanding the reach of government into the vastly expanding industrial sector of the American economy.

Justice Stephen Field offered a notable dissent that came to the defense of private property and its abuse by government, extending an argument he presented earlier in the *Slaughterhouse Cases*. Field's opinion provided a recitation of the opposing side of the debate regarding private property initiated by Waite, supporting a laissez-faire model for economic regulation. This approach argued that the due process clauses of the Fifth and Fourteenth Amendment, provided a substantive right to property founded in natural law. The interpretation offered by Field defended market capitalism and the wealth earned by entrepreneurs who risked and created fortunes through their own ingenuity and effort. The power of the government to regulate business and industry, and to regulate the use of private property, not only violated economic principles, but also eroded the vested rights of property owners. To protect the due process rights and personal freedoms of the owners of capital, Field argued that the regulatory power of government must be curtailed to ensure against the redistribution of wealth.

Although Field and his allies, both on and off the court, lost in *Munn*, the idea promulgated

in dissent eventually won the day. By the early decades of the 20th century, the theory of laissez faire held sway over economic thought as well as Supreme Court opinions. Field's view was articulated most clearly by the justices in the 1905 case of *Lochner v. New York*, in which the court overturned state laws that attempted to regulate the wages and hours of workers.

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See Also: Antitrust Law; Chicago, Illinois; *Lochner v. New York*; Supreme Court, U.S.

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Murder, Contemporary

Homicide is generally considered the most serious of all crimes. In addition, it is often used by researchers as a proxy measure for other forms of violent crime because it is measured more precisely and reliably than other types of crime. The study of homicide is an ongoing criminological endeavor as its nature and magnitude change over time. The empirical examination of homicide is more useful than relying on media depictions of the crime, which may be somewhat distorted. The media tends to concentrate on specific victim types, which may not be reflective of the true nature of contemporary homicide. For example, the murder of the very young, the very old, females, and those with high socioeconomic standing receive a

disproportionate amount of coverage when compared to those who are more often the victims of murder. Despite the fact that the number of homicides has decreased since the early 1990s, the public still exhibits a great deal of emotion about this crime. As de Tocqueville wrote, “the more something unpleasant diminishes, that which remains of it becomes unbearable.”

Homicide Measurement

In 1961, the Federal Bureau of Investigation (FBI) began to collect nationwide homicide data, known as the Supplemental Homicide Report (SHR). Originally, it collected only victim demographics, information on the weapon used, and circumstances related to the homicide. Since then, it has increased the amount of information it includes for each homicide. It is estimated that about 90 percent of the nation's homicides are reported through this system. A recent improvement on SHR measures of homicide is the National Violent Death Reporting System (NVDRS), which collects data on all violent deaths in 17 states. The NVDRS collects data from many sources such as the state's health department, the medical examiner, the coroner's office, and the crime lab. It provides a more detailed picture of violent deaths than the SHR alone.

In the 1970s and 1980s, the United States experienced a surge in the homicide rate. In the 1970s the average rate was 9.1 (per 100,000) and 8.7 in the 1980s. The 1990s saw a decline in the U.S. homicide rate from 9.8 in 1991 to 5.7 in 1999; this mirrored the overall crime drop experienced in the United States during the 1990s. Since 2000, the homicide rate has leveled out at a range from 5.5 to 5.7 per 100,000, which is the lowest rate since the late 1960s. For the nation as a whole, rates of homicide have been relatively stable since 2000. This is also the case for whites, black females, and adult black males over the age of 25; however, this is not the case for young black males. This is also not the experience of those living in poor neighborhoods, where homicides are often increasing. The raw data may be obscuring a bifurcation of crime rates: between prosperous and poverty-stricken areas. Homicides in low-income areas are higher than rates in more prosperous communities. This also includes sharp differences in the demographic characteristics of

those involved and in the relationship between the victim and offender.

Race

Homicide rates in the United States have remained relatively stable since 2000; however, the rates involving youth, as both offender and victim, have increased. This increase is especially marked in young black males. The number of homicides involving black male juveniles rose by a third. This is even more dramatic when one considers that the rate for white youths as offenders and victims has declined since 2000. The data show that blacks of all ages are disproportionately represented as both homicide victims and offenders. Blacks are about six times more likely to be victimized than whites and seven times more likely to be offenders. Racial distribution also changes by the nature of the homicide. Black victims are overrepresented in drug-related homicide at 61.6 percent of the total number of drug-related murders; however, blacks are less often the victims of sex-related homicides and workplace killings than whites. There is little difference in the rate of gang-related, felony, or gun homicides between whites and blacks as either victims or perpetrators. Most murders are, and have been, intra-racial; however, this has been slowly becoming less so over the course of the last 10 years. If the perpetrator was a friend or acquaintance of the victim, then only one-twelfth were interracial. If the perpetrator was a stranger, 25 percent of the incidents were interracial.

The reasons for this racial disparity are not fully understood; however, some studies have posited various possible reasons. One factor that has been posited is differential exposure to lead, as such exposure has been linked with an increase in violent behavior. This hypothesis has been tested repeatedly and correlations have been found across time, place, neurological testing, and a series of studies controlling for several confounding variables. The group with the largest increase in homicide perpetration (black males) also had the highest lead exposure during adolescence. Linked to this hypothesis is the possible covariance of lead exposure and criminogenic neighborhoods.

Another hypothesis for this disparity is the effect of incarceration. There is some evidence

to suggest that tougher sentencing laws (such as three strikes laws) did have an effect on reducing homicide initially; however, those prisoners being released seem to be committing further homicides upon their release. Upon further examination, the prisoners who do reoffend are those most likely to have returned to areas of socioeconomic disadvantage. This observation leads to policy implications such as supplying released individuals with education, drug programs, and vocational training. Despite the increases in homicide rates among young black males, the rate is still much lower than the rate during the 1980s and early 1990s during the crack epidemic that occurred in many urban areas. Some have made the point that were it not for the crime drop in the 1990s, these increases would not seem as stark or concerning.



New Orleans citizens organized a march against violent crime in January 2006 in response to multiple recent murders. The poster shows two locally well-known murder victims: musician and educator Dinneral Shavers and filmmaker and activist Helen Hill.

Age

Age is also an important differentiating factor in the study of homicide. About one third of all victims and half the offenders are aged less than 25. The victimization of children aged less than 14 years has declined to its lowest recorded level and has remained stable throughout the 2000s; however, the victimization rate of those aged 18–24 has not experienced a similar decline but has remained stable, as has the victimization of those in the over 35 age group. In 2000, the victimization rate of those aged 25–34 was at its lowest recorded level; however, since then, this rate has increased. The victimization of children aged less than 5 years (infanticide) has declined since 2000; however, the rate of infanticide has remained relatively stable across all races over the same period, except those for blacks, which reached its lowest recorded level in 2004. The most likely perpetrator of infanticide is a parent of the victim. Most parent perpetrators are male, as are their victims; and the younger the infant, the greater the risk of victimization. With regard to those more than 65 years of age, the rates of both offending and victimization have declined since 2000. Despite their overall lower level of homicide victimization, however, this group was more likely to be killed in a felony-homicide, as compared to a non-felony homicide, than those aged less than 65 years. Whites are more than twice as likely to be the victims of eldercide as blacks.

Gender

Males are disproportionately represented in both offenders and victims, accounting for about 80 percent of the victims and 90 percent of the offenders. Males killing males make up 65.3 percent of the total number of homicides, males killing females 22.7 percent, females killing males 9.6 percent, and females killing females 2.4 percent. Although the rate of victimization for both sexes has fallen since 2000, males are still four times more likely to be murdered than females. In 2005, the victimization rate for females fell to its lowest recorded level. The recorded level of male victimization reached its nadir in 2000, but has increased slightly over the 2000s. The gender distribution of homicide victimization also is dependent upon the nature of the homicide. For example, women are more than four times as likely to

be the victim of a sex-related homicide and nearly twice as likely to be murdered by an intimate as males. Men are about eight times more likely to be the victim of a felony-murder and more than nine times more likely to be the perpetrator of a felony-murder than females. The gender disparity is perhaps most evident in the area of gang-related homicides. Men are about 18 times more likely to be the victim of this type of homicide and nearly 60 times more likely to be the perpetrator. Men are also nearly two times more likely to be murdered by a stranger than are women. The victimization rate of both black and white females has decreased in the 2000s, as has the offending rate for black females. White females of all ages had the lowest rates of offending.

Victim–Offender Relationship

The victim and the offender are strangers in 14–20 percent of homicides. This is approximately the same percentage as spouses and other family members. In about one-third of the cases, the victim was a friend or acquaintance of the perpetrator, and in another third of the cases the victim/offender relationship was not known. A recent study has raised an interesting point concerning acquaintance homicides. It found that, in most of these cases, the people involved knew each other through prior illegal transactions. As such, the term *acquaintance homicide* may include situations such as rival gang killings or disputes between drug dealers. Another difference in the nature of the homicide and the victim/offender relationship is that guns are more likely to be used by strangers and friends/acquaintances than they are in homicides occurring between intimates.

On the whole, intimate homicide has been on the decrease across all races, and the level for women victims reached its lowest level in 2004. The number of white females killed by intimates reached its lowest level in 2002. However, across all age groups, female victims are still more likely than male victims to be killed by an intimate. About one-third of all female victims were killed by an intimate, which is a rate 10 times higher than that for men. In the late 2000s, the percentage of intimate homicides where the weapon used was a gun has decreased, while homicides not involving a gun increased in intimate homicides

with a male offender and female victim. Spousal/ex-spousal homicides have been decreasing over the last few years; however, they still remain the most common form of homicide within a family. Fathers are more likely than mothers to be killed by their children, with teenage sons being the most frequent offender in such homicides. Males who kill their sisters are usually younger than those who kill their brothers; sisters very rarely kill siblings of either sex.

Since 2000, the circumstances surrounding homicide have undergone a change. The largest category within this subset is “unknown.” Of the known circumstances, arguments are the most prevalent, although this has been a declining factor in recent years. The rate of felony-homicide has continued its decrease from the 1990s, but gang-related homicides have increased since 2000 after undergoing a decrease at the end of the 1990s. After a brief spike at the start of the 2000s, the rate of murdered law enforcement officers is declining. Of the identified assailants in these cases, over 50 percent had a prior criminal record and about 40 percent had a prior record for a violent crime. The most common weapon used in the killing of a law enforcement officer is a firearm; of these homicides, 75 percent used a handgun as the murder weapon.

Gun-Related Homicide

After a dramatic decrease in firearm homicide in the 1990s, the percentage of homicides that involve a gun has increased since 2000 across all demographic groups. Homicide rates in large cities have fallen since 2000, reaching their lowest levels since the 1960s. Homicide rates in cities with populations of 250,000 to 499,999 and cities with a population between 500,000 to 999,999 have remained stable.

True to most other time periods, most homicides are carried out with firearms, 75 percent with handguns. The number of firearm homicides carried out by those aged 14–24 has increased, and youths in this age group are also the most likely to be the victim of a firearm homicide. Although the problem of homicide has decreased since the early 1990s, and has held steady since the year 2000, homicide is still a problem in the United States. Because the problem largely affects a certain section of the population, a

more targeted social response may help reduce the homicide rate.

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See Also: 1941 to 1960 Primary Documents; 1961 to 1980 Primary Documents; 1981 to 2000 Primary Documents; 2001 to 2012 Primary Documents; Gangs, Contemporary; Guns and Violent Crime; Murder, History of; Murder, Sociology of.

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Murder, History of

For more than two centuries, observers ranging from visitors to scholars have debated the notion of “American exceptionalism,” the idea that the United States, with its traditions of democracy, liberty, social mobility, and tolerance, stands apart from other countries. While commentators disagree about the virtues of American society, the nation’s levels of murder are, and long have been, truly exceptional, at least by comparison with other democratic, industrialized nations. At the start of the 21st century, the U.S. murder rate was approximately four times that of Canada, six times that of Italy, eight times that of Germany, and 11 times Japan’s rate. Nor is this gap a recent creation. For more than 150 years, Americans have slaughtered one another at rates far above those of western European nations, and over the past two centuries, New York City’s homicide rate was roughly 15 times London’s rate. Thus, murder in America has a long and distinctive history, one bound up in broader social changes tied to race, ethnic, and

gender relations and linked to shifting population currents and political and economic transformations. While scholars dispute the nation's record for equal opportunity, civil liberties, and democracy, there is no denying America's remarkable, hard-fought record for lethal violence.

Murder, or, to be more precise, homicide (the umbrella legal category that includes both intentional, premeditated "murder" and unlawful but nonpremeditated "manslaughter"), is a uniquely measurable crime. While some illegal acts such as gambling may be victimless and hence underreported, and many violent acts such as rape require victims to report the crime or law enforcers to record and investigate the offense, homicides are visible, obvious crimes that are difficult to overlook, typically featuring a corpse covered with blood and disfigured by knife or bullet wounds. Moreover, the legal definition of "homicide" has changed only modestly over the centuries and has varied little from place to place, and although many societies are purposefully oblivious to prostitution, gambling, and even—nonlethal—spousal abuse, murder is seldom ignored. Therefore, using surviving legal records and other sources, scholars can, with considerable accuracy, measure the homicide rate, defined as the number of such crimes per 100,000 people, enabling historians to compare levels of homicide over time and across space. Because homicide is the least socially constructed violent crime, historians and criminologists also frequently use the homicide rate as a proxy for levels of overall violence in society.

While it is uncertain whether tracking patterns of lethal violence also measures trends in assault or child abuse, scholars of homicide rely on these statistics to chart the history of aggressive, coercive, and pathological behavior. Furthermore, based on this technique of calculating and comparing rates, historians have argued that violent conduct has varied dramatically from place to place, era to era, and group to group. Some of these patterns reinforce our understanding of the American past, such as the long-standing trend of slaveholding and former slaveholding states having high rates of murder, while other patterns run counter to the received wisdom, such as the finding that for most of American history, large cities experienced lower homicide rates than the nation as a whole.

But studies of the history of murder extend beyond statistical comparisons. Recent scholarship has also demonstrated that the character or form of lethal violence has varied as much as the level of homicide. Weapon use has changed markedly, just as the relationships between killers and victims have shifted over the centuries. Killers, for example, mainly targeted friends and acquaintances in particular times but more often preyed on strangers or butchered spouses in other eras. By exploring the history of murder, historians can also analyze changes in culture and family life as well as class, ethnic, and race relations.

Colonial America

During the early stages of European settlement, colonial America suffered from skyrocketing levels of homicide, far in excess of the rate in 17th-century western Europe. A wide range of factors contributed to this meteoric level of bloodshed. Young men predominated in the populations of new settlements, as impoverished, unmarried indentured servants poured into Maryland, Virginia, and other colonies. A surfeit of bachelors has nearly always fueled high rates of interpersonal conflict, for aggressive young men engage in raucous activities, jostle for status, and compete for power and resources, leaving a trail of carnage in their wake. High rates of mortality from disease also likely contributed to the thrall of bloodletting, cheapening life and inuring the newcomers to death. Conflict with Native Americans added to the toll. Furthermore, at least during the early decades of settlement, legal institutions in many colonies remained underdeveloped and barely capable of mediating disputes, encouraging footloose and often besotted young men to resolve disagreements themselves. These factors, however, differed from colony to colony, and hence levels of murder varied. Homicide rates in 17th-century southern colonies—where sex ratios were especially uneven; where young, single indentured servants predominated; where relations with Native Americans were particularly acrimonious; and where malaria made life fleeting—towered over levels in northern colonies. During the middle decades of the century, for example, Virginia's homicide rate was approximately quadruple that of New England.

Homicide levels fell gradually and unevenly over the remainder of the colonial era, reflecting

the balancing of sex ratios, the development of more stable legal and political institutions, and a host of other social changes. Still, lethal violence occasionally flared at the local level. When migration, racial conflict, political turmoil, or war disrupted social life, murder rates often ballooned.

Regional variations became more pronounced over time even while lethal violence dropped, with rates of homicide in New England tumbling to levels roughly comparable to those in England but slaveholding colonies experiencing significantly higher homicide rates. By the mid-18th century, Virginia's murder rate was nearly eight times that of New England. Slavery contributed to this widening gulf. Although interracial killings accounted for a portion of the regional difference, white-on-white violence generated the lion's share of the southern death toll. Slavery exerted a deeper influence on social life and dispute resolution, conditioning white southerners to rely on coercion, stunting the development of legal institutions in order to bolster the authority of white men, and eventually forging a culture of honor in which public displays of aggression became both normative and valorized.

It is neither surprising nor coincidental that slaveholding areas would suffer from elevated levels of murder or that eye gouging, nose biting, and dueling became accepted rituals for resolving disputes and establishing authority in the south. Nor it is surprising that higher rates of lethal violence in the south outlived slavery and, in fact, persist at the start of the 21st century.

The Nineteenth Century

This regional gap expanded during the early 19th century. Southern homicide rates rose, doubling between the mid-18th century and the 1820s. By contrast, northern homicide rates remained low. Even as the populations of New York City and Philadelphia ballooned and impoverished newcomers crowded into densely packed neighborhoods, the northern urban homicide rate was modest.

During the 1820s, New York City's population rose by 64 percent, and during the 1830s, it jumped by another 54 percent; ethnic and religious tensions flared, and the early stages of industrialization sparked economic dislocation, class conflict, and a series of acrimonious strikes

and riots. Yet this was one of the least murderous eras in New York City's history.

The northern pattern, however, changed abruptly during the middle decades of the 19th century. Homicide rates spiked, more than doubling in many places, and the northern United States became significantly more homicidal than western Europe, producing the sizable gap in violence that persists to this day. Antebellum urban conditions fueled much of the increase as the arrival of millions of Irish and German immigrants and displaced native-born farmers, many of them poor, young, single men, contributed to searing class, ethnic, and religious tensions. Bloody riots exploded throughout the region and culminated in the 1863 New York City draft riots, in which thousands of working-class, foreign-born men violently resisted efforts to conscript them into the Union army, attacked law enforcers, vented their rage against African American residents, and killed more than 100 people in the process. But more prosaic disputes generated the majority of the murders during this era. As poor, young, working-class men crowded into cities and became concentrated in particular neighborhoods, they forged a plebeian culture that rejected the polite sensibilities, emotional restraint, and moral reforms of the middle class. Instead, working-class men created an autonomous culture, one that celebrated toughness, venerated ferocity, and glorified brutality. The bachelors who gathered in rough saloons reveled in drunkenness, gleefully watched and participated in bare-knuckle boxing matches, and affirmed their camaraderie with recreational violence, battering and bludgeoning one another to establish both their individual status among peers and a collective oppositional identity.

While the wave of violence was most pronounced and most visible in the working-class neighborhoods of cities, the surge in murder extended beyond the tough sections of major cities, such as the Five Points neighborhood of New York City. In fact, the explosion in lethal violence crossed the nation. Rates of homicide, for example, swelled in the northern countryside and in western boom towns.

Some scholars have linked the mid-century increase in violence to the American state-building process. According to this view, at both the local and the national levels, American government

expanded during this era with the formation of the municipal police, the invention of the prison, and the powerful centralizing pressures unleashed by the Civil War. Because core state formation in the United States occurred at a violent time, such disorder became institutionally ingrained as the norm, in stark contrast to the state-building process in western Europe, where low levels of violence were the norm at the peak of state formation and hence aggressive behavior became more systematically regulated and criminalized. Furthermore, American federalism divided legal responsibilities for maintaining order among the local, state, and federal governments, limiting the development of more powerful and centralized legal practices, standards, and institutions. Similarly, the collapse of the second-party system, driven by the sectional crisis and ethnic divisions, no doubt weakened both formal and informal mechanisms of social control. Regardless of the precise explanation, during the mid-19th century, American violence began to assume its modern form, with rates of murder consistently higher than those of western European nations.

At the same time that the U.S. trend deviated from the European trajectory, regional differences expanded. During the final third of the 19th century, the south became even more murderous, particularly at the close of the century, when racial violence, including lynching, reached its high-water mark. More than ever before, southern whites relied on lethal violence, much of it ritualized, sadistic, and public, to bolster a racial hierarchy seemingly imperiled by the abolition of slavery, by increasing African American autonomy, and by the growing impoverishment of the region. Southern mobs, sometimes with thousands of participants and spectators, lynched approximately 800 African Americans during the 1890s. During the late 19th century, South Carolina and Louisiana had homicide rates more than 20 times that of heavily urban, industrialized Massachusetts.

The American west presented a more complicated pattern, though this region also experienced high levels of homicide. In mining camps and cattle towns, men often outnumbered women by enormous margins, political and legal institutions remained ineffective, and homicide rates sometimes mushroomed to 40 or 50 times those of northeastern urban centers. Even western cities

experienced high levels of lethal violence; late-19th-century Omaha, for example, was twice as homicidal as Philadelphia or Boston. Settled agricultural areas, however, tended to be considerably less violent than frontier regions or mining camps, and the level of murders in boom towns quickly peaked and then dropped precipitously.

As murder rates rose in the south and spiked in the west during the late 19th century, lethal violence in the northeast and the midwest fell sharply. Class, ethnic, religious, and racial tensions worsened during this era, and urban population densities reached unprecedented levels. Moreover, for the first time in American history, inexpensive revolvers became widely available; the proportion of homicides committed with firearms doubled during the second half of the century. Thus, fights that had earlier produced bruised cheekbones, fractured jaws, and cracked ribs now ended with fatal bullet wounds. In short, the technology of killing improved dramatically. And yet northern society became less violent. During the final quarter of the century, Philadelphia's murder rate dropped by half, and Boston, New York City, and other major urban centers experienced similar decreases.



In the 19th century, rates of homicide swelled in areas like the northern countryside. This Henry Robinson & Company print depicts the sensational murder of Sarah Maria Cornell, a pregnant factory worker, by Ephraim K. Avery in May 1833.

Contrary to the conventional wisdom about cities, urban industrial life helped to reduce lethal violence during the late 19th century. The regimen of the assembly line and the school appears to have inculcated discipline and self-control in factory workers and children, who, in turn, became less impulsive, less inclined to engage in recreational fighting, and hence less likely to kill or be killed. In Chicago, the proportion of homicides resulting from drunken brawls fell by one-third during the closing decades of the century. Paralleling the drop in homicide—and reflecting a similar increase in self-discipline—was a sharp decline in accidental death, as city dwellers drank less, fell into machinery less, drowned less, and stumbled off roofs and into busy traffic at plummeting levels. Simply put, industrialization made urban life more orderly and less deadly, even though social tensions flared, guns became readily available, and dangers abounded in mechanized workplaces and crowded streets.

But not all forms of lethal violence decreased during this era. Public murders such as saloon fights fell most sharply. Domestic homicide, however, increased at the end of the nineteenth century, though not enough to offset the drop in public violence. In Chicago, the spousal homicide rate tripled during the final quarter of the 19th century. Cultural changes fueled this spiral, for new gender ideals encouraged men to derive status and fulfillment from family life, and those who struggled to do so sometimes reacted to these pressures by lashing out, slaughtering their wives and children—and frequently committing suicide as well. Therefore, changing cultural values transformed patterns of lethal conduct, producing an overall drop in murder, sparking shifts in the character of homicidal behavior, and making streets less violent but homes more violent.

The Twentieth Century

Over the course of the twentieth century, levels of homicide fluctuated wildly, and forms of murder varied, though the core pattern of American lethal violence was already well established. First, American homicide rates towered over those of western Europe. Early 20th-century New York, Boston, Cleveland, and Providence, for example, were each roughly 10 times more homicidal than London. Second, within the United States, regional differences persisted in the new century.

Although southern lynching peaked during the 1890s, racial violence continued. Furthermore, the south remained violent overall, even if the gap began to narrow. During the early 1910s, for example, New Orleans, Charleston, and Savannah had homicide rates three times that of Chicago and five times that of New York City, and during the late 1910s, Mississippi was more than four times more murderous than New Jersey, more than six times more homicidal than Minnesota, and seven times more murderous than Massachusetts. Third, domestic homicide continued to increase, while drunken-brawl homicide, the leading source of mid-century northern deaths, decreased. Nonetheless, both rates and patterns of murder remained fluid.

During the first three decades of the 20th century, northern violence rose once again. Nationally, the homicide rate increased by nearly one-third. Locally, the surge was often still greater. In Chicago, for example, the homicide rate ballooned, jumping almost 250 percent between 1900 and 1930. A series of celebrated murders—including the Sacco and Vanzetti robbery-murder in 1920, Nathan Leopold and Richard Loeb's thrill killing of 14-year-old Bobby Franks in 1924, and the St. Valentine's Day Massacre in 1929—made the era seemed even more murderous.

No single factor accounted for this surge. Rather, a confluence of demographic, social, and institutional forces reversed the late-19th-century pattern and sparked a jump in murder. Nearly 19 million immigrants arrived in the United States between 1900 and 1930, with more than half coming between 1905 and 1914, when World War I began in Europe and choked off the flow of travelers. The majority of the newcomers hailed from southern and eastern Europe. As a result, the United States abruptly became more ethnically and religiously diverse. Some of the immigrants hailed from parts of Europe experiencing unusually high levels of violence such as Italy and Greece, and many more confronted fierce discrimination from their new neighbors, potential employers, and local policemen and judges. Struggling against poverty and alienated from legal institutions, immigrants, at least for a short period, often experienced higher rates of violence, though such elevated levels of homicide typically lasted only a few years. During the 1910s, for example, Italian



An unidentified New York City crime scene, early 1900s, from the New York City Municipal Archives. In the 20th century, American homicide rates were well above those of Europe; New York was 10 times more homicidal than London.

immigrants in Chicago suffered from a homicide rate seven times the overall level for the city.

The enormous flow of African Americans from the Deep South to the industrial cities of the north—the Great Migration—also contributed to the rising tide of lethal violence, particularly in the urban north. Approximately 1.5 million African Americans left the violent south and resettled in areas where they faced intense discrimination, were packed into emerging ghettos, received scant protection from law enforcers, and endured still higher levels of homicide. During the early 1920s, African American Cincinnati-ans were murdered at 13 times the overall rate for the city and 27 times the white rate. Furthermore, they died from lethal violence at nearly double the rate of African American residents in Atlanta, Dallas, and Birmingham. In the urban industrial north, poverty, racial discrimination, and isolation combined to fuel soaring homicide rates,

adding to the death toll from lethal violence during the early 20th century.

Overlapping cultural and economic pressures contributed to the spike in violence as well. The commercialization of leisure, the rationalization of the marketplace, and the general prosperity of the era concentrated wealth, expanded access to consumer and luxury goods, and generated new opportunities for those willing to commit robbery, many of whom used lethal violence in the process. Newly available automobiles, by providing speedy, effective getaway vehicles, also helped to launch an explosion in payroll and bank robberies. In 1918, Chicago, by itself, had 14 times as many robberies as England and Wales, and the city's robbery-homicide rate quadrupled between 1900 and 1920. This trend continued into the 1930s and made murderous bank robbers, including John Dillinger, Charles "Pretty Boy" Floyd, and Bonnie Parker and Clyde Barrow national celebrities.

Prohibition also buoyed the early-20th-century murder rate. By creating unimaginable opportunities for those willing to manufacture, smuggle, and distribute illegal alcohol, Prohibition sparked a rapid expansion of criminal networks, most notably organized crime, and triggered unstable market conditions and turf wars among gangsters such as Al Capone. In northern cities, Prohibition-related violence accounted for 10 percent to 20 percent of local homicides during the 1920s and thus contributed to the increase in violence.

By the 1930s, however, the American murder rates began to tumble once again. Even as the Great Depression produced widespread impoverishment, homicide dropped by roughly 30 percent during this decade, providing still more evidence that poverty, by itself, does not generate violence. Chicago's homicide rate plunged by 51 percent; New Orleans's rate contracted by 39 percent; and Miami's rate fell by 38 percent during the 1930s. Moreover, regional patterns started to converge during this period, and the murder rate dropped throughout the nation, including the south.

The low levels of violence continued until the early 1960s. Nationally, the homicide rate decreased by 16 percent during the 1940s and by an additional 11 percent during the 1950s. During the mid-1950s, when homicide hit its lowest levels, the murder rate was roughly half the

1920s level. Neither World War II and the cold war nor the postwar demographic changes such as the second phase of the Great Migration or the early flow of migrants to the Sunbelt disrupted the larger trend. The overall decrease in American murder during the mid-20th century paralleled changes in western Europe, where homicide rates also plunged during the Great Depression and remained low for the next two decades.

Despite the broader convergence of regional and even international trends, some long-established patterns in American murder persisted. The south, for example, continued to experience higher rates of homicide than the northeast or the midwest. Furthermore, African Americans still suffered from elevated levels of murder. In 1940 and 1950, the African American homicide rate was 11 times the white rate, and the gap narrowed slightly—to a ninefold differential—in 1960. Nonetheless,

the larger trend was toward national and international convergence, as improved transportation and communications gradually winnowed away at local and regional distinctiveness, even in murderous behavior.

This mid-century ebb, however, proved to be short-lived, both in the United States and in Europe. Violence soared during the late 1960s, and the epidemic of crime ravaged American society until the early 1990s. Between 1963 and 1973, for instance, the national homicide rate nearly doubled. Major urban centers were hit particularly hard, becoming, for the first time in American history, significantly more violent than the nation as whole, though no part of the United States was spared from this wave of murder. From the early 19th century until 1958, New York had a lower homicide rate than the United States. By 1980, the city's murder rate was 2.5 times the national rate,



A New York Police Department officer confronts an angry group at Seventh Avenue and 126th Street during the Harlem Riot of 1964. The riots of 1964 were the first in a series of violent race-related riots across American cities between 1964 and 1965, incited by the shooting of a 15-year-old African American by a white off-duty police officer on July 18, 1964.

and in 1991, New York City, by itself, accounted for 9 percent of all U.S. homicides—the seven largest cities produced 25 percent of the nation's murders in 1991. More visible and more shocking crimes underscored this trend of skyrocketing urban violence, including race riots and political assassinations (John F. Kennedy in Dallas in 1963, and Martin Luther King, Jr., in Memphis and Robert Kennedy in Los Angeles in 1968). The rise of violence during this period was even greater than homicide figures indicate, for dramatic improvement in trauma care enabled many badly injured crime victims to survive injuries that would have been fatal just decades earlier, complicating comparisons of late-20th-century murder rates with those of earlier eras and masking the level of serious violence in society.

Numerous factors fueled this explosion of violence. The baby boom played a particularly important role. By the early 1960s, the first wave of baby boomers, those born during the late 1940s, had reached their teenage years and thus entered the peak period of the life cycle for engaging in violent behavior. Even a small increase in the number of teenagers in a society typically triggers a rise in crime, but the coming of age of the baby boomers produced an enormous bulge in the proportion of young adults and thus a surge in violence. Scholars have estimated that this demographic imbalance accounted for more than half of the homicide increase between the early 1960s and the mid-1980s. The disorder of the 1960s and the 1970s probably added to the combustible mixture, eroding faith in the legal system and encouraging people to resolve disputes through aggressive self-help.

Likewise, the disintegration of the industrial economy and increasing African American poverty and racial segregation isolated and alienated many Americans, as jobs disappeared, inner-city schools crumbled, and the urban infrastructure collapsed. If the regimen of the workplace and the respectability and long-term opportunities promised by education inculcated restraint, then the deepening poverty and institutional problems of this period contributed to the crime wave. Finally, the introduction of crack cocaine increased violence during the late 1980s.

By the mid-1990s, the U.S. homicide rate began to fall, tumbling by 42 percent in the last five

years of the century and dropping to a 30-year low. A cluster of overlapping shifts produced this decrease: handgun violence, homicide by youths, and inner-city murder dropped dramatically during this period, as did both domestic and African American homicide. The number of murders committed with handguns, for example, went down by 37 percent between 1993 and 1998, and the rate of lethal violence committed by African American men between ages 14 and 17 plunged by 67 percent. New York City's plummeting count accounted for more than 25 percent of the nation's mid-1990s decrease in homicide and 10 percent of the late 1990s drop. Levels of lethal violence have remained largely steady through the opening decade of the new century.

Criminologists and sociologists offer a variety of explanations for the recent ebbing of American murder rates. As family size has decreased, the number of young adults has fallen, accounting for approximately 10 percent of the 1990s drop. More effective policing strategies, enhanced protection and services for battered women and children, stronger gun-control laws, changes in drug markets, and increased economic opportunities for inner-city residents have all contributed to the recent trend, though policy makers and politicians fiercely debate the sources of the drop. Despite this decrease, the United States remains extremely violent by international standards, with an early-21st-century homicide rate hovering in the same range as Angola, Haiti, and Argentina.

Conclusion

Macro-level and mono-causal theories for the history of American murder offer, at best, partial explanations for the nation's long, enduring history of violence, failing to account completely for variations over time, across space, and between groups. Southern honor, for example, helps to account for regional differences but does not explain elevated levels of violence in, for example, Michigan or California. Likewise, the proliferation of handguns in the United States has contributed to the death toll from violence, but the nation was more murderous than western Europe before firearms became readily available. Demographic factors such as the surfeit of young men or the arrival of immigrants help to explain frontier violence, yet do not account for the south's consistently high levels of

violence. Theories that emphasize the impact of the state-formation process or that focus on the role of trust in political institutions are suggestive, though they stop short of explaining the variability that has defined patterns of American violence. Nor is it surprising, given the size and diversity of the nation, that a complex, rapidly changing blend of social, cultural, demographic, and institutional factors has contributed to the waxing and waning of lethal violence. The one constant, however, is America's long, "exceptional" record for horrific levels of murder.

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See Also: 1851 to 1900 Primary Documents; 1901 to 1920 Primary Documents; 1941 to 1960 Primary Documents; 1961 to 1980 Primary Documents; Crime in America, Types; Guns and Violent Crime; Violent Crimes.

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Uniform Crime Reporting (UCR) program designates murder as the willful, nonnegligent killing of one human being by another; this does not include justifiable homicides, accidents, or deaths as a result of negligence. According to the UCR, justifiable homicides include the killing of a felon either by peace officers in the line of duty or by private citizens when a felon is in the process of committing a felony.

The UCR data indicate that the murder rate has decreased substantially over the past two decades, from a high of 9.8 murders per 100,000 inhabitants to a low in 2009 of 5 murders per 100,000 inhabitants. This is a vast improvement, though more than 12,000 people were arrested in 2009 on murder charges. Males are much more likely to be perpetrators (nearly 90 percent) as well as victims (77 percent). Further, of the single-victim, single-offender statistics, African American offenders comprised 47 percent of 2009 offenders and 53 percent of male victims. On the other hand, white females were more likely to be victims (62 percent) than were black females. The known circumstances under which murder is most likely to occur are non-felony-related, with many of these being the outcome of an argument between acquaintances.

With the exception of female victims, murder is not likely to cross race and gender lines. In other words, 84 percent of the time, the offender is the same race as the victim. Males are murdered by other males 88 percent of the time. However, only 9 percent of offenders who kill females are also female. Of those cases in which the relationship between the victim and offender is known, nearly 35 percent of murdered females are murdered by their spouse or boyfriend.

While murder is legally defined as the purposeful termination of one life by another, sociologists argue that the violation is not about action per se. Rather, murder is an issue of class, social power, and resources (or lack thereof). Characteristics commonly attributed to the likelihood to commit murder, such as sex and race, do not by themselves indicate a propensity for murder. Rather, structural forces surrounding the individual influence the likelihood of becoming a perpetrator or victim. The sociological understanding of why murder occurs may be explained by four sociological perspectives: functionalist, conflict, social disorganization, and symbolic interactionist.

Murder, Sociology of

At its simplest, murder is the illegally sanctioned termination of a human life by another person. While the Federal Bureau of Investigation's (FBI's)

Functionalist Perspective

The functionalist view of crime, as espoused by Emile Durkheim, posits that a certain amount of crime is necessary for the continuation of social life. Excessive deviance, of course, is deemed pathological, but some level of deviant behavior—including murder—is a necessary part of the social fabric in ways that are both obvious and subtle. It is important to note that while functionalists view crime as a social good, an event that occurs with some frequency over time and is thus serving some function in the society, it is not necessarily a moral one. Functional theorists believe that any behavior that does not benefit the society or its members, for example, the functions of setting boundaries, establishing group solidarity, or serving as an instrument of innovative adaptation or tension reduction, will eventually become extinct.

When murder occurs in a society and is punished appropriately, boundaries are set for societal members. The action of sanctioning serves to remind members of the society that some behaviors are sanctioned, while others are condoned; this offers a means through which to continually verify the boundaries of the society. Further, group cohesion is reinforced because when a social member violates the social norms, the community tends to bond together, creating a band of support for either the victim or the accused.

Because of the need to be able to prosecute murderers, new technologies are created to verify the guilt or innocence of perpetrators. For example, DNA evidence can now be used to clear or convict an accused murderer. Further, rather than focusing on the breakdown of society in an increasingly violent culture, a focus on the prosecution of a murderer allows the society to direct its attention squarely toward the individual problem with a ready solution, thus reducing societal tensions. In other words, the appointment of a scapegoat allows the members of a society to believe that the cause of murder is a lack of personal control on the part of the murderer, rather than a reflection of a systemic societal or economic problem.

Not so obvious are the latent or subtle social goods that can result from a crime such as murder. While murder is manifestly not a moral good, it does serve as a justification of the social services a culture must employ in its reduction. A direct resulting social good in this case would be the

job-creating effects of hiring people to fill various roles in the criminal justice system, including patrol officers, lawyers, judges, prison guards, and parole officers. If all crime were to suddenly cease, society would have no need for this industry, and vast swathes of the population would become unemployed.

Robert Merton's strain theory elaborates that deviance is the result of a discrepancy between socially engendered goals and the legitimate means to achieve those goals. Conformists, or nondeviants, accept the notion of social boundaries and have the means to work within those boundaries. Merton's typology contains four types of deviants, including the innovator, the retreatist, the ritualist, and the rebel. In the application of this theory, a murderer would be an example of an innovator. Using the scenario of murder occurring as a result of an argument given the prevalence according to the UCR, an innovator may be unable to settle the argument through legitimate means such as reasoning and compromise. This same individual may then resort to illegitimate means to settle an argument and ensure social power over another, killing his opponent to "win" the argument.

While murder and other crimes are obviously not moral goods for society, according to the functionalist perspective, they nonetheless provide social goods, both manifest and latent, and are necessary for the successful continuation of the society. Thus, even though murder is an overwhelmingly negative aspect of society, the very existence of such crimes can result in some social goods, specifically the maintenance of social order.

Conflict Perspective

The conflict perspective posits that deviance is the result of an unequal society. Murder, then, can be seen as the manifestation of the struggle between the powerful and the powerless. Within such a general perspective are two more specific theories: pluralistic conflict theory and radical Marxist conflict theory. Pluralistic conflict theorists view murder as the result of a universal battle over scarce resources, while Marxist theorists espouse the view that murder is a structural issue that is the logical conclusion of the inequality inherent in a capitalist system.

Pluralistic conflict theorists propose that deviance such as murder is a cultural response to



The body of Orlie Comeau was found in an investigation in 1941 on the Standing Rock Indian Reservation near Cannonball, North Dakota. Today, in the face of soaring poverty, substance abuse, unemployment, disease, and high incidence of suicide, crime rates on reservations are very high and few crimes are solved. Confusing jurisdictions, insufficient FBI training in Native American culture, and distrust between federal and tribal investigators have complicated this sociological problem, hindering justice on reservations.

particular situations or events that bring to light competition for social or economic advantage. Thus, conflict is the inevitable result of distinctions between those in authority and those subject to authority. Richard Quinney's *Social Reality of Crime* (1970) articulates the following five propositions, with a sixth proposition being a composite statement, resulting in the social reality of crime:

1. *Crime is a definition of human conduct that is created by authorized agents in a politically organized society.* Murder is itself a definition of behavior that is projected on some persons by others. Political agents have the authority to deem some forms of killing, such as the killing of felons by peace officers, justifiable homicide rather than murder.
2. *Criminal definitions describe behaviors that conflict with the interests of the segments of society that have the power to shape public policy.* Those who have the power to have their interests represented in public policy, generally white upper-class males, regulate the definition of murder and victimization.
3. *Criminal definitions are applied by the segments of society that have the power to shape the enforcement and administration of criminal law.* Those who have the power to determine the definitions of murder and victimization, generally white upper-class males, also have the power to enforce the definitions (or not).
4. *Behavior patterns are structured in segmentally organized society in relation to criminal definitions, and within this context,*

persons engage in actions that have relative probabilities of being defined as criminal.

The acceptance and continuation of a violent culture is learned in social and cultural settings. If a perpetrator is socialized such that murderers are not prosecuted, such as gang-on-gang violence, then the perpetrator is not likely to perceive the behavior as criminal.

5. *Conceptions of crime are constructed and diffused in the segments of society by various means of communication.* Definitions of who should be labeled as murderers are socially constructed. As such, anecdotal evidence suggests that certain segments of the population, such as felons and child predators, are categorically denied protection due to their social ostracism and status as social pariahs.

Radical Marxist conflict theorists view social conflict as the result of the ongoing social struggle between those who profit and those who suffer so that others may profit. There are two predominant conditions of conflict. First, the greater the difference between those in authority and the subjects of that authority, the more significant the conflict. Second, those subjected to authority must be organized to a degree that allows for authority to be resisted. Conflict increases when legal norms reflect the cultural norms. When the culture and laws coincide, there is a greater likelihood that a murderer will be prosecuted. If, on the other hand, there is little sympathy for the victim, there may be less likelihood that the murderer will be prosecuted. Conflict also increases when subjects have little power; if the definition and enforcement are likely to meet with little resistance, prosecution is more likely. In other words, if society's perception is that the murderer is a person of importance, he or she is less likely to be prosecuted.

Whether the inequality exists between groups over perceived scarcity of resources or between classes over structural inequality, conflict theorists would concur that murder occurs when there is an imbalance. When the individual with power seeks to maintain or gain power, the most effective way to do this is to subjugate the other, and the most effective way to subvert that power is through deviant behavior such as murder.

Social Disorganization Perspective

Deviance, according to proponents of the social disorganization perspective, is a natural by-product of social change, and while it has negative impacts on society, this disorganization is a necessary step toward reorganization. Rapid social change can result in high rates of nonconformity, disrupting the normative order. Key characteristics of social disorganization include normative competition, conflict, or lack of consensus often caused by changes in technology, urbanization, and immigration.

W. Thomas and F. Znaniecki, of the Chicago School, proposed an ecological perspective, suggesting that deviance was the result of place over person. Areas where poverty is rampant and job opportunities are scarce tend to lack social organization; thus, deviance is more likely to occur. Lacking strong societal boundaries, the people in these areas tend to develop laissez-faire attitudes and simply drift into deviant behaviors.

Consistently, the murder rate as reported in the UCR report is highest in the most populated areas. Cities exceeding 250,000 people experienced a murder rate of 10.2 per 100,000 in 2009. During that same time, cities with populations under 100,000 experienced a substantially lower murder rate (4.1) and those cities with a population less than 10,000 were only 2.8. Suburban areas experienced a murder rate of 3.0 per 100,000.

Robert Ezra Park and Ernest W. Burgess contend that areas away from the urban core that have greater uniformity, consistency, and universality of conventional values tend to have lower rates of deviancy. The corollary to this notion is, of course, that areas that are characterized by overcrowding, low rents, low rates of owner occupancy, and lower educational levels tend to have much more deviant behavior. Consider, then, who is likely to occupy this area originally emanating from the city center immediately outside the central business district, which Park and Burgess term the *transition zone*. This area of high population concentration, low education levels, and low housing values tends to be occupied by the lower class. People living in these areas often have a sense of being trapped in their social class, hopeless, with little means to escape the grasp of devastation, thus exacerbating the conflict that accompanies social disorganization. The problem

is particularly acute for adolescents trapped in the transition zone—this segment of the population has even fewer resources than adults of the same area and perhaps a greater sense of being trapped by their social and physical circumstances.

Chicago's Cabrini Green, perhaps the most famous and notorious of America's housing projects, serves as a prime example of the volatile mix of a high concentration of what was once as many as 15,000 people and severely limited resources. Cabrini Green was built after World War II in reaction to a government mandate for low-income housing. Cheaply constructed with little to no upkeep, Cabrini Green's appeal as a solution declined, and those with meager resources fled, leaving behind those who had no choice but to stay. Gangs and violence moved in, increasing deviance and violence. Violence in the 1990s was so bad that police officers reportedly refused to go to the center of the Cabrini Green complex for fear for their own safety. Since that time, due to destitution and skyrocketing crime, Cabrini Green has been demolished, replaced by mixed-income housing. An important note with regard to the social disorganization perspective is that being in compressed urban areas does not *cause* deviance. Rather, deviance is more likely to occur in these areas because of the structural challenges that residents of these areas encounter.

Symbolic Interactionist Perspective

Deviance is a matter of labeling and social construction, according to symbolic interactionists. J. L. Simmons noted that deviance, like beauty, is in the eye of the beholder. Specifically, murder is only deviant and criminal where and when it is so labeled. While this may seem contrary when considering the personal devastation that results from murder, consider the issue of self-defense whereby, in this case, an individual kills another in what he or she believes to be a justifiable action in the face of a lack of available government intervention. Murder for the sake of self-preservation is often not labeled as murder as long as the killing was a justifiable reaction to the expected likelihood of the initial offense. In other words, killing someone in reaction to having been kicked would not likely be considered justifiable self-defense. However, in some cases, such as those suffering from spousal battery, ongoing abuse and fear that brings about

murder in self-defense may be deemed justifiable even if the action immediately preceding the self-defense killing was not an immediate risk to life.

Howard Becker suggests that labels are created as a result of powerful "moral entrepreneurs." This labeling occurs in an orderly process: initial recruitment, role imprisonment, and entrance into sustaining subcultures. The initial recruitment phase might include coercion by peers to commit an offense. Role imprisonment takes place once the perpetrator has accepted the mantle of murderer; he or she has been labeled such by society and has accepted that label, along with the resulting social stigma. The murderer is ostracized by society and thus must seek out a sustaining subculture, a place in society in which he or she is accepted in spite of, or perhaps because of, his or her status as social pariah. It is important to note that this progression occurs only as societal labels are applied and accepted; in cases where society does not consider the perpetrator to be deviant, or even considers the murderer to be sympathetic, as in the case of a battered wife who murders her husband, the same labeling process will not occur. Indeed, the perpetrator in such a case will often not be imprisoned in the role of murderer.

Deviant behavior is learned rather than innate; socialization experiences and surroundings play an integral role in determining one's likelihood of becoming an offender. Edwin Sutherland's theory of differential association asserts that people have differential access to social resources and dominant social norms, offering an explanation of differential rates of deviant behavior. In other words, deviants are not born but develop as the result of a learning process that they see as normal, but that others view as deviant. With this assertion comes the assumption that people will behave in deviant ways when they determine the situation is appropriate for deviation with respect to their past experiences and associations with others.

The learning process of developing deviancy follows a continuum, with three modes expressing the most to least direct paths to deviance: formal, informal, and indirect-imitative. In formal instruction, deviance is taught as if through step-by-step instruction. In this case, the perpetrator is specifically taught how to load a gun, where to aim, and when to pull the trigger. In informal instruction, the perpetrator learns from another

but through observation rather than through individualized instruction. For example, the perpetrator might watch another perpetrator plan and execute a murder. Finally, indirect-imitative learning involves the perpetrator learning how to commit the offense from a third-party source, such as the computer, television, or print media, rather than through direct observation or interaction.

Thus, the proponents of symbolic interactionism find that deviance is fluid; it can change in form and function over time and place. Even within set parameters, there is a wide variance in the perception of deviant behaviors, including the degree to which the behavior is perceived as variant and whether it should be sanctioned. Further, through interactions with others, society is socialized, learning how, when, and whether to behave in conjunction with the socially prescribed norms or to react in a deviant way.

Conclusion

Sociologists do not function as arbiters of the quality of social acts and actors; rather, they offer objective explanations for general social behaviors. While murder can generally be explained by the four different social behavior theories, its sanction continues the ongoing process of building social stability, maintaining power differentials, and serving as a barometer of society's relative perceptions of murder across time and place.

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See Also: 1851 to 1900 Primary Documents; 1961 to 1980 Primary Documents; Criminology; Discretionary Decision Making; Forensic Science; Murder, Contemporary; Murder, History of; Uniform Crime Reporting Program; Urbanization; Vigilantism.

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Murders, Unsolved

Americans have long had a fascination with crime, particularly with murder. While modern journalism and the 24-hour news cycle provide ample opportunity for Americans to dissect every covered murder, even in previous decades there has been a fascination with murders—particularly those that remain unsolved.

Television shows like *Unsolved Mysteries*, *America's Most Wanted*, *The First 48*, and *Criminal Minds* help make murder a topic of consideration and discussion for many as citizens become able to watch mystery stories acted out. Add in media coverage of murders, missing people, and other crimes, and citizens almost become amateur detectives. Yet most Americans are unaware of the vast number of unsolved murders in American history or the number of suspected serial killers yet to come to justice.

Early America

Given the primitive nature of policing and relative dearth of evidence-collecting techniques in early America, it should be noted that there are considerably more high-profile unsolved murders today than there were in the 18th or even early 19th century. One of the most famous unsolved murders occurred in 1843 when Emeline Houseman and her 20-month-old daughter, Anna Eliza, were brutally murdered and then burned on Christmas night in Staten Island. Their bones were broken

and their skulls shattered before the house was set on fire to hide the crime. Polly Bodine, Houseman's sister-in-law, was immediately named as the main suspect. However, there were numerous inconsistencies: Namely, that the motive was theft yet, very little was taken, and Bodine was a woman of considerable means herself. Yet Bodine had many suspicious characteristics for 1840s New York: She had separated from her husband and was sleeping with another man. She had undergone abortions. Ultimately, she was arrested and tried three times but never served time for the murders. In the second trial, she was convicted, but the jury's verdict was overturned on appeal. Despite Bodine being labeled the Witch of Staten Island, the murder remains unsolved.

Another case that created a media circus during its era was the trial of Emma Cunningham regarding the death of her husband Dr. Harvey Burdell, a prosperous dentist, in New York City. Burdell had a less than glowing public reputation as he was accused of being abusive and also embezzling. On January 31, 1857, his servants discovered his body in his office. He had been stabbed and strangled. In total, there were 15 stab wounds inflicted by a left-handed assailant. Given that Emma was left-handed, she was an immediate suspect and was quickly arrested. Despite strong suspicions that she was guilty, the jury acquitted her.

Two of the oldest unsolved murders in the United States had their roots in Arkansas politics. In 1868, Thomas Hindman was killed when he was shot through his parlor window while reading the newspaper with his children. Some 21 years later, John Clayton met a similar fate after starting an investigation into election regularities in a race in which he was posthumously declared the winner.

In 1892, in Fall River, Massachusetts, Lizzie Borden "took an axe and gave her mother 40 whacks." And when that job was neatly done, "she gave her father 41." Or did she? Despite being the only person home at the time of the murders except a maid, a rocky relationship with her parents—Andrew and Abby—and much evidence against her, Lizzie was found not guilty amid most public speculation. The crime was particularly heinous in nature: Andrew had his skull crushed and his eyeball split from the force

of the blows from the hatchet raised by the assailant. The Lizzie Borden case is remembered as one of America's most famous trials, and the home in Fall River has been a robust attraction, even allowing guests to stay in the rooms where Abby and Andrew met their deaths.

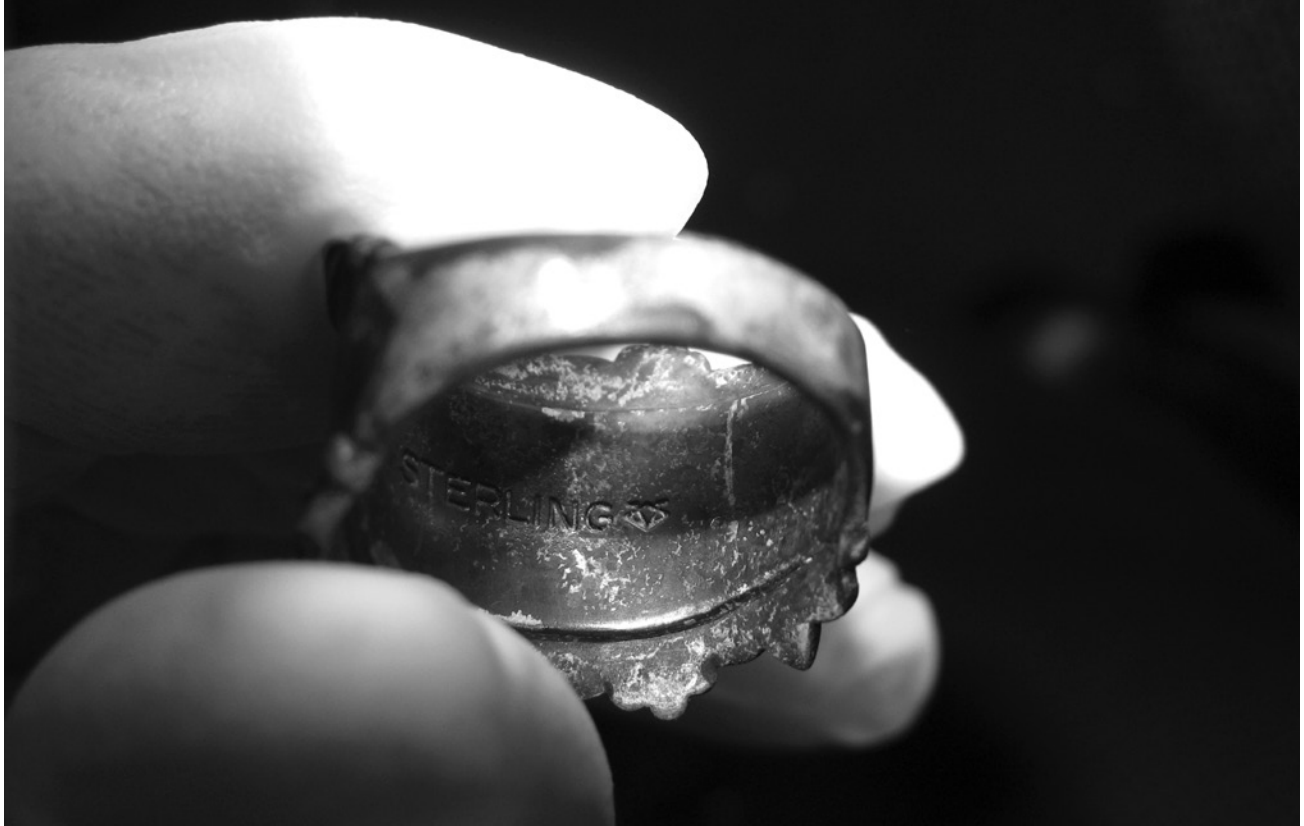
Early Twentieth Century

The first half of the 20th century was marked by a series of unsolved murders throughout the United States. In 1900, William Goebel was shot by an unknown assassin the morning before he was to be sworn in as governor of Kentucky. Although he survived long enough to be sworn in, he died three days later. To this day, he is the only state governor in American history to be assassinated. Twelve years later, in Villisca, Iowa, one of the deadliest unsolved murders in U.S. history occurred when J. B. Moore, his wife, four children, and two guests were killed by an axe murderer in their home.

On May 23, 1918, New Orleans grocer Joseph Maggio and his wife were butchered while sleeping above their store. Nothing was stolen, and the ax was left in the apartment, still covered with fresh blood. Despite money and valuables being in plain sight, the killer simply left a message in chalk about the victims without taking any goods. Despite having a suspect, no evidence was ever available to link him to the murder.

In 1944, the first unsolved Hollywood murder occurred when Georgette Bauerdorf was found dead in her bathtub. A 20-year-old heiress, she was strangled and had a piece of towel stuffed in her throat. A large roll of \$2 bills, thousands of dollars' worth of silver jewelry and many other valuables were left in the home. The police were able to clearly state that the murderer had a motive beyond robbery but were never able to advance the case past determining the assailant unscrewed a light bulb on her front porch and patiently awaited her arrival.

Three years later, Elizabeth Short, age 22, was found in Leimert Park in Los Angeles, mutilated and cut in half. She became known as the Black Dahlia, and her case has been the basis for many books, television episodes, and films as police and members of the public continue to try to bring her killer to justice. In 1922, an Episcopal priest and a member of the church choir (with



A clue to a modern unsolved murder in Kentucky: one of two rings found on a white female whose body was discovered on October 9, 2001, near Interstate 65 in Simpson County. One was a gold band and the other was a silver band with blue painted enamel flowers and leaves. New technology is used to help bring killers to justice; in this case, the state forensic anthropologist was able to create, based on scientific guidelines, a three-dimensional facial reconstruction on the victim's skull.

whom he was having an affair) were found dead in New Jersey. The priest's wife and her brothers were charged and later acquitted. While the case—commonly referred to as the “Minister and Choir Singer”—is still unsolved, it is best remembered for the sensational coverage it received from the media.

Mid- and Late Twentieth Century

In the second half of the 20th century, the number of unsolved murders in the United States increased. Pregnant Marilyn Sheppard was murdered in her home on Lake Erie in 1954. Sheppard's husband—Samuel—was tried and convicted of her murder in a trial that many compare to the O. J. Simpson murder in terms of media coverage and outrage. After having his conviction overturned as a result of media bias, the carnival atmosphere, and potential judicial improprieties,

Sheppard was found innocent in his second trial. He died claiming that a bushy-haired man killed his wife and knocked him unconscious twice. No further suspects were ever brought to trial.

The 1956 murder of the Grimes sisters, who were last seen at an Elvis Presley movie at the Brighton Theater in Chicago, is another prominent unsolved murder from the era. Their disappearance led to one of the largest missing persons hunts in the United States, but eventually their bodies were found off a country road, covered in bruises and marks. Little has ever appeared in terms of solid evidence despite three or four suspects being named and one false confession, except that puncture wounds in the chests of both women suggest an ice pick may have been the weapon of choice for their killer.

In 1957, a young boy was found beaten and naked inside a cardboard box in Philadelphia. The

boy, who was estimated to be between 4 and 6 years of age, was never identified. After the discovery of his body, every gas bill in the city came with a picture of the young victim. Despite widespread attention, the boy was never identified and his killer was never brought to justice. Just over a year later, another young murder victim was discovered in Springfield, Illinois. Sixteen-year-old Mary Jane Hanselman was found in the woods, bound by her own stockings and wearing her uniform from her job as a waitress. While a dishwasher from the restaurant was arrested, he was later released because of a lack of sufficient evidence, and no further arrests were ever made in the case.

A close friend of President John F. Kennedy, Mary Meyer was shot and killed in 1964 after going for a walk. A mechanic working nearby heard her cries for help and arrived in time to hear two gunshots and to see a man standing over

her. Raymond Crump was ultimately tried and acquitted of the crime. Much speculation has been raised regarding potential links between Meyer's murder and the assassination of Kennedy.

In 1969, Betsy Aardsma was stabbed through the heart in broad daylight among the books of Penn State University's library. Two men came to the information desk and told a worker that "somebody better help that girl." Unfortunately, Betsy was wearing a red dress and as a result, for several minutes no one realized she had been stabbed. She died at the hospital, and the two men were never identified. Between 1970 and 1973, three younger victims were found in Rochester, New York. Now known as the Alphabet Murders, the victims (ranging from 10 to 11 years old) were kidnapped from different areas, raped, strangled, and then dumped in suburbs that started with the same letter as their name. All three victims had the same first initial in their first and last names. The case is still open and comparatively more active than most unsolved murder cases from the 1970s. In 1974, Henry Bedard was found covered in leaves in the woods in Swampscott, Massachusetts. He was returning home from Christmas shopping when he was beaten to death with a baseball bat. The case remains open.

In 1975, American actress Barbara Colby was shot to death along with a colleague while walking to a car in a parking lot. While Colby died immediately, her colleague was able to describe what happened before succumbing to his injuries. He claimed that there was no provocation and two perpetrators were present. He did not recognize either. Both were left with money and valuables, so robbery was not the motive. As of 2011, there has still been no determination made regarding the motive for the murders. Another American actor, Bob Crane, was beaten to death with a camera tripod in his apartment in Scottsdale, Arizona, in 1978. Famous for his work on *Hogan's Heroes*, Crane had allegedly called longtime friend John Carpenter the night before he was murdered to tell him their friendship was over. Carpenter had helped Crane in his activities in the underground sex scene of the late 1970s. Police found blood smears in Carpenter's carpet that matched Crane's blood type, but no charges were filed until 1994. Carpenter was acquitted, and the case has since been cold.



The mugshot of Elizabeth Short, arrested in 1933 for underage drinking in Santa Barbara, California. Her sensational, unsolved murder became known as the Black Dahlia after her mutilated body was discovered in Los Angeles on January 15, 1947.

Raymond Washington, founder of the Crips, was killed in 1979 while walking the streets of Los Angeles. By this time, Washington had little authority over the gang he had started and was actually attempting to unite rival gangs in peace. Always opposed to guns, Washington was wary about approaching unknown cars. He feared being the victim of a drive-by shooting. While no one was ever charged with Washington's murder, most believe he knew his killer. Washington willingly approached the car the killer was in and was shot in the stomach by a passenger. If he had not known the individuals, he would not have gotten that close.

In 1980, 14-year-old Ronda Blaylock was discovered stabbed and left for dead near the Surry-Stokes county line outside Winston-Salem, North Carolina. Ronda had gone to school, taken the bus home to a friend's house, walked back to her own house, and was walking back to her friend's house when they were picked up by a young man driving a blue pickup with a camper. The friend was dropped off at home alive, but Ronda was not seen again until her body was discovered. The friend was never able to identify the man who gave them the ride or explain why Ronda stayed in the truck with him.

In 1995, 17-year-old Deanna Cremin was found strangled behind a senior center in Somerville, Massachusetts. Cremin was walking home with her boyfriend. Her boyfriend only walked her halfway to her door and allowed her to walk to her unknowing death. As of 2005, the police had started to focus on three individuals: her boyfriend, an older admirer, and another adult man. Without witnesses coming forth, however, the crime is not likely to be solved soon. In 1996, Amber Hagerman, age 9, was found with her throat cut in a creek bed by a man walking his dog. Hagerman had been riding her bike near her grandparents' home in Texas. She was kidnapped and held for two days before being murdered. Although significant reward money was offered, no information on her killer has ever been found. Her death was not for nothing, however, as Hagerman inspired the creation of the AMBER Alert System. The day after Christmas in 1996, 6-year-old JonBenet Ramsey's body was discovered in the basement of her home in Colorado—dead from strangulation. The media coverage of Ramsey's

death lasted for many years and regularly pointed an accusatory eye at her parents. Despite making it to a grand jury on multiple occasions, there have never been larger developments.

The latter half of the 1990s saw the murder of three rappers. In 1996 Tupac Shakur was killed in a drive-by shooting in Las Vegas, Nevada. A year later, Notorious B.I.G. was gunned down at a red light while driving back to his hotel in Los Angeles. Lastly, Big L. Harlem was killed near his home in Harlem. All three cases remain unsolved. Some Americans still argue that Shakur is alive. There was a composite sketch of a potential person of interest in Notorious B.I.G.'s murder, but no one was ever taken into custody. For many music fans, these three unsolved murders will remain relevant until answers appear.

The Twenty-First Century

The 21st century has brought with it a new wave of unsolved murders. Given the shorter time frame authorities have had to conduct these investigations, there is still hope they will be solved. For people like Jill-Lyn Euto (a 19-year-old stabbed to death in Syracuse in 2000), Evelyn and Alex Hernandez (a mother and son who disappeared in 2002; only Evelyn's torso was ever found), Rashawn Brezell (whose dismembered body was found in garbage bags in Brooklyn), Gail DeLay (who was beaten to death in Dallas in 2005), and Robert Wone (murdered in Washington, D.C., in 2006 while his three roommates were home), the hope is that new technology and public awareness will help bring their killers to justice.

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See Also: 2001 to 2012 Primary Documents; Bodine, Polly; Borden, Lizzie; Cunningham, Emma; Serial and Mass Killers; Sheppard, Sam; Simpson, O. J.

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Music and Crime

Music has played an integral role in the life of mankind since recorded history. It has been used for ceremonial purposes, rallying cries, and serves as a cultural identifier for many people. Music as a creative form of expression and method of identification for individuals is evident in modern society. As a result, much debate and concern has been generated concerning the relationship between music and crime. Thus, it is vital that this connection be explored, at the very least, in a general sense.

Because the term *music and crime* conjures a number of different thoughts, there are several avenues to explore. The first is the relationship between violent criminal acts and music as the cause of those crimes, specifically, the outcry that certain forms of music may cause individuals to commit heinous acts against others. A second exploration of music and crime looks at criminal activity in songs. The third aspect of music and crime is the role that organized crime figures played in the music industry from the 1950s through the mid- to late 1980s. Music piracy, the current criminal threat to the music industry, is not a recent phenomenon. Instead, as the fourth examination of music and crime shows, the current form of music piracy is simply a technologically advanced way of engaging in copyright infringement.

Music as the Cause of Crime

Similar to other forms of media, music has, throughout history, been blamed for the ills of society. Newer forms of music and the subculture that develops as a part of the musical genre have been regarded with suspicion by older generations for many years. Musical genres such as heavy metal, rap (primarily gangsta rap), and early forms of jazz were, during their infancy, considered to be gateways to delinquent behavior by youth. This phenomenon did not develop and just begin with rock and roll of the 1950s or with rap and heavy metal in the late 1980s; however, it is these forms of music that the public, media, and authority figures began to take interest in. Early jazz, the blues, and R&B have been criticized as being the cause of youthful displays of negative attitudes, delinquent and antisocial behavior, all

of which lead to criminal activity. Mankind's use of the argument "The music made me do it" goes as far back as biblical accounts, Homer's use of the sirens in the recounting of Ulysses's journey home, and the story of the Lorelei, whose voices drove listeners to suicide. Thus, one must consider and understand that although discussions regarding the relationship between violence, crime, and music are a more contemporary undertaking, the subject itself predates contemporary society.

Currently, the debate regarding musical influence on criminal behavior has focused on the affect that rap and heavy metal have on youth. Mainstream media has, in the past few decades, reported several instances in which offenders and critics of popular music have blamed each genre for some sensationalized crime committed by a juvenile offender. During the late 1980s and throughout the 1990s gangsta rap (a subgenre of rap) artists such as Tupac (2Pac) Shakur, Ice-T, N.W.A (Niggaz With Attitude), and 2 Live Crew were named as instigators of various crimes that range from assault and murder of a police officer to domestic abuse and rape. The group 2 Live Crew, whose lyrical content is considered to be lewd, degrading, and violent toward women, had their song (*As Nasty as They Wanna Be*) declared criminally obscene by a federal judge. Ice-T's *Cop Killer* was boycotted by politicians and law enforcement. Both Tupac Shakur and N.W.A have had offenders declare that their songs, which were playing at or before the time of the criminal act, made them assault or kill a police officer. Similar to rap and its subgenre gangsta rap, heavy metal and its many subcategories have been cited as the cause for various violent criminal acts by youth. Artists such as Ozzy Osbourne, Judas Priest, Deicide, and Cannibal Corpse have been named in lawsuits that allege their music led to violence and criminal activity that led to the death of the complainants loved ones. One of the more notable references toward the link between heavy metal and criminal activity is that of the Columbine High School tragedy. Alternative rocker Marilyn Manson was pointed to as a catalyst for the two shooters' actions, which led to the deaths of 12 other students and one teacher, while 24 others were wounded. Manson was also blamed in the Santana High School shooting, which was regarded as a Columbine copycat killing.

Critics of gangsta rap and heavy metal have used these incidents to link crime to music and push to see these forms of music banned or, at the very least, censored. Despite these incidents and claims by critics, there has been no strong support or clear indication that music (specifically rap and heavy metal) leads to violence or criminal behavior. Despite much theoretical debate concerning the effect of violent music on criminal behavior, the amount of research and subsequent empirical support for one side or the other is seriously lacking. Data concerning the link between violent music and criminal activity is mixed at best. On one hand, some studies indicate that violent music (i.e., heavy metal and rap) has an effect on mood alteration but that there are no direct links between the music and an individual's decision to commit a violent criminal act. On the other hand, several studies demonstrate that exposure to violent, sexually aggressive music facilitates sexually aggressive behavior. One should note that many

of these studies have limitations and the findings are questionable. Thus, strong empirical data is limited in regard to proving or disproving the idea that violent music causes certain individuals to commit violent criminal acts.

Criminal Activity in Music

From country to rap, crime and criminals have been a focal point in music dating back at least to the 19th century. Much of current music uses crime and criminals as a focal point. For instance, rap is known to tout and in some cases glamorize drug use and trafficking, assault, and a gangster lifestyle. Although some critics of popular music claim that crime in music is a recent occurrence that is unique to more aggressive styles of music (i.e., rap, heavy metal), criminality has been the subject of ballads, songs, and musical lyrics for a considerable period of time. Stagger Lee, possibly one of the better known criminal figures in music, has been the subject of more than 150 songs



Marilyn Manson playing on the Rape of the World 2007 Tour in Belfort, France, June 29, 2007. Manson's music has been considered a catalyst for the actions of several youth crimes, most notably that of senior students Eric Harris and Dylan Klebold, who killed 12 students and a teacher and wounded 24 others during a suicidal shooting spree at Columbine High School on April 20, 1999. Manson's music was also blamed for inciting Charles Andrew Williams to copycat the Columbine shootings at Santana High School on March 5, 2001.

since 1897, which is when the ballad's unknown authors wrote about events surrounding the murder of a man in a St. Louis saloon.

Crime has been the subject of a variety of other music genres as well. Blues singers have sung about a number of crimes since the genre's introduction to the music scene. Most notably, during the Depression era, many blues singers, usually poor African Americans from crime-ridden neighborhoods, sang about muggings, lover's quarrels, and murder. Rap, similar to blues, originated among African Americans as a reflection and commentary on their urban environments. Specifically, gangsta rap made its mark on the music scene with songs like N.W.A.'s *Fuck Tha Police* and Ice-T's *Cop Killer*, to name a few. The various forms of rock and roll have lauded drug abuse, underage drinking, and sex with minors. The Guns n' Roses song *Mr. Brownstone* chronicles heroin addiction, Mötley Crüe describes the lifestyle of a successful drug dealer in the hit *Dr. Feelgood*, and the band Skid Row tells the story of a young man who receives a life sentence for murder in *18 and Life*.

Although less recognized, another aspect of criminal activity in music is that of female crimes against men. A number of female artists and female groups have generated popularity and press based on songs that focused on the death of an abusive or cheating lover. Country music has led the charge with songs like the Dixie Chicks *Goodbye Earl* and Martina McBride's *Independence Day*. Both songs describe situations in which a woman who was severely beaten by her husband later killed him. The primary difference between the two is that the female in McBride's song kills herself and her abuser, whereas the Dixie Chicks female and her best friend kill the abuser and bury him in the backyard. *Miss Otis Regrets*, originally penned as a blues song of the 1930s, tells the story of a polite society lady who kills the man who seduced and then abandoned her.

Organized Crime in the Music Industry

Another aspect of the relationship between music and crime is that of criminal activity within the music industry; such crimes include illegal downloads (music piracy), organized crime, and copyright infringement. Since the days of famous Rat Pack members Frank Sinatra, Dean Martin, Sammy Davis, Jr., and Joey Bishop, the Federal

Bureau of Investigation (FBI) has kept extensive files on musicians and music executives because of alleged ties to criminal organizations or, in some cases, because of criminal involvement of the artists themselves. Although the association between members of the Mafia and musicians can be traced back to the early days of jazz, it is the period between the late 1950s and the 1980s that warrants the most attention. It was during this time that mobsters saw the financial benefits of illicit involvement with the music industry.

Music distribution has, it seems, been problematic for the music industry and musicians since well before the onslaught of music piracy and illegal downloads. Since the 1950s, Morris Levy, a formidable record industry titan with alleged connections to the Genovese crime family, controlled various aspects of the record industry. His peak period of influence was from the 1950s through the 1970s, but he continued to utilize his illicit connections well into the 1980s. Levy, whose businesses included record pressing plants, distribution companies, record store chains, and record labels, printed extra or counterfeit copies of popular records and sold them on the black market in order to circumvent taxes and royalties owed to artists. He also assigned authorship of early rock and roll hits to himself in order to defraud powerless black artists of their royalties.

During the 1980s, Salvatore Pisello, an alleged drug trafficker, soldier in the Gambino crime family, and business partner to Levy, worked for MCA Records as a consultant. At this time, Pisello along with Levy swindled millions of dollars from the company in a series of questionable distribution deals. In a deal to sell \$1.25 million in cutouts (copies of albums record companies are no longer selling and have cut out from their catalog) to John LaMonte, a small-time wholesaler who was connected to a New Jersey crime family, Pisello and Levy intended to rip LaMonte off. However, after being roughed up and extorted because he refused to pay for the merchandise, LaMonte turned FBI informant and exposed the Mafia's ties to the music industry.

Illegal Music Distribution (Music Piracy)

As the black market distribution deals engaged in by mob-connected record industry moguls like

Levy demonstrates illegal distribution of popular music has been taking place for decades and is not a new phenomenon that started with the technological age. Music piracy, which is still a mob-backed endeavor, has taken shape in the form of illegal digital downloads.

Music piracy is described as the unauthorized duplication and distribution of music, and it comes in two forms: physical and digital. Physical music piracy involves the unlawful duplication and distribution of music using some physical medium such as cassette tapes or compact discs. Digital music piracy is similar to physical music piracy but it includes downloading and file sharing.

Technological advancements such as the cassette tape in the 1960s, home cassette recording device in the 1970s, and the compact disc in the 1980s made duplication of music easier. The advent of the compact disc and digitally encoded music heralded a new era in music piracy. A 2006 Recording Industry Association of America (RIAA) report indicates that one in every three CDs sold worldwide is counterfeit. As of 2005, the manufacture and international traffic of illegally obtained music has netted an estimated \$4 billion to \$5 billion in sales.

While physical musical piracy has been a bane to the music industry, illegal digital downloading has garnered the most media and legislative attention. The era of digital downloads and file sharing began with the launch of Shawn Fanning's company Napster in 1999. Napster, which was in service from 1999 to 2001 (before legal injunctions caused it to be shut down), allowed users to share mp3 files of music and film in a manner that circumvented paying markets. This was seen as

a direct violation of copyright infringement laws. Although Napster was shut down and file sharing was declared illegal, the road to massive illegal digital downloads was paved.

Groups involved in the organized distribution of illegal music both domestically and internationally range from hierarchical organized crime groups such as the Mafia to terrorist groups. Much of the money earned from music piracy goes to support illegal activities like drug trafficking, terrorism, and other organized crime endeavors.

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See Also: Compton, California; Computer Crime; Klebold, Dylan, and Eric Harris.

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Narcotics Laws

From the Greek *narke*, meaning “numbness” or “stupor,” narcotics are technically any class of drugs that induce sleep. But that narrow definition does not align with either the medical meaning of the word or the meaning ascribed to it in the law regulating narcotics. In medical parlance, “narcotics” generally refers to the opioid analgesics—a class of natural, semisynthetic, and synthetic painkillers derived from or structurally similar to opium. True opiates are derived from opium—a resinous, milky fluid produced by the opium poppy (*Papaver somniferum*). Opium contains both morphine (approximately 10 percent) and codeine (approximately 1–2 percent).

It has been used for thousands of years around the globe as a medicine for pain relief and for pleasure since it produces euphoria in the absence of pain. Semisynthetic narcotics do not exist in nature but are synthesized by altering a naturally occurring substance, such as heroin from morphine or oxycodone from thebaine, a nonnarcotic found in opium. Synthetic narcotics such as methadone and Demerol are completely synthesized in a laboratory. In moderate doses, narcotics dull the senses, relieve pain, and induce sleep. In higher doses, narcotics cause stupor, coma, convulsions, or even death caused by respiratory depression.

Morphine was first isolated in 1803 and was named after Morpheus, the Greek god of dreams. The German pharmaceutical corporation E. Merck & Company began commercially manufacturing morphine in 1827. In 1832, codeine was isolated from the poppy and, shortly thereafter, semisynthetic and synthetic narcotics began to be created. In 1898, heroin was developed as an allegedly nonaddictive opioid analgesic. Of course, heroin turned out to be much more addictive than either morphine or codeine.

Laws designed to control narcotic use are a relatively recent phenomenon, historically speaking, because until the 18th century, abuse of narcotics was not perceived as a major social problem. One of the earliest known narcotics laws was a Chinese edict issued in 1729 prohibiting the smoking of opium and its domestic sale, except under license for use as medicine. The edict, however, did little to curb the use of the drug in China, as opium addiction established itself as a major public health threat in China during the 1800s, prompting the Manchu dynasty to restrict opium use through legislation focusing on trade, primarily with Great Britain since British control over the East India Company had given the British a virtual monopoly on the opium trade. In 1799, Chinese emperor Kia King banned opium completely, making poppy cultivation, use, and trade illegal. Illicit smuggling, however, kept opium flowing

into China, primarily from Turkey, leading the British and Chinese to fight two Opium Wars. Not only did China lose the wars, but it paid large indemnities, including the ceding of Hong Kong to the British. Moreover, the British victories allowed them to increase the opium trade from other areas of Asia until the turn of the 20th century.

Early U.S. Narcotics Laws

The first major concern about narcotic use in the United States occurred during the Civil War as a function of physicians using the relatively new drug morphine to treat battlefield injuries, resulting in hundreds of thousands of morphine addicts. Morphine addiction, however, was seen almost exclusively as a medical issue. It was not until

1890 that the U.S. Congress imposed a tax on opium and morphine; in 1905, Congress banned opium completely. Racism, not public health concerns, was largely responsible for these laws. Chinese immigration into the western United States spurred concern over cheap immigrant labor, as well as exaggerated fears that Chinese men were luring white women into opium dens for sexual purposes. As a result, San Francisco banned opium smoking in 1875 because that practice was associated with the Chinese. In 1883, the U.S. government began taxing opium imports. California criminalized selling opiates or cocaine without a prescription in 1907 and banned the possession of opium in 1909, the same year that the federal government banned the importation of opium.



Joseph Basile, hiding his face with his coat, under arrest in connection with the seizure of \$25 million worth of narcotics in February 1949. Chief of Detectives William T. Whalen stands over some of the confiscated drugs. The Boggs Act was passed shortly afterward in 1951 to create uniform penalties and minimum sentences for federal narcotics law violations.

The Pure Food and Drugs Act of 1906 banned the interstate transportation of adulterated or mislabeled food and drugs. Requiring the labeling of ingredients in over-the-counter items had the practical effect of decreasing the availability of opioids and cocaine, the latter of which had begun to cause its own social problems.

Cocaine was isolated from the coca plant (*Erythroxylum coca*) around 1860. Within a few years, it was found in everything from toothpaste and nasal sprays to cigarettes and Coca-Cola. As a result, from the mid-1880s through the 1920s, the United States faced a major cocaine epidemic. Again racism contributed to attempts to control the drug. Contractors were alleged to be providing cocaine to African American employees to get more work out of them, and media reports of “cocaine-crazed Negroes” killing white women in the south caused a panic about the substance. These concerns led Congress to pass the Harrison Act of 1914. The law required registration and payment of a tax by all who imported, produced, or distributed opium, cocaine, or their derivatives. The act limited the availability of these substances, as well as marijuana and chloral hydrate, substances that the act classified together under the moniker *narcotics*. In 1922, Congress enacted the Jones-Miller Act, providing fines and prison sentences for those convicted of the unlawful importation of narcotics. It did little to curb the illicit drug trade other than to increase the price of opioids and cocaine. In 1932, the National Conference of Commissioners adopted the Uniform Narcotics Drug Act to achieve uniformity in state drug laws regulating narcotics, focusing primarily on opioids, cocaine, and marijuana.

Marijuana use had increased significantly during the late 1910s through the 1930s, partly as a function of the high cost of opioids and cocaine in the wake of the Harrison and Jones-Miller acts and partly because of the growth of the American jazz scene. Racism played a role in the inclusion of marijuana in the Harrison Act, largely as a function of the perceived crumbling of racial barriers when blacks and whites interacted as equals while smoking marijuana in jazz clubs. Racism against Mexican immigrants, who were perceived to be vying with unemployed Americans for limited jobs during the Great Depression, similarly prompted concerns about marijuana.

Mexicans were painted as marijuana users who used violence against Americans when high, leading to the passage of the Marihuana Tax Act of 1937, the first piece of federal legislation specifically targeted at marijuana. Although the act did not prohibit marijuana use, it taxed anyone who cultivated, distributed, or used the substance, effectively placing marijuana on par with cocaine and opioids.

Narcotics Laws in the Modern Era

World War II focused attention away from drugs. International trafficking was practically eliminated. In the 1950s, amphetamines, which were originally prescribed to curb obesity and depression, became popular among students, professionals, and even homemakers. Additionally, LSD (lysergic acid diethylamide) grew in popularity in certain communities during the 1950s and 1960s. Collectively, these changes prompted federal legislation that altered the ways in which the United States dealt with illicit drugs, nearly all of which were lumped together under the term *narcotics*. The Boggs Act, passed in 1951, established uniform penalties and minimum sentences for those who violated federal narcotics laws. These penalties were increased and expanded by the Narcotic Control Act of 1956. By the mid-1960s, federal control over amphetamines, barbiturates, and LSD (none of which are true narcotics, pharmacologically speaking), expanded with the passage of the Drug Abuse Control Amendments to earlier laws.

In 1970, Congress repealed the hodgepodge of drug laws and enacted the Comprehensive Drug Abuse Prevention and Control Act of 1970. Critics of the law argued that it was passed as a punitive response to the prevailing counterculture of the time. For example, the 1960s saw major social unrest as a result of unpopular foreign policies and the slow pace of civil rights legislation. At the same time, crime was constructed as a major social problem, especially in urban areas in which minorities were viewed as the perpetrators of violence and the distributors of illegal drugs. Collectively, these reasons prompted President Richard Nixon to reinvigorate the “war on drugs” in a manner that targeted two groups critical of his administration: minorities and youth.

Title II of The Comprehensive Drug Abuse Prevention and Control Act of 1970 is commonly

referred to as the Controlled Substances Act (CSA). The CSA organized all federally regulated drugs into five “schedules” of drugs based on the substance’s alleged potential for abuse and its accepted medical uses. Schedule I lists substances that have a high potential for abuse and no accepted medical uses in the United States, including heroin, MDMA (ecstasy), hallucinogens such as peyote and LSD, and, controversially, marijuana. Schedule II also contains drugs with a high potential for abuse, but these drugs have accepted medical uses, including many of the opioid analgesics, stimulants such as cocaine and Ritalin, and some short- and intermediate-acting barbiturates such as pentobarbital and secobarbital. Schedule III drugs have moderate potential for abuse and a variety of accepted medical treatments, such as anabolic steroids, Ketamine, and some intermediate-acting barbiturates. Schedule IV drugs have even lower abuse potential, including the benzodiazepines/major tranquilizers, such as Xanax and Valium, long-acting barbiturates used for sleep and seizure disorders, opioids used for antidiarrheal purposes, and non-benzodiazepine sleeping pills such as Ambien and Lunesta. Finally, Schedule V drugs have the lowest potential for abuse, such as cough suppressants containing small amounts of codeine and stimulants used to treat chronic fatigue or to suppress appetite.

The CSA has been amended numerous times since 1970 but remains the primary federal law for the formal social control of drugs of abuse in the United States. Yet there have been numerous criticisms of the CSA. First, the CSA discouraged the psychopharmacological advances of the 1950s and 1960s—innovations the National Institute of Mental Health was designed, in large part, to foster. Second, by lumping tight control of drugs of abuse without significant medical uses with true narcotics, people suffering from severe chronic pain sometimes find it difficult to obtain relief because physicians often fear prescribing opioid analgesics for long-term use. Third, a criminal justice focus on controlling drugs of abuse has significantly overshadowed public health approaches, resulting not only in the underfunding of drug treatment programs but also in the spread of diseases such as hepatitis and human immunodeficiency virus and acquired immune deficiency syndrome (HIV/AIDS) as a function of the refusal to

adopt policies like needle-distribution programs, which some consider to promote intravenous drug use. Fourth, federal drug interdiction efforts cost more than \$19 billion a year. The money and the law enforcement efforts expended reduce the amounts of both resources that can be devoted to other priorities, from education and social services to other forms of crime control, including counterterrorism. Fifth, the continued classification of marijuana as a Schedule I substance is dubious, especially in light of the fact that since 1996, 15 U.S. states and the District of Columbia have legalized the cultivation, possession, and/or use of marijuana for medicinal purposes.

Drug Testing

Drug testing emerged as drug control efforts increased. The National Institute for Drug Abuse originally developed drug tests for military use. But other forms of drug testing became commonplace in the mid- to late 1980s, largely in response to executive orders and legislation signed by President Ronald Reagan. Originally, governmental efforts to create a “drug-free workplace” via drug testing were aimed at federal transportation employees. In 1989, over Fourth Amendment challenges, the U.S. Supreme Court decided *Skinner v. Railway Labor Executives Association*, upholding drug tests of railroad employees who were involved in accidents, and *National Treasury Employees Union v. Von Raab*, upholding suspicionless drug testing of U.S. Customs Service agents who were involved in drug interdiction efforts or who had access to classified information.

The practice eventually spread to private-sector employees and to students. Most common law challenges to private-sector drug testing were unsuccessful. Constitutional challenges to random drug testing in schools fared no better. In *Vernonia School District v. Acton* (1995), the Supreme Court upheld random drug testing of student athletes, and in 2002, it extended that holding to students who participate in competitive extracurricular activities in *Board of Education v. Earls*. Some states, however, have invalidated suspicionless testing of students on state constitutional grounds.

The ever-increasing focus on penal social control of drugs of abuse has had serious consequences for the justice system. The incarceration rate in the United States has quadrupled since

1970, largely as a function of drug-related crime. Some argue that this has created a permanent underclass in America in which convicted drug offenders find themselves closed off from educational and employment opportunities, as well as from full participation in the democratic political process because of voting disenfranchisement laws. Moreover, drug prohibition has created a criminal subculture, especially in inner cities, in which \$40 billion per year in profits from the illicit drug trade are paid for in violence and fear.

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See Also: 1921 to 1940 Primary Documents; 1941 to 1960 Primary Documents; 1961 to 1980 Primary Documents; Drug Enforcement Administration; Harrison Act of 1914; Pure Food and Drug Act of 1906.

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National Association for the Advancement of Colored People

The National Association for the Advancement of Colored People (NAACP) was founded on February 12, 1909. It is the oldest, largest, and most recognized grassroots civil rights organization in the United States. The NAACP has more than 500,000 members and supporters in the United States and other nations, who serve as civil rights leaders in their communities, campaign for equal opportunity, and conduct voter mobilization. The NAACP has championed several civil rights issues, with numerous national and state victories.

In the 21st century, the NAACP continues to fight for equality in economics, healthcare, education, voter empowerment, and the criminal justice system, alongside advocating for civil rights issues in the legal arena.

Formation

The NAACP was formed in part as a response to the ongoing monstrous lynchings and the 1908 race riot in Springfield, the capital of Illinois and burial site of President Abraham Lincoln. A group of white liberals, who were dismayed by the violence against blacks, called for a meeting to discuss racial justice. The group members included Mary White Ovington, Oswald Garrison, William English Walling, and Dr. Henry Moscowitz. Around 60 persons signed the call, with seven of them being African Americans, including W. E. B. Du Bois, Ida B. Wells-Barnett, and Mary Church Terrell. The call was released on the centennial of Lincoln's birth.

The other members of the initial group included Joel and Arthur Spingarn, Josephine Ruffin, Mary Talbert, Inez Milholland, Jane Addams, Florence Kelley, Sophonisba Breckinridge, John Haynes Holmes, Mary McLeod Bethune, George Henry White, Charles Edward Russell, John Dewey, William Dean Howells, Lillian Wald, Charles Darrow, Lincoln Steffens, Ray Stannard Baker, Fanny Garrison Villard, and Walter Sachs.

The NAACP's mission echoed the focus of Du Bois's Niagara movement begun in 1905. The mission was to secure for all people the rights stated in the Thirteenth, Fourteenth, and Fifteenth Amendments to the U.S. Constitution, which promised to end slavery, equal protection under the law, and universal adult male suffrage. As such, the NAACP's main goal is to ensure the political, educational, social, and economic equality of minority group citizens of the United States and to purge racial prejudice. The NAACP seeks to bring down all barriers of racial discrimination through the democratic processes.

The NAACP emphasized local organizing. Therefore, by 1913, it had set up branch offices in Boston, Massachusetts; Baltimore, Maryland; Kansas City, Missouri; Washington, D.C.; Detroit, Michigan; and St. Louis, Missouri. Because of the pivotal role of founding member and 1929–39 president Joel Spingarn, the



Four of the most active leaders in the National Association for the Advancement of Colored People (NAACP) movement hold a 1956 poster reading "Stamp out Mississippi-ism! Join NAACP." They are, from left, Henry L. Moon, director of public relations; Roy Wilkins, executive secretary; Herbert Hill, labor secretary, and Thurgood Marshall, special counsel.

NAACP experienced rapid growth. The membership grew exponentially from 9,000 in 1917 to around 90,000 in only two years with more than 300 local branches. The organization started to see more African Americans in its leadership roles, with writer and diplomat James Weldon Johnson as its first black secretary in 1920 and Louis T. Wright, a surgeon, as its first black chairman of its board of directors in 1934.

The NAACP named its first president, Moorfield Storey, a white constitutional lawyer and former president of the American Bar Association, and established its national office in New York City in 1910. Du Bois, its only African American executive, was made director of publications

and research. In 1910, the official journal of the NAACP, *The Crisis*, was founded by Du Bois.

The Crisis magazine was established as a premier crusading voice for civil rights. As one of the oldest black periodicals in the United States, *The Crisis* carries on its mission into the third millennium. The magazine is respected for its thought-provoking content, opinion, and analysis, and serves as the official voice of the NAACP in the fight for human rights for people of color. During the Harlem Renaissance, *The Crisis* also published works by Langston Hughes, Countee Cullen, and other African American literary figures. Because of Du Bois's decision to do so, the publication's prominence would rise.

The magazine is published quarterly at present (2012), forging an engaging and candid forum for important issues pertaining to people of color, the American society, and the world at large. The publication also features relevant historical and cultural achievements. In writings that address past and present racial issues, the magazine explores their impact on educational, economic, political, social, moral, and ethical matters. The quarterly also provides updates on NAACP activities at the national and local levels.

Early Advocacy Efforts

The most strenuous and central campaign in the history of the NAACP must have been the decades-long battle against lynching, spanning more than 30 years. Though expressing initial concerns about its constitutionality, the NAACP endorsed the federal Dyer Bill, which would have punished those who took part in or failed to prosecute lynch mobs. The U.S. House of Representatives passed the bill, but the Senate never did, as was the case with other antilynching legislation. It was observed that because of the NAACP report *Thirty Years of Lynching in the United States, 1889–1919*, a public debate was started and drastic drops in the incidence of lynching followed.

The NAACP's most productive period of legal advocacy was established in the 1930s. With Walter F. White as president, the association commissioned the Margold Report, which laid the ground for the triumphant reversal of the separate but equal doctrine. This doctrine had been in effect in public facilities since the 1896 decision in *Plessy v. Ferguson*. White then recruited Charles H. Houston as NAACP chief counsel in 1935. Houston's protégé Thurgood Marshall was instrumental in reversing *Plessy* in the 1954 case *Brown v. Board of Education*.

As the United States entered the Great Depression during the 1930s, the NAACP shifted its focus to economic justice, given the disproportionate toll that African Americans faced. Despite the initial years of tension with the white labor unions, the NAACP was able to partner with the emerging Congress of Industrial Organizations to secure jobs for black Americans.

White continued to play an important role in this area, especially through his mobilization with First Lady Eleanor Roosevelt, also an NAACP

national member. As a friend and adviser to the first lady, White met with her on a regular basis to persuade President Franklin D. Roosevelt to proscribe job discrimination in the armed forces, defense industries, and the agencies created by Roosevelt's New Deal.

In 1941, thousands of jobs for black workers came about when Roosevelt received a threat of a national march in Washington, D.C., from labor leader A. Philip Randolph, in collaboration with the NAACP. The president also consented to a Fair Employment Practices Committee (FEPC) to ensure compliance. This focus on economic justice was a pivotal turn and continues to be a crucial part of the NAACP's work, because the effects of economic disparities are continued to be felt today for blacks and other people of color.

The NAACP continued to expand as its membership increased throughout the 1940s, reaching 600,000 members by 1946. The association remained steadfast in its legislative and legal mission to advocate a federal antilynching law and an end to state-mandated segregation. This growth in numbers was the impetus for the formation and sustenance of the civil rights movement in the 1950s.

Civil Rights Era

The civil rights era marked another breakthrough in the struggles for racial equality. In 1954, *Brown v. Board of Education* achieved the removal of segregation in public schools, owing in great part to the leadership of Marshall and the NAACP Legal Defense and Educational Fund. Lobbyist Clarence M. Mitchell, Jr., heading the NAACP's Washington, D.C., bureau, helped achieve integration of the armed forces in 1948 and the passage of the Civil Rights Acts of 1957, 1964, and 1968, as well as the Voting Rights Act of 1965.

While hard-earned racial justice legislations took nearly half a century to come about, the implementation of civil rights took even greater efforts and more extended time. Violence continued to face people of color, especially NAACP administrators and activists. Jim Crow segregation continued to persist throughout the south, and black children faced violent discrimination when they attempted to enter previously segregated schools in Little Rock, Arkansas, and other

southern cities. In the south, many African Americans were still denied the right to register and vote.

The NAACP realized the importance of working within the system to effect change, but it also made rigorous grassroots outreach, such as posting bail for hundreds of Freedom Riders in the 1960s who traveled to Mississippi to register black voters and to challenge Jim Crow segregation. In 1963, Roy Wilkins, the secretary succeeding Walter White in 1955, worked with other leaders and national organizations to plan the march on Washington. In 1964, major civil rights legislation was passed, affirming the laudable achievement that the NAACP had obtained.

Given its gravity and the service of prominent leaders, the NAACP has triumphed over several injustices against people of color, at both the national and state levels. The organization's early court battles helped confirm its role as a legal advocate. An important court case at the NAACP's conception was the victorious 1910 *Guinn v. United States*, which fought against a discriminatory Oklahoma law that regulated voting by means of a grandfather clause. Five years later, the NAACP also engaged in an important battle fighting D. W. Griffith's inflammatory film *Birth of a Nation*, a motion picture that invested in the perpetuation of demeaning stereotypes of African Americans and glorified the Ku Klux Klan.

Contemporary Issues

Through its most recent campaign, "Fighting for Health Care as a Civil Right," the NAACP established an unprecedented Civil Rights Health Care War Room in Washington, D.C., along with the National Urban League and Black Leadership Forum. Together, they generated tens of thousands of phone calls to Congress, thousands of letters, and more than a dozen visits from state NAACP leadership to congressional leaders in Washington. As a result, the Patient Protection and Affordable Care Act and Health Care & Education Reconciliation Act of 2010 were passed to extend health insurance coverage to 32 million Americans and will outlaw discrimination against patients with pre-existing medical conditions.

Another prominent victory came with the "Strengthening Hate Crimes Enforcement" campaign, in which NAACP supporters sent hundreds of letters and made phone calls to Congress

demanding tougher measures against hate crimes. After a 13-year campaign, the Mathew Shepard, James Byrd Jr. Hate Crimes Prevention Act was passed, allowing the federal government to prevent, investigate, and prosecute hate crimes.

The NAACP also launched the campaign "Protecting the Working Poor" through calls and letters to Congress, in which NAACP members and supporters demanded action for families struggling with unemployment in difficult financial times. Through this project, the Continuing Extension Act of 2010 was approved, extending federal unemployment benefits to those whose state-paid benefits have expired.

Another campaign aimed at upholding justice for all, the NAACP's "I Am Troy Campaign," made Troy Davis a representative of racial disparities that are still present in the criminal justice system. Davis, a former sports coach, was on death row for decades for the murder of an officer, even after seven of the nine witnesses in the original trial had recanted their testimony. This campaign culminated in a rare Supreme Court decision, in which evidence against Troy Davis was ordered to be reheard. Though Davis was executed in 2011, his case focused attention on the continuing plight of people of color in the U.S. justice system.

The NAACP's "Combating Employment Discrimination" campaign succeeded with the Lilly Ledbetter Fair Pay Act, the first act of Congress signed by President Barack Obama after taking office. This act combats discrimination in employment wages in response to the demand made in letters and faxes to Congress from NAACP supporters, insisting that equal work for equal pay become the law of the land.

The NAACP also worked on "Protecting Vulnerable Populations," a campaign that started in the days following the devastating earthquake in Haiti. Thousands of Haitian travelers and immigrants in the United States were facing deportation to their destroyed homeland. The NAACP leaders lobbied White House officials and acquired Temporary Protected Status (TPS) for Haitian nationals living in the United States.

As part of its efforts to fight for economic equality, the NAACP launched the "Curbing Predatory Lending" campaign, demanding stronger consumer protections against credit card companies. As a result, the Credit Cardholders' Bill of Rights

of 2009 was passed, curbing predatory lending practices by credit card companies and benefiting Americans across all socioeconomic levels.

As an organization committed to advocating for the underserved, the NAACP launched the national campaign "Protecting Children's Health" after President George W. Bush had twice vetoed legislation to extend health coverage to working-class children. The organization gathered letters and generated calls to Congress for the sake of these children. As a result, the Children's Health Insurance Reauthorization Act of 2009 was passed, expanding health insurance coverage to 4.1 million children.

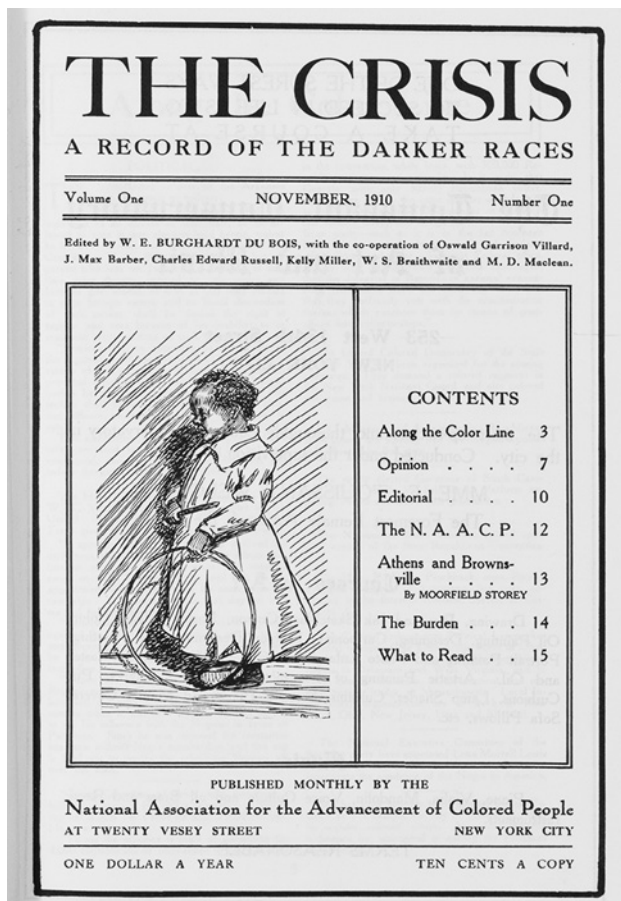
The NAACP also achieved local victories that address issues at the state level. In March 2009, the NAACP had worked diligently to get the New

York legislature to repeal many of the state's Rockefeller drug laws, which had imprisoned thousands for low-level offenses. In the same month and year, the NAACP succeeded in repealing the death penalty in New Mexico. In August 2009, the state of North Carolina successfully passed the Racial Justice Act, allowing a defendant facing a capital trial or an inmate sentenced to death to use evidence showing a pattern of racial disparity as a way to challenge racial injustice in the death penalty. In 2008, the Ohio legislature passed to cap interest rates on short-term payday loans that law targeted low-income communities.

The NAACP believes in building a better America together and works to reduce the world's largest prison population. As racial profiling continues to plague law enforcement practices, eradicating racialized imprisonment will remain an ongoing goal for the NAACP. In recent years, a large number of nonviolent offenders were incarcerated with no accompanying improvement in neighborhood safety. In its efforts to keep communities safe, the NAACP advocates policies that are results based, focusing on treatment for addiction, mental healthcare, judicial discretion in sentencing, and ending racial disparities in the criminal justice system.

For instance, the NAACP endorsed H. R. 4080, the Criminal Justice Reinvestment Act, which would help states develop incarceration reduction strategies and reinvest money saved. As a country, the United States has the largest incarcerated population in the world with 2.3 million people behind bars, a 500 percent increase over the past 30 years. As a result, prisons are becoming increasingly overcrowded, leading to state governments facing the burden of expanding costs. Still, public safety has not been better because of this large-scale imprisonment. The racial and gender disproportion of inmates also reflect dire sociocultural impact. Up to 88 percent of the incarcerated are male, and 57 percent are ethnic minorities. In 2009, for instance, 42 percent of all incarcerated inmates were white, almost 40 percent were African American, and 16 percent were Hispanics.

This disproportion negatively affects particular communities of color, and the incarcerated ratio 1:31 adults in America speaks of both the detrimental human toll and staggering financial costs. Less than three decades ago, the ratio was 1:77.



The first issue of The Crisis, the official publication of the National Association for the Advancement of Colored People (NAACP), was published in New York City in November 1910 and sold for \$0.10 a copy.

In terms of financial costs, the National Association of State Budget Officers estimated in fiscal year 2008 a record spending of \$51.7 billion on corrections, and \$68 billion if adding costs at the local levels. The United States would benefit if such money were spent on education, health, transportation, or the like.

The need to effectively reduce the incarcerated population is still a challenge, as it requires local adaptations and flexible implementation. The NAACP believes that the one common denominator across the 50 states is the struggle in human and financial resources, the corollary of a dysfunctional criminal justice system. In this context, H. R. 4080/S. 2772, the Criminal Justice Reinvestment Act, was introduced by Congressmen Adam Schiff (California) and Dan Lungren (California), along with Senators Sheldon Whitehouse (Rhode Island) and John Cornyn (Texas). This legislation would devote grant funding for intensive analysis of criminal justice data, policies, and the cost-effectiveness of current spending on corrections in order to develop data-driven policy options that can address this. The NAACP strongly supported H. R. 4080/S. 2772 and urged its immediate enactment. Nonetheless, the bill has not become law. It will be reintroduced in the next congressional session because of its importance in the NAACP's advocacy for racial justice in the criminal justice system.

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See Also: Civil Rights Act of 1866; Civil Rights Act of 1875; Civil Rights Laws; Race, Class, and Criminal Law; Race-Based Crimes; Racism.

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National Commission on Law Observance and Enforcement

The National Commission on Law Observance and Enforcement was a government commission charged with examining a variety of issues pertaining to the American system of criminal justice. The commission is more commonly referred to as the Wickersham Commission in recognition of its chairman, George Wickersham. Wickersham was an attorney and public servant who had previously served as the U.S. attorney general and had become known for his willingness to prosecute corporations under the Sherman Anti-Trust Act. The commission was made up of 11 members, who came from a variety of backgrounds. There were several prominent individuals on the commission, including Roscoe Pound, who was the former dean of Harvard Law School, and Newton Baker, who was the former U.S. secretary of war. The commission was appointed in 1929 by President Herbert Hoover through an act of Congress and was charged with gathering information regarding the scope, role, purpose, and influence of the criminal justice system.

The committee was established when Prohibition, as established by the Eighteenth Amendment, was still law. The widespread public disagreement concerning Prohibition and its effect on American society made it a particularly important social concern when the commission was appointed. As a result, the commission examined the issue of Prohibition at length and may be best known for this role. However, the scope of the commission was actually much wider than any one issue and included an overview of the nation's law enforcement, prosecutorial, and correctional functions and an assessment of the extent and causes of crime. The commission's final report was published in 14 volumes between 1931 and 1932, containing the commission's findings and recommendations:

1. Preliminary Report on Observance and Enforcement of Prohibition
2. Report on the Enforcement of the Prohibition Laws of the United States
3. Report on Criminal Statistics
4. Report on Prosecution
5. Report on the Enforcement of Deportation Laws of the United States
6. Report on the Child Offender in the Federal System of Justice
7. Progress Report on the Study of the Federal Courts
8. Report on Criminal Procedure
9. Report on Penal Institutions, Probation, and Parole
10. Report on Crime and the Foreign Born
11. Report on Lawlessness in Law Enforcement
12. Report on the Cost of Crime.
13. Report on the Causes of Crime, Volume I
14. Report on the Causes of Crime, Volume II

The commission was divided on the issue of Prohibition and its future as a viable part of American society. Evidence of this division is provided by the optional individual opinions that most commission members decided to issue. Some members argued that existing enforcement efforts should be continued in an attempt to determine if Prohibition could become a practicable public policy in American society. Other members argued that efforts to enforce Prohibition had proven their futility and that prohibition should be repealed because it was unenforceable and incompatible with public sentiment. Still, other members argued that existing efforts at enforcing Prohibition, while lacking in some respects, did not necessarily indicate a need for outright repeal. Instead, these members advocated the reform of existing policies and an accompanying revision of enforcement efforts. In spite of the differences of opinion, the commission was able to reach a consensus regarding the issue of Prohibition, which was reflected in their final report.

The commission's final report recommended against repealing Prohibition and restoring legalized saloons. Additionally, the commission's final report recommended against altering existing legislation to allow the sale of certain types of alcohol as some members had suggested

as a compromise measure. At the same time, the commission's findings underscored the difficulties associated with governmental attempts to enforce Prohibition. The commission's final report noted that existing enforcement efforts and mechanisms were deficient and needed to be expanded and that increased levels of both public and state support would be necessary if ongoing enforcement efforts were to be successful. In recognition of the political realities associated with Prohibition, the commission also made a number of suggestions for change in the event that policy makers decided to revise existing legislation. Ultimately, the commission's recommendations regarding Prohibition were largely ignored by policy makers, who in 1933 enacted the Twenty-First Amendment, resulting in the repeal of Prohibition.

While the committee's findings regarding Prohibition may have dominated the public imagination, other findings may have been just as significant for the American criminal justice system. The commission noted that graft and corruption were commonplace, that plea bargaining processes were increasingly replacing jury trials, and that social factors influenced criminal propensity. Some of the commission's most sensational findings were contained in the volume on lawlessness in law enforcement. In this volume, the commission acknowledged the existence of police brutality and corruption and noted that American police officers relied on entrapment, coercion, threats, and evidence falsification during the course of their duties.

These revelations resulted in both social and political calls for the reform of the American criminal justice system. It is difficult to determine the extent to which the commission had a lasting impact on the criminal justice system. However, it appears likely that, at a minimum, the commission's findings altered the way in which the public viewed the criminal justice system and its place and purpose within larger society.

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See Also: Corruption, History of; Hoover, Herbert (Administration of); Police Abuse; Prohibition; Sherman Anti-Trust Act of 1890; Wickersham, George.

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National Congress on Penitentiary and Reformatory Discipline

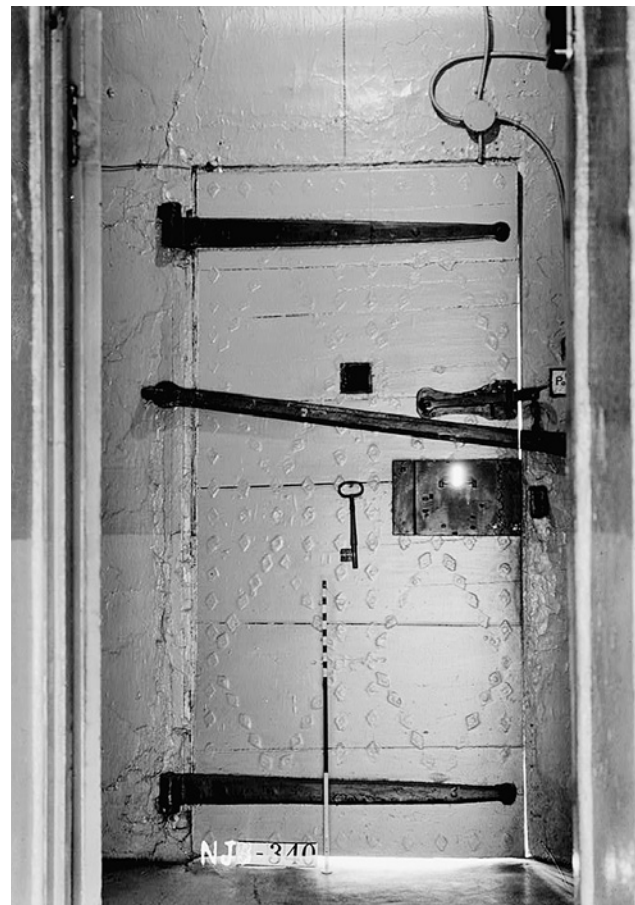
The National Congress on Penitentiary and Reformatory Discipline was a meeting of prison reformers in the United States held in Cincinnati, Ohio, from October 12 to October 18, 1870. Marking the inception of the National Prison Association, the congress represented the culmination of years of efforts by reformers toward the creation of a national prison congress. It would be followed by the International Penitentiary Congress in 1872. Principles adopted by the congress advocated a number of reforms that later became central elements of prison systems in the United States, including indeterminate sentences and the progressive classification of inmates.

Reformers Congregate

The congress attracted reformers concerned with prison and penitentiary discipline from across the United States, and congressional attendees represented a broad spectrum of interests and occupations. Among those in attendance were state administrators and institutional commissioners, judges, wardens of several state penitentiaries,

prison chaplains, directors of houses of refuge, institutional matrons, and members of charitable societies. The geographic distribution of attendees was uneven, and states from the midwest and northeast had the largest contingents of members present. The single largest group came from Ohio, the host state of the congress, with more than 100 members. Attendees from southern states were far less numerous and, among former Confederate states, North Carolina and Tennessee each had a sole attendee at the congress, while two attendees came from South Carolina.

Many notable American prison reformers attended the congress. Enoch Cobb Wines, advocate for penitentiary reform and secretary of the New York Prison Association, served as a vice president of the congress. Zebulon Brockway, future



The outside of an original cell door from a 1767 Burlington County Prison in Mount Holly, New Jersey. This solidly built prison, originally designed to house approximately 40 prisoners, was in constant use until November 1965.

warden of the model reformatory at Elmira, New York, served as one of the secretaries to the congress. Most prominent among politicians in attendance was the congress's president, Rutherford B. Hayes, then governor of Ohio and future president of the United States. Other notable politicians in attendance were Frederick Smyth, the former governor of New Hampshire; Daniel Haines, the former governor of New Jersey; and Conrad Baker, then governor of Indiana.

Over the course of the congress, papers by authors, both in attendance and corresponding, were presented for consideration by congressional members. Authors addressed a broad range of topics related to prison and penitentiary reform. Following the presentation of individual papers, members of the congress were given opportunities to question presenters and discuss the merits of ideas presented.

Methods of Investigation

Congressional members explored ideas such as a scientific approach to crime and punishment; the causes of crime, including intemperance and vice; and the nature of criminal populations, including the nationality of offenders. Domestic and foreign authors provided accounts of institutional practices from both the United States and abroad, ranging from prison discipline in Denmark to the Port Blair penal settlement in India to the Ohio reform farm school. Though its author was not in attendance, a notable paper by Sir Walter Crofton was read describing the Irish system—which served as the base model for the system of inmate classification that the congress advocated in its principles. The congress deliberated methods of fostering inmate reformation, with consideration devoted to education and religious training for inmates. Members of the congress took critical stances against many of the practices that characterized prisons and penitentiaries of mid-19th-century America, notably, political influence in the administration of prisons and determinate sentences for crimes.

The congress was not entirely without conflict or dissent. In an example of a minor disagreement, responses of both “no” and “yes” were given by congressional members to a question asking whether the sexes could be kept separate and reformed at the same institution. A more significant disagreement arose in which several

members of the congress, including Enoch Cobb Wines, differed as to whether the highest financial results obtainable through prison labor were compatible with the highest moral results in reforming prisoners. Similarly, during the discussion of Zebulon Brockway's paper outlining the ideal prison system, A. G. W. Carter of Cincinnati argued that the nation's penitentiaries were unsuccessful at reformation—and that the nation would be better served by banishment or transportation of offenders.

Principles of the Congress

As a statement of its ideals, the National Congress on Penitentiary and Reformatory Discipline adopted 37 principles that defined the congress's stance on the nature of imprisonment, the objectives of punishment, and the methods to be employed by penal institutions. Foremost, congressional principles defined the objective of prison discipline in the United States as reformation. Principles indicated that inmate reformation was to be achieved through the use of education and religious instruction, through discipline inculcated in inmate labor, and by avoiding the use of physical force on inmates. A number of the principles adopted by the congress addressed inmate sentencing, notably, advocating for indeterminate sentences, in which sentences were not to be fixed in length but rather extend until inmates exhibited proof of reformation. Principles also advocated ensuring that sentences be of sufficient length to allow for inmate reformation, reducing the usage of gubernatorial pardons, and eliminating inequities in the length of sentences for like offenses. The principles of the congress contained provisions for changing current organizational practices within prison systems, including the centralization of prison administration and the use of progressive classification of inmates based on a system of marks. The congress also endorsed new penal management practices, including eliminating political appointments of prison administrators and requiring specialized training for reformatory officers.

Many of the reforms advocated at the National Congress on Penitentiary and Reformatory Discipline were adopted by prisons in the United States following 1870. New York's Elmira Reformatory, the model institution opened in 1876

under Zebulon Brockway, incorporated a version of the mark system, inmate classification, inmate vocational and religious training, and indeterminate sentences. Later, in the Progressive Era, both indeterminate sentences and inmate classification became central elements of prisons in the United States. Prison systems of the Progressive Era also endorsed a concept similar to reformation, termed *rehabilitation*, as the primary goal of incarceration.

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See Also: Brockway, Zebulon; Elmira Prison; History of Crime and Punishment in America: 1850–1900; National Prison Association.

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National Organization for Women

The National Organization for Women (NOW) was founded in 1966 after the Equal Employment Opportunity Commission (EEOC) decided, in 1965, not to include gender as one of the categories for which employment discrimination was not permitted. The Civil Rights Act of 1964 included, in Title VII, a prohibition against employment discrimination based on gender, but the EEOC essentially decided that this provision would not be enforced. One month after the EEOC determined that gender segregation in job posting was permissible, a conference on Title VII

and the EEOC was held, where founding members of NOW met and established that they had common goals and determined to take action.

Formation and Early Years

Betty Friedan, author of *The Feminine Mystique*, attended the conference and invited several other participants to gather after the proceedings to discuss what action could be taken. EEOC officials had been recommending the formation of a private organization to see to the interests of women, just as civil rights groups had done for African Americans. Twenty-eight women came together to form NOW with the intent of ending gender-based employment discrimination. Within a few months, the organization had grown to more than 300 women and men. (It is important to note that NOW is the National Organization *for* Women, not the National Organization *of* Women, as it is often incorrectly called; the group's members are of both genders and are organized to advocate for women.) During NOW's first national conference, a written



Betty Friedan, author and feminist, was one of 29 founding members of the National Organization for Women (NOW) and was elected NOW's first president in October 1966.

statement of purpose was developed, which went far beyond employment discrimination. At the time, the stated purpose of the organization was to work toward “a fully equal partnership of the sexes” and to promote equality for women in all spheres of life.

During NOW's second annual meeting in 1967, members created a “Bill of Rights for Women” and added the passage of the Equal Rights Amendment, the repeal of antiabortion laws, and public funding for child care to its stated goals. NOW went about achieving these goals by organizing rallies and demonstrations and using the legal system. Several landmark cases in women's rights history can be traced back to the involvement of NOW. Notably, it was a NOW attorney who argued the first gender discrimination case appealed under Title VII, *Weeks v. Southern Bell*, argued in the U.S. Fifth Circuit Court of Appeals.

The plaintiff, Lorena Weeks, had been barred from advancing to a higher-paid job, that of switchman, by her employer, Southern Bell, because it was a man's job requiring the ability to lift more than 30 pounds. At the time, the company prohibited women from entering such a job because of that requirement. Somewhat theatrically, Weeks entered the courtroom carrying the typewriter she was regularly required to carry in the course of her job at Southern Bell. The typewriter weighed more than 30 pounds. The court ruled that prohibiting women from entering this job on the grounds of the 30-pound requirement violated Title VII of the Civil Rights Act.

Despite its formation as a result of employment discrimination, and frequent public demonstrations regarding that issue, NOW's early years also saw it add other women's issues to the agenda. In 1973, NOW established a task force on rape and a task force on sexuality and lesbianism. Not simply a political organization, NOW began using its members to make a difference in the everyday lives of those affected by “women's issues.” NOW members were instrumental in setting up some of the first rape crisis centers and hotlines. During the same time period, after *Roe v. Wade* legalized abortion, NOW members organized to escort women into abortion clinics to protect them from protesters outside the clinics.

Recent Activism

In 1998, at NOW's annual meeting, the delegates put together a “Declaration of Sentiments” that summarized their visions, history, and methods. NOW takes pride in being a grassroots organization, despite its current size and success. The delegates wrote how they “have sued, boycotted, picketed, lobbied, demonstrated, marched, and engaged in nonviolent civil disobedience” throughout the group's 32-year history and how they had seen enormous change, but that they were not done yet. They noted that women still did not have equal decision-making power in all areas of society and that, somewhat due to gender inequality, there is still violence, poverty, and need of all kinds in American society. The visions for change have gone considerably past a desire for equal employment opportunity.

NOW continues to work on behalf of many women's issues, the most prominent of them being abortion and reproductive rights; economic justice and ending sex discrimination; lesbian rights; promoting diversity and ending racism; and stopping violence against women. Each of these issues is approached from the perspective that women are equal to men, and the law should reflect and protect this equality while taking into account the reality of men's and women's lives.

For an example of the types of ideology NOW supports, in the abortion and reproductive rights area, NOW opposes restrictions on the availability of abortion or of any reproductive healthcare service. It takes the position that funding for these services should be available just as it would be for any nonreproductive healthcare service. It is not just the availability of abortion that concerns NOW in the reproductive rights sphere. The George W. Bush administration supported legislation that would restrict access to contraceptive pills and other forms of legal birth control. NOW vigorously opposed this legislation and a similar proposal that pharmacists be allowed to choose not to dispense birth control prescriptions for moral or religious reasons. NOW also supports comprehensive, medically accurate sex education and opposes abstinence-only programs.

Most relevant to the history of crime and criminal justice is NOW's organization to support the prevention of violence against women. After being involved in establishing rape crisis centers

in the early 1970s, NOW engaged in activism to change the way sexual assault and domestic violence are perceived by the public and handled by the legal system. For instance, NOW is behind efforts to make people aware that sexual assault is most often committed by someone known to the victim rather than by a stranger, and to end the distinction between forcible (“real”) rape and non-forcible rape. The group works to raise awareness of the prevalence of intimate partner or domestic violence. The belief that this is a private matter and that it does not occur very frequently is an unrealistic means of dealing with the problem and can be damaging to victims. In addition to supporting efforts to prevent violence against women, NOW wants to ensure that women who have been victimized receive appropriate services and are not mistreated by the legal system. For instance, NOW supports making emergency contraceptives available to victims of sexual assault and having this service covered by public funds. NOW was also instrumental in the implementation of rape shield laws. These laws limit the admissibility of a victim’s prior sexual history in a sexual assault trial, with the intent of reducing the potential for reporting a sexual assault to be a humiliating examination of the victim. NOW is a strong supporter of the Violence Against Women Act (VAWA) and its continued reauthorization.

It should be noted that, in addition to NOW’s direct involvement with attempting to reduce violence against women, the social conditions that NOW represents may be associated with levels of violence against women. NOW membership may be representative of the level of organization within a community and the degree to which gender equality is supported. Both these concepts have been shown to be related to levels of sexual violence. In a 2007 study, the level of NOW membership in a state is statistically significantly negatively associated with the level of acquaintance rape. That is, in states where more people are motivated to join a feminist organization, there are lower levels of sexual assaults committed by acquaintances. In most analyses, NOW membership was unrelated to sexual assaults committed by strangers; however, one analysis showed that increased NOW membership was associated with an *increase* in sexual assault committed by strangers. A possible explanation for that finding is the backlash theory:

As gender equality increases, males may feel the need to fight back to keep women in their place, and one method of doing so is sexually assaulting them. The findings for acquaintance rape were much more consistent and support the hypothesis that gender equality is associated with reduced violence against women. Consistent with that theory, the number of female representatives in Congress for a particular state was also significantly negatively associated with acquaintance rape.

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See Also: 1851 to 1900 Primary Documents; Civil Rights Laws; Equality, Concept of; Gender and Criminal Law.

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National Police Gazette

The *National Police Gazette* was a tabloid newspaper aimed at lower- and middle-class American men. From the late 19th century through the



A copy of a 1922 edition of the popular tabloid the *National Police Gazette*, which was published for more than 130 years and influenced magazines like *Sports Illustrated* and *Playboy*.

early 20th century, the *Gazette* exerted a huge influence on American popular culture, titillating readers with scandalous news of sex, crime, politics, and illegal sporting events. The *Gazette* began publication in 1845 and ceased in 1977, but its years of greatest influence were in the decades immediately before the turn of the 20th century, under the editorship of Richard Fox. By 1895, it was selling more than 2 million copies every week.

The American press of the early national era was not above reporting on sex scandals, and not above using such scandals to embarrass the powerful and wealthy. Accusations of sexual impropriety became a relatively common strategy of partisan politics. Perhaps the best-remembered

example today remains the early journalistic sallies against Thomas Jefferson's relationship with his slave, Sally Hemings, his wife's mulatto half-sister. However, by the mid-19th century, such opportunistic smut became detached from politics, as publishers discovered it worked on its own as a useful strategy for increasing circulation. Gossip and outright fabrication became a staple of tabloid journalism.

During the early 1840s, George Wilkes—the man who would go on to found the *Gazette*—worked at the *Subterranean*, which routinely vilified the New York City police and political opponents for allegedly frequenting bordellos and engaging in various crimes. When Wilkes founded the *National Police Gazette* in 1845, he modeled his new publication on the English police gazettes that emerged in the late 1700s to chronicle crime and police activity in London. The *Gazette* covered murder more than any other crime, especially those that involved sex scandals or high society. Its stock-in-trade was detailed descriptions of interpersonal violence—women fighting men, women fighting women, or women drinking and carousing—nearly always accompanied by salacious images featuring bared limbs and ruffled petticoats, blood, and gore.

The *Gazette* ran regular columns with titles such as “Murder and Suicide,” “Vice’s Varieties,” and “This Wicked World.” It thrived on stories about sex and prostitution. The sexual indiscretions of the wealthy or pious were routinely featured. By the late 1800s, the *Gazette* was publicizing prize fighting at a time when boxing was still illegal, even awarding its own championships and prizes. The *Gazette* continued to highlight its crime coverage well into the 1870s. After the turn of the 20th century, the *Gazette*’s focus shifted to sex and sports. Even as crime became less central to the paper, sensationalist crime reporting remained a staple throughout the *Gazette*’s run. The *Gazette* engaged in primitive criminological research and theorizing. In 1846, the *Gazette* published a series of case studies of criminal careers, titled “Lives of the Felons.” Included in the series were the quantitative results of a survey of criminals, reporting on the causes of their criminal activities—causes such as evil associations, intemperance, weak principles, and sudden temptations.

The *Gazette* also influenced scholarly criminologists during the 19th century. For example, the *Gazette's* publisher, Richard Fox, released a biography of Belle Starr, a consort of various men in midwestern criminal gangs. The biography was more myth-making than objective reporting.

It contained a great deal of factual embellishment and outright fabrication. An Italian reporter plagiarized the Starr biography and published the stories in Italian. Cesare Lombroso, the central figure in the Positivist school of criminology, used the Belle Starr stories. In his book *The Female Offender*, Lombroso repeated Fox's mythical version of Belle Starr's life to justify his theoretical assertions that deviant women are atavistic throwbacks to an earlier stage in human evolution.

In exposing, categorizing, ridiculing, and condemning all manner of fraud, crime, and hypocrisy—while simultaneously glorifying certain outlaws—the *National Police Gazette* delineated and clarified the boundaries between deviant behavior and acceptable behavior for generations of American men. The *Gazette* constitutes one of the richest data sources for cultural criminologists studying the late-19th-century United States and its influence on contemporary mores.

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See Also: Literature and Theater, Crime in; New York; New York City: News Media, Crime in.

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National Prison Association

The National Prison Association (NPA) was founded in Cincinnati, Ohio, in 1870 during a meeting of domestic and international prison leaders. Founding members included such correctional luminaries as Enoch Wines (New York Prison Association), Zebulon Brockway (superintendent of the Detroit House of Correction), and Franklin Sanborn (Massachusetts Board of State Charities). Early members, many of whom were actively involved in the antislavery movement, sought to improve the plight of prisoners worldwide. Of particular interest to the association were corporal punishments, forced servitude, and the use of long-term segregation, all of which were practiced widely in the 19th and early 20th centuries. Advances in offender classification and the implementation of humane disciplinary practices were sought. Members also desired to see improvement in dietary and educational provisions. Association founders authored a "Declaration of Principles" that set forth the values of the organization. These principles were later ratified by the membership. These principles quickly gained international support, giving the NPA a great deal of influence over legislative processes related to prison operations and offender treatment. Eventually, NPA was renamed the American Prison Association (1907) as a way to distinguish itself internationally. To better reflect its growing interest in rehabilitation, its name was changed yet again in 1954 to the American Correctional Association (ACA). This change also acknowledged the increasing importance of probation and parole in offender supervision and treatment efforts. Rutherford B. Hayes, then governor of Ohio and future president of the United States, was elected as the association's first president.

The "Declaration of Principles," upon which the association was founded, has guided its operations since its inception. These principles have, however, evolved and were revised at the 1930, 1960, 1982, and 2002 national meetings. Even though revisions have been made, core philosophies have remained intact. The ACA adheres to seven basic principles. These principles include recognition of the rights and dignity of offenders, a concern for



The Bergen County Jail facility in New Jersey has state-of-the-art technology featuring computer control of all inmate housing areas, an integrated perimeter security system, a sitewide duress/panic alarm system, and a computerized center control. The facility is designed and operated to meet accreditation set by the American Correctional Association (ACA).

public safety, a desire to assist offenders in becoming responsible citizens, continual assessment and improvement, the promotion of professional standards, the effective management and treatment of offenders, and serving as an advocate for crime victims. According to the association, its overall mission is to “provide a professional organization for all individuals and groups, both public and private, that share a common goal of improving the justice system.”

Structure and Function

The ACA's Government and Public Affairs Department is responsible for determining the association's position on policy issues and representing it before the U.S. Congress, state and local governments, special interest and advocacy groups, and the media. The department also monitors legal

and legislative activity and distributes information to its membership. To do this, the association issues the *ACA Federal Alert*, which informs members about legislation that may affect the profession. The association holds two annual conferences and publishes *Corrections Compendium* (a research-based journal published four times a year) and *Corrections Today* (a highly stylized magazine that is published six times a year). It also publishes an annual directory of all U.S. institutions and agencies that handle juvenile and adult offenders.

The ACA operates the Correctional Certification Program (CCP). The program is intended to professionalize corrections through continuing education and training. It also seeks to improve the public image of corrections and to serve as a recruitment tool. The CCP provides individuals

with the opportunity to gain recognition as qualified practitioners. Participants can obtain certification as an executive, manager, or supervisor in either juvenile or adult corrections. Certification is also available in correctional healthcare and security.

The association remains the only body to grant accreditation to correctional institutions. For an institution to gain accreditation, it must submit to a rigorous process in which it develops extensive policies and procedures relating to all aspects of correctional operations. Furthermore, evidence must be presented to verify agency compliance with these operational mandates. This process generally takes about 18 months, concluding with an on-site assessment by ACA-trained auditors. Correctional accreditation signifies a dedication to continual evaluation and improvement, education and training, and a professional orientation. Once achieved, accreditation becomes a source of institutional pride and provides some protection against lawsuits. Once an institution is accredited, the process of staying accredited is continual, with reaccreditation occurring every three years.

In recent years, the ACA has reached out to students interested in corrections. For college students wanting to learn more about the correctional profession, the ACA offers opportunities to complete internships in a variety of areas. Students may choose to work in Standards and Accreditation, Professional Development, Publications and Communications, Government and Public Affairs, Information Technology, Conventions and Corporate Relations, or Membership and Finance.

The American Correctional Association is headquartered in Alexandria, Virginia, and has more than 20,000 active members. Since its creation nearly 150 years ago, the association has effectively served as an advocate for the professionalization of corrections and the humane treatment of offenders. Its influence over corrections continues to be felt on both a domestic and international basis.

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See Also: Brockway, Zebulon; Hayes, Rutherford B. (Administration of); Prisoner's Rights.

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National Security Act of 1947

The National Security Act of 1947 (Public Law 80-235, 61 Stat. 496, 50 U.S.C. ch. 15) created the national security structure of the United States. It was signed on July 26, 1947, and affected the defense, intelligence, and executive activities of the government. The introduction notes that it is "An act to promote the national security by providing for a Secretary of Defense; for a National Military Establishment; for a Department of the Army, a Department of the Navy, and a Department of the Air Force; and for the coordination of the activities of the National Military Establishment with other departments and agencies of the Government concerned with the national security." The National Military Establishment (renamed the Department of Defense in 1949) merged the Department of War and the Department of the Navy. The secretary of defense position was created to provide civilian control over the armed forces. The three current branches of the armed forces were created when the Air Force was separated from the Army and the Marines remained with the Navy. A Joint Chiefs of Staff (JCS) was formed to provide advice to the president on military matters, but the act clearly stated it was not "establish[ing] a single Chief of Staff over the armed forces nor an overall armed forces general staff."

The backbone of the current intelligence structure was also created by the act. The Central Intelligence Agency (CIA), the first peacetime intelligence agency, was created to replace the Office of Strategic Services (OSS) that organized intelligence

efforts during World War II. In addition to the CIA, the director of central intelligence position was established to oversee the entire intelligence community. The last major component was the National Security Council (NSC). The NSC's function was "to advise the President to the integration of domestic, foreign, and military policies relating to the national security." It is located in the executive branch and consists of the president, vice president, the national security adviser (position created in 1953), secretary of state, secretary of defense, and political appointees.

The need to reorganize the nation's defense and intelligence structure was clear after the experiences of World War II. During the war, there were difficulties with collaboration between civilian and military policy bodies, interservice squabbles between the army and navy; and intelligence challenges due to the ad hoc nature of the OSS. Given the postwar status of the United States and the impending cold war, it was imperative that a permanent national security structure be created. During the congressional debate on the national security structure, one of the main concerns was the role of the defense and intelligence bodies in the internal security of the country. There were repeated references to the threat of an American Gestapo.

Specific references are made in the act curtailing the role of the CIA in law enforcement and other internal security matters. It states that the director of the CIA shall "collect intelligence through human sources and by other appropriate means, except that the Director of the Central Intelligence Agency shall have no police, subpoena, or law enforcement powers or internal security functions. ... [and] provide overall direction for and coordination of the collection of national intelligence *outside* the United States" [*emphasis added*]. The act also carefully limits the role of Department of Defense intelligence agencies, noting they could "collect information *outside* the United States about individuals who are *not* United States persons" [*emphasis added*] and clearly states "[a]ssistance ... may not include the direct participation of a member of the Army, Navy, Air Force, or Marine Corps in an arrest or similar activity."

It also describes the process by which foreign intelligence, gathered by law enforcement agencies, will be shared with the director of national

intelligence. The attorney general was given the power to withhold information if it "would jeopardize an ongoing law enforcement investigation or impair other significant law enforcement interests." Later amendments to the act have blurred the lines between intelligence and law enforcement agencies, such as the post-9/11 National Counterterrorism Center, established in 2004.

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See Also: Homeland Security; Terrorism; Truman, Harry S. (Administration of).

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Native American Tribal Police

The term *Native American* is a late-20th-century descriptor used to identify the indigenous peoples of North America that is now the United States. The term *Indian* is the descriptor used by the federal government as a matter of federal law. There is no federal statute that defines the status of Indian, although the U.S. Supreme Court has handed down decisions that do. There are currently more than 550 federally recognized Indian tribes in the United States. Each tribe is responsible for setting its enrollment criteria. Some tribes have a blood quantum requirement, while others have enrollment based on their ancestors appearing on a particular historical list of tribal members such as the Dawes Act.

The term *Indian Country* is ubiquitous; there are several types of Indian Country that are recognized by U.S. law. Reservations are a type of Indian country established by U.S. law. Early reservations were established when a tribe would sign a treaty with the United States. Each treaty signed would yield to the signing peoples the promise of protection, education, healthcare, and hunting and fishing rights. In exchange, tribe members would surrender all ancestral lands to the U.S. government. There are about 310 Indian reservations in the United States. Informal reservations are lands that once were reservations and have been disestablished, or that have unclear status but remain as trust land. Land that has/had been set aside for Indians legally retains the title of Indian Country. Dependent Indian communities have been interpreted by the U.S. Supreme Court in several tribal cases to be land federally supervised, which has been set aside for the use of Indians. A fourth type of Indian Country was created through the Dawes Act and Allotments. From 1887 until 1934, the federal government ran programs that took parcels of tract land and allotted or assigned these parcels to particular Indians or to Indian families. The fifth and final type of Indian Country is listed as “special designation.” Congress can designate certain lands as Indian Country for jurisdictional purposes even if these lands do not fall within the aforementioned types of Indian Country.

Policing Indian Country

There were more than 200 tribal police departments operating in Indian Country under the direction of the Bureau of Indian Affairs Division of Law Enforcement Services as of 2011. These tribal police departments serve a wide range of geographic locations ranging from small communities to very large nations, such as the Navajo Nation, which has a population of more than 250,000 members and covers 26,000 square miles, occupying parts of Arizona, New Mexico, and Utah.

The concept of tribal police can be traced back to the 1880s when John Q. Tufts was Indian commissioner of the Five Civilized Tribes, which consisted of the Choctaw, Cherokee, Chickasaw, Creek, and Seminole. Commissioner Tufts organized the first U.S. Indian Police force that would operate under the direction of the Indian agent assigned to the Union Agency. Many of the



Before the U.S. Indian Police Academy was established at Roswell, New Mexico, in 1968, training for tribal officers was extremely limited. The program was designed to train Bureau of Indian Affairs and tribal law enforcement officers.

U.S. Indian police officers were given deputy U.S. marshal commissions that allowed them to cross jurisdictional boundaries and arrest non-Indians. These early commissions laid the foundation for the idea of cross-deputization.

Many of these early tribal police were recruited from the Indian Light Horsemen, a band of men who operated in enforcing the laws of the individual tribes throughout the vast lawless territories. These units were known as the Cherokee Light Horsemen, Choctaw Light Horsemen, Chickasaw Light Horsemen, and Seminole Light Horsemen. This early form of frontier police officers can be traced back to “Light-Horse Harry,” a nickname given to General Henry Lee III, because of his rapid cavalry readiness during the American Revolution. During the American Revolution, Lee served as a cavalry officer in the

Continental army; he is the father of Confederate general Robert E. Lee. A light horseman is a soldier of the light cavalry, which was lightly armed, equipped, or horsed and so was especially mobile. The light horsemen were given considerable latitude when enforcing the judgments of the court. Much reliance was placed upon their on-the-spot discretion while enforcing the law, which many times gave rise to individual interpretation as to how the law would be enforced.

American Indian tribal governments were spawned from the rights of inherent sovereignty, not from the U.S. Constitution. Moreover, the creation of tribal police and tribal courts were by the U.S. Department of Interior's Bureau of Indian Affairs in the 1900s, which focused on controlling Indians and breaking up tribal leadership and tribal governments. One of the most famous encounters between tribal police and resistant Indians was when officers confronted a Hunkpapa Sioux holy man in 1890 that resulted in the killing of Sitting Bull. The arrest of Sitting Bull came under the direction of U.S. Indian agent James McLaughlin, who ordered the arrest of Sitting Bull based on his fear that Sitting Bull was preparing to flee the reservation because of the Sioux Indian belief in the Ghost Dance.

Modern Tribal Police

Tribal police are responsible for large tracts of land and operate with minimum resources. Police training is often limited and receives little to no federal help. A 2003 report produced by the U.S. Civil Rights Commission found that per capita spending on law enforcement in Indian communities was roughly 60 percent of the U.S. average, while the U.S. Department of Justice reports that crime victimization rates in Indian communities are significantly higher than in the U.S. population at large and more than twice as high as in African American communities. The structuring of tribal police departments in Indian Country can be founded in Public Law 93-638. Under this framework of law, tribes have the opportunity to establish traditional functioning governments contracting with the Bureau of Indian Affairs (BIA). Typically, the contract establishes the department's organizational framework and performance standards and provides basic funding for police operations. Officers and staff of these

departments are tribal employees. This relationship with the federal government makes all officers and staff federal employees. According to the National Congress of American Indians (NCAI), tribal police departments are faced with a litany of obstacles such as complicated jurisdictional networks answering to multiple authorities, operating with limited resources, and patrolling some of the most desolate territory in the United States, often without assistance from partner law enforcement agencies.

At present, there are approximately 3,000 BIA and tribal uniformed officers available to serve an estimated 20 million Indians covering more than 56 million acres of tribal lands in the contiguous 48 states. In the United States and in Indian Country, tribes may be getting new officers, without hiring any new ones as part of a cross-deputization agreement. Historically, the relationship between tribes and the United States has been strained. Tribes do not have criminal jurisdiction over non-tribal members, and the state does not have criminal jurisdiction over tribal members. The heart of the cross-deputization agreement provides the ability for officers, both tribal and nontribal, to make arrests and sort out any jurisdictional issues later. Moreover, cooperative agreements surrounding jurisdiction are not new. Deputization and mutual aid agreements have been used and proved to be instrumental in exercising law enforcement in Indian Country.

Tribal relations in the United States have greatly improved over the past couple of decades. The need for better government-to-government relations is paramount. As trust and understanding build between tribal, state, and local governments, cooperation agreements will become more in demand. The use of cooperative law enforcement agreements, especially at a time when states are faced with huge economic deficits, becomes a win-win situation for all parties concerned.

Despite the benefits of these special arrangements, situations still exist that may serve to stall cooperative law enforcement efforts in Indian Country. The local sheriff is under no obligation to deputize tribal officers. Thus, the deputization is at the sheriff's pleasure, and a change of office, general dislike, or distrust may impair the ability of tribal law enforcement officers to receive special deputy status. For these and other reasons,

a statewide solution or a state police agreement might be a better option to pursue, to reinforce tribal law enforcement authority to enforce state laws against nonnatives on reservation land.

Conclusion

Native American tribal police have a very long and well-documented past. Tribal police first operated in the post–Revolutionary War period, where early light horsemen worked to provide law and order in a vast lawless land with few resources available to them, and have continued to the 21st century, where Native American tribal police still attempt to provide law and order in vast areas with little resources. Cross-deputization has afforded some nations the cooperation and additional resources to join together with nonnative police departments to provide a broader net of services and protection.

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See Also: Frontier Crime; Native Americans; Peltier, Leonard.

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Native Americans

The term *Native American* is clouded with controversy. The *Oxford Dictionary* defines “Native American” as “a member of any of the indigenous peoples of the Americas.” Therefore, any

culture or race of people that existed prior to the “discovery” of American in 1492 would be classified as Native American.

Historically, Native American tribal members were governed more by societal taboos and traditions than by rules and laws. Ceremonies would be held to try to “heal” those who went against these norms. This entry will focus on the experience of Native Americans living in the United States after the arrival of explorers and colonists.

In the 1970s, the academic world began promoting the term *Native American* as a politically correct alternative to Indian. The term *Indian* was the most used and recognized label when referring to indigenous peoples of the United States. Historically, the creation of the word *Indian* is credited to Christopher Columbus, an Italian-Spanish navigator who sailed from Spain searching for a route to Asia. After 36 days at sea, Columbus’s little flotilla reached land. It is still disputed today as to where Columbus actually landed, but the little island called Guanhani by its inhabitants seems to be the most favored by historians. Columbus renamed this island San Salvador. Columbus’s voyage, although courageous in nature, has a very dark religious side that has been suppressed from traditional history books used to educate American students. When Columbus landed on Guanhani Island, he performed a ceremony to take possession of the land in the name of Spain. Columbus was acting under the international laws of Western Christendom. These are based on religious doctrines. These doctrines today are referred to as the Doctrine of Discovery. This archaic Judeo-Christian doctrine is still employed by the U.S. government to deny the rights of Native American Indians.

In 1452, Pope Nicholas V presented King Alfonso V of Portugal the bull *Romanus Pontifex*, which officially declared war against all non-Christians throughout the world and sanctioned and promoted exploration of new lands of these non-Christian nations. Theological and legal doctrines drafted during the time of the Crusades set forth a clear message that non-Christians were enemies of the Catholic faith and were identified as less than human. In the bull of 1452, Pope Nicholas ordered King Alfonso to “capture, vanquish, and subdue the saracens, pagans, and other enemies of Christ”; to “put them into perpetual slavery”; and to “take all their possessions and property.”



Iroquois tribe members pose for a portrait in Buffalo, New York, in 1914. The Iroquois lived in the upper and central area of the Mohawk Valley and the lake region of central New York. Some historians believe that the Iroquois Confederacy of the people of the Five Nations, the oldest known participatory democracy, influenced the U.S. Constitution.

Columbus set sail in 1492 armed with the understanding that he was authorized to take control of and possess any land he discovered if that land was not occupied by a Christian ruler. After Columbus returned from his voyage, Pope Alexander VI issued an additional papal document, the bull *Inter Cetera* of May 3, 1493, which granted to Spain the right to conquer the lands that Columbus had already found or that would be discovered in the future.

What can be learned at this point is that the papal bulls of 1492 and 1493 provided the authority sanctioned by the church that Christian power could and would serve as a weapon of mass destruction involving indigenous people, thereby creating a divine fight based on the Bible to conquer and claim absolute title to and ultimate authority over newly discovered non-Christian habitants and their lands.

Doctrine of Discovery

In 1823 Chief Justice John Marshall, writing for the U.S. Supreme Court in *Johnson v. McIntosh*, in a unanimous decision pontificated that Christian European nations had assumed “ultimate dominion” over the lands of America during the Age of Discovery and that the early inhabitants upon discovery had “surrendered any rights to complete sovereignty, as independent peoples or nations.” Chief Justice Marshall clearly articulated that Indians only retained a right of “occupancy” in their lands. Moreover, Marshall outlined that the United States upon victory for independence in

1776 had acquired the power of dominion from Great Britain, which set up the passing of the right of discovery to the United States.

It is important to note that a long, tremulous battle has raged in government addressing the church and state separation. The framers of the Constitution saw the need to keep the two separated. However, Chief Justice Marshall’s decision in *McIntosh v. Johnson* laid the foundation for making the Christian Doctrine of Discovery for U.S. Indian policy into U.S. law that is still viable today.

Indian tribes have been an important part of American history. The U.S. Constitution makes a direct reference to Indian tribes in Article I Section 8 Clause 3, more commonly referred to as the commerce clause, stating “Congress shall have the power to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.” During this early time, it has been estimated that approximately 35 million people lived in North America, which included Mexico and Canada. Native governments were in full political operation, controlling the day-to-day activities within each nation’s territory. Benjamin Franklin, one of the most famous framers of the U.S. Constitution, documented his observations of the Haudenosaunee government in 1783, just four years before the 1787 Philadelphia Convention began to draft the new constitution. Franklin was fascinated with the five nations (Mohawk, Oneida, Onondaga, Seneca, and Cayuga) method of government. The people of the Five Nations, also known by the

French term *Iroquois Confederacy*, comprised the oldest participatory democracy on Earth. In the early 18th century, a sixth nation was added. The Tuscaroras became part of the Haudenosaunee, which when translated means “People Building Long House.”

On June 11, 1776, Iroquois chiefs were invited to speak at the meeting hall of the Continental Congress. During this meeting one, of the chiefs addressing the members stated that “we are all brothers” and that “the friendship between them would continue as long as the sun shall shine and the waters run.” It was at this time that Acting President Hancock was given an Indian name by an Onondaga chief. The president’s name would be “Karanduan” or “the Great Tree.” Iroquois ideas had a major impact on the founders. The European countries that colonized North America negotiated with Indian tribes through official government-to-government council sessions and by entering treaties, which recognized tribal governmental control over the territory of this emerging world. The underlying motive behind these early European encounters with natives was to procure their land in what would appear to be legitimate land transactions. Thus, the creation of treaties with Indian tribes would provide an official and legal document giving force to the land acquisition and provide a way of demonstrating a relationship between the two parties if any European country would contest or object to these land sales.

The United States for the most part adopted this traditional treaty process with Indian tribes. The method recognized the tribes as sovereign governments not aligned or affiliated with any European powers. The power of Indian tribes in the 1700s and 1800s was a power that the U.S. government realized could be a serious threat. The U.S. government negotiated and signed approximately 385 treaties with a variety of Indian tribes. These early treaties between the U.S. government and the Indian Nation had the force of a legal binding contract between “two sovereign nations.”

Constitutional Rights and Laws

The first U.S. Congress, formed under a new constitution in 1789–91, enacted four statutes concerning Indian affairs. In 1789, Congress established a Department of War with responsibility

over Indian affairs, which in turn set monies aside to negotiate Indian treaties and appointed federal commissioners to oversee the treaty process. By July 1790, Congress passed a law that forbid states (13 at the time) and individuals from dealing with Indians and tribes over land sales. This law is still in effect today.

The Constitution makes reference to Indian tribes but it is not expressly designated as it is in Article VI, where it is made clear that all treaties entered into by the United States “shall be the supreme law of the land.” Thereby a strict interpretation of Article VI would yield that the federal government’s treaties with Indian tribes are the supreme law of the United States. The exclusion of American Indians can be seen in the Constitution’s method of counting the population of a state to determine how many representatives a state can have in Congress. Indians were expressly not to be counted unless they paid taxes. Conversely, Indians were not considered to be federal or state citizens unless they paid taxes. There were three “Civil War Amendments Passed by Congress” at the end of the Civil War: the Thirteenth, Fourteenth, and Fifteenth Amendments. These new amendments were put in place to handle citizenship rights. The Fourteenth Amendment extended citizen rights to ex-slaves and “[a]ll persons born or naturalized in the United States.” That amendment still excluded individual Indians from U.S. citizenship rights; additionally, it excluded all Indians from being counted toward congressional representation with the caveat of taxpaying Indians. This exclusion clearly demonstrated Congress’s position that Indians, unless taxpaying, were considered citizens of other sovereign governments in the year 1868 when the Fourteenth Amendment was ratified. Moreover, in 1897, Massachusetts Senator Henry L. Dawes put forth a comprehensive piece of legislation designed to put an end to the “Indian problem” in the United States. Congress passed the General Allotment Act, which was designed to impose private property ownership on Indians by dividing their reservations into individual farms. The General Allotment Act soon became known as the Dawes Act. The act was part of a broader federal policy designed to assimilate Indians into mainstream America and was coupled with government-sponsored education programs and Christian mission

work. Under the Dawes Act's terms, the president used his discretion to identify which reservations would undergo allotment in severalty. Scholars generally agree that the Dawes Act was poorly implemented and that it failed to achieve its assimilationist goals. Congress officially overturned the act in 1934 and indefinitely extended the trust period on existing allotments. Although the Dawes Act was intended to be the solution to the "Indian problem," it has instead generated more ongoing court battles that are still in existence today. The relationship between Indians and the U.S. government continued to escalate. The question on the lips of politicians and citizens was: What are we going to do with those Indians? They are not citizens of the United States, and they cannot be a foreign nation within the U.S. borders.

For the next 56 years, this view would resound in U.S. government, with a few exceptions. However, the defining moment came in 1924 when Congress passed the Indian Citizenship Act, also known as the Snyder Act. New York State representative Homer P. Snyder proposed granting full U.S. citizenship to Indians who had not already become citizens through entering the armed forces, giving up tribal affiliations, and assimilating into mainstream American society. The 1924 act was not a panacea for Native Americans. Many obstacles still remained in place. The Indian Citizenship Act provided only a quasi-citizenship for Native Americans, although more than 10,000 Indians from many different nations had served in the military and fought in World War I. The passage of the 1924 Indian Citizenship Act should have guaranteed Indians the same constitutional rights that were afforded to U.S. citizens. However, the First Amendment, which provides for freedom of religion, was not realized for Native Americans for another 50 years.

In 1934, two major pieces of legislation were enacted that affected Native Americans: the Indian Reorganization Act and the Johnson-O'Malley Act. John Collier, commissioner of Indian affairs from 1933 to 1945, brought the plight and struggles of native peoples to the forefront of the political environment. In 1926, the Institute for Government Research (IGR) authorized the Meriam Report, which served as a survey on Indian affairs in the United States. Lewis

Meriam had been appointed to oversee the survey teams that were responsible for collecting information regarding the conditions of American Indians. Meriam's 847-page report served as the first major study on the status of Indians in the United States. This report was the catalyst for the 1934 Indian Reorganization Act with the exposing of the government's failure to meet its goal of protecting Native Americans, their land, and their resources. The Meriam Report emphasized the need for education in Indian country. However, the survey teams expressed that education should stress assimilation of Indian children into civilization rather than separating them from other white children as previous education policies had stressed. The report was extremely critical of Indian boarding schools. Native American boarding schools were created by the U.S. government as a means to force assimilation on Indian children.

Indian Boarding Schools

One of the most famous Indian boarding schools was founded in 1897 in Carlisle, Pennsylvania, by Captain Richard Henry Pratt. The school was the first off-reservation boarding school, which became a model for Indian boarding schools. Captain Pratt analogized Indian education with that of raising wild turkeys, stating that if the eggs are taken from the nest where they would be raised and placed in a nest of a domesticated turkey, the fledglings would then grow to be domesticated. Conversely, remove the Indian child, earlier in life the better, put him/her in an environment with kind treatment, and a domestic civilized child will emerge. The root of Pratt's ideology was to remove or erase as much as possible any trace of Native American customs, culture, language, and religion from the children at the school. Pratt's most notable statement was "kill the Indian, save the man." The Carlisle School was just one of as many as 26 Indian boarding schools across the country that operated under the direction of the Bureau of Indian Affairs (BIA). In addition, there were more than 450 Christian missionary schools that were in operation.

Indian boarding schools have a mixed legacy. Proponents point to the positive accomplishments that were gained from these forced assimilation academies. Detractors point to the thousands of

Indian children who died of infectious diseases that were common during the early 20th century. Beatings were a common form of punishment for students grieving or speaking their natural language. It was common practice to wash the mouths of Indian children with lye soap for speaking their tribal languages.

Although the United States wears a black eye from the early operation of Carlisle Indian School under the direction of Captain Pratt, Pratt also authorized a second school for Native American children, Chemawa Indian School located in Salem, Oregon. Opened on February 25, 1880, as an elementary school, the Chemawa Indian School is the oldest continuously operating Native American boarding school in the United States. In 2005, Chemawa Indian School formed a partnership with Willamette University, a private liberal arts college in Salem. While the government and religious schools aggressively sought to wipe out Indian culture, their attempts gener-

ally met with failure. Indian students refused to assimilate then, and for the most part now, into white society.

Native American Sovereignty

The United States struggled deeply with the idea of multiple sovereign dependent tribes existing within its boundaries. Although these tribes retained their quasi-independence gained through the treaty process, many political voices proclaimed a need to abolish federal supervision over tribal residents and subject the Indians to the same laws, privileges, and responsibilities as other U.S. citizens. On August 1, 1953, the U.S. Congress passed House Concurrent Resolution 108 (HCR-108), which declared that the United States had abolished federal supervision over Indian tribes. HCR-108 was passed concurrently with Public Law 280, which granted state jurisdiction over civil and criminal offenses committed by or upon Native Americans in Indian Territory



The Albuquerque Indian School was established in 1881 to provide an off-reservation primary school education to Native Americans from the southwestern United States, eventually housing 800 students through 12th grade. In 1886, the Bureau of Indian Affairs assumed control of the school from the the Presbyterian Home Mission Board. The Albuquerque Indian School operated until 1982, when its program was transferred to the Santa Fe Indian School.

in the states of Nebraska, Oregon, Wisconsin, Minnesota, and California, all states with large Indian populations. Public Law 280 is a federal law establishing a mandate that transfers federal law enforcement authority within certain tribal nations. Other states were allowed to elect similar transfer of power if the Indian tribes affected gave their consent.

From 1953 to 1964, the U.S. government terminated a total of 109 tribes as bands of sovereign dependent nations. The terminations of tribes extinguished their ancestral rights to land, hunting, and fishing as well as ended their tribal rights as sovereign nations. It also terminated all federal support to healthcare, education programs, and police and fire departments that existed on Indian lands. The tribes initially selected for termination had been considered to be groups who were the most successful in the self-determination process. Tribes did not favor Public Law 280, and scholars have written volumes stating that the termination policy had devastating effects on tribal autonomy, culture, and economic welfare. Lands rich in resources were taken over by the federal government and stripped of any value. By 1972, termination clearly had destroyed any educational system that had been put in place earlier. States were expected to assume the role of educating Indian children, and it was all too clear that the state educational systems were struggling to meet current demands without the added number of Indian children who had never been inside a public school.

Indian tribes spent the next decades repealing the effects that termination had placed on their society. By the 1960s, federal leaders began opposing the implementation of termination. Presidents Lyndon B. Johnson and Richard Nixon encouraged Indian self-determination instead of termination.

Indian Bill of Rights Act

The U.S. Supreme Court held in *Talton v. Mayes* (1896) that Indian tribal governments were not subject to restraints placed on the federal and state governments by the Constitution and the Bill of Rights. The Indian Bill of Rights extends 10 restrictions derived from the U.S. Bill of Rights and other parts of the U.S. Constitution. These comprise freedoms of speech, press, assembly,

petition, religion, and security against unreasonable searches and seizures, accompanied by the requirement of a search warrant; freedom from double jeopardy; guarantees against self-incrimination, excessive bail and fines, and cruel and unusual punishment; prohibition of taking private property without just compensation; in modified form, the criminal procedure protections of the Sixth Amendment; the due process and equal protection clauses; prohibition of bills of attainder and ex post facto laws; and guarantee of a six-person criminal jury trial. Congress chose to limit its intrusion into tribal sovereignty by omitting certain other securities such as the right to be a republican form of government, the ban on religious establishments, the requirement of free counsel for indigent criminal defendants, the right to jury trial in civil cases, and the immunities clauses.

The Indian Civil Rights Act is best known for extending part of the Bill of Rights to individual Indians against tribal governments. Moreover, the Indian Civil Rights Act goes further than the language of the Bill of Rights in that it guarantees “equal protection of the law,” something absent from the U.S. Constitution before the ratification of the Fourteenth Amendment. It also denies tribal governments the power to pass ex post facto laws and bills of attainder, provisions that have the power to imprison tribal members for a term greater than six months. Traditional governments did not practice imprisonment at all, supporting the idea of restorative justice; Native American justice is based on healing along with reintegrating individuals into their community. Native American justice involves bringing together victims, offenders, and their supporters to resolve a problem. Restorative justice looks beyond retribution to find deeper solutions that heal broken relationships.

Clashes With Federal Government

Richard Oakes, a Mohawk native, is credited with organizing a group of students and Indian supporters setting sail on November 20, 1969, in a chartered boat, the *Monte Cristo*, to symbolically claim Alcatraz Island in the name of all Indian people. The symbolic occupation lasted for 19 months, ending June 11, 1971. President Nixon ordered federal marshals, Federal Bureau

of Investigation (FBI) agents, and Special Forces to retake the island from the remaining occupiers. Approximately 15 people were removed on that day. As a result of the occupation, the American public was reawakened to the plight of American Indians, giving birth to a political movement that continues today.

Native American clashes with state and federal government officials have continued throughout the 20th century, including the siege at Wounded Knee in 1973, which has roots in the original massacre that took place on December 29, 1890, at Wounded Knee Creek located on the Lakota Pine Ridge Indian Reservation in South Dakota. The events that occurred on December 29, 1890, are well documented in military dispatches, photographs, and eyewitness accounts. Scholars have questioned if this was a historical battle or a well-planned massacre to avenge the earlier demise of General Armstrong Custer and his 7th Cavalry. In February 1973, the American Indian movement and the Lakota Nation made a final stand for Indian rights with a siege at Wounded Knee that lasted 71 days. The foundation for the siege grew when American Indians stood against the U.S. government, which ended in an armed battle with U.S. troops. Corruption within the Bureau of Indian Affairs and Tribal Council was at an all-time high. Tension on Pine Ridge Indian Reservation was on the increase and quickly became out of control. The creation of the American Indian Movement (AIM) was instrumental in shaping the path of American Indians across the country, and the eyes of the world followed AIM protests through the occupation at Alcatraz Island to the 71-day standoff at Wounded Knee, which was sparked by the exploitation of more than 100 years of racial tension and U.S. government mishandling of relations with Native Americans. The siege at Wounded Knee was followed by what historians call the “Reign of Terror” from the U.S. government instigated by the FBI and the BIA. During the three years that followed, 64 tribal members were killed, hundreds were harassed and beaten, and more than 562 arrests were made, with only 15 people actually being convicted of any crime. A large price was paid for those 71 days of sovereignty on the land of the Lakota ancestors.

On March 30, 1990, at the Ganienkeh Reservation in Altona, New York, a rural community

located about 500 miles north of New York City, as a medivac helicopter operated by the Vermont Army National Guard flew over the Indian territory, shots were fired by a tribal member using a hunting rifle at a civilian doctor, forcing the aircraft to land in a field on Ganienkeh property. After a 10-day siege, the governor was able to negotiate an agreement, releasing the helicopter and crew with no additional injuries.

Contemporary Native Americans

In recent times, Indian tribes have consistently engaged in business enterprises as a means of generating revenue for the operation of their tribal governments. Gambling, in a variety of forms, has traditionally been part of the culture of Native Americans. Today, gambling provides many nations with the much-needed revenue to meet their infrastructural needs. The Indian Gaming Regulatory Act (IGRA), passed by Congress in 1988, provided the gateway to self-determination. The IGRA represents an attempt by Congress to balance the rights of tribes engaging in activities generally free of state jurisdiction and the interests of states in regulating gaming activities within the tribe’s territory. It can be argued that the balance was not struck. The U.S. Supreme Court in a case between California and the Cabazon Band of Mission Indians disagreed with California’s argument. The court’s decision turned on the fact that the civil part of Public Law 280 did not grant states jurisdiction to regulate Indian activities on reservations. It granted state courts the jurisdiction to hear and decide cases involving Indian parties in states that generally prohibited gambling but allowed some forms of gambling for charitable organizations or state lotteries. Indian tribes could also engage in these forms of gaming.

The decision in *Cabazon* set the stage for the IGRA. As stated, Indian gaming has become an important means of support for tribal governments; however, this has come with a cost and division of traditional and progressive members of tribal communities. Indian gaming law specifically will continue to grow and evolve in years to come. At present, there are Indian casinos operating in 28 states by 233 different nations. There are currently more than 400 Indian gaming facilities generating almost \$30 billion and providing over 1 million jobs for native and nonnative people.

In 1990, Congress passed the Native American Grave Protection and Repatriation Act (NAGPRA). This act provides a process for museums and federal agencies to return certain Native American cultural items, human remains, funeral objects, sacred objects, or objects of cultural patrimony. Moreover, NAGPRA authorizes federal grants to Indian tribes, Native Hawaiian organizations, and museums to assist with the documentation and repatriation of Native American cultural items. With the passage of NAGPRA, Indian nation burial sites are now protected, making it a crime to disturb present and ancestral burial sites.

Conclusion

The history of Native Americans has generated a plethora of political and scholarly discourse. At the time of discovery, Native Americans numbered between 20 million and 30 million; today, there are an estimated 2.5 million documented Native Americans living in and around reservation land. The framework of this tapestry is determination. Native Americans are proud people who have endured diseases, removal, termination, and assimilation into white society. Today, Indian numbers are growing; the idea of self-determination has taken hold, giving rise to a growing number of nations that now provide industry, education, healthcare, housing, and an infrastructure that can support the needs of the community.

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See Also: 1600 to 1776 Primary Documents; 1801 to 1850 Primary Documents; 1851 to 1900 Primary Documents; 1921 to 1940 Primary Documents; Constitution of the United States of America; Native American Tribal Police; Peltier, Leonard; Supreme Court, U.S.

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Nebraska

A Great Plains state, Nebraska is one of the country's leading agricultural producers and was initially settled primarily by homesteaders claiming free land granted in the 1860s. When the territory was first organized, there were few laws governing it, and "claim clubs" were organized by those who had land claims in any given area. The Omaha Claim Club, organized by settlers around what would become Nebraska's biggest city, first met in 1854 and appointed R. B. Whitted the city's first sheriff, as well as designating a number of other city officials. The primary goal of the claim clubs initially was to protect against illegal claim jumpers, which was the biggest concern for the first settlers. The territorial legislature was comprised mainly of claim club members, and the concerns of claims clubs and town government soon broadened. By the 1860s, Omaha police were directed to wear uniforms, and the department gradually became more organized and professionalized. In 1923, Omaha organized a separate motor force unit, installed call boxes throughout the city (many of which remain in service), and created the first American safety patrol, to protect children walking to school.

Crime

Omaha has experienced a range of crime trends over its history, with gambling and prostitution rampant in its early days as a frontier town. The Burnt District was the city's red-light district in the late 19th century and was home to about 100 brothels and saloons—many of them little more than shacks with mattresses—employing sex workers. At one point, about a third of the adult male population was estimated to have a sexually transmitted disease, which contributed to the district finally being shut down around the turn of the century. It was succeeded by the Sporting District, overseen by political boss Tom Dennison.



A Nebraska family in front of their sod house in 1886. The state was settled in large part by homesteaders claiming free land grants. The Omaha Claim Club was organized in 1854 to protect members' claims in the Nebraska Territory.

Dennison ran the city's brothels, gambling houses, and—once Prohibition began—bootlegging. He may have been responsible for inciting the Omaha Race Riot of 1919, though he was never found guilty of this.

The 1919 riots preceded by two years the establishment of the second Ku Klux Klan in Omaha but were the latest in a long history of incidents sparked by racial tensions. The African American population had doubled in the previous decade, and white workers were angry at having to compete with them for jobs, and especially at the use of African Americans as strikebreakers by the local meatpackers. When the local paper (controlled by Dennison) reported the rape of a 19-year-old white girl by a 40-year-old black man, Will Brown—though later reports by the police department said she had not positively identified him as her attacker—and presented it as merely the latest in a series of attacks that the newly elected mayor was unable to prevent, a riot was stirred up, culminating in Brown's lynching and numerous intentional and accidental killings and assaults, as well as a siege of the courthouse.

Nebraska's crime rate, at 279 violent crimes per 100,000 inhabitants in 2010, is well below the national average. While the national crime rate climbed sharply in the 1970s and 1990s before falling, Nebraska's has remained somewhat

steady since an initial climb from the mid-1960s to the mid-1970s (rising from 64 to 239 from 1966 to 1974). While it rose over the course of the 1990s, it didn't rise as high as in many other states; the decline since then has been gradual, with an uptick (281 to 310) corresponding to the 2007–08 financial crisis, during which Nebraska suffered from rising fuel costs and commodity crop price volatility.

Punishment

Nebraska is a capital punishment state and has executed a total of 37 people, three of them since the rewriting of death penalty statutes after the 1970s Supreme Court rulings. Public hanging was the method of execution until 1913, when use of the electric chair was mandated. Since 2009, when the Nebraska Supreme Court declared electrocution cruel and unusual punishment, lethal injection has been the state's method of execution. Juries decide whether a case of murder in the first degree will be classed as a Class I felony, carrying the death penalty, or a Class IA felony, punished by a life sentence without possibility of parole. Juveniles and the mentally unfit are exempt from execution.

The most famous execution in Nebraska was that of Charles Starkweather, whose killing spree with his girlfriend in 1958 captured the public imagination and inspired the movies *Badlands*, *True Romance*, *Natural Born Killers*, and *The Frighteners*, as well as the Bruce Springsteen song *Nebraska* and elements of Stephen King's work. An 18-year-old high school dropout fascinated by James Dean in the movie *Rebel Without a Cause*, Starkweather took a job at a newspaper warehouse because it was near Whittier Junior High School in Lincoln, where 13-year-old Caril Ann Fugate was a student. Starkweather had just met Fugate and the two soon began a relationship. When he lost his job at the warehouse, he began working as a garbage collector and spent time plotting bank robberies. His first known act of serious violence seems almost random—on December 1, 1957, he shot to death a gas station attendant for having refused to accept credit the previous day when Starkweather tried to buy Fugate a stuffed dog.

Weeks later, an argument with Fugate's parents ended with their ordering Starkweather to stay away from their daughter; Starkweather

fatally shot both of them and stabbed to death their 2-year-old daughter, Fugate's half-sister. He confessed to Fugate when she came home from school, and they hid the bodies and remained in the house for a week until relatives became suspicious. Fleeing when the police arrived, Starkweather and Fugate took to the road to evade capture, killing numerous people they encountered. Starkweather's account of events after the fact changed many times; at first, both he and Fugate insisted he had held her hostage, but at her trial he testified that she had been a willing participant and multiple murderer. Starkweather was tried for only one of the murders but received the death penalty; Fugate received a life sentence and was paroled in 1976.

While still a territory, the Nebraska government addressed the issue of constructing a prison, relying on county jails until the need could be met. A plan to house inmates in other states' prisons was explored but never implemented, and the costs of the Civil War made it impossible to receive federal money to construct a penitentiary, despite repeated requests. A temporary prison was finally built in 1870 on land appropriated south of the capital of Lincoln. The first permanent prison, the West Cell House, was built in 1876, and remained in operation until 1980.

Since the 1980s, Nebraska prisons have been over capacity and are projected to be 55 percent over capacity in 2015. More than half of Nebraska's inmates are incarcerated for non-violent crimes. Advocates have been calling for prison reforms for years, and have received support from the federally funded Vera Institute of Justice, which found Nebraska's criminal law reforms of the 1980s and 1990s to be at fault. During that period, influenced by the war on drugs and nationwide concerns over crime, limits were placed on parole, and mandatory minimum sentencing was enacted for many crimes, among other changes. While crime rates fell—as they did nationwide—prison populations and expenses soared. From 1990 to 2005, the cost of Nebraska incarcerations more than quadrupled, and the prison population grew 3.5 times as fast as the state population. The first steps in reducing prison overpopulation came in 2003, when voluntary sentencing guidelines—eliminating many mandatory minimums—were adopted, with the

stated goal of keeping Nebraska's crowded prisons a place for the violent offenders who posed the greatest risk to public safety and emphasizing community-based sanctions for nonviolent offenders, especially first-time offenders. Drug laws were reformed first, because of drug offenders' disproportionate representation in prison. New laws also emphasized rehabilitation in order to avoid recidivism.

Nebraska is one of only six states to operate a prison nursery. The nursery at the Nebraska Correctional Center for Women opened in 1994, and inmates whose release date comes before their child turns 18 months old are allowed to have that child reside with them, in recognition of the critical bond that forms between mother and child in infancy.

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See Also: Capital Punishment; Frontier Crime; Race-Based Crimes.

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Nelson, "Baby Face"

Infamous car thief, bootlegger, and bank robber, George "Baby Face" Nelson was born under the name Lester Joseph Gillis in Chicago, Illinois, on December 6, 1908, to Joseph and Mary Gillis. Nelson lived in a neighborhood in Chicago's Near West Side, referred to as the Patch. At a young age, he engaged in various crimes, but most notable was the stealing of car parts and cars. By the early 1930s, Nelson elevated his criminal aspirations to bank robbery, and soon he became acquainted with many rising members of the Chicago mob,

who may have employed Nelson as a syndicate gunman and chauffeur. Nelson, who also operated under the alias Jimmy Williams, gained some notoriety after he escaped from a train en route to the state prison at Joliet, Illinois, where he was intended to serve time for his second bank robbery conviction. The attention that his early criminal exploits drew from the American media was minor compared to the attention the press gave Nelson once John Dillinger joined his fledgling gang and enabled them to successfully pull off numerous bank robberies across several states. During his criminal career, Nelson killed several men, including three Federal Bureau of Investigation (FBI) agents, which made him one of the most notorious gangsters during the public enemy era of the 1930s.

On March 3, 1934, John Dillinger reportedly used a wooden pistol that was smuggled in to him so he could escape from the Crown Point jail with two hostages in Sheriff Lillian Holley's V-8 Ford. It was suspected that "Baby Face" Nelson, along with Homer Van Meter, fronted the bribe money necessary for Dillinger's successful escape. On the day following the escape, Dillinger joined up with Nelson's gang in Minneapolis, Minnesota. On the same day, Nelson murdered Theodore H. Kidder, which was supposedly the result of a minor car accident in St. Paul, Minnesota. Later information revealed that Kidder sold guns and ammunition illegally through his sporting goods store, so his death may have been the result of an arms transaction gone awry.



The Federal Bureau of Investigation's (FBI's) 1931 mug shot of Lester Gillis ("Baby Face" Nelson). The criminal killed more on-duty FBI agents than any other American citizen.

As a new member of Nelson's gang, Dillinger gladly accepted a secondary role. However, after the robbery of the Security National Bank in Sioux Falls, South Dakota, where the gang made off with \$49,500 and Nelson wounded a policeman, the press referred to them as the second Dillinger gang. Dillinger's distinction in the newspapers angered an envious Nelson, whose ego was greatly injured by this snub. Nelson's hot-tempered nature often led Nelson to willingly shoot police and civilians, and he frequently threatened the lives of other members in the gang. Regardless of the difficulty Nelson presented to the gang, they were able to continue to rob banks and evade capture in several states, including Illinois, Iowa, Indiana, and Wisconsin.

After Dillinger was killed by federal agents on July 22, 1934, Nelson gathered his wife, Helen, and his son, Ronald, and fled to California. In November, Nelson returned with Helen to Lake Geneva, Wisconsin, to stay with a young bootlegger named John Paul Chase at Lake Como Hotel, which was operated by Hobart Hermanson. The FBI was tipped off about Nelson's intention to spend the winter there, and agents convinced Hermanson to allow them to use his house in an attempt to ambush Nelson. On November 27, 1934, a Ford, which the FBI mistook as Hermanson's, pulled into the driveway where the trap was being laid, but instead, it was manned by Nelson. Nelson fled the scene but soon encountered a carload of agents near the town of Fox River Grove, where Nelson turned around to chase the agents. Nelson's car was disabled by a shot to the radiator. A second FBI car closed up on Nelson's car at Barrington, Illinois, but both agents Samuel Cowley and Herman Hollis were killed by Nelson, even though he sustained 17 gunshot wounds from agents. Nelson managed to escape with his wife and Chase and found refuge at a friend's house in Skokie, Illinois. Nelson died, and his body was discovered the next day, wrapped in a blanket on the northeast corner of St. Paul's cemetery.

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See Also: Bootlegging; Dillinger, John; Federal Bureau of Investigation; Gangs, History of; Guns and Violent Crime.

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Ness, Eliot

Eliot Ness (1903–57) was a Prohibition and Treasury Department agent; Cleveland, Ohio, public safety director; and leader of the famed Untouchables, upon which two TV series and the 1987 movie of the same name were based. Ness was born in Chicago to Peter and Emma Ness, Norwegian immigrants. Ness was a studious boy who grew up reading Arthur Conan Doyle's Sherlock Holmes books while working in his father's bakery. Ness attended the University of Chicago, where he played tennis and earned a degree in business. After graduation, he remained at the University of Chicago and earned his Ph.D. in 1925.

Ness's first job was at the Retail Credit Company, where for two years he investigated insurance claims and verified credit ratings. Inspired by his boyhood hero Sherlock Holmes and his Prohibition agent brother-in-law, Alexander Jaime, Ness later worked for the U.S. Treasury Department before transferring to the Department of Justice's Chicago Office as a Prohibition Agent.

Tracking Al Capone

In 1929, President Herbert Hoover instructed Secretary of the Treasury Andrew Mellon to bring gangster Al Capone's reign as king of the underworld to an end. The government launched a two-pronged attack against Capone. One strategy was to investigate Capone for failure to pay income taxes; the other was to bring him down for violations of the Volstead Act.

At the time, Prohibition agents at the Department of Justice had a dubious reputation as dishonest law enforcement officers. The agents were known as corrupt and easy to bribe, and Ness became frustrated with both the reputation and

the inability of his fellow agents to effectively uphold the law and shut down the openly operating vice industry in Chicago. Through the efforts of his brother-in-law Jaime, Ness eventually gained an interview with U.S. District Attorney George E. Johnson, during which he attempted to sell his idea for enforcing Prohibition laws and cleaning up the Windy City. His idea was a simple one: Organize a small, hand-picked, elite squad of agents who possessed the necessary law enforcement and other skills to accomplish the job, along with one important qualification. Ness knew, more than anything else, this squad would have to be completely and unequivocally honest, unable to be bribed.

Ness's plan was approved, and he was put in charge of the unit. He poured through the records of all agents intently, eliminating those who did not fit his criteria and eventually narrowing the list down to nine. These nine, along with Ness as their leader, began their task of bringing down Capone, perhaps the nation's most infamous gangster.

Several successful raids against Capone breweries and distilleries brought a predictable reaction from Capone: buy off the \$2,800-a-year agents who were attempting to shut down his empire. Capone made several attempts, with the amount of the bribe growing larger as Ness and his men declined Capone's offers. After one incident in which Ness and two of his men turned down \$2,000 bribes, Ness, always on the lookout for positive publicity, called a press conference. He reported the bribe attempts and publicly vowed that they would topple the Capone empire. The Chicago press reported on the incidents and deemed Ness and his men "the Untouchables," honest agents who could not be bought. When bribery did not work, Capone tried violence, and various attempts were made on Ness and his men, also unsuccessful. Ness and his men continued on, conducting several successful raids and confiscating trucks, stills, brewing vats, and other equipment.

While Ness and his men's efforts were successful at hurting Capone's bootlegging operations, the income tax charges took precedence, and Capone was convicted for tax evasion in 1931 and sent to the federal prison in Atlanta, and later transferred to Alcatraz. The indictments returned that



A photographer captures truckloads of beer en route to Chicago being captured and destroyed in Zion City, Illinois, circa 1920. Prohibition (a U.S. ban on selling, manufacturing, or transporting alcohol) lasted from 1920 to 1933. Eliot Ness joined the Bureau of Prohibition in Chicago in 1926 and became the chief investigator of the Prohibition Bureau for Chicago.

were based on Prohibition violations were held in abeyance in case there were problems with the tax charges, but in the end were never used. After Capone's imprisonment, Ness was promoted to chief investigator of Prohibition Forces for the Chicago Division in 1932.

Service in Cleveland

In 1933, Ness was sent to Cincinnati as a revenue agent, charged with seeking out and destroying moonshine stills in the hills of Ohio, Kentucky, and Tennessee. From there, he became the investigator in charge of the Treasury Department's Alcoholic Tax Unit for the Northern District of Ohio. In November 1935, Harold Burton was elected mayor of Cleveland, running on a reform platform and promising to clean up corruption in the Cleveland Police Department. In early 1936, Ness was tapped by Burton for the task and was appointed Cleveland's public safety director. In Cleveland, Ness made considerable progress in

reforming the police, modernizing the department's policies, personnel, equipment, and methods. He also made progress in cleaning up Cleveland's criminal element, especially in the organized crime district, the notorious Mayfield Road Mob, based in Cleveland's Little Italy. Ness's reputation with the public, however, began to suffer on two fronts, professional and personal.

Cleveland was plagued by a series of gruesome murders between 1935 and 1938 in what came to be known as the Cleveland Torso Murders or the Mad Butcher of Kingsbury Run, in which a dozen or so homeless transients had been found murdered, dismembered, and decapitated. There were two prime suspects in the case, one a former World War I surgeon who was said to have been skilled at amputation. Although the suspect failed two polygraph tests and was questioned by Ness personally, Ness claimed that there was not sufficient evidence to hold him on the charge, and he was released. The suspect was a cousin of

one of Ness's and mayor Burton's prime political enemies, and his release prompted speculation of political corruption and possible blackmail. Although the murders eventually stopped, Ness did not catch his man in this case.

Ness's personal reputation began to suffer with his divorce from his first wife, Edna, and subsequent marriage to Evaline McAndrew, a Cleveland socialite originally from Chicago who was 10 years Ness's junior. Ness had buried himself in his work and neglected Edna, who finally left him and moved back to Chicago, something that did not seem to sit well with Cleveland's working class and largely ethnic population of the 1930s. When Ness and McAndrew married, however, they were often seen among the city's social elite in Cleveland's best restaurants and nightclubs. Ironically, the man who claimed the reputation of drying up Chicago during Prohibition had the reputation of being a regular and frequent drinker of alcohol in Cleveland. Ness had reportedly been drinking in the early morning hours on March 5, 1942, when he was involved in an automobile accident in which 21-year-old Robert Sims was injured. The accident was portrayed as a hit-and-run in the newspapers, although Ness said that he was concerned with his wife's well-being and he had spoken to Sims about following him in his car to the hospital. When he noticed that Sims was not behind him, Ness said that he returned to the scene, but Sims had been taken to the hospital by a passing motorist.

Ness's political enemies made the most of the accident, and Ness' reputation began to suffer. According to his friends, he had lost his enthusiasm for his job and his heart was no longer in his work. Soon after the accident, he resigned and left Cleveland. Ness later worked as director of social protection for the Federal Security Agency, and then entered the private sector as president of the Guaranty Paper Corporation and the Fidelity Check Corporation.

The Untouchables

In 1957, Ness teamed up with author and sportswriter Oscar Fraley to publish his memoirs, appropriately called *The Untouchables*. Eliot Ness died suddenly of a heart attack on May 16, 1957, shortly after approving the final galleys for the book, which became a best seller. *The*

Untouchables also became a prime time TV series running on ABC from 1959 until 1963. Starring Robert Stack as Eliot Ness and narrated by Walter Winchell, the show was nominated for several awards and proved popular with viewers. In 1987, *The Untouchables* was produced as a motion picture based on Ness and Fraley's book, directed by Brian DePalma and starring Robert DeNiro, Sean Connery, and Kevin Costner as Ness. Paramount Television attempted to resurrect the series in syndication in 1993–94, starring Tom Amandes and William Forsythe, but it was not as successful as the original ABC TV series.

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See Also: Bootlegging; Capone, Al; Chicago, Illinois; Cleveland, Ohio; Moonshine; Nitti, Frank; Prohibition; Television, Police in; Volstead Act.

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Neutrality Enforcement in 1793–1794

At the beginning of his second term as president, George Washington and his administration had to confront a significant foreign policy crisis. France, which had overthrown its monarchy, declared war on Great Britain. Realizing its

navy was weaker than Britain's, France sought U.S. assistance. To avoid entering the war, the Washington administration proclaimed neutrality. Enforcing neutrality proved challenging, however. Lacking military strength to stop U.S. citizens from joining French naval expeditions, the administration turned to law enforcement. This marked the first effort by the United States to enforce policy through criminal law.

Washington began his second term in March 1793, having spent his first term organizing the fledgling government and establishing precedents for future presidents. Between his election and inauguration, the people of France executed their king and declared war on Great Britain. The war presented a foreign policy crisis for Washington, because France sought assistance from the United States. During the American Revolution, the Americans signed a treaty with the French obliging the United States to repay its war debt to France over a period of time and prohibiting the United States from allowing France's enemies to use United States ports to arm ships to oppose France. Now, France sought advances on its debt and the use of U.S. ports to arm French merchant ships. The war also presented a problem for Washington because the nation divided over whose side to take in the war. Many preferred the British for business reasons. Merchants conducted most of their trade with the British and wanted to continue that relationship. Many Americans identified with the French Revolution, however. They likened the French struggle to their own. Without a unified nation, Washington knew a war would make the new nation vulnerable.

Washington's desire to maintain neutrality raised several fundamental questions. Did he have the power to declare neutrality? What did neutrality mean? Did the treaty with France require the United States to permit the French to recruit ships and sailors from the American public? If so, how could the United States remain neutral? To answer these questions, Washington tasked his cabinet to work out the details. Washington's cabinet debated enforcement options. Treasury Secretary Alexander Hamilton, who favored the British, advanced a policy whereby customs officials reported violations directly to Hamilton. Hamilton would forward the relevant information to the U.S. district attorneys to pros-

ecute the cases. Secretary of State Thomas Jefferson, a strong proponent of France, argued that grand jurors were the proper body to present allegations of neutrality violations. With Hamilton and Jefferson unable to agree, Attorney General Edmund Randolph proposed a compromise whereby customs officials would report neutrality violations directly to the district attorneys. Washington approved Randolph's proposal.

Controversy Over the Debate

While the enforcement debate was ongoing during May 1793, France forced the United States to take immediate action. French privateers, using some U.S. sailors, captured several British ships off the Atlantic coast and brought them to U.S. ports, claiming them for France. This caused British protests, forcing the United States to resolve the problem. Negotiations with France brought initial success, but the seizures continued. In June 1793, Gideon Henfield, an American sailor, was arrested by Philadelphia law enforcement authorities for serving as a prizemaster aboard a French privateer. Similar incidents followed. The arrests created the need for a special federal grand jury. Attorney General Randolph and the U.S. district attorney for Pennsylvania, William Rawle, prepared the indictment. To do this, they had to determine the law Henfield violated. Lacking a statute, Randolph and Rawle relied upon the common law. They decided that Henfield's actions, because they risked war with Britain, breached the peace of the United States. Accordingly, they drafted an indictment against Henfield and used similar versions for other indictments returned by the special grand jury in July 1793. A few weeks later, a jury acquitted Henfield. Although disappointed with the verdict, the Washington administration determined that the verdict resulted from a lack of proof rather than an improper legal theory.

After Henfield's case, the administration continued neutrality enforcement through the courts. While never gaining popular support, the government obtained some convictions. More importantly, these efforts helped keep the United States out of war. Neutrality enforcement set the precedent for using criminal law to enforce policy. Four years later, President John Adams prosecuted political opponents for sedition. Nearly 100 years later, President Ulysses S. Grant would

enforce civil rights policy through prosecution. Today, nearly every social policy is supported through criminal prosecution.

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See Also: Federal Common Law of Crime; Hamilton, Alexander; History of Crime and Punishment in America: 1783–1850; Jefferson, Thomas; Washington, George (Administration of).

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Nevada

Nevada was admitted to the Union on October 31, 1864, despite the absence of characteristics typically associated with other territories admitted into statehood. Experts speculate as to the true reason Nevada was prematurely admitted to the Union; some credit the mining of precious metals during a costly Civil War, while others credit President Abraham Lincoln's reelection campaign. The fact remains that Nevada entered the Union under unique circumstances and as such has a distinct social history of social control. Over time, Nevada's history of crime, police, and punishment have come to resemble those of other states—with notable exceptions. The state of Nevada is a 110,540-square-mile landmass divided into 17 counties occupied by approximately 2.5 million residents. Laws regulating a multitude of things (including criminal behavior) are created in a process modeled after that of the federal government, due in large part to the dependence of the state on the federal government during its early days. Laws are written and ratified by a bicameral state

legislature comprising the State Senate and the State Assembly, which are currently made up of 21 and 42 members, respectively. Laws passing both bodies are signed into law by the governor and can be ruled unconstitutional by the Nevada Supreme Court. One of the unique features of the Nevada legal system is a trifurcated criminal code consisting of misdemeanors, gross misdemeanors, and felonies; most other states have a two-level system (with misdemeanors and felonies). The laws in Nevada are similar to those of other states with the exception of two important exceptions, which have been associated with infamous crime problems in Nevada history: legalized prostitution and legalized gambling.

Prostitution and Gambling

Prostitution is legal under certain circumstances in Nevada and is regulated by the state; the most important restriction on prostitution is the prohibition against licensing brothels in counties with a population base of more than 400,000. Currently, there are approximately 35 state-regulated brothels operating in nine Nevada counties. Legalized prostitution was associated with one of the most infamous criminal scandals in state history: the indictment of Joe Conforte, owner of the first



The Chicken Ranch brothel, one of 35 state-regulated houses of prostitution in Nevada. It was opened 60 miles west of Las Vegas in Pahrump, Nevada, in 1976, as close to Las Vegas as regulations would allow.

state-regulated brothel, for tax evasion in the early 1990s. Conforte fled the country prior to being tried. In late 1999, the government seized the brothel, claiming it was purchased by a Conforte-run shell company, and auctioned it off.

Additional infamous crimes in Nevada history revolve around the statewide gaming industry, which was legalized in 1931. In an effort to minimize the influence of organized crime and to restore faith in the gaming industry, the Nevada Gaming Commission (NGC) was created as a regulatory and enforcement branch in 1957. The presence of organized crime in the gaming industry reduced the amount of tax revenue, which is based on gaming revenue, by falsely reporting the amount of gaming revenue. The implementation of the NGC in 1957, along with other industry changes (e.g., the presence of corporate casino enterprises), has helped to mitigate the organized crime problem in the Nevada gaming industry.

Criminal Justice System

It is interesting to note that the NGC is one of the many agencies with law enforcement capacities in the state of Nevada. Law enforcement organizations in Nevada are regulated by the Nevada Peace Officers Standards and Training (POST) Commission, which currently recognizes approximately 140 law enforcement agencies statewide (including municipal police departments, county sheriff's offices, university police, tribal police, and other state law enforcement agencies). The first law enforcement officer in the state was the Ormsby County (now Carson County) sheriff, appointed in December 1861. Law enforcement statewide was the responsibility of the county sheriffs until the Nevada State Police organization was commissioned in 1908 to deal with civil unrest surrounding mining camp labor disputes.

The state police in Nevada no longer exist as an autonomous agency; its police function has been taken over by the Nevada Highway Patrol. The first highway patrolmen in Nevada were hired in 1923 and were responsible for collecting vehicle registration fees and enforcing motor vehicle laws throughout the state. As of 2008, there were more than 350 patrolmen responsible for enforcing traffic laws and maintaining public safety statewide. Nevada maintains an autonomous correctional

system designed to confine convicted felons for the public protection. Corrections in Nevada started with the creation of the first territorial prison at the Warm Spring Hotel (near Carson City) in 1862; this facility was eventually expanded and fortified with materials from a nearby quarry to create the Nevada State Prison.

The Nevada State Prison was the only such institution statewide until the construction of other correctional facilities in the 1960s. Currently, Nevada operates eight correctional institutions and 11 minimum-security facilities, which house more than 12,000 inmates statewide. Perhaps the most famous inmate currently incarcerated in Nevada is O. J. Simpson, who was convicted of assault with a deadly weapon, kidnapping, and robbery stemming from events inside a Las Vegas hotel room in September 2007.

Nevada, like many other states, carries out the death penalty via lethal injection. Nevada was the first state to utilize lethal gas, during the execution of Gee Jon in 1924. Nevada has executed 73 persons in its history, including 12 executions performed after the death penalty was reinstated nationwide in 1976 with the Supreme Court decision in *Gregg v. Georgia*. As of 2011, there are 77 people on death row in Nevada.

Crime in Nevada has followed trends generally resembling national trends. Examining trends from 1960 through the present shows the violent crime rate peaked in Nevada in the early 1990s and has been steadily declining since. The property crime rate peaked in 1979 and has been generally declining since, although it has increased from time to time. Recently, Nevada garnered notoriety by being in the top 10 most violent states from 2005 (when it ranked ninth) through 2008 (when it ranked third), although it experienced a decline in property crime during the same period (from ninth to 18th). Nevada has steadily remained the second-highest state in the number of vehicle thefts and robberies during this four-year period. Nevada's history of crime, police, and punishment reflects the unique conditions surrounding the birth of the state; prostitution and gambling continue to set it apart from other states.

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See Also: Gambling; Las Vegas, Nevada; Prostitution, History of.

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New Hampshire

One of the original thirteen colonies, New Hampshire's history goes back to the early 17th century. Today, it is one of the smallest and least populous states, its recent history and demographics having been greatly affected by the growth of the Boston metropolitan area in neighboring Massachusetts—and by the transformation of many former farm and orchard towns on the border into exurban bedroom communities and the cold war–fueled growth of tech sector companies like Lockheed-Martin, Raytheon, Digital, and Wang.

Police

Early law enforcement was handled by constables. In the capital of Concord, for instance, in the colonial era, the constable was an elected official who was also responsible for tax collection. Over time, the number of constables was increased.

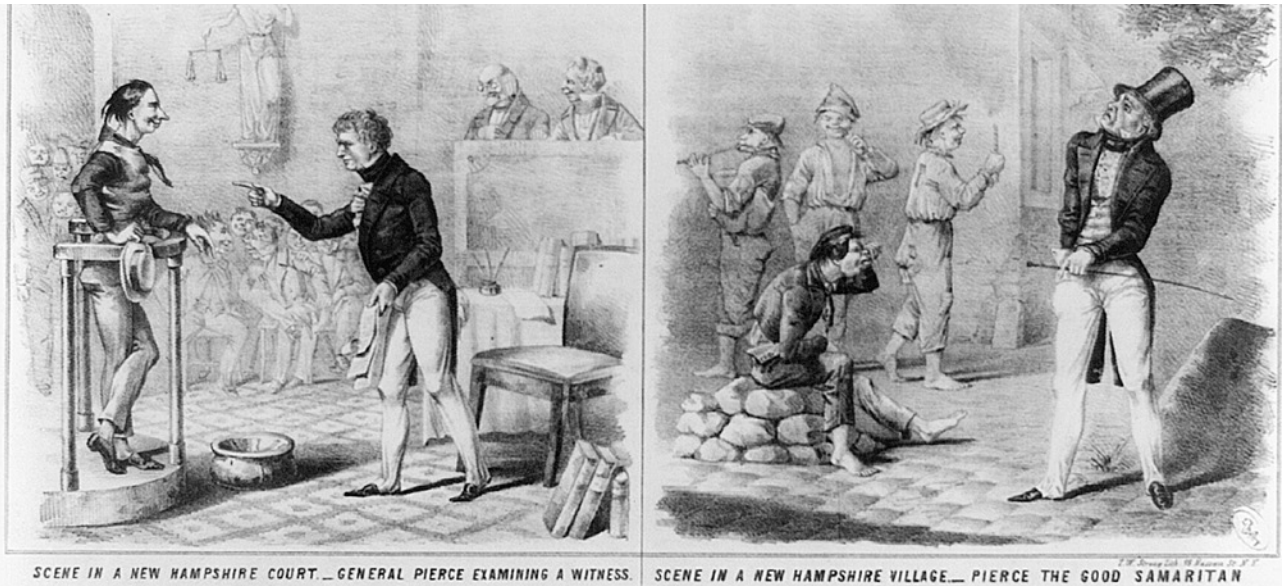
Election of constables took place at town meetings (the standard form of local government in much of New England), and anyone chosen to be constable who did not wish to serve would have to pay a fee in order to opt out of the position. In the 1830s, Concord added police officers—appointed by the town government rather than elected by the people at large—to the city police force, and the police department was formally created in 1853.

The New Hampshire State Prison was built in 1812, after being authorized by the New Hampshire General Court in 1810. An early prison industries program was begun in 1819 with the construction of a workshop in which the inmates could do hand manufacturing of various goods. For decades, there were few female inmates—never more than six at a time up until 1941, at which point the state began housing female inmates in correctional facilities in Vermont and Massachusetts. The New Hampshire Women's Prison was built in the 1980s to accommodate a growing number of female offenders. Shortly after, the state built the Northern New Hampshire Correctional Facility to deal with the growing state prison population.

Crime and Punishment

New Hampshire is a capital punishment state, and the death penalty has been used since the colonial era. Since that time, 24 people have been executed. In the colonial era, hanging was the method of execution, and the death penalty was prescribed not only for murder but for rape, abortion, burglary, counterfeiting, treason, bestiality, and homosexuality. Three of the four executions in the colonial era were for the crime of "feloniously concealing the death of a newborn," an act criminalized to such a degree out of fear that women who bore children out of wedlock or conceived by men other than their husbands would kill the child (having concealed their pregnancy) in order to maintain their secret. The fourth was Eliphas Dow, convicted for murdering Peter Clough, with whom he had been feuding for some time.

The only execution solely for rape (without subsequent murder) in New Hampshire was also its only execution of a nonwhite person, African American Thomas Powers, in 1796. All other



A lithograph pokes fun of General Franklin Pierce, depicting him as a trial lawyer in a New Hampshire court and giving money to the poor, saying "So, here's a cent for you, buy a stick of candy and remember to vote for Pierce, if ever he is nominated for President." Pierce was the 14th president of the United States and the only U.S. president to come from New Hampshire.

executions since statehood have been for homicide or accessory to murder. Not until 1903 was the mandatory death penalty lifted from cases of murder in the first degree, allowing juries to choose to impose a life sentence instead.

The last time an inmate was executed in New Hampshire was 1939, when Howard Long was hanged for the molestation and murder of a 10-year-old boy. Three years later, Ralph Jennings was sentenced to death for murdering a school-teacher but committed suicide in his cell. In 1959, Frederick Martineau and Russell Nelson were convicted of murdering a man who was scheduled to testify in a Rhode Island burglary case, but they were spared the death penalty after 13 stays of execution, when the 1972 Supreme Court decision in *Furman v. Georgia* found all extant death penalties to be unconstitutional. The death penalty statute in New Hampshire was subsequently amended.

Today, although lethal injection is intended as the form of execution, New Hampshire has no execution chamber. Though hanging is legally permitted when injection is "impractical," the state's hanging gallows was dismantled in 1992. Attempts to repeal the death penalty have failed, perhaps in part because of several recent high-

profile murders, such as the murder by four adolescent boys of Kimberly Cates during a home invasion in Mount Vernon in 2009. Despite the violence of the crime, it failed to fit the requirements for a capital murder under New Hampshire law, which requires that for the death penalty to be used, the murder must have been a contract killing; a murder coupled with a federal drug offense, kidnapping, or aggravated sexual assault; a murder by someone who has previously served a life sentence; or a murder of a police officer. The inability of the state to seek the death penalty in this case resulted in calls not for the repeal of the death penalty but for the rewriting of the statute in order to encompass more crimes.

There is in 2011 one inmate on death row: Michael Addison, sentenced in December 2008 for the murder of a police officer in 2006. Addison shot and killed Officer Michael Briggs when he responded to a domestic disturbance call, prompting a manhunt in the Manchester area—later expanding to Massachusetts—when Addison fled the scene.

A politically conservative state, New Hampshire has tended to be more socially liberal than mainstream American conservatives—it has one of the lowest rates of church attendance in the

nation, for instance, and has legalized gay marriage—but has also attracted elements of the political fringe, including several small antigovernment groups. This was brought to national attention in 1997, when 62-year-old Carl Drega, who had a long history of arguments with state and local government over zoning and building code issues, fired shots in the air to scare off town officials when they came to his property to discuss a dispute over an assessment. He subsequently shot and killed two state troopers who were ticketing him for the rust holes in the bed of his truck, and after a circuitous evasion route, took a fortified position in a hilltop across the state line in Vermont, from which he continued firing at state troopers with an AR-15 rifle, until he was eventually killed by police gunfire.

The violent crime rate in New Hampshire has always been lower than the national average: 167 violent crimes per 100,000 inhabitants in 2010, compared to the national rate of 403. Aggravated assaults account for most of the violent crimes, but the figures for rape are slightly higher (31) than the national average (27.5) and thus constitute a significant share of violent crimes, about 18 percent. Crime has risen in recent years, having jumped from 96.5 to 175.4 from 1999 to 2000, declining slightly in the middle of the decade, and rising to present levels during the financial crisis, although New Hampshire has been less affected by the recession than most states. Rape, robbery, and murder have stayed fairly steady since the 1980s; the fluctuations have largely been in the number of aggravated assaults.

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See Also: *Furman v. Georgia*; Massachusetts; Vermont.

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New Jersey

New Jersey was inhabited by Native Americans as early as 10,000 years ago. The Lenape or Lenni Lenape Indians (known as the Delaware to the English) are the aboriginal inhabitants of New Jersey who lived in small communities made up of extended family members across New Jersey, Delaware, and eastern Pennsylvania. English settlers referred to the Lenape as “Delaware Indians” after Lord De La Warr. The Lenape understood their name to connote the phrase *original people* or *genuine people*. Europeans and African slaves first entered the region during the 16th and 17th centuries. An Italian explorer sailing for the English, Giovanni de Verrazano, was the first European since Norse explorations of the region in 1000 C.E. to reach the Jersey shore, anchoring at Sandy Hook in 1524. The British explorer Henry Hudson, in service for the Netherlands, sailed through Newark Bay in 1609, claiming the land for the Dutch that was at first called New Netherlands. Trading posts began to appear in what are today the cities of Hoboken and Jersey City following the Hudson expedition. The first Europeans to build settlements in New Jersey were the Dutch, Swedes, and Finns.

The British took control from the Dutch in 1664, and the territory was subsequently divided into two proprietary colonies by 1674. Sir George Carteret took control of East Jersey and Lord John Berkeley came to administer West Jersey. The land became known as New Jersey after the Isle of Jersey in the English Channel (Carteret was formerly the governor of the Isle of Jersey). Both Carteret and Berkeley sold New Jersey lands at low prices and allowed settlers to have a measure of political and religious freedoms. This helped to facilitate the development of an ethnically diverse environment. English Quaker John Fenwick and Edward Byllinge purchased land from Lord Berkeley on the east side of the Delaware. Fenwick's allotment came to be known as the “Salem Tenth,” and this comprised about 10 percent of the territory of West Jersey. John Fenwick's initial goal was to establish a colony of English Quakers. As the proprietor of Salem Tenth, Fenwick made several purchases from local Native American tribes in 1675, including land that today encompasses Salem and Cumberland counties. New Jersey

became a royal British colony in 1702, effectively ending the proprietary system.

On the eve of the American Revolution, New Jersey came under direct Crown control and later declared itself to be an independent state in 1776. New Jersey was the third state to ratify the U.S. Constitution in 1787. The Industrial Revolution through the 1800s brought manufacturing industries to New Jersey and an increase in population. Historically, the state of New Jersey has been one of the most densely populated states in the Union through the 20th century. The combination of industrialization, population increase, and urbanization in New Jersey through the 20th century allows for an examination of crime and punishment in the state that reflects national trends. New Jersey contains some of the most populous crime-ridden cities in the United States, including Newark and Camden. National trends in crime and punishment are often first visible in the state of New Jersey.

Crime and Punishment

New Jersey has an illustrious history in crime and punishment. Some of the greatest crimes of the 20th century took place in New Jersey. On September 14, 1922, Episcopal priest Edward Wheeler Hall and his mistress Eleanor Reinhardt Mills, a member of the church choir, were both found dead in New Brunswick, New Jersey. This case became known as the Hall-Mills case and the sensational trial that followed led to the acquittal of the priest's wife Frances Noel Stevens Hall and her brothers in 1926. This case was considered perhaps the trial of the century before the Lindbergh case because of the widespread national attention and the novels and films that were inspired by the case. Charles Augustus Lindbergh, Jr., the 20-month-old son of writer Anne Morrow Lindbergh and aviator Charles Lindbergh, was kidnapped from the couple's Hopewell, New Jersey, home on March 1, 1932. The decomposed body of Charles, Jr., was discovered on May 12, 1932 with a crushed skull. Bruno Richard Hauptmann, was eventually apprehended and convicted of the crime. He was executed on April 3, 1936. Enoch Lewis "Nucky" Johnson (1883–1968), Republican Party political boss and racketeer in Atlantic City, New Jersey, has inspired several books and a television series. The infamous

DeCavalcante crime family emerged in north Jersey during Prohibition. The DeCavalcante crime family in New Jersey included a Newark faction run by Gaspare D'Amico through 1937, followed by the leadership of Stefano "Steve" Badami through the 1950s. The DeCavalcante crime family maintained close ties with the La Cosa Nostra crime network based in New York, engaging in such activities as drug trafficking, extortion, fencing, fraud, gambling, and murder, among other crimes. The DeCavalcante family's New Jersey crime network in both Elizabeth and Newark was likely the inspiration for the HBO series *The Sopranos* and the more recent CNBC program *Mob Money*. Richard Biegenwald, the "Jersey Shore Thrill Killer," murdered several women in the Jersey Shore area during the early 1980s. The dismembered bodies of some of his victims were found in shallow graves located on his mother's property in Staten Island. Biegenwald was convicted and subsequently died in prison of liver disease in 2008.

The September 11, 2001, attacks orchestrated by the radical terrorist organization Al Qaeda are also associated with crime in New Jersey. United Airlines Flight 93 to San Francisco departed from Newark International Airport the morning of September 11, 2001, and crashed in a field in Shanksville, Pennsylvania, killing all passengers on board after being hijacked by four Al Qaeda terrorists under instructions from Osama bin Laden. Newark International Airport was renamed Newark Liberty International Airport after the attacks.

New Jersey has 14 state correctional facilities run by the New Jersey Department of Corrections. These facilities are designated for adults, youths, and women and currently house more than 24,000 women, youth, and adult inmates in total. The state has both minimum- and maximum-security prisons, such as East Jersey State Prison, located in Rahway, New Jersey. The first major prison built in the state was Trenton State Prison, created in 1799 and organized according to the congregate system (mixing all types of prisoners in one building regardless of sex, age, or mental condition). The inmates in Trenton State, regardless of type of crime, mingled liberally during the day and were housed in cells during the evening until the mid-1800s when the prison was

remodeled. The East Jersey State Prison (formerly known as Rahway State Prison) was built in 1896, and women once imprisoned at Trenton (now known as New Jersey State Prison) were eventually relocated to the Edna Mahan Correctional Facility located in Clinton, New Jersey, in 1913.

There have been several New Jersey cities that have been listed as “most violent” cities in the United States in the past decade. Camden has ranked number one on the list of most violent cities in the United States more than once, and Newark has been labeled “the carjacking capital of the world” several times. In 2001, an estimated 63 percent of the prisoners in New Jersey state prisons were African American, while roughly 19 percent were white and 18 percent were Hispanic. The New Jersey State Prison is located in Trenton, Northern State Prison is located in Newark. The Edna Mahan Correctional Facility for Women is in Clinton, New Jersey. These are three of the major correctional facilities in the state.

Ironically, New Jersey contains both the most violent city in the United States and the safest city in the United States: The town of Brick, New Jersey, has been listed as the safest city in the country. This helps to illustrate the fact that New Jersey serves as a microcosm of the larger trends across the nation in terms of crime and punishment.

Newark Riots

The civil rights era brought major rebellions to the state of New Jersey within and outside the prison system. There was a serious prison uprising in the New Jersey State Prison located in Trenton in 1952. Prisoners, citing overcrowding and poor conditions, destroyed property, took hostages, and refused to surrender in what has been classified by some as the most violent year in prison rebellion that took place before the events at Attica.

Major cities such as Newark were also engulfed by rebellion in the 1960s. Poverty, diminishing purchasing power, and deteriorating living conditions in the Central Ward (where most of the expanding black population resided) led to the conflagration that was the Newark riots in 1967. On July 12, 1967, an African American taxi driver named John Smith was beaten by Newark police officers for allegedly resisting arrest. Before the riots that followed the beating of Smith, through

July (amid rumors that the police had killed him), then Mayor Hugh Addonizio had offered to condemn sections of the Central ward to make way for the building of the University of Medicine and Dentistry. The Newark riots ended with 26 killed, 1,500 wounded, 1,600 arrested, and the destruction of an estimated 167 retail stores (many of which never rebuilt in the city). Middle-class communities of all races fled the city in the 1970s and 1980s, along with vital industries, leaving behind a city increasingly marred by political corruption, crime, and urban decay.

Trends in Crime and Punishment

New Jersey has at times had lower numbers than the national average in crime and punishment, although in some instances, the state has surpassed the national average. The boom in crime in the United States took place roughly between 1963 and 1974. This was an era of civil unrest, urban rebellion, and political assassinations. There was a slight hiatus in the crime “boom” in the mid-to late 1970s but the national crime rate spiked once again through the 1980s, reaching dramatic proportions. The New Jersey incarceration rate was lower than the national average through the 1980s. New Jersey exceeded the national incarceration rate in the early 1990s but has since experienced a decrease through the 2000s.

New Jersey, between 2005 and 2008, was ranked at either 27th or 30th on the list of states with the highest crime rates. Residents have a one in 308 chance of becoming a victim of violent crime. The chances of a New Jersey resident becoming a victim of property crime are far greater at one in 43. The national crime rate has been steadily declining since the 2000s, along with New Jersey’s crime rate.

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See Also: Camden, New Jersey; Lindbergh Law; Newark, New Jersey.

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New Mexico

New Mexico's justice system began with colonization of the region by the Spanish. The earliest record of arrest and punishment begins with Don Juan de Oñate y Salazar (1550–1626). The son of a conquistador, Oñate was ordered in 1595 by King Philip II to colonize the northern frontier of New Spain. He began the expedition in 1598, and on April 30 claimed all of New Mexico beyond the Rio Grande for Spain. He and his party continued up the Rio Grande, where he founded Santa Fé de Nuevo México. Oñate served as the province's first governor. Oñate reportedly wielded a stern hand on both Spanish colonists and indigenous peoples. In October 1598, a skirmish erupted when Oñate's occupying Spanish military demanded supplies from the Acoma Indians—supplies essential to the Acoma's winter survival. The Acoma resisted, and 13 Spaniards were killed, including Oñate's nephew. In 1599, Oñate retaliated; his soldiers killed 800 villagers, enslaved the remaining 500 women and children. After a trial overseen by Oñate, he ordered the left foot of every Acoma man over 25 amputated. The reported number of men mutilated ranged between 24 and 80.

In 1614, Oñate was accused and convicted of a variety of crimes and excesses committed during his governorship, including adultery and violating the Order on New Discoveries of 1573, which declared that pacification should be carried out charitably and without force against the natives. The Order on New Discoveries was written by the Council of the Indies, created by the king of Spain in 1524 as an authoritative governing body for Spanish colonies in America. Oñate was fined and exiled from New Mexico.

On August 10, 1680, Pueblo peoples staged an uprising, laying siege to the city of Santa Fe, forcing the Spanish to retreat. On August 20, the colonists fled south to El Paso del Norte. In 1688, Capitan General y Gobernador Don Diego de Vargas was appointed governor of New Mexico. He assumed his position on February 22, 1691. In July 1692, de Vargas and a small contingent of soldiers returned to Santa Fe, surrounded the city, and called on the Pueblo people to surrender, promising clemency if they would swear allegiance to the king of Spain and return to Christianity. After meeting with de Vargas, the Pueblo leaders agreed. The returning settlers also founded the old town of Albuquerque in 1706. Following the recapture, the Spanish issued substantial land grants to the Pueblos and appointed a public defender to protect the rights of the Indians and argue their cases in Spanish courts.

At the outset of the Mexican–American War (1846–48), General Stephen Watts Kearny marched his 2,500-man Army of the West to Santa Fe. The Mexican military forces retreated to Mexico, and Kearny's forces took control. In 1846, Kearny set up a provisional government using a system of laws known as the Kearny Code. The judicial branch consisted of a three-man Superior Court. Each served as a trial judge, presiding over a judicial district; together, they



The gas chamber at the old New Mexico Penitentiary site in Santa Fe, New Mexico. The facility was closed in 1998 after two riots resulting in the death of 35 inmates.

constituted an appellate court that reviewed each judge's decisions. At the new American court's first session in Taos in April 1847, 17 men were tried for murder, five for high treason, and 17 for larceny. Fifteen were convicted of murder, one of treason, and six of larceny. Those convicted of homicide were hanged.

During New Mexico's mid-19th century, a series of internecine battles called range wars raged across the state. Usually, the conflicts were about economic issues, such as supplying cattle to Indian reservations and disputes over land titles, borders, or grants. Many of these battles turned into personal or familial vendettas; they included the Colfax County War and the Horrell War. The most famous, the Lincoln County War, was best known because of the involvement of William Bonney—"Billy the Kid."

It is generally accepted that the conflict began with the murder of wealthy Englishman John H. Tunstall on February 18, 1878. Tunstall sought to challenge the banking and cattle monopoly run by Lawrence Gustave Murphy. While Murphy owned no cattle, he was supplied and challenged by John Chisum, owner of the largest herds in the state. When Tunstall arrived in Lincoln County, he joined with Chisum and his political and economic compatriots. The dispute turned into an armed conflict resulting in the deaths of two men and the eventual issuance of a warrant for the arrest of Bonney.

Bonney was one of many "regulators"—essentially hired guns with negligible enforcement duties often employed to protect herds from rustlers. During this period, sheriffs such as Pat Garrett were the primary law enforcement officers in the state's counties. As more municipalities were created, police departments took on policing of the cities. One of the first police departments was established in Santa Fe.

Law Enforcement

During New Mexico's early history, there was an attempt to establish a statewide law enforcement agency. The New Mexico Mounted Police was the result. It was established in 1905 by the New Mexico Territorial Legislature.

The popularity and increased use of automobiles highlighted the need for a statewide law enforcement agency. In 1933, the New Mexico Motor Patrol was established, primarily to enforce

traffic laws. In 1935 the Twelfth State Legislature changed the name of the organization to the New Mexico State Police and gave officers powers to enforce state laws.

The state police force responded to riots at New Mexico Penitentiary. On July 19, 1922, prisoners rioted against overcrowding, poor food, and excessive force by prison authorities. When the inmates refused to return to their cells, tower guards opened fire, killing an inmate and injuring five others.

A second riot occurred June 15, 1953. Inmates protesting the use of excessive force seized Deputy Warden Ralph Tahash and 12 guards and held them hostage. In the resulting melee, guards killed two inmates and wounded several others. This second riot led to the abandonment of the original facility as a prison and the construction in 1956 of what was called "the main unit." In 1980, the main unit was the scene of one of the most violent riots in the correctional history of America. Over two days, 33 inmates were killed and 12 officers were held hostage by escaped prisoners. The main unit was closed in 1998.

Uniform crime reports for New Mexico indicate that while the population has risen steadily since 1960, the level of crimes has remained consistent, placing New Mexico 36th out of the 50 states with the first owning the highest crime rate.

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See Also: Automobile and the Police; Billy the Kid; Border Patrol; Frontier Crime; Native American Tribal Police; Native Americans.

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New Orleans, Louisiana

Today, as in the past, New Orleans enjoys its reputation as a colorful, zestful, unique, and slightly racy tourist destination. “The city that care forgot,” despite its *laissez-faire* repute, antique buildings, musical traditions, and wonderful cuisine, has endured a series of blows that has left it staggering to regain its foothold as the onetime Queen City of the south. Before the Civil War, it was the site of great ethnic and political upheaval: Rival Irish and Anglo-French gangs warred, and some groups reached the status of private political armies. Corruption and a very obvious spoils system in local government were established well before secession. When the city was at its height, the Civil War and postwar occupation reduced its white inhabitants to often incoherent rage and, on more than one occasion, to insurrectionary violence. Shortly after Reconstruction, Italian American crime syndicates began to dominate the organized crime scene, and underworld figures became ensconced in urban politics well into the 1980s. The very word *mafia* entered the American lexicon in the Crescent City in the 1880s with the influx of poor Sicilians in that decade. Civil rights struggles damaged the city’s reputation and sense of community in the 1950s and 1960s, and inner-city crime, always an issue in this highly congested residential area, when conflated with racial issues, did incalculable damage to New Orleans’s repute within the region from the 1960s to the present. Moreover, the city’s importance as an entry port for Latin America gave way to Miami in the 1970s.

The near-mortal blow delivered by Hurricane Katrina seems like a cruel anticlimax to those who have watched the city decline for 50 years. Entire vital neighborhood were left in shambles; a weather-based genocide of sorts occurred, and many New Orleanians began an outmigration with no apparent end in sight. The disgraceful desertion of their posts by the city’s infamously

brutal and corrupt police added no luster to the reputation of law enforcement or of the city itself. The 2010 oil spill in the Gulf of Mexico has added to the misfortune and fatalism that plagues the damaged city. The city that in the 1800s was once the second-largest port in the nation is at present primarily a tourist-oriented backwater.

The ongoing and largely accurate perception that violent crime is pervasive throughout the region discourages many Louisianians from visiting the city. Tourists are strongly advised to stay in the French Quarter and, above all, not to wander in the quaint cemeteries that adjoin that colorful district, as they are magnets for predatory criminals. But that was true long before the storm; in the 1850s, in fact, when rural planters expressed anxiety about being victims of crime while conducting business there, predatory gangs of footpads were a matter of concern. It has often been said that Louisiana is two states: the French Catholic south and the “redneck” Protestant north. In truth, Louisiana is three mini-states: those mentioned formerly and New Orleans, which has more in common with a failed and anarchic third-world postcolonial city-state than with the rest of the state. Much of the chaos that seems to characterize the city stems from its history of crime, corruption, and civic disorder.

Early History

Jean Baptiste Le Moyne, Sieur de Bienville, founded New Orleans in 1718. It was soon noted that the city, situated surrounded by swamps, was cold and wet in the winter and hot and humid in the summer. The settlement flooded the following year when the Mississippi escaped its banks. Levees were begun, and drainage activities made the city somewhat more habitable. Colonists were obtained for this bleak outpost from jails and hospitals; prostitutes, paupers, and peasants were rounded up in France and shipped to the fledgling city. Petty criminals and vagabonds were in the majority of the first ships to arrive from the mother country. Women were in short supply. Accordingly, 88 prostitutes were shipped from a house of correction in Paris. Some were quickly married off upon arrival but the majority proved problematic and antisocial. Other, more respectable women were sent in 1728, and further shipments were sent until 1751. This had the

effect of making the city a more settled and sedate place. Further contributing to the civilizing of the area was the arrival of nuns in 1727. Their charge was to aid in the care for respectable women sent by the king to find husbands, and to effect the salvation of loose women and girls of bad conduct. One historian describes the early settlers as a “motley rabble” who had little inclination to work but preferred a life of indolence and crime. Thus, the pattern of the New Orleans criminal lifestyle was set quite early.

The importation of slaves in the same decade only added to the confusion, though it relieved some whites of the necessity of manual labor. Almost all the slaves had come directly from Africa and were thought to be dangerous. Consequently, in 1724, a Black Code was written to regulate their behavior. Successive royal governors proved to be inefficient and corrupt; this contributed to a pattern that would become quite familiar in the city and, indeed, in the future state.

Colonial Period Ends: American Ascendancy

Louisiana passed to Spain at the end of the French and Indian War (1762) but the Spanish governor was driven from the city in 1768 by a revolt of French aristocrats. The following year, a Spanish fleet imposed a new governor in impressive style, but in 1800, Spain returned the state to France and shortly thereafter, in 1803, Napoleon sold the colony to the United States. Initially there was resentment toward the new American masters. Traders and uncouth backwoodsman from upriver flooded in to the city, which only increased French resentment. Many were particularly colorful and violent flatboatmen who were also prodigious drinkers. Violent confrontations ensued in river districts when these boatmen landed with their cargoes. Piracy in the Gulf of Mexico and along the river was common. Pirates such as Jean Lafitte made New Orleans a home base and a regular port of call. Another disruptive group, filibusterers—armed groups of American adventurers



A scene of the bustling New Orleans riverfront at night in 1883, crowded with people and steamboats and featuring electric lighting. A citywide electric lighting system was introduced in the city in 1886, somewhat alleviating the city's rampant crime; the riverfront was one of the few areas where the use of electric lights had been introduced a few years earlier.

trying to foment revolution in Latin American for their own gain—made New Orleans a final stop before venturing south of the border.

In order to deal with these disruptive and drunken rowdies, New Orleans created a *garde de ville* in 1806 and two years later adopted constables. They were specially detailed to patrol and keep order in the Swamp, the district of vice favored by the flat-boatmen. Prostitution, gambling, and violent crime flourished in this area. In the 1820s, gangs of criminals operated with impunity from the Swamp. The Swamp, also known as Girod Street, remained a vice district into the 1890s. Duels were not uncommon in New Orleans, though they were not nearly so normal as movies and fiction might suggest. In the colonial period, swords were preferred, and fencing masters and schools were a feature of city life. Americans would fight with anything from axes to more prosaic pistols. After 1848, dueling was strictly forbidden under the state constitution, though it continued until the Civil War. The most common site for duels was the Oaks, a site outside the city proper where many an affair of honor was resolved.

Political Violence

Politically oriented gang violence began to flourish, as it did elsewhere in the nation, in New Orleans in the 1840s. In the election of 1856, the American, or Know-Nothing, Party elected a slate of city officials after seizing polling places and shooting a police officer and the chief of police. Immigrants and Democratic officials were attacked in their homes and on the street thereafter. Ultimately, a mob of Know-Nothings attacked the registrar of election's home. This led to the formation of a vigilance committee consisting of French Creoles and immigrants. On June 3, 1858, armed members of this group occupied the French Quarter. Led by a U.S. Army officer, they seized arms and strategic buildings and called for an overthrow of the corrupt American Party regime. After negotiations failed to resolve the situation and a large, threatening Know-Nothing mob assembled nearby, the vigilance committee evacuated the area. No investigation of this movement was ever made, and little is known of the leader's motivations. After the war, extremely violent incidents occurred in 1866 and 1874, both involving large-scale conflict between white supremacists

and Reconstruction supporters. Cannons and Gatling guns were used in the disorders of the latter year.

Storyville

Violent crime continued to plague the city, fueled by cheap bars and prostitutes. The Gallatin Street area was the most abandoned and dangerous location in New Orleans. Burglars operated out of local bars, and gangs of toughs beat up and robbed drunks who frequented bars and houses of ill repute. Cockfights, dogfights, rat killings, and indecent exhibitions were featured in the area until the 1890s. By 1898, 36 square blocks of the French Quarter were devoted to the infamous Storyville vice district by act of the city council. Like the red-light district of contemporary Amsterdam, Storyville seen as a tourist attraction of the city. In 1900, there were at least 230 houses of prostitution and 2,000 prostitutes in the district. The bordellos were closed in 1917 by order of the U.S. secretary of the navy, but underground prostitution continued to flourish in the city's neighborhoods. The tawdry hoopla and tourist attractions of Bourbon Street are a pale evocation of the vice that flourished there in the not-too-distant past.

The Mafia

Sicilian criminal gangs were noted in New Orleans by 1861, earlier than is commonly thought, and they were well organized. New Orleans—not Chicago or New York City—was, in fact, the center of Mafia organization in the country. Criminals from Italy entered the port in large numbers in the 1880s and inaugurated a reign of terror within the Italian immigrant community. These criminals assassinated citizens and police alike, often using a “Mafia gun,” a sawed-off double-barrel 12-gauge shotgun. Two Italian families, the Provenzanos and the Matrangas, began a fight for domination of the docks in the mid-1880s. On October 15, 1890, the chief of police, Pat Hennessey, who unwisely had gotten involved in the feud, was killed in the streets of the city, probably by the Matrangas. Identifying his killers as “Dagoes” with his last breath, the chief collapsed and died. This led to an outpouring of anger, and 21 Italians were arrested. After a trial replete with jury tampering, most were acquitted outright, after which a group of Sicilians reportedly tore

down an American flag and hoisted the Italian banner. This series of events further enraged the riot-prone citizens of the city, who called a mass meeting, then adjourned to gun stores and, finally, stormed the parish prison. Seven of the principals in the case were shot out of hand, and several others were shot while cowering in a doghouse; two others were hanged after being caught trying to escape. Public officials were quietly supportive, and no investigation was ever conducted. This incident precipitated a diplomatic flap between Italy and the United States. Though it broke the Mafia's overt domination of courts, organized crime figures such as Carlos Marcello have remained prominent in the city to the present.

A curious side note to Mafia involvement in New Orleans involves a theory of the assassination of President John F. Kennedy that focuses on New Orleans Mafiosi as having been involved. Curiously, Lee Harvey Oswald gave out pro-Cuba propaganda from a building shared with the naval intelligence service in early 1963. New Orleans district attorney Jim Garrison led an ill-fated investigation into the Kennedy assassination from 1965 to 1969.

Police

The New Orleans Police Department has been plagued by corruption and allegations of brutality for many years. During the 1800s, it was dominated by Democrats, then by nativists, then by different factions of the Democratic Party. During Reconstruction, it came under fire as overly protective of the newly freed slaves. This contributed to the mob violence of the period. The department continued to be famously corrupt as it protected prostitution in the late 1800s and bootlegging operations following Prohibition. In recent years, it has been dogged by controversy and allegations of brutality and corruption. One officer killed another while robbing a restaurant. Another put out a contract on a witness. During Hurricane Katrina, some 200 officers deserted their posts while others looked on while looters sacked businesses. Other officers shot innocent citizens fleeing the flood. Presently, the city is trying to rebuild the department—the latest of many attempts.

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See Also: 1801 to 1850 Primary Documents; 1851 to 1900 Primary Documents; Gangs, History of; Louisiana.

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“New Punitiveness”

Rehabilitation remained the dominant philosophy of punishment until the 1970s. Skyrocketing crime rates coupled with the belief that treatment did not work led policy makers to reject a rehabilitative approach to dealing with crime and instead to adopt a “get tough” perspective under the premise that increased penalties would lead to reductions in offending. Strict sanctions such as mandatory minimum sentences, three strikes laws, and truth-in-sentencing legislation became commonplace in criminal justice practice. In addition, the nature of confinement and community supervision evolved from a focus on meeting the individual needs of offenders to a system that centered on surveillance and control. As such policies were implemented, research began to document the hidden consequences of the tough-on-crime movement that included housing, employment, public benefits, and voting restrictions that limited the likelihood of offenders successfully reintegrating into society post-release. Crime became a hot-button issue in which politicians campaigned



Supermax prisons (super-maximum security) were developed in the late 20th century to house violent prisoners, often in solitary confinement, in an attempt to achieve “behavior modification.” The penitentiary on Alcatraz Island, off San Francisco, California, was opened as a federal prison in 1934 and is considered an early example of a supermax prison. It operated as a federal prison until 1963. Today it is a national recreation area and a National Historic Landmark.

on the promise to “get tough” in order to secure support from an increasingly fearful public who appeared to favor harsh sanctions. Research suggests, however, that the American public is not as punitive as is widely perceived. More importantly, empirical studies have overwhelmingly concluded that “get tough” policies have had little effect on recidivism rates. Despite scientific evidence, mixed public support of harsh criminal sanctions, and an overly burdened criminal justice system, policy makers continue to support and rely on punitiveness as an approach to addressing crime.

Early penal practices in the United States focused on the role of the penitentiary as a means to change the offender. Theoretically, the use of solitary confinement was viewed as a way to provide the offender with the opportunity to reflect on his actions, to repent for his misdeeds, and to reform his behavior. When, in the mid-1800s, the use of the penitentiary failed to succeed in reforming individuals as hoped, significant changes were made to

these penal policies and practices. The focus continued to be on reforming the individual, and policies such as indeterminate sentences, rehabilitation programs, offender classification, and the use of early release as an incentive to reform were introduced. By the late 1800s, penal experts suggested that society’s ills, and not the individual, were the cause of criminal behavior. Beginning in the 1930s, penal experts argued that criminal behavior was caused by social, psychological, and biological deficiencies that required medical treatment. Until the late 1960s, penal philosophy in the United States continued to focus primarily on the treatment and rehabilitation of the individual offender, whether while incarcerated or in the community.

Get Tough Movement

Two major turning points gave birth to the “get tough” movement in the 1970s. First, in 1974, Robert Martinson published his large-scale evaluation of prior studies of correctional treatment

programs in which he concluded that existing attempts at rehabilitation had little effect on recidivism rates. Although Martinson acknowledged that these findings may reflect flawed research designs used in carrying out the original studies, as well as poor implementation of the treatment programs themselves, politicians and the public interpreted these results as “nothing works” regarding correctional treatment. Second, Americans were growing increasingly fearful as crime rates continued to increase and this in turn sparked political debate on how to address this social issue.

In general, both liberals and conservatives questioned the broad discretionary power (which was at the heart of the rehabilitative ideal) given to judges and to correctional and parole authorities. Liberals contended that the use of discretion (e.g., indeterminate sentencing strategies and parole decisions) was applied in a discriminatory and coercive fashion. They pointed to the way in which class and race influenced sentencing outcomes, with poor racial minorities receiving disproportionately longer prison sentences. Conservatives, on the other hand, argued that the rehabilitative philosophy was too lenient in its approach to punishment, which threatened public safety and therefore was ineffective at controlling crime. They argued that crime would be better controlled through increased prison sentences and stricter supervision.

While liberals and conservatives differed in their reasoning for their waning support of rehabilitation, both sides agreed that policy changes were needed. Arguably, the most significant policy change was the implementation of determinate sentencing strategies. This satisfied both liberals and conservatives by removing discretion from the sentencing process. Liberals hoped that a standardized sentencing framework would result in a fairer, more equitable sentencing process; conservatives hoped this change in policy would remove the reliance on rehabilitation as a goal of corrections and produce consistently longer prison sentences.

Growing public concerns about rising crime rates and the increasing distrust of the effectiveness of rehabilitation also resulted in a change in political rhetoric. A far less optimistic, less forgiving view of offenders and the ability of the criminal justice system to change them developed. Accordingly,

politicians initiated additional get tough policies intended to curb judicial and correctional discretion and to reduce crime by increasing the severity of punishment. The newly implemented tough-on-crime policies included mandatory minimum sentences, truth-in-sentencing laws that required all prisoners to serve at least 85 percent of their prison terms, three strikes legislation that mandated life sentences for repeat felony offenders, as well as lengthy increases in sentences across a broad array of offense types, most notably for drug crimes. Strict intermediate sanctions, such as intensive probation and boot camps, were implemented as a means to punish and control offenders in the community. Interestingly, new correctional terminology evolved reflecting this more punitive approach. For instance, “supermax” prisons sprouted across the nation and phrases such as “shock” incarceration and “three strikes and you’re out” were coined in an effort to deter first-time as well as repeat offenders. New “get tough” initiatives also targeted specific groups of offenders such as gang members and sex offenders in an effort to extend the scope of punishment by increasing sentences and heightening surveillance of these offenders in the community.

Confinement and Parole Changes

Changes in conditions of confinement and parole supervision also emerged to reflect the philosophical shift away from rehabilitation toward an increasingly punitive model of crime control. The incarceration of inmates in tents and the use of chain gangs became commonplace in certain regions of the country. As a means to promote a harsher correctional environment, policies were implemented that restricted prisoners’ access to visits and phone calls from family and friends. Amenities such as television, coffee, cigarettes, personal hygiene items, exercise equipment, free writing supplies to mail letters, and the use of small personal appliances were restricted and/or prohibited. While correctional budgets and the safety concerns of inmates and staff led to some of these restrictions, the get tough movement was influential in the changing nature of confinement in prisons and jails.

Parole was revamped in order to diminish or eliminate a prior focus on individualized reintegration and treatment and was replaced with a

system of detection and control. In other words, the job of a parole officer changed from providing assistance to recently released prisoners (securing housing, employment, healthcare, or other needed services) to one of supervision and control (monitoring parolee compliance with the conditions of community supervision). Sex offender policies are a prime example of the way in which the goals of community corrections were transformed during this tough-on-crime era. For instance, parole officers who work with this specialized population are no longer charged with the primary task of ensuring that the treatment needs of these offenders are met, but rather they are required to tighten security to enhance crime control.

Some examples include restricting computer use and the time of day in which sex offenders can run personal errands, in order to lessen contact with potential victims (e.g., grocery shopping late at night). Broader policies also were implemented to monitor and control sex offenders in the community, such as requiring sex offenders to register their address with the state, making public personal identifying information, requiring police departments to notify neighbors of the location of sex offenders, enforcing rigid residential restrictions, and, in some states, allowing for the civil commitment of those convicted of a sex crime. Community corrections experienced a fundamental philosophical change in that it began to focus less on "changing" offender behavior through treatment and services and focused more on "catching" offender behavior through the use of heightened supervision and control.

Equally important are the less visible consequences of punitive policies directed toward offenders. A growing number of studies have emerged in recent decades that have examined consequences of the tough-on-crime movement that affect prisoners in ways often not visible to the public. For example, once a prisoner is released, he or she is often banned from residing in certain locations and denied public assistance (e.g., food stamps, healthcare, and housing assistance) and access to college loans. In many states, individuals with a felony record are unable to vote, are disqualified from various forms of employment, and are restricted from obtaining a driver's license. Some states also have implemented policies that

define incarceration as a form of parental abandonment, resulting in the limitation or termination of parental rights of prisoners with children. Regardless of whether the intent of such policies is punitive in nature, they create challenges for recently released offenders in their attempts to successfully reintegrate back into society.

Increased Prison Populations

Today, many politicians continue to rely on the political rhetoric of increased punishment as a means of crime control and promise to get tough on crime. However, studies on public attitudes toward punishment reveal that Americans tend to have a fairly complex set of beliefs surrounding tough-on-crime policies. Studies have found that support of such initiatives often depends on how the question is posed to respondents. For example, if individuals are asked general questions regarding their opinion on criminal sanctions, such as the death penalty or three strikes legislation, results overwhelmingly suggest that the public is in favor of such punitive policies. Yet, if respondents are presented with specific situations in which these policies may be used, support for tough-on-crime initiatives is dramatically reduced and rehabilitation for offenders is viewed by respondents as an important goal of the criminal justice system. In light of such inconsistencies in the research on public perceptions of punishment, painting the American public with the broad brush of favoring punitive criminal justice policies is misleading.

Tough-on-crime policies initiated during the 1970s continue to dominate the criminal justice system today. This philosophical shift toward increased punitiveness has placed enormous pressure on the courts and the correctional system as the prison population has expanded sixfold in the last three decades. Comparatively, it has been estimated that the United States incarcerates its citizens at rates of up to 15 times higher than other Western nations. Despite surges in incarceration rates, little evidence supports the notion that increased punishment reduces crime. In contrast, much of the research suggests that lengthier prison terms are associated with increased criminal behavior and that intermediate sanctions such as intensive supervision, boot camps, and shock incarceration have not been shown to reduce rates

of recidivism. Faced with the fiscal crisis of the past few years, however, some states have begun to reexamine many of the punitive policies that are representative of this crime control philosophy and have resulted in an increasingly large and expensive prison population.

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See Also: History of Crime and Punishment in America: 1970–Present; Incapacitation, Theory of; Rehabilitation.

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New York

The history of crime, police, and punishment in New York can be traced back to its early colonial roots. Early encounters with French and Dutch explorers left footprints on the frontier’s wilderness that paled in comparison to the influence that Britain cast over this early colony and the colonists that remained. During the years between 1620 and 1640, a great migration from England was occurring. Families were fleeing England in search of a new life and an opportunity to create a

deeply religious society with a political system that gave a voice to the people.

English common law provided the framework for handling criminal offenders in the colonies. Although English common law was employed in adjudicating offenders, religion served as the foundation for determining what would be a crime and what the punishment would be. An early book written in 1648 provided a foundation of legal codes for determining what conduct would constitute a crime. The book *The General Lawes and Libertyes of the Massachusetts Bay Colony* contained very strong biblical references, much harsher than common law. This first legal code established by the colonists provided one of the earliest documents of individual rights in America.

Early crimes in the colony were as simple as lying, idleness, drunkenness, and even just plain bad behavior. The colonists held individual liberty in high regard, and crimes against moral behavior were seen as sins and punishable. Early efforts to control crime were the responsibility of the colonists themselves. Rattle watches were established to conduct citizen patrols during hours of darkness. The early watches were designed to alert the sleeping colonists and send out a hue and cry for assistance. The rattle aspect of these watches came from the citizens banging their wooden rattles together to create a loud, alarming sound that could be heard by the sleeping citizens.

Punishment and Policing

When offenders were apprehended, they were detained until a court proceeding could be held. Early detention areas, what we refer to as jails, were not used for punishment, only for detention. Once an offender was adjudicated, punishment was swift and public. Punishment was employed as a general deterrence for all to see and take the warning that behavior against the moral codes was not tolerated. However, it is worth noting that citizens of higher status were afforded lesser penalties by the courts and seldom were punished publicly. Fines were imposed and paid by citizens of a higher social class.

One of the most common methods of public punishment was the use of a wooden framed object called a stock. The convicted subject would stand before the stock and place his head in the

center hole and place his hands at the wrist in the adjacent right and left holes. Citizens of the community were encouraged to insult and throw items at the stock offender. This process was designed to change the moral behavior through embarrassment. Early reports do not support the ideology of the stock reforming characteristics. Recidivism was alive and revolving even back in the early 1600s.

Trial by ordeal was a judicial practice that was commonly used to determine guilt or innocence of the accused. Hanging and burning at the stake were punishments often used by the courts when the accused had been found guilty of the offense.

Early forms of policing were conducted by the citizens. With the continued growth in population, the need for a regulated police force was realized. England had employed the use of sheriffs to preserve the king's peace. The New York City Sheriff's Office was established in the early 1600s and was designed with a sheriff in each of the five boroughs to enforce laws under a wide jurisdiction. In 1845, the New York Police Department (NYPD) was created, transferring the responsibility of maintaining jails to the city's sheriff's departments. Today's sheriff's department can be found in all 62 counties, and they currently house 84,209 prisoners (state and local), either serving their time for a class A misdemeanor or awaiting trial.

As the state of New York continued to grow, the need for additional law enforcement capabilities also grew. On April 11, 1917, the New York State Police Department was created by New York's legislature. The department's first superintendent, George Fletcher Chandler, was responsible for the department's early organization and development. Mr. Chandler coined the term *New York State Trooper* and was an early advocate of officers carrying their service weapons exposed on a belt, which was not a common practice at the time. Today, recruits must complete a 26-week training program prior to being appointed as a trooper. At the present time, there are approximately 5,000 troopers serving New York State.

New York's Prison History

The New York State prison system is one of the oldest systems in the country. The first structure in New York built to hold offenders was a

cold, damp, dim-lit stone structure built in Fort Amsterdam in 1625. The purpose of this prison was to house soldiers who disobeyed orders, native peoples, disorderly people, and debtors. Confinement was not commonly used, and for the most part, it served as a jail until offenders could be adjudicated. Executions were used for many offenses, and public punishment such as whipping and pillorying were commonly employed for lesser offenses.

In 1759, the first jail was built primarily to house civilian lawbreakers, but a space was set aside for debtors and paupers. Bridewell Prison, located at City Hall, was constructed to be a debtor prison, more commonly referred to as a workhouse. Although not prisons or penitentiaries, the first New York institutions for mass incarceration were 25 British ships anchored in the Hudson and East rivers during the American Revolution. Greenwich State Prison was built in 1797 and was New York's first prison built after becoming a state. When they were sent "up the river," convicted offenders were taken from the courthouse down to Wall Street, put on a boat, and sailed up the Hudson River to the Christopher Street docks—one block north stood the prison. Greenwich State Prison was built at the foot of the present-day 10th Street in Greenwich Village. The prison operated for 30 years until it was overshadowed by another institution, Sing-Sing Prison, constructed in Ossining, New York. Officially designated the state prison, Greenwich Village Institution soon became known as Newgate, which was the name for Great Britain's citadel of incarceration.

Newgate Prison, built in 1797, was considered a model of reform at the time, rehabilitating inmates by teaching them trades and allowing them to bathe in an indoor pool. Newgate was built on open farmland, but within a 20-year period, development of this area grew at a much faster rate than anyone could imagine. Prisoners could no longer be marched over the Washington Square to be hanged at the hanging elm tree. In 1828, Newgate was officially closed, and all prisoners were transferred to Sing Sing.

Newgate Prison differed greatly from the British system. Instead of death sentences or crippling corporal punishment, prisoners got lengthy prison sentences. That meant building facilities



Colonial punishment in New York included having one's head and hands locked into a stock similar to this structure. Passersby would try to shame the offenders by attacking them verbally and by throwing objects at them.

to house felons who, under prior laws, would have been executed or severely maimed. These early reforms were premised on the idea that each human possessed a capacity for redemption. Credit for these early reformations was given to the Society of Friends, or the Quakers, and members of the Christian churches. Their belief, which became known as the Pennsylvania system, was that sinners needed to recognize their wrongness and take responsibility for their conduct, do penance for it, and resolve to sin no more. In part, the offender who sinned must become penitent to be saved. Thus, the place set aside for such potential and perhaps actual penitents came to be called a penitentiary. Although it was a noble idea, its serious flaws were soon identified.

On September 10, 1828, construction was started on Blackwell's Island. The penitentiary was the first public institution erected on the island. It was described as "a gloomy and massive edifice, constructed of hewn stone and rubble masonry." Blackwell's Island is now known as Roosevelt Island. In 1884, New York City purchased Riker's Island from the Riker family and used the island as a jail farm. In 1932, the city opened a jail for men on the island to replace its dilapidated jail on Blackwell's Island. Today, the

jail is operated by the New York City Department of Corrections with a staff of 7,000 officers and 1,500 civilians to control an inmate population of 14,000.

In 1816, New York constructed Auburn Prison. Auburn was founded as a model for the contemporary ideas about treating prisoners, known as the Auburn system. The Auburn system was in contrast to the earlier ideologies employed by the Quakers, who employed the Pennsylvania system, which was based on solitude, penance, and prayer. The Auburn system replaced prayers with hard labor. Inmates were compelled to work during the day, and the profit from their labor helped to support the prison. Inmates were segregated by type of criminality into different locations within the institution and were identified through the use of special clothing. The traditional American prison uniform, consisting of horizontal black and white stripes, originated at Auburn. Inmates had their hair cut off to prevent head lice and moved from one location to another in lockstep, keeping their heads bowed and their mouths shut. Each prisoner placed a hand on the shoulder of the man in front of him to maintain a rigid separation. Meals were conducted in communal dining halls, but a code of silence was strictly enforced by the guards. For 30 years, this system was adopted by other jurisdictions. The Auburn system was also known as the Congregate system.

The largest prison in New York was often referred to by people from New York City who were sentenced to do their time there as "New York's Siberia" because of the cold climate and isolated location. Dannemora State Prison was named after the village in which it is located in Clinton County. Built in 1844 with prison labor, Dannemora has a unique feature built inside. After the 1929 riot at Dannemora and riots that took place at other prisons, it was necessary for prison reform. The reformation brought about the construction of schools in the prison, and the renovation and restructuring of buildings within the prison creating a more modern appearance. The unique structure found behind the 60-foot walls of Dannemora is the quaint little church of St. Dismas, the Good Thief, begun in 1939 and completed two years later.

In 1899, a mental health facility known as the Dannemora State Hospital was constructed.



Sing-Sing prison, was the third prison constructed in New York State and began operation in 1826 in Ossining, New York, about 30 miles north of New York City. The prison is still in operation, although the original cellblock is no longer in use. A museum housing two historic cells, an electric chair, artifacts, and confiscated weapons is located in Ossining.

Inmates with tuberculosis noticed that their illness was cured during their time of incarceration. Upon closer review, it was determined that the clean Adirondack air was the contributing factor for curing these inmates. Currently, there are approximately 3,000 inmates housed at what is now known as Clinton Correctional Facility.

Elmira Correctional Facility, originally known as Elmira Prison or by the locals as “the Hill,” began as a prisoner-of-war camp constructed by the Union army during the American Civil War to house captive Confederate soldiers. The legislature approved the building of a new prison on the site, which housed offenders between the ages of 16 and 30. In July 1876, the prison began receiving prisoners from Auburn. The opening of Elmira became a third new methodology of dealing with incarcerated offenders. Unlike the Pennsylvania system or the Auburn system, under the direction of warden Zebulon Brockway, incarceration was designed to reform each inmate by

an individualized program. Brockway rejected the earlier draconian system that was grounded on hard labor, silence, and religious and moral lectures enforced by barbaric brutality. Instead, he favored the mark system, developed in Australia by Alexander Maconochie, which rewarded inmates for good behavior with early release.

The Elmira system was influential in prison reform. Two central ideas emerged from the system: Juvenile and adult offenders need to be handled differently, and prisoner rehabilitation is possible. Inmates were classified into three categories or grades. Newly arriving prisoners were graded with a 2 for the first six months of incarceration; inmates who were institutionalized were graded with a number 1 classification; and inmates who resisted institutional life, were less responsive to rehabilitation, and had behavioral problems received a grade of 3. The Elmira system ultimately influenced the construction of 25 reformatorys in 12 states across the country.

Upon Brockway's resignation, the reformatory style of life succumbed to the more traditional standard of custody and treatment methods.

As the offender population continued to grow, the need for more cell space and construction of new prisons increased. Again, new lands were sought to construct another prison. In 1905, a large tract of land was purchased in Comstock. By 1909, construction had begun on what would come to be known as Great Meadow Correctional Facility. On February 11, 1911, inmates started arriving at Great Meadow, and construction continued to enlarge its holding capacity. In the beginning, Great Meadow was home to first-time offenders, and there did not seem to be a need for a wall around the institution. But as population at the prison continued to increase, and the inmate population began to change from first-time offenders to multiple offenders, the need for a wall was evident. In 1924, construction of the wall around Great Meadow began, and four years later, the inmates had walled themselves in. Great Meadow is a maximum-security facility today.

Female Prisons in New York State

New York presently has five women's prisons. Bedford Hills, the largest women's maximum-security prison, which was the old Westfield State Farm, originated with an 1892 law (Chapter 637) providing for a reformatory for women. The reformatory opened in 1901 under the jurisdiction of the State Board of Charities. Admitted were women 16 to 30 years of age who were convicted of a misdemeanor. Bedford Hills functions as a general confinement facility, reception center, detention center, and diagnostic treatment center. Approximately 800 females are housed there.

Bayview Women's Correctional Institution, known as the Vertical Institution, is an eight-story building in downtown Manhattan's West Chelsea District. It was constructed in 1931 as the Seamen's House YMCA, a place for merchant sailors to stay while their ships were docked. In 1967, the Narcotic Addiction Control Commission (NACC) was created to direct the state's efforts that were ongoing since the early 1950s to combat the rising inner-city drug problems. This program had a short life span with the introduction of Rockefeller drug laws in 1973. Addicts who formerly were committed to NACC instead received long

prison sentences, and the state began to phase out its drug rehabilitation centers. Bayview's capacity today is 183 general confinement beds, plus 140 work release beds.

Taconic Correctional Facility is a medium-security women's prison that is associated with Bedford Hills. In 1973, Taconic began to operate as an autonomous medium-security prison.

Albion Correction Facility is the world's first institution for female "defective delinquents." Credit for creating the Albion institution belongs primarily to Josephine Shaw Lowell, the "Queen Victoria of New York." In 1876, she was appointed the first female commissioner on the New York State Board of Charities, an umbrella organization overseeing a multitude of agencies serving the poor, sick, blind, insane, alcoholic, orphaned, and otherwise needy. Lowell assumed a leadership role in development in New York's correctional history and reformatories for women and institutions for the mentally retarded. New York's first women's reformatory opened in Hudson in 1887. Within two years, Hudson reached its capacity of 234 inmates. Lowell pressed the legislature for two additional female houses of refuge—one in Bedford Hills, and the other in the western sector of the state. In April 1892 on an old farm site in the town of Albion, construction began on the Western House of Refuge for Women. Albion officially opened December 8, 1893. The Albion mission was to "give such moral and religious training as will induce the inmates to form a good character and such training in domestic work as will eventually enable them to find employment, secure good homes, and be self-supporting." In the beginning, Albion counseled domesticity; today, it counters domestic abuse. Once, it instilled ladylike graces; today, programs deal with aggressive behavior control, anger management, and alternatives to violence. The female population turned in their kitchen utilities for welder's helmets and sheet metal fabricating tools. Little remains of Lowell's ideology of creating ladies out of these wayward souls.

Conclusion

The history of crime, police, and punishment in New York is vast, dating back to the 1600s. The French, Dutch, and English have left notable footprints on the current judicial system. Early legal

codes, English common law, and religion shape much of the historical landscape. Colonization and crime go hand in hand, especially when social mores and moral ideologies collide. Enforcement of moral rules and social laws has its roots with colonial Americans on their rattle watches, patrolling the streets in search of violators, to paid law enforcement officers as colonies grew into cities and the need for regulated policing of streets grew with the population. Once violators were apprehended and found guilty of their crime, the need for punishment was created. Methods of punishment itself have a long, rich history.

In early New York, many of these earlier forms of punishment were used. Stocks, pillory, dunking stocks, and branding were commonly used as punishment. Hanging, beheading, and burning at the stake were used in the more serious crimes that were punishable by death. The use of incarceration for punishment became a popular way of dealing with less serious violators. Today's prison system has its roots in New York. New York has the most prisons in the United States, ranging from work camps to maximum "A" high-security institutions. Crime, police, and punishment in New York are deep and rich with history, which in turn offers scholars the opportunity to explore many fascinating areas of New York's jurisprudence system.

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See Also: 1600 to 1776 Primary Documents; Auburn State Prison; Bedford Hills Correctional Facility; Brockway, Zebulon; Elmira Prison; New York City; Sing Sing Correctional Facility.

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New York City

From its earliest days as a Dutch trading post to its present-day incarnation as one of the world's centers of cultural and economic power, commerce has been at the center of New York City's *raison d'être*. Positioned strategically at the nexus of evolving flows of money, goods, and people between North America, Europe, and around the world, the city's shifting position in a global economy has driven its transformation from vital seaport to industrial powerhouse to world financial capital. While New York's role as a conduit for material resources has historically fueled the city's physical growth, its corresponding role as the point of origin for much of the country's news, culture, and entertainment has ensured that New York remains a symbol and a bellwether for the United States at large, as much in the realm of the illicit as in other areas of social life. Over time, the city's vast *mélange* of economic activity has provided myriad opportunities for gain outside the boundaries of the strictly legal.

A Hub of Trade

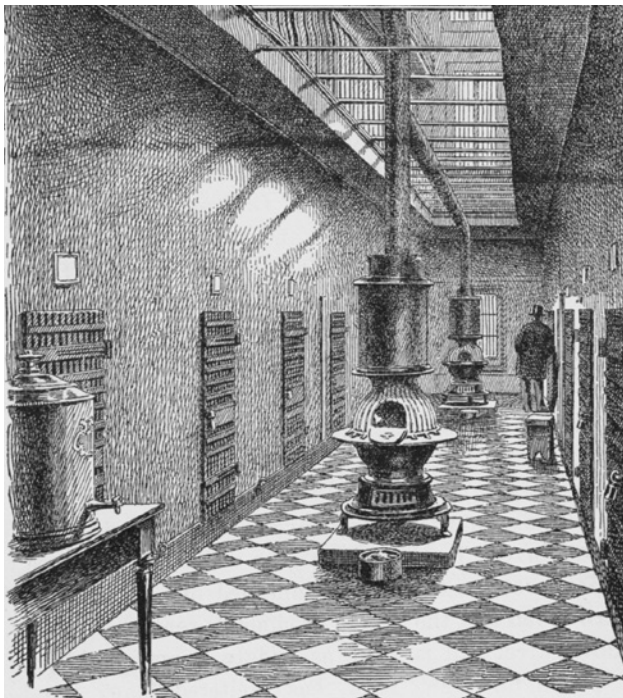
Initially colonized by the Dutch during the early 17th century, New Amsterdam, as it was called, began life as a trading post dealing in furs acquired from local Native American peoples. In 1626, construction began on Fort Amsterdam, and during the Dutch period, crime seems to have largely revolved around offenses committed by the soldiers stationed there—drunkenness, desertion, insubordination, destruction of civilian property, and petty larceny. When the English seized the colony from the Dutch in 1664, they quickly began to integrate the growing city into the transatlantic commercial networks that nourished Britain's expanding empire. Prior to the American Revolution, New York served as one node of a triangle that connected the North American agricultural hinterland with West Indian sugar plantations and

British manufacturers supplying finished goods to the colonies. Along with the opportunities for piracy and smuggling engendered by the booming trade—smuggling may have accounted for as much as one-third of all northern commerce during this time—came a vast increase in population that included thousands of transient laborers and an increasing number of slaves, many of whom congregated in waterfront taverns that served as sanctuaries for prostitution and the blossoming trade in stolen goods. In a city that contained the highest concentration of slaves north of Virginia, fears of both slave insurrection and class-based interracial solidarity haunted the well-to-do. Ordinances and slave codes designed to limit the ability of servants and slaves to congregate proved ineffective, and the city's thin, disorganized police apparatus was relatively powerless to prevent the development of a vibrant interracial underworld centered in and around the city's "disorderly houses," taverns often run by widows or unmarried women unable to support themselves by legal means. A bloody slave revolt in 1712,

in which slaves set fires and ambushed residents who rushed out to quell them, provoked a brutal crackdown, but in 1741, New Yorkers discovered what they believed to have been a larger-scale conspiracy on the part of slaves and poor whites to burn the city, murder its inhabitants, and govern it themselves. Whether or not the "Negro Plot," as it was called, represented an actual conspiracy or simply a manifestation of panic and paranoia among the city's elite continues to provoke debate among historians to this day.

The outbreak of the long imperial crisis that resulted in the American Revolution initially brought great prosperity to New York City, as merchants amassed ever-greater fortunes supplying the influx of troops required to fight King George's and the French and Indian Wars, as well as outfitting the numerous privateering vessels that preyed upon French and Spanish ships in the Atlantic. The newfound plenitude, combined with a massive influx of soldiers, sailors, and fortune-seekers, brought new opportunities for plunder. The increasingly bold and organized trade in commercial sex flourished, as did assaults and property crimes like burglary. City authorities, who still relied on an unpaid municipal watch, were initially powerless to prevent the outbreaks of malfeasance and responded to the public outrage by constructing a new city jail, creating a paid watch, and installing whale-oil lamps along the city's streets, to be maintained by a new corps of municipal lamplighters. The jail soon proved inadequate, however, and by 1772, in the middle of economic depression, political crisis, and an unprecedented population surge, authorities constructed a new prison, which they named Bridewell after London's notorious institution of the same name. During the struggle for independence, the British quickly reoccupied New York and imposed martial law for the duration of the conflict. Imperial authorities promptly freed all slaves who would pledge allegiance to the Crown, while the outrageous behavior of British troops and their leaders, who looted and vandalized private homes and public buildings alike, extorted provisions from surrounding farmers, embezzled money from city coffers, and ran protection rackets, shocked and angered the city's cowed populace.

Upon independence, New York resumed its role as a thriving mercantile city. Improvements



A 19th-century illustration of "murderers' row" in "The Tombs," showing the cells of condemned prisoners. The Manhattan Detention Complex city jail, built in 1835 in downtown Manhattan, was referred to as "The Tombs."

in transportation and communications, especially the Erie Canal, which in 1825 connected the east coast to the agricultural interior, bolstered the city's status as the country's most important seaport, while new waves of immigration set the stage for the class and interethnic conflict that riled the city during the first part of the 19th century. Moreover, as the city's politics began to organize themselves into a recognizably modern form, the line between politics and vice became so blurred as to render the two virtually indistinguishable. The first organized street gangs in New York had appeared toward the end of the 18th century, but the arrival of large numbers of immigrants, especially from Ireland, restructured the city's criminal landscape. During the 1830s and 1840s, nativist gangs like the Bowery Boys squared off in bloody turf battles against their Irish counterparts throughout New York's notorious Five Points neighborhood, a state of affairs later chronicled in Herbert Asbury's popular book *The Gangs of New York* and Martin Scorsese's 2002 film of the same name. The gangs frequently doubled as volunteer fire companies, there being no professional force in the city at this time, and found themselves enlisted on election days to steal or stuff ballot boxes and to intimidate the supporters of rival candidates. Office-seekers elected in this manner, many of whom doubled as proprietors of the saloons where the gangs congregated, then arranged protection for the city's proliferating saloons, brothels, and "hells," or gambling dens. After the Civil War, many of the gangs transformed into quasi-legitimate "political clubs" run by district leaders from Tammany Hall, the city's notorious Democratic machine, which reached its corrupt apotheosis under the leadership of William "Boss" Tweed, the legendary manipulator of city patronage who died in the Ludlow Street Jail after stealing an estimated \$25 to \$45 million from the city, a figure that easily exceeds a billion dollars in today's money.

Prostitution flourished as well during this time, as the low wages afforded to the increasing numbers of single young women streaming into the city from rural areas induced many to turn to the illicit sex trade as a means to survive. They found ready clients among the crowds of single men who had entered the city, often as immigrants. Prostitution was often tolerated by authorities

and encouraged by landlords, many of whom believed that prostitutes, with their relative stability of income, made for especially good tenants. In 1836, the grisly murder of young prostitute Helen Jewett in a Fifth Ward brothel sent newspaper circulations soaring and revealed the trade's allure to men of all classes. By 1860, New York City contained just over 800,000 people—and 500 brothels.

In response to the uncontrolled growth of illicit activity, officials established in 1845 a full-time, paid, professional police force roughly on the model of London's Metropolitan Police, although the decentralized nature of New York's force ensured that officers remained beholden to local politicians and retained plenty of opportunities for profit. Indeed, bribe-taking remained a routine feature of police life until at least the 1970s. The city's correctional institutions multiplied as well during this time, with penitentiaries established at Bellevue in 1816 and on Blackwell's Island (now Roosevelt Island) in 1836, and the erection of the Halls of Justice, nicknamed "The Tombs" for its distinctive Egyptian Revival architecture, in 1838. In 1884, New York City acquired Riker's Island, which from that point served as the city's main jail complex. Today, the facility houses approximately 14,000 prisoners per day, making it by most measures the largest jail facility in the United States.

Parallel Growth

The late 19th and early 20th centuries witnessed the parallel professionalization of both criminals and their ostensible nemeses on the police force. Gangs continued to run protection rackets, plunder ships docked at the city's many wharves, commit bank frauds when not robbing the banks themselves, and serve as muscle for the city's political machines. The dynamic relationship between criminals and the police was crystallized in the words of police captain Alexander "Clubber" Williams, who rejoiced upon his reassignment to the Tenderloin, one of the city's most notorious red-light districts, located in the vicinity of today's Empire State Building. Williams, who became known as the "Czar of the Tenderloin," described the opportunities for personal enrichment available to enterprising officers. "I've been having chuck steak ever since I've been on the force," he quipped, "and now I'm going to

have a bit of tenderloin.” Later, the city’s red-light district migrated uptown to the emerging black ghetto of Harlem, where rigid racial segregation and discrimination forced many residents into the illicit economy and where police brutality was the norm. Major riots in 1935 and 1943 highlighted the crises in Harlem and foreshadowed the urban ghetto revolts of the 1960s, which were directed mainly against the police.

The first half of the 20th century proved to be a golden age for organized crime in New York, especially as Prohibition, which never enjoyed great popularity in the city, vastly increased the opportunities for illicit profiteering and spurred a greater degree of organization on the part of criminal gangs that controlled the bootlegging trade. New York functioned as a source of both supply and demand for alcohol, serving as a distribution point for much of the country and housing an estimated 32,000 speakeasies. A new generation of leaders, including “Dutch” Schultz, “Lucky” Luciano, Meyer Lansky, and Frank Costello, adopted the businesslike model set by the infamous gambler Arnold Rothstein, who allegedly rigged the 1919 World Series, and the unique “five families” structure of the city’s Italian Mafia emerged. The five families, whose exploits were fictionalized in the hit book *The Godfather* and the later films of the same name, rationalized and systematized the business of crime in the city, dividing up turf and raking in cash from gambling, loan-sharking, prostitution, labor racketeering, illegal drug sales, and the usual protection rackets, now extended to New York’s vegetable and garment industries.

During the latter half of the 20th century, New York, like many northern cities, experienced the related ills of depopulation, deindustrialization, increasingly rigid racial segregation, and rising crime rates. Reversing a steady decline that had commenced in the late 19th century, the number of annual murders in the city reached 1,000 for the first time in 1969, surged abruptly during the 1970s and again during the 1980s, and peaked at 2,245 in 1990. While traditional organized crime was weakened through the application of the Racketeer Influenced and Corrupt Organizations Act (RICO) and corruption on the police force was exposed in the Knapp Commission hearings, most notably by officer Frank Serpico, whose lonely crusade against graft was depicted in the 1973 film



An uncropped version of the photograph printed in a 1963 edition of the World-Telegram & Sun reveals blood on the streets during the police brutality linked to the Harlem riots.

Serpico, police and politicians found themselves bewildered and grasped for responses. Rioting during the 1977 citywide blackout and the panic over the Son of Sam serial killer in the same year helped make New York a nationwide symbol of the country’s urban ills. Drug crime enforcement was stiffened with the passage of the Rockefeller drug laws in 1973, which imposed harsh mandatory minimum sentences on offenders, while the police department reintroduced foot patrols, part of a national trend toward “community policing.”

In 1994, former prosecutor Rudolph Giuliani conducted a successful mayoral campaign largely on promises to reduce crime. While crime did indeed drop during Giuliani’s tenure, controversy remains over whether his endorsement of aggressive policing tactics and “broken windows” approach, which focused on quality-of-life crimes, were active factors in the decline, which occurred nationwide. Moreover, during

the Giuliani era, the police department became embroiled in a series of high-profile brutality cases, most famously when officers shot unarmed Bronx resident Amadou Diallo 41 times in the hallway of his apartment building.

The terrorist attacks of September 11, 2001, killed 23 police officers and prompted the creation of new deputy commissioners for intelligence and counterterrorism. On the whole, however, by the beginning of the 21st century, the Federal Bureau of Investigation (FBI) would report that crime had declined in New York to the point where it had become statistically one of the country's safest large cities.

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See Also: 1851 to 1900 Primary Documents; 1901 to 1920 Primary Documents; 1961 to 1980 Primary Documents; 1981 to 2000 Primary Documents; 2001 to 2012 Primary Documents; Genovese, Vito; Giuliani, Rudolph; Gotti, John; Hays, Jacob; Knapp Commission; LaGuardia, Fiorello; Luciano, "Lucky"; New York; Organized Crime, History of; Rothstein, Arnold; Schultz, Dutch; Wilson, James Q.

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Newark, New Jersey

Newark is a city located near the Passaic River and Newark Bay in northern New Jersey within the county of Essex with a current population of 277,140. Newark is the largest city in New Jersey and one of the most ethnically diverse

cities in the state. Newark was founded as a result of a land purchase by New Haven colony Puritans led by surveyor, tax collector, appraiser, and magistrate Robert Treat (1624–1710) in 1666; Treat eventually served as governor of the colony of Connecticut from 1683 to 1698. The land was purchased by the Puritans from the Hackensack Indians.

The name *Milford* was first applied to what is today Newark but later abandoned for the term *New Ark* or *New Work*, a phrase eventually abbreviated to *Newark*. Newark at its inception was essentially a settlement in which church and state were one. The phrase *city of churches* has often been applied to Newark, given the proliferation of religious structures that are prominent throughout the city. The city was incorporated in 1713 as one of New Jersey's collections of townships. Newark began to attract new immigrants through the 1700s and early 1800s, when the city began to become an industrial center.

Newark began to emerge as an industrial city in the 19th century, given its proximity to key waterways, including the Passaic River, Newark Bay, and the Atlantic Ocean.

Economics and Industry

Newark experienced dramatic changes in industry, business, commerce, and population through the late 19th century and into the 20th century. John Wesley Hyatt created the first commercially successful plastic (celluloid) from a factory on Mechanic Street in Newark. This was a product used in carriages made in Newark, billiard balls, and dentures. Edward Weston developed an improved process of zinc electroplating and the making of an arc lamp in Newark while Thomas Edison perfected the process of automatic telegraphing in a Newark lab in the 1870s before moving to Menlo Park.

The Gold and Stock Telegraph Company paid Edison thousands of dollars for his improved version of the stock ticker (a telegraph printing instrument). Newark became a center of the insurance industry with the establishment of Mutual Benefit in 1845 and Prudential in 1873. By the 1880s, Newark-based insurance companies were second only to Hartford, Connecticut-based firms in the selling of insurance. The population of Newark increased by 200,000 from 1880 to 1910, reach-



The Newark Police headquarters building on Orange Street. The Newark Police Department is the largest in New Jersey and has been in operation since 1856, when the city council approved a budget of \$7,462.00 to create a daytime police department and \$14,458.00 to maintain a night watch department. The departments merged in 1857 to become the Newark Police Department.

ing 347,000 including increasing numbers of immigrants from Ireland, Germany, and Italy at the turn of the century.

Newark was a thriving industrial city with one of the busiest intersections in the United States at Market and Broad streets in the first decades of the 20th century but experienced a sharp decline following World War II. By the 1920s, the population approached the 500,000 mark but began to decline with industry and white flight after 1945. Postwar practices of the U.S. federal government such as redlining helped to facilitate the decline of a once thriving city. The Federal Housing Administration (FHA) redlined nearly all of Newark, backing loans in the emerging suburbs as opposed to the city regions. This made it virtually impossible to secure a mortgage or home improvement loan in a city marked by aging buildings and declining industry. This led

many manufacturers to build enterprises in outlying areas as opposed to within the city. The rise of new roadway systems such as Interstate 280, the New Jersey Turnpike, and Interstate 78 made it easier for upwardly mobile working and middle-class families to access the city from outlying suburbs as commuters. A majority of the citizens moving out of the city were white, while through the 1950s large numbers of nonwhites made their way in to the city to become permanent residents. The Great Migration of African Americans in the first few decades of the 20th century to cities in the north, such as Newark, helped to change the racial composition of the city in dramatic ways. By 1966, the majority of people living in Newark were African American. The decline of industrial jobs, the rise of unemployment, poverty, and the white flight out of the city compounded by political corruption in the

second half of the 20th century help explain why Newark has been listed among one of the “crime capitals” of America.

Society and Politics

In the 1950s, Newark’s white population decreased by 25 percent, from roughly 363,000 to 266,000; this decline continued into the 1960s as racial tensions increased. While Newark was becoming increasingly African American, African Americans remained out of power, such as with the police force (only 150 of 1,400 police officers in Newark were African American by 1967). Many white-owned businesses remained, but increasing poverty, diminishing purchasing power, and deteriorating living conditions in the Central Ward (where most of the black population resided) led to the Newark riots in 1967. On July 12, 1967, an African American taxi driver named John Smith was beaten by Newark police officers for allegedly resisting arrest. Before the riots that followed the beating of Smith through July (amid rumors that the police had killed him), then Mayor Hugh Addonizio had offered to condemn sections of the Central Ward to make way for the building of the University of Medicine and Dentistry. The Newark riots ended with 26 killed, 1,500 wounded, 1,600 arrested, and the destruction of an estimated 167 grocery stores (many of these establishments never returned to the city). Middle-class communities of all races fled the city in the 1970s and 1980s, along with vital industries, leaving behind a city increasingly marred by political corruption, crime, and urban decay.

Newark is currently divided into five political wards with the North, Central, and West wards containing the residential neighborhoods while the industrial area, airport, and seaport are part of the East and South wards. Governance of Newark is divided between the mayor and city council. Since 1962, five mayors of Newark have been indicted for crimes while in office, including Hugh Addonizio, Kenneth Gibson, and Sharpe James. This is every mayor elected since 1962 with the exception of the current (2012) mayor, Cory Booker. Addonizio, mayor of Newark from 1962 to 1970, was convicted of extortion for taking kickbacks from city contractors in 1967. Gibson, successor to Addonizio and the first

black mayor of the city, was tried and acquitted while in office and was later convicted of tax evasion in 2002. Sharpe James, who defeated Gibson in 1986, was found guilty of fraud in 2008 and was forced to spend several months in prison following his conviction.

Crime and Punishment

Newark has an illustrious history in crime and punishment from the building of the Old Essex Jail in 1837 (recently transformed into a \$24 million office complex) to Northern State Prison, which currently holds more than 2,000 inmates. “Dutch” Schultz was killed at the Palace Chop-house Bar along with members of his infamous Schultz Gang on October 23, 1935, at the height of organized crime in the city. The DeCavalcante crime family in New Jersey included a Newark faction run by Gaspare D’Amico through 1937 followed by the leadership of Stefano “Steve” Badami through the 1950s. The DeCavalcante family’s New Jersey crime network in both Elizabeth and Newark was likely the inspiration for the HBO series *The Sopranos*.

Newark has had a history that is attached to both organized crime and the crime of the century with the September 11, 2001, attacks orchestrated by the radical terrorist organization Al Qaeda. United Airlines Flight 93 to San Francisco departed from Newark International Airport the



The stereotype of Newark as a crime-ridden city full of dilapidated buildings is being replaced as the area undergoes improvements to business, industry, and entertainment.

morning of September 11 and crashed in a field in Shanksville, Pennsylvania, killing all passengers on board after being hijacked by four Al Qaeda terrorists under instructions from Osama bin Laden. Newark International Airport was renamed Newark Liberty International Airport after the attacks.

In the 1990s and through the early decades of the 21st century, Newark has been identified by several sources as a high-crime city. Newark was identified by *Time* magazine as “the most dangerous city in the nation” in 1996. The causes of Newark’s high crime rate are directly linked to elevated levels of unemployment, poverty, urban decay, and political corruption. In the 2003 Federal Bureau of Investigation (FBI) *Report of Offenses Known to Law Enforcement* Newark’s violent crime rating was high in several categories. In this same report, murder in Newark was listed at 3.8 times the national average, and robbery in Newark was recorded at 2.14 times the national average, and aggravated assault at 1.2 times the national average. This 2003 report also recorded property crimes such as car theft and arson. In the category of car theft, Newark ranked 3.6 times higher than the national average and has been dubbed by some in the mass media as the “car jack capital of the world.” Newark was rated in the Morgan Quinto list of dangerous cities in the top 25 more than once during the mid-2000s. In recent years, Newark has experienced a dramatic decrease in the murder rate, such as with the 30 percent decline that took place between 2007 and 2008. March 2010 was the first month since 1966 that not one murder occurred in the city.

Crime Trends

During the 1960s, Newark was at the center of violent unrest in 1967 as illustrated in the Newark riots that left the city economically devastated. This was compounded by the decline of manufacturing, white flight, and urban decay. There were an estimated 500 urban disturbances in the United States during the 1960s, and the post-1960s violent crime rate into the early 1970s was astronomically high. The 1980s were also a violent decade. The peak in violent crime in the United States occurred roughly in the year 1993. The 2000s indicate a significant decline in crime rates in the United States, and 2009 has been identified as the “safest year” in 40 years.

Newark has experienced trends in crime that are higher than both the state and national averages. The FBI Uniform Crime Report indicated that in 2008 Newark had a rate of 951 violent crimes per 100,000 persons. The New Jersey state average was 342 per 100,000, while the national average was 676 per 100,000 persons. Only 3 percent of the cities in America at the time had a higher crime rate than Newark. The 2000s have remained violent in Newark despite the national trend of declining crime since the 1990s. From 2001 to 2002, more than 1,000 violent crimes per 100,000 persons occurred, and from 2004 to 2006, the trend was similar and above 1,000. Crimes of property in Newark have remained high in the past decade, remaining at 3,000 to 5,000 property crimes per 100,000 since 2001. Newark was classified as “safer” than only 12 percent of the cities in the United States between 2006 and 2008.

Newark’s Renaissance

Newark continues to serve as an important center of business, commerce, and entertainment while at the same time the city is undergoing a much-needed renaissance in these arenas. Prudential, one of the world’s largest insurance companies, remains headquartered in Newark. The Newark airport, one of the busiest in the nation, Rutgers University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology, and PSE&G constitute vital aspects of business, industry, and entertainment in Newark today. The New Jersey Performing Arts Center (NJPAC) is a \$180-million entertainment center that opened in 1997 and is home to the New Jersey Symphony Orchestra.

The center features a diverse contingent of performances from opera to gospel to hip hop. Riverfront Stadium is home to the minor league baseball team the Newark Bears, and the Prudential Center recently opened in 2007 for the New Jersey Devils hockey team. Newark has endured a cycle of industrialization, deindustrialization, and renewal not unlike other cities in the United States such as Detroit, Chicago, and Camden, New Jersey.

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See Also: Camden, New Jersey; New Jersey; Riots; Terrorism; Urbanization.

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News Media, Crime in

The news media spends much time reporting on crime and criminal justice in America and is a primary source of information about these topics for the general public.

People now have easy access to the news at their fingertips, with online news sources and the sharing of information through social media. They also have the ability to discuss the articles through forums on many news Websites. Citizens must discern which information is accurate and which information is inaccurate, and may come to conclusions about a suspect's guilt or innocence or make judgments about a crime victim's actions based on what they read. Citizens will also draw conclusions about how the criminal justice system operates and whether or not it does so fairly. In other words, our collective knowledge about the causes, amount, and types of crime in our society—as well as the workings of criminal law, the police, courts, corrections, and other aspects of the criminal justice system—is heavily influenced by the news media.

Early Crime News

Crime stories often lead the evening news and are given prime spots in newspapers and online news sources, though this was not always the case. While crime has been with us for millennia, crime news is a much more recent development, though by no means solely a modern phenomenon. Indeed, the Roman Senator Cicero is said to have lamented the too frequent reports of criminal violence that filled the “newspaper” of ancient Rome—the *acta diurnal populi Romani*. However, for most of human history, technological limitations and low levels of literacy meant that these presentations of crime were restricted primarily to oral accounts, with some augmentation through written text and artistic renderings such as sketches, wood etchings, and paintings. While actual accounts of crime in early news were relatively rare, some attention was devoted to issues of “justice”—that is, the state's retributive response to wrongdoing. Newspaper-like accounts of executions can be found in the historical records of many African, Asian, and European nations. These stories were frequently devoted to the “spiritual” consequences of crime, though they were occasionally paired with notions of the state's retributive responsibility. Tales of executions were recounted in gruesome detail for the news audience, serving both the functions of vicarious titillation as well as general deterrence.

An early incarnation of broadsheet newspapers, the English “newsbooks” of the 17th century began to include sensational and bizarre accounts of crime and misadventure. In the United States, the publication of criminal narratives goes back to the colonial era. Strict morality and religiosity in colonial America curbed crime, but also created ample opportunity for news accounts of transgression and punishment. News accounts of colonists convicted of using profanity, displaying public drunkenness, or inappropriate behavior occurring between men and women and sentenced to lashings, the stock, or pillory were a common fixture. For example, in 1656 a newspaper in Boston reported that a naval officer, Captain Kemble, was placed in the stocks for having engaged in lewd behavior on the Sabbath, while a Salem paper recounted the fines imposed on John Smith and Mrs. John Kitchin for their frequent absences from church. In addition to other strategies for shaming



As crime news became more prominent in the 19th century, papers like the *New York Herald* and the *Sun* captivated their readers with detailed accounts of crime. The coverage of the murders of high-class New York prostitute Helen Jewett in 1836 (left) and Mary Rogers, a New York tobacco shop worker in 1841 were the beginnings of sensationalized news coverage.

offenders (such as clipping ears, branding, or forcing them to wear signs—such as “A” for adultery) crime news coverage heavily emphasized specific and general deterrence.

In keeping with the punitive orientation of American justice, the harsh punishment of offenders was a common theme in colonial accounts of crime. Stories recounting public lashings, scalding, and executions were among newspapers’ staple offering, even for what we would today consider relatively minor offenses. For example, in 1752, the *Pennsylvania Gazette* reported that John Broughton had the letter “R” branded on his hand and was sentenced to a lifetime of servitude for the crime of pickpocketing.

As early American cities grew, the general populace’s fear of crime increased. In 1744, a newspaper in New York reported that the city’s streets were becoming very dangerous at night and that only the “sufficiently strong or well armed” were safe. Indeed, according to the press, it was not

simply growing urban areas that were dangerous, but small communities as well. Many colonial newspapers featured editorial content condemning the English for transporting some of Britain’s criminals, particularly counterfeiters, pickpockets, and highwaymen to America.

Nineteenth-Century Crime News

Growing populations, increased literacy, and technological advancements in the early decades of the 19th century made news accounts of crime a more prominent component of the general public’s knowledge of crime and criminal justice. By the 1830s bizarre and fear-laden crime news coverage under the auspices of the “astonishingly real” became standard fare. James Bennett’s fledgling paper, the *New York Herald*, vastly increased its circulation with long, drawn-out crime stories, such as that of the murder of Helen Jewett, an upscale New York City prostitute in 1836. The paper titillated readers with details from the trial

and of Jewett's death and championed the innocence of her accused murderer Richard Robinson. Other New York City newspapers, such as Benjamin Day's *The Sun*, condemned Robinson and editorialized that he used his family's prominent wealth to buy an acquittal from a corrupt criminal justice system.

By the mid-1840s the penny presses in the United States began to publish lurid accounts and photos of the dead and dying, frequently related to street crime, but also included those resulting from what the media frequently termed *industrial accidents*. While this decade began with a clear distinction on the treatment of crime between the "exploitative" newspapers and their more "serious" counterparts, it was not long before all the papers were including sensationalized accounts and photographs of heinous crimes among their staple offerings. Coverage of the death of Mary Rogers, a tobacco store employee from a New York City in the summer of 1841, exemplified the news media's approach to crime news coverage during this time period. Dubbed the "Beautiful Cigar Girl," she was missing for three days before her body was found floating in the Hudson River. The New York press transformed her death into a national story with sensationalized coverage—alternately speculating suicide and several different murder scenarios and reporting a confession that Rogers died as a result of a failed abortion. Drawn out for months, these stories also served as a venue for criticism of the police, debates over abortion, and gang activity.

By the mid-19th century newspapers were regularly covering a host of crime and criminal justice issues in connection with city politics, industry, labor movements, and immigration. Anti-Irish immigrant sentiment in the 1860s resulted in newspapers from all political stripes running stories about crimes and disturbances linked to Irish immigrants. This period also saw newspapers addressing the role of government authority in crime news stories ranging from the New York City Draft Riots through police discretion and the use of firearms.

Twentieth-Century Crime News

By the turn of the 20th century, crime took on the character of the saleable news commodity we know it to be today. This epoch saw the rise of yel-

low journalism, exemplified by Joseph Pulitzer's *New York World*. These periodicals ran features on atrocious, though statistically rare criminal violence, including cannibalism, human sacrifice, kidnapping, white slavery, and gangland murder. William Randolph Hearst's *San Francisco Examiner* similarly entertained readers, devoting a quarter of the paper to coverage of crime. Stories about transgressive (typically, lascivious) behavior and humorous coverage of arrestees brought into lower courts were standard fare.

By the 1920s crime news coverage took on an increasingly lurid, sensational flavor. A growing number of mediated depictions of crime, particularly visual representations of dead and dying crime victims, became the standard fare in newspapers. News audiences were inundated with photographs of spectacular death moments, brought on by criminal violence on the streets of urban cities. During this decade, news coverage of crime also harkened back to a zeitgeist of an earlier age—the punishment of criminals. News accounts of trials abounded, as did exposes on hard labor in prison and executions of convicted felons. In 1928, newspaper photographer Tom Howard smuggled a small camera into the press viewing gallery of New York's Sing Sing Prison during the execution of convicted murderer Ruth Snyder. Howard snapped a photo as the electricity surged through Snyder's body. The blurry, full-page photo of Snyder's jolting body captioned "DEAD!" appeared on the front of New York's *Daily News* the following morning. By the end of the day, the paper sold more than 1.5 million copies—the highest sale of any newspaper in history at that time.

The general public's social desire to consume crime through the news coalesced with newspaper visuals and media loops by the 1930s. From fatal bar brawls and car chases through brothel raids to mobster warfare, the visual record of crime swelled in the 1930s and 1940s. One of the most famous contributors was New York photojournalist Arthur Fellig. Fellig built his early career on capturing images of crime, which he sold to newspapers and magazines. As one of only a few journalists who had a license, Fellig used a police-band shortwave radio to listen in on police radio calls. As a result, he frequently arrived at crime scenes before the police or ambulance personnel. Nicknamed "Weegee the Famous," Fellig shocked

and delighted news audiences with his detailed accounts and explicit photos of crime scenes. The work of Fellig and journalists like him not only generated substantial profits for newspapers and magazines but perhaps more importantly cemented the relationships among crime, spectacle, and the news media.

In the early 20th century, large police departments hosted crime reporters whose focus it was to report on the major activities of the department. The fascination with crime was in part fueled by a media campaign organized by J. Edgar Hoover, who wished to make the Federal Bureau of Investigation the premier law enforcement agency in the nation. To generate public support, he strategically portrayed his agents as crime fighters, and the suspects as hardened criminals who were dangerous and difficult to apprehend.

By the mid-1950s, higher standards of living and economies of abundance resulted in lower crime rates but, ironically, greater news coverage of crime. In fact, the mid-20th century was a watershed moment for crime in the news media, with increasingly aggressive marketing of crime news through specialized “crime beat reporting.” The result was more sensationalistic coverage of crime that relied ever more heavily upon the police, prosecuting attorneys, and other criminal justice officials for commentary and analysis.

In the final decades of the 20th century, the news media was quickly ascending to a position of unchallenged dominance for producing and filtering popular portrayals of crime. Now there are several types of news media that provide the public with information about crime and justice in America. Television, newspapers, the radio, and the Internet are all popular sources of news coverage. Local media outlets tend to focus on events occurring within a certain geographic area and national outlets choose to cover events that either have implications for the entire nation, or those that will capture national attention.

Crime Suspects

The news media provides considerable information about the suspects who are accused of having committed crimes. After they are arrested, suspects can expect to have their mug shots, criminal histories, and even mental health history reported in news coverage. This information can be gathered from a

variety of places, including the police, public court records, attorneys, friends, and family members. This information can also include whether the suspect and victim knew each other.

In cases where the suspect is unknown, the news circulates information provided by the police in the hope that someone will know the suspect and report him or her to the police. Sometimes this includes a sketch of the suspect provided to a police sketch artist by the victim. In the cases of crimes committed in public places, such as banks or retail stores, there is often video of suspects, which is aired to the public. Some news coverage is specifically directed at the apprehension of people who are suspected of committing crimes. For example, *America's Most Wanted* focuses on encouraging citizens to provide information about suspected criminals so they can stand trial. This TV show was the first of its kind, developed by John Walsh, whose son Adam was murdered in 1981. Walsh has been a figurehead in the news not only because of this show but because of his efforts to create stricter laws for sex offenders and his leadership in searching for missing children.

Crime Victims

The news also reports information about crime victims, but is usually more selective in what it shares. Some information about victims is not provided to the public. For example, the names of child victims or rape victims are usually not published to assist the victims in keeping their experiences private and possibly protecting them from further violence. Sometimes information about victims is shared that casts them in a negative light. For example, a good deal of private information about the woman who accused Kobe Bryant of raping her was made public, including mental health problems she experienced when she was younger. Her name quickly spread across the Internet, and after she filed a civil lawsuit against Bryant, some news media made the decision to publish her name. The charges were dropped and Bryant was never tried for, nor convicted of, committing any crime.

Sometimes victims of crimes are portrayed by the media as deserving of what happened to them, or at least, as being partly at fault for what happened to them. Researchers have found that gender is a significant ingredient in the news media's



A policewoman renders first aid to a citizen. Since the late 20th century, television shows have been developed that blur the line between news and fiction by filming police officers while they perform their duties. These shows include COPS, Alaska State Troopers, Border Wars, and the Police Women series in locales such as Broward County, Florida and Maricopa County, Arizona.

coverage of crime victims. For example, while men are the most common victims of violence, it is women who are overrepresented as victims of violent crime in the news media. While female victims may be more newsworthy than their male counterparts, they must be deemed innocent (i.e., virtuous and honorable) as opposed to blameworthy (i.e., shameful and unscrupulous) if they are to warrant sympathetic media coverage.

The Police

Crime reporting has largely focused on the police since their development in the mid-1800s. Reporters were stationed at police departments, where they received firsthand accounts of any activity or crime. The police are portrayed in the news media largely as crime fighters and law enforcers. This image is only partly based on reality. While the police are responsible for enforcing laws, their shifts are often filled with other duties. The police are responsible for assisting citizens with non-criminal matters, maintaining order, investigating traffic accidents, and providing service to the community. Officers often engage in activities designed to bridge the gap between them and citizens, such as the DARE program or citizen police academies.

Police misconduct and abuse are frequently covered by the news media. The public normally has little knowledge of police activities; however, personal recording devices and video recording capabilities on cell phones have made it easier for police activity to become more publicized. The publicity surrounding the altercation between Rodney King and the Los Angeles Police Department (LAPD) marks one of the earliest and most controversial instances of private citizens secretly videotaping police officers on duty. In 1991, four LAPD police officers were accused of using excessive force against King. These officers were tried in a court of law, and were subsequently acquitted of any criminal wrongdoing at the state level, resulting in violent rioting in Los Angeles. This case was widely covered by the news media and analyzed by reporters.

The news media played the videotape of Rodney King's experience with these officers multiple times. The officers were subsequently indicted on federal criminal charges and two were convicted of violating King's constitutional rights.

There are several shows on television that blur the line between news and fiction. Born in the late 1980s and truly taking form in the decade

of the 1990s, this “tele-visual” medium is sometimes referred to as “crime vérité.” First aired in 1989, *COPS* and similar shows follow police officers while they are on duty, often showing either the most exciting events or the strangest events. This depiction of police work does not always accurately reflect reality. It takes many hours of filming officers to fill a half-hour segment of the show. Officers also have other duties aside from enforcing the law, but because these duties might be perceived as uninteresting, they are not covered by such shows. More recently, developed shows such as *Police Women* (e.g., with several different series set in Broward County, Florida, Cincinnati, Ohio, and Memphis, Tennessee) focus solely on women police officers on patrol.

Trial Coverage

The majority of the general public has not been inside a courtroom or taken part in a criminal trial and instead relies upon news coverage of trial events reported after the fact. Now, more than ever, people have access to information about what occurs in the courtroom. Most national news stations devote coverage to high-profile trials. There are also entire television networks dedicated to trial coverage. The first of these was Court TV (now truTV). Though the network began broadcasting in 1991, it was the coverage of the murder trials of Lyle and Erik Menendez in 1993 and O. J. Simpson in 1994 that truly propelled it into a national sensation. Originally featuring continuous live trial coverage, with commentary by a team of anchors and legal analysts, it later began airing more stylized and fictional programming such as *Forensic Files* and *Homicide: Life on the Street*.

With the Internet, reporters can now blog live coverage of trials. In Warren County, Ohio, reporters from the major news stations blogged trial coverage during the Ryan Widmer murder trial, allowing the public to follow the trial and make comments as the trial progressed.

Corrections

The corrections field (jail, prison, probation, and parole) is not covered in the news media as much as other components of the criminal justice system. The field of corrections is covered largely

in the form of serial television documentaries with an investigative or exploratory focus. The shows tend to document life in prisons and provide information about how inmates adjust to life without freedom. Some of the coverage features interviews with inmates who reflect upon their lives in jail or prison, and who sometimes speak about the crime of which they were convicted. The shows also emphasize the manner in which corrections officers must conduct business.

Moral Panics

A moral panic occurs when the public believes an event or a series of events is a threat to the public order and well-being. The media contributes to moral panics by continuous coverage of crime events and other issues that could be construed as related to crime. One example of a moral panic, created in part by the media, is school shootings. Since the 1990s, there have been several dozen shootings in American schools. The news media reported extensively on these events, with a focus on the perpetrators of these crimes. The media described these school shooters as loners and outcasts who were angry and depressed. In reality, although there may be warning signs that a student may resort to violence, school shooters do not fit a single profile that allows them to be identified. Sometimes moral panics are localized and occur in only one geographic area.

Special interest groups sometimes use moral panics to put pressure on the criminal justice system to respond to the relevant issue, usually by creating or changing laws and their enforcement. Often the result is legislation designed to punish or monitor offenders that sometimes has unintended consequences.

One such example is the proliferation of news coverage of gang and drug activity in the inner cities in the 1980s. Public fear of drug crimes and an outcry over the ensuing violence prompted legislators to draft sentencing laws that mandated prison time for certain offenses, such as possession of crack cocaine. Other legislation mandated prison time after a certain number of offenses had been committed (i.e., the Three Strikes Laws). The unintended consequence of these laws is prison overcrowding, which has created fiscal and public relations problems for prisons in such circumstances.

Conclusion

Crime is central to the production of news. It grips the collective imagination of a diverse audience of viewers, readers, and listeners. Indeed, the ubiquity of the news media has resulted in these narratives becoming the overwhelmingly dominant forum for the social depiction of crime. The portrayal of crime in the news media is largely piecemeal and is sometimes not reflective of the actuality of crime and criminal justice.

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See Also: 1921 to 1940 Primary Documents; Famous Trials; Fear of Crime; Film, Crime in; Literature and Theater, Crime in; News Media, Police in; News Media, Punishment in; Television, Crime in.

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News Media, Police in

Forms of news media vary from the traditional printed newspapers, radio, and television news programs to Internet news and infotainment. Modern technology has allowed individuals to more easily obtain information. In addition to

television news, news programs have extended their coverage to news Websites such as MSNBC.com, ABCnews.com, and even Google News. Add to this the public addiction to YouTube, blogging, and tweeting, and many people mistakenly identify anything posted on the Internet as accurate news. In all, news today tends to provide situational coverage without added context, which tends to distort larger issues and support stereotypes.

Police are the gatekeepers to the public's source of crime information presented in the news media. As much as 25 percent of news is dedicated to crime coverage. While most people do not experience crime firsthand, they are exposed to news media in some form or another. As such, the media has a powerful influence in our understanding of crime and justice. Media images of the police have been found to directly affect public opinion and thus police–public relations. Police tend to be depicted as either the good cop or the bad cop and not much in between. Furthermore, the advancement of infotainment has worked to place unreasonable expectations on the police.

Historical Context

Crime has long been a focus of news media. By the end of the 1500s, it was common for notorious murders to be publicized in some media. The most common forms of early crime news were distributed as broadsheets (or broadsides) or pamphlets, or communicated in speeches or sermons. By the 1600s, England published pamphlets dedicated to crime. The most common crimes reported were murder, treason, and witchcraft. Additionally, news publications were sold as a form of entertainment. The United States adopted this same form of broadside reporting. However, early U.S. news was limited mostly to political editorials published in early newspapers. Crime reported within these papers was brief and usually focused on trials. There was widespread fear that frequent reporting of crime details would serve to encourage copycat criminals. It was not until the 1830s that the first daily city newspapers started to publish crime news as front-page stories. In 1833, the *New York Sun* was one of the first newspapers to publish daily crime news, primarily reported by the police.

In response to a growing market for crime news, the form of crime reporting changed drastically.

Newspapers started to devote more time to crime and justice. the focus was over-sensationalized, often fabricated in new mass-circulation newspapers called the “penny press.” Benjamin Day was the first to practice the new style of crime reporting when he founded the *New York Sun* in 1833. Day initiated news reporting that provided many more details than previous practices. Day’s reporters wrote crime stories that included gory details.

James Gordon Bennett, another famous journalist, founded the *New York Herald* in 1835. Bennett was the first to follow stories and run them for as long as they lasted. Bennett’s influence revealed itself in 1836, he spent so much time chronicling the murder of a prostitute named Ellen Jewett that the murder trial had to be postponed because of the publicity his news coverage stirred. Crime reporting of the day focused on crime reports released by police courts and police stations. Newspapers within the penny press sent their reporters to the same location where police would provide reports of crime. This relationship allowed the police to partially shape the image of crime and justice. However, as the penny press was known to publish sensationalized and fabricated information, stories often became distorted. Additionally, the detail and time given to crimes resulted in criticism of the penny press as swaying public opinion in what law journals called “trial by newspaper.”

There was also growing attention given to corruption within the system, especially among the police. The yellow journalism of the later 19th century developed by William R. Hearst and Joseph Pulitzer was an even more sensationalized descendant of the penny press. By the 1920s, tabloids carried on the tradition, heightening sensation by including photographs. Both were widely criticized for inaccurate and negative reporting. Criminal justice dissatisfaction with media images of justice officials as corrupt resulted in other weekly news publications to the contrary. Publications such as the *National Police Gazette* (1845–1977) were established to provide an increasingly literate population with a more favorable view of police and their crime-fighting activities.

By the end of the 1800s, social perceptions changed from viewing crime as a sin or the result of structural corruption to viewing crime as an individual deficiency. The ceremonial nature of

the trial was soon replaced by the factual details provided by the police. By the 1920s, radio news became the first live reporting of crime. This practice continues today with television news, all utilizing police as the gatekeepers to crime news.

The presentation of crime news as entertainment quickly took root, and soon media forms of news entertainment sprung up around the nation. Infotainment is a media presentation that mixes news with entertainment. These news media releases tend to sensationalize, exaggerate, and skew aspects of crime and justice, blurring the line between entertainment and news information. The first infotainment in mass media was yellow journalism. Currently, well-known forms of infotainment include tabloids such as the *Inquirer* and television programs such as *60 Minutes*, the *Today* show, *COPS*, and *America’s Most Wanted*.

Police Image and Image Management

Early crime reporting by the penny press was dedicated to presenting crime as a social malady. With the changed focus on crime as an individual deficiency, the media started to rely heavily on police reporting of the facts of crime. The adaptation of a structured format for reporting all crime stories also made relying on police accounts of the crimes more desirable. Furthermore, reliance on police accounts reflected the official police standpoint and eliminated the need to retract stories. This reliance on police for crime information is referred to as front-end reporting. Front-end reporting focuses on the causes, investigations, and solutions to crime.

Today, police departments assign officers to deal directly with the news media in order to control the flow of information and images of the police. These officers are commonly known as public information officers or public relations officers. They also determine most of what is presented to the public about the extent and nature of crimes. Along with this, police provide media with a specific orientation toward crime. This orientation, depending on the era, may be law and order, a war on crime, or a crime epidemic. In any presentation, the concern maintains that crime is an individual deficiency that can only be eradicated by the police.

Even with the public relations officers working closely with the media, two contradictory

images of the police tend to be present at the same time. The first is the positive “good” cop who is a highly moral and concerned expert in fighting crime using the latest technology and fighting for the safety of the citizens. The good cop image is a soldier in the war against crime who usually quickly captures the criminal and is a very competent professional. Crimes fought by the good cop tend overwhelmingly to be of a violent nature. The second image is the negative “bad” cop, who is either incompetent or corrupt. This cop does not care and is often criminal and violent. If the police do care, then they are simply bumbling idiots, and crime can only be eradicated by private citizens, either private enforcement agents or vigilantes.

These two images are both wrong. The reality of police work involves mostly noncrime service calls. These tend to involve crisis management (traffic accidents or fires), community education (workshops and school visits), or administrative work. Crimes typically addressed by the police tend to be minor violent or nonviolent crimes. In fact, more than 80 percent of all crimes reported to the police are nonviolent crimes. However, when consistently working so closely with public relations officers, media images depict a society ridden with violence.

According to the media, when police investigate crimes, they tend to be forensics and computer experts when, in fact, nationally most police officials do not have this expertise. Among departments that widely use these technologies, only a few officers are trained in such skills. Hence, even with the good cops around the nation, the competence tends to be overstated. Media overreliance on police accounts of crimes tends to focus on the crime details and the immediacy of the situation and has come to be known as forensic journalism. The facts provided by the police are brief and identified as factual. Forensic journalism tends to present a form of media investigation similar to forensic science. Since forensic journalism relies on the police, it also reinforces the image of police as competent and as forensics experts. The details provided go unquestioned until police reports specify otherwise.

Unfortunately, the bad cop image can be very damaging to crime fighting. Even with public relations officers, reporters are able to uncover

some of the police corruption that occurs. Stories of police murder for hire occasionally hit the nation or instances of police brutality, such as in the Rodney King or Abner Louima beatings. To further push the bad cop image is the increased possession and use of cell phones with videotaping and Internet capacity. The use of the Internet and such sites as Facebook and YouTube allow everyday people to post police abuse of authority for national consumption.

Media researchers have also found that looping works to push the bad cop image. Looping is when stories are repeatedly recycled throughout the daily news reporting and can last for weeks. A video recording of police brutality may be placed on the Internet for public consumption. Newspapers and television and radio news media then report on the video recording.

Next, an infotainment program may use the clip in a public interest piece. The video will find its way onto the news organization’s Website and even be used as evidence in a court case. Looping allows the media to keep ratings up but it also serves as an alarm to public consumers. Though the incident is one instance of police brutality, the constant barrage of the story gives the appearance of widespread police brutality. Research has revealed that an instance of police corruption in one department can negatively affect the public opinion of local police on the other side of the nation.

Police Corruption and Violence

Public image of the police from the 1960s through the 1980s reflected waves of public distrust in the government. The 1960s and 1970s experienced civil unrest. As a result, members of society led the civil rights movement, the student rights movement, and the Vietnam War protest. Police were often shown in the news as the primary oppressors of the people. Initially, public outrage and distrust was found primarily in African American communities. Television news captured numerous occasions of police brutality during peaceful civil rights protests. The famous 1963 news footage of the Birmingham, Alabama, police hosing down civil rights activists with high-powered fire hoses and letting loose attack dogs was further memorialized by the PBS documentary *Eyes on the Prize*. The Birmingham



On day 14 of the Occupy Wall Street protests in 2011, the Granny Peace Brigade and other citizens marched against police brutality from Zuccotti Park to the headquarters of the New York Police Department. The media often rely on law enforcement for crime information, which generally portrays the police in a positive light; however, coverage of corrupt police and police brutality is growing with the increased usage of cell phone videotaping and the ease of posting videos online.

police chief reported to the news cameras that he would do it again.

The 1968 Chicago Democratic National Convention resulted in what was termed a police riot. The 1968 convention was overridden by nearly 10,000 yippies who were viewed to be a threat to the city. Chicago police were said to have started the riot by beating a young boy who pulled an American flag down from a flagpole. The Democratic National Convention is nationally covered by the media. During the riots, famous news anchor Dan Rather was beaten by police. The National Guard shooting of four Kent State University student war protesters on May 4, 1970 was preceded by student-police conflict. While the National Guard and not the Kent city police were the shooters, national outcry opened the gates. Media coverage of the brutalization of white, middle-class citizens worked to extend public distrust in the white American community.

The 1960s and 1970s also uncovered widespread economic corruption among police in parts of the nation. Public trust and confidence reached one of its lowest points. News stories uncovered numerous occasions of police taking bribes from organized crime syndicates. These bribes resulted in police shielding criminals and their crimes, ranging from prostitution to gambling to murder. The news presented organization-wide police corruption in Kansas City, Missouri, Chicago, and New York City in the 1960s. The famous case of New York City police detective Frank Serpico was widely covered in the news in the late 1960s and early 1970s. Serpico's initial attempts to report witnessed corruption went unaddressed by his superiors. Finally, he turned to the media and told his story to the *New York Times*. As a result of the in-depth media coverage of Serpico's whistle-blowing, the Knapp Commission was formed in New York

City and worked to document police corruption and reform.

On the tail end of these events and with a drastic increase in drug and violent crime, the public voiced dissatisfaction with police ability to protect the people. The popularity of vigilante justice flourished. The media were at the forefront of this image. While movie and television entertainment media played a larger role, the news media frequently presented the need, or the public's desire, for vigilante justice. Frequent news coverage of the establishment and activities of the Guardian Angels (a civilian nonviolent vigilante group) often emphasized the need of private citizens to protect themselves. The Guardian Angels identified themselves as community safety patrols and first patrolled the streets of New York City in 1979. By 1981, Guardian Angels patrols were established nationwide. The establishment of the Guardian Angels was meant to provide protection that the people felt they were not receiving from the police. News media uncovered a relationship between the Guardian Angels and the police, which on the surface appeared to be civil but actually was plagued by distrust on either part. As the decade unraveled, news media presented increasingly negative images of the civilian patrol group that often resulted in arrests and the police having to restore public order.

As the 1980s came to a close, much of public sentiment shifted from incompetent police to corrupt police but with a racial divide. The looping of the 1991 video recording of Rodney King being brutally beaten by four Los Angeles Police Department (LAPD) resulted in increased African American mistrust nationwide. The television news media presented the beating on a daily basis and then covered the case through the criminal trial. News stories of the acquittal of the police officers resulted in major riots in New York and Los Angeles. In 1994, the Los Angeles police investigation of O. J. Simpson as a suspect in the murder of his ex-wife and her friend received media attention worldwide. While on the one hand, the media tended to present O. J. Simpson as guilty, they also presented the Los Angeles police corruption as a detrimental factor in the case. Media coverage of the case paid close attention to the prejudicial and discriminatory history of Detective Mark Fuhrman and Simpson's claims that he

planted evidence. The distrust in the LAPD helped O. J. Simpson to gain an acquittal.

Other cases attesting to police brutality have been presented in the media. In the 1990s, the two most famous cases were the 1997 beating and forcible sodomization of Abner Louima by New York City police officers in the 70th Brooklyn precinct house. The attack resulted in a protest of 7,000 marchers. Media coverage stressed that the case was one of torture, prejudice, and discrimination. In 1999, news media presented yet another instance of police violence against a black immigrant. Four New York City police officers, of the Street Crime Unit, fired 41 shots at the unarmed West African immigrant Amadou Diallo.

With the increasing tough-on-crime sentiment of the 2000s, aided by heroic police response on September 11, 2001, public trust in the competence and morality of the police increased. However, the 2006 shooting of unarmed Sean Bell on the eve of his wedding by New York City police officers continues to present police as trigger-happy cops who hold prejudicial views of black males, seeing them as immediate threats. The Innocence Project has worked since 1992 to exonerate more than 260 convicts, most in the 2000s. Media coverage has focused on incompetent police or corrupt police who falsify evidence or force confessions. However, as discussed earlier, media reliance on police as their primary source for crime information helps to provide a positive image of the police.

Good Cops in the Media

While news reporters never gave up the practice of demonizing police, the move toward relying on police accounts of crime worked in giving police a level of control over crime information and how this information was to be presented. Police tend to provide situational facts of crime and emphasize their expertise in being able to fight crime. The emphasis is on the need to treat crime as an attack on the public and allows police to maintain their war on crime. Further, the tendency of the media and the police to focus on the less frequent violent crimes paints police as soldiers.

News coverage of crime has always sold crime as entertainment; however, this particular practice increased substantially in the 1990s with the

introduction of criminal profiling and televised infotainment news. Though infotainment programs such as *60 Minutes* have been on the air for decades, infotainment took a new entertainment approach when television first aired *COPS* in 1989. While the program is purely entertainment, the public tends to interpret the televised police activities as real police work and real police personalities in response to real crimes of violence that are at epidemic proportions. Unfortunately, viewers do not understand that the producers work very closely with the police, allowing them to edit out footage that is unfavorable to positive police images. Other programs such as *America's Most Wanted*, *American Justice*, *Criminal Minds*, *Forensic Files*, *Fugitive Chronicles*, and *The First 48* have chronicled police expertise and response to violent crimes.



The badge of officer number 1012, a Port Authority of New York and New Jersey police officer and 9/11 attack victim named George Howard. The selfless actions of police and firefighters were well documented during the 9/11 attacks.

Though the stories chronicled in these television shows may be true, the details tend to be dramatized. Furthermore, viewers are not informed that most crimes go unsolved and most criminals are not caught. The programs also do not inform viewers that most police are not highly trained crime scene investigators, nor are they trained in the latest technological and forensic sciences. These very positive images of police are further reinforced when the viewer is made to interpret these shows as crime news that should be generalized to all police.

Fortunately, infotainment is not the only source of media images of the good cop. There is no shortage of good police in the United States. Heroic and prompt police responses to heinous violent crimes have often been looped through the news media. The 1966 University of Texas at Austin shooting in which 16 people were shot and killed by Charles Whitman from the university's landmark tower prompted the image of police courageous enough to charge the tower in the face of adversity. This image of charging the tower was further stressed during the more recent heroic and unselfish police responses when many charged the World Trade Center as it was attacked on September 11, 2001. Many police officers and firefighters were so concerned with the safety of others that they charged the tower, even to their own peril. These stories have been continuously looped through the various forms of news media memorializing the sacrifices that police are willing to make in order to fight crime and protect the public.

Other well-known police responses that have been looped through the media include the response to the 1997 Columbine school massacre; the 2006 Amish school shooting in Nickel Mines, Pennsylvania; and the 2009 Binghamton, New York, massacre. While there are always questions and critiques as to how police responded to the crimes and what they could have done to save all victims, media coverage stressed the timely response and training of the police. For example, 14 people were killed in the Binghamton shooting; however, media stressed that it took police only two minutes to arrive at the scene following the 911 call and that no hostages were shot once police arrived. Police took six minutes to arrive at the scene of the Nickel Mines attack, where a heavily armed man killed four young school girls. Most recently, news coverage

of retired police officer Mike Jones stressed the heroic nature of police even after leaving the job. Mike Jones overtook a man shooting at a Panama City, Florida, school board at its January 3, 2011, meeting. Looping of this crime incident focused on the heroics and strong characters of police, stressing “once a cop, always a cop.”

As with all people in society, there are good and bad to be found. The news media has been at the forefront of bringing out the best and the worst in policing throughout United States history. The unfortunate fact is that news has not paid close attention to the more typical officer or the more typical crime. Focusing on positives and negatives as well as placing focus on these day-to-day activities may provide us with a more accurate understanding of policing and may minimize unreasonable expectations of police. The police have aided news media in their images via their public relations officers, so the blame cannot be placed solely on the media. However, examining the media through an organizational perspective, media researchers have learned that focusing on the mundane does not sell.

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See Also: News Media, Crime in; News Media, Punishment in; Police Abuse; Television, Police in.

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News Media, Punishment in

Current research has found that the media has the greatest influence on the public's perception of crime, justice, and punishment today. Further, the media is responsible for the production and reproduction of cultural images of crime and justice and the construction of the social reality of crime that affects perceptions of crime and justice. Many criminologists have studied the impact of the portrayal of crime in the media on the public. Criminologists have found that the depiction of crime, criminality, and the seriousness of crime does not correspond to actual crime statistics.

Various types of media serve as sources of information about crime and justice. Newspapers and magazines are significant sources of crime information. Further, film and television are also important types of media because they are sources of entertainment and utilize audio-visual technology that overcomes the obstacle of literacy that the other forms of media have to contend with. In addition, with the advent of videotape technology, film now joins with television, and has become more readily accessible to home audiences. This means that individuals can watch these films and television programs at their leisure within the comfort of their own homes, making the messages that are transmitted through television and film accessible to a large number of people around the world. Television has become the primary source for socialization and information received by the public.

Learning About Crime and Punishment

Several theories have been posited about the process through which the public learns about crime, justice, and punishment issues. Albert Bandura's social learning theory states that individuals learn through the process of observation. Individuals frame conceptual ideas regarding behavior and ultimately translate these conceptual models into actual behavior. Social learning is a complex process through which behavior is based on the modeling of symbolic verbal cues and observational inputs. These observationally learned inputs can either be behavior learned from parents and teachers or representational symbolic events.

These representational symbolic events can be presented through television and film.

In addition to learning theory, cultivation theory has been used to explain the learning process that takes place through the media. George Gerbner, originator of cultivation theory, focused his research within the medium of television. He studied the extent to which television viewing contributed to viewer beliefs about gender, minority, and age-role stereotypes; health; science; the family; educational achievement and aspirations; politics; religion; the environment; and other topics. He also examined the way that television viewing contributed to viewer behaviors. Cultivation theory is based on the notion that television "cultivates" or contributes to attitudes and beliefs of audiences over time. Those who spend more time watching television are more likely to see the world in relation to the constructed images, depictions, values, mores, and ideologies that are presented on television. Regardless of specific theoretical beliefs about how the media impacts perception and behavior, we know that the media does influence the public's perception of crime in the United States.

The production and reproduction of the social reality of crime by the media is potentially hazardous if it often distorts the reality of crime, justice, and punishment. Richard Quinney noted the mass media's influence on the social reality of crime. He states that the media of mass communication are among the most influential agents in the diffusion of the conception of criminals. The mass media is preoccupied with the topic of crime. Consequently, the conceptions of crime and punishment by the public are created, to a certain extent, by the images presented by the mass media. Additionally, the mass media is selective in the presentation of images of crime to the public, choosing to present the most sensational aspects of crime, serving to distort the everyday reality of crime, justice, and punishment.

It is almost impossible to isolate oneself from the reach of the mass media and the information it relays. The mass media industry and its by-products are significant because the messages that get translated through it reach an extraordinarily large number of individuals. Recently, there have been some significant historical changes to the mass media industry that have repercussions in

regard to who controls the production and reproduction of knowledge of crime, justice, and punishment in today's society.

Media Industry Shifts

As recently as the past two decades, there has been a dramatic and telling change in the mass media industry. The number and variety of media choices available to most Americans has changed significantly. In the late 1970s, there were only a few television stations from which to choose, and only 20 percent of the American public had access to paid cable systems comprised of only a dozen more stations. Three national television networks (ABC, NBC, and CBS) dominated prime-time viewing, attracting 90 percent of the viewing audience. Today, television networks not only have to compete with a variety of cable television stations but also with the Internet for their audience.

During the 1970s, typical Americans could choose from between 10 and 15 radio stations. They could also see a movie at a downtown or suburban movie theater. Americans would often read one daily newspaper, although some larger towns and cities had two daily papers, and they could choose from an assortment of magazines that they could buy at a local newsstand or bookstore.

Today, the number of daily newspapers continues to decline while television, radio stations, and magazine outlets continue to expand. While the public has seen significant changes in the amount of production by these media industries, what is more significant is that two decades ago, one could speak of these media industries as separate entities. Now, however, these industries are merging both technologically and economically. Since the 1980s, the mass media industries have become subject to an emerging phenomenon—the global commercial system that is dominated by a small number of extremely powerful corporations based in the United States.

Mass Media Oligopoly

For-profit corporations control almost all of the mass media in the United States. As an aspect of large-scale mergers, fewer and fewer corporations own the majority of the mass communications in the country. Furthermore, these controlling corporations have reached into the international

market. Changes in the political and economic landscape, such as pressure to deregulate and privatize the mass media from the International Monetary Fund, the World Bank, and the U.S. government, have helped fuel the rise of the few global media giants.

As of 2010, five media conglomerates control the majority of the mass media industry in the United States. Listed in descending order by 2009 revenues, these corporations are Walt Disney (\$36.1 billion), News Corporation (\$30.4 billion), Time Warner (\$28.8 billion), Viacom (\$13.6 billion), and CBS (\$13 billion). These media corporations are among the top 500 largest corporations in the world. Listed by top 500 rank in 2009 they are Walt Disney (57), News Corporation (76), Time Warner (82), Viacom (170), and CBS (177).

Although these five large media conglomerates are separate entities, they all are remarkably similar. Currently, they control the majority of the mass media in the United States, and they are reaching into international domains. The United States has not always been a country dominated by the corporatization of the mass media. Expansion of most mass media by corporate domination is the result of an important change in the relation of the government and the media. Recently, Federal Communication Commission (FCC) regulations have been relaxed or in some instances eliminated. One of the areas of the media to be affected by these recent historical changes is the motion picture industry.

Social Constructionist Perspective

It is important to understand the context in which media images are produced. In order to examine this context further, researchers have begun to examine the ownership of media organizations from a social constructionist perspective. This perspective contends that media-generated images are used to create meaning about political and social issues. The lens through which images are focused is not impartial but is influenced by the political agenda set forth by the privileged few who construct these images. The brilliance of this system is to make the process seamless so as to not raise questions.

The oligopolistic structure of the media industry means only five very wealthy and powerful corporations are controlling the majority of American media construction. Ben Bagdikian, a leading

researcher in the field of media studies, compares the few media corporations to the Organization of Petroleum Exporting Countries (OPEC) in that while each corporation is technically competing with the others, they all share a common cause, as does OPEC in its interest in oil. The lack of diversification results in highly duplicative manufactured media content. These repetitive media images account for a lack of representation of multiple viewpoints. This shared ideology and values results in the homogenization of imagery that replicates corporate power interests effortlessly. While the media industry is not the only oligopolistic industry, it is unique because it is in the business of manufacturing images that affect the social and political world. The concern is that a few corporations own the majority of the media and are determining what is socially and politically acceptable for the majority of American consumers to believe.

How then does this process apply to crime and punishment? The media is the platform through which Americans learn about social and political issues. Several scholars have examined the mechanism by which crime, the criminal justice system, and punishment are chosen among other relevant topics of interest by the media. Scholars have outlined a three-step process. First, crime is chosen from among various issues and elevated in status in a process known as “agenda setting.” Second, once selected, the crime issue is narrowed in scope to street crime, and finally, the solution to the



The social constructionist viewpoint posits that the media industry is unique because it manufactures images that affect the public's view of social and political issues.

crime problem is seen as one that can be addressed by investing more money into the criminal justice system. News organizations and governmental leaders help to produce popular images of crime, justice, and punishment by identifying what is socially thought provoking about crime. This argument can also be extended to encompass not just news media but also the entertainment industry. Edward Herman and Noam Chomsky show that in this way, the media in all of its forms serves a particular function, to operate as propaganda for the state's ideological machinery by communicating specific messages to the general public.

Other scholars have added to this discourse on the media and crime. In 1988, Gregg Barak introduced the concept of newsmaking criminology to the field. Newsmaking criminology refers to the process through which criminologists use mass communication to interpret, inform, and alter images of crime, criminals, and victims. Barak's newsmaking criminology primarily focuses on such mass communication as newspapers, magazines, and television. His work serves as a call to arms as he advises criminologists, as the experts on crime, to redefine and realign the focus that is perpetuated in the media. One way that criminologists can counter the perpetuation of the media bias is to alert the public to the realities of crime and the processes that take place within the criminal justice system. However, researchers must first be able to speak to the biases that are being perpetuated by the media to the public. In order to do this, academics must evaluate the media's perspective on crime and punishment and assess whether it reflects reality.

Representation of Crime and Punishment

The representation of crime and punishment is a complex process. J. Ferrell et al. discuss the process by emphasizing that this is more than a simple reporting of criminal events by news organizations. While the population of prisoners in the United States is increasing, the average American is more likely to read about or view the prison experience than they are to have knowledge of it firsthand. The literature addressing the representation of prison by the media has focused on film and television depictions. The general public gets much of its information about the institution of prison from film. In the United States, there has

been little representation of prison on television except for two recent television dramas, *OZ* and *Prison Break*.

Today, prison films purport to depict the difficulties of life behind bars, which offers the audience a fantasy and an escape from the monotony of everyday life. Stock plots, characters, and themes have surrounded the prison film. Prisons in film often portray stereotypical depictions of a young "fish" arriving at an institution only to be given guidance about the prison experience from an older, wiser, seasoned convict. The theme of injustice that is met with rebellion by the main characters is a stock theme depicted in prison films. As the film develops and as the audience grows to know the characters in the film, the heroes who are originally presented as hardened criminals change to soft-hearted characters with whom the audience can sympathize. Additionally, the bulk of prison films present stock characters such as the sadistic warden, malicious correction officers, the young hero, and the unlikely friendships between convicts. The majority of prison films focus on all-male institutions. The rare film that depicts female inmates is typically a low-budget, sexual exploitative production. Prisons in film are depicted as maximum-security institutions that house hardened criminals. However, the majority of prisons in the United States are medium security.

The highly ordered structure of the prison institution in real life allows the prison film to embrace an immediate rhythm and repetition. While for most prisoners daily life is filled with the monotony and boredom associated with waiting for time to pass, prison films do not show this process, as it does not make for an exciting, captivating film. Prison films are often applauded by the public for their "realism." However, research has shown that the penal institutions and daily life of convicts depicted on film are far from realistic. For example, B. Jarvis points out that in 55 episodes of the television show *OZ*, which depicts the maximum-security Oswald State Penitentiary, there are almost 100 deaths. However, the majority of the violence depicted was nonfatal, such as stabbing, mutilation, and self-mutilation. The U.S. Department of Justice reports 8,000–9,000 violent incidents per year along with 50–60 murders throughout



A young woman is arrested for underage drinking. Although female involvement in crime is growing (according to Federal Bureau of Investigation research, arrests for males increased 0.6 percent while arrests for females increased 5.1 percent from 2004 to 2008), news reports show stories involving mainly nonwhite males as suspects and criminals.

all the penitentiaries within the United States. Clearly, the representation of violence in prisons on television is overrepresented compared to the national statistics. Even though most research has concluded that the representation of penal institutions and the daily life of convicts as seen by the media in prison films (and the occasional television program) do not reflect what is known about these institutions as reported in the criminological literature, this visual media does give viewers a glimpse inside an institution often shrouded in mystery. In addition, recent research has just begun to address the public opinion shift toward punitiveness and the intersection between the consumption and interpretation of media depictions of punishment.

Furthermore, research has examined the portrayal of criminals by the media. It has been found that news programs influence audiences about the

picture of crime in the United States. One of the public's primary sources of crime information is local news reports. Crime stories dominate these nightly news programs. Investigations have found that new stories overrepresent violent street crime. They also primarily depict perpetrators of these crimes as nonwhite males. Crime stories are presented as small sound bites where images of individual violent crimes are presented, a prime suspect is named, and information about this prime suspect is presented by a demographic profile that includes the race and/or ethnicity of the suspect. Because of this limited presentation of crime by television news, the public views criminals in a similar vein. Because crime news is framed in this manner, it is not surprising that increases in the viewing of local television news stories have been positively associated with public support for punitive crime policies.

In addition to research on the portrayal of crime and criminal offenders by the media, scholars have also examined the death penalty and the depiction of capital cases in the news and in crime dramas. When executions moved from the public square to behind prison walls, punishment became an abstract concept for the majority of the public. While few television dramas depict the prison institution itself, crime dramas do often focus on executions and the death penalty as a sanction. Interestingly, general support for the death penalty was found among viewers of crime drama programs. Further, research has attempted to explore whether media depiction of executions has a deterrent or brutalizing effect on homicides. Other research has examined the effect of news reporting of executions on public opinion. Historically, media coverage of the death penalty has emphasized questions of constitutionality, morality, deterrence, equity of application, and cost-effectiveness. However, recently, the media has raised questions about the guilt or innocence of offenders. In a study of 3,692 abstracts from the *New York Times* crime stories about the death penalty, researchers found that the reporting of the death penalty issue has grown in importance in recent years, peaking in the year 2000. In addition to the amount of news media coverage of the death penalty issue, the type of media coverage has changed.

Media focus has shifted from pro-death penalty coverage after the constitutional moratorium on the death penalty (1972–76) and into the early 1990s, to an anti-death penalty agenda by 1997. Since 2000, the focus of the media on the death penalty has been on fairness. An increasing number of exonerations of death row inmates, highlighted by such groups as the Innocence Project, have fueled this media representation. The focus of the media on the innocence of death row inmates has the potential to sway current public opinion away from the current pro-death penalty feelings in the United States. The repetition of exonerated and innocent death row inmate media coverage increases this potential.

Scholars have also addressed the extent to which media representations are related to fear of crime and, consequently, public policy decisions about crime and punishment. Media studies have found that homicide stories reported by

newspapers showed the strongest relationship to fear of crime. Further, homicide stories reporting local cases increased fear, while stories about crime outside an individual's local area decreased fear. In effect, newspaper coverage of crime in other places makes people feel significantly better about crime in their own city or town. In addition, researchers have argued that the depiction of prisoners as violent and aggressive criminals both by the entertainment media and by news reporting has had an impact on public perception of punishment. Consequently, these negative images have allowed the public to turn a blind eye to the growing prison population in the United States. The representations of crime and punishment in film, on television, and by the news media have become an important cultural artifact that influences perception and ultimately public policy.

Conclusion

It has become nearly impossible to isolate oneself from the overreaching influence of the mass media industry. Television, film, magazines, newspapers, books, radio, and most recently the Internet surround Americans. Research has shown that the public relies upon the mass media for information. Crime news stories represent more than one-quarter of total news stories. The media is responsible for the production and reproduction of cultural images of crime, justice, and punishment, and the construction of the social reality of crime, which affects these perceptions. The depiction of crime, criminality, and the seriousness of crime are not accurately represented in the media compared to actual crime statistics.

Researchers have started to study the owners of the mass media in the United States, as these corporations are responsible for the construction of the social reality of crime. In recent years, the mass media industry has become an oligopoly. Five large conglomerates own the majority of all media outlets in the United States. This shift in media ownership likely has a major influence on the information that is being relayed to the public. Unless the American public seeks out alternative media outlets, citizens are left without much choice but to accept the information that is presented to them by the mainstream media.

Because the media is the stage through which Americans learn about social and political issues,

the way crime and punishment are presented by the media is extremely important. Some say that the media, including the motion picture industry and television, magazine, and newspaper conglomerates, reproduces the dominant ideology set forth by its corporate owners. In this way, the mass media industry and a few corporate conglomerates decide what is socially acceptable about crime and punishment in the United States.

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See Also: Death Row; Film, Crime in; News Media, Crime in; News Media, Police in; Television, Crime in.

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Nitti, Frank

"The Enforcer," Capone underboss and bodyguard, reputed leader of the Chicago "Outfit" after Al Capone's fall from power, Frank Nitti was born Francesco Raffaele Nitto in Italy. Details of Nitti's early life are sketchy. He was born either in 1881, 1884, or 1886 near Salerno, Sicily, or the town of Angri, near Naples, where his father died when Nitti was 2 years old. He was brought to America in either 1891 or 1893 by his mother, Rosina, and his stepfather, Francesco Dolendo, whom his mother had married shortly after his father's death. Dolendo immigrated to America, finding work and saving enough money to send for Rosina, stepdaughter Giovannina, and young Francesco. Nitti grew up in New York, taking his criminal apprenticeship with the street gangs of the time. In 1907, Nitti headed up a Brooklyn gang of juveniles, the Navy Street Boys, who were reported to have had an 8-year-old mascot by the name of Alphonse Capone. From there, Nitti moved on to become a member of New York's notorious Five Points gang, who, besides Capone, also claimed the likes of Johnny Torrio, Frankie Yale, Charles "Lucky" Luciano, and Meyer Lansky as alumni. As a young man, Nitti worked at several legitimate jobs and eventually became a barber. Unable to get along with his stepfather, Nitti left home and moved to Chicago around the time of World War I, where he also entered a new trade—fencing stolen jewelry. Through this endeavor, he became reacquainted with Torrio, Capone, and other gangsters.

By the 1920s, Nitti was solidly entrenched as a member of the Torrio-Capone organization, which Capone took complete charge of after Torrio's "retirement." Serving in various capacities, reputedly as Capone's bodyguard, counselor, second-in-command, and go-to guy when Capone needed someone to "apply some muscle," Nitti earned the nickname "the Enforcer." Nitti also learned the ins and outs of Capone's operations in vice, prostitution, and bootlegging during this time. Nitti's role in the post-Capone organization (called "the Outfit" in Chicago) is also sometimes murky and often in dispute. According to some, after Capone reported to the federal penitentiary in Atlanta to serve his sentence on income tax evasion charges in 1932, Nitti was the one running the Outfit, having the experience from his

many years working with Capone, and, despite the nickname of the Enforcer, had an aptitude for business and efficiency. Other sources, however, claim that Nitti was no more than a “front man” for the likes of Outfit notables like Paul “the Waiter” Ricca, Anthony “Big Tuna” Accardo, and others, who were the real brains of the organization.

In December 1932, two Chicago detectives entered Nitti’s office on North LaSalle Street. The two detectives shot Nitti, one of them inflicting a minor gunshot wound to himself so as to claim self-defense. The origin of the plot is in dispute, but reportedly the attempt on Nitti’s life was ordered by Chicago Mayor Anton Cermak to try to rid Chicago of the vestiges of the Capone organization and leave room for other gangsters—and allies of Cermak’s—to move in. Nitti was seriously wounded in the attack but eventually recovered. Although unproven, Nitti was later allegedly behind the assassination of Cermak in Miami in retaliation for the attempt on Nitti’s life.

In the mid-1930s, Nitti became involved in a shakedown scheme run by Willie Bioff and George Browne, in which money was extorted from several major Hollywood studios that were forced to pay or have their theaters shut down with “labor problems.” The scheme lasted until 1941, when the brother of a Twentieth Century Fox executive, indicted for income tax evasion, provided information on the Browne/Bioff scheme to authorities in exchange for leniency. Nitti was indicted along with Browne, Bioff, Tony Accardo, and others. On March 19, 1943, employees at a railroad yard watched from a distance as Nitti put a gun to his head and pulled the trigger. According to some reports, Nitti committed suicide rather than face a long prison term on the labor racketeering charges.

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See Also: Bootlegging; Capone, Al; Chicago, Illinois; Illinois; Italian Americans; Organized Crime, History of; Organized Crime, Sociology of; Prohibition.

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Nixon, Richard (Administration of)

In part because of the social turmoil that had come to characterize aspects of the 1960s, Richard Nixon (1913–94) found a receptive audience among U.S. voters when he established law and order as a centerpiece of his campaign for the presidency in 1968. After soliciting advice from Republican lawmakers and party leaders as to the future direction of his campaign and which issues to prioritize, Nixon announced in July 1968 that the country’s top priority should be to address crime and disorder. The message proved popular with the public as rates of violent crime, property crime, and the incidence of drug use increased markedly during the 1960s. The public was also weary of civil unrest such as riots related to the Vietnam War or the civil rights movement. With regard to the latter, Nixon did not equate civil disobedience and pro-civil rights demonstrations to criminal acts, and as a result, he avoided alienating minorities and civil rights leaders.

During the presidential campaign, Americans rated crime as their principal concern. Nixon’s “tough on crime” platform became politically popular, and many other politicians at the national level began to adopt the stance. Specifically, Nixon advocated a multipronged assault on the problem via the introduction of new federal legislation, the creation of a congressional subcommittee focused upon countermeasures against crime, and the allocation of additional funding and manpower

resources at the federal, state, and local levels to bolster law enforcement and prosecution efforts and to facilitate improvements in the penal system and the rehabilitation of incarcerated persons.

Drug Policies

Upon assuming the presidency in 1969, Nixon began implementing his law-and-order platform and fulfilling promises of new anticrime legislation. In an address to Congress in 1969, he identified the increasingly widespread abuse of drugs as not just a threat but a national emergency and a major root cause of the broader problems of crime and social instability. He advocated a formalized and comprehensive antidrug policy to be coordinated at all levels of government. This materialized in the Comprehensive Drug Abuse Prevention and Control Act of 1970. Among other things, the act created classifications of controlled substances and established higher standards for the pharmaceutical industry in terms of monitoring production and sales records of certain types of drugs such as opiates.

A key component element of the latter act, the Controlled Substances Act of 1970, served as the cornerstone of the government's increased efforts at combating the abuse of narcotics. To better facilitate enforcement of the Controlled Substances Act and coordinate interagency efforts, the Nixon administration created the Drug Enforcement Administration in 1973 as an expansion and consolidation of several preexisting agencies such as the Department of Justice's Bureau of Narcotics and Dangerous Drugs. Such federal antinarcotics initiatives were not entirely new, but rather were a continuation and widening of early-20th-century federal regulations designed to combat the abuse of illicit drugs. The Nixon administration is credited for the escalation of governmental efforts to address the distribution and use of illegal narcotics and for coining the term *war on drugs* in 1971. His administration was also the first in U.S. history to invest significant effort in diplomatic cooperation aimed at combating the international trade in illicit drugs. Contemporary federal statutes and law enforcement programs aimed at antinarcotics efforts are largely a continuation of policies established during the Nixon administration.

The federal initiative to combat illegal drugs both during and after the Nixon administra-



Singer Johnny Cash (left) met with President Richard Nixon in 1972 to discuss prison reform. In a 1968 speech, Nixon stated that the U.S. prison system was "a crime university," graduating more than 200,000 hardened criminals a year.

tion has garnered criticism from some circles. In 1972, citing lack of precedent in the U.S. Constitution, the National Commission on Marijuana and Drug Abuse, to the surprise of Congress and the White House, recommended decriminalization of marijuana for personal use and advocated educational and other means of discouraging its use rather than codified punitive measures. The Nixon administration responded by ignoring the recommendations. More broadly, critics argue that the increased effort to criminalize drug use, and the associated increase in financial and logistical commitment to combat drug use, has been ineffectual and has consumed a disproportionate amount of law enforcement, judicial, and penal resources.

Organized Crime

The anticrime initiatives of the Nixon administration were not focused exclusively on narcotics. One of the principal accomplishments of the Nixon presidency was the passage of the Organized Crime Control Act of 1970, a culmination of a long-standing desire to bring organized crime more directly under the scrutiny of federal law. Historically, state and local prosecutors had often struggled to bring organized crime figures to justice for their activities under their jurisdictions, with acquittals, mistrials, and witness tampering being commonplace. The Organized Crime Control Act (OCCA) was designed to better enable

U.S. authorities to bring crime syndicates to justice under federal law and to establish criminal prosecution of organized crime as a high national priority. In keeping with the broader law-and-order strategy of his administration, the ultimate goal of the program in Nixon's words was to "launch an all-out war against organized crime" and eradicate its influence in the United States.

Although the goal of complete eradication was not achieved, significant strides were made by federal law enforcement against organized crime stemming from the new initiative. The OCCA has 13 component elements, each of which addresses specific aspects of investigating or prosecuting organized crime, including rules that allow for the prosecution of witnesses or jurors for noncompliance or failure to be forthcoming with facts. One element of the OCCA was the successful Racketeer Influenced and Corrupt Organizations Act, better known by its acronym, RICO. The OCCA also led to creation of the federal witness protection program. Critics of the OCCA and the RICO have described both as potentially encroaching upon civil liberties, noting that federal agencies were granted more investigative powers in certain instances than they had previously possessed and that the rights of individuals to choose whether to testify as witnesses or to assert Fifth Amendment protection in certain criminal proceedings were restricted. It is somewhat ironic that the Nixon administration, which would have otherwise perhaps been best remembered for its anticrime initiatives, is instead remembered chiefly for the illegal activity related to the Watergate scandal in which the president was implicated, ultimately culminating in his resignation.

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See Also: 1961 to 1980 Primary Documents; Drug Enforcement Administration; Organized Crime, History of; Watergate.

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North Carolina

North Carolina was first inhabited by European settlers in 1584 under a charter given to Walter Raleigh. With successful settlements in the early 1600s, a loose legal structure was established based on English common law. Final judicial authority, however, remained largely in the hands of the colonial governor. The state of North Carolina has had three different constitutions—the first ratified in 1776, a second in 1868, and a third in 1971. Today, North Carolina retains a tri-level court system, with crimes tried in local districts, an intermediate court of appeals with statewide jurisdiction, and a state supreme court. North Carolina's current population exceeds 9 million people and the state's crime rate has seen recent declines, with 2010 levels reported to be the lowest in over two decades.

Crime

In colonial times, the developed towns in the eastern part of the state effectively punished criminal activity, but the criminal justice system was poorly implemented in frontier areas. Juries possessed considerable power in determining verdicts and punishments, with little uniformity across different courts or cases. Drawing heavily from the Declaration of Independence and the English legal tradition, the 1776 North Carolina constitution included traditional protections such as the right to be informed of the accusations, to confront the accusers and witnesses with other testimony, and protections from self-incrimination. The constitution also provided for "unanimous verdict[s] of a jury of good and lawful men, in open court." By 1817, 28 crimes were considered felonies, all of which were punishable by death. These crimes included murder, burglary, arson, highway robbery, sodomy, prison escape, concealing childbirth, and stealing slaves. The constitution of 1868 retained all existing rights but also limited the number of crimes subject to capital punishment and added the right to a writ of

habeas corpus, which was not explicitly enumerated in the 1776 constitution.

Today, Chapter 14 of North Carolina General Statutes contains a full list of crimes, while Chapter 15 codifies criminal procedures. Recent developments include a “habitual felon” classification, which greatly increases sentences for those with three or more prior felony convictions. As its population grew in the 20th century, North Carolinians witnessed a general increase in crime. The highest crime rates in the state, based on crimes per 100,000 people, occurred in the 1990s. At its peak in 1991, 5,888 crimes were reported per 100,000 people, up from 1,179 in 1960. In 1960, the murder rate was 10.6 per 100,000 people, 11.7 in 1970, 10.6 in 1980 and 10.7 in 1990. However, in the past decade the state has seen a significant drop in all crimes, as the number of total crimes per 100,000 dropped to 3,956 in 2010. The murder rate is half that of 1960, at 5.1 murders per 100,000 people in 2010.

According to 2010 North Carolina Department of Corrections data, drug-related crimes represent the most frequent violations, with nearly one out of every five new prisoners (18 percent) and probationers (21 percent) being convicted of drug possession. Statistics also show that 11 percent of newly admitted prisoners were convicted for assault, another 11 percent for larceny, 10 percent for driving while impaired,

and 10 percent for breaking and entering. Concerning those who received a non-drug-related probationary sentence in 2010, 16 percent were convicted of driving while intoxicated (DWI), 13 percent for larceny, and 12 percent for other traffic violations.

As in many states, law enforcement remains a largely local activity. In 1738, an early colonial law established local sheriffs for each county, but private citizen groups often served as the chief law enforcers. The 1776 constitution also included a provision that each county should have a sheriff. Today, sheriffs are popularly elected in each county and have the duties of law enforcement, administering the local jails, and providing courthouse security. North Carolina statutes as provide municipalities the ability to create city police forces and state agencies with statewide law enforcement powers. Statewide organizations include the North Carolina Highway Patrol, the State Bureau of Investigation, and Wildlife Enforcement officers.

Punishment

As with decisions of guilt, punishments during colonial rule were largely under the control of the juries. This led to inconsistent punishments throughout the colony, including crimes going unpunished when juries failed to show up at court. With the constitution of 1776, provisions on punishment were codified, including restrictions on excessive bail, excessive fines, and cruel or unusual punishments. North Carolina continued to practice capital punishment as well as hard labor and imprisonment sentences. The ratification of the North Carolina constitution in 1868 created several changes in criminal law, including a specific provision enumerating that punishment should include reforming the offender.

Historically, the presiding judge in each case possessed wide discretion to dictate punishments for criminal activities. This, too, led to inconsistent and sometimes arbitrary punishments. However, in 1981, the legislature passed a statute setting presumptive prison terms for every crime. The 1994 Structured Sentencing Act created a more formal sentencing rubric. This framework created a detailed presumptive range of punishments based on the class of crime committed and the prior criminal record of the defendant. Punishments may



In 2008, the police department in Leland, North Carolina, began a program to collect expired or unused prescription drugs to remove them from circulation. A press conference was held in 2010 to display the pounds of narcotics collected.

vary from the presumptive range based on mitigating or aggravating factors. Penalties include death, imprisonment, fines, restitution, community service, restraints on liberty, and work programs.

The 1868 constitution provided for the first state penitentiary, known as Central Prison in Raleigh. Originally, inmates worked on state projects or could be leased out to private employers. Many inmates currently work on state projects or through work release, a practice started in 1957 that allows inmates to work in the private sector during the day and return to confinement at night. As of 2010, the state maintains 70 prisons and work farms across the state, with an inmate population of more than 40,000 and nearly 112,000 probationers. In 2010, the vast majority of new prisoners (93 percent) and new probationers (76 percent) were male. A majority of new prisoners and probationers (57 percent) were African American while 35 percent were white.

Concerning the death penalty, by 1663, the colony could legally carry out capital punishment under the Charter of the Carolinas. The 1868 constitution limited the number of crimes punishable by execution to rape, murder, arson, and burglary. In addition, the 1868 constitution prohibited public executions and created first- and second-degree murder categories. In 1909, the North Carolina General Assembly outlawed hanging and limited executions to electrocution. In 1935, the North Carolina General Assembly again changed its prescribed mode of execution from electrocution to lethal gas. Under the current structured sentencing format, first-degree murder is the only crime for which one can receive the death penalty. Since 1984, 43 prisoners have been executed, the most recent occurring in 2006.

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See Also: Capital Punishment; Executions; Felonies; Hanging.

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North Dakota

One of the least populous states, North Dakota lies along the Canadian border. It was admitted to the union in 1889, when the Dakota Territory was divided into North and South Dakota. During the territorial period, many settlements were military forts and important posts in the Indian wars of the 19th century. As the area became more populous, more forts and infantry posts were established to protect railroads and early settlers from Indian attacks. Many settlements in this period had mixed populations of military, white settlers, and Indians. The territory attracted its share of banditry and outlaw activity, particularly targeting railroads and stagecoaches.

In 1883, shortly before statehood, the territorial government appropriated \$50,000 to construct the Bismarck Penitentiary, which would become the North Dakota State Penitentiary. It was built two miles east of Bismarck's business district, along the Northern Pacific Railroad line. The first inmates were admitted in 1885, and by the next year the concern was that the transfer of 60 inmates from territorial jails would overcrowd the prison. In order to offset prison expenses, beginning in 1892, inmates were contracted out as laborers to the private sector, a practice abolished after five years after criticism of the treatment of the prisoners.

Crime

North Dakota's violent crime rate, 225 crimes per 100,000 inhabitants in 2010, is a little more than half of the national average, and is made up mostly of aggravated assaults. However, the crime rate is considerably higher than it used to be. Though the crime rate grew from the 1960s to the 1990s, it still remained very low (below 100) even when the national crime rate was peaking at more than 700. Since 2001, while the national crime rate has gradually declined, the North Dakota crime rate has steeply increased, peaking at 266.4 in 2009.

One notable incident occurred in 1969, when the "Zip to Zap" college spring break event degenerated into the only official riot in North Dakota history to require the intervention of the National Guard. Chuck Stroup, a North Dakota State University student who couldn't afford to travel to Florida for spring break (the traditional spring break destination at the time), proposed a North Dakota spring break celebration called Zip to Zap, to take place in the town of Zap in Mercer County. His advertisement in the student paper led to local news coverage, which was picked up by the Associated Press, and students as far away as Texas—and, ironically, Florida—became interested in attending.

North Dakota students were aware of the transformations in student culture on the coasts and the hippie movement and other elements of youth culture that were the subject of popular entertainment, but none of it had yet made its way to the remote state. Somehow, because of both student interest in participating in those nationwide phenomena and local papers hungry for news, what originated as a spring break party was portrayed and discussed more and more as—in the words of the student paper—"a full program of orgies, brawls, freak-outs, and arrests." None of the organizers were prepared for the scale of the event.

The price of beer was doubled almost as soon as students arrived in town, because demand was so high, and students quickly outnumbered townspeople in Zap by about 10:1. When nighttime temperatures fell, drunken students started a bonfire in the center of town. When they were asked to leave, a drunken riot broke out, destroying one of the two bars in town and the local café. The National Guard arrived at dawn to disperse the hungover students in full view of the

national media that had expected a hippie freak-out and protest.

In the 21st century, the most significant crime problem in North Dakota is the rise of methamphetamine abuse. Although local production has increased (despite laws limiting purchases of precursor drugs), most meth used in North Dakota is produced in Mexico or California by Mexican criminal organizations and arrives in the state either via distribution channels in Minnesota and Washington, or is distributed locally by the Sons of Silence motorcycle gang and their associates. Meth-related crimes include not only possession and distribution but meth-driven violence and assaults and addiction-motivated burglaries and thefts. At least 80 percent of the inmates in the North Dakota women's penitentiary are incarcerated for meth-related crimes, and one in five high school students has reported trying the drug.

Punishment

In 1883, shortly before it was granted statehood, the territorial government appropriated \$50,000 to construct the Bismarck Penitentiary, which became the North Dakota State Penitentiary. It was built two miles east of Bismarck's business district, along the Northern Pacific Railroad line. The first inmates were admitted in 1885, and by the next year, the warden was already expressing his concern that with the transfer of 60 inmates from territorial jails, the prison would soon face overcrowding. He also wrote to the governor of his worries over finding sufficient work for the prisoners to keep them busy and to offset the cost of their care and asked for funding to install electric lighting in the facility because of the safety concerns over the kerosene lamps the prison was then using. Other early requests included a prison library, a prison hospital, and cells for female prisoners. These requests were repeated in following years. In order to offset prison expenses, beginning in 1892, inmates were contracted out as laborers to the private sector, a practice abolished after five years as a result of criticism of the treatment of the prisoners.

The prison library was soon established through charitable donations, and the board of trustees continued to request funds to expand the library and hire a librarian who could double as a teacher of arithmetic and reading. Parole, first mentioned in an 1888 report to the governor, was introduced

in the 1890s in the form of an early release program for prisoners with short sentences, who were released to the custody of an employer (nearly always a local farmer). The number of parole violators who were turned in shortly after harvest—and therefore returned to prison once their labor was no longer necessary—indicates that this form of “parole” was in many cases just another form of convict leasing. The North Dakota Pardon Board assumed duties of parole in 1939, when the system was modernized to resemble parole systems as we know them today.

Although the death penalty was historically used in North Dakota—and, in the Dakota Territory period and early years of statehood, lynchings outnumbered legal executions because of the vigilante justice that developed from residents’ frustrations with the sparse distribution of law enforcement—the last execution in the state was in 1905. The death penalty was abolished in 1975 after 70 years without an execution, and attempts to revive it have failed.

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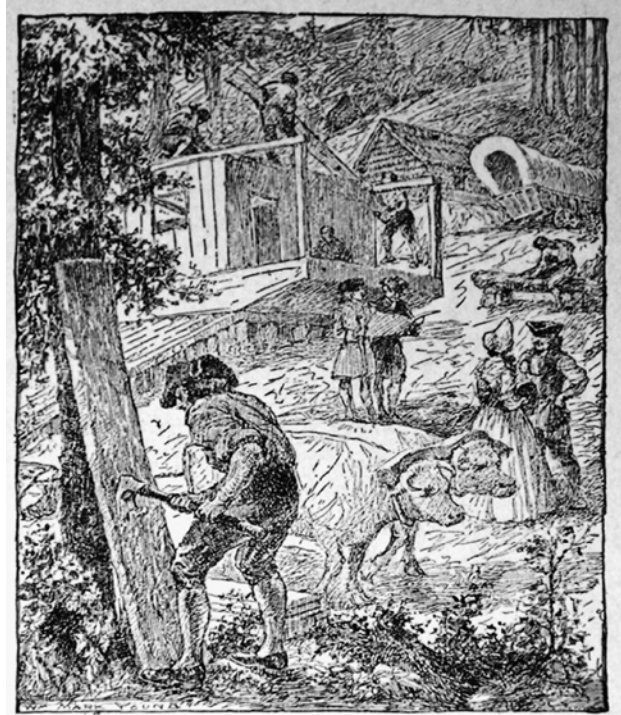
See Also: Convict Lease System; Penitentiaries; South Dakota.

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Northwest Ordinance of 1787

The Northwest Ordinance of July 13, 1787, was the most important achievement of the U.S. Congress under the Articles of Confederation, America’s first attempt at a national government. The law was passed during the same summer that the Constitutional Convention was meet-



PIONEER SETTLERS BUILDING ADVENTURE GALLEY ON THE YOUGHIOGHENY

An image from the 1927 publication, History of the Ordinance of 1787 and the Old Northwest Territory, depicting pioneers who had gone west over the mountains and settled in Pennsylvania on the Youghiogheny River.

ing in Philadelphia to create the Confederation’s successor. The Northwest Ordinance established the machinery of territorial self-government with eventual statehood, letting the territory grow until its population was large enough to be represented along with the original states in the Congress. The ordinance was the blueprint for the western expansion of the new nation. Thirty-one states were admitted into the United States through procedures first laid out in this law. The ordinance also created a “compact” of six articles that protected the civil liberties of its residents. These key civil liberties were later incorporated into the Constitution and in its first 10 amendments, the Bill of Rights.

The young republic was troubled by several political and economic afflictions. It had incurred massive debt during the Revolutionary War. The United States faced the threat of war with the Native Americans in the western lands it had

acquired from Great Britain. British troops still occupied some of those lands and would not evacuate from the area until 1794. Land speculators and squatters were already settling the frontier. There was no orderly process for selling land or establishing legal title. Some political leaders feared that the frontier economy might fall under the control of European powers, given the most convenient trade outlets for the west were in the hands of Britain and Spain. Many states were reluctant to cede their land claims to the national government.

Thomas Jefferson first sought to deal with these problems in a proposal drafted in 1784. It never passed. There followed a three-year struggle to find an accommodation that respected the competing needs of the nation. Some believed that the development of western lands required the establishment of law and order. Others sought to pay off the national debt by selling the vast western lands. The Northwest Ordinance was prompted by this tangled web of lofty principles, economic interests, and pragmatism.

Five new states were created by the Northwest Ordinance in the frontier bounded on the east by the Appalachian Mountains, on the west by the Mississippi River, on the south by the Ohio River, and on the north by the Great Lakes. These states were Indiana, Ohio, Illinois, Michigan, and Wisconsin.

The ordinance protected essential liberties such as religious freedom, the guarantee of the due process of law, such as the right to bail and a trial by jury, a prohibition against cruel or unusual punishment, the protection of contracts (the first such guarantee in any government's charter), and a ban on ex post facto laws. It also established a written guarantee of the writ of habeas corpus and the right to just compensation for government confiscation of private property.

Three features of the law had long-term implications. It sought to protect Native Americans, prompting the first official U.S. Indian policy. It encouraged public education by setting aside land for the construction and funding of public schools, setting a precedent for federal funding of public education and the ideal of public education. The ordinance also declared that no one could be born a slave in the territory.

The antislavery provisions were the most idealistic and problem ridden. Slavery was already well established in some portions of the region. No slaves in the territory were immediately freed. Moreover, the ordinance contained a fugitive slave clause protecting slaveholders whose property escaped into the territory, and there was no enforcement clause to root out existing pockets of slavery. Two to three thousand slaves remained in the area until 1848.

Nonetheless, the ordinance discouraged slave owners from moving into the region, guaranteeing the emergence of free states. Practically, it created a region of free states that would balance the south's clout in Congress. Finally, it was the only act passed by the national government indicating public disapproval of slavery until the Missouri Compromise of 1820.

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See Also: African Americans; Slavery; Slavery, Law of.

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Oakland, California

Founded in 1852 and located in California's East Bay, Oakland is one of several cities incorporated in Alameda County. From the beginning, Oakland has been the dominant city in the area, serving as the county seat since 1873. With a police department established in 1853, crime in early Oakland was not a major issue; though influenced by the leavings of California gold rush lawlessness, Oakland in its formative years was not atypically criminal. Despite a decrease in felony arrests in the latter part of the 19th century, the size of the police force grew. The primary policing concerns during the early decades of Oakland's history were maintaining order and discipline, as evidenced by a majority of arrests for public disturbances such as brawls, drunkenness, and vagrancy. The first drug arrests in Oakland arose in the 1880s with the formation of drugs laws that made the sale or use of opium a misdemeanor. Reflecting the beginnings of a history of racial tensions, many of these arrests targeted Chinese immigrants. The primary mode of punishment for crime in early Oakland was incarceration in county jails or federal prisons, with the majority of petty criminals placed in jails for short sentences. Unlike other emerging cities in California at the time, less emphasis was placed on levying fines as punishment, and incarceration functioned as the main form of punishment.

Oakland in the Twentieth Century

Oakland was designated the terminus station for the transcontinental railroad in 1869, laying the foundation for a transportation hub that would continue to grow into the 20th century. Oakland's economy and population grew rapidly in the first decades of the 20th century. By 1920, the population exceeded 200,000, more than 90 percent of whom were white. Notions of nativism were amplified by the simultaneous growth of this white middle class and the influx of southern European and Irish Catholic immigrants with socialist politics. As a result, racial and ethnic tensions permeated debates over the role of police, Prohibition enforcement, court appointments, and other crime issues. Additionally, Oakland became one of the main centers for African American settlement in California. In conjunction with the rise in nativist politics, Oakland saw the rise of an active and large branch of the Ku Klux Klan with elected members across the city government in the 1920s.

Policing concerns during the Great Depression were impacted by domestic migration and labor unrest. Like many other California cities, Oakland saw increased domestic migration during the Great Depression as white migrant workers were displaced from their farms by droughts and new farming mechanization. As was the case across California, migrants were persecuted by residents who saw them as economic competition



Members of the Black Panther Party marked their 40th anniversary in Oakland, California, in 2006. The organization was founded in Oakland by Huey Newton and Bobby Seale in 1966, who believed that racism was rampant in the United States. The group sought to empower African Americans, fight police brutality, and organize urban activists.

and cultural threats. Additionally, labor unrest in the 1930s was a primary concern for police and the courts. This concern was epitomized in May 1934 when local maritime workers went on an 83-day strike at city docks, and Oakland police opened fire on striking union members.

The ethnic makeup of Oakland shifted significantly during World War II, as migrant workers from across the country traveled to the East Bay to find work in the city's booming defense industry. A significant number of these migrants were African American. During the World War II era, the African American population in Oakland increased more than 150 percent. This arrival of African American citizens transformed the racial makeup of Oakland as African Americans outnumbered Asians as the largest minority group. Housing became scarce and placed heavy strain

on Oakland police, who struggled to maintain order and discipline in a city plagued with homeless migrants. Several landlords were prosecuted during the housing crisis for profiteering and health violations.

The arrival of African American migrants in the Bay Area for defense industry employment in the 1940s evolved over the following decades and fed into the Black Power generation. The Black Panthers transformed the city of Oakland, not just in terms of demographics, but in education, labor, politics, and policing and prisons. The Black Panthers' sudden growth in the 1960s was based on the group's ability to address the concerns of black migrants, with police brutality topping the list. Famed for their armed patrols in which members followed police on patrol to document any violation of rights while openly carrying guns, the

Panthers challenged an increasingly discriminatory and violent police force, as well as prosecutorial bias and unjust incarcerations.

Through the end of the 20th century, high homicide rates along with gang violence and activity became and remain a primary concern for law enforcement and the court system. Oakland gangs differ from those in other major California cities because they are less formal and instead function as loose-knit neighborhood associations. Latino and African American gangs have a significant presence, but given the lack of formal structure, many of these affiliations and corresponding crimes are not classified as gang-related under state law. Regardless, the African American neighborhood gang associations in Oakland are highly affiliated with the drug trade and drug violence. The majority of drug trade is neighborhood based and occurs throughout the day in the open air on street corners.

Oakland began operating drug courts in the 1990s in an attempt to reduce the strain placed on the court system by drug-related offenses. Oakland drug courts focus on reviving the generation of people of color who have been disproportionately affected by failed drug policies. During the 1990s, police emphasis included not only the drug trade but also “soft crimes” of public disturbances in order to promote a more positive image of the Oakland community, which was quickly becoming known for its drug crimes and high homicide rates.

Currently, Oakland is rated the fifth most dangerous city in America. From 2000 to 2005, Oakland’s total homicides accounted for more than 70 percent of the total homicides in Alameda County. The victims of these homicides were primarily African American or Hispanic minorities between the ages of 18 and 34. Given the informal structure of Oakland gang activity, gang affiliations among victims are difficult to track. Similar statistics exist for those convicted of crimes. Educational outreach programs informing young minorities of the impacts of crime and the drug trade are being implemented across the East Bay in an attempt to mitigate these high rates of crime and victimization.

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See Also: Black Panthers; California; Federal Prisons; Ku Klux Klan; Strikes.

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Obama, Barack (Administration of)

Barack Obama became the 44th president of the United States on January 20, 2009. During his first two years in office, Obama signed several significant pieces of criminal justice legislation, including an expansion of existing hate crimes legislation and the Fair Sentencing Act.

His administration also released a statement in 2009 indicating that federal authorities would not raid medical marijuana dispensaries, a very different stance than the two previous presidential administrations had taken. Still, other domestic issues, such as the economy and healthcare, took the front seat during the first two years of his administration.

While Obama served in the Illinois State Senate (1997–2004), he successfully passed legislation requiring police officers to record the race of automobile drivers they detained in order to monitor racial profiling. He also advocated legislation that required the videotaping of interrogations of suspects in capital cases; Illinois was the first state in the United States to do so. A highlight of his Senate career was his legislation that called for the state to place a moratorium on executions in order to study problems with the death penalty system.

Presidential Election Politics

Obama defeated Senator John McCain (R-AZ) in the general election. During the presidential campaign, crime was not a central issue, although Republican strategists attempted to paint Obama as soft on crime. They released an ad attacking Obama for his opposition to a bill while in the Illinois State Senate that would have extended the death penalty to gang-related murders. The ad was quickly criticized for its drastic misrepresentation of the bill and Obama's position, squelching any momentum for making crime a central campaign issue. A crime-related issue that drew attention during the campaign was illegal immigration, on which the candidates had differing positions. Obama's position included a pathway toward citizenship for immigrants who entered the United States illegally. McCain opposed this approach (even though he previously sponsored such legislation in the U.S. Senate) and emphasized a stricter anti-immigration stance that included more law enforcement and strengthening of the borders.

Guantanamo Bay

One of the first policies that President Obama focused on was the closing of detention facilities at Guantanamo Bay naval base in Cuba. Established under the Bush administration in 2002 for the purpose of holding detainees from the wars in Afghanistan and Iraq, the facilities had been criticized for not providing ordinary protections to foreign prisoners established by the Geneva Conventions. Obama signed an executive order on January 22, 2009, that ordered the closure of the detention facilities "as soon as practicable, and no later than one year from the date of this order." The executive order also specified that any individuals would be returned to their home country if not transferred elsewhere before the closure. Congress, however, has so far prevented the transfer of all of the detainees through amendments to defense spending bills. As of February 2011, 172 detainees remained at Guantanamo.

Hate Crimes Prevention Act

On October 28, 2009, President Obama signed into law the Matthew Shepherd and James Byrd, Jr., Hate Crimes Prevention Act, an expansion of the existing hate crimes legislation to include acts of violence motivated by a victim's sexual

orientation, gender, disability, or gender identity. The existing legislation, as part of the 1968 Civil Rights Act, had only considered hate crimes to be those motivated by a victim's religion, race, color, or national origin. The law also allows judges to impose harsher penalties for hate crimes and permits the Justice Department to help local police departments investigate alleged hate crimes. The bill is named for Matthew Shepherd, a 21-year-old gay man who was brutally beaten and murdered by two men in Wyoming in 1998; Shepherd's sexual orientation was the motive for the murder. The other named individual in the bill, James Byrd, Jr., was a 49-year-old African American man who was beaten and murdered by three white men in Jasper, Texas. The murderers chained and dragged Byrd behind a pickup truck for several miles, dumping his dead body in front of an African American cemetery.

Drug Laws

Obama made several remarks during the presidential campaign that the sentencing disparities between possession of crack and powder cocaine should be eliminated and that Congress should lift the ban on federal funding for needle exchange programs; both were eventually changed. In December 2009, Obama signed into law an end to the long-standing ban on federal funding for



President Barack Obama greets James Byrd, Jr.'s sisters and Matthew Shepard's mother at a reception commemorating the enactment of the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act in 2009.

needle exchange programs. Eight months later, President Obama signed into law the Fair Sentencing Act, which reduced the disparity in sentencing between crack and powder cocaine from a 100:1 to an 18:1 ratio. The law also eliminated the mandatory five-year sentence for simple possession of crack cocaine. The 100:1 disparity, established by the 1986 Anti-Drug Abuse Act, meant that somebody had to possess 500 grams of powder cocaine to trigger the same mandatory five-year prison sentence that one would get for possession of five grams of crack cocaine. The initial disparity reflected largely unscientific notions that crack cocaine was more harmful and violence-provoking than powder cocaine. The policy has also been criticized for being racially biased and contributing to the disproportionate imprisonment of African Americans.

Obama has also relaxed the use of federal authorities to raid medical marijuana dispensaries. Since 1996, 15 states and the District of Columbia have approved the use of marijuana for medicinal purposes. During the Clinton and Bush administrations, federal authorities frequently raided marijuana dispensaries, citing violations of federal drug laws. The Obama administration has appeared to take a different approach in this area, and made a public statement in October 2009 that federal resources would not be used to prosecute patients or those running marijuana dispensaries that were complying with state laws.

There are several other crime- and punishment-related policies that Obama has mentioned that he would like to focus on in the future, especially concerning prisoner re-entry. He also wants to revive former President Clinton's Community Oriented Policing Services (COPS) program in order to fund thousands of new police officers. Although Obama's primary focus during his first two years in office has not been crime related, he still believes there are problems with the criminal justice system that need to be addressed.

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See Also: Bush, George W. (Administration of); Clinton, William (Administration of); Drug Abuse and Addiction, Contemporary; Sentencing.

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Obscenity

Obscenity refers to expressions, actions, or ideas, particularly of a sexual nature, that cross the boundary between the acceptable and the unacceptable in a community. The idea of obscenity is associated with the ideas of sacrilege, taboo, blasphemy, or heresy in matters of religious faith or political beliefs; each challenges norms or "morality" in a severe or fundamental way. By definition, that which by consensus is obscene does not need to be tolerated by a community, because that which is obscene is whatever a community does not believe it can tolerate. As such, American law has long assumed that obscenity falls outside the protections guaranteed to individuals by the U.S. Constitution, such as the rights of free speech and free press. Obscenity is often contrasted with indecency, a less serious category of expression that is offensive to some observers but has been given greater protection.

The central problem in the concept of obscenity is that its definition depends on the individual, or, as Supreme Court Justice Potter Stewart famously defined it, "I know it when I see it." Because individuals always live within a social setting, the nature of obscene material or actions varies widely across communities, cultures, and over time. Not all societies have labeled depictions of sexual activity as obscene. Written and artistic depictions of human sexuality can be found in Greek, Roman, and ancient Eastern cultures. Anthropologists have noted cultures in which sex in public places has been acceptable. Thus, even after obscenity emerged as a significant "social problem" in the United States, the large and diverse country displayed significant disagreement about obscenity.

Early Obscenity Laws

Though the regulation of obscenity is sometimes criticized as “puritanical”—referring to the strict moral standards of the early settlers of colonial New England, the Puritans—through the first half of the 19th century, obscenity prosecutions were relatively rare, with one court finding just three per year. After the Civil War, however, obscenity prosecutions surged. Within the moral climate of the Victorian era and the fear of a breakdown in the social order, crusader Anthony Comstock, leader of the New York Society for the Suppression of Vice and long-time U.S. Postal Inspector, drove the passage of the Comstock Law of 1873. This amendment to the 1865 Postal Act criminalized mailing or receiving “obscene,” “lewd,” or “lascivious” publications, which in Comstock’s vision included not only pornographic texts and pictures but also materials referring to contraceptives and abortion.



Mae West, photographed in 1933 riding in a carriage, was arrested in 1927 on a morals charge for the content of her Broadway play *Sex*. West used the publicity and her sex symbol image to her advantage throughout her career.

Though Comstock objected to nudity in art and even in medical anatomy books, many materials declared “obscene” in the 19th century qualify as literature today. The prevailing definition given to obscenity by courts drew on an 1868 English case, *Regina v. Hicklin*, which deemed materials obscene based on whether they displayed a “tendency” to “deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.” By this standard, only select words or passages needed to be obscene, or for the work to thematically address matters of sexuality, for the work as a whole to be considered obscene.

Under this legal regime, antipornography groups and prosecutors focused on the protection of youth from corruption. In the late 19th century and first half of the 20th century, works that were banned or subjected to obscenity trials included Henry Miller’s *Tropic of Cancer*, Theodore Dreiser’s *An American Tragedy*, and D. H. Lawrence’s *Lady Chatterley’s Lover*. Other books and magazines were forced off the market under pressure from antiobscenity activists, who also urged police raiding and otherwise suppressing works and merchants who sold those works. Among the most notable, Victoria Woodhull, a prominent suffragette, was arrested in 1872 (along with her husband and sister) at Comstock’s instigation for publishing a newspaper advocating free love, sex education, and licensed prostitution. In 1927, the famed actress and sex symbol, Mae West, was tried and imprisoned for 10 days for the raunchy dialogue and subject matter of the Broadway play *Sex*, which she wrote, directed, and produced.

Obscenity often attracts readers precisely because it challenges social conventions and norms, piquing the already strong interest in matters of sexuality. One side effect of efforts to condemn obscenity has been to provide publicity to the work being banned. For example, criticism by Comstock and others of *September Morn*, an unremarkable 1912 painting by French artist Paul Chabas featuring a nude woman with a backdrop of a lake and mountains, generated enough of a scandal to drive the sale of reproductions for years. Over the 20th century, artists in many media have become more proficient in using shock value and the specter of oppression to generate attention and sympathy.

Censorship in the Twentieth Century

What is “shocking” and obscene in one era has tended to become commonplace and absorbed into the mainstream, and with that process the American understanding of obscenity changed greatly over the course of the 20th century. Because obscenity law depends on society’s sense of the tolerable limits, changes in opinion have resulted in changes in the law. The significant departure from the Victorian era of obscenity regulation can be seen in the response to James Joyce’s monumental *Ulysses*. The classic novel was banned in the United States in 1921, following its partial serialization in a magazine. The New York Society for the Suppression of Vice objected to the book following publication of a passage concerning masturbation. However, the book was judged not obscene in 1933 by a federal district court judge in New York City who, two years earlier, had protected works containing information on birth control and marital sexual relations. His decision on *Ulysses* was upheld on appeal to the Second Circuit Court of Appeals, at the time the most important appellate court below the Supreme Court.

In 1957, the U.S. Supreme Court rejected the *Hicklin* standard and in *Roth v. United States* moved to consider the view of the “average person,” rather than the most vulnerable, and the work “taken as a whole.” In stating that obscenity should be judged by “contemporary community standards,” the court recognized that judgments about obscene material depend on values that change with time. Though the Supreme Court under Earl Warren was eager to adapt the law to changing times, the primary shift was the dramatic changes to American society that were becoming clear by 1960, with increasing openness to discussions of sexuality. Though the 1950s are idealistically portrayed with the purity of the American nuclear family and growing suburbia, efforts to restrict as obscenity works such as Allen Ginsberg’s *Howl and Other Poems* suggest the rising current of challenge to traditional norms. New forms of media also contributed to changing social values, with the national distribution of Hollywood movies in particular disseminating new ideas about romance and youthful rebellion.

Still, efforts to restrict literature of a sexual nature continued. The English novel, *Memoirs of*

a Woman of Pleasure by John Cleland, first published in 1748 and circulated thereafter with the better known title *Fanny Hill*, had been banned in the United States since 1821. Using the *Roth* standard, the Supreme Court decided that the erotic work—telling the story of a girl who falls into prostitution—was not “utterly without redeeming social value,” a heightened standard that made prosecution difficult. *Fanny Hill*, though focused on explicit depictions of sex and often accompanied in various editions by explicit illustrations, had begun receiving attention for its historic and literary value. In the wake of this decision, courts began to hear expert witness testimony from famous authors and scholars speaking to the artistic value of questioned works.

It has been insufficient for proponents of obscenity regulations to assert a mere desire for moral standards. A common strain in Victorian-era obscenity regulation had been to emphasize the capacity of such material to corrupt people by encouraging sexual activity in general and “improper” forms of sex in particular. The changing views about divorce, infidelity, and homosexuality—the latter often dated to the 1969 Stonewall riots in New York—that were reflected in the decisions of the Warren Court made it difficult to



Paul Émile Chabas's painting *September Morn* caused a scandal when it was first displayed in the window of a Chicago art gallery in 1912. The mayor charged the gallery owner with indecency, leading to a demand for reproductions.

limit material that advocated openness in matters of sex and relationships.

An alternative approach to obscenity in the second half of the 20th century was to emphasize the harms of “hard-core” pornography to the observer, the participants, or communities in which it was distributed. In the 1969 decision of *Stanley v. Georgia*, the Supreme Court ruled that a man could not be prosecuted for possessing obscene material in his own home, suggesting that obscenity would be protected by an individual’s right to privacy. Nevertheless, the conservative court under Chief Justice Warren Burger retained room for the community’s interest in its rulings. In *Miller v. California* (1973), the court rejected the “utterly without redeeming social value” standard and instead asked whether the work as a whole “lacks serious literary, artistic, political, or scientific value.” Emphasizing the depiction or description of sexual conduct in a “patently offensive” way that “appeals to the prurient interest,” Burger, joined by other new appointees of President Richard Nixon, tried to exclude “hard-core” pornography from constitutional protection.

Widespread Availability of Obscene Materials

Even though government regulation remains, since 1970, the social backdrop for the legal battles has featured increasing availability and diversity of the market for obscenity of all stripes. Commercial purveyors of pornographic material commonly have been at the cutting edge of new technologies, from home video recording and mail-order video to Internet-based dissemination of photographs, streaming video, and online chat. As the Supreme Court considered, in later years, whether the mythical “average person” or some form of “reasonable person” should be the judge of obscenity, the challenge is that any such person is likely to have had increasing awareness of the significant market for pornography, making either formulation a very permissive test.

Seeking to ground obscenity regulations on the harm caused, rather than the visual content itself, in the 1980s, some feminists allied with social conservatives in a campaign against pornography on the basis that it degraded women and encouraged sex crimes. They were successful in getting ordinances passed in a small number of U.S. cities, but these were struck down in court.

The regulation of child pornography has seemed on stronger ground, given the overwhelming social consensus for classifying it as obscenity and the direct harm to children involved in producing it. In 1982, the Supreme Court ruled that pornographic materials made using children constitute obscenity. However, with the ability of computers to generate realistic, “virtual” children, and the literary potential for such “actors” to be portrayed in sexual situations—such as in Vladimir Nabokov’s classic, *Lolita*—the “direct harm” rationale for regulating such obscene material had been undercut. In 2002, the court ruled unconstitutional the section of the federal Child Pornography Prevention Act of 1996 banning “virtual” child pornography on the basis that the law was too broad in scope.

Recent information technologies, like printing presses and film before it, have markedly shaped the ambition of limiting obscenity. Even if technologically feasible to control it, congressional efforts to prohibit dissemination of obscene material over the Internet have proven unsuccessful. Congress first attempted to do so in the 1990s, first with the Communications Decency Act of 1996 and then, in 1998, the Child Online Protection Act. The Supreme Court ultimately rejected both attempts to restrict sexually obscene and indecent material from the Internet, even though the latter act was carefully tailored to follow the *Miller* guidelines. Even without the court’s protections, the Internet has freed from the scrutiny of communities and neighbors sexually oriented materials about a wide range of sexual practices.

Yet, the idea that some forms of expression are “obscene” in society remains, at least in the judgments of some individuals or communities. Even if virtual sexual activity—including “sexting” and the distribution of obscene photos via Twitter—is difficult to regulate, social norms may shame or punish those whose activity becomes public. And where sexual activity moves from the virtual to the physical, such as in nude dancing, communities have continued to use their regulatory powers to limit or shun the activity.

Further, even “indecent” communications and activity can generate intense social and governmental responses when it is delivered in ways that make it difficult for unwilling audiences to avoid it. The Federal Communications Commission retains

authority over broadcasters that use offensive language (famously, certain “dirty words”) on the radio, and the brief, partial nudity of performer Janet Jackson at the 2004 Super Bowl made clear that there remains an active debate about the acceptability of public nudity in the United States.

In comparative perspective, the United States has a peculiar relationship with obscenity. To much of the world, the United States is among the most permissive societies for producing and consuming both sexualized and genuinely pornographic material. Yet, to critics, especially European audiences, the United States is still relatively puritanical about nudity and sexual content in mainstream television. Still, obscenity depends on culture rather than consistency: Europe’s relative tolerance of sexuality in the broadcast media does not extend as generously to the depictions of violence in American television.

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See Also: 1921 to 1940 Primary Documents; 1941 to 1960 Primary Documents; Comstock Law; Obscenity Laws; Pornography.

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was no longer protected by the First Amendment to the Constitution of the United States. Freedom of speech and press are guaranteed by the First Amendment. The words of the amendment are simple and seemingly absolute. The amendment states, in pertinent part, “Congress shall make no law ... abridging the freedom of speech, or of the press.” Obscenity litigation exemplifies the difficulties the court has encountered in giving meaning to these words. These words have been interpreted by the Supreme Court as neither simple nor absolute. The general standard for obscenity was established in 1973. However, the court continues to deal with this issue as the views of society have changed and new forms of disseminating information have been created; in 1973, personal computers, the Internet, cell phones, cable television, and all that goes with them did not exist.

Roth v. United States

The Supreme Court did not squarely address the issue of obscenity until 1957, in the case *Roth v. United States*. Roth had been convicted of mailing advertisements for a book many considered obscene. He challenged his conviction, stating that it violated the First Amendment. The Supreme Court was faced with the need to develop a legal standard to determine obscenity. Once a work was determined to be obscene, it no longer was protected by the First Amendment. The legal standard developed in *Roth v. United States* for determining whether a specific item is obscene is “whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to the prurient interest.” The *Roth* test of obscenity is based on obscenity’s presumed effect on an individual’s psychological state. Implicit in this presumption of changes in a person’s psychological state because of exposure to obscene materials is a further assumption that this psychological effect will result in deleterious behavioral changes such as antisocial conduct, primarily sexual.

The *Roth* standard received harsh criticism in the dissenting opinions from the majority opinion in *Roth*. One criticism was that the court failed to articulate the governmental interest in the regulation or proscription of obscenity, making it inconsistent with the main body of First Amendment jurisprudence. Justice William J. Douglas’s

Obscenity Laws

The U.S. Supreme Court had great difficulty reaching a consensus on the legal standard for what is or is not obscene. This was the critical issue, as once it was determined that something was obscene, it

dissenting opinion cited the difficulty inherent in defining obscenity by means of focusing on the subjective responses assumedly evoked by exposure to obscene materials, rather than focusing on the prohibited conduct precipitated by such exposure. In essence, Justice Douglas argued, the standards punished thoughts rather than antisocial conduct, and that surely freedom of thought is protected by the First Amendment.

The legal standard for obscenity enunciated in *Roth v. United States* did not end the controversy surrounding the legal definition of obscenity. Rather than leading to a convergence of views and the development of a uniform standard that the lower courts could follow, the views of the justices became more divergent. Review by the Supreme Court of obscenity cases increased dramatically. Given this divergence of opinion, the court began the tedious and confusing practice of deciding obscenity cases not on the basis of a uniform standard but rather by each justice applying his individual standard to the allegedly obscene materials.

Miller v. California

In 1973, a majority of the court was able to agree on a new legal test for obscenity, one that was intended to end this approach. In *Miller v. California*, the Supreme Court set the following as the new obscenity standard: (1) whether the average person applying contemporary community standards would find the work, taken as a whole, appeals to the prurient interest; (2) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (3) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Although longer and arguably more protective of free speech, this test is open to some of the same criticisms leveled at the standard enunciated in *Roth v. United States*. Unlike the analysis presented in *Roth*, *Miller v. California* addressed the issue of what important state interests would be supported by the proscription of pornography. Specifically, the court identified the state's interests in protecting the quality of life of its citizens, the "tone of commerce in the great city centers, and possibly, the public safety itself." As support for this last important state interest, the court cited the Hill-

Link Minority Report of the 1970 Commission on Obscenity and Pornography that concluded that there was at least arguable support for the contention that there is a causal link between pornography and criminal behavior. The 1970 Report of the Commission on Obscenity and Pornography stated that there was insufficient evidence to conclude that exposure to pornography was causally related to antisocial or criminal behavior.

The three justices who dissented in *Miller v. California*, Justices William Brennan, Potter Stewart, and Thurgood Marshall, criticized the court for upholding legislation, the true purpose of which is the regulation of thought and morality. Their second major criticism focused on the court's failure to sufficiently scrutinize the state's purported interests in support of legislation that prohibits the publication, distribution, or viewing of obscene materials. Citing one of the court's recent opinions, the dissenters noted that in that case the court had ruled that the idea that there is a legitimate state interest in controlling the moral content of the thoughts of American citizens was inconsistent with the philosophy of the First Amendment. The dissenters concluded that instead of encroaching upon rights protected by the First Amendment, the state should use the deterrents ordinarily applied to prevent crime, education and punishment for the violation of the law. The dissent identified two interests that it deemed to be sufficiently compelling to support a state's right to regulate pornographic materials. These were the prevention of the distribution of pornographic materials to juveniles, and the prevention of the exposure of such materials to consenting adults.

New York v. Ferber

With regard to pornography and juveniles, the court, in *New York v. Ferber* (1982), held that states have a self-evident compelling interest in "safeguarding the physical and psychological well-being of a minor." The breadth and importance of this interest is not only a sufficient basis for states to make the distribution of pornography to minors illegal, it is recognized as such a sufficiently compelling interest that states can criminalize the production, distribution, and possession of photographs and films depicting sexual activity by children. Such material is not subject to the obscenity standard the court announced



Obscenity has proliferated almost uncontrollably on the Internet. The definition of whether a work was "obscene" was determined in Roth v. United States based on the work's presumed effect on the viewer's psychological state and the assumption that these psychological changes will result in antisocial and possibly sexual behavior. Without the protection of the First Amendment of the U.S. Constitution, the government can criminalize the production, distribution, and possession of materials ruled to be obscene.

in *Miller v. California*. The fact that children are depicted engaged in sexual activity is sufficient for a state to criminalize the production, distribution, and possession of such photographs and films.

The court provided several bases for the latitude given states in prohibiting and punishing anyone involved in the production, distribution, and possession of photographs and films depicting sexual activity by children. First, photographs and films of sexual activity by children necessarily require the sexual exploitation and abuse of those children. In addition, they reasoned that banning such materials was justified as a means of countering the powerful economic motives that fuel the child pornography industry. The justices commented that the purveyors of this form of entertainment could use models that appeared younger than their actual ages, a practice that would allow the conveyance of the same intended effect.

Thus, *New York v. Ferber* created a dual standard for the regulation of specific sexually explicit materials, one for materials aimed at and using adults, and another for materials aimed at or using children. The latter category of materials could be proscribed, without violating the Constitution, without the prerequisite that these materials first be proven to meet the constitutional standard for obscenity established by the court in *Miller v. California* and *New York v. Ferber*. These cases continue to be the constitutional standards for obscenity and pornography using or distributed to minors.

The development of new technologies has raised additional issues. For example, computer animation makes it possible to make very realistic animations of children having sex with adults and each other. *Ferber* makes it clear that images of actual children engaged in any sexual activity can

be prohibited in accord with the Constitution. In fact, this standard has been adopted into federal law. Since the technology did not exist in 1982, *Ferber* did not address the issue of producing, distributing, and possessing lifelike computer-generated animation of children engaged in sexual activity. Congress passed a law criminalizing this, stating that this encouraged pedophiles and thus threatened children. The Supreme Court ruled that this law was unconstitutional. The essential difference between computer-generated animation, regardless of its lifelike qualities, and photographs and videos of actual children engaged in sexual activity is that fact that actual children are involved. Without this, computer-generated, animated child pornography must be judged by the standards announced by the court in *Miller v. California*. If they were found to be obscene, these materials would fall outside of the protection of the First Amendment, and their production and distribution could be prohibited.

The *Miller* standard, at least in part, is based on the assumption that exposure to sexually explicit material results in violent behavior, predominantly involving sex. If true, this provides a rationale for upholding the constitutionality of laws restricting sexually explicit material. The First Amendment has been consistently interpreted to exclude from its protection speech that creates a “clear and present danger,” as held in the 1919 Supreme Court decision in *Schenck v. United States*, and speech “directed to inciting or producing imminent lawless action,” as held in the 1969 *Brandenburg v. Ohio* Supreme Court decision.

A substantial body of research exists that has examined whether exposure to pornography leads to aggressive or violent behavior. This research has examined the effects of exposure to both nonviolent and violent pornography. The findings from this research arguably provide support for those who wish to see pornography banned and for those who contend that it should receive full First Amendment protection. The presence of violence in some pornography confounds the effects of exposure to sexually explicit material. Some research, such as that done by Edward Donnerstein, suggests that it is the combination of violence and sexually explicit material that results in increased aggressiveness. In an experiment comparing the aggressiveness of

groups exposed to either violent sexually explicit material, nonviolent sexually explicit material, or violent material with no explicit sexual content, violence was found to be a potent variable. Violent material with no explicit sexual content resulted in slightly less aggression than when violence was combined with sexually explicit material. The least aggressive group was the one that was exposed to sexually explicit material that contained no violence.

In sum, after struggling for decades, the Supreme Court has defined obscenity using a standard that excludes sexually explicit material that has serious literary, artistic, political, or scientific value. Material that is determined to be obscene is not protected by the First Amendment. Sexually explicit films and photographs that show minors involved in sexual activity are not protected by the First Amendment and do not have to be found to meet the standards for obscenity. With no constitutional protection, the government can criminalize the production, distribution, and possession of such materials. The obscenity standard developed by the court assumes that exposure to sexually explicit material leads to deleterious effects, particularly sexual violence. While research has yet to provide a definitive answer, there is good evidence that violent material, with or without sexually explicit components, plays a major role in aggressive behavior.

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See Also: 1921 to 1940 Primary Documents; 1941 to 1960 Primary Documents; *Brandenburg v. Ohio*; Computer Crime; Obscenity; *Roth v. United States*; *Schenck v. United States*; Sex Offenders.

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Ohio

Formerly part of the Northwest Territory, Ohio has been a state since 1803 and shares aspects of many of the regions surrounding it: the northeast, the south, and the midwest. It is one of the most densely populated states, with seven metropolitan areas with populations of at least 500,000.

Crime

Akron, Ohio, was one of the first midwestern cities to attract the Mafia. Before the spread of organized crime during Prohibition, Don Rosario Borgio had headquartered his crime family in Akron's north side in the early 1900s. His general goods store was both a legitimate business and a front for the criminal operations he conducted from the store's two back rooms, and the property was protected by alarms on both sets of stairs, spiked pits beneath the stairs, solid steel doors, and an arsenal of weapons. His gambling and prostitution revenues gave him ample money to bribe politicians, but he had difficulty getting any of the Akron police force to take a bribe, and raids on his operations began in 1918. He brazenly declared war on the police, offering a \$250 bounty for any police officer. Several were killed in the winter of 1918, and the head of the New York City Police Department's "Italian Squad" (as the anti-Mafia unit was called at the time) was called upon for assistance. A case was built against Borgio fairly quickly, and he was sentenced to 20 years in prison—but was secretly paroled in 1934, at which time he returned to Italy.

Ohio has been home to a number of high-profile or otherwise notable murders, including Anna Marie Hahn, a German-born serial killer. Claiming to have been sent to America by her scandalized parents after her affair with a doctor, Hahn began poisoning elderly men and women in Cincinnati's German community in 1933. All in all, she had five known victims over the next four years. Her motive was her gambling habit: She would befriend an elderly person in the hope of being named in his/her will, or in order to borrow money, and then kill him in order to collect the inheritance or avoid paying the debt.

Another Ohio serial killer was Donald Harvey, who claims to have killed 73 people between 1970 and 1987 and is known to have killed at least 26.

An orderly working in several Cincinnati-area hospitals, Harvey claims his first killings were to put suffering patients out of their misery but has admitted anger at victims, and a sadistic pleasure from the act of killing. His killings transpired over at least 17 years, and his methods included multiple poisons, suffocation, turning off or sabotaging medical equipment, and overdoses of morphine. Because his methods varied, it was difficult for the pattern of deaths to be detected. He was eventually sentenced to three consecutive life sentences.

Alton Coleman, at the time of his execution in 2002, was the first and only person to receive the death sentence in three states: Illinois, Indiana, and Ohio (twice). A middle-school dropout, at the age of 28 he and his borderline mentally retarded 21-year-old girlfriend, Debra Brown, killed multiple people in six states, including numerous children. The U.S. attorney chose Ohio as the first state to try the killers, because it was believed the death sentence would be achieved fastest there. Coleman was eventually given two death sentences and was executed in 2002. Brown's sentence was eventually commuted on the grounds of her low intelligence.

Wilford Berry, Jr., was convicted in 1999 for the 1989 aggravated murder of his boss, the owner of a Cleveland bakery. Berry was inconsistent in explaining his motives, and after his direct appeal in 1997, he became the first defendant since Ohio reinstated the death penalty in 1981 to waive his right to further appeal. A competency hearing was scheduled, and he was found to have a mixed personality disorder but was considered competent enough to waive his rights. Berry was assaulted repeatedly during a prison riot by death row inmates who felt that his "volunteering" to be executed would somehow impact their own appeals.

Christopher Newton was executed in 2007 for the aggravated murder of his cellmate while serving a sentence for the burglary of his father's home. Newton had previously been incarcerated, and in fact stated that the only purpose of the burglary was to return to prison, where he intended to die—and that killing his cellmate (for the putative offense of being a poor chess player) was motivated by this wish to die in prison. Despite this and the violence of the murder, the court denied Newton's defense team funds

to conduct neuropsychiatric tests to determine Newton's mental fitness, which might have justified exempting him from the death penalty. Further controversy arose because Newton's overweight condition resulted in the execution taking so long—10 attempts to find a vein—that Newton was given a bathroom break in the middle of the two-hour ordeal, six times longer than is considered reasonable.

Ohio's crime rate is slightly lower than the national average, at 315 violent crimes—mostly aggravated assaults and robberies—per 100,000 inhabitants in 2010. Robberies are a larger portion of the violent crime than in most states. The crime rate has not changed greatly, though it is lower in the 21st century than at its height from the late 1970s to 1990s (peaking at 561 in 1991), and the murder rate has fallen to half of its 1979–80 peak.

Police

Early Ohio law enforcement included constables, night watchmen, and property guards, and the duties of local law enforcement officials were often limited to specific types of crimes. The City Marshal's Office of Lancaster, for instance, was established when Lancaster was incorporated in 1831, and the marshal was tasked with dealing with horse thieves, drunkards, problems in the saloons, and clashes with local Native American tribes. Like many young small towns, Lancaster lacked a jail, and more serious problems were deferred to county or federal authorities. City marshals were typically elected positions, and night watchmen often worked on a volunteer basis, much like early firefighters. The creation of organized police departments was gradual in Ohio, as the constabulary and night watch first grew in numbers and were assigned more duties, until local populations reached the critical mass that resulted in professional police forces emerging. In the more urban areas like Cincinnati, professional city police forces were preceded by private police funded by merchants to supplement the work of the night watch.

Cincinnati established its police department in 1850, a few years after a private police force had been formed to safeguard the merchants of Pearl Street. The city council appointed a police chief and six lieutenants to whom day and night watchmen answered. The positions of sergeant and

captain were created the following year. In 1855, Cincinnati hired its first police detectives, and the police department began to become more formalized and professional, with uniforms, training, and certification. Cleveland's police department followed in the 1860s, and other cities thereafter.

Punishment

Early prisoners were kept in town or county jails, typically for short periods of time. The Ohio State Penitentiary was built in Columbus in 1834, with a separate women's building added in 1837, and operated until 1983, when the Southern Ohio Correctional Facility in Lucasville replaced it. The "Ohio Pen" is perhaps most famous for the escape of General John Morgan during the Civil War and for housing Dr. Sam Sheppard, the inspiration for the TV series and movie *The Fugitive*.



Correctional facilities in Ohio vary in size from this small cell in an eight-bed prison in the Brecksville Police Department to the Southern Ohio Correctional Facility, housing more than 1,400 and the inspiration for the movie *The Fugitive*.

Ohio is a capital punishment state, and 388 executions have been carried out since 1885. After the 1970s Supreme Court rulings rendered unconstitutional all extant death penalty statutes, Ohio's death penalty was reinstated with a new law in 1981. Under the new law, the jury decides the sentence, choosing from the death penalty, life without parole, life without parole in the first 30 years, or life without parole in the first 25 years. Capital murder includes aggravated murder with at least one of the following aggravating factors: murder for financial gain, murder committed by a person incarcerated or on probation, a murder that put someone other than the victim at grave risk of death, the calculated murder of a victim under the age of 13, political assassination, murder of a witness in a criminal proceeding, murder in the commission or attempted commission of terrorism.

From 1885 until 1897, executions were carried out by hanging at the Ohio Penitentiary in Columbus. Hanging was replaced by the electric chair in 1897 (Ohio was the second state to adopt electrocution) and by lethal injection in 1963. In 2009, Ohio announced that it would begin lethal injection executions by a single drug, sodium thiopental, a drug in use in other states as one of several drugs used in the injection. In 2011, this was changed to pentobarbital, because Hospira, the manufacturer of sodium thiopental, discontinued the drug.

Like many states, Ohio faces a prison overpopulation problem and has considered sentencing reforms as a remedy. In mid-2011, a bill that would expand the role of mandatory drug treatment in lieu of sentencing for nonviolent drug offenders, and would increase parole, passed the House of Representatives with widespread support. It also eliminated the disparity between crack and cocaine sentences, the former of which was more harshly dealt with, a disparity considered racist because of the demographics of the users of these two different forms of the same drug. At the same time, because prison overpopulation also exacerbates budget problems, another remedy that gained in popularity was prison privatization, which began to gain traction among Ohio lawmakers.

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See Also: Cincinnati, Ohio; Cleveland, Ohio; Sheppard, Sam.

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Oklahoma

Formed by the union of the Oklahoma Territory and Indian Territory in 1907, Oklahoma was one of the last states to enter the Union. At a time when most of the country was formalizing its police departments, requiring professional training and certification of its new officers, much of Oklahoma was still functionally lawless. Town and county jails were used to hold prisoners for brief periods, and federal marshals were in many cases the only form of law enforcement. Other towns had elected town marshals or constables, and night watchmen who doubled as the fire watch. In the early decades of the 20th century, Oklahoma's police departments began to catch up to those in the east.

In the territorial days, convicted felons were incarcerated in the Kansas State Penitentiary in Lansing, Kansas. In 1908, shortly after statehood, Kate Barnard, the new Oklahoma commissioner of charities and corrections, made an unannounced visit to the Kansas facility to investigate complaints about the mistreatment of Oklahoma inmates (and perhaps others, though it was the Oklahomans she was there to see) and discovered systematic torture of inmates, prompting an immediate recommendation to the governor that Oklahoma inmates be returned to the state. They were temporarily housed in a federal jail and were put to work building the new Oklahoma State Penitentiary, which opened later in the year. The prison was later the site of one of the worst prison riots in American history, in July 1973. Overcrowding, in part because of the governor's refusal to approve parole recommendations for

drug offenders and violent offenders, had reached the point that the prison was housing more than twice its capacity.

Early Crime

Oklahoma has been home both to Wild West outlaws and Depression-era gangsters and bandits. In the Indian Territory era, the Rufus Buck Gang was an outlaw gang whose members were primarily multiracial, each of them part African American and part Creek. Operating in 1895 and 1896, they held up various stores and ranches and succeeded in resisting capture until the summer of 1896, when a combined American and Creek force captured them and brought them before “Hanging Judge” Isaac Parker, who lived up to his name.

Indian Territory was also home to the Dalton Gang, relatives of the Younger brothers, who were part of the James-Younger Gang in Missouri from 1890 to 1892. Grat, Bob, and Emmett Dalton had moved to the Indian Territory from Missouri, and were originally lawmen, having become marshals after the death of brother Frank Dalton, who had tracked a horse thief into the Oklahoma Territory and been shot to death by the suspect. Their life as lawmen didn’t last long, and they were soon robbing gambling houses and numerous trains. They were eventually apprehended in Kansas, while trying to increase their reputation by robbing two banks at once in broad daylight.

Another Dalton brother, Bill Dalton, was one of the leaders of the Wild Bunch gang. Having originally been a California legislator, he grew bored with politics, assisted the Dalton Gang with a Los Angeles train robbery, and relocated to Oklahoma after the Dalton Gang’s 1892 defeat in Kansas. He had inherited the Dalton obsession with fame and was determined to be more famous than his brothers. With Bill Doolin, he formed the Wild Bunch and robbed banks, stagecoaches, and trains throughout Oklahoma, Texas, Arkansas, and Kansas during the 1890s. (Butch Cassidy’s Wild Bunch was a separate gang, operating at the turn of the century in Wyoming.)

One of the most wanted criminals in Oklahoma during the 1920s and 1930s was Wilbur “Mad Dog” Underhill, Jr. Beginning his life of crime as a teenager, he was repeatedly arrested for burglaries and armed robberies throughout his 20s, and



Residents of the Indian Territory in Oklahoma, most of the members of the Dalton Gang were killed following a botched bank robbery. Pictured after their deaths, from left, are Bill Power, Bob Dalton, and Grat Dalton.

escaped from prison several times. After a mass jail escape from Lansing state prison, where he was incarcerated in 1931 for the murder of a police officer, Underhill and his fellow escapees formed the Bailey-Underhill Gang, named for Underhill and Harvey Bailey, the millionaire bank robber who was one of the most successful thieves of the 1920s. The gang proceeded to rob several banks, and Underhill took control of the gang when Bailey was erroneously sentenced to life for a kidnapping (having been passed money that had been used to pay the ransom). A federal task force was formed to stop the gang, which by then was attracting considerable media attention, and Underhill was killed on his honeymoon when a 24-man strike force of federal, state, and local police surrounded his rented cottage and he opened fire on them. He died of his wounds in a prison hospital. The gang shot up the town of Vian in revenge for Underhill’s capture, which succeeded only in motivating the strike force to apprehend them all the quicker, and within months, most of the members had been killed or captured.

Contemporary Crime

Oklahoma was one of the states where a surge of methamphetamine use in rural and suburban areas began in the late 20th and early 21st centuries. From 1994 to 2003, the Oklahoma Bureau of Narcotics and Dangerous Drugs estimated that

meth labs skyrocketed from about 10 to more than 1,200. In 2002, there were 1,300 lab seizures in Oklahoma, more than 10 percent of the total meth lab seizures in the country, at a time when in much of the rest of the country, methamphetamine supply still came from organized crime, particularly Mexican criminal organizations. In 2004, Oklahoma was one of the first states to limit the sale of pseudoephedrine, the key precursor in meth cooking, by requiring that the ingredient be sold behind the counter, with limits imposed on purchase amounts. Purchasers were also required to show identification and sign a log. The subsequent drop in Oklahoma meth crime inspired other states to follow suit.

In 2010, one-pot meth labs soared in popularity in Oklahoma. While the meth labs in use only a few years earlier entailed a setup fee of roughly \$1,000, one-pot labs can use a two-liter soda bottle and a handful of items from a hardware store to begin cooking meth using recipes widely circulated online. While the risk of fire and explosion is much greater, the development seems inevitable in retrospect: Law enforcement efforts had focused most heavily on disrupting the commercial meth trade, and one-pot cooking, with its low start-up cost, is a method well-suited to producing small amounts of meth for personal use, turning customers into their own dealers, whose activity won't necessarily be affected by pseudoephedrine purchase limits so long as the drug remains available in some quantity.

A further development in Oklahoma's meth crisis came in 2011, when the federal government cut off funds previously available to states for chemical disposal and other cleanup expenses in dealing with seized meth labs. The state's Bureau of Narcotics warned that health complaints throughout the state, blamed on pollen or molds, could actually be caused by contaminants in air ducts and air conditioners in places where the residence or motel room had previously been used as a meth lab—and that without federal funding, the state would not be able to clean sites as quickly as it would like.

Oklahoma lags behind only Texas and Virginia in modern executions (executions performed after the death penalty reforms required by the 1970s Supreme Court case *Furman v. Georgia*). It was the first jurisdiction in the world to adopt

lethal injection as the method of execution and the first state in the country to use pentobarbital as the drug of execution after Hospira ceased manufacture of sodium thiopental, the drug previously used.

Crime rates in Oklahoma are slightly higher than the national average, at 479.5 violent crimes per 100,000 inhabitants in 2010. Having peaked at 664 in 1995, the crime rate has always been high, with aggravated assaults constituting a large share.

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See Also: Frontier Crime; Gangs, History of; Oklahoma City Bombing; Parker, Isaac.

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Oklahoma City Bombing

On April 19, 1995, an explosion tore through the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma. The blast occurred with such force that much of the north side of the Murrah Building was simply vaporized; hundreds more buildings within a 16-block radius were damaged. The bombing killed 168 people and injured nearly 600 more; 19 of the dead were children. Until September 11, 2001, the event was the single most lethal terrorist attack ever committed on American soil, eclipsing its nearest rival—the 1927 Bath School Bombing committed by Andrew Kehoe in Michigan—by over 100 fatalities.

In the early days following the bombing, media speculation focused on international terrorists as the likely culprits behind the act, specifically, Arab terrorists with an anti-Western or Islamic fundamentalist agenda, such as those behind

the first World Trade Center bombing on February 26, 1993, or the bombing of Pan Am Flight 103 over Lockerbie, Scotland, on December 21, 1988. Some in the media, however, began looking in a different direction, noting that the event took place on the two-year anniversary of the disastrous Federal Bureau of Investigation/Alcohol Tobacco and Firearms (FBI/ATF) raid on the Branch Davidian compound near Waco, Texas, over the course of which 86 people, including 20 children and four government agents, lost their lives. Vocal leaders in the burgeoning patriot militia movement had for two years been using Waco as a rallying cry, a powerful symbol of federal government tyranny and excess, memorialized by such figures as Carl Klang in his song “Seventeen Little Children,” and Linda Thompson in her video “Waco: The Big Lie.” These figures, and the militias they inspired, believed strongly in Second Amendment rights; some advocated armed resistance to government overreach.

Investigation of Timothy McVeigh and His Co-Conspirators

Media speculation surrounding the significance of the Waco anniversary was confirmed two days after the attack, when Timothy McVeigh was taken into federal custody. He had originally been arrested 90 minutes after the explosion for driving without a license plate and carrying a concealed weapon. When arrested, McVeigh had been wearing a T-shirt with two slogans printed on it: On the front, the shirt read, *sic semper tyrannis*, Latin for “thus always to tyrants,” the motto of the state of Virginia and the words shouted by John Wilkes Booth upon his assassination of Abraham Lincoln; and on the back, a phrase attributed to Thomas Jefferson: “The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants.”

Among McVeigh’s other possessions were an unlicensed 9mm handgun and a copy of *The Turner Diaries*, William Luther Pierce’s fictional account of a terrorist bombing sparking a race war in an alternative future America; first published in 1978, the novel had long been a fundamental text of the white separatist militia movement, inspiring the assassinations, bank robberies, and other criminal activities of Robert Matthews’s group The Order in the early 1980s.

After McVeigh’s arrest, the investigation of the incident and the trials of those involved proceeded briskly, backed by the federal government. McVeigh’s accomplice, Terry Nichols, was arrested April 21, turning himself in the same day McVeigh was taken into federal custody. Also arrested were Michael and Lori Fortier. Evidence about the planning and execution of the bombing came to light, developing into an overall narrative of a deliberately and carefully planned terrorist act designed to enact the highest possible toll in human lives and destruction.

McVeigh and Nichols began stockpiling weapons and supplies some eight months before the event and scouted their target, selected because it contained offices of both the ATF (Alcohol, Tobacco, and Firearms) and DEA (Drug Enforcement Agency), at least twice as part of their planning process. In the end, the two packed 7,000 pounds of explosives into a rented Ryder truck. The primary explosive component was ammonium nitrate fertilizer, but the conspirators also used race-car fuel and the industrial explosive Tovex, mixed, packed into 55-gallon drums, and arranged within the truck’s storage compartment to form a shaped charge that would maximize casualties. On the day of the attack, McVeigh drove the truck to the Murrah Building himself, lighting two fuses and parking the truck on the building’s north side before fleeing on foot to his car, parked several blocks away. McVeigh was in fact only some three blocks distant when the bomb exploded.

On Trial

Of the co-conspirators, only Nichols and McVeigh were tried for direct participation in the bombing. The Fortiers—who knew about the planning of the attack to the extent that Michael aided McVeigh and Nichols in scouting the Murrah Building, and Lori laminated the fake ID McVeigh used to rent the Ryder truck—both agreed to testify against the two central conspirators. Lori received full immunity for her testimony, and Michael was sentenced to 12 years in prison; both entered the Witness Protection Program. Nichols, who turned himself in and consented to the search of his property, was convicted of federal crimes and 161 counts of murder in the state of Oklahoma; he escaped the death



Search and rescue workers from the Federal Emergency Management Agency (FEMA) gather at the scene of the Oklahoma City bombing. The blast caused a partial collapse of all nine floors of the 20-year-old building, killing 168.

penalty as the result of a jury deadlock on the issue, instead receiving life in prison without the possibility of parole. On June 13, 1997, Timothy McVeigh became the first person since 1963 to receive the death penalty in a federal trial.

Throughout his trial and subsequent interviews and media communications, McVeigh never expressed remorse for his actions, instead presenting them consistently as a justified act of war against the American federal government. He wrote a number of essays during his incarceration that further explained his motives for the attack and connected his actions to world

events and government activity, including an April 26, 2001, letter to Fox News with the subject line, "I Explain Herein Why I Bombed the Murrah Federal Building in Oklahoma City." In the letter, he compares federal actions such as the siege at Waco to the actions of the Chinese government in the Tiananmen Square crackdown, and compares his bombing of the Murrah Federal Building to the bombing of Serbian government buildings by the U.S. Air Force. McVeigh was executed on June 11, 2001, at the federal penitentiary in Terre Haute, Indiana. He chose "Invictus," a defiant poem by William Ernest Henley, as his final statement.

Political Rhetoric and Violence

In the immediate wake of the Oklahoma City bombing, President Bill Clinton gave a powerful speech decrying political rhetoric, popularized at the time through the talk-radio format, that might tacitly or explicitly condone violent action or terrorism as an acceptable form of political expression; this speech was echoed by President Barack Obama in his own remarks at a memorial for the victims of a 2011 shooting in Tucson, Arizona, that critically injured U.S. Representative Gabrielle Giffords and killed six others. Both presidents received criticism for implying connections between political rhetoric and violent action that cannot readily be proven; however, the membership and media visibility of American patriot militia organizations dropped sharply after the Oklahoma City bombing, not returning to the levels reached before the event until the election of Barack Obama as president in 2008. A memorial to the victims of the bombing was completed and dedicated by President Clinton on April 19, 2000, at the former site of the Murrah Federal Building.

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See Also: McVeigh, Timothy; Oklahoma; Terrorism.

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Olmstead v. United States

In 1928, the U.S. Supreme Court decided *Olmstead v. United States*, concluding that the government's interception of telephone communications did not constitute a search or seizure under the Fourth Amendment. This decision launched a national debate on law enforcement wiretapping. It served as the key precedent for when law enforcement activities constituted a search for nearly 40 years, until it was overruled. Justice Louis Brandeis's dissent, invoking the right to privacy, serves as the rationale for current Fourth Amendment jurisprudence. *Olmstead* involved the prosecution of a 91-person, alcohol-distribution conspiracy. The conspiracy, headed by Roy Olmstead, imported large amounts of alcohol from British Columbia, Canada, through Puget Sound to various ports. Conspirators took the alcohol to a farm outside Seattle and then distributed it. To oversee his \$250,000 a year business, Olmstead used telephones, having three lines in his office alone. Law enforcement tapped these lines to obtain their evidence.

Before the district court, Olmstead sought to suppress the wiretap evidence, arguing that the taps violated the Fourth Amendment. The district

court denied the motion. The 9th Circuit Court of Appeals affirmed the judgment, reasoning that the Fourth Amendment only applied to entering homes and offices to obtain documents. Wiretapping was like looking through open windows or listening at doors. Supreme Court Chief Justice William Taft wrote the majority opinion. He described the court's prior decisions on the exclusion of evidence seized in violation of the Fourth Amendment. Then, Taft examined what the Fourth Amendment protected, stating that the amendment's original intent was to prevent the government from forcibly intruding upon a person's house or body to obtain papers or effects. To Taft, this meant that the Fourth Amendment only protected tangible items, not phone conversations.

After denying the Fourth Amendment claim, Taft discussed the admissibility of evidence obtained by federal agents in violation of state law. Washington law prohibited intercepting telephone communications, making violations a misdemeanor. Taft concluded that there was no authority for excluding constitutionally obtained evidence, regardless of the ethics of seizure. He compared wiretaps to law enforcement's undercover involvement in criminal conspiracies. Excluding wiretap evidence would also require the exclusion of evidence obtained in undercover operations. Noting that Congress could pass a wiretap law if it so desired, Taft stated that the court would not do it.

While Taft's opinion carried the majority, four justices led by Louis Brandeis dissented. Brandeis began the movement recognizing that the Fourth Amendment protects people and their privacy, rather than places. He asserted that the Constitution must adapt to technological innovation; the Constitution's drafters could not have possibly foreseen using wiretapping to collect evidence. Therefore, Brandeis reasoned, constitutional interpretation should be based on its principles, namely, liberty and security. Because tapping telephone wires invades privacy and infringes on liberty and security, seizing telephone calls was unjustified, and the fruits should be suppressed. Both Taft's and Brandeis's opinions have had lasting and influential repercussions—Taft's in the short term, and Brandeis's in the long term. The U.S. Congress soon accepted Taft's invitation and prohibited wiretapping by federal law enforcement as part of the

Federal Communications Act in 1933. *Olmstead* also set the standard for when law enforcement required a search warrant prior to performing intrusive investigatory techniques. Law enforcement officers only had to consider whether the place searched was private or not. If it was exposed to the public or for public use, they did not need a warrant, even to conduct a wiretap.

The public/private distinction formed the foundation of the government's case in *Katz v. United States*, the U.S. Supreme Court case that adopted the rationale of Brandeis's opinion from the *Olmstead* case. *Katz* involved a government wiretap of a public telephone booth. Before the Supreme Court, the government argued that the Fourth Amendment was not violated because there was no trespass on private property. The court rejected the argument, reasoning that the Fourth Amendment protected people, not places. *Katz*, therefore, had an expectation of privacy upon stepping into the phone booth. This meant that the government needed some type of judicial order prior to conducting the wire tap. The *Olmstead* case served as the foundation for search and seizure law for nearly 40 years. It also touched off the debate about the propriety of the government's use of wiretapping to gain evidence in criminal cases. Finally, the case became the starting point for a fundamental change in how courts interpreted the Fourth Amendment.

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See Also: Defendant's Rights; Electronic Surveillance; *Katz v. United States*; Prohibition; Supreme Court, U.S.

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Omnibus Crime Control and Safe Streets Act of 1968

Public concern over high crime rates throughout the 1960s led President Lyndon Johnson's administration to authorize federal funds for the improvement of state and local police. The Omnibus Crime Control and Safe Streets Act (OCCSSA) of 1968 assisted state and local governments in reducing the incidence of crime, and it increased the effectiveness, fairness, and coordination of law enforcement and criminal justice systems at all levels of government. The act focused on regulating firearm sales, established the Bureau of Justice Statistics, and created grants for construction and renovation of courtrooms, correctional facilities, treatment centers, and other criminal justice-related structures. The act contained 11 titles, including sections on wiretapping and electronic surveillance, admission of confessions, and the formation of the Law Enforcement Assistance Administration (LEAA).

Titles

Title I of the OCCSSA dealt with the formation of the LEAA. Congress realized crime was a local problem and that it had to be dealt with by state and local governments if it was to be effectively controlled. The LEAA supported crime control efforts through aid to state and local authorities, targeting street crime, riots, and organized crime. Funding started in 1968 with \$60 million; by 1982, the agency had spent more than \$8 billion on grants to law enforcement agencies around the country. Grants from the act were used to purchase devices, facilities, and equipment designed to improve and strengthen law enforcement, and to recruit and train law enforcement personnel; for public education on crime prevention and respect for law and order; for constructing buildings or other physical facilities; for the development, education, and training of special law enforcement units to combat organized crime and control riots; and for recruiting and training community service officers to assist local and state law enforcement agencies in improving police-community relations.

Part D of Title I dealt with the formation of the National Institute of Law Enforcement and Criminal Justice, which encouraged research to improve and strengthen law enforcement. The institute was authorized to fund grants and enter into contracts with public agencies, institutions of higher education, or private organizations to conduct research, demonstrations, and special projects. The institute also carried out programs of behavioral research to provide more accurate information on the causes of crime and the effectiveness of various means of controlling and preventing it. The institute also evaluated correctional procedures and made recommendations for action to be taken by federal, state, and local governments.

Title II of the OCCSSA dealt with the admissibility of confessions and eyewitness testimony.

This provision aimed to overturn Supreme Court decisions as to the admissibility of evidence obtained in violation of the constitutional rights of the people under the Fourth Amendment. Title II of the act allowed the admission of voluntary confessions, even if the police failed to inform the suspect of his/her rights.

Title III of the OCCSSA focused on wiretapping and electronic surveillance. Because people involved with organized crime made use of oral communications in their criminal activities, the interception of such communications via wiretapping to obtain evidence of the commission of crimes or to prevent their commission was an aid to law enforcement and to the administration of justice. This provision addressed privacy issues in wiretaps and the potential methods of ensuring privacy while providing for effective law enforcement.

Title IV addressed trafficking of firearms. This provision made it unlawful for anyone other than a licensed importer, manufacturer, or dealer to engage in importing, manufacturing, or dealing firearms or ammunition. This included shipping, transporting, or receiving any firearm or ammunition in interstate or foreign commerce. Title IV was expanded upon in Title VII, which established who and what constituted an unlawful possession or receipt of a firearm. Title VII declared illegal the receipt, possession, or transportation of firearms by felons, veterans who are other than honorably discharged, mental incompetents, aliens who are illegally in the country, and former citizens who have renounced their citizenship.

Title V of the OCCSSA dealt with riots and civil disorders. It declared an individual inciting a riot or civil disorder, organizing or promoting a riot, or aiding and abetting persons involved in a riot or civil disorder would be ineligible to hold any position in the government of the United States for five years following the date on which the conviction became final. Any person holding a position in the government and found guilty of rioting or civil disorder would be immediately removed from such position.

The final five titles addressed smaller or more administrative issues. Title VI set forth the procedure for the president of the United States to appoint and have confirmed by the Senate a director of the Federal Bureau of Investigation. Title VIII provided for a process of appeal by the



The Omnibus Crime Control and Safe Streets Act (OCCSSA) has drawn criticism regarding the rights of citizens, particularly over Title III, which set guidelines for obtaining orders to wiretap phone lines in the United States.

United States from decisions sustaining motions to suppress evidence. Title IX focused on additional grounds for issuing warrants: It stated that a warrant could be issued to search for and seize any property that constituted evidence of a criminal offense in violation of the law. Title X dealt with prohibiting extortion and threats in the District of Columbia: It made illegal any threat of kidnapping; any ransom demand for a kidnapping; and any threat to injure the property or reputation of a person in the District of Columbia. Title XI concluded the act with general provisions, which held that if a certain section of the act were deemed invalid, then the rest of the act remained unaltered.

Criticism

Criticisms of the OCCSSA include the LEAA's lack of clear objectives and control of funding dispersed to law enforcement agencies. The program failed to monitor its expenditures and did not establish procedures to evaluate the impact of funded programs on crime. The declared objectives of the organization were diverse, ambiguous, and conflicting with the scope of the program; many were exceedingly broad and ill defined. Failing to clarify its objectives resulted in the LEAA allocating a disproportionate amount of funds to the police and caused great confusion in the operation and understanding of certain programs. Little attention was paid to the underlying social and economic problems that led to crime and incarceration, and serious crime continued to grow into the 1980s. Another criticism of the OCCSSA is with Title III: Citizens were concerned with their privacy while using telephonic communications. Title III allowed the suppression of evidence obtained through the use of police wiretapping but declared that evidence received from private surveillance turned over to law enforcement was obtained with "clean hands." The vague language made suppression a discretionary act of the judiciary, which led to difficulties in attempting to apply the title's exclusionary rule to law enforcement officials using wiretap evidence obtained with clean hands.

The Omnibus Crime Control and Safe Streets Act was approved June 19, 1968. This act served to initiate a nationalization of crime policy. In the early years, it gave money through the LEAA to

police for hardware (e.g., helicopters, tanks, riot gear), but in later years, the LEAA emphasized community corrections and diversion programs. The existence of a central grant-producing presence in Washington, D.C., increased the flow of information between jurisdictions and fostered a sense of common participation.

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See Also: Johnson, Lyndon B. (Administration of); Law Enforcement Assistance Administration.

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Oregon

A large state in the Pacific northwest, Oregon was admitted to the union in 1859. Beginning in the territorial era, early Oregon saw frequent anti-Chinese violence. Portland had one of the country's first Chinatowns, home to many of the Chinese workers who had been brought in to work on railroads and mines. Throughout the Pacific northwest in the late 19th century, mobs drove or attempted to drive Chinese workers out of town, motivated by racist distrust and fear. The National Guard armory near Portland's Chinatown was even built, in 1888, out of fear of a Chinese uprising.

Police and Punishment

Early law enforcement was handled by night watchmen, constables (often elected officials, often working part-time), or federal marshals. The Portland Metropolitan Police Force, one of the state's first organized police departments, was established in 1870 and modeled after well-established police departments in other states. While in the east law enforcement had evolved toward the



Portland police officers on bicycle patrol gather in front of the City Police Bureau on day one of Occupy Portland, a protest movement that began "in peaceful solidarity with Occupy Wall Street" on October 6, 2011. The Portland police reported that more than 4,000 people began the march, increasing to 10,000 by midday and filling city streets.

modern police department gradually, with a transitional period in which a town or city marshal oversaw "day watch" or police workers, Portland's police department was essentially modern from its inception, with a chief of police overseeing a force of six patrolmen and a lieutenant. In 1908, the department hired the first female police officer in the country, Lola Baldwin, as the head of the Women's Protective Division. The department adopted its current name, the Portland Police Bureau, in 1915, and in 1919, it became the first American police department to use radios.

The first state prison in Oregon was built in Portland in 1851. It was replaced by a new facility in Salem in 1866, which has remained Oregon's only maximum-security facility. Today, most of the cellblocks have been converted to double-occupancy cells in order to maximize capacity, and there are special housing units for death row,

inmates with psychiatric problems, and disciplinary solitary confinement.

Oregon is a capital punishment state. Executions were conducted by the territorial government and made explicitly legal in 1864. Since 1904, executions have been carried out exclusively at the state penitentiary in Salem. The death penalty has been repeatedly outlawed and revived in Oregon, having first been repealed in 1914 by a ballot measure to amend the state constitution; the repeal effort won by a margin of 0.04 percent. A new amendment restoring the death penalty passed only six years later. In 1931, lethal gas replaced hanging as the method of execution.

A ballot measure outlawed the death penalty again in 1964, this time with 60 percent of the vote. It was again revived in 1978 by ballot measure, but the measure was overturned in 1981 by the Oregon Supreme Court because it denied

defendants the right to a trial by jury. A new ballot measure in 1984 successfully restored the death penalty by requiring a separate sentencing hearing, decided by a jury, in cases of aggravated murder, that is, murder accompanied by aggravating factors such as a contract killing, a victim who is a child, or the killing of a witness or a police officer. Oregon's death penalty statute is substantially similar to those of other states.

Throughout the 1990s and early 21st century, ballot measures have reformed Oregon's criminal sentencing guidelines. A 1994 ballot measure, part of a nationwide call for stricter sentencing, established mandatory minimum sentences for violent crimes: murder, manslaughter, assault, kidnapping, rape, robbery, sexual abuse, unlawful sexual penetration, and sodomy. (Oregon's sodomy laws are applicable only if the sex is nonconsensual or if one party is under the age of 16.) Several 1999 ballot measures were enacted that limited parole and excluded people convicted of specific crimes from serving on criminal trial juries or grand juries. A 2008 measure further increased sentences for drug trafficking, theft against the elderly, and certain other crimes of theft, while requiring addiction treatment for some drug offenders. The measure came at a time when many states, faced with prison overpopulation, were rolling back or proposing the rollback of mandatory sentences enacted in the 1980s and 1990s; Oregon, instead, continued on the path laid out in the previous century. As a result, while it has seen a greater decrease in crime than the country as a whole, it spends the highest percentage of its state budget on prison and parole of any state, and since the 1994 establishment of mandatory minimum sentences it has seen the prison population increase from about 4,000 to nearly 15,000.

Crime

In 1994, the neo-Nazi group Volksfront was founded by inmates in the Oregon State Penitentiary. Since then, chapters have been opened in 10 countries and throughout the United States. Volksfront's stated goal, the Northwest Territorial Imperative, is to establish a partially autonomous, exclusively white community in the Pacific northwest, which will be home to a European American community center with a museum, library, and the headquarters for Volksfront. Officially opposed

to lawbreaking, Volksfront includes many members who have been arrested for racially motivated crimes, both before and after their joining the group. In 1998, the European Kindred white supremacist gang was formed in the Snake River Correctional Institution in eastern Oregon. More secretive and ritualistic than Volksfront or the California-based Nazi Lowriders (also popular in the Oregon prison system), the European Kindred seem primarily interested in controlling the crime in the prison system, running dogfights, and making and selling methamphetamines.

Oregon is also the headquarters of two major outlaw motorcycle clubs and is home to local chapters of several others, including the Gypsy Jokers, the Vagos, and the Outsiders. The Brother Speed Motorcycle Club was founded in Boise, Idaho, but relocated to Portland. The Free Souls Motorcycle Club is a one-percenter gang formed in Eugene, with multiple chapters throughout Oregon and an affiliated chapter in Washington State. The motorcycle gangs in Oregon are generally involved in the methamphetamine, marijuana, and hash trade in the state, and in the trafficking of stolen firearms.

The crime rate in Oregon has long been considerably lower than the national average and has followed the national trend of rising in the decades leading up to a peak and then declining. While the national crime rate peaked in the 1990s, as it did in most states, in Oregon, the peak was reached in 1985, with a violent crime rate of 551 crimes per 100,000 inhabitants. Decline was slow, but by 2010, the rate had fallen by half and was at 252 per 100,000.

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See Also: Crime Rates; Penitentiaries; Race-Based Crimes.

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Organized Crime, Contemporary

To the general public, notions of organized crime often carry stereotypical images associated with Hollywood productions, such as *The Godfather*, *The Sons of Anarchy*, *The Sopranos*, and *The Departed*. While these portrayals may enlighten the public about the mere existence of organized crime, they inadequately capture and represent the historical and present-day facts concerning criminal organizations. Unfortunately, because of their misconstrued portrayal in movies and television series, individuals have developed misperceptions about organized crime, especially as it relates to the 21st century.

Historical Development

The origin of organized crime in the United States dates as far back as 1890 when the Italian American Mafia (i.e., La Cosa Nostra or American Mafia) murdered the New Orleans chief of police. Following this event, many Italian immigrants living in the surrounding area were targeted by mobs of retributive residents and were subsequently forced to flee New Orleans and seek shelter in other major cities throughout the United States, such as Chicago, New York, Kansas City, and Las Vegas. Mafia families operating in these (and other) cities continued to expand—enjoying the high levels of secrecy and solidarity produced by their ethnic homogeneity and traditional Sicilian ideologies—and became heavily involved in an assortment of criminal activities.

American Mafia families gained an influential position in the criminal underworld by exploiting business opportunities and corrupt government officials. For example, the Chicago families that operated during the 1920s gained high levels of prestige by capitalizing on the illicit liquor market produced by Prohibition. During this era, Mafia families cultivated useful relations with local law enforcement and government officials and became prominent suppliers of bootlegged liquor. Additionally, the American Mafia developed a presence in licit enterprises by gaining control of labor unions during the 1920s and the gambling ring in Las Vegas during the 1940s. Other criminal activities utilized by the American Mafia included

drug trafficking, gambling, loan-sharking, and “protective” services. While maintaining an influential role during the early and mid-1900s, the American Mafia faced a rapid decline resulting from antiorganized crime legislation and the cultivation of other criminal organizations, which led to their replacement in the transnational drug market (by an assortment of drug distribution networks). However, even after experiencing such a dramatic reduction in the number of active members, recent law enforcement operations targeting the American Mafia show that they are still present and evolving today.

As one of the first criminal organizations operating in the United States, the American Mafia created an illusion that criminal organizations follow a strict structure with stern recruiting guidelines, which focus heavily on ethnic similarity. The reality, however, could not be further from that stereotype. As many criminal organizations have demonstrated throughout the 20th and 21st centuries, organized crime is more versatile and opportunistic than rudimentary descriptions would lead one to believe. Thus, rather than being hindered by an inextensible, vertically configured, and ethnically homogeneous structure (e.g., Sicilian Mafia, ‘Ndrangheta, Chinese triads, and Japanese Yakuza), modernized crime syndicates have, for the most part, adopted a flexible, decentralized, and ethnically diverse composition with relaxed recruiting guidelines. As a result, many contemporary criminal organizations have ignored inalterable characteristics (e.g., race, gender, and ethnicity) and recruited/formed alliances with people possessing a desired skill set, position of authority, or equally useful quality.

Contemporary Organized Crime

By altering their original structure of vertical hierarchy, clearly defined leadership positions, and centralization, many contemporary organized crime groups appear more subtle and loosely connected, without a traditional pyramid structure. Taking this approach was very useful because groups that did not fit the stereotypical “Mafia” description were largely overlooked (e.g., the Russian Mafia). Yet as law enforcement developed a comprehensive understanding of criminal organizations and criminal networks, it became exceedingly more difficult for criminals to evade their

attacks. In response to the government's changing tactics, some organized crime groups altered their criminal activity (e.g., the Russian Mafia withdrew from international drug trafficking and began providing security for Mexican drug cartels, and the Mexican drug cartels began kidnapping in addition to drug trafficking), while others modified and/or advanced their structure and methods of operation (e.g., Asian and Russian organized crime).

American crime syndicates, such as the Chinese and Russian Mafia, benefit from their involvement in a variety of criminal activities. The Russian Mafia, for example, engages in a list of financially motivated crimes, which include theft, prostitution, gambling, fraud, and international drug, person, firearm, and vehicle trafficking. To remain authoritative in its respective markets, while simultaneously evading attacks by law enforcement officials, the Russian Mafia is thought to operate under two different structures. The first consists of a loosely connected and ethnically heterogeneous network that recruits members and forms ties based on an individual's skill set, rather than kinship. This type of organization often forms with a specific purpose (e.g., committing varying types of fraud and racketeering) and has both short-term and long-lasting operations, depending on the network's interest(s). The second structure has its roots in foreign-based affairs and often operates internationally in the trafficking of people, drugs, firearms, and vehicles. Under each of these functions, communication is conducted on an as-needed basis, and ties are formed only long enough to complete a task—similar to licit enterprises.

Like the Russians, Asian criminal organizations have varying structures and methods of operation. Some traditional Asian groups (e.g., Chinese triads from Hong Kong and Taiwan and the Japanese Yakuza) enjoy a fixed vertical hierarchy, while others (especially in the United States) have shifted to a loosely connected and ethnically diverse structure, making them more opportunistic in nature. Because of these attributes, the latter group recruits people from a variety of ethnic backgrounds, generally forms only long enough to complete a task, and is often involved in transnational criminal activities. The fact that each of these criminal organizations operates under multiple structures makes

identifying and combating them difficult for law enforcement officials, who must differentiate and categorize groups as conforming to one structure or the other.

Accompanying their involvement in legitimate enterprises (e.g., the stock market, construction, waste disposal, and wholesale markets) and illicit domestic activities (e.g., gambling, prostitution, loan-sharking, violence, and providing protective services), Chinese American criminal organizations also participate heavily in transnational human and drug trafficking. Despite having a lower frequency than many Asian countries, the high number of Chinese women working in the sex trade throughout the United States has brought a considerable amount of attention to the international trafficking of women. Additionally, because large quantities of heroin and amphetamines are produced in the Burmese part of the Golden Triangle, international drug trafficking from Asian countries poses a grave threat to the United States. In recent years, many drug cartels located south of the United States border have started infiltrating the international drug market by exploiting their access to drugs (e.g., cocaine, marijuana, and heroin) and transnational trade routes. This fact has alternated the nature of international drug trafficking by increasing competition (among organized crime groups) and the need for international law enforcement tactics.

Other Forms of Modern Organized Crime

While the term *organized crime* is often held synonymous with the Italian Mafia, the shift toward viewing organized crime as loosely connected, ethnically heterogeneous, and flexible has led to the discovery of criminal organizations that differ from traditional Mafia-type groups. In addition to the Italian, Russian, and Asian Mafias operating in the United States, refined descriptions of organized crime have been expanded to include American outlaw motorcycle gangs (OMGs), organized street gangs (e.g., Mara Salvatrucha, or MS-13), criminal networks (e.g., drug cartels and "men for hire"), and alliances between terrorist and organized crime groups (i.e., narcoterrorism). These recently discovered gangs and criminal networks have convoluted the understanding of organized crime by forming unconventional alliances (e.g., the business

alliances between terrorist and organized crime groups) and borrowing traditional tactics utilized by criminal organizations (e.g., kidnapping and international drug trafficking).

Originating in the 1930s, most OMGs formed between the late 1940s and 1960s. Initially, these gangs were not seen as a threat to others; rather, they functioned as small, nonviolent, counterculture groups known as motorcycle clubs (MCs). During the latter part of the 20th century, however, several of these motorcycle clubs began displaying elements of criminal organizations, which included implementing requirements for inclusion (e.g., riding a particular type of motorcycle), a formal vertical structure (similar to the Italian Mafia's) and dress code, solidarity through subcultural beliefs, and a propensity toward violent and criminal behavior.

To date, there are more than 300 American OMGs, several of which operate transnationally with both domestic and international alliances. For example, one of the most notorious American OMGs—the Outlaws—expanded its organization in the early 21st century to include a “supported club” known as the Black Pistons. After receiving Outlaws support, the Black Pistons expanded rapidly and developed a presence in the United States, Canada, and Europe, which enhanced the organization’s manpower and territorial control. Similar to other criminal organizations, OMGs are involved in a variety of criminal activities, which include assault, homicide, weapons trafficking, theft, and drug manufacturing and distribution (primarily methamphetamines and marijuana). In addition, OMGs also use legitimate business operations to cover their clandestine enterprises (e.g., running strip clubs), violence (or threat of violence) and murder to protect their fellow members, and tactical alliances to enhance their business opportunities (e.g., the Hells Angels have formed alliances with Colombian drug cartels and the American Mafia). Although the American OMGs appear structurally and operationally similar to traditional criminal organizations, their tactically developed alliances and business operations make them some of the most dangerous, long-standing, and successful contemporary criminal organizations.

Whether a street gang is considered criminally organized typically depends on the gang’s



This Mara Salvatrucha (MS-13) gang member bears a tattoo showing his membership in the original Salvadorian MS-13. The gang is now represented in at least 13 U.S. states and has spread to Canada, Mexico, and Central America.

characteristics. Although it can be argued that many are not, some gangs, such as the Mara Salvatrucha (MS-13), clearly possess elements akin to traditional criminal organizations. At the time of its origin (during the 1980s), MS-13 restricted its membership to Salvadorians. This is likely because Salvadorians formed MS-13 in Los Angeles, California, in order to provide a unified defense against well-established rival gangs. During the 21st century, however, MS-13 expanded its membership to include people from Ecuador, Guatemala, Honduras, Mexico, and African American communities within the United States. Additionally, MS-13 demonstrated its high levels of organization and sophistication when it started to mobilize in response to heightened attacks by law enforcement. Because of their violent demeanor, willingness to commit a variety of crimes, and high levels of organization and mobility, MS-13 now has a presence in approximately 13 states and three countries. Ultimately, MS-13 has gained a reputation for borrowing organized crime tactics such as assassinations, kidnapping, auto theft, human and contraband trafficking, extortion, and other forms of racketeering. As a result, they are considered one of

the most violent and ruthless contemporary criminal organizations.

Drug distribution networks located along the United States-Mexico border (i.e., “Mexican drug cartels”) have adopted a powerful position in the transnational drug market since the Colombian drug cartel demise in the 1990s. Initially trafficking small amounts of marijuana and opiates during the 1960s, these Mexican drug cartels have enhanced their operations to include a variety of tactics and criminal activities. Using weapons (that are usually) trafficked from the United States, the various cartels fight among one another—in addition to the constant conflict they maintain with U.S. and Mexican law enforcement officials—over territory and popular trafficking routes into California, Arizona, New Mexico, and Texas (e.g., the crossing near Tijuana). For example, the Sinaloa and Gulf cartels have been fighting one another since 2001 for control of Nuevo Laredo—a Mexico city with access to the most efficient international trafficking route on the 2,000-mile border. Because of their widely used violence and success as international drug traffickers, the Mexican drug cartels became a salient target for Mexican and U.S. law enforcement agencies. As a response to the heightened attention from law enforcement, Mexican cartels expanded their criminal involvement to include kidnapping and weapons and human trafficking. Because of their tactful shift between various criminal activities and their relentless use of violence and murder, they are now, like MS-13, considered one of the biggest organized crime threats to the United States.

Until recently, the lines separating criminal organizations from terrorist groups appeared clear. However, since the 1990s, terrorist groups have been forming alliances with criminal organizations and utilizing their tactics more frequently than they had in previous years. Examples of this crossover include the Revolutionary Armed Forces of Colombia (FARC), which uses drug trafficking and kidnapping to finance terrorist operations in Colombia, and Al Qaeda, who often exchange opium trafficking for funding by criminal organizations. In exchange for their funding, terrorist groups often perform violent and public acts, while the organized crime groups operate clandestinely. Although this terrorist–organized crime link may

not specifically occur in the United States, it does demonstrate a potential threat, especially when one considers the attacks of 9/11 and questions where funding for similar terrorist attacks originated.

Conclusion

Many modern criminal organizations appear strikingly more advanced than traditional organized crime groups. While earlier groups, such as the Italian American Mafia, operated under a stern vertical hierarchy with membership thresholds and restricted methods of operation, most contemporary organized crime groups possess a flexible and loosely connected structure with an opportunistic *modus operandi*. As this entry illustrates, some contemporary organized crime groups are more restricted by their fixed structure and membership requirements (e.g., the Hells Angels) than other opportunistic groups (e.g., drug cartels); however, it is also arguable that these rigorously controlled groups remain active because solidarity, secrecy, and sense of belonging reinforce commitment to the group’s ideologies and practices. Accounting for enhanced law enforcement tactics, technological advancements, and the increasing number of opportunistic crime syndicates, contemporary organized crime groups must be adaptable, flexible, and willing to take advantage of opportunities to make money. In sum, to understand contemporary organized crime, one must account for its constantly evolving nature rather than focusing on incipient definitions synonymous with the original Italian Mafia.

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See Also: 1961 to 1980 Primary Documents; 2001 to 2012 Primary Documents; Italian Americans; Organized Crime, History of; Organized Crime, Sociology of; Terrorism.

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Organized Crime, History of

The history of organized crime necessarily begins with a definition of organized crime, something that has perplexed law enforcement officials, government leaders, and scholars for years. There is no universally accepted definition of exactly what organized crime is. Two robbers who plan their roles, one who acts as a lookout and drives the getaway car while the other brandishes a gun and demands "Give me all your money!" have organized their crime, yet few would label such an action organized crime in the sense that one would label an act street crime, property crime, or hate crime.

There have been numerous attempts by various people to construct a definition; some criminologists feel that attempting to define whether criminal activity is or is not "organized" is less helpful than identifying the degree of organization on a continuum. Others argue that organized crime cannot be adequately defined, but that characteristics can be assigned to organized crime that sufficiently describe activities or enterprises that are organized or not. Still others turn to legal statutes for a definition. The Organized Crime Control Act of 1970 defines racketeering as participation in one of several different criminal acts, including murder, counterfeiting, theft from interstate transit, mail or wire fraud, extortion, illegal gambling, and many others.

Some point out, however, that the definition of what is today called organized crime is fluid, changing throughout the years as society has changed along with various forms of criminal activity. Further, a definition of organized crime can vary according to who is doing the defining. From the standpoint of law enforcement, the government, and the big-business industrialists, for example, the Molly Maguires were members of a group of Irish criminals belonging to a secret organization bent on destroying the anthracite coal mines of eastern Pennsylvania in the years following the Civil War. From the point of view of the coal miners, the citizens of the region, however, the Mollies were a group of latter-day Robin Hoods who came to the aid of the exploited workers and organized labor, attempting to unionize workers and eradicate dangerous and unsafe working conditions.

There are, however, a number of groups throughout history that can be singled out as precursors to organized crime. While many would agree that these were organized crime groups or groups that led into the development of other groups, there is no single universal definition of organized crime since there is no single unified group of organized criminals, nor is there any single monolithic history or evolution of organized crime.

For most people, the term *organized crime* equates with terms like *Mafia*, *La Cosa Nostra*, and the negative stereotypes of Italian Americans. No ethnic group, however, holds a monopoly on criminal activity, although gangs have frequently been organized with ethnicity at their core. Long before the mass migration of Italians to America's shores, several gangs operated organized and profit-oriented criminal enterprises—among the most prominent, the Irish and Jewish gangsters. What all three groups had in common was their oppression in their homeland, their immigration to America, and the difficulties arriving out of their ethnic background with isolation from mainstream American culture upon their arrival.

Pirates

For most, piracy conjures up the images popularized by picaresque novels or the swashbuckler romantic movie roles of Errol Flynn, not those of the Corleone family or today's drug cartels



The Molly Maguires were viewed as both heroes aiding exploited mine workers and as criminals determined to destroy the eastern Pennsylvanian anthracite coal mines after the Civil War. Above is an example of a coffin notice sent to mine bosses.

that dominate the news. Although the differences between modern-day organized crime and the maritime piracy of the so-called golden age of piracy are apparent, there are also several similarities that cause many to see maritime piracy as an earlier form of organized crime. The most active era of maritime piracy lasted from about the middle of the 1600s to the early decades of the 1700s and dominated the areas of the West Indies, colonial North America, and Africa; for the most part, ethnicity played little role among pirates.

England's Navigation Acts, a series of laws enacted from about 1650 to 1700, regulated the importation and transportation of certain goods between England and its colonies. Essentially, the laws stated that goods could not be brought to England or its colonies unless they were transported by British ships manned by British citizens. The laws further stipulated that goods exported by the British colonies could only be transported and sold to England. The laws had the intended effect of strengthening England by restricting colonial commerce with other European countries, but the restrictiveness of the Navigation Acts also had the effect of creating a black market and a higher demand for certain products, giving rise to maritime piracy much as Prohibition and the Volstead Act did for the Irish, Jewish, and Italian gangsters of the early 20th century.

Corruption of the police, prosecutors, judges, and politicians is often cited as one of the major

reasons that Prohibition failed in 1920s America, and corruption was also common as a means of getting around the Navigation Acts. Merchants, faced with the prospect of paying exorbitantly high prices, provided an outlet for pirates to sell their plunder taken from merchant ships on the high seas. Representatives of the Crown used to enforce the laws were scarce, and evidence suggests that pirates freely bribed local colonial officials, and the colonists themselves, to abet their criminal enterprises. In cities like Boston, New York, and Philadelphia, pirate collusion with local citizens and officials to have their plunder unloaded and distributed for sale was common.

Just as the use of violence in obtaining their objectives is used by modern-day gangsters, pirates of the golden age used violence for the same ends. Accounts of pirate violence and brutality were well known, and the use of the skull and crossbones image had the intended effect of striking terror into the hearts of potential victims. As with modern-day gangsters, sometimes only the reputation of violent and brutal acts was enough to gain the compliance and surrender of their enemies.

As with their later gangster counterparts, poverty and social conditions often played a role in influencing young men to pursue a life of crime as a pirate. Poor, unemployed, and uneducated, many of them barely literate, many young men of the 17th and 18th centuries left home and chose an occupation that was open to them—going to sea. Many sailors opted to join up with pirates as a means of obtaining the luxurious and exotic items they saw there for themselves. While the life of a pirate may have been more dangerous, it could also be more lucrative, and for many it won out over the prospect of working for wages as an ordinary seaman. The spoils that the pirates reaped were pooled and divided up among the men according to rank, with everyone getting their previously agreed-upon share. Among modern criminal groups, a similar dividing of profits occurs, although the lowest-ranking pirates were usually not able to be as entrepreneurial as the lowest-ranking soldiers of modern groups.

Since most pirates had once been navy men, pirate ships were organized similarly to naval vessels. As with naval vessels, pirate ships had codes of conduct, rules that organized operations so that

things would run smoothly, usually agreed upon by all involved prior to setting sail, with ritualistic oath-taking ceremonies as have been described in some organized crime group initiations.

As with modern groups, pirates often had to swear to codes of silence to their activities when ashore. Pirates, too, had their “colors” to swear their loyalty to, just as modern street gangs and outlaw motorcycle gangs have theirs, the most commonly known being the skull and crossed bones of the “Jolly Roger,” although many variations of this existed.

Pirate captains held their positions at the behest of their crews. While some could be violent or cruel, if they were effective and made things profitable, they were tolerated by the group. If not, the crew could turn the tables on the captain and refuse to serve. The quartermaster was elected by the crew and served as the check on the captain’s power. Other ranks below the quartermaster

usually depended on their skills and standing for status with the rest of the crew, and included gunners, bosuns, mates, and carpenters. Like modern-day criminal groups, individuals served by their rank and by distinguishing themselves individually in their criminal enterprises. While there are some differences between maritime pirates of old and modern forms of organized crime, some of the similarities are striking, especially considering the differences between time periods in which both have flourished.

Irish American Organized Crime in New York

The Irish had long been the victims of oppression by the English, generally Protestant versus Catholic. By the 1840s, this oppression, along with the failure of the potato crop and the subsequent famine, had pushed a large segment of the Irish population to seek better opportunities elsewhere. The first large-scale immigration of peasants to the



An 1896 lithograph depicts “a pirate’s ruse, luring a merchantman in the olden days.” Pirates attacked ships in North America and the Caribbean as late as the 1870s. Twenty-first-century pirates prefer to target small boats or modern cargo vessels with relatively small crews, yet they still cause international losses of up to \$16 billion per year.

United States, the Irish settled primarily in urban areas and primarily in the northeast. Although able to speak English, the Irish were isolated and ostracized in America because of their different culture and their Catholic religion.

Youth gangs had flourished in urban neighborhoods in America since the turn of the 19th century. With no social safety nets, gangs made up of orphans, dropouts, and antisocial boys roamed the streets of the cities, defending their neighborhoods. The rise of the city bosses and political machines in the 19th century also characterized urban life at the time. Saloons were the center of urban neighborhoods, a place of respite for urban residents and a place for local gatherings and meetings when needed, such as labor unions and electioneering for local politicians. Saloon keepers and tavern owners often worked for the political machines and city bosses and were often looked up to and trusted by both the machines and the local residents. The value of the youth gangs was not lost on the saloon keepers or local politicians as a means of getting out—and sometimes coercing—the vote. Corrupt political machines and city bosses existed throughout America, but perhaps none are as well known as New York's Tammany Hall and William "Boss" Tweed. Neighborhood gangs benefited from their associations in several ways, not least among them the alliances and loyalties formed between them and the political bosses. They also learned how the bosses operated their organizations, the networks and contacts that could be made, the how and who that could be bribed, and to whom and when threats or violence could be used to gain another's compliance. Through the political bosses and machines, ethnic groups also learned the way they could redress their grievances, since most ethnic groups coming to the United States from Europe in the 19th and early 20th centuries were met with more and more anti-immigrant nativist sentiment.

The most prominent of the 19-century Irish gangs in New York was probably the Five Points gang, so named because of the convergence of five streets in that neighborhood; this was depicted in the 2002 Martin Scorsese film *Gangs of New York*. The ethnic makeup of the Five Pointers later changed as the Irish were supplanted by other groups, most notably the Jews and Italians. In addition to the Five Points gang, other

prominent Irish gangs of the times included the Whyos, the Forty Thieves, the Dead Rabbits, the Kerryonians, and the Plug Uglies. Although not organized crime per se, these gangs were precursors to organized crime where politics and political corruption were learned that would later serve a large part of the success of ethnically organized crime groups. They were also important training grounds for teaching the workings of the urban environment to those from groups that were largely rural peasants when they first emigrated, such as the Italians and the Irish.

Irish Crime in Other Cities

Similar situations existed between gangs and political bosses in other cities, such as Chicago, Boston, Philadelphia, and others. A popular misconception exists that Irish crime groups and gangsters faded away in the 20th century, but this is not so. Jack "Legs" Diamond and "Big Bill" Dwyer were two of New York's famed bootleggers of the Prohibition era, while the Westies from the west side of Manhattan figured prominently in the news well into the late 20th century. In Chicago, several Irish gangs dominated the city's streets well into the Prohibition years. The North Side Gang, a combination of Irish and Polish gangsters that had evolved out the earlier Market Street Gang, went to war with the Torrio-Capone organization in the 1920s and was led by the infamous Dion O'Banion and later by George "Bugs" Moran. It was seven members of the North Side Gang that were gunned down in a north side garage in what has come to be known as the St. Valentine's Day Massacre, an attempted but failed hit on Moran.

Boston's several Irish neighborhoods have spawned many such gangs throughout the years. Most famous is The Winter Hill Gang from Somerville and Boston's Charlestown Mob, who opposed each other in the Irish Mob Wars of the 1960s. The Winter Hill Gang was later led by James "Whitey" Bulger, who became embroiled in a corruption scandal with the Boston Federal Bureau of Investigation (FBI) office and who for years became a fugitive from justice until his 2011 capture. The decline of Irish organized crime came with the decline of the purely Irish urban neighborhood and the transformation of ethnic identity. Although some Irish neighborhoods can still be found in America, after World War II, several

things contributed to their decline and the transformation of ethnic identity: the move from the urban areas to the suburbs, the invasion and succession of other ethnic groups, and then the supplanting of the older, European immigrants by newer groups from Asia and Central America, and acculturation/assimilation of the Irish as a group that accompanied higher rates of exogamy.

Jewish American Organized Crime

Jewish gangsters began to grow in strength in the late 19th century as waves of Jewish immigrants began succeeding the Irish. As with the Irish before them, mostly eastern European Jews had endured prejudice and discrimination in their homelands and upon their arrival were the objects of anti-immigrant and nativist sentiment, as well as anti-Semitism. Unlike the Irish, or the Italians who were shortly to follow, Jews came from many different countries. While there is some convergence in the evolution of Jewish organized crime with their Italian and Irish counterparts, there are, generally speaking, several differences.

Jewish groups arose from youth gangs as well, and Jewish extortion gangs similar to the Italian Black Hand gangs plagued New York in the early 20th century. Jewish gangs tended to specialize in property crime and labor issues and, perhaps because the Jewish immigrants as a group were better educated than most other immigrants, tended to approach criminal activities with less crudity and more businesslike operations. With only a couple of exceptions, Jewish gangs did not rise to prominence as much as individual Jewish gangsters did, the list being long and infamous. The Jewish underworld can be characterized more as a complex cooperation with other criminal ethnic groups than as a homogeneous organization.

Jewish organized crime was centered primarily in New York, which has a large Jewish population. Probably the best-known exception was Detroit's Jewish criminal group, the Purple Gang, although they are usually described more as a loose confederation than a unified organization. The Purple Gang, or the Purples as they were sometimes called, especially prospered during Prohibition with their geographic location just across the Detroit River from Canada. The gang held a monopoly on what was transported across the river from Canada and at one time had

made a business deal with Chicago's Al Capone to furnish him with Canadian whiskey. Capone had also hired Purple Gang hit men to use in the St. Valentine's Day Massacre. The Purples also enjoyed a reputation as hijackers, much of their hijacking being shipments of liquor from other criminals trying to take advantage of their geographic location. In the 1920s, the Purple Gang was hired by the Wholesale Cleaners and Dyers Association to enforce a trade restriction that the association had placed upon its members. When a dry cleaning shop failed to comply, the Purples were sent in to force them to comply by means of arson, with stink bombs that would ruin the clothing in the shop or with real bombs that would destroy it.

Eventually, gang leader Abe Bernstein took over the association, and the same tactics were used for shops that did not pay their dues or refused to go along with the association agenda. The Purple Gang eventually went into decline after the repeal of Prohibition, with the source of their revenue gone and the successful prosecution and the imprisonment of various gang leaders. Italian criminals eventually supplanted them as the Detroit edition of organized crime.

Jewish organized crime today has not been replaced as much as it has been transformed. Today, most Jews emigrate from Russia and the other former Soviet countries, and are focused in the Jewish community of Brighton Beach in Brooklyn; much of their criminal activity is centered in the northeast. They are usually identified, though, by their Russian nationality, rather than as Jewish.

Italian Organized Crime

Organized crime in Italy began in the south of Italy and in Sicily among the oppressed peasantry residing in a region that had been occupied by foreign governments and their armies for thousands of years. Jutting out into the middle of the Mediterranean Sea, this region, dubbed the *mezzogiorno*, was coveted for its strategic location for commercial and military purposes and throughout the millennia had been controlled and occupied by the Greeks, Romans, Spanish, Arabs, Normans, and Carthaginians, among others. The end of feudalism in the early 19th century resulted in the establishment of large private



Smiling convicted New York mobsters Emanuel "Mendy" Weiss (right) and Louis Capone, surrounded by detectives, ride a train "up the river" to the Sing Sing prison death row after receiving their sentences. Capone was not related to the Chicago criminal Al Capone but was a supervisor for Murder, Inc.—a group of mainly Jewish and Italian American hit men from Brooklyn.

estates owned by the aristocracy, many of whom left their land and became absentee landowners, leaving the day-to-day management of their land to overseers. The peasants were forced to curry favor from these overseers in order to lease parcels of land from them or to make arrangements to work the land and share the crops. This enabled the overseers to gain an enormous amount of power, as they controlled the food source for the peasants and the crops that were to be sold in the cities. Commonly, the overseers began to hire henchmen to help them protect their interests, as many took unfair advantage of the peasants that farmed their land.

The effect of hundreds of years of oppression and maltreatment, along with the system that arose after the decline of feudalism, was to make

the local populace distrustful of those in authority, whose favor they needed to farm the land and earn a living. With the unification of the kingdoms of Italy in the 1860s, the peasants were hopeful of gaining equality and ending the discrimination against them, but it was not to be. Instead, they were left to their own devices to find ways to achieve what they needed to survive. What evolved was a patronage system of getting and receiving favors from the powerful overseers, a complex network of alliances and enemies. The word *mafia* originally meant "to be bold or daring" in the local dialect, a term that was applied to the overseers as men who were bold, daring, and commanded the respect of others, sometimes cruelly. It eventually evolved to equate with the patronage system that had grown up around them; thus, *mafia* became a

method, or a way of doing things, not a criminal organization. It was *mafia* as a method that came to America when mass immigration of Italians to America began in the late 19th and early 20th centuries, not a formal criminal group that members brought with them. The word *mafia*, however, has come to mean any tightly knit and unified group in the vernacular of the 21st century.

The peasants who came were for the most part from small villages and rural areas of the *mezzogiorno*, but there were no strong ties to farming. Thus, they settled in urban areas in America where they could find work. Children were sometimes left to play in the streets, and playgroups often grew into youth gangs, much as what had occurred earlier with the Irish and Jewish immigrants. Petty youth crimes such as stealing from apple carts often turned into more serious crimes such as burglary, extortion, and violence. Black Hand gangs arose, and although often erroneously associated with the Mafia, they were, in fact, independent gangs whose only business was extortion.

The coming of age of Italian gangsters coincided with the passage of the Eighteenth Amendment and the Volstead Act, or Prohibition. Prohibition afforded them as well as other gangsters the opportunity to reap huge financial profits and build large-scale organizations out of what had previously been little more than street gangs. Competition for power between the two top Italian gangs in New York erupted into a gang war in the late 1920s. Known as the Castellamarese War, the conflict eventually culminated in the killing of the leaders of both factions and the organization of the five-family structure in New York. Many historians and criminologists point to this as the formal organization of the Mafia.

From the 1930s through the 1980s, the Italian American Mafia followed no specific progression or chronology as an organization. Instead it followed a catalog of names and events that have occurred throughout the years that have become part of the lexicon of popular culture in America: Luciano, Giancana, Columbo, Bonanno, Ricca, Gravano, Gigante, and Gotti are all surnames of people who have been involved in repeated patterns of power struggles to the ascendancy of various families and control of the Mafia. Historical events such as the establishment of Murder, Inc., in the 1920s; the incident at Appalachin, New York

in 1957; the Kefauver hearings in the early 1950s and the McClellan hearings in the late 1950s, along with the testimony of Joseph Valachi in 1963; the Pizza Connection, which began in 1985; and organized crime involvement in gambling and labor unions have all become a part of the storied and infamous history of organized crime, sometimes intertwined with works of fiction or semi-fiction such as *On the Waterfront* (1954), *The Godfather* (1972), *The Untouchables* (1987), *Goodfellas* (1990), and *Casino* (1995). Today, while Italian American organized crime is not dead, it is a far cry from the strength it once had.

Modern Organized Crime

Changing social conditions of the last half of the 20th century contributed to the decline of the gangs that were once common in American cities and to the transformation of ethnic identities. The second and subsequent generations no longer identified with the oppression felt by the first generation or with the attitudes and methods originally spawned in the *mezzogiorno* of the late 19th and early 20th centuries.

There was a concerted effort by law enforcement and legislators to reduce or eliminate the problem of organized crime. For years, FBI director J. Edgar Hoover refused to admit even to the existence of the Mafia or organized crime. The reasons for the denial have been speculated about for years, but the real reasons died with Hoover in 1972. At any rate, federal efforts to combat organized crime were minimal until they began to change in the 1960s under the direction of Attorney General Robert Kennedy. A few attempts had been made at legislation targeting organized crime prior to the 1960s, but all were flawed and largely ineffective. Title III of the Omnibus Crime Control and Safe Streets Act of 1968 made wiretaps more effective in the fight, and the Organized Crime Control Act of 1970 established two important tools in the fight against organized crime. One was the Witness Protection Program, which provided a safe haven for potential witnesses to be able to come forward and testify against bosses and other organized crime figures, and the other was Racketeer Influenced and Corrupt Organizations (RICO), a law that, although not used extensively until the 1980s, made it easier to prosecute those in leadership positions by establishing a pattern of

racketeering. By the late 1980s, these tools were invaluable in combating organized crime.

Another factor to consider is the globalization of organized crime. For example, while the Mafia had long been in cooperative ventures with other crime groups throughout the world, particularly in Italy and Sicily, organized criminal enterprises went global in the waning years of the 20th century, far beyond the boundaries of declining neighborhoods. Once relatively unchallenged by other groups, the Mafia found itself being outpaced by drug cartels capable of producing and transporting their own product, and by more sophisticated scams that relied on technology and international cooperation that the Mafia did not have. Today, only vestiges remain of the 26 families that existed nationally on the flow charts and diagrams of the Justice Department, with the only real Mafia presence remaining in Chicago and New York, albeit in a much smaller and more weakened state.

Conclusion

The Irish, Jews, and Italians are not the only ethnic groups that have participated in criminal organizations, nor has shared ethnic background been the only focal point. In the United States, the history of organized crime is littered with examples of inter-ethnic cooperation between groups, and although multiculturalism was not a value shared by many of the early gangsters, ethnic differences were often set aside in pursuit of riches and profit. And while many countries each have their own history of organized crime, organized crime today is a global phenomenon that knows no boundaries. Organized crime in the United States, for the most part, had its origins in the complex relationship between ethnicity, nationality, immigration, and the socio-historical context of the time and the countries from which each group emerged. No ethnic group is inherently criminal, and the vast majorities of all ethnic groups that have come to America have taken their place as upstanding and law-abiding citizens. While there still may be an ethnic component among the various organized crime groups of today, most organized crime groups of the modern era are now strictly driven by profit and opportunity and not by ethnic background.

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See Also: 1921 to 1940 Primary Documents; 1941 to 1960 Primary Documents; 1961 to 1980 Primary Documents; Chicago, Illinois; Irish Americans; Italian Americans; Jewish Americans; New York City; Organized Crime, Contemporary.

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Organized Crime, Sociology of

Establishing a concrete definition of organized crime is rather difficult given the multidimensionality of scholarship surrounding criminal organizations. Because working definitions of organized crime have been offered by disciplines such as economics, criminology, political science, international affairs, and anthropology, determining the precise elements of a criminal organization and organized crime itself becomes difficult. Additionally, creating a comprehensive definition is further complicated by the changing and adaptive nature of organized crime and the cultivation of new groups (e.g., terrorist organizations, criminal networks, and street gangs).

Because organized crime groups adapt to their environment, their criminal activity, structure, and methods of operation fluctuate—this, in turn, alters the definition. Therefore, rather than ascertaining a concrete definition, it is best to incorporate the most frequently cited elements and causes of organized crime.

Current definitions frequently include elements of a formal structure, longevity, use of crime and

violence to obtain money and power, and use of corruption to ensure immunity. A great deal of research suggests that a criminal organization's structure varies depending on its membership requirements, size, and hierarchy. There is also some overlap regarding structure when discussing a criminal organization's longevity, because a group's structure may reflect a need to be opportunistic and short-lived or protected and durable. Finally, when discussing the use of crime for financial profit, it is necessary to identify the services and goods being provided, because the type of goods and services provided by criminal organizations generally reflect the demands of the local community.

Formal Structure

The structure of organized crime generally follows three different models. Some groups are structured hierarchically with a formal division of labor and identifiable leaders, a few are based on ethnicity and often have ties to cultural ideologies, and most have a flexible structure, which they alter to meet changing economic opportunities. Although most criminal organizations fit under only one of the three models, it is important to note that some groups comprise elements from multiple models. For example, the Italian American Mafia recruits exclusively from the pool of Italian Americans; emphasizes the Sicilian ideologies of secrecy, respect, honor, and family ties; and maintains a strict, vertically tiered structure with known leaders. This is similar to the Hells Angels motorcycle club, which recruits primarily Caucasian males—who drive American-made motorcycles (e.g., Harley-Davidson)—and operates under a strict vertical hierarchy. With such a wide variety of structures, a comprehensive understanding of organized crime requires a review of the elements affecting its makeup.

The selective recruitment of members is an essential component for most definitions of organized crime because organizations vary in their requirements for membership. For example, some criminal organizations select members based primarily on ethnic ties and familial association (e.g., the American Mafia), others recruit based on location (e.g., prison gangs) or means of transportation (e.g., outlaw motorcycle clubs), and most recruit based on an individual's skill set or connections

(e.g., Russian Mafia, drug cartels, etc.). The justification for choosing one form of recruitment over another is predicated on a desired outcome, but it is important to note that most contemporary organized crime groups have relaxed their membership requirements regarding fixed attributes (e.g., ethnicity or gender) and focused heavily on dexterity and networking.

The basic premise underlying organized crime is the desire to achieve monetary gain. However, in addition to being profit oriented, organized crime values secrecy, immunity, efficiency, and, in many cases, cohesion. Therefore, criminal organizations must find a balance that allows them to complete their desired tasks in a clandestine fashion. To achieve this, some groups recruit based on ethnicity, because the solidarity and shared values produced by ethnic homogeneity are thought to enhance group cohesion and a sense of belonging, which often result in higher levels of trust and secrecy. Yet, placing ethnic limitations on membership hinders an organization's ability to recruit the best people for a particular task, which further inhibits its ability to operate opportunistically. Thus, while some groups benefit from the high levels of secrecy and solidarity produced by their ethnic similarity, they are simultaneously limited by the type of people they may recruit. This likely explains why the American Mafia was replaced in the international drug market by an assortment of multiethnic criminal networks.



Charlie "Lucky" Luciano became known as the father of U.S. organized crime after he split the New York City area into five Mafia crime families, established the first commission, and was the first official boss of the Genovese crime family.

While it is widely accepted that some criminal organizations maintain an ethnic requirement for full membership in their group/family/organization, criminologist J. Albanese cautions that generalizing this element to all groups would lead one to fall into an “ethnic trap.” To this point, modern research acknowledges that while some groups are ethnically similar, it is a more appropriate description of organized crime during the late 19th and early 20th centuries, when Italian organized crime was supreme. Thus, rather than maintain the fallacious view that all organized crime is akin to the Italian Mafia, researchers and law enforcement officials have acknowledged the transnational and opportunistic nature of most contemporary criminal organizations, which requires high levels of dexterity and intergroup cooperation. For a crime group to remain influential and competitive in light of these advancements, it must be willing to cooperate with the most skilled individuals, irrespective of their ethnic origin. In this respect, contemporary organized crime functions more like a crime syndicate and less like a rigorously governed “family.”

Organization Size

Identifying a criminal organization's size can be an extremely daunting task, especially for groups that operate transnationally and under a code of silence. To this end, it is necessary to consider how the size of a criminal organization fluctuates depending on the environment in which it is situated, its prestige, and its criminal involvement. For example, criminal enterprises that operate in communities characterized by a weak and corruptible governing body are more likely to expand in size, while communities possessing strong, authoritative governments are not. In addition to its immediate environment, a criminal organization's size is shaped by the nature of its criminal involvement. Specifically, the size of a criminal enterprise may reflect a need to be covert, opportunistic, or undoubtedly present. For crimes such as international drug, human, and vehicle trafficking, where the need to be unnoticed is high, criminal organizations alter their size to be no larger or more pronounced than is necessary. Additionally, because the number of criminal enterprises has increased in the past two decades, the need to be opportunistic and competitive is more important now

than it was in previous years. This point is illustrated by the assortment of constantly expanding Mexican drug cartels.

Attempting to meet the high U.S. demand for illicit narcotics (e.g., cocaine and methamphetamines), Mexican drug cartels have been engaged in violent turf wars over the best trafficking routes to California, New Mexico, Arizona, and Texas, which has expanded their violent presence to several cities in the United States as well. As a result, they have been purposively targeted by competitive crime syndicates, as well as both U.S. and Mexican law enforcement agencies, which only seems to perpetuate their growth and propensity toward violence. Thus, despite law enforcement officials' ability to hinder their operations in the past, the lucrative and prestigious nature of drug trafficking in Mexico seems to outweigh the fear of potentially being apprehended by law enforcement officials, as is evident by their continued growth in the international drug market. In addition to the above-mentioned factors, a discussion of the strengths and weaknesses for small and large criminal organizations is warranted.

Most crime groups are small, unsophisticated in both operation and structure, and have little to no reputation; however, because of their simplicity, they also tend to be highly mobilized, opportunistic, and lucrative. In contrast, J. Finckenauer and E. Waring illustrate the value of large criminal organizations by arguing that they are more sophisticated in both operation and structure, better able to participate in multiple criminal enterprises, and comprise members that tend to see themselves as belonging to an accredited group. Additionally, M. Bouchard and F. Ouellet suggest that large criminal organizations are valuable because of their inherent access to more resources (e.g., social capital). Despite each of these desired attributes, large criminal organizations are negatively impacted by their heightened exposure to attacks by law enforcement and their inability to mobilize quickly. Although each of the aforementioned sizes has strengths and weaknesses, determining which one to operate under is usually contingent on the type of crime being committed and the multiplicity of craft required to be successful.

As Albanese demonstrates, international drug trafficking networks must be larger and

more sophisticated than street-level drug dealers because of the intricacy involved in (1) obtaining the raw substance, (2) processing the end product, (3) transporting the end product to consumer nations, and (4) “laundering” or transporting the illicitly obtained funds back to the original source. Given the elaborate and demanding process described by Albanese, it is easy to see why transnational organized crime groups recruit and/or cooperate based on an individual’s skill set and/or position (e.g., geographically or politically) rather than ethnicity. Moreover, beyond demonstrating the salience of dexterity, it also illustrates why an organization needs to be large enough to handle the intricacies of transnational crime while accounting for the increased likelihood of obstruction by law enforcement officials.

To the contrary, while international drug trafficking is necessary when the raw substances are located in other part of the world (e.g., coca and opioids), drugs such as marijuana and methamphetamines tend to be grown/manufactured locally and, consequently, require less manpower and sophisticated trafficking methods. As a result, their organizations tend to be smaller in size and more simplistic in their operations. Despite the inherent weaknesses of being small (e.g., less social capital, less opportunity to expand, etc.), these criminal organizations benefit from their ability to mobilize quickly and operate clandestinely. A criminal organization’s size can fluctuate quite dramatically, depending on the current task; thus, law enforcement officials are able to combat a criminal enterprise most efficiently only after identifying its environment, type and complexity of criminal involvement, and level of prestige.

Hierarchy

The hierarchy of organized crime varies dramatically depending on its division of labor, ethnic makeup, and desire to be opportunistic. The American Mafia, Hells Angels motorcycle club, and other large organizations maintain a strict vertical hierarchy with a strong central governing body, which usually comprises identifiable leaders and homogeneous members. Under this structure, assignments/tasks are generated at the top and distributed to the lower entourage. Because groups operating under this structure are

complex, large, have a division of labor, and are therefore easier to manage, a vertical hierarchy is often the preferred structure. However, while they benefit from the organizational element, groups operating under this structure are simultaneously weakened by their exposure (i.e., ease of identification) to outsiders, such as law enforcement officials. During the notorious years of the American Mafia (i.e., preceding the 1970s), this stern structure allowed leaders of the various Italian American families to maintain an influential role (by allocating tasks and scheduling “hits”) without falling victim to attacks by law enforcement. However, after the United States passed the Racketeer Influenced and Corrupt Organizations Act (RICO) in 1970, federal prosecutors were able to arrest influential mobsters and apply long prison sentences for charges that were previously unavailable to them. In response to legal developments such as this, criminal organizations began operating under a different hierarchical structure, or refrained from acquiring one at all.

This second, and more popular, hierarchy is horizontal, meaning that it does not have a top-down structure but rather operates without a clearly identified leader. An organization with this structure includes a decentralized and flexible network and no (or very few) identifiable leaders. Organized crime groups structured by horizontal hierarchy are problematic for law enforcement officials because they make it extremely difficult to identify individuals occupying leadership positions. The types of criminal organizations most likely to use this hierarchy are often opportunistic, well protected, ethnically heterogeneous, and well equipped to handle adversity. Moreover, specific groups that would fit this structure include most drug cartels, the Russian Mafia, the Chinese Mafia, and profit-oriented criminal networks comprising individuals with or without allegiance to another organization.

Longevity

The longevity of criminal organizations such as the Hells Angels, Outlaws, and the American, Chinese, and Russian Mafia reflect the ability of organized crime groups to react and adapt to changing environments. While criminal organizations utilize tactics such as secrecy and decentralization to combat attacks by law enforcement, they also



A 1988 press conference of the Soviet Public Prosecution Office's team investigating the existence of an official Russian Mafia look at gold coins, jewelry, and other valuables confiscated from high-ranking bribetakers.

face advances in technology (e.g., tracing credit cards and Internet portals, wiretapping, etc.) and globalization that challenge their ability to remain intact. Contemporary organized crime groups must overcome the traditional obstacle of evading attacks by law enforcement officials while simultaneously remaining competitive in their respective markets; however, because of the recent advances in technology, this requires that they update their methods of operation in conjunction with the latest innovations.

Throughout the early and mid-1900s, the American Mafia exploited the public's demand for illicit goods and services. For American Mafia families residing in Chicago during Prohibition (1920–33), this involved trafficking and distributing bootleg liquor; for the Las Vegas-based families operating during the 1940s, it included providing illicit gambling services. Moreover, for the Russian Mafia located in Pennsylvania, fraud was seen as the quintessential method of obtaining funds. For example, during the early 1990s members of the Russian Mafia created an automobile insurance ring that appeared legitimate to the outside world but eventually claimed more than \$1 million in fraudulent claims. Since that time, the Russian Mafia has advanced its involvement in fraud to include the production of counterfeit credit cards, checks, Immigration

and Naturalization Service documents, and passports. Additionally, various other organized crime groups have expanded their criminal involvement to include diamond smuggling, counterfeiting, and cybercrime, which includes, among many others, online pornography and hacking (e.g., into a victim's bank account). What is interesting about the level of evolution for these and other criminal organizations is their use of innovative techniques to stay modern. Without such practices, it is unlikely that they would continue their longevity.

For contemporary organized crime groups to successfully maintain both business operations and defense strategies, they must use and/or threaten to use violence. Whether it is because of lack of payment for drug transactions, refusal to pay gambling debts, potential testimony against a fellow member, or any assortment of acts in opposition to the criminal organization's wishes, the use or threat of violence is considered a valuable method for reaching a desired end. In support of this fact, two members of the American Mafia—Al Capone of Chicago and John Gotti of New York—gained more popularity in their respective communities than many politicians because of the fear they instilled in others. Additionally, the Mara Salvatrucha (MS-13)—a multiethnic gang that originated in a California prison—is known to have increased rapidly in size and reputation because of its propensity toward violent behavior. After consideration of the nature of organized criminal behavior, which relies on fear as a method of coercion and policing, it is logical that the use or threat of violence would be considered a necessary element to remain influential in the criminal underworld. Understandably, the criminal underworld cannot rely on law enforcement officials to reconcile their differences; thus, utilizing violence and fear as a form of retaliation is an imaginable alternative.

Given the ubiquitous nature of law enforcement, it is not plausible for many criminal organizations to remain authoritative in their respective markets without ensuring immunity from the state. Unfortunately, the corrupting and coercing of politicians, law enforcement officials, and prosecutors occurs throughout the world, including the United States. However, documenting the occurrence of corruption is extremely difficult

because (1) politicians, law enforcement officials, and prosecutors are not likely to admit having engaged in corruption irrespective of its voluntary or coerced nature; and (2) the people generally conducting research on corruption (i.e., the government) are the ones who would be involved in it. Nevertheless, there are several well-known occurrences of it in the United States. For example, the Chicago families that operated during the 1920s pursued higher levels of prestige by capitalizing on the illicit liquor market produced by Prohibition. During this era, Mafia families had to cultivate useful relations with local police and government officials if they wanted to remain prominent suppliers of bootleg liquor. Had they not done so, it is more likely that they would have been apprehended or, at the very least, had their operations interrupted.

Causes of Organized Crime

It is widely accepted that most criminal organizations form because of an opportunity for financial gain. Therefore, organized crime groups are most likely to prosper in communities that have a weak and/or corruptible government and a population that demands illicit goods and services. Additionally, organized crime is often caused by immigration, the globalized economy, easy transnational travel and communication, political change, and other criminal organizations meeting their demise. The Colombian drug cartels, for example, were successful because of Colombia's weak government and the cartels' ties to criminal organizations in other parts of the world.

For these drug cartels, collecting and manufacturing cocaine was simple, because their government was weak and incapable of disrupting their operations; however, because of the unflattering state of their economy, the cartels were unable to sell their finished product locally and therefore needed to reach consumer markets in other parts of the world. Given that the two largest consumers of illicit substances are North America and Europe, the drug cartels were forced to form business alliances with criminal organizations in these countries. In the United States, the drug cartels have been known to cooperate with the Hells Angels, the American Mafia, and the Russian Mafia. In this example, the drug cartels were successful because of a weak governing

body, the ease of transnational trafficking, and the presence of a consumer market. Additional occurrences of organized crime being cultivated are the result of increases in immigration and the changing nature of organized crime—usually in response to heightened attacks by law enforcement officials.

The development of organized crime is often the result of increases in immigration to a particular country. In the United States, this was most evident during the late 1800s and early 1900s when Italian, Irish, German, and Russian immigration increased. What is most fascinating about this link between immigration and organized crime is the behaviors and ideologies many of the mobsters transferred from their homeland. For the Sicilians settling in the United States, this involved the ideologies of secrecy, solidarity, and distrust for authority, which developed after being negatively affected by years of suppressive and treacherous dictators. Similarly, individuals who immigrated to the United States from the former Soviet Union were reluctant to trust government officials and, resulting from their experiences with corrupt governing bodies, carried little remorse about stealing from those dissimilar to themselves.

This fact may explain why the Russian Mafia prefers fraud as its primary means of income. Each of these causes of organized crime brings attention to the salience of an evolving society that is both positively and negatively affected by advances in technology. Because of advances in the ease of travel and communication (e.g., the Internet), countries like the United States are influenced by the ideologies of other countries. While this influence is considered a positive when the ideologies are beneficial, it is often not the case regarding individuals interested in criminal involvement. It is therefore helpful to review the causes of organized crime in other parts of the world in order to better understand the causes and influences of organized crime in the United States.

Conclusion

The sociology of organized crime is often concerned with the causes, structure, historical development, and criminal involvement of varying groups. Regarding the causes, it is generally agreed that organized crime is most likely to

exist in communities that desire illicit goods and services and lack a strong governing body. Moreover, because of technological advances in travel and communication, people studying organized crime are forced to consider its presence in cyberspace and parts of the world containing copious amounts of illicit substances (e.g., opium and coca), thus illuminating the unbounded nature of crime. Considering the transnational nature of crime, it is imperative that criminal organizations be described in reference to the social forces likely to alter their structure and criminal involvement because, as this entry suggests, the nature of organized crime is constantly changing and adapting to the rest of the world.

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See Also: 1941 to 1960 Primary Documents; 1961 to 1980 Primary Documents; 2001 to 2012 Primary Documents; Organized Crime, Contemporary; Organized Crime, History of; Terrorism.

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Oswald, Lee Harvey

Born in Slidell, Louisiana, Lee Harvey Oswald (1939–63) was raised by a single mother and

two older brothers. The family moved several times within the Louisiana and Texas area, living in 22 different homes throughout his childhood. Oswald was never one for traditional schooling, skipping most of his classes starting in the eighth grade, leaving him to roam the streets of whatever city he may have lived in at the time. He was caught by a truant officer at one time and was sent to a youth detention center for three weeks. There, he received a psychiatric evaluation and was found to be nonemotional and introverted, possessing the feeling that no one cared about him. As a child, Oswald was deeply interested in politics and socialism, joining the Young People's Socialist League when he was 16 years of age. He has stated that his interest in politics stemmed from the reading of a political pamphlet announcing the execution of Ethel and Julius Rosenberg (who were accused of selling secrets to the Soviet Union).

Military Service

Oswald attempted to sign up for service with the Marine Corps in 1955 but was rejected because of his age. He instead joined the Civil Air Patrol, a youth auxiliary of the Air Force. A year later, in October 1956, he entered the U.S. Marine Corps, only a week after he turned 17. While in the Marine Corps, Oswald received extensive marksmanship training, making him a skilled shooter. During his training and service, Oswald discussed with his fellow recruits his radical political views and pro-Soviet tendencies. Only a year into his enlistment, Oswald accidentally shot himself with an illegally obtained pistol. He was court-martialed for the incident and later attacked the sergeant he believed was responsible for his punishment. He was court-martialed a second time for the assault. Around this time, he began to learn the Russian language and follow Marxism.

Based on a hardship plea by Oswald, the Marine Corps released him in September 1959. Just nine days after his release, Oswald left the country to travel through France and England, ending in the Soviet Union to attempt to relocate and to obtain citizenship. Deeply dissatisfied with the American way of life and values, Oswald wanted to become a citizen of the Soviet Union; however, he was denied asylum. Upon receipt of

this news, Oswald attempted suicide for the first time. He was later recruited by the KGB (Soviet Union national security agency) for a short time, but never joined their ranks.

Assassination of President Kennedy

In 1961, Oswald's love affair with the Soviet Union came to a halt, leaving him to appear at the U.S. Embassy to request his return to the United States. Eighteen months later, the newly married Oswald and his wife, Marina Prusakova, moved to America to begin their life together. Upon arrival, Oswald was questioned by the Federal Bureau of Investigation (FBI) and was found to be aggressive and evasive. The couple moved to Dallas, Texas, where Oswald created his first alias: Alek J. Hidell. While living in Dallas, Oswald showed signs of losing control of his rage and temper,



Jack Beers, Jr., a Dallas Morning News photographer, captured the moment when Lee Harvey Oswald was shot by Jack Ruby (in foreground) as Oswald was being moved by police in 1963.

picking fights with family and with his wife. He became a supporter of Fidel Castro, and became even more critical of U.S. policies under the Kennedy administration. He traveled to New Orleans and Mexico City to promote his pro-Castro sentiments. Again, Oswald tried to return to the Soviet Union, but after his application for residency was denied, he returned to Dallas and got a job at the Texas School Book Depository.

On November 22, 1963, President John F. Kennedy was traveling via chauffeured car through the streets of Dallas. When the car the president was traveling in reached Dealey Plaza at 12:30 p.m., three shots were fired at Kennedy, striking him in the head and causing his death. The majority of witnesses stated that they believed the shots came from the Texas School Book Depository. An investigation by the Warren Commission, headed by U.S. Supreme Court Chief Justice Earl Warren, followed the assassination.

The commission determined that Lee Harvey Oswald committed the assassination of President John F. Kennedy. According to the report, Oswald woke up that morning and left his wife, Marina, with his wedding ring and cash. When he left his home, he was carrying an oblong package that was wrapped in brown paper; he told his neighbor it was a curtain rod. Oswald spent the morning filling book orders at the School Book Depository and stated that he spent his lunchtime with two coworkers. However, his coworkers denied this fact; it is thought that Oswald remained on the sixth floor of the building.

Three minutes after the assassination took place, Oswald was seen walking out the front door of the Book Depository. He then boarded a bus but hastily disembarked and got into a taxi after the bus hit traffic. He was dropped off a couple of blocks away from a rooming house he had in Oak Cliff. He acquired a .38 revolver and left the house. Soon after he left the rooming house, Oswald encountered Dallas police officer J. D. Tippit, whom he then shot with his revolver. An eyewitness stated that Oswald was the shooter, and that after the shooting, he ran to the Texas Theater; Oswald was apprehended there by police. The FBI crime lab collected the bullets and cartridges from the scene, and they were matched to Oswald's revolver; although the bullet recovered from Tippit was fired from a

barrel that was bored out, the hammer markings matched. After Oswald was questioned by police for murdering Tippit, he was declared a suspect in the Kennedy assassination. Oswald was charged with the murder of President Kennedy and was scheduled to be transferred for interrogation. In route, he was shot and killed by Jack Ruby, a Dallas nightclub owner.

To this day, there is much debate by the public and political officials alike concerning the assassination of President Kennedy. Many conspiracy theories have circulated throughout the years concerning how the assassination took place and who “really” committed the act. Many believe that there were actually four shots fired that fateful day, and that there had to have been two different gunmen to pull off the assassination. Some believe the shooting was a part of a large conspiracy fashioned by the mob, the Central Intelligence Agency (CIA), and/or Castro extremists.

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See Also: 1961 to 1980 Primary Documents; Ballistics; Federal Bureau of Investigation; Guns and Violent Crime; Kennedy, John F. (Administration of); Secret Service.

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Padilla v. Kentucky

Padilla v. Kentucky is a 2010 U.S. Supreme Court ruling that stipulates under the Sixth Amendment that the attorney and/or defense counsel of a non-citizen client charged with a crime is required to advise the client about the risk of deportation from the United States upon entering a guilty plea.

Jose Padilla was born and spent his early formative years in Honduras. Immigrating to the United States in the 1960s, he became a lawful permanent resident. Padilla later served honorably in the U.S. military and fought in the Vietnam War. For over 40 years, he was a legal resident of the United States, where he later became a licensed commercial truck driver. In September 2001, a Kentucky law enforcement officer conducted a traffic stop on Padilla in order to perform a routine document check on his truck. During the traffic stop, the officer obtained consent from Padilla to conduct a search of his vehicle, where he located 23 separately wrapped Styrofoam boxes in the trailer area that did not appear on the truck's manifest. The officer reported that he asked Padilla if he knew the content of the boxes and Padilla replied "maybe drugs." A subsequent search revealed the boxes contained nearly half a ton of marijuana. Padilla was arrested and later indicted by a Hardin County grand jury on drug trafficking and other related charges. Padilla

was appointed state-funded legal counsel and was unsuccessful in his motion to suppress the key evidence in the case (the consent to search the vehicle and his confession). Subsequently, in 2002, Padilla pled guilty to trafficking more than five pounds of marijuana, possession of marijuana, and possession of drug paraphernalia.

Based upon Padilla's plea agreement, he would serve a five-year prison sentence and serve the remaining five years on probation. During his conversations regarding a plea agreement, Padilla claimed that his defense counsel never advised him that under federal criminal codes his drug conviction was considered an "aggravated offense," making it a deportable crime. Padilla also claimed he was instructed by his defense counsel that, based on his long residency in the United States (over 40 years), he would not have to worry about deportation.

In August 2004, fearing deportation from the United States, Padilla filed a motion for post-conviction relief with the Hardin County Circuit Court. Post-conviction relief is a generic term referring to the formal appeal of a criminal conviction, which if granted by the court may include a new trial, modification of a sentence, or even release. Padilla claimed that his constitutional rights under the Sixth Amendment, specifically regarding effective counsel, had been violated. Padilla claimed that he would have never accepted

a plea agreement had his attorney advised him of the deportation consequences. Under *Padilla*, 253 S.W.3d at 483, the court denied the motion for relief, finding that defense counsel is not required to inform a client of the “collateral consequences” of a guilty plea in order for the plea to be valid. The Kentucky Court of Appeals later reversed the decision (*Padilla*, 253 S.W.3d at 483-84), remanding the case for an evidentiary hearing. The Court of Appeals ruled that although the Sixth Amendment does not require full disclosure of all collateral consequences of criminal convictions by legal counsel, such as deportation, to validate a guilty plea, the affirmative act of grossly misadvising a client can justify post-conviction relief. In January 2008, The Kentucky Supreme Court later reversed this decision (*Padilla*, 253 S.W.3d at 483-84), ruling that a defense counsel’s failure to advise a client of collateral consequences or misadvising regarding collateral consequences does not provide a basis for post-conviction relief.

In March 2010, the Supreme Court of the United States heard the case and reversed the Kentucky Supreme Court, ruling that under the Sixth Amendment, defense counsel of a noncitizen client charged with crime is required to advise the client about the risk of deportation upon entering a guilty plea. The court supported the ruling by confirming that recent changes to immigration laws have dramatically raised the stakes of a noncitizen’s criminal conviction, including reforms that have expanded the class of deportable offenses, for which deportation is now virtually inevitable for a vast number of noncitizens convicted of crimes. The U.S. Supreme Court added that accurate legal advice for noncitizens accused of crimes has never been more important thus, as a matter of federal law, deportation is an integral part of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes.

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See Also: Customs Service as Police; Defendant’s Rights; Homeland Security.

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Paine, Thomas

Thomas Paine (1737–1809) was born in Thetford, England, and began his life as a corseter’s son. At birth, his name was Pain, and the change in spelling is somewhat disputed. Evidence shows that he spelled it “Paine” by 1769, while he was still living in England. At 13, he began working as his father’s apprentice, but this trade did not initially suit him. At 19, he enlisted and briefly served in the navy. After returning to Britain, he set up a business in Kent, and shortly after, he married Mary Lambert. His wife died in childbirth, along with their child, and Paine drifted afterward. He briefly served as an excise officer. After being deposed of his post twice in four years, he had brief stints as a minister, a schoolteacher, and a tobacco shop owner.

In 1768, Paine moved to Lewes, where he lived above the tobacco shop of Samuel and Esther Ollive. Samuel Ollive introduced him to the Society of Twelve, an elite intellectual group that discussed town politics. While living here, Paine married Elizabeth Ollive. In the midst of a new marriage and finding a place within society, Paine joined local excise officers in asking Parliament for better pay and working conditions. In 1772, he published a 21-page article, “The Case of the Officers of Excise,” arguing for the cause. Over the next two years, he lost his job and business because of extended absences brought on by his travel and writings, and in April 1774, he sold his household possessions to avoid debtor’s prison. In June 1774, he formally separated from his wife and moved to London. By happenstance, that September a friend introduced him to Benjamin Franklin. By this point, Paine had developed a sense of political fervor, and in his conversations with Franklin, the two discussed the fate of the colonies. Franklin encouraged Paine to move to Philadelphia, and he gave him a letter of recommendation. In October, Paine left Great Britain; he arrived in Philadelphia in November.

American Political Writing

After spending nearly six weeks recovering from the voyage, Paine became the editor of the *Pennsylvania Magazine* in January 1775. He held the post ably, and shortly after arriving in Philadelphia, Paine began joining local democratic groups discussing the rising protests and royal taxes. In 1776, taken up with the colonial cause, he published *Common Sense*. *Common Sense* appeared after the revolution began, but it was widely recognized as important and was immediately popular. Individuals read it aloud in taverns, and his use of plain language and concise writing, and his call for immediate separation from Britain helped solidify the work as part of the popular rhetoric. Most significantly, since the Continental Congress was more concerned with how independence

would affect the war effort, *Common Sense* did more for the general public as a rally cry and call for support. The core of the argument rested on the belief that monarchies ruled by force, making them an illegitimate form of government.

In late 1776, Paine published *The Crisis* to inspire the revolutionaries on the battlefield. He described Americans as devoted to civic virtue and opposing the selfish provincial man, and the pamphlet proved extremely popular among the troops. George Washington even had it read aloud to troops. Paine became a hero during the Revolutionary War, but shortly after, he left America to return to Europe. He felt the need to continue to write for social and political reform there. He published *The Rights of Man* in 1792—his anti-monarchy stance in support of the French



A statue of Thomas Paine stands in Thetford, Norfolk, England, where he was born. He moved to the British American colonies in 1774 in time for the American Revolution. His main contributions were *Common Sense* and the widely read *The American Crisis*, a prorevolutionary pamphlet series written between 1776 and 1783.

Revolution. He fled England for France, where in 1793, he was imprisoned because he refused to support the execution of Louis XVI. James Monroe worked to prevent his execution, and Paine left France in 1802 when Thomas Jefferson invited him back to the United States. During this period in England and France, Paine published *The Age of Reason*, an antichurch text, and he learned upon his arrival in the states that he was held in disregard by most of the public for his religious stance. He died in New York City in 1809.

Paine's political writings reflected revolutionary fervor, but they also called upon the individual to engage in acts of civil disobedience. Refusal to pay taxes, boycotting, and taking up arms for a revolution were considered treasonous to supporters of the king. After the American Revolution, Paine's continual calls for a revolution in government every generation threatened the newly formed government. Although Paine ended his days amid public rejection, his ideas have inspired many people in later generations.

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See Also: American Revolution and Criminal Justice; Colonial Courts; Political Dissidents.

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Paretsky, Sara

Sara Paretsky is a novelist and editor of more than 20 books. She is best known for her crime and detective fiction and as the creator of the female private eye Victoria Iphigenia (V. I.) Warshawski. Paretsky was born in Ames, Iowa, on June 8, 1947,

the daughter of physicist David Paretsky and librarian Mary E. Edwards Paretsky. Paretsky and her family moved to Lawrence, Kansas, in 1951. After receiving her bachelor's degree in political science from the University of Kansas in 1967, Paretsky moved to Chicago. She briefly worked as a secretary at the University of Chicago before earning a university fellowship and going on to complete a Ph.D. in American history in 1977. Her dissertation "Words, Works, and Ways of Knowing: The Breakdown of Moral Philosophy in New England Before the Civil War" examined 19th-century Calvinists, or "Christian scholars," at Andover Seminary in Massachusetts.

The poor employment market in higher education convinced Paretsky to study for a business degree. The same year she earned her Ph.D., she also received an M.B.A. from the University of Chicago. From 1977 to 1986, Paretsky managed the advertising and direct mail marketing programs at CNA Insurance Company, observing the insurance industry firsthand. The experience proved invaluable in developing the various white-collar crimes V. I. Warshawski later investigated.

Paretsky began writing fiction when she was not bust working at CNA. She was critical of the way women were traditionally portrayed as powerless victims or evil femme fatales in crime and hard-boiled detective novels. Paretsky envisioned a lady private eye with a feminist sensibility. Thus was born V. I. Warshawski, the multiethnic offspring of a Polish American policeman and an Italian-Jewish mother.

V. I. Warshawski is a product of the women's movement and a new kind of private investigator. Warshawski's sexual independence and tough intelligence departs from the persona of the elderly Miss Marple in Agatha Christie novels, as well as the social anomie characteristic of Dashiell Hammett's Sam Spade or Raymond Chandler's Philip Marlowe. Rather, Warshawski identifies with the underdog and downtrodden while maintaining emotional connections to family, friends, and community.

Paretsky's mysteries are geographically and socially rooted in Chicago. In the early novels, V. I. Warshawski resides in the Lakeview neighborhood along Halsted Street, just north of Belmont Avenue. In *Indemnity Only* (1982), her protagonists include a North Shore banker,

a union leader, University of Chicago students, and insurance agents. Warshawski tackles Chicago's shipping business in *Deadlock* (1984). *Killing Orders* (1985) examines Roman Catholicism as Warshawski investigates a Chicago monastery with missing funds and eventually exposes church corruption. The flooding of Chicago's underground tunnels in the central business district in 1992 is relived in *Tunnel Vision* (1994). *Burn Marks* (1989) investigates corruption and murder in Chicago's construction industry.

Paretsky's vivid renderings of Chicago have generated comparisons with prominent authors such as Nelson Algren. But her fiction also epitomizes the Chicago-based urban realism associated with Theodore Dreiser, Frank Norris, Carl Sandberg, Gwendolyn Brooks, and Studs Terkel. Just as Brooks's *In the Mecca* (1968) transformed a single South Side apartment building into a paradoxical emblem of African American life and urban renewal, and Terkel's *Division Street* (1967) made that local thoroughfare a symbolic divide in Chicago and the entire United States, Paretsky's V. I. Warshawski evokes a gritty, pragmatic feminism confronting the raw, unrefined, and violent elements of the late-20th-century, deindustrialized metropolis.

The popularity of the Warshawski series generated multiple awards for Paretsky. In 1987, *Ms. Magazine* named Paretsky Woman of the Year. In 1996, she received the Mark Twain Award for distinguished contribution to Midwest literature. The British Crime Writers Association honored Paretsky with the Cartier Diamond Dagger Award for lifetime achievement in 2002 (the first non-British writer to receive the award) and the best novel of 2004 (*Blacklist*). Her 2007 memoir, *Writing in an Age of Silence*, was a National Book Critics Circle Award finalist.

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See Also: Chicago, Illinois; Christie, Agatha; Literature and Theater, Crime in; Private Detectives.

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Parker, Isaac

Isaac Charles Parker (1838–96) was born in Ohio. Much has been written about his life and legal career, and he is one of the best-known judicial figures in American history. He is known as "the Hanging Judge" because of his willingness to sentence offenders to the gallows. This readiness to employ capital punishment makes him a somewhat divisive figure in American history.

Early Career

At age 17, Parker began studying law. After studying for the bar exam largely on his own, he was admitted to the Ohio Bar Association in 1859. Shortly thereafter, he moved west and began practicing law in St. Louis, Missouri. Initially a Democrat, Parker was elected to the office of city attorney, but within days, the Civil War broke out and he reexamined his political views. He ended up fighting vigorously to keep Missouri in the Union and was an enlisted member of the 61st Missouri Emergency Regiment, a guard for Union forces.

Parker was elected to the office of prosecutor (on the Republican ticket) in Buchanan County, Missouri, and by the age of 30, he had been elected to the bench of the 13th Judicial District in Missouri. In 1870, Parker resigned his bench and served two consecutive terms in Congress as a representative from Missouri. After Parker made an unsuccessful bid for the U.S. Senate, President Ulysses S. Grant nominated him to be the chief justice to the Utah Territory. Before the nomination was finalized, Parker requested that the nomination be changed so that he could be a judge in the U.S. District Court for the state of Arkansas and the Indian Territories. It is largely unknown why he requested this change, though Mary Stolberg speculates that he might have desired the lifetime appointment that came with the Arkansas bench. His nomination was confirmed, and he was sworn into office on March 25, 1875.



Isaac Charles Parker served as a U.S. district judge for 21 years. He is remembered today as the “Hanging Judge” of the American Old West, sentencing 160 people to death.

An Earned Reputation

When Parker arrived in Fort Smith, Arkansas, he found a court that was rife with corruption and that was essentially in chaos. Several clerks were accused of embezzlement, and the previous judge had stepped down amid allegations that he mismanaged court funds. In addition to corruption, there was a pervasive feeling among Fort Smith residents that Arkansas and the Indian Territories were simply out of control. In order to do his job, Parker had to fix the issues of the court, as well as win over the residents in the area. In an effort to do to the latter, it is said that he helped found a library and hospital in Fort Smith, as well as organize the county fair.

During his first term on the bench, Parker found eight men guilty of murder; six of them were hanged on September 3, 1875. It is important to note that during the first 14 years of his tenure, all of Parker’s decisions were final. There was no appeal either by error or by writ of certiorari because the court operated largely as a circuit court. The situation changed on February 6, 1889, when Congress stipulated that death penalty

cases could be reviewed—and possibly reversed—by the U.S. Supreme Court. Nearly two-thirds of Parker’s cases were reversed and remanded back to Fort Smith for new trials.

In an effort to hear as many cases as possible, Parker would often hold court six days a week for at least 10 hours a day. During Parker’s 21 years on the bench, he tried 13,490 cases (most of them criminal cases); 9,454 resulted in guilty verdicts. While he is often referred to as “the Hanging Judge,” it was ultimately a jury that made the decision between guilt and innocence, and in Parker’s view, he was upholding the law by passing down death sentences. All told, he sentenced 160 people to death (four of them were women), and of those, 79 were hanged on the gallows. Some notorious outlaws were among the 160 people sentenced to death by Parker. One such group was the Rufus Buck Gang, a five-member group comprising four Native Americans (Sam Sampson, Maoma July, and brothers Lewis and Lucky Davis) and led by Rufus Buck. During the summer of 1895, they went on a crime spree in which they raped, murdered, robbed, and generally terrorized citizens in the Indian Territory.

Parker’s last term on the bench began in the summer of 1896, but he was too ill to hold court, and he passed away on November 17, 1896. He is buried in the Fort Smith National Cemetery.

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See Also: Arkansas; Capital Punishment; Judges and Magistrates.

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Parker, William

William H. Parker (June 21, 1905–July 16, 1966) rose through the ranks to become chief of the Los Angeles Police Department (LAPD). A member of the LAPD for 39 years (1927–66), he is the longest serving chief in the department's history (1950–66). Following his death, the Police Administration Building (which was replaced in 2009) was renamed in his honor.

Parker was born in Deadwood, South Dakota. His parents were William and Mary Katherine Moore Parker. His family moved from Lead, South Dakota, to Los Angeles in 1922. Parker, who was an attorney, joined the Los Angeles Police Department on August 8, 1927. As a police officer advancing through the ranks, Parker avoided the corrupt police culture where officers routinely beat suspects and engaged in graft in alcohol, prostitution, and vice. He served as an LAPD officer for 15 years before taking a leave to serve in World War II. He received a Purple Heart after being wounded during the Normandy invasion, and an Italian Star and a Silver Star. He later helped “de-Nazify” local police forces in Germany and Italy as the Allies advanced. When he returned to the LAPD after the war, he was reassigned to basic patrol status in the LAPD. He became deputy chief and the first head of the bureau of internal affairs. The Brenda Allen scandal rocked the department in 1949, when it was revealed that members of the LAPD's vice squad had offered “protection” to gambling and prostitution operations and that they had attempted “shake down” organized crime figures (including Allen, who was known as the “Queen Bee of Vice”) in the city. Chief Clemence B. Horrall and Assistant Chief Joe Reed resigned.

Parker became permanent police chief on August 9, 1950, and is credited with transforming the LAPD into a professional law enforcement agency. The department that he took over in 1950 was notoriously corrupt and was heavily influenced by politicians. Parker embarked on a campaign to reform the LAPD by introducing professionalism while making the department autonomous from civilian control. This effort was threatened by the “Bloody Christmas” incident, when five young Latino and two Anglo men were beaten by more than 50 police officers

while they were in police custody on Christmas Day, 1951. The men had been arrested after fighting with some officers in a bar. Latin American leaders demanded greater police accountability to civilian authority. Eight officers were indicted for assault in the scandal. Five of the eight were eventually convicted, but only one was sentenced to more than a year in prison. By limiting the damage of the scandal, Parker ensured the independence of the department. Parker's efforts to root out corruption included the establishment of an “intelligence division,” and the resurrection of the vice squad, designated “administrative vice.” These two divisions were referred to as the “palace guards,” and they reported directly to the office of the chief.

Parker's experience with military public relations in World War II was used to develop an effective media relations strategy for the police department. Following the Bloody Christmas scandal, Parker created a television program, *The Thin Blue Line*, to broadcast a favorable image of the LAPD. Through television shows such as *Dragnet*, and a steady stream of good publicity from local newspapers, he was highly admired nationwide. He introduced the motto “To Protect and to Serve” in 1955. Among the changes made by Parker were the introduction of more proactive policing methods and less use of violence but more use of force in securing areas, practices very similar to military peacekeeping methods that he was exposed to during the war.

Another change initiated by Parker was to transform the police force from one with officers on foot patrol into a force that relied on automobiles. He also reduced the size of the force. He believed that a smaller force would mean less corruption. This required a shift to more mobile policing, which allowed for faster response times from a smaller force. This also had the effect of isolating his officers from the neighborhoods they patrolled, further reducing the potential for corruption.

Parker was accused of being hostile toward African Americans and Latinos and of creating a departmental culture that tolerated brutality against minorities. Parker's police force protected white neighborhoods from “invasion” by the city's minorities, ensuring the support of whites for Parker's style of policing. Ultimately, the department's attitude toward minorities culminated in

the Watts Riots of August 1965. Over six days, 34 people were killed, 1,032 injured, and 3,438 arrested. Parker's explanation of the Watts riots underscored just how disconnected the department seemed from the moment. "One person," Parker is reported to have said, "had thrown a rock, and then like monkeys in a zoo, others had started throwing rocks."

On July 16, 1966, Parker died of a heart attack. Following his death, the Los Angeles city council voted to name the police administration building the Parker Center, in honor of the chief. When a new \$437 million police headquarters complex was nearing completion in 2009, a proposal to name the building for Parker was opposed by a number of political and civic leaders who blamed him for police officers' discrimination against minorities—especially blacks and Latinos—and brutality. At the building's dedication in October 2009, Mayor Antonio Ramon Villaraigosa acknowledged the controversy, stating "Our department has emerged from that dark cloud. The weight of the past instead has transformed this department into the strongest, most well-equipped, most respectful force this city has ever seen."

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See Also: 1961 to 1980 Primary Documents; Los Angeles, California; Police, Contemporary; Police, History of.

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Parole

Parole is the portion of state correctional systems in which convicted individuals are supervised after they have been released from prison. Parole serves two purposes: (1) to assist former prisoners in their transition from prison into the community and (2) to provide a means of early detection and sanction of potentially deviant behavior. Parole differs from probation in that probation is often used as a diversion from prison time, and parole is used as a means of supervising reentry into society. The term comes from the French word *parole*, which means "word," as in giving one's word. The U.S. parole system was based on the Irish system and introduced in 1876. Though parole is historically defined as discretionary release, many states have eliminated their parole board but maintained some form of parole or post-release supervision. Today, only Maine and Minnesota do not have either a parole board or some form of post-release supervision; the U.S. Parole Commission is in charge of parolees in Washington, D.C. As of 2008, one in 45 adults is on parole or probation, and more than 800,000 adults are on parole.

Development of the Parole System

The concept of parole first appeared in the 1600s; it was used as a way to expand the labor pool in English colonies. Children (indentured poor and delinquents) and pardoned convicts (individuals granted reprieves or stays of execution) were shipped to American colonies and became indentured servants. Initially, no conditions were placed on those pardoned to the colonies. After some convicts returned to England early, conditions were attached, the chief of which was a



The main cellblock of Dublin Prison in Dublin, Ireland. The Irish ticket-of-leave system included periodic release from prison, with the final stage allowing conditional release with supervision from local police officers.

promise not to return to England until the expiration of the sentence.

This system of parole expanded with the transportation of prisoners to Australia. In Australia, under Alexander Maconochie, who was superintendent of the penal colony at Norfolk Island off the coast of Australia, a system similar to the present-day parole system was developed. Indeed, Maconochie's system is credited as the origin of the modern-day parole system. Maconochie was critical of definitive prison sentences. He argued that sentences should not only punish individuals for their past behavior but also prepare them for life after the prison sentence. Because he believed the time necessary to prepare an individual for the future varied, he developed a system similar to modern-day indeterminate sentences. Under Maconochie's "mark" system, prisoners were rewarded for good conduct and labor. The mark system allowed prisoners to progress through stages of increased responsibility by earning a

specified number of marks that eventually led to freedom. Bad behavior resulted in a move back to an earlier stage.

Maconochie's mark system had five stages. First, prisoners were subject to strict imprisonment. Second, prisoners were allowed to work in work gangs. Third, prisoners were allowed freedom in a restricted area. Fourth, prisoners earned a ticket-of-leave onto parole. During this stage, prisoners earned a partial pardon and were expected to live by certain conditions of release. In the fifth and final stage, prisoners earned a complete restoration of liberty and were completely released from their sentence.

Maconochie first implemented his mark system in 1840 on Norfolk Island with much success. Colonial administrators in Australia, however, found his system to be too lenient on the prisoners, and he was relieved of his duties in 1844. In 1849, he was placed in charge of two English prisons, but criticism of his approach once again led to his dismissal. He then began advocating for penal reform and became the inspiration for a new system of leave in Ireland.

The Irish parole system was first implemented in 1853. Walter Crofton, who was appointed administrator of the Irish prison system in 1854, adopted Maconochie's mark system and created the Irish ticket-of-leave. The Irish ticket-of-leave had four stages. First, prisoners were subject to three months of reduced rations and no employment followed by six months of full rations, employment, and religious teachings. These first nine months occurred in solitary confinement. Second, inmates were moved to a congregate prison system where they worked together in groups. After earning a specified number of marks, inmates moved to the third stage, which allowed them to earn tickets-of-leave. Unlike the English and Australian systems, however, the Irish ticket-of-leave was not a permanent leave. Rather, it allowed for periodic release from the institution. In the fourth and final stage, those who had earned a ticket-of-leave could then be placed on conditional release. While on conditional release, local police officers were required to supervise these individuals, help them secure employment, verify employment, and perform periodic home visits. The individual on release was required to report to the police officer at set intervals. The role of the police officer in

supervising those on conditional release was the precursor to the modern-day parole officer.

Parole in the United States

In 1870, Zebulon Brockway, a penologist and warden at various U.S. institutions, presented a paper based on the Irish system that described the usefulness of an indeterminate sentencing structure and a parole system at the very first meeting of the American Prison Association. Those in attendance urged New York to adopt Brockway's proposal at the recently approved Elmira Reformatory. In 1876, Brockway was appointed superintendent of the newly opened Elmira Reformatory, where he implemented his version of the Irish marks system. Once enough marks were earned, parole from Elmira required six months of supervision by reformatory authorities. It was at this time that the modern-day version of parole was first established in America.

It was not until 1907, however, that the first formalized system of parole was established. Although many states had systems of early release, New York was the first to establish a statewide parole system that required specialized agents to supervise parolees. Throughout the early 1900s, parole grew in popularity. By 1927, all but three states had a parole system. In 1942, all states and the federal government had formally established parole systems.

As David Rothman points out, however, parole had many weaknesses. Not only did it suffer from massive public criticism, but it was also blamed for the failures of other societal institutions (including prisons) to stop a paroled individual from committing another crime. Furthermore, parole systems nationwide failed to competently determine release dates or supervise those on parole. The parole board, in particular, suffered from a number of inadequacies. Members of the parole board often lacked the expertise needed to make an informed decision. Board members were politically appointed and, in many cases, were government officials with other responsibilities. Even if board members had full-time appointments, they still lacked adequate information as to how to make release decisions. Specifically, the information provided in a prisoner's file was not useful in predicting future behavior, and legislatures rarely provided specific criteria by which to

judge the information. As a result, board members focused on the conviction offense and prior criminal behavior. This resulted in privileging first-time offenders over repeat offenders or in making wholesale decisions to release or not release everyone. When release decisions were made, they were often based on capricious factors such as appearance. In terms of supervision, the parole system faced the same failures as probation and prisons in delivering rehabilitation. Part of this was related to the fact that agents were inadequately trained and were poorly qualified to assist parolees. Agents were also overburdened, which means they were not able to properly follow up on a parolee's monthly report to determine compliance or begin the revocation process when necessary.

Despite these problems, systems of parole became a key component of correctional systems nationwide from the 1940s through the 1970s. During this time, correctional systems operated under the medical model, which viewed prisoners as sick and in need of a cure and utilized scientifically supported treatment programs. It was also believed that individualized treatment was necessary to address a prisoner's weaknesses, prepare him/her for a law-abiding life, and reduce recidivism. Conditional release onto parole became the part of this individualized treatment that continued in the community and provided a way to determine whether the individual was "cured" and could live a law-abiding life outside prison or needed to be returned for additional treatment. Parole boards also gained power as they became the sole authority to determine who could be released and when.

Challenges to the Parole System

The power of parole boards was challenged in *Morrissey v. Brewer* (1972). John J. Morrissey and G. Donald Booher were released from prison in Iowa, placed on parole, and then had their parole revoked after they violated their conditions of release. The two sued, challenging the revocation procedures, which did not provide a hearing, and arguing that the procedures violated their due process rights. The U.S. Supreme Court held that because parole revocation is not a part of criminal procedures, parolees were not entitled to full due process rights. Some rights, however, were required. These rights included notice of the

evidence against the parolee and the right to confront witnesses.

The parole system was further challenged in the early 1970s when criticisms of the medical model began to grow. These criticisms included little evidence that parole reduced recidivism rates, a belief that indeterminate sentencing structures were unjust and inhumane, and increased signs of inconsistent and discriminatory release decisions. Because of these criticisms, both liberals and conservatives called for a move away from indeterminate sentencing systems and toward determinate sentencing systems. As a result of these changes, many states abandoned discretionary release and eliminated their parole boards.

Parole Process

Today, release on parole can occur through either discretionary or mandatory release. Most individuals released on parole are released through discretionary release. This means that individuals in prison who are eligible for parole go before a parole board and make a case for their release. The parole board then determines whether or not to release the individual based on numerous criteria. These criteria vary by state, but often include items such as employment and residence upon release. Individuals released discretionarily then serve the remainder of their prison sentence on parole. If they violate their parole supervision, they are returned to prison where they complete the remainder of the sentence. Under a discretionary release system, state laws may limit parole eligibility. For instance, many states bar those sentenced to life, life without parole, or those convicted of certain crimes (e.g., first-degree murder or drug trafficking) from early release on parole.

Individuals released through mandatory release do not have their release determined by a parole board. Rather, their release is determined by legislation, that is, sentencing guidelines. These guidelines determine who is eligible for supervision and how much time must be spent in prison prior to release. Unlike discretionary release, mandatory release is not the continuation of a prison sentence in the community. It is an additional phase of the sentence that occurs after the prison sentence is served. For instance, individuals sentenced to time in prison in California must serve three years on parole after they

have completed their prison sentence. Under the mandatory release system, state laws may dictate who must be placed on parole. For instance, in some states, individuals convicted of a violent crime serve time on parole, but those convicted of a nonviolent crime do not.

Regardless of how an individual is released, systems of parole and post-release supervision are usually set up in the same manner. State parole systems are divided into regions or divisions, which are then divided into parole offices. Administrative positions usually include those in charge of parole offices, regional or district administrators, the head of the parole system, and parole board members if such a board exists.

On the most basic level, supervision is carried out by two individuals: the parole agent and the parolee. The parole agent is directly responsible for supervising and assisting parolees. Agents provide assistance to parolees with regard to housing, employment, and substance abuse (among other possible avenues for assistance) and ensure parolees follow the conditions of parole supervision set forth by the agent. A parole agent's caseload may include parolees with a variety of backgrounds and criminal offenses. Specialized caseloads may include high-risk sex offenders or those with a mental illness. Parole agents perform many roles, including visiting parolees at their homes, collecting samples for drug tests, preparing cases for parole revocations, and filling out paperwork regarding the activities and actions relating to a particular case.

Those on parole typically share the same characteristics as those in prison. The majority of parolees are male (88 percent) and are white (41 percent), African American (38 percent), or Hispanic (19 percent). Parolees are most likely to have served time for a drug offense, followed by property offenses and violent offenses. About half of all parolees are 35 or younger, and only 7 percent have attended some college or higher-level education. Upon release, parolees tend to live in geographically concentrated areas. These areas often lack the services needed by parolees. Where services do exist, they tend to be too small to meet the need for the service. Parolees are required to follow certain rules put in place by their parole agents. These rules, known as conditions of parole, place restrictions on what parolees can do. These conditions range from prohibiting

parolees from drinking alcohol or using drugs to restricting where a parolee may go. Failure to follow these conditions may be grounds for revoking parole and sending the individual back to prison.

There have been mixed reviews as to the effectiveness of parole and post-release supervision. Some studies found that those released on parole adjusted to living in the community better than convicts who did not go through the parole system. Other studies, however, found that parolees were more likely to be rearrested than nonparolees. One additional study focused on noncriminal justice-related outcomes and found that parole has no effect on housing stability, minimal effect on family stability, and a strong effect on employment.

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See Also: Corrections; Probation; Rehabilitation; Sentencing: Indeterminate Versus Fixed.

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Peltier, Leonard

Leonard James Peltier (1944–) is a Native American political activist who is incarcerated for murder and has become a symbol for political prisoners. Peltier was born on the Chippewa reservation in North Dakota. His father, Leo Peltier, was three-quarters Chippewa and died in 1990; his mother, Alvina Showers, who died September 9, 2002, had a Chippewa father and a Lakota Sioux mother. Peltier attended Flandreau Indian School in Flandreau, South Dakota, but did not graduate. Peltier had some involvement with the criminal justice system prior to the incident at the Pine Ridge Reservation that brought him national recognition. In March 1970, Peltier was convicted of trespassing in Fort Lawton, Washington. On November 22, 1972, he was acquitted of the attempted murder of an off-duty policeman in Milwaukee, Wisconsin.

Pine Ridge Reservation

At the Lakota Sioux Pine Ridge Reservation in South Dakota, Tribal president Richard "Dick" Wilson was elected in 1972 by a slim margin. Wilson's administration was marked by accusations of corruption and patronage. As president, Wilson controlled a tribal ranger group funded by a \$67,000 grant from the U.S. Bureau of Indian Affairs (BIA); this group referred to itself as the GOON Squad, an acronym purportedly standing for "Guardians of the Oglala Nation." Many of the Pine Ridge BIA tribal police officers were moonlighting on the GOON Squad, along with hundreds of other individuals who cycled in and out of the group. The GOON Squad was accused of terrorizing leaders of a group that opposed Wilson in a land claims struggle. Part of this issue involved the holding by the federal government of a parcel of the northwestern portion of the Pine Ridge Reservation, known as the Sheep Mountain Gunnery Range, which amounted to about one-eighth of the total area of the reservation. At the beginning of World War II, the Department of War had borrowed the land for use as a training field for aerial gunners. The federal government had promised that this area would be returned to the Oglala Lakotas at the end of the war, but it never was. This occupation was contrary to the 1868 Treaty of Fort Laramie. Further, in 1970, the National Uranium Resource Evaluation Project in



A sign demanding Leonard Peltier be released is posted outside Detroit, Michigan. Peltier was charged with the murders of two Federal Bureau of Investigation (FBI) agents in the Pine Ridge Reservation incident. He was placed on the FBI's 10 Most Wanted list and was ultimately found guilty and sentenced to two consecutive life terms in prison.

collaboration with the National Aeronautics and Space Administration had determined that there were substantial uranium deposits near Sheep Mountain, and governmental efforts appeared to be directed at permanently holding onto the parcel of land.

The GOON Squad and others used the tactic of political violence to intimidate those who were opposed to allowing the federal government to continue holding the Sheep Mountain Gunnery Range. In response to this, the Oglala Sioux Civil Rights Organization was formed to solicit the U.S. Justice Department to intervene. A petition for removal of Dick Wilson, who was in favor of the continuation, was circulated by the Oglala Sioux Civil Rights Organization; there were more names on the petition than people who had voted for Wilson as tribal president. In February 1973, a meeting for the impeachment of Wilson was held, but the BIA named Wilson to preside over his own impeachment; U.S. marshals were dispatched to the meeting

to keep order. Wilson, not surprisingly, was not impeached at this meeting, and he immediately issued a ban on any further meetings on the reservation by opponents.

Wounded Knee Occupation

Leaders of the American Indian Movement (AIM), including Russell Means, supported traditional Oglala Lakota Sioux in their positions. Means attempted to meet with Wilson to come to an agreement over their differences and resolve tribal tensions, but his efforts were unsuccessful. In protest, AIM members occupied the small town of Wounded Knee on the Pine Ridge Reservation for 71 days, during which time they were under siege by federal authorities from the Federal Bureau of Investigation (FBI), the BIA, and, of course, the GOON Squad. Leonard Peltier was a member of AIM, and supported the traditional Oglala Lakota Sioux in the standoff.

Federal authorities arrested 562 individuals who participated in the Wounded Knee siege, of

whom 185 were subsequently indicted by federal grand juries based on evidence supplied by the FBI. Only 15 were ever convicted, most for minor offenses like trespassing or interference with a postal inspector.

Brutal repercussions continued against opposition supporters on the Pine Ridge Reservation. From March 1973 to March 1976, there were at least 342 serious physical assaults of AIM members and supporters, and 69 persons were killed. Unfortunately, none of these homicides was ever solved by the FBI, who had preeminent jurisdiction over these incidents. As a member of AIM, Peltier became involved in efforts to address the pattern of violence at Pine Ridge.

On June 26, 1975, a firefight broke out between an AIM enclave and the GOON Squad, BIA tribal police, FBI agents, and a contingent of white vigilantes from off the reservation. Two FBI agents, Jack R. Coler and Ronald A. Williams, were killed during this melee. Leonard Peltier, who was then 32 years old, was charged with the murders of Coler and Williams. On December 22, 1975, Peltier was placed on the FBI's Ten Most Wanted list. On February 6, 1976, he was extradited from Canada based on an affidavit by Myrtle Poor Bear, which she later claimed had been made as a result of intimidation by FBI agents. Peltier was found guilty on April 18, 1977, and was sentenced on June 1, 1977, to two consecutive life terms. In January 1976, the U.S. Congress passed Public Law 90-468, which codified the transfer of the Sheep Mountain Gunnery Range to the U.S. Department of the Interior. Peltier conducted hunger strikes in April and May 1984 in protest of his incarceration; numerous unsuccessful appeals have been filed on his behalf. He is currently incarcerated at the U.S. Penitentiary in Lewisburg, Pennsylvania. His projected date of release is October 11, 2040. However, there is a large, highly visible, and active movement of concerned individuals interested in working to free Leonard Peltier from what they feel is an unjust incarceration.

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See Also: Federal Bureau of Investigation; Leavenworth Federal Penitentiary; Native American Tribal Police; Native Americans.

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Pendleton Act of 1883

The Pendleton Act of 1883, also known as the Civil Service Act, was the first major piece of legislation that regulated elements of a federal bureaucracy plagued with a history of patronage, graft, and corruption. In the decades following the American Civil War, reformers advocated a system of government administration that was more responsive to the public and less beholden to political parties and their machines. Despite attempts in the early 1870s to establish a civil service commission with the power to control the hiring and dismissal of employees, meaningful change at the national level only came after the assassination of Republican President James Garfield.

The legislation, originally proposed by Democratic Senator George H. Pendleton from Ohio, authorized the establishment of a three-person bipartisan commission with the power to assist the president in creating rules that regulated the federal workforce. The legislation outlined eight guidelines to direct the work of the president and the commission that included the use of competitive exams to determine the qualifications of applicants. The legislation also required that all new employees be subject to a probationary period before an offer of permanent employment was tendered, and eliminated the requirement that employees contribute to the political campaigns of elected officials. The overarching purpose of the law was to establish a system based on merit that ended the practice of removing individuals from federal positions for purely partisan motives.

Although the bill passed both the House of Representatives and the Senate rather handily during the lame-duck legislative session of 1882 and 1883, the reform proposal likely would have

been defeated if not for the death of President Garfield. Garfield's election to the presidency came as a result of a compromise between two competing factions in the Republican Party. The Stalwarts supported the nomination of Ulysses S. Grant for a third term in large measure because Grant opposed civil service reform. The moderate wing of the party, the Half-Breeds, advocated the candidacy of James Blaine of Maine, who supported the elimination of political patronage. Garfield represented an acceptable middle ground, although the Stalwarts were able to strengthen their position with the selection of Chester Arthur as Garfield's running mate.

Despite Garfield's ostensible moderation, he surprised many by calling for significant reform to the federal bureaucracy in his inaugural address—a proposal met with resistance from Republicans who controlled Congress. On July 2, 1881, only four months into his tenure as president, Garfield



Chester Arthur assumed the presidency in 1881 after President James Garfield's death. He pursued civil service reform as a memorial to his predecessor.

was shot and gravely wounded by Charles Guiteau. Guiteau, who was likely mentally ill, was active in Republican Party politics and had supported the nomination of Grant for president. He fancied himself a political insider and attempted to curry favor with a number of party leaders. After the election of Garfield, he moved to Washington, D.C., expecting to be awarded a patronage position with the federal government as a reward for his efforts during the election. Guiteau became well known in Washington as a nuisance, and was eventually banned from entering the White House. Angered over being rebuffed, he purchased a revolver that he used to shoot Garfield in a Washington train station.

Guiteau was arrested and tried for the assassination of the president, who died from his wounds on September 19, 1881. At trial, the defense raised the insanity defense, a strategy that seemed to be buttressed by the odd behavior of Guiteau at a trial that included five days of rambling testimony. The jury, not persuaded, found him guilty, and Guiteau was executed in June 1882. The public and the press alike believed that Garfield's death was a direct result of the corrupting effects of the patronage system that allowed political parties to abuse the system of employment at the federal level. Arthur, who assumed the presidency after Garfield's death, pursued civil service reform as a memorial to his predecessor's efforts, signing the bill into law in January 1883. Although the legislation was an important first step in eliminating influence of partisanship on the bureaucracy, the law only regulated approximately 10 percent of the federal workforce. As a result of amendments to the original Pendleton Act, more than 90 percent of all government employees at the national level are covered by civil service protections today.

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See Also: Arthur, Chester (Administration of); Garfield, James (Administration of); Guiteau, Charles; Insanity Defense.

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Penitentiaries

The term *penitentiary* refers to a specific type of prison popular in the early to mid-19th century. The word can be traced to the 15th century and was originally used to describe institutions for punishing crimes against the Roman Catholic Church. Penitentiaries in the 18th and 19th centuries were designed to reform inmates, usually through extensive religious education, sometimes accompanied by elaborate architectural designs and rigorous monitoring of inmates' interactions. By the first quarter of the 19th century, two models of penitentiary construction and operation vied with one another for dominance: the Pennsylvania or Separate system, most closely associated with Philadelphia's Eastern State Penitentiary, and the New York or Auburn system, most closely associated with New York's Auburn and Sing Sing penitentiaries. Though the word *penitentiary* became synonymous with "prison" by the last part of the 19th century, most penitentiaries had abandoned or heavily scaled back their religious orientation following the Civil War, opting instead for the more "scientific" rehabilitative methods of the reformatory system pioneered by Zebulon Brockway at the Elmira Reformatory.

Walnut Street Jail

The first institution to be called a penitentiary was Philadelphia's Walnut Street Jail. This institution was constructed in 1776 and functioned as both Philadelphia's city jail and Pennsylvania's state prison. Originally designed as a U-shaped building surrounded by a high wall, the jail was designed to confine groups of inmates in large rooms. Inmates were not differentiated by age or crime, which made keeping the peace at the facility extremely difficult. Worse, the accommodations were (like

most jails of the time) squalid, which facilitated the transmission of disease, and the building was often not secure, which allowed inmates to escape. Finally, jail administrators often extorted money from inmates in exchange for better food and accommodations, which only encouraged inmates to prey upon one another.

Unfortunately, none of these issues was unique to the Walnut Street Jail; many jails and workhouses around the world faced similar challenges. In response, by the middle of the 18th century, a group of English, French, and American reformers began agitating for corrections to the issues prisons faced. The most famous prison reformer of this period was an Englishman named John Howard who, in 1777, published an exposé of prison conditions titled *The State of the Prisons in England and Wales*. Howard's book decried many of the worst conditions prevailing in jails and prisons of the time, including unsanitary conditions and administrative corruption. He furthermore recommended that inmates be separated from one another and be housed according to age so that younger inmates (who were presumably being held for lesser crimes) would not become "hardened criminals" through their association with older prisoners.

Inspired by Howard's example and appalled by conditions at the Walnut Street Jail, a group of prominent Philadelphians organized the Philadelphia Society for Alleviating the Miseries of Public Prisons (PSAMPP) in 1787. Their goal was to reform the Walnut Street Jail by introducing some of the reforms suggested in *The State of the Prisons*. In particular, the PSAMPP's members hoped to make the Walnut Street Jail a place where inmates could be reformed by separating convicts from one another and introducing labor and religious programming; these three things formed the basis of penitentiary discipline for the next century.

Because the Walnut Street Jail's design was not conducive to separating inmates from one another, in 1790, the Pennsylvania legislature (after extensive lobbying by the politically prominent members of the PSAMPP) built an addition to the institution. Called the "penitentiary house," it was designed to separate inmates from each other by housing each in a single cell. Moreover, inmates received piecework and had access to local ministers who volunteered to provide the

convicts with religious counsel. The new innovation proved very popular, and within a short time, similar institutions were constructed in New York (Newgate) and New Jersey (Trenton).

Eastern State Penitentiary

Unfortunately, the Walnut Street Jail's new penitentiary house quickly became overcrowded, making strict separation of inmates nearly impossible. Moreover, the expanding prison population in Pennsylvania exacerbated the Walnut Street Jail's problems. In response, by the second decade of the 19th century, the PSAMPP began advocating the construction of replacement penitentiaries, specifically built to practice the Pennsylvania system. Western State Penitentiary, the first of these, opened in Pittsburgh in 1826, but the administration was unable to fully implement the Pennsylvania system because the cells were not large enough

for inmates to practice their newly acquired trades. As a result, Philadelphia's Eastern State Penitentiary, which was built between 1821 and 1836, was specifically designed to implement all aspects of the Pennsylvania system; this institution became one of the archetypes of a Pennsylvania system penitentiary. Eastern State was constructed on a radial plan, with the seven original cellblocks meeting at a central location like the spokes of a wheel; the cellblocks were surrounded by a massive wall designed to resemble a medieval castle. All of the cells opened to a small, walled exercise yard where prisoners were allowed one hour of recreation daily. Because inmates were expected to spend most of their time in their cells, each cell had indoor plumbing and running water, and Eastern State Penitentiary was the largest and most expensive public works project of its time as a result of these amenities.



Eastern State Penitentiary in Philadelphia, Pennsylvania, was built between 1821 and 1836. This 2003 aerial view reveals the radial plan it was constructed with, showing the seven original cellblocks meeting at a central location like the spokes of a wheel. Around the cellblocks, a massive wall was erected resembling a medieval castle.

Auburn State Prison

Yet, the Pennsylvania system was not the only model of penitentiary administration popular in antebellum America. Many Americans, most notably the Prison Discipline Society of Boston, advocated the New York or Auburn system of penitential discipline. On first glance, there appeared little difference between the Pennsylvania and New York systems: both called for the rigorous separation of inmates, and partisans of both systems demanded that inmates labor while incarcerated. The difference was that, while inmates at a Pennsylvania system penitentiary slept and labored in their cells, inmates of New York system penitentiaries only slept in theirs; during the day, they labored in large, factory-like workrooms attached to the cellblocks. In both systems, however, inmates were expected to remain silent and not communicate with each other in any way.

The New York system was first practiced in New York's Auburn Prison, which opened in 1816. Though the prison was initially overseen by William Brittin, the man most commonly associated with the New York system was Auburn's second warden, Elam Lynds, who became infamous for his brutality. Though Lynds did not design the New York system, he methodically and ruthlessly enforced it through floggings and other forms of physical punishment. Despite his fearsome reputation, Lynds enjoyed the support of some New York legislators due to the fact that Sing Sing's factory system consistently produced a profit; this was in marked contrast to the prison's ideological rival, Eastern State Penitentiary, which never turned a profit.

Reformatory Movement

Ultimately, the New York and Pennsylvania systems were both eclipsed by the reformatory movement pioneered by Zebulon Brockway in the 1870s, and both systems' distinctive features slowly disappeared. Partially, this was due to the pervasive overcrowding that affected most American penitentiaries after the Civil War, and partially it was due to the substitution of religious solutions to crime for scientific ones. Moreover, because reformatories required no elaborate (and expensive) architectural forms, these institutions were more attractive to cost-conscious legislators. As a result, few new Pennsylvania or New York system

penitentiaries were built in the United States after the Civil War, and many penitentiaries formerly conducted along the New York or Pennsylvania systems were transitioned into reformatories.

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See Also: Auburn State Prison; Eastern State Penitentiary; Pennsylvania System of Reform; Rehabilitation; Sing Sing Correctional Facility; Walnut Street Jail.

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Penitentiary Study Commission

The Arkansas Penitentiary Study Commission was established in 1967 to investigate the increasingly poor conditions within the Arkansas penitentiary system. The report it generated following its investigation was the leading catalyst in penal reform in the state. The commission was established by then-Governor Winthrop Rockefeller in response to a report by the Criminal Investigation Division of the Arkansas State Police that described deplorable conditions within the two prison farms of the Arkansas penitentiary system. Because of the political atmosphere of the time and the public opinion that criminals should be locked away and forgotten, reform of the penal system was projected to take many years. Dissatisfied with the proposed timeline the reforms, Rockefeller requested that the state legislature establish the Penitentiary Study Commission to conduct further investigations, and it was officially organized in January 1967.

Upon the conclusion of the first round of investigations, the commission released its first report in February 1967, which addressed present problems within the penal system and suggested three recommendations in response to the findings. First, it suggested that more paid personnel be hired to run the administration and guard the prison. It also recommended that control of hiring and firing of personnel be turned over from the governor to the Penitentiary Board. And lastly, it recommended that the prison no longer be required to pay its own operating fees. Because this report only addressed current administrative concerns rather than the actual conditions within the prison, a further study was conducted and its results published in January 1968. This two-volume document detailed the deplorable conditions within the prison farms and reported that the Arkansas penal system differed from other national institutions in a number of ways. First, it found that the Arkansas prison farms had very few paid employees but rather used low-risk prisoners as guards over other inmates. It also found that inmates were confined in open barracks where violence, sexual assault, and alcohol and drug use were rampant. Third, the commission found that the prison farms lacked rehabilitative programming.

More specifically, the commission found that the operations of the prison farms were well in violation of the Thirteenth and Fourteenth Amendments, which protect against involuntary servitude and require due process and equal protection, respectively. As part of the Thirteenth Amendment violation, the commission found that inmates were required to work long hours in the prison fields regardless of weather conditions, without proper clothing, and without compensation. In addition, workers were almost entirely supervised by other inmates armed with high-powered weapons, and murder, bribery, and extortion were a way of life.

Claims of violations of the Fourteenth Amendment were also numerous. Of primary concern were the cruel and unusual living conditions within the prisons. During the course of the commission's investigation, they also found a variety of torture devices used on inmates, including whips, electrocution, and humiliation. To address these issues, the commission recommended that the

prison-guard system be phased out in its entirety. Also in violation of the Fourteenth Amendment were the living conditions within the barracks. These barracks were filthy, with discolored mattresses, overflowing toilets, and bug-infested beds. In addition, the dormitories were segregated by race but not by violence of the offender, and sexual assault and violence were commonplace. The conditions in the kitchen also left much to be desired, and bug debris was found to cover many of its surfaces. Lastly, the lack of rehabilitative programming was found to be in violation of the Fourteenth Amendment. In response to this finding, the legislature adopted Act 50, which identified education and rehabilitation as essential programs within any penal system.

To address the remaining findings of the commission, the act proposed by the legislature also called for the creation of the Department of Corrections to replace the outdated and inefficient Penitentiary Board. In addition, the previously separate Board of Pardons and Paroles was integrated into this new department, the Youthful Offenders Facility was built, a new maximum security facility was designed, the number of civilian employees was significantly increased, and the system of using low-risk prisoners as guards was eliminated. The commission's findings also had lasting effects on the operation of other Arkansas prisons and invited widespread reform and modernization throughout the penal system.

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See Also: Arkansas; Corrections; Penitentiaries.

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Penn, William

An early American colonist, Quaker writer, and minister, William Penn was born in London, England, in 1644 to Sir William Penn and Margaret Jasper. As an exalted admiral in the English Navy, Sir William Penn provided his son with a life of luxury, often attending royal events. Shortly after enrolling in Christ Church College, University of Oxford, Penn was exposed to Quakerism for the first time. He noted the peaceful nature of the religion and the Quakers' emphasis on nonviolence and humanism. Penn was expelled from Oxford for refusing to participate in daily Anglican services. By 1668, he had converted to Quakerism against the wishes of his father and was repeatedly imprisoned for his beliefs. Throughout such persecutions, he wrote several pamphlets including *Truth Exalted* and *No Cross, No Crown* espousing religious tolerance and criticizing discriminatory religious laws in England. Upon his father's death in 1670, Penn inherited an annual income. As his father's final wish, the king and the duke of York appointed Penn a royal counselor in honor of the elder Penn's service to the Crown. Utilizing his position and seeking to escape religious intolerance, William Penn set up the colony of Pennsylvania using progressive notions regarding religion and the penal system.

Penn was continually arrested in England for his religious beliefs and ministry. With thousands of Quakers imprisoned and their land confiscated due to the Conventicle Act, Penn held public meetings to protest the law. He was arrested, and authorities refused to show him a copy of his charges. The judge further dictated the jury to come to a verdict without hearing Penn's defense. The jury acquitted Penn and his fellow defendants; the jurors were placed in jail and levied with fines. Eventually, the jury was released per a writ of habeas corpus and it was ruled that juries could not be coerced or punished for their verdicts. This experience was a key precedent influencing Penn's later constitutional provision in Pennsylvania, outlining the right to a trial by jury. Following his imprisonment, Penn petitioned for legislation outlining religious liberty. He was rebuffed and became convinced that religious toleration could not be achieved in England and called for a mass exodus of Quakers from England to America.



William Penn was arrested many times in England for his religious beliefs, along with thousands of other Quakers, and was ultimately arrested, jailed, and acquitted.

Beginning in 1677, Quakers slowly began to leave England for the provinces of West and East Jersey in America. Seeking to extend the area, Penn petitioned King Charles II for a charter of land, which was officially signed on March 4, 1681. With the territory, Penn was made the largest private (non-royal) landowner and officially formed the colony of Pennsylvania.

In the spring of 1682, Penn wrote the first Frame of Government of Pennsylvania. This document was to serve as a constitution for the colony. Inspired by the nonviolent and humanistic nature of the Quakers, Penn strove to create a society based on religious toleration and individual liberties in his "Holy Experiment," the new province of Pennsylvania. The first frame, while only enacted for a short period of time, was considered progressive. It would also later serve as the basis for the U.S. Constitution and the Bill of Rights.

Penn's constitution included religious liberty, an assembly elected by the people to make the laws, freedom of the press, and trial by jury

and was the first to provide for peaceful change through amendments. Additionally, Penn is considered one of the early initiators of correctional reform in the United States. Whereas the English penal code outlined over 200 offenses that could be punished by the death penalty, Penn reduced this number to two in Pennsylvania—treason and murder. Pennsylvania's criminal code also forbade torture and other forms of cruel punishment. His penal system, inspired by Quakerism, was designed to reform, not merely punish. Jails and prisons, which replaced corporal punishment, were to correct delinquent individuals through the use of workshops and labor. Although these reforms were reversed after Penn's death, the Quakers would petition for their return years later. The frame went through several revisions, until Penn wrote the fourth frame, the Pennsylvania Charter of Privileges, which remained in place until the American Revolution. William Penn died in 1718 and was buried in England.

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See Also: Pennsylvania; Pennsylvania System of Reform; Quakers.

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Pennsylvania

Founded as a colony in 1682 by William Penn and granted statehood in 1787, Pennsylvania has been a pioneer in criminal punishment reform. The state was home to Eastern State Penitentiary in Philadelphia and developed the Pennsylvania system of reform. Pennsylvania was active in prison and capital punishment reform and was the first state to make only first-degree murder

a capital offense in 1794, as well as the first to abolish public executions in 1834. While the state still allows capital punishment, efforts by reform groups to end executions and improve conditions for prisoners continue.

Crime

In early Pennsylvania, policing morals and protecting the public order shaped the types of crimes that were on the books; fornication, bastardy, adultery, and operating tippling houses were criminal acts. During the 17th and 18th centuries, there was a slow but steady increase in homicide rates. In 1800, the murder rate in Pennsylvania was 1.5 per 100,000 people; by contrast, today's rate is 5.2 per 100,000. Burglary and robbery also increased at an alarming rate in the 18th century. During the 19th century, property crime patterns followed residential and business expansion, particularly in cities. Sometimes necessity motivated acts of larceny, but in growing cities with larger populations and more businesses, larceny also became a crime of opportunity. Property crime currently occurs at a rate of 24.07 per 100,000 people. Riots became conspicuous after the American Revolution and increased during the antebellum decades. Philadelphia had several race and ethnic riots in the 1830s and 1840s, the most notable being the Nativist Riots in 1844. Fugitive slave riots also occurred in southern Pennsylvania leading up to the Civil War.

Pennsylvania dealt with numerous occasions of labor violence and unrest. The Molly Maguires, a group of Irish American coal workers in northeastern Pennsylvania, became tired of poor and unsafe working conditions. After a failed strike in the late 1870s, some of the Mollies continued the fight with violent killings of local mine authorities. After trials in which an undercover Pinkerton agent provided much of the testimony, 20 Mollies were executed between 1877 and 1879. In 1902, another coal strike in the same region provoked threats of violence and required federal intervention to end the strike. In western Pennsylvania, steel strikes were common. The 1892 Homestead Strike began on June 30 with workers from various steel plants around Pittsburgh striking; the strike conditions resulted in a violent battle on July 6, 1892, between strikers and private police. The mill owners used strikebreakers to continue

production in mid-July, and a failed assassination attempt on the mill owner caused the downfall of the strike. In 1919, steelworkers in Pittsburgh went on strike again in order to force local officials to allow the American Federation of Labor to hold union meetings in the city. In September of that year, a general steelworker strike began, halting half of the nation's steel production—in Pennsylvania and other states. Companies used violence, threats, and strikebreakers to demoralize the strikers. In early January 1920, the strike fell apart, resulting in little union organizing for steelworkers for the next 15 years.

Police

From Pennsylvania's inception, law enforcement occurred at the local level with appointed sheriffs. They attended all court sessions, oversaw arrests of people committing infractions, and oversaw the local prisoners. In 1701, the office of sheriff became an elected office with three-year terms. Currently, the sheriffs of each county are elected to four-year terms, and role of sheriff is usually limited to court security and transporting prisoners. Many boroughs, cities, and townships have their own police departments that deal with the local law enforcement duties. Cities like Philadelphia and Pittsburgh established professional police forces in the 1850s. In the mid-1860s, the Pennsylvania legislature established a private police force, the Coal and Iron Police, in order to protect coal and iron production sites. This police force was also used by companies in a strikebreaking capacity. After the Coal and Iron Police failed to stop the Anthracite Coal Strike in 1902 in northeastern Pennsylvania, and because of growing frustration with the refusal or inability of the local police to enforce the law, Governor Samuel W. Pennypacker created the Pennsylvania State Police in 1905.

Punishment

The colony of Pennsylvania modeled its legal system after that of England, utilizing trials and public physical punishments for wrongdoers. While England had several hundred capital crimes on the books, in 1682, Pennsylvania had only murder as a capital offense. Other criminal punishments in Pennsylvania included fines, whippings, time in the stocks, or branding. This mild penal

code, when compared to that of England and other colonies, illustrates the Quaker influence of benevolence and pacifism on colonial institutions such as criminal punishments. Between 1718 and 1794, the number of capital crimes fluctuated but by 1794, only first-degree murder warranted the death penalty.

Penal reformers in Pennsylvania worked to find a better way to punish offenders because it was believed that public punishments were degrading and left no room for character reform. In 1787, the Philadelphia Society for Alleviating the Miseries of Public Prisons was established to improve prison conditions. The organization moved to create a penitentiary system in Pennsylvania that would allow offenders to reform their behavior. The group continues its work today as the Pennsylvania Prison Society. In 1790, Walnut Street Jail in Philadelphia became a penitentiary, with Western State Penitentiary in Pittsburgh opening in 1826 and Eastern State Penitentiary in Philadelphia in 1829. In these penitentiaries, inmates underwent the Pennsylvania system of reform. Inmates were placed in individual cells and were kept in total silence to allow for reflection and reform. Inmates were not exposed to physical punishment and worked at artisanal crafts in their cells. While critics of the Pennsylvania system suggested that the solitary confinement would produce insanity, Pennsylvania reformers stood by their system, utilizing it at Eastern State until 1913. Today, there are 26 state correctional institutions in Pennsylvania.

Reformers also worked against capital punishment in Pennsylvania. The 1794 law was an early success. Executions, however, continued to be public spectacles. In 1834, Pennsylvania declared public executions illegal, moving them to the county jail yards to avoid such scenes. In 1913, the electric chair became the mode of execution, and in 1990, lethal injection replaced the electric chair. In the 1970s, the state declared capital punishment to be unconstitutional, but it was reenacted in 1974 and is still on the books today. Only three executions have taken place in the state since 1976, and as of 2011, more than 200 inmates are on death row.

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See Also: 1777 to 1800 Primary Documents; Eastern State Penitentiary; Penn, William; Pennsylvania System of Reform; Quakers.

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Pennsylvania System of Reform

The term *Pennsylvania system* refers to a regimen of inmate reform most commonly associated with Philadelphia’s Eastern State Penitentiary during the 19th and early 20th centuries. Also known as the separate system, the Pennsylvania system called for inmates to be completely and totally separated from one another, to learn and practice a trade while incarcerated, and to receive religious instruction. Because of the complexity of these requirements, successfully implementing the Pennsylvania system was nearly impossible and required elaborate and expensive physical plants, making the Pennsylvania system far less competitive when compared with the congregate, or New York, system. The Pennsylvania system is often misconstrued to have meant that prisoners were kept in strict solitary confinement; in fact, though separated from one another, inmates at both the Walnut Street Jail and Eastern State Penitentiary had regular interactions with staff, administrators, prison inspectors, and selected visitors, which is why it was also known as the separate system.

The first attempt at implementing what came to be known as the Pennsylvania system occurred in

1790 at Philadelphia’s Walnut Street Jail. Under heavy pressure from a group of local notables who comprised the Philadelphia Society for the Alleviation of Public Prisons (PSAMPP), the Pennsylvania legislature mandated the construction of a special “penitentiary house” on the grounds of the already extant Walnut Street Jail. This addition held state prisoners one to a cell in the hope that the inmates could be reformed by strictly controlling their environment (e.g., visitors, books).

Eventually, overcrowding frustrated this plan, as did the inability to implement various other aspects of the evolving ideology, such as teaching inmates a trade. Thus, the PSAMPP began advocating the construction of two state penitentiaries—one in Pittsburgh and one in Philadelphia—that would be specifically designed to implement the Pennsylvania system by guaranteeing inmates individual cells large enough for sleeping, eating, and working.

The PSAMPP’s efforts bore fruit in the opening of Pittsburgh’s Western State Penitentiary (1826)



Also known as the separate system, the Pennsylvania system called for inmates to be completely separated from one another and to learn a trade while incarcerated.

and Philadelphia's Eastern State Penitentiary (1829). As a result of poor architecture, Western State Penitentiary was never able to fully implement the Pennsylvania system, so the building was razed in the mid-1830s and rebuilt to mirror Eastern State Penitentiary's design; thus, Eastern State Penitentiary became *the* model of a Pennsylvania system penitentiary, including its physical design. Originally, Eastern State Penitentiary contained seven cellblocks that radiated, like spokes on a wheel, from a central hub. This design minimized the need for a large guard force, because one individual could survey all of the cellblocks from a single location. Because inmates were expected to spend all of their time in their cells or in the attached exercise yards, each cell contained running water and plumbing (in an era when the president of the United States still used an outhouse!), making Eastern State Penitentiary the largest and most expensive public works project in the United States up to that point.

Alexis de Tocqueville, who visited Eastern State Penitentiary in 1831, called the Pennsylvania system a "powerful" tool in the reformation of inmates. Charles Dickens, who visited a decade later, disagreed; he called the Pennsylvania system "immeasurably worse" than physical torture. Despite the controversy, prisons that were designed and/or administered at least partially according to the Pennsylvania system proliferated before the U.S. Civil War and included the State Prison of New Jersey at Trenton, the city prison of Manhattan, and jails and prisons throughout the United Kingdom and France.

Unfortunately, the exorbitant cost of constructing and maintaining Pennsylvania system institutions doomed the system. Even at Eastern State Penitentiary, the system was never practiced as intended because prisoners were routinely employed around the institution as a cost-cutting measure. Moreover, pervasive overcrowding of these institutions following the Civil War meant that most prisons could not adequately separate inmates, many of whom were housed two or even three to a cell. Finally, the growing conviction that penitentiaries had failed to actually rehabilitate inmates made alternative models, such as the reformatory system, more attractive to reformers and cost-conscious legislators alike. By the 1870s, many formerly Pennsylvania

system institutions had abandoned the system in favor of the cheaper and more "scientific" reformatory model pioneered by Zebulon Brockway at the Elmira Reformatory. Though Eastern State Penitentiary would continue the Pennsylvania system (in name at least) until 1913, Pittsburgh's Western State Penitentiary adopted the congregate (New York) system in 1869.

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See Also: Brockway, Zebulon; Eastern State Penitentiary; Penitentiaries.

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People v. Pinnell

People v. Pinnell is a 1974 California case concerned with equal protection under the Fourteenth Amendment in the selection method of grand jurors, secret proceedings wherein each juror's oath is to maintain that secrecy. Targets of the grand jury and suspects and their attorneys are not permitted to testify or be present during the presentation of testimony. Only the prosecutor, key staff members, and witnesses are allowed inside, and deliberations are completely secret. The rationale for the secrecy is to encourage witnesses to testify free from the fear of retribution or retaliation from the criminal element; however, secrecy breeds distrust. Typically, trial court

judges administer the selection of those who serve on the grand jury pursuant to statutory authority establishing the method of selection, thus evidence of any discriminatory practice therein lies with the selecting judges.

In this case, the judges asked 79 different groups to submit names of prospective jurors and received 75 names; the judges themselves submitted an additional 30 names. Those 105 people were sent questionnaires from which the judges unanimously selected 30 people to serve on the jury panel. Those 30 people were placed in a jury wheel from which the 19 jurors who served were randomly selected, a selection method not previously used in Marin County but pursuant to statutory authority in California Penal Code Section 903.4.

The California Supreme Court had previously found California Penal Code Section 903.4 to be constitutional in its selection of grand jurors under the Fourteenth Amendment, in *In re Wells*, (1971) and *People v. Newton* (1971). However, *Pinnell* presented a different issue, whether the selection process “as applied” singled out for different treatment any of the classes to which Pinnell might belong. He alleged that the opportunity for discrimination in the process was sufficient to make the process applied in his case unconstitutional despite the constitutionality of the statute itself. Four cognizable groups were statistically underrepresented in his grand jury; therefore, he alleged he had met the burden of establishing the opportunity for discrimination, which, under his theory, resulted in an unconstitutional application of the statute. The selecting judges testified in an evidentiary hearing that they sought a fair cross-section of the community and that no group was intentionally excluded. The trial judge agreed with Pinnell’s position and found the method of selection failed to ensure a fair representation of those groups, thus the method as applied violated the Fourteenth Amendment.

The California Court of Appeals reversed and held that because this selection method had never been used before, no statistical history existed from which an inference of intentional and systematic exclusion could be drawn, nor was there any direct evidence of purposeful exclusion of a class. In fact, the only direct evidence, the testimony of the selecting judges that they sought a

fair cross-section of the community and that no group was intentionally excluded, directly contradicted Pinnell’s assertion. The decision followed long-established U.S. Supreme Court precedent. In *Hernandez v. Texas* (1954), the U.S. Supreme Court held that whether a group constitutes a distinct class in a community is a question of fact and that a method of selecting jurors violates equal protection when it intentionally and systematically excludes or underrepresents a cognizable or distinct class. Further, the court ruled that while direct proof of this sort of discrimination is very rare, purpose may be inferred from a substantial history or inadequate representation by the distinct classes. *Hernandez* therefore provides two methods of proof in a case of alleged discrimination in jury selection: either through direct evidence or a substantial historical record of systematic and intentional exclusion, neither of which was supported by the evidence in *Pinnell*. Prior to *Hernandez* in *Akins v. Texas* (1949), the Supreme Court held that the mere fact of inequality in the number selected does not in itself show discrimination, and in fact, the proportional limitation necessary to achieve equality in numbers is forbidden per the ruling in *Cassell v. Texas* (1949). Based on these precedents, the court held a statistical imbalance in one grand jury insufficient to sustain a showing of systematic intentional exclusion. Even if the opportunity for discrimination existed, absent evidence of the exercise of that opportunity, no Fourteenth Amendment violation is shown. *Pinnell*’s importance lies in its successful extension of the rule of law under the Fourteenth Amendment, which says equal protection is denied when a method of selection “intentionally and systematically” excludes or underrepresents a cognizable class to the grand jury setting. The court established that in jury selection, either petit or grand, it is the manner of selection, not the result, that determines constitutionality.

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See Also: Juries; Racism; Supreme Court, U.S.

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People v. Superior Court of Santa Clara County

People v. Superior Court of Santa Clara County, a 1982 California Supreme Court case, is representative of the enduring struggle in the United States with the appropriateness of execution as punishment. Enthusiasm for imposition of the death penalty was at one of its lowest points in the 1970s, not only in California but across the nation.

In the 1972 case *Furman v. Georgia*, the U.S. Supreme Court held Georgia's death penalty statute unconstitutional, along with all death penalty statutes in use. It did not hold the death penalty per se unconstitutional. Widely split, the court agreed that the statutes established a cruel and unusual punishment under the Eighth and Fourteenth amendments to the Constitution but agreed on little else. In the wake of *Furman*, states amended their death penalty statutes to comply with the prescribed rules of the court. With this precedent in hand, those favoring abolition of capital punishment believed their goal to be an eventual certainty. However, four years later, in *Gregg v. Georgia*, the Supreme Court held the death penalty to be a permissible form of punishment for carefully defined categories of murder with limited discretion allowed the sentencing authority and abolishing mandatory death in any case. Sociologically, the development of the law in this area reflects the responsiveness of courts to social and political realities; as those dynamics shift, so must the law. Put another way, the law evolves to meet the evolving standards of society.

Death Penalty in California

California believed that its statute assigning the death penalty to homicides "especially heinous, atrocious, cruel, [and] manifesting exceptional

depravity," defined as "a conscienceless or pitiless crime or one unnecessarily torturous" to the victim, was in compliance with *Furman* and *Gregg*. In *People v. Superior Court of Santa Clara County*, however, the defendants challenged the California statute, arguing that as it was sufficiently broad as to include all murders, the *Gregg* requirement for capital punishment was not met, and so the statute was void because of vagueness.

Defending the statute, the state of California asserted two arguments: that *Proffitt v. Florida*, having successfully withstood a federal constitutional challenge containing the exact language of the California statute, was binding precedent, and that the special circumstances finding was only a sentencing function. The California Supreme Court in distinguishing *Proffitt* held that the statute violated the fundamental principles of due process, pointing out that the challenge in *Proffitt* was on Eighth Amendment grounds. In rejecting California's second argument, the court found the pejoratives therein were too imprecise and lacked the requisite certainty for punishment as either an element of an offense or a special circumstance. According to the court, due process under California's constitution requires the same specificity in defining special circumstances or aggravating factors as required in the definition of the crime itself.

Vagueness has its roots in the common law, where courts refused to pass judgment on legislation found to be too uncertain to enforce. At the country's founding, the concept of certainty regarding the precise nature of the violations charged was established as a necessary precedent to enforcement in the Fifth Amendment to the U.S. Constitution. Certainty as to whom a statute seeks to punish, the specific prohibited conduct, and the resulting punishment is required in order to prevent one whose liberty is at stake from having to speculate as to the meaning of the statute under which he is charged. Difficulty in meeting those demands arises as words commonly have multiple meanings in the English language. On the other end of the spectrum, too much specificity in a statute creates gaps in prohibited conduct.

Twenty years after *People v. Superior Court of Santa Clara County*, in *Ring v. Arizona* (2002), the U.S. Supreme Court in interpreting the same language applied *Santa Clara's* rationale but



The lethal injection room at San Quentin State Prison in California was completed in 2010. Although the constitutionality of the death penalty is settled, the struggle with the appropriateness and delivery still remains an issue and continues to evolve. It is an enduring struggle in the United States. In November 2011, California state attorneys and death row prisoners agreed to review new lethal injection procedures by September 2012, postponing any lethal executions until then.

decided the case on Sixth Amendment trial by jury grounds rather than on due process. While the constitutionality of death as punishment is settled, the struggle with appropriateness and due process in adjudication and delivery continues to evolve.

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See Also: Capital Punishment; *Furman v. Georgia*; *Gregg v. Georgia*.

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Percival, Robert V.

Robert V. Percival is professor of environmental law at the University of Maryland, where he has been on faculty since 1987. He has been visiting professor at Harvard and Georgetown and in Slovakia and China and has presented environmental law workshops around the world. He is also a world authority on global environmental law and a member of the International Union on Conservation of Nature (IUCN) Commission on Environmental Law and editor and/or board member of several governmental environmental organizations. He earned a B.A. from Macalester College

in 1972 and both an M.A. and a J.D. from Stanford in 1978. At Stanford, he edited the law review and graduated first in his class. After graduation, he clerked for a justice of the Ninth Circuit Court, then for Justice Byron R. White, and was special assistant to the first secretary of education. Prior to joining the University of Maryland, he was senior attorney for the Environmental Defense Fund.

His *Environmental Regulation: Law, Science and Policy* is the leading casebook in environmental law in the United States. *Law and the Environment*, which he coedited with Dorothy C. Alezizatos, was the first work to collect major cross-disciplinary environmental works, including material by philosophers, scientists economists, historians, ecologists, and legal scholars. It attempted to treat environmental concerns as a public policy issue. The combination of history, society's response, and future implications in a global context make this work unique. He also writes on federalism, presidential power, legal history, and regulatory policy. In the aftermath of 9/11, President George W. Bush assumed great power, leading Percival to write in the *Duke Law Journal* in opposition to unitary theory, the assumption that presidents can order agency heads to make certain decisions. Percival concludes that the unitary theory that conservatives refer to in attempting to give the president total control over administrative agencies is constitutionally flawed. Rather, agency heads have a relative degree of autonomy and the Bush administration overstepped its constitutional authority in blocking the release of Reagan presidential papers and more notably in authorizing military tribunals for noncitizens. Percival addresses presidential directive authority again in 2011 in an article for the *Fordham Law Review* and again finds unitary theory invalid; presidents violate constitutional limits if they mandate agency decisions.

The Roots of Justice: Crime and Punishment in Alameda County, California, 1870–1910, co-authored with his mentor Lawrence M. Friedman in 1981, won prizes in Western and legal history. Friedman had seven years earlier called for scholars to leave the study of court cases and actually take a look at how the criminal justice system operated. It was time to look at the system in its private moments, inside the jails, rather than just in the public setting of the courtroom. The work

was a landmark in legal and criminal justice studies. The work was the first to deal with the entire system, rather than one institution or one part, over time. The study of Alameda noted that the county was atypical because of the proximity of San Francisco but typical in its rapid population growth and industrialization. Thus, it was a reasonable case study for the groundbreaking study of the total criminal justice system. With his mentor, Friedman, Percival examined victims, accused, police, and other actors as they worked through the criminal justice system from crime and arrest to indictment and jury selection, pretrial and trial maneuvering, sentencing, parole and probation, appeal, and jail. The study used 73 tables and figures to display the multitude of records that the system generated, from police blotters to court records to prison and jail reports. Newspaper coverage was also a valuable source. The study found that serious crime rates declined over the period of the study, freeing citizens from fear and allowing them to use the criminal justice system for enforcing the community moral values and discipline. Crimes such as brawling and drunkenness were the norm, and the Alameda justice system emphasized order rather than law. A class bias was obvious in the types of crime prosecuted, as well as in the sorts of people brought into the system. The study also demonstrated how the professionals took over and manipulated the system with the acquiescence, if not admiration, of those whose morality the system came to represent.

The study remains a landmark examination of how the legal system actually works at the ground level, a clear departure from the traditional view from above, the theoretical operation of the legal system. They were criticized for somewhat simplistic methodology, overreliance on traditional sources such as newspapers, and neglect of the political aspect, but they were praised for achieving their stated goals of exploring from the ground up and the outside in.

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See Also: California; Crime and Arrest Statistics Analysis; Criminology; History of Crime and Punishment in America: 1850–1900; History of Crime and Punishment in America: 1900–1950.

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Peterson, Scott

Scott Peterson was born on October 25, 1972, in San Diego, California, to Lee Peterson and Jacqueline Latham. Growing up, Scott was described as a well-behaved child who was praised for his golf skills and accomplishments. For his golf achievements, Peterson was awarded a partial athletic scholarship to play golf at Arizona State University (ASU). After one semester, Peterson left ASU and moved back in with his parents. In 1994, Peterson enrolled in California Polytechnic State University, where he met his future wife, Laci Rocha. The couple later married in August 1997 and moved to Modesto, California.

On December 24, 2002, Laci Peterson, who was eight months pregnant with the couple's first child, disappeared from the couple's Modesto home. On the day of his wife's disappearance, Scott reported that he had spent the day fishing on his boat in San Francisco Bay. Initially, the Rocha family was supportive of Scott as he coped with the disappearance of his wife. As a result of this support, Scott was not identified as a suspect in Laci's disappearance. However, investigators later discovered that Scott had extramarital affairs. One of

his affairs was with Amber Frey, whom Scott was seeing at the time of Laci's disappearance. The discovery of this affair, in addition to discrepancies in Scott's reports of his wife's disappearance, ultimately prompted investigators to focus on Scott as the prime suspect in his wife's disappearance. On April 14, 2003, the partial remains of Laci Peterson and her unborn son were discovered in San Francisco Bay, which led to Scott's arrest for these murders on April 18. When he was arrested, Peterson claimed that he was meeting his father and brother to play golf. However, at the time of his arrest, Peterson was in possession of various suspicious items, including \$15,000 in cash and camping equipment, which investigators believed to be evidence that Peterson had planned to flee.

On June 1, 2004, the trial of *People of the State of California v. Scott Peterson* commenced. Peterson was charged with the double homicides of his wife, Laci, and unborn child, with a guilty conviction carrying with it the possibility of death. Due to the media attention surrounding the trial, the presiding judge, Al Girolami, ordered that the trial be moved from Modesto, California, to Redwood City, and he enacted a gag order prohibiting everyone involved in the case from speaking to the media.

The prosecution focused its case on forensic evidence, Peterson's affair with Amber Frey, and on Peterson's actions throughout the investigation into Laci's disappearance. Lead prosecutor Rick Disatso argued that a hair found in a pair of pliers on Peterson's boat provided forensic evidence that Peterson used his boat to discard Laci's body. According to Disatso, prior to her death, Laci had never been on Peterson's boat, thus indicating that the hair must have been transferred on the day of her death. In addition, the prosecution argued that Peterson's actions prior to Laci's disappearance, namely, his affair with Amber Frey, further established Peterson's guilt. Frey testified at the trial that throughout the affair Peterson claimed to be a widower. Frey further reported that she did not learn that Peterson was married until news of Laci's disappearance reached the media. Disatso used this testimony as well as taped conversations between Frey and Peterson to establish that Peterson had a motive to kill his wife in order to continue his affair with Frey. Peterson's selling of Laci's car and his desire to sell the couple's

Modesto home were also presented as evidence of Peterson's motive.

The defense, led by Mark Geragos, focused on trying to prove that the prosecution's forensic evidence was circumstantial and that Peterson's affair with Amber Frey indicated that he "was a cad" but did not prove that he was a murderer. In addition, Geragos argued that the discovered remains of the fetus were full-grown, which he claimed suggested that Laci was likely kidnapped, held for an extended period of time, and later murdered by an unknown individual or group. On November 12, 2004, Scott Peterson was found guilty of one count of first-degree murder in the death of his wife, Laci, and one count of second-degree murder in the death of his unborn son. On March 26, 2005, following the jurors' recommendation, Judge Alfred Delucchi sentenced Scott Peterson to death by lethal injection and ordered that Peterson help pay for Laci's funeral. On March 17, 2005, Peterson was moved to San Quentin State Prison where he awaits the death penalty.

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See Also: Capital Punishment; News Media, Crime in; San Quentin State Prison.

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Petty Courts

Petty courts are known by various names: city or municipal courts, mayor's courts, magistrate's courts, or justice of the peace courts. They occupy the lowest level of courts and are courts of limited

jurisdiction. Their jurisdiction is most often limited by subject matter and by geography. These courts may vary significantly in organization and practice from jurisdiction to jurisdiction.

Petty courts have been used as local arbiters of justice in the United States since colonial times. They are deeply rooted in the local context from which they emerged, and each court's practices have been shaped by local needs and customs. In early petty courts, proceedings focused more on dispute resolution than on crime control per se. Proceedings were initiated by private citizens rather than by agents of the state and were overseen by local authorities (e.g., squires and aldermen) who rarely had formal legal training. The high degree of local control caused concern among progressive reformers as many petty courts were susceptible to undue and inappropriate local political influence. Mayors and other local political figures enjoyed broad discretion in using the local courts to advance their own agendas, for example, using court appointments to reward loyal supporters. Though modern petty courts continue to be locally funded and managed, they are being brought under greater levels of state control. Increasingly, state legislation subjects local courts to regulations that seek to minimize vulnerability to local political whims and to ensure uniform legal procedures and standards across jurisdictions. Though still separate from most state court systems, decisions made in the petty courts may be subject to review by courts in the state-administered court system should a petty court defendant wish to appeal a case.

Cases

Types of cases typically heard in petty courts include traffic offenses, local ordinance violations, minor criminal cases (i.e., misdemeanors), and low-value civil cases. In some cases, petty courts may conduct the preliminary proceedings in felony cases (e.g., the entering of a plea). In addition, some jurisdictions allow for proceedings of more serious motor vehicle offenses to be heard in the petty courts if the defendant agrees to such an arrangement.

Misdemeanors that are commonly addressed by petty courts include petty theft, disorderly conduct, public drunkenness, curfew violations, loitering, resisting arrest, simple assault,

underage possession of alcohol, and minor controlled substance and paraphernalia offenses. Petty courts may also hear some civil cases—these cases are typically limited by the amount of money involved. A growing trend in localities across the United States is the creation of specialized petty courts focused on processing distinct types of cases (e.g., truancy or drug cases) or on resolving cases involving unique populations (e.g., the homeless, or enlisted military personnel and veterans of war).

Caseloads in urban and suburban petty courts are often staggering, far outweighing the number of cases processed in all other types of courts. Even with heavy caseloads, petty courts must process every case in a reasonable amount of time—usually within two years of when the case was originally filed.

Cases enter the petty court system in a variety of ways: as a result of an indictment, a complaint

made by a member of the public, or a citation or violation notice issued by a public official or law enforcement officer. Like defendants in other courts, defendants in petty courts may plead not guilty, guilty, or, in some cases, *nolo contendere*, or “no contest.” A no contest plea means that the defendant is claiming neither guilt nor innocence. No contest pleas are treated the same as a guilty plea (or a guilty ruling) in sentencing decisions. Unlike other courts, defendants may not be required to appear in court or to meet with a judge in order to enter a plea and resolve their case; many jurisdictions allow defendants to plead guilty through the mail or, increasingly, online. Like other courts, a guilty (or no contest) plea is the most common plea made in petty courts. If a defendant does not appear when required by the court, a warrant may be issued for the individual’s arrest.

Sanctions

Petty courts most commonly rely on two forms of sanctions: the assessment of fines and fees or short-term incarceration in a local jail. They may also have the authority to require individuals to participate in counseling, community service, or other types of rehabilitative or educational programming.

In the past, many local jurisdictions allowed the presiding judge in the petty courts to take a percentage of the proceeds obtained from any fees and fines collected. This practice encouraged judicial corruption and has since been outlawed. In contemporary times, some of the revenues generated by fines and fees are used to pay local court and criminal justice administration costs. Increasingly common is the allocation of revenues generated by the petty courts into the general funds of the local and state governments. Petty courts tend to be the only component of a state’s criminal justice system that generates a profit. In some states, millions of dollars of revenue are generated each year by the local petty courts; for this reason, some legal scholars are concerned that political figures may deemphasize the role of the courts in justice seeking and order maintenance and, instead, utilize the petty courts as a “cash cow” that can be used to generate discretionary revenue for the government.

Petty courts may also order guilty parties to serve time in a local jail. Generally, jail terms are



Petty court cases are typically traffic offenses, ordinance violations, minor criminal cases, and low-value civil cases, taking place without the involvement of a defense attorney.

less than one year. Noncompliance with court requirements may result in additional charges, for which defendants can be sentenced with more strenuous requirements or with additional jail time. Many courts may also restrict individual access to a driver's or professional license. In addition, charges in petty court may have significant hidden civil consequences for defendants. Criminal records may result in social stigma or limit the ability of an individual to retain or obtain certain forms of employment. Many jurisdictions have provisions for the expunging (i.e., erasing or sealing) of a criminal record. Which charges and how many charges can be expunged vary depending on the jurisdiction.

Procedures

Most petty court processes take place without the involvement of a defense attorney. For much of their history, petty courts were not required to provide attorneys for defendants who could not afford counsel. In 1972, the U.S. Supreme Court ruled that legal counsel must be provided in any case where there is a possibility of deprivation of liberty (i.e., incarceration) no matter how brief the deprivation. In jurisdictions where punishments may include jail time, legal counsel may be provided for those who prove themselves to be indigent (i.e., poor). Courts that provide defense counsel may require an application and an application fee from defendants who seek appointed counsel. Indigent defense attorneys often have heavy caseloads and little time to prepare for each of their cases. In addition, indigent defense programs are often underfunded and lack access to the necessary resources to mount a rigorous defense of clients, including funds for additional investigations or expert witnesses. As with other types of courts, defendants have the option to hire their own representation, but most do not.

Given the high volume of cases and the expectation that legal cases be processed quickly, there is significant institutional pressure exerted on petty court personnel to minimize challenges posed by defendants to the charges they face. Trials are infrequent, and court processes are rarely recorded. Multiple defendants are scheduled to be seen at one time, and their legal rights are often told to them en masse. Without a trial, defendants in the petty courts rarely

have the opportunity to exercise many of the rights considered fundamental to the American justice system, including the right to review evidence against them, to present evidence in their defense, to confront witnesses, and to have their case heard by a jury of their peers.

Depending on the jurisdiction, judges in petty courts are either appointed by the local government (e.g., the city council) or elected by local residents. As with judges in other types of courts, petty court judges are predominantly white and male. Not all jurisdictions require a serving petty court judge to have a law degree, or in some cases, a college degree. Judges may not have any support staff (i.e., clerks, bailiffs) and may only work part time, especially in small or in rural jurisdictions.

Conclusion

Though petty courts receive little media or scholarly attention compared to other types of courts, these courts are the most likely and most frequent point of contact between members of the public and the justice system. Experiences in petty courts may have significant impact on public trust and confidence in the larger justice system and on the perception that American courts are unbiased, efficient, and accessible.

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See Also: Courts; Defendant's Rights; Due Process; Traffic Crimes.

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Philadelphia, Pennsylvania

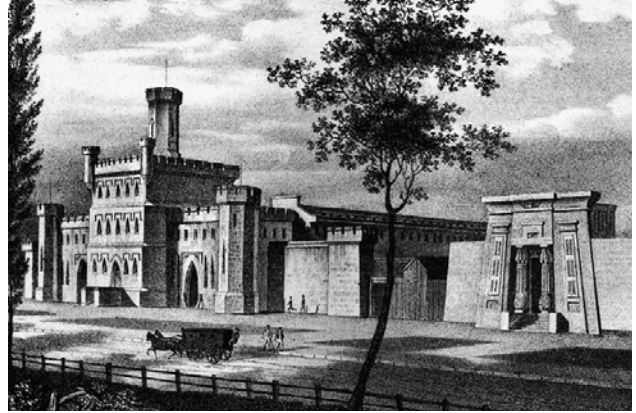
The largest city in the Commonwealth of Pennsylvania, Philadelphia was established as the first settlement in the colony of Pennsylvania in 1682 by William Penn. It was incorporated as a city in 1701. Philadelphia was an important trading and cultural center in the British Empire during the 17th and 18th centuries and became a center for revolutionary activities. Philadelphia has, since the 18th century, been active in prison reform activism and is home to the internationally renowned Eastern State Penitentiary.

Crime is always an issue in urban centers, and Philadelphia is no exception. In the 18th century, homicide indictment rates ranged from 1 to 6 per 100,000 people, with a spike of 11.6 per 100,000 during the period of 1765–75. Rates of property crime ranged between 150 and 200 incidents per 100,000 people during the late 18th century. During the 19th century, rates of homicide indictments ranged from 2.2 to 4 per 100,000. Crime in 19th-century Philadelphia also involved violent rioting, particularly in the 1830s and 1840s, stemming from ethnic and racial tensions in the city. The most notable of the riots were the Philadelphia Nativist Riots, which took place in May and July 1844. These riots occurred between Irish Catholics and American nativists as a result of growing anti-Catholic sentiment and frustration over the rising Irish population in Philadelphia. Catholic churches were burned, and there were more than 100 casualties.

By the turn of the 20th century, Philadelphia's homicide rate had dropped to 2.1 per 100,000. Over the course of the 20th century, crime rates increased steadily, and drug-related and Mafia crime became serious issues in the 1970s and 1980s. In 1990, the violent crime rate was 1,348.8 per 100,000; the property crime rate was 5,843 per 100,000. By 2005, violent crime had increased to a rate of 1,467.1 per 100,000, while the property crime rate had dropped to 4,102.0 per 100,000. In 2007, the homicide rate was 27 per 100,000.

Law Enforcement

Law enforcement in early Philadelphia consisted of a night watch, which was organized in 1751.



Moyamensing Prison, or the Philadelphia County Jail, opened in 1835 in the southern part of the city to deal with the growing number of offenders committing lesser crimes.

Without much of a police force, private prosecution was the mainstay of criminal justice for Philadelphia's lower classes. Individuals had the ability to take others to court without police intervention in the first half of the 19th century, and the courts acted as a means to settle disputes. The system changed when a professional police force was established, and other criminal justice officials such as district attorneys became salaried employees of the state.

Philadelphians realized the need to create a unified police department in the 1830s with the rise of racial and ethnic violence. In 1833, an initial preventive police department was established. Trouble over police jurisdiction arose between the city and surrounding independent boroughs in the 1830s and 1840s. In 1854, when Philadelphia incorporated these boroughs into the city proper, a centralized police department was also established, splitting the larger city into separate police districts, all part of the Philadelphia Police Department. The Philadelphia police have received national attention from several cases in the 20th century, notably those dealing with the communal black liberation group MOVE during a raid in 1978 and the bombing of their compound in 1985. The case of Mumia Abu-Jamal, who was convicted of killing Philadelphia police officer Daniel Faulkner in 1981, also received national recognition. Abu-Jamal is currently incarcerated, while appeals trials determine whether his death sentence will be upheld or commuted to a life sentence.

Prison Reform

During the colonial era, punishments in the city were public, including hangings, work gangs, whippings, and the use of stocks and pillories. In 1776, the city opened a new prison, later known as Walnut Street Jail, in downtown Philadelphia. Prisoners were held in large rooms, and little effort was made to help inmates rehabilitate. During the Revolutionary War, some citizens became active in trying to improve the conditions for prisoners, initiating some of the earliest prison reform work for which the city later became known. In 1787, the Philadelphia Society for Alleviating the Miseries of Public Prisons was established. Three years later, Walnut Street Jail was expanded to become the nation's first penitentiary, utilizing individual cells to halt prisoner corruption and to attempt to produce character reform in the inmates.

Prison reform efforts continued into the 19th century. Eastern State Penitentiary opened in 1829 on the northwestern outskirts of the city. The penitentiary used the Pennsylvania system of reform, in which inmates served their entire incarceration term in total silence and isolation. Each prisoner had his or her own cell and worked at artisanal crafts. Prison reformers from the Philadelphia Society visited the penitentiary regularly to ensure that attempts at rehabilitating inmates were being made. In 1835, Moyamensing Prison, or the Philadelphia County Jail, opened in the southern part of the city to deal with the growing number of offenders committing lesser crimes. With the opening of this county jail, Walnut Street was closed. Moyamensing Prison was destroyed in the 1960s.

In 1971, Eastern State closed its doors, and most of its inmates and employees moved to Graterford Prison outside the city. Even though the historical prisons are now closed, prison reform efforts still emanate from Philadelphia. The Philadelphia Society was later renamed the Pennsylvania Prison Society, and the organization still has its headquarters in the city.

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See Also: 1801 to 1850 Primary Documents; 1851 to 1900 Primary Documents; Eastern State Penitentiary; MOVE; Pennsylvania; Pennsylvania System of Reform; Quakers.

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Pickpockets

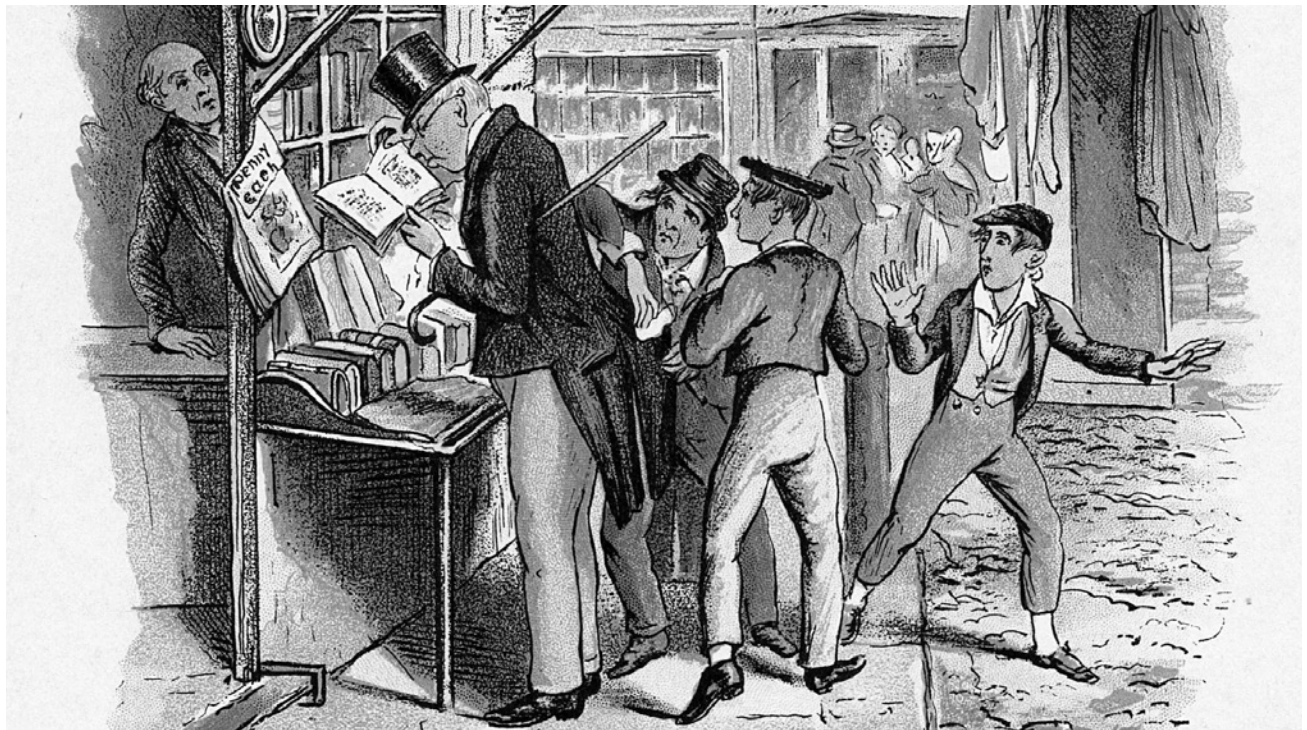
The word *pickpocket* first emerged in the late 1500s to describe a person who steals wallets, money, and other valuables from the pockets of other people. Pickpockets have a lengthy history throughout the world and have likely existed as long as people have carried valuables with them. Edwin Sutherland placed pickpockets in a class of skilled criminals that includes shoplifters, confidence men, and check writers. He described these types of criminals as professional thieves who have great acting skills and principally depend on their wits and talking ability. While pickpocketing could conceivably be committed by just about anyone of any age, race, or gender, it was not uncommon for children to engage in the “trade” in early American cities. This topic is an important one to explore because many societal factors coalesced to allow pickpocketing, and juvenile pickpockets in particular, to flourish in large American cities in the 1800s.

Ample references to pickpockets in the United States can be found in newspapers dating back to at least the 1800s. A *New York Times* article from 1865 describes a “swell mob” of pickpockets who would rush toward city cars in the evening and go about emptying the pockets of the crowd. Pocket picking persists to this day, and the method has remained largely unchanged. John Young, a former criminal investigator with the Amtrak Police Department, states that contemporary pickpockets tend to operate in places where large crowds of people congregate (e.g., cities or train stations) and will typically bump into their intended victim in an

effort to distract him/her long enough to steal his/her wallet or other valuables.

Pickpockets have oft been romanticized in classic literature through colorful characters like Charles Dickens's controversial character Fagin, who teaches children the finer points of pocket picking in his veritable school for crime. Fictional accounts aside, historical examinations of pickpocketing reveal an entire subculture that existed in the 1800s; many well-known American pickpockets began their criminal careers as children. Understanding the history of pickpocketing is no easy task because of the deeply secretive nature of the pickpocketing subculture that existed primarily in larger American cities during the 1800s. Timothy Gilfoyle, who has written extensively on juvenile pickpockets, notes that records are scarce, as the subculture of juvenile pickpockets was largely organized around an oral culture that left little written evidence. Gilfoyle goes on to state that the lack of written records coupled with the fact that pickpocketing was, for the most part, an invisible crime makes historical analysis of the subject very

difficult. However, historians have been very clear on the factors that precipitated and allowed juvenile pickpockets to flourish. With industrialization in the United States came an infusion of people into large cities, and large-scale factories (or sweatshops) largely replaced craftsmen and skilled laborers. As a consequence, many children who might previously have been engaged in an apprenticeship were largely left to their own devices. All of these factors converged, along with the fact that school attendance was not compulsory in the 1800s, to result in an abundance of juvenile pickpockets. The newsboy profession often overlapped with pickpocketing. George Appo, who is perhaps the most famous American pickpocket, revealed that he and a fellow newsboy were able to pickpocket for a full two years before police apprehended them. Another pickpocket and newsboy, Larry Caulfield, is quoted as saying, "I made a great deal of money at picking pockets, without getting into difficulties with the police." The "newspaper dodge" was a favored tactic among newsboy pocket pickers. This strategy involved waving a newspaper in the



Pickpockets like Fagin in Charles Dickens's Oliver Twist (depicted above) have often been romanticized in literature. Historical research of pickpocketing reveals that an entire subculture existing during the 1800s shared their techniques by word of mouth, leaving little documentation. Many well-known American pickpockets started their careers at a young age.

face of a potential victim and while he/she was distracted, the newsboy would reach into the victim's pocket and remove any valuables. Larry Caulfield would often board crowded streetcars and shove a newspaper in the face of male passengers and yell "News, boss?" in an effort to divert the attention of his intended victim. Caulfield bragged, "If you will stand for a newspaper under your chin, I can get even your socks." So many of these children posed as newsboys that it was virtually impossible to tell a real newsboy from a thief.

Use of the newspaper dodge was certainly not the only pickpocketing technique employed. Numerous tactics were (and still are) used by pickpockets. For example, "the sandwich" involves a team of two pickpockets. One pickpocket bumps into the victim as a distraction, while the accomplice steals the person's valuables.

The Case of George Appo

George Appo, who began his criminal career as a pickpocket in New York City, is regarded as a compelling and significant criminal of the 19th century. Appo, the son of immigrants, never went to school and largely supported himself as a child by working as a newsboy, pickpocket, and confidence man. His father was convicted of murder and spent most of Appo's life in and out of prison. Appo's mother and younger sister died in a shipwreck when he was just 6 years old, effectively making him an orphan. By the age of 12, with his father back in jail, George fell in with a gang of pickpockets and took up the trade to support himself. He worked the streets for two years, until he was arrested and sentenced to the School Ship Mercury, a floating prison of sorts that was designed to teach young delinquents nautical skills. Appo served more than one year on the vessel, but accounts differ about the nature of his release. Tyler Anbinder reports that he jumped ship in New York Harbor in 1873, but according to Appo himself, he was released on good behavior after he saved a fellow shipmate from drowning. Debates about his release notwithstanding, it appears that his time on the ship did little to alter his behavior, as he very quickly returned to his previous environment and associates and began pickpocketing again in earnest. By age 16, Appo was once again arrested for pickpocketing and was sentenced to two and one-half years' imprisonment with hard labor.

By all accounts, Appo was a skilled pickpocket, and on a good night, he would earn about as much as a skilled laborer's salary. Throughout his career as a pickpocket and confidence man, he likely earned thousands. The money he earned through his criminal enterprises did not come without a steep cost, however, as he served decades behind bars and suffered numerous injuries. At various points, Appo had his teeth knocked out, and once released, he was assaulted nine times, shot twice, and stabbed in the throat once. The physical cost of criminality did not deter Appo, and his career transitioned from pickpocket to confidence man. Of course, young men were not the only ones engaged in pickpocketing, though it was a predominantly masculine trade. Men and women would often work in teams, with the woman largely serving as a distraction for the intended victim. This technique (which is still employed by pickpockets today) typically involved a beautiful woman distracting the victim while the accomplice stole from the victim. Sophie Lyons was one such female pickpocket. She would go on to become one of the most skilled confidence women in early American history. Gilfoyle notes that Lyons was an extremely successful pickpocket who would occasionally use knives to cut open bags and steal valuable contents.

The pickpocketing problem did not go unnoticed by the criminal justice system. By the latter part of the 1800s, rates of arrest and conviction were quite high. Gilfoyle reports that prosecutions of pickpockets nearly tripled between 1869 and 1876. During the period, juries became much more likely to convict juveniles for pickpocketing. Evidence suggests that punishments also became quite harsh in the 1870s. A number of juveniles were sent to penitentiaries, with some serving sentences of several years. Despite the availability of juvenile facilities, almost 85 percent of male pickpockets aged 16–17 were sentenced to Sing Sing Penitentiary at Ossining, New York. In summary, the history of pickpocketing is largely a history of juvenile crime, exacerbated by the Industrial Revolution. As Gilfoyle notes, many of the children who engaged in this practice were children who lacked parental supervision and used pickpocketing as one of many strategies to survive on the streets.

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See Also: Juvenile Delinquency, History of; Juvenile Delinquency, Sociology of; Juvenile Justice, History of.

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Pierce, Franklin (Administration of)

Democrat Franklin Pierce (1804–69) served one term as the 14th president of the United States from 1853 to 1857. Although Pierce was from New Hampshire, he was largely viewed as a southern sympathizer who desired to protect the legality of slavery and the Fugitive Slave Act of 1850. Pierce was most noted for his signing of the Kansas-Nebraska Act of 1854, granting the voters of those territories the right to decide slavery's legal status through the doctrine of popular sovereignty. His administration was unable to stem the widespread election fraud and violence in "Bleeding Kansas" that resulted. The Pierce administration's expansionist foreign policies were overall more successful.

Franklin Pierce served as a postmaster and lawyer upon his graduation from Bowdoin College. He had a lengthy on-and-off political career as a Democrat before running for president, serving

in the New Hampshire legislature from 1828 to 1832 and in the U.S. Congress from 1832 to 1842 before resigning for personal reasons. Pierce was a supporter of President Andrew Jackson and his Democratic principles. He also served as a general during the Mexican–American War (1846–48). Pierce was nominated to the Democratic ticket in 1852 as a compromise candidate on the 49th ballot of the nominating convention because of his northern origins and southern political leanings. Franklin Pierce defeated Whig Party nominee General Winfield Scott in the general election.

Slavery Under the Pierce Administration

Many historians view Pierce as an ineffective president who allowed sectional divisions to worsen during his administration. Pierce had been an outspoken critic of the abolitionist movement and was seen as a southern sympathizer, or "dough-face," despite his northern origins. Pierce sought to maintain national unity by composing his cabinet of both northerners and southerners and through his rigid enforcement of the earlier Compromise of 1850, including the Fugitive Slave Act, which allowed slave catchers to pursue escaped slaves into free states. A noted case involved fugitive slave Anthony Burns, who was captured and held in Boston, Massachusetts. Pierce supported the attorney general's refusal to allow Burns's friends to purchase his freedom and deployed federal troops to ensure his return to slavery.

Anthony Burns, a slave owned by Virginia merchant Charles Suttle, escaped to Boston as a shipboard stowaway. Suttle later determined the location of the fugitive through a letter Burns sent to his brother, who was also Suttle's slave. In 1854, Suttle traveled to Boston to reclaim Burns under the Fugitive Slave Law of 1850. Burns was arrested and held at the federal courthouse. Boston area abolitionists converged on the courthouse to protest and free Burns, leading to a riot that attracted national attention. Pierce ordered U.S. marines to protect the courthouse and ensure that the Fugitive Slave Law would be executed. Under the Fugitive Slave Law, a commissioner rather than a jury heard the case. Although renowned Boston lawyer Richard Henry Dana represented Burns, Judge Edward G. Loring convicted him as a fugitive slave, and Suttle was named his rightful owner. An African American church purchased

Burns's freedom soon after his return to Virginia aboard a federal ship.

Domestic and Foreign Policy

Pierce's commitment to national unity was most tested when the territories of Kansas and Nebraska began the path to statehood. Pierce signed the Kansas-Nebraska Act of 1854, repealing the old Missouri Compromise line restricting slavery to south of 36°30' north latitude and implementing the concept of popular sovereignty in the territories of Kansas and Nebraska. Popular sovereignty would allow the people of a territory to vote to determine the legality of slavery when that territory applied for statehood. There was election fraud as Missouri voters crossed into Kansas to illegally vote it a slave state, and a violent struggle between pro-slavery and abolitionist factions erupted in what became known as "Bleeding Kansas."

The Pierce administration did little to address the violence and illegal elections even after John Brown's Pottawatomie Massacre left five dead, and Kansas had competing pro- and antislavery governments appealing to Washington for legitimacy. The divisiveness over popular sovereignty and the subsequent violence in Kansas resulted in deepening sectional divisions within the Democratic Party, the demise of the Whig Party over sectional differences, and the creation of the Republican Party in the north.

The Pierce administration's foreign policy aims were more successful and expansionist in character. Successes included U.S. ships' gaining limited access to Japanese ports under Commodore Matthew Perry, the Gadsden Purchase of land near the Mexican border, and the negotiations of treaties with Canada settling fishing rights and Great Britain settling Central American conflicts. More controversial were the recognition of American William Walker's regime in Nicaragua and a failed attempt to acquire Cuba from Spain revealed in the Ostend Manifesto, which damaged Pierce's reputation when it was publicly revealed. The Cuba plot also furthered northern criticisms, as many felt southerners desired Cuba as a potential new slave territory.

When the Democratic Party failed to nominate Pierce for a second term in 1856 because of his unpopularity in the north, he left politics and

returned to the practice of law in Concord, New Hampshire. His criticisms of President Abraham Lincoln and his Emancipation Proclamation freeing slaves in rebellious territories during the Civil War led to further accusations of his southern sympathies. Franklin Pierce died in Concord on October 8, 1869.

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See Also: Fugitive Slave Act of 1850; Lincoln, Abraham (Administration of); Slavery, Law of.

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Pittsburgh, Pennsylvania

Pittsburgh, Pennsylvania, located at the confluence of the Monongahela and Allegheny rivers, forming the Ohio River in western Pennsylvania, developed in the 18th century as a site for trading between Native Americans and Europeans and became a battleground for control between colonial powers. Pittsburgh was home to Western State Penitentiary, one of the earliest penitentiaries in the United States, which opened in 1826. In the 19th century, the city became known for its steel industry, which led to violent labor unrest.

Early History

Because of its location on the colonial frontier, much of Pittsburgh's early crime and violence stemmed from hostilities between European settlers and Native Americans. Each group perpetrated violent attacks on the other. Other minor offenses such as dishonesty or ill fame were punished internally through a system of ostracism. The offender was ostracized from the community until his or her behavior was reformed. After the

American Revolution, Pittsburgh was still considered the American frontier. In the early 1790s, more resistance occurred during the Whiskey Rebellion, when frontiersmen in western Pennsylvania used violence and intimidation to prevent government officials from collecting a tax on whiskey. The violence culminated in 1794 when more than 500 protesters attacked the home of a tax inspector. The federal government responded by sending troops to quell the violence. Approximately 20 leaders were arrested and tried for their participation, but all were later acquitted or pardoned.

When the city was incorporated in 1816, Pittsburgh established a Mayor's Court, which tried assaults and batteries, riots, and all other offenses that were normally tried in a county Court of Quarter Sessions. Pittsburgh's Mayor's Court sat four times a year, just like the traditional Court

of Quarter Sessions. While there had been a night watch patrol in Pittsburgh since 1794, in 1816, the order of incorporation for the city provided for a high constable and four other constables, a watch captain, and 12 watchmen. The day and night patrols dealt with the common urban crimes such as burglary, prostitution, murder, and gambling. The Pittsburgh Bureau of Police, founded in 1857, became the unified police force for the city. Currently, it is the third-largest law enforcement agency in the state.

In 1826, the state opened Western State Penitentiary in what is now West Park, Pittsburgh. This first Western State Penitentiary remained in operation until 1880. Its original design resembled Jeremy Bentham's Panopticon, which ideally would provide constant surveillance of every cell. When it was determined that the design presented security issues, the building plans were modified to resemble the hub-and-spoke plan that the builders of Eastern State Penitentiary were following in Philadelphia. The first Western State Penitentiary housed more than 100 Confederate soldiers captured in Morgan's Raid in 1863. In 1882, the current Western State Penitentiary opened. In its early days, it housed some maximum-security inmates. It closed from 2005 to 2007 for maintenance purposes. It currently houses low- and medium-security inmates who require substance abuse treatment. Pittsburgh is also home to Allegheny County Jail. An early jail attached to the county courthouse was built in 1886, and the building now houses the county's Family Court Division. The current Allegheny County Jail is still located in downtown Pittsburgh.

The Nineteenth Century and Beyond

Pittsburgh grew in the 19th century because of booming industries, which fostered a great deal of labor unrest and violence in the late 19th and early 20th centuries. On July 14, 1877, a railroad strike began in Martinsburg, West Virginia, as a result of the railroad company's reducing wages for a second time in one year. The strike quickly spread to other railroad workers across the region. Pittsburgh became the site of the worst violence that occurred during the strike. On July 21, 1877, militiamen attacked strikers with bayonets and gunfire, killing 20 and wounding dozens more. In retaliation, strikers caused the militia



The steel business, along with other booming industries, fostered much labor unrest and violence in Pittsburgh, Pennsylvania, in the late 19th and early 20th centuries.

to take cover in a roundhouse and set fire to the railroad yards. The next day, the militia fought its way out of the roundhouse, killing 20 more people. President Rutherford B. Hayes was forced to send federal troops to end the strikes after a month of rioting and violence.

In 1892, skilled union members who worked for Carnegie Steel went on strike at the Homestead Steel Works to protect their jobs from being taken by unskilled workers. The company locked union members out of the plant, and the strike began on June 30, 1892. Workers from other nearby steel plants joined the strike in sympathy. The company tried to continue production with strikebreakers and attempted to get Pinkerton agents to the plant to protect the strikebreakers. The strikers anticipated the plan, and a bloody battle erupted between the strikers and the Pinkerton agents, resulting in several deaths on both sides. The Homestead Strike eventually failed after an assassination attempt on the company executive. The strikers lost public support for their cause, and workers returned to the plant. In 1919, steelworkers in Pittsburgh went on strike again in order to force local officials to allow the American Federation of Labor to hold union meetings in the city. In September, a general steelworker strike began, halting half of the nation's steel production in Pennsylvania and other states. Companies used violence, threats, and strikebreakers to demoralize the strikers. By early January 1920, the strike fell apart.

In the 20th century, Pittsburgh dealt with organized crime and high crime rates. The LaRocca family held control over politicians, police officers, and labor unions. The group was involved with bootlegging and ammunition trading during the early and mid-20th century, and turned to gambling and illegal drug rackets in the 1980s. Top members were convicted in the 1990s, greatly weakening the family's power. Crime rates for the past 25 years have shown a steady decrease in property crimes, dropping from 6,129.7 incidents per 100,000 people in 1985 to 3,771.2 per 100,000 in 2009. Violent crime rates have averaged 1,065.1 incidents per 100,000 since 1985. In 2003, statistics indicated that Pittsburgh had a murder rate 2.61 times higher than the national average.

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See Also: Court of Quarter Sessions; Penitentiaries; Pennsylvania; Strikes.

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Plea

A plea is an agreement reached by the prosecution and defense in a criminal case in which the defendant admits guilt rather than pursuing a trial in exchange for a reduction in charges (charge bargaining) or a recommendation for a lesser sentence (sentence bargaining). Many scholars believe that pleas originated as a means to deal with burgeoning caseloads in the 19th and 20th centuries in order to increase efficiency. However, there is evidence to suggest that this is not the case. Rather, plea practices appear in isolated examples in the 1700s in England and in the colonial American courts. Just after the Civil War, the practice of offering pleas started to become more commonplace. Many scholars point to increased industrialization, immigration, and corruption in urban criminal justice systems among the many causes for the plea trend. Others have drawn a parallel between the emergence of plea negotiations with the advent of public prosecution, increased rights for defendants that created lengthier trials, and even the creation of a public defender system.

There is no consensus about whether pleas grew in usage as a means of increasing efficiency or if other underlying factors led to the increased use. Nonetheless, it seems clear that the volume of cases entering the system during the 1920s as a result of federal Prohibition laws was the driving force behind the institutionalization of plea bargaining. From that point forward, in many cities across the country, the plea became the most



Attorneys approach the bench to speak with the judge. A plea offer may include a reduction in the number of counts, a reduction in the level of offense, or offering to make recommendations regarding the sanction. Taking a plea is often thought to represent a better deal than taking the chance of a trial in which sanctions could be much higher.

prevalent means by which cases were disposed. By the end of the 20th century, pleas had become entrenched as a permanent fixture of the modern criminal justice system, and as of 2006 (the most recent year for which data were available), more than 95 percent of all criminal cases nationwide were disposed by guilty plea.

Definition of Plea Bargaining

The practice of plea bargaining is highly controversial and viewed by many legal scholars as an affront to moral, legal, and ethical conceptualizations of justice. Other scholars are staunch advocates of the use of pleas, citing numerous benefits to the state, the defendant, and the criminal justice system overall. Although the critics are vocal and many, there is little support in the courts for eliminating plea bargaining. In fact, the practice has survived numerous court challenges and the constitutionality of plea bargaining was upheld by the U.S. Supreme Court in

1970 in *Brady v. United States* and in *Santobello v. New York*.

Pleas can take many forms and serve several different purposes, most of which are seen in terms of benefit to the state rather than to defendants. Specifically, pleas can be used (1) in exchange for testimony against another defendant, (2) to encourage the timely resolution of a case and the avoidance of a lengthy and costly trial, and (3) to promote public safety by securing a conviction of a defendant. There are no national guidelines or case law as to when a plea can or should be offered or what the terms of a plea should be. (In individual prosecutors' offices, however, there are specific policies on plea negotiations.) Nevertheless, the common practice generally involves a determination on the part of the prosecutor during screening, charging, or even pretrial preparations, in which the prosecutor exercises his or her discretion about whether to make a plea offer to the defendant. The decision whether to accept the

plea in this instance lies with the defense. In situations where the plea negotiation is initiated by the defense, the decision about whether to negotiate lies solely with the prosecutor.

The plea offer may include a reduction in the number of counts (i.e., an offer to plea to one count of bad checks in exchange for dropping the other five counts); a reduction in the level of offense (for example, reducing an aggravated assault to an assault charge); or offering to make recommendations regarding the sanction. The practice of including charges in the plea negotiation process has become known as “charge bargaining.” When the focus is on the sanctions, or the sentencing options, the negotiation has become known as “sentencing bargaining.” In recent years, the practice of charge bargaining has become particularly important. With many states legislating determinate or mandatory sentencing as a means for limiting judicial discretion, the practice of charge bargaining then effectively moves the discretionary power over sentencing to prosecutors. By negotiating which charges to file, the prosecutor is in part also negotiating which sentencing guidelines will apply.

Whether it is the charges or the sentence being “bargained,” the plea represents a means for certainty about the sanctions for defendants rather than the uncertainty of trial—in other words, taking the plea is often thought to represent a better deal than taking the chance of a trial in which the sanctions could be much higher. A plea offer is usually made with the caveat that if the defendant opts to go to trial, it is likely that the maximum sanction will be levied against him or her if convicted. Some critics point to this very notion as the epitome of what is wrong about the use of pleas, arguing that the plea is used by the state to obtain a conviction in what would otherwise be a weak case that would be unlikely to result in conviction at trial. Part of the concern here stems from the fact that during the negotiation stage, the prosecutor typically has a significant advantage over the defense in that he or she generally has a better sense about the strength of the case than the defense counsel does, particularly when plea negotiations begin before discovery. Moreover, the prosecutor has unparalleled bargaining strength—a defendant is forced to deal only with the prosecutor who

is handling the case for the state and cannot “shop” for better deals with other prosecutors who may be seen as more lenient or who offer better deals. As a result, critics claim, defendants feel coerced into accepting plea offers. On the other hand, from the state’s perspective, the plea represents the certainty of a conviction, some sanction for an offender, and no chance of an appellate reversal.

Rules of Pleas

Because of concerns that pleas not violate defendants’ rights, there are a number of rules regarding guilty pleas designed to protect these rights. Pleas must be entered into by the defendant voluntarily, without coercion from either the prosecution or the defense. Defendants must plead openly in court, informing the court that the plea was entered into voluntarily, without coercion, and acknowledging the right to a trial if he or she so chooses. The plea agreement reached by the prosecution and the defense is only a recommendation to the judge, who ultimately has the authority to decide whether or not to accept the plea in whole or in part, and what the appropriate sanction should be. More often than not, the plea is accepted by the court with little or no modification to the terms. Once the court has accepted it, a guilty plea cannot be revoked, which eliminates the possibility of appeal and transparency in the system. Here again, critics find fault with the “rules,” arguing that they are symbolic only and afford no real protection against coercion or injustice.

Despite the fact that there are very specific rules with regard to the entering of a guilty plea that stem from long-seeded concerns about self-incrimination and self-conviction, there is a continuous debate about the appropriateness of the plea as a tool for disposing criminal cases. Much of the debate stems from the question of whether the practice of plea bargaining is morally justified and the extent to which such practices may invalidate the concept of justice. Proponents of pleas focus on the efficiency gains created by guilty plea case disposition, which allow the system to process a greater volume of cases than it would otherwise be able to handle. Proponents also argue that pleas create certainty of punishment, thereby maximizing the public good through deterrence

and ensuring public safety—in essence, bargaining for the public good.

Criticisms of Pleas

The list of criticisms of pleas runs long. Opponents raise concerns about the subversion of due process through the use of pleas, noting that plea bargaining is inherently unfair and coercive. There is no opportunity for defenses to be presented before a judge or jury, rather in pleas, these defenses become the mitigating factors by which the defense hopes to achieve a more beneficial plea offer for his or her client.

The strongest critics of plea bargaining point to disparities in sentences between those defendants that decide to plead guilty and those who prefer to have a trial. There is evidence to suggest that defendants who plead receive more lenient sentences than those who go to trial, thus raising questions about fairness—how can two defendants who share similar characteristics and have committed the same crimes be sentenced differently because one decided to plead and one decided to exercise his or her right to a trial? The idea that a defendant can be “rewarded” with a more lenient sentence for pleading guilty is particularly troublesome.

Part of the rationales for leniency for defendants who plead guilty is born out of the idea that by pleading guilty, defendants are demonstrating a certain amount of remorse and a willingness to accept responsibility for their crimes. It is the defendant’s frame of mind regarding the crime and his willingness to “own up” for what he has done that deserves reward. A defendant who knows the evidence against her but fails to accept responsibility for her actions or demonstrate repentance does not deserve such a reward but rather should receive the maximum punishments allowable. Critics believe, however, that such a rationale is fundamentally flawed—that a person guilty of committing a crime receives less punishment than he or she deserves in a plea bargain or, conversely, if a person is not guilty, then he or she may receive more punishment than they deserve. Both instances, then, are seen by critics as potential sources of injustice.

Defendants are also thought to be pressured into accepting plea offers by prosecutors and even defense counsel because of caseload constraints—

both sides want cases resolved quickly. There are no universal rules guiding which pleas will be offered to which defendants and under which circumstances. Although many prosecutors’ offices have their own policies that guide plea negotiations, there is wide variation in the application of these policies among line attorneys, who exercise a great deal of individual discretion. Moreover, because pleas are negotiated outside the court and generally accepted by the court, there is no further review of the case, creating the potential for prosecutorial misconduct and wrongful conviction. More recently, the extent to which pleas are used in criminal cases has been analogized with “bargain” justice that ultimately weakens public trust and confidence in the criminal justice system.

Benefits to the Justice System

Despite the vast and, in many instances, strong criticisms of plea bargaining, the practice is pervasive and institutionalized. The Supreme Court has upheld the practice of pleas and there is little incentive within the courts to eliminate pleas. Proponents, however, offer a systemic perspective that points to additional benefits of pleas—plea bargains can help to bolster public trust and confidence in the system because of the certainty of conviction, thereby eliminating the potential for juries to get easy cases wrong. In this vein, plea bargaining is seen as a tool for disposing of the “easy” cases and ensuring that only those cases that are most difficult go to trial.

Both proponents and critics of pleas make strong arguments supporting their position. As such, a more productive debate (and possible solution) stems not from a dichotomous argument of plea/no plea but rather focuses on creating checks and balances on the plea process. At the heart of all the debate around plea bargaining lie concerns about the enormous power afforded to the prosecutor and the fact that this power is virtually unchecked in a system dominated by pleas. Thus, demands for reform are more likely to be realized when the focus shifts from elimination of the plea practice altogether to one that limits the opportunities for increased and unchecked prosecutorial discretion.

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See Also: Defendant's Rights; Discretionary Decision Making; District Attorney; Due Process; Mandatory Minimum Sentencing; Prohibition.

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Plessy v. Ferguson

In 1896, the U.S. Supreme Court, in a 7–1 decision, ruled that the separate but equal provision of private services was constitutional under the equal protection clause. State laws requiring segregation based solely on race in private businesses were entirely legal based on the court's ruling. This standard would allow continued de jure discrimination against racial minorities through legalized segregation until *Brown v. Board of Education* was decided in 1954, which overturned the separate but equal doctrine.

In July 1892, the New Orleans Comité des Citoyens arranged for Homer Plessy to board a whites only car of the East Louisiana Railroad in New Orleans. The car was designated for only white patrons in accordance with Louisiana state law. The Comité des Citoyens planned the act of civil disobedience in hope of having the court (at any level) rule that separate but equal was not an acceptable policy when considering segregation.

To show how difficult it can be to enforce racial segregation, the Comité des Citoyens chose Plessy, who was born free and only one-eighth black. Under a state law from 1890, he was still considered to be black and was not supposed to sit in that car. After the conductor was made aware of Plessy's race, Plessy was asked to move to the proper car. When he refused, he was removed and arrested.

The arguments in the case were clear. Louisiana argued that conditions in the two cars were equal and consequently there was no issue. Further, the state claimed there were neither constitutional provisions nor national laws that prevented them from enacting and utilizing a separate but equal policy. Plessy and the Comité des Citoyens, on the other hand, believed the forced segregation denied him his rights under due process and the Thirteenth and Fourteenth Amendments of the Constitution. Both the district court and Supreme Court of Louisiana held that the state had the right to regulate any type of transportation operating within state boundaries. In 1896, the Supreme Court of the United States granted a writ of certiorari for Plessy's case.

The Supreme Court was ultimately no more sympathetic to Plessy than either state court had been, ruling 7–1 that the Louisiana law did not in any way violate the Fourteenth Amendment. Going even further, the court found that the law did not suggest the inferiority of blacks but instead asked for the races to be separated as a matter of public policy. Justice Henry B. Brown, writing for the majority of the court, stated "We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it." If anyone felt inferior as a result of the law's presence, it was due to their perceptions, rather than what the letter of the law asked for and mandated.

Justice John M. Harlan, who had owned slaves in his life and was formerly a member of the Ku Klux Klan, vehemently disagreed with the majority and believed the decision of the court would become infamous for its negative effects on minorities in America. Harlan believed that the court had made a sweeping judgment based solely on a cursory examination in the quality differences between railway cars. While railway cars were admittedly close to equal, public restrooms, restaurants, and schools were not. With the court's ruling, separate but equal became a foundation of American law and public policy for decades—particularly throughout the south. For many states, *Plessy* provided the ability to

separate races and ensure differences in quality without fear of remand from state or national authorities. For the Comité des Citoyens, they were left to state, “We, as freemen, still believe that we were right and our cause is sacred.”

Rather than working to assure fairness throughout the country, the *Plessy* decision was instead used to further segregation laws. Hard-earned victories for African Americans throughout Reconstruction were undone immediately through the use of separate but equal. Worried about how states could potentially use this national precedent to create unfair conditions for minorities in their states, Justice Harlan wrote in his dissent that “we shall enter upon an era of constitutional law, when the rights of freedom and American citizenship cannot receive from the nation that efficient protection which heretofore has unhesitatingly accorded to slavery and the rights of the master.” His fears were well-founded as the Jim Crow south took significant steps to assure that states could limit the rights of certain individuals.

Plessy did more than simply allow segregationists to see that society remained segregated. States and localities that had previously begun working toward integration reverted to their former ways under the blessing of *Plessy*. It would take until 1954, when a mother grew tired of watching her daughter ride by a white-only school seconds from her home to drive miles away to the school for African Americans in Topeka, for the Supreme Court to return to the question of separate but equal. In *Brown v. Board of Education of Topeka, Kansas*, the Supreme Court deemed separate but equal was no longer an acceptable doctrine and set out to ensure greater equality.

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See Also: 1851 to 1900 Primary Documents; Constitution of the United States of America; Racism; Supreme Court, U.S.

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Poe, Edgar Allan

One of America's foremost writers and men of letters, Edgar Allan Poe (1809–49) wrote in a variety of genres: poetry, short story, novel, book review, and essay. His works include classic tales of horror, crime stories, lyrical love poems, and even science fiction. He was an innovative contributor to the gothic tradition and helped to develop a philosophy of literary aesthetics; he is often credited with inventing modern detective fiction.

One of three children of itinerant actors, he was born on January 19, 1809, in Boston, Massachusetts. After the early death of his parents, he was raised by a wealthy tobacco merchant, John Allan, with whom he had a tempestuous relationship. He attended the University of Virginia, joined the army briefly, and even gained a short appointment at West Point.

In 1836, he married his cousin, Virginia Clemm, when she was only 13 years old, and lived with her until her early death in 1847. He lived in Richmond, Philadelphia, New York, and Baltimore. From his adolescence on, Poe was primarily devoted to his writing, and this remained the central calling of his life.

Poe published five collections of works within his lifetime, beginning with *Tamerlane and Other Poems* in 1827. His works appeared extensively in the contemporary press and in literary magazines, including *Godey's Lady's Book*, *The Southern Literary Messenger*, *Graham's Magazine*, and the *Broadway Journal*. He also served as editor of a newspaper and several literary magazines, including the *Messenger* and *Graham's*. Poe's most important works include the stories “The Fall of the House of Usher” (1839), “The Murders in the Rue Morgue” (1841), “The Masque of the Red Death” (1842), “The Tell-Tale Heart” (1843), “The Cask of Amontillado” (1847), and the poem “The Raven” (1845).

Poe's contributions to crime and detective fiction include his trilogy of mystery tales, all crafted in the 1840s and set in Paris: "The Murders in the Rue Morgue" (1841), "The Mystery of Marie Roget" (1842–45), and "The Purloined Letter" (1844). Closely identified with these works is his urban story of the same period, "The Man of the Crowd" (1840). Poe referred to the first three of these as "tales of ratiocination," stories about mysterious crimes whose solutions are reasoned by the elusive C. August Dupin, his brilliant detective hero, a stand-in for Poe. These works echo Poe's preoccupation with death, violence, loss, and decay, just as they reiterate his time period's obsession with death and mourning. They also reflect the rise of the modern city and its growing problems with crime and urban policing.

With the exception of "The Purloined Letter," which takes place indoors, these stories use the architecture and the culture of the city to unfold their narratives. Here, the traditional countryside gothic motif is replaced by urban ones, and the references within the works reflect the emerging urban mystery novels (made most famous by Eugene Sue's *The Mysteries of Paris*, published in 1842), the pamphleteers of Grub Street, the Newgate Calendar, and the Penny Dreadfuls. These new forms of popular culture often featured sensational events, including murder, told in the vernacular language of urban popular culture.

Both "The Murders in the Rue Morgue" and "The Mystery of Marie Roget" have the death of a woman (or women) as their primary subject, and project Poe's belief that female death, especially the death of a beautiful woman, was a primary literary subject. In "Murders" the detective Dupin solves the bloody murder of a mother and daughter, two withdrawn characters whose brutalized bodies are found in their Paris apartment. Even though the rooms are in total disarray, the door has remained locked, there is no sign of entry or exit, and no clues are found in what is nothing less than a grotesque and bloody murder scene, Dupin solves the murder. He concludes, through ratiocination, that only an orangutan coming through the chimney could have committed the crime.

In "The Mystery of Marie Roget," the first detective story to attempt to solve a real crime, the city as a social and intellectual space displaces

the city as an architectural space as in "Rue Morgue" and "Man of the Crowd." The tale is based around the real disappearance and mysterious death of Mary Cecelia Rogers, the "tobacco girl," who was found dead in the Hudson River in 1841. Poe gave Mary the name "Marie" and transposed the events to Paris.

A celebrated event that led to the criminalization of abortion in New York State in 1845 and contributed to the reform of the police department that same year, the death of Rogers was made famous by the penny press, which used the case to express a series of contemporary concerns about sex, women, and crime in the quickly growing city. Poe attempted to solve the murder by using the available newspaper stories or what he called the "public prints," thus making the new penny press, and even reading itself, the subject of the tale.

With "The Purloined Letter," a story about blackmail over a stolen letter containing compromising information, these tales form the basis for the works of Conan Doyle, Robert Louis Stevenson, G. K. Chesterton, and modern detective fiction generally. Dupin and the unnamed narrator anticipate the similarly isolated but brilliant detective Sherlock Holmes and his companion Watson. Holmes, like Dupin, solves puzzling crimes through the use of reason and intellect and, again like Dupin, is able to outwit the often bumbling, or at least inefficient, police, who in real life would become a topic of concern throughout the century. Poe died in 1849 of unknown causes in Baltimore, where he is buried.

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See Also: Detection and Detectives; Literature and Theater, Crime in; Literature and Theater, Police in.

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Police, Contemporary

During the 20th century, contemporary police departments sought to enhance both their images and their abilities. Ways of accomplishing these goals included the adoption of professionalism, community policing, the science of policing, and the endorsement of new technologies.

For much of American history, the emphasis in policing was simply to place officers in neighborhoods on the theory that their very presence would serve to deter criminal activity. However, in the post-World War II environment of the 1950s, police departments began to believe that they should be more like the military, and they began initiating what came to be known as “professionalism.” The three major elements of professionalism were focusing on suppressing crime, acting with objectivity according to the principles of police science rather than yielding to political pressure, and centralizing police departments.

By the 1980s, enthusiasm for professionalism began to wane. During the 1990s, it was replaced with community policing, in which the police cooperated with civilians in combating crime. The idea originated with Herman Goldstein, a law professor at the University of Wisconsin. Most cities began putting police officers back on neighborhood beats to give them firsthand knowledge of where crimes were likely to occur and who the criminals were. Community policing was not popular with everyone. Critics claimed that it was too expensive and that it tended to expect police officers to serve as “social workers with guns.” Supporters cited the many successes of community policing in cities of various sizes. One common example was New Haven, Connecticut, which was identified as the city with the sixth-highest rate of violent crime per capita, even though it was 140th in population. New Haven turned to community policing in 1991 and witnessed an immediate decline in violent crimes over the following year. A survey conducted by the National Institute of Justice in 1990 revealed that 71 percent of officers polled believed they needed more training in community relations.

At the federal level, officials began to promote the notion of intelligence-led policing, which focused on basing policy decisions and implemen-

tation on data that had been scientifically generated using the latest technology. Another method that received a good deal of attention was predictive policing, which had been implemented in New York, Boston, and Los Angeles under the guidance of Police Chief William Bratton, the creator of CompStat. The central idea of predictive policing was using scientific analysis of crimes and criminals to place police officers in those areas where crimes were likely to occur before the crimes took place.

Battling Crime

Violence was ubiquitous in American cities in the 1970s. Drugs were sold on street corners throughout the United States, and people were afraid to walk in their own neighborhoods. Crime rates soared even higher in the 1980s as a crack cocaine epidemic spread. Responding to this environment, James Q. Wilson and George L. Kelling of Harvard's John F. Kennedy School of Government authored an article that appeared in *The Atlantic* in March 1982 in which they set the stage for a major transformation in the way that police departments viewed their roles in preventing crime. Wilson and Kelling reminded the police and the public that “if a window in a building is broken and is left unrepaired, all the rest of the windows will soon be broken,” regardless of the type of neighborhood involved. The “broken windows” theory became a major element of community policing, with police officers working with local communities to fight crime through maintaining individual neighborhoods and working with young people to steer them away from gangs.

More aggressive measures include controversial practices such as “stop and frisk,” which involves officers detaining potential suspects long enough to search for possible weapons by lightly patting them down. In *Terry v. Ohio* (1968), the Supreme Court held that officers must have probable cause before engaging in “stop and frisk.” The police often arrest suspected criminals for minor offenses on the principle that it deters them from committing major crimes. Racial profiling is another controversial practice that has been used as a deterrent. In such cases, suspects are targeted on the basis of race, ethnicity, religion, or national origin on the assumption that certain groups are more likely to commit crimes. The practice of stopping people of

color for minor traffic violations in order to search for possible contraband became so common that it became known as “driving while black or brown.” After the terrorist attacks of 9/11, racial profiling extended to targeting Arabs, Muslims, and south Asians as potential terrorists.

In a survey conducted by the Police Executive Forum in 2007, two-thirds of police officers questioned stated that they operate on the principle that monitoring “hot spots” is the most effective way to reduce the incidence of violent crimes. Police chiefs and sheriffs contend that the easy availability of firearms is the chief cause of high rates of violent crime in America. New York City has frequently been cited as clear evidence of that fact. In 1990, 2,245 murders occurred in the Big Apple. When officials began focusing on gun crimes between 1988 and 1998, the rate for gun-related crimes dropped from 1,220 to 376.

Policing Environment

In the federal system of the United States, each state, city, and township has its own system of choosing those who exercise authority over police forces at its particular level. In the heyday of political machines, police chiefs were answerable to party bosses. Even now, political pressure may force contemporary police administrators to operate in an environment that makes it difficult to enact the best policies. Some qualified candidates elect to remain in lower-level positions rather than battle politicians for control. The Interna-

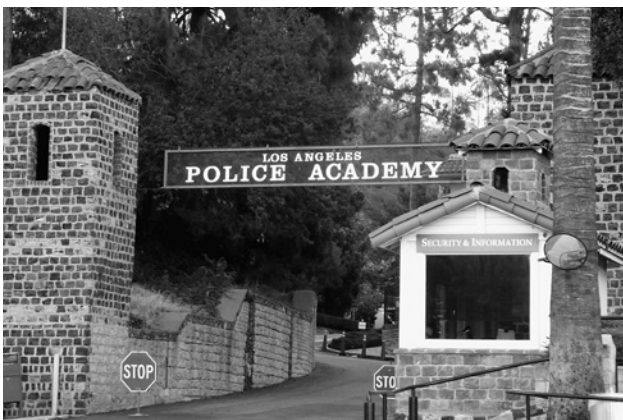
tional Association of Chiefs of Police has identified five major entities that affect the environment in which police forces function: the police department as a cooperative entity, the public, the media, public and private agencies, and politicians. Successful police chiefs must be successful in working with all of these groups.

Police officers risk their lives for relatively little money. They are required to respond correctly to any situation that arises. Basic training for most police officers includes amassing knowledge about how the criminal justice system works, laws and methods governing search and seizure, correct behavior concerning the use of force, police procedure, professional ethics, and elementary first aid. Training time varies greatly among jurisdictions. In Texas, a hairdresser is required to train for 1,500 hours, but only 618 hours of training is mandated for police officers. Much of police training is accomplished through lectures rather than hands-on training. As more women enter police work and as the pool of candidates has declined, physical requirements for becoming a police officer have become more lenient. Officers may be as short as 5'5" and weigh as little as 100 pounds. The hands of some police officers are perceived as too small to operate high-capacity semiautomatic guns.

Much attention is now being paid to the use of force by police officers because of the large number of shootings of unarmed suspects in cities throughout the United States. In 1985, in *Tennessee v. Garner*, the Supreme Court held that officers may use force only in cases where an officer is threatened with a weapon or where there is probable cause to believe that a suspect has committed a crime that involved serious physical harm. Even under those circumstances, officers are required to issue a warning to the suspect. In the case in question, Tennessee officers shot and killed a suspect simply to prevent his escape after a minor robbery at a private residence.

While early histories were often characterized by internal corruption, it is less likely among contemporary departments because of tighter recruiting standards, better internal monitoring, improved psychological testing of officers, and greater leadership accountability.

Throughout American history, police departments have been forced to deal with crises of



The Los Angeles Police Academy's 21-acre complex graduated its first recruit class in 1936. The facility has classrooms, a gymnasium, athletic field, obstacle course, and a firing range.

both major and minor proportions. Those challenges have ranged from draft raids during the Civil War to curtailing lawlessness on the frontier to battling organized crime during Prohibition to the civil rights violence of the 1960s to modern battles against drugs and gangs. Police departments in most large cities have repeatedly come under attack. As the largest cities, New York and Los Angeles have perhaps been criticized more harshly than others. Both cities have experienced scandals that have generated public outrage over police brutality, planted evidence, and the shooting of unarmed suspects. Southern cities have also come in for their share of blame. In New Orleans, for instance, a Department of Justice investigation revealed endemic racism and repeated use of excessive force. On the other hand, police departments have also demonstrated unprecedented courage, as was the case with the New York Police Department on September 11, 2001, when terrorists hijacked jetliners and crashed them into the Twin Towers.

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See Also: Boston, Massachusetts; Los Angeles, California; New York City.

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police force to protect citizens and to help maintain order. From the earliest watchmen to today's policemen surrounded by computers and other technology, their work has both changed and stayed the same.

In the beginning, the early colonies of the 17th century brought with them the police system used in England at that time. This system involved members of each community looking out for each other and taking turns standing watch at night. Since the early colonists lived in rather archaic conditions and were busy building shelters and planting crops, crime was not much of a problem. The system was used more to protect and keep order in the community, not necessarily to fight crime.

Most of the problems came about from individuals who either broke a moral code or did not live up to their community obligations. Disorderly behaviors such as loitering, panhandling, and public intoxication were targeted because it was believed that these behaviors would lead to more serious crimes. Volunteer constables usually heard court cases of colonists who found themselves in trouble after committing these activities or actions such as working on the Sabbath, cursing in public places, not having animals properly restrained, or giving birth to a baby without first being married. However, since the colonists generally conformed to accepted community ideals, they gave little thought to establishing formal policing institutions. As settlers established larger villages such as seaports Philadelphia, Boston, and other areas where strangers and sailors traveled through more often, volunteer watch did not work as well any longer. Populations increased, crime became more abundant, keeping watch turned into a more active duty, and volunteers had trouble staying awake at night after working all day at their paying jobs. As settlers complained about this mandatory volunteer duty, colony governments began to threaten them with fines if they refused their obligations.

Formal Systems Development

By the middle of the 18th century, as these villages grew more economically affluent with significant increases in population, colonists were better able to pay fines and did so instead of standing watch. However, since the growth of cities brought in more jobless outsiders trying

Police, History of

From the colonies in the early 1600s to the present time, America has depended on some type of

to find employment, crime increased, and there were not enough watchmen or constables to handle the problems.

Therefore, in 1749, Philadelphia provided tax monies to hire officials called “wardens” who could employ the watchmen they needed. If someone wanted to work all day and still stand watch at night, he was permitted to do so. However, the wardens were authorized to fire anyone who did not perform their duties well. Law enforcement improved under this plan, and other cities began to make similar changes in their own communities to provide for a paid police force. Into the mid-1800s, police officers still spent much of their time preserving order in their communities and keeping the streets clear of drunks and those who became too unruly. Records in Boston and New York City around this period showed that a large percentage of arrests were for intoxication.

As the agrarian society was decreasing in rural communities, industrialization was growing in the urban areas. People moved around more, immigration increased, ethnicity changed in the neighborhoods, and citizens no longer were as familiar with their neighbors as they had been in the past. These changes made self-policing more difficult, and people began to depend more often on the official police force provided by the governments.

The Boss System

By the late 1800s, more men from various immigrant groups were being hired into large city police forces, with the Irish dominating in numbers. As these groups began to fill more police jobs, they began to take on new responsibilities in various immigrant neighborhoods. This new population in America did not know where to turn for much-needed social services. Therefore, they would often rely on the police officers who lived in their neighborhoods, those whom they saw as a connection to the political network that seemed unreachable. They may have seen the police officer as one who protects them and keeps order in society, but they also saw him as the one person who could help them find assistance when in need. As waves of immigration and poverty added to the duties of the policemen, elements of corruption also appeared. Law enforcement personnel grew into a part of both the ethnic communities and the political machines of local governments.

This combination not only made the delivery of social services easier, but bribery for money and favors also became more prevalent.

Police departments were now powered by the governments and heavily influenced by the politicians of their community. These smaller neighborhoods were critical to what became known as the community “boss” system. Individuals in these communities started their leadership quest by joining important neighborhood institutions, such as the volunteer fire department. After being elected leaders by their peers, they pledged their followers’ votes to certain politicians. Once votes were delivered as promised, bosses could expect more favors to come their way. Party leaders rewarded these bosses with jobs, contracts for city services, and other opportunities to make money for themselves, their friends, and others in their neighborhood. During a time when civil service was nonexistent, everyone working for governments owed their job to a politician.

Neighborhood bosses made sure that only those most loyal to them earned a job on the police force. Employment as a policeman who regularly patrolled the neighborhood was a highly sought-after job. The wages were fairly high, and the position offered steady employment, two attributes that lower-income workers seldom found. Citizens often pleaded with their community’s bosses for a job, and politicians could insist on their loyalty before hiring them as patrolmen.

Politicians were often elected with promises of keeping down prostitution, gambling, and the sale of alcohol, for politicians and police were considered guardians of a society’s virtue. However, having laws in place to suppress such activities opened up another avenue for entrepreneurship and bribery. Those who offered the services did so illegally and considered bribery just another business expense (which was often easier and cheaper than campaigning against moral advocates). Policemen on the street, as well as politicians, took monetary bribes or used one of the services to stay quiet. Eventually, the bribery system was used to protect thieves as well. The job of a policeman became so lucrative that many not only begged for a job, they began to pay large sums of money to get such a job. Not all policemen fell into corruption, but many did.

More law enforcement changes appeared in larger cities during the mid-19th century. New York City combined day and night shifts in 1845, and Boston began consolidating day and night shifts in the 1850s. It was also during this time that police forces moved to a more preventive policing method instead of focusing on punishment after the fact. The state of New York passed legislation in 1844 to establish a preventive police force in New York City, followed by New Orleans, Cincinnati, Boston, Philadelphia, and finally Chicago and Baltimore.

It was during this time that cities also began requiring policemen to wear uniforms. This decision was controversial, with many policemen complaining that uniforms represented subordination and made them appear less masculine. Others were afraid that criminals would flee the scene of a crime more quickly once they saw the uniform, yet some believed a victim could find help more quickly if policemen were more recognizable.

The idea of arming a policeman with a gun was even more contentious. Some believed that guns would provide the police too much power, but a number of policemen felt they needed a gun when they came in contact with an armed criminal. Many citizens owned guns, and law enforcement wanted weapons as powerful as the ones being used by the criminals.

Migration

People began to leave the populated areas of the east and migrate into the American west but the need for police protection stayed with them. Towns were often separated from each other by many miles and they could not depend on people outside their own communities to come in and help should trouble arise. During the mid-1820s, several of these isolated communities produced small militias, and a few of the units were utilized to patrol the frontier. These men were called "Rangers."

In many small villages, however, a single marshal or county sheriff could usually provide the legal services within the community. The first village law enforcement created by settlers in the American west was in Texas. By 1831 the town of San Felipe de Austin had established a community patrol under the command of Captain Thomas Gay. The village governing council established

formal regulations, reflecting the basic need for law enforcement in the sparsely populated west. As more towns developed, the same procedure ensued: A mayor or town council during the early years would most often appoint a *marshal* or *constable*, terms preferred over *chief of police*.

African American Police

As for African Americans in the police force, "people of color" served in New Orleans as early as 1805. By the 1870s, African Americans were fulfilling police positions in almost every major city in the south, and two black policemen, Ovid Grefory of Mobile and Bryan Lunn of Raleigh, were serving as assistant chiefs of police. However, by 1877 and the beginning of a period known as the Redemption (when most federal troops that had been stationed in the south at the end of the U.S. Civil War were removed), most all southern black policemen were forced to leave their positions. The U.S. census of 1910 reported that there were only 576 African Americans working as policemen in the country, which amounted to less than 0.5 percent of the total 61,980 employed. By 2009, their numbers had increased to 100,700, or more than 14 percent of the total employed.

Samuel Battle was the first African American to be hired as a policeman in New York City after consolidation of the five boroughs. Battle was born in Newbern, North Carolina, to parents who had both been born into slavery. His application had previously been rejected three times after a physician had reported a heart murmur. However, in 1911, with the help of an African American politician and a medical examination by a physician outside the police department who found no heart murmur, Battle was appointed to the police force.

He did not sleep in the same barracks as the white men but instead stayed separated in another room. Many of the white officers would not speak to him, though according to his captain, he never complained about the silence. By 1913, he was assigned to a Harlem precinct, and a few years later he protected a white officer (who had killed an African American) from an angry Harlem mob. Battle served for 35 years as a police officer and became the New York Police Department's first black police sergeant and lieutenant.

Police and the Community

The community focus of a police force became more apparent with the passing in 1919 of the National Prohibition Act (41 Stat. 305). Rural populations often supported this law and police were encouraged to make arrests when finding violations. City communities were more apt to enjoy alcoholic beverages and did not support this new law. Therefore, to continue a positive public image of policemen in the city, there were fewer arrests.

During the 1930s and a few years preceding, violent criminals and gangs committing robberies and murders made sensational names for themselves. J. Edgar Hoover, director of the Bureau of Investigation (predecessor to the Federal Bureau of Investigation) began to refer to John Dillinger, "Baby Face" Nelson, Bonnie and Clyde, and other criminals by the term *public enemy*. The general public became very familiar with this term public enemy and the sensational stories being told in the news, and the public image of the police became even more important. With communities hearing more about crimes and criminals than they did about the community work being done by their local police, it became important for the community police forces to now be known as crime fighters.

Technology improved: More policemen began driving squad cars instead of walking on the streets. They carried radios and stayed in touch with headquarters. The science of fingerprinting was improving, and more states began to use this technology in the solving of crimes.

With so many people out of work during these financially hard times, applications for police jobs increased. The large number of applicants meant more competition for each position and higher standards set for each hire. College-level training programs were being offered, and the first complete police curriculum put in place in 1930 at San Jose College in California. The higher standards and availability of increased education led to a more efficient and professional police force.

Civil Unrest

Urban areas continued to grow, and troubled race relations, poverty, and the Vietnam War caused tension and unrest in several heavily populated cities. In the 1960s, there was the civil rights movement, the student activist movement, the

anti-Vietnam War movement, and the ghetto riots in Los Angeles, Detroit, and other cities. Sometimes different races joined together to fight the establishment. Riots broke out in major cities such as Los Angeles, Detroit, and Newark, New Jersey. There were separate incidents in each that set off the anger, but problems such as deteriorating housing, economic inequality, and reports of police abuse kept the riots going for several days. The National Guard was called in to police the streets of these cities until peace returned.

In 1967 President Lyndon B. Johnson appointed the National Advisory Commission on Civil Disorders. One major problem they reported was the tense and difficult relationship between police and those they monitor and protect in the ghettos. There were complaints that police did not spend enough time in the ghettos for crime prevention. Yet when police patrols increased, their presence caused increased hostilities between the two groups. During this time of increased violence, in September 1968, in Indianapolis, Indiana, Liz Coffal and Betty Blankenship also made history as the first two female policewomen ever to go out in a police car on street patrol. Since the early 20th century, policewomen had held jobs in police departments performing safer duties, such as those in housekeeping, food service, and clerical. However, Coffal and Blankenship were the first two to take on the more dangerous job of patrolling the streets.

As the United States has progressed from the first colonies of the 17th century, so has the job of law enforcement. There have been changes in society such as immigration, population growth, urbanization, poverty, technology, and criminal activity. The police force has addressed these changes by moving forward with the newest technologies and well-educated men and women of various backgrounds. However, even with changes in society and in the world of law enforcement, the police are still required to interact with people, protect their communities, continue in the role of service, and take the lead in maintaining a safe society.

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See Also: 1851 to 1900 Primary Documents; Boston, Massachusetts; Civil Disobedience; Philadelphia, Pennsylvania; Urbanization.

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Police, Sociology of

Since the early 1960s, sociology has examined the construct of “police” and “policing.” As a result, sociology has probed the forms and institutions in which policing has occurred and the concealments and symbols that it uses to forge its identity. This examination has been intertwined with the history of police and seeks to determine what policing means, has meant, and can mean. This focus has bedeviled sociologists for five decades and differs significantly from concurrent research that has taken place in the related fields of criminology, law, police administration, and police science. Some sociologists have argued that police and policing have little to do with law enforcement, assertions that have proven highly controversial.

Police as an instrument of social control have existed since ancient times. In the United States, the U.S. Marshals Service was established in 1791, and city police forces were formed in Philadelphia, Pennsylvania, in 1751; in Boston, Massachusetts, in 1838; and in New York City in 1845. Much of the policing in small towns was of very poor quality for much of the 19th century. As national organizations such as the Federal Bureau of Investigation began to provide training and support services to local law enforcement agencies during the first half of the 20th century, however, the quality of policing improved. During the 1920s, the Berkeley, California, police department began to adopt new technologies, emphasize professionalism among members of the force, and make available extensive training so that police could improve their skills. O. W. Wilson, the chief of police of Wichita,

Kansas, and, later, Chicago, introduced strategies that came to be known as police science. Wilson regularly rotated police from a beat in one community to another to reduce the threat of corruption, established a nonpartisan police board to advise and regulate the force, and raised salaries to attract a more educated and professional officer. For most of the first half of the 20th century, academic notice of police occurred only in history departments, law schools, or police science programs that were designed to provide practitioners with training. Only during the latter half of the 20th century did sociologists begin to study police, and their findings and theories changed how many viewed that occupation and those who practiced it.

Police Role and Functions

Early studies of police focused primarily upon requests for police service and the levels of discretion exercised by officers in fulfilling their duties. Scholars such as Frank J. Remington and Herman Goldstein, both of the University of Wisconsin Law School, undertook major studies that examined policing and criminal law. These examinations of police practices cast doubt upon the generally perceived notion that these individuals were fighting crime or enforcing the peace. Indeed, early studies suggested that the majority of police duties had little to do with enforcing the law, keeping the peace, or otherwise acting as agents of social control. Instead, it was proposed that police engaged in functions so varied, and sometimes contradictory, that any attempt to define police by the functions they are alleged to perform and the ends they are theoretically to achieve is misguided and ill-fated.

Sociologically, policing is best defined in terms of its means rather than in terms of its ends. Some have suggested that individuals join the police not as a form of employment, as a way to obtain stable economic benefits, training in criminology, or even to achieve a generous pension, but instead as an authorized way to use coercive force against others. While this supposition was highly controversial, its adherents maintained that while other variables regarding police varied greatly as a result of history or geography, no entity ever termed *police* had ever existed that did not have the authorization to use coercive force. This assertion had the elegance of being universal and was applicable

across time and boundaries. It also proved morally and politically neutral, insofar as it was applicable to subjects that were engaged in either exemplary or loathsome behavior. Finally, it opened a new series of queries regarding police: Why do all modern societies have police? What does having police provide to those societies, regardless of their political leanings? Which duties are best assigned to police and which to other societal institutions?

Sociologists grappling with these questions have suggested that societies require that certain duties be done, be done quickly, and be done by whatever means necessary. Situations that call for police meet all three of these criteria. Time becomes a crucial element here, as some situations cannot be put aside for a later resolution. Situations dealing with an escaped murderer, vandalism affecting city lights, keeping the curious away from an accident scene, or interrupting a domestic dispute call for immediate action, and most individuals would approve of the use of coercive force to protect the greater good in these situations. These arguments overturn traditional conceptions about why police join the force. Rather than acquiring the right of coercive force to assist in their duty to enforce the law, sociologists suggest that many police enforce the law because doing so allows them to engage in coercive force.

David H. Bayley, of the State University of New York at Albany, examined the role of police discretion in a series of studies begun during the 1970s and 1980s. Bayley suggested that police work can be summarized as having guidelines that explicitly define its realities. These guidelines include that most police work is done by a single officer or two partners, that officers must make many decisions outside of the control of a supervisor, and that officers make decisions based upon internalized knowledge and skill. These guidelines influence the development of policing standards, and the preparation and training of officers. Emphasizing that officers adhere to a process, and making these officers accountable for adhering to that process, is one of the more significant ways that policing outcomes are consistent with public values. James Q. Wilson, who taught at Boston College, developed the “broken widows” theory, which suggested that accepting vandalism and urban disorder created an environment in which crime was tolerated and that cleaning up environ-

ments stopped further vandalism and an escalation in crime. Wilson also suggested that different types of policing were more effective in different areas, building support for differentiated policing practices for disparate communities. Wilson’s theories affected policy choices in such disparate settings as New York City, Albuquerque, New Mexico, and Lowell, Massachusetts, all of which implemented “zero tolerance” programs intended to reduce crime rates.

Sociological studies of police were most popular during the 1960s and 1970s. Scholarship in that area continues but now often extends to ancillary areas such as judicial, occupational, organizational, and political aspects of police. The law-and-order sentiments expressed by many voters during the 1980s and thereafter may have played a role in this shift. The growing fields of criminology and police science, with their emphasis on training students to assume positions as police, may also have reduced interest in the field. Despite this, sociology of police remains a vital part of many sociology programs and presents an important and diverse perspective on how we define “police.”

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See Also: Crime Prevention; Defendant’s Rights; Interrogation Practices; Police, History of; Prisoner’s Rights; Reform, Police and Enforcement.

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Police, Women as

When considering women’s impact on the history of policing, it is necessary to address the limited

opportunities in the field for women. For most of U.S. history, women were tasked with the maintenance of the household. Women, serving as the primary caretakers of most households, were considered subservient to men despite their disproportionate contributions to the preservation of the family unit. Prospects for employment outside the household were bleak, thereby confining women to the private sphere. The social roles fulfilled, and broken, by women are mirrored by women's experiences in law enforcement.

The history of women in policing is roughly categorized into three major periods: women as police matrons, later as policewomen, and finally as police officers (who happen to be women). As women comprise approximately 50 percent of the population, but only about 12 percent of state and local law enforcement agencies, an understanding of their historical struggles is crucial in efforts to address problems they still face today.

Police Matrons

Women initially entered the field of law enforcement through their work in correctional institutions as police matrons, with Maryland becoming the first state to officially hire a woman for jail duties in 1822. In jails and prisons, matrons ensured that men and women would be kept separate from one another and that adequate food and clothing were provided to the prisoners. This work was done on a volunteer basis but soon became paid as prison administrators began to appreciate the unique contributions of women in this role. The early 19th century marked the beginning of women's work in policing but they were not treated on an equal basis until the 1960s.

The volunteers, many from advantaged backgrounds and many of them Quakers, harnessed the stereotype of women as moral entrepreneurs in order to justify their work in early prisons. They viewed themselves as agents of transformation to the indigent, immigrant, and otherwise "fallen" women they supervised. Appalled at the abhorrent conditions found in the early-19th-century prisons, these women were part of a larger social movement that pushed for more government intervention in the affairs of the less fortunate. Many sought inspiration from reformers abroad. One of the more famous influences

was found in Britain: Quaker minister Elizabeth Fry publicly promoted the better treatment of female prisoners.

In working with the less fortunate, women reinforced gender roles while simultaneously altering them. For example, Eliza Farnham, working out of the Sing Sing prison, helped fuel the larger feminist movement under way because she questioned the double standards inherent in the legal system. Even conservative reformers like those belonging to the 1845 Women's Prison Association (WPA) in New York advocated training for women prisoners so that they could support themselves once released. Of course, the training they embraced only reinforced the stereotypical roles of women in this period by preparing them for positions as housekeepers, nannies, and seamstresses. These occupations were not meant to supplant wifedom; rather, they dealt with the reality of women's economic predicament. The Civil War had left many women impoverished,



Women police officers being trained to inspect and aim handguns sometime between 1910 and 1920. During the early 1900s, women began to be hired in law enforcement.

and rapidly expanding cities further contributed to the number of families plunged into poverty. To these police matrons, it made sense to train women to be self-sufficient.

Even though police matrons showed no interest in challenging the long-accepted mores of the time, women gained a presence in police departments, where they were responsible for the custodial maintenance of incarcerated juveniles and women. This reflected a combination of the biblical and social values that were dominant at the time, relegating women to more domestic tasks.

Women excelled in these roles; nevertheless, the resistance to their employment in law enforcement remained unaffected. With any internal advancement that was made by women, challenges ensued claiming that their femininity, as well as their safety, was at risk. Women's ability to handle the more dangerous criminals underwent extreme scrutiny because they were seen as being more fragile. To some extent, the men of these early departments were resentful of the matrons' presence because these women were considerably more educated and of a higher socioeconomic standing than many of the men. When police matrons began to advocate for separate prisons staffed by women, stressing the immorality of male supervision of incarcerated women, their efforts were met with resounding disapproval.

Policewomen

It had been generally accepted that women possessed a restricted public role in society, which was used to rationalize their exclusion in most public workplaces. Regardless of their qualifications, this common perception created an environment within law enforcement where women were paid less, worked longer hours, and were confined to working only with juveniles and women. This inequity in treatment angered potential activists and inspired the "policewoman" movement. Early reformers of this movement lobbied for better pay and fought against the limited functions that women performed in law enforcement. In order not to threaten the status quo, however, women's domestic role was embraced rather than rejected and focus was placed on expanding women's legal authority rather than their roles in society. The policewoman movement thus began.

Mary Owens, the first woman to have the power to arrest, was hired in 1893 by the Chicago Police Department in order to financially compensate her for her husband's death. This was not entirely uncommon because in many departments, widows fulfilled the roles of police matrons. In 1905, Lola Baldwin was tasked with the protection of young women's virtues in Portland, Oregon. Though given some police powers, she could not arrest men. As seen in Owens's and Baldwin's cases, policewomen can be identified as an outgrowth of police matrons; indeed, the roles had considerable similarities. Nevertheless, at the time, the public saw them as revolutionaries.

The early 1900s brought sporadic successes for the inclusion of women in law enforcement. Among these was the hiring of the first official policewoman in 1910 by the Los Angeles Police Department, Alice Stebbins Wells. After petitioning the city, Wells received full arrest powers, setting her apart from all of her female predecessors. Though Wells worked primarily with women and juveniles and was not issued a gun, she was still considered a trailblazer. Among her achievements, she helped establish the International Policewomen's Association and was indirectly responsible for the hiring of women in police departments across the United States.

Throughout her career, Alice Stebbins Wells advocated for women police officers while maintaining that women's social role should inform their role in law enforcement. Arguments of women's superiority in moral matters, as well as their advanced training and prior background in social work, were used to reinforce their inclusion in the profession. Still, many policewomen felt it necessary to push further, advocating initiatives that would help prevent crime through their social services and actual arrest powers. Through their increased duties, the professionalization of law enforcement, and the consequent endorsement from the International Association of Chiefs of Police, they inadvertently subjugated the value of existing police matrons.

Police Officers

It was not until the 1950s that serious questions were raised in regard to the limitations placed on women's responsibilities in police work. No longer satisfied with their allotted place in police

departments, many women began to see themselves as police officers. In some respects, the movement to professionalize law enforcement, which began in the 1930s, also helped spur women's desire to be officers. The two world wars also contributed to a changing sentiment toward women's abilities in this realm by acclimating the public to women in uniform. Even when qualified male police officers were scarce, women were not given the same responsibilities. Despite this, women made considerable advancements in the 1950s, both in numbers and in the professionalism of their position in law enforcement agencies.

In the 1960s, women began to enter police work on equal footing with men, even though there were still obstacles to their equality. The work remained heavily dominated by men and was generally seen as antithetical to the feminine qualities women possessed. In addition, women commonly faced isolation, ridicule, sexual harassment, and outright hostility by their colleagues. These issues led to numerous lawsuits, which broke many legal and organizational barriers but did little to change individual attitudes toward women in policing. The 1972 revision of Title VII of the 1964 Civil Rights Act prohibited discrimination in public agencies, thus providing some important inroads for many women as it affected hiring, promotion, and the general working environment in police departments.

The environment and police culture remained stubbornly masculine, but after time and a number of experiences, attitudes began changing. On September 20, 1974, Officer Gail Cobb became the first female police officer to be killed in the line of duty. This dubious distinction elevated the view of women as police officers, but academics continued to document an unwelcome working environment irrespective of women's demonstrated competence.

In 1985, Penny Harrington became the country's first female chief of police in a major U.S. city and founded the National Center for Women and Policing Advisory Board. Her 21-year rise to the top of the Portland, Oregon, police department was no easy accomplishment; she had to file 40 sexual discrimination lawsuits along the way. She has since become known as a crusader for women in policing and, not unlike Alice Stebbins

Wells, has significantly raised awareness of the problems women face in the field and the many benefits of increasing women's representation in police agencies.

The 1991 Christopher Commission, tasked with the investigation of the Rodney King beating, stimulated, albeit briefly, a renewed interest in women's competence in policing. Expert testimony corroborated the prior academic research demonstrating women's strengths in policing. Still, stereotypes of law enforcement as a masculine occupation remained resilient and women continued to struggle for acceptance in the field. Sexual harassment suits would last well into the 21st century.

In law enforcement today, women still face gender-specific discrimination. Policies that undermine family life and, more importantly, the lack of policies that accommodate women's disproportionate share of caretaking responsibilities, continue to plague efforts at recruiting and retaining women police officers. Though studies demonstrate women's viability in this line of work, particularly in their contributions to community policing efforts, the percentage of women in local and state law enforcement agencies hovers around 12 percent.

Conclusion

The legal barriers erected to keep women out of law enforcement are gone and many law enforcement agencies actively recruit women. The National Center for Women and Policing (NCWP), created in 1995, collects data pertinent to women's representation and informs the profession of women's status and current treatment. Organizations such as this are critical to the lasting success of women as they document instances of discrimination and policies that undermine their presence in law enforcement. The last obstacle for women to overcome may be the persistent distinctions created by a culture that has delegated men and women to very different employment opportunities based on gender role stereotypes.

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See Also: Gender and Criminal Law; Police, Contemporary; Women in Prison.

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force. This means that the police have the right to use force to overcome any citizen resistance and to compel citizens to do that which they may not wish to do. Further, this right is given to the police by the state, which confers legal legitimacy upon the use of force. The police are the only people in society who are legally authorized to use force against others. The coercive power of the government as envisioned by the social contract has been given to the police to fulfill their duties. The granting of legal legitimacy to the police use of force does not necessarily equate to moral legitimacy. This means that the police may use their legally granted right to use coercive force for ends that may not be morally justifiable but are nevertheless legitimate.

Along with the right to use coercive force, the police have the power and authority to carry out their mission. Authority refers to the unquestioned entitlement to be obeyed and that comes from their fulfillment of a specific role. People obey these commands because it is both right and necessary to do so. Power is similar to authority in that both are found in the role of police and both are forms of social control. Power differs from authority, however, in that it is recognized that there might be resistance to police authority and if such resistance exists, it will be overcome. The police may not always have to resort to use of coercive force because they may use persuasion to overcome resistance to their authority. Persuasion means an attempt to encourage people to comply with the police by means of words, argument, or symbols so as to avoid the use of force.

While the police have a great deal of power to carry out their mission, there are restrictions on its use. The police have vast discretion in their exercise of power and authority but remain accountable to the public. The proper exercise of police power is of great concern to a society that considers itself free and democratic. Police in the United States are bound by the restrictions of the Constitution, state statutes, and local policies and procedures in the application of their powers. The public not only expects the police to use their power and authority responsibly; they also expect to be treated with courtesy and respect and to have their rights recognized. When the police do apply coercive force, it is expected that it is done so reasonably and that its application does not exceed what

Police Abuse

The police in America are charged with keeping peace and maintaining order in society. In order for them to achieve these goals, they need power and authority to force those who do not comply to do so. Police have been defined as institutions or individuals given the general right by the state to use coercive force within the state's domestic territory. There are two important ideas in this definition. First is the right to use coercive



Issues surrounding police abuse of minorities persist. A protest of the shooting death by an officer of a young African American; the officer was found guilty of involuntary manslaughter.

is necessary to accomplish the mission. In every country, there is a desire and an expectation that the police respect the fundamental human rights and dignity of the person as stated in the United Nations Declaration of Human Rights.

History of Police Abuse

While it is hoped that police respect the rights and dignity of persons, this has not always been so. Historically, and through present day, there have been issues of police abuse. Often, this has taken place with police harassment of minorities with the consent of the community. During the “political era” of policing, the police were controlled by politicians who used the police as a means to solidify their power. Immigrants, slaves, and Native Americans were seen as threats to the community because they threatened the status quo. Police used their powers to keep these various groups in line. There was little public outcry since the harassed minorities had little power and prevailing public attitudes, enforced and shared by the police, were against them. This abuse lasted well into the 20th century. For example, police mistreatment of African Americans continued in many states until the 1960s and beyond as police in many states

enforced the Jim Crow laws used to keep segregation in place.

There was little official recognition of the problem of police abuse until 1929, when the National Commission on Law Observance and Enforcement, also known as the Wickersham Commission, published its report, “Lawlessness in Law Enforcement.” The report documented abuses by police that included the use of pain in interrogations, as well as corruption and other abuses. While this report spawned outrage and calls for reform, little materialized. The law-abiding public wanted crime and undesirables dealt with and cared little about how this was accomplished as long as they didn’t bear the brunt of police abuse. Public opinion in recent times has shifted in regard to police abuse for a variety of reasons, including citizen awareness and growing willingness to speak out, Supreme Court decisions governing police powers, greater citizen oversight of the police, federal government intervention through the Department of Justice, and more transparency regarding police operations.

Types of Abuse

There are many forms and definitions of police corruption, misconduct, and deviance. Police abuse is a form of occupational deviance because it is an improper use and application of police power and authority. It differs from corruption in that corruption involves a misuse of one’s official position for financial gain. Police abuse is a form of police misconduct that may not, and often does not, involve financial gain. It is misconduct in which there is a misuse of official position in acts other than for financial gain. With this definition, for an act to be considered misconduct, there are two important elements to consider. First, there must be an act that is a misuse of an officer’s power and authority and a contradiction of the Constitution, law, or policy. Second, it must be an “official” misuse of power and authority: The police officer must be acting in an official capacity as a police officer.

Police abuse has been called both abuse of power and abuse of authority. Both have the same meaning. Abuse of power/authority was defined by Thomas Barker and David Carter in 1985 as any action by a police officer without regard to motive, intent, or malice that tends to injure, insult, trespass upon human dignity, manifest

feelings of inferiority, and/or violate an inherent legal right of a member of the public in the course of performing police work. Police abuse can be broken down into three specific areas: physical, psychological, and legal abuse.

Physical abuse is the use of excessive force or physical harassment. This can be further broken down into two categories: extralegal and unnecessary police violence. Extralegal force, also called brutality, is the application of intentional physical abuse inflicted maliciously and for no legitimate police purpose. It is often used against persons who challenge the police authority. When used in this manner, extralegal force is considered a form of punishment and is intended to teach those who have challenged the police not to do it again. Unnecessary force is usually not the product of malice but rather arises from incompetence. It occurs either as a result of poor training or because officers have placed themselves into what they perceive to be a vulnerable position because they may have misjudged a situation. It might be that the officer is afraid of being hurt since he/she lacks the confidence to handle the situation. Once this occurs, the officer may use more force than is necessary for the situation, not out of malice, but to compensate for the inadequacies already stated. Whatever the reason, it is still unnecessary force and will be seen as such by the recipient as well as by others.

Psychological abuse takes place when a police officer verbally assaults, ridicules, discriminates, or harasses persons. It is also when an officer places an individual who is under the control of the police in a position where the person's conception of him/herself as a person is devalued. Psychological abuse can also occur when an officer treats a person with disrespect, for example, by the use of profanity or demeaning language. It may also take the form of intimidation through threatening words or bodily language intended to place the person in fear. Additionally, it may be seen in intimidation such as excessively stopping and searching someone without sufficient reason. Using degrading language toward someone based on their race, ethnicity, gender, age, or sexual identity also falls into this category of abuse. It is possible that psychological and physical abuse may happen together and may be used to complement each other.

Legal abuse can transpire with or without physical or psychological abuse. It is identified as the violation of a person's rights, either constitutional or those defined by statute. Examples include detentions without reasonable suspicion, searches without probable cause, and lying by officers to ensure conviction. Other examples might include planting of evidence or the making up of informants in order to arrest persons suspected of criminal activity. Legal abuse may be involved in noble cause corruption. Police officers who engage in these acts often do so for what they consider to be a noble cause or in the belief that the end justifies the means. Officers assume that the person being arresting is guilty and that their actions will ensure a conviction, thereby getting the guilty party off the street. Therefore, the actions are noble because even if the means to achieve them are bad, the outcome is good. Unlike traditional corruption, there is usually no personal gain for the officer, and the intended good is for the organization or society at large.

Factors in Abuse

There are many reasons police officers engage in abuse. Policing is largely a discretionary activity and is conducted in a low-visibility environment. Police have a great deal of discretion in how to perform their duties. In policing, this means that officers can decide which laws will be enforced, as well as when and how. It also means that officers can decide whom to arrest as well as which means of maintaining order and keeping the peace they will use. While there are laws and policies guiding police discretion, it is often the officer on the street making decisions as to how discretion will be used.

Policing is low-visibility work. This means that the police often make their decisions in an environment in which they are not observed either by their supervisors or by citizens. Police are spread out temporally and geographically in such a manner that makes it difficult to constantly supervise them. Consequently, many of the actions and decisions that they make are free of direct supervisory scrutiny, and reporting is based on their own word. In addition, police work in areas and at times of day where there may not be many, if any, civilian witnesses to their actions. This gives officers who are so inclined the freedom to do as they please. The existence of the code of silence, or blue wall of

silence, should also be noted here. It has been documented that many police officers are reluctant to report other officers who may abuse their powers, and some may go as far as to lie about what they may have witnessed. Often, officers may tolerate some behaviors like abuse while reporting more serious actions such as corruption. Because abuse is often looked at as a means to a noble cause or as necessary to achieve organizational goals or to ensure respect for the law and police, it may often be overlooked. These factors lead to an environment in which some officers believe that they may engage in abuse without fear of repercussion.

There are other reasons police may engage in abuse. It has been argued that police work in a culture of violence. Police officers are often injured and sometimes killed in the performance of their duties. This violence comes at the hands of the citizens they are charged with protecting. Further, police work is often framed in metaphors of war, such as a “war on crime” or a “war on drugs.” Policing in this fashion takes on a paramilitary tone with an “us against them” mind-set. The police adopt a military philosophy using military-type uniforms, equipment, and strategies. In this philosophy, members of the public are viewed as symbolic assailants and as the enemy. This can be seen in some types of zero tolerance or broken windows policing in which citizen complaints against the police increased dramatically.

One other reason for police abuse is that it is seen as street justice and as a way to correct a bad attitude, or disrespect for the police. When police officers believe that a citizen has a bad attitude because he/she is openly defiant or disrespectful, they may resort to some form of abuse in order to “correct” the attitude problem. It is a way for the police to take control of the situation, to show that they are in charge, and to ensure that the citizen will act “respectfully” toward the police in future encounters. The police are trained to believe that they must always be in control and that they must win in every encounter. Therefore, disrespect cannot be tolerated and must be rectified. Another aspect of street justice is that it is often perceived that criminals never get their just punishment from the justice system; consequently, the police must ensure that “justice” is delivered on the street.

Whatever the reason for abuse, police departments must take steps to ensure that it does not occur. There are several ways to go about this. First, and perhaps most important, the right people must be recruited and selected for police work. Persons must be selected for their good character and integrity above all else. Ethics and integrity training, focusing on human rights and the dignity of the person, must begin in the police academy and continue throughout an officer’s career. The importance of adherence to the Constitution, use of force training, the use of courtesy, and recognition of cultural diversity are topics that must also be emphasized.

Leadership must set the tone for integrity in the department and create a climate in which abuse and other forms of misconduct cannot survive. An open citizen complaint procedure must be set up in which every complaint is thoroughly investigated, and there must be a fair system of discipline in place to ensure that abusive behavior is rooted out and stopped, and good policing must also be recognized. Abuse by police officers is incompatible with good policing, and police administrators must make every effort to keep it from occurring.

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See Also: Code of Silence; Interrogation Practices; Police, Contemporary.

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Political Crimes, Contemporary

Although numerous definitions of political crime exist, one of the most useful is the one developed by P. Beirne and J. Messerschmidt in 1991. They define political crimes as the following:

... crimes against the state (violations of law for the purpose of modifying or changing social conditions) ... [and] crimes by the state, both domestic (violations of law and unethical acts by state officials and agencies whose victimization occurs inside [a particular country]) and international (violations of domestic and international law by state officials and agencies whose victimization occurs outside the U.S.).

Subsumed under this broad rubric are numerous actions. On one end of the continuum are nonviolent oppositional political crimes that include dissent, sedition, treason, espionage, and spying, as well as violent actions such as sabotage, assassination, and terrorism. On the other end of the spectrum are state crimes that include corruption, illegal domestic surveillance, police and correctional officer use of excessive force, civil and human rights violations, and state corporate crimes.

Both oppositional and state crimes do not exist in a vacuum. More often than not, there is an intimate relationship between the two illegal activities, where one often type of crime leads to the other. Likewise categorizing political crimes into separate decades (as follows) is in many respects arbitrary as political crimes do not stop and start every 10 years and grievances and dispositions to engage in organizational malfeasance, deviance, and crimes can persist over numerous years and across changes in government and leadership.

The 1960s

During the 1960s and the early 1970s, several race riots and violent antiwar student demonstrations (opposing the Vietnam War) took place in the United States. In addition to this mass political violence were a number of assassinations of prominent politicians, including President John F. Kennedy (1963), his brother Senator Robert Kennedy (1968), and civil rights leader Martin

Luther King, Jr. (1968). These actions, in part, set the conditions for the growth of a number of terrorist groups with different ideological leanings. While the Ku Klux Klan (which can trace its origins back to the Reconstruction period of American history) increased its violent tactics against African Americans, as well as against individuals and groups that were in favor of expanded civil rights guarantees for minorities in the United States, some of the terrorist groups that operated during this period were affiliated with émigré or nationalist-separatist movements such as the anti-Castro Cubans, Croatian Separatists, and Puerto Rican and Armenian nationalists.

In 1969, radical elements of the left-wing Students for a Democratic Society (SDS) formed the Weather Underground to commit terrorist actions against the U.S. government. They bombed government (including police and military) and corporate buildings, offices, and vehicles across the country. In reaction to these incidents, federal, state, and local law enforcement agencies, in addition to other federal agencies, including the Internal Revenue Service, increased their monitoring of dissident groups—especially the SDS and the Black Panther Party—and radical right-wing organizations such as the Ku Klux Klan. Collectively known as Operation CHAOS, some of these actions bordered on state crimes as various government organizations engaged in illegal domestic surveillance and used excessive force.

The 1970s

During the 1970s, as domestic terrorism declined, incidents of state crime started coming to public attention. In May 1970, for example, members of the Ohio National Guard shot and killed four students and injured nine others after a series of student protests at Kent State University in Ohio against the U.S.-orchestrated bombings in Cambodia. Additionally in May 1970, a similar incident took place at Jackson State University where two students were killed by police. Shortly after this incident, in 1971, Daniel Ellsberg, an analyst working for the Rand Corporation, provided the *New York Times* with top-secret documents about U.S. involvement in Vietnam. These items, collectively referred to as the Pentagon Papers, provided a comprehensive official history of the U.S. involvement in Vietnam, including official

documentation of efforts to extend the war to Cambodia and Laos.

Other incidents related directly to domestic issues. In 1971, prisoners at the Attica Correctional Facility in New York rioted. Four days later, Governor Nelson Rockefeller called in the National Guard, which retook the prison. The ensuing melee resulted in a death toll of 43, including 11 prison employees. Most of the individuals died at the hands of state troopers and the National Guard.

One year later, a state crime of profound political impact took place. In 1972, during a routine patrol, a security guard stumbled upon "the Plumbers," a secret team assembled by President Richard Nixon. This group was in the process of burglarizing and wiretapping the Democratic National Committee headquarters, located in the Watergate Building in Washington, D.C. When investigations into the Plumbers were conducted, it was found that they "ultimately handled such tasks as forging diplomatic cables and hiring thugs to disrupt peace rallies."

The Federal Bureau of Investigation's (FBI) ongoing illegal surveillance of American citizens (1925–72) was an agencywide operation that was conducted with the guidance of top FBI officials and involved almost every field office in the United States. Even though a federal court order has long been necessary for any law enforcement agency to open private mail, between 1959 and 1966, the FBI illegally examined 42 million pieces of mail in New York City alone. Furthermore, the Central Intelligence Agency (CIA), prohibited by legislation from engaging in domestic surveillance, read private mail sent to and from the United States and the Soviet Union during the height of the cold war. It has been determined that CIA agents opened 216,000 pieces of mail and compiled a list of 1.5 million names of individuals from these mailings alone.

Even though dissident groups in the United States had suspected for some time that they were being spied on, infiltrated, and, to some extent, destabilized by the FBI, it was not until March 8, 1971, that their suspicions were confirmed. On that date, a group identifying itself as the Citizens' Commission burgled a regional FBI office in Media, Pennsylvania. The Citizens' Commission stole about 1,000 Counter-Intelligence Program (COINTEL-PRO) documents that indicated that the FBI had,

for years, operated a national, organizational, and illegal operation against several dissident groups. The FBI actions included spying, infiltration, and disruption of the Black Panther Party, the American Indian Movement (AIM), SDS, and the Communist Party of the U.S.A. (CPUSA).

In 1978, several congressmen were charged with and convicted of accepting bribes from FBI undercover agents. In an operation known as ABSCAM, federal agents posed as wealthy Arab businessmen desiring political and business favors from Congress members in exchange for bribes, some of which were as high as \$100,000. In all, five congressmen were convicted and sentenced to prison terms ranging from 18 months to three years. State and local officials were also indicted for and convicted of corruption. In addition to ABSCAM, under almost each new president, there have been political scandals, most involving some form of corruption in the executive, legislative, and judicial branches of government.

The 1980s

In 1983, the FBI began an investigation of the organization Committee in Solidarity with the People of El Salvador (CISPES), which opposed the U.S. involvement in that country. At this time, many U.S. citizens had grown concerned about the federal government's continued financial support and military training of the El Salvadoran government, a regime that most human rights watch groups considered repressive; CISPES sought to increase public awareness of this issue. When the FBI investigation of CISPES garnered a negative public reaction, Director William Sessions ignored the organizational nature of the surveillance program and imposed disciplinary sanctions against six agents. Nonetheless, a Senate Select Committee criticized the FBI and its continuing surveillance of people and groups involved in dissident political activities. In response, the FBI claimed that all domestic surveillance had been discontinued.

Some incidents of state-corporate crime have resulted in national tragedies remembered by millions of Americans. The 1986 explosion of the space shuttle *Challenger* technically resulted from faulty seals; however, a deeper analysis points to the "hurry-up" agenda of the National

Aeronautics and Space Administration (NASA), which is a federal agency, and to the mismanagement of Morton Thiokol, the company that manufactured the seals. Although corporate engineers voiced misgivings over the scheduled flight of the shuttle, their concerns were overridden by both NASA and Morton Thiokol's management—which yielded to state-corporate pressures to produce a series of space shuttle flights in a set time. The fatal consequences—the death of seven astronauts and the loss of millions of dollars of equipment—were the result of both private producers and state managers whose concerns for production, flight schedules, and a financially self-sufficient space shuttle program overshadowed those for human life.

In 1989, as the result of a detailed investigation, Oliver North, a Marine Corps colonel and a national security adviser to President Ronald Reagan, received public attention because of his activities in the Iran-Contra scandal. In sum, starting in 1985, North was responsible for managing and (depending on which source one believes) orchestrating a deal whereby Nicaraguan Contras were provided financial aid and allowed to secretly sell and/or transport illegal drugs, the profits from which were channeled to Israel to pay for anti-aircraft missiles that were later shipped to Iran. During this time, the congressionally mandated Boland Amendment placed an embargo not only on the types of aid that the Contras could receive but also on the goods the West could supply to Iran. North was charged with lying under oath, obstructing a congressional inquiry, taking money and not declaring it to the Internal Revenue Service (IRS), and destroying government documents. He had also accepted an illegal gratuity: a home security system worth \$13,800. North was convicted of these charges in 1989, but the conviction was subsequently overturned because his testimony at the trial had been “immunized.” This outcome was predictable because the appellate panel was primarily composed of Republican appointees. Similar outcomes befell North's accomplices, Robert McFarlane, Richard R. Miller, and Carl (“Spitz”) Channel.

The 1990s

The 1990s witnessed further prosecutions of government employees in various intelligence agencies.

In 1994, Aldrich H. Ames, a veteran CIA official and his wife, Rosario, were convicted of espionage. Ames was given life in prison, and his wife served five years. In 1996, Earl Edwin Pitts, an FBI agent for 13 years, was arrested, and a year later, he pleaded guilty to espionage. In 1996, Harold J. Nicholson, a CIA station chief, was arrested and convicted of espionage two years later. In October 1998, a retired army intelligence analyst, David Shelton Boone, was convicted of selling secrets to the KGB (the Russian national security agency until 1991). For almost a decade prior to his arrest, Boone had passed on information concerning the U.S. nuclear arsenal.

Although there have been numerous incidents of police corruption and violence in the United States, in March 3, 1991, four white Los Angeles policemen were caught on videotape severely beating African American motorist Rodney King. This led to their suspension and the filing of criminal charges. On April 29, 1992, when an all-white jury in neighboring Simi Valley acquitted the officers, Los Angeles became the scene of a major riot that lasted nearly a week. Also in August 1992, in Ruby Ridge, Idaho, federal agents tried to arrest avowed white supremacist Randy Weaver on weapons charges. The armed standoff resulted in the government sniper killings of Weaver's wife and son. Both the beating of Rodney King and the shooting of Weaver's wife and child are examples of how excessive state violence can violate the civil rights of an individual and call into question government procedures for armed standoffs.

Although numerous incidents of state-corporate crime have occurred in the United States, one of the most notable events took place in an Imperial Chicken processing plant fire in September 1991 in Hamlet, North Carolina, in which 25 people were killed. In particular, the state of North Carolina's history of regulatory failure as perpetrated by various state and federal agencies contributed to the tragedy in Hamlet. During this period, North Carolina failed to fund (and to use available federal funds toward) its own state Occupational Safety and Health Administration (OSHA)—a program designed to protect worker safety on the job. At the national level, federal funding for OSHA had decreased in the pro-business, antilabor political climate of the 1980s. In turn, North Carolina had promoted a social climate friendly to business



An aerial view of the Pentagon showing emergency crews responding to the destruction caused when a hijacked commercial jetliner crashed into the building during the September 11, 2001, terrorist attacks. It is debated whether such acts of terror should be considered and prosecuted as criminal (political crimes) or deemed acts of war.

and hostile to labor and corporate regulation. The state's right-to-work laws weakened the little power organized labor had previously held. Workers at Imperial, paid slightly more than minimum wage, were nonunion and likely would have remained that way had events not taken the course they did. State regulatory inspectors knew that Imperial kept the Hamlet plant's fire exit doors locked to prevent workers from stealing chicken parts. Because they could not escape the building when the fire started, 25 workers died. Clearly, the state had shirked its responsibility for protecting workers (which in this case amounted to a failure to properly enforce the existing law) and allowed a corporation to engage in illegal and, ultimately, deadly actions.

As one final example of state-corporate crime in the 1990s, one must mention ValuJet Flight 592, which crashed in the Florida Everglades in May 1996, killing all 109 people on board. During the investigation into the incident, it was discovered that the government inspectors from the Federal Aviation Administration who were supposed to inspect the safety operations of the ValuJet and Sabre (a contractor for the airline company) technologies had failed to perform their full duties;

thus, this incident is considered an act of state-corporate crime.

Governmental misconduct was not limited to the corporate world during this period. In February 1993 in Waco, Texas, the Bureau of Alcohol, Tobacco, and Firearms (a division of the U.S. Department of Treasury) tried to arrest David Koresh, the charismatic leader of a Christian millenarian sect called the Branch Davidians. The situation led to an armed standoff at the Branch Davidian compound. After 51 days, the final assault, at this point managed by the FBI, resulted in the compound becoming a veritable inferno. Eighty-six cult members, including children, died in the flames. This incident, along with the one at Ruby Ridge, helped to bolster the fledgling militia movement in the rural west over the next decade.

In addition, arguably the best-known type of political crime—terrorism—also increased in many countries during the 1990s. On February 26, 1993, members of Al Qaeda placed a truck bomb in the underground parking garage of the World Trade Center in New York City. Although the original intent of the bombers was to fell one of buildings, the resultant blast only killed six people, although

it injured 1,042 individuals. On April 19, 1995, in Oklahoma City, decorated Gulf War military veteran Timothy McVeigh, along with Terry L. Nichols, detonated a Ryder truck bomb that destroyed the Alfred P. Murrah Federal Building. The death toll reached 186, including several children in the building's second-floor day care center. McVeigh, who was later apprehended and given the death penalty, said that he committed the action because of his disillusionment with the federal government's actions in the Ruby Ridge and Branch Davidian incidents. On April 3, 1996, Theodore (Ted) Kaczynski (popularly known as the Unabomber) was arrested and charged with a series of mail bombings he had perpetrated, which were ostensibly directed against supporters of technology and those whom he perceived as hurting the environment. In January 2001, President Bill Clinton left office under a shroud of controversy because of a number of scandals in which he (and sometimes, his wife) was alleged to have been involved in (e.g., Whitewater, abuse of power, and romantic or sexual involvements). Additional tension was produced by President Clinton's unsuccessful impeachment.

The 2000s

The early 2000s witnessed a highly publicized espionage case. In the spring of 2001, Robert P. Hanssen, a senior FBI agent, was convicted of having illegally transferred sensitive documents to Soviet and then Russian intelligence agents and their organizations starting in 1985. Hanssen was in a unique position to collect sensitive information because of his contacts with the CIA and the State Department. Why and how he managed to evade detection for a decade and a half were matters of grave concern to U.S. intelligence officials.

On September 11, 2001, one of the most infamous cases of political crime occurred. Four planes were hijacked by members of Osama bin Laden's Al Qaeda network. These planes were crashed into the World Trade Center, the Pentagon, and a rural field in Pennsylvania, causing close to 3,000 deaths and more than 6,300 injuries. Although not nearly as dramatic or deadly, several anthrax-filled letters were sent through the U.S. mail in late 2001, some addressed to well-known television broadcasters and politicians. The attacks led to the deaths of three people, the hospitalization of others, and the slowdown and virtual shutdown

of the U.S. postal system. In 2008, following a series of U.S. law enforcement failures and multiple interpretations, the FBI conceded that Bruce Ivans was the likely culprit. Ivans, a disgruntled federal government biodefense researcher who had experienced psychological problems, committed suicide before formal criminal charges could be filed. In the wake of the attacks, Congress passed the USA PATRIOT Act, which has given state and federal law enforcement agencies increased powers in investigating and charging individuals suspected of or engaging in terrorism. Some of the more important highlights include so-called roving wiretaps (tied to certain people rather than to particular telephone lines); nationwide search warrants, instead of those limited to specific jurisdictions; searches of electronic mail; and the power to detain foreigners for extended periods of time. The bill gives "authorities the ability to hold immigrants suspected of terrorist acts for seven days without filing charges." The PATRIOT Act also permits longer and more severe sentences and the extension of the statute of limitations on terrorism cases. Few literate Americans, including some of the members of Congress who passed the bill, have read the full text of this rather draconian antiterrorism legislation.

In 2006, Jack Abramoff, a former businessman and Republican lobbyist, was convicted of mail fraud and conspiracy. He, along with several White House officials, had engaged in corruption through the "selling" of political influence to a number of individuals and organizations, which included various Native American tribes that were trying to obtain concessions for their gambling operations.

Conclusion

In each new decade, the full panoply of political crimes has occurred, although the number of occurrences has obviously varied. Despite this continuity, the passing years have resulted in a greater appreciation that political crime is not simply limited to actions directed against the state, but that the government (through its criminogenic agencies—national security/intelligence, military, and law enforcement) is capable of and has carried out numerous actions that should be labeled as state crimes. Although this may seem unfathomable to many Americans who may see

this statement as somewhat un-American, the veracity of the claims cannot be denied.

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See Also: Black Panthers; Federal Bureau of Investigation; Kent State Massacre; King, Rodney; Ruby Ridge Standoff; Terrorism; Waco Siege.

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Political Crimes, History of

When examining the history of any phenomenon, one typically talks about periods of change and stagnation. When drilling deeper into the history of a controversial action like crime, it is important to see that the frequency and types of occurrences vary as a reflection of different processes at work (e.g., the growth of technology, introduction of new laws, diffusion of ideas, and social change).

It is also necessary to keep in mind that the dialectical nature of political crime as oppositional (actions against the government and its allies) may cause the state to overreact and engage in state crimes. Political crime, an increasingly important scholarly subject that is often mentioned in passing in introductory textbooks on criminology, is no different. Part of the initial problem in tracing the history of political crime in any country is a lack of widespread agreement on what constitutes political crime. Some of this confusion results from a lack of consensus over broad definitions of crime in general. In the current state of criminology, crime covers not only violations of existing laws but also violations related to social harm, moral transgression, and civil and human rights. This "social justice" perspective acknowledges that some behaviors are not traditionally labeled criminal, but should be, and that certain activities that do not violate the existing law, yet fall under the previously mentioned characteristics, should be considered crimes. A definition of political crime is provided by P. Beirne and J. Messerschmidt:

... crimes against the state (violations of law for the purpose of modifying or changing social conditions) ... [and] crimes by the state, both domestic (violations of law and unethical acts by state officials and agencies whose victimization occurs inside [a particular country]) and international (violations of domestic and international law by state officials and agencies whose victimization occurs outside the U.S.).

The purpose of this entry is not to examine definitional, conceptual, or theoretical debates but to provide a rather straightforward chronological history of political crime in the United States in seven different periods, from the country's founding to the contemporary era. This includes such acts as oppositional political terrorism, sabotage, sedition, espionage, corruption, illegal domestic surveillance, human rights violations, and state-corporate crime.

Founding Period

The founding period covers a large swath of history that predates the passage of the U.S. Constitution. Some scholars and many leftist political activists argue that the creation of the United

States as an independent country was not simply a rebellion against Great Britain, the interpretation that is common in most popular textbooks. The revolution was, rather, part of the natural progression of colonialism on the North American continent, a series of events that included genocide against Native Americans and the practice of slavery, both different types of political crimes. The American Revolutionary War (1775–83) itself was an act of sedition and treason against the British monarch. Shortly after America gained independence (1783), small rebellions took place throughout the country. One of the most notable was the Whiskey Rebellion. In 1794, farmers in western Pennsylvania believed they were being unfairly charged for the grain they grew that was later converted to whiskey, and they used intimidation and violent tactics to keep the tax from being collected. Shortly after America's separation from Great Britain, it was necessary for the new government to provide a legal structure with which its inhabitants could live. Numerous laws, both civil and criminal, were passed. Thus, Congress passed the Sedition Act of 1798, which criminalized any scandalous article written about the president or Congress. In general, the act made it a crime to say, write, or publish anything "false, scandalous, or malicious." Later federal law defined seditious conspiracy as follows:

If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof.

The Nineteenth Century

During the greater part of the 19th century, as the country expanded westward and new territories, states, and municipalities were acquired and/or created, there were ample opportunities for law-breaking by those in political leadership positions. Numerous land scandals through which local elites profited at the expense of ignorant homesteaders, farmers, and native peoples had the semblance

of corruption and other similar political crimes. During the War of 1812, the U.S. government, as a security precaution, arrested numerous British citizens who were living in east coast cities. Some were deported to England while others voluntarily relocated to Canada (and became known as the Upper Canada Loyalists). The Seminole War of 1818, instigated and led by then general and later President Andrew Jackson, included numerous instances of human rights violations and genocide. Until recently, few history books would have—as Howard Zinn did—described Jackson as “slaveholder, land speculator, executioner of dissident soldiers, exterminator of Indians.” These actions were followed by other acts of political crime: the assassination of President Abraham Lincoln (1865); attempts by the Ku Klux Klan and others to thwart Reconstruction (1865–77); the assassination of President James A. Garfield (1881); and the assassination of William McKinley (1901). As factory workers, miners, and those working in the context of the rapid U.S. industrialization began to demonstrate, police, the state patrol, and the military were used by mayors, governors, and presidents to quell labor unrest, sometimes resorting to excessive force and violence.

World War I

In 1918, in an effort to shore up support for the entrance of the United States into World War I and to reduce criticism of the war, the Sedition Act of 1786 was amended. The act was made more specific and was popularly referred to as the Sedition Act. During this time, close to 1,000 individuals were incarcerated under state or federal sedition laws because they opposed U.S. involvement in World War I or because of their “controversial” union activities or religious and political beliefs. During the U.S. involvement in World War I (1917–18), the Department of Justice also interned 6,000 German and other European-born civilians and merchant seamen in military barracks in Georgia and Utah. These seizures were motivated by both justifiable and unfounded suspicions of espionage and subterfuge in North America.

Interwar Period

One of today's most widely used spying techniques is wiretapping, which was, ironically, declared illegal in the United States in 1934.

Although the FBI continued using this technology in subsequent years, agents did discontinue its use briefly after a Supreme Court ruling in 1937 that applied the law to the Federal Bureau of Investigation (FBI) and its operations. Two years later, in opposition to the Supreme Court's decision, President Franklin Roosevelt claimed the FBI had the authority and right to wiretap in "national security" cases.

World War II

Normally, the offense of treason needs to be committed inside the United States, but during this period, the jurisdiction was expanded to include actions by Americans in other countries. For example, several persons were prosecuted for their broadcasts that aired in foreign countries during World War II. One of the most famous cases was against the rather eccentric, pro-Fascist American writer Ezra Pound. During World War II, Mussolini's Fascist government allowed Pound to broadcast in English from Rome. Pound was arrested and charged with treason. During the trial, he claimed that his actions were patriotic. The trial resulted in a verdict of "unsound mind," and Pound was committed to the mental ward at St. Elizabeth's Hospital in Washington, D.C., from 1945 to 1948, when he was released with the diagnosis that he was "incurably insane, but not dangerous." During World War II (1941–45), 120,000 Japanese American citizens (born in the United States) and 8,000 Japanese nationals were interned in prison camps located in Utah, Colorado, Idaho, and Washington. Besides these individuals, 3,500 Germans and 1,000 Italians (American citizens and foreign nationals) were incarcerated. The internment included women and children and lasted through the declaration of peace. These innocent people lost their jobs and homes and suffered great hardships that continued into the years that followed the war.

The 1950s

In the post-World War II era, America, facing the threat of communism, passed an array of laws pertaining to sedition and treason, including the McCarran Act (1950), the Internal Security Act (1952), and the Communist Control Act (1954). Many state and local governments enacted similar or even more sweeping laws.

One of the best-known cases of espionage during this time period concerned the activities of Julius and Ethel Rosenberg. In 1950, at the height of the cold war, this couple, along with a handful of coconspirators, were arrested, tried, and convicted. On June 19, 1953, despite considerable public protest, the Rosenbergs were executed for leaking classified information on the highly secret atomic bomb to authorities in the Soviet Union.

The 1960s to the Present

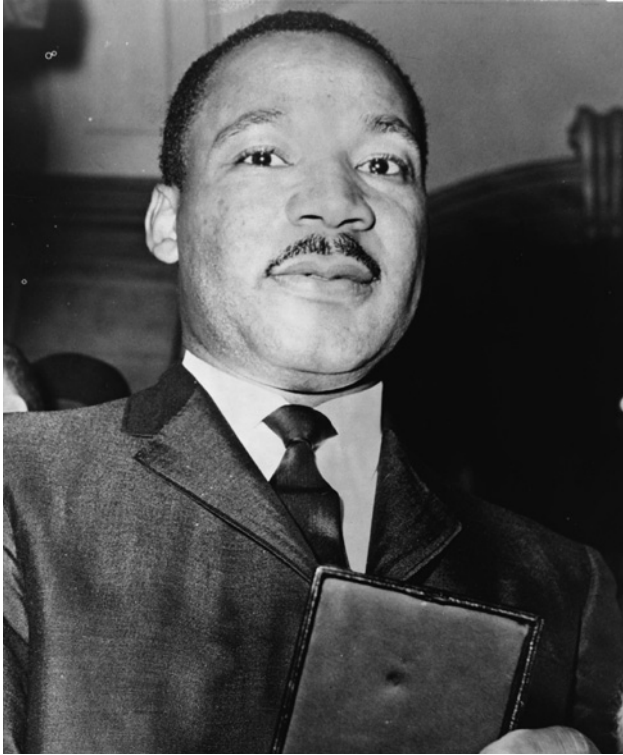
During the 1960s, public protests against the war in Vietnam, the draft, and civil rights often placed the public at odds with law enforcement and national security agencies. Numerous instances of police use of excessive force occurred. On several notable occasions, the police clashed with student demonstrators against the Vietnam War and with civil rights protesters. Other public protests were organized as reactions to police brutality. These confrontations were largely centered in big cities like New York, Chicago, and Los Angeles. Other incidents took place on college campuses, including Jackson State in Mississippi and Kent State in Ohio (both of which occurred in May 1970).

Some of the more salient oppositional political crimes that occurred during the 1960s included the assassinations of three notable public figures: President John F. Kennedy, Martin Luther King, Jr., and Senator Robert Kennedy.

Domestic Surveillance

In an attempt to monitor dissent, local, state, and federal law enforcement agencies increased their domestic surveillance activities. Most major urban police agencies (e.g., Chicago, New York, Los Angeles, and Philadelphia) spied on American citizens during this time. Each police department had special units whose responsibilities focused on information gathering and the infiltration and destabilization of citizen groups defined as threatening to social order. While engaging in their own surveillance operations, the city police departments often acted in tandem with national law enforcement agencies, most typically the FBI.

For example, the Chicago Police Department's political surveillance operation claimed in 1960 that it "had accumulated information on some 117,000 local individuals, 141,000 out-of-town subjects, and 14,000 organizations." Until 1968,



Some of the most notable political crimes occurred during the 1960s, including the assassinations of John F. Kennedy, Robert Kennedy, and Martin Luther King, Jr. (above).

most of the department's spying had been limited to ideologically threatening groups—the Communist Party and the Socialist Workers' Party. However, with the Democratic National Convention scheduled for Chicago in 1968, surveillance increased to include a wide variety of “civic groups and prominent citizens,” linking them, as best the authorities could, to communism and communist subversion, although very little substantiation ever materialized.

New York City opened a separate spy unit, the Bureau of Special Services (BOSS), and Philadelphia, under Mayor Frank Rizzo, the son of a police sergeant and a career police officer himself, established a surveillance unit known as the Civil Defense Squad. The New York, Philadelphia, and later, the Los Angeles police departments operated similarly to the surveillance squad of Chicago—clearly violating laws and spying on citizens. Each department now claims that its spy operations have long been shut down, although just after former Los Angeles Police Chief Darryl Gates retired

in 1993, evidence emerged indicating that he had used a special Los Angeles Police Department surveillance force to spy on various leftist sympathizers and political enemies, including actor Robert Redford and former Mayor Tom Bradley.

Wiretapping remained illegal until 1968, when it was ruled legal if authorized by court order based on sufficient probable cause. Despite this judicial intervention, illegal domestic surveillance continues unabated. Also, criminal justice personnel often have to go “judge shopping” in order to gain the trust or confidence of a sympathetic judge. Illegally planting listening devices, or bugs, is possible mainly through burglaries. While the rate of using these devices has varied, FBI director J. Edgar Hoover continued condoning illegal burglaries and the planting of bugs throughout his career.

In 1978, the U.S. government passed the Foreign Intelligence Surveillance Act (FISA). Its passage was a response to the perceived excesses of the Nixon administration in connection with spying against political groups that engaged in legitimate political dissent; it also arose because of the revelations of the Church Committee, which investigated illegal domestic surveillance engaged in by both the Federal Bureau of Investigation and the Central Intelligence Agency (CIA). FISA was designed to monitor communications between foreigners outside the United States and was not intended to record domestic communications.

Since 1986, the FBI has been using Carnivore, a program that intercepts all e-mail traffic coming in and out of the United States. News reports periodically allege real or purported bugging incidents. For example, in February 2002, it was revealed that the CIA had planted listening devices in the rooms of Japanese officials during the most recent round of trade negotiations between the United States and Japan.

FISA was amended in 2001 because of the USA PATRIOT Act. The legislation was once again changed in 2007 through the Protect America Act. This new act expired one year after its implementation and was seriously flawed thus a new FISA bill was passed in 2008.

One of the most pervasive intelligence operations bears the name *Echelon*. Although its existence was originally denied by the U.S. National Security Agency, the operation monitors every electronic transmission related to U.S. interests,

including cell phone calls and e-mail messages. A scandal broke out in Europe in February 2001 when it was discovered that the CIA was spying on behalf of American businesses. Numerous contemporary cases have explicitly been labeled as state-corporate crimes and include the following: the January 1986 *Challenger* explosion; the September 1991 deadly Imperial Chicken processing plant fire in Hamlet, North Carolina; and the U.S. Department of Energy's role in nuclear weapons production (1960s to present).

Additional contemporary examples of state-corporate crime in the United States have included the work by Wedtech, a defense contractor that was charged with fraud in its dealings with the government in 1987, and the crash of ValuJet Flight 592 in May 1996. In the former case, under the pretense of helping disadvantaged minority businesses, the Small Business Administration, White House aides, a number of members of Congress, and Attorney General Edwin Meese III were implicated in corruption charges. In the latter case, it was discovered that Federal Aviation Administration inspectors who were supposed to inspect the safety operations of ValuJet and Sabre Technologies (which had a contract with the airline company) were negligent in their affairs. This omission led to the deaths of all 109 individuals on board when the plane crashed in the Florida Everglades.

Undoubtedly, some of the most notable instances of political crime in the United States over the past four decades have been instances of both domestic and international political terrorism. On February 26, 1993, members of Al Qaeda placed a truck bomb in the underground parking garage of the World Trade Center (WTC) in New York City. Although the original intention of the bombers was to fell one of the buildings, the resultant blast killed five people and injured 1,000. Similar incidents included the 1995 Oklahoma City bombing by Timothy McVeigh, which killed 186 and injured 680 people. On September 11, 2001, 19 Al Qaeda members hijacked four planes, two of which were flown into the WTC, one into the Pentagon in Washington, D.C., and one headed for another location in Washington, D.C., which was intentionally crashed into a field in Pennsylvania when passengers took action against the terrorists. This coordinated act killed 3,000 people and injured approximately 6,300 people.

Conclusion

The terrorist incidents of the past decade, both in the United States and abroad, should not force the reader into thinking that either terrorism or political crimes are things of the past. For as long as we have states and as long as we have individuals and groups vying for political power, political crime will exist. In order to better appreciate the progression of political crime in the United States, more scholarship needs to be produced. Future research should include not only case studies but also an accounting of sorts that would place this issue into a quantitative format that is easily understandable.

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See Also: 1600 to 1776 Primary Documents; 1851 to 1900 Primary Documents; 1941 to 1960 Primary Documents; Federal Bureau of Investigation; Homeland Security; King, Martin Luther, Jr.; Ku Klux Klan; McVeigh, Timothy; Oklahoma City Bombing; Political Crimes, Contemporary; Terrorism; USA PATRIOT Act of 2001.

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Political Crimes, Sociology of

Political crime is rarely examined when studying the dynamics of crime, justice, and law. Yet understanding political offenses or illegalities is fundamental to comprehending the workings of a criminal justice system that selectively defines, enforces, and adjudicates who is defined as criminal. As a variety of scholars, jurists, policy makers, legislators, and activists have argued, the law and, by extension, crime qualify as political acts. Hence, interpreting law, crime, and criminals requires a political focus. Various criminal acts are explicitly political. For example, sedition and treason have traditionally been viewed by states as political offenses because of their real or alleged threats to order (public, social, or otherwise) or national security. As a result, these behaviors have been codified in law. However, some state reactions to dissent are almost or actually criminal. This is the case when governments occasionally engage in repressive actions during which law-abiding individuals are placed under surveillance and/or harassed or groups are infiltrated and/or destabilized.

These escalating state responses are rarely recognized in domestic criminal law. Both actions, oppositional and state-initiated, are increasingly understood by many scholars and activists as political crimes. Likewise, and according to recent theoretical advances in criminology, sociology, political science, and law, many controversial behaviors are considered politically and socially harmful, yet are not presently classified in legal codes as criminal. Legal definitions of crime are often too narrow, and the law is frequently too dynamic to be helpful. In other words, we cannot impose the kind of neutrality upon the law that might be implicit in the philosophy of "equal justice under the law."

Thus, an alternative, more contemporary, and inclusive definition and conceptualization of crime is needed. One definition that is gaining increasing legitimacy recognizes that crime is not only a type of deviance that has been codified or has been conceptualized as a violation of a criminal law but can be interpreted by the wider body politic as a social harm, moral transgression, and/or civil or human rights violation. This "social justice" perspective acknowledges that some

behaviors are not traditionally labeled criminal but should be and that certain activities that do not violate the existing law yet fall under the previously mentioned characteristics should be considered crimes. This notion would accommodate not only the actions of individuals and organizations, but also those of states, their employees, and contractors. Thus, political crime is a more far-ranging label than previously considered.

Understanding and Interpreting Political Crime

It is difficult to come to terms with political crime. Several reasons contribute to this state of affairs. In general, there is often a lack of consensus with respect to a definition, availability of good information, rigorous analysis, and/or interest in political crimes. Undoubtedly, considerable confusion exists about what constitutes a political offense. Experts are often divided over how to define political illegalities, and many seem to purposefully define political crime differently. Moreover, information presented by the mass media and news media minimizes the ability of citizens to understand political crimes properly.

Although this is less the case with oppositional political crimes such as terrorism, the media construction of state crimes such as genocide often presents them as unavoidable illegalities, the "just deserts" inflicted upon "irrational" dissidents, or the collateral damages of war. Perhaps more importantly, the identification of crimes by the state is not popular. Many people do not criticize the legitimacy of their own political system because of high levels of trust, deference to authority, apathy, or repeated experiences of powerlessness.

P. Beirne and J. Messerschmitt define political crime as follows:

... crimes against the state (violations of law for the purpose of modifying or changing social conditions) ... [and] crimes by the state, both domestic (violations of law and unethical acts by state officials and agencies whose victimization occurs inside [a particular country]) and international (violations of domestic and international law by state officials and agencies whose victimization occurs outside the U.S.).

Given this categorization, a political crime in the United States could involve a correctional

officer violating a prisoner's civil, human, or constitutional rights. On the other hand, an international political crime could include the destabilization of a foreign government, as the United States was accused of attempting in Salvador Allende's Chile in 1970. Alternatively, the 1998 bombing of the U.S. embassies in Kenya and Tanzania, allegedly committed by the Al Qaeda terrorist organization, would also qualify as an international criminal action.

Jurists usually distinguish a crime by referring to the existing criminal code, and if this is insufficient, they examine the context. The context includes the perpetrators' motives, affiliations, targets/victims, and the effects of the action. Although democratic governments and their employees are bound by specific laws and statutes forbidding them to engage in illegalities (typically embedded in criminal and administrative law), they periodically violate these rules for particular purposes.

Crimes committed by the state are somewhat unique because they include illegalities committed by the government as a whole, by organizational units of the state, and by individual officials who break the law for their own personal or their agency's gain. These types of crimes differ because the former two categories are organizationally based, whereas the latter is regarded as individual crimes of occupational corruption. Just as some types of white-collar crime are organizationally based (e.g., the Ford Pinto case of violence against consumers), some specific political state crimes are also considered organizational. For instance, the Federal Bureau of Investigation's (FBI) ongoing illegal surveillance of American citizens (1925–72) was an agencywide operation conducted with the guidance of top FBI officials and involving almost every field office in the United States.

Theories of Political Crime

No widely accepted causal theories of crime, including political crime, exist. Though this hinders the ability to specify an appropriate explanation for political crime, we can examine relevant theories. Robert Merton (1938; 1964, 1966) provided one of the earliest explanations that, in part, touches on political crime. According to his anomie theory of deviance (i.e., strain theory), individuals live in societies that have a considerable amount of struc-

tural dysfunctionality. This leads people to experience an ends/means discrepancy. These processes combined together create stress. In order to minimize the discomfort, individuals have five options, one of which is rebellion (nominally a type of political crime). Unfortunately, Merton's theory, regardless of who uses it, is too limited for a more encompassing understanding of political crime.

Similarly, R. Moran (1974) describes "sequential stages which in successive combination might account for the development of a political criminal." The first are what he calls "predisposing conditions or background factors, the conjunction of which forms a pool of potential political criminals. These conditions exist prior to an individual's decision to commit a political crime and by themselves do not account for his behavior." The aforementioned conditions include the concept of strain and "a political problem solving perspective." The latter consists of "situational contingencies which lead to the commission of political crimes by predisposed individuals." Moran advocates a five-stage developmental model consisting of the following steps: (1) strain, (2) political problem-solving perspective, (3) a turning-point event, (4) commitment to act, and (5) engaging in the political crime. Although he recognizes many of the limitations of his idea, the cases upon which Moran builds his model may be too ideographic to legitimately support the kinds of generalizations he made.

An alternative perspective has been offered by Austin Turk (1982). His structural conflict theory posits that although power and inequality are important factors in explaining political crime, the cultural gap between offenders and authorities is the primary factor that leads to the commission of political crime. Turk's theory is interesting, but it is limited in its explanatory power.

Merton's, Moran's, and Turk's theories are useful in describing, and in some cases explaining, various types of political crime, but they are not very helpful in accounting for all types of this phenomenon. The dynamic nature of such activities needs to be more thoroughly explored, and furthermore, the macro- and micro-level processes in political crime should be linked.

The Sociological Interpretation

Often, research about political crime has taken a static perspective or has maintained that political

crime primarily results from either state or oppositional activities. Like many other phenomena in the social and natural sciences, the process of political crime follows an interactive, iterative, or dynamic pattern. In short, building on Newtonian physics, nothing in nature is static, and neither is political crime. One of the central hypotheses underlying political crime is grounded in the interaction between anti-systemic crime and state crime.

In an effort to illustrate how dynamic political crime can be, numerous historical examples offer a perspective whereby state crimes can cause oppositional crimes and vice versa. In other words, political crime does not exist in a vacuum. Rather, as previously mentioned, it is affected by a series of factors that are endemic to the people who commit the crimes, the occupations they hold, the organizations that employ them (or of which they are members), and more generally, the context in which a particular crime exists. Thus, political crime is a response to a variety of subtle, ongoing, interacting, and changing psychological and structural factors manifested by perpetrators, victims, state agencies, and audiences.

A vast array of theories may shed light on the nature of political crime. Moreover, one must accept the fact that each type of political crime may have a different cause. The relative cause of a particular political crime, therefore, depends on the situational dynamics. One category of theories are micro in focus because they explain phenomena pertinent to people, their differences, their mental states, and their interactions. The micro theories typically explain individual-level behavior and encompass explanations subsumed by psychology. On the other hand, macro theories are relevant because they clarify how environmental factors (including institutions, economics, political systems, and cultures) affect individuals and groups. Among the macro theories are sociological explanations, sometimes called structural explanations.

In general, structural theories posit that the causes of terrorism can be found in the environment and/or the political, cultural, social, and economic structure of societies. Social-psychological theories specify and explain group dynamics and explore why individuals join organizations and how participants (perpetrators, victims, and audiences) affect the commission of acts. Finally, rational choice theories explain the participation

in organizations and the choice of actions because of participants' cost-benefit cognitive calculations.

Structural theories explain human behavior by focusing on the social structures within which individuals must function and on the organizational dictates that affect varieties of behavior. Despite their diversity, these theories share a main concern in explaining societal organization and the ways that people are affected by institutions, culture, economies, and conflict.

Although several structural theories may be relevant to a discussion of political crime, many scholars regard conflict theory as the most valuable or useful explanation. To make matters more complicated, a variety of different conflict theories have been formulated. They range from conservative to radical perspectives, but they all agree that conflict is a naturally occurring social phenomenon. Special attention should be given to the variety of radical and critical theories including but not limited to Marxist, neo-Marxist, and conflict approaches. Radical conflict theory, some theorists suggest, explains the roots of much political crime that is situated in and emanates from social, political, and economic processes.

Conflict theories differ specifically in their origins, their persistence, their ability to create change, and their contribution to criminal behavior. Many theories that have emanated from the radical/conflict tradition are parsimonious, have considerable explanatory power over other efforts, and are widely accepted by many criminologists, as evidenced by their inclusion in a large body of literature pertaining to political, white-collar, and state crime research. Nonetheless, these theories are difficult to apply to practical policy concerns.

Radical conflict theory traces its origins to the work of Karl Marx (1818–83). He (along with Friedrich Engels) suggested that conflict in society is the result of a scarcity of resources (i.e., property, wealth, power, and jobs). This creates inequalities among individuals and constituencies that in turn lead to a struggle between those who possess these resources and those who do not. During the 1960s, a number of theorists applied these theories to crime. These Neo-Marxist or "radical" conflict theorists suggested that class struggle affects crime.

R. Quinney, a leading radical conflict theorist, argued that all crime in capitalist societies (which stress individualism and competitiveness) should

be considered a manifestation of the class struggle, whereby people strive for wealth, power, money, status, and property. In countries dominated by a capitalist mode of production, a culture of competition arises. This is seen as normal and desirable and takes many forms, including criminality. Traditional neo-Marxists can be criticized for the disproportionate emphasis they place on the working class and the poor (what Marx calls the “dynamite”) as a catalyst of change. The working class and the poor levels of society rarely participate in the political process. Furthermore, the types of activities that are legislated as criminal, and that are responded to by the crime control industry, are often those behaviors most often engaged in by the poor and the powerless.

Conclusion

Although many political crimes are committed by groups that are formally or loosely structured, whether oppositional in nature or organized by state organizations, these activities are, in the final analysis, committed by individuals. These people are working within the structural confines of both informal and complex organizations, political systems, political economies, and different cultures. They make decisions and act, while often denying that any wrongdoing has occurred. In sum, political crime is the result of a complex interplay among individuals (I), situations/opportunities (S), organizations (O), and resource adequacy (R). These combined factors have been identified as the ISOR explanation. In general, governmental response to political crime ranges from apathy to policy advocacy to organizational or political change. In general, anti-systemic political crimes are met with state resistance or change, whereas state crimes are met with apathy, resistance, or demand for change from the public or its elected representatives. Apathy and resistance are the most disconcerting responses to state crime because they prevent its control and encourage future commission. For example, a state that is the victim of espionage can simply ignore that a threat to national security has taken place. Alternatively, a state can analyze the event or can engage in counterespionage. In this context, the ISOR relationship is not simply a resource mobilization theory or a crime prevention method brought into alignment with environmental design theories.

Even though conflict and differential association theories were developed to further the understanding of nonpolitical crime, they can easily explain political lawbreaking and, as a result, help us to understand the dynamics of political crime. Conflict in general, rather than that specifically motivated by economic factors alone, is the most important reason why people engage in political crime. Groups and in-group socialization are equally important and powerful motivators.

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See Also: 1600 to 1776 Primary Documents; 1921 to 1940 Primary Documents; Political Crimes, Contemporary; Political Crimes, History of; Political Dissidents.

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Political Dissidents

Political dissidents are individuals who disagree with the establishment, policies, or cultural, social, and economic practices of their time. They act, either as individuals or in tandem with like-minded groups, to effect change in the social, economic, political, or cultural arenas. They can be severely persecuted or punished by their government or law-enforcing groups because they pose a threat to the established order. Because of their new ideas or new ways of thinking, dissidents make important contributions to the society in all areas, instigating necessary shifts and forging new ground for multifaceted changes. Contemporary American political dissidents, usually being controversial figures, have been present and influential in the American public discourses because of political stances or intellectual differences.

Political dissidents are dissatisfied with or in opposition to the practices of the ruling class. They can convey their opinions in peaceful discussions, civil disobedience, or demonstration with force. While repressive regimes have been known for persecuting their political dissidents, pro-democracy governments like the one in the United States have been more tolerant of them.

In spite of the diverse areas in which dissent has been expressed in the United States, the term *political dissident* has been used as the common term. Since the impetus for the dissidents' defiance of the current system is their dissatisfaction with the establishment, their ultimate goal is to change the existing paradigm. Political dissidents, therefore, assume a form of authority and establish a kind of polity via their acts and thoughts. While the term *political dissident* was widely used first in the mid-20th century, it is also applicable to figures living before this time with similar orientations and public reputations.

The Risk of Dissent

It is noteworthy that a substantial number of political dissidents from other countries have sought refuge in the United States. This fact, together with the freedom that American political dissidents have, as found in the cases of Michael Moore and Noam Chomsky, shows that political dissent is tolerated, and with time, celebrated. American political dissidents do not have the need to use a pseudonym for the sake of their safety and life. While the American political dissidents might not be able to effect change in the system, be it governmental or social or cultural, at the time of their engagement, they do contribute to change by transforming the public thoughts and discourses over time. However, a dissident deemed a threat to the government will not be tolerated. If the dissent demonstrates nationwide influence with a movement behind it, then the dissidents' lives will be at risk.

Critics of politicians and policies can be labeled dissidents and persecuted for treason against the authorities. In 1919–20, for instance, an estimate of 10,000 members of labor organizations and socialist-communist groups were arrested in raids led by U.S. Attorney General Alexander Mitchell Palmer. In like manner, in the late 1940s through the mid-1950s, hundreds of leftist civilians were investigated or blacklisted from selected jobs.

During the civil rights movement in the 1950s and 1960s, several opponents of racial segregation and political exclusion were arrested and assaulted by the governing body.

An early case of political dissent involved the trial of John Peter Zenger. During the early 1730s, William Cosby was the governor of the colony of New York. The *New York Weekly Journal*, America's first independent political paper, criticized the governor for replacing Lewis Morris, the chief justice of New York, who decided against the governor in a lawsuit. The founder and editor of the *Weekly*, James Alexander, had authored the critical articles. John Peter Zenger was in charge of the printing. The governor then sued Zenger "for printing and publishing several seditious libels dispersed throughout his journals or newspapers, titled the *New York Weekly Journal*; as having in them many things tending to raise factions and tumults among the people of this Province, inflaming their minds with contempt of His Majesty's government, and greatly disturbing the peace thereof."

Andrew Hamilton, a Philadelphia attorney, defended Zenger, arguing that the published statements could not be considered libelous if they were true. According to the English law of the time, truth was not a defense to libel. The jury acquitted Zenger nonetheless and by so doing established a central tenet of defamation law—that truth is an absolute defense. The decision redefined the law of libel and slander during the era of the trial and set the ground for the freedom of the press that the United States celebrates today. Gouverneur Morris wrote this of the Zenger case: "The trial of Zenger in 1735 was the germ of American freedom, the morning star of that liberty which subsequently revolutionized America."

Prominent Dissidents

While several political dissidents have been male, an early female figure changed the world of politics, exerting a bicontinental, if not global, influence during the first decades of the 20th century. Emma Goldman, native of Kovno, present-day Lithuania's Kaunas, was born in the Russian Empire in 1869 and moved to the United States in 1885. Her interest in anarchism developed after the Haymarket affair, and blossomed into great writings and lectures on anarchist philosophy,

women's rights, and social issues. Goldman joined her lover and lifelong friend, anarchist writer Alexander Berkman, in planning the assassination of industrialist and financier Henry Clay Frick as an act of propaganda. Although the assassination failed, Berkman was sentenced to 22 years in prison. Goldman was incarcerated multiple times the following years, having incited riots and illegally distributing information about birth control. Goldman left a substantial legacy of political activism and writings in various areas, such as prisons, atheism, freedom of speech, militarism, capitalism, marriage, free love, and homosexuality.

A political dissident of the early 20th century—who participated in politics—was Eugene Victor Debs. He was known for his commitment to political activism, social justice, union organizing, women's rights, children's rights, and pacifism. He is also known for epitomized progressivism, humanitarianism, and social criticism. Born in Terre Haute, Indiana, in 1855 to French immigrant parents, Debs left school and worked as a painter for the railroad yards when he was only 14. A year later, he worked as a railroad fireman, and engaged in the trade union movement.

In 1884, Debs was elected to the Indiana legislature as a Democratic candidate. He was elected the first president of the American Railway Union (ARU) in 1893. The ARU called for a strike in 1894 when the Pullman Palace Car Company reduced workers' wages and refused arbitration. The strike spread to 27 states, with Debs being recognized as an orator comparable to Abraham Lincoln. Nonetheless, Debs was arrested and imprisoned as a result of Richard Olney, the attorney general, filing an injunction under the Sherman Anti-Trust Act against the Pullman Strike. The Supreme Court heard the case in 1895, where David Brewer refused the ARU's appeal. This hearing adversely pushed back the initial efforts of the trade union movement.

During his incarceration in Woodstock Prison, Debs engaged in the writings of Karl Marx and became a socialist, convinced that a new cooperative system should replace capitalism. Remaining on the moderate and balanced stance, Debs rejected the revolutionary violence endorsed by some left-wing groups. He cofounded the Social Democratic Party (SDP) with Victor Berger and Ella Reeve Bloor in 1897.

Debs ran for presidency in 1900 under the endorsement of the SDP, but lost. In 1901, the SDP and Socialist Labor Party merged into the Socialist Party of America (SPA). Debs also contributed to the weekly *Appeal to Reason*, whose circulation was among the highest in the United States. In 1904, Debs ran again as an SPA presidential candidate and was rather close to winning, only third to Theodore Roosevelt's first.

Debs was also against some wars, opposing World War I because of its roots in the imperialist competitive system. In 1917, the U.S. declared war on the Central Powers. In 1918, Debs gave a speech in Ohio criticizing the Espionage Act, was arrested, convicted, and sentenced for 10 years. While in prison, Debs commenced his fifth attempt at the U.S. presidency under the Socialist Party in 1920. Lincoln Steffens paid Debs a visit during his incarceration, and later campaigned for Debs' release on the ground that Debs rejected Bolshevism and violence. In 1921, President Warren G. Harding pardoned Debs, but the socialist activist died five years later in Elmhurst.

Contemporary American Dissidents

It is useful to examine the discourses of some leading political dissidents in contemporary American history. Dr. Martin Luther King, Jr., though celebrated as a renowned civil rights leader in the 21st century, was a political dissident of his time. He was born on January 15, 1929, and grew up during the turbulent era of the Great Depression and World War II. Though a religious leader because of his role as a Baptist minister, King worked tirelessly and fearlessly for a color-blind society and civil rights. He received threats from the Federal Bureau of Investigation (FBI), challenged the establishment in racial injustice, called for economic equality, and organized marches for the working poor. Though King's activism is celebrated worldwide today, his work was not accepted by the establishment at that time. King was opposed to the U.S. involvement in Vietnam. He criticized the government for spending too much money and resources on the war in Vietnam and not enough on the needy at home. He accused the United States for the loss of civilian lives in the war. His antiwar stance had severed support from his white allies, including President Lyndon Johnson, prominent publishers, and union leaders.

Nonetheless, King called for change in the political and economic structures of the nation. He urged a redistribution of resources to remedy racial and economic injustices.

The benefit of hindsight proves that King contributed tremendously to the development of the United States as a nation in the areas of civil rights, racial justice, and economic equalities. Nonetheless, as in the case of most dissidents, he suffered resentment, violence, threats, and assassination. He was clandestinely persecuted by the FBI because of his influence and his message. Yet in 1964, King was the youngest person to ever have received the Nobel Peace Prize for his activism to end racism through nonviolent means. As American society evolved, King was acknowledged at home as well. He was posthumously accorded the Presidential Medal of Freedom in 1977 and Congressional Gold Medal in 2004. In 1986, Martin Luther King Jr. Day was established as a U.S. federal holiday in honor of his contributions.

Another prominent political dissident in American contemporary history is Avram Noam Chomsky. Born on December 7, 1928, he is an American linguist, philosopher, cognitive scientist, and social activist. In the 1960s, Chomsky started to emerge as a political dissident and anarchist, opposing the Vietnam War with his 1967 essay, "The Responsibility of Intellectuals." Two years later, he expanded this essay into a book titled *American Power and the New Mandarins*, detailing his opposition to the Vietnam War.

These publications, together with Chomsky's provocative commentaries about U.S. foreign and domestic policies, helped establish him as a prominent political dissident. He has since been consistently outspoken against U.S. foreign policies, declaring himself anarcho-syndicalist and a libertarian socialist. Chomsky is also critical of certain aspects of American life, culture, and society. His 1988 *Manufacturing Consent: The Political Economy of the Mass Media*, coauthored with Edward S. Herman, analyzed how propaganda model theory worked in the mainstream media. Chomsky argued that the U.S. government and mega-media corporate companies conspired to manipulate the opinions of the American public.

Chomsky's influence is widespread and steady, making him the most cited living author and the eighth most cited source of all time. The 1992

Arts and Humanities Citation Index listed Chomsky as the most cited scholar from 1980 to 1992. Like most political dissidents, he has a controversial status, particularly because of his criticism of U.S. foreign policies. Nonetheless, Chomsky has authored more than 150 books and gained global awareness of his stance.

Another popular political dissident, closely connected to the entertainment industry, is Michael Moore. An author, filmmaker, and political activist, Moore has engaged with pressing issues in contemporary America through documentaries with an edge. A highly controversial figure, Moore has produced and directed numerous films that are critical of American political, social, and cultural practices. His 2009 *Capitalism: A Love Story* documentary sought to see why the American government is still subsidizing the financial institutions that are responsible for the loss of jobs and homes of millions of Americans. In 2007, Moore released *Sicko*, raising debates about the millions of Americans without health coverage and treatment. His numerous other documentaries tackle issues such as gun violence, the chasm between the first and third worlds, terrorism, and corporate America.

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See Also: 1600 to 1776 Primary Documents; 1777 to 1800 Primary Documents; 1801 to 1850 Primary Documents; 1851 to 1900 Primary Documents; 1901 to 1920 Primary Documents; 1941 to 1960 Primary Documents; Federal Bureau of Investigation; King, Martin Luther, Jr.; National Association for the Advancement of Colored People; Political Policing.

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Political Policing

Political policing, though it might have had its genesis in previous American and European history, is seen as a 20th-century phenomenon. Political policing is defined as the police's curbing of political expressions and activities of the people, which can be in the form of protests, demonstrations, sit-ins, town hall meetings, walks, and others. In very few cases, political policing can be seen in investigations of corrupt political practices. Political policing can involve coerced force, beating of civilians, use of weapons, arrests, incarceration, and persecution. Today, political policing takes place worldwide and is documented by bloggers or demonstrators across the Web. The multimedia outlets also feature news and editorials pertaining to political policing incidents.

The root of political policing can be traced back to the 18th and 19th centuries, when states increasingly employed the political police to enforce codes of behaviors and to suppress internal opposition. When the people organized and pushed for social and political changes, as seen in the French Revolution, the government and its neighbors were concerned about the spread of such movements and uprisings. Better means of communicating helped political organizers amass supporters and followers, leading to an organic growth and far-reaching effects.

While some political police forces were set up to suppress a particular event, these forces remained in place even after the conclusion of such event. This helps explain why political policing accumulates, continuing through regime changes and transitions in the form of structural continuities, common targets, or other characteristics and methods. Though the American people enjoy a great deal of democratic processes, political policing is also present and prevalent. In recent years, political policing has focused on immigration issues, targeting immigrants and activists alike. While political policing can target corrupt elected

officials and shady governmental administrators, it is most often seen in oppressing civil demonstrations and protests.

Political policing touches upon various governing and law-enforcing aspects. Though the police force is projected as defender of the public in a democratic society like the United States, it can be said that such effort is made because federal leaders know how much they need public support. Therefore, politicians can use double speech in order to uphold the police force and cover up ambiguities or abuses. Furthermore, the police force is essentially a law enforcement agency, working primarily to endorse a dominant ideology and to protect the ruling classes.

Historical Context

The earliest incident of political policing might have been the Alien and Sedition Acts of 1798, an effort by Congress to strengthen the federal government as it faced the threat of war with France. The four laws collectively named the Alien and Sedition Acts and sponsored by the Federalists were intended to repress possible political opposition from the Republicans under the leadership of Thomas Jefferson. On June 18, Congress passed the first law, the Naturalization Act, which required that aliens be residents for 14 years instead of five years before they became eligible for U.S. citizenship. On June 25, Congress passed the Alien Act, authorizing the president to deport aliens deemed "dangerous to the peace and safety of the United States" during peacetime. On July 6, Congress enacted the third law, the Alien Enemies Act, allowing the wartime arrest, imprisonment, and deportation of any alien subject to an enemy power.

On July 14, the fourth and final law, the Sedition Act, was passed, declaring that any treasonable activity—including the publication of "any false, scandalous and malicious writing"—was a high misdemeanor, punishable by fine and imprisonment. This legislation was responsible for the arrest of 25 men, most of them editors of Republican newspapers, and the forced closure of their respective newspapers. Among the 25 arrested was Benjamin Franklin's grandson, Benjamin Franklin Bache, editor of the *Philadelphia Democrat-Republican Aurora*. He was charged with libeling President John Adams, and his arrest



U.S. Army soldiers of the 130th Military Police Company, Tennessee Army National Guard role-play as rioters during training for their upcoming deployment. Political policing is the police's curbing of political expressions and activities of the people, which can be in the form of protests, demonstrations, sit-ins, town hall meetings, walks, and others.

resulted in a public outcry against all of the Alien and Sedition Acts.

At the time, several Americans challenged the constitutionality of these laws. Public opposition put tremendous pressure on the government and helped elect the Republican candidate Thomas Jefferson to the presidency in 1800. The new president pardoned all those convicted under the Sedition Act, and Congress refunded all fines including interest.

Party line is not the only factor that prompts political policing. For various reasons, political policing can be closely linked to racial profiling in that certain racial groups are targeted as a result of criminal stereotypes or discriminations. The establishment or expansion of a particular political police force can also be sustained even after

the cause, such as a moment of crisis, has dissipated. In 1917, the Federal Bureau of Investigation (FBI) developed a political mission to monitor the activities of radicals opposing U.S. entry into the war and to surveil large groups of German immigrants. At the conclusion of World War I, the force was maintained because of the rise in left-wing radicalism.

Governmental Justifications

The government can argue that political policing is used to gather information about the public in order to aid in better governing. This can be a pretext in that in a democracy, other channels of communications, such as newspapers and online forums, can accomplish this task. It is important to note that in democratic regimes, the targeted

groups are focused, whereas in dictatorships, the extremist approach can be the case and therefore the targeted groups can mean anyone.

It can be said that the police structures are most specialized in the political arena, where secrecy shields policing activities from public view. Techniques used in political surveillance include collection of information, intercepting correspondences, listening to conversations, using informants and agents, and manufacturing evidence should such become unprocurable by force. When using force, the police are aware that they will be held accountable by the public, and abuse always takes place in secret.

The U.S. government is also alleged to have trained police forces in Latin America and elsewhere on political policing, and hence partaking in this process beyond its geographical territories. The U.S. training programs are preferred for penetrating police structures, starting with basic coaching in traffic control techniques and technologies. Then the training moves to large-scale operations and manipulations.

The United States spends a large budget on police assistance to third world countries, exceeding \$337 million in the years 1962 through 1974 alone. During these 12 years, the United States sponsored almost 1 million foreign police officers to receive instruction in their own countries and more than 5,000 trained at the International Police Academy based in Washington, D.C. The training program covered surveillance techniques, interrogation procedures, methods of conducting raids, crowd-control procedures, and intelligence gathering. Participants in these training programs also watched films with policemen using violent techniques in suppression procedures. In their final writing assignments, the participants claimed that the programs had prompted them to use physical coercion and torture.

In the World War II era, with the fight against communism and fascism, the U.S. police assumed a dominant and implicit role in Central America. Presidents Harry Truman, Dwight Eisenhower, and John F. Kennedy expanded the policy on political policing in these countries, giving it a less intimidating look than direct military intervention. When the policy was at its peak in the 1960s and 1970s, Latin American countries experienced state-led brutality and inhumanity. This has been

seen as the United States ensuring its own security by asserting its agenda, rather than delivering what it claimed, which was to democratize the police forces in its southern neighbors.

During the first decade of the 21st century, the American public has scrutinized its law enforcement for political policing of people with Muslim backgrounds, such as through raids at mosques, arrests, imprisonments, and home searches. After the September 11, 2001, attacks on the World Trade Center in New York and the Pentagon in Washington, D.C., and the Iraq War in 2003, law enforcement had shown increased interference with the civil liberties of Muslim Americans.

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See Also: American Civil Liberties Union; Political Dissidents; Terrorism.

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Polk, James K. (Administration of)

Often referred to by the American press as "Young Hickory," James Knox Polk (1795–1849) served one term as the president of the United States, 1845–49, but is most remembered for acquiring Oregon, California, and Texas, which established the United States as a continental power, united from coast to coast. Polk was born to Samuel and

Jane Polk in Mecklenburg County, North Carolina; he was the first of nine children. Soon after Tennessee entered the Union in 1796, Samuel Polk moved his family there to settle along the Duck River in the newly formed Maury County. Faced with the hardships of frontier life, young James Polk suffered from chronic illness caused by a urinary bladder stone that had to be removed surgically at age 17. In 1818, Polk graduated from the University of North Carolina with honors in mathematics and the classics he subsequently studied law in Tennessee at the office of Felix Grundy. Admitted to the Tennessee bar in 1820, Polk began practicing law in Columbia, Tennessee. While a member of the Tennessee state legislature, in 1823, Polk kindled a friendship with Andrew Jackson and soon became a great proponent of the Jacksonian ideas of westward expansion and Manifest Destiny, which he maintained as a congressman, as the governor of Tennessee, and later as the 11th U.S. president.

As president, Polk sought the annexation of Texas and reclaimed the American rights to the Oregon Territory, which were disputed by Great Britain. His aim was to gain vast lands to the west that would provide the United States with vital resources and ports, especially San Francisco Bay. Ultimately, his goals led America into its first successful invasion of a foreign country and its first occupation of a foreign capital.

The Texas Revolution of 1836 was sparked by the Battle of the Alamo, which later led to the defeat of Mexico's General Antonio Lopez de Santa Anna at the Battle of San Jacinto. The newly independent Republic of Texas was recognized by Britain, France, and the United States. However, efforts by Texans to join the United States offended the Mexican government, which in turn threatened military action if the United States attempted to annex the territory. The 1845 annexation of Texas subsequently resulted in President Polk mobilizing U.S. troops at the Rio Grande boundary, whereby this provocation swiftly initiated the U.S.–Mexican War when U.S. cavalrymen were killed and wounded at the Rio Grande in May 1846. Polk proclaimed the incident as the shedding of American blood on American soil, which resulted in a declaration of war from Congress. Outmatched and outnumbered, the resource-depleted Mexican army was

decimated by the much larger American forces. The 1848 Treaty of Guadalupe Hidalgo ended the war and coerced Mexico to surrender the territories that make up the current American southwest, including Arizona, California, New Mexico, Nevada, and Utah. However, the treaty also entailed the payment of \$15 million to the Mexican government. Approximately 75,000 to 100,000 Mexicans living in these areas instantaneously became American citizens by default and were consequently subjected to harsh property taxes that many were unable to pay, leading to numerous land seizures and many dispossessed people.

In the midst of the war with Mexico, President Polk accepted a compromise with Britain that led to the Oregon Treaty, whereby the 49th parallel was set as a boundary between the United States and Canada, with rights of free navigation for both countries. The resulting land acquisition included the modern-day states of Idaho, Oregon, and Washington. These new lands presented the opportunity for the expansion of the institution of slavery to western America, since the soil of southern cotton plantations had become depleted of nutrients, an issue later addressed by the Civil War. Polk retired in 1849 and died four months later in Nashville at age 53. His remains rest at the state Capitol grounds in Nashville.

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See Also: California; Oregon; Presidential Proclamations; Texas.

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Pornography

Obscenity is one of the only types of speech not protected under the First Amendment free speech clause of the Constitution of the United States. As pornography has been characterized as obscenity over the years, this has resulted in an often tumultuous history between pornography and crime. The definition of obscenity, and what sexually explicit materials qualify as obscene, has been the topic of some of the primary debates at the center of the issue of pornography and crime.

Pornography typically refers to erotic or sexual representations designed to arouse and/or pleasure those who read, hear, see, or handle them. More broadly, the actual definition of “pornographic” is always shifting between two equally ambiguous concepts, the erotic and the obscene. In the United States, representations considered erotic are often considered socially acceptable, as they are associated with aesthetics, good taste, or considered artistic. In contrast, obscenity represents criminality and vulgarity. In the United States, obscene material can be prosecuted because of its offensiveness, demeaning quality, or inhumanity. However, pornography is considered to be legal. Thus, pornography is legal, but only within certain limits that are defined by ever-changing definitions of obscenity.

The difficulty in officially defining “obscenity” resides in the words of former Supreme Court Justice Potter Stewart, who said of obscenity: “I know it when I see it.” Because Stewart was essentially blind at the time of his comment, he exhibits the difficulty of deciding what is obscene rather than pornographic. The U.S. justice system has been equally vague when coming to a definitive statement defining obscenity. Sexual norms are always changing, thus representations of what might be considered obscene are constantly changing. When a representation once considered obscene or criminal becomes so commonplace that stigma against it weakens, it eventually moves into the pornographic, then into the erotic.

Obscenity laws were first established in the mid-19th century. The first laws were put in place after the Civil War in response to lewd postcards sent via the mail by members of the Union army. Soon after, in the early 1870s, Anthony Comstock began organizing the first antipornography

campaign in the United States. These efforts culminated with the passage by Congress in 1873 of the Comstock Act. This law forbade sending any sexual content through the mail, including not just explicit pictures but also any information about birth control, sexual health, and abortion. Anthony Comstock was also empowered to enforce this law as a special agent of the U.S. Post Office Department. Comstock devoted his career of 40-plus years to personally arresting those he found guilty of violating the law, claiming great success.

The U.S. Supreme Court first addressed the issue of obscenity after World War II in an effort to allow literature with sexual content such as the works of William Faulkner to be published while excluding pornography. In 1957, the court formally stated that obscenity was not protected as free speech. At the same time, the standard of what counted as obscene was shifted from consideration of isolated passages to the work as a whole. Then, in 1969, the Supreme Court first legalized possession of pornography.

The first determination of obscenity established by the courts was the Hicklin test. This was part of the decision of the 1868 case *Regina v. Benjamin Hicklin*. The test of obscenity was ruled to be “whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort might fall.” The Hicklin test was replaced by the Roth test. The Roth test was part of the 1957 decision in *Roth v. United States*. The Roth test was intended to set a national standard for defining obscenity. The Roth test argued that a text was obscene if the “dominant theme taken as a whole appeals to the prurient interest” of an “average person, applying contemporary community standards.” This would be again disputed and revised in 1966 in *Memoirs v. Massachusetts*, where obscenity was defined to be that which is “patently offensive” and “utterly without redeeming social value.” These criteria would be altered and compiled into the current legal definition of obscenity.

The current definition of obscenity was established by the Supreme Court in its ruling on the 1973 case *Miller v. California*. This ruling establishes that states can establish their own standards of obscenity as long as they also meet the criteria

that “as a whole, they appeal to a prurient interest in sex,” that sexual behavior is portrayed in a way that is “patently offensive” and that the works in question “as a whole, do not have serious literary, artistic, political or scientific value.” If a work is found to meet all three of these criteria, it may be deemed obscene and regulated or censored. These criteria still remain open to interpretation.

The regulation of obscene material has also impacted the study of sexuality. As early as 1950, when in *United States v. 31 Photographs* Alfred Kinsey’s Institute for Sex Research was accused by the federal government of illegally importing obscene material. Ultimately, the Institute for Sex Research prevailed in 1957 when a federal court ruled in its favor. However, concern about obtaining and considering the impacts of pornographic content has remained a concern for sexuality researchers. This is particularly true for research on adolescent sexuality, as viewing pornographic

content by a minor or showing a minor pornographic content is illegal and severely punished in the United States.

There is also a long-standing debate as to whether viewing pornography encourages violence, particularly sexual violence. Two separate presidential commissions have been convened to explore these questions, as well as considerable psychological and sociological research. The first President’s Commission on Obscenity and Pornography was appointed by Lyndon Johnson and reported to Richard Nixon. The conclusion of this commission was that pornography had no discernible effects on encouraging crime. The commission further advocated that most obscenity laws should be repealed. President Nixon rejected the recommendations of the commission, yet sexually explicit movies, books, and magazines thrived in popularity during the 1970s.

The second presidential commission was convened by Ronald Reagan. The Attorney General’s Commission on Pornography, better known as the Meese Commission, was specifically tasked with finding a causal relationship between pornography and social problems. The Meese Commission, comprised of 11 members, six of whom were antipornography activists, concluded that pornography did contribute to social problems. This included the conclusion that pornography encourages sexual violence and abuse. Several members of the commission formally dissented. Psychological and sociological research has not come to a consensus regarding any relationship between pornography and crime. Nonetheless, in response to the Meese Commission’s report, the National Obscenity Enforcement Unit was created. It was employed by Presidents Ronald Reagan and George H. W. Bush to indict hundreds of manufacturers and distributors of sexually explicit movies. They employed tactics such as filing charges in conservative districts to capitalize on the community standards component of the definition of obscenity. While many companies were successfully prosecuted, this did not prevent a significant rise in the popularity and production of pornography from the mid-1980s through the 1990s. One company in particular, PHE, which produced the Adam & Eve catalogs of products, fought the indictments and successfully defended itself against the charges.



Larry Flynt, pictured here at an adult film event, is the head of Larry Flynt Publications. In 2003, *Arena* magazine listed him as number one on the “50 Powerful People in Porn” list.

After George H. W. Bush's presidency, the focus of the Department of Justice was shifted away from prosecuting video manufacturers and distributors. In 1996, the Communications Decency Act was passed that regulated the transmission of obscenity over the Internet. This was still not a priority of the federal government during the second term of Bill Clinton. However, George W. Bush and Attorneys Generals John Ashcroft and Alberto Gonzalez returned to a concerted effort to charge and prosecute a number of pornography companies and individuals with obscenity. Most of the people and companies charged by these attorneys general were ultimately dismissed by courts or unsuccessfully prosecuted.

Organized Crime

Although the connection between pornography and organized crime has diminished over the last two decades, the association still exists in certain facets of the pornographic industry. For the first half of the 20th century, profits in the pornographic industry were minimal and attracted little attention from organized crime. However, the growing popularity of pornographic magazines and films in the 1960s and 1970s led to Mafia control over distribution and production of a variety of pornographic materials. During this time, the Mafia moved forcefully into peep shows, arcades, and adult movie houses where porn could be exhibited and sold, and competing organized crime syndicates fought, scammed, and murdered one another for various pornographic enterprises. For example, in New York, organized crime organizations leased or purchased real estate in slum neighborhoods, then subleased the building to sex businesses for inflated rent, operated protection rackets, and used such businesses to launder money.

The Attorney General's Commission on Pornography and the Justice Department both cited criminal organizations' heavy involvement in the pornography industry during the 1970s. Organized crime is contingent on providing goods and services that are forbidden and illicit but also in high demand. For example, in the late 1960s, organized crime possessed or controlled practically all homosexual meeting places in New York City. However, once homosexuality began to lose its taboo in the United States and hold the rights of heterosexual citizens, the Mafia's profits began to

falter. Similarly, as the distribution of sexual representations gradually became decriminalized and legalized, organized crime began to retreat from pornographic enterprises.

However, even into the 1980s, organized crime controlled various conduits into the pornographic industry, such as magazines, films, videos, and sexual accessories; owned book distributorships; and laundered money through strip clubs and bars. Since the 1980s, the influence of organized crime within the porn industry has waned. The reasons are many: continued convictions of pornographers tied to the Mob, the relentless prosecution of crime syndicates by the Justice Department, the decline of porn theaters due to DVD sales, and the Internet, which distributes a massive amount of pornography and is unable to be controlled by organized crime. Currently established communications and cable corporations earn the largest profits from pornography, primarily through selling it via cable services in hotel rooms. Aside from prostitution, only the connection between organized crime enterprises and strip clubs or bars remains as significant as in the past. Some experts suggest that strip clubs and bars may be the last of the pornographic enterprises tied to organized crime syndicates because they provide opportunities for skimming profits and laundering money.

Child Pornography

In the United States, child pornography refers to pornographic material that includes sexual depictions of anyone under the age of 18. Producing or owning child pornography carries severe penalties. It is also a serious crime to show anything pornographic to anyone under the age of 18. Given the cultural taboo and the ongoing investigation and prosecution of child pornography production and viewing, it is limited to a very small segment of the population. The issue was brought to widespread attention with the cases of Traci Lords in the early 1980s and Alexandra Quinn in the early 1990s. These two actresses were discovered to have used false identification to enter the pornography business and appeared in numerous pornographic films while under the age of 18. Popular media reported on the threat and spread of child pornography, largely on the Internet. While most scholars agree that these threats were inflated, they took hold in the popular imagination and the federal

government responded. This led to the passage of 1995 laws that required producers of any pornographic images to keep evidence of the age of all participants. The 1996 Communications Decency Act was passed soon after to further regulate pornography on the Internet and establish harsh penalties, in particular for child pornography.

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See Also: Comstock Law; Indecent Exposure; Morality; Obscenity; Organized Crime, Contemporary; Sodomy.

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Posses

The term *posse*, from the medieval Latin *posse comitatus*, generally refers to the power associated with a group of men. Posse comitatus is defined as “A group of citizens who are called together to help the sheriff keep the peace or conduct rescue operations—Often shortened to *posse*.”

Legal Basis of the Posse

As a part of the compromise reached between northern and southern politicians at the end of Reconstruction, Congress agreed to limit future use of federal troops in local law enforcement matters by passing the Posse Comitatus Act of 1878. It stated that it would be unlawful to use any members of the army as a posse, except in exceptional situations authorized by the Constitution or by an act of Congress. The act also

prohibited the appropriation of funding for any such use of troops if in violation of the act. At the state level, the authority for a county sheriff or other law enforcement officer to conscript any able-bodied males to assist him in keeping the peace or to pursue and arrest a fugitive originates in what is known as common or de facto law. Initially, law enforcement officers were authorized to form posses without any structured authority, but over time and with the misuse of the practice, many states imposed statutory requirements on the deputization of civilians. In the 20th century, most states have statutes that diminish the role of sheriff's posses, except for rare instances, such as in Arizona. Recently, a number of sheriff departments have formed civilian groups, appropriately also known as posses, to assist with the organizational and communal needs of their communities but without the legal authority to arrest fugitives.

Posses in the American Old West

The more popular use of the word is most often associated with the American Old West, even though law enforcement officers have used the practice throughout Europe and the United States for several hundred years. Also known as a sheriff's posse, civilians were deputized for a limited time frame in order to accompany the sheriff in apprehending fugitives and outlaws. The posses of the Old West were made up mostly of men on horseback in order to travel as quickly as possible. The use of posses in the Old West also exhibited a form of justice identified by Michel Foucault as “popular justice.” By legally deputizing citizens to assist in the apprehension of criminals, local law enforcement officers were also, at times, attempting to limit the growth and popularity of vigilantism. The largest of the early posses was formed by the sheriff of Northfield, Minnesota, to apprehend the James Gang after a failed robbery attempt at the First National Bank of Northfield. Three gang members were killed in town and the other six fled, pursued by a posse of well over 1,000 men. Only Frank and Jesse James managed to escape the posse and return to their home in Missouri.

The conflict that resulted in the Lincoln County War provided one of the most compelling examples of an Old West posse. The difference between an officer of the law and an outlaw in the Old West was often dependent on

political power. In 1876, Jon Tunstall and his business partner Alexander McSween opened a store in Lincoln County in direct competition with an existing store owned by Lawrence Murphy and James Dolan. As the competition built, Murphy and Dolan turned to local sheriff William J. Brady to support their business, while Tunstall and McSween in turn called in the town constable Richard Brewer and a posse of armed men, known as the Regulators, to protect them. Through their contacts in the local government, Murphy and Dolan obtained court orders against McSween and Tunstall. As the conflict grew, both lawmen turned to known outlaws to form their posses. Although posses were originally formed to apprehend fugitives, local business interests often turned to the men they employed as law enforcement officers to legitimize their control

over their economic and financial empires. Sheriff Brady's posse drew first blood with the murder of Jon Tunstall. Several of Tunstall's men, including Billy the Kid, witnessed the murder, but were too far away to prevent it. However, they saw the men who killed their employer, and the death of Sheriff Brady followed soon after.

Even though both sides initially employed legally formed posses, Murphy and Dolan's associates controlled the justice system in the Arizona Territory, thus the posses formed by Sheriff Brady and later Sheriff Pat Garrett had the support of state officials. Ultimately, Samuel B. Axtell, territorial governor, revoked John Wilson's appointment as justice of the peace in Lincoln County, claiming that the Lincoln County commissioners had no legal status to appoint him. Since Wilson deputized the Regulators and issued the warrants



The jail and courthouse in Lincoln, New Mexico, where Billy the Kid was tried, still stands today. The Lincoln County War was a feud that became famous because of the participation of a number of notable figures of the Old West, including Billy the Kid, John Chisum, and Sheriffs William Brady and Pat Garrett and the Old West posses that tracked them.

for Tunstall's murderers, Axtell's decree resulted in the Regulators losing their right to serve as deputies. Stripped of their legal protection, Tunstall's men were labeled outlaws and were left to face the Lincoln County sheriff and his posse as criminals. Sheriff Pat Garrett, appointed sheriff of Lincoln County in 1880, took quick advantage of his position, formed well-armed and tenacious posses, and ultimately hunted down each of the Regulators, including the infamous Billy the Kid. Once the regulators were gone, the sheriff's posses were disbanded and the men simply went on their way.

The last significant use of a deputized sheriff's posse resulted in the Latimer Massacre. In 1897, the Latimer mine owners near Hazelton, Pennsylvania, in an attempt to force striking workers to return to work, turned to the Luzerne County Sheriff's Office for assistance. The sheriff, recognizing the advantage of manipulating racial overtones, intentionally deputized a posse consisting of 100 English and Irish citizens to stand against the mine workers, who were Slavs and Germans.

On September 10, the sheriff and 150 armed deputies confronted nearly 400 unarmed strikers. The violence resulted in the deaths of 19 miners and as many as 49 men wounded. Public outrage over the deaths resulted in criminal charges against Sheriff James Martin, and 73 of the deputies who made up the posse were arrested. Although medical testimony provided evidence at the trial that nearly all the strikers had been shot in the back, the sheriff and his posse were acquitted. In response, and to limit any future similar altercations, many state legislators voted to restrain the use of posses and the arbitrary deputization of citizens.

Modern Day

Starting during the middle of the 20th century, local sheriff departments, depending on the state, employed community policing strategies where people helped the sheriff but without the legal protection afforded by being deputized as a member of a posse, and their services focused more on administrative and public relations duties. Yet, civilians are still called upon to serve in sheriff's posses as deputies in states where the legislature provides for their use, on rare occasions.

In June 1977, the sheriff of Aspen, Colorado, called for a posse to search for Ted Bundy when he escaped captivity. In the state of Arizona, many sheriff's offices allow for community policing units, known as posses, which work in a reserve status assisting the sheriff's staff in a number of situations. The posse members are considered part of the community policing corps and are not sworn deputies and have no legal rights to arrest offenders.

Phoenix, Arizona's sheriff, Joe Arpaio, created a group of civilian members known informally as the Immigration Posse. Sheriff Arpaio formed the posse, which includes nearly 3,000 members, in response to growing concerns over illegal immigration. Members of the posse are sworn in by the sheriff as "illegal immigration fighters" and function in the same manner as the earlier Old West posse members tasked with assisting the sheriff in apprehending fugitives—specifically, illegal immigrants crossing the U.S. boundary with Mexico. The Maricopa County Sheriff's Office defends the use of the posses by providing evidence of their effectiveness. Between 2007 and 2010, the sheriff's office, including its deputized posse members, investigated, arrested, or detained more than 42,000 illegal immigrants. Amid growing public debate about the use of the posses and the focus on apprehending illegal immigrants, the Arizona legislature passed a state law in April 2010 making it a crime if an immigrant is found not carrying immigration documentation, and authorizing police officers to detain or arrest anyone they suspect of being an illegal immigrant.

The U.S. Justice Department, facing pressure from Latino American and Human Rights groups, as well as the governments of Mexico and Central and South America, filed lawsuits against the State of Arizona and against the Maricopa County Sheriff's Office, charging that the state of Arizona violated the rights of the individuals stopped for suspicion of being illegal immigrants, and that the sheriff's office practiced discrimination, unconstitutional searches and seizures, and English-only policies in the Phoenix jails. The future use of sheriff's posses is dependent upon the outcome of the pending court cases.

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See Also: 1851 to 1900 Primary Documents; 1901 to 1920 Primary Documents; Adversarial Justice; Arizona; Billy the Kid; Dime Novels, Pulp, Thrillers; Justice, Department of; Sheriffs; Vigilantism.

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Presidential Proclamations

Mother's Day, Easter, World War II Veterans Remembrance, Crime Victims Recognition, Crime Prevention Week, Stalking Awareness, Sexual Assault Awareness, and hundreds more—these are the common occasions for presidential proclamations. Presidential proclamations can be an aspect of constituent services when they are largely ceremonial recognition of special events, days, weeks, months, or groups. Proclamations can be extremely controversial as in Gerald Ford's proclamation pardoning Richard Nixon or Jimmy Carter's amnesty for draft evaders. Traditionally, presidents in the closing days of their administrations issue proclamations pardoning wrongdoers, and sometimes these pardons generate controversy as well. Presidential proclamations are also a vehicle for setting aside land for parks and other uses. Presidents from Teddy Roosevelt to Bill Clinton and Barack Obama have used proclamations to designate public land for national forests and monuments.

George Washington established American neutrality, and Abraham Lincoln emancipated slaves through presidential proclamation. Lincoln also pardoned deserters, ordered the arrest of individuals who armed hostile Indians, and closed and opened southern ports. Andrew Johnson ordered the arrest of Jefferson Davis and other members of the Confederate government and blocked insurgent vessels while also lifting blockades of southern

ports, amnestying rebels, ending martial law, and recognizing reconstituted southern governments.

Powers and Limits

A presidential proclamation can implement a law or declare one. The presidential powers in event of crisis, emergency, or exigency other than war or natural disaster are derived from the Constitution and 200 years of congressional delegation. The powers are extensive, but they are not absolute. Since 1976, with enactment of the National Emergencies Act, the president has to declare formally the existence of a national emergency and specify what authorities he intends to use. Proclaimed emergencies have termination dates, and extension when the emergency persists requires the issuance of a new proclamation.

Legally, a presidential proclamation is equal in weight to an executive order (EO), but the EO targets those inside government while the proclamation affects those outside government. While less powerful than laws, they can have the same effect on trade, foreign affairs, travel, war, and peace. Usually, Congress delegates the powers exercised through EO or proclamation. The president may not suspend the Constitution, other than habeas corpus, regardless of the nature of the emergency, but the judiciary as well as the Congress have the right and obligation to restrain presidential use of emergency powers. The U.S. president can declare emergencies for rebellion or invasion and can suspend habeas corpus. He can also exempt military cases from the grand jury requirement during public emergencies.

The Eighteenth Century

In the summer of 1792, western Pennsylvanians, Virginians, and Carolinians began using force in protest of the imposition of the federal whiskey excise tax enacted in 1791. Given the limited means of transport, whiskey was the only product that farmers could ship at a profit. The tariff took what little profit the farmers made. Farmers in western Pennsylvania attacked federal excise agents. By 1794, the attacks had increased to include rioting and an attack on a federal marshal and the home of a regional inspector. Mobs of several hundred roamed the area, and Pittsburgh was in disarray. Congress authorized the calling up of the militia in the event of rebellion



Some proclamations can be extremely controversial, as was Gerald Ford's proclamation to pardon Richard Nixon. President Ford is shown here in the Oval Office in 1976.

and mandated that the president issue a presidential proclamation warning rebels to stand down. Were they to continue, the militia would go after them. On August 7, 1794, George Washington issued a presidential proclamation calling on the mobs to return home and calling out the militia into an army as large as the one that defeated the British—13,000 men. By issuing the proclamation, Washington assumed extraordinary powers, a great leeway granted by Congress for the emergency. Washington for the first time used the 1792 militia law and established a precedent that it could be used to suppress insurrections and execute the laws of the land and that the federal government could use troops from one state to deal with problems in another. The federal government was superior to the individual states. Washington also pardoned the leaders after their trials.

The Nineteenth Century

For 100 years after the Whiskey Rebellion, Congress granted presidents standby or permanent powers in emergencies. Permanent powers are inherent in the presidency because they are specified in the Constitution or laws, and the president can act without further authorization. Standby powers are available only within limits, and the president must activate them by issuing a proclamation of labor, economic, or military emergency. Through the first half of the century, presidents were largely free to act without restraints. The first challenge to the president's authority came in the early days of the administration of Abraham Lincoln.

With Congress not in session and the south seceding in 1861, Lincoln issued a proclamation blockading secessionist ports. He subsequently enlarged the navy, expanded the blockade, and called up an army by proclamation. Lincoln also suspended habeas corpus on April 27, 1861, in part of Maryland and the midwest, including southern Indiana, in response to requests by his generals for the establishment of military courts to control Copperheads (sympathizers with the Confederacy). Congress retroactively authorized his emergency acts, and the court exercised no oversight. When Lincoln imposed martial law under congressional authorization on September 15, 1863, he regularized the suspension of habeas corpus that he had proclaimed on his own authority on April 27, 1861.

Imposition of martial law is a controversial use of the presidential proclamation. Martial law occurs when the military assumes emergency control because civilian authorities are not functioning well enough to preserve order and security and to provide essential services. In extreme cases, the highest-ranking military officer becomes *de facto* governor and suspends the Constitution. Martial law is associated with suspension of habeas corpus, civil rights, and civil law. Habeas corpus is the right to a hearing about whether imprisonment is lawful, a means of judicial oversight of law enforcement. The Constitution allows suspension of habeas corpus in cases of rebellion or invasion if necessary to preserve public safety.

Under martial law, curfews are put in place. Military law and justice apply to civilians. Checks

on presidential power are in the hands of the judiciary. In the major habeas corpus case of the Civil War, *Lambdin P. Milligan* and four other Indiana Copperheads were sentenced to be hanged in 1864 for treason against the Union. Because the executions had not occurred by the end of the war, they had time to appeal to the Supreme Court, which declared the suspension unconstitutional because the civilian courts were in operation at the time of their trials. In *Ex parte Milligan*, the Supreme Court ruled that Lincoln exceeded his Constitutional authority when he suspended habeas corpus where civilian law was still in operation.

In the United States, the most extensive use of martial law came during Reconstruction after the Civil War. Ulysses S. Grant used proclamations frequently. In May 1870, he issued a proclamation against the Fenian Brotherhood's attempts to harm relations between the United States and Britain. The Fenian Army of Vermont responded by attempting to invade Canada. The effort failed, and the United States compensated Canada.

That same month, Grant received Congressional authority against the Ku Klux Klan. The first Klan Act made deprivation of civil or political rights by interference with voting a federal offense and allowed federal action in such cases. The third act, the Ku Klux Klan Act, passed in April 1871, enforced the Fourteenth Amendment by banning wearing disguises, intimidating officials, and creating conspiracies. Grant used the act in the election of 1872. Before then, in October 1871, he issued a proclamation against the South Carolina Klan. In September 1874, Grant's proclamation demanding the dispersal of the White League rebellion in Louisiana eventuated in the sending of three gunboats and 5,000 troops to New Orleans. The uprising ended in two days, but Grant and the Republicans were roundly criticized for sending troops to interfere in a local matter.

Presidents also proclaimed *posse comitatus*. The 1878 Posse Comitatus Act banned military involvement in domestic law enforcement unless authorized by Congress. After the Civil War, federal troops at southern polls helped to ensure blacks the vote and to keep out former Confederate officers, who were stripped of citizenship rights, including voting. In the west, there was also a need for more law than the sparsely

populated areas could provide, so military commanders exercised civilian police powers against criminals and Indians. When Congress enacted the Posse Comitatus Act, it seemed to infringe on the right to use troops in civilian police roles when no alternative existed. Although Rutherford Hayes vetoed the 1880 Army Appropriations Act because it seemingly blocked *posse comitatus*, he failed to notice that on congressional approval, the president could still activate a *posse comitatus* through proclamation.

World War I and Beyond

World War I and its aftermath saw the expansion of standby emergency authorities that the president could activate by proclamation of a national emergency. Proclamations ranged from the limited single event to the virtually unlimited ongoing state of emergency. Standbys remained a major source of presidential authority until the Vietnam War era, when in 1976, Congress revoked presidential use of standby authorities and required specific statutory authorization for proclaimed emergencies.

Woodrow Wilson, having proclaimed a state of war after Congress's declaration of war, used the presidential proclamation vigorously in 1918 for such war-related functions as registering men for the draft, licensing commercial activities, setting commodity prices, restricting diversion of foodstuffs to alcoholic beverages, taking of land and other resources for military purposes, calling up the coast artillery and other units, nationalizing American Railway Express and other transport activities, and expanding the coverage of the Trading With the Enemy Act.

In 1919, Wilson used the *posse comitatus* proclamation against rioters in Chicago. He sent the army into West Virginia's coal mining areas between 1917 and 1921. The army routinely intervened in labor disagreements in the coal mines of West Virginia between 1877 and 1920. By 1917, it was routine army duty because the process was clearly spelled out by the law and the Constitution, including the Posse Comitatus Act, and there was little chance that state and local authorities could abuse military power. Army efforts were perceived as equitable and fair, unlike those of the state National Guard called up by the state in similar disputes. Then, in 1917, Wilson abdicated the presidential role in labor disputes. In federalizing

the National Guard for wartime service, Secretary of War Newton Baker suspended the legal procedures that involved state legislatures, the president, and the war department. Power to call out federal troops devolved to state and local officials sympathetic to local business and patriotic groups. Between 1917 and 1921, without the restrictions of the presidential proclamation process, the use of federal troops to crush protest and organized labor was without precedent.

In 1932, Herbert Hoover proclaimed an emergency and used the military against the World War I veterans of the Bonus Expeditionary Force. Franklin Roosevelt issued his national emergency proclamation within 48 hours of taking office in 1933, using the 1917 Trading With the Enemy Act to declare a bank holiday. When Congress passed validating legislation, he issued a second bank holiday proclamation based on the law. In September 1939, Roosevelt proclaimed a limited national emergency, and in May 1941, he proclaimed an unlimited national emergency. The two remained in effect until 1947 when certain provisions were rescinded. Peace with Germany in 1951 and Japan in 1952 ended World War II, and presidents used the Emergency Powers Interim Continuation Act and the Emergency Powers Continuation Act to justify subsequent emergency proclamations after Harry Truman proclaimed in April 1952 that the 1939 and 1941 proclamations were terminated.

Hawai'i was under martial law from December 7, 1941, until October 24, 1944. During the Korean War, on December 16, 1950, Truman proclaimed a state of national emergency. Under the emergency proclamation, Truman nationalized the railroads and put them under the command of the Army Corps of Engineers. In 1952, the court ruled in *Youngstown Sheet & Tube v. Sawyer* that Truman had exceeded his authority because presidential actions during an emergency still had to conform to congressional acts.

When nationalized by proclamation in the 1950s and 1960s, the National Guard served in civil rights disturbances such as that Little Rock, Arkansas, and in the disarray surrounding the Democratic National Convention of 1968 in Chicago. Proclamations of emergency sent federal forces into Watts in Los Angeles, California, and other riot-torn cities.

Not all emergencies proclaimed by the presidents require the use of troops. Under the International Emergency Economic Powers Act of 1977, presidents can proclaim an emergency and freeze assets, confiscate property, and limit trade. Nixon also used emergency proclamations to declare the 1970 postal strike an emergency and for tariff adjustments. When a federal emergency is declared, the Federal Emergency Management Agency (FEMA) is empowered and federal assistance becomes available. Unlike in normal disasters (hurricanes and floods), in a federal emergency, FEMA can ignore administrative processes, and the federal government appoints those who oversee dealing with the emergency.

As a result of several presidential proclamations, the United States is currently in a state of emergency because of terrorism. In January 1995, Bill Clinton signed an executive order declaring a state of emergency and establishing an embargo on trade with terrorists interfering with the Middle East peace process.

Other emergencies that triggered presidential proclamations include the Sierra Leone diamond trade and the Iran hostage crisis of the Carter administration, which continued under new declarations in 1995 and 2001. In July 2011, Barack Obama issued a proclamation to fight transnational organized crime. The proclamation established antiterrorist measures, restricted travel to the United States by those involved, provided for seizure and blocking of assets, and established domestic and foreign activities to destroy terrorist networks by reducing the drug and money trade both at home and abroad. Assistance to foreign governments in implementing domestic antiterrorist networks and sharing information were also authorized.

Oversight

The power of presidential proclamation is extensive, particularly when Congress and the courts decline to check presidential actions. The Insurrection Act of 1807 gives the president authority to deploy troops domestically to put down insurrection, rebellion, and lawlessness. The applicable laws seek to give state and local governments the first chance to control unrest, and the idea is to delay and limit presidential involvement. In the aftermath of the terrorist attacks of September

11, 2001, and Hurricane Katrina in 2005, neither Congress nor the Supreme Court seemed inclined to intervene against the president. Rather, the restraining forces tended to be enablers.

In 2006, after George W. Bush requested expanded national powers after Hurricane Katrina, Congress modified the act to give the president wider leeway, authorizing the deployment of troops in natural disaster, public health emergency, terrorist attack, and other conditions when the president determines the states are unable to act effectively. Opponents decried the easing of the restrictions on presidents declaring martial law and the expansion of the uses of the military in civilian matters. Martial law was not declared after Hurricane Katrina; rather, New Orleans was in a state of emergency. The mayor said that officers could ignore civil rights and Miranda rights of looters, and up to 15,000 federal troops and guardsmen patrolled the city. Proclamations may occur at the state or local level when a governor or mayor issues a declaration of emergency, usually the result of a natural disaster. The Bush-requested law expanding the use of the military in civilian disasters passed, but the changes generated controversy and protest and were removed from the insurrection legislation two years later.

Some emergencies were forgotten, and emergency powers and penalties remained in effect long after the need ended. Gerald Ford revoked the executive order interning Japanese during World War II by proclamation in 1976. The 1950 proclamation of an emergency in Korea continued in effect into the Vietnam years. The Korean War emergency ended on September 14, 1978. Courts continue to uphold harder-than-normal penalties, including deportation, authorized because of and levied during the period of emergency. When Nixon authorized various illegal actions during Watergate, Congress realized that the Truman state of emergency was still in effect. The 1976 National Emergencies Act established a two-year limit on emergency declarations unless the president explicitly extended them and specified in advance which provisions he was invoking. In 1998, Bill Clinton issued a proclamation expanding the 1995 Middle East state of emergency to cover Osama bin Laden and other targets, and President George W. Bush extended it. The Bush declaration of emergency

on terrorism was renewed by Obama in 2009 and 2010.

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See Also: 1777 to 1800 Primary Documents; 1961 to 1980 Primary Documents; Ku Klux Klan; Military Courts; Rule of Law.

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President's Commission on Law Enforcement and the Administration of Justice

The President's Commission on Law Enforcement and the Administration of Justice was assembled during the presidential administration of Lyndon B. Johnson. Following the social unrest of the 1960s, President Johnson established this commission to study specific social issues that were plaguing America—crime and deviance.

The task delegated to the commission was to conduct a critical and thorough evaluation of the entire American criminal justice system. The objective of this enormous effort was to make



Antiwar protesters march against the U.S. involvement in the Vietnam War in Washington, D.C. on April 24, 1971. The President's Commission on Law Enforcement and the Administration of Justice was convened during a time of social unrest in the United States, which arose out of the civil rights movement and the demonstrations against the Vietnam War.

recommendations that would reduce or eliminate crime in the United States of America. The commission had a significant impact on policing tactics, techniques, and procedures across the United States. The work of the commission was vital to the criminal justice field because it was the first large-scale official attempt to examine all parts of the criminal justice system systematically since the Wickersham Commission.

During the era when the President's Commission on Law Enforcement and the Administration of Justice was convened, the United States was recovering from the social unrest that arose out of the civil rights movement and the Vietnam War. The social change that came about from these historical events fueled changing ideologies in many aspects of American life. President Johnson used

the changing American social arena as a platform to acknowledge crime as a social problem and subsequently used the commission as an instrument to combat this social problem—crime and deviance.

The Challenge of Crime in a Free Society

The 19-member panel, led by Attorney General Nicholas Katzenbach, relied on multiple field research efforts conducted at local and national levels in order to examine crime and deviance within the changing American society. In addition, the commission relied on feedback from federal, state, and local criminal justice officials in order to draw conclusions concerning the status of the criminal justice system. After 18 months, the panel published what has since been recognized as one most significant reports

ever published within the American criminal justice system—*The Challenge of Crime in a Free Society*. This 342-page report outlined the massive efforts of the commission. Soon after being published, the report became widely recognized as being critical of various criminal justice strategies. For example, the commission condoned the unilateral efforts of local, state, and federal law enforcement agencies and noted that interagency cooperation would be essential for combating crime in the coming decades.

Although critical of certain aspects of the criminal justice system, the commission made more than 200 individual recommendations that supported the positive control of crime and deviance in America. The President's Commission on Law Enforcement and the Administration of Justice called for the criminal justice system as a whole to enact numerous efforts that would enable the system to develop into one that would be capable of handling the crime dilemma for centuries to come.

Within their general recommendations, the commissioners noted that crime can only be reduced and controlled, never eradicated. The recommendations of the commission were sociological in nature in that many acknowledge the social nature of crime and deviance. In addition, the commission broadly stressed the importance of integrating the community into crime prevention and reduction strategies. With this, the commission stressed that police agencies needed to adapt a proactive ideology that would encourage preventive policing rather than reactive policing. Another general theme noted in the findings of the commission that was emphasized as being essential to the reduction and prevention of crime was the establishment of a broad range of tactics, techniques, and procedures to handle the dynamic situations that police officers often face while policing the community. The intent behind this recommendation was to have departments establish uniform policies and practices that would standardize and professionalize policing. Considering the historical time frame when the commission was conducting its research, the members and staff recognized that police agencies needed to eliminate injustices that existed within law enforcement agencies at all levels. The intent behind this recommendation was to counter many of the biased ideologies that

flourished within the unique social arena of the era. More generally, the commission noted that agencies should recruit better-qualified candidates into the field of policing.

The proposals put forth by the commission that are credited as having the most significant impact on crime and deviance today include the recommendation to conduct more research on crime and deviance; the recommendation to invest significantly more money into all areas of the system; the proposal that practitioners and citizens must view the issue of crime and deviance as a communal problem; and the recommendation that criminal justice agencies embrace and leverage technology in the fight against crime. Other areas of the criminal justice system such as courts and corrections were not scrutinized to the same degree as the policing sector, but they were evaluated. The recommendations that were relevant to those sectors have significantly impacted the contemporary criminal justice system. For example, some practitioners might posit that the commission played a role in advances such as 911, community policing, and the establishment of national policing standards, certification, and accreditation.

Conclusion

Despite often being criticized as overly ambitious in its efforts and recommendations, the commission laid the foundation for criminal justice policies for centuries to come. The work of the commission has helped practitioners answer the challenge of combating crime by positing that the government and citizens are ultimately responsible for the control and prevention of crime. To justify this stance, the commission argued that official statistics concerning crime were ultimately misleading and that crime would never be eradicated. Consequently, according to the commission, criminal justice officials would face a monumental task for centuries to come. To tackle this monumental feat, the commission recommended that the government establish an agency to assist but not usurp state and local law enforcement agencies as they combat crime.

Although some of the recommendations of the commission have yet to come to fruition, many of its recommendations are now common policies and practices that assist law enforcement agencies

in accomplishing the monumental task of preventing and controlling crime in the United States.

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See Also: Johnson, Lyndon B. (Administration of); Police, History of; Technology, Police.

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Prison Privatization

States have been turning to privatization as a way to deal with a burgeoning and increasingly costly prison system. In corrections, privatization is the transference of the construction, operation, or specific functions of a prison facility from the public to the private sector. Proponents argue that there are many benefits to privatization. Construction of new prison facilities will occur faster and for less money when done by private companies. Operation costs will be lower, while correctional officers will receive higher salaries, and inmates better services and programming.

However, private prisons have not always turned out to be the panacea that proponents hoped. Due to lower wages and less benefits, the personnel in private prisons often lack the necessary experience and training. For this reason, staff turnover rates are high. Many private prisons have also been plagued with incidents of violence and abuse. Opponents of privatization are also concerned that private facilities are often more driven by making a profit than with safety and security. Currently, there are over 100,000 inmates housed in private facilities across the United States. Given that the recent trend toward

privatization does not appear to be waning, many researchers have suggested that steps need to be taken to ensure that private prisons are regulated and held accountable to the same standards as prisons in the public sector.

History of Privatization

While prison privatization has received renewed attention over the past 20 years, its origins date back to the early 1800s with the lease system. As part of this system, states, which were often in financial debt, would shift control of an institution to a private contractor as a way to deal with the rising cost of a growing prison population. This system is known to have first occurred in the Frankfort, Kentucky, state prison in 1825.

The state, which was suffering from a financial crisis, entered into an agreement with businessman Joel Scott, wherein the state would receive \$1,000 per year for the work of the inmates in the prison in return for allowing Mr. Scott to operate the prison for five years. As a way to reduce their debt after the Civil War, southern states also turned to the practice of leasing inmate labor. The abolition of slavery after the war deprived southern states of their cheap labor force. As a result, states turned to leasing out inmate labor as a way to replace slave labor and to help rebuild their economy.

Initially, the primary reason for turning to privatization was to offset the costs of an increasing



Prison privatization's origins date back to the 1800s. States would shift control to a private contractor as a means of dealing with the rising cost of a growing prison population.

prison population. However, states quickly found that there was a downside to privatization. For example, in 1871, the first Texas prison lease was awarded to a private company. While initial reactions to this arrangement were positive, the state ended up having to regain control over certain aspects of the facility in 1876 because of reports of 382 escapes and 62 deaths, in addition to concerns over the treatment of inmates. The state eventually assumed complete control over the facility in 1883 after continued reports of inmate deaths and abuse. States continued to contract with private companies until the early 1900s, despite concerns about corruption and abuse. The stabilization of prison populations after 1930 reduced the need for states to turn to privatization. The privatization of prisons did not become an issue again until the early 1980s, when incarceration rates in the United States began to skyrocket.

Prior to the mid-1970s, the prison population in the United States was relatively stable, fluctuating from between 100–150 inmates per 100,000 persons. Crime rates began to increase during the late 1960s and 1970s and a shift occurred in the philosophy of punishment. Previously, the focus was on rehabilitation, with individualized sentences and a treatment approach to corrections. The increase in crime, along with research that discounted the effectiveness of rehabilitation programs in reducing recidivism, led to a tough-on-crime approach where inmates were sent to prison solely to be punished for the crime committed.

As part of this crime control model, individuals were sent to prison for a wider range of offenses and for longer periods of time. In addition, as part of truth-in-sentencing, inmates were required to serve a greater portion of their sentence before being released. As a result of these changes in policy, in addition to the weakening of parole, the incarceration rate in the United States increased rapidly. For example, between 1980 and 1990, the incarceration rate in the United States increased from 139 to 292 inmates per 100,000 persons. By the mid-1990s, the incarceration rate had grown to approximately 600 per 100,000 persons.

States, which were suffering from the economic downturn of the early 1980s, were unable to keep up with the cost of a growing prison population.

There was no money to build new prisons, and the prison facilities that did exist were old and in need of repair. As a result, existing prisons became overcrowded. Conditions in many prisons across the country were getting so bad that many states were put under federal court order to limit their prison populations until they were able to increase the capacity of their facilities. Privatization offered a cost-effective solution to states. For states that were in need of new prison facilities, the private sector was able to secure funds and build prisons faster than the government. In addition, the private sector also claimed to deliver better services at a cheaper price. For example, initially, private companies boasted that they would specialize in supervising specific populations, such as inmates with acquired immune deficiency syndrome (AIDS) and maximum-security inmates, utilizing innovative programming at a lower cost. By privatizing prisons, politicians were able to still appear tough on crime, yet also fiscally conservative.

Corrections Corporations

The privatization of prisons that occurred during the late 20th century was in marked contrast to the system of privatization that occurred a century before. Previously, states would completely relinquish control of the facility, which they contracted out to a private company. This included both control over the operation and management of the prison as well as responsibility for the inmates. In contrast, in the modern system of privatization, states continue to maintain responsibility for the inmates, yet transfer control over prison functions to the private sector. In addition, one of the benefits of the lease system was that private contractors could profit from the labor of prison inmates, an aspect of privatization that no longer exists today.

The privatization movement in the United States began with the formation of the Corrections Corporation of America (CCA) in 1983. While CCA initially operated facilities for detained immigrants and juvenile offenders, in 1985 the company was contracted to operate a minimum-security facility for adults in St. Mary, Kentucky, the first private prison for adult inmates in the country. That same year, the company entered into negotiations with the state of Tennessee to take over control of its

entire prison system. While there was initial support to privatize the state's prison system, eventually the contract fell through. The state did not feel confident transferring control of its prison system to a recently formed company. In addition, there were concerns that, if problems arose, the state would not be able to take back control of the system.

In 1988, a second firm, the Wackenhut Corrections Corporation (now known as the GEO Group) was developed. Over the next two decades, the number of private prisons across the country grew substantially. In 1991, over 13,000 inmates were housed in 44 private correctional facilities across the country, operated by 14 companies. The use of private prisons continued to grow rapidly during the 1990s, with Corrections Corporation of America and Wackenhut monopolizing the field. For example, in 1999, CCA supervised so many inmates that it was the ninth-largest prison system in the country, and Wackenhut the 19th-largest prison system for adults.

Early studies found that privately operated prisons function as well as publicly operated prisons and for lower costs. However, many have argued that this may have been due to the fact that initially, private prisons were only operating minimum-security prisons, which house inmates who pose little risk. Since 1992, states have begun to contract with private companies for the operation of maximum-security prisons.

Criticisms of Private Prisons

Over the years, private prisons have not escaped criticism. While proponents of privatization argue that private prisons operate more efficiently, with some suggesting a cost reduction of between 15 and 20 percent, concerns have been raised about how this is actually accomplished. Primarily, private prisons are more cost-effective due to the fact that they reduce labor costs by having less staff, lower wages, or offering fewer benefits, yet the average savings has been shown to be only about 1 percent. The reduction in costs has, however, proven to have negative implications for the prisons. As a result of cutting back on personnel costs, private prisons are more likely to hire less experienced and well-trained staff. As a result, the staff turnover rates are much higher in private prisons, with one study reporting a difference of

41 percent in private prisons compared to 15 percent in public prisons.

Many have argued that the problems with staffing, along with defective classification and security procedures, have led to an increase in violence in private prisons. In July 1998, there was a highly publicized escape of six maximum-security inmates, five of them convicted murderers, from the Northeast Ohio Correctional Center, drawing increased attention to this issue. A year later, a prison guard was killed during a riot in the Guadalupe County Correctional Facility, a Wackenhut-operated prison in New Mexico. In both cases, it was found that inexperienced staff and a lack of basic security procedures were to blame.

Whether the escapes and violence that occur in private prisons are more serious than those that occur in public prisons has been explored by several researchers. A study conducted by Judith Greene in 1999 compared the quality of services in a private prison run by the Correctional Corporation of America with those of the public prisons in Minnesota and found that the private prison exhibited a higher level of operational problems. In addition, Greene's research found that these problems, which included unreliable classification methods, high rates of staff turnover, and inadequate program services, were directly related to security and safety issues within the prison. Another study that year conducted by James Austin compared the number of assaults in public and private facilities and found that there were 49 percent more assaults on staff and 65 percent more inmate-on-inmate assaults in private prisons. Not only does cutting back on administrative and programmatic services increase problems within the prison, but it also limits the ability of a facility to adequately prepare inmates for their release back into the community.

In addition to concerns about the operation of private facilities, opponents of privatization have argued that prisons should not be driven by a profit motive, because their fundamental obligation is to increase stockholders' profits. Both CCA and the GEO Group bring in millions of dollars of revenue each year. Opponents are concerned that industry executives will continue to lobby for tougher sentencing laws to ensure the continuation of their business, regardless of whether it is in the best public interest. Because

of concerns over violence in private prisons, by the turn of the century, the desire among states to privatize had decreased significantly. However, at this time, the federal prison system was experiencing unprecedented growth in its prison population, increasing by 31 percent between 1995 and 1999 alone. In turning to private companies to assist them with this increasing prison population, the federal prison system was also helping to salvage a failing industry.

Modern Facilities

Despite the fact that states were no longer seeking private contracts, private companies were continuing to build new prisons on speculation that contracts would follow. As a way to fill these empty prisons, private companies began to contract with states that had overcrowded prison systems to incarcerate their inmates on a per diem basis. This benefitted states because it allowed them to reduce overcrowding while also saving money because the per diem cost to house inmates in private prisons was less than the state's cost. For example, the state of Virginia, in 1994, had shifted to a tough-on-crime approach as a way to deal with their crime problems, as had many states at that time.

Sentence lengths were increased through truth-in-sentencing and the use of parole was abolished. As a result, it was predicted that the state's prison population was going to expand rapidly and the state built six new prisons, and contracted with a private company for a seventh in five years to prepare for this increase. By 1997, however, the growth in the state's prison population slowed and the state was left with a number of empty prison beds. The state began to charge other jurisdictions on a per diem basis to house their inmates. This enabled the state of Virginia not only to fill these prisons but also increased revenue to the state. By the end of the 1990s, from 10,000 to 15,000 inmates were being housed in prisons outside the state in which they were convicted and sentenced, and oftentimes in private prisons.

By 2005, there were 415 private facilities under contract to state and federal correctional authorities, housing 108,523 inmates. Currently, approximately 7 percent of inmates in the United States are housed in private prisons. While the majority

of private facilities are still minimum security (364 facilities in 2005), there are currently 43 medium-security-level and eight maximum-security-level private facilities in operation in the United States. Although the number of inmates housed in private facilities makes up a only small percentage of the overall prison population, there is no indication that the privatization of corrections will cease to exist anytime soon. One of the reasons for this is because prisons, particularly private prisons, have become a growth industry in rural areas and provide a benefit in terms of jobs and revenue to areas that have previously experienced a collapse in their economy.

For this reason, researchers argue that steps must be taken to ensure that private facilities are appropriately regulated and held accountable. In addition, more research must be conducted to evaluate the effectiveness of private facilities. Many of the studies that have been conducted to date simply compare private and public prisons on a number of measures. However, long-term studies are needed that enable researchers to examine whether private prisons are able to provide cost savings—and a comparable quality of confinement—to states over time.

Over the past 20 years, states have turned to privatization as a way to help offset the cost of their once-growing prison population. Privatizing certain aspects of their correctional system has proven to provide some benefits to states, namely, the ability to build new prisons within a short period of time for lower cost. However, privatization did not come without its problems. Reducing operating costs oftentimes meant less-experienced staff and problematic security and classification procedures, which can lead to violence and escapes. For some types of inmates, primarily minimum security, private prisons do appear to be able to meet their goal of providing more efficient services than the public sector. Yet, this does not appear to be the case for all types of facilities.

While the rate of incarceration in the United States has slowed over the past few years, private companies have still been able to remain viable, particularly given the recent recession. States still struggling with overcrowding and a tight budget have turned to private companies to house their inmates for a lower cost. In addition, private

companies have also found a niche in the rural economy by providing job opportunities and economic growth. Given the history of private prisons and the problems that have occurred, it is important that states learn from the lessons of the past and seek to develop ways to ensure that private prisons keep the safety and security of inmates—and not simply increased revenues—as their driving motivation.

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See Also: Corrections; Federal Prisons; Penitentiaries; Prisoner's Rights.

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Several theories have been put forth regarding why inmates riot. One perspective is that inmates are simply responding to poor prison conditions, while another focuses on the fact that inmates are more likely to riot when the status quo of a prison is shifted. A more common perspective is that prison riots are the result of an administrative breakdown in the prison facility. While many of the riots that have occurred over the years have been in overcrowded prisons, research has found that prison conditions alone cannot fully explain why this type of violence takes place in prisons.

There have been four waves of prison riots in the United States over the past century, each influenced by a specific set of circumstances. Prior to 1929, riots were caused by disgruntled inmates who were attempting to escape from the prison. Frustration riots were common during the late 1940s and 1950s. During this time, there was a unified inmate subculture that often clashed with prison authorities regarding "brutal and crowded" prison living conditions. The period between 1950 and 1953 had an increase in prison riots. In that three-year period alone, there were 50 prison riots, more than had occurred in the prior 25 years. One of the most significant factors that led to an increase in prison riots during this time was the enforced idleness of inmates because of a lack of prison programming available. The riots that occurred during this period reinforced the belief that rehabilitation programs were necessary in improving the behavior of inmates not only upon release from prison but also while incarcerated.

Prison Riots

Violence is an unwanted yet expected aspect of life in many prison facilities. Individual incidents of violence, however, are different from widespread prison riots, which are defined as an attempt by inmates to collectively take control of all or part of a prison facility. Prison riots can be either expressive, in that they are spontaneous events, or instrumental, meaning that they are planned with some goal in mind. Over the past century, as the prison system in the United States has grown, prison riots have become more common, ignited primarily by overcrowded and substandard living conditions.

Early Riots

Escape attempts and rioting were commonplace in early penitentiaries because of overcrowding and harsh living conditions. Newgate Prison, the first penitentiary in New York state, experienced disturbances regularly as inmates challenged the conditions of their confinement. In April 1803, a riot occurred when armed guards were summoned to prevent the escape of 20 inmates. Four inmates were killed.

The riot that heralded the modern era of prison riots occurred in 1946 at the U.S. Federal Penitentiary on Alcatraz Island in 1946. This riot, which initially started over a failed escape attempt, led to a three-day uprising, which has become known

as the Battle of Alcatraz. Prisoners were armed, and marines and army soldiers were called in to suppress the violence; they did so using explosives such as demolition bombs, antitank shells, and rifle grenades. By the end of the third day, three inmates and two guards had been killed, and one inmate and 14 officers were injured.

Over the next decade, the civil and political unrest that American society was experiencing, in addition to the fact that prisons were becoming more racially integrated, led to an increase in two specific types of riots. The first wave of riots that occurred during this time have been referred to as race riots. The unified inmate subculture that was seen in prisons during the 1940s and 1950s had disappeared as more distinct groups came to form. The riots that occurred during this period were primarily the result of racial conflict between various groups. However, riots were also used as attempts by specific inmate groups to push for specific rights while incarcerated. For example,

inmates who associated with the Nation of Islam resorted to riots to fight for the right to practice their religion freely within the institution. The general unrest within the country and in prisons is illustrated by the fact that between 1969 and 1970, 98 prisons riots were reported.

Political Riots

The next wave of riots are known as political riots and occurred during the early 1970s. The purpose of these riots was to address many of the concerns inmates had regarding their treatment and conditions of confinement. One of the most famous political riots was the riot at upstate New York's Attica Correctional Facility in 1971.

Overcrowded prison conditions initially ignited the four-day riot at Attica, with more than 1,000 inmates rebelling and taking control of the entire prison for the first day, holding a number of guards hostage. A series of demands were made by the inmates to improve



Prison riots are acts of defiance by a group of prisoners usually to force change or express a grievance. Initially, the actions of prisoners during a riot were viewed as irrational. More recently, however, external conditions like overcrowding and cost-cutting measures in correctional facilities are considered more of an explanation of these events.

living conditions. When negotiations over these demands fell through, authorities forced the inmates to retreat to the exercise field, then shot more than 3,000 rounds of tear gas, in addition to live ammunition, into the field. The firestorm left 29 inmates and 10 hostages dead. Another three hostages, 85 inmates, and one state police trooper were wounded. In addition, one guard and three inmates had been killed by the rioting inmates. The damage to the facility cost the state tens of millions of dollars.

In the next year, 1972, there were 48 prison riots, which was more than in any other year in the history of the United States. The riots during the 1970s led to a shift in not only the way in which prison riots were carried out but also how they were viewed by the general public. The taking of hostages became a common feature of prison riots during this time. As a result of an increasing number of riots, some of which were highly publicized, the public increasingly began to associate prison riots with “violence and even organized terrorism.”

Rage Riots

The final wave of riots have come to be known as rage riots. These riots were often spontaneous and resulted from guard efforts to break up altercations between inmates. At other times, rage riots were deliberate acts designed to incapacitate parts of the facility or to get revenge on an inmate or guard perceived to have started the trouble.

On February 2, 1980, inmates at the Santa Fe Penitentiary took seven guards hostage, obtained a set of keys, and embarked on a prison wide brawl. Reportedly, some inmates found blow-torches and used them on inmates who were snitches or against whom other prisoners had grudges. Inmates also assaulted and sodomized 11 guards. After 36 hours, authorities were able to restore order in the facility. In total, 33 inmates died. During negotiations, inmates cited overcrowded prison conditions (the facility was at 150 percent of its rated capacity at the time of the riot) and abuse by prison guards as some of their concerns and reasons for inciting the riot.

In recent years, two riots in particular have received national attention; however, their motivations are not as obvious. On Easter Sunday, April 11, 1993, 450 inmates rioted at the Southern Ohio

Correctional Facility, a maximum-security prison in Lucasville, Ohio. The riot, primarily caused by overcrowded prison conditions (the prison population was at 150 percent capacity at the time of the riot), lasted for two weeks. It took hundreds of National Guardsmen to eventually quell the riot, after which nine inmates were allegedly beaten to death and one guard was strangled. During the riot, \$40 million in damage was inflicted on the prison.

Most recently, in August 2009, inmates at the California Institution for Men in Chino rioted for 11 hours straight, leaving 250 people injured and 55 hospitalized. While it is unclear what specifically set off the riot, racial tensions between black and Latino inmates and overcrowded prison conditions have been cited as potential causes.

Causes of Riots

While the prison riots that have occurred over the past century have appeared to follow certain trends, researchers have focused more specifically on what causes inmates to riot. Two central models have been used to explain inmate behavior. The first is the importation model. Essentially, the behavior of inmates in prison is shaped by their individual characteristics; for example, offenders from lower-class backgrounds bring a set of attitudes specific to their cultural situation, including views on the acceptability of violence. Since these attitudes are specific to individuals, the importation model is not applicable to collective violence, nor does it provide any guidance on universal changes in governance that can limit or prevent such situations.

The second model is the deprivation model. This model argues that inmate behavior is shaped by the stress and oppression of living in prison. For example, overcrowded prison conditions, lack of programming, and stringency of rule enforcement have been found to be associated with levels of disorder. Much of the violence under such conditions is thought to be expressive, lacking any goal other than tension reduction.

While these are two broad explanations for inmate behavior while incarcerated, there are many specific explanations as to why prison riots occur. External social and political factors, such as what influenced the race and political riots during the 1970s, can shape the motivation of

inmates. However, research has found that the conditions within the prison, mainly the role that prison management plays in controlling inmate behavior, is a stronger motivating factor than the characteristics of inmates themselves or the socio-political context at the time.

Two theories provide explanations as to why inmates riot. The first is the inmate-balance theory. This theory argues that there is a tenuous balance of power that exists within a prison. Because life in prison is so austere, and privileges so few and far between, any change in the balance of those privileges can be a catalyst for violence, either personal or collective. Any administrative change such as tighter security procedures can upset this balance and potentially be stress-inducing for inmates. This may also result when prison officials abuse their positions or assert strict authority over inmates. This theory argues that the social setting of prison itself is the root of the problem. As long as the status quo is maintained, violence may be manageable, but once the balance is upset, prisoners can be motivated to riot.

The other theory is the administrative control theory. This theory argues that weak management can cause prison officials to lose control over the prison, leading to collective violence and rioting. Examples of poor prison management include high staff turnover, lack of staff discipline, lax security, and failure to search inmates or disperse crowds. Idleness among inmates, similar to what was experienced during the 1950s, can also lead to inmate riots. Essentially, this theory, which is based on the deprivation theory, argues that prison riots occur in response to the conditions at the prison; prisoners will, for example, riot when faced with overcrowding, food shortages, systemic abuse or racism, or other negative circumstances. Prison conditions, particularly overcrowding, are often noted as a cause of prison riots. However, prison conditions alone cannot fully explain why inmates riot. Instead, research, particularly that by Bert Useem and Peter Kimball, has found that prison riots are primarily the result of some form of administrative breakdown that has occurred within the prison. While prison conditions may be a motivating factor, more important is how well the administration within a facility deals with these conditions. Prisons that are poorly managed, regardless of the conditions

in which inmates are housed, are most at risk for collective violence.

Conclusion

The risk of inmates rioting is always a concern for prison administrators. Yet the motivations for why inmates riot are not often clear. The prison riots over the past century have been characterized as occurring in four waves, each with its own specific causal factors. In the early part of the 20th century, prison riots resulted from an initial escape attempt or other attempt to break free from the confines of prison life. However, in the 1930s and 1940s, riots were a collective attempt by a unified inmate subculture to lash out at prison authorities over the conditions of their confinement. During the 1960s and 1970s, race and political riots were prominent, influenced by the civil and political unrest that the country was experiencing at the time. More recently, rage riots have been common within prison facilities, spontaneous events sparked by inmate frustration over what they perceive to be mistreatment. However, the motivating factors behind prison riots are often complex and not necessarily caused by one issue alone. Although there are many explanations as to what leads inmates to riot, research has found that most often some type of administrative breakdown is to blame. Despite concerns over prison conditions and the characteristics of inmates within a facility, it is imperative that prison officials maintain a safe and secure environment and take the steps necessary to reduce the likelihood of violence within their facility.

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See Also: Attica; Corrections; Federal Prisons.

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Prisoner's Rights

Prisoner's rights are those rights that individuals retain after they are found guilty of a crime and sentenced to a term of confinement in a prison or jail. In the United States, prisoner's rights include both positive rights, such as the right to challenge a criminal sentence and the right to challenge conditions of confinement within prison, and negative rights, such as the right to be free from cruel and unusual punishment and the right to be free from discrimination.

Most prisoner's rights are civil rights, meaning that a prisoner must file a lawsuit against a specific individual or agency and seek a particular remedy, such as a change in policy or a payment for damages suffered. In such cases, prisoners often represent themselves (*pro se*), initiating and pursuing their own legal challenges. The development of prisoner's rights in the United States can be divided chronologically into roughly three different eras of progress: limited rights in the early republic and 19th century; an expansion of rights in the mid-20th century, especially during the Warren Court, when courts broadened civil rights in general; and a contraction of rights in the late 20th century, especially after 1996.

Early Republic and the Nineteenth Century: Two Basic Prisoner's Rights

The U.S. Constitution codified one basic right of convicted criminals: habeas corpus. The right to habeas corpus originated in English common law and traditionally provides convicted criminals the right to challenge the authority of a judge or jailer to impose a particular sentence. The Bill of Rights, ratified in 1791, codified a second basic right of convicted criminals: the Eighth Amendment guarantee against the infliction of cruel and unusual punishment. These two rights became the

foundation of prisoners' attempts to exercise their civil rights from within prison walls.

However, when these rights were first codified in American law, prisons as such hardly existed. Criminal sentences traditionally involved a range of punishments from warnings and fines to public whippings and the ultimate sanction: execution. A few scattered jails existed in the 18th century, but judges rarely meted out prison terms to convicted criminals. Prisoner's rights law, then, only slowly began to develop, following the establishment of the first penitentiaries and prisons in the United States in the early 1800s.

In Re Medley was one of the few 19th-century federal cases to even mention conditions of confinement in prisons—a topic that became a frequent subject of prisoner's rights litigation in the 20th century. *Medley*, an 1890 U.S. Supreme Court case, condemned the use of solitary confinement in Colorado for death-sentenced prisoners. Specifically, the court ordered that James Medley, whom a Colorado judge sentenced to death for a first-degree murder conviction in 1889, be released from solitary confinement and from prison. The court explained that at the time Medley committed his crime, Colorado did not keep death-sentenced prisoners in solitary confinement. Because Medley could not have known at the time of his crime that he would be subject to the severely punitive punishment of solitary confinement, the imposition of the punishment was unconstitutional (a violation of the *ex post facto* clause). The court did not, however, address the constitutionality of using solitary confinement or of imposing the death penalty.

In Re Medley foreshadowed the procedural complexity of prisoner's rights claims in the 20th century; successful challenges to the death penalty and to other conditions of confinement increasingly turned on questions not of the morality of cruelty but of the fairness of procedure. While a convicted criminal's right to challenge the judicial authorization for his sentence was well established even in English common law, and the Eighth Amendment in the U.S. Bill of Rights forbade the imposition of cruel and unusual punishments, these rights were of limited application to most prisoners in the United States until the mid-20th century.

Indeed, throughout the 19th century, and well into the 20th century, federal courts viewed prisoners as "slaves of the state," who were *civilter*



Prisoner's rights in the United States include the right to be free from discrimination. At the state penitentiary in Canon City, Colorado, in the early 1900s, homosexuals are being punished by wearing dresses and wheeling heavy rocks.

mortuus, or civilly dead. In *Ruffin v. The Commonwealth* (1871), the Virginia Supreme Court explained the meaning of civil death: Prisoners lost the rights that non-prisoner citizens of the United States could claim, like those rights codified in the Bill of Rights. Moreover, if a prisoner had any possessions in his name when he entered prison, his estate would literally be “administered like that of a dead man.”

Warren Court Era and Beyond: Expanding Prisoner's Rights

In the mid-20th century, three significant changes in federal law led to a steep rise in the number of prisoner's rights claims brought in federal courts. First, in *Miller v. Overholser* (1953), a Washington, D.C., district court case, and *Brown v. Allen* (1953), a Supreme Court case, federal courts expanded the habeas corpus remedies available

to prisoners to include challenges to conditions of confinement (instead of limiting these remedies to challenges to the terms of sentences). Second, in *Robinson v. California* (1962), the Supreme Court incorporated the Eighth Amendment prohibition on cruel and unusual punishment against the states. This was part of a slow process by which the Supreme Court made most of the Bill of Rights applicable to any citizen anywhere in the United States and therefore enforceable by individual citizens against individual state actors. Third, in *Cooper v. Pate* (1963), the Supreme Court held that the Civil Rights Act gave prisoners the right to sue prison officials directly for civil rights violations suffered in prison. This kind of civil rights challenge is called a Section 1983 claim, named for the relevant section of the Civil Rights Act.

The expansion of habeas corpus rights, the extension of federal Eighth Amendment protections to state prisoners, and prisoners' new power to sue under Section 1983 together produced an explosion of prisoner lawsuits, which challenged both the conditions of confinement in prisons and the constitutionality of the death penalty. Responding to the increased attention these lawsuits brought to prisons and prisoners in the United States, Congress also stepped in, passing laws that further changed the shape of prisoner's rights.

Conditions of Confinement Litigation

In 1965, three prisoners filed a federal district court case, *Talley v. Stevens*, challenging the conditions of their confinement at Arkansas State Penitentiary. Within five years, the case had expanded to include the entire Arkansas state prison system, and in 1978, the case reached the U.S. Supreme Court, as *Hutto v. Finney*. For the first time, the court directly considered the application of the Eighth Amendment to prison conditions in a state prison system. The federal district court in Arkansas had ordered state officials to take multiple remedial actions to improve conditions in the state's prisons, including desegregating prisons, improving basic living conditions, and limiting periods of confinement in isolation cells. The Supreme Court agreed that the combination of severe deprivations documented in the Arkansas prisons constituted a violation

of the Eighth Amendment prohibition on cruel and unusual punishment and upheld the district court orders.

Three years after *Hutto*, in 1981, the Supreme Court heard its second major case regarding the application of the Eighth Amendment to prison conditions: *Rhodes v. Chapman*. *Rhodes* was the first case in which the court considered the application of the Eighth Amendment to the conditions of confinement at a particular prison, as opposed to an entire prison system. In *Rhodes*, the court did not find the same interdependence of multiple deprivation conditions that had existed in Arkansas and so refused to uphold the district court's orders to improve prison conditions and to release prisoners from the Southern Ohio Correctional Facility in Lucasville.

In *Rhodes*, Justice William Brennan noted that, as of 1981, there were 8,000 pending prisoner lawsuits challenging conditions of confinement in the United States, and 24 states with either individual institutions or entire prison systems subject to orders to remedy unconstitutional conditions of confinement. In fact, the vast majority of Eighth Amendment standards governing prison conditions in the United States were set not by the Supreme Court but by lower federal courts. Throughout the 1960s and 1970s, district courts in states from Alabama to California found violations so egregious that the officials in charge of the offending prisons either did not appeal the lower court's remedial orders, or did appeal, only to be summarily dismissed by the circuit courts.

Medical Experimentation Legislation

While federal courts heard more and more claims about unconstitutional prison conditions throughout the United States, the public media also increasingly covered unconstitutional prison conditions. For instance, in the 1970s, Americans were shocked to learn of both the Heller experiments, funded by the U.S. government between 1963 and 1973, which examined the effects of radiation on the testes of Oregon prisoners, and the Tuskegee syphilis experiments, funded by the U.S. government from 1932 through 1972, which evaluated the long-term effects of untreated syphilis in African American men. In 1978, in response to public revelations about these and other experiments on prisoners and other vulnerable human

subjects, Congress passed the Act for the Protection of Human Subjects. This act, codified at Title 45 of the federal register, regulates all categories of human subjects' participation in experimental research. Title 45 provides for prisoner participation in federally funded medical experimentation under very limited circumstances, subject to rigorous safeguards for obtaining prisoners' consent and ensuring that the research will benefit the prisoner subjects.

In spite of these rigid federal regulations, U.S. prisoners in the 21st century continue to participate in a variety of experimental biomedical research protocols. Prisoners in private prison facilities are particularly vulnerable to recruitment for participation in experiments that might not be clearly beneficial to the prisoner participants. In fact, as of 2008, more than 125,000 prisoners, or 8 percent of the U.S. prison population, were housed in private prison facilities. The growing use of these private facilities arguably undermines prisoner's rights because the private facilities are not subject to the same federal regulations as public facilities and because private facilities have greater incentives to engage in cost-cutting that tends to make these facilities both more profitable and less comfortable.

Death Penalty Litigation

In the same decades that U.S. federal courts received the first barrage of claims about unconstitutional prison conditions, they also received claims about the unconstitutionality of the death penalty, as implemented in various states. These claims are generally brought by prisoners, under the habeas corpus law or under the Eighth Amendment; death penalty challenges affect the kinds of punishments to which prisoners are subject generally, as well as the procedural rights of prisoners to bring challenges under habeas corpus and Eighth Amendment laws.

In a 1972 case, *Furman v. Georgia*, the Supreme Court declared a de facto moratorium on carrying out death sentences throughout the United States. The court found that Georgia's death penalty, as arbitrarily and inconsistently applied to criminal defendants, violated the Eighth Amendment prohibition on cruel and unusual punishment. However, just four years later, the court reconsidered Georgia's newly minted death penalty statute and found

it to be constitutional (*Gregg v. Georgia*, 1976). Among other safeguards, *Gregg* mandated automatic federal appellate review, all the way to the Supreme Court, of death sentences. Since *Gregg*, federal courts have scrutinized death sentences much more carefully. As federal appellate courts have been required to consider dozens of death sentences annually, these courts have increasingly restricted the conditions under which the death penalty may be imposed. In 1986, in *Ford v. Wainwright*, the Supreme Court held that severely mentally ill defendants could not be executed. In 2002, in *Atkins v. Virginia*, the court held that mentally retarded defendants could not be sentenced to death. And in 2005, in *Roper v. Simmons*, the court held that defendants who were under 18 at the time they committed their capital offense could not be sentenced to death.

Roper is important not only for its holding but for its unusual references to international law. In *Roper*, Justice Anthony Kennedy noted that by executing criminals who were juveniles at the time they committed their crimes, the United States was an outlier among the developed world powers. In fact, most countries in the world, Kennedy pointed out, have signed onto international treaties pledging not to engage in such extreme punishment practices.

In addition to cases challenging the constitutionality of imposing the death penalty on particular defendants, the federal courts have also heard cases about the constitutionality of various state methods of execution. Most recently, in 2008, in *Baze v. Rees*, the Supreme Court considered a case challenging the constitutionality of Kentucky's method of execution. The court upheld Kentucky's use of lethal injection to execute death-sentenced prisoners. Indeed, since the 1970s, the U.S. Supreme Court has continued to hear a variety of cases, brought as both habeas corpus challenges and as Section 1983 Civil Rights Act challenges, regarding the imposition of the death penalty. However, in this same period, the court has heard many fewer claims about conditions of confinement.

Welfare Reform Era: Limiting Prisoners' Rights

The bipartisan welfare reforms of 1996 completely reshaped federal benefit plans and social safety nets in the United States; as such, the welfare

reforms obscured attention to the passage of two lesser-known pieces of federal legislation, which would, nonetheless, have a dramatic impact on the U.S. criminal justice system. In 1996, Congress passed the Prison Litigation Reform Act (PLRA) and the Anti-Terrorism Effective Death Penalty Act (AEDPA) with the specific intention of limiting the number and kinds of lawsuits that prisoners could bring to challenge both their criminal sentences and the conditions of their confinement.

Both acts sought to accomplish their goals through complex procedural reforms. The PLRA limits the scope and duration of consent decrees issued by federal courts overseeing state prison conditions, caps the rate at which attorneys may be compensated for representing prisoner clients, requires prisoners to exhaust available in-prison administrative grievance processes before turning to the federal courts for assistance, and bars prisoners who file "frivolous" lawsuits from having their claims heard in federal court. In 2010, the Supreme Court heard oral arguments about the application of the PLRA to a class action lawsuit filed in California, challenging the provision of healthcare and the high degree of overcrowding throughout the state's prison system. This case, *Plata v. Schwarzenegger*, marked the first time the high court directly considered the PLRA's procedural provisions.

However, just two years after the passage of the PLRA, the Supreme Court held in *Pennsylvania Department of Corrections v. Yeskey* that the Americans with Disabilities Act applies to prisoners. This holding allowed prisoners with disabilities to challenge conditions of their confinement related to disability accommodations without being as constrained by the PLRA provisions limiting the scope of consent decrees and attorney compensation. Analyses of the PLRA suggest that the law has accomplished its goals of limiting prisoners' access to federal courts, although it has not necessarily increased the efficiency of prisoner litigation or facilitated the enforcement of prisoners' constitutional rights.

Like the PLRA, the AEDPA limits the situations in which federal courts may hear claims from and grant relief to prisoners sentenced to death or to prison by state courts. The AEDPA requires federal courts to find that a state court was unreasonable in its application of law or

in its determination of facts before agreeing to hear a prisoner's claim for habeas corpus relief. In addition, the AEDPA enacted strict timelines within which prisoners must file state and federal appeals of death sentences. In sum, both the PLRA and the AEDPA imposed limitations on the lawsuits prisoners could bring challenging either their sentences or the conditions of their confinement.

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See Also: 1851 to 1900 Primary Documents; 1901 to 1920 Primary Documents; Bill of Rights; Eastern State Penitentiary; *Furman v. Georgia*; *Gregg v. Georgia*; Habeas Corpus, Writ of; Supermax Prisons; Walnut Street Jail.

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Private Detectives

Private detectives are people who undertake police-like activities without being part of the police service but customarily work within the private sector on an individual or freelance basis, or more likely as part of a specialist company. Initially, private detectives were involved in work that supplemented activities of the state, when the reach of the latter was still insufficient to complete

its various requirements. This notably included antiunion activities in industrial action in the 19th century and the search for spies and saboteurs. In the 20th century, the nature of private investigation changed as state capacity increased while more private citizens were willing to use their services to pursue their own interests, often but not always as a result of suspicion about a spouse's loyalty and activities. In the contemporary United States, much of the demand for private investigation results from possible fraud in the insurance industry as well as family-based issues. The nature of this work has been revolutionized by the arrival of modern information technology.

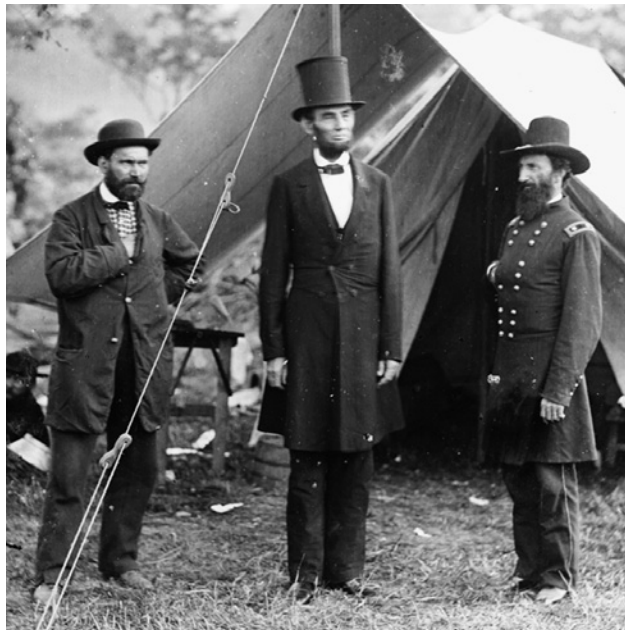
The Pinkerton Agency

Prior to the invention of uniformed police in the mid-19th century, all police operatives were effectively private detectives who worked for victims of crime, who paid a fee for recovery of stolen property. Taking fees became illegal for uniformed public police, and their creation coincided with the development of corporate-level private investigation, in the form of the Pinkerton Agency. The concept of organized private investigation first came to prominence with the establishment by Allan Pinkerton of his eponymous detective agency in 1850. His reputation was made by the successful foiling of a plot to assassinate Abraham Lincoln, prior to his election as president. Subsequently, the company achieved considerable commercial success undertaking work that would in many cases have been undertaken by the police or military forces if the federal or state governments involved had sufficient capacity. One strand of this work was to track down suspected criminals operating in remote locations without many state services, such as the James brothers, Butch Cassidy and the Sundance Kid, and other notorious outlaws. Pinkerton agents were paid by and worked for corporations directly. These included railroads, stagecoaches, and banks. When involved in labor disputes, agents were hired by the corporation involved and, again, worked on their behalf.

Given the absence of scrutiny and the portrayal of the wanted individuals as heavily armed and dangerous, Pinkerton's agents (predominantly if not exclusively men) would normally have had a free hand in conducting their work. The workforce included, as a result, many young men without a

strong stake in society (e.g., often poor or recent migrants) who were willing to take risks to make a living. When the Pinkerton agents were brought in to break strikes, infiltrate unions, and take physical action against workers, they also were able to call upon protection from prosecution. Eyewitness reports of strikes in the second part of the 19th century describe scenes of open warfare, with the collusion of the state acting to support the hated Pinkerton men. Ultimately, this resulted in the so-called 1893 Anti-Pinkerton Act, which prevented the state from hiring companies providing quasi-military or mercenary forces for strikebreaking activities. Private detective work subsequently took a more peaceful turn, and their protection from the law was greatly diminished. However, this has changed to some extent in the wake of the 2001 terrorist attacks on the United States and the creation of the Homeland Security industry; Pinkerton has been reinvented as Pinkerton Government Services, Inc., with a much closer private-public sector arrangement than would have previously seemed possible.

The Pinkerton Agency used an eye for its logo and a slogan attesting to the fact that the agents



Allan Pinkerton along with President Lincoln and Major General McClelland in 1862. Pinkerton was head of Union Intelligence Services at the time and also formed the Pinkerton National Detective Agency.

never slept. This gave rise to the term *private eye*, which has stuck ever since. The company now competes in a marketplace that is characterized by the entry of large new companies featuring ex-military personnel and high-level contacts that offer all-encompassing, turnkey-style service provision. Smaller companies and individuals tend to position themselves as niche operators because of location or the possession of specialist skills or knowledge.

The Nature of Private Investigation Work

Private investigation in the past involved a great deal of physical activity, with physical confrontation, tracking down wanted people, and acting without state-provided infrastructure and services. The work has subsequently changed to a more sedate form in general, in part because of the need to comply with the law and to keep private investigator actions distinct from those of the official police. As demand for services switched to the personal level, work focused more on labor-intensive activities such as surveillance, checking records, and interviewing possible witnesses. This kind of work represents the common symbol of the private eye in the media of popular culture. When divorces were restricted to the demonstrable production of cause and blame, private detectives were called upon to monitor suspected philanderers to provide attested, photographic evidence in flagrante. This required a degree of physical dexterity and tradecraft that meant ex-military or security forces were attracted into the industry. To some extent, the private detective represented the force of bourgeois society into a sphere of activity that is usually considered to be private. The private detective in this case was seen as an unwanted irritant and an intruder. Even when a divorce might be mutually acceptable and the infidelity an invention for the sake of legal requirements, the private detective was still seen as an unavoidable extra.

As demand for private detective services from the insurance industry has increased, the role of the investigator has continued to focus on careful, often dull but also secretive scrutiny of possible evidence. The reduction in the need for physical requirements has broadened the employment possibilities for women and people not possessed of above-average physical abilities. However, these changes have not further endeared the private eye to the public, since few people have a positive

opinion of insurance companies as a whole, and many consider insurance fraud a form of victimless crime. In recent years and partly to address these issues, some attempts have been made to professionalize the industry with the use of licenses to try to ensure proper quality assurance standards and to enhance transparency in the industry. Licenses are issued at the state level, and only five states no longer require such a license, although the requirements vary considerably. It is clear that problems of legality and jurisdiction continue to hinder investigations when cross-border issues are involved. In some cases, this issue might have an impact on the behavior of those whose actions might be investigated in one way or another. Professionalization also assists in the specialization of individual companies, branding, and enhancing services. That has implications for the nature of individuals hired and the need for qualifications and competencies. Unionization has also made a moderate impact upon the industry and will in due course raise the standards of pay and terms and conditions of employment.

The Impact of Technology

Improvements in information technology such as mobile phones, the Internet, rapid identification of individuals captured on photograph, and so forth have revolutionized the scope of private detective work and the way in which it might be conducted. For various reasons, many people have become very interested in tracing their ancestors or current family members with whom they have had little or no contact, and online tools have been developed to enable such activities to be conducted successfully. The same tools can be used by people to replicate the kind of search that private detectives, in addition of course to state officials, had access to as a monopoly. Further, urban development and the spread of intelligent personal communication devices have together acted to widen the range of occasions on which people are effectively visible and the same technology can also be used to transmit evidence of that visibility widely and very quickly. Privacy and legal issues aside, the technical ability to provide evidence of the actions of an individual has thus become easily obtainable, and so members of the public can again undertake work that once only private detectives were able to do. This is an additional reason for the profession-



Raymond Burr in the Ironside television show. Ironside is an example of a private investigator being portrayed as a decent individual forced into isolation through unfair social forces.

alization of private detective work, which stresses potential dangers that members of the public are not aware of and that might affect them while also further incorporating advanced technical skills as necessary for detection but beyond the scope of ordinary citizens. Currently, the sense of fear and anxiety that has been fostered in the creation of the concept of a society under imminent terrorist threat has fueled the sense of social solidarity necessary to encourage the majority of people to accept elevated levels of surveillance.

The Private Investigator in Popular Culture

The private detective has become a popular and even iconic figure in modern culture, and variations have been portrayed in print and on screen, although the representation of the individual varies from country to country. In the United States, the first manifestation of the private eye was seen in the dime novel detectives of the last decades of the

19th century. Such detectives were routinely portrayed as having great moral rectitude; they acted to restore the moral order when it was compromised by lawless persons. A second stereotype of the private eye was created in the 1920s and 1930s as part of the hard-boiled literary genre and most commonly associated with Dashiell Hammett and Raymond Chandler, who respectively created the antiheroes Sam Spade and Philip Marlowe.

These investigators are outsiders operating in a society that is almost entirely corrupt, with those hiring the detectives morally indistinguishable from the criminals to be investigated. Despite the often unappealing habits of the detectives concerned and their old-fashioned attitudes toward gender relations, the audience tends to side with them because it is made clear that the state and its representatives have not only failed to provide the police services required but might also be complicit in illegal action for financial gain. The private eye is, in this sense, the armed outsider who, from an existential perspective, demonstrates that only direct action by the individual can achieve any desirable goal. It is no surprise that this image became popular at a time of economic crisis when millions of people were becoming impoverished as a result of large-scale forces over which they had little control and the true outlines of which they could scarcely discern.

More recently, various television series have portrayed the private investigator as an inherently decent individual who has been forced into social isolation through social forces, often unfairly applied. *Ironsides*, for example, was forced to retire from the police force and use a wheelchair after being shot by an assassin; he subsequently became a consultant to the police. Jim Rockford from the *Rockford Files* was falsely accused of a crime and as an ex-convict turned to righting wrongs as a private investigator. It is possible to argue that Miss Marple, an amateur private detective, suffers from prejudice against elderly women in obtaining meaningful employment and that investigators specializing in the supernatural (e.g., *Buffy the Vampire Slayer*) represent the difficulty that members of minority interests face, having to hide their true identity from the public. In just about every case, the innate decency of the private detective shines through, although she or he is often disadvantaged as a result.

Private Detectives and Society

In a heavily armed country like the United States, it is inevitable that private detectives will feel the need to be armed to go about their work, thereby intensifying the arms race and making their jobs more likely to lead to deadly violence. One result of this is to reduce trust where private detectives are concerned, and this makes their relationship with society different from what may be found in western Europe, with its general reverence for the skilled professional, or from societies under authoritarian rule where all figures wielding power, state-mandated or not, are met with more or less resentful obedience.

The demographic features of private detectives have varied through the ages. In the early days of the industry, most detectives were fit young men with a willingness to tolerate physical hardship and risk; they were often recently arrived immigrants. As the nature of the work changed, the people involved became more educated and skilled, often with access to necessary personal connections with the authorities and almost certainly an urban bias. This was a period when private detection took place in cities, according to the concept of corrupt cities and innocent countryside. In recent years, the labor market has broadened, and career paths are being opened to aspiring detectives as one of a range of competing career options.

These people are operating now in a society in which it has become increasingly accepted that the state should not and cannot in any case provide policing for all purposes. Indeed, since the 1960s, the proportion of state officials acting as police has declined considerably in comparison with private sector operators.

However, since hiring private detectives continues to require quite large amounts of money, it tends to be less likely that the poor and ethnic minorities will be confronted with them on a daily basis. Indeed, it may be the case that private detectives are the one branch of the quasi-official police services that can reach out and affect rich and settled members of society who are able to avoid unwanted interactions with the police through various means.

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See Also: 1851 to 1900 Primary Documents; Dime Novels, Pulp, Thrillers; Hammett, Dashiell; Private Police; Strikes.

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Private Police

Private police are members of private-sector organizations providing personnel who offer various police-related activities, usually on a contractual basis. The range and nature of the services offered has varied considerably, depending on the location and nature of the venue concerned and the changing legislative structure in force. In general, private police complement the services provided by public police officers rather than substituting for them.

Private police also have a less significant status in law and cannot perform many of the functions that public police can. While some private police may be used for personal security in locales considered vulnerable to violence, they are also widely used as security guards intending to bar entry to once public spaces now privatized on a commercial basis.

While public sector policing developed in nature over the course of centuries, the emergence of private police has arisen with dramatic speed since the 1960s, until now the relative numbers in the United States greatly favor the private

over the public. Reasons for the rapid emergence of this industry include the expansion of policing services demanded (e.g., personal security, background checks, and asset surveillance), the increase in expense of the police resulting from professionalization and increases in technology, and the greater willingness of state agencies to privatize services once considered essential for the government to provide in one form or another. Consequently, private–public contracting schemes have emerged in many different parts of the country. Notable examples include the Buffalo Creek, West Virginia–Guardsmark contract in 1976 and the Kalamazoo, Michigan–Charles Services contract, when private police were sworn in as government officials in order to increase their legal status and ability to use those powers normally reserved for public police.

Privatization Issues

In many cases, private police are parts of corporations that have received outsourcing contracts determined by public-sector organizations for a mixture of operational or ideological reasons. Much effort has been expended in trying to establish whether this practice is cost-effective and/or delivers efficiency improvements. This is very difficult to resolve because direct comparative data are not available: private police may not have official powers, but they can rely upon the fact that people with whom they interact are aware of the powers of public police upon whom they can call when required. Private police rely upon a great deal of state-funded infrastructure and governance, without which they would find it much more difficult to fulfill their allocated functions.

The privatization of the police and police activities in America has represented an extension of capitalist control over all forms of social and economic life. When only public-sector police are present, the citizens had the expectation, which was of course not always met, that objective policing of democratically accountable laws would govern their daily lives. Since policing is objective and universal within the country, citizens have accepted that the same laws will apply to everyone and so contribute to the social solidarity necessary to ensure an orderly and fair society. The presence of private police

changes the relationship between citizens and the authorities since it is evident that at least some police are acting on behalf of corporate interests and not for the state as a whole. Increasingly, as private police come to guard gated communities or shopping centers, those deemed “undesirable” are excluded, physically if necessary, from more and more parts of the country. The designation of who is undesirable has had plain ethnic- and gender-based components. The process has been likened to a new enclosure of the commons, in which American land, which in the public imagination at least acted as a resource anyone could use, is now reserved for the personal use of a small number of wealthy people who use their influence with politicians to ensure this arrangement is recognized in the law. Protestors and those critical of these arrangements are routinely subjected to harassment.

Relationships Between Private and Public Sector Police Services

Although it might appear clear that public and private police are funded by wholly different sources, in practice, it has become increasingly difficult to distinguish this difference. State and federal administrations that have favored market, rather than state-based means of providing services have entered into contracts with private-sector providers that necessarily include means of oversight and accountability that make the relationship between the two often very close.

However, at the operational level on the ground, cooperation between private and public has not always been straightforward. Public police in some cases understandably resent the shrinkage of their authority and workplace conditions, particularly when private police are freed from the kind of paperwork involved with documenting incidents and crimes that most police workers tend to dislike. One well-known example of this comes with university campus police. Although this form of private police has existed since the beginning of the 20th century, it has only been from the 1960s onward that campus police have had more than a custodianship role and have been increasingly empowered to investigate and deter and, in general, become a more obvious and intrusive service. This has not been universally popular, and a number of students and their representatives

have questioned the legitimacy of such police to carry out activities for which they are not democratically accountable. Personal issues have also been important in the case of events of political protest, most notably during protests against the Vietnam War, as well as in the case of the physical safety of female students.

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See Also: 1851 to 1900 Primary Documents; Police, Contemporary; Police, Sociology of; Political Policing; Private Detectives.

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Private Security Services

Private security is an industry responsible for the protection of life, property, and information. Definitions of the term *private security* vary. Private security can be considered any type of protective service that is typically financed through nonpublic funding sources. In 1970, the U.S. Department of Justice funded the first major study of the private security industry in the United States, which was conducted by the Rand Corporation. The Rand report defined private security as “all types of private organizations and individuals providing all types of security-related services, including

investigation, guard, patrol, lie-detection, alarm, and armored transportation.”

The American Society for Industrial Security (ASIS), the largest association of private security professionals in the United States, has defined private security as “an independent or proprietary commercial organization whose activities include safeguarding the employing party’s assets—ranging from human lives to physical property (the premises and contents), responding to emergency incidents, performing employee background investigations, performing the functions of detection and investigation of crime and criminals, and apprehending offenders for consideration.”

Private security experts affiliated with ASIS have identified core elements of the private security industry, which include physical security, personnel security, information systems security,

investigations, loss prevention, risk management, legal aspects, emergency and contingency planning, fire protection, crisis management, disaster management, counterterrorism, competitive intelligence, executive protection, violence in the workplace, crime prevention, crime prevention through environmental design (CPTED), and security architecture and engineering. Annual revenue for private security firms in the United States has been on the rise in recent years and was estimated in 2012 at between \$19 billion and \$34 billion.

Origin

During the colonial era in America, crime control was generally the responsibility of the community. Laws were enforced by unpaid citizens who rotated service as watchmen. This loose and informal system gradually fell out of favor



Frank Leslie's Illustrated Newspaper published this rendering in October 1884, which reads "Ohio: The mining troubles in Hocking Valley—Scene in the town of Buchtel—the striking miners' reception of "Blackleg" workmen when returning from their work escorted by a detachment of Pinkerton's detectives." Pinkerton's men were sent in lieu of the police to break strikes by coal miners.

as homogenous and closely connected communities transformed to more fragmented societies. Private policing grew out of the early office of the constable. Early constables profited from their positions by selling protective and investigative services or by collecting fees and demanding rewards.

The growth of the private security industry in America traces its origins to the widespread industrialization in the 1850s and 1860s, along with the development of uniformed, professional policing agencies, penitentiaries, and the expansion of the criminal code and court system. Industrialization, urbanization, and rapid population growth from immigration brought about an increase in crime in urban areas. With formal policing agencies fragmented and limited by jurisdictional boundaries, private security transcended these boundaries and became the protective as well as the enforcement agents of the industrialists.

In 1850, Allan Pinkerton established the first private security and investigations company in the United States. The Pinkerton's Protective Patrol began as an agency that augmented the Chicago metropolitan police. During the U.S. Civil War, Pinkerton's agency conducted espionage for the Union army. After the Civil War, the Pinkerton National Detective Agency became the primary protective agency for the growing railroad industry and also functioned as an expanded police force to break coal miner strikes. Franklin B. Gowen, president of the Philadelphia & Reading Railroad, called upon the Pinkerton Detective Agency and his own Coal and Iron Police to infiltrate and crush labor organization and discontent with work and labor conditions.

Throughout the late 19th century and early 20th century, the Pinkertons and other private security agencies provided two general services to industries: general property protection and strike services. Pinkerton provided owners of industry with four strike services: labor espionage, strikebreakers, strike guards, and strike missionaries. Labor espionage was an infiltration of labor activities, which provided management with information about employee discontent, serving to undermine worker organization and collective bargaining. Strikebreakers were workers who replaced the striking employees in an attempt to undermine strikes and worker negotiations. Strike guards

or "watchmen" protected the owner's property during strikes. Strike missionaries served to incite worker and citizen antipathy and even violence against striking employees. By the early 1900s, the Pinkerton agency had established liaisons with police organizations in Europe and was exchanging information about international crime. Their methods influenced many modern policing agencies throughout the world. Their early trademark was "The Eye That Never Sleeps," which was the origin of the informal term for private investigators, *private eyes*.

Private security employment declined between 1929 and 1939 because of the Great Depression, although there was a high level of volatility within the American populace, with at least 25 percent of the workforce unemployed or facing layoff. Despite the overall decline in private security employment, corporations still maintained a contingent of privately compensated police, spies, and strikebreakers, which led to a Senate investigation led by Senator Robert M. LaFollette, Jr. The LaFollette Committee subpoenaed the records of many private security agencies, including the Pinkerton National Detective Agency, and the William J. Burns International Detective Agency as well as documents belonging to their clients. After nearly three years of testimony, Senator LaFollette introduced the Oppressive Labor Practices Act, which prohibited the use of private policing to conduct industrial espionage and strikebreaking. The bill passed in the Senate but was defeated in the House of Representatives, ultimately lost amid the increasing turmoil in Europe.

War and Private Security

Throughout World War II, private security involved the organization of citizens to protect military installations, factories, and railroads, in addition to conducting training for civil defense and other emergency services. The private security industry grew after World War II, with many of the returning veterans working in the defense industry. In 1954, retired Federal Bureau of Investigation (FBI) agent and World War II veteran George Wackenhut founded the Wackenhut Corporation, which grew into one of the largest private security organizations in the world. In 1955, a group of security executives formed a national organization of security directors who worked on

manufacturing contracts for the U.S. Department of Defense. This association became the American Society for Industrial Security (ASIS). Today, ASIS International is dedicated to professionalizing the security industry and providing educational and networking opportunities within its membership.

Throughout the 1960s, the increase in crime and social disorder fueled the federal government's interest in shifting more crime prevention responsibility to the private security industry. In 1976, the National Commission of Criminal Justice Standards and Goals issued its *Task Force Report on Private Security*. This report encouraged an improvement in the working relationships between public law enforcement and the private security industry.

The September 11, 2001, attacks on the United States further encouraged the expansion of the private security industry and an increased collaboration between private security and public policing relating to domestic security. With private security currently responsible for protecting a significant amount of the nation's critical infrastructure, partnerships between the private and public sectors will likely continue.

Services Provided

The two major types of private security are proprietary security and contract security. Proprietary security is also referred to as in-house security. Employees working under a proprietary security structure are employed by the companies where they perform their services and are not working for a private security firm. Security personnel working in a casino and loss prevention agents working in a department store are the most common examples of proprietary security services.

Contract security services are performed by a security firm that provides its services to another company on a contractual basis. The services provided typically include patrol, alarm system monitoring, investigations, and armored car delivery. Most shopping malls employ contract security to patrol the property. The largest firms providing contract security services are Securitas and Wackenhut. Companies often outsource their security needs to a private security firm because of the cost savings in maintaining an in-house security staff. Contract security firms are

responsible for hiring, scheduling, supervising, and training their security staff, which provides additional benefits and savings to the client. Some of the disadvantages, however, are that contract security personnel tend to be paid less than in-house security, and therefore, the turnover rate among contract security tends to be much higher. Lack of adequate training and qualifications for the particular job site is also an ongoing problem. Because the security firm is responsible for hiring and providing security staff for the client, the client has little control over the quality of personnel the firm provides. Therefore, it is the contract security firm's responsibility to thoroughly screen individuals and perform adequate criminal background checks.

Private security functions include physical security, personnel security, and information security. Physical security includes locks, fences, building design, and alarm systems. Personnel security includes the protection of celebrities, dignitaries, corporate executives, customers, and guests. Information security includes the protection of a company or organization's intellectual property or any confidential information.

Some of the major controversies involving private security services include hiring and background check practices, licensing and regulation, adequacy of training, liability, lack of procedural safeguards, and the deployment of private security contractors in areas of conflict around the globe.

Background investigations and criminal history checks of private security applicants are now becoming standard practice within the industry. The thoroughness of the background investigations of private security employees varies based upon the particular agency and the position; checks are not standardized from state to state.

The Private Security Officer Employment Authorization Act, enacted in December 2004 as Section 6402 of the Intelligence Reform and Terrorism Prevention Act of 2004, allows states to perform fingerprint checks of state and national criminal history databases to screen prospective private security personnel. The background checks are not mandatory, however, and employees may still continue to work pending the outcome of the background check.

Licensing and regulation of private security employees vary widely from state to state. Some

states require all security officers to be licensed, and others only require security personnel who carry firearms at their job site to be licensed. ASIS International has developed a code of ethics and administers several certification programs, with the Certified Protection Professional (CPP) designation being the most widely recognized in the security industry.

Criminal or civil liability is a major concern within the private security industry. Public police officers tend to have protection from personal liability, whereas private security officers acting within the scope of their employment may be held criminally liable for offenses such as false arrest, false imprisonment, assault, and trespass. Additionally, the security company can be held vicariously liable for the negligent actions of its employee who was acting within the scope of his or her employment with the security company. Private security firms must be aware of the liability involved within the industry and take appropriate measures to mitigate those risks by thoroughly screening applicants, properly training and supervising employees, and maintaining adequate liability insurance.

Future trends in private security will likely be related to innovations in security technology, threats related to globalization, and continuing concerns over domestic and international terrorism. Advances in security technology, as well as threats of cyber-related attacks, will drive the need for highly trained and educated security professionals within the area of information technology (IT).

This will likely lead to a need for closer collaboration between private security, local law enforcement, and homeland security agencies in order to address threats that transcend jurisdictional boundaries. Ironically, this takes the private security industry back to its American roots under the Pinkerton agency, which grew out of a need to protect industry from threats that transcended state and international boundaries prior to the formation of the FBI. Specialized areas involving fraud investigations and computer-related investigations will likely continue to grow.

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See Also: 1851 to 1900 Primary Documents; Private Detectives; Private Police; Strikes; Terrorism.

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Probation

Probation is the most widely used sentencing option in the United States. The term *probation* derives from the Latin word *probatio* (meaning "period of proving" or "trial and forgiveness"), thus implying that an offender must prove himself/herself through a specified period of time (the length and term of probation) by complying with the terms and conditions of probation. According to the Bureau of Justice Statistics, of the 7.2 million persons under correctional supervision (including both community-based corrections and institutional corrections) at year-end 2009, 58 percent were on probation (4.2 million). Approximately half of all persons on probation at year-end 2009 were being supervised for a conviction for a felony offense. Probation is a community-based sanction that affords the convicted offender an opportunity to remain in the community with the possibility to receive therapeutic support programs as an alternative to going to prison. Persons sentenced to probation are subject to terms and conditions ordered by the court

or other governing body. Probation allows the offender to remain in the community subject to terms and conditions imposed by the court and is an alternative to incarceration. Probation can be either unsupervised (in which the offender is not monitored) or supervised (in which the offender is monitored by a probation officer or other community corrections professional).

Reasons for Probation

There are a number of advantages and disadvantages associated with probation. First and foremost, probation is more cost-effective than incarceration. Nationwide, the average cost per day to house an offender in a jail or prison is \$62 per day, far more than \$2 to \$3 per day for probation. Probation offers a reduced criminalization of offenders as they are not subject to socialization with more hardened offenders behind bars. Community-based corrections allow the offender to maintain his/her family ties, as parents on probation are able to remain in the home to raise their children (whereas incarcerating the parent may result in the children being placed with other family members or foster care). Because probation affords an offender the opportunity to work, thereby providing for his/her family as well as paying restitution, court costs, and fees, and contributing to the tax base, probation is advantageous as the offender is contributing financially to society versus being a tax burden through the cost of incarceration, any public assistance his family may receive in his absence, and so on. Probation offers the offender a greater opportunity to receive therapeutic and professional services in the community. In prison, there are few programs available to offenders, and those that are available have limited availability based on the large numbers of offenders in prison seeking to participate in those programs.

A main disadvantage of probation is that it can be considered a lack of punishment. One of the widely held criticisms of probation is that the offender is allowed to reside in the community. That, coupled with the relatively nonrestrictive terms and conditions of probation, does not constitute a “real” punishment in the eyes of opponents, and there is no severity in the punishment.

Community-based corrections also have a social liability in that offenders remain in the community

and often reoffend, sometimes committing violent acts. According to the Bureau of Justice Statistics, 35 percent of offenders recidivate, being rearrested for a subsequent offense after exiting probation (either having their probation revoked, terminated, or transferred to unsupervised probation).

Early Probation

Probation as a community-based sanction can trace its origins to the English courts in the 18th and 19th centuries. Judges had the discretion to grant what was deemed a judicial reprieve, thereby sparing the offender from incarceration by suspending his/her sentence if the judge deemed there was no purpose served by incarcerating the offender. This practice was adopted in the American colonies. In Boston, Judge Peter Oxenbridge Thatcher employed judicial leniency by allowing offenders to be released from custody on their own recognizance (their verbal or written promise to appear in court if need be) either before or after they were convicted. In 1841, John Augustus, a Boston shoemaker and a member of the temperance movement against alcohol, often visited the Boston courts to observe the daily hearings, operations, and business of the courts. There, Augustus often intervened on behalf of offenders charged with being a public drunkard; he observed that many offenders were held over for court or remained in custody because they could not afford to pay the fine or other monetary assessment ordered by the court. Augustus then decided to approach judges and asked if they would consider releasing the offender if Augustus promised to “monitor” him/her while he/she was released and ensure that he/she did not get in further trouble. Augustus also attempted to rehabilitate alcoholics and assisted those arrested for alcohol-related offenses. It is estimated that by the time of his death in 1859, Augustus supervised 2,000 offenders, both men and women, over the years, and thus Augustus is widely considered to be the “father” of modern probation.

After Augustus’s death, another Boston philanthropist, Rufus R. Cook, continued Augustus’s work through the Children’s Aid Society and assisted juvenile offenders. Benjamin C. Clark volunteered as well to continue Augustus’s work. Boston led the nation in establishing probation as a statutory sanction in that the first state law prescribing for probation was passed



Probation officers from the Anchorage Probation Enhanced Supervision Unit display a bag of cash found in a search of an offender's apartment. When the offender denied access to his apartment, the officers returned with a search warrant and found \$30,000 in cash and cocaine. The offender was remanded and the case was forwarded for new criminal offenses.

in Massachusetts in 1878, granting the mayor of Boston the authority to hire the first probation officer, a retired police officer, Captain Edward Savage, who became a full-time paid probation officer. By 1925, probation was available for juveniles in every state and for every adult by 1956. The growth of probation at this time can be credited to the attitudes and beliefs held during the Progressive Era, when, in an effort to address the challenges of crime and deviance, reformers advocated strategies to rehabilitate offenders rather than house them in correctional institutions. Alternatives to incarceration such as probation, parole, and indeterminate sentencing, which afforded offenders the option to secure their freedom if they made strides in reforming their lives, proliferated.

Probation Standards

Although the terms and conditions vary from jurisdiction to jurisdiction and offender to offender (based on the offense, the offender's

challenges, and other factors), there are standard conditions of probation (required of all offenders, regardless of the their offense, special needs, or previous convictions). These conditions require the offender to be gainfully employed or enrolled in a program of study; commit no criminal offense and notify the court and/or probation officer if charged with a new offense; pay a fine, cost of court, restitution, or other fees; report as directed to the court, probation official, or other community corrections professional; notify officials of any change in address and/or employment; not possess any illegal weapons; maintain family obligations (e.g., child support); and remain within the court's jurisdiction unless given permission to leave by the court and/or probation officer. Punitive conditions of probation are those that increase the punishment of the offender based on the severity of the offense. Therefore, the offender may be sentenced to complete community service hours as a condition of probation or be required to be

on curfew or be placed on intensive probation (a more restrictive form of probation). Treatment conditions of probation (such as requiring the offender to participate in substance abuse treatment or mental health counseling) attempt to reverse the offender's self-destructive behavior.

There are three primary types of probation: supervised probation, unsupervised probation, and intensive supervision probation. Intensive supervision probation (ISP) is a more restrictive form of probation in which the offender is subject to additional terms and conditions and closer monitoring of his/her behavior. ISP was first implemented in Georgia in 1982 in response to the state's incarceration rate (it was the highest per capita rate of any state). The overcrowded conditions in Georgia's prisons were spilling over into the local jails, and thus the state had to develop probation programs that were effective alternatives to incarceration. While the model for ISP varies from state to state, it typically involves the use of two probation parole officers (oftentimes a probation officer and a surveillance officer) who work together to monitor the offender. Whereas an offender on regular probation has one encounter with his/her probation officer once per month (or in some instances, once every other month), an offender on ISP sees his/her offender several times per week. In addition, these offenders are typically subject to curfew, which is closely monitored by the two-person team, and are required to complete more community service hours than an offender on regular supervised probation. They are subject to searches of their person, premises, and vehicle (a condition that is typically ordered only in special circumstances for regular probation). ISP officers typically have smaller caseloads (an average of 30) than do regular supervision probation officers (the recommended average is 90), allowing ISP officers more time to dedicate to the close monitoring of offenders.

There are five models of probation (the manner to describe the relationship between the probation officer and the client). These models are the treatment model, the rehabilitation model, the due process model, the just-deserts model, and the community model. The treatment model, sometimes referred to as the medical model, makes the assumption that criminal behavior is somewhat like an illness, and if the cause of the

illness is addressed, then the offender will be less likely to engage in criminal behavior again. The treatment model aims to remedy the offender's illness. The rehabilitation model stresses reforming the offender through rehabilitation. The due-process model, which is sometimes referred to as the justice model, stresses fair and equitable treatment of all offenders, regardless of extralegal factors such as race, socioeconomic status, or gender. The just-deserts model emphasizes that the punishment should be equitable with the severity of the crime and that offenders should get their "just" or rightful punishment, or the punishment that they deserve based on their offense. The idea is that the more serious the offender's crime is, the more restrictive his/her probation or level of supervision should be. Finally, the community model, sometimes referred to as the reintegration model, focuses on preparing the offender to return to the community and thereby equipping the offender with appropriate resources to reintegrate (i.e., providing resources for counseling and stable living environments). There are three conceptual models of intensive supervision probation: the justice model, the limited risk control model, and the treatment-oriented model. The justice model seeks to be punishment centered, yet fair to the offender. This model emphasizes daily or near-daily contact with the offender, community service, and if applicable, restitution or reparations to the victim. This model does not address rehabilitation for the offender. The limited risk control model is based on an offender's anticipated criminal behavior. A risk assessment is conducted to determine which level of supervision is appropriate for the offender and takes into account the offender's previous criminal history, current criminal offense, and the risk he poses to the community based on the same. Finally, the treatment-oriented model focuses on rehabilitation of the offender in an effort to reintegrate the offender into the community.

Mechanics of Probation

Probation is typically a suspended sentence. Once an offender is convicted of an offense, rather than incarcerate the offender, the judge can suspend his/her sentence and place him/her on probation. So long as the offender complies with the terms and conditions of his/her probation, he/she can

remain free in the community. However, if the offender violates the terms and conditions of probation, his/her probation can be revoked, he/she can be remanded into an active sentence in jail or prison. In general, there are two types of violations of probation: technical violations and new offense violations. Technical violations are those in which the offender violates a technical condition of probation (such as maintaining full-time employment, adhering to curfew, or completing community service hours) and thus breaks the terms of probation. New offense violations involve the offender being arrested and/or convicted of a subsequent or new criminal offense. Of the offenders who have their probation revoked and are sent back to jail, it is estimated that one-third commit new offense violations while two-thirds commit technical violations. Probation officers typically have the responsibility for determining whether the offender has violated the terms and conditions of probation.

Although the U.S. Supreme Court held in *Griffin v. Wisconsin* (1987) that probationers do not have the same rights as other members of society and that the probationer's freedom is conditional contingent on his/her compliance with special restrictions, offenders do have certain due process rights, including the right to an attorney during the revocation process (*Mempa v. Rhay*, 1967). In addition, the Supreme Court, through *Morrissey v. Brewer* (1972) and *Gagnon v. Scarpelli* (1973), ruled that the probation revocation hearings must include a three-stage procedure, affording offenders limited due process rights that must be protected. Per the landmark decisions, offenders must be afforded a preliminary hearing, a probation revocation hearing, and a revocation sentencing hearing.

At the preliminary hearing, a "disinterested person" (such as a judge or an administrative hearing officer) determines if there is probable cause to revoke the probation. In other words, whether the facts and circumstances cause a reasonable person to believe that the offender likely violated the terms and conditions of his/her probation. If, at the preliminary hearing, probable cause has been found, the probation officer (or other representative of the supervising agency) presents evidence to support the contention that the offender violated the terms and conditions of probation. At this hearing, the

offender has the right to know the charges being alleged against him/her, the right to present witnesses on his/her behalf, and the right to confront witnesses against him/her. At this stage, a neutral and detached body, such as a judge or an administrative hearing officer, makes a decision in favor of the probation officer or the offender. If the decision is made to revoke the offender's probation, then the judge must decide whether to remand the offender to a period of incarceration in a jail or prison and for what length of time. The judge can also decide whether to keep the offender on probation and possibly make modifications to the terms and conditions (e.g., require additional community service hours, impose additional sanctions such as a term in boot camp, sentence the offender to a weekend in jail, and so forth).

Administration of Probation

There are a number of challenges in effective administration of probation that impact the effectiveness of supervision by probation/parole officers. Sex offenders present a problem for probation and parole and require unique programming and policies. Megan's Law and other similar statutes require convicted sex offenders to register with local law enforcement; law enforcement officials are in turn required to notify the community of the offender's presence. Because many communities do not want sex offenders residing nearby, probation officers not only face the possibility of the sex offender re-offending, they also have to protect the offender from vigilante behavior by community members. Special needs offenders such as sex offenders also pose a challenge for probation in that probation agencies have created specialized caseloads and special programs to target these offenders. For example, the North Carolina Department of Correction, Division of Community Corrections created specialized caseloads in which all sex offenders were supervised by the same officer (or officers). States must also deal with a lack of access to adequate mental health facilities for these offenders, and probation officers are sometimes underprepared or undertrained to work with certain categories of offenders such as sex offenders or mentally ill offenders.

Another challenge of probation is the lack of public confidence in probation and the perception that probation is too lenient. According to

the American Probation and Parole Association (APPA), between 43 percent and 65 percent of offenders sentenced to probation are either arrested during probation/parole or within three years of their probation sentence. Only 57 percent of offenders sentenced to probation successfully complete their sentences. Because of the recidivism rate and relatively low successful completion of probation, there is a perception that probation is ineffective.

Terrorism is another challenge for probation officers. While it is doubtful that most terrorist activities will warrant a probation sentence, offenders who have been convicted of funding these organizations and offenders with terrorist ties have been placed on probation, and extremist domestic terrorist organizations have members who are on probation and/or parole. Further, probation officers may be instrumental in knowing their offenders' affiliations with various organizations and other associates, which may prove useful for counterterrorism efforts.

Budget cuts have resulted in challenges for agencies. These cuts result in staffing issues and problems ensuring that officers have appropriate resources (equipment, training). Although the number of persons placed on probation has increased, funding of these agencies has not—in some places, it has declined. As such, many probation officers have caseloads that exceed the American Probation and Parole Association recommendation that regular probation supervision caseloads be no greater than 90 offenders for every officer. In some jurisdictions, there are 352 offenders for every officer. When officers have that many cases, the quality of supervision suffers, and probation officers suffer stress and burnout. This can impact the probation officer in terms of physical and emotional health and can often result in high turnover rates of probation officers, which can result in a lack of or lapse in supervision or in offenders being supervised by less experienced probation officers.

Today, many of the offenders placed on probation are violent offenders or felons and suffer from mental and behavioral health challenges, as well as substance abuse issues. As such, probation officer safety is a concern. Probation officers often go into high-crime neighborhoods to visit their offenders (often with multiple offenders residing

in the same neighborhood. Supervision standards in many jurisdictions require probation officers to visit the offender in the community at night and on weekends, exposing them to risks.

In the United States, the responsibility for the administration of probation services varies from jurisdiction to jurisdiction. At the federal level, the U.S. Probation Office is responsible for administering probation in each of the U.S. district courts. At the state level, probation and parole can be administered through the state's executive branch of government, state judicial agencies, or local executive or judicial agencies. In some states, probation is administered by a combination of these agencies and organizations or may even be a private function, contracted by the states to a private organization.

Conclusion

Probation officers typically have the responsibility for the supervision of offenders sentenced to probation. Depending on the jurisdiction, these officers may be sworn law enforcement officers with the power to arrest and carry firearms. These officers monitor the progress of the offender on probation and report any violations to the court or other sentencing authority, represent the probation agency in matters against the offender, and make recommendations to the court in terms of whether probation should be revoked or continued. Probation officers are responsible for conducting office visits with the offender (meeting with the offender in the office to discuss his/her compliance with the terms and conditions of probation). Probation officers are often responsible for searching an offender, his/her residence, and/or his/her vehicle per the terms and conditions of probation, conducting curfew checks and subsequent criminal record checks, searching for new arrests and convictions, and verifying an offender's employment, residence, and school enrollment. In order to do this, probation officers conduct field visits, in which they visit the offender at his residence, place of employment, or school. During a field visit, a probation officer is able to verify and assess the suitability of an offender's residence, employment, or school enrollment.

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See Also: Community Service; Parole; Sex Offenders; Terrorism.

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Proclamation for Suppressing Rebellion and Sedition of 1775

The Proclamation for Suppressing Rebellion and Sedition, more simply referred to as the Proclamation of Rebellion, was a formal statement issued on August 23, 1775, by King George III (1738–1820) of Great Britain that characterized as rebellious the actions of American colonists that would eventually erupt as the American Revolution. Tensions between the American colonists and the British government had been worsening for decades prior to the proclamation. Those considered patriots by the Americans were, according to the Proclamation of Rebellion, considered rebels and criminals by the British. John Hancock (1738–93), for example, was regarded as a smuggler as evidenced by the seizure by the British of his ship *Liberty*. Paul Revere (1735–

1818) was considered to be a subversive by acts like his engraving of the Boston Massacre titled "The Bloody Massacre." Settlers along the frontier, beyond the Proclamation Line established by another royal decree, the Royal Proclamation of 1763, to protect Native American-held lands, were regarded as little more than squatters.

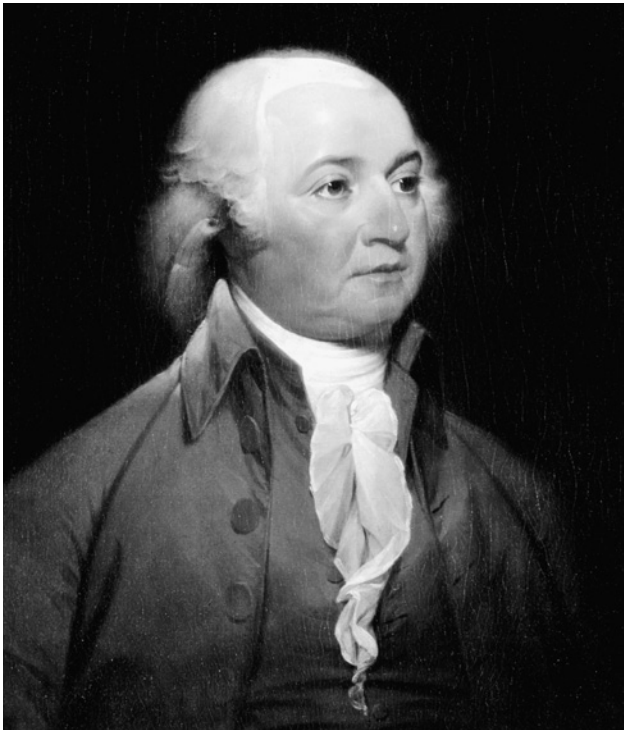
After the First Continental Congress met in September 1774 in Philadelphia to discuss what were considered oppressive actions by the British Parliament, such as the Coercive Acts, known by the colonists as the "Intolerable Acts," colonists in Massachusetts organized groups of minutemen to collect stores of weapons to prepare for armed defense to protect their rights. By early 1775, conditions in the American colonies had deteriorated to the point where many colonists felt that there were concerted efforts on the part of the British colonial government attempting to deny them their rights as Englishmen, such as those established in 1215 by the Magna Carta. Some colonials were so incensed that they chose to actively take up arms against the British authorities and troops. Notable hostile outbreaks at that time included the shots fired in April 1775 at Lexington and Concord; the seizure of cannons and ammunition at Fort Ticonderoga and Fort Crown Point on Lake Champlain by a force led by Ethan Allen (1738–89) and Benedict Arnold (1741–1801) in May 1775; and the Battle of Bunker Hill in Boston in June 1775. These sorts of military incidents led to the urging by royal advisers to have George III, king of Great Britain and Ireland, openly express his displeasure at such "disorderly acts." These sentiments resulted in the issuance of the Proclamation of Rebellion.

The Proclamation for Suppressing Rebellion and Sedition is actually a rather short statement. It consists of one page of a little over 400 words. It was printed under a copy of the royal arms. The Proclamation of Rebellion ordered that "utmost endeavours" should be used by British authorities to "withstand and suppress such rebellion." The inflammatory tone of the Proclamation of Rebellion has been considered as contributing to the full outbreak of the American Revolution.

Prior to the issuing of this Royal Proclamation, there was not much open discussion by American colonists about possible independence from Great Britain. However, after this direct statement from

the very highest level of the British government, in which what many colonists considered as justified responses were regarded as “treasons and traitorous conspiracies” by the Crown, many were moved toward revolution. The directness of the Proclamation of Rebellion, in fact, left little opportunity for reconciliation, such as had been offered in July 1775 by the “Olive Branch Petition” sent by the delegates of the Second Continental Congress. This message had been proffered by the conservative delegates, such as John Dickinson (1732–1808) of Pennsylvania, proclaiming loyalty to the Crown but dissatisfaction with the actions of governmental ministers. In addition, the Second Continental Congress also sent in July 1775 a “Declaration of the Causes and Necessity of Taking Up Arms” to King George III.

In the Proclamation of Rebellion, King George III strongly stated that the leaders of resistance to his rule were “dangerous and ill designing men” who were to be considered traitors to be captured and punished as they were clearly in “open and avowed rebellion.” The bluntness of the



The bluntness of the Proclamation of Rebellion convinces many colonists to side with more radical members like John Adams (above), eventually leading to the Declaration of Independence.

Proclamation of Rebellion helped persuade many of the formerly loyal colonists that rebellion was the only course of action left. Most of the more moderate delegates to the Second Continental Congress were persuaded by the tone of the Proclamation of Rebellion to then side with the more radical members, like John Adams (1735–1826) of Massachusetts, who were arguing for independence. This eventually led to the drafting of the Declaration of Independence and the resulting American Revolutionary War.

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See Also: 1600 to 1776 Primary Documents; American Revolution and Criminal Justice; Colonial Courts; Declaration of Independence.

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Procunier v. Martinez

Procunier v. Martinez (1974) established limits on prisons’ rights to censor mail to and from inmates and established prisoners’ rights to meet with law students and legal paraprofessionals who are working on the prisoner’s behalf. The case was a significant milestone in American law because it extended limited constitutional rights to prisoners under the First and Fourteenth Amendments.

In *Procunier*, the court ruled on the constitutionality of California Department of Corrections regulations that gave prison personnel significant powers to censor prisoners’ mail. The prisoners, who were the appellees, brought a class-action suit, charging that prisons routinely used mail censorship to silence, suppress, or discourage

prisoner complaints, to censor inflammatory political or social opinions, and to censor lewd or obscene communications. Prisons screened both incoming and outgoing mail under these regulations. The appellees argued that these regulations violated their First Amendment free speech rights. Prior to *Procunier*, U.S. courts had taken disparate approaches to the issue of censoring prisoners' mail. No generally accepted standard had been established to test the constitutionality of such actions. Justice Lewis Powell, writing for the majority, set out to clarify a test for constitutionality as applied to prisoner mail censorship.

The court also acknowledged the relevance in this case of the existence of First Amendment and Fourteenth Amendment rights for third parties outside the prison who wished to communicate with prisoners. The court sought to balance the needs of prisons to maintain necessary control over the inmate population with the inmate's First Amendment rights and the First Amendment rights of those who are not prisoners but who are communicating with inmates. The *Procunier* decision acknowledged that prisoners' constitutional rights are limited, compared to non-inmates. It agreed that censoring prisoners' mail could be justifiable in certain circumstances, so long as such censorship advanced penological interests that were not founded on suppressing expression. The court posited mail concerning escape plans or criminal activities as examples of mail worthy of censorship by prison authorities.

Balancing the various interests, the court set a two-pronged test for the constitutionality of prison mail censorship. First, censorship must further an important or substantial government interest in security, order, and rehabilitation. Such censorship must be unrelated to the suppression of expression. In other words, prison officials may not censor mail simply because they disagree or disapprove of the contents. Second, the censorship should be no greater than necessary to protect the particular governmental interest involved. This sets limits on the scope of censorship and restricts broad, sweeping censorship practices. Next, the court held that the decision to censor or withhold delivery of prisoner mail must be done in accordance with minimal procedural safeguards. Prisoners must be notified of such actions. The letter's author must be allowed

to appeal the rejection to some official other than the one who made the initial censorship decision. The appellees also charged that California's ban on the use of law students and legal paraprofessionals to conduct attorney-client interviews with inmates violated the inmates' right to counsel. Only licensed attorneys were permitted to interview inmates. Attorneys could not even delegate basic paperwork tasks, such as obtaining a prisoner's signature on a form.

The court had held five years earlier in *Johnson v. Avery* that prisoners have the right to legal assistance from fellow inmates. The *Procunier* decision held that California's restrictions violated prisoners' rights to due process, of access to the courts, and to legal representation. In 1974, the same year the court decided *Procunier v. Martinez*, it held in *Pell v. Procunier* that prisoners do not have a right to interviews with reporters. In *Houchins v. KQED* (1978) the court extended such restrictions to include other people outside the prison. In *Jones v. North Carolina Prisoners Labor Union* (1977), the court upheld restrictions that prohibited inmates from engaging in labor organizing activities and also upheld prison censorship of mail related to labor activism. In *Bell v. Wolfish* (1979), the court upheld a New York regulation that limited prisoners to receiving hardbound books only from established publishers or book vendors. In *Turner v. Safley* (1987), the court upheld Missouri prison regulations prohibiting mail between inmates in state prisons and established a more lenient standard for testing First Amendment constitutionality of mail censorship than did *Procunier*. In *Thornburg v. Abbott* (1989), the court upheld federal prison restrictions on prisoners' mail access to books or subscriptions to periodicals.

Procunier established a high-water mark for prisoners' First Amendment rights under American constitutional jurisprudence. Since *Procunier*, the Supreme Court has gradually eroded its conception of prisoners' rights as laid out under *Procunier*.

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See Also: *Johnson v. Avery*; Penitentiaries; Prisoner's Rights.

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Professionalization of Police

The development of professional standards for American policing, as well as the advancement of the concept of policing as a profession, developed during the early decades of the 20th century in reaction to various problems and challenges encountered by early municipal-level police agencies during that time. Police professionalism remains an evolving, and to a certain extent subjective, concept.

Tenets of Police Professionalism

There is some debate as to whether policing constitutes a profession at all and instead might be more accurately deemed an occupation or job. Even within law enforcement, there is disagreement surrounding what precisely defines professionalism, and whether those criteria can be objectively measured or are merely subjective. Certainly, one challenge in examining the professionalization of policing is determining precisely what police professionalism entails.

The term *professional* is generally reserved for members of occupations that require an elevated level of education and training; the command of a specific, relevant skill set; and a sense of identity and fellowship among their members. Professionals possess a personal dedication to the goals, ideals, and standards of that profession and have internalized a set of principles of performance and behavior that often extend beyond the workplace into other aspects of their lives.

Development of Police Professionalism

The first municipal-level law enforcement agencies emerged during the mid- to late 19th century in the major urban centers of the northeast and midwest, and the concept of full-time police departments designed to control crime and disorder gradually spread to communities throughout the nation. Many of these fledgling police departments, however, faced major challenges as they struggled to establish themselves, define their goals and responsibilities, and earn public trust and respect.

The most significant challenge faced by emerging police departments was a complete lack of recruitment, selection, and training standards. Many departments did not have stringent criteria regarding who would make a suitable police officer. Once hired, officers were not offered any kind of systematic training regimen or much guidance in terms of how to enforce law, interact with the public, or generally conduct themselves. Compounding these problems was the disturbing reality that in many municipalities, police and politics became inextricably intertwined; policing jobs and promotions were offered as rewards for actively supporting particular candidates, and jobs could be lost for associating with a losing candidate. Officers had very little supervision while out on patrol, and their assigned beats were often too large to be able to patrol efficiently during those pre-automobile days. Officers were vulnerable to corruption, and police supervisors had few mechanisms to adequately control the problem. In addition to the instability of the job itself, many officers experienced low pay and few, if any, benefits.

Influenced by the wide-ranging efforts of the Progressives, who during the late 19th and early 20th centuries engaged in activism that addressed political corruption and numerous other social ills that impacted many aspects of American life, police reformers worked to address perceived flaws in policing. The International Association of Chiefs of Police (IACP), which formed in 1893, was one of the first established professional organizations in the field and was especially vocal in its recommendations to untangle politics and policing and develop more clear and consistent recruitment, selection, and promotion standards. Meanwhile, investigative commissions identified specific problems plaguing police departments and issued recommendations to resolve them.

The most famous of these, the Wickersham Commission, convened in 1929 and issued its *Wickersham Commission Report* in 1931. One section of the report, "The Police" (authored primarily by August Vollmer), critiqued the lack of professionalism that was epidemic in police departments during that time and recommended refining hiring standards and improving officer pay, benefits, and access to necessary equipment and other resources. Another section, "Lawlessness in Law Enforcement," discussed the serious problems of police corruption and brutality and the lack of officer supervision and discipline.

Advocates of police professionalism in the early 20th century urged major changes in many aspects of policing. They insisted upon the complete removal of political patronage from policing. They focused on numerous personnel issues: Officers should be well trained and carefully supervised, and all hiring or promotion decisions should be based on merit alone, not political affiliation or arbitrary whim. They recommended a shift in policing focus. Crime fighting should be the primary task of police, and their success at this task would serve as an objective measure of police effectiveness. Meanwhile, all laws should be enforced equally, without bias or prejudice; police discretion should be minimized. Finally, police should take advantage of all technological innovations that would aid them in their crime-fighting mission. During this period, in fact, the development and/or increased availability of patrol cars and two-way radios greatly aided law enforcement in this renewed effort to fight crime.

Influential Early Proponents

Referred to as the "father of modern police professionalism," August Vollmer is a towering figure in the evolution of the modern police department and a pioneer in the development in police professional standards. While serving as the chief of police in Berkeley, California, from 1905 to 1932 (with a brief departure to serve as chief of the Los Angeles Police Department from 1923 to 1924), Vollmer pioneered many approaches to police hiring, training, and practice that are commonplace today. He emphasized the importance of a standardized, rigorous, academy-based training regimen for all recruits; to this end, he founded the Berkeley Police School in 1908, which was

one of the first police academies in the country. This academy taught recruits a variety of subjects, including criminal law and procedure, police psychology, forensics techniques, and police administration. He later advocated the creation of regional training academies throughout the nation. Furthermore, believing that police work was, in his words, the "highest calling in the world," he felt that a college education would develop the type of intellect and character that was necessary to do the job well, and he made a special effort to recruit the college educated. Vollmer was a strong believer in improving the diversity of the police force, so as to better represent the community, and was a proponent of the hiring of African American and female recruits. He was a major figure in the academic study of police science at the college level and in fact helped develop (as well as taught at) the School of Criminology at the University of California, Berkeley. Vollmer was a strong advocate of incorporating new technologies whenever they could allow police officers to do their jobs more effectively; his department was among the first to utilize radio communications, automobile and motorcycle patrols, and forensic techniques such as fingerprint analysis. Indeed, he helped found one of the nation's first crime labs.

Orlando W. (O. W.) Wilson was a criminology student and disciple of August Vollmer at University of California, Berkeley. Already an officer in the Berkeley Police Department during his student days, he devoted the remainder of his professional life to law enforcement, at various points serving as chief of police in Fullerton, California (1925–27), and Wichita, Kansas (1928–39), as well as superintendent of police in Chicago (1960–67). He was a great advocate of improved police professionalism, which to him meant creating and enforcing tougher recruitment and training standards; like August Vollmer, for example, he preferred recruits to be college educated. Also like Vollmer, he utilized technological innovations for police work, introducing at various points the use of automobile patrols, two-way radios, and a mobile crime lab that could be accessed in the field. Wilson worked to improve professionalism in long-established departments as well.

While serving as police superintendent in Chicago in the aftermath of a serious scandal that

rocked the department, decimated officer morale, and undermined police-community relations, Wilson instituted more stringent hiring guidelines, initiated a nationwide recruiting drive, and offered higher salaries to attract a better standard of applicants. He also introduced numerous measures to ferret out corruption and misconduct. In order to ensure that the best-qualified people had access to supervisory positions, he launched an improved merit system for promotions. Following in the philosophical footsteps of his mentor August Vollmer, Wilson was also a major proponent of the academic study of criminology and police methodology, even serving as the dean of the School of Criminology at University of California, Berkeley (1950–60). Perhaps his most influential contribution to the profession was his insistence on the careful evaluation and assessment of entrenched policing policies and practices; he conducted, for example, the first systematic study of the effectiveness of one-officer patrol vehicles and later examined ways to enhance the efficiency of automobile patrols and improve police response times.

Consequences of Professionalism

Policing agencies witnessed a number of significant changes in the early 20th century, and many of these shifts in policing philosophy and strategy brought unexpected consequences. The biggest criticism of how the professionalism movement manifested itself in policing practice was that it emphasized the importance of officers maintaining a “professional distance” from the community they served. Officers were discouraged from interacting with the public more than necessary in order to avoid becoming too familiar with members of the community, which might lead to favoritism or unequal treatment or somehow make the officer more vulnerable to offers of bribes and other forms of corruption. It was for the same reasons that during this time, rotating shifts and beat assignments became commonplace. Meanwhile, the greater emphasis on crime fighting, prevalence of patrol cars, and improved communications in the field meant that patrol officers were expected to spend their shifts quickly responding to calls for service and making arrests, and interacting little with the community otherwise.

Over time, critics alleged, officers became so isolated from the community that they were, in

essence, outsiders, and this shaped feelings of hostility and distrust among the public. Furthermore, as a result of being so removed from the people of the neighborhoods they patrolled, officers lacked awareness of their unique issues and problems, and this made responding to crime and controlling disorder a greater challenge. This became most dramatically evident beginning in the early to mid-1960s and culminating in the latter part of that decade, when police in urban areas were increasingly called upon to respond to scenes of civil unrest or disturbances stemming from civil rights or antiwar protests. Many police agencies found they had fallen into the “trap of technology,” in which their reliance on patrol vehicles and central dispatch effectively removed the officers from the kinds of regular interactions with the populace that can better inform policing strategy and response.

Policing’s Current Status

What are currently considered to be the defining qualities of a profession, and does policing have these qualities? There isn’t a consensus on either matter. Even within law enforcement, individual police officers may disagree as to whether policing constitutes a profession, or what particular elements might define policing as such. This is a critical issue, as professionalism generally entails a near-universal agreement among members regarding the distinguishing characteristics of that profession, including a devotion to shared goals, a commitment to pursuing a particular level of training and expertise, and an adherence to a clear set of performance and conduct standards. Regardless, researchers have highlighted a number of characteristics believed to be common to professions and have debated the extent to which law enforcement possesses them.

A profession might be identified as an occupation that, while fulfilling some critical societal need and largely acting in the public interest (although it may indeed revolve around the needs of a particular client base), is also viewed as a personal calling by those within it. Indeed, members of a profession may constitute a unique subculture to which they are completely immersed and greatly devoted. Much research on policing has been devoted to exploring these issues, and the unique nature of the policing subculture has been



Regional police training academies exist throughout the United States. Recruits experience a standardized, rigorous, academy-based training regimen.

a frequent subject of interest. Policing is ostensibly devoted to the greater public good, although officers may be called upon to make very difficult decisions, which would seem to not be in the best interests of particular individuals (i.e., the use of deadly force, or employing any type of physical force to obtain suspect compliance) but which are intended to preserve society's best interests.

Professions are also expected to develop (and carefully supervise) recruitment, selection, training, and performance standards for their members. Recruitment and selection criteria within policing have become fairly consistent across agencies, with some individual variations depending on the size and unique circumstances of the agency. Academy and field training are fairly standardized as well. All of these are changes that occurred gradually during the course of the 20th century as a result of the professionalism movement. Performance standards have been more difficult to develop and universally implement but may include the evaluation of such criteria as crime rates, arrest rates, number of tickets or citations issued, citizen satisfaction surveys, supervisor or peer evaluations of officer performance, response time to calls for service,

commendations or other forms of positive recognition earned by officers, number of disciplinary actions taken against officers, and/or number of formal complaints filed against a department or particular officers.

Another possible element of a profession is the existence of a unique area of expertise that is attainable through higher education. This is a separate issue from the standardized academy and field training that is near-universal for police recruits. The examination of the criminal justice system generally and police science in particular are recognized fields of academic study at the undergraduate and graduate level, but a degree—or even some college education—is not required by the vast majority of local-level law enforcement agencies. In many departments, however, recruits are encouraged to pursue higher education via the incentives of a higher starting salary and/or pay grade or enhanced opportunities for specialized assignments or advancement within the organization, and top administrators are often expected to possess at least an undergraduate degree. Related to the academic study of law enforcement is another potential element of a profession, which is the existence of a body of professional and academic literature and an active body of research examining the practices and policies of the profession. Policing certainly meets this criterion, as there are numerous publications (including professional and peer-reviewed academic journals) targeted to police officers, academics, students, and the general public that actively disseminate current research on police policy methodology. It is difficult to assess, however, the degree to which rank-and-file officers are encouraged to familiarize themselves with this existing research or the extent to which it informs police practice.

Relatedly, a profession often entails a dedication to self-improvement through ongoing coursework, training, or in the case of the police department itself, internal and/or external evaluation and/or accreditation. Police departments routinely offer various in-service training opportunities to their officers, and such training will be required for officers seeking specialized assignments or administrative positions. Departments will, however, vary in terms of the breadth and complexity of in-service training opportunities available. The

pursuit of accreditation—which entails meeting a set of standards that apply to numerous aspects of the operation of the police agency—is by no means universal and is, indeed, completely voluntary. The Commission on Accreditation for Law Enforcement Agencies (CALEA) is the standard accreditation body within policing. Agencies pursuing the accreditation process must submit an application and then conduct a self-study to determine whether they meet, or can implement, CALEA's accreditation standards.

Depending on the results of the self-study, the agency will then invite a team of outside assessors to objectively assess the agency's success at satisfying CALEA's criteria. Professional accreditation through CALEA is a significant achievement for any police department, and it can serve to elevate the agency's status within the law enforcement community and even among the general public. Perhaps most importantly, the existence of an accreditation process implies the authenticity of a set of universal standards for the operation of police agencies.

Another possible element of professionalism is the existence of professional organizations intended to further the interests of, as well as develop policy and standards of conduct for those within, a particular profession. In policing, there are organizations for top administrators such as the IACP. The majority of organizations targeted to lower-ranking officers, however, are social or fraternal in nature or are devoted to legal or collective bargaining issues.

The existence of a code of ethics is another feature that tends to characterize professions. These codes of ethics address not only how individuals are expected to conduct themselves while acting in the capacity of their profession but in all areas of their lives. Although the IACP has developed a code of ethics that it proposes be universally adopted, no common code of ethics yet exists within policing.

Professionals may be expected to be able to autonomously apply their expertise to a variety of scenarios while in the field and independently address problems and generate solutions, all with relatively little direct supervision. This would seem to be consistent with the current realities of patrol work, although increased levels of supervision, the development of explicit policies designed to address a greater variety of situations, and an

emphasis on reduced officer discretion were all hallmarks of the professionalism movement of the early and mid-20th century.

Future of Police Professionalism

The refinement of professional standards in policing continues. There is an ongoing debate, for example, surrounding the value of higher education for police officers and whether a college degree (or at least some college education) should be required, and departments vary insofar as the availability of in-service training and officer involvement in professional organizations. The concept of professionalism itself has changed since the adoption of the ideals and standards of the reformers of the early 20th century.

Today, there is a focus on proactively exploring seemingly unrelated incidents to discern possible linkages and navigating the delicate territory of interpersonal interactions and community relations. As success in these areas is more difficult to objectively measure than comparing crime or response rates, assessing the level of professionalism of a particular department based on these sorts of criteria will prove to be a challenge in the future.

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See Also: Automobile and the Police; Corruption, History of; Crime and Arrest Statistics Analysis; Crime Prevention; International Association of Chiefs of Police; Police Abuse; Reform, Police and Enforcement; Reform Movements in Justice; Training Police; Vollmer, August; Wickersham Commission; Wilson, O. W.

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Prohibition

National Prohibition came into effect across the United States at midnight on January 16, 1920. Passed by Congress in December 1917 and ratified by the requisite number of states by January 1919, the Eighteenth Amendment prohibited the “manufacture, sale, and transportation” of alcohol. There was strong voter support for the amendment within the context of mobilization for World War I—as dry supporters had successfully urged wartime bans on distilling and brewing as part of the food conservation programs—and from states that had enacted their own prohibition laws. Indeed, by the end of 1917, 18 states had adopted bone-dry laws that included prohibitions on personal use of alcohol. By 1919, 33 states had either statutory or constitutional prohibition.

Congress had passed the National Prohibition Enforcement, or Volstead Act, over President Woodrow Wilson’s veto in October 1919. Drawing on existing state laws, it set out the terms of the federal Prohibition code. It outlawed the manufacture, sale, transportation, and possession of any “intoxicating liquor” (defined as any beverage that contained more than 0.5 percent alcohol) “except as authorized in this act.” The act set out the regulations for the production and distribution of alcohol for industrial use and established a detailed permit system, which formed the basis for the continuing legal industry. Thus, church officials, doctors, pharmacists, industrial manufacturers, and others could still obtain alcohol under a heavily regulated system. There were also exemptions for possession of alcohol for personal consumption within an individual’s private home and allowing the home fermentation of fruit juices.

Some of the seeds of Prohibition’s failure lay in these exemptions. For example, one federal enforcement officer estimated that Chicago physicians had issued 300,000 bogus prescriptions for alcohol within the first six months of Prohibition. Several journalists delighted in the exposure of corrupt priests and rabbis abusing the exemptions for sacramental wine. Home production of wine and beer was a booming hobby across the United States, and male and female home brewers sold their product for a tidy profit. Through their

political connections, the Genna brothers gang in Chicago obtained a permit to process industrial alcohol, which they did, into bootleg whiskey.

However, the Volstead Act still contained important differences from state prohibition laws. For example, Kansas had already been a dry state for 40 years before Prohibition was enacted and had bone-dry laws in force. Thus, there was no fixed alcoholic content in its laws defining intoxicating liquor, there were no medical exemptions, state search and seizure laws were tougher, and penalties—including life sentences for a fourth conviction by 1927—for persistent violators were harsher. Scholarship on Prohibition has traditionally tended to focus on the major northeastern cities, but there are a substantial number of local and state studies.

Enforcement

The Volstead Act divided responsibility for the enforcement of Prohibition between the Justice Department and the Treasury Department. Federal revenue officers were empowered to enforce the Volstead Act and the Justice Department handled the prosecution of violators. A Bureau of Prohibition was established as a subdivision of the Bureau of Internal Revenue, and Republican prosecutor Mabel Walker Willebrandt, the first female assistant attorney general, was appointed to run it from 1921 to 1929. However, the concurrent powers section of the Eighteenth Amendment also rested on the expectation that the states would actively enforce Prohibition. Most enacted supplementary liquor laws, like New York’s Mullan-Gage Enforcement Law in April 1921.

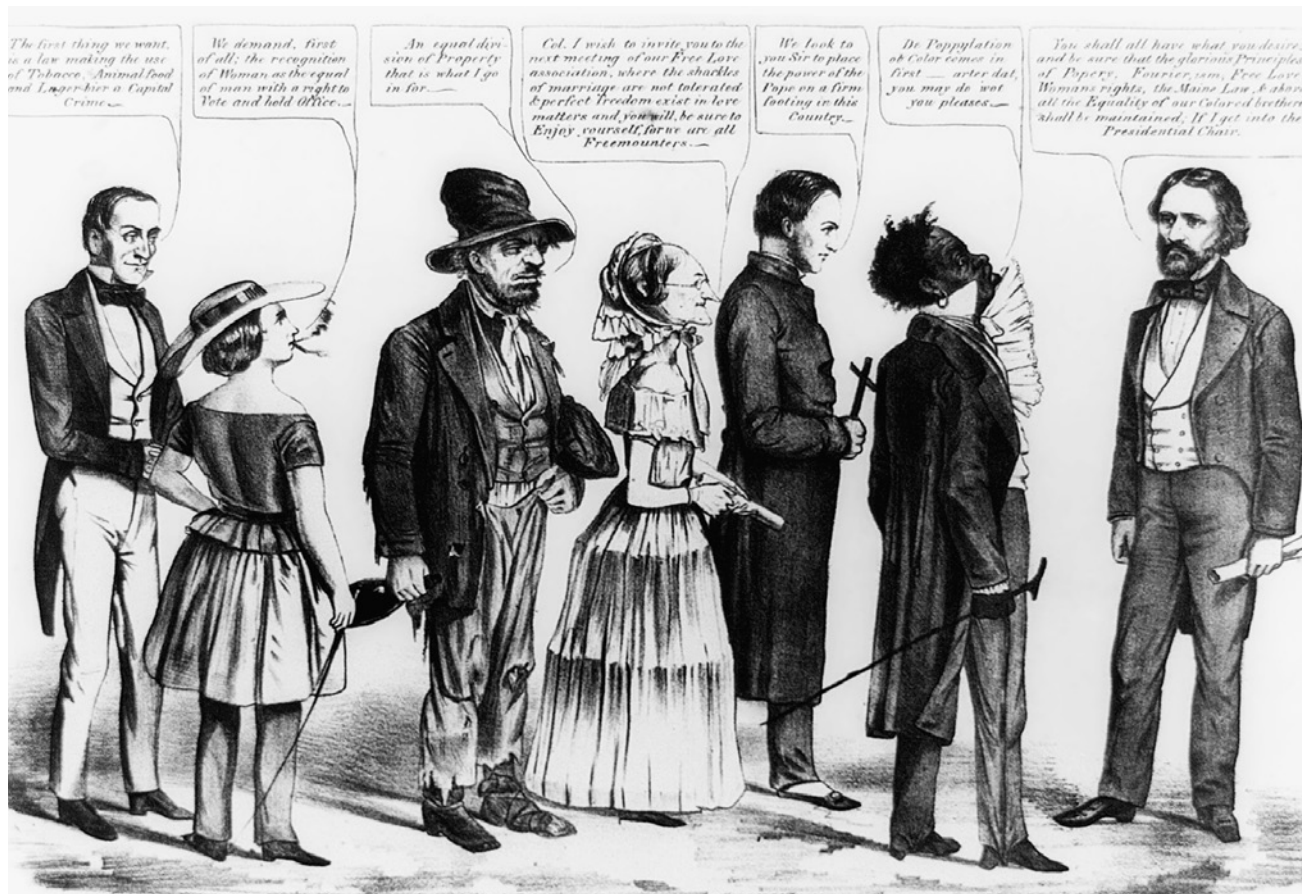
Under the terms of the Eighteenth Amendment, the liquor industry had been given a year to wind up business, but this was also an important window for those planning to circumvent the new laws. Within minutes of Prohibition coming into effect, gangs had launched successful raids on government bonded liquor warehouses and hijacked trucks carrying medicinal and industrial liquor. Many saloons remained open and continued with business as usual. Alcohol consumption in the United States did fall in the early 1920s, probably by up to 40 percent, as a result of rising costs rather than effective enforcement but gradually rose throughout the rest of the decade.

Evasion

Sources of illegal alcohol were numerous, but in the popular image of the Prohibition years, its enjoyment is associated with a new fashionable but illegal drinking establishment, the speakeasy, and its rural and small-town equivalent, the roadhouse. Many had concealed entrances staffed by doormen and required passwords to enter. Owners installed collapsible shelves and hidden cellars to stymie raids. However, every speakeasy operator had to pay protection money to local police in order to remain in business, so that officers would ignore liquor violations and provide information about raids. High-end speakeasies were often glamorous and fashionable nightclubs where jazz musicians and exotic dancers entertained wealthy patrons drinking imported brand liquor. By contrast, the “shock houses”

of the Bowery and Lower East Side served noxious liquor supplied by local “alky cooks” that induced gut rot, blindness, and even death. Ordinary citizens used a variety of methods to transport alcohol, including hip flasks, ladies’ muffs, and baby carriages.

Liquor flowed into the United States from Canada and Mexico. Under phony bills of lading, it crossed international borders by railroad, truck, speedboat, and airplane, often with the assistance of customs officials and shipping clerks. Efforts to blockade the Detroit River, Hudson River, and overland routes had little effect. Innovative methods of concealment such as blocks of ice, hot water bottles, and rubber tires were swiftly adopted by a booming smuggling industry. A coastal “Rum Row” stretched the length of the east coast from Newfoundland to the Keys



Prohibition was a very controversial issue, as shown in “The Great Republican Reform Party Calling on their Candidate,” an 1856 political cartoon about John C. Fremont, the first Republican party candidate for president of the United States. The man on the left states, “The first thing we want is a law making the use of Tobacco, Animal food, and Lager-bier a Capital Crime.”

and Bahamas. International agreements during the 1920s extended American territorial waters from three nautical miles offshore to 12. Schooners packed with branded liquor waited outside the limit for customers in speedboats.

In the early 1920s, Rum Row was dominated by small independent operators like the legendary Bill McCoy, but they were soon squeezed out by larger organized syndicates, which began to monopolize all aspects of the illegal liquor industry. John Kobler described the ascendancy of New York gang bosses such as William “Big Bill” Dwyer, whose extensive operations included hotels, nightclubs, breweries, casinos, and race-tracks in many parts of the United States. By 1923–24, Dwyer’s payroll included purchasing agents, customs and Coast Guard officers, police, and Prohibition agents. He had also assembled a fleet of oceangoing vessels to ensure his lines of liquor supply remained open and efficient.

Andrew Sinclair argued that in the initial years of Prohibition, criminal gangs often provided protection and ensured delivery for ordinary brewery and distillery owners who had the necessary political contacts, as in the example of the Torrio gang and Chicago brewer Joseph Stenson, who netted up to \$50 million in profits. However, the election of a reform mayor in 1924, a series of brewery raids and several arrests, and an assassination attempt on Torrio disrupted this arrangement. Respectable businessmen were edged out by increasingly powerful criminal syndicates.

Criticisms

The Anti-Saloon League (ASL), the Woman’s Christian Temperance Union (WCTU), and their allies promised that a new nation would emerge in January 1920 when the United States became dry. The so-called noble experiment was intended to eradicate the social problems associated with drinking—alcoholism, domestic violence, poverty, unemployment, and low work productivity. A key target was the closure of the saloon, particularly the working-class ethnic or immigrant saloon, which many native-born ASL supporters considered to be a major impediment to assimilation. Dry advocates often linked the perceived inherent criminality of ethnic and nonwhite Americans to intemperance, and in the southern states, the “liquor question” became entwined with issues

of race and the maintenance of white supremacy. Despite being portrayed as a rural, native-born, white, Protestant, middle-class goal, Prohibition nonetheless garnered significant support from different ethnic, religious, and racial groups. For example, it was linked with black racial uplift in the early 20th century.

Critics charged that the poor were most frequently arrested and jailed for bootlegging, while middle- and upper-class people bought and drank behind the protection of country clubs, political connections, and homes they owned. In his study of New York City, Michael Lerner found that Prohibition agents and the federal courts did make examples of wealthy defendants on occasion, but generally, wealthy upper-class elite Volstead violations were ignored, and enforcement efforts were directed at working-class drinking establishments and lower-class violators. As most of these defendants could not afford effective legal counsel, they were more likely to employ ineffective lawyers and be convicted or enter into plea bargains for reduced sentences and fines. The result was a two-tiered legal system. Further, the dry lobby quickly scapegoated ethnic Americans, Catholics, Jews, and African Americans for their disregard of the law and the consequent failures of Prohibition. During his unsuccessful presidential campaign in 1928, New York Governor Al Smith criticized the Eighteenth Amendment as an attack on immigrant customs and traditions by intolerant nativists and xenophobes.

The rise of celebrity bootleggers who violated the Volstead Act with impunity and seemed immune from prosecution reinforced the perception that the poor were being disproportionately targeted and confirmed that Prohibition was failing. As Claire Bond Potter observed, “By 1924, reformers, the press, and many civic leaders (both wet and dry) understood Prohibition as a moral and managerial failure that had produced a cynical, crime-ridden public, a network of powerful gangsters, and hypocrisy in government.”

Initially, the Prohibition Bureau employed 1,550 agents in 18 administrative districts to police the Volstead Act and arrest those citizens who were willfully flouting federal laws. There were simply never enough agents to effectively police the massive territory of the United States. From the outset, Prohibition suffered also from a spectacular

failure of presidential and congressional leadership, as President Warren G. Harding regularly played poker and drank with his Ohio political associates, and bootleggers supplied members on Capitol Hill. The Republican Congresses of the 1920s never voted for enough appropriations to adequately staff or equip the bureau, particularly with regard to the salaries and training that a professional police force required. The starting salary for a Volstead agent was \$1,200 in 1920, rising to \$2,300 by 1930. There were honest and efficient agents, including Izzy Einstein and Moe Smith in New York, and the incorruptible Eliot Ness in Chicago, but many others took bribes to supplement their incomes and to look the other way. As there was no civil service exam requirement until the later 1920s, many agents were political appointees with no knowledge of the law or how to enforce it. A 1927 attempt to professionalize the bureau floundered when employees were required to take the federal civil service exam and more than 40 percent failed, plus nearly 100 supervisors were demoted, dismissed, and transferred.

The bureau was supposed to be supported by more than 3,000 customs agents and special officers from several other government departments, as well as state police forces, highway patrols, and local sheriffs' officers, but many of these law enforcement officials had other offenses to investigate and were never committed to enforcing Prohibition. Further, in joint operations involving federal and local police, there was often no clear chain of command. States with a dry history like that of Kansas experienced Prohibition differently when compared to wet centers like New York City, New Orleans, and Chicago, and evidently did remain drier, yet liquor "rings," corrupt law enforcement, significant moonshine production, and public disregard for the law were found everywhere. By 1927, only a third of the 48 states continued to appropriate funds for state enforcement. New York had become the first state to repeal its state enforcement legislation in 1923, which in effect left enforcement to federal officers alone.

Bootlegging

While millions of Americans clearly resented federal and state efforts to regulate their behavior and continued to purchase and consume alcohol

despite its illegality, speakeasies, bootlegging, and the violence of organized crime generated profound anxieties among local and state civil leagues, church groups, and others. It also enabled more extremist groups like the Ku Klux Klan to make political capital as champions of law and order. The Klan's projected image as guardians of white, native-born, American morality drew critical local electoral support for a short period in the early 1920s. Its rhetoric linked nativism, racism, anti-Semitism, and anti-Catholicism with lax law enforcement, widespread crime and disorder, and unchecked bootlegging and vice.

Gangs and urban crime syndicates rose to power through the saloons, gambling houses, and brothels of the 19th century but Prohibition enabled their expansion and monopolization of the illegal liquor market. Contemporary criminologist John Landesco argued Prohibition enormously increased the personnel and power of organized crime: "It had opened up a new criminal occupation, with less risk of punishment, with more certainty of gain, and with less social stigma than the usual forms of crime like robbery, burglary, and larceny." Figures such as Arnold Rothstein, "Dutch" Schultz, Charles "Lucky" Luciano, and Alphonse "Scarface" Capone built extensive crime syndicates on the profits of bootlegging and through a series of deadly gang wars in the mid- to late 1920s. They bought invaluable protection from politicians, judges, and police. The perpetrators of gang murders and bombings went unpunished because juries were either bought or too fearful to convict.

Guided initially by his onetime mentor Johnny Torrio, Capone built a large, disciplined, and ethnically diverse criminal organization that expanded from its key base in Cicero to establish control over Chicago through the elimination of rival gangs, violence, various forms of intimidation, political manipulation, and corruption. By the late 1920s, the Chicago Crime Commission estimated the Capone syndicate's profits at \$60 million per year. Encouraged by the patronage of many respectable Americans, Capone presented himself as a reputable businessman who was merely catering to public demand. But a bevy of bodyguards surrounded him in public streets, hotel lobbies, at the racetracks, and in nightclubs he sat in an armor-plated swivel chair when at

the “office,” and his car was adorned with armor plating and bulletproof glass.

The failure to prosecute Capone for numerous bombings and murders during Chicago’s beer wars, his ostentatious displays of wealth, and expressions of benevolence paid for with the profits from vice and bootlegging symbolized the impotency of national government. The Chicago Crime Commission’s Subcommittee for the Prevention and Punishment of Crime, known as the “Secret Six,” persuaded prosecutors to send Eliot Ness’s team of “Untouchables” to Chicago to take on the Capone syndicate. The infamous 1929 St. Valentine’s Day Massacre, in which seven associates of Capone’s rival Bugs Moran were gunned down in a warehouse on Chicago’s North Clark Street by gunmen hired by the Capone organization, and the murder of Assistant State Attorney William H. McSwiggin in Capone’s headquarters at Cicero were major turning points in public attitudes.

Arguments for Repeal

There were increasing public demands for more aggressive law enforcement to curb the open gang warfare and violence that periodically exploded on city streets, and the New York Police Department (NYPD) instituted a number of get-tough anti-crime measures in the late 1920s, including the use of dragnets and strong-arm squads. However, this led also to charges of increased police harassment and brutality, frequent use of the “third degree,” and gross violations of the Fourth Amendment, as local police and Prohibition agents broke down doors and wiretapped private telephones in their pursuit of bootleggers.

In the late 1920s, the Association Against the Prohibition Amendment (AAPA) and Women’s Organization for National Prohibition Reform (WONPR) convincingly argued that alcohol consumption was just as prevalent under Prohibition as during the pre-1920 period, that the nation was in the grip of an unprecedented crime wave, and that the government was losing valuable tax revenue to the bootleggers and racketeers. Shortly after taking up presidential office, Herbert Hoover appointed a national crime commission chaired by retired federal jurist George Wickersham to evaluate Prohibition enforcement and organized bootlegging. The Hoover administration also

resolved to “get” Capone, which it did on income tax evasion charges in October 1931.

The establishment of the Wickersham Commission in 1930 was the beginning of the end of Prohibition, even though commissioners voted to continue with better enforcement (only two of 11 commissioners called for repeal). Nevertheless, they concluded that as a police force, the Bureau of Prohibition had failed, and that the trade in alcohol had not diminished.

Prohibition had turned tens of millions of otherwise law-abiding Americans into willing lawbreakers, and the resulting disrespect for the law was incalculable. The Wickersham Commission called it “a serious impairment of the legal order to have a national law upon the books ... which public opinion in many important centers will not enforce.” Prohibition opponents argued that opening up distilleries and breweries would create much-needed jobs during the early years of the Great Depression. The ratification of the Twenty-First Amendment was a speedy affair with a certain result as disaffected dries and long-time wet supporters joined forces to ensure repeal by the end of 1933.

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See Also: 1941 to 1960 Primary Documents; Capone, Al; Ness, Eliot; Volstead Act; Wickersham Commission.

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Prostitution, Contemporary

Prostitution, sometimes referred to as “sex work,” is the world’s oldest profession, albeit a controversial one. Prostitution involves two or more consenting adults who negotiate some form of sexual service in exchange for monetary payment or other goods; thus, there is a buyer (e.g., client, customer, or “john”) and a seller (i.e., a prostitute), a service (e.g., sexual intercourse or oral sex), and a contracted price. Prostitution is a vast, growing, and lucrative industry. In the United States alone, it is estimated that there are 1 million prostitutes, thousands of whom are arrested each year. Prostitution occurs for many reasons, can take on numerous forms, and has been made more visible in recent years due to media reports and technology. Debates have ensued as to whether prostitution should be legalized, and action has been taken to reduce criminalization and stigma of prostitution, the victimization associated with it, and the demand for these services.

Characteristics and Risk Factors

Understanding the characteristics of and risk factors for prostitution is important in analyzing the behavior, examining the various legal positions taken on it, and implementing strategies to address the issue.

Prostitutes: Females are disproportionately represented among prostitutes; they make up a large portion of individuals arrested and punished for prostitution. In particular, minority females are overrepresented among prostitutes arrested and sanctioned, although they are not representative of the prostitute population. The intersection of race/ethnicity and poverty plays a powerful role in this since urban areas have a higher concentration of minority groups, and street prostitution is much more visible to police in these socially disorganized areas. Yet, these minority females are arrested and prosecuted at higher rates than other groups involved. Males are also involved in and arrested for prostitution and prostitute-related behaviors. They have been increasingly represented in the number (approximately 40

percent) of those arrested for prostitution, soliciting sex, and “pimping.”

In order to understand the nature of prostitution, numerous prostitute typologies have been created representing its hierarchical structure. The typologies vary by spatial lines, working conditions, income, and other factors. Most commonly, prostitutes have been categorized as streetwalkers, bar girls, brothel workers, and escorts, although classifications vary from study to study.

Streetwalkers make up the most visible prostitutes. They may appear on the streets, at rest stops, and in other public areas, often working in poor or deteriorated neighborhoods. Street prostitutes often face or have faced a host of negative situational and personal factors that have served to contribute to their involvement in the activity; this includes financial problems, homelessness, drug addiction, prior sexual abuse, and psychological state. Street prostitutes are commonly young, work long hours and numerous days, and earn limited amount of money, sometimes less than \$20 for their services. These individuals have the highest risk for victimization by those around them. They are also the group most subject to arrest, jail, and fines. Street prostitutes, however, represent only a small portion of prostitutes.

Other types of prostitutes come at a higher price, including bar girls, brothel workers, and escorts. Bar girls are individuals who sell sexual services at bars, night clubs, private clubs, or other social institutions and typically have deals with owners of these businesses. These individuals are able to conduct their services inside private buildings and establishments, evading street visibility. They earn more and work less than street-level workers, but also face problems similar to those noted among street prostitutes. Those who work in brothels, known as “sex workers” due to their choice to engage in this as an occupation, comprise another typology.

These individuals are thought to have fewer constraints around them. They gather at one house or place of service, often licensed, where customers may select a woman (or several women) with whom they engage in sexual activities. Here, a house madam is the person in charge of the business and often takes a cut of the sex workers’ earnings. The conditions afforded to the prostitute are



Many people in the United States have pushed for reform of what they consider to be outdated laws regarding prostitution. They contend that the criminalization of prostitution is unjust and hurts those already at a disadvantage, namely, the street-level prostitutes who have already been victimized and experience a host of negative life circumstances.

often much safer and better than conditions for the typologies previously mentioned. Prostitutes in massage parlors represent a similar typology, working in a similarly structured setting. Lastly, escorts are the highest class of prostitutes and make the most money, some earning thousands of dollars per hour. They are selective of customers, often work on their own terms, and see prostitution as a type of work. In sum, prostitution exists in diverse forms and across diverse sites.

Clients: When discussing prostitution, attention toward clients is warranted. Clients of prostitutes are often referred to as customers or “johns.” They are disproportionately male and often diverse across demographic characteristics. Clients are usually employed and in long-term, committed relationships. These characteristics have

been found across numerous studies, irrespective of the type of prostitute sought.

It is estimated that approximately 20 percent of men have paid for sex. Research has suggested that there are various reasons for patronizing prostitutes, including a lack of interest in conventional relationships, a desire to engage in sexual activities with multiple individuals or individuals of desired characteristics, and a wish to engage in behavior that a partner might be reluctant to engage in. Other reasons noted include thrill, fun, and pursuit of social and interpersonal contact, particularly for those who might be physically or socially unattractive. Cultural expectations and expression of power over women have also been cited as reasons for involvement. Those who patronize prostitutes generally know where to find prostitutes and

have access to funds. Further, they often evaluate the risk of getting caught and fear being identified publicly for their conduct.

Facilitators of Prostitution: In some cases, prostitutes are recruited into prostitution and controlled by pimps. Pimps are male agents who socialize prostitutes into the subculture with promises of money and live off the earnings made. They advertise sex for sale to potential clients and connect the clients to prostitutes. Pimps have been noted to be territorial, possessive, and also abusive. They most commonly operate street-level prostitution in socially disorganized neighborhoods. In some cases, intimate partners have been noted to act as pimps, pressuring an individual into prostitution. Similar to pimps, females who act as agents in brothels are known as madams. They have similar responsibilities and also take a cut of the prostitute's earnings. Pimps and madams have both acted as facilitators to prostitution.

The Internet has also facilitated prostitution, serving as a mechanism for communication between two parties who can contract a service and price. Prostitutes increasingly use the Internet due to the ease of advertisement, a sense of autonomy, and the ability to evade law enforcement as well as the general public. A large market for prostitution exists, made evident by numerous Internet Websites, both group and self-regulated. This method of prostitution diminishes the possibility of being apprehended for engaging in the behavior and may lead to a gradual decline in street prostitution and third parties (i.e., pimps and madams).

With technology like the Internet, it is not difficult to find listings for various adult services. Individuals may advertise freely and the advent of online prostitution has acted to facilitate sexual services offered in various private locations, including massage parlors, saunas and spas, hotel rooms, and even homes. While some prostitution on the Internet may be blatantly obvious, other forms are more subtle, using coded language. Local papers have also been notorious for selling sex discreetly, but due to the widespread use of the Internet, it is becoming obsolete. The Internet is such a strong facilitator of prostitution that it makes the act virtually disappear behind the bounds of visibility. The advent of such technology has furthered the

commercialization of sex in ways not previously possible.

Explanations

A proliferation of explanations as to why prostitution occurs has been offered. At the macro level, economic and cultural factors play a role in involvement. Conditions that exist in the United States and around the world promote prostitution. Prostitution is more likely to occur in countries with economic marginalization of females, which increases vulnerability for engaging in sex work, particularly when there is a lack of opportunity for income for females. Additionally, gender arrangements that exist in patriarchal societies contribute to prostitution.

Males are socialized to be dominant and aggressive, while females are expected to be passive and submissive. A double standard for sexuality exists where men are encouraged to pursue sex, while women are simultaneously shunned from the very same behavior. The Madonna-Whore duality explains this; in patriarchal societies, females who engage in sex with multiple partners are considered bad, while those who are chaste are good. Since men cannot satisfy their desires with all women due to gender role expectations, men can fulfill their desires with a certain few, which is thought to preserve the sanctity of other females. Yet, this societal-level explanation does not explain prostitution alone. The United States has achieved substantially more gender equality than in the past and in comparison to other countries, but the demand for prostitution remains high and prostitution has been diversifying in technological and social arenas.

Life interactions also influence prostitution. Although some individuals choose to participate in the activity of their own accord, many individuals involved in prostitution are pushed into it by those around them, whether a friend, an intimate partner, or a family member. Negative life circumstances can also act as a push factor toward prostitution. The most common micro-level explanation cites evidence pointing at the large percentage of prostitutes who are survivors of abuse, particularly sexual abuse and incest committed by someone they know. Such victimization might teach victims to identify with themselves as objects rather than beings, which sways them

to engage in the behavior. The victimization then continues with exposure to violence and exploitation by those in higher positions with more power. This more commonly holds for lower-level prostitution but has also been found for other levels.

The Media and Prostitution

Although street prostitution has been the most studied due to the ability to identify those involved, other forms are widespread and have received great notice, courtesy of the media. In recent years, numerous political figures and officials have faced public scrutiny when the media called attention to their roles in soliciting sexual services via phone services and Internet listings. Among these cases was married New York Governor Eliot Spitzer, a well-known lawyer and politician, who resigned from his position when he was exposed in 2008 for his involvement in an international prostitution ring known as the Emperors' Club VIP. The organization was comprised of high-level escorts who provided sexual services at great costs to clients who booked appointments online or by phone. Federal investigations found Spitzer to have procured services exceeding \$80,000, revealing the lucrative nature of the industry. Other politicians have also shared media attention, including Senator David Vitter, who was linked to a Washington escort service.

In 2009, the use of Internet listings in facilitating sexual services had received national attention arising from the case of the "Craigslist killer," Philip Markoff. Markoff targeted females advertising "erotic" services; the first female was robbed, but the second was murdered. Given that higher-priced prostitution is thought to be safer, the case serves as a grave reminder that violence and exploitation occur outside street-level prostitution. These cases, among many others, demonstrate the underground nature of these services.

Legal prostitution has also been popularized. Advertisements via billboards, radio, and television have attempted to attract customers. Further, television shows and series now focus on sex work in brothels. HBO's *Cathouse* features Nevada's Moonlite Bunny Ranch.

Contemporary Views

In recent years, the debate regarding whether prostitution should be seen as criminal behavior

or as legitimate activity has become increasingly contentious. There are a wide range of perspectives pertaining to this issue, often guided by morals and beliefs. Contemporary views on prostitution focus on morality, social problems, gender organization and arrangements, human rights, health, and labor. While there is a general consensus that forced prostitution through kidnapping, violence, and deception is immoral and wrong, considerably less force is always subject to deliberation. Some individuals contend that all prostitution is forced, whether through violence or threats of violence, fraud, deception, or negative life circumstances. They also see prostitution as a criminal offense that contributes to the decay of morality, community well-being, and overall health. Conversely, others argue that it should be a choice, and criminalizing prostitution only serves to revictimize those already victimized by their own life circumstances.

Against Prostitution: Individuals opposed to prostitution have coalesced around the view that prostitution is rarely voluntary, is exploitative in nature, and is an extreme form of gender discrimination that prevents females from being seen as males' equal counterparts. They argue that gender inequality will remain unattainable as long as men are buying, selling, and exploiting women for sex. Moreover, they contend that decriminalizing or legalization of prostitution would contribute to violence against women since women would be viewed as a commodity or second-class citizens. Thus, to support prostitution is a method for males to maintain dominance over women and contribute to gendered violence. Further, those opposed to prostitution argue that it contributes to moral erosion. Individuals and groups on this side of the debate oppose the legitimization of prostitution and want to end the institution of prostitution to promote an idealistic society. They also work to eliminate the sex industry overall, protesting against pornography, gentleman's clubs, and so forth.

Groups like WHISPER (Women Hurt In the System of Prostitution Engaged in Revolt) and CATW (Coalition Against Trafficking in Women) reflect the views of this side of the debate. They emphasize the patriarchal environment in which prostitution occurs and argue that it contributes

to the sexual objectification and degradation of women as well as the double standard in society. Moreover, given evidence of prostitution in countries with gender inequality, they argue that is difficult to estimate just how many individuals would “choose” to engage in sex work if afforded other economic opportunities.

For Prostitution: Many individuals in the United States have pushed for reform of what they consider to be outdated law and discriminatory practices regarding prostitution. They argue that prostitution offers a viable source of income where individuals can earn better-than-average pay, which they would not be able to do given any other opportunity. Further, if legalized or decriminalized, those who choose to engage in prostitution could act with agency, acting in a self-directed way rather than being forced under the wing of a pimp or madam. This side of the debate contends that the criminalization of prostitution is also unjust and hurts those already at a disadvantage, namely, the street-level prostitutes who have been victimized and experience a host of negative life circumstances. Criminal justice responses have disproportionately focused their efforts and resources on apprehending these prostitutes and served to revictimize them. If prostitutes fear apprehension, they are also less trusting of police and therefore unlikely to report victimization. Cases of police misbehavior have also called for the decriminalization/legalization of prostitution.

Prostitutes’ rights organizations, social justice networks, and various coalitions on prostitution have guided the prostitutes’ movement and call for decriminalization of all aspects of prostitution in which individuals are willing participants. These groups argue that one should be able to choose whether or not to engage in such behavior, and the government should not interfere with private matters involving consenting adults. These groups argue that prostitutes should not face legal repercussions or stigma and should be afforded the same rights as workers in any other occupation. COYOTE (Call Off Your Old Tired Ethics) and HIRE (Hooking Is Real Employment) are two groups that have contributed to this movement. They view prostitution as a legitimate occupation and advocate the repeal of laws against prostitution, arguing that such laws are responsible for

the real victimization of prostitutes. By providing sex workers with agency, autonomy, and self-regulation, their victimization can be reduced and they may be able to better their current circumstances. The American Civil Liberties Union also takes this view, arguing that one should be able to freely choose whether to engage in the activities and be afforded the same protection and rights as any other person.

Responses to Prostitution

Prostitution has proven to be a complex issue. Government officials, criminal justice agencies, community groups, support organizations, social service agencies, and public health agencies have largely influenced law. Four legal approaches have guided responses to prostitution: prohibition, abolition, legalization, and decriminalization. Prohibition punishes anyone involved in prostitution, whether the prostitute or those who facilitate it. Abolition criminalizes individuals other than the prostitute (i.e., clients, pimps, madams, and traffickers). People supporting this approach argue that simply targeting prostitutes does not get at the source of the problem. In this approach, prostitutes are also seen as victims, disadvantaged and constrained in their opportunities to earn a living. The legalization approach is where government regulation exists; revenue is generated from taxation of services. Decriminalization deals with repealing all laws pertaining to prostitution; those who support this view believe that government should not interfere in the private lives of consenting adults. While the former two approaches focus on criminalization, the latter two focus on normalization.

The predominant policy of federal and state law has been prohibition. Federal law prohibits crossing state or international boundaries for purposes of sex; it also criminalizes the transportation of individuals for purposes of sex and forbids deception and coercion. Prostitution near military and naval bases has also been prohibited by federal law, and federal law has placed a ban on visas and admission to the United States for any foreigner who has engaged in prostitution within 10 years of the date applied. The federal government, however, has given states discretion as to which approach to take; states have primarily followed precedent set forth by the federal government.

State laws criminalize the act of soliciting sex, engaging in prostitution, and profiting from prostitution in all but one state: Nevada. Prior to 2009, Rhode Island was a state that decriminalized these acts, but in 2009, they made it a misdemeanor. States where it is criminalized have proposed various penalties for prostitutes, customers, pimps, and brothel owners. Penalties for prostitutes and customers are typically misdemeanors for first offenses, while penalties for pimps and brothel owners have been classified as felonies for first offenses. Subsequent convictions for prostitutes or clients may be upgraded to a felony charge. An examination of potential penalties for prostitutes and customers across states reveals that most states have imposed standardized, equivalent sanctions for the buyer and seller in the form of fines and/or jail. However, some states have proposed potentially slightly higher penalties for customers (e.g., Arizona, Montana, New York, and Rhode Island) while other states have proposed higher penalties for prostitutes (e.g., Delaware and Kansas). Laws have also been enacted in recent years to enhance the penalties for prostitutes arrested and convicted for prostitution if they are aware of their human immunodeficiency virus (HIV) status and continue to engage in the activity.

There has been a desire by many to reform what is considered to be outdated law. Recognizing that simply decriminalizing prostitution might lead to problems, and that prohibition serves to victimize those already disadvantaged, some places have adopted abolition and legalization as strategies. Abolition views the prostitutes as victims and pushes for criminalizing those who solicit sex or are third parties, thereby targeting demand. Sweden has adopted this approach. Canada, the United Kingdom, and many other places have legalized prostitution but criminalized it in public places and criminalized pimping, brothel owning, and other activities. For legalization, prostitution is regulated and mandatory health checks are imposed to prevent the spread of sexually transmitted diseases. Brothels have been legally licensed and operate in order to provide protection for vulnerable women who might otherwise be exploited; these can be found in certain counties of Nevada, as well as several places abroad like the Netherlands. Nevada has 28 brothels with about 1,000 sex workers in the counties where prostitution is

legal. Most brothels have female prostitutes and male clientele; there is also an establishment that employs male prostitutes for female customers, although controversy exists as to how to subject these men to health screenings.

Law enforcement policy throughout the United States has traditionally focused on arresting and prosecuting those who sell their bodies. This concentrates police on apprehension of street-level prostitutes. Prostitutes have also been arrested for public nuisance and loitering violations. Approaches to address the inequity of response and prosecution of men and women involved in prostitution or related behaviors have also been taken. Crackdowns and client arrest programs have also been used to apprehend customers of prostitution and those in control of prostitutes, their pimps. This is thought to deter the demand and often only has a short-term effect. Court orders have also even been issued prohibiting those convicted from entering certain areas. In an attempt to reach specific deterrence, methods of shaming offenders have been used; the names of those arrested for soliciting sex have been posted in newspapers, on billboards, and on various Internet sites. Additionally, collective efficacy among communities has been encouraged by local law enforcement to have community members act as a form of surveillance to reduce any street-level disorder that may exist.

New Approaches

Some places have used innovative approaches to handling prostitution by creating multiagency responses that involve police personnel collaborating with social service agents. This comprehensive approach is thought to raise sensitivity and awareness of issues surrounding prostitution to better address it. Diversion programs that include education also exist for those who come into police contact. These approaches raise public awareness and also have offered substance abuse treatment, mental health treatment, healthcare, housing, job training, and support.

Places like San Diego, California, and Indianapolis, Indiana, have also taken unique approaches in using restorative justice methods to address prostitution. This involves community justice panels comprised of various members in the neighborhood and community service sentences

rather than traditional sanctions. They are based on the notion of repairing harm and having violators understand the consequences of their actions. Diversion programs that include education also exist for those who come into police contact. This attempts to reduce stigma associated with prostitution and related offenses. Current strategies include targeting prostitutes as well as targeting clients and third parties but remain heavily concentrated on street-level prostitution. Innovative methods have surfaced and hold promise for effectively addressing the problem.

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See Also: Adultery; American Civil Liberties Union; Fornication Laws; Gender and Criminal Law; Las Vegas, Nevada; Mann Act; Obscenity; Obscenity Laws; Prostitution, History of; Prostitution, Sociology of; Race, Class and Criminal Law; Sex Offender Laws; Sex Offenders; Shaming and Shunning; Sin; Television, Crime in.

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long overshadowed the many vices that plagued their communities, one of which was prostitution. Regarding the long-standing human preoccupation with the pleasures of sex, early American colonials were no different than their counterparts throughout the world. In public fights, it was not uncommon to hear the word *whore* used as an insult. In many cases of the colonial period, the term *prostitution* was used in reference to any prohibited sexual behavior.

For example, an Indian woman who had sexual relations with a white man, or a white woman who slept with a black man, would have been called a prostitute. The term also referred to females who traded sexual acts for food, shelter, or other goods of exchange. Prostitution in the colonial era was viewed as a personal, temporary state of sinfulness rather than a commercial vice, status, or occupation.

Early History

Female slaves and indentured servants were subjected not only to forced labor but also forced prostitution at the hands of their masters. Such women sometimes gave birth to children sired by their owners. The law only highlighted the nonexistence of their rights: A slave would witness her newborn become an asset of the man who raped her, while a pregnant indentured servant received a prolonged sentence of servitude. While such actions were often referred to as "forced prostitution," these were more a form of sexual slavery different from the commercial trade of sex. While most church records of the 17th century focus primarily on fornication and adultery, two accounts suggest that prostitution was more common than church records indicate. One told of the excommunication of a woman for being a prostitute, the other told of a 12-year-old boy who received punishment for entering a brothel.

Neither English nor American common law classified prostitution as an offense, and prior to World War I, prostitution was commonly viewed and regulated as a form of vagrancy. By the mid-18th century, prostitutes were punished under laws that prohibited adultery or fornication or for "nightwalking"—strolling the streets at night with immoral intentions. A Massachusetts law against nightwalking was enacted by colonial assembly as early as 1699 and reenacted by the

Prostitution, History of

Prostitution in the United States can be traced back to 17th-century colonial America. The overt religious nature of early North American settlers has

state legislature in 1787. An actual crime of prostitution itself, however, was not established in Massachusetts until 1917.

Benjamin Franklin recalled seeing young women “who by throwing their head to the right or left of everyone who passed by them, came out with no other design than to revive the spirit of love in disappointed bachelors and expose themselves to sale at the highest bidder.” Large numbers of prostitutes followed the military camps of the Revolutionary War. While some officers worried about the strategic and sanitary problems surrounding such a presence, others welcomed the presence of prostitutes as a method of increasing troop morale. Prostitution was by this time a permanent fixture of American society.



This circa World War II cartoon shows two prostitutes (named Gonorrhea and Syphilis) with a warning at the top stating, “Warning: These enemies are still lurking around.”

A gradual increase in prostitution followed the changing role of women and the American family. As the deeply religious colonies transformed into a more and more secularized and commercialized country, changes in social and economic elements of family life resulted in an ever-increasing population of prostitutes. As the cash crop market replaced the self-sufficient farm, economic relations infringed upon the traditional religious values of families in ways unpredicted. Rather than bartering, men were paid in cash for their farm labor. Early manufacturing moved some of women’s duties outside the home, which weakened the female’s vital role in the domestic economy. Women of differing socioeconomic status were affected in different ways. Middle- and upper-class women paid cash for the household items they once made. In an effort to expand their role in the changing society, many of these women later played a role in the initiation of the 19th-century women’s rights movements. Women of lower-class families entered the workforce alongside their husbands and children to earn wages for the family. Young women from agricultural families whose skills were no longer needed at home entered the workforce in early manufacturing and textile centers.

The less fortunate, single girls and women from poor families, had fewer options outside the home. Their experiences in the workforce were tainted with both wage and sexual discrimination and exploitation. In the very best of circumstances, female work provided wages barely suitable for subsistence. In addition to such hardships, women faced new sexual troubles in their interactions with men. Domestic servants were commonly subjected to sexual exploitation. False promises of love and marriage often resulted in premarital relations. This was not uncommon in rural areas, but without the support of the family and community, the women found virtually no support. In the cities, there was no family or community to enforce a proper marriage when relations resulted in pregnancy. Many women were left with little choice but to return home and face the shame of having an illegitimate child, face the near-impossible challenge of raising a child on low wages, take a risky attempt at an abortion, resort to infanticide, or take on a life of prostitution.

Nineteenth-Century Prostitution

The rapid industrialization of the later 19th century intensified changes in American family life and further contributed to the continual increase of prostitution. Lower-class families were no longer self-sufficient cohesive units but instead subsisted on the combined earnings of individual family members. Many single women who left the home were faced with poor wages and sexual exploitation, thereby entering the ranks of potential prostitutes. Some women found no other form of employment than prostitution; for others, sex work was simply viewed as their best option. Prostitution in the United States probably peaked during the second Industrial Revolution from approximately 1880 to 1915, as heavy industry forced women out of the labor force. Not until the growth of the clerical and service demand did women attain better employment opportunities, at which time prostitution began to decline.

During the last half of the 19th century, the demand for prostitution also increased. The growth of heavy industry brought with it an influx of male workers, and increasing militarization resulted in large male populations that provided keen support for a large prostitution industry. Bars, pool halls, and gambling parlors that were frequented by working men became prime places of business for prostitutes in developing urban areas.

Prior to the Progressive Era of 1890 to the 1920s, prostitution was frowned upon, but not officially classified as criminal conduct. Disapproval of prostitution was expressed in the form of lawless, unofficial harassment. Throughout the 18th and into the early 19th century, this enforcement of punishment was carried out by gangs that served as a type of informal police force in many cities. The enforcement technique of choice was usually a mob attack, also known as “whorehouse riots.” In 1734, 1793, 1799, 1823, and 1825, mobs destroyed several brothels in Boston. Also in 1825, a mob of some 2,000 people destroyed brothels and brawled with police in Lenox, Pennsylvania. In 1857, the mayor of Chicago joined citizens as they set ablaze an entire strip of brothels before claiming that order had been restored to streets of the city.

Professional police forces were being established in major cities during the mid-19th century. The police held the discretion to arrest

prostitutes, madams, or johns on charges of “keeping a disorderly house,” “lewdness,” or vagrancy. The main intent of such policies was not to eradicate prostitution but to merely hide it from the public eye. In wealthy neighborhoods, prostitution maintained a discreet existence in upper-class houses that catered to an affluent clientele. In such neighborhoods, madams could buy immunity from police action through cash payments to the authorities, as well as silence about patrons. Aside from these discreet, wealthy brothels, prostitution was limited to lower-class neighborhoods and urban slum areas far from the view of affluent society. The creation of proper police departments also led to the creation of red-light districts in many American cities of the latter 19th century. In these districts, prostitution houses were allowed to do business given that they paid off the police. The typical sanction for prostitution was a fine rather than serving time in jail.

The 19th-century principle of silent toleration implies underlying opinions toward prostitution that were in contrast to the publicly expressed condemnation of the day. Attitudes toward prostitution were deeply intertwined with class and gender. Despite the common public depiction of prostitutes as societal outcasts, in reality they played a rather considerable role in several facets of American society. On an economic level, prostitution provided income to, among others, madams, doctors, politicians, and the police. On a political level, it supported class and gender divisions through the image of the whore. Women saw in this image a reminder of how they might be treated or what they might become if they strayed from the prescribed path of purity or sought a life outside the protection of males. Prostitution was often associated with nonwhite, immigrant, and lower-class populations. Such associations created a divide among women and served as justification for placing populations at the bottom of the social scale. The observable association of prostitution houses with urban slums and lower-class customers depicted lower-class men as having access to prostitutes, all the while implying that the upper-class men did not. Sexual indulgence was associated with poor health and waning ambition. These associations rationalized the prevalence of poverty and malady among the poor.

Early colonists passed the first law against brothels in 1672, which prohibited the keeping of “bawdy” houses, a law that was imported from England. Beyond such ordinances, prior to 1917, very little action was taken to regulate prostitution; with the exception of an Indiana statute in 1914, there were no attempts to define prostitution. Up to this time, only 14 states had signified prostitution as a statutory offense, and some 28 states had classified prostitutes as vagrants. Moreover, only two states, Indiana and South Dakota, had legislation targeted at the “johns,” or male customers of prostitutes, but in Indiana and Iowa, the Supreme Court had ruled that a man could not be guilty of prostitution.

Modern Laws Against Prostitution

Given that prostitution as a crime cannot exist absent of statutes that formally define and explicitly prohibit such actions, the history of prostitution in a legal sense can generally be dated from post-World War I to the present. This timeline stands despite the fact that actions that are currently regulated under the law as prostitution were regulated under numerous laws aimed at controlling adultery or fornication at much earlier times in U.S. history.

In the late 19th century, the growing feminist movement in the United States targeted prostitution. During the 1860s and 1870s, American and British feminists focused on the issue of state attempts to regulate prostitution. The predominantly middle-class feminist movement viewed its primarily blue-collar prostitute “sisters” as victims of the sexually deviant male rather than as deviant women. Society was blamed as having forced prostitutes into their profession and then, as a form of sexual discrimination, refusing to reward them. Feminists argued that prostitutes, therefore, maintained a right to conduct their business free from harassment by law enforcement.

The New York legislature passed a bill for the regulation and legalization of prostitution in 1871, but it never became law. Four years later, another bill was introduced that was also never signed into law. The bill failed primarily because of the efforts of women’s organizations, which cited the failure of similar systems that had been implemented in Europe, where some prostitutes were actually licensed and underwent medical

checks. Also pointed out was the fact that male customers faced no regulation under such systems. Furthermore, they contended that policies as such promoted corruption among those charged with the regulation.

In 1870, however, St. Louis, Missouri, passed the Social Evil Ordinance, which granted the Board of Health the power to regulate prostitution. The ordinance called for the licensing of brothels, and that all prostitutes be registered and undergo medical examinations. Medical examinations were financed with dues collected from madams and prostitutes. Legalized prostitution in St. Louis was short-lived, as in 1874 the Missouri state legislature nullified the ordinance. From 1897 through 1917, New Orleans, Louisiana, was home to a red-light district nicknamed Storyville in reference to the man who wrote the legislation establishing the district. Modeled after the legal red-light districts of northern Dutch port towns, Storyville was implemented in an attempt to limit prostitution and its accompanying social ills to one area of the city, thus allowing for easier regulation. Brothels in Storyville ranged from cheap shanties to elegant mansions for the well-to-do customers. Shortly after America entered World War I, four soldiers in Storyville were murdered in a matter of weeks. At the demand of the U.S. Armed Forces, Storyville was closed in 1917, although it continued to operate underground well into the late 1920s.

As feminist organizations joined forces with social purity organizations, the economic justifications of prostitution were weakened, which was further hastened by rising concerns over the issue of foreign women and children being trafficked and forced in sex work. The prevailing view was that evil males were forcing young, innocent women into the profession. The middle-class feminist ideology of the day held females as pure and supreme on a moral level and began to support more reform of sexual customs, primarily of the lower class. Therefore, the feminist campaign against state regulation and legalization of prostitution was transformed into a campaign to repress all sexual deviance.

The morality and purity activists were worried about what they perceived as growing acts of immorality among the lower classes in the metropolitan areas. Therefore, they sought to

abolish not only prostitution but also various forms of alternative sexuality from homosexuality to pornographic materials. In the early 20th century, increasing immigration and overpopulated cities struck a fear in people that bolstered the movement against prostitution. New laws that made prostitution illegal were enacted throughout the United States. Oddly enough, these state sanctions did not abolish prostitution but rather led to its institutionalization among the criminal world. Prostitution went from being controlled by madams and prostitutes to being a supplemental income for organized crime. Furthermore, prostitutes were subject to harsher working conditions as they faced brutality not only at the hands of police but also from pimps. Ironically, the implementation of vice squads, special courts, social services, and prisons aimed at prostitution solidified the institutionalization and bureaucratization of prostitution.

Conclusion

This has been the state of prostitution in the United States to the present day. Prostitution by the 1970s was completely illegal in the United States (with the exception of 13 counties in Nevada at the time). While the specific legal definitions vary between federal, state, and local levels, most of the laws define prostitution as the exchange of sex for money.

Other laws relating to prostitution are pandering and procuring laws, which target individuals who encourage people to become prostitutes, and pimping, which is defined as living or profiting off the income of a prostitute. Laws prohibiting pimping commonly make illegal any act related to the management of a prostitute. While antiprostitution legislation is generally gender neutral, the enforcement of such laws tends to be overwhelmingly biased.

Prostitution has been legalized in some counties in Nevada. In 1973, Nevada was home to 33 legal brothels. All of the counties were rural, with the largest city to have an active brothel in 1970 being Elko, population 7,621. Today, Nevada is home to 28 legal brothels, which still exist in primarily rural areas.

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See Also: Prostitution, Contemporary; Prostitution, Sociology of; Slavery.

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Prostitution, Sociology of

At its simplest, prostitution is the sale of sexual services to a buyer for payment, goods, or services. Prostitution is illegal in the United States, with the exception of 12 Nevada counties: Churchill, Elko, Esmeralda, Eureka, Humboldt, Lander, Lyon, Mineral, Nye, Pershing, Storey, and White Pine.

Within these counties, cities may still deem prostitution illegal. In addition to 10 federal laws that address the punishment of prostitution, most of which address transportation across state lines, all 50 states and the District of Columbia have laws, albeit highly variable laws, punishing prostitution. Penalties for prostitutes and customers are generally the same, although they vary significantly from one state to another. Arizona's penalty for a prostitute's first offense is 15 days' jail time (Class I misdemeanor) while a customer's first offense is 30 days' jail time and/or \$500 (Class III misdemeanor). To the other extreme, Iowa's law regarding prostitution, which is classified as an aggravated misdemeanor, carries a penalty of two years' jail time and/or up to a \$5,000 fine.

While prostitution is defined as a sexual service for pay, sociologists argue that prostitution is not about the financial exchange per se. Rather, prostitution is an issue of social power (or lack thereof). Therefore, the sale of sexual services is merely a tool by which women are arguably subjugated and degraded. The sociological understanding of why prostitution occurs may be explained by the

three sociological perspectives: functionalist, conflict, and symbolic interactionist.

Functionalist Perspective

According to Emile Durkheim's view of functionalism, some crime is necessary for the continuation of social life. While excessive deviance is deemed pathological, some degree of deviance, such as prostitution, contributes to the social order through manifest and latent functions. Note that functionalists view deviance as a social good, not necessarily as a moral good. A social good is an action or occurrence that serves some purpose in the functioning of society as evidenced by its recurrence over time. According to functionalist theorists, behavior or action that does not benefit society or social members will eventually become extinct. Relevant manifest or apparent functions

of deviance include boundary setting, group solidarity, and tension reduction. When prostitution occurs in a society and is punished appropriately, boundaries are set for societal members. Through the action and sanctioning, social norms are established so that cultural members are reminded of which behaviors are sanctioned as opposed to condoned. If the action were not committed and condemned, cultural members would have no verification of the boundaries of society. Further, when a culture member violates the social norms, the community tends to bond together, creating a band of support. Rather than a society of individuals, group cohesion is created.

In terms of tension reduction, rather than focusing on social ills such as structural breakdowns contributing to a violent culture that encourages rampant sexuality, being able to focus on the



The U.S. Department of State estimates that between 600,000 and 800,000 people are trafficked across international borders each year, particularly from Asia and southeast Asia. Millions more are enslaved within national borders. Human trafficking is truly a world-wide phenomenon—paradoxically hidden in the shadows and out in the open for all to see.

prosecution of a deviant such as a prostitute permits society to redirect its focus from a systemic problem to an individual problem with a ready solution. As such, the population perceives that the problem is not that American culture has run amok with violent and degrading sexual images and fewer opportunities for women, but rather that some women choose to become prostitutes to better their social standing. Proponents of this logic argue that women are better paid and have more autonomy as prostitutes than they would have if they were working at a local fast food or retail establishment.

Latent function is the social good that occurs but is less seemingly apparent and clearly defined than are the manifest functions. While deviant actions such as prostitution are certainly not a moral good, in other words, it is not an action that society would deem "good," the deviance does serve a purpose in that it justifies the need for social services to reduce such crimes. For example, the services offered by deviants such as prostitutes allow men whose sexual needs are unsatisfied at home to pay for satisfaction without emotional entanglements, thus avoiding the heartbreak and home breaking of a romantic affair. Further, goes the argument, men who are able to obtain services with consenting partners, even if for pay, will not be forced to resort to rape as a means of sexual fulfillment.

Robert Merton's strain theory elaborates that deviance is the result of a discrepancy between socially engendered goals and the legitimate means to achieve those goals. Nondeviants, termed *conformists*, both accept the social goals and have at their disposal legitimate means to achieve those goals. Merton's typology contains four types of deviants, including the innovator, the retreatist, the ritualist, and the rebel. If the socially engendered goal were to make fast money and assuming free choice, a prostitute would be an example of an innovator, given the notion that women can make more money faster by engaging in prostitution than they could in more conventional pink-collar occupations. Because women are typically relegated to the lowest-paying jobs, engaging in prostitution by choice is a way for women to make more money relative to men in the same position or to other women in lower-status but legitimate occupations.

While crime generally, and prostitution specifically, are not moral goods for society, according

to the functionalist perspective, their existence does provide a social good and is necessary for the maintenance of society and social order. So while prostitution is predominantly considered dysfunctional and there are overwhelming negative attributes to the action for the individual, the occurrence of deviance does retain some redeeming qualities for the continuation of society.

Conflict Perspective

According to the conflict perspective, deviance occurs as a result of an unequal society. Prostitution is the manifestation of the struggle between the powerful and the powerless. The specific application of the conflict perspective to the deviant act of prostitution varies between pluralistic conflict theorists, who view the battle of power as being a conflict over scarce resources, and radical Marxist conflict theorists, who view the struggle as a structural issue resulting from the inequality inherent in a capitalist system.

Pluralistic conflict theorists propose that deviance such as prostitution is a cultural response to particular situations or events that bring to light competition for social or economic advantage. Thus, conflict is the inevitable result of distinctions between those in authority and those subject to authority. Richard Quinney's *Social Reality of Crime* (1970) articulates the following five propositions, with a sixth proposition being a composite statement, resulting in the social reality of crime:

1. *Crime is a definition of human conduct that is created by authorized agents in a politically organized society.* Prostitution is itself a definition of behavior that is projected on some persons by others. Political agents determine which acts are available for sale versus deemed illegal such that, with the exception of 12 counties in Nevada, sexual acts are illegal while other forms of touching, such as massage, are deemed legal.
2. *Criminal definitions describe behaviors that conflict with the interests of the segments of society that have the power to shape public policy.* Those who have the power to have their interests represented in public policy, generally white upper-class males, regulate the definition of prostitution and victimization.

3. *Criminal definitions are applied by the segments of society that have the power to shape the enforcement and administration of criminal law.* Those who have the power to determine the definitions of prostitution and victimization, generally white upper-class males, also have the power to enforce the definitions (or not).
4. *Behavior patterns are structured in segmentally organized society in relation to criminal definitions, and within this context, persons engage in actions that have relative probabilities of being defined as criminal.* The acceptance and continuation of prostitution is learned in social and cultural settings. If customers of prostitutes are socialized such that customers are not prosecuted, then the perpetrator is not likely to perceive the behavior as criminal.
5. *Conceptions of crime are constructed and diffused in the segments of society by various means of communication.* Definitions of who should be labeled as prostitutes and customers are socially constructed. As such, anecdotal evidence suggests that certain segments of the population, such as high-priced call girls, are typically not persecuted to the same degree as street-level prostitutes.

Radical Marxist conflict theorists view social conflict in terms of a struggle between social classes as a result of the structural inequalities inherent in capitalist societies. Conflict is the result of ongoing social struggle between those who profit and those who suffer to the benefit of others. There are two predominant conditions of conflict. First, the more significant the behavioral difference between authorities and subjects, the more significant the conflict. Second, subject(s) are organized to the degree that authorities can be resisted. Conflict increases when legal norms reflect the cultural norms. When the culture and laws coincide, there is a greater likelihood that a prostitute will be prosecuted. If, on the other hand, the dominant culture does not see the offense as problematic, there is less likelihood that the prostitute will be prosecuted. Conflict also increases when subjects have little power; if the definition and enforcement are likely to meet with little resistance, prosecution is more likely.

If the accused is perceived as a person of importance, the likelihood of prosecution decreases.

Whether the inequality exists between groups over perceived scarcity of resources or between classes over structural inequality, conflict theorists would concur that prostitution occurs when there is an imbalance. When the individual with power seeks to maintain or gain power, the most effective way to do so is to subjugate others. When a female sells her body to or is degraded by a male, the patriarchal social order is reinforced.

Some types of feminist scholars, specifically liberal and existentialist feminists, contend that prostitution is liberating for women. In a society of unequal freedoms where women are not coerced into prostitution, prostitution empowers women, allowing them to regain some of their social rights and responsibilities. Further, female prostitutes are entrepreneurs who are conducting economic business arraignments: fees for services rendered.

Proponents of liberal and existentialist feminism argue that the way to help women is not to further victimize them through stigmatization and prosecution but rather to legalize the victimless crime of prostitution. Through such legislative action, female workers would receive greater security and health benefits as well as increasing state and federal coffers through the payment of taxes on services rendered. These theorists further argue that through decriminalization, there would be fewer resources spent to prosecute victimless crimes and, similar to the repeal of Prohibition, there would be no market for black market sex workers and thus no coercion.

In sum, whether they are opponents or proponents of prostitution, conflict theorists globally contend that prostitution is the result of inequality. The difference lies in whether prostitution reduces or further propagates the inequality.

Symbolic Interactionist Perspective

Symbolic interactionists view deviance as a matter of labeling and social construction. J. L. Simmons noted that deviance, like beauty, is in the eye of the beholder. Specifically, prostitution is only deviant and criminal where and when it is so labeled. While this may seem contrary when considering the personal devastation of prostitution, consider the treatment of prostitution in colonial times. Women who would today be considered

prostitutes were more likely to be prosecuted as vagrants than sex workers. Women who were punished for selling sexual services would likely be charged with adultery or fornication.

Further, history provides examples of cases in which prostitutes, rather than being viewed as deviants, were social servants. From 1941 through 1944 in Honolulu, Hawai'i, although technically illegal, prostitutes, labeled "entertainers," were permitted to operate with a \$1 annual licensing fee in an attempt to contain and curtail venereal diseases and to service the needs of military personnel and the predominantly male plantation workers.

Similarly although not related, Japan's so-called "comfort women" were utilized in military brothels to satiate the physical needs of those fighting in World War II. Of these women, some were volunteers, whether literally or due to circumstance, while others, particularly non-Japanese women, were forced to become comfort women. While comfort women were originally disavowed by the Japanese government, the Japanese parliament has since offered its apologies and compensation to the thousands of women victimized during this period.

Howard Becker suggests that labels are created as a result of powerful "moral entrepreneurs." This labeling occurs in an orderly process: initial recruitment, role imprisonment, and entrance into sustaining subcultures. Initial recruitment into the behavior in question, such as prostitution, might include coercion by peers to commit an offense. Role imprisonment occurs as the perpetrator takes on the label of prostitute, meaning that society has labeled the offender, and the perpetrator accepts and embraces the label, unable to free himself or herself of the stigma of being a prostitute. Finally, because of the social ostracism of the prostitute, the perpetrator enters into sustaining subcultures that are accepting of the prostitute in spite of, or because of, his/her label and status as social pariah. However, norms precede labels, and the progression occurs only as the labels are applied and accepted. In cases where prostitutes are not considered deviant, such as where prostitution is legalized, role imprisonment will not occur.

Conclusion

The job of the sociologist is not to pass judgment on the quality of social acts and actors but rather

to offer an objective, generalized explanation for social behavior. Toward that end, the sociology of prostitution offers three explanations for prostitution as a social behavior that has occurred throughout time. The action of prostitution contributes to social stability, maintains power differentials in society, and serves as an indication of the relativity of perception of action across time and place.

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See Also: Adultery; Criminalization and Decriminalization; Criminology; Fornication Laws; Gender and Criminal Law; Prostitution, History of; Rape, Sociology of; Victimless Crimes.

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Punishment of Crimes Act, 1790

As the Constitution of 1789 went into effect and the central government of the United States grew in power, criminal law at the federal level became necessary. The legal traditions that had developed in the colonies, together with the need for laws to regulate crime in locations of exclusive federal jurisdiction and violations unique to the federal government, led to the Punishment of Crimes

Act of 1790. Within the American colonies, two developments set New World criminal law apart from its English parent: public rather than private prosecution of crimes, and adoption of code law in place of common law. Unlike England, where victims hired private prosecutors to go after abusers, colonial governments cultivated legal systems with public prosecutors who pursued those accused of crimes in the name of the state.

Following independence, the United States moved from English common law, which depends on juries to know and implement the laws and proper punishments if violated, to a codified system of criminal law. Codification met several important objectives. It helped to ensure limits on the national government, important to those who remained skeptical of the newly powerful national government. Code law also reduced judicial and jury discretion, as both were bound by what was written. With federal law, this meant further limits on federal government powers. Finally, code law provided a way for citizens to know the law and the punishment for breaking it ahead of time; criminal statutes created a prospective rather than a retrospective legal system in which citizens could make reasoned judgments. Both the state responsibility for prosecution of criminal offenses and codification of laws contributed to the need for statutes such as the Punishment of Crimes Act, passed by the U.S. Congress in April 1790.

Geographic limits on states' jurisdiction, meaning that some parts of the United States were not subject to their police powers, together with unique violations affecting only the national government also led to the act. Though police powers—government regulations for the health, safety, welfare, and morality of citizens—were not addressed by the division of power in the Constitution of 1789, by tradition, states rather than the national government had primary responsibility here. Thus, there was little development of criminal law at the national level, as states provided the criminal codes and prosecution of violators. Exceptions, however, came from localities under exclusive federal jurisdiction—federal military installations as well as the high seas and waterways not under states' jurisdiction. Without federal criminal law, acts within these zones would not be subject to governmental regulation. Additionally, such violations as counterfeiting federal

documents, bribing of federal judges, and treason did not fall under states' criminal codes. A separate federal criminal code had to police these areas of exclusive federal jurisdiction.

Punishment of Crimes Act

The First Congress wrote the Punishment of Crimes Act, the first federal criminal law, delineating specific crimes and maximum punishments for guilt. It also stipulated how federal criminal trials would be conducted. Among the federal crimes named in the act are treason, willful murder, piracy or shipboard revolt, and forgery or counterfeiting of U.S. certificates and documents. For each of these, the penalty is death. With murder, the judge has discretion to add post-execution dissection of the body. Lesser crimes are also covered by the act. Some of these crimes are related to those already named: knowing about but not reporting treason, rescuing a body from post-mortem dissection, knowing about but not reporting murder or other felony, using false documents to gain a favorable court decision, receiving goods stolen through piracy or helping those engaged in piracy, and rescuing those who have been sentenced. Other, lesser crimes stand alone. These include manslaughter, maiming, stealing (from the U.S. government or a private citizen), receiving stolen goods, committing perjury or causing others to commit perjury, bribing a judge, obstructing a U.S. officer serving a warrant, or suing a foreign minister or ambassador. Those found guilty of these crimes are subject to a variety of punishments, from a specified number of years in prison to maximum fines to whipping a maximum number of "stripes" to prohibition on holding public office.

The act also provides for how trials will be conducted. For instance, it notes a time limit for grand jury indictment after the offense (treason and murder excepted). The accused is to receive the indictment prior to trial, to have access to counsel, and to have the right to compel witnesses. If the accused remains silent, or refuses to plea, the court will proceed as if with a not guilty plea. Executions will be by hanging. With the Punishment of Crimes Act, Congress began the federal criminal code. It established federal courts' jurisdiction to punish specific serious crimes (though it left out assaults and rapes, remedied by the Assimilative Crimes Act of 1825) in locations of

exclusive federal jurisdiction. It created federal courts' jurisdiction over federal crimes (e.g., bribing a federal judge, forging a federal document, or piracy). Over time, the national government has developed a significant body of law to regulate the behavior of citizens regarding federal jurisdictions and preferences. Rather than filling a vacuum, as in 1790, when the act provided law and punishment for acts outside states' jurisdiction, federal criminal code now often overlaps, and even conflicts with, that of states.

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See Also: Codification of Laws; Federal Common Law of Crime; History of Crime and Punishment in America: 1783–1850; Jurisdiction.

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Punishment Within Prison

For the general public, the punishment portion of the American criminal justice system is defined by prison: criminals, because of their guilt, are isolated from the larger society in prisons; their punishment is to remain separate until their sentence has been served. Society, however, does not end at the prison gates; even within the walls, prison officials have historically used systems of punishment and reward to maintain order, enforce rules of conduct, and deter further criminality within prison

societies. Since America's first prisons were built in Philadelphia and Auburn, New York, wardens grappled with two opposing realities in designing the systems of punishment necessary to maintaining the order of the societies within their walls, as well as their own authority: first, the limited circumstances of the prisoners in their charge left them with few means of punishment through further deprivation; and second, the very isolation of prison society allowed them to exercise types and degrees of punishment unthinkable in the outside world. Common punishments for prison inmates' infractions and further crimes before the reforms of the Progressive Era were characterized by their cruelty and brutality; despite successive waves of reform, even contemporary forms of in-prison punishment continue to produce criticism and controversy within the human rights community.

Nineteenth-Century U.S. Prisons

With their dueling models of individual reform, the Eastern State and Auburn Penitentiaries immediately set tremendous administrative and managerial challenges for the wardens placed in charge of their operations; chief among these difficulties was the reliance of both models on enforced inmate silence as the key to individual spiritual self-reflection, penitence, and eventual reform. Eastern State's "separate system," in which prisoners worked alone in their cells, made the task of enforcing noncommunication between inmates considerably easier than Auburn's "congregate system," in which inmates worked and ate together silently in groups, ostensibly not permitted to communicate in any way. The method by which Auburn's early administrations chose to enforce this silence was one of the very barbarous punishments that the penitentiary was originally designed to eliminate: flogging.

Exercised in various forms by the numerous American prisons that adopted the congregate model after its popularization in the 1830s, the basic mechanics of flogging were the same: The rule-breaking prisoner was beaten with a whip or a leather strap, on the back, the buttocks, the backs of the legs, or the soles of the feet. Depending on the organization of the prison in question, the punishment might be delivered at an individual guard's discretion when the infraction was discovered or upon the order of a superior at a set time; these official punishments often took place



A 1912 illustration of a U.S. inmate receiving "the paddle," a form of punishment until the mid-20th century. Significant reforms were made to prisoner punishment.

in front of the rest of the prisoner population as a general deterrent to further rule breaking and would involve a set number of lashes that usually corresponded to the gravity of the infraction committed. A less formal flogging at a guard's discretion might continue for as long as the guard's strength allowed; in many 19th-century American prisons, inmate trustees wielded the whips.

During the 19th century, periodic scrutiny by government auditors, religious groups, and reformers forced prison administrators to reduce their reliance on flogging and use a more expansive and imaginative array of punishments to maintain order within their institutions. Some of these punishments, such as the iron gag (a piece of metal clamped over the tongue and secured around the jaw) and the hoods and masks used at Eastern State, were designed specifically for the purpose of enforcing the silent system; others, such as the yoke, ball and chain, cold showers, and restricted rations, were invented or adapted from more traditional punishments as sanctions for different kinds of rule breaking. A prisoner might be punished for shirking work (some 90 percent of 19th-century inmates worked, with the goal of making each prison self-sufficient), attempting escape, insubordination, possessing contraband, or engaging in sexual activity. Many of these punishments held the potential to inflict permanent disability or death upon the punished prisoner, most commonly through infection (the

lacerations caused by lashes or the constant friction of a ball and chain's iron collar could lead to gangrene, staph, and fatal fevers). Many observers (often themselves proponents of Auburn's congregate system) asserted that the separate system was a dangerously cruel punishment that tended to result in mental illness for prisoners subjected to it for extended periods, a great irony given the contemporary adoption of solitary confinement as the universally accepted standard of in-prison punishment for American prisoners.

Punishment in American prisons during the 19th century varied along regional, racial, and gender lines. Female prisoners might have their heads shaved, find themselves gagged, be subjected to cold showers, or spend a period of time in a straitjacket before a warden would consider flogging, a punishment considered unseemly for women prisoners in the eastern seaboard states but increasingly acceptable as one moved west. The American south underwent a drastic change in the demographics of its prison populations after 1865, at the close of the Civil War through Reconstruction, from approximately 90 percent white in the pre-war years to 90 percent black at the close of Reconstruction. In large part, this shift was a response on the part of the southern states to the economic effects of abolition: state governments viewed the new black prisoners, themselves former slaves, as an economic resource and leased convicts out to a variety of industrial and agricultural interests as slave laborers.

Punishments for black southern prisoners in the postbellum era therefore reflected the southern traditions of African American chattel slavery, with one important difference: Now the property of the state rather than the plantation and factory owners who took advantage of their slave labor, labor overseers no longer had to treat convict laborers as capital interests. In practical terms, this often meant that overseers no longer limited punishments to a degree that preserved convicts' long-term health and labor viability. Convicts who failed to meet work quotas or attempted escape might be beaten nearly to death as a general deterrent for others; those who physically resisted guards or fought with white inmates might simply be shot, buried in an unmarked grave, and dropped from official records. Lax oversight and rampant corruption encouraged such practices.

Twentieth-Century Punishments

The onset of the Progressive Era brought with it significant reforms to official practices of prisoner punishment; beginning in the 1890s in eastern states, and spreading throughout the country through the 1930s, these reforms drastically reduced or eliminated prison administrators' recourse to corporal punishment as a means to enforce their authority. A return to the rehabilitative model pioneered by the Eastern State and Auburn penitentiaries led to a reexamination of the punitive potential of penitentiary techniques, chief among which was the solitary confinement so integral to Eastern State's separate system. Prison administrators soon found that, when coupled with various other forms of deprivation such as partial or total darkness, extreme heat or cold, cramped or confined quarters, the lack of bedding or clothing, restricted food and water rations, and limited toilet facilities, isolation cells could be highly effective tools for breaking the wills of disruptive or refractory prisoners. That this punishment could be explained and described for the benefit of government auditors, progressive reformers, journalists, and the general public in terms consistent with the rehabilitative model of the day was an added advantage, one that tended to deflect any protest at its cruelty.

Wardens who chafed at these new restrictions to corporal punishment could continue to draw upon informal and extralegal means of punishment for enforcing internal discipline and maintaining their authority. While no longer able to officially delegate flogging duties to inmate trustees, prison guards and administrators could still (depending on varying levels of public scrutiny and administrative oversight) rely on various elements of prisoner society to enforce discipline through corporal means. Official procedures, from cell and work assignments to distribution of food rations and various privileges, could serve as means of informal punishment. Gangs and individual prisoners could be unofficially authorized to discipline their fellows through beatings, torture, rape, and murder in extreme cases. Periodic prisoner protests, public outcry, and government crackdowns brought such practices to light and limited their widespread use. Contemporary examples of such abuses, however, continue to arise in periodic media accounts, guard

and administrator prosecutions, and civil lawsuits brought by prisoners; such occurrences are a testament to the enduring appeal of informal systems of punishment as a disciplinary tool and retributive reaction.

Official in-prison punishment, meanwhile, remained focused on solitary confinement, a practice that continued to incorporate elements of extreme deprivation and discomfort well into the 1960s and 1970s. Such practices became a focal point for the civil rights and black nationalism movements during this era due to their disproportionate impact on African American prisoners and their targeted use to deter, discourage, and punish political agitation by black prisoners. In his autobiography, *Revolutionary Suicide* (1973), Black Panthers founder Huey P. Newton describes a solitary deprivation cell in the Alameda County Jail as the crucible of his revolutionary activism. Called the "soul breaker" by black prisoners of the day, Newton was confined to a deprivation cell as punishment for organizing a protest against inferior-quality food in 1964. Along with his vivid descriptions of the lack of light, clothing, and bedding (and the accumulation of bodily waste) that he experienced during his confinement, Newton details the techniques of resistance he used to control his physical and mental functions and maintain his sanity under such extreme circumstances. Descriptions like Newton's led to public outcry against the deprivation cell, and prisoner civil suits in the state and federal courts were successful in reforming the practice but not eliminating it.

Contemporary Prisons

The 1980s marked the end of the rehabilitative era in American penal practice and a vast increase in the scope of local, state, and federal prison systems that has continued unabated into the early decades of the 21st century. Among the engines for this approximately fivefold increase in America's prison population were the extension of sentence lengths for various offenses, the expansion of offense types for which prison was the legally mandated punishment, and the large-scale migration of severely mentally ill individuals from confinement in state mental institutions to confinement in prisons. Such massive changes in the organization of prison societies required wardens and higher level correctional administrators to revise and reconsider

traditional management techniques; ultimately, however, this process led to an increased reliance on solitary confinement. In contrast to its previous use, solitary confinement under this new paradigm was not used primarily as a punishment for specific crimes and disciplinary infractions but as a widespread preemptive management technique based on administrative prisoner classifications.

The movement toward the “supermax” prison classification in the American Federal Bureau of Prisons and a number of states reflects this trend: administratively and architecturally, supermax prisons are designed around the solitary confinement model. Prisoners spend up to 23 hours a day in solitary cells and exercise alone in attached outdoor yards; in many cases, all human contact, including that with guards, lawyers, and family members, takes place through a plexiglass screen. A prisoner confined to a supermax prison might conceivably live out the remainder of his life there without further physical contact with another human being. Given the scale and historical implications of its use, solitary confinement continues to be a controversial disciplinary technique, drawing the criticism of journalists and human rights campaigners, and causing departments of correction to go to serious lengths to justify its continued use. While the relative cruelty or constitutionality of solitary confinement and its potential mental health effects continue to be debated, American prisoners at state, federal, and local levels continue to be subjected to this punishment as a matter of official disciplinary policy. The social and psychological effects of such widespread use may take years to come to light.

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See Also: Auburn State Prison; Eastern State Penitentiary; Penitentiaries; Prisoner’s Rights.

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Pure Food and Drug Act of 1906

At the turn of the century, labor unions began to take a firm hold on the American worker, and the rapid growth of factories and cities led to calls for social reforms. These social reforms varied from child labor laws to prostitution laws to sanitary reform. Grassroots efforts, primarily via women’s civic organizations, made note of the dirt and filth inside American cities, and muckraking journalists made their names by providing the public with sensationalized stories of death, unsanitary conditions, and the abuse of humanity. Muckrakers also came in the form of novelists like Upton Sinclair. Sinclair wrote *The Jungle* in 1906 about the Chicago meatpacking industry. He set out to write a novel about the plight of the underpaid American worker, but the public focused more on the graphic descriptions of conditions inside meatpacking plants, the refuse on the floor, the by-products (human, refuse, and animal) ending up in the final product, and of the general condition of the American food processing industry.

Sinclair’s novel caused an immediate public outcry. After reading *The Jungle*, President Theodore Roosevelt ordered an investigation of the industry. The report proved that conditions were not far off from Sinclair’s telling, and in



A Food and Drug Administration (FDA) inspector gives an overview of the seafood inspection process to a restaurant processing facility in Baltimore, Maryland. The FDA existed as part of the U.S. Department of Agriculture's Division of Chemistry before 1906 but did not become a viable organization until federal legislation began forcing manufacturers to comply with sanitary and labor codes.

some cases, the plants were actually worse than expected. Roosevelt demanded that Congress take a stand on this issue, not just because canned meat sales were falling in the United States and Europe, and he threatened to release the findings of the entire report to the public if legislatures failed to respond.

Meat packing plants, while unhappy about the public outcry and the proposed encroachments on their high profit margins, initially battled the fury by supporting a reform bill. They hoped that showing support would ease the public's mind and only require minimal changes within their factories. The Meat Inspection Act of 1906 set rules for meat inspection and packing, which directly paved the way for the Pure Food and Drug Act of 1906.

The Pure Food and Drug Act of 1906 passed quickly, and easily, as the public was still fresh with horror at the meat industry and muckraker Samuel Hopkins Adams exposed many medicines as being poisons. The recently formed American Medical Association joined in the fight to reform

the distribution of drugs, especially as the industry was quickly growing. The 1906 legislation required the labeling of processed foods and medicines with ingredients, and the passage of the law is considered the founding date of the Food and Drug Administration (FDA). For the first time, federal legislation put the value of the consumer before the right of profits.

The FDA existed before the 1906 legislation as part of the U.S. Department of Agriculture's Division of Chemistry, but it did not become a viable and meaningful organization until federal legislation began forcing manufacturers to comply with sanitary and labor codes. In 1911, the act was revised to prevent fraudulent labeling after the U.S. Supreme Court ruled that the 1906 law did not cover false claims for advertising. By 1938, a more forceful version of the law passed as the Food, Drug, and Cosmetic Act. The passage of the Pure Food and Drug Act created a long-standing relationship with the government and private industry in regard to consumption and sanitary production. The public's response to the FDA

grew and also caused the agency to change, as in the 1911 dispute with Coca-Cola.

In 1903, Coca-Cola changed the main ingredient in its beverage from cocaine to caffeine, and in 1911, the U.S. government took claim against the company for misrepresentation in its products of high levels of caffeine. The court, in *United States v. Forty Barrels and Twenty Kegs of Coca-Cola*, ruled in favor of Coca-Cola, saying that caffeine did not violate the Pure Food and Drug Act. In 1912, Congress amended the act to include caffeine as a habit-forming and possibly harmful drug, and Coca-Cola settled out of court on reducing the caffeine in its product.

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See Also: Corruption, Contemporary; Crime in America, Types; Roosevelt, Theodore (Administration of).

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Puritans

Puritanism, whose adherents were known as Puritans, was a radical Protestant movement that emerged in England in the middle of the 16th century in opposition to what was considered undue Catholic influence in the Church of England. Puritan ideas and activities, particularly their resistance to the Crown and the official religion it upheld, made an enduring impact on English and American culture.

Puritans in England

The rise of Puritanism was preceded by England's break from the Catholic Church and the establishment of an independent national church. These

developments coincided with the rise of Protestantism in Europe, whose adherents often decried Catholicism as a pseudo-Christian cult that deviated from the pure Christianity bequeathed by the early followers of Jesus Christ. Henry VIII (r. 1509–47), who instigated England's break with Catholicism, did not intend to move the country in the Protestant direction, but he inadvertently promoted Protestantism, which many English reformers, including those who several decades later filled the Puritan ranks, wanted England to embrace.

While Protestantism made notable advances in England in the reign of Henry's successor Edward VI (r. 1547–53), some reformers complained that the Church of England retained many elements of Catholic worship. They argued that a true Christian church should be founded only on the principles mentioned in the scriptures. Therefore, they wanted to purify the Church of England of all the vestiges of Catholicism, many of which they saw as scripturally baseless. It was their hope for a "pure" church that inspired the term *Puritan*.

In their theological views, the majority of those reformers were admirers of the French theologian John Calvin (1507–64), one of the most important figures of the Protestant Reformation. His work *The Necessity of Reforming the Church* (1543) highlights the main principles of his theology. Most importantly, Calvin called upon Christians to treat the Bible as the only authority in religious matters. Consequently, he rejected many Catholic ceremonies and teachings that the Bible does not explicitly endorse. In particular, he condemned such staples of Catholicism as the veneration of saints, the use of the sacraments, and the doctrine of transubstantiation. Calvin also put much emphasis on the doctrine of predestination, according to which man's fate rests entirely in God's hands; he firmly believed that one's prospects for salvation were determined entirely by God, not one's deeds. English reformers fell under Calvin's influence during their exile in Switzerland, where many of them escaped during the brief but bloody reign of Mary I (r. 1553–58) as she forcefully tried to revert England back to Catholicism.

The succession of Elizabeth I (r. 1558–1603), who was a Protestant, allowed Puritans to return to England and begin their efforts to reform the newly resurrected Church of England, which they believed was still mired in quasi-Catholic rituals.

To their disappointment, their effort suffered some major setbacks right in the beginning of Elizabeth's reign. The new monarch, who inherited a country that was torn by Protestant radicals and their pro-Catholic opponents, was not inclined to move in either direction to avoid bloodshed. In what became known as the Elizabethan Settlement of Religion (1559), the queen attempted to find a compromise between the reformers and Catholic sympathizers by making concession to both: She allowed some Protestant rituals while preserving many elements of Catholic worship. Unsurprisingly, many Protestant reformers found this arrangement utterly unsatisfactory.

In their reaction to the Elizabethan Settlement, Protestant dissenters can be classified in two basic categories. One group was formed by those who remained members of the Church of England but continued to advocate its purification. They are called nonseparating Puritans, or simply Puritans. Another group consisted of reformers who were so dissatisfied with the Church of England that they chose to separate entirely from it. They became known as Separating Puritans, or Separatists.

Both Separatists and Puritans advocated churches' relative independence from the Crown and were persecuted for what was considered their anarchical and quasi-republican ideas. Elizabeth I reacted harshly to any criticism of the existing religious order. Her successors James I (r. 1603–25) and Charles I (r. 1625–49) were even more intolerant of religious dissent, viewing Puritanism as a threat to the monarchy. Although both kings considered themselves avowed Calvinists, they did not appreciate Puritans' open criticism of the Crown and the Church of England.

Puritans in America

The Puritan criticism of the state church was one of the chief reasons for their emigration to New England. The first to arrive, in 1620, was a group of Separatists (Pilgrims), who founded the Plymouth plantation. They were followed, in 1630, by the Great Migration of Puritans, who established a cluster of settlements in what is today Massachusetts, Connecticut, Rhode Island, and New Hampshire.

The American Puritans can be credited with creation of lasting political traditions and introducing the notion of American exceptionalism. In contrast

to many other American colonies, which were primarily founded as commercial outposts, the Puritan leaders saw their mission in America in much larger terms. Many of them regarded their colonization effort as a part of a sacred—if not apocalyptic—war against Satan. Some colonists were also convinced that they were creating what John Winthrop, the leader of the Great Migration, called “a city upon a hill,” a model Christian society that was to be admired (and possibly replicated) by all Christendom. They even compared their escape to America to the Jewish exodus from Egypt and the conquest of the Promised Land, thus perpetrating the notion that the colonization of New England was a part of the divine plan. Traces of this vision are shared by many Americans to this day.

The Puritans' ambiguous attitude toward the relation of secular and religious institutions sparked a lasting debate in American culture. The early New England colonists nominally believed in the separation of church and state. This belief reflected their antipathy toward the Church of England, which, as a state church, combined secular and religious elements. The Puritans were convinced that the religious principles promoted by the Church of England were shaped by political concerns. This was obviously seen as a problem, because the reformers were committed to purifying Christianity. This is why they made efforts to separate religious and civil authorities.

However, while the American Puritans were afraid of tainting their religious beliefs with politics, they did not hesitate to shape their political beliefs according to their religious convictions. They wholeheartedly believed that New England should be a theocracy, a form of government designed to preserve the purity of their religious beliefs. To the extent possible, their Bible Commonwealth, as the political order of the Puritan New England was dubbed, relied on laws that were based on the Bible. Thus the *Fundamental Orders of Connecticut* (1639), the colony's constitution, was explicitly designed to “maintain and preserve the liberty and purity of the Gospel of our Lord Jesus.” In the Massachusetts *Bodie of Liberties* (1641), the list of capital crimes was simply adopted from the Bible.

To protect the purity of their religious beliefs, most settlements in New England were founded on Congregational principles. The basic premise

of Congregationalism is that people can form churches (congregations) and choose their ministers. Such a proto-democratic approach reflected New Englanders' desire to move away from the centralized forms of governing typical of the Catholic Church and the Church of England. As a result, Puritan settlements in New England were organized as semiautonomous religious entities, whose members participated in some functions of church governance. This approach was legitimized in the Massachusetts *Bodie of Liberties*, which gave congregations considerable freedom to conduct their affairs.

Religious Persecution

At the same time, the Puritan authorities strove to maintain a sense of religious homogeneity throughout New England. As a rule, they did not appreciate the idea of religious diversity and persecuted anyone who did not share their views. In the first decades of colonization, when they enjoyed considerable autonomy, the New England Puritans methodically combated encroachments of Anglicans, Baptists, Quakers, and other religious groups, whose adherents were forced to leave the colony or, in some cases, simply executed. In the

1620s, for example, they deported many Anglicans, including Thomas Morton, John Lyford, Samuel Brown, whose presence was deemed subversive. The authorities' religious intolerance was also apparent in their harsh treatment of the Quakers, who were regarded as religious anarchists. Massachusetts reacted to spread of Quakerism by passing several harsh laws. The first one, adopted in 1656, threatened captains of ships that brought any Quaker to New England with heavy fines and warranted punishment for the Quakers who dared to come to the commonwealth. A year later, the court adopted yet another law that allowed even more severe punishments for the Quakers; henceforth, they were to have their ears cut off and be deported. The law was modified in 1658 to require execution of those Quakers who returned to the commonwealth after being deported. Several Quakers who defied these laws, most famously Mary Dyer, were executed in 1660–61.

Religious persecution in New England was not limited to non-Puritans. Several prominent Puritans who defied the Puritan orthodoxy were expelled from New England in the 1630s through the 1650s. The first notable case, in 1635, involved Roger Williams, a radical Separatist whose views



Criticism of the church played a large part in the Pilgrims' decision to emigrate to New England. The first to arrive, in 1620, was a group of Separatists (Pilgrims), who founded the Plymouth plantation. They were followed in 1630 by the Great Migration of Puritans, who established a cluster of settlements in what is today Massachusetts, Connecticut, Rhode Island, and New Hampshire.

were considered so extreme that he was banished. He went on to establish the Providence plantation (Rhode Island), which continued to attract religious nonconformists through much of its early history. Even more scandalous was the affair of Anne Hutchinson, a Calvinist fundamentalist who took the liberty of organizing an unsanctioned Bible study group and challenged the authorities who sought to curb her activities. She was tried and expelled in 1638 after a contentious trial at the General Court. Samuel Gorton, another radical minister who was infamous for his contempt for organized religion, particularly of the sort promoted by the American Puritans, came close to being executed but was instead banished in 1644. Likewise, John Pynchon, a prominent colonist, ran into serious troubles for publishing a book in which he questioned Calvinist principles.

Crime and Punishment

The Puritan attitude toward crime and punishment was also shaped by their religious views. Since they saw the concept of original sin as a cornerstone of Christian faith, they believed that everyone was naturally predisposed toward crime. What is more, they were convinced that all crimes were related; one person's sexual proclivity, for example, was believed to be rooted in the same impulse that prompted another man to steal. It is understandable that Puritan ministers encouraged people to become aware of their criminal inclinations in order to avoid committing crimes. Punishment rituals in early New England were typically designed as occasions to promote this notion. As a rule, ministers called upon the people who attended public executions to compare themselves to condemned criminals. This was the case even when a criminal was executed for a rare crime. To quote Samuel Danforth's execution sermon, which he delivered on the occasion of a young man's punishment for bestiality, "the spectators" of executions were as sinful as "the Sufferers" on the scaffold. The authorities, likewise, routinely chastised the population for all sorts of transgressions.

Decline

The Puritan influence started to decline in the 1660s, first in Britain and then in New England. After the death of Oliver Cromwell, the Puritan

dictator who ruled England in the 1650s, the monarchy and the Church of England were restored, and the Puritans lost their supremacy. Throughout the 1660s, the English parliament adopted four major laws, commonly referred to as the Clarendon Code, which were meant to promote Anglicanism and suppress religious dissent, particularly Puritanism. The New England Puritans suffered a major setback in 1684, when the king revoked the charter of the Massachusetts Bay Colony, which gave colonists considerable liberty in governing themselves, and united all English colonies from New Jersey to Maine into the new political entity called the Dominion of New England. It was governed by an appointed governor rather than an elected official. In a particularly telling sign of the Puritan decline, the Dominion's new governor, Edmund Andros, was an Anglican with little respect for the political and religious culture the Puritans had built in New England.

Puritanism's cultural impact could be felt well after its decline in the early 18th century. Several legal codes adopted in New England, particularly the *Fundamental Orders of Connecticut* and Massachusetts' *Bodie of Liberties*, created the tradition of self-governance and demonstrated the Puritan commitment to the rule of law. Equally noteworthy was their belief in the separation of church and state. In spite of their full-hearted commitment to ideological homogeneity, the Congregationalist principles that Puritans embraced can be said to promote democratic values.

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See Also: 1600 to 1776 Primary Documents; Bodie of Liberties; Massachusetts; Mayflower Compact.

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Quakers

The Religious Society of Friends, often called simply Friends or Quakers, is a Christian sect that emerged in mid-17th-century England in tandem with the religious upheavals of the English Civil War (1642–51). The sect's founder, George Fox, heavily emphasized principles of social justice, creating a strong link between Quakers and reform movements. In particular, many prominent British and American Quakers played important roles in the various prison reform movements of the 18th and 19th centuries.

The Quakers are a sect of English dissenters, or Christians who broke away from the Church of England during the 16th, 17th, and 18th centuries. George Fox, a young preacher who was disturbed by the disjuncture between many Christians' actions and their professed beliefs, founded the sect. Fox believed in the spirituality equality of all persons and thus argued that Christians required no clergy. Perhaps not surprisingly, Fox ran afoul of England's religious establishment and was jailed several times; this was a fate he shared with many other prominent Quakers (including William Penn) and one that served to galvanize the sect's commitment to social justice.

Nowhere was this clearer than in Pennsylvania's approach to criminal law. In 1682, William Penn promulgated the "Great Law or Body of

Laws," which was adopted by the assembly on December 7, 1682. Though the Great Law still criminalized sexual immorality, drunkenness, and profanity, it utilized imprisonment in a house of correction and/or fines instead of public physical punishment for most offenses except murder, which was still a capital offense. William Penn was averse to jails, and the horrors he had experienced while incarcerated in London's infamous Newgate Prison pushed him to seek alternatives. Because he had been deeply impressed by Dutch workhouses (which were based on the English Bridewell system) during his tour of Holland, Penn decreed that, in Pennsylvania, all counties were to have workhouses.

Penn's control over the colonial government was extremely tenuous. Between 1682 and 1701, Pennsylvania had four different governments, and Penn lost his charter for two years beginning in 1692. By May 1718, Pennsylvania operated under the much harsher English criminal code, a system that lasted until independence. Pennsylvania's embrace of the English criminal code was rooted in the Quaker aversion to oath taking. In 1715, Parliament forbade the right of affirmation, which the Quakers had used in lieu of swearing oaths. Pennsylvania's Quakers were understandably agitated, because their refusal to swear oaths meant that they could not participate in criminal procedures, disrupting colonial justice. Pennsylvania's

new governor, William Keith, offered a solution: Pennsylvania might induce Parliament to recognize the right of affirmation if the commonwealth adopted the English criminal code, which it did on May 13, 1718—in the process, repudiating Penn's vision for the colonies. By the time Pennsylvania revised its penal code following the Revolutionary War, the state's Quakers had lost much of their political power, and the new laws owed more to Enlightenment rationalism.

Influence in Social Justice

By the 19th century, English and American Quakers were at the forefront of social justice activism in fields as diverse as abolitionism, women's rights, and prison reform. For instance, in the 1680s, prominent Quakers began attacking slavery as incompatible with their belief in the spiritual equality of all people; shortly thereafter, they promulgated the first recorded protest against slavery, the 1688 Germantown Quaker Petition Against Slavery. A century later, Pennsylvania had passed the first abolition act in 1780, and three years later, English Quakers founded the first British abolitionist society.

Not surprisingly, Quakers became involved with prison reform very early. In 1777, Englishman John Howard published his seminal book *The State of Prisons in England and Wales*, which spurred the prison reform movement of the 18th and 19th centuries. English Quakers such as Elizabeth Fry (1780–1845) were at the forefront of this movement, which sought to reduce overcrowding and institutionalize humane treatment of inmates. Many prominent English Quakers joined such organizations as the Society for the Improvement of Prison Discipline and the Committee for Investigating the Alarming Increases of Juvenile Crime, which advocated increased governmental oversight of prison administration. Quaker agitation led, in part, to the passage of the Prisons Act of 1835, which created the position of inspector in order to ensure that jail keepers treated their inmates humanely.

Across the Atlantic, Howard's investigations inspired Americans to take up the cause of prison reform; many of the movement's leaders were Quakers. For instance, the Philadelphia Society for Alleviating the Miseries of Public Prisons (founded in 1787) had a large concentration of



William Penn was the founder of the English American colony of Pennsylvania. Penn received vast land holdings from the King of England, Charles II, in 1681 as a repayment of debts owed to his father, Admiral William Penn.

Quaker members. This organization was directly responsible for the creation and early administration of Philadelphia's famed Eastern State Penitentiary, the most important example of a Pennsylvania (or separate) system penitentiary. However, prominent Quakers like Thomas Eddy (called the "John Howard of America") also vigorously advocated the rival penitential system, the New York (or silent) system, which was later practiced at Auburn and Sing Sing.

In general, the influence of Quakers in American and English prison reform ebbed during the mid-19th century. As prison administration became more centralized and "scientific" during the reformatory era, many of the oversight functions performed by philanthropic organizations like the Philadelphia Society for Alleviating the Miseries of Public Prisons were absorbed by the state. Moreover, as the number of American and English Quakers declined relative to other religious

sects, so too did their political influence. However, even today, Quakers continue to play a vital role in advocating prison reform in the United States and Great Britain.

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See Also: 1801 to 1850 Primary Documents; Eastern State Penitentiary; Eddy, Thomas; Penitentiaries; Penn William.

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in America

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AN ENCYCLOPEDIA

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Race, Class, and Criminal Law

While criminal law in the colonies and, later, in the United States has always been raced and classed, the specific relationships between race, class, and criminal law have fluctuated across time and place. Criminal codes were explicitly raced from the colonial period until shortly after emancipation. In these codes, whether a behavior was a crime and what the prescribed punishment for that crime was depended on the race of the alleged offender. Since the fall of Black Codes in the 1860s, states have adopted implicitly raced criminal codes.

Similarly, 18th- and 19th-century criminal codes were often explicitly classed; for example, codes included vagrancy laws that criminalized the status of being homeless or unemployed rather than a particular behavior. Since the U.S. Supreme Court found vagrancy and, later, most loitering statutes unconstitutional, criminal codes have become more implicitly classed. Criminal codes that are implicitly raced and classed criminalize activities in which poor people, blacks, and other people of color are disproportionately likely to engage or for which they are likely to be arrested, but nonetheless prescribe the same punishment for anyone convicted of a given crime.

Race and Criminal Law in U.S. History

Each colony—and after the Revolutionary War, each slave state—enacted slave codes, statutes that defined the status of slaves and the rights of slave owners. During this period, the “general” criminal codes applied only to whites and free blacks. The slave codes governed most blacks as well as the behaviors of whites in relation to blacks. As such, criminal law was explicitly raced along a number of dimensions, including what behaviors states criminalized, the mechanisms through which an individual’s guilt was determined, and, what the prescribed punishment for a given criminalized act was. Slave codes criminalized speaking in any African tongue, reading and writing, owning or carrying a firearm, running away, and many other acts that were not criminal when engaged in by whites. Moreover, slave owners and overseers could punish slaves not only for the crimes enumerated in these codes but also for any act that opposed their wishes or whims. As such, slave codes gave slave owners nearly unlimited power to punish slaves, with some states failing to criminalize even the killing of slaves. Finally, slave codes prescribed some punishments, like hobbling and castration, to which whites were never subjected, regardless of the crime for which they were convicted. The codes also criminalized some behaviors only when whites engaged in them with blacks; for example, slave codes made

it a crime for whites to teach blacks to read or write, to provide blacks with alcohol, or to aid a runaway slave. Although slave codes protected slave owners' near exclusive rights to determine when and how slaves were punished, the codes did provide for exceptions. When blacks were accused of crimes that affected an entire community rather than just an individual owner, local courts or magistrates would try blacks and set their punishment. However, the criminal processing of blacks, whether free or slave, did not mirror that of whites. Blacks accused of crimes were not entitled to juries and, in many states, blacks were prohibited from testifying or serving on juries.



Wilson Chinn, a branded slave from Louisiana in 1863, stands alongside some of the instruments of torture used to punish slaves. Each U.S. colony had its own slave code, defining slave status and slave owners rights.

Every former slave state enacted Black Codes in 1865, within months of the confederacy's defeat in the Civil War. Like slave codes, Black Codes criminalized many behaviors if, and only if, blacks engaged in them. These behaviors included being out past set curfews; using "foul" or "suggestive" language near white women, having sexual relations with white women, or marrying white women; being unemployed, not having proof of employment, or leaving the employ of a particular proprietor without his consent; and possessing a weapon. These codes sanctioned racially differentiated legal treatment.

The passage of the Thirteenth, Fourteenth, and Fifteenth Amendments to the U.S. Constitution and the Civil Rights Act of 1866 ended slavery except as punishment for a crime, and granted citizenship and equal protection to all people born in the country, and voting and all other civil rights to each adult man who was a U.S. citizen. Taken together, these laws enabled former slaves and poor whites to vote in new governments; each of these new governments abolished their state's Black Codes. For the next 20 years, southern blacks experienced a period of relative freedom and power. In the 1880s, the northern troops abandoned the south and the federal courts began to turn their backs on claims made by black plaintiffs. This allowed former Confederate states to enact new statutes, which became known as Jim Crow laws, limiting the rights of blacks. Convict lease systems, wherein states "leased" prisoners to private individuals or companies, flourished under these new regimes.

When leased, prisoners labored in a variety of highly exploitative contexts, from plantations to mines. Many scholars have argued that this system, while being less all-encompassing in its scope, was even more profitable for plantation and mine owners and even more deadly for blacks than was slavery. The system of convict leasing completely transformed the criminal legal system in the south. In 1850, for example, Alabama's state prison held 167 white men, three white women, and four "free colored people"; by 1888, 85 percent of prisoners in the state were black. While counties generally left white convicts in prisons and jails where they were taught a trade or used on chain gangs to make and maintain roads, black convicts were leased to mining companies.

Nine percent, or nearly one in 10, of leased prisoners died each year. The convict leasing system relied on the pairing of the enactment of vacuous laws—such as those against dead falls, or selling goods after sunset—purportedly applicable to all, selective arrest wherein only blacks were arrested for the new crimes, a system of fees and fines, and a (racialized and gendered) selective process that determined to whom inmates were leased. Notable is that the clearly racialized practice of convict lease could exist in the absence of explicitly racialized laws. Thus, the period of convict lease represents a turning point in the relationship of race and criminal law.

Class and Criminal Law in U.S. History

Each colony and later each state enacted vagrancy laws, criminalizing homelessness and unemployment and, in some instances, criminalizing leaving a job without the employer's permission. In colonial America, if a person wandered into a town and did not find work, he was told to leave town or be prosecuted. In the states, vagrancy laws were often replaced with laws criminalizing more specific behavior, such as loitering, sex work, and public drunkenness, although some states retained vagrancy statutes on the books. In the southeast, counties often arrested and summarily convicted homeless, unemployed black Americans as vagrants. While convict leasing ended in the late 1920s, vagrancy laws remained on the books until 1972, when the U.S. Supreme Court, in *Papachristou v. Jacksonville*, ruled that a Florida vagrancy law was unconstitutional because it was too vague to be understood. Since this time, cities and states have enacted new laws criminalizing behaviors associated with vagrancy, such as panhandling or sitting or lying on sidewalks.

Historically, loitering, or remaining in a particular public place for a protracted period of time, was often a crime in itself. More recently, however, loitering constitutes a crime only when one does so “in order to” solicit for prostitution, beg, consume alcoholic beverages, or engage in gang-related activities. Even when loitering statutes mandate that police only arrest people loitering with criminal intent, however, these statutes ultimately empower police to arrest anyone who is spending time in any public place—since intent is rarely incontestable. Because poor people, and

especially homeless people, spend much of their time in public places, these laws allow police to arrest poor people with little or no cause. Acknowledging this, in 1999, the Supreme Court found Chicago's loitering statute, like Jacksonville's vagrancy statute, to be unacceptably vague and thus unconstitutional. Since that time, however, Chicago has enacted a revised loitering statute that attempts to address the court's concerns.

Race and Class in Contemporary Criminal Law

While contemporary sentencing policies are formally race and class neutral, they nonetheless punish noncriminal behaviors and traits, like being in or near public housing or being in a gang, that correlate closely with both race and class.

Drug use is widely distributed throughout the population. However, drug markets are concentrated in poor, urban areas. Street-level distribution, the type of drug trafficking that is most heavily policed, is an occupation dominated by young black, and in some regions, Latino boys and men. Moreover, because the drug market is highly resistant to criminalization, every time a young black or Latino man is arrested, convicted, and sent to prison, another young black or Latino man takes his place. This guarantees a nearly inexhaustible supply of poor, young men to fill U.S. prisons. Because laws stipulate that having drugs in your apartment or car makes you guilty of possession, young women of color are often charged for drug crimes along with their boyfriends and husbands. They are less likely to have “substantial assistance” to offer a prosecutor and, thus, prosecutors are less likely to offer women plea bargains that help them avoid mandatory terms. As such, the war on drugs, which increased funding for policing as well as increasing the sentences for almost every drug crime, has predictably increased the incarceration rates of poor men and women of color.

Sex work is an occupation disproportionately engaged in by poor women of color. Laws that criminalize sex work, therefore, necessarily target these women. Recognizing this, some states have sought to switch the focus of criminalization from sex workers to those who manage sex workers and those who buy sex, so-called pimps and johns. However, many sex worker organizations argue that even laws that view sex workers

as victims and focus criminalization on johns and pimps lead to increased criminalization of sex workers and their communities. This is because these laws, like those enacted in Illinois in 2005, still respond to sex work with the blunt instrument of criminalization. For example, under the “End Demand” laws enacted in Illinois in 2005, a person who let her friend, who was a sex worker, stay the night at her house could be charged as a pimp or trafficker.

In addition to criminalizing behaviors associated with the poor, many states enacted dozens of sentencing enhancements in the last quarter of the 20th century. These laws prescribe that additional time be added to a convicted person’s sentence if she committed the crime while engaging in other noncriminal behaviors (like being in or near public housing) or having other noncriminal traits. In Alabama, for example, people convicted of engaging in drug trafficking while within a three-mile radius of a public housing facility are subject to a sentence enhancement of five years without the possibility of parole. Noncriminal traits that can trigger sentencing enhancements include having been previously convicted of a crime. In California, for example, having been previously convicted of a single “serious felony” subjects anyone convicted of a new “serious felony” to a five-year sentencing enhancement.

Controversial Practices

Sentencing enhancements for gang affiliation are particularly controversial. While varying in their particulars, anti-gang ordinances rely on police creating a registry of people suspected of being in gangs. Civil gang injunctions require only a preponderance of evidence. Once police serve an individual with an injunction, that person may be prohibited from being outside after a given curfew; from socializing with other people, even if they are family members, whom police have categorized as being in the same gang; from consuming alcohol even in his/her own home; and from many other noncriminal behaviors. If an individual breaks any of the stringent rules placed upon him/her by the injunction, he/she can then be charged with a crime, even though the activity would not be a crime if he/she had not been categorized as “in a gang.” In another variation of these policies, cities build up registries of suspected gang members. If

anyone in the gang registry is convicted of a crime, he/she faces a sentencing enhancement simply for being on the registry. Because police can decide that people are in a gang on the basis of how they dress, their tattoos, and who they spend time with, racialized enforcement is rampant. In some cities, more than 95 percent of people served with gang injunctions or listed on gang registries are black or Latino.

Sentencing enhancements allow states to prescribe punishments for these behaviors and traits, which poor people of color are more likely to engage in or have, without criminalizing them *per se*. In the 2004 case *United States v. Booker*, the Supreme Court ruled that only facts admitted by a defendant or proven beyond a reasonable doubt to a jury may be used to calculate a sentence. While there was some speculation that this ruling would render sentencing enhancements unconstitutional, its reach has been considerably less broad.

Similarly, while many states have abolished parole, most still have some form of post-release supervision. Moreover, supervision strategies have increasingly emphasized surveillance and control. When a person is released from prison, he/she must follow a number of rules well beyond not committing a new crime. It is perhaps in these rules for the newly released that the class bias of the criminal legal system is most transparent. In New Jersey, for example, it is standard to require newly released people to have a permanent address and, eventually, a job. While people can often stay in homeless shelters when they are first released—although people marked as sex offenders, transpeople, women with boy children, and many others are excluded from most shelters—nearly all shelters limit the amount of time a person can stay. Once a person has stayed in the shelter for a certain amount of time, often 30 days, he/she must find a room to rent or other accommodations. Failing to do so is a violation of parole, and the newly released person’s parole officer can choose to revoke his/her parole and send him/her back to prison for the remainder of his/her original sentence based on this “violation.” In times and places when jobs are scarce and rents are high, states regularly send people to prison for failing to find work or shelter. The predictable effect of greater restrictions and closer surveillance has been an increase in the number

of people admitted to prison not for new criminal convictions but rather for technical parole violations. In 2001, in fact, nearly 40 percent of all prison admissions were for parole violations. Parole revocations sustain large prison populations, even in the face of declining felony convictions, by creating a large group of quasi-permanent prisoners.

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See Also: Convict Lease System; Gangs, Contemporary; Gender and Criminal Law; Prostitution, Contemporary; State Slave Codes.

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Race-Based Crimes

Race-based crimes occur when an offender targets a victim because of his/her racial group. Perpetrators of such crimes are motivated by bias against particular racial groups. Race-based crimes are often referred to as “hate crimes.” The level of severity of these types of offenses can range from physical aggression to harassment. In the United States, both the Federal Bureau of Investigation (FBI) and the National Crime Victimization Survey (NCVS) keep track of hate crimes. There are



A Klansman watches a cross burning with his children standing in front of him in 1987 in Oak Hill, Ohio. The Klan was founded by six former Confederate officers in 1866. The group expanded rapidly and its members have committed untold acts of violence.

numerous examples throughout history that show ethnic conflict.

Early America

Anti-black violence was common throughout America in the 19th century. Lynching—murder by mob violence—peaked during the late 19th century and into the early 20th century. This was a common occurrence in the United States, particularly in the south.

The north also saw its share of antiblack riots in the slavery era. Cincinnati was home to recurring riots against blacks (some of whom arrived in the city after fleeing slave states), most notably in 1829, 1836, and 1841. Anti-abolition riots also broke out in northern cities. In 1838, a riot targeting both blacks and white abolitionists destroyed Philadelphia’s Pennsylvania Hall after a speech by abolitionist Angelina Grimke. The New

York City Draft Riots (July 13–16, 1863) were motivated principally by anger over draft laws, but targeted blacks as scapegoats, and at least 100 blacks were killed in the violence.

New forms of white supremacy emerged in the south after the Civil War. The Ku Klux Klan was founded during Reconstruction as a paramilitary group targeting blacks, northerners, and their supporters. They practiced harassment, violence, and even murder. During this period of time, African Americans became scapegoats for the hardships, economic distress, and loss of social status of whites. White supremacy is an institutional system of oppression and exploitation against people who are nonwhite. It is used to maintain the privilege, wealth, and power of those who are white. White supremacy manipulates all aspects of relations in society, including housing markets and politics.

After the end of slavery, whites campaigned to disenfranchise African Americans through other means. These included segregation in housing, transportation, and public facilities, and changing laws in order to keep blacks from voting. Non-

whites were also controlled through the enactment of discriminatory Jim Crow laws at both the state and local levels from the 19th century through the 20th century.

These laws enforced the doctrine of “separate but equal,” which legally enforced the unequal treatment of nonwhites. These laws mandated the legal exclusion of nonwhites from particular career opportunities, housing, educational institutions, and other social institutions.

Post–World War II

The Great Migration by African Americans from the south to the north brought with it major demographic changes in some regions. Social tensions increased among whites and blacks who competed in the labor market. Competition for limited resources between different groups resulted in racial conflict. One of the cities that experienced episodes of violence and chaos because of racial tensions between blacks and whites was Chicago. Tensions reached a boiling point and resulted in what is now commonly referred to as the Chicago race riots of 1919.



Al Sharpton (center, right) leads the first of dozens of protest marches after 40 white teenagers murdered Yusuf Hawkins, a 16-year-old black youth, in what was then the predominantly white neighborhood of Bensonhurst in Brooklyn, New York, in 1989. Sharpton led marchers through the area for over a year, despite verbal and physical threats to his life.

World War II also marked a significant shift in community demographics and social demands. African Americans began demanding equal rights and argued for the elimination of racial segregation. They became vocal about wanting social, economic, and political inclusion, particularly after having made a number of contributions during World War I and World War II. Demographic shifts were brought about in part because of economic and job opportunities in the north. This influx of black migrants caused strain on public facilities, which led to increased public tension over housing, public transportation, and use of recreational facilities. In spite of civil rights statutes, segregation of public facilities caused a rift between blacks and whites. Tensions between black and white residents of Detroit escalated in 1943, culminating in an outbreak of violence.

During the early 1940s, there were public outbreaks and disturbances across the United States caused by racial conflicts. The Detroit riot of 1943 marked one of the nation's most divisive moments based on racial conflict between blacks and whites. On June 20, 1943, chaos erupted in Detroit. The public clash started at an amusement park on Bell Island. On that day, there were minor quarrels between black and white youths at the amusement park. Rumors began to circulate about blacks murdering and raping whites, and whites doing the same to blacks. These rumors lead to race riots, looting of stores, and property damage. Whites attacked blacks who were out in public. Both groups took part in violence and looting over a three-day period. President Franklin Roosevelt dispatched federal troops to Detroit in order to quell the riot and restore peace. By June 23, when all of the damage was considered, 34 people had been murdered, the majority of whom were black. Approximately 700 individuals were injured, and more than 1,000 were arrested for their part in the riot. The riot caused an estimated \$200 million worth of property damage.

The civil rights movement was one of the events that emphasized racial minority rights. Legislation like the Civil Rights Act of 1964 and the Voting Rights Act of 1965 were steps toward promoting equality for those who had historically been suppressed. Jim Crow laws were overruled by both the Civil Rights Act of 1964 and the Voting Rights Act of 1965. The Supreme Court in *Brown v.*

Board of Education in 1954 ruled against segregation and ended the "separate but equal" doctrine. The U.S. government enacted legislation that recognizes the rights of all Americans, regardless of race. Increasing equality through legislation made it easier for nonwhites to fight against unequal treatment. Special dispensation has been given to law enforcement and the courts in order to arrest and prosecute those who commit hate crimes.

Pushback against the civil rights movement was unrepentantly violent. The 16th Street Baptist Church in Birmingham, Alabama, was one of several black churches bombed by white supremacists after the legal end of segregation. In Mississippi, three civil rights workers were lynched in 1964. In 1968, Martin Luther King, Jr., the most prominent civil rights leader, was assassinated by James Earl Ray.

Crimes Against Chinese and Mexican Americans

African Americans have not been the only racial or ethnic group targeted by race-based crimes; immigrant groups have also historically been targeted. In recent times, Chinese and Latino immigrants have been the victims of racially motivated crimes. The first wave of Chinese immigrants began arriving in the United States in 1848. Chinese immigrants were allowed into the United States to fill a labor shortage around the time of the 1849 gold rush. This wave of immigration was followed by another period of Chinese immigration to the United States later in the 1800s. Chinese immigrants worked on the railroad at a low-paying wage in dangerous conditions. As Chinese immigration increased, so did racial tension and violence against Chinese immigrants. During the 1870s, the Chinese immigrant population was one of the largest immigrant groups in California. During this time, Chinese Americans began to experience backlash from the public and politicians alike.

This group was met with violence and race-based discrimination, including prominent massacres in 1871 Los Angeles and 1880s Washington and Oregon. Often, this violence was supported, implicitly or explicitly, by labor unions concerned with the effect of the Chinese on American wages. In 1882, the U.S. Congress passed the Chinese Exclusion Act, which essentially froze immigration

from China. This piece of legislation marked an important transition in U.S. immigration policy. This was the first time that a group of immigrants was intentionally excluded from the United States. One of the consequences of this act was that it created a shortage of cheap low-skilled laborers.

As a response to the demand for cheap labor, the U.S. government began looking for other alternatives. The United States set up a program in agreement with the Mexican government to fill this gap. The Bracero Program (1942–64) was set up as a temporary guest worker program to supply the much-needed laborers. During this time, illegal immigration also increased. In response to the increase of the Hispanic population, the public and politicians began demanding controlled immigration. In 1943, the “Zoot Suit Riots” (named for the suits worn by young Latino men) broke out when white sailors stationed in Los Angeles targeted Mexican Americans who they considered unpatriotic because their suits did not follow clothing rationing guidelines.

One of the methods used to control illegal immigration was through widespread deportation that targeted the Hispanic population. In 1954, the U.S. government set up Operation Wetback to deport over 1 million Mexican immigrants. There were cases in which undocumented immigrants along with their U.S. born children were deported. Agents interrogated and stopped those who were “Mexican-looking.”

Since then, Hispanic immigrant groups continue to be victimized because of their ethnic background and have been the targets of violence and harassment solely because of their ethnicity. Some states, notably Arizona, have taken action to question and interrogate anyone who “looks” like an undocumented immigrant. This is simply a code for stopping anyone who looks Hispanic. Multiple states have taken legal action against immigrants and have adopted legislation that targets undocumented immigrants and their U.S.-born children.

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See Also: 1851 to 1900 Primary Documents; 1901 to 1920 Primary Documents; 1941 to 1960 Primary Documents; African Americans; Chinese Americans; Hispanic Americans; Xenophobia.

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Racism

Race is a social construction or multidimensional process of competing race projects, as explained by Howard Winant and Michael Omi in their landmark text *Racial Formation in the United States* (1986). Race as a concept is often produced in social relations, as shaped by cultural, economic, and political systems of power. Race is also understood as a subjective phenomenon articulated in racial identities. Racial “identities” are shaped by perceptions about the physical body (phenotype) and cultural practices. Race as a marker of human difference evolved during the era of the Atlantic slave trade to justify the subjugation of Africans in the American plantation economy. Many scholars have recognized that race continues to operate at the social level in U.S. society though it is no longer understood as a fixed biological reality. Racism is based on false perceptions about physical types attached to human “races.” The unequal policies and discriminatory practices used against groups or individuals erroneously designated as “naturally” inferior is defined as racism.

The U.S. criminal justice system has exhibited a long history of racism. This is evidenced historically in the unequal treatment of major ethno-racial communities in the United States such as African Americans, Latinos, and Native Americans under the U.S. penal system. The social history of crime, punishment, and criminal justice has been significantly marred by racism. This has been exhibited in the history of all-white juries, courtrooms, and the use of the harshest punishment reserved for

nonwhites who victimize whites. Some whites involved in the administration of justice actively participated in or incited mob violence and riots against African Americans after slavery. People of color are overrepresented in nearly all aspects of criminal justice, including offending, victimization, and delinquency, and in all stages, including arrest, pretrial detention, sentencing, and confinement. Racism in the history of the U.S. criminal justice system is illustrated in police surveillance, sentencing, incarceration rates, and the juvenile justice system.

The framing of the U.S. Constitution in 1789, which counted each enslaved African as three-fifths of a person for the purpose of census taking, prohibited the end of the Atlantic slave trade

until 1808 and allowed the recapture of fugitive slaves. These measures in the U.S. Constitution helped to anchor a system of racial slavery predicated upon white supremacy. The 1790 U.S. census defined citizens as “free white persons.” Racial slavery and racism were entrenched in U.S. society through the 19th century. Crucial legal decisions such as the Supreme Court decision in *Dred Scott v. Sandford* (1857), in which black slaves and their descendants were declared “non-citizens,” helped to illustrate racism in the administration of justice in a slave republic. Following the Civil War (1861–65) and the ratification of the Thirteenth Amendment to the U.S. Constitution, which abolished slavery, vigilante violence against African Americans soared as thousands were lynched across the American south and west through the early 20th century. At this same time, Native Americans had their land holdings vastly reduced through a series of unequal treaties with the U.S. government. Native Americans were ultimately forced onto 160-acre reservation plots by the late 19th century. The increased numbers of Latin Americans coming into the country illegally have also made them the target of the penal system in large numbers. Thus, people of color continue to serve as the chief recipients of racial discrimination in the U.S. criminal justice system. This is evidenced with an examination of racism in police surveillance, sentencing, incarceration rates, and the juvenile justice system.

Racism and Police Surveillance

The surveillance of people of color in U.S. society has a long history. Concerns about the control and surveillance of African Americans began with the slave codes first implemented in the mid-to late 17th century. These codes, although they varied across the colonies, and later the states, in most cases prohibited slaves from leaving the plantation. Slaves could not assemble without a white person present; they were not permitted to read, write, or marry, and they were subject to harsh punishment if these laws were broken. Punishments ranged from lashing and whipping to branding, imprisonment, and death. The slave codes were followed by the Black Codes with emancipation in 1865. The Black Codes were designed to limit the labor, mobility, and



As of 2008, 70 percent of prisoners in the United States are people of color, leading some to believe that racism is largely responsible for the overrepresentation of non-whites in all stages of the criminal justice system.

employment of the former slaves while severely restricting their rights and civil liberties. White southerners faced the dilemma of how to control postslavery black labor and behavior, which was once regulated by slave owners. Jim Crow laws (segregation) helped to solidify the domination of African Americans in southern society by separating the “races” and criminalizing interracial contact in nearly every social setting. The Black Codes were soon followed by the convict lease system and later the by infamous chain gang through the 20th century. Black labor resources in the convict lease system were used to till fields, build levees, railroads, and dig mines across the south. Black labor played an important role in the economic development of the region through the early 20th century.

Racial minorities continue to serve as the primary victims of police surveillance. African Americans and Hispanics are stopped most frequently by police and are more likely to be made subject to search and arrested, according to national statistics. In 1998, African Americans comprised 11.6 percent of drivers stopped by police but represented 19.9 percent of the drivers arrested, while Hispanics were 8.4 percent of drivers stopped by police but made up 11.7 percent of those arrested. Many individuals of Arab descent have complained of increased police surveillance and racial profiling since 9/11. The increased surveillance of Arab Muslims in the post-9/11 world has led to a greater number of detainments, interrogations, and arrests among Arab Muslims. Native Americans are also disproportionately made the subject of police surveillance, particularly in the states of the Great Plains (where they make up a disproportionate number of the prison population compared to their actual population). The prison industrial complex in the United States is disproportionately populated by people of color as a result of targeted surveillance and unequal sentencing.

Racism and Sentencing

African American men have a 32 percent chance of serving time in prison at some point in their lifetime, and Hispanics have a 17 percent chance; white men have a 6 percent chance of serving time in prison over the course of a lifetime. These numbers help to reflect racism in the sentencing of

racial minorities. Women of color sentenced for drug crimes were the highest-growing segment of the U.S. prison population from 1998 to 2008. Some statistics suggest that as many as 33 percent of African Americans would receive less prison time if they were treated “equally” to whites in the criminal justice system. Hispanics and African Americans with no prison records are more likely to serve time on a first offense compared to whites with a similar history. Hispanics are twice as likely as whites to serve prison time as opposed to probation or a fine. African Americans, at roughly 14 percent of the U.S. population, are disproportionately sentenced to death in cases involving capital crimes. African American men make up 43 percent of the current death row prison population.

Native Americans have increasingly lost control of their sovereignty to the U.S. federal government. This has impacted issues of crime and punishment for the Native American community. In the past century, the jurisdiction over an expanding number of crimes has been removed from tribal authorities. The power to punish has been slowly appropriated by states. The U.S. Congress passed Public Law 280 in 1953, which offered states opportunities to assume jurisdiction over reservations within state borders. In 1968, the law was amended, but it continues to afford unequal punishment to Native Americans compared to crimes committed by their white counterparts against Native Americans. Tribal affiliations that do not have the economic resources to support law and order or to regulate crime and punishment are forced to rely on local, state, or federal authorities to provide law enforcement, courts, and jails. Native American communities with the resources and jurisdiction over law enforcement have limited powers in terms of sentencing. In fact, the Supreme Court ruling in *Oliphant v. Suquamish* (1978) determined that non-Native Americans are immune from criminal and tribal prosecution in the Native American judicial system. This illustrates the limited control or protections that Native Americans have in regard to matters of law enforcement.

The war on drugs has helped to fuel racism in sentencing. In 1988, the U.S. Congress passed a law that created a 100:1 quantity ratio between the amount of crack and powder cocaine required to

produce a mandatory minimum sentence for trafficking and created mandatory minimums for simple possession. In other words, the possession of 5 grams of crack would receive a five-year sentence while a person would need to be caught with 500 grams of cocaine to receive a five-year sentence. Crack, a drug commonly associated with African American communities—as opposed to the more expensive cocaine associated with whites—is the only drug with a mandatory prison sentence for a first simple possession offense. Despite the fact that the majority of crack users are white or Hispanic, in 1994, African Americans made up 84.5 percent of the defendants convicted of crack possession (10.3 percent were white, and 5.2 percent were Hispanic). African Americans have routinely made up the majority of persons charged with trafficking crack, with estimates as high as 88 percent or more by 2001. The disproportionate number of African Americans incarcerated today (at roughly 50 percent of the total prison population) is caused in part by the increased number of arrests for drug offenses that disproportionately target African Americans. By 2000, African Americans made up 53 percent of those convicted by state courts for drug offenses.

Racism and Incarceration Rates

People of color are overrepresented in U.S. rates of incarceration. The U.S. prison population was less than 200,000 in 1973, but by 2004, it was calculated at more than 2.2 million. The United States leads the world in rates of incarceration with 700 inmates per 100,000. Between 1980 and 1996, incarceration rates in state and federal institutions increased by 200 percent. The number of people incarcerated in the United States has now reached 2.3 million, and more than 64 percent of those in prison are racial minorities. In 1910, African Americans made up 11 percent of the U.S. population and 31 percent of the prison population. African Americans now comprise 50 percent of adults in federal, state, and local prisons and jails. Hispanics currently constitute 18.6 percent of the U.S. prison population. The 43 percent of African Americans on death row is three times the percentage of the African American population in the United States (at roughly 14 percent). In 2003, whites were imprisoned at a rate of 376 per every 100, 000, compared to

2,526 African Americans per every 100,000. In the states where Native Americans comprise a significant minority, rates of incarceration for Native Americans are relatively high. Native Americans make up 6 percent of the population in Montana but make up 16 percent of the prison population, while in North Dakota, Native Americans make up 5 percent of the population but 19 percent of the prison population.

The high rates of incarceration of racial minorities may be influenced by a series of contributing social, environmental, economic, and educational attainment factors. Most statistics indicate that social environment and poverty serve as factors that may contribute to one's future incarceration. Many have noted that the African American high school dropout rate mirrors the African American prison rate at 50 percent. The rate of recidivism is also extraordinarily high for those who have served time in prison. The move away from rehabilitative prisons to those with greater emphasis on incapacitation in the U.S. prison system has had a serious impact on prison rates. This has been coupled with more aggressive drug enforcement practices.

Racism and the Juvenile Justice System

The school to prison pipeline is fueled by racial bias, particularly toward African American and Hispanic youth. African American youths are six times more likely to be held in a youth detention center than their white counterparts. Hispanic youths are three times more likely to be detained. In the 1980s, African American and white rates for juvenile drug arrests were similar, but by 1993, African American rates were more than four times the rate of white arrests; 46 percent of all juvenile arrests by 1993 were arrests of African American youths. In 1994, one in three young African American men between the ages of 20 and 29 was under correctional supervision, compared to one in four in 1990.

At the end of 2004, 8.4 percent of black males ages 25 to 29 were in prison compared to 2.5 percent of Hispanic males and 1.2 percent of white males. Racism in the juvenile justice system engenders distrust, suspicion, and hostility among youths of color along with a profound sense of alienation from mainstream society, which in turn shapes perceptions of fairness. The essence of a democratic



African Americans comprise 84.5 percent of all defendants convicted of crack possession and trafficking despite the fact that the majority of users are white or Hispanic.

society is voluntary obedience to laws, and this becomes compromised with perceptions of unfairness. Many scholars suggest that racism in the juvenile justice system is more profound than at any other level in the criminal justice system overall.

Racism continues to permeate the social history of crime and punishment in U.S. society. Racism causes tremendous damage to communities of color disproportionately affected by the unfair practices in surveillance, sentencing, and incarceration, as well as in the juvenile justice system. Felony convictions lead to the forfeiture of civil liberties such as voting. An estimated one in seven African American men have been disenfranchised because of felony convictions. Racism in the criminal justice system helps to impact the economic development of individuals and communities. Individuals with arrest records suffer an estimated 7 percent decline in income as a result of having a prison record.

The racism evidenced in the social history of crime and punishment in the United States is a reflection of the larger racial bias that remains present in the society as a whole despite attempts at remedy that have been made. Native Americans represent less than 2 percent of the U.S. population but make up roughly 4 percent of the total prison population. Hispanics are routinely and explicitly singled out by the Immigration and Naturalization Service (INS) for immigration enforcement, making up 96.2 percent of illegal immigrants arrested

by the INS, though they make up only 54 percent of the total number of illegal immigrants in the United States.

Social scientists have argued that racism symbolizes a deeper racial divide, though the Supreme Court since the Warren era has done much to minimize the racial disparities in the U.S. criminal justice system. The recognition of such a divide has also opened a dialogue on potential remedies that are in progress.

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See Also: 1801 to 1850 Primary Documents; 1851 to 1900 Primary Documents; 1901 to 1920 Primary Documents; 1921 to 1940 Primary Documents; 1941 to 1960 Primary Documents; Capital Punishment; Juvenile Justice, History of; Sentencing.

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Rader, Dennis

On March 9, 1945, Dennis was the first of four sons born to William and Dorothea Rader. The Raders moved to Wichita, Kansas, where young

Dennis participated in the Boy Scouts and even church group activities and was an average student. However, by his own admission, Rader was already strangling animals while developing fantasies about control, bondage, and torture. His college career was comprised of mediocre grades and a severe lack of socialization, so Rader joined the U.S. Air Force in 1966. After an unremarkable five years with the military, he returned home to Wichita, Kansas, in 1971, where he immediately married Paula Dietz. By 1974, unemployed and depressed, Rader was fantasizing about actually committing murder by strangulation when he chanced upon Julie Otero. The Oteros were a Hispanic family who had recently moved to Wichita, and they were to be the first victims of the BTK.

After observing the family for several days to get an idea of their routine, Rader gathered his "hit kit," consisting of a gun, ropes, knives, and various tools for breaking and entering. Around 8:00 A.M. on January 15, 1974, he cut the phone lines and entered through the back door, expecting only Julie and the children (Josephine, 11, and Joey, 9) to be present. Unexpectedly, her husband Joe was also there, as well as the Oteros' vicious dog. However, using the gun, Rader managed to subdue and then systematically bind and strangle all four of the Oteros, even with their extensive training in the art of judo. Part of this may have been the story that he concocted: He was a wanted criminal and simply needed money, food, and a car to escape. It was with this same ruse that Rader managed to fatally wound another Wichita woman named Kathryn Bright. Later that same year, Rader wrote to a local newspaper after discovering that the murders of the Otero family were going to possibly be blamed on someone else. The newspaper directed the journalist to look inside a book at the local library. Inside the book, the police found a hand-written letter from Rader, who professed his guilt for the murders of the Otero family in extreme detail and proudly proclaimed that "the code words for me will be Bind Them, Torture Them, Kill Them ... BTK." It would be this same need for credit that would later lead to his downfall.

Rader continued to kill and to write the media sarcastic poems and letters through 1979, by which time he was employed by the ADT alarm

system company and had two children with his wife Paula. Then, his murders became more sporadic, with self-proclaimed kills occurring in 1985, 1986, 1987, and 1991. Eventually, he stopped killing and did not contact the media again until 2004. On March 17, he mailed an envelope to the *Wichita Eagle*; it contained three photocopied pictures of his own photos of the dying Vicki Wegerle taken in 1986, as well as a photocopy of her missing driver's license. He signed it with the BTK symbol he had used in his previous letters in the 1970s. Over the next 11 months, Rader sent nine more packages to the police and to television and radio stations. Some were merely letters confessing past deeds, whereas others were sketches, photos, and dolls grotesquely posed like previous victims. On February 16, 2005, Rader sent the police, among other things, a diskette. Technical analysts uncovered Rader's name, as well as reference to Christ Lutheran Church, where he had officially been made president the month before. He was immediately placed under surveillance while his daughter's DNA was matched to semen he had left at various crime scenes.

On February 25, Rader was arrested and provided a 30-hour confession of all his crimes, in detail. After he was formally charged with 10 counts of murder, the media began leaking information about Rader and interviewing his friends and family, who swore that they never could have imagined such heinous crimes being committed by the man. On June 27, Rader pled guilty to all charges and began describing, in detail, every murder he had committed. At the end of the proceeding on August 18, Judge Gregory Waller sentenced Dennis Rader to a minimum of 175 years to life in prison.

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See Also: Murder, History of; Serial and Mass Killers.

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Ragen, Joseph

Joseph Ragen is best known for serving as the long-standing warden of the Illinois State Penitentiary at Joliet. He served as warden at Joliet-Stateville for 25 years from 1936 to 1961. Joseph E. Ragen was born in 1896 in Trenton, Illinois. His father was the county sheriff. He served in the U.S. Navy during World War I. In 1922, he began serving as deputy sheriff for Clinton County, Illinois, working under his father. In 1926, Joseph Ragen was elected sheriff of Clinton County. In 1930, he was elected county treasurer of Clinton County.

In 1933, Ragen was appointed as warden at the Illinois State Penitentiary at Merard, Illinois. He was also appointed superintendent of prisons for the state of Illinois, a position that required him to inspect all of the state prisons, including the Joliet-Stateville complex, which consisted of two maximum-security prisons designed to hold about 3,500 prisoners, but which commonly swelled to over 5,000 inmates, as well as a prison farm. In 1936, there was a series of escapes and major disturbances at Joliet-Stateville and the governor demanded the resignation of the warden and appointed Ragen in his place. Thus, in 1936, Ragen became warden and superintendent of all prisons at Joliet-Stateville, Illinois. From 1941 to 1942, Ragen served briefly with the U.S. Department of Justice. In 1942, he returned as warden at Joliet-Stateville.

Ragen established an autocratic leadership style at the Joliet-Stateville prison complex. He

made all the rules and frequently hired and fired employees at will. No one could enter the Joliet-Stateville complex without Ragen's personal approval, including journalists, whom he may have regarded as being unfriendly to his administration. Inmates were not permitted to organize clubs or other associations. All inmate mail was diligently censored. For many years, inmates at Joliet-Stateville were forbidden to write or send writs to the courts. Ragen is credited with keeping partisan politics out of the operations and personnel decisions at Joliet-Stateville. This was a time when there were no prison unions, no central prison authorities in the state, and when federal courts took little interest in prison conditions.

During Ragen's 25-year tenure as warden at the Joliet-Stateville prison complex, there were no reported or acknowledged escapes from Stateville; there were no major disturbances or riots, and there were very few deaths. This included the 1950s, a time when prison riots were sweeping the United States. Ragen kept a firm grip on affairs at Joliet-Stateville, controlling the penal environment while also maintaining a profitable flow of food and manufactured goods from the prison factory and its 2,200-acre prison farm. This calm and orderly state of affairs won Ragen international acclaim and he played host to a series of international visits by foreign corrections officials. In 1950, he became president of the American Prison Association.

Ragen kept a rigid and orderly system of operations in place at the Joliet-Stateville prison complex. He advocated maintaining a clean,



Joliet Correctional Center in Joliet, Illinois, was part of the Joliet-Stateville complex that housed from 3,500 to 5,000 inmates. Joseph Ragen was appointed warden and superintendent of the complex in 1936 and established tight control over inmates, visitors, and the press. Ragen served as warden for a total of 25 years, and Joliet Correctional Center was decommissioned in 2002.

safe, and secure environment. Inmates marched in tight formation through formal gardens. He could place unruly prisoners in disciplinary segregation for several years at a time. Corrections officers were not allowed to beat inmates. Ragen regularly walked the prison walls and personally inspected all aspects of prison operations. He insisted that the inmates must work while incarcerated. Initially, this work mostly involved maintaining cleanliness within the prisons. In the mid-1950s, Ragen established a large correctional cannery that reached an annual production level of 300,000 gallons of fruits and vegetables. He also established a prison furniture factory, clothing factory, textile mill, and sheet-metal plant.

Ragen was well known for hosting lavish meals at his warden's residence in Stateville. He regularly entertained legislators and other politicians to ensure that they did not endeavor to exercise any political or other authority over him and his operation. When one Illinois governor attempted to use his position to award patronage jobs to potential corrections officers, Ragen and his key administrative staff resigned. Serious troubles began brewing at Joliet-Stateville, and within six months, the governor conceded defeat and Ragen returned as warden. Ragen tended to hire rural, uneducated white males as corrections officers, which created some tensions as the inmate population became more African American and urban. After Ragen retired, subsequent wardens had difficulty maintaining order as rations worsened. In 1961, Ragen resigned as warden of Joliet-Stateville and was appointed director of the Illinois Department of Public Safety. He served as public safety director until 1965, when he began serving as vice president for the Louis Joliet Bank. Ragen died on September 22, 1971.

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See Also: Chain Gangs and Prison Labor; Corrections; Illinois.

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Ramirez, Richard

Richard was the youngest of five children raised by Mexican immigrants Julian and Mercedes Ramirez. He was born on February 29, 1960, in El Paso, Texas, and like his siblings before him, had medical disabilities throughout childhood. In particular, he suffered from epilepsy, which resulted in grand mal seizures. The children were all physically beaten, and although Richard had four older siblings to turn to, it was his cousin Michael who held the most influence over him. Michael had served in the Vietnam War and came back emotionally hardened and physically violent. He would call Richard over and show him photographs of himself raping and murdering Vietnamese women, or they would go hunting for animals with knives. One day, in the midst of a fight with his wife, Michael calmly drew his gun and shot her in the head. Richard was right beside him when this happened, and Michael told him to go home and tell no one what he had seen.

Michael also introduced Ramirez to marijuana, and he eventually dropped out of high school to pursue his various drug habits. In 1978, he moved to southern California, where he began stealing cars to burglarize houses so that he could support his various drug addictions. Along with the drugs, Ramirez's diet consisted primarily of convenience store food: items so laden with sugar that his teeth started to rot, giving his breath a distinctive odor.

It was also at this time that he began practicing his worship of Satan, which later became part of his signature. Eventually, burglary was no longer enough for Ramirez. On June 28, 1984, he murdered Jennie Vincow, 79. Her son discovered her body sprawled out on the bed; she had been stabbed repeatedly, and her throat was slashed so

savagely she was nearly decapitated. Her valuables had been stolen, fingerprints were recovered from the windowsill, and the autopsy revealed signs of sexual assault.

Ramirez did not kill again until March 17, 1985, but became so enraged that he began a full-blown murderous rampage that would span from San Francisco to Mission Viejo and last until he was captured on August 31, 1985. Although in the beginning he was sloppy and would just shoot the victim and steal their belongings, eventually he developed a pattern: sneak in during the middle of the night, dispatch the husband first with a gunshot directly to the temple, then restrain the woman so he could have his way with her after casing the house. He sometimes carved an inverted pentagram into the walls or even the flesh of his victims. He did not discriminate either; he raped and killed females and males from the ages of 6 to 83. His last successful attack, on August 24, 1985, resulted in the identification of his vehicle due to the fact that he left the female victim alive, as he had in several other incidences. A few days later, a young boy saw the same bright orange Toyota truck driving through his neighborhood in the early hours of the morning and called the license plate in to the police. The forensics team was able to identify a fingerprint from the steering wheel of the vehicle as belonging to Ricardo Leyva Ramirez. Immediately, the police put out a bulletin with his name and photograph, and within 24 hours, Richard Ramirez had been captured by several Hispanics who refused to become further victims of the Night Stalker.

Upon his arrest, Ramirez, 26, was charged with 14 murders and 31 other felonies. Throughout his trials he added to his demonic persona: dressing in all black, wearing sunglasses, showing off the inverted pentagram carved in his palm and shouting "Hail Satan!" intermittently. After nearly a year, the jury finally started deliberations with 8,000 pages of trial transcripts and 655 exhibits to consider. On September 20, 1986, almost two months after they had begun, the jury announced that they had reached a unanimous decision: On each of the 43 counts, the jury had voted guilty. "Dying doesn't scare me," Ramirez later responded. "I'll be in hell. With Satan." Despite his conviction, several females remained convinced of his innocence and, on October 3,

1996, Doreen Lioy, the most outspoken of them all, married him in the main visiting area of San Quentin State Prison. Ramirez's appeal against his conviction and sentence continues.

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See Also: Murder, History of; San Quentin State Prison; Serial and Mass Killers.

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Rape, Contemporary

Rape is defined as a form of nonconsensual sexual contact in which the bodily integrity of the victim is violated vaginally, orally, or anally, using either the body of the perpetrator or an object. Both males and females may be victims of rape.

Mistaken Notions About Rape

Although rape has been defined as a crime throughout American history, its definition has evolved as the social understanding of the issue has developed, especially in light of the work of feminist activists and scholars in the late 20th century. Traditionally, rape was considered more a crime against the father or the husband than against the victim herself. Reflecting the dependent status of women in a patriarchal society, the law viewed a sexual assault as either an offense against a father in whose care she was presumed to be or an insult to a husband, who was assumed to have the only sexual access to his wife. Based on those assumptions, rape was a grave insult to a husband or father's honor and to his status as head of the household. In addition, until well into the 20th century, accusations of rape were regarded with a great deal of skepticism—unless the accused was African American and the victim



According to the results of the 2000 National Violence Against Women Survey, 40 percent of rapes were likely to include physical assault along with sexual assault.

was white. Victims often felt that dealing with the criminal justice system was like a “second rape.” Their privacy was invaded as they were asked about prior sexual contacts and they were often treated without dignity or respect, as if they were responsible for provoking an attack. Much of the legal framework surrounding rape law implied that the woman who claimed assault was not to be believed. Many of the definitions and evidentiary rules in rape cases derived more from men’s fear of false charges than from the experience of the victim. For example, when rape was defined as “carnal knowledge without consent, of a woman not [one’s] wife,” the notion of consent focused on the victim’s behavior rather than on that of the assailant. How could it be proved that a woman did not consent? Typically, nonconsent required resistance, preferably physical resistance. The expectation seemed to be that a woman, usually taught all her life to avoid violence, would prove

her unwillingness to be raped by fighting like a man. If a woman failed to demonstrate enough opposition, the courts were likely to conclude that she had acquiesced. Thus, using enough physical force to break down a woman’s resistance often sufficed to indicate that she had consented, and that therefore no crime had occurred.

Other assumptions indicating a lack of trust in women victims included rules of evidence that required that a charge of rape be corroborated. Although witnesses to rape were unlikely to come forward, torn clothing, bruises, or other injuries might serve to substantiate the victim’s story. Courts were also permitted to use information about someone’s past sexual history to inquire into her good character and presumably her truthfulness. Such a line of questioning might imply that if she had sexual relationships with other men, the victim was not respectable, and that she might lie. Past sexual history might also be used to suggest that a woman who would have sex with one man would have it with anyone. Charges of rape were also expected to be based on a “fresh complaint,” coming immediately after the incident occurred. Here, the implication was that if time had passed, a woman might concoct a story. Until the late 20th century, rape laws reflected several other false and unflattering myths. A persistent belief that no woman can actually be raped against her will bolsters the notion that women provoke rape by their dress, by flirting, by drinking alcohol, by living alone, or by going home with a man. Another pervasive myth is that women are more likely to be raped by crazed, psychopathic strangers who jump out from behind bushes than by acquaintances, dates, or intimate partners. In fact, the reverse is true, because in nine out of 10 rapes, the perpetrator is known to the victim. A number of major feminist works in the late 20th century challenged these mistaken notions.

Rape and Women’s Civil Rights

Susan Brownmiller argued that rape was the original method by which men subdued women and kept them in a position of dependence. She theorized that rape and the fear of sexual assault disadvantaged women as a group by intimidating them and by limiting their options to move freely through society. Significantly, Brownmiller’s work is credited with spreading the argument that rape

is not about sex but about violence and power. She claimed that rape is essentially a deliberate hostile act of degradation, stemming from the concept of male privilege, the myth that men have a “right” to women’s bodies. Susan Estrich expanded the understanding of the crime of rape by explaining how the criminal justice responses to any rape are related to the appropriateness of the relationship between the victim and the rapist. The more conventional the liaison, the more likely the behavior will be excused. However, if the assailant is a member of a minority group, greatly older or younger than the victim, or a stranger, it is more likely that the assault will be seen as a crime. Estrich advocated treating nonconsensual sex, no matter how appropriate the man involved, as “real rape.” Much of the feminist scholarship on rape also raised the point that too often rape was defined from a male perspective and focused on women’s sexuality. Instead, they called for considering rape from the point of view of the victim and using her experience as the yardstick for determining what constitutes a crime.

Scholars writing about rape produced the theoretical foundation for an anti-rape movement. In addition, women meeting in consciousness-raising groups often found they had a common experience of nonconsensual sex. Starting from the premise that “the personal is political,” and arguing that violence against women is a form of patriarchal control, many women began to see rape as a feminist and women’s rights issue. Groups created task forces to monitor how the criminal justice system treated rape victims and publicized the practice of blaming the victim. They started community education efforts such as “Take Back the Night” marches and they helped to organize rape hotlines and counseling services for victims, often in association with domestic violence survivors’ services. Throughout the late 20th century, the idea took hold that violence against women was not just individual criminal behavior but was part of a larger social structure that kept women in a persistently inferior position.

Statistics on Rape

Patterns of violence against women were also highlighted in two major studies from the National Institutes of Justice (NIJ). In 2000, the National Violence Against Women Survey questioned 8,000

women and 8,000 men and demonstrated that victimization was linked to the sex of the victim and the offender. Among other things, the survey showed that women were 10 times more likely than men to be raped and that rape was likely to be accompanied by physical assault in more than 40 percent of cases. Only 10 percent of women who were raped were the victims of strangers; the other 90 percent were victimized by current partners, acquaintances, or relatives. More than 54 percent of victims were raped before the age of 18 and those women were twice as likely to be raped again as adults. The same year, NIJ released a second study, “The Sexual Victimization of College Women.” That report found that between 20 and 25 percent of college women experience a rape during their college years. The investigators did not begin by asking the respondents “Have you been raped?” Instead, they described behaviors that meet the definition of rape and asked the subjects whether they had those experiences. More than 40 percent of those who had experienced the behavior that met the definition of rape did not realize they had been raped. The study revealed a contradiction between the terms the victims used and their actual experience. A sizable minority seemed unable or unwilling to name what happened to them as the crime of rape. Perhaps they feared reprisals from the assailant or perhaps they blamed themselves. As 90 percent of college rapes are by persons known to the victims, the latter may be unwilling to label a boyfriend or classmate as a rapist. The college survey also indicated that only 5 percent of victims report their rape to law enforcement, although two-thirds tell someone, usually a friend. The findings support the belief that campus rapes are seriously underreported and that, therefore, they go unpunished and the survivors do not receive necessary services. Another consequence is that young women going off to college are often not made aware that the real threats of sexual assault are from men they know, in familiar places, with alcohol involved.

Major Legislation

Women’s groups and their allies have had a significant impact on the way the criminal justice system deals with rape, even if the response is still often inadequate. Most jurisdictions have broadened their definitions of rape to include all forms

of sexual assault, oral and anal as well as vaginal, and those in which an object is used. They also define marital rape as a crime and recognize that it often accompanies other forms of domestic violence. There seems to be greater understanding that rape involves not just sexual contact but also forced subjugation of a victim to a violent act. Rape shield laws are designed to protect victims from having their prior sexual history used against them. Prosecutors today are more likely to be pro-victim and tougher on assailants, although courts still often seem unwilling to convict otherwise upstanding young men.

The 1994 Violence Against Women Act (VAWA) reflected the theory that crimes against women are civil rights violations, that women have a constitutional right to be free from violence directed against them because of gender. The supporters of the act argued that the states had failed to adequately address violence against women, whether it took the form of rape, domestic abuse, stalking, or sexual harassment, although the Fourteenth Amendment to the Constitution promised “equal protection of the law.” Therefore, VAWA allowed victims of gender-based violence to sue their assailants in federal court and to claim monetary damages. Christy Brzonkala, a freshman at Virginia Tech, was raped by two male students in 1994. When the university failed to provide an appropriate disciplinary response, she sued the rapists in federal court. Her case made it all the way to the Supreme Court, which in 2000 found VAWA to be unconstitutional. The majority of the justices ignored the evidence that crimes against women were not treated as seriously as crimes against men. They failed to grasp the argument that violence against women perpetuated gender inequality. By ruling against VAWA, the court missed a historic opportunity to address structural barriers to women’s full citizenship. They preferred to consider rape as a crime by individuals and not as a violation of women’s civil right to be free from violence based on gender.

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See Also: 2001 to 2012 Primary Documents; *Coker v. Georgia*; Rape, History of; Rape, Sociology of; Violence Against Women Act of 1994.

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Rape, History of

Rape has always been a gendered victimization throughout the world. This means that the victims are overwhelmingly one gender—female. While many rapes are committed by strangers, researchers have found that most rapes are committed by acquaintances. These acquaintances may be individuals familiar to the victim, including current or former dating intimates and spouses or relatives. However, U.S. culture has historically defined rape as stranger-on-stranger crime, and the American legal system has addressed this crime using this myth. Reliance on this rape myth has denied justice for many victims of all races and economic statuses and has left many rapists unpunished. Throughout American history, however, social definitions, also known as social constructions, of rape have changed. With social change, society has experienced legal change.

Historical Context

Rape, as distinct from sexual assault, has historically been limited to penal-vaginal penetration in which, by law, the male was defined as the aggressor and the female as the victim. This definition excluded all other forms of sexual violence against females as well as all sexual violence against males. Since females have historically been defined as weak, submissive victims, these legal definitions fit well within existing social constructs. Furthermore, social definitions of males as aggressive and strong fit well within legal definitions of males as rapists.

Just as rape is a gendered victimization, the legal system is also a gendered institution. This means that the legal system is a male-dominated institution that enacts law through a male perspective. Social constructions of rape also influence legal definitions. As women did not have a voice in the political system, their interests were not recognized. The history of rape reflects the history of women's position within the larger society.

Until the passage of the Nineteenth Amendment in 1920 giving women the right to vote, women were legally defined as the property of their fathers or their husbands. In colonial America, marriage was a contract in which the husband would provide for the necessities of the wife (and children) but upon marriage, the wife would become the property of the husband. As a result, the rape of a woman was a violation of the property of the husband, or father. Further, rape

within marriage was not illegal as the husband had the legal right to access his property. Adding to this acceptance was the court's recognition that a husband had a right to physically punish his wife if she misbehaved (*Bradley v. State of Mississippi*, 1824). Thus, women often experienced legally acceptable domestic violence and rape.

Extending the male's rights within the marriage contract to other male suitors, rape was more likely to be defined as stranger-on-stranger behavior. As such, females who were raped by men who were courting them were viewed to have consented in order to secure a marriage proposal. As courtship was the first stage leading to the marriage, men were given a level of power that required that the woman prove that she did not consent. An unchaste woman was not marriageable and, as such, when she had intercourse, consensual or otherwise, she lost her value.

All of these ideas are based on what scholars have identified as rape myths. Rape myths are commonly held notions, stereotypes, prejudices, or false beliefs about rape, rape victims, and rapists. Rape myths are supported by cultural ideologies of family, gender, and decency. As the male is defined to be naturally aggressive and the female naturally submissive, scholars have uncovered a rape myth that blurs the lines between date rape and seduction.

Criminal seduction laws in the 1840s demonstrate the blurred lines between date rape and seduction. Common within colonial America, fathers were able to sue a rapist for loss of chastity, and thus income. Seduction laws of the 1840s were designed to protect family reproduction, male property rights, and the class status of unstained women. These laws focused on men and criminalized consensual premarital sex with a chaste female under the promise of marriage. In Ohio, for example, a man found guilty under the seduction law may have received up to 10 years in prison. However, following rape myths regarding resistance, it was often difficult for the victim to prove seduction or rape.

Under rape and seduction laws, victims were required to undergo a resistance test. The resistance test required that the victim provide evidence to show that she engaged in the "utmost reluctance and utmost resistance" to the sexual act. Following further rape myths, resistance



Titian's 1571 painting *The Rape of Lucretia*. Rape victims are overwhelmingly female and researchers have found that 90 percent of women are raped by partners or acquaintances.

was demonstrated through the evidence of violence and injury. Hence, without the evidence of extreme physical abuse (utmost resistance), the victim was unable to convince family members and justice officials that she resisted. The rape myths that men are naturally aggressive and women are naturally submissive were ingrained within culture; this allowed society to reject the woman as a rape victim and did not punish the rapist for his crime.

Unfortunately, resistance and consent were only believed if the woman was chaste. While prosecutors focused on resistance, defense attorneys focused on chastity. A rape myth used here was the belief that good women are raped; in other words, they resist. On the other hand, bad women do not resist; they want the sexual interaction. Chastity refers to the goodness of character and of body. However, while a chaste body (never having had sexual relations in the past) was a requirement in showing the possibility of resistance, defense attorneys focused on chaste character. A woman who had sexual relations in the past or who did not behave like a “good woman” was easily believed to be an unchaste woman who would not resist.

Adding to rape myths of consent and chastity was the myth that women lie about rape in order to secure marriage or to protect a chaste reputation. As a result, corroboration laws were enacted. It was not enough for a woman to claim that she was raped; she had to have other evidence, often another witness, as testimony to the rape. This could be an individual who witnessed the violence or who provided aid in the aftermath of the violence that resulted. In 1974, New York became one of the first states to repeal the corroboration law. By the early 1980s, most states followed suit.

Changing Social Definitions and Legal Responses

Social constructions of property, consent, resistance, and other forms of rape myths historically have also been vital to the arrest, prosecution, and conviction of rapists. During the 1970s, the nation underwent an anti-rape movement in which victims and other advocates fought for the right to say “no” and for equal protection under the law (the Fourteenth Amendment to the U.S. Constitution). The legal pattern of the day was to discount

all claims of rape unless they were committed by men against chaste women in an overly violent manner. Advocates, however, lobbied for a legal redefinition of rape to recognize sexual assault. In the 1970s, states added sexual assault laws that defied rape myths and recognized as sex crimes any sexual assault by a male or female on another male or female against his or her will. These laws recognized attempted rapes, sodomy, and other unwanted sexual violence.

Along with legal redefinitions of rape and the repeal of corroboration laws in the 1970s and 1980s, society saw a change in social constructs of resistance and resistance laws. A common rape myth held for so long has been that rape involves physical violence. Physical violence is the nonsexual violence that subdues the victim to the rape. However, in the 1980s, society and justice officials started to recognize the existence of psychological coercion. The terror of the sexual assault often subdues the victim for fear of serious injury. In fact, almost three-quarters of all completed rapes involve psychological coercion. As such, resistance as demonstrated by injuries to the victim is often absent. This was the most common form of resistance and corroboration required by the courts. When the justice system came to acknowledge that no injury may be present on a rape victim, resistance standards began to change. Laws moved from an “utmost resistance” standard to an “earnest resistance” standard in the 1980s.

Today, these legal corroboration and resistance standards no longer exist. However, rape myths persist and as a result, the practice of applying standards that have been legally repealed persists. These are especially applicable to more than 60 percent of sexual assault cases, those involving non-strangers. Of particular concern to rape reform are marital rape and date rape.

As identified earlier, husbands had a legal right to take sex from their wives—property. This was dictated by the legal interpretation of the marriage contract. It was not until the mid-1970s that the idea of marital rape was socially constructed. The notion of marital rape was first addressed in the 1975 case of *Judy Hartwell*. Hartwell killed her abusive husband after he raped her. The Michigan court judge presiding over the case argued that a wife had the right to say “no” and to defend herself against violence. In 1977, Oregon was the first

state to criminalize rape by a husband. Before this time, states included a marital exemption to rape. This meant that an act was not rape if the act was committed by a husband. By the late 1990s, all 50 states criminalized marital rape. Some states removed the language from law that specified the relationship to the offender; other states legislated that marriage is not a defense, while others created a separate spousal rape category.

In the 1980s, date rape was first recognized as a punishable sexual assault. The focus of research was mostly on campus rape, and colleges brought awareness to their students through workshops and orientations. However, persistent rape myths continued to hinder the arrest, prosecution, and convictions of rapists. In order to subvert the negative effects of rape myths, rape shield laws were passed beginning in the mid-1970s. By the 1980s, most states had some form of rape shield law. The rape shield laws were intended to eliminate victim blaming and the assumption that chasteness dictates rapist behaviors. The laws prohibited defense attorneys from using a victim's past sexual history as proof of consent. These laws recognized that expectations of chaste character and body did not provide for women's equal protection under the law.

Evolving Debates and Solutions

As with all changes in social definitions, debate continues as to who is considered to be a rape victim and who is considered a rapist. While society has maintained its belief that rape also included many other forms of sexual assault, social constructs of specific rape circumstances, victims, and offenders continue to persist. The social constructions of wives as property of males, resistance, and consent persist within legal definitions. Currently, only 17 states do not include exemptions to marital rape laws. Some exemptions to marital rape laws include a statute of limitation that is shorter than non-spousal rape. This means that the victim has a shorter time to report the crime. Other states require that force or the threat of force must have been present. Still other states require that the married couple be legally separated for the offense to be considered a sexual assault. These laws bring to the forefront the continued use of earlier legal definitions. The wife is still defined as the property of the husband when legal separation is mandated,

and shorter reporting windows are thrown up. Furthermore, evidence of force supports the long-standing myth that all rapes are physically violent.

As in earlier seduction laws, a degree of ownership is given to the dating rapist. Rape shield laws have great potential; however, exemptions to these laws tend to leave many victims exposed and unprotected to the dangers of rape. Many rape shield laws exempt victims who were previously sexually intimate with the rapist. Further, evidence of prostitution and other promiscuity is often exempted. In other words, if the victim was sexually active with the rapist, even through marriage, then she may have her sexual history brought before the court as evidence of consent and unchaste character. Additionally, a sexually promiscuous victim is one who is unchaste and is considered to be a liar if she claims to have been raped.

As society moves forward in reconstructing ideas of rape and sexual assault, debilitating rape myths persist. Advocates claim that further reform needs to be made. They argue that while the victim must have a right to equal protection, so too must the defendant be given due process of the law. As a result, it has been proposed that evidence of sexual contact of the crime in question must be admissible in court; however, evidence of sexual conduct prior to the act in question must be inadmissible.

As society moves through history and into the contemporary approach to rape and sexual assault, scholars have uncovered consistent evidence of rape myths and victim blaming. Beliefs that the victim shares some responsibility for the sexual assault tend to minimize the seriousness of rape and sexual assault in the eyes of society and especially the criminal justice system. The use of rape myths, however, has further-reaching effects. Specifically, rape myth acceptance and victim blaming by society often result in the victim's inability to understand that he or she has been sexually assaulted. This is known as the unacknowledged rape victim.

As many as 50 percent or more of rape victims do not know that aggression against them is legally defined as rape. Often, it is the female who has been raped by her dating partner and has engaged in previous sexual contact with him. If a victim has been intoxicated, acting flirty, or

dressed promiscuously, she may blame herself for the rape and may not understand that the act was a crime punishable by law. These victims have accepted rape myths and are unlikely to report these crimes to the police.

Sexual assault is the most underreported violent crime in the United States. It is also least likely to result in an arrest, prosecution, or conviction. Currently, 74 percent of women who experience attempted rapes and 65 percent of women who experience completed rapes do not report these crimes to the police. Only 14 percent to 18 percent of all reported cases are prosecuted in criminal court. More than half (53 percent) of rape defendants are released before the case disposition is determined. Only 62 percent of all rape cases prosecuted result in a conviction. This is the lowest conviction rate following assault cases (54 percent). Following this knowledge, 21 percent of all convicted rapists are given probation.

Until society can shed its rape myths and extend the citizenship to all women by providing equal protection under the law, society will remain ignorant. Historically, rape was defined as a crime of sexual perversion. This myth allowed the justice system to neglect these violent offenders. Today, rape is moving toward being defined as a crime of power and control. This means that the rapist is asserting his or her power over the victim through sexual domination.

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See Also: 1851 to 1900 Primary Documents; 1921 to 1940 Primary Documents; Domestic Violence, Contemporary; Gender and Criminal Law; Rape, Contemporary; Rape, Sociology of.

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Rape, Sociology of

At its simplest, rape is forced sexual action, particularly referring to sexual penetration. While the Federal Bureau of Investigation's (FBI's) Uniform Crime Reporting (UCR) Program designates forcible rape as that perpetrated by men onto women, both males and females may be victims, as males and females may also be perpetrators. Sexual attacks on males are counted by the UCR Report as aggravated assaults or sex offenses, depending on the circumstances and the extent of any injuries. In 2009, the number of forcible rapes of women by men was estimated at 88,097. During this same time, only 21,407 arrests for forcible rapes were made.

While rape is legally defined as a nonconsensual sexual action, sociologists argue that the violation is not about sex per se. Rather, rape is an issue of social power (or lack thereof). Therefore, sex is merely a weapon used by one individual to establish power over another. As such, characteristics commonly associated with sexuality, such as perceived attractiveness of the victim and/or the perpetrator, social standing, or occupation, do not factor into the likelihood of becoming a victim or a perpetrator.

No one deserves to be raped. Rape is perpetrated by an individual who has social (and often physical) power over another. Contrary to popular belief, being sexually appealing to others does not mean an individual is "above" rape—if rape is an issue of power rather than biology, access to legitimate means to obtain sexual gratification becomes irrelevant. Further, being viewed as either "too available" (e.g., a prostitute, or a woman

dressed provocatively) or as sexually undesirable and unable to utilize conventional channels to achieve sexual contact does not preclude one from becoming a victim. The sociological understanding of why rape occurs may be explained by the three sociological perspectives: functionalist, conflict, and symbolic interactionist.

Functionalist Perspective

According to Emile Durkheim's view of functionalism, some crime is necessary for the continuation of social life. While excessive deviance is deemed pathological, some degree of deviance, such as rape, contributes to the social order through manifest and latent functions. Functionalists view deviance as a social good, not necessarily as a moral good. A social good is an action or occurrence that serves some purpose in the functioning of society as evidenced by its reoccurrence over time. According to functionalist theorists, behaviors that do not benefit society or social members will eventually become extinct. Manifest or apparent functions of deviance include boundary setting, group solidarity, adaptive innovation, and tension reduction.

When rape occurs in a society and is punished appropriately, boundaries are set for societal members. Through the action of sanctioning, social norms are established so that cultural members are reminded of which behaviors are sanctioned as opposed to condoned. If the action were not committed and condemned, cultural members would have no verification of the boundaries of society. Further, when a culture member violates the social norms, the community tends to bond together, creating a band of support for either the victim or the accused. Rather than a society of individuals, group cohesion is created.

Because of the need for hard evidence, new technologies have been created to verify the guilt or innocence of perpetrators and victims. For example, rape kits that enable professionals to determine whether DNA evidence is available. In terms of tension reduction, rather than focusing on social ills such as structural breakdowns contributing to a violent culture, being able to focus on the prosecution of a deviant such as a rapist permits society to redirect its focus from a systemic problem to that of an individual problem with a ready solution.

Latent function is the social good that is less apparent and clearly defined than manifest function. While rape is a heinous deviant action, the deviance does serve a purpose in that it justifies the need for social services to reduce such crimes. For example, because of deviants such as rapists, there is a need to employ people to fill a variety of roles within the criminal justice system, among others. Examples include the patrol officer, lawyers, judges, prison guards, and parole officers. According to the application of the functionalist perspective on deviance, if society were able to rid itself of all deviance, a large segment of the population would become unemployed.

Robert Merton's strain theory elaborates that deviance is the result of a discrepancy between socially engendered goals and the legitimate means to achieve those goals. Nondeviants, termed *conformists*, both accept the social goal and have at their disposal legitimate means to achieve those goals. Merton's typology contains four types of deviants, including the innovator, retreatist, ritualist, and rebel. A rapist would be an example of an innovator, such as a male accepting the socially engendered goal of social power over females or effeminate males. If this power is unable to be achieved in a legitimate way, such as through success in the workplace, the individual may resort to illegitimate means such as rape to ensure social power over another.

While crime generally, and rape specifically, are not moral goods for society, according to the functionalist perspective, their existence does provide a social good and is necessary for the maintenance of society and social order. So, while rape is predominantly considered dysfunctional and there are overwhelming negative attributes to the action for the individual, the occurrence of deviance does retain some redeeming qualities for the continuation of society.

Conflict Perspective

According to the conflict perspective, deviance occurs as a result of an unequal society. Rape is the manifestation of the struggle between the powerful and the powerless. The specific application of the conflict perspective to the deviant act of rape varies between pluralistic conflict theorists, who view the battle of power as being a conflict over scarce resources, and radical Marxist



Sailors stationed at Naval Air Station Jacksonville listen to a presentation given by Men Against Violence Against Women, an organization focused on effecting social change by making men aware of the prevalence of violence against women, stressing that it is also a man's issue, since the majority of violent crimes against women are perpetrated by men.

conflict theorists, who view the struggle as a structural issue resulting from the inequality inherent in a capitalist system.

Pluralistic conflict theorists propose that deviance, such as rape, is a cultural response to particular situations or events that bring to light competition for social or economic advantage. Thus, conflict is the inevitable result of distinctions between those in authority and those subject to authority. Richard Quinney's *Social Reality of Crime* (1970) articulates the following five propositions, with a sixth proposition being a composite statement, resulting in the social reality of crime:

1. *Crime is a definition of human conduct that is created by authorized agents in a politically organized society.* Rape is itself a definition of

behavior that is projected on some persons by others. That the UCR report defines rape as an action conducted by men to women is constructed by political agents.

2. *Criminal definitions describe behaviors that conflict with the interests of the segments of society that have the power to shape public policy.* Those who have the power to have their interests represented in public policy, generally white upper-class males, regulate the definition of rape and victimization.
3. *Criminal definitions are applied by the segments of society that have the power to shape the enforcement and administration of criminal law.* Those who have the power to determine the definitions of rape and victimization, generally white upper-class males, also have the power to enforce the definitions (or not).

4. *Behavior patterns are structured in segmentally organized society in relation to criminal definitions, and within this context persons engage in actions that have relative probabilities of being defined as criminal.* The acceptance and continuation of rape culture is learned in social and cultural settings. If a perpetrator is socialized such that rapists are not prosecuted, then the perpetrator is not likely to perceive the behavior as criminal.
5. *Conceptions of crime are constructed and diffused in the segments of society by various means of communication.* Definitions of who should be labeled as rapists and victims are socially constructed. As such, anecdotal evidence suggests that certain segments of the population, such as prostitutes, the obese, and the feeble-minded, are categorically denied protection due to their social ostracization and status as social pariahs.

Radical (Marxist) conflict theorists view social conflict in terms of a struggle between social classes as a result of the structural inequalities inherent in capitalist societies. Conflict is the result of ongoing social struggle between those who profit and those who suffer to the benefit of others. There are two predominant conditions of conflict. First, the more significant the behavioral difference between authorities and subjects, the more significant the conflict. Second, subject(s) are organized to the degree that authorities can be resisted. Conflict increases when legal norms reflect the cultural norms. When the culture and laws coincide, there is a greater likelihood that a rape will be prosecuted. If, on the other hand, there is little sympathy for the victim, there is less likelihood that the rapist will be prosecuted. Conflict also increases when subjects have little power; if the definition and enforcement is likely to meet with little resistance, prosecution is more likely. If the accused is perceived as a person of importance, the likelihood of prosecution decreases.

Whether the inequality exists between groups over perceived scarcity of resources or between classes over structural inequality, conflict theorists would concur that rape occurs when there is an imbalance. When the individual with power seeks to maintain or gain more power, the most effective way to do this is to subjugate the other.

When a female is raped by a male, the patriarchal social order is reinforced.

Rape is more likely to be reported in egalitarian cultures than in more traditional, patriarchal cultures. Egalitarian cultures, such as the United States, are those in which males and females hold relatively equal power and responsibility. There is little clear division between the sexes in terms of the separate spheres of labor: both sexes are participating in the workforce outside the home (public sphere) as well as engaging in the domestic-based, private sphere. Because of this blending of responsibility and a lack of clear gender division in either the workplace or, increasingly, in the home in egalitarian societies, sexual violence may occur in an attempt to maintain patriarchal control in a nonpatriarchal society.

Conversely, in patriarchal cultures, such as India, where there is a clear delineation between men's and women's work and places in society, women are less likely to report being victims of sexual violence. Sexual violence committed against women is often viewed more as an affront to the family than to the violated female. Under Islamic law, women are required to provide four witnesses to rape. Those who are unable to do so are often revictimized by being charged with adultery. Violence against women in developing countries often goes unreported and may be used systemically as a way of maintaining social control, such as the widespread rape of women and children in the republic of Bosnia-Herzegovina by Serbian men from 1992 to 1995 in an attempt to force Muslims into fleeing their villages.

Symbolic Interactionist Perspective

Symbolic interactionists view deviance as a matter of labeling and social construction. J. L. Simmons noted that deviance, like beauty, is in the eye of the beholder. Specifically, rape is only deviant and criminal where and when it is so labeled. While this may seem contrary when considering the personal devastation of rape, consider the issue of marital rape, also known as spousal rape and conjugal rape, whereby a husband rapes his wife. Until the late 1970s, most states in the United States did not consider marital rape a crime, traceable to a 17th-century decree that a husband cannot be guilty of rape of his wife "for by their mutual matrimonial consent and contract the wife hath given up herself

in this kind unto the husband which she cannot retract.” Thus, as part of the marital contract, the wife did not have the power or right to refuse sexual advances by her husband. As recently as 1993, a North Carolina law stated, “a person may not be prosecuted under this article if the victim is the person’s legal spouse at the time of the commission of the alleged rape or sexual offense unless the parties are living separate and apart.”

While conjugal rape is currently deemed criminal in the United States, not all states prosecute to the same extent as stranger rape. A person convicted of spousal rape will typically receive much more lenient sentencing than a person convicted of stranger or date rape. Further, the same rules of circumstance often do not apply. For example, in Ohio, if a perpetrator uses a drug or intoxicant to influence consent, a charge of rape is not considered a viable charge for spouses who live together. In many other countries, such as the Bahamas, marital rape is not illegal.

Howard Becker suggests that labels are created as a result of powerful “moral entrepreneurs.” This labeling occurs in an orderly process: initial recruitment, role imprisonment, and entrance into sustaining subcultures. Initial recruitment into the behavior in question, such as rape, might include coercion by peers to commit an offense. Role imprisonment occurs as the perpetrator takes on the label of rapist, meaning that society has labeled the offender and the perpetrator accepts and embraces the label, unable to free himself or herself of the stigma of sexual offender. Finally, due to the social ostracization of the rapist, the perpetrator enters into sustaining subcultures that are accepting of the perpetrator in spite of, or because of, their label and status as social pariah. However, norms precede labels and the progression occurs only as the labels are applied and accepted. In cases where perpetrators are not considered deviant, such as when a Bahamian husband rapes his wife, role imprisonment will not occur.

Conclusion

The job of the sociologist is not to pass judgment on the quality of social acts and actors but rather to offer an objective, generalizable explanation for social behavior. Toward that end, the sociology of rape offers three explanations for rape as a social behavior that has occurred throughout time. The

action of rape contributes to social stability, maintains power differentials in society, and serves as an indication of the relativity of perception of action across time and place.

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See Also: 1851 to 1900 Primary Documents; 2001 to 2012 Primary Documents; Gender and Criminal Law; Rape, Contemporary; Rape, History of.

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Ray, James Earl

James Earl Ray (March 10, 1928–April 23, 1998) was a career criminal convicted of the assassination of American civil rights leader Dr. Martin Luther King, Jr. He was convicted on March 10, 1969, after agreeing to a plea bargain by which, in exchange for a guilty plea, he was sentenced to 99 years in prison. He later recanted his confession and tried unsuccessfully to gain a trial.

James Earl Ray was born in Alton, Illinois. He dropped out of 10th grade at the age of 15. He

worked for a while at a shoe company, but was laid off at the end of 1945 and joined the army. After two years of service in the infantry and the military police, mostly in Germany, he received a less-than-honorable general discharge in December 1948 for “ineptness and lack of adaptability to military service.”

In 1952 he served two years for armed robbery of a taxi driver in Illinois. In 1955, he was convicted of mail fraud. After an armed robbery in Missouri in 1959, Ray was sentenced to 20 years in prison. He escaped from the Missouri State Penitentiary in Jefferson.

Ray spent the next year as a fugitive, living for a time in Mexico and then in Los Angeles. He was briefly a volunteer in George Wallace’s presidential campaign and considered migrating to Rhodesia, which was governed by a white-minority government. Ray, using the alias Eric Starvo Galt, eventually made his way to Atlanta, King’s hometown. Ray, who had purchased a rifle in Birmingham, Alabama, on March 30, 1968, using another alias, Harvey Lowmeyer, then went to Memphis, where Martin Luther King, Jr., was lending his support to black sanitation workers who were on strike for higher wages and better treatment. King was shot and killed by a sniper on April 4, 1968, while standing on the second-floor balcony of the Lorraine Motel in Memphis, Tennessee.

Captured in London

On June 8, 1968, Ray was captured at London’s Heathrow Airport while traveling on a false Canadian passport under the name of Ramon George Sneyd. He was extradited to Tennessee, where he was charged with King’s murder. He confessed to the crime on March 10, 1969, and was sentenced to 99 years in prison. Within days, Ray attempted to withdraw his guilty plea, which was rejected by the courts. For the rest of his life, Ray would claim that he had not shot King, but that he was part of a conspiracy with a man named Raoul.

On June 10, 1977, Ray and six other inmates escaped from the Brushy Mountain State Penitentiary in Petros, Tennessee. Ray was recaptured three days later. Ray continued asserting his innocence. The United States House of Representatives Select Committee on Assassinations (1976–79) reviewed the matter and concluded in its report that Ray killed King, although “there is a likelihood” that

there was a conspiracy. Ray took a polygraph test as part of a 1977 interview with *Playboy*. The magazine said that the test results showed “that Ray did, in fact, kill Martin Luther King, Jr., and that he did so alone.”

In 1992, Ray’s book, *Who Killed Martin Luther King?: The True Story by the Alleged Assassin*, appeared. In December 1993, Loyd Jowers appeared on the ABC-TV program, *Prime Time Live*, where he claimed that Ray was not involved in the King assassination. Instead, he asserted that King had been killed by an Earl Clark, a Memphis police officer, and that the killing was the work of a conspiracy involving the Mafia and the U.S. government. In 1998, the King family filed a wrongful death suit against Jowers and other un-named co-conspirators. In December 1999, the jury found Jowers responsible. An investigation by the U.S. Department of Justice of Jowers’s claims that was completed in 2000 found they could not be substantiated. King’s family supported Ray’s request for a trial, believing that it would reveal the existence of a conspiracy to murder the civil rights leader.

Ray died on April 23, 1998, while in custody of Tennessee authorities at the Columbia Nashville Memorial Hospital; his body was cremated and his ashes were scattered in Ireland.

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See Also: 1961 to 1980 Primary Documents; Civil Rights Laws; King, Martin Luther, Jr.; Racism.

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Reagan, Ronald (Administration of)

Ronald Reagan (1911–2004), the 40th president of the United States, was an actor and a politician. Both professions are noted for having members whose words and actions are sometimes inconsistent, if not contradictory, while being routinely pleasing to the constituent's ear. Unlike many politicians, however, Reagan also had a rare willingness to adjust to circumstances. His law-and-order rhetoric was usually but not always matched by tough action against criminals. Still, he was tough rhetorically, allowing those who admired him to misconstrue him as consistently tough on crime and to cite him as the model for their tough actions.

As president (1981–89), Reagan often talked of the list he kept on his desk as governor. The list named a dozen murderers who had completed their sentences or been paroled and then added another 22 victims to their original 12. He noted that capital punishment would have kept that total at 12. Despite the tough rhetoric, during eight years as governor of California, Reagan executed only one person, in 1967, and granted clemency in a second capital case because the man had brain damage. He later said the 1967 execution decision was one of the hardest he ever had to make. Still, he was disappointed that a judge he appointed was the one to throw out the California capital punishment law after Reagan left office.

As president, Reagan enjoyed high approval ratings and favorable relations with Congress, which enabled him to enact much of what he wanted. Tougher laws against crime were easy to pass because they matched the mood of the country as well as congressional Republicans and southern Democrats.

Stance on Crime

Between 1960 and 1975, the number of violent crimes nationwide rose from 288,000 to 1.04 million, and the number of murders more than doubled from 9,000 to 20,000. In the late 1960s, conservatives—first Richard Nixon and later Ronald Reagan—decried the breakdown of law and order as a means of destroying the already unraveling liberal consensus. “Law and order”

is a label for the broad issues including a stricter criminal justice system for violent and property crimes, harsher penalties including mandatory sentencing, longer sentences, and even capital punishment. Politicians use law and order to tar their opponents as weak against crime, and it can also be a cover for police abuse.

As liberals took control of the Democratic Party, millions of Democrats fled what they saw as excessive pandering to minorities and lack of commitment to law and order. Many became “Reagan Democrats,” while others shifted to the Republican Party. For Reagan, the underlying cause of crime was not environment but moral failure. The same breakdown in values that led to increased crime led also to government growth and economic decline. He regarded as mistaken the 1950s and 1960s intellectuals who treated crime as a problem of impoverished childhood environment and called for government intervention to correct the environment that promoted criminal behavior. Reagan believed that good and evil were not changed by improvement in material environment. Federal government merely exacerbated social problems.

Reagan contended that victory in the war on crime would come only with a change in American attitudes, when once again right and wrong mattered, when individuals took responsibility for their actions, and when retribution was swift and sure. The legal system was the moral voice of society, and, given that the values were sound, their expression in punishment was nothing to feel guilty about. Theft and murder were not political statements, matters of relativity, but absolute crimes.

Crime Legislation

Crime and criminal law became politicized. One legacy of this state of affairs was the Comprehensive Crime Control Act of 1984, which reformed sentencing, bail, and forfeiture laws and made procedural changes. The Sentencing Reform Act set guidelines to standardize punishments for classes of crime, eliminating judicial discretion. This had been a goal of others, including Edward Kennedy, since the 1970s. The act was good in theory because it eliminated the wide disparity in sentences that had plagued the courts for years. It came under fire quickly, however, because in



At 3.1 million square feet, the Ronald Reagan Building and International Trade Center is the largest building in Washington, D.C. Congress mandated that the center provide a setting where the best public and private resources could create a national forum for trade advancement. The building also houses a conference and events center and office space.

practice the guidelines were much narrower than liberal reformers anticipated, and both jurists and convicts sought relief, throwing the system into chaos for several years before it stabilized. Criticisms continue that the guidelines are unduly rigid and harsh. The law left no room for compassion for congenital criminals.

The Bail Reform Act of 1984 changed the traditional rule that only genuine flight risks were denied bail. While claiming to preserve the presumption of innocence, the act allows a judge to incarcerate a defendant believed to be dangerous. It authorized preventive detention for the first time during peace, incorporating the discredited notion that past behavior is an accurate predictor of future conduct. Twenty years later, federal prisons overflowed with pretrial detainees, among them low-level drug dealers, and pretrial detentions of a year were not unusual.

The Reagan administration also weakened the insanity defense, made forfeiture more oppressive, abolished parole in many cases, and established

mandatory minimum sentences for cases involving drugs or weapons. Reagan continued and increased the war on drugs and established the Office of National Drug Control Policy. The war on drugs targeted not only traffickers and dealers but users as well, criminalizing a social issue.

War on Crime

Ronald Reagan was not the first to promise to get tough on crime—law and order has been a favorite excuse used against antilynching advocates, civil rights sympathizers, and politicians who supported the right to demonstrate, among others. Richard Nixon blamed civil unrest and crime on the civil rights movement, and he was frustrated that there was no federal law allowing him to enter the cities and take on street crime. After Nixon's term, crime faded as an issue until Ronald Reagan vowed to use federal law enforcement to take back the streets and strongly encouraged his agencies to shift from white-collar to street crime.

He could have been harsher. For instance, in 1982, Reagan approved a middle path when given three options by budget director David Stockman. The extreme was a 14 percent real growth and construction of seven more prisons. The low end was a reduction of 5 percent in real growth and no new prisons. Reagan's choice was 6 percent real growth and the building of three new prisons. His advisers, Stockman and Attorney General William French Smith, indicated their preference for the high end.

Ronald Reagan regarded the war on crime as black and white, a battle of good versus evil. He left a legacy of being tough on crime. The 1980s and 1990s were a time of excess and soaring crime; Reagan sought to rebalance the system to restore the edge to law against the forces of lawlessness. He led an unprecedented campaign against greed, corruption, and crime. His legacy included "three strikes" laws, the war on drugs, and conservative talk radio demanding even more changes. New crimes meant new criminals in new prisons, and soon, the United States led the world in share of citizens per capita incarcerated even as the crime surge of the 1980s abated and the violent crime rates dropped consistently over the next 30 years.

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See Also: 1981 to 2000 Primary Documents; Bail Reform Act; Capital Punishment; Crime in America, Causes; Federal Rules of Criminal Procedure; Nixon, Richard (Administration of).

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Reform, Police and Enforcement

There are two broad categories of police reform: performance and enforcement. Performance reform efforts are aimed at improving how the police conduct business and began with the professionalization movement in the early 1900s. This effort focused on training and educating police so they would provide better service to citizens. Other performance reforms have focused on the relationship between the police and the public, such as community-oriented policing. The second category of reform efforts emphasizes which laws the police enforce and how they do so. This includes focusing on specific types of crimes per political or public desire, and policies and case law, which guide enforcement activities. Performance and enforcement reform are not mutually exclusive; they are related, and often the reform efforts in performance impact enforcement and vice versa.

Professionalization of the Police

Modern police did not appear in the United States until the 1830s and 1840s. As cities grew on the east coast, the need for organized policing became apparent. There were more people, more businesses, and more opportunities for crime and disorder. Despite the clear need for a formalized police force, the organization effort was difficult. There was resistance from citizens who feared the police would become a military presence in their cities. As a result, the first police officers did not wear uniforms or carry guns until several years after they were organized. Eventually, the police were required to wear uniforms and badges and were permitted to carry firearms. Training for these first police officers was nonexistent. Men were often hired off the street and sent to work immediately. Departments did not have regulations, and most officers were not knowledgeable of the law. Performance standards were minimal, and enforcement was largely driven by the desires of political officials. Most men were hired as officers because of the politicians they knew and enforced the law according to what those politicians wanted. Advancement within the ranks was not based on skill, experience, or aptitude;

it was based upon political affiliation. The result was unskilled police officers improperly enforcing laws against citizens who had little legal recourse in those days of brutality and corruption.

The first reform movement in the early 1900s largely focused on police performance. The Progressives wanted to professionalize the police by removing control from the politicians and requiring that officers be educated and trained. Some police officers supported this reform effort. August Vollmer and O. W. Wilson advocated what were, at the time, radical changes in policing. Vollmer, the chief of the Berkeley, California, police department, believed that police officers should have college educations and formal training on how to be a police officer. Partly as a result of this early effort, many departments now require at least some college education, and some require four-year degrees to be hired as an entry-level patrol officer. Vollmer was an advocate for using technology to improve performance and enforcement capabilities and believed in patrolling communities to prevent crime. Wilson served as an officer under Vollmer and also supported police reform. He was regarded by police administrators as the leading authority on police leadership. His influence is still recognizable in police agencies as demonstrated by their bureaucratic and paramilitary structure and procedures.

Other police reformers of the Progressive Era were William Gaynor and “Golden Rule” Jones. Gaynor was the mayor of New York City from 1910 to 1913. He required the police to abandon the enforcement of liquor violations and the use of warrantless searches to raid bars serving alcohol during Prohibition, thus promoting the constitutional rights of citizens. Jones believed the poor were disenfranchised from proper legal representation and dismissed the cases brought before him. The effect was reduced police harassment and eventual changes in the New York criminal code. The Progressive Era also introduced women into policing. Although their role was limited to handling cases involving women and children, females had a solid role in police departments as the moral arm of justice.

Despite these efforts, the Wickersham Commission report of 1931 presented evidence that police performance needed improvement. The report revealed that corruption among police and local

politicians was widespread as they capitalized on Prohibition. The police were as much a part of organized crime as they were the vehicle that was supposed to stop it. The report detailed police practices and found that officers were often brutal toward suspects, frequently giving them the “third degree.” The third degree was a physical beating suspects were subjected to until they confessed to a crime or provided information. The third degree was also administered to punish a disrespectful suspect or citizen. These revelations put pressure on police administrators to professionalize their officers and eradicate corruption and abuse.

Technology

Several technological changes occurred in the late 1800s and early 1900s that changed police performance and law enforcement—and that continue to impact American policing. The invention of the telephone allowed citizens to call the police for help directly from their homes—and led to the police being invited to enter private dwellings on a regular basis. Private problems increasingly became police business, including domestic violence and other family-related issues. The public was now also able to call the



A New York Police Department security camera keeps watch over midtown Manhattan. With technological advances like these cameras, critics fear a huge surveillance infrastructure without adequate public oversight or outside regulation.

police for nonlegal matters as well, broadening the scope of policing duties.

A related technological advancement was the portable police radio. Prior to the radios, police relied on emergency whistles to call for assistance, thus limiting the distance an officer could walk on patrol without placing him in danger. Officers also had limited contact with their supervisors while on patrol. The radio allowed officers to safely expand their patrol areas and to communicate with each other. Officers also had more supervision than they did previously, making it easier for supervisors to be sure that any policies and procedures that did exist were being followed.

Automobiles and motorcycles also changed police performance and enforcement. Officers no longer were confined to a few blocks on foot—they could cover several miles of jurisdiction and move quickly from place to place. It was possible for them to respond to crimes soon after they occurred and for them to vigorously pursue suspects, who also were acquiring vehicles. The use of vehicles did, however, put a barrier between the police and the public, who previously could speak to officers freely as they walked down the same streets. As officers and the public grew farther apart physically, the image of the police as aloof crime fighters was enhanced. This was not entirely unplanned, as the professional reform effort sought to remove the police from public and political influence to reduce the opportunity for corruption and unfair enforcement.

Other technology rapidly developed and changed the way the police investigated crimes and thus enforced some laws. In an early form of crime mapping, detailed record-keeping systems were implemented so that the police could track crimes based upon locations and possible suspects. Fingerprint analysis revolutionized criminal investigations, allowing suspects to be identified based upon evidence left at a crime scene. Now crimes that once might not have been given much attention could be investigated with relative ease when compared to the effort that would have previously been expended.

Court Rulings

A series of state and federal court rulings have dramatically changed the way the police conduct business. These rulings were largely concerned

with police violation of citizens' constitutional rights. *Weeks v. United States* (1914) set the stage for search and seizure case law, requiring that federal law enforcement agencies have warrants to seize a person's property. The Warren Court heard the case of *Mapp v. Ohio* (1961) and extended the search warrant requirement to state law enforcement agencies. The Warren Court ruled in the case of *Miranda v. Arizona* (1966) that a suspect has the right to counsel and is not required to speak to the police until counsel is obtained. *Tennessee v. Garner* (1985) prohibited police officers from shooting at fleeing felons, contributing to a dramatic change in when officers were permitted to discharge their firearms to apprehend suspects. Case law continues to impact police performance and enforcement of laws.

The 1960s to the Present

The President's Commission on Law Enforcement and Criminal Justice report was published in 1969 and included recommendations for reform. Among the recommendations was that the police strive to become closer to the public, and that drug enforcement be increased. Following the report's recommendations, some departments attempted to change their image by adopting team policing in the 1970s. The goal was to improve police-public relations by promoting a less military atmosphere surrounding the police and by encouraging officers to have more direct contact with community members outside law enforcement duties. A group of officers was permanently assigned to the same patrol area and wore business attire to avoid the military stigma of the police uniform. These efforts were met with resistance from officers and the public. Officers were ridiculed by the public and by other police agencies, and the idea was eventually abandoned.

In the 1980s, police departments began experimenting with community-oriented policing (COP) as a way to improve police-community relations and encourage citizens to take an active role in improving their communities. The philosophy of COP is that policing will be more successful if community members have a voice in how policing is conducted where they live. Police departments began assigning officers to permanent shifts and beats (similar to team policing) to encourage more



Delaware Senator Tom Carper (left) and the Laurel's Police Department announce a community-oriented policing (COP) hiring program grant. Community policing supports partnerships and problem-solving techniques to proactively address crime. A main component of the strategy is to place more officers on the street to fight crime and to build trust in the police force.

interaction with citizens. It was hoped that officers would be able to determine which solutions to crime and disorder would work based upon community needs, in addition to building trust so that citizens would provide information about criminal activity. The police engage the community by hosting town meetings and citizen police academies, by using foot patrols in business areas, and by establishing substations to encourage citizens to come to them for assistance.

COP has also been used as a vehicle to improve the relationship between the police and minorities. The police have historically had a negative relationship with racial and ethnic minorities that has created much controversy. The push for drug enforcement in the 1980s put the police at odds with minorities living in the inner cities. The highly publicized police assault on Rodney King in Los Angeles in 1992 fueled tensions, and there was outcry from the black community about how the police treated black suspects, particularly males.

Racial tension continued as police departments across the country were accused of targeting minorities (largely blacks) during traffic stops. The U.S. Department of Justice investigated several departments and instituted oversight efforts to reduce the targeting of minorities, leading to reform in police record keeping and how traffic stops are conducted. Some police departments have initiated COP efforts in areas heavily populated by minorities in an attempt to improve relations by familiarizing the police and citizens with each other and jointly addressing community problems.

Problem-oriented policing (POP) is a reform focusing on both performance and enforcement. POP requires that the police gather and analyze information to determine the best course of action when a problem presents itself. This method requires that the police think “outside of the box,” and consider other options besides enforcing the law to solve a problem. POP differs from COP in that it does not require community

participation to be effective—the police can identify which problems to solve on their own accord. Using POP necessitates that officers be given latitude in decision making and be permitted to do what is reasonable to resolve issues. This directly opposes the paramilitary decision-making structure proposed by early reformers and still used by many departments. POP does not necessarily require enforcement of law to be successful; however, when the law is enforced to solve a problem, it is done based upon information that has determined enforcement is the best option.

CompStat is a method of law enforcement and accountability designed to reduce crime while holding police officers responsible their enforcement efforts. First initiated in New York City, CompStat uses crime mapping to determine problem areas in the various jurisdictions. Zero-tolerance policing is used as the primary means of reducing instances of crime. Zero-tolerance policing occurs when the police make arrests for all offenses in their districts, regardless of how minor they are. Routine meetings are held between police leadership and patrol supervision, which must provide explanations for any failure to achieve a reduction in crime.

Police Discretion and Reform

Controlling discretion is one way to institute reform among police. Police have always had latitude in how they perform their duties. The policies and procedures that are in place are designed to guide officers, not dictate their every move. Some policies and procedures allow more discretion than others. However, some areas of controversy have been the focus of changing policies, procedures, and laws designed to change the way the police respond to these situations. Two such areas are domestic violence enforcement and vehicle pursuits.

In the 1980s and 1990s, several events occurred that reformed the way police responded to domestic violence. The battered women's movement gained national and local support and encouraged lawmakers to create laws making it easier for the police to arrest in cases of domestic violence. There were also several lawsuits against the police for failing to protect victims of domestic violence. Many states and some departments adopted preferred or mandatory arrest policies,

and police departments responded by providing more education about domestic violence and its impact on victims to their officers.

Vehicle pursuits have always been a source of controversy for the police because of the danger involved. When a suspect leads police on a vehicle chase, there is always the chance that the pursuit will end in the loss of life of the suspect, the officer, or an innocent bystander. Since the 1990s, there has been a push for the police to limit, or completely eliminate, police pursuit of suspects. Some police departments have no-pursuit policies, while others provide stringent guidelines for when a pursuit should or should not be initiated.

Police reform will continue to occur as problems with the police are identified and as the needs of the public and the police change. Members of the police community, lawmakers, or the general public may lead future reform efforts. These reforms may come in the form of case law, policies and procedures, and new ways of enforcing the law.

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See Also: Law Enforcement Assistance

Administration; Police, Women as; Police Abuse; President's Commission on Law Enforcement and the Administration of Justice; *Weeks v. United States*.

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Reform Movements in Justice

The American criminal justice system is intended to uphold fundamental positive values: community safety, fairness and consistency in the law, accountability for harm, and boundaries of acceptable behavior. Reform movements in justice attempt to remedy perceived abuses against these values. Reformers seek to amend, or in some cases transform, the processes by which we apprehend, prosecute, defend, sentence, punish, and supervise those charged with criminal offenses. But reforms almost always fall short of expectations. Some sociologists theorize that reform movements fail because of the incompatibility of conscience with convenience, that is, the reformers' idealism, or conscience, must confront the pragmatic expediency of the complex penal field. Additionally, reformers typically function outside the criminal justice system and hold ideals and expectations incompatible with the actual workings of judicial and correctional processes. Finally, reform efforts fail because of competing ideologies. Some advocate treatment-oriented incarceration, state benevolence, decriminalization, and decarceration to reform the system. Others promote increased state deterrence through more punitive incarceration, or "swift and certain punishment." Ultimately, reformers must negotiate the fraught dialectic between social control and social reform. This entry traces these patterns of reform, in their social and legal contexts, from the colonial period to the 21st century.

Early Reforms

The colonists, while primarily deriving their penal codes from English law, began the first reform efforts by deemphasizing public displays of corporal and capital punishment, which had been the standard means of punishment in England. They preferred confinement. Up to this point, jails were deplorable facilities, primarily used to hold people for relatively short periods before they were publicly beaten or executed. Instead of individual cells, they featured large, disorderly rooms that simply functioned as temporary holding areas. But early reformers like William Penn, James Wilson, Thomas Jefferson, Benjamin Franklin, William

Bradford, and Benjamin Rush advocated abolition of the public death penalty and torture in favor of the prison as a way to reform offenders. Penn lobbied that the purpose of punishment should be "to reclaim, rather than destroy," and Rush argued that "all public punishments tend to make bad men worse, and to increase crimes, by their influence on society."

Their ideas reflected the influences of Enlightenment thought, evangelical Christianity (especially the Quaker commitments), and the earlier reform philosophy by punishment theorists like Cesare Beccaria. Although their efforts to completely abolish the death penalty never succeeded, states drastically reduced capital crimes, and the Pennsylvania legislature even divided murder charges into two "degrees" in 1794, resulting in manslaughter as punishable only by imprisonment, not death. Most states quickly adopted this practice. Additionally, almost all states eliminated the death penalty for property crimes and sodomy. In this shift away from English reliance on public and physical punishment, the early reformers consistently asked: What kind of punishments befit a democracy? How can offenders be rehabilitated?

The prison system seemed to answer these questions. After visiting American prisons, Alexis de Tocqueville observed that our social reformers seemed obsessed with incarceration, excessively concentrating on prisons as the panacea to crime: "They have the monomania of the penitentiary system, which seems to them the remedy applicable to all of ills of society," he wrote to a friend. Indeed, incarceration has remained ubiquitous as America's primary response to crime for the past 250 years.

As the new states formed their penal codes, reformers optimistically experimented with the burgeoning concepts of the penitentiary, with its implicit religious connotation of penitence, and the correctional institution, which carries the reformers' optimism that incarceration can be a curative experience for offenders. Pennsylvania continued to lead innovative reform efforts with the Eastern State Penitentiary, which featured separate confinement for every inmate. New York also experimented and developed the Auburn system, which housed inmates in their own cells at night but used a congregant system during the workday. Inmates and guards participated in a



Colorado State Penitentiary prisoners circa 1898 walking in "lock-step"—marching men as closely together as possible, in which the leg of each man moves at the same time with the corresponding leg of the person before him.

military-style discipline, including the famous “lockstep,” and factory-style industry. Also known as the “big house” prison model, variations of the Auburn system have prevailed in American criminal justice. But the criminal population rapidly outgrew Auburn, and both recidivism and prison violence revealed the current system’s failures, so the convicts themselves labored to build another experimental prison, the Elmira Reformatory, in 1876. Under the direction of the venerated penologist Zebulon Brockway, the Elmira system deemphasized punitive and humiliating treatment of prisoners in favor of vocational and religious instruction, “good-time” credits, and post-release supervision. Although Brockway envisioned his prison as a college, transforming the dangerous classes into “Christian gentlemen” who embraced the Protestant work ethic, mismanagement, overcrowding, and the fundamental problems of rehabilitative penology led to Elmira’s failure. In the early 19th century, Edward Livingston, by turns a member of the House of Representatives, an attorney, and the mayor of New York, led another significant reform movement. Also opposed to the death penalty and retributive punishment, Livingston was confident in social reform as a way to reduce crime. He committed to a serious emphasis on rehabilitation, which included proactive social programs such as “houses of refuge” and “houses of industry” that provided structured living

conditions and work for those who could not find them elsewhere. Livingston spent the last 12 years of his life on his most significant contribution, the Livingston Code (1833), in which he recodified criminal procedure to be more reformatory, humane, and simple. Although states didn’t officially adopt the Livingston Code, it significantly influenced subsequent reform efforts, especially in the Progressive Era.

Parole, Probation, Indeterminate Sentencing, and the Juvenile Court

The Progressive Era (1890s to 1920s) abounded in reform efforts in many social and political arenas, from immigration policy to women’s suffrage to the child labor laws. The Progressive Era reformers contributed substantial changes to criminal justice: the innovative concepts of parole and probation, indeterminate sentencing, and the juvenile court. Both parole and probation represent a shift away from the big house prisons as a way to reform offenders to an understanding that offenders could rehabilitate more substantially by interacting in their communities, under supervision. Between 1900 and 1925, all 48 states initiated probationary sentencing practices. In 1925, under the Federal Probation Act, even federal judges could opt for probation over incarceration, if they deemed that “the ends of justice and the best interest of the public as well as the defendant [would] be served thereby.” Similarly, indeterminate sentencing would incite prisoners to seek their own reform, motivated by the understanding that they had “the key to the prison in their own pocket.” The juvenile court reflects the Progressive Era’s interest in child welfare. Juveniles always held special protections under the law; from the house of refuge movement to the early 19th-century pre-delinquency efforts to reform schools, criminal law sought to distinguish minor offenders from adults. But the newly formed juvenile court, first established in Chicago in 1899, then reproduced in 45 states by 1920, formally codified a less adversarial process for juvenile offenders, treating them less as “criminals” and more as children in need of correction and guidance.

Progressive Era reformers assumed these changes made the criminal justice system more fair and humane; they believed they were creating

individual justice, as opposed to previous generic concepts of a criminal class. They attempted not only to make the punishment fit the crime but to make the punishment fit the criminal. Their optimism rested in their unmitigated belief that humans could be perfected if only the right method were discovered and that state mechanisms could mete out the reforms in fair and just ways. But as historians and sociologists have traced, the Progressive Era reforms usually resulted in increased state control and actually subjected offenders to prolonged incarceration and arbitrary sentencing practices. Their attempts to correct the failures

and abuses of the prison system never materialized as they intended.

Model Penal Code

In 1931, 100 years after the Livingston Code, the American Law Institute and the American Bar Association proposed a Model Penal Code, which served as an archetype for states to clarify, streamline, and reconcile the competing theories behind criminal law: progressivism's perfectibility ideal, emphasizing treatment and rehabilitation, and new concerns for the mid-20th-century rising crime rates, deterrence, and culpability. Under the direction of Columbia law professor Herbert Wechsler, the Model Penal Code was completed in 1962 and served as a prototype for state reform of the existing patchwork penal codes: Within 20 years, 34 states enacted new penal codes, and others were substantially revised.

Racial Justice

Generations of civil rights reformers have advanced the criminal justice system from the legal institution of slavery in the 18th century to eventual abolition, the Emancipation Proclamation, the Thirteenth, Fourteenth, and Fifteenth Amendments (banning slavery, granting citizenship and due process, and protecting voting rights), and eventually the Civil Rights Acts outlawing discriminatory legal and social practices. Civil rights reformers advocate equitable legal treatment for racial minorities, primarily through a liberal equality paradigm. Formal institutions like the American Civil Liberties Union (ACLU) and the National Association for the Advancement of Colored People (NAACP), as well as hundreds of grassroots racial justice organizations, continue to initiate reform of racially biased practices in American criminal justice. Most recently, these reforms have addressed police brutality, racial disparities in arrests and convictions, drug offense policies, and the wide disparities in incarceration rates. But while their broad aims coincide, civil rights reformers differ widely philosophically and politically. Some of these discrepancies have led to a rejection of the principles behind civil rights by critical race activists, who work outside traditional liberalism.

Critical race theory, initiated in the late 1970s by Derrick Bell and others, is an academic and activist movement by legal scholars to address



Attorney General Robert F. Kennedy speaking in June 1963 to a civil rights crowd and reporters in front of the U.S. Justice Department, with a sign for the Washington Congress of Racial Equality prominently displayed.

how racism is a deeply embedded structure in the legal system and the penal field. Although dominated by minorities in the legal profession, critical race theory is in many ways a countermovement to civil rights reforms. Critical race theory critiques the beliefs that racism can be defeated through education and an eventual “colorblind” society. Instead, critical race theorists merge racial issues in law, sociology, economics, literature, and psychology to show how the law constructs and maintains social domination and subjugation. While civil rights (and most reform movements) are affirmative, seeking to restructure the existing systems to be more fair, critical race theory is often criticized for being too negative: Primarily, its contribution involves illustrating the failures of racial justice. But the empirical research behind critical race realism provides a framework for understanding how, almost four decades after the Civil Rights Act, eight black and Hispanic males are incarcerated for every one white male in the United States.

From the Correctional Institution to Mass Incarceration

The 19th-century “big house” prisons led to the rise once again of the correctional institution movement, also known as rehabilitative penology (1950s to 1980s). This reform movement initiated treatment-oriented prisons, with more professional staffing, psychotherapy, addiction counseling, and a heavy emphasis on education. Even the most punitive level of incarceration, solitary confinement, was labeled the “adjustment center,” illustrating how reformers attempted to ameliorate every aspect of incarceration. This was a period when convicts like Malcolm X, George Jackson, and John Irwin went to prison uneducated and emerged as important political and social theorists. This era of prison reform correlated the prison to a hospital: Inmates were treated almost as patients in need of care. But rising crime rates, empirical failures of reform, and increasing politicization of crime legislation led to the failure of the correctional institution and the rise of the warehouse prison.

As a result of disillusionment with rehabilitation programs that did not seem to work, in the mid-1980s, a new era began, one of “sending a message” to criminals. Subsequently, the war on

crime and the war on drugs (with resulting “three strikes and you’re out” sentencing procedures) quadrupled the prison population between 1980 and 2010. In the 21st century, the United States incarcerates a higher per capita rate of its population than any other country, with about 3 percent of the population in prison, on parole, or under probationary supervision. Former emphases on rehabilitation and treatment shifted to punitive, control-oriented prison systems and longer sentences that function almost solely to “warehouse” offenders, or to remove them and store them away from communities. One example is the 1994 retraction of Pell Grant funding for inmates, which illustrated legislators’ “tough on crime” stand to the public but effectively ended the only program that statistically lowered recidivism rates.

Reformers decry mass incarceration as exorbitantly expensive, socially deteriorating, racially unjust, and insufficient to deter crime or to fully satisfy victims. They claim it diametrically opposes what the original reformers sought as “befitting a democracy.” But after 200 years of reform efforts, sociologists observe that the United States has failed to create a system capable of sufficiently deterring crime, making communities safer, fully satisfying victims, eliminating racial bias from the justice system, or empirically reforming offenders. Many reformers are turning to a paradigm shift, restorative justice, with promising social, legal, and moral dimensions to correct abuses in the criminal justice system.

Restorative Justice

Reformers in the 21st century believe that restorative justice functions as a viable corrective to the failed paradigms of criminal justice reform. It gained extraordinary momentum in Europe, South Africa, New Zealand, and Australia, particularly after Desmond Tutu’s Truth and Reconciliation Commission (which he explicitly understood as restorative justice). First a grassroots and academic movement, restorative justice has steadily achieved workable credibility: The National Institute of Corrections researched, then piloted a restorative justice program, and the U.S. Department of Justice has integrated restorative justice principles into the Office of Juvenile Justice and Delinquency Prevention and into drug courts. Most states use some form of

restorative justice mediation for juveniles and are increasingly incorporating it into their state correctional institutes. In addition to government adoption, restorative justice has attracted media attention, sparked the development of nongovernmental organizations, and been the focus of extensive academic scholarship in the fields of law, sociology, and criminal justice.

Restorative justice shifts the criminal justice process away from punishment and control, and toward meeting the goals of all stakeholders in the offense: victims, defendants, those impacted in the community, mediators, and community safety advocates. It focuses on the harm caused by criminal behavior rather than on guilt against the state; in this way, restorative justice seems to meet the divergent ends of both retributive justice and welfare justice models.

The practices of restorative justice involve identifying the harm caused by criminal behavior, determining the steps to repair that harm, then facilitating a process through which the harm can be remedied. This can include group conferences, victim/offender mediation, restitution options, victim assistance, community service, and ex-offender assistance. The key values are “encounter,” which creates opportunities for victims, offenders, and community members to meet and discuss the harm of the offense; “amends,” which facilitates the offender’s repair of the harm; “reintegration,” which seeks to restore the offender as a productive member of the community; and “inclusion,” which provides all people with a stake in the crime to participate in the resolution.

Conclusion

While history illustrates persistent oscillation between competing theories of reform, generally understood as retribution and rehabilitation, restorative justice offers a new lens through which to consider crime and punishment. Instead of focusing on the criminal act as a violation of a specific penal statute, with a punishment to be exacted, restorative justice focuses on who has been hurt and what society’s role should be to repair that harm. In a shift away from conceiving of crime as a felony against the state, and toward handling the offense in a more socially egalitarian way, restorative justice responds to the original

reformers’ question: What kind of punishment befits a democracy?

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See Also: Prisoner’s Rights; Rehabilitation; Retributivism; Suspect’s Rights; Vice Reformers; Victim Rights and Restitution.

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Rehabilitation

Rehabilitation is one of four philosophies governing systems of punishment (along with deterrence, incapacitation, and retribution) and is often used to justify penal programs such as in-prison drug addiction programs, in-prison employment programs, and community corrections such as parole and probation. The use of rehabilitation as the main philosophy of punishment, however, has changed over time. Rehabilitation has moved from dominating the criminal justice system for

roughly 70 years in the 1900s to being viewed as not possible in the 1980s and 1990s to regaining popularity in the 2000s. Furthermore, it is unclear what is meant by rehabilitation, especially as a goal of correctional systems.

Early History

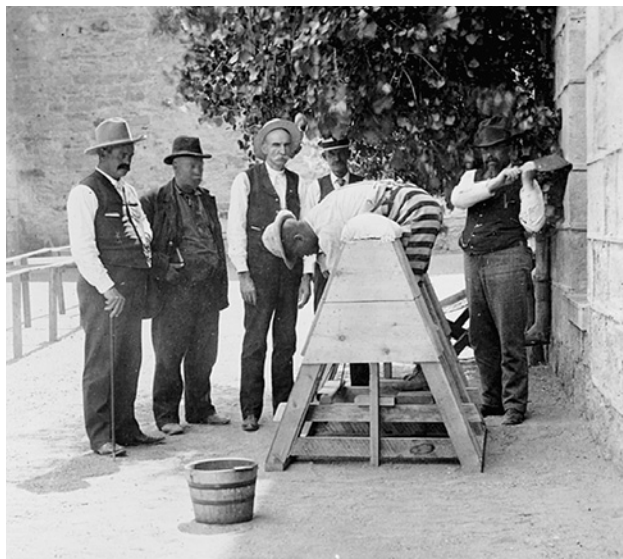
Rehabilitation as a guiding philosophy of the correctional system first took hold in the early 1800s. At this time, America's criminal justice system was moving away from the gallows and toward penitentiaries. The first penitentiaries were designed to reform the offender by isolating him from negative influences and reclaiming his soul through hard work and religious instruction. Although the goals were the same, two competing models developed. Under the Pennsylvania system, reformation was achieved through silent meditation and solitary confinement. Under the Auburn system, reformation was achieved through group labor during the day and silent meditation at night.

At this time, however, inmates were released upon the expiration of their sentences, making it difficult to ensure that a released offender was truly reformed. This began to change in the 1870s when Zebulon Brockway, a penologist and warden at various U.S. institutions, suggested the

United States adopt an earned-release method similar to Ireland's and described the usefulness of an indeterminate sentencing structure and a parole system at the very first meeting of the American Prison Association. His suggestion was formally adopted in 1876 in New York's Elmira Reformatory, where Brockway implemented a mark system in which inmates were required to earn a specified number of marks before earning release on parole. Brockway's system was the first to base rehabilitation on in-prison behavior rather than religious conversion.

It was not until the early 1900s, however, that the belief grew that the rehabilitative process was different for different people. Under the Progressive movement, correctional systems began adopting the idea that crime was caused by biological, psychological, or social deficiencies. It was also during this time that many states shifted to an indeterminate sentencing structure that allowed release based on rehabilitative progress rather than the passing of time. Indeterminate sentencing allowed for the development of programs based on an individual offender's background and needs. It also permitted judges, wardens, and probation or parole officers to have complete discretion in determining when an individual was reformed and ready for release.

The implementation of indeterminate sentencing also paved the way for an increase in the use of parole supervision. The first formalized parole system, in which specialized agents supervised parolees, was established in New York in 1907. By 1942, all states and the federal government had formally established parole systems. The implementation of formalized parole systems enabled parole boards to determine when a convict was ready for release from prison and enabled parole agents to determine when an ex-convict was ready for release from supervision. In this way, rehabilitation was formally linked to a person's behavior and progress while under supervision rather than on time. The linking of prisons and parole and indeterminate sentencing also provided a means by which to return a parolee to prison if it was determined that the individual had not truly rehabilitated.



In the 1800s, U.S. criminal justice was moving from severe punishment and the gallows toward imprisonment. At the Colorado State Penitentiary, the "Old Gray Mare" was a structure used to punish inmates with beatings.

Medical Model of Rehabilitation

Although rehabilitation had been used almost from the inception of correctional systems, the

use of the rehabilitative ideal in America gained strength during the clinical or medical model of the 1950s and 1960s. The medical model argued that biological, psychological, and social deficiencies indicated that offenders were sick and in need of treatment or a cure to prevent further recidivism. This treatment involved in-prison programming such as employment, education, and drug addiction programs. This version of the rehabilitative ideal is different from earlier versions for several reasons. First, disciplines concerned with human behavior (e.g., psychology and criminology) emerged. Second, the rehabilitative ideal dominated scholarship to such an extent that the treatment and reform of offenders were viewed by some as the only questions worth asking within the field of corrections. Third, it was not necessary to prove complete rehabilitation prior to release from prison. Rather, inmates needed to show that they were on the road to rehabilitation and could maintain their treatment in the community. This belief created a rehabilitative process that began in prison and continued with parole. Fourth, treatment of offenders was based on scientifically designed programs and various treatment modalities were tested to determine which worked best. Finally, such programs were to be designed around the individual's needs and were not to be a one-size-fits-all model. In order to accomplish this individualization, many correctional systems began classifying offenders based on their needs and deficiencies.

The medical model also resulted in greater reliance on parole systems to facilitate reintegration of offenders into society and continue their rehabilitative treatment in the community. Parole boards were granted broad discretionary powers in determining who could be released from prison and when. Parole boards were to release those individuals who had received as much treatment as possible while in prison and who were able to continue their treatment in the community. Parole agents were then responsible for ensuring inmates continued their treatment in the community and returning those who still required in-prison treatment.

Decline in Popularity

Although rehabilitation was viewed as the ultimate goal of the corrections system, not all

offenders had access to rehabilitative programs. Indeed, some legislation prohibited offenders with multiple felonies from accessing their services. For instance, the Narcotic Addict Rehabilitation Act (NARA) of 1966 prohibited those who were convicted of three or more felonies from a rehabilitative commitment and required that they be sentenced to prison. Although prisoners challenged these barriers in *Marshall v. United States* (1974), the Supreme Court found that the NARA, and by extension similar exclusionary rules, did not violate an offender's due process or equal protection rights because the state could reasonably assume that a repeat offender would not benefit from such treatment.

As such, there is reason to believe that not all inmates were able to participate in rehabilitative programs even if they wanted to. Additionally, questions arose as to the effectiveness of penal-based therapy: specifically, who decided what constituted rehabilitation and who decided what constituted a cure. Questions also arose as to the effectiveness of treatment carried out in artificial, and sometimes hostile, environments.

As a result, the attachment to the rehabilitative ideal did not last long. Throughout the 1950s, 1960s, and 1970s, multiple studies analyzed the effectiveness of existing rehabilitative programs and found that few, if any, achieved the desired effects. Possibly the most damaging study was Robert Martinson's report on the effectiveness of correctional programs nationwide. Although the study found that some programs were promising, the general conclusion was that nothing worked to reduce recidivism. This report confirmed the growing belief that the rehabilitative ideal was a failure and resulted in a lack of faith in the correctional system and loss of legitimacy among those authorizing rehabilitation.

Changes within the larger social structure also impacted faith in the rehabilitative ideal. For instance, some scholars argue that the decline of the rehabilitative ideal can be summarized as a loss of faith in the malleability of human beings and a loss of consensus about the goals of rehabilitation. The lack of belief in the malleability of people was related to several culture shifts, including a loss of faith in social institutions—such as schools and families—once believed to play a large role in shaping one's moral character. Additionally,

there was a drop in legitimacy of those participating in the rehabilitation programs, where those in the programs were viewed as different from those not in the programs, and thus incapable of change.

Additional criticism of rehabilitation included critiques of the methods used in the name of rehabilitation and a view that rehabilitation was detrimental to a fair correctional system. As Edgardo Rotman notes, treatments such as shock therapy were carried out in the name of rehabilitation. As these treatments fell out of favor because of their abusiveness and intrusiveness, the idea of rehabilitation was held responsible for such harsh treatment, leading many to critique the rehabilitative approach. Furthermore, legislators on both sides of the political spectrum were calling for changes in sentencing schemes. Liberals argued that indeterminate sentencing led to abuses of power by sentencing and correctional officials and that the rehabilitative ideal helped justify longer sentences; conservatives argued that indeterminate sentencing led to increased leniency and that rehabilitation took the bite out of the prison systems. While liberals and conservatives had differing views on the failure of indeterminate sentencing, the result was a decline in the support of rehabilitative policies and a shift away from discretionary release.

Additionally, radical criminologists argued that individual treatment was ineffective without first implementing structural changes of society and that the rehabilitative ideal was an excuse to avoid such changes. They argued that without these structural changes, former prisoners would return to unchanged conditions—the same conditions that propelled them into crime to begin with. Radical criminologists also critiqued the discretionary power associated with indeterminate sentencing and the ineffectiveness of correctional institutions. They argued that rehabilitation was masking the ways in which prisons were perpetuating unequal power structures.

As a result of these criticisms, many states moved away from the indeterminate sentencing structure and abandoned rehabilitation as the main goal of the correctional system. A new system was put in place that emphasized incapacitation and retribution as justification for the prison system. Determinate sentencing structures were put in place, and by the 1980s, many

states eliminated their parole boards. Sentencing guidelines, mandatory minimums, and truth-in-sentencing laws were used to determine when someone would be released, and release dates were dependent on the crime, not the individual. Where programs were available, they focused on risk management. According to the risk management model, branded by Malcolm Feely and Jonathan Simon as the “new penology,” correctional systems utilize actuarial tools to determine who should be released, who should be in programs, and whom to be most concerned about. Rather than focusing on individuals, the new penology focuses on minimizing the risk of groups of people. Such attempts have led to an increase in the surveillance of parolees to minimize the risk they pose to the community and greater reliance on drug testing and statistical risk analyses.

Even at this time, however, rehabilitation programs were still utilized within the corrections system in America. Indeed, numerous rehabilitative programs were developed and utilized well after Robert Martinson’s report was released. For instance, hundreds of sex offender programs were implemented during the 1980s and continue to be used today. Furthermore, programs aimed at addressing and reducing alcohol and drug addictions were used even after faith in the rehabilitative ideal waned. The late 1990s also saw a resurgence of faith-based prison programs aimed at reforming inmates, though the effectiveness and constitutionality of such programs are unclear. This has led to criticism of the notion that nothing works. Many scholars are now arguing that it is not that programs do not work; rather, it is that existing programs are poorly designed or implemented.

Rehabilitation Revival

Today, there seems to be a reemergence of rehabilitation within the correctional system. For instance, in 2005, California added the word *rehabilitation* to the title of its Department of Corrections and established a new mission statement that emphasized rehabilitation. In 2009, the U.S. Congress passed the Second Chance Act, which provides a way for qualified nonviolent offenders to have their criminal records expunged. There has also been a push in several states to utilize evidence-based practices, develop intermediate

and alternative sanctions for nonviolent offenders, and develop alternatives to reincarceration for parolees and probationers who violate their conditions of release.

Additionally, several recent studies have shown that rehabilitative programs implemented correctly not only reduced recidivism but saved states money. Indeed, Steve Aos, Polly Phipps, Robert Barnowski, and Roxanne Lieb reviewed hundreds of programs that target different groups and found that many of these programs significantly reduced recidivism rates. For instance, in a review of programs aimed at juvenile offenders, they found that programs such as Multisystemic Therapy and Multidimensional Treatment Foster Care not only reduced juvenile recidivism rates but also saved at least \$28 for every \$1 spent. In a review of programs aimed at adult offenders, they found that programs such as drug treatment programs, cognitive-behavioral therapies, and educational and vocational programs all reduce adult recidivism rates and either save money for every

\$1 invested or break even. The authors also found that programs aimed at certain types of criminals such as sex offender therapy also reduce future crimes. Extreme overcrowding and lack of state funds, however, have prevented many states from effectively implementing such programs. A lack of funding and resources in the communities also prevents probationers and parolees from accessing programs.

Studies have shown that effective rehabilitation programs share several guiding principles. First, effective programs should focus on scientifically known predictors of criminal behavior and recidivism reduction. These factors include static factors that do not change over time (e.g., gender and criminal conviction offense) and dynamic factors that can change over time (e.g., educational attainment and antisocial behavior). Second, the programs should focus on both thought processes and behavior patterns of offenders (also known as cognitive-behavioral therapies). Third, rehabilitative programs are most effective when working



Inmates listen to a social worker explain their rehabilitation options. Modern rehabilitation theories include the principles of correctional rehabilitation (attempting to eliminate criminal behavior and its causes), legal rehabilitation (eliminating a criminal record and restoring legal rights), and generic rehabilitation (the use of psychological and physical therapies).

with offenders with the highest risk of recidivating. Fourth, programs should address a range of additional factors (e.g., community-based interventions and utilization of well-trained and specialized program providers) whenever possible. Finally, effective programs are those that have been independently evaluated to ensure that the desired outcomes are actually achieved.

Although the use of rehabilitation has ebbed and flowed, some scholars argue that even at times when punishment and risk management are the main focus, the notion of rehabilitation is present in some way. For instance, in a study on parole agents and their role in the correctional system, Mona Lynch finds that, in practice, parole agents function as more than risk managers and that the practice of punishment does not fall in line with all of the theoretical tenets of the new penology. Steven Hutchinson argues that punishment and rehabilitation are braided together. In other words, the notions of punishment and rehabilitation cannot be separated, though one may be more prominent than the other. Indeed, some scholars speculate that while the use of rehabilitation declined during the late 1900s, its use may not have disappeared entirely and likely shifted from a central role to a peripheral role. This notion is further supported by the continued use of rehabilitative programs in the 1980s and 1990s.

Furthering this idea, Gwen Robinson argues that the concept of rehabilitation in the United Kingdom and Wales did not disappear, then reappear; rather, it evolved over time. In the 1950s and 1960s, rehabilitation was viewed as a form of welfare and was understood as designed to benefit the lives of former inmates. During the “nothing works” period of U.S. corrections in the 1970s through the 1990s, Robinson notes that rehabilitation evolved into a risk management tool. Treatment programs were viewed as a way of maintaining an individual’s criminogenic risks and assisting in preventing future crimes. Today, rehabilitation is reframed as a tool for the improvement of society, for risk management, and as a form of punishment. Thus, rehabilitation is used as a means of providing the greatest good to the greatest number of people by managing and maintaining risk, reducing recidivism, and providing alternatives to incarceration (e.g., community sanctions).

Although a similar analysis has not been conducted for the United States, the historical use of rehabilitation in America seems to echo the pattern described by Robinson.

Modern Rehabilitation Theory

Several theories abound as to what rehabilitation means. The three prominent theories are (1) correctional rehabilitation, (2) legal rehabilitation, and (3) generic rehabilitation.

Correctional rehabilitation seeks to eliminate criminal behavior or to eliminate the causes of criminal behavior. Some argue that factors important to achieving recidivism reduction include repairing relationships, restoring one’s status in the community, and establishing stable employment. While many rehabilitative programs aim to reduce recidivism, they often accomplish this goal by addressing noncriminal factors such as increasing educational attainment and improving jobs skills. Two current models exist to assist with the elimination of criminal behavior or causes of criminal behavior: the risk, needs and responsivity model and the good lives model.

The risk, needs and responsivity model (RNR) was first developed in Canada and offers a mix of the risk management methods described by the new penology and the rehabilitative methods adopted in the 1950s and 1960s. This model focuses on three key ideas: the amount of risk posed by the offender, the needs of the offender, and the ability to adjust the program to be responsive to the offender. The model argues that in order to minimize the harm, or risk, one may cause, it is necessary to address the offender’s criminogenic risks such as antisocial behavior and poor problem-solving skills, and that treatment delivery must be adjusted in a way that maximizes change.

Building on the risk, needs and responsivity model, the good lives model (GLM) argues for a human-centered, holistic approach to rehabilitation. Specifically, the GLM is based on the idea of helping the offender find pro-social ways of achieving the benefits gained through criminogenic behaviors. Rather than focusing on managing the risk to society, GLM argues that focusing on what is best for the individual will result in positive outcomes for society as a whole. In other words, helping individuals achieve specific goods

or goals in socially accepted ways will automatically eliminate criminological behavior.

Legal rehabilitation implies an undoing of the criminal conviction. In other words, legal rehabilitation focuses on eliminating the criminal past and restoring legal rights and standing after a period of punishment. Such a restoration includes a return to full citizenship status (including a return of full voting rights) for recently released prisoners. Indeed, some scholars argue that the reinstatement of full citizenship is an important step in reintegrating former prisoners into the community and could potentially reduce recidivism. Some states and the federal government now have legislation in place that effectively removes a criminal history from one's past (e.g., Second Chance Act of 2009; California's Certificate of Rehabilitation; various state systems of pardon), though the process is often difficult to navigate and can take decades to finish.

Finally, generic rehabilitation is based on rehabilitative methods utilized in psychological and physical therapies, many of which are now used in prison- and community-based correctional programs. This view argues that rehabilitation is an ongoing effort that may be achieved in numerous ways and encompasses four principles: (1) it is a process; (2) it is viewed as a change for the better; (3) it implies a return to a former state (e.g., a mobile state after an accident; in this case, a return to the community); and (4) it implies the intervention of some other party. Even for those who may not seek official forms of intervention (e.g., therapists, support groups, drug rehabilitation programs, education or job skills classes), some assistance exists through the support of friends, family, and community members. For criminological purposes, the process of rehabilitation may mean "the restoration of a former state ... [or] the acquisition of skills, and the establishment of rank, rights and responsibilities previously denied."

These theories of rehabilitation are not necessarily mutually exclusive. It would be easy to see rehabilitation as a mixture of several of the theories, if not all of them. For instance, rehabilitation could be an elimination of criminal behavior or the causes of criminal behavior as well as a restoration of civil and legal rights. Furthermore, correctional and legal rehabilitations may be accomplished by utilizing the four principles found

in generic rehabilitation. The common theme throughout these theories is that rehabilitation is, in some way and regardless of the role rehabilitation plays in corrections, enacted by the state.

In order for rehabilitation to be truly effective, however, some scholars argue that rehabilitation must be viewed as a right that is provided by the state. The argument made by scholars working in this vein is not that all offenders should receive rehabilitation but that all offenders have the right to an opportunity to rehabilitation and that rehabilitation is what the state owes the offender in exchange for future adherence to the law. Advocates of rehabilitation as a right argue that this view requires an overarching change in the penal system, focusing more on individual outcomes and less on overall effectiveness. Finally, rehabilitation advocates also argue that this shift to a rights-based focus is necessary to maintain the rehabilitative ideal. Sam Lewis argues that without this view, rehabilitation could be abandoned in favor of more politically accepted policies.

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See Also: Auburn State Prison; Corrections; Deterrence, Theory of; Incapacitation, Theory of; Parole; Penitentiaries; Pennsylvania System of Reform; Retributivism; Sentencing, Indeterminate Versus Fixed.

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Religion and Crime, Contemporary

Some of the earliest efforts to explain criminal behavior involved supernatural phenomena like religion. During the earliest times, human inquiry regarding the causes of deviant or criminal behavior led many to believe that witchcraft, spells, or demon possession were among the root causes of aberrant social behavior.

These ideas are reflected in the resulting public responses to criminal behavior. For example, trial by ordeal became a common practice in many parts of the world. In essence, trial by ordeal involved subjecting a suspected individual to a harsh physical task that could either injure or kill the accused in an attempt to see if some sort of divine intervention would occur. If the accused was not seriously harmed or killed by the assigned task, it was thought to be proof of innocence and divine vindication of guilt. If the accused was injured or killed by the assigned task, it was thought to be evidence of divine retribution and proof of the individual's guilt. During later times, trials by combat became more common and pitted two individuals against each other in battle. The underlying belief behind tests of this nature was that God would aid the most righteous combatant, thereby providing them with evidence of absolution. During this period, religious beliefs provided both a basis for understanding deviant behavior and a process through which justice could be administered and dispensed.

Historically, the church was much more actively involved in the provision of law and social control and had a great impact on the way in which society understood and related to crime. This may help explain the existence of beliefs regarding the

causal nature of the religion and crime relationship. The greater involvement of the church in this regard may have been inevitable given that a more formalized system of law and justice was largely lacking. This greater involvement is underscored by the role that the church played in helping define criminal behavior, investigating allegations of deviant behavior, and punishing those individuals thought to have violated established standards of behavior. Remnants of this influence are reflected today in certain laws that prohibit some types of sexual, recreational, and social practices. Over time, however, the direct involvement of the church in the control and punishment of criminal offenders became less significant. As organized systems of justice evolved, there were fewer duties for the church and practices such as trial by ordeal and trial by combat were largely abandoned. Beliefs positing a direct causal relationship between supernatural phenomena and crime began to fade with the advent of the classical and positivist schools and the first tentative steps toward the scientific study of crime. However, the debate regarding the correlation between religion and criminal behavior has continued unabated ever since.

Effect of Religion on Behavior

Much of the discussion regarding religion and crime in contemporary times has focused on whether religion has a mitigating or limiting effect on criminal behavior. However, questions have also arisen in regard to the degree to which religion might contribute to or precipitate violence toward others. Throughout history, there are numerous examples of deviant or violent behavior that have, at least in part, been attributable to the religious motivations, ideologies, or divisions of those involved. Events such as these tend to resonate with the public imagination and have an especially significant social impact when they involve religious leaders who occupy positions of public trust. High-profile examples of this nature may influence societal attitudes toward religion and undermine public trust in religious institutions. Additionally, these types of incidents may solidify social attitudes regarding the nature of the religion and crime relationship and mask the degree to which religious beliefs may have an insular effect on criminal propensity.

Discussions concerning how religion influences criminal propensity tend to center around a number of different issues. First, questions have arisen regarding the degree to which the divisions between religions have created animosity, inflamed tensions, and ultimately contributed to violence between rival religious groups. There are numerous examples, both historical and contemporary, of religion contributing to conflicts of varying severity in widely disparate geographic regions around the world. The Armenian genocide serves as one of the most graphic historical examples of events in which religion was thought to be one of many precipitating factors that contributed to both the origination and continuation of extreme violence. Second, questions regarding how religious principles might be related to individual criminal propensity have surfaced and been addressed. There are numerous examples of individuals who claim to have been influenced to commit criminal acts as a result of their adherence to the principles of their religion, at least to the degree that they are capable of understanding those principles. Recent investigations of polygamist sect leaders and polygamist sect members regarding allegations of sexually based criminal offenses provide a disturbing example. Third, evaluations regarding how religious beliefs have contributed to a culture that may be more conducive to the occurrence of certain types of criminal behavior have been undertaken. For example, attitudes regarding the desirability of male-dominated households and the need for females to be subservient to their husbands have been associated with religious teachings. These beliefs have also been linked to an increase in both the frequency and the severity of domestic violence.

Research regarding the way in which religion contributes to criminal propensity has not been overlooked, but research regarding the degree to which religion and religious beliefs inhibit criminal propensity has been far more robust. Many have speculated that religious beliefs should be inversely related to criminal involvement. If this were the case, individuals with greater religious attachment would be expected to be less likely to engage in criminal behavior. Beliefs of this nature are based upon the assumption that religions advocate characteristics such as honesty, piety, compassion, and benevolence that are not con-



Portrait of Mormon polygamists imprisoned at the Utah Penitentiary in 1889. Polygamy is an example of committing criminal acts as a result of adherence to religious principles.

ducive to criminal involvement. These principles are communicated through religious teachings and texts, and it is believed that once they are internalized, they will influence an individual's personality and outlook. In turn, these changes are thought to influence a wide variety of human behaviors. For example, religion's influence on prejudicial beliefs, political identity, and attitudes toward child rearing and sexual practices have been examined. When directly applied to criminal behavior, many have assumed that religious principles would influence adherents in such a manner that they would become less willing to view the attitudes and behaviors that are associated with deviant or criminal behavior as desirable or acceptable.

Investigations regarding the degree to which religion inhibits criminal propensity have reached vastly different conclusions. Some findings have seemed to indicate that religion has little if any prohibitive influence on criminal involvement. Other findings seem to indicate that religion does have a significant influence on reducing criminal activity. As a result of the very divergent conclusions that have been reached, there is no universal consensus regarding the degree to which religion is related to reductions in criminal activity. Some more recent examinations have focused on attempting to explain the divergent conclusions that have been reached rather than the underlying nature of the relationship itself. One potential

explanation for the divergent conclusions that have been obtained in this regard pertains to the way in which certain key terms and concepts associated with the religion and crime relationship have been operationalized, defined, and measured. Religion is a malleable and flexible concept that can be difficult to precisely define and understand. As a result, the concept has been viewed through a number of different theoretical lenses across time. If religion is viewed as the observance of a set of practices, such as church attendance, a less definitive relationship might be observed. However, if religion is viewed in relation to the extent to which it alters an adherent's underlying beliefs, a more substantive relationship might be found. Given the importance of differences of this nature, the concept of religious orientation or religiosity has become increasingly important.

Religiosity

Briefly stated, religious orientation or religiosity focuses on the degree to which an individual's religious attitudes and attachments alter his/her beliefs, attitudes, and method of understanding the social world. When viewed in this manner, religion is a more complicated concept and one that cannot be fully understood through an individual's adherence to religious practices and rituals. Instead, the concept of religion is best understood through the degree to which the principles associated with a given religion have been internalized and the extent to which they have in turn altered the behaviors and understandings of a given follower. Typically, individuals are roughly divided into one of several categories when viewed through the lens of religious orientation. One category includes those who have a very limited or superficial attachment to religious principles and beliefs. These extrinsically oriented individuals may have an ulterior motive for their religious involvement, which does not necessarily generate any type of sincere commitment. A second category includes those individuals with a very intense and meaningful attachment to their religious beliefs. For these intrinsically oriented individuals, religious principles have become part of their lived experience and are viewed as guiding principles that influence the way in which they live their lives and relate to the world around them. The identification of these more subtle distinctions

between larger "religious" populations allows the religious orientation concept to provide for a more detailed and meticulous examination of the role that religion might play in regard to criminal propensity. In doing so, the religious orientation concept may well be able to overcome some of the discord that has resulted from past overgeneralizations of the religion concept. If so, future investigations might be able to provide greater clarity regarding the degree to which religion influences deviant and criminal propensity.

Conclusion

A thorough evaluation of the nature of the relationship between religion and crime proves both the enduring and the contentious nature of these concepts. Individuals have been attempting to examine what type of relationship exists between religion and crime from a variety of different perspectives since the very earliest of times. Today, there are many individuals in society who strongly believe that religion exerts either a causal or an inhibitive effect on human deviance. At the same time, there are many individuals in contemporary society who remain convinced that religion has little, if any, influence on the darker side of human behavior. In the end, it is likely that disagreements of this nature will continue and may not ever be fully and completely resolved. Despite disagreements of this nature, religion has almost certainly influenced how society views the concepts of crime and deviance to at least a certain extent. It also appears likely that public interest in the individual concepts of crime and religion will persist and that the relationship of these concepts to each other will continue to capture the public imagination for the foreseeable future.

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See Also: 1961 to 1980 Primary Documents; 2001 to 2012 Primary Documents; Bakker, Jim; Bible; Bigamy/Polygamy; Religion and Crime, History of; Religion and Crime, Sociology of.

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Religion and Crime, History of

Contemporary Western societies have grown so accustomed to the formal separation of religion and the state that it may come as a surprise that the distinction between sin and crime did not even enter into Western consciousness until early in the second millennium, and then only incrementally; and in many parts of the world, the idea that religion and the exercise of criminal justice exist on two different planes has only recently been considered, if at all. One can thus conclude that the common historical experience of the human species has favored the idea that religion and governance, heterodoxy and treason, and sin and crime are by no means antithetical and are in many ways synonymous.

This entry gives a brief overview of the period in which the boundaries between religious codes of conduct and social delinquency were far more fluid than today. It then discusses the development of secular legal systems and their institutions of punishment that borrowed liberally from religious law and penal practice, yet have largely existed independent of the religious domain. It concludes with some observations on the history

of American corrections, its resonance with early penal history, and how, in America, the relationship of religion and crime is once again recovering some of its ancient cooperative roots.

The Early Experience of Religion and Crime

Social scientific literature claims that the origin of society lies in the symbols emanating from totemic worship. Emile Durkheim's early work points to the mechanical nature of such primitive groupings in which individual self-consciousness was inseparable from communal identity and shared standards of conduct. In his later work, he demonstrates how these "sacred" beliefs fueled the moral commitment that each member felt for the clan. Any infringement of the ritual elements related to totemic worship or of the moral requirements of mutual care was a serious threat to the religious underpinnings of the clan and, by virtue of that fact, to its very existence. Violations not only were decisively punished, they reinforced for all the need to reproduce constantly the religiously driven ethical norms.

This same dynamic is found repeatedly in ancient societies. For Confucius and for the Chinese dynasties influenced by his thought, shame, as opposed to the Christian concept of guilt, was the dominant moral and spiritual concept. One was categorically defined by one's external actions, not internal modes of thought or perception. To disregard any of the Confucian ethical teachings was perceived as an attack upon the entire society. Chinese criminal codes were unambiguous in their attempts to quell any wayward conduct and the emperor was the figure-head embodying both spiritual fulfillment and criminal enforcement.

In Egypt, documents from the Middle Kingdom (2050–1786 B.C.E.) reveal that preservation of public peace was a religious duty. Any harm inflicted upon a fellow Egyptian threatened the sacred order and, by extension, the pharaoh, who was obligated to preserve it.

The prologue to the Code of Hammurabi announces that Marduk has been given dominion over earthly creatures and that Hammurabi, as a god-fearing ruler, undertakes the task of providing a law based upon divine righteousness in which the evil and violent are destroyed, lest they bring harm upon the weak and the innocent.

Throughout the ancient Middle East, the divinity ruled the land; the legitimacy of the monarch was understood to derive from the favor bestowed by God. Because of this divine blessing, the ruler often received the honor befitting a God. A fortiori, violations of legal statutes were not only attacks upon the sovereign and the people, but also upon the divine legislator. The experience of the Hebrew people is a long meditation on these themes. The isomorphism of religion and society was revealed in the intensity of God's repeated insistence that all forms of idolatry be eliminated from Israel, by violence if necessary, as well as in the punishments endured during times of exile when the captive Israelites were repeatedly confronted with the choice to either conform to the religion of the conqueror, or die.



decisively fractured by a stroke of the pen. This momentous decision inaugurated two great and lasting legal developments: The church began to promulgate the world's first "modern" legal system, canon law, and the newly developing states of Europe had to draft their own legal and criminal codes.

Another outcome of this decisive change, was an unprecedented understanding of law and the concept of crime. With canon law, there developed a separation between what was termed the internal forum (the private domain of conscience adjudicated between priest and penitent) and the external forum. The latter addressed public breaches of morality that were called "criminal sins." As a result, not only were sin and crime now separate areas of punitive attention, but also actions meriting punishment no longer consisted simply of offenses against God and the victim; one was culpable for violations against the law itself.

Since the church had already developed within its own penitential system the basic foundation of the Western understanding of punishment—sentencing the offender to a penance measured in segments of time—and since it had also developed within the monasteries the basic model of the prison (recalcitrant monks confined in a cell for a specific temporal period), there was abundant precedent for Boniface VIII to declare in the late 13th century that every diocese in the Catholic Church had to erect at least one prison to confine clerics convicted in ecclesiastical courts of criminal sins.

At the same time, secular authorities began to imitate the Catholic Church in the inauguration of imprisonment as the basic form of social reprisal in the West. Finally, secular polities also mirrored the ecclesiastical understanding of law as an independent moral and social fact, the violation of which signaled the need of and justification for punishment.

Consequently, the initial period of separation between church and state was more an amicable separation than a complete divorce. Not only did the church use the state for its own ends in criminal matters (the execution of heretics, for instance), but the state also imitated the church in the formation of its criminal codes and penal arrangements. The shifting contours of the relationship between religion and crime are also revealed in the American context.

Religion and Crime in the American Context

As with ancient civilizations, the early history of America reveals a reciprocal relationship between religion and crime. The Puritans established a holy commonwealth in which every element of life, including the method of addressing social delinquency, was derived from biblical sources. God was, in effect, both the legislator of law and the dispenser of justice. Thus, Thomas Hooker could cry out to the disobedient, "It is not arguments you gainsay, not the counsel of a minister you reject, the command of a magistrate you oppose, evidence of the rule of reason you resist, but be it known to you, you fly in the very face of the Almighty."

Similarly, in Pennsylvania, under the leadership of William Penn, the Quakers sought to develop a "Holy Experiment," the aim of which was to magnify "the Glory of Almighty God and the Good of Mankind." Unlike the Puritans, however, whose Calvinism took a disparaging view of human nature, the Quakers believed that each person was endowed, in Penn's words, with "Native Goodness." In consequence, their penal philosophy was noticeably more mild. They endorsed the death penalty only in the case of homicide done with "malice or premeditation." In lieu of formal legal procedure, they instituted an early form of community corrections with the appointment of arbitrators known as "peacemakers," whose task it was to mediate disputes between citizens and achieve a form of what is now termed restorative justice without the need of formal judicial prosecution.

After the American Revolution, constitutional provisions formally separated law from religion, but with the rise of the penitentiaries in the early 19th century, religion and crime became related in a new and powerful way. The evangelical revival known as the Second Great Awakening was predicated not only upon the Puritan belief that America was the "new Israel," but also upon the conviction that America must show the world the way to redeem those lost to sin and bound for perdition.

The two prototypical penitentiaries at Philadelphia and Auburn, New York, revealing Quaker and New England Calvinist influences, respectively, both claimed to accomplish with their penal methodology the necessary means for the conquest of sin within the errant individual. Whether their regimens fulfilled their stated purposes is a matter for debate, but it cannot be denied that



Pope Saint Gregory VII is depicted saying mass. The pope's 1075 reforms, declaring that the Roman Catholic Church was a separate legal entity, independent of the laws of "earthly princes," were the basis of modern secularization.

these experiments influenced the development of the modern prison in the United States and around the world.

The initial religious tenor of American penal institutions remained strong, with some demonstrative exceptions, until after the Civil War. Then, with the advent of the social sciences, the influence of Italian criminologists such as Cesar Lombroso and Enrico Ferri, and the impact of Darwinism, a distinctly secular, rational, and therapeutic approach to corrections ensued.

Religion came to be viewed in the contemporary way that many have experienced it in relation to the issue of crime: on the one hand, a peripheral and voluntary choice for inmates, judges, and correctional staff unrelated to the practice of law and the imposition and execution of sentence; on the other hand, a frequent catalyst for exclusionary extremism as witnessed in the violent reaction to Catholics and Mormons in the 19th century and, to a lesser but still significant degree, Muslims in the present day.

The "desacralization" of corrections remains by and large the case, but there have been several developments that signal not so much new developments in the correctional milieu as a recovery and refashioning of concepts tracing back in some

instances several millennia. Two cases in point are the growing phenomena of faith-based prisons and the concerted worldwide attention given to the practice of restorative justice.

Charles Colson, one of the Watergate conspirators, had a powerful spiritual conversion during his period of incarceration. After his release from confinement, he devoted his life to prison reform. One of his most noteworthy innovations grew from a visit he made to a prison in Brazil, run by three Catholic laypersons. All of the procedural guidelines for the facility were based upon biblical, and especially New Testament directives, in which no violence would ever be sanctioned and a daily regimen of prayer, work, and mutual respect would be fostered. Colson was able to import that concept to the United States and other countries of the world where it has been instituted in a number of jurisdictions. While the methodology may not exactly duplicate the monastic prison of an earlier age, the idea that the criminal offender often requires something more morally substantive than vocational and educational programs, and/or psychological and medical treatment, and something far less morally problematic than idleness and an atmosphere of retribution, has apparently struck a chord with a growing number of judges, prosecutors, and political officials.

In the same way, restorative justice reproduces penitential practices tracing back to the New Testament, the early history of the church, and the use of peacemakers in colonial Pennsylvania. In simple form, this practice seeks to return to the era before the development of modern systems of law in which an offense was primarily understood not as a statutory violation, but as an act of harm brought by one person upon another. It seeks to bring the victim and offender together into a mediated conference in which each can express his or her feelings and a mutually agreeable solution can be worked out independently of the criminal court and the penal system.

The fact that each of these methods has stimulated such widespread national and global interest reveals that the early conflation of religion and crime is once again revealing itself in the contemporary practice of criminal justice.

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See Also: 1600 to 1776 Primary Documents; 1801 to 1850 Primary Documents; 1921 to 1940 Primary Documents; 1961 to 1980 Primary Documents; 2001 to 2012 Primary Documents; Bible; Morality; Religion and Crime, Contemporary; Religion and Crime, Sociology of.

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Religion and Crime, Sociology of

The sociological perspective of the relationship between religion and crime is focused on several key areas. In addition to the basic application of the major theoretical perspectives in sociology to the nature of the relationship between religion and crime, this focus includes substantive examinations of social issues and processes such as religious fundamentalism and religiously motivated violence and criminality, religion and terrorism, religion as a protective factor against criminal behavior, the role of religious organizations and their response to crime, religion and morality, and types of religious criminality. Sociologists consider the context of the relationship of religion with the broader culture and with the other social institutions of society in which it is embedded as they seek to investigate the more specific connection between religion and criminal behavior.

Sociological Frameworks for Understanding Religion and Crime

Each of the three major theoretical perspectives in sociology—structural functionalism, conflict theory, and symbolic interactionism—offers a generic framework for understanding and analyzing the relationship between religion and crime. The structural functionalist approach, which originated with the work of Emile Durkheim, views religion as a central social process, one that has the function of maintaining the basic moral order of a society. Through its myths, rituals, and symbols, religious behavior produces social solidarity and allows social groups to function and survive with relative health and stability. Relative, because in this understanding, some amount of deviant and criminal behavior is actually necessary for the smooth functioning of society. This is because behaviors defined as "criminal" create, sharpen, and reinforce social boundaries, reminding members of social groups and the culture at large which behaviors are acceptable and unacceptable. In this view, whatever the social causes of criminality, its function—in appropriate amounts—is to provide and define the normative set of behavioral guidelines individuals are to follow. When the normative rules of society are violated through criminal actions, social sanctions of varying kinds are imposed in order to both highlight the boundaries of what is acceptable and unacceptable and to bring the individual back into the normative order.

Conflict theory, in contrast, argues that crime in society is ultimately a product of the unequal relationship between those in positions of power and those who are subject to this power. Religion becomes a part of the ideological structure that ultimately reproduces this inequality and helps to maintain the status quo. Importantly, criminality is not simply a given set of behaviors with a corresponding set of essential qualities. Rather, it is those in power who have the social, political, and material resources to define what is criminal and what is not; when a behavior works against the interests of those in power, it is more likely to be defined as criminal or considered immoral. Conservative Christian groups in the United States (which have been a powerful political force in the last decade) have sometimes acted as moral entrepreneurs; that is, they have been very

influential in asserting and defining, sometimes explicitly through legislation, what is moral and what should be legal and illegal in society. The political actions of these groups regarding social issues such as abortion and gay rights are strongly connected with the specific religious beliefs and worldviews of religious groups. Other instances where a conflict perspective can be useful in understanding the relationship between religion and crime involve cases of specific religious beliefs and their conflict with the broader secular society and the law. Examples include court cases when parents have refused medical care for their children because of their religious views. Gary and Margaret Hall, of Faith Assembly, a church that believes in and practices faith healings, were sentenced in 1986 to five years in prison for reckless homicide after their infant son died from pneumonia, which doctors testified could have been prevented with basic medical care. Conflicts such as these raise questions about religious freedom, the role of the state, definitions of criminality, and the relationship, and differences between religious and secular authority and power.

The final major sociological approach, symbolic interactionism, with its focus on social process and the social psychological and micro interactions of small groups, contrasts with the macro perspectives of both structural functionalism and conflict theory. A core principle of symbolic interaction is that people act toward objects (whether physical or abstract) based on the meaning those objects have for them. It highlights the socially constructed nature of religious meaning. That is, religious beliefs, values, and ideas—in short, religious worldviews—are the products of meaningful interactions and ongoing human relationships.

The actions of individuals are strongly influenced by the religious worldviews to which they subscribe and which are constructed in the context of group dynamics and social interactions. The symbolic interactionist thus investigates the substantive meaning of religion for individuals, their personal religious identities, and how this connects to the behavioral choices they make in the context of their associations. To understand criminality, a person investigates the subjective interpretations, self-understanding, and religious identities of individuals as they have undertaken

criminal actions based on the meaning and purpose those actions have had for them.

Substantive Issues in Religion and Crime

The relationship between religion and crime is complex and sometimes controversial, as the sociological work in this area indicates. One way in which this is most evident is that the beliefs and values central to different religions in the United States can be viewed in very different ways—as either protections against criminal behavior or motivators of criminal behavior. The first is usually referred to as religion as a deterrent. That is, religion serves as an important aspect of social control, and one of its functions is to inhibit criminal behavior. This view seems to be consistent with the American public's general assumptions about the connection between religion and morality—that crime itself, and the potential “moral decay” of a society are best resisted with a strong religious foundation.

Crime, defined as any behavior that is considered an offense against the state and that is punishable according to the law of that state, is an ongoing social issue. Sociologists who argue religion is a deterrent to crime do so based on substantial research on the subject. For instance, as Robert Wuthnow observes, a review of close to 60 studies from the 1970s through the 1990s concluded that there is a positive correlation between religiosity—measured primarily through religious participation—and compliance with social conventions and the law. There has since then been general agreement among scholars that religion can act as a deterrent to crime. However, the same research has also led scholars to not overstate this relationship, as the cumulative findings suggest that the relationship is moderate and may not hold across all conditions or for all types of criminality and delinquency. For example, with regard to normative views concerning crimes against individuals (such as murder and theft), specific religious convictions are not particularly relevant, and the secular institutional sphere alone appears adequate in effectively conveying proscriptions against these types of crimes. Further, not all research has been consistent with the conclusion that religion has a deterrent effect on crime (see Travis Hirschi's study of religion and delinquency) and not all sociological perspectives

share the assumptions about human motivations and inhibitions toward criminal behavior that the research on religion and social control seem to take for granted (one notable theory is the rational choice model).

Deterrence to crime is just one of the effects that religion has on other aspects of social life. It has frequently been observed that religion can motivate altruistic behavior and can also be a vehicle for positive social change. Moreover, this change can be brought about through what may be viewed—especially at the time—as deviant or unlawful means. An oft-cited example in the United States is the influence of Christianity—its symbols, values, moral guidelines, narratives, and language—and how it was taken up by various religious leaders and activists during the civil rights movement of the 1950s and 1960s in order to push for greater equality and social justice. Acts of civil disobedience, boycotts, and other means were used to bring about this change, and the movement was suffused with religious meaning and justification.

Religious values and attitudes also have implications for criminal justice. Religious organizations have historically been involved, even if indirectly, in the making of criminal law, and religion has continued to strongly influence public opinion about a host of social, moral, and political issues. Concern over abortion, gay marriage, stem cell research, pornography, drugs, and other issues have prompted religious individuals and groups to become involved in the political sphere and advocate their specific views on these topics. Thus, religion motivates particular responses to criminality and ultimately helps shape social policy and the ways in which the criminal justice system handles criminal offenders. For instance, as Harold Grasmick argues, evidence suggests that conservative Christians are more likely to hold retributive attitudes concerning punishment for criminal offenses than their secular or less religious counterparts. That is, violations of social rules of all kinds (from misdemeanor-level juvenile delinquency to adult criminality) are met with more stringent and punitive attitudes



A U.S. Navy serviceman photographed the American flag on display on September 15, 2001, at the site of the terrorist attack on the World Trade Center four days earlier. The attacks provide an example of both the effect of the perception of the West as a threat to traditional religions and their worldviews and the way that religion is at times used to justify violent acts.

toward punishment for offenders, especially if the offenses are seen as violations of religious or moral codes. Criminality not only violates the law of the land but is also an inherent violation of God's law. This is one sense—consistent with the conflict perspective—in which religion can function to sacralize the social order and legitimate certain, even controversial, responses to criminal actions, such as the death penalty. A good portion of the response of religion to crime, however, takes the more implicit form of informal social sanctions. As a primary agent of socialization, religion imparts codes of conduct that mostly discourage violations of the law. Religious values and attitudes are closely connected with how individuals think about and respond to crime. Religion is also unique as a form of social control in that its adherents often are motivated not just to obey the law but also to respond more enthusiastically to violations of the law by others, because of the view that ethics and morality are rooted in, and ultimately justified by, a supernatural source.

In addition to religion as a form of social control and deterrent to crime, it can also motivate and justify criminal behavior. Some acts of terrorism and violence are impelled by religious impulse, and religious beliefs and views can provide the rational basis for committing criminal acts that individuals or groups might otherwise not consider. This religious extremism can lead to terrorist acts that are often the most striking instances of the connection between religion and crime, and it is these actions that seem to offer the best evidence of religion being a core cause of criminality—although based on the evidence and arguments of scholars in this area, using religion as a justification for crime after the fact is much less difficult to establish.

Mark Juergensmeyer observes that at the macro level, the processes of modernization, globalization, and the general influence of the West are perceived by some religious communities around the globe as threats to their traditions and the religious worldviews that undergird these traditions. The attacks of September 11, 2001, are an example of both this kind of conflict and the ways in which religion can be used as a justification for acts of violence. Domestic acts of violence also demonstrate how specific religious views can come into conflict within the broader society. The perception by some religious groups

that American society is in moral decline, caused by secular forces, gives similar motivation and justification for acts of violence. The string of abortion clinic bombings across the country over the last several decades have been not so much about modernization and Western power but about upholding specific conservative religious views against the threat of secular culture.

Typology of Religion-Related Crime

It is useful to differentiate religion-related crime from other types of criminality. Karel Kurst-Swanger defines religion-related crime as “any illegal or socially injurious act which is committed within the auspices of religious practice or as a result of a particular religious belief.” It is important, when applying this definition, to also distinguish types of religion and religious organizations, as they have varying relationships with the broader society and will be connected with criminality in different ways and to different degrees.

Kurst-Swanger suggests three descriptive and distinct—though also occasionally overlapping—types of religion-related crime: theologically based crimes, reactive/defensive crimes, and abuse-of-religious-authority crimes. Theologically based crimes are those that follow from basic religious attitudes or viewpoints, or specific religious beliefs. Crimes against women that draw upon the reinforcing and legitimating aspects of religion's role in patriarchy are an example. Likewise, and more concretely, an individual who feels ordered by God through a literal interpretation of a religious text to carry out a violent act against another would be categorized as a theologically based crime. Reactive/defensive crimes involve a religious person or group feeling threatened by some external social or political force and engaging in crime as a response to this threat. Resisting secular—or even competing and conflicting religious—forces through violent means is a common form of this type of crime. Terrorist acts and abortion bombings fit within this category. The final type, abuse of religious authority, has received heightened attention in the last few decades. This occurs when individuals or groups in positions of religious leadership abuse their power and status. Unlike the previous two types, this type has little to do with the content of religious ideas motivating crime. Rather, it

is the institutional structure of religion that provides the context for the exploitation of crime, a context wherein offenders can gain protection from the institution and/or from appealing to their status as a religious authority in order to avoid the consequences of criminal behavior. The sexual abuse of children by priests who received protection within the Catholic Church provides the clearest example of this type of religion-related crime.

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See Also: 1600 to 1776 Primary Documents; 1801 to 1850 Primary Documents; 1851 to 1900 Primary Documents; 1961 to 1980 Primary Documents; Crime in America, Types; Criminology; Religion and Crime, Contemporary; Religion and Crime, History of; Terrorism.

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sentence length of inmates more than doubled. The rapid growth in prison population has been accompanied by numerous reports on prison conditions compiled and published by a diverse range of stakeholders.

Early Prison Reports

Written by John Howard in 1777, *The State of the Prisons in England and Wales* attracted public attention because of its meticulous description of prisons' poor sanitation, high rates of starvation, and chronic overcrowding. In search of best prison practice, Howard traveled the European continent extensively. His advocacy for prison reform was influential when William Blackstone and William Eden drew up the Penitentiary Act 1779; the act contained features that Howard admired in foreign countries' prison systems, including individual cells, a prison labor regime, improved sanitary conditions, elimination of the sale of alcohol, religious instruction, prison uniforms, and a policy that rewarded good conduct with remission of part of the prisoner's sentence.

In the 1820s, U.S. prisons adopted either the Auburn system, which required inmates to work and eat together in silence, or the Pennsylvania system, which kept inmates in solitary confinement for both work and meals. As a result of longer sentences and an influx of new immigrants, overcrowding became problematic by the 1860s. The New York Prison Association commissioned Enoch Wines and Theodore Dwight's *Report on the Prisons and Reformatories of the United States and Canada* (1867). Wines and Dwight called for reform of the entire prison system because, according to their investigation, not a single institution was pursuing the reformation of its inmates. They criticized the use of cruel and degrading corporal punishment as a disciplinary measure, the lack of staff training, and the lack of centralized prison supervision. Recommendations included training of guards, establishment of educational programs and vocational training for inmates, and purposeful inmate preparation for release. The resulting prison reform emphasized rewards for positive inmate behavior, abolished corporal punishment as a disciplinary measure, and established indeterminate sentences that allowed for early release on parole compared to previously immutable sentences.

Reports on Prison Conditions

Reports on prison conditions have been compiled since the late 18th century, and many of them have triggered prison reform. Since 1980, the U.S. prison population has increased dramatically, reaching approximately 2.3 million by 2009—the highest documented incarceration rate in the world. During the same time, the average

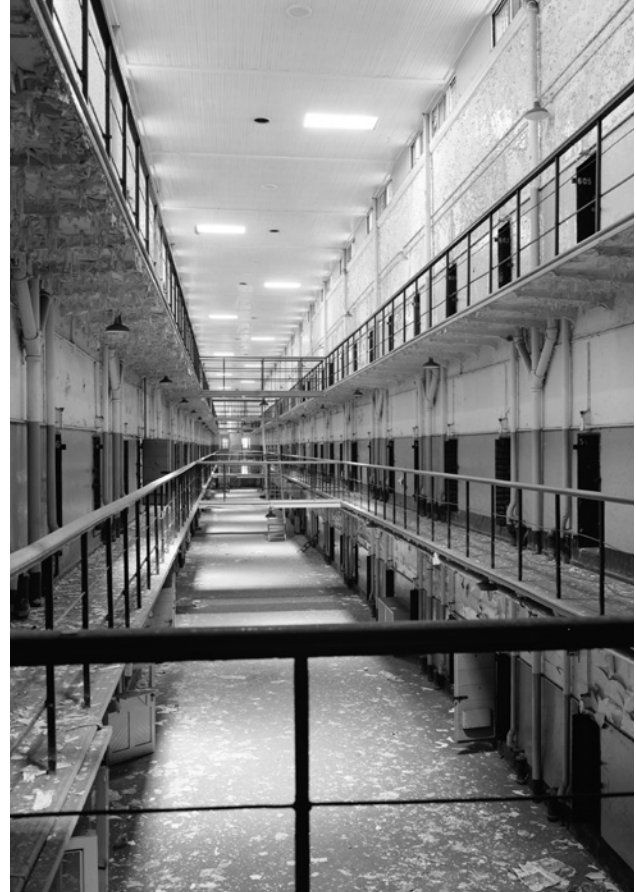
Despite various reform efforts, a report compiled by the President's Commission on Law Enforcement and Administration of Justice 100 years later (1967) was characterized by the same keywords as its predecessors: prison overcrowding, brutal and degrading treatment of inmates, and poor preparation for reintegration upon release. Since that time, the prison population has risen steadily. Incarcerating more offenders for longer periods, the United States faces the challenge of detaining an increasing number of inmates in constitutionally adequate conditions.

Constitutionally Adequate Prison Conditions

Constitutional standards for adequate prison conditions are framed through the Eighth Amendment to the U.S. Constitution, which prohibits the infliction of cruel and unusual punishment. State and federal courts have addressed several questions on which conditions of imprisonment constitute cruel and unusual punishment. Before 1970, courts only assessed specific acts committed against individuals. For example, the Supreme Court ruled in *Estelle v. Gamble* (1976) that staff's deliberate indifference to prisoners' serious medical needs violates the Eighth Amendment. In *Hudson v. McMillian* (1992), it held that using excessive physical force against an inmate may constitute cruel and unusual punishment even if the prisoner's injuries are minor.

Since *Holt v. Sarver* (1970), more complex cases have challenged the constitutionality of entire prison structures. Broad remedial orders have been imposed in more than 24 jurisdictions directing prison administrations to ameliorate prison life. For example, in *Plata v. Schwarzenegger* (2005), the Californian Prison Health Care System was found to be in violation of the Eighth Amendment and was put under receivership after the court determined that one inmate died every week as a result of medical maltreatment.

The basic standards applied by courts to the question of constitutionally adequate prison conditions have been summarized by William Danne as including (1) conditions that are of such inherent cruelty that no inmate conduct can warrant it, (2) conditions that are abhorrent to contemporary society, and/or (3) conditions where punishment for prison disciplinary purposes is excessive. These standards generally allow prison guards



A cellblock in the Philadelphia County Prison. The Philadelphia Prison System is the birthplace of modern corrections, beginning with the city's first jail, a seven-by-five-foot cage built in 1683 to detain "miscreants," expanding to houses of correction by 1721.

to use reasonable force in order to protect themselves or other inmates from attack or to enforce compliance with orders from staff. The standards prohibit the denial of essential medical care, shelter, clothing, bedding, basic hygiene implements, and nourishment. However, solitary confinement, forced labor, bodily searches, and failure to provide inmates with rehabilitative programs have not been considered to constitute cruel or unusual punishments unless they violate one of the basic standards discussed above.

The standards set forth by U.S. courts provide a point of reference for governmental agencies' reporting on prison conditions, as well as for state and federal court decisions in cases of inmate litigation. However, reports from nongovernmental agencies also frequently refer to the United

Nations Standard Minimum Rules for the Treatment of Prisoners (UN Minimum Rules). While these rules are not legally binding, and therefore are not applicable to U.S. courts, they nevertheless provide guidelines specifying what is generally accepted as good practice in the treatment of prisoners.

Reports on Conditions in Supermax Facilities

The first supermax prison was created at the Federal State Penitentiary in Marion, Illinois. Following a series of violent incidents, including the murder of two guards in separate incidents on the same day in 1983, the prison went on permanent lockdown—prisoners remained in their cells except for isolated exercise. As this reportedly resulted in a safer prison environment, other jurisdictions started adopting supermax facilities. By 2000, the Federal Bureau of Prisons and at least 40 states had built various forms of supermax prisons. Today, more than 20,000 prisoners are held in state or federal supermax facilities in the United States.

Labeling this process “Marionization,” Human Rights Watch (HRW) published its *Report on Prison Conditions in the United States* in 1991. This report was based on interviews with inmates, former inmates, prison advocates, lawyers, relatives of current inmates, and correctional officials in more than 20 jails and prisons. Supermax facilities in particular were criticized in respect to human rights abuses. Violations of the UN Minimum Rules evidenced in the HRW report were numerous. The rules require at least one hour daily outdoor exercise, yet prisons such as the Florida State Prison at Starke had a windowless wing where inmates were confined 24 hours a day, some for several years. In the Disciplinary Segregation Unit at Oregon State Penitentiary in Salem, the use of so-called “strip status”—where prisoners are stripped of all clothing, cell items, and personal possessions and can only “earn” them back bit by bit demonstrating good behavior—was frequently imposed as a disciplinary measure. Strip status is seen as violating the UN Minimum Rules, which entitle prisoners to clothing and bedding and prohibit degrading punishment. In the same prison unit, observers reported witnessing the use of handcuffs as a disciplinary measure; collective punishment; and the ordering

of undesirable, unpleasant work as a means of punishment, all of which are prohibited by the UN Minimum Rules.

The HRW report concluded with recommendations on how to address such violations. First, it suggested that supermax facilities should only be used under independent supervision from correctional administration. Second, the report proposed that physical restraints, collective punishment, and denial of access to reading material, a table and chair in prison cells, outdoor time, and contact visits should never be used as disciplinary measures. Third, the report proposed an end to the mixing of nonviolent offenders with dangerous criminals. Last, the report recommended that the U.S. Department of Justice publish an annual report on violence in prisons and jails to protect inmates against violence from other inmates and to examine the conduct of officials in institutions where repeated incidents of violence take place.

The *Report on Prison Conditions in the United States* was followed by other HRW reports on individual supermax facilities. The report *Cold Storage: Super-Maximum Security Confinement in Indiana* (1997) took a critical view of the use of solitary confinement for mentally ill inmates. The report *Red Onion State Prison: Super-Maximum Security Confinement in Virginia* (1999) detailed how the state of Virginia randomly subjected inmates with low security risk to the strict conditions of supermax facilities, primarily in order to utilize their excess capacity. In its 2011 annual report, Amnesty International condemned conditions in U.S. supermax facilities for reasons similar to those addressed by HRW, highlighting that these conditions are in some cases imposed for years on individuals awaiting trial, which may affect their health and ability to assist in their defense.

However, reports on prison conditions are not only gathered by nongovernmental organizations. Reports are also heard before courts through testimony of expert witnesses, whose observations are included in the courts’ decisions and thus attain the status of factual evidence. Contrary to conventional reports, which can only offer recommendations for action, evidentiary reports can directly impact judicial decision making and render enforceable action. Expert witnesses’ reports on prison conditions in the United States before

the European Court on Human Rights have prevented the extradition of a number of people for whom a warrant existed and who were likely to face incarceration in supermax prisons. The European court argued that current prison conditions violate Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which states that no one shall be subjected to torture or inhuman or degrading treatment or punishment.

Reports Addressing Prison Rape and Sexual Abuse

Prison rape has long been part of the prison mythology. It has become a common feature in the portrayal of prison life in popular media. Society has even tacitly condoned prison rape when incarceration is imposed on notorious offenders, particularly sex offenders. However, it has only been with the massive growth in prison populations that the problem of prison rape has become a public one, in part because of the rise in the rates of nonviolent offenders, and in part because of the increasing awareness that official rates of sexual assaults in prisons do not reflect the reality of this type of violence.

In 1996, HRW published *All Too Familiar: Sexual Abuse of Women in U.S. State Prisons*, a report focusing on sexual violations by male staff against female prisoners. The organization followed up with *Nowhere to Hide: Retaliation Against Women in Michigan State Prisons* (1998), a report documenting widespread sexual abuse of female inmates and exposing retaliatory punishment of prisoners who reported such abuse. In the same year, Amnesty International released its report *Not Part of My Sentence: Violations of the Human Rights of Women in Custody*, which confirmed that sexual abuse of female inmates by male staff is commonplace and uncovered that staff found guilty are often retained and transferred to other prisons. Arguably the most influential report, *No Escape: Male Rape in U.S. Prisons*, was released by HRW in 2001. Based on a survey of 34 prisons, including testimony of more than 200 victims, the report illustrates that rape and sexual slavery are commonplace in U.S. prisons. A culture of indifference and ignorance as well as the lack of empirical data on the subject were identified as the main causes for the persistence of

prison rape. Through extensive media coverage of this report, the taboo subject of prison rape was introduced to the public.

Prison officials and the U.S. government, who had long described the problem as minimal, were obligated to formally address the issue. *No Escape: Male Rape in U.S. Prisons* was a primary driver in the passage of the Prison Rape Elimination Act of 2003. As called for in the legislation, the National Prison Rape Elimination Commission (NPREC) was established to study the causes and consequences of sexual abuse in U.S. prisons and to develop mandatory nationwide standards for correctional facilities in order to eliminate prison rape through prevention, detection, and punishment of sexual abuse in confinement.

The NPREC published its report in 2009. Conducting a survey of more than 63,000 inmates in more than 400 prisons and jails, the report found that an estimated 60,500 inmates were sexually abused annually. Notably, more inmates reported abuse by staff than by other prisoners. The NPREC found that some of the abuse prevalent in women's prisons was facilitated through prison policies on regular pat-down searches for weapons, drugs, and other contraband by staff of the opposite sex.

The NPREC suggested that every correctional facility should have a written zero tolerance policy for all forms of sexual abuse. It also recommended that staff receive extensive training on how to prevent sexual abuse and how to respond when it has occurred. Meanwhile, prisoners should be educated about their right to be safe. To prevent sexual abuse, the NPREC suggested offering competitive compensation packages to recruit and retain appropriate staff. It also recommended the supervision of staff and prisoners at all times (especially cross-gender supervision in women's prisons) and the improvement of reporting procedures. Acknowledging that some inmate groups have features that make them more vulnerable to sexual abuse than others (e.g., young people, women, homosexuals, transgendered individuals, and people with a mental disability or illness, a lack of experience in correctional facilities, or a history of sexual victimization), the NPREC proposed that such features be taken into account and be the nationwide driver for decisions about inmate housing and programming. In the event

of sexual abuse, the NPREC recommended that investigations should be conducted thoroughly and competently, that perpetrators should be held accountable through administrative sanctions and criminal prosecution, that staff members who have engaged in sexual abuse not be hired or retained, and that victims receive immediate and ongoing medical and mental healthcare to minimize trauma.

The commission also regarded the lack of any empirical data collection that may reveal patterns of abuse and a lack of rigorous internal monitoring and external oversight as contributors to the persistence of prison rape. To this end, the report recommended standard audits by independent auditors on a three-year cycle. Finally, the NPREC report criticized the restrictions of the Prison Litigation Reform Act (PLRA). The PLRA was enacted in 1996 to reduce the strain on the judicial system by inmate litigation. Two requirements made it difficult for inmates to pursue lawsuits involving complaints about their treatment in prison. First, inmates are required to exhaust internal administrative remedies before their claims can proceed to court. Second, inmates are required to prove physical injury to receive compensation. The NPREC suggested amending the exhaustion requirement; however, it did not specify what these modifications should be. Furthermore, it recommended changing the second requirement as it fails to acknowledge emotional and psychological injuries caused by sexual abuse.

In its *World Report 2011*, HRW noted that even 17 months after the NPREC provided its report, the attorney general had not promulgated nationwide standards, although prison rape remains commonplace.

Reports on Prison Overcrowding

Every prison facility is built with a design capacity in mind, in particular, the number of beds and inmates it can accommodate. In an effort to house increasing numbers of inmates, however, many prisons now routinely fill their gymnasiums and classrooms with bunk beds—a trend commonly referred to as the “warehousing” of prisoners. Conservatively defined, overcrowding occurs when the prison population exceeds 100 percent of the facility’s design capacity, but other factors like number of staff and available programs and



Twenty-first-century prison overcrowding in California, where prisoners are stacked three high on triple bunks in what was the gymnasium at Solano Prison in Vacaville, California.

services (operational capacity) also influence the overall capacity of a prison. In 2008, the Bureau of Justice Statistics found that federal facilities operated at 135 percent of capacity, and 18 states worked at or above 100 percent capacity. Applying the conservative design capacity above as a measure, some facilities were found to be operating at well over 200 percent capacity.

In 2006, the privately organized Commission on Safety and Abuse in America’s Prisons published its report *Confronting Confinement*. This report was not commissioned by a governmental agency but was initiated by the commission’s co-chairs, former Attorney General Nicholas Katzenbach and former Federal Appeals Court judge John Gibbons. Overall, the report covered four areas of concern: (1) the dangerous conditions of confinement, including violence, poor health-care, and inappropriate solitary confinement; (2) the challenges facing labor and management; (3) weak oversight of correctional facilities; and (4) serious flaws in the available data about violence and abuse. The report concluded with a number of recommendations; however, overcrowding was identified as the number one cause of prison violence, and therefore the report insisted that crowding must be reduced to a level that ensures safety for inmates and staff.

Reports on overcrowding have also been received by courts. Upholding a district court decision, the Supreme Court made a landmark decision in *Brown v. Plata* (2011). It ordered the state of California to reduce its overall prison population to 137.5 percent of design capacity within two years. To achieve the reduction and remedy the presently occurring Eighth Amendment violations, the court mandated that California either increase capacity via new prison construction or release prisoners through parole or sentencing reform. The Supreme Court based its decision on testimony by expert witnesses, who detailed major deficiencies in healthcare provision, including understaffing of medical personnel, inadequate housing for disabled and elderly inmates, lack of basic medical equipment and medications, and the general abysmal state of prison medical facilities. Witnesses also described the impact of overcrowding on the existing medical conditions. Overcrowding had increased inmate violence and the rate of infectious diseases. This situation put medical and correctional staff into a constant state of crisis, which made retaining—let alone hiring—staff extremely difficult. Increased inmate violence caused more lockdowns, which in turn impacted the provision of medical care. In consideration of these reports, the Supreme Court concluded that prison overcrowding promotes violence and results in significant and chronic understaffing of medical personnel with the effect of significant delays in treating prisoners. Thus, the Supreme Court stated that overcrowding is the primary cause of systemwide Eighth Amendment violations.

Conclusion

Contemporary reports on prison conditions have largely been initiated and published by nongovernmental organizations. Findings and recommendations of these reports have subsequently been validated through governmental reports, official statistics, and reports before the Supreme Court and the European Court on Human Rights. All reports stress the importance of reducing overcrowding, preventing sexual abuse, and limiting long-term solitary confinement. They also bring attention to the fact that the majority of inmates will be released at some point in the future, and that the treatment they have experienced in prison

will have an effect on the communities they are returning to.

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See Also: Chain Gangs and Prison Labor; Federal Prisons; Prisoner's Rights; Punishment Within Prison; Supermax Prisons.

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Retributivism

Retributivism is a theory of justice that applies to the provision of rewards and punishments to someone based on their actions. A reward or punishment is retributively just if it is based on what the recipient deserves. People should receive their due, their "just deserts." Retributivism is not a comprehensive or exclusive theory of justice, because goods may be justly distributed on many other bases, such as one person one vote, to each according to his needs, and maximizing utility, and retributivists may well accept one or more of these principles as appropriate in many circumstances. But when the authority, whether a parent, employer, military commander, or criminal court, understands itself to be rewarding or punishing an individual for his conduct, retributivism insists that it be based on, and proportional to, the actor's desert. A retributivist might

say that his theory is implicit in the very words *reward* and *punishment* and argue that the words are being misused if applied to distributions not based on just deserts.

Retributivism is best seen as a particular application of the deontological claim, which holds that some acts are themselves right or wrong, independent of whatever outcomes they produce; the ends do not always justify the means, because acting justly is more important. The best example of a deontological proscription is the celebrated transplant hypothetical: everyone agrees that it is immoral for a doctor to kill a healthy person in order to distribute his organs to five desperate transplant candidates, even though her act of killing would save five lives at the cost of one. The deontological view prohibiting undeserved punishment and mandating deserved punishment is more commonly known as retributivism. Although retributive justice may be applied to rewards and punishments generally, the theory is especially important, and most commonly invoked, in the context of a state's criminal punishment.

Retributivism as a Theory of Criminal Justice

Because criminal punishment constitutes the deliberate infliction of suffering on an individual, imposing a punishment must be justified, and according to retributivism, punishment is justified only if two elements are present. For any particular sentence to be deserved, and therefore retributively just, (1) the defendant must be blameworthy for his conduct, and (2) the sentence must be proportional to the degree of his blameworthiness. Therefore, despite its harsh colloquial connotation, retributivism serves to limit punishment as well as justify it: Under these two principles, punishment may not be inflicted on the innocent, or the guilty beyond their desert, even if doing so would achieve a greater good for others. The retributivist formula for criminal punishment is a matter of justice, not vengeance; revenge may be what a victim wants, but psychological satisfaction to the victim is merely incidental.

Utilitarianism provides the chief rival justification for criminal punishment, and what counts as utilitarian justification is opposed in almost every respect to the retributivist one. Where retributivism finds punishment justified because criminals deserve to suffer, utilitarians find punishment

justified only by the societal benefits it will produce, particularly in the form of crime prevention through its deterrent, incapacitative, norm-reinforcing, or rehabilitative effects; therefore, retributivism will likely mandate the acquittal of an insane compulsive killer as not responsible for his actions, while utilitarianism will likely justify imprisonment to prevent further killings. Where retributive punishment looks backward to past wrongful conduct, utilitarian punishment looks forward to its effects. Where retributivism is concerned only with individual fairness and depends for its force on a normative assertion, utilitarianism is concerned only with collective benefits and depends for its force on empirical proof of efficacy.

But to remove desert from the punishment equation (as utilitarians do except to the extent that a desert-based system will increase future utility) leaves any criminal justice system unmoored from some of the most deep-seated moral convictions. Absent countervailing utilitarian considerations, utilitarianism would presumptively justify such blatantly unfair state actions as imprisoning individuals who have committed no crimes when their personal characteristics predict such activity, as may be the case with the class of unemployed, impoverished, and addicted male school dropouts; demolishing the family homes of suicide bombers because it might be one of the few ways to deter terrorists willing to kill themselves; and finally, the execution of an innocent person if it would deter more killings than the one it inflicts. Retributivism seems to be the only theory of criminal justice that can explain why such acts are unacceptably immoral.

In recent decades in the United States, retributivism seems to have gained ascendancy over its utilitarian rival. In 2011, the influential 1962 Model Penal Code, a project of the American Law Institute (ALI) intended to influence and reform criminal codes, was the subject of an ALI reexamination designed to better reflect the retributive philosophy. Yet, despite its common-sense appeal, retributivism is notoriously difficult to apply in practice, whether that involves the judicial imposition of a sentence or the legislative drafting of a criminal statute. To do so, authorities must discern more precisely what it means for a person to be "blameworthy" and for a punishment to be "proportional" to his or her blameworthiness.

Blameworthiness

To be blameworthy is to commit some wrongful act, having freely chosen to do so with some level of ill intent. That the conduct be wrongful (harmful or threatening harm to others, or immoral albeit victimless) is a prerequisite to deserved punishment, arguably with the exception that violating a duly passed law, in itself, should not qualify as the kind of wrongful conduct that suffices. Otherwise, any criminal law regime would be self-justifying, so that criminalizing singing would justify punishing a yodeler, and the wrongfulness prerequisite for criminalization and punishment would be illusory. It is the requirement that the defendant have freely and intentionally chosen to commit the wrongful act that is much more difficult to apply. American criminal law generally requires that the defendant's act must be a product of his will (rather than, for example, a seizure or an act during sleepwalking) and was committed with some kind of ill intent. In American jurisprudence, both

a willed act (*actus reus*) and guilty mind (*mens rea*) are generally required.

The problem is that it is perfectly possible for someone to choose to act, and to do so with ill intent but without the freedom of choice that is essential for blameworthiness. Imagine a drug addict who intentionally purchases heroin but whose addiction was itself acquired through medical treatment after a car accident. Many would characterize his choice to buy heroin and the intent accompanying it compelled, not free, the product of bad luck, of circumstances beyond his control. If so, the idea that this person deserves to be punished is undermined.

The U.S. Supreme Court was on the verge of finding a free will requirement in the Eighth Amendment to the Constitution in the 1962 case of *Robinson v. California*, 370 U.S. 660, but retreated soon afterward, concerned with the imponderables of free will. To philosophical determinists, every choice and state of mind is unchosen, however it



The retributivism theory holds that criminal punishment is justified only if the defendant is blameworthy for his or her conduct and that the sentence imposed must be proportional to the degree of the criminal's blameworthiness (having chosen to commit an act freely with ill intent). The retributivist formula stresses criminal justice over vengeance or revenge.

may seem to the actor, due to the prior unchosen causes that produced them. On this account, the free choice that seems necessary to deem someone blameworthy dissolves into a matter of bad luck, the antithesis of free choice. The solution in American jurisprudence is to carve out the most obvious cases of compulsion like insanity and duress, while presuming free will as the norm. But even if this kind of total determinism is rejected as false, science keeps discovering new unchosen antecedents for acts and thoughts, and thus where to draw a line between freedom to choose and its absence is always unstable and almost infinitely contestable. What, for example, should a retributivist make of the fact that the large majority of child abusers were themselves abused as children? Or of the oft-stated claim that poverty causes crime? It seems retributively unjust to blame an offender whose choices are thought to result not from his blameworthy choice but from such unchosen prior influences as poverty, psychological makeup, or genetic infirmities that led to that choice.

Moreover, while retributivism generally corresponds to intuitive moral convictions, in some instances it does not. Imagine two people, both driving home drunk but only one of whom kills a pedestrian. There appears to be no difference in their respective blameworthiness; the difference is a result of bad luck. Yet, most people would demand greater punishment for the one who kills, and most criminal codes adopt the position that results, even if fortuitous, count. Drunk driving is punished less severely than vehicular homicide, and attempted murder is typically punished less severely than a successful murder.

Proportionality

The second requirement and dilemma for retributively just punishment concerns not whether to punish but how much. “The punishment must fit the crime,” which to a retributivist means it must be proportional to both the gravity of the crime and the degree of ill intent accompanying its commission. On this account, an armed robber should receive a more severe sentence than a pickpocket, and a purposeful killing deserves a more severe sentence than a reckless but unintended one. The U.S. Supreme Court has read a very modest proportionality requirement in the Eighth Amendment, ruling the death penalty

unconstitutional for rape in *Coker v. Georgia*, 433 U.S. 584 (1977) and unconstitutional for juvenile killers in *Roper v. Simmons*, 543 U.S. 551 (2005), and proportionality is key to what lawmakers and judges typically aim to achieve in their fashioning of punishments.

But intractable and inherent difficulties plague this principle as well. Most people may agree that the most blameworthy crimes should receive the gravest punishments, which in most countries means the longest term of imprisonment. But this can’t describe anything about where the schedule of imprisonments should begin or end or how large the range should be; authorities must give retributive sense to a system of rankings with no “anchoring points.” The one retributive version that does have such touchstones is the *lex talionis*, which mandates that the criminal receive the precise suffering he inflicted on the victim, “an eye for an eye, a tooth for a tooth.” But no one regards raping a rapist, or torturing a torturer, as appropriate punishment today.

Even with an objective way to discern the appropriate range of punishments, there would remain the problem of grading between the poles. How many more years should a premeditated killer receive compared to an impulsive killer, if any? Who is more blameworthy, the prosecutor who withholds evidence resulting in an unwarranted conviction or the armed robber? If a fraudulent broker has already suffered the loss of reputation and the revocation of his license, should that amount of suffering be deducted from the degree of punishment or not? The problems of application are endless; retributive theorists have debated for many years whether a defendant whose negligent acts cause unintended harm deserves any punishment, and if so, how much, without settling on any definitive answer to the question.

Why Retributivism Holds That Punishment Must Be Deserved

Retributivism holds that desert is necessary for punishment and in its pure form also holds that desert is wholly sufficient to require punishment. There is great intuitive appeal to this claim, and a retributivist might say that no more is required to support it, that his claim is self-evident. But is there anything more that a retributivist can

say to support the theory? Many philosophers have tried, most notably Immanuel Kant. For Kantians, the retributive principle most centrally embodies respect for the right of autonomous individuals to determine their futures. An individual wills his own punishment by his own blameworthy act, and only by inflicting punishment can the state respect the defendant's own moral choices. Because this view is based on respect for the defendant's autonomous agency, proponents of this view sometimes speak of the right of the criminal to be punished. Another theory also posits that the defendant has a moral right to punishment but traces it to a defendant's right to atone for his crime and thereby restore his standing as an equal member of the community.

Some theories place more focus on the victim's right to justice. On one account, the state has an affirmative duty to punish a blameworthy wrongdoer because he has treated the victim as a mere object of no intrinsic worth, and the state is obligated to repudiate this subjugation by the infliction of punishment. If instead the state does nothing, it leaves the victim an outcast and unrecognized as part of the social compact, thereby reinforcing and joining in the criminal's debasement of his victim. Somewhat related is Herbert Morris's "free-rider" conception, holding that a criminal deserves and must receive punishment in order to redress the unjust advantage over law-abiding citizens he acquired by his crime. The criminal has benefited from the protection of the criminal law but hasn't suffered the burden of self-restraint that others have assumed. By forcing the defendant to suffer a theoretically equivalent burden, punishment restores equality between the criminal and the victim and the proper balance of benefits and burdens that attach to each.

A Variation: Retributivism Reduced to a Limit on Punishment

In its strictest Kantian version, retributivism both prohibits punishment of the innocent and demands punishment of the guilty. But a "softer" version of retributivism exists, which holds that punishment of the guilty is merely permissible, not mandatory; desert then becomes a necessary but not sufficient condition for punishment. How can this version be justified, and what is the criterion by which the state is supposed to decide

whether to punish or not? This one-way retributivism may at first thought appear to be incoherent. If no one should be punished beyond what he deserves, how can someone who does deserve punishment need not receive it? To say A deserves B seems to mean that A should receive B, at least in the absence of a stronger countervailing reason. Yet, the soft retributive version has an appeal that neither strict retributivism nor strict utilitarianism has alone: it jettisons the most undesirable aspects of both the former (which mandates an offender's suffering even when useless) and the latter (which may authorize the scapegoating of an innocent if socially useful). What remains is an account that combines the overwhelming moral truth that it is unjust to punish the innocent and the humane directive to impose punishment only when something would be accomplished by doing so.

One might see soft retributivism as a kind of forfeiture theory in which a person who engages in blameworthy criminal conduct forfeits his liberty right in proportion to his blameworthiness. The state then chooses whether to impose the punishment it now has a right to inflict, and the yardstick by which the state makes this choice is almost certainly going to be the comparative social utility of each option. In that sense, soft retributivism constitutes a mixed theory combining two moral theories that in pure form are irreconcilable. It is the most prominent of several variations that attempt to reconcile retributivism and utilitarianism in the field of criminal punishment and responds to a common, almost universally perceived need: The Rosetta Stone of the substantive criminal law is to find a principled way to reach an accommodation between the preventive goals of punishment and the ethical considerations of fairness.

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See Also: Corrections; Criminalization and Decriminalization; Cruel and Unusual Punishment; Deterrence, Theory of; *Furman v. Georgia*; Incapacitation, Theory of; Rehabilitation; Sentencing; Three Strikes Law.

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Mormon emigrants traveling in covered wagons circa 1879. Members of the Mormon faith were driven out of the midwest and migrated to what is now Utah.

Reynolds v. United States

Reynolds v. United States, 98 U.S. 145 (1879), held that the practice of polygamy (plural marriage) for religious purposes is not protected by the First Amendment's free exercise of religion clause. *Reynolds* was also the first Supreme Court case to interpret the free exercise clause.

The Church of Jesus Christ of Latter-day Saints, commonly known as the Mormon church

after the Book of Mormon, was founded by Joseph Smith in 1830. The church required the obedience of its members because it believed that God commissioned it to establish His kingdom on earth. Mormons voted as a bloc, formed their own militias, and conducted business only with fellow Mormons. Hostile residents ran Mormons out of Illinois and Missouri. Mormons finally migrated to the desert of what would become the Utah Territory. The Mormon church in the 19th century taught that it was a divine duty for a Mormon male to have more than one wife if he could afford it. About one-quarter of all Mormon families were polygamous. National outrage at the practice resulted in four federal laws challenging the practice. Six American presidents actively campaigned against polygamy. By the 1850s, tensions between the federal government and the Mormon establishment escalated into the Mormon War. President James Buchanan declared martial law and sent 3,000 troops to Utah to put down what he perceived as a rebellion. Mormon leader and territorial Governor Brigham Young

called upon his followers to fight federal troops. About 150 people died during the year-long war. The Mormons eventually surrendered but continued to practice polygamy.

President Abraham Lincoln signed the Morrill Anti-Bigamy Act in 1862, making polygamy a federal crime. Enforcement of the law had to wait until after the Civil War. Confident that the act was unconstitutional, Mormon leaders asked George Reynolds, a devout Mormon married to two wives, to challenge the law. Reynolds contended that his plural marriage was sanctioned by his religious faith and that the law infringed on his constitutional right to freely exercise his religion. Moreover, plural marriage posed no threat to the public. The trial judge instructed the jury not to accept religious duty as a ground for acquitting Reynolds. The jury found him guilty and sentenced him to two years in prison and a \$500 fine. The territorial supreme court affirmed his conviction. Chief Justice Morrison Waite, speaking for a unanimous U.S. Supreme Court with Justice Stephen Field concurring, asked whether a religious belief could justify an “act made criminal” in federal law. While conceding that the government has no authority over religious opinions, Waite held that Congress could regulate actions that violated community norms and threatened public order. Calling a behavior “religious” does not make it immune from government regulation. Reflecting beliefs of the time, Waite argued that not only did polygamy violate the law of every state, it was also an affront to democracy itself. Democracy depended on monogamy. Polygamy leads to patriarchy, and patriarchy threatens democracy.

Reynolds served 18 months in prison. At least another 1,000 Mormon men were convicted for polygamy during the decades following *Reynolds*. Mormons ignored the federal ban on polygamy until the federal government began to confiscate church property and ordered the church dissolved. The Mormon church renounced polygamy in 1890. Utah became a state in 1898. In 1984, federal courts reaffirmed *Reynolds*’s central holding that the First Amendment does not protect polygamy. However, Supreme Court decisions in cases such as *Cantwell v. Connecticut* (1940) and *Wisconsin v. Yoder* (1972) extended some protection to sincerely based religious

conduct. These cases rejected *Reynolds*’s simple distinction between belief and action. The First Amendment protects not only religious beliefs but also “the free exercise [action]” of religious beliefs. Recent cases such as *Employment Division v. Smith* (1990) have held that so long as the law does not target religious groups, the government can burden religiously motivated conduct. The debate over the government’s authority to outlaw plural marriages between consenting adults continues. As the portion of the Muslim population in America grows, there may be a second confrontation between the state’s secular interest in prohibiting polygamy and the Muslim doctrine of plural marriages.

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See Also: Bigamy/Polygamy; Religion and Crime, History of; Utah.

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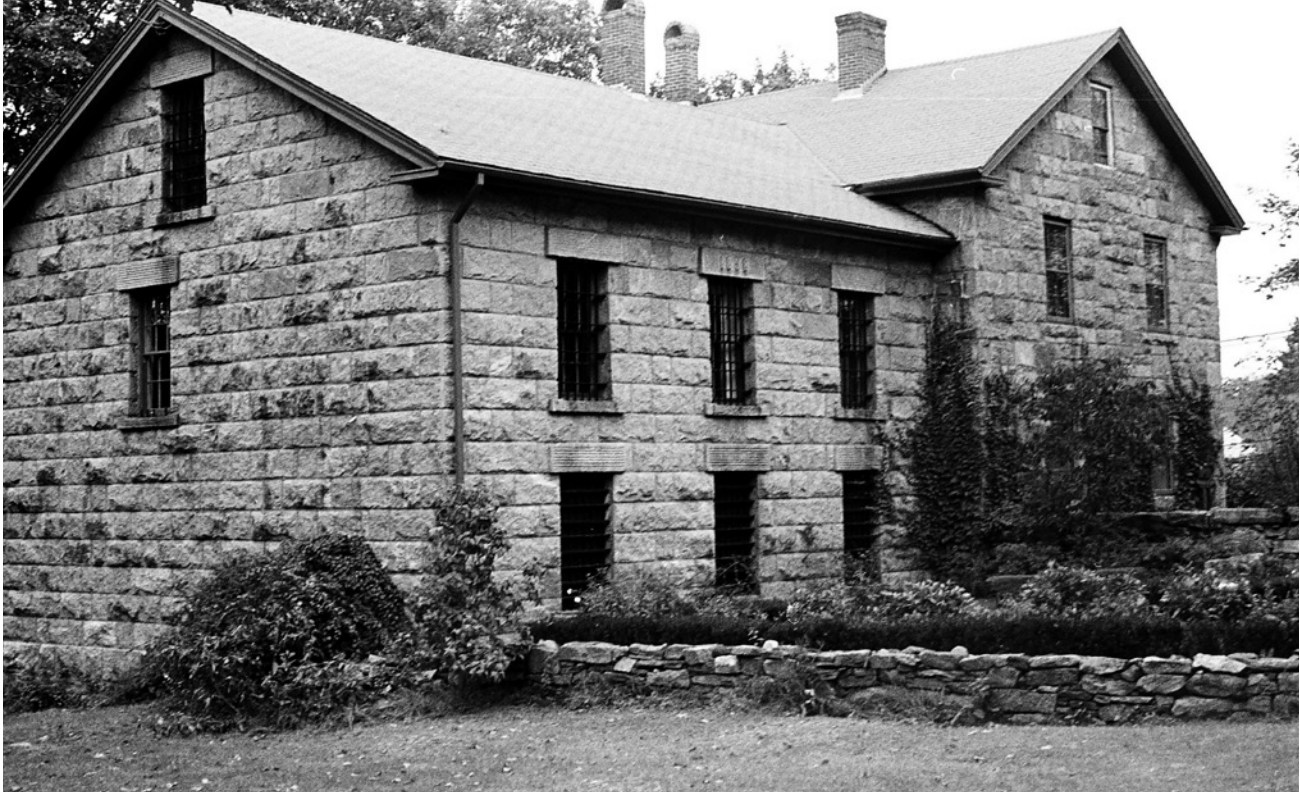
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Rhode Island

One of the original thirteen colonies, Rhode Island is the smallest state but, thanks to the Providence metropolitan area, is the second most densely populated. It has the distinction of being the only predominantly Catholic state in the country, as well as having the highest percentage of Portuguese Americans.

Police and Punishment

The Rhode Island Sheriff’s Department, a statewide law enforcement agency, is one of the oldest law enforcement agencies in the country, having been established in 1663. Organized by county, the sheriffs are responsible for judicial and courthouse security, the transport and custody of inmates and detainees, and the execution of writs



The Pettaquamscutt Historical Society in Rhode Island bought the Washington County Jail from the state to use as its headquarters in 1960. The current stone building, constructed in 1858, replaced a wooden structure with three-foot-wide outer walls buried three feet in the ground, stone ceilings, and cell doors and outside windows made of heavy iron. It was considered more humane than the previous wooden jails that had almost no ventilation and were infested with bugs and other vermin.

and civil processes. When initially established, their responsibilities were broader, until the organization of modern police forces in Rhode Island's cities and towns in 1864 and the creation of the Rhode Island State Police. The Rhode Island State Police was founded in 1925, earlier than that of many states, and was based on the Pennsylvania State Police. While many state police organizations originated as highway patrol units and were given broader powers around the time of World War II, Rhode Island's state police were—like Pennsylvania's—intended from the start to be a highly organized statewide law enforcement agency, with captains and lieutenants paid professional wages and a superintendent, serving a five-year term, given broad powers.

The Rhode Island State Police and the Rhode Island Sheriff's Department were both originally part of the Department of Administration. In 2008, a new bill reorganized Rhode Island law

enforcement, creating the Department of Public Safety, consisting of six agencies: the Rhode Island State Police, the Division of the State Fire Marshal, the 911 Uniform Emergency Telephone System, the Capitol Police, the Municipal Police Training Academy, and the Public Safety Grants Administration Office. The state police superintendent became the commissioner of the new department, with his successors to be appointed by and to serve at the pleasure of the governor.

Because of its small size, Rhode Island did not build a state prison until 1838, relying for more than 200 years on town and county jails. In the colonial era, other forms of punishment were used to avoid the cost of incarceration to the colony whenever possible, including corporal punishment, the stocks, and fines. As corporal punishment began to be phased out, incarceration was necessary more and more often. The first building used as a prison proved to be unsuitable

and was replaced in 1869 by the facility that came to be known as the State Farm, in the village of Howard. It was managed by the state until 1920 and included not only the State Workhouse and House of Corrections but the State Hospital for the Insane, the State Almshouse (which became the State Infirmity after 1917), the State Prison and Providence County Jail (managed with Providence County), and two juvenile facilities, the Sockanosset School for Boys and the Oaklawn School for Girls. The State Workhouse was a mixed-sex facility until 1924, when it became the State Reformatory for Women, eventually closing in 1968. The State Prison and Providence County Jail became the Adult Correctional Institution and remains in operation, occasionally housing federal inmates.

Rhode Island was one of the first states to abolish capital punishment. While 52 executions had been conducted from 1673 to 1845, most of them in the colonial era, the legislature voted to abolish capital punishment for all crimes except murder and arson in 1844. Rhode Islanders had spent several years considering abolishing capital punishment altogether, but Amasa Sprague, the brother of former Governor William Sprague, was murdered on New Year's Eve, 1843, in a dispute over the renewal of a liquor license.

The desire to see Sprague's death avenged influenced the legislature's preserving the use of the death penalty for murder, and John Gordon was executed on Valentine's Day, 1845. Arguments over Gordon's trial and the duo's involvement in the labor movement contrasted with the perception of Sprague as a powerful industrialist persisted for years, and eventually the legislature was persuaded to abolish capital punishment entirely in 1852.

An 1872 provision reintroduced the death penalty for murders committed while already serving a life sentence, but no one was ever executed under it. A century later, the law was broadened to make mandatory the death penalty for a murder committed by an incarcerated inmate, but the Rhode Island Supreme Court ruled it unconstitutional. After several suggestions for redrafting the law, in 1984, the legislature voted to simply remove it entirely. There have been many attempts since to reinstate the death penalty, but none have succeeded.

Crime

Rhode Island is home to what is, in the 21st century, the most active organized crime family outside New York City: the Patriarca crime family, named for its third and most successful leader, Raymond "Il Patrone" Patriarca. Originating in Boston in 1916 under the leadership of Gaspare Messina, the organization that became known as the Patriarca family relocated to Providence when Il Patrone inherited the reins after Messina's successor, Phil Buccola, retired to Sicily in 1954. Patriarca owned a vending and pinball machine distributorship in Providence, from which he ran his criminal operations; associates called it "The Office." He quickly established the family's exclusive claim on criminal activities in New England and formed alliances with New York crime families in order to help him preserve his territory. Underbosses were set up in major sites outside Rhode Island, most notably Boston; it is somewhat counterintuitive to think that Mafia interests in Boston, with a metropolitan population some four times that of the entire state of Rhode Island, were controlled from a small city an hour away.

The Patriarca interests in Boston were impacted by the 1960s ramp-up of federal investigation into organized crime, spearheaded by Attorney General Robert F. Kennedy, and by the increasing strength of non-Italian gangs, especially Irish American and foreign drug cartels. While the overall power of the Patriarcas declined, the syndicate's hold on Rhode Island never weakened. Il Patrone died of a heart attack in 1984, not long after being arrested for the murder of a suspected informant. Incarcerated Jerry Angiulo, Patriarca's Boston underboss, openly sought the leadership of the family, but Il Patrone's son Raymond Patriarca, Jr., was ultimately given the reins. His leadership proved to be weak and ended in 1990 when he and 20 family leaders and associates were arrested on a variety of racketeering and other charges; a series of trials included as evidence a video of a Mafia induction ceremony. Nicholas Bianco, the Providence underboss and a former Colombo family capo, succeeded Patriarca Jr. briefly before being incarcerated as part of the same investigation.

Boston underboss Frank Salemme took over after Bianco and moved the family to Boston

amid internal warfare that continued throughout the 1990s. The Providence operations remain involved in gambling, narcotics, and other endeavors, and the family has broadened its crimes to include Internet scams, credit card fraud, and securities fraud.

The crime rate in Rhode Island is lower than that of the country as a whole, about 256.6 violent crimes per 100,000 inhabitants in 2010. Slightly higher now than before the financial crisis of 2008, the crime rate has otherwise been on a general decline since the peak of 462 in 1991, which was reached after decades of gradual increase. Aggravated assault makes up more than half of the violent crimes. The murder rate (2.8 in 2010) is roughly half of the national average (5), while the commonality of rape (28) is about the same.

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See Also: Boston, Massachusetts; Organized Crime, Contemporary; Organized Crime, History of.

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Ricci v. DeStefano

Ricci v. DeStefano is a U.S. Supreme Court decision involving claims of reverse discrimination against white firemen in New Haven, Connecticut, during the promotional process. The case garnered national attention during Supreme Court Justice Sonia Sotomayor's confirmation hearings in 2009. The Supreme Court ruled that statistical racial disparities in testing do not allow employers to use race-based criteria in employment decisions. Although provisions of both Title VII of the Civil Rights Act of 1964 (prohibiting employment discrimination based on race, color,

religion, sex, or national origin) and the equal protection clause of the Fourteenth Amendment could be analyzed, the court exclusively examined the Title VII argument.

The Facts

The case was filed by firemen who stated that they were denied promotion within the fire department because of their race. The petitioners, mostly white firemen, took a promotional exam in late 2003 but were not certified because of the low passing rate of minority test takers. The controversy revolved around the validity of the promotional exam. The exam process consisted of two elements: a written and an oral examination. The written exam was produced by



The white firefighters in the Ricci v. DeStefano suit claimed they were experiencing reverse discrimination for promotions due to statistical racial disparities during promotion exams.

a company specializing in such exams, using both industry and departmental standards. To correct for potential bias, the exam was pretested on a nationwide sample of firemen, including a large number of minorities. Additionally, the racial composition of each oral examination panel consisted of one African American, one Hispanic, and one white examiner, again by design to minimize potential bias.

The respondents (i.e., the City of New Haven, Connecticut) stated that the exam results were not certified due to the disparate impact on minority test takers, citing evidence that pass rates for whites were more than twice those of minority firemen. Disparate passing rates in conjunction with a clause within the city's charter mandating open positions be filled by one of the top three scoring candidates would have likely resulted in the promotion of disproportionately few, if any, minority candidates. The respondents claimed this showed a disparate impact and that certification of the results was inconsistent with federal law.

The case was originally filed in federal court in 2006, resulting in summary judgment in favor of the city. The petitioners appealed the decision to the Second Circuit Court of Appeals, where in 2008, summary judgment in favor of the city was issued largely on the reasoning of the lower court. The decision was appealed to the Supreme Court, which granted certiorari, largely because the case was not heard before the entire appellate court in 2009.

The Decision

In late June 2009, the Supreme Court, in a 5–4 decision, ruled in favor of the petitioners. The ruling issued by the court contains two important holdings. First, the city's decision to not certify the exam results because whites performed better than minorities without additional reasons violated Title VII. Secondly, the court held that the actions of the city could be justifiable if strong evidence showed the action was taken to avoid disparate impact liability. The city had stated that certifying the results would violate the rights of minority firemen; however, this evidence was insufficient because the court believed any legal actions against the certification would have likely been unsuccessful. The court further

reasoned that the city could have taken any steps to minimize disparate impact prior to administration of the promotional exam; however, after the exam was administered, the city was obligated to certify the results unless disparate impact could be shown.

This case provides little guidance to lower courts with similar cases. The Supreme Court established the standard of avoiding disparate impact liability; however, this standard was never clearly defined. Some courts have used this case to eliminate the use of voluntary affirmative action plans by employers. Although the Supreme Court did not consider the petitioners' equal protection claims, looming questions remain as to the constitutionality of Title VII under the Fourteenth Amendment. This point was raised in a concurring opinion and may force this issue to be revisited in the future.

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See Also: Bill of Rights; Civil Rights Laws; Equality, Concept of.

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Riots

Riots are inherently political, not only in the moment of their eruption but also in the social drama that follows as interested parties contest

conflicting interpretations of the events. Some street battles that resemble riots superficially are not typically considered riots at all, in part because dominant narratives have assigned to them alternate political definitions, for example, as uprisings, insurrections, rebellions, revolts, or revolutions. Ordinarily, what comes to mind when thinking of riots in the United States are race riots from the time of Reconstruction through the civil rights era, although the history of riots show more diverse motivations. In the contemporary scene, riots have become hypermedia events, and their representations circulate around the world through mass communication outlets, saturating public attention.

Unlike crimes that are defined by a specific act, the legal definition of a riot requires that a general set of conditions met. One person cannot be a riot; commonly, the minimum required for a riot is three people, although that number has changed with time. As the Bill of Rights protects freedom of assembly and freedom of association, there has to be some violent or threatening quality in the collective behavior of the group, transforming its legal status to that of an “unlawful assembly.” What makes a riot distinct from a peaceable assembly is that it is comprised of warring parties that are working in concert to achieve some objective. This is fundamentally different from a group, which by happenstance come to blows, resulting in the destruction of property. It also underscores the inherently political subtext to rioting. Rioters take sides with particular factions, an act that is in itself a public declaration of identity. All riots in American history, and even those violent conflicts given other labels and assigned other meanings are, in addition to destructive and dangerous, also performances of collective identity.

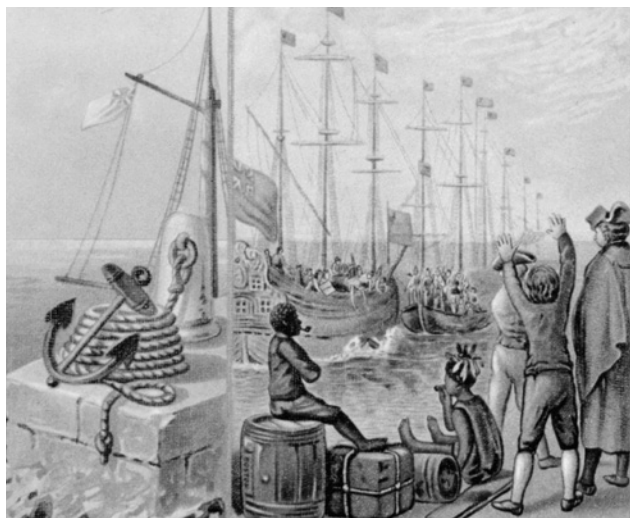
Rioting poses a real or perceived threat of bodily harm or loss of property. Further, throughout history, it has been interpreted as an explicitly moral threat with judgment rendered on riot participants in the public sphere. An etymology of the word *riot* reveals that the moral evaluative function of labeling rioters as such is rooted in the word’s older uses. From this moralizing framework, rioters are considered the same as a mob—a seething mass of people and driven by a “mob mentality.” The mob, in its behavior, acts to the detriment of others, but also against

its own best interests morally. Included among these archaic meanings of *riot* is the sense of acting in an unrestrained and wanton manner, suggestive of individuals who have no self-control or compassion for the well being of others. Clamor, din, and brawl are all synonyms of this form of rioting. It is a state of reckless impulsiveness. In a similar vein, *to riot* has meant to indulge in an excess of luxury, bringing to mind a sinful display of gluttony. Carousal and excess are synonymous with this sense of *riot*; New Orleans during Mardi Gras is a modern day corollary. In both senses, rioters are perceived as deriving pleasure and personal gain from irresponsibility at the expense of others, and this is their principal moral flaw.

Not everyone perceives rioters as morally compromised; some who are sympathetic with the combatants may hold them in high esteem. A different terminology is used by this group who reject the label *riot* because of its stigma in favor of a positive moral evaluation of their actions conveyed by words such as *rebellion*. Objectively, the many violent conflicts not ordinarily considered riots—such as rebellions—do share many of the same characteristics as riots, both physically and legally, if not symbolically.

Early-American Riots

Many instances of protest and armed conflict against the state resemble rioting in important ways. Consider the many colonial uprisings against the British in the run-up to the Revolutionary War, such as the Stamp Act Protests of 1765, which included masses of people in the street, opposing groups taking sides, and the illegal destruction of property. However, these actions are now seen as patriotic acts of rebellion, not as illegal acts resulting in loss of property. From the point of view of the colonial British authorities, something like the Boston Tea Party of 1773, only one instance in a string of collective uprisings around Boston in the late 18th century, was illegal rioting, but from the American present, these events are seen as a formative moment for the nation and are positively evaluated. Similarly, from the colonial era through the Civil War, there were dozens of slave revolts, such as Nat Turner’s Slave Rebellion in 1831, which present many of the same outward appearances of a riot. Slave revolts were illegal, resulting in severe retaliation by property owners



British authorities considered the Boston Tea Party, when colonists dumped British tea into the Boston Harbor in protest of that government's monopoly on tea and its tax on tea from other sources, an illegal riot, rather than a protest.

and the state against African slaves. Today, they are more likely to be read as righteous examples of the oppressed rising up against their oppressors.

The difference between a planned uprising or protest, and a seemingly spontaneous riot, are more apparent than real. A riot appears to be spontaneous primarily from the point of view of those in positions of authority, whereas for the riot participants, whatever event that may have incited their actions may be taken as only the latest event in a long line of grievances that precede the riot. Rebellions and riots are congruent in the ways that they produce meanings, contingent upon historical and cultural contexts, through collective violence.

On the theme of racial violence, some lynchings exhibited many of the same features as riots on the occasions when the lynching party turned against an entire minority community. Lynching was part of a regime of fear and retaliation against minority targets for real or imagined crimes of symbolic importance. These were extrajudicial executions carried out against African slaves from colonial times through the early republic, and against African Americans from Reconstruction through the civil rights era, although there are modern corollaries. Lynching and other acts of collective violence were also carried out against other racial

minorities, most notably in the American west against the Chinese in the 19th century.

Some labor strikes that resulted in armed conflict against strikebreakers or police show some of the same qualities as riots. From miners in Colorado and West Virginia to the Teamsters and manufacturing unions of the midwest and east coast to the Industrial Workers of the World (IWW) protests along the west coast, there were numerous instances when peaceful protest broke down into violence, when hired goons with weapons took on the strikers, or where state authorities intervened with an excessive show of force. The Battle of Matewan in 1920 epitomizes this level of conflict with violent factions warring against the state over labor rights.

Returning now to what might be thought of as genuine riots, there are many different types of conflicts and motivations to consider. Some of the worst riots of the early republic fell along class lines as the exploited took to the streets, directing their anger against the rich. This was the case in the Baltimore Bank Riot of 1835, when thousands of citizens outraged by financial mismanagement at the Union Bank of Maryland ransacked the homes of the privileged and burned their possessions. The Anti-Rent War in 1839 was a similar case of the underclass revolting against the wealthy when tenant farmers in the Hudson Valley rose up against their landlords.

The Anti-Draft Riots of 1863 in New York City were part of widespread resistance to the Civil War in the northern states, but were far more violent and greater in scope than any other U.S. uprising before or since. As potential draftees into the Union Army, working-class men resented that the wealthy could opt out of the conscription lottery by paying a \$300 commutation fee, and Irish immigrants, already in direct competition with blacks for the lowest-paying jobs in the city, were irate at being forced to go to war to fight to free the slaves. Shortly after the names of the draftees were drawn, angry citizens took to the streets—more than 50,000 individuals by some accounts—driving back the police and militias. Some blacks were lynched and Protestant churches were burned, while police stations and the mayor's residence, symbols of the state, were also targeted.

Vigilante mobs can be the perpetrators of rioting violence when citizens feel that the criminal

justice system has failed and it is necessary to take matters into their own hands. Vigilantism may overlap with lynching in some contexts and there is a long and proud tradition of vigilante justice in the American west, but the Cincinnati Court-house Riots of 1884 were an example of how this can turn into a citywide conflagration. Following the sentencing of a murder case that was seen as too lenient, an angry crowd attempted to steal the prisoner from his cell and ended up destroying the city courthouse.

There have been many anti-immigrant riots in American history, most notably against Germans, Irish, Catholics, and Chinese. A slew of anti-immigrant riots are attributed to the Know-Nothings, a splinter group of the Whig Party who advocated American nativism. From 1855 to 1858, there were riots in numerous cities, all attributed to the Know-Nothings. The Orange Riots, which took place in Manhattan in 1870 and 1871, pitted Protestant Irish against Catholic Irish. Along the west coast, a string of riots directed against Chinese immigrant communities commenced in 1871 with the Chinese Massacre in Los Angeles and continued sporadically through the Seattle riot of 1886.

Civil Rights Riots

Riots directed against blacks are a formative part of American history, and one of the most consequential was the Pulaski, Tennessee, riots in 1866, which marked the birth of the Ku Klux Klan. After the U.S. Supreme Court decided *Plessy v. Ferguson*, establishing the constitutionality of racial segregation, violence directed against African Americans continued. A cluster of incidents in 1919 are known as the Red Summer Riots, in which whites attacked black communities in dozens of cities across the United States. These riots were tied to labor disputes and black migration into industrializing areas during World War I. Perhaps the best-known race riot of this era took place in Tulsa, Oklahoma, in 1921, when whites burned more than 1,200 African American homes in what was characterized then as a “Negro uprising.”

The Harlem Riots of 1935 signify a transformation of the structure of American racial violence. An otherwise ordinary encounter between an employee at a five-and-dime store

and a would-be shoplifter proved the catalyst for a community protest outside the store after a rumor circulated that the shoplifter had been beaten. The predominantly black crowd did not turn its violence against white individuals per se, but rather they battled against the police and engaged in the destruction of white-owned property as businesses were looted and burned.

The different racial and ethnic composition of the American west led to different frictions between the dominant group and minorities. In Los Angeles, the Zoot Suit Riots occurred in 1943, in which white sailors and Marines targeted Mexican Americans, recognizable based on their distinctive choice of clothing. These riots took place over several days and were echoed by sympathetic attacks across the United States.

After the Supreme Court decided *Brown v. Board of Education* in 1954 and put an end to the era of “separate but equal,” American society became embroiled in a long civil rights movement. During this time, mass protests led by African Americans, but comprised of people from all backgrounds, were, time and again, subject to extraordinary displays of force from state authorities. From 1966 to 1971, there were scores of riots in cities large and small across the nation that were either racially motivated or linked to protest of the war in Vietnam. A symbolic starting point for all this was the Watts Riots of 1965, which lasted six days and resulted in 34 deaths and more than 3,000 arrests. The assassination of Dr. Martin Luther King, Jr., on April 4, 1968, sparked riots in many American cities. In contrast to historical and continuing collective violence of whites against blacks, some of these events are, like the Harlem Riots of 1935, distinguished by black destruction of white property or symbols of the state.

Riots in the Late 20th Century

The late 1960s and early 1970s were also a time of widespread political protest and civil disobedience. The 1968 Democratic National Convention in Chicago is probably the best known of these riots. A political protest led in part by the Youth International Party escalated to six days of violence after the shooting death of a young man at the hands of Chicago police. The 1969 Stonewall Riot in Greenwich Village, New York, was a symbolic starting point for the gay rights

movement. The Stonewall Inn, a bar that catered to the gay community, was frequently raided by police, who arrested any men dressed as women. The riot began one night when the 200 patrons of the establishment collectively resisted and repelled law enforcement. At Kent State University in Kent, Ohio, a student protest of the American invasion of Cambodia devolved into a melee in which the Ohio National Guard fired on the students, killing four. This resulted in a nationwide student strike and galvanized public sentiment among youth against the role of the United States in Vietnam.

The Attica prison riot took place in 1971, when prisoners seized control of the facility, demanding better conditions; 39 people died over the course of several days of fighting. The American Indian Movement took control of the town of Wounded

Knee, South Dakota, in 1973, and fought U.S. marshals, the Federal Bureau of Investigation (FBI), and other law enforcement officials in a siege that lasted 71 days. This was one of many violent political protests associated with the Red Power movement. These and many other examples from the era illustrate the blurred boundaries separating planned protest from spontaneous riot, especially when state agents used excessive force against an assembly of citizens.

In 1992, Los Angeles erupted in riot once again, the worst conflict since the 1965 Watts Riots, this time sparked by the acquittal of four white police officers who were videotaped beating a black motorist, Rodney King. This situation was unique in that as soon as the riot broke out, local and national television news cameras were on the scene broadcasting events as they happened. Aerial



The 1964 fatal shooting of 15-year-old James Powell by a police officer who said the boy lunged at him with a knife spurred a riot through Harlem streets. Angry residents march while displaying photographs of the New York Police Department lieutenant. Civic action continued in New York City for five days: stores were looted and there were violent clashes between police and the public.

footage was provided by helicopter, and coverage of the six-day riot was continuous. The hyperreal nature of this media-saturated event lent the riots a cultural cachet, and representations of the Los Angeles riots soon permeated popular culture in music, film, and television.

In Seattle at the 1999 meeting of the World Trade Organization (WTO), planned antiglobalization protests captured national attention. Police quickly turned on the demonstrators, using tear gas, pepper spray, and rubber bullets to turn back the crowd. Some retaliated against this suppression by breaking store windows, burning dumpsters, and vandalizing property. This conflict set the tone for future WTO meetings, which are now well known for their tight security.

The Study of Riots

The political sensitivity of labeling an event a “riot” illustrates the degree to which the aftermath of the conflagration necessitates a public relations strategy on the part of governments. Accordingly, it is not unusual for persons in positions of authority to avoid the word *riot* altogether. There is a stigma attached to rioting that many communities may wish to avoid. For example, city leaders may be concerned that riots reflect poorly on the city’s image and that negative perceptions could be detrimental to perceptions of their effectiveness as leaders, or that capital will flee the area, resulting in a loss of economic growth. Similar concerns may be reflected in local news coverage of riots when, either swayed by pressure from outside forces or similarly invested in maintaining a public front, the word is avoided. Euphemisms such as “disturbance” or “unrest” diminish the conflict and make it seem less substantial than it really is. Riots may also be described metonymically, as in “the fires” or “the violence,” which lends a vivid description of the scene, but successfully ignores the political demands at the heart of the conflict and avoid the stigma of “riot.” In all cases, riots may be viewed as social dramas. They illustrate the sudden emergence of a neglected population demanding visibility, and mainstream society, often caught off guard, must acknowledge their presence.

In terms of disciplinary considerations, the body of literature addressing riotous behavior is interdisciplinary, touching on history, sociology, psychology, political science, and journalism. A central

debate in scholarly circles has been interpreting the meaning of collective violence, including riotous action. Gustave Le Bon’s argument that crowds are essentially unthinking and directed only by a “mob mentality” dominated the literature in the early 20th century, until social historians such as George Rudé and others ushered in a new paradigm that rioting behavior of large groups could be read as rational. Paul Gilje’s comprehensive work examines collective violence in the United States in context of its democratic political system, identifying rioting as a persistent cultural trait in America. Likewise, David Grimstead focuses on the question of the political consequences of collective violence in American society, specifically, the differing responses of governmental authorities in the north and south to abolitionist and antiabolitionist revolts. This theme of crowd action as having some larger political meaning or effect is continued in the work of Jack Tager, whose scope concerns patterns of social violence in Boston, Massachusetts, from the early Republic through the 1970s.

Sociological literature on riots in the United States was mostly written in the late 1960s and early 1970s, but there is also a significant amount written about the Los Angeles riot of 1992. A good deal of this material is applied research directed at municipal officials who are particularly concerned with managing a riot, so that the number of people injured and the amount of property damaged can be minimized quickly. Bruce Porter and Marvin Dunn, writing on the Liberty City riots of Miami in 1980, identified three types of rioters who elected to participate in the riot at different times relative to different social factors.

Young males were most likely to be the earliest participants, risking arrest in exchange for the possibility of fun, or even profit. Experienced criminals tended to wait until they felt that police could not interfere with their plans to exploit the opportunity. The last to enter the fray, the most cautious group, were older, stable, and without criminal backgrounds. These participants proceeded only once looting appeared to be normal and police appeared to be unable to secure calm. Writing on the role of the state in the Los Angeles riots of 1992, Bert Useem argues that the actions of police during a riot are more complicated than it may seem. He describes two basic

strategies available to state authorities. A diplomatic strategy relies on convincing participants that rioting is not in their best interest. A force-based strategy relies on authorities attempting to physically inhibit participant movements. Each strategy is limited in its own way. A massive show of force may antagonize rioters and undermine any future diplomatic efforts, while the use of diplomacy, should it prove ineffective, can delay the state's ability to respond with force in a timely manner.

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See Also: 1600 to 1776 Primary Documents; 1777 to 1800 Primary Documents; 1801 to 1850 Primary Documents; 1851 to 1900 Primary Documents; King, Rodney; Ku Klux Klan; Lynchings; Strikes.

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Robbery, Contemporary

Robbery has historically been deemed one of the basic common law felonies, punishable by death. The common law elements of robbery are (1) a person taking another's personal property of value, (2) from the person's possession or presence, (3) by force or by placing the person

in fear, and (4) with the intent to permanently deprive the other person of that property. Many modern robbery statutes require proof of the same legal elements. Robbery is a crime throughout the United States and is subject to extensive punishment in prison. The Federal Bureau of Investigation (FBI) and the Uniform Crime Reporting (UCR) program have a short definition of robbery. The UCR defines robbery as "The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or putting the victim(s) in fear."

Robbery Patterns

Some common robbery patterns include bank robberies, carjacking, home invasions, taxicab robberies, automated teller machine robberies, convenience store robberies, and truck hijacking. The UCR's analysis of robbery types includes (1) street/highway: 42.8 percent, (2) bank: 2.2 percent, (3) gas or service station: 2.4 percent, (4) convenience store: 5.4 percent, (5) commercial house: 13.7 percent, (6) residence: 16.9 percent, and (7) miscellaneous: 16.6 percent.

A bank robber shouted, "Everyone down on the ground; this won't take long, folks!" His accomplices, wearing celebrity masks, jumped over kneeling bank tellers filling duffle bags with money. One robber, wearing a stopwatch around his neck, caught the attention of law enforcement investigators, thus earning them the nickname the Stopwatch Gang. The Stopwatch Gang committed their robberies in less than two minutes and in some cases in as little as 90 seconds. This is an example of a planned operation that is designed to produce maximum profits, avoid the use of force, and reduce the possibility of apprehension. Three team members executed their robberies with expert reconnaissance, planning, and timing. The Stopwatch Gang robbed more than 100 banks in Canada and the United States, for a total net of \$15 million.

Typical armed robbers are not meticulous planners with high-profile targets. The Stopwatch Gang and the Tilley Bandit, who was known for his distinctive hat and was responsible for 17 bank robberies, represent special exceptions. The Tilley Bandit was an unemployed businessman with a master's degree who planned his robberies



A thief can break into a car using a thin strip of metal known as a Slim Jim within seconds. The overall rate of auto theft is reported to have dropped 7.2 percent during 2010, declining from a total of 794,616 vehicles stolen in 2009.

with expert precision. Professional bank robbers have distinctive patterns that include unique signature clues that differentiate their crimes. The more general robbery patterns comprise opportunists who prey on soft targets.

Even the infamous Bonnie and Clyde do not compare to these exceptional bank robbers; they were opportunist bank robbers. Opportunist-selected raid robberies transpire in rapid succession after token informal planning. The robbery locations are preselected; possible routes of approach and escape receive minimal planning. The financial return is low to moderate. For example, several team robberies might unfold in rapid succession. Occasionally, there may be a backup robber or additional team members who are responsible for covering the first offender

and surveillance for the approach of police patrol officers.

Opportunistic street robberies prevail because offenders have the motivation and opportunities to target victims. Street robberies persist because the robbers understand the terrain, neighborhood, and predictable victim patterns. This ambush style of robbery involves little planning and can occur because of the need for the money and victim vulnerability. The amount of money acquired is rather limited; therefore, street robberies require frequent scores to reap a financial return. A victim is more likely to encounter a single robber rather than a group of offenders. In most cases, the robber will be armed with weapons or will execute a physical attack; these strong-armed robberies are commonly referred to as “muggings.” Robbers ambush rapidly, assault the victim to possible unconsciousness, then seize cash, jewelry, wallets, and credit cards.

Motivation and Violence Factor

Someone asked Willie Sutton, the famous bank robber and escape artist, “Why do you rob banks?” Sutton’s response: “That’s where the money is.” Victims are subject to attack because of their vulnerability and their appearance of wealth. Robbers have a certain kind of victims in mind. These criminals target victims who carry a considerable amount of cash and those wearing expensive jewelry. Opportunistic robbers select victims or business targets based on a brief planning strategy. Individuals who appear to present a challenge are avoided. These robbers isolate their victim, thereby ensuring compliance. The exceptions to basic planning and strategies are drug and alcohol abusers, who are generally more careless and vulnerable to apprehension and prosecution.

Victims who frustrate the robber’s monetary motivation are more likely to become the recipients of physical violence or death. However, in more than 80 percent of the robbery cases in which force takes place, the offender initiated the attack without victim resistance. In many cases, the victim will be beaten, disfigured, or killed simply because of the robber’s need for violence. Assaults occur frequently if the robber is under the influence of alcohol or drugs. Drug use—especially of cocaine or amphetamines—can serve as a significant violence multiplier.

Robbery is a high-profile violent crime that instills considerable fear in the public and in the many victims of violence. The opportunity for violence is higher because of the use of force during victim/robber confrontations. The violence may include assault and battery with possible recovery, disabling injuries, or even death.

FBI Statistics

- Nationwide in 2009, there were an estimated 408,217 robberies.
- The estimated number of robberies decreased from the 2008 and the 2005 estimates—8 percent and 2.2 percent, respectively. However, the 2009 robbery estimate increased slightly from the 2000 number.
- The 2009 estimated robbery rate of 133 per 100,000 inhabitants reflected a decrease of 8.8 percent compared with the 2008 rate.
- An estimated \$508 million in losses were attributed to robberies in 2009.
- The average dollar value of property stolen per reported robbery was \$1,244. The highest average dollar loss was for banks, which lost \$4,029 per offense.
- Firearms were used in 42.6 percent of the robberies for which the UCR received additional information in 2009. Strong-arm tactics were used in 41.1 percent of the total number of robberies; knives and cutting instruments were used in 7.7 percent; and other dangerous weapons were used in 8.7 percent of robberies in 2009.

Methods of Investigation

Strategic and tactical intelligence products strive for real-time intelligence. Crime and pattern analysis serve the purpose of trying to interrupt robbery offenses. The modus operandi (MO) system report serves as the foundation for robbery analysis. Behavioral science is an excellent tool of crime analysis. It allows investigators to plan for future intervention and prevention strategies. Crime analysis computer software and technology assist in the collection and statistical analysis of burglary data.

The MO report collects criminal intelligence and describes all known factors concerning the robbery that make up the sum total of the series. The basic master clue to every crime is the general

theory or particular method pursued in the commission of the crime. The MO reporting system has two basic objectives: (1) the early identification of unknown offenders before arrest and (2) the clearing of all related cases after the arrest of the responsible offender. Crime analysis should assist in the assignment of preventive patrols and surveillance to detect robberies in progress.

MO information includes type of robbery, time (day and hour), method of attack (threatened or observable weapon), object or property sought, number of robberies, voice and words of the robber, and vehicle description. MO strategies include the robbery attack type, object of attack, and the special features of the method or trademark. For example, the robber pointed a chrome-plated, .45-caliber automatic at the victim. The trademark helps individualize and link related cases to a specific offender pattern.

Robberies may include a series of cases that are signature clue related and outside the necessary requirements to accomplish the crime. These represent psychological behaviors that the offender must complete to feel satisfied—the emotional and compulsive behaviors that link robbery cases to a particular robber. For example, the robber requires victims to undress to expose certain body parts for the purpose of humiliation or psychological gain. Robber hostility may serve as a trademark clue to identify and link certain cases. The force or assault may exceed the amount necessary to accomplish the robbery. Pistol whipping or shooting the victim after securing his/her valuables is a useful indicator of robber personality. Another case linkage trademark clue might move in the opposite direction. For example, thanking the bank teller for cooperation.

Law enforcement agencies maintain current information on known offenders. Known offender files and mug shot files are helpful in the investigative process. Offender files are divided into known active and inactive files. The files contain the suspect's description, MO, and summary of the suspect's criminal record. Mug shots, known offender files, and criminal suspect descriptions are the primary means for investigators to review potential robbery suspects. Computer programs like Inter-Quest and FACES may help develop the robber's physical and facial description for the victim identification of the suspect(s). This computer software

is most helpful when the victim is not able to identify the existing mug shot photographs.

Conclusion

Professional bank robbers have distinctive patterns that include unique signature clues in their crimes. The Stopwatch Gang thought they planned the perfect crimes; however, their perfection became a unique *modus operandi* (MO) and trademark. Their three-person team's distinctive serial robbery pattern and trademark ultimately led to their detection and arrest. Professional robbers do not represent the typical robber case. They may be initially quite successful; however, their planned bank robbery forecasts eventually lead to imperfections and vulnerabilities. Their high-profile targets and robbery patterns are subject to crime analysis and law enforcement tactical strategies.

Crime analysis supports field operations through planning strategies and investigative personnel deployment. The general robbery pattern consists of opportunists who prey on soft targets. Many of these robberies are spontaneous, and limited contact between victim and robber often results in a low arrest clearance rate. The MO crime analysis system may help suppress robberies through early intervention based on corrective action through specific field countermeasures. Police surveillance and decoy operations offer some of the best strategies to prevent street robberies.

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See Also: 1921 to 1940 Primary Documents; 1941 to 1960 Primary Documents; 1961 to 1980 Primary Documents; 1981 to 2000 Primary Documents; Crime and Arrest Statistics Analysis; Crime in America, Distribution; Crime in America, Types; Guns and Violent Crime; Robbery, History of; Robbery, Sociology of.

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Robbery, History of

Robbery involves illegally removing property from another person or organization, often using force or intimidation. Robbery has changed in nature throughout history because of the changing nature of goods that are available to be robbed, the rise in capacity of the state to deal with the robbery, and the motivations of the robber. Increasingly, robbery has become a small-scale but widespread issue fueled by the desire to obtain cash to meet an addiction. This kind of crime is associated with urban rather than rural or suburban areas, where social solidarity and higher levels of police coverage make the threat of robbery comparatively remote.

Bank Robberies

In the early days of American banks, deposits were protected by lock and key only, and the most likely means of gaining access was to get a replica key or to suborn the locksmith in one form or another. This was the case for the first such robbery, which took place in Philadelphia in 1798 at the Bank of Pennsylvania, as a result of which suspicion was wrongly placed on locksmith Patrick Lyon, who was victimized by a combination of bank executives and state authorities who banded together to provide the lesson that such crimes would not be tolerated. Lyon was eventually able to clear his name and identify the guilty parties, who had found an alternative means to obtain insider status. Even when dynamite and guns have replaced the insider access, ruling authorities have remained eager to procure arrests and imprisonment of perpetrators of crimes, and in some cases the burden of proof was scarcely satisfied. Still, notorious criminal gangs made careers from violent robberies, such as the Reno Brothers Gang (also active on the railroad), the James Brothers Gang (most active 1866–76) and Henry

Starr, who was the first man known to use a (stolen) car to make his getaway.

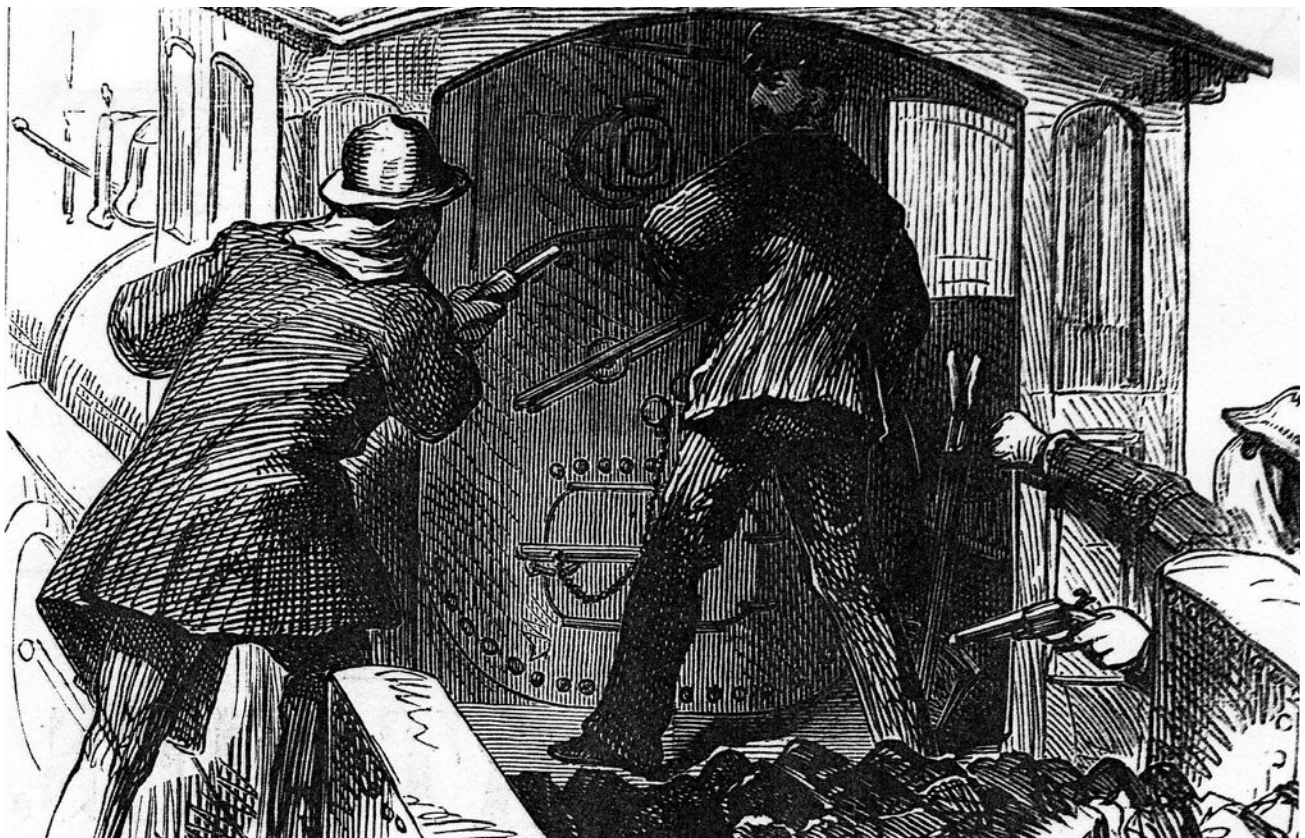
Bank robberies have also been used by radical groups as a means of gaining sensationalized coverage of their actions and causes, to obtain money to fund their further activities, and to strike a perhaps symbolic blow against the capitalist system. The most infamous of these robberies took place in 1974 at Hibernia Bank in San Francisco and was perpetrated by the Symbionese Liberation Army and included the kidnapped but machine gun-wielding heiress, Patty Hearst, who was a victim of Stockholm syndrome. Hearst was subsequently captured and in due course was pardoned.

Train Robberies

The development of the railroad system represented in a quite real sense the extension of capitalist control of the continental United States, and

the trains that used them occasionally carried large amounts of cash or other valuable items. This made the train system an attractive target for robberies and also made the prevention of such crimes, or at least the tracking down and prosecution of perpetrators, a significantly important undertaking for the state to complete. One result of this is that high-profile robberies gave rise to very well-known criminals, including Jesse James and Butch Cassidy, who were pursued by not just the state authorities but by additional private detectives, including Pinkerton men, who might be hired. Police and private detectives were often hired on the basis that they could keep part of any loot recovered from suspected criminals, which intensified conflicts between them. Victims, whether individuals or organizations, might have to satisfy themselves with just a portion of what was recovered.

Since trains are large and powerful machines, it requires quite serious measures to make them



The engineer of a Kansas Pacific train, which held a Wells Fargo safe, being held at gunpoint in 1874 by the Jesse James gang. The gang only robbed train passengers two times because James was mainly interested in safes carried in express or baggage cars, giving his gang a type of "Robin Hood" perception, where only the wealthy were targeted.

stop and to force the crew to provide access. This might have been effected by creating a blockade on the track or by digging up a section of the track or using some other means to force the train to stop peremptorily. This involved considerable risk to the train drivers, crew, and any passengers, and, indeed, to the criminals who might get too close to a derailed engine or carriage. Since guards of money or valuable items were almost certainly armed, then the criminal gang (it is difficult to imagine one individual person holding up a train in the way that highwaymen would hold up horse-drawn carriages) would also necessarily be armed, and violence was that much more likely. These measures made the perception of the robbery a much more serious offense and so sentences and punishments were that much harsher. Nevertheless, stakes were often high as stagecoach robberies, beginning with “Tom Bell” (Thomas J. Hodges) in 1856, were often motivated by the discovery of gold or other precious minerals and their transportation in one direction with payroll payments moving in the opposite direction through mostly rough, partly mapped, and unpoliced territory. Stagecoach robberies continued into the 20th century.

Train robberies declined in importance because of the rise in importance of automobiles and airplanes in long-distance communication and the increased use of electronic transfers of money. The last reported train robbery took place in 1963, although acts of robbery on or around a train have continued.

Mugging

Mugging is a form of robbery that takes place in a public space, usually a city street but any public area may be used, and may involve the use of violence to disable the victim prior to removing her or his possessions. In other cases, a threat of violence is used or an item is simply snatched, and the mugger aims to make an immediate escape. An international fear of garroting erupted in the 1850s and 1860s, in the aftermath of the revolutionary war of 1848 and emergence of the bomb-wielding anarchist, and this sparked a street-level arms war of knuckle-dusters and belt buckle pistols. This helped cement in the public mind the connection between street robbery and possible deadly violence.

Mugging regularly involves vulnerable people unlikely or unwilling to be able to respond effectively. Women’s handbags, for example, are a common item of theft in this way, since they are comparatively small, likely to contain valuable items, and the victims will be unlikely to challenge a male mugger. When mugging involves the use of cars, then it is termed *carjacking*. As people have generally become richer and, especially, as they are more likely to carry around small but expensive and relatively anonymous products such as mobile telephones and computers, the motivation to commit mugging for financial gain has increased. However, depending on the environment concerned, the definition of what represents a valuable item can vary considerably. There are numerous anecdotes, many no doubt apocryphal, of muggings that have taken place for the sake of a pair of basketball shoes, often derived from 1970s New York, described as the “mugging center of the world.” It is no coincidence that mugging is so commonly associated with inner-city locations and with gang activities that are also correlated with young ethnic-minority men. This is not necessarily an example of straightforward racism but part of a wider attempt to portray the inner-city areas as dangerous and ungovernable and, hence, to justify the use of zero tolerance policies, three-strike sentencing policies, and other draconian approaches. Cities have become increasingly subject to this kind of law enforcement regime as the wealthier citizens have moved out to suburban areas or, as in the case of New Orleans, quite literally to the more desirable higher ground. In reality, of course, mugging has taken place throughout the history of human society.

Shoplifting

Shoplifting involves stealing items from shops and can be conducted by both staff and customers. When conducted by staff, shoplifting is usually motivated by financial gain or by some measure of disaffection with the job. When conducted by others, it might be simply motivated by desire to obtain something that could not otherwise be afforded or that could be exchanged for cash but might also be motivated by a form of rite of passage (or hazing) among young people or some other psychological need. There is a particular form of desire to commit shoplifting by wealthy

women, of a variety of ages. This was referred to as “kleptomania” in the 19th century and was the preserve of wealthy middle-aged women and hence forgivable, although some professional thieves also played upon the issue. That this type of theft can stem from a psychological need is suggested by the fact that the women involved have little or no interest at all in the items that are in fact stolen. However, it has also been argued that the distinction in the ways and reasons in which people shoplift depends on the way they are described and perceived. Hence, if poor people are involved, it is because they are giving way to vicious inclinations, but if they are from the wealthier classes, then it is a case of teenaged high spirits or, as mentioned, psychological kleptomania among the wealthy. Sometimes, causes are impossible to know. Lizzie Borden, acquitted of axe murders, was accused of shoplifting in 1897, for example. Shopkeepers and security can differentiate between “boosters,” who are career criminals, and “snitches,” who act in the same manner as serial criminals but are otherwise law-abiding citizens.

Since a great deal of shoplifting appears to be undetected or unreported, to some extent because shop owners are reluctant to allow society to know too much of the reality of their trade, comprehensive evidence is not available.

Looting

Looting involves theft or robbery in the midst of a general outbreak of disorder, perhaps as a result of a riot or in the wake of a natural disaster. Widespread looting took place in Los Angeles as part of the so-called Rodney King riots (or uprising), which was sparked by a court decision exonerating white police officers of the beating of a black man (King), despite video evidence to the contrary. This sparked outrage among many minority groups who felt themselves to be unfairly treated by the state and who responded in part by stealing goods that they would not otherwise have been able to afford but that were flaunted in front of their eyes on a daily basis as evidence of their lack of economic empowerment. This kind of looting has been seen in numerous cities in U.S. history and represents rage and frustration with inequality as much as any desire to commit theft. Nevertheless, looting has been met

with swift and violent response by the state as it represents a threat not just to public order but to the privileges of the property-owning classes. Some elements of the popular media were complicit in making the link in the public eye between black men and incipient desire for lawless rioting and theft. Consequently, after New Orleans was struck by Hurricane Katrina and thousands of people were desperately searching for food and water to survive, there were outbreaks of racially motivated shootings of black men.

Looting is a term that has also been used to describe the removal of Native American remains from their resting places for scientific analysis or for display elsewhere. This was previously considered acceptable behavior by scientists and archaeologists in what was considered effectively to be “empty land” prior to settlement and has now become seen as an aspect of colonization. The practice is now regulated by the 1990 Native American Graves Protection and Repatriation Act. However, some issues remain unresolved.

Computer Crime

In recent years, some elements of computer-mediated (or Internet) crime have become new forms of theft. Although most such crime is probably best described as fraud, in that it inspires people to part with money under false pretences, the practice of identity theft and subsequent extraction of savings from banks accounts is certainly a case of robbery. Additionally, computer-based infrastructure conduits have also become increasingly popular for people wishing to steal electronically denominated assets from their rightful owners through hacking into the system. This kind of crime is new in that it can be conducted without respect for physical geography but from nearly any point on earth, and this not only makes finding the perpetrators more difficult but also raises issues of jurisdiction and the ability to commit policing actions on a transborder basis.

Perpetrators and Victims

The type of robbery involved determines the nature of the perpetrator to a certain extent. For example, train robbery or bank robbery almost certainly requires a considerable degree of planning and conspiring and the involvement of a number of people over the course of time. By contrast,



After Hurricane Katrina hit New Orleans in 2005, businesses tried to open as soon as possible to serve a desperate community but looting was rampant as residents sought food and water from any possible source. This food store on Magazine Street displayed a makeshift sign directing shoppers to their location while warning that "Looters Will Be Shot."

house burglary or shoplifting may be an entirely opportunistic form of crime. However, since more opportunities for robbery occur in an urban rather than a rural environment, this type of crime tends to be more prevalent in urban settings. This in turn has an impact on the nature of victims and the ways in which this has changed over time.

Policing Robbery

Individual police forces had the reputation, with a basis of reality, of having little interest in dealing with robbery unless they were offered the opportunity to profit from recovery of property. Their reputation for incompetence and venality reached a peak with the cinematic portrayal of the *Key-Stone Cops*. Reformers and establishment figures such as August Vollmer (1876–1955) professionalized the police and revolutionized practices with respect to robbery and other crimes. Prevention was stressed in addition to detection, and victims could subsequently expect to have all of their belongings returned to them by right.

As the number of retail and service outlets has grown, the willingness and ability of the state police forces to patrol each one to deter robbery has declined. Indeed, those states internationally that tried to create a regime of total surveillance have ended up with police states hated by the citizens and, therefore, lack the social solidarity necessary to deter crime in the first place. As a result, retail outlet owners have turned to private police or security guards, technology, or armed response to try to prevent robberies. Security guards can be expensive and, like the early banks, susceptible to providing inside assistance in some cases. To reduce costs, modern businesses can join security schemes together, which provide some in-premises technology that detects unwanted activities and then provokes a response from the security team. The same service might be provided by the police but it is very expensive, and limited resources mean it is effectively limited to only very important or valuable locations that can be protected. Hence, market-based

transactions have arisen to provide the necessary protection. Using technology on its own, whether it is closed-circuit television, shuttering, or post-theft modifications of a product, tends to be an acceptance of failure in that it is more useful in finding criminals after the event than deterring them in the first place. However, such technology can have a deterrent effect on theft by staff, which can also be a significant problem in some situations. Meanwhile, relying on an armed response is a very dangerous course of action.

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See Also: 1851 to 1900 Primary Documents; 1921 to 1940 Primary Documents; 1941 to 1960 Primary Documents; Burglary, History of; James, Jesse; Private Detectives; Robbery, Contemporary; Robbery, Sociology of.

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Robbery, Sociology of

Robbery involves the theft of property from an individual or an organization, often but not always with the use of violence or the threat of violence or another form of intimidation. Insofar as robbery is inspired by the need for financial gain, it has been committed by people of all categories, especially if they believed that they would not be caught or that their actions were justified. However, there has been a difference in a number of cases between acts of robbery by the rich, which has been aimed at personal aggrandizement, and

robbery to obtain food or other necessities, which is the preserve of the poor and vulnerable.

Theft, Property, and the State

From an early part of its history, U.S. federal and state governments have been willing to place property on the same level or higher than the rights of individuals. Property rights were enshrined while large numbers of people were categorized as slaves and were not only considered to be property themselves but also were considered unworthy of receiving the full rights of free people. The authorities, both through the official police and military and also through the use of private police and detectives, have been used to protect the assets of the rich and deny them to the poor. People have been unwilling to accept this situation when they believe that the asset accumulation has been conducted unfairly and at the expense of victims. In the early years of the nation, outlying areas were far from official scrutiny, and powerful individuals could use this opacity to create their own fiefdoms through the use of force or intimidation. The dispossessed in such situations often had the option of moving on to new open land but may not always have been willing to do so.

As late as the second half of the 19th century, the great capitalists who were developing the American west, laying railroads, and developing powerful institutions were commonly referred to as "Robber Barons," because of the way they had enriched themselves and impoverished others to achieve their goals. While the acts of which they were accused seem quite often to have taken place, the state was generally happy to turn a blind eye or even to collude in such activities because it was thought more important to develop national capacity in the age of imperialism, when aggregate, biddable economic power could be used to further the growth of American influence in the international realm. As has been seen internationally, state authorities around the world have shown themselves quite willing to give freedom of action to large capitalists if their goals may be construed as being broadly in line with national developmental goals.

Robbery and Poverty

The most common motivation for robbery is financial gain, and the people most in need of

money are the poor. Academic studies concerning the links between poverty and crime find there is often but not always a direct correlation between the two and also suggest that crime rates are higher when society exhibits higher levels of inequality of income and of opportunity. Recent research indicates (although there have been a number of dissenting voices) that less inequality in the country or among the 50 states would lead to better outcomes in terms not just of crime but also of physical and mental health, levels of imprisonment, and marital breakdowns, teen pregnancies, and a range of other societal indicators. Insofar as this is true, then, it suggests that those who most commonly commit robbery are those who are or who feel most likely to be suffering from such inequality.

Given the low level of social security in the United States, the period of time in a family between the principal breadwinner losing a job and the onset of hunger can be very short, at least compared to European countries, for example. Other immediate threats include loss of housing or failure to meet house repayments or other loans. To some extent, the threat of social disorder and familial breakup that follows robbery or other crimes is mitigated through the use of state transfers, such as food stamp or soup kitchen programs, although these can be subject to stigma in practice to those using them. Additionally, America has a comparatively high number of religious institutions, and some of these offer help and assistance to people and families suffering from poverty and hunger. Inevitably, many of these institutions expect to be repaid in part by receiving attention to their religious messages or even conversion to their beliefs. People in vulnerable situations can indeed be persuaded to take actions that they might otherwise not make if they had more security and self-esteem.

Workers who are constantly aware of the flimsy nature of their income and food security can suffer from stress and attendant health problems such as heart diseases, while also forcing themselves to be quiescent and nonconfrontational in the case of problematic workplace issues for fear of job loss. Once the descent into crime is made, social stigma and prejudice against former convicts has in many cases been such that decent work can never again be found.

The descent into poverty is most rapid and the situation most insecure when the country is suffering economic recession. It is also more prevalent in those types of work that are seasonal, that are strongly affected by external environmental conditions, or in which barriers to hiring and firing practices are extremely low. These industries include fruit picking, meat packing, and the service sectors of the tourism industry. It is clear that in at least some of these cases, comparatively large numbers of ethnic minority migrants may be clustered together. Outbreaks of thefts following economic problems have tended to inspire harsh treatment from the state and from local people. It has been common, therefore, for authorities to justify their actions by ascribing to certain ethnic or racial groups a propensity to theft or other forms of crime. This attitude dates back to the time of slavery, of course, when many people



Broken glass is all that remains after the pictured vehicle theft. It has been suggested that robbery is committed by those who perceive a social and financial inequality with society.

found it necessary to try to justify their role in maintaining a slave-based industry by traducing the humanity of those involved. Harsh economic conditions also frequently inspire governments to turn against other scapegoats, as happened to the hundreds of thousands of Mexicans and many of their American-born children during the Great Depression, not to mention ethnic Japanese during World War II. At the same time, new historical studies have revealed the extent to which the slaves and other oppressed minorities should not be seen as passive chattel but as vigorous individuals, many of whom were involved in staging numerous acts of resistance against the slavers. Robbery was seen as one such justifiable response to unjust and barbaric treatment. A shadow of such actions may be seen in later history in the case of theft in the workplace.

Insofar as the motivation for robbery varies depending on economic factors, it will also necessarily have an uneven distribution over the geography of the country. Areas of rural poverty, for example, will be united with impoverished inner city areas as places where the crimes are more commonly seen on a per capita basis. However, police involvement is more likely to be found in urban areas, whereas rural victims may have wished to take matters into their own hands.

Although poverty and other economic factors certainly contribute to the likelihood of individuals committing robbery or other crimes, they do not explain why some individuals fall into this behavior and others do not. At the more immediate, individual level, people are also affected by such motivations as past experience, peer group pressure, social relationships with potential victims, and the effects of chance and opportunism. A much stronger disincentive to robbery is the likelihood of being caught rather than the nature of any future punishment. Similarly, anticrime measures such as security systems, spotlights, and CCTV, if they are credible, may deter a person who might commit a crime of opportunity, or at least transfer it elsewhere. Discouraging membership in peer groups that are more likely to encourage crime can also an effective strategy.

Deviant Behavior

An unknown but surely significant proportion of robbery, in common with many other types

of crime, results from the voluntary adoption of deviant behavior by a wide range of individuals. Deviant behavior involves contradicting cultural or social norms in some way, and this can involve crime and, in this case, robbery. The interactions between deviant behavior and robbery can take several forms: Peer acceptance might be obtained by an act of robbery or shoplifting, especially when the prospective victim might be characterized as being inimical in some way; the robbery might be inspired by the desire for money to fuel a deviant addiction; or the act might itself be attractive from an ideological perspective, either to strike at an individual or organization or to demonstrate independence from conventional thinking. This last form of behavior might lead to occupation of a residence and marking out the act in some graphic way. The situation is similar to computer hackers who break into other peoples' systems and, instead of causing damage or theft, act to vandalize the system and leave marks of their acts in evidence.

To some extent, the introduction of the term *deviant behavior* into the discourse of crime and punishment has been, so it has been claimed, a means of reducing the culpability of the rich and powerful while criminalizing the poor. This has been the case with shoplifting or shop theft. When this is committed by the poor or by members of certain ethnic or racial groups, it is termed *theft* and the victims are deemed suitable for strong punishments. When it has been middle- or upper-class youth, the crime has been reclassified as one of social disorder and juvenile boundary testing: As a result, the punishments have been greatly diminished in severity. When it comes to well-known wealthy celebrities committing the same crime, albeit often in a different physical environment, then they are said to be suffering from some kind of psychological problem that causes aberrant attention-seeking behavior for which the culprit should be exonerated and pitied.

Robbery in the Workplace

Since the workplace can represent a place of conflict between employees and employer or between employees, it has been quite common for disaffection to strike at least some workers (and also some managers, of course). Managers tend to have more opportunities to commit acts of fraud

or corruption to enrich themselves while punishing the company; ordinary workers tend to be restricted to acts of minor theft of workplace stock or office supplies, in addition to acts of sabotage or vandalism, which usually have different motivations.

There seems generally to be a difference in motivation between stealing from an employer and stealing from a fellow employee. While the latter tends to reflect personal hostility or antipathy to the individual victimized, the former reflects an organizational culture in which it is acceptable to steal from the employer or even justified because the employer lacks moral legitimacy. By committing acts against the employer, employees might be involved in acts of social bonding with their workmates or be performing an act of organizational or retributive justice. In other words, the items stolen may be of secondary importance to the fact that the act represents a blow against the organization.

Striking Against the Capitalist or Despotic State

In some cases, robbery may be considered an act that strikes against an unjust or improper state, and this justifies the illegal action. In the case of riots and looting, the theft of property from shops may be justified by perpetrators in that the victims are complicit in erecting and sustaining the unequal state. This is one reason why looted items are so often the high-value consumer goods that are symbols of personal success, in addition to items that are of direct personal use or utility. Acquiring high-ticket consumer goods from rioting is, of course, an irrational act because of the difficulty of hiding them from official scrutiny subsequently and the determination of the owner to regain them.

Riots have also provided the opportunity for some personal score settling. For example, if many Korean-owned grocery or other retail stores were attacked during a riot, it may appear that this was motivated by resentment that one set of ethnic minority people had been benefiting from the system that was held to be systematically preventing the rise of another group.

A similar situation has existed with regard to radical or terrorist groups, who often identify the possession of large amounts of apparently surplus

capital as being representative of the ills of the capitalist state and its allies in banking, finance, and commerce. Consequently, a bank robbery may be seen to be a justified strike against injustice, although that justification would not generally extend to the use of violence against low-level employees committed in the conduct of the theft, since this would be an act of class treachery.

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See Also: Political Dissidents; Slavery; Terrorism.

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Roberts v. Louisiana

Roberts v. Louisiana (431 U.S. 643, 1977) asked and answered the question of whether the death penalty could be mandatorily given for first degree murder. In a 5–4 opinion, the Supreme Court of the United States decided on June 6, 1977, that Louisiana's death penalty law violated the Eighth and Fourteenth Amendments to the U.S. Constitution. The Louisiana statute that was declared



The hanging noose at the County Courthouse, a National Historical Landmark in Tombstone, Arizona. Historically, hanging was the most common method of execution. Following a conviction for first-degree murder and being sentenced to death, Harry Roberts challenged the constitutionality of Louisiana's death penalty statute, and the Supreme Court found that Louisiana's sentencing scheme does not allow juries the constitutionally required right to consider mitigating factors based on the circumstances of the crime or the offender's character.

unconstitutional imposed the death penalty for first-degree murder of a police officer. Jurors were not allowed to consider any evidence about intent or other mitigating factors.

Harry Roberts was arrested, tried, and convicted of murdering Dennis McNerney, an on-duty police officer in New Orleans, Louisiana. During Mardi Gras in 1974, Harry Roberts, then 19 years old, began shooting neighbors. The police were called to the scene and two officers, one Officer McNerney, responded to the call. McNerney and his partner, Officer George Tobin, arrived in a marked squad car and in uniform. They approached Roberts, who shot both officers before they could exit their vehicle, killing Officer McNerney, who died at the scene within minutes. Roberts was wounded in the leg by Officer Tobin and fled the scene. He was apprehended by additional officers called to the scene by Officer Tobin. Roberts was tried under a Louisiana statute that required a mandatory death sentence for individuals intentionally killing a police officer. He was

found guilty and, under state law, received the death penalty without any discussion of factors that would work in Roberts's favor.

Upon appeal, Roberts raised the constitutionality of the Louisiana statute. The U.S. Supreme Court had recently litigated another portion of the Louisiana law in *Stanislaus Roberts v. Louisiana* in 1976 (428 U.S. 325). In this case, the Supreme Court struck the mandatory provision of the statute for the killing of a police officer in the course of an armed robbery. The court found the mandatory component in violation of the Eighth and Fourteenth Amendments to the Constitution. Both Harry Roberts and Stanislaus Roberts (no relation) were convicted under different, but similar, state provisions that both resulted in their automatic sentences of death. While *Harry Roberts v. Louisiana* was being appealed, the court's decision in *Stanislaus Roberts v. Louisiana* was handed down.

Roberts v. Louisiana is contextually important in terms of the post-*Furman* death penalty decisions. In *Furman v. Georgia*, 1972 (408 U.S. 238),

the Supreme Court struck down the death penalty and imposed a national moratorium, forcing states to reconsider the random “wanton and capricious” nature of sentencing perpetrators to death. After several years, the states had rewritten their death penalty statutes, and in 1976, in a series of cases, *Gregg v. Georgia* (428 U.S. 153), *Jurek v. Texas* (428 U.S. 262), *Proffitt v. Florida* (428 U.S. 242), (*Stanislaus*) *Roberts v. Louisiana* (428 U.S. 325) and *Woodson v. North Carolina* (428 U.S. 280), the Supreme Court ruled that replacing mandatory sentencing structures with random ones still did not meet constitutional muster. While the per curiam opinion in *Roberts v. Louisiana* struck the Louisiana statute, the four dissenters—Chief Justice Warren Burger and Justices William Rehnquist, Louis Powell, and Bryon White—argued that all mandatory sentencing schemes were not unconstitutional and the state of Louisiana could differentiate the killing of a peace officer as a more egregious crime warranting the death penalty.

The majority reasoned that mandatory sentences solved the randomness problem of *Furman* but created other constitutional problems by not allowing juries to consider all factors that both encourage and discourage a sentence of death. *Gregg*, *Proffitt*, and *Jurek* held that the death penalty was not unconstitutional per se, but death penalty trials must be bifurcated. The remaining 1976 cases made clear that juries must take into account both aggravating and mitigating factors when imposing punishment in the second phase of the trial following the first guilt/innocence phase. *Woodson* and *Roberts* both focused on the punishment phase, stipulating that the consideration by the jury must be nuanced, accessing all factors that work in favor of the criminal (mitigating factors) and work against them (aggravating factors). Mandatory death sentences violate the Eighth Amendment as cruel and unusual because they deprive the jury of information, such as intent and extenuating circumstances. The court would later find that mandatory life sentences are not the same as mandatory death sentences and can be instituted for certain crimes.

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See Also: Cruel and Unusual Punishment; *Furman v. Georgia*; *Gregg v. Georgia*.

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Rockefeller, Nelson

Nelson Aldrich Rockefeller was the 41st vice president of the United States under Gerald Ford and the 49th governor of New York. As governor of New York, Rockefeller championed stringent laws against drug use, sale, and possession. He dealt with the siege at the Attica Correctional Facility during his term, which ended with an assault by State Police officers and National Guardsmen where 39 were killed, including 10 hostages held by rebellious inmates.

Early Life and Career

Rockefeller was born on July 8, 1908, in Bar Harbor, Maine. He was the son of John Davison Rockefeller, Jr., and Abby Aldrich Rockefeller. He was the grandson of Standard Oil founder and chairman John Davison Rockefeller, Sr., and U.S. Senator Nelson Wilmarth Aldrich, a Republican from Rhode Island. He attended the Lincoln School, an experimental elementary and secondary school run by Teachers College of Columbia University. In 1930, he graduated cum laude with an A.B. in economics from Dartmouth College. After graduation, he worked in a number of family-related businesses, including Chase National Bank (1931); Rockefeller Center Inc. (joining the board of directors in 1931, serving as president from 1938 to 1945 and 1948 to 1951, and as chairman from 1945 to 1953 and 1956 to 1958); and Creole Petroleum, the Venezuelan subsidiary of Standard Oil of New Jersey (1935–40). From 1932 to 1979 he was a trustee of the Museum of Modern Art (serving as treasurer, 1935–39, and president 1939–41 and 1946–53). He and his four brothers established the Rockefeller Brothers Fund, a philanthropy, in 1940



In 1973, as governor of New York State, Nelson Rockefeller signed new drug laws that were the toughest in the United States. These included mandatory life sentences for drug users.

(he was a trustee from 1940–75 and 1977–79, and president in 1956).

Government Service

Rockefeller's first government service was as a member of the Westchester County Board of Health, (1933–53). In 1940, President Franklin D. Roosevelt appointed him coordinator of inter-American affairs. In 1944, Roosevelt appointed Rockefeller assistant secretary of state for American republic affairs, a position he held until August 1945. Rockefeller was a member of the U.S. delegation at the United Nations (UN) Conference on International Organization at San Francisco in 1945. He was instrumental in persuading the UN to establish its headquarters in New York City. His father donated the \$8.5 million required to purchase the land for the UN.

In 1950, President Harry S. Truman appointed Rockefeller chairman of the International Devel-

opment Advisory Board. In 1952, President-Elect Dwight D. Eisenhower asked Rockefeller to chair the President's Advisory Committee on Government Organization to recommend ways of improving efficiency and effectiveness of the executive branch of the federal government. Rockefeller joined the administration as undersecretary of the new Department of Health, Education and Welfare (HEW) in 1953. The following year, Eisenhower appointed him special assistant to the president for foreign affairs, a position he held until December 1955.

Rockefeller entered New York politics, chairing the Temporary State Commission on the Constitutional Convention (1956–58) and the Special Legislative Committee on the Revision and Simplification of the Constitution (1958). In 1958, he was elected governor by over 600,000 votes, defeating the incumbent, multimillionaire W. Averell Harriman (he was reelected in 1962, 1966, and 1970).

Governor

As governor, Rockefeller doubled the size of the State Police, established the New York State Police Academy, and signed legislation authorizing 228 additional state judgeships to reduce court backlogs. In 1963, Rockefeller signed legislation abolishing mandatory capital punishment, establishing a two-stage trial for murder cases with punishment determined in the second stage. Rockefeller oversaw 14 executions by electrocution as governor, including that of Eddie Mays (1963), the last execution in New York. While a supporter of capital punishment, Rockefeller signed the bill abolishing the death penalty in 1965, except in cases involving the murder of police officers.

What became known as the Rockefeller Drug Laws were his response to the rapid increase in narcotics addiction and related crime. In 1962, the state legislature enacted his proposal that offered rehabilitation to convicted drug addicts in lieu of prison time.

When this program proved unsuccessful, Rockefeller called for compulsory treatment, rehabilitation, and aftercare for three years in 1966. This did little to reduce the narcotics trade and associated crime. Rockefeller then offered a hard-line approach. In 1973, new drug laws included mandatory life sentences for anyone convicted of

selling two ounces or possessing four ounces of a “narcotic drug”; rewards for information leading to the conviction of drug pushers; and more severe penalties on youthful offenders. Once again, the laws failed because they did not lead more addicts to seek rehabilitation as hoped and ultimately did not solve the problem of drug trafficking. The drug laws were among the toughest in the United States when they were enacted. Mayor John Lindsay of New York City denounced the laws as “merely a deceptive gesture offering nothing beyond momentary satisfaction and inevitable disillusionment.” To carry out the rehabilitation program, Rockefeller created the State Narcotics Addiction Control Commission, which administered the largest methadone maintenance program in the country.

The laws proved ineffective, as drug use did not decline, even as drug convictions increased. At the time the laws were enacted, 11 percent of inmates in the state’s prisons were drug offenders; the proportion of drug offenders reached 35 percent in 1994. In 2004, Governor George E. Pataki signed legislation reducing the maximum mandatory sentence to 20 years. In 2009, mandatory sentences were eliminated for all offenders, except those convicted of being “major traffickers,” who could be sentenced to 15 years to life.

On September 9, 1971, inmates at the state prison in Attica, New York, took control of a cell block and seized 39 guards as hostages. After four days of negotiations, Department of Correctional Services Commissioner Russell Oswald agreed to most of the inmates’ demands for reform, but refused to grant complete amnesty to the rioters, with passage out of the country and removal of the prison’s superintendent. When negotiations stalled and the hostages appeared to be in imminent danger, Rockefeller ordered New York State Police and National Guard troops to storm the prison on September 13. When the assault on the prison was over, 39 were dead, including 10 of the hostages. All but three of the deaths were attributed to the gunfire of the National Guard or State Police. The other three dead were inmates killed by other inmates at the start of the riot. Opponents blamed Rockefeller for these deaths, in part because of his refusal to go to the prison and talk with the inmates, while his supporters, including many conservatives who had often differed with him in the past, defended his actions as necessary

to maintain law and order. “I was trying to do the best I could to save the hostages, save the prisoners, restore order, and preserve our system without undertaking actions which could set a precedent which would go across this country like wildfire,” Rockefeller said.

In December 1973, Rockefeller resigned as governor to devote his attention to the Commission on Critical Choices for America, a privately funded group established to study the problems facing America. He served as chair until becoming vice president in December 1974. Rockefeller unsuccessfully sought the Republican presidential nomination in 1960, 1964, and 1968. After Gerald Ford became president following Richard Nixon’s resignation (1974), Rockefeller was named vice president, taking office in December 1974. Opposed by conservatives within the Republican Party, Rockefeller announced that he would not be a candidate for vice president in 1976, allowing Ford to pick Robert Dole of Kansas as his running mate. Rockefeller died on January 26, 1979, at age 70 from a heart attack.

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See Also: Attica; Ford, Gerald (Administration of); New York; New York City; Roosevelt, Franklin D. (Administration of); Truman, Harry S. (Administration of).

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Roe v. Wade

On January 22, 1973, the Supreme Court handed down a 7–2 decision in *Roe v. Wade*. The court declared unconstitutional a Texas law that considered an attempt to procure an abortion a criminal act unless done by a physician to save a woman's life. The court found the Texas statute interfered with a doctor's right to pursue the best medical treatment for patients.

A number of factors led to abortion reform. The thalidomide scare in 1962 resulted from a drug marketed in Europe as a cure for morning sickness; while the Food and Drug Administration did not approve it for distribution in the United States, some Americans traveling abroad brought home the pills. Reports confirmed that the drug caused severe birth defects, especially early in pregnancy. Similarly, German measles swept the nation between 1962 and 1965, posing a 50 percent chance of fetal deformity in pregnant women afflicted with the disease. Some doctors ignored state laws and performed abortions, bringing legal action against themselves as they endeavored to help their patients. The introduction of the European vacuum or suction aspiration in 1967 to replace the bloodier dilation and curettage procedure made abortion more acceptable to many physicians. Some physicians requested that the American Law Institute (ALI) investigate ambiguous state laws and devise a model reform law that would permit greater freedom to medical practitioners. The ALI's recommendation allowed abortion when a woman's physical or mental health was endangered, the fetus was physically

or mentally defective, or pregnancy resulted from rape or incest.

Issues outside the medical realm also influenced pressure for change. This era witnessed an expansion of human rights with movements for civil, women's, and privacy rights. Apprehension regarding overpopulation meshed with concerns over mounting welfare expenditures, especially among recipients of Aid to Families with Dependent Children. Rhetoric regarding the cost-saving potential of abortion swayed many legislators prior to *Roe v. Wade* to begin decriminalizing abortion. California was the first state to liberalize its abortion law in 1967, followed by 11 other states by 1970; these laws modeled the ALI recommendation. Four states in 1970—New York, Alaska, Washington, and Hawai'i—passed laws that went beyond the ALI model, in effect legalizing abortion on demand.

In addition to legislative activity, there were more than 25 abortion cases pending before state courts when the Supreme Court decided to hear *Roe v. Wade*. Two years earlier, the court had heard its first case devoted solely to abortion in *United States v. Vuitch* (1971). The court overturned the 1901 anti-abortion statute in the District of Columbia as unconstitutionally vague because a doctor's decision to perform an abortion to protect the woman's health could later be second-guessed by a jury. The court declared abortion to be a surgical procedure and as such was left to doctors to decide its medical necessity. *Roe v. Wade* confirmed this medical jurisdiction.

Jane Roe's Case

Norma McCorvey, alias Jane Roe, lived in Dallas County, Texas. Her marriage had failed and her mother and stepfather were raising her 5-year-old daughter when she became pregnant at age 21 in 1969. She wanted an abortion because of the economic hardship of raising a child as a single mother and because of the social stigma attached to illegitimacy. McCorvey met attorneys Linda Coffey and Sarah Weddington, who represented her as Jane Roe; they challenged the Texas statute passed in 1854 and revised in 1857 that prohibited abortion unless the woman's life was at stake. They presented two main arguments. First, McCorvey could not secure an abortion because the pregnancy did not threaten her life; she did not

possess funds to travel elsewhere to obtain a legal abortion. Second, the Texas law violated her privacy protected by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the Constitution.

The case came before the federal court in Dallas in 1970. The court rejected the law because it denied Jane Roe her Ninth Amendment right of privacy to decide whether or not to procreate. While the court issued a declarative relief that the law was unconstitutional, it did not issue an injunctive relief mandating the law not be enforced against physicians, assuming the state would comply with the court's decision. District Attorney Henry Wade, however, decided to proceed with prosecutions, providing Weddington and Coffey with the basis for a Supreme Court appeal.

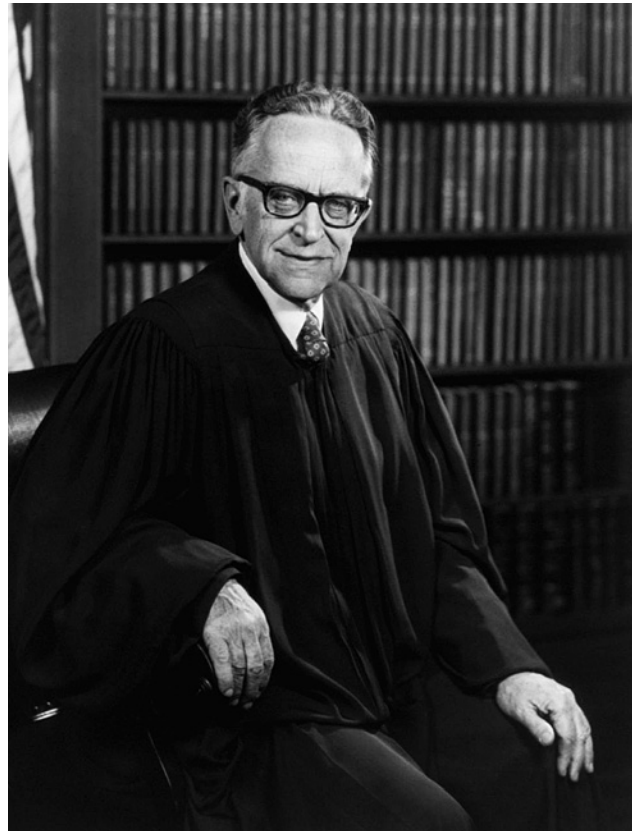
John Tolle, Jay Floyd, and Robert Flowers from the Texas attorney general's office served as lawyers for the state. They argued that Jane Roe had no standing before the court because she was no longer pregnant by the time her case reached litigation. The court disagreed: if "termination makes a case moot, pregnancy litigation seldom will survive much beyond the trial stage.... Our law should not be that rigid." Jane Roe would represent pregnant women in a class-action suit. Tolle et al. also argued that the state had a compelling interest to protect the legal rights of the fetus.

Weddington, with help from Coffey, presented Roe's case twice. They argued in December 1971, but the retirements of Justices John Harlan and Hugo Black in September had left the court with only seven justices, who were hesitant to decide this case without a full bench. They reargued in October 1972 after President Richard Nixon appointed Justices Lewis Powell and William Rehnquist, two men Nixon assumed would reject abortion liberalization. Weddington's main argument was that privacy rights declared in *Griswold v. Connecticut* (1965) should extend to a woman's decision whether or not to bear a child. Amicus briefs supporting this claim came from the American College of Gynecologists and Obstetricians, the New York Academy of Medicine, and Planned Parenthood Federation of America.

Blackmun's Majority Opinion

Justice Harry Blackmun wrote the majority opinion. Drawing on history, Blackmun found that

ancient codes and ancient religions did not proscribe abortion. Common law did not prohibit abortion prior to quickening (first sign of fetal movement). As he argued, "a woman enjoyed a substantially broader right to terminate a pregnancy" at common law, at the time of the drafting of the U.S. Constitution, and during much of the 19th century than she did in the 1970s. He located the legislative change in the latter half of the 19th century when states passed abortion statutes for three main reasons. The laws were part of a Victorian effort to curb illicit sex, but Texas did not advance this reason as part of the argument in *Roe*. The laws also attempted to protect women from dangerous abortions, but medical advancements had abrogated this reason. Lastly, Tolle argued the laws were there to protect prenatal life, but Blackmun could not find this assertion in the 19th-century legislation;



U.S. Supreme Court Justice Harry A. Blackmun's official 1976 portrait. Although Blackmun is best known as the author of Roe v. Wade, he made great contributions in the fight against race discrimination and protecting disadvantaged citizens.

the law claimed to protect the mother's life. The availability of abortion in the early 19th century confirmed his belief that a fetus is not a person under the Constitution.

In addition to history, Blackmun drew upon the privacy foundation laid in *Griswold*, *Loving v. Virginia* (1967), and *Eisenstadt v. Baird* (1972). Blackmun contended that "This right of privacy, whether it be found in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the district courts determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." This right to abortion was "fundamental" and could only be regulated if a "compelling" state interest exists.

Blackmun expanded on this notion of state interest when he introduced the trimester approach to abortion. During the first trimester, state interest in protecting maternal health is not compelling enough to interfere with the woman's decision to abort because mortality rates for abortion were as low as or lower than for childbirth. In the second trimester, the state may have a compelling interest to regulate but not prohibit abortion to protect maternal health because mortality rates were higher for abortion than childbirth. By the third trimester, the state has a compelling interest to protect a viable fetus and thus may prohibit abortions unless the mother's health or life is at stake. Blackmun acknowledged the arbitrary nature of his trimester framework: Neither side arguing before the court had introduced this concept. Blackmun maintained that it left states the right to set medical guidelines between the first and third trimesters.

Doe v. Bolton, the companion case to *Roe*, declared Georgia's abortion statute unconstitutional. The court struck down the approval of a hospital staff committee and two consulting physicians prior to an abortion; the attending physician's approval is sufficient. The court also rejected the residency requirement because no other medical procedure had such a prerequisite. The state could not interfere with the exercise of a woman's right to abortion by prohibiting or limiting access to it.

Justices Byron White and William Rehnquist dissented. White argued that no language existed

in the Constitution to support the right to abortion. In his view, the court "simply" announced an unfounded right for pregnant women; he found the decisions to be "an improvident and extravagant exercise of the power of judicial review." Rehnquist agreed that the court had overstepped its boundary, breaking a long-standing tenet that the court should not "formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." Privacy, in his opinion, did not apply to abortion because the procedure occurs with a medical professional in a hospital or clinic, not the privacy of one's home. He also took issue with Blackmun's historical analysis: The fact that most states for over a century had prohibited abortion unless to save the mother's life meant that a right to abortion was not "so rooted in the traditions and conscience of our people as to be ranked as fundamental."

Criticisms

Some legal scholars have critiqued the majority decisions in these cases. They believe abortion rights would have been on firmer ground had the court invoked sex equality considerations rather than due process and privacy. Justices could have looked to *Reed v. Reed* (1971) in which the court unanimously ruled that dissimilar treatment of men and women was unconstitutional based on the Fourteenth Amendment's equal protection clause, but the court did not pursue this track. The shaky grounding of *Roe* in privacy galvanized antichoice groups to propose overturning *Roe* by constitutional amendment and numerous state and federal laws to limit abortion. The trimester approach has set up a possible collision course as technology allows safer abortions later into pregnancy and moves back the point of viability earlier in pregnancy. It has led to state efforts to institute mandatory viability testing before performing an abortion. Some scholars believe the court should have struck down the Texas law and gone no further, allowing the battles to be played out in state legislatures that were already passing liberalized abortion statutes. By delineating the medical and trimester approach, the court sparked bitter debate on the issue for decades.

In sum, *Roe* and *Doe* invalidated state power to criminalize abortion. They struck down nearly all state abortion laws, including those that had

been liberalized prior to 1973. The court ruled that abortion fell under the right to privacy recognized in *Griswold* and protected by the Fourteenth Amendment's due process. Yet the court did not remove all restrictions nor mandate access to abortion. The ultimate decision to abort rests not with the woman but with her physician, confirming the medical rather than feminist framework of the judgment. Since 1973, the court has upheld the right of public hospitals to refuse to perform abortions; parental consent laws as long as judicial bypass exists; and 24-hour waiting periods. Still, the basic ruling in *Roe* remains intact in 2010.

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See Also: 1851 to 1900 Primary Documents; Abortion; *Eisenstadt v. Baird*; *Griswold v. Connecticut*.

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Romer v. Evans

In 1992, the citizens of Colorado adopted Amendment 2, which added the following to the Colorado Constitution:

Neither the State of Colorado ... nor any of its ... political subdivisions ... shall enact, adopt or enforce any statute, regulation, ordinance or policy whereby homosexual, lesbian or bisexual orientation, conduct, practices or relationships shall constitute or otherwise be the basis of or entitle any person or class of persons to have or claim any minority status, quota preferences, protected status or claim of discrimination.

At the time Amendment 2 was adopted, several municipalities, including Aspen, Boulder, and Denver, had already enacted ordinances prohibiting discrimination on grounds of sexual orientation in areas such as employment, education, housing, health and welfare services, and public accommodations. Amendment 2, supported by 53 percent of voters, would not only have rescinded the existing antidiscrimination ordinances but would have prohibited any future legislative, executive, or judicial action, at any level of government, designed to protect people on the basis of sexual orientation.

The amendment, which had generated significant controversy even before its passage, was immediately challenged and a court-ordered injunction prevented it from taking effect. A trial was held to establish the facts in the case, and when the trial judge ruled in favor of challengers, the case was appealed to the Colorado Supreme Court. According to Keen and Goldberg (2000), those challenging the amendment made three primary arguments. First, because the amendment prohibited lesbian, gay, and bisexual people from obtaining governmental protection against discrimination, it infringed their fundamental right to participate in the political process. Second, challengers argued that Amendment 2 was discriminatory because it treated one class of citizens (gay people) differently from the rest of Coloradans without a legitimate purpose. Third, challengers argued that the amendment violated their First Amendment rights to free expression and association. The state offered several arguments in defense of the amendment, the principal ones being that it prevented factionalism by promoting legal uniformity across the state, it preserved resources to support existing civil rights laws, it prevented governmental interference with the personal, familial, and religious privacy of those opposed to homosexuality, it protected children from psychological harm, and that it was the will of the people.

In 1994, the Colorado Supreme Court affirmed the trial court decision, stating that Amendment 2 violated the fundamental right of lesbian, gay, and bisexual people to participate equally in the political process. Because Amendment 2 implicated a fundamental right, the court applied strict scrutiny, meaning not only that the law needed to have a legitimate government purpose but that it also had to be narrowly tailored to achieve that

purpose. According to the Colorado Supreme Court, none of the state's arguments in favor of the amendment met this burden. Proponents then appealed to the U.S. Supreme Court, which granted a writ of certiorari.

In 1996, Justice Anthony Kennedy, joined by Justices John P. Stevens, Sandra Day O'Connor, David Souter, Ruth Bader Ginsburg, and Stephen Breyer, upheld the decision of the Colorado Supreme Court but adopted a different legal rationale. Adopting a less stringent form of legal analysis known as rational basis, the court found that Amendment 2 violated the equal protection clause of the Fourteenth Amendment. In his majority opinion, Justice Kennedy wrote, "A law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from the government is itself a denial of equal protection of the laws in the most literal sense." Moreover, the court found that Amendment 2 did not bear a rational relationship to a legitimate government purpose. Consequently, Justice Kennedy states, "We must conclude that Amendment 2 classifies homosexuals not to further a proper legislative end, but to make them unequal to everyone else. This Colorado cannot do. A state cannot so deem a class of persons a stranger to its laws."

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See Also: *Bowers v. Hardwick*; Colorado; Due Process; Equality, Concept of; *Lawrence v. Texas*; Sodomy.

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Roosevelt, Franklin D. (Administration of)

Franklin Delano Roosevelt (1882–1945) was the 32nd president of the United States and the only president elected to more than two terms in office. First elected in 1932 against Republican Herbert Hoover, Roosevelt was re-elected three more times and ultimately passed away during his fourth term as president. Following his death, the Twenty-Second Amendment to the U.S. Constitution limited the number of terms a president can serve to two. Roosevelt's leadership during two of the country's greatest crises of the 20th century, the Great Depression and World War II, have consistently earned him a top-tier rating among scholars and historians of U.S. presidents.

Immediate Action

In 1932, the United States was in the midst of the Great Depression, and public sentiment had shifted from the Republican Party in favor of the New Deal promised by Roosevelt. Ultimately, Roosevelt accomplished the goal of providing for a more powerful federal government, including the establishment of a more powerful federal law enforcement organization that was widely supported by the public. In February 1933, before Roosevelt officially took office, Joseph Zangara attempted to assassinate him but instead ended up killing Mayor Anton Cermak of Chicago.

When Roosevelt first entered office, many suspected he would put into place an attorney general who would remove then director of the Bureau of Investigation (renamed the Federal Bureau of Investigation in 1935, hereafter FBI) J. Edgar Hoover. However, Roosevelt placed Homer Cummings into the position of attorney general. Cummings had similar views regarding crime as Hoover, most notably that a powerful federal law enforcement institution was necessary to engage



Franklin D. Roosevelt with his son and wife in Rhinebeck, New York, in 1932. Roosevelt was elected president at the height of the Great Depression: By March 1933, 13,000,000 Americans were unemployed and nearly all of the country's banks were closed. Among other accomplishments, Roosevelt created a more powerful federal government and federal law enforcement system, controls over banks and public utilities, Social Security, and a work relief program for the unemployed.

in effective crime control. To ensure states' rights advocates were in tune with a stronger federal institution, Cummings and Hoover campaigned for a force that would focus on interstate issues, as the regulation of interstate commerce was already in the purview of the federal government, and did not attempt to create a nationalized police force akin to Great Britain's Scotland Yard.

An early action taken by the Roosevelt administration regarding crime was to repeal the National Prohibition Act (Volstead Act). The first step was to transfer control of enforcement from the highly corrupt Prohibition unit within the Bureau of Internal Revenue located within the Department of Treasury to the Justice Department. Hoover, whose FBI was located within the Justice Department, did not approve, as he saw the corruption and lack of scientific policing techniques of Prohi-

bition agents as detrimental to law enforcement. Hoover was able to maintain control over the management and hiring of the FBI, allowing the FBI to remain free of the public disdain associated with Prohibition agents.

Federal Law Enforcement

In 1933, Cummings declared that the Roosevelt administration was entering a war on crime, and he proposed a 12-point plan to be passed by Congress to expand federal law enforcement powers. Under the administration of President Herbert Hoover, there had been a rise in crimes involving kidnapping and bank robbing. It was during this time that Congress first started to expand federal law enforcement powers with the passage of the Federal Kidnapping Act (Lindbergh Law), named after 20-month-old kidnap victim Charles

Lindbergh, Jr., making it a federal crime to transport a kidnap victim across state lines. Although this expanded federal law enforcement powers somewhat, congressional focus was on social and economic policies proposed by the White House. Crime control was not yet a major factor for Congress.

On July 17, 1933, congressional concern with federal law enforcement was triggered by the killing of two federal agents and the bank robber Frank "Jelly" Nash outside Leavenworth penitentiary. The fact that federal agents at the time were not allowed under law to carry firearms sparked concern among members of the public and Congress. In his January 3, 1934, State of the Union address, Roosevelt stated that crime was a threat to the nation and in order to combat the crime wave involving kidnapping, bank robbing, and extortion, some type of federal enforcement was necessary, so Congress should pass the Cummings plan. In June 1934, Congress enacted six of the 12 points of the Cummings plan. The focus was on making criminal actions that crossed state lines federal crimes. Thus, interstate racketeering, bank robbing, and car theft, as well as killing a federal agent, were made federal crimes. This expanded the power of the FBI drastically and led the way to having a more centralized federal law enforcement agency.

The focus of the FBI was not on organized crime during these early years. In fact, it was largely ignored by federal law enforcement. Hoover avoided going after these types of vice crimes as he was known for disavowing the existence of syndicate crime. Rather, the focus was on bandit crimes such as bank robbing, automobile theft, and kidnapping, where clear public enemies could be established that Hoover could use for public relations purposes to promote the FBI. On July 22, 1933, the capture of bank robber and kidnapper George "Machine Gun" Kelly proved an excellent tool for Hoover when Kelly shouted "Don't shoot, G-men. Don't shoot!" This pushed the use of *G-man* (government man) into the public lexicon and promoted the image of the professional, efficient, incorruptible federal agent. This image was fueled by other notable events such as the killing of public enemy number one John Herbert Dillinger on July 22, 1934, and the 1935 capture/killing

of the members of the Barker-Karpis gang. As the FBI became more prominent, congressional appropriations rose rapidly, doubling between 1932 and 1936.

International Relations

As the change in social and economic policy was coming to an end, Roosevelt faced other problems in his administration. In 1940, Roosevelt won an unprecedented third term for the office of president. Unlike in Roosevelt's first two terms in office when the economy was the main issue, he faced problems on the international front with the rise of Adolph Hitler in Germany and the beginning of World War II.

In the late 1930s, the United States was officially a neutral country. In 1935, Congress passed the Neutrality Act, which banned weapons shipments to fighting nations. While Roosevelt was opposed to the act, the public was not, thus he signed the legislation. In 1938, Roosevelt attempted to convince Congress that the United States should not maintain neutrality, but it was not until after World War II actually began that Roosevelt was able to make his concerns heard with the Congress and the United States at large. When Germany invaded and took control of Paris in 1940, congressional and public opinion in the United States shifted to support Roosevelt's positions, including a major increase in military and defense spending. Roosevelt believed that the United States should provide support to Great Britain, most notably by turning the United States into an "arsenal of democracy" wherein the United States would supply armaments and ammunition to the Allied forces. It was made clear during 1941 with the passage of the Lend-Lease Act by which the United States would lend weapons to Great Britain that the United States was clearly on the side of the Allied forces.

National Security Versus Individual Rights

In addition to syndicate and bandit crime, radical movements developed during the Great Depression that were associated with Nazism and Fascism. These were considered "fifth column" movements by the Roosevelt administration and spurred the development of further counterespionage and counterintelligence activities by the FBI. In 1935, the FBI uncovered a German

espionage organization that had been operating in New York City since around 1927. In 1936, Hoover and Roosevelt met to discuss ways to counter espionage; one focus of Hoover's was to infiltrate certain types of organizations, most notably unions, in order to keep radical elements out of industry. Roosevelt's plan was much more minimal than Hoover's; however, the control and independence Hoover established for the FBI allowed him to take bigger actions and to inform the attorney general only after the fact. Congress officially expanded the FBI's powers in 1939 and 1940 after Germany invaded Poland and the crisis of World War II truly began. Over the next few years, special divisions were created for the purpose of counterespionage and intelligence such as the Special Intelligence Service and Office of Strategic Services. In 1940, Hoover established a detention program to go after enemy aliens that would hold and track persons of interest.

In 1937 and 1939, the U.S. Supreme Court had determined that forms of wiretapping were unconstitutional; however, Roosevelt in 1941 issued a secret directive that allowed the FBI to engage in wiretapping. Because of legal concerns, the attorney general informed Hoover that records should not be kept. This type of practice is considered one reason why the FBI was able to engage in other investigative activities of questionable legality in 1940, such as opening the mail of suspects. The fear of radical activism was not limited to the political and criminal arena, when, for example, the FBI instituted investigations of the motion picture industry under the 1942 COMPIC program.

World War II

In 1941, many in the United States believed the country would at some point enter the war but no one was prepared for the December 7, 1941, Japanese attack on Pearl Harbor. The next day, Roosevelt asked for a congressional declaration of war. As the United States mobilized for war, industrial production grew rapidly and unemployment decreased, allowing for the entrance of more women and minorities into the workforce. In 1941, Roosevelt signed Executive Order 8802, which forbade hiring discrimination based on race in defense industries. Roosevelt's strategy for war

was to focus on going after Nazi Germany, the root of the problem. When Germany and Italy declared war on the United States on December 11, 1941, Roosevelt's strategy gained a stronghold, and the U.S. entrance into World War II fully began.

In 1941, Attorney General Francis Biddle established lists of German and Italian aliens who could be detained, and in 1942, Roosevelt issued Executive Order 9066, which relocated and placed in internment camps immigrants and dual-citizenship holders of Japanese descent. Hoover, for his part, argued that this latter executive order was without merit and thus did not support that particular internment. The U.S. Supreme Court upheld the constitutionality of the executive order in *Korematsu v. United States* (1944).

Roosevelt held a number of strategy meetings with prominent leaders of the Allied forces: Winston Churchill of Great Britain, Joseph Stalin of the Soviet Union, and others such as Chiang Kai-shek of China. These meetings laid the foundation for a future interventionist foreign policy by the United States. Throughout the war, Roosevelt maintained a positive view, despite those who thought otherwise, of Joseph Stalin. However, Roosevelt eventually realized that the fear others in the administration had that Stalin would prove to be a tyrannical leader were ringing true. This led to the eventual replacement of Roosevelt's vice president, Henry Wallace, who was considered pro-Soviet, with Harry Truman as a running mate in the 1944 election, an election that Roosevelt won to secure his fourth term as president.

In March 1945, Roosevelt spoke to Congress about the goal of creating an international organization that would bring together nations striving for peace. This organization, the United Nations, was something Roosevelt hoped to be directly involved in. However, before this could occur, Roosevelt suffered a stroke on April 12, 1945, and died that day. Not long after his death, the United States and the Allied forces defeated Germany and the rest of the Axis powers to win World War II.

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See Also: Great Depression; Hoover, Herbert (Administration of); Hoover, J. Edgar; Lindbergh Law.

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Roosevelt, Theodore (Administration of)

The 26th president of the United States (1901–09), Theodore “Teddy” Roosevelt is commonly referred to as the first modern American president for his role in momentarily expanding the influence and power of the executive branch of the government. He is noted for his opposition to the ideas of limited government and individualism, and he advocated the use of government regulation to attain social and economic justice. Roosevelt was born in New York City, New York, on October 27, 1858, the second of four children of Theodore Roosevelt, Sr. (1831–78) and Martha Bulloch (1835–84). Born into a wealthy family as a sickly and asthmatic child, he was educated at home with the help of private tutors until he entered college. In 1876, Roosevelt entered Harvard College; he graduated in 1880. While at Harvard, he developed his lifelong political and historical interests, as well his study of the U.S. Navy role in the War of 1812.

Upon graduating, he married Alice Hathaway Lee (1861–84), with whom he had one daughter, and went on to study law at Columbia University. He withdrew from law school after one year to pursue politics when offered the opportunity to contest for New York Assemblyman in 1881, which he won in 1882. In the New York Assembly, he became the leader of the Republican

Party’s reform wing, during which time he gained a reputation for fighting against illegal or unethical political practices. The sudden deaths of Roosevelt’s wife and mother in the same house on the same day in February 1884 were a discouraging double tragedy in his last term in the assembly.

Roosevelt retired to his ranch in the Badlands of the Dakota Territory and spent two years there in an endeavor to recover while he engaged in hunting, herding cattle as a rancher, and hunting down outlaws as a frontier deputy sheriff. He also spent his time there studying and writing about frontier life for eastern magazines. In 1886, he returned to New York with politics and a romantic interest in his childhood sweetheart, Edith Kermit Carow, on his mind. He went to London and married Edith (1861–1948) on December 2, 1886, resulting in his induction into the British Royal Society. They raised six children, Theodore, Kermit, Ethel



Known for its antitrust actions, Theodore Roosevelt’s administration also created the formal Federal Bureau of Investigation (FBI) by executive order on July 26, 1908.

Carow, Archibald Bulloch, Quentin, and Alice Lee, Roosevelt's daughter from his first marriage.

Political Ascendancy

Roosevelt was appointed in 1889 by President Benjamin Harrison (1833–1901) to serve on the Civil Service Commission in Washington, D.C. Roosevelt's significant achievement was that he provided the leadership for the commission to become dedicated to opening equal opportunity access for all who were qualified to serve and work in government, particularly for African Americans, who were historically victims of oppression and discrimination. In 1895, he returned to New York to serve two years as president of the New York City Police Board. During his tenure in this post, he radically reformed the police department and enforced the law with relentless proficiency and rectitude. He succeeded in improving the force, raising personnel morale and reducing corruption. Roosevelt provided leadership that enabled him and his fellow commissioners to institute new disciplinary procedures, new recruitment policies based on physical and mental qualifications instead of political affiliation, and established meritorious service methods to combat corrupt police favoritism. Unfortunately, some of his achieved improvements were abandoned after he left.

In 1897, Roosevelt resigned from the position of president of the police board and was appointed by President William McKinley (1843–1901) to the post of assistant secretary of the Navy. As assistant secretary, he enthusiastically worked with senators to promote justification for war against Spain. He played a significant role in preparing the Navy for the Spanish–American War (1898), which resulted in moving control of Latin American colonies, including Philippine territories, from Spain to the United States. Upon the start of the war, Roosevelt resigned from the Department of the Navy in April 1898 and formed the First U.S. Volunteer Cavalry regiment. Known as the Rough Riders, members of the cavalry consisted mostly of cowboys from the western region and Roosevelt's friends from the New York area. Under his command, the cavalry regiment became famous for leading dual charges up Kettle Hill and San Juan Hill in Cuba on July 1, 1898. He returned home as a distinguished war hero and was nominated for governor of New York.

In the fall of 1898, Roosevelt became governor of New York, a term that he began by pushing a profound body of new laws and regulations through the New York Assembly and Senate. Because of his Progressive policies, public opinion was favorable to him and showed him to be a master politician. In 1900, Roosevelt was selected as the Republican vice presidential running mate under the William McKinley presidency, which defeated William Jennings Bryan in a landslide. His time as vice president was short. On September 6, 1901, President McKinley was shot in Buffalo, New York, while attending the Pan-American Exposition; he died eight days later, making Roosevelt the president of the United States.

Presidency

Roosevelt's first major presidential achievements include his antitrust actions to curb the power of large corporations. He delivered a 20,000-word address to Congress, persuading it to control the activities of large corporations, referred to as trusts. Over his two terms as president, he maintained aggressive attacks on trusts and has been called a "trustbuster." His foreign policy was aimed at limiting European influence in the Western Hemisphere while expanding American influence globally. In 1904, Roosevelt was elected to a full presidential term in a landslide, making him the first president to be elected on his merits after gaining office because of the death of his predecessor. In the area of crime and criminal justice, Roosevelt's administration created the Bureau of Investigation (FBI after 1935) by executive order on July 26, 1908. Deriving its powers from the Interstate Commerce Act of 1887, the Bureau's first crime-fighting FBI comprised some transferred secret service men and specially appointed agents. The bureau's first crime-fighting task was to take surveys of prostitution houses in preparation for enforcement of crimes related to the White Slave Traffic Act.

As an environmentalist president, one of Roosevelt's major accomplishments in his second term was setting aside nearly 200 million acres for national public control, monuments, parks, and wildlife refuges. He continued his Progressive movement agenda, preaching the so-called Square Deal for people to earn a living wage. People still associate him with his famous saying: "Speak

softly and carry a big stick, and you will go far.” Theodore Roosevelt died on January 6, 1919, in Oyster Bay, New York.

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See Also: Federal Bureau of Investigation; New York City; Secret Service.

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Roth v. United States

In legal settings, the term *obscenity* is frequently used to describe expressions (e.g., actions, images, or words) of an explicitly sexual nature (e.g., pornography). Most often, the term *obscenity* is used around discussions of which type of content should be protected under the First Amendment of the Constitution. *Roth v. United States* (1957), along with another case, *Alberts v. California* (1957), was a landmark case presented before the U.S. Supreme Court that redefined the constitutional test for determining whether material is considered obscene and therefore unprotected by the First Amendment. In the case of *Roth*, the court defined obscenity more narrowly and adopted the “community standards” test, or “whether to the average person, applying contemporary community standards, the dominant theme taken as a whole, appeals to the prurient interest.” Materials that appeal to the prurient interest are those “having a tendency to excite lustful thoughts.” In addition, materials failing to meet this test could be banned as obscene. In *Roth*, the court reaffirmed its decision that obscenity was not protected under the First Amendment and, consequently, upheld the convictions of Samuel Roth and David Alberts for publishing and distributing obscene material through the mail.

Samuel Roth, who operated a literary business in New York City, was convicted for violating

the federal statute (i.e., the Comstock Act) that criminalized sending “obscene, lewd, lascivious, or filthy” materials through the mail. David S. Alberts was convicted under California statute for selling lewd and obscene books, in addition to composing and publishing obscene advertisements for his products. The court combined the *Roth* and *Alberts* cases because they raised the same issue: Did either the federal or California’s obscenity restrictions, prohibiting the sale and transfer of obscene materials through the mail, encroach upon the freedom of expression as guaranteed under the First Amendment?

In a 6–3 decision written by Justice William J. Brennan, Jr., the court held that obscenity was not “within the area of constitutionality protected under speech or press.” The court noted that the First Amendment was not meant to protect every utterance or form of expression and stated that a published work is obscene if it (1) appeals predominantly to prurient interest, (2) is patently offensive by contemporary community standards; and, (c) is utterly without redeeming social value. Justice Brennan went on to state that such a definition of obscenity gave sufficient fair warning and satisfied the demands of the due process clause guaranteed under the Fourteenth Amendment. As a result, the court ruled that because obscenity is not protected, constitutional guaranties were not violated in the cases of both defendants, Samuel Roth and David Alberts.

In his concurring opinion, Chief Justice Earl Warren expressed his concern that “broad language used here may eventually be applied to the arts and sciences and freedom of communication generally” and recommended that the court’s decision in *Roth* be interpreted within a limited scope. In their dissenting opinion, Justices William O. Douglas and Hugo Black argued that the First Amendment protected obscene material. Justice John Marshall Harlan II dissented in *Roth*, but concurred in *Alberts*, because, he argued, that although the states have broad power to prosecute obscenity, the federal government did not have such authority to criminalize the possession and distribution of obscene materials.

In the case of *Roth*, despite its good intentions, the court failed to distinguish sex from obscenity. Because the court relied on vague language

(e.g., “average person,” “contemporary community standards,” and “prurient interest”) it spent decades addressing the shortcomings of the *Roth* decision (see *Jacobellis v. Ohio*, 1964; *Miller v. California*, 1973; *Reno v. ACLU*, 1997).

For example, in *Miller v. California* (1973), the court created a modern three-prong test for judging obscenity: (1) the proscribed material must depict or describe sexual conduct in an obviously offensive way, (2) the conduct must be specifically described in the law, and (3) the work must, when taken as a whole, lack serious value, and must appeal to a prurient interest in sex. Today, there continues to be much debate on how to best define obscenity, especially because perceptions of what is considered obscene differ from culture to culture. As the legal definition of obscenity continues to develop, censorship restrictions may present civil liberty issues for the court to consider in the near future.

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See Also: Brennan, William J., Jr.; Obscenity Laws; Pornography.

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Rothstein, Arnold

American gambling figure Arnold Rothstein enjoyed a reputation as the nation's biggest high-stakes gambler during his lifetime and is today known for his connections to the 1919 Black Sox betting scandal. Rothstein's father, Abraham, was born in New York City to a Russian immigrant family. Called “Abe the Just” by New York Governor Alfred E. Smith for his rectitude, he prospered in the textile industry. His son Arnold was attracted to gambling in his teenage years. Progressive Era–New York had a thriving gambling subculture, with elaborate illegal casinos



New York gangster Arnold Rothstein is best remembered for financing the bribery of eight Chicago White Sox players (above) to throw the 1919 World Series by losing games.

and street-corner dice games. Early on, Rothstein supplemented his gambling winnings with income derived from moneylending. As he grew older, he worked day jobs as a salesman but continued to hone his gambling ability, for a time under the tutelage of famous gamblers “Honest” John Kelly and Richard Canfield. After saving \$2,000, he retired from sales and pledged himself to the life of a professional gambler.

Through the 1910s, Rothstein worked in book-making, taking and placing bets on both horse races and sporting events; bankrolled floating illegal dice games; and played cards and billiards for high stakes. He also owned clubs in which gambling was conducted, although this was ostensibly illegal in the state of New York. Tied to the city's political establishment (he was a protégé of Tammany leader Big Tim Sullivan), he did not fear the law. Usually, his operations continued without police harassment, and even when the police attempted to close him down, they inevitably failed. In early 1919, he was accused of firing shots at police officers during a raid of one of his dice games. The indictments were dismissed before trial, a testament to his political connections.

Rothstein's stamina was legendary—he once played pool for 32 hours straight and followed nights at the dice tables with days running his gambling establishments. He grew wealthy from his gambling interests and boasted that he never ran crooked games. Yet, he was involved in what is likely the largest gambling scandal in American professional sports history: the bribery of players for the purpose of throwing the 1919 World Series. With the Chicago White Sox heavily favored to beat the underdog Cincinnati Reds, smart operators understood that, should the Reds win, those who bet on them might make a fortune. The exact sequence of events that led to the cheating is unclear; those involved had good reason to obscure their roles. Most believe that a coterie of gamblers, led by Rothstein, offered to pay \$10,000 to eight members of the Chicago White Sox to throw the series by deliberately losing games. Cincinnati won the series 5–3, and almost immediately allegations of a fix began circulating. A series of investigatory articles in the *New York World* led to public demands for a formal inquiry. Subsequent scandals during the 1920s fueled the fire. Testifying before a Chicago grand jury, Rothstein denied any role in the “fix” and escaped indictment.

Despite his protestations, Rothstein's name was thereafter linked with the World Series scandal. He publicly foreswore his gambling interests and announced his intentions to concentrate on his real estate investments; over the next decade, he built a large real estate empire that included two office buildings in midtown Manhattan, a New York City hotel, and 1,000 furnished apartments, which he rented. With the advent of Prohibition, Rothstein emerged as a mentor for a rising cohort of bootleggers and gangsters, including Frank Costello, Charles “Lucky” Luciano, and Meyer Lansky.

He reportedly bankrolled both massive bootlegging operators and hijacking ventures. In 1924, Rothstein was accused of income tax evasion; the case was never resolved. His personal fortune was estimated at between \$2 and \$10 million, a tremendous sum for the period. Rothstein remained, until he died, a gambler. On November 5, 1928, he was shot at Manhattan's Park Central hotel, reportedly after his failure to square a gambling debt. He died shortly afterward, steadfastly

refusing to name his killer, who was never brought to justice.

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See Also: 1921 to 1940 Primary Documents; Genovese, Vito; Luciano, “Lucky”; Schultz, “Dutch.”

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Ruby Ridge Standoff

The Ruby Ridge Standoff is one of the most devastating indictments against law enforcement in the history of America. The Ruby Ridge Standoff resulted in the deaths of a U.S. marshal, a teenager who was shot in the back while running from law enforcement officials, and an unarmed mother who was shot dead while holding her infant child.

Randy Weaver has been described as a white supremacist, a religious fanatic, an ultraconservative religious fanatic, and an isolated survivalist. He was formerly a Green Beret. Weaver lived in a small isolated cabin made of plywood and a sheet-metal roof without electricity in a forested and mountainous area in northern Idaho with his wife, Vicki, and his teenage daughter, Sara, his younger teenage son, Sammy, and his subsequently born infant daughter, Elisabeth. It was common practice for people in this part of the state to carry weapons while walking or working in the forest. The family had little money and obtained much of their food from farming their small garden and hunting. In 1989, Weaver needed money. Weaver was enticed by an informant for the U.S. Bureau of Alcohol, Tobacco, and Firearms (BATF) to sell illegal sawed-off shotguns. There is a dispute as to

whether the shotguns were ever delivered; however, Weaver's subsequent acquittal indicates that they were never, in fact, delivered.

A Warrant Is Issued

As a result of the entrapment by the BATF, in 1991, a warrant was issued by the U.S. District Court for the arrest of Weaver on the gun charges. After he was bailed, a court date of February 21 was set, which was reset for February 20 at the request of the BATF. However, the notice sent to Weaver's lawyer had March 30 for the hearing date. When Weaver failed to show at the February 20 hearing, a warrant was issued for his arrest for failing to appear before the court, even though the judge was notified of the clerical error. Subsequently, the U.S. Marshals Service prepared a threat assessment concerning Weaver that included numerous falsehoods, such as allegations that Weaver had been involved in a bank robbery, that Weaver's cabin was a fortified house with blackout curtains, that Weaver had vehicles in his "compound" that were mounted with heavy caliber guns, and that he would likely shoot officers on sight. By 1992, the U.S. Marshals Service began surveillance of Weaver's cabin.

On April 21, six marshals dressed in camouflage uniforms, black ski masks, and body armor while carrying submachine guns approached the Weaver cabin, ostensibly for a "reconnaissance" mission. When the marshals approached the Weaver cabin, they threw pebbles at the cabin to see if they could attract the attention of the Weavers' dogs. One of the dogs responded and began to approach the marshals. Weaver, a friend, and his teenage son, who carried a shotgun and rifles at the time, followed the dog. Weaver went in one direction and his son and his friend went in another direction.

As Weaver approached a stand of trees, a camouflaged marshal yelled at Weaver to freeze. Weaver refused and retreated back to the cabin. A short time later, as the dog approached the stand of trees where the marshals were hidden, one of them shot the dog. Weaver's son shot once into the forest and started to run back to the cabin. Weaver yelled to his son to hurry back to the cabin and fired several shots into the air to distract whoever it was who was shooting. At that time, the marshals opened fire and shot

Weaver's son in the back, killing him. Weaver's friend returned fire in the direction of the marshals. One of the marshals was struck and killed, although there is some question whether he was killed by Weaver's friend or friendly fire from the other marshals. After taking shelter in the cabin, the Weavers later retrieved their son's body and placed him in a shed on their property. The siege then began. The log road that led to the Weaver's cabin was blockaded. Eventually, hundreds of law enforcement and military personnel were brought in, along with over 250 law enforcement and military vehicles, including armored personnel carriers. The FBI Hostage Rescue Team was brought in, along with specially trained sniper teams.

The Siege and Outcome

On April 22, later in the afternoon, the Weavers wanted to check on their son's body in the shed. Weaver, his friend, and his teenage daughter exited the cabin and went to the shed. When Weaver attempted to open the shed door, one of the snipers shot Weaver. Weaver, his friend, and his daughter fled back to the cabin. Weaver's wife, who was unarmed and holding her infant daughter, held the door open for them. At that time, a sniper shot Weaver's wife, killing her. The bullet went through her skull and struck Weaver's friend, who was seriously wounded. The siege lasted nine more days before the Weavers were eventually convinced to surrender. During the siege, the situation attracted national attention. Hundreds of people appeared at the scene but were prevented from approaching due to the blockade. During and after the siege, the government issued numerous press releases that were subsequently shown to be false, which only inflamed the public reaction.

Weaver and his friend were indicted for the crimes of conspiracy, the original gun charge, failing to appear, assaulting U.S. marshals, murder, resisting U.S. marshals, concealing a fugitive, receiving firearms, committing crimes while on bail, and carrying firearms. Weaver was represented by the famous trial attorney Gerry Spence. After a long trial that revealed numerous problems and inconsistencies concerning the evidence presented by the government, Weaver was acquitted of all the charges except for the minor crimes of failing to appear and violating bail. Weaver's friend was acquitted of all charges. The result

brought a wave of public outrage at the conduct of the government.

Numerous calls were made for investigation into the conduct of the federal law enforcement agencies. Subsequently, a few of the law enforcement officials involved in the Ruby Ridge Standoff were given minor punishments such as a reprimand or a short suspension. Incredibly, one of the higher law enforcement officials who was so punished was simultaneously recommended for promotion. None of the federal law enforcement officials were ever criminally prosecuted for their actions. The government subsequently paid each of Weaver's daughters \$1,000,000 and paid Weaver \$100,000 in damages when they brought a civil suit for violations of their civil rights. Weaver's friend was awarded \$380,000 in damages. The Ruby Ridge Standoff was a disaster for American law enforcement. It provided ammunition for many of the critics of government who had been continuously raising vociferous allegations of criminal misconduct. Its effects are still felt today, although the terrorist attack of 9/11 has caused much of such criticism to be muted.

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See Also: Civil Rights Laws; Famous Trials; Federal Bureau of Investigation; News Media; Police in.

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the emergence and establishment of democratic politics. Euro-American history traces the origin of the rule of law back to the ancient Greeks and later to the events and the illustrious figures that contributed to the foundation of British constitutionalism. Aristotle and Plato (400–300 B.C.E.) argued that “the rule of law is better than the law of any individual” meant that judges and governments should abide by the law in order to restrain despotism and to avoid discretionary power. However, until the medieval period, the general assumption was that the prince or the king would be above all law. During the Christian era of the late Roman Empire, the emperor was subordinated to the law of God but certainly not to the law of other men.

The Magna Carta, one of the most ancient written guarantees of English liberties, is traditionally regarded as the first step toward the emergence of the rule of law. It was drafted at Runnymede by the Thames and signed by King John in 1215 under pressure from his rebellious barons. The barons, exasperated by cutthroat royal taxation and supported by the archbishop of Canterbury, Stephen Langton, requested a solemn grant of their rights. While deeply revealing of the feudal system for limiting to nobles the newly acquired rights, the Magna Carta provided for equality before the law, right to property, and religious freedom, reforms of law and justice, and restrained the power of royal officials.

It was not until the 17th century in England that a specific limitation to the power of the king was formulated. Sir Edward Coke, one of the most authoritative common law lawyers of the time, argued that although the king had no superior on earth, he was not legitimated to act as judge because he lacked the specialized knowledge possessed by lawyers. Toward the end of the 17th century in England, the Bill of Rights (1689) provided the Parliament with the first recognition of the principle of exclusive privilege of legislative rights. This had immediate effect on the revenue system, for the king could not raise taxes without seeking legislative approval. Yet separation of powers and primacy of the rule of law in the society at large took a long time to be established. It was not until the 18th century that the judiciary was granted security on the basis of the Act of Settlement (1701), by which King

Rule of Law

Today the concept of the rule of law as a government of laws and not a government of men is inherent in democracy. It has gone beyond the specialized realm of legal doctrine. In fact, the very conceptualization of the rule of law predates

William III established tenure for judges unless the Parliament would remove them. Secrecy and independence of the jury would not, however, be a priority until the 18th century. The latter saw four main events taking place, all of which are considered to have substantially contributed to the consolidation of the rule of law: the U.S. Declaration of Independence in 1776, the U.S. Constitution in 1787, the French Declaration of the Rights of the Man in 1789, and the U.S. Bill of Rights in 1791 positing the freedom of religion, of person and property, and the right to due process and a fair trial (also the controversial right to bear arms). Many see the above sequence of events as a historical process of consensus progressively affirming the necessity for the primacy of the rule of law and the progressive abandonment of feudalism for the embracement of modernity and democratic institutions.

However, until the 19th century, civil service was still appointed on the basis of patronage, and political participation was still limited to the elite, and all of this was perfectly consistent with the classical liberal tradition theorized by Alexis de Tocqueville.

Contemporary Rule of Law

The current formulation of the rule of law is indebted to Albert Vann Dicey (1835–1922), professor of constitutional law in the United Kingdom. The essential characteristics of the rule of law, as originated from Dicey's ideas, should involve (1) supremacy of the law—all persons, irrespective of their rank and condition, and governments alike, are subject to the law; (2) interpersonal adjudication—law based on standards and on the importance of legal power; (3) restrictions on the exercise of discretionary power and



A crowd is allowed to view the heavily guarded ancient Magna Carta document after it is installed in the U.S. Congressional Library in Washington, D.C., by British Ambassador Lord Lothian in 1939 for the time span of World War II. The Magna Carta was a set of laws imposed on King John by a group of feudal barons attempting to limit his powers.

exclusion of arbitrary power; (4) the doctrine of judicial precedent; (5) the common law methodology; (6) that legislation should be prospective and not retrospective; and (7) separation of powers—the parliament has the exclusive right to the legislative power, restrictions apply on the exercise of legislative power by the executive, and the judiciary is independent.

Dicey's positivistic vision, which did nothing to hide some disregard for continental legal traditions, was limited by its inability to distinguish between arbitrary governments lacking formal rules and political regimes (such as apartheid in South Africa, colonial settlements in many areas of the world, and Nazi Germany) that had rules that were discriminatory and unjust. However, Dicey's original formulation of the rule of law, which he used for the first time in 1875 to describe a salient feature of the constitution, was reinterpreted and expanded by subsequent generations of scholars.

In the 20th century, following the growing legal consciousness regarding the perpetration of human rights abuses at the hands of governments, the concept of rule of law became increasingly interlinked with international human rights seen as focusing on the protection of ethnic minorities, women, and children, as well as on the achievement of international standards of labor. However, it was after World War II, with a shift from human rights as protection of minorities and specific social groups to a set of political, civil, economic, social, and cultural rights established as universal and applicable to everybody, that the notion of the rule of law acquired crucial importance: It was no longer about procedures and formal requirements but about substantive conditions in absence of which governments would be free to infringe upon human rights. The rule of law—it was argued by the United Nations—should meet international standards. Yet in the aftermath of World War II in Europe, imposing positive international laws on all states was perceived as likely to jeopardize the exclusivity of state sovereignty.

Formal and Substantive Rule of Law

North American legal theories know two main versions of the rule of law: formal and substantive. The first one, advocated by Joseph Raz, Lon Fullers, and Robert Summers, stresses procedural

features; the second one, promoted by Ronald Dworkin, Sir John Laws, and Trevor Allan, foresees the need for substantial requirements based on contents in addition to its formal requirements. As a result, a middle path has also been articulated as principled adjudication grounding on legal reasoning, transparency, and accountability. The oaths that all government officers, including the president, Supreme Court justices, and the members of the Congress in the United States must pledge on the Constitution, confirm the superiority of the rule of law over any human prerogative. However, both the judiciary and the executive are granted some degree of discretionary power that fuels scholarly debates on the interpretation of the rule of law, especially in relation to the ongoing absence of ratification by the United States of the Rome Statute of the International Criminal Court in 2000. In the 21st century, the universalistic framework of the rule of law was reasserted with renewed vigor by post-9/11 security precautions resulting in a reconfigured world order. Since then, although a certain consensus consolidated around the necessity to reach universal standards of the rule of law, the debate on how this is to be done is still open on the basis of the factual ground that careful scrutiny of the notion and implementation of the rule of law shows how this encompassing and powerful idea assumes different forms in different contexts.

Although the conceptual origin of the rule of law is considered to be indisputably Western, some scholars point out that similar ideas have been elaborated in the east as well. The most ancient example may be the Cyrus cylinder dated 539 B.C.E. It is a written declaration on a clay cylinder, which attests to a long tradition in Mesopotamia whereby kings used to begin their reigns with reforms. For a long time, the cylinder has been interpreted as an act of self-legitimacy by Cyrus seeking the loyalty of his new Babylonian subjects and promising in exchange respect for the religious and political traditions of Babylonia. However, in the early 1970s, the last shah of Iran adopted the Cyrus cylinder as a symbol of his reign, and while celebrating 2,500 years of Iranian monarchy, he defined the cylinder as “the first human rights charter in history,” an interpretation that is still advocated by some, but

criticized by others as “anachronistic, tendentious, and erroneous.” Another example of non-Western ancient conceptualization on the rule of law is Ashoka’s edicts: inscriptions on rocks and pillars disseminated at different location in Afghanistan, India, Nepal, and Pakistan. Made by the emperor Ashoka during his reign (269–231 B.C.E.), they promised reforms and policies and promulgated his advice to his subjects. The present formulation of these edicts, based on earlier and subsequent translations, provides some insights into the ruler’s attempt to legitimize his empire by making the moral and spiritual welfare of his subjects the primary concern. Some scholars also trace the rule of law back to Chinese legal tradition that elaborated on the concept of the well-governed society as early as the 2nd century B.C.E. by founding it on the legitimacy of the ruler, the ability to exercise power, and on the exclusivity of the publicly proclaimed power. In fact, the Qin Code (Qin Lu) compiled by Emperor Qin Shihuangdi, who reigned between 246 and 210 B.C.E., is considered to be the first archived code of law in China for its attempt to depart from Confucian immunities related to social hierarchy and kinship.

Notwithstanding undeniable similarities of conceptualizations in the history of political thoughts and legal theories all over the world, it is also a fact that the rule of law sits oddly with the traditions that view good governance as the exclusive prerogative of the ruler and discourage litigation as potentially going against the interest of stability, efficiency of government, and social peace. Inferring, however, a polarization between countries governed by the rule of law and countries lacking the rule of law would not only be too simplistic but also risks discrimination against societies that have different conceptualizations of the rule of law.

Conclusion

Finally, the rule of law in its Western formulation and historical development has its own detractors: Leftist scholarship has denounced it as an ideological construction whose birth is rooted in the purpose of legitimizing the privileges of feudal landowners thanks to the alliance with the common law courts. Yet the criticism of the rule of law features substantial variants. Roberto Unger,

Ugo Mattei, and Laura Nader, probably the most radical critics of the rule of law, have pointed out the discrepancy between the rhetoric of the rule of law and the actual practice of governance by colonial regimes first, and subsequently in the postcolonial market economy. The rule of law is, therefore, considered to be an instrument of oppression and plunder in the hands of Euro-American expansionism. However, among the scholars criticizing the overvaluation of rule of law for perpetuating the stereotypical image of Western legal superiority, some such as Edward Thompson and William Jenner have advanced moderate instances based on the consideration that even the ruling elite must at least partially abide by the rule of law if they do not want to risk losing their legitimacy. Eventually, the rule of law emerges as a concept historically linked with the political struggles for the establishment of democracy in the West but also as a powerful argument for legitimizing institutional settings and military interventions that have not necessarily supported democratic institutions.

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See Also: Constitution of the United States of America; Convention on Rights of the Child; Juries; Magna Carta; Tocqueville, Alexis de.

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Rural Police

Rural policing is an often discussed but little understood concept within the criminal justice system. There are many different definitions of what constitutes a rural community and of what police do in the community. There is a common belief that is often backed up by the uniform crime report (UCR) of the Federal Bureau of Investigation (FBI) that crime is less common in rural than urban areas. However, rural police agencies are also less likely to report their data to the FBI. Some features of rural culture that affect policing are distrust of government; reluctance to share internal problems, which may lead to a failure to report crime among citizens; and informal social controls among citizens. Rural police may get calls that are out of the ordinary to urban agencies, including housing checks for citizens on vacation, animal problems, utilities, littering, acting as parade escorts, and many other duties that may take time out of the day.

More than 50 percent of law enforcement agencies in the United States are rural police agencies. However, rural police agencies have to deal with less funding on average than their urban counterparts, and the geographic regions that they have to reach are much larger, which leads to longer response times. Rural areas also tend to be more homogenous than urban areas. Many rural areas do not have the basic dispatch necessities that other areas may have, such as E-911, or even a clear dispatch system. Because of the limited funding, continuing education is not a service that rural officers receive, so they may fall behind in new ways of policing. Salary differences also give an added disadvantage to rural police agencies. Being unable to recruit the most qualified officers in a system where officers receive inadequate training furthers the problems of rural policing. With the problem of finding qualified officers comes the problem of using reserve officers who may be even less qualified than the officers already in place.

Rural policing in the United States is carried out by three distinct agencies: state law enforcement such as the highway patrol, county agencies such as the sheriff's department, and municipal or local police agencies. Oftentimes, municipal police agencies may have less than 10 sworn officers, and

many of those are part-time employees. Municipal police agencies are often more reliant on cooperation with other agencies than in urban areas. The bureaucracy for rural police agencies is often less complex than that of their urban counterparts.

Because of funding and lack of police training, many rural agencies rely more heavily on state and federal law enforcement than their urban counterparts. Since many rural areas do not have crime labs, they may send evidence to a state crime lab or federal crime lab. Since some crimes in rural areas may involve wildlife or poaching, state and federal bureaus of wildlife may become involved more quickly in these cases. In many cases with fugitives who are on the run, there must be coordination between the state police, federal U.S. Marshalls, and local police agencies. Sometimes, a state police agency will take the lead in dealing with fugitives because they must track where the fugitive has been and where they are going.

While there may be a need for more state police agencies in rural areas due to lack of funding and training, the interaction between rural and state police may not be as forthcoming. This lack of interaction may also be multiplied by political officials who may feel an affront that their police cannot do the job that locals need. Despite these incidents, state bureaus of investigation routinely work with local officials in complex cases. State bureaus are often called in at the request of the sheriff or local officials, which helps to alleviate some concerns by political officials.



The California Highway Patrol in Bridgeport, California, uses the Dodge Durango in the rural area where the vehicle's handling capabilities allow for all-weather and off-road use.

Many state police agencies have had a history of working with rural areas. Probably the most famous of these police agencies were the Texas Rangers. Originally started in 1823, they were primarily known for fighting and chasing Native Americans, bank robbers, and gangsters. Until 1935, gaining entry to the rangers was primarily based on nepotism because rangers often favored certain candidates over others in political races; after the reforms of 1935, the favoritism ended.

The Office of the Sheriff

The office of the sheriff dates back to the 1000s in England. There are currently more than 3,100 sheriffs in the United States, with most sheriff positions elected. The duty of a sheriff differs in a rural area because he is often seen as the preeminent officer in the county. The sheriff is in charge of all administrative duties for the county police agency, including investigations that range from homicide to vagrancy. Because some rural areas lack a police department, the sheriff may be the sole provider of police coverage for a large area. Because the sheriff holds an elected position, he or she may face undue pressure that is not applicable in urban areas. Therefore, it is important for sheriffs to maintain a unique bond and close communication with members of the community. The duties of sheriffs and deputies are sometimes difficult because of the large geospatial distance that a single department covers. The problems become compounded in poorer rural regions because funds do not extend to adequate staffing or up-to-date equipment.

The sheriff also often runs the county jail. While jails in urban areas are often overcrowded, jails in rural areas tend to be under capacity. Similar to police agencies, jails in rural areas are often understaffed and have very few programs for prisoners. Many jails in rural areas are structurally deficient. Inmates in rural areas are less supervised and less often separated by age. This leads to a huge increase in homicide, suicide, and deaths from illness within the inmate population.

In many areas of the south, the sheriff has been viewed as one of the most influential, if not the most influential, figure in the county. This is because the sheriff is one of the few office holders in the county that runs nationwide. People in the rural south generally have a great deal of respect

for the office of the sheriff. While the sheriff commands respect, sometimes the line between policeman and criminal becomes thin. During the 1960s, sheriffs were often called upon in the south to reinforce or promote violence against African Americans. One of the most famous cases of this was that of Lawrence Rainey in Neshoba County, Mississippi. He was accused of involvement in the deaths of three civil rights workers in Mississippi. While not convicted of either the murders or subsequent civil rights charges, many believed that he played a role in the cover-up. Another famous example was Gerald Hege in North Carolina. Hege came to office as a tough, hands-on enforcer of the law. He created a line of merchandise and ordered his police officers to wear paramilitary uniforms. As the years progressed, charges of corruption began to surface, and he became a convicted felon.

History of Rural Policing

In the past, rural policing has been popularized by TV shows like *The Andy Griffith Show* and others as having little, if any crime. However, throughout history, rural police have had to deal with a wide range of issues unique to the rural experience. In many rural areas in the south, bootlegging was a major problem that was dealt with primarily by federal and local police. Rural police agencies have also had to deal with the specter of race. Many lynch mobs were formed and were not controlled well by rural police agencies, either because of sympathies the police officers had with the local mob, or because of lack of resources. Since these early days, rural policing has advanced to looking for meth houses and marijuana crops through many advanced technologies; rural policing today is front and center in the battle against drugs.

While popular culture has historically portrayed rural areas as being low in crime, western films such as *Tombstone* have depicted lawlessness as rampant in rural western towns. Movies and popular culture have depicted many outlaws as heroes, including Billy the Kid and Jesse James, while the police were portrayed as outlaws. However, the days of the Old West are gone. There are no longer gunfights at high noon as popularized in movies. Today, rural police agencies in the west deal with immigration, drugs, and many other problems.

Rural policing in the United States is often seen as a public service, as well as a tool for crime prevention. Rural police are often asked to do things that in the big cities may be the responsibility of the fire department, emergency management, or animal control. Rural police have to deal with things that urban police do not, including organized theft of livestock, grain, and farm equipment.

Vigilantism has also been associated with rural areas. With lynchings occurring primarily in rural areas of the south by organizations such as the KKK and others, vigilantism has also had significant racial undertones. In southern Indiana, a group called the White Caps lynched several people who were either criminals or suspected of being criminals. They caused an international incident by lynching members of the Reno Gang in 1868, which caused Great Britain to threaten to pull their extradition treaty with the United States. While lasting to the early part of the 1900s, the White Caps lost much public support after an 1888 incident in which they lynched a man who was possibly innocent. Another vigilante group was the Anti Horse Thief Association, which was formed to protect against marauders invading the border and to stop horse thievery. The group was prominent in Oklahoma and other parts of the midwest but expanded into other areas.

Informal Control in Rural Areas

Because of strict gun laws in many urban areas and the conservative political nature of many rural areas, guns are more prevalent in rural areas. Many people in rural areas are avid hunters, and hunting even makes some rural areas tourist destinations. While gun ownership is higher in rural areas, commission of a crime with guns is higher in urban areas. However, there is some evidence that police in rural areas are more likely to have a gun pulled on them than police in urban areas. This could be because of the distrust of government by many people in rural areas.

Lyerly and Skipper have argued that there are informal social controls that lead to less delinquency in rural areas; many other studies have found that crimes such as shoplifting and other types of property theft are often handled informally

between individuals. This informal control happens because many residents in rural areas know each other, newcomers to these areas and overall social mobility are also rare in these areas. While this informal control may seek to help police, it also may lead to problems. For example, many women are unwilling or fearful of having law enforcement intervene in domestic violence situations, possibly because the women do not want to be embarrassed and have people they know intervene in a domestic situation. Another reason is that the woman may be fearful that her husband may know the officer, and that the officer would side with him.

The very nature of crime is that people are more likely to commit crimes against people they know, rather than people they do not know. Rape, homicide, assault, and many other crimes may not be reported to the police in rural areas because of distrust of government or fear of reprisal. The social isolation of rural areas and the togetherness of the community is a central key to understanding the strengths and weaknesses of rural policing.

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See Also: Federal Bureau of Investigation; Sheriffs; State Police.

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Sacco and Vanzetti

After the Russian Bolshevik Revolution in 1917, fears of communism quickly spread throughout the United States, and in 1919, a series of bombings heightened these suspicions. In April, the U.S. Postal Service intercepted several mail bombs, and in June, eight bombs—in eight cities—exploded within minutes of each other. Fears of conspiracy and communists at the national level further fed social hysterias. Attorney General A. Mitchell Palmer and his assistant J. Edgar Hoover led a series of raids throughout the country (known as the Palmer Raids), and in May 1920, two Italian immigrants in Braintree, Massachusetts, found themselves at the center of this national hysteria. Nicola Sacco and Bartolomeo Vanzetti were quickly accused, tried, and convicted of murder. Normally, a murder conviction would not make national and international headlines, but this case centered on the ethnicity of the accused, national origin, and political leanings. To this day, much controversy surrounds the Sacco-Vanzetti case, questioning if they really were anarchists.

On April 15, 1920, F. A. Parmenter and Alessandro Berardelli—a shoe factory paymaster and his guard—were shot in South Braintree, Massachusetts. Records note that about \$15,000 in cash was taken, which was not an uncommon crime. Immediately, Sacco and Vanzetti were not

suspects, but they fell into a police trap at Boda's Garage three weeks later. The duo, both carrying weapons, lied to the police about their whereabouts and weapons. They were arrested on the basis that they were carrying a weapon similar to that of the crime and the vehicle they were claiming was seen in the Braintree area at the time of the shooting.

On September 11, 1920, they were charged, and Vanzetti was also charged with a December 24, 1919, robbery in Bridgewater. In the summer of 1920, Vanzetti stood trial for the Bridgewater robbery, and he was subsequently found guilty, even though he had a sound alibi and witnesses to support him. He received a stiff sentence of 10 to 15 years for an attempted robbery with no injuries. After the harsh verdict, the recently formed American Civil Liberties Union hired Fred H. Moore, a well-known labor attorney on the west coast, to defend Sacco and Vanzetti. Moore used his own socialist beliefs to defend the duo, and throughout the trial he likened the Braintree police to the actions of the Palmer Raids. More so, he argued that the two were being wrongly prosecuted because they did not fit the American ideal, nor did they speak much English.

The trial lasted six weeks, and Moore used grassroots techniques to rally not only national public support but also that of the international community. He even enlisted the help of the



A group tries to draw support for an upcoming protest in London, England, in 1921 to support protest of the death sentences imposed on Nicola Sacco and Bartolomeo Vanzetti.

Italian government. On July 14, 1921, the jury found the duo guilty, even though the evidence was conflicting, evidence that the crime could have been committed by the Morelli Gang, and a confession from convicted bank robber Celestino Madeiros (given in 1925) came into play.

Several witnesses testified that Sacco and Vanzetti were in Boston at the time of the murders, but these accounts did not aid the defendants. In addition to base facts, the prosecutor—Frederick G. Katzman—used the defendants’ political beliefs as motive for the murder. The two were known to converse with anarchists and socialists.

In addition to the conflicting testimonies, Judge Webster Thayer repeatedly threw out testimony from known political activists, in the retrial he refused to allow the testimony of Celestino Madeiros, and he presided over Vanzetti’s trial for the attempted robbery in 1919. Thayer’s actions reflect the rise of nativism in the United States, and they also mirror the amount of media attention the case received. Moore captivated his audience and he made frequent use of newspapers and other media outlets to argue that the defendants were being penalized for their political beliefs and not for their actions.

In 1924, while attempting to reverse the court’s decision, Moore was replaced as defending council. William Thompson, a well-known Bostonian, took over the case. As the defense progressed, he stated that he did not care for the defendants’

political beliefs, but he did admire them for their dedication and determination. He attempted to downplay the political front, but it was to no avail. In 1926, the Massachusetts Supreme Court reviewed the case, but it did not see a different outcome (*Commonwealth v. Sacco and Vanzetti*, 255 Mass. 369, 151 N.E. 839 [1926]). Attempts to save the duo lasted until 1927.

The two faced their fate on April 23, 1927, as they died in the electric chair. Afterward, they received an elaborate funeral in Boston, as the trial had brought great attention to the city. At the time, comparisons were made between the Sacco-Vanzetti affair and the Boston Massacre.

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See Also: Anarchists; Italian Americans; Political Dissidents.

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Salem Witch Trials

In colonial Massachusetts, between 1692 and 1693, a series of infamous trials occurred where more than 150 people were arrested and 19 people were convicted and hanged. The crime these people were accused of committing was witchcraft. These trials, the Salem witch trials, have become so well known in America today that

they are essentially as much a part of popular early American history as Captain John Smith and Pocahontas of Jamestown Colony or George Washington and the cherry tree. However, they are not representative of a positive part of early America. In fact, the Salem witch trials are a prime example of mass hysteria, social ignorance, and religious intolerance, which can have deadly results.

Massachusetts Bay Colony, as it came to be known after the Puritans landed at Plymouth in 1620, was heavily reliant on religious principles. The Puritans left England in search of freedom to practice their religion as they saw fit; however, the Puritans and their descendents were not the most receptive to people of other religious practices. The colonists were, generally, very strict in their observations of religious law and ritual. They did not approve of such common things as music, dancing, or toys for children. Those people who violated the religious norms were often subject to severe peer pressure and even criminal punishment, which included being placed in the stocks for people to gawk at and abuse. Even though the colonists did not have a theocratic form of government, it was generally accepted practice that government leaders were strong believers in their religion.

The time of the Salem witch trials was toward the end of the Inquisition the Catholic Church had conducted in Europe. During the time of the Inquisition, thousands of people were arrested, questioned, tortured, and executed for heresy, blasphemy, and other crimes. Witchcraft was also a crime investigated by the Inquisition, although it was not the primary goal. Death in the Inquisition usually meant being burned at the stake. Interestingly, in America, many people think that the people convicted of witchcraft in Salem were burned at the stake, but, in fact, they were hanged. The act of being burned for being a witch was apparently transferred in American lore from the stories of the Inquisition to the Salem witch trials. However, there is little doubt that the colonists were well aware of the religious zealotry in Europe that mandated that witches be found, tried, and executed, and that the colonists adopted this attitude and brought it with them to America. There were witch hunts in England as well.

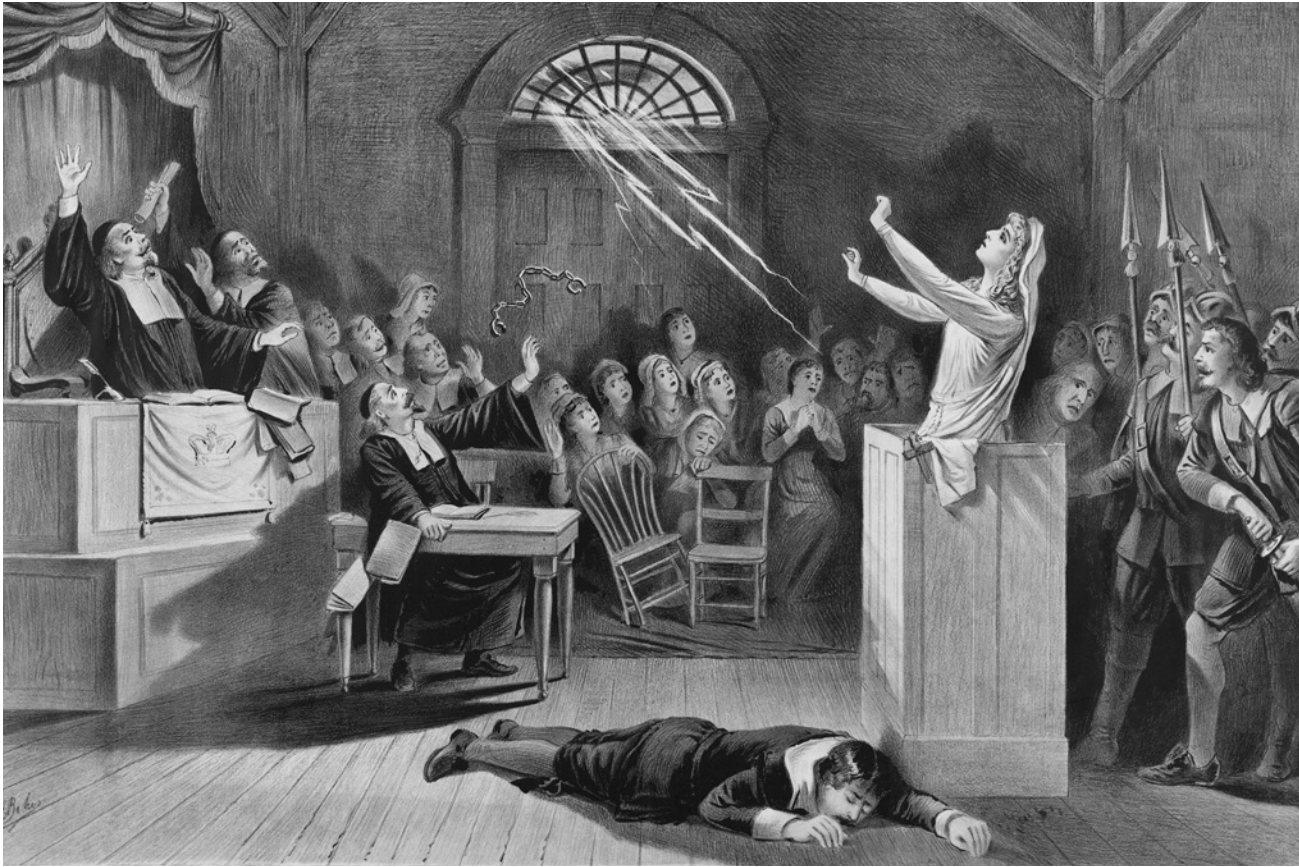
The year 1692 was a year of change for the colonists in Massachusetts. A new charter for the Province of Massachusetts had been approved in 1691, and a new governor had been appointed. In 1692, one of the first concerns of the new governor was the creation of a Court of Oyer and Terminer to address the problem of the full jails. At the time of the Salem witch trials, there were two municipal entities involved: Salem Town and Salem Village. Salem Town was the larger of the two municipalities. Salem Village was generally considered a troublesome place, where the residents quarrelled with each other often. It is reported that there was a family feud in Salem Town, with the town being split between the two sides.

Mass Hysteria

The events leading to the Salem witch trials began in Salem Village when two young girls, Betty Parris, age 9, and Abigail Williams, age 11, began to experience strange fits of screaming and tantrums for which doctors could not find any medical cause. The girls would complain about being stuck with needles and pins. More accusations were brought by Ann Putnam, age 12, of Salem, although some historians hold the position that Putnam's accusations were a result of an ongoing family feud between the Putnam and Porter families.

Initially, three people were arrested: Sarah Good, who was a homeless woman with a dubious reputation; Sarah Osborne, who did not regularly attend church and was twice married; and Tituba, a slave of Indian or African heritage, who had been accused of telling the girls tales of sexual practices with demons. In March 1692, the women were arrested, interrogated, and held in jail. After these initial arrests, over the next few months, more accusations were made against other people, and more people were arrested and examined in Salem Village and Salem Town. Three women who had been arrested, Abigail Hobbs, Mary Warren, and Deliverance Hobbs, confessed to the charges and, as a result, more arrests were made.

By the end of May 1692, more than 60 people were in custody when the Court of Oyer and Terminer convened in Salem Town. Bridget Bishop, a woman who was described as not living according to the Puritan lifestyle, was the first person convicted and hanged on June 10, 1692.



A dramatic scene from a 17th-century witch trial with a woman conjuring up supernatural powers and a man passed out on the floor. The Salem Witch hunts and trials resulted in 19 women executed, at least four accused witches perishing in prison, and one man being pressed to death. About 100 to 200 others were arrested and imprisoned on witchcraft charges.

More accusations and arrests followed. On July 19, 1692, five more women were found guilty and hanged. On August 19, 1692, four men and another woman were convicted and hung. On September 22, 1692, eight more people were convicted and hanged. In October 1692, the Court of Oyer and Terminer was dismissed. Despite the dismissal, trials for witchcraft continued in other courts in 1693. Although some people were found guilty, the governor pardoned them before they were executed.

A few years after the conclusion of the Salem witch trials, public criticism of the trials began. Some of the participants in the Salem witch trials even expressed their regret over the events and asked for forgiveness. Starting in 1700, petitions began to be filed with Massachusetts courts, asking for reversal of the convictions and

compensation. In 1711, some of the convictions were reversed by the General Court, and compensation was paid to survivors and relatives. In later years, several memorials were erected to the victims of the Salem witch trials. In 1957, the remaining convictions of the Salem witch trials that had not been reversed were reversed by the Massachusetts General Court.

A number of historians have speculated as to why the witch hunts occurred and why certain people were singled out. These proposed reasons have included personal vendettas, fear of strong women, and economic competition. Regardless, the Salem witch trials are a memorial and a warning to what hysteria, religious intolerance, and ignorance can cause in the criminal justice system. Unfortunately, American history shows that such events can and will happen again and again. The

primary example of this repetition is the McCarthy hearings and the Red Scare in America during the 1950s, which destroyed the lives of numerous people. Indeed, the injustice of the Salem witch trials has entered into the American lexicon with the famous phrase *a witch hunt*, which is often used when people are being falsely charged.

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See Also: 1600 to 1776 Primary Documents; Court of Oyer and Terminer; Famous Trials; Religion and Crime, History of.

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San Francisco, California

San Francisco was founded by the Spanish in 1776 and passed to Mexico in 1821. The Mexican state of which it was a part was seized by the United States in 1846. Shortly thereafter, the former quiet and undeveloped town grew 2,500 percent in one year: Gold had been discovered nearby. Ineffective military rule in the pre-statehood period and a weak criminal justice system thereafter led to serious crime and social unrest. Crime, prostitution, and political violence became endemic. In effect, self-styled vigilantes, with their own alternative control institutions

and militia, overthrew democratic government. The city suffered a catastrophic earthquake and fire in 1906 but rose from the ashes, though its prominence as a vice center was finished. In the 1950s, the city became known as a haven for alternative lifestyles and in the 1960s presaged a new type of youth culture. Today, it enjoys a progressive, tolerant environment and city governance, perhaps a cultural survival of its free-wheeling past as a wide-open boomtown. It is known as a major tourist destination because of its picturesque neighborhoods, mild climate, and specific scenic attractions, one of which is the former Alcatraz prison, located on an island in the bay. The stately and beautiful Golden Gate Bridge, a place with a dubious distinction of popularity for suicide, overlooks the area.

Gold Rush and Vigilante Days

The first committee of vigilance in San Francisco was constituted in 1851. It was concerned with the problem of arson and an alleged gang of Irish Australian provenance, the Sydney Ducks. Nativism was rising as a political force in the United States, and crime was used as a pretext to deport and otherwise expel undesirables, particularly Australians. The committee also took on policing powers and hanged four reputed criminals.

In 1856, several political duels so inflamed the business community that the vigilance committee was reconstituted. It should be noted that civic warfare and reaction broke out in Baltimore, New Orleans, and New York in the same era. Vigilantes in San Francisco were backed by their own militias and even seized arms from the U.S. government. This apparent anarchy was supported by local newspapers and many historians, all of whom cited "corruption" as a rationale. However, it is quite apparent that much of the struggle involved control of municipal government. The "People's Party" of the vigilantes seized control from the Democratic administration and then merged with the Republican Party.

Prostitution and other forms of vice were endemic from the gold rush period through the early 1900s. Especially prominent in that regard were the Tenderloin area and Chinatown. An area closer to the waterfront called "the Barbary Coast" was an internationally known brothel district. Women flocked to the city from points east

in the United States and from many foreign countries to get in on this secondary gold rush. Unwary and drunk customers were often drugged in the area's many saloons and robbed or even shanghaied—knocked out and dragooned into involuntary service on a merchant vessel. It is notable that the vigilantes made no effort to thwart the profitable trade of women, drugs, and spirits. Drug trafficking, chiefly of opium, was an issue that related to Chinese immigration; opium dens were closed in 1878, chiefly as an anti-Chinese measure. But other vice continued to flourish, almost untrammelled, until the early 1900s when moral crusaders led by the clergy closed down the various venues. Thereafter, prostitution continued on a much more subdued basis, but saloons, with a few notable exceptions, faded from the scene.

San Francisco Renaissance

In the early 1950s, a small group of East coast and west coast intellectuals began to coalesce in several urban American locales. New York's Greenwich Village was one pole in the world of the Beats, but North Beach is where some of the critical events leading to the San Francisco Renaissance and the subsequent Summer of Love and hippie movement occurred. San Francisco was known as a tolerant small city with a lively cultural life. Numerous coffeehouses and jazz clubs, low rents, cheap food, mild climate, and bookstores were among the attractions of the North Beach area that appealed to this group of disaffected intellectuals. Drugs such as cannabis and various hallucinogens were popular among this group as they sought to find truth outside the normal parameters of mundane experience. Jazz, with its combination of improvisation, artistry, and insistent beat, contributed to that desire to transmute the quotidian reality. Beat writers, after "beat down," or, alternately, "beatific," included Jack Kerouac, Allen Ginsberg, Gary Snyder, Neal Cassady, and bookstore proprietor and poet Lawrence Ferlinghetti.

Ginsberg's reading of his prophetic and jeremiad-style poem "Howl" at City Lights Bookstore in 1956 ignited a cultural revolution. The published poem itself was seized by the police, and the ensuing court battle eventually set a legal precedent protecting artistic freedom. The attendant publicity and the success of Kerouac's *On*

the Road ignited a minor influx of the like-minded into the North Beach area, which became notorious as a "beatnik" locale. Beats were known for a slang derived from black and underworld argot, for example, "dig," "daddio," "pad," and "chick"; most men wore beards, and most women had long hair and were attired in dancing tights. A few beats like Allen Ginsberg were "out" and openly homosexual. Beats were tolerant of experimentation, be it with drugs or sexuality. This was a huge departure from the middle-class norm of Eisenhower-era American. Media fixated on Beat imagery, and the beatnik became a familiar stereotype in film and television by the early 1960s.

Summer of Love and Aftermath

As rents rose in the North Beach area and it became more of a tourist destination, Beats and other bohemians moved into nearby neighborhoods. By the mid-1960s, the formerly working-class Haight-Ashbury neighborhood became a student and Beat quarter. A vibrant and exciting series of events transformed the neighborhood into a tolerant, musically and artistically innovative destination. Cannabis and hallucinogens were easily attainable and drew some repressive tactics from police such as mass arrests in neighborhood sweeps. By the summer of 1967, the youth revolution that had swept the country found its focal point in that neighborhood, and thousands of young people literally mobbed the streets. Many of these young people were exploited by predatory criminals who were also drawn to the area. Hard drugs and hallucinogens of dangerous potency and unknown provenance contributed to the downfall of the neighborhood. This led to a general disaffection with the entire urban "hippie scene" and a resultant "back to the earth" movement in which many young people moved to rural areas where some formed communes.

In a return to the city's vice-begotten roots, the adult entertainment industry began its national rise to prominence in the 1960s and 1970s in the city's North Beach area. The Condor Club housed the first topless dancers and gave rise to a host of imitators in the same district, which, incidentally, was very near the old vice haunts of the 1800s. Adult bookstores and cinemas prospered in North Beach and in the Tenderloin district. Many

old Beat haunts were displaced by the growing number of clubs boasting risqué entertainment. Today, both the Tenderloin and the sex district of North Beach attract tourists and locals looking for a night on the town.

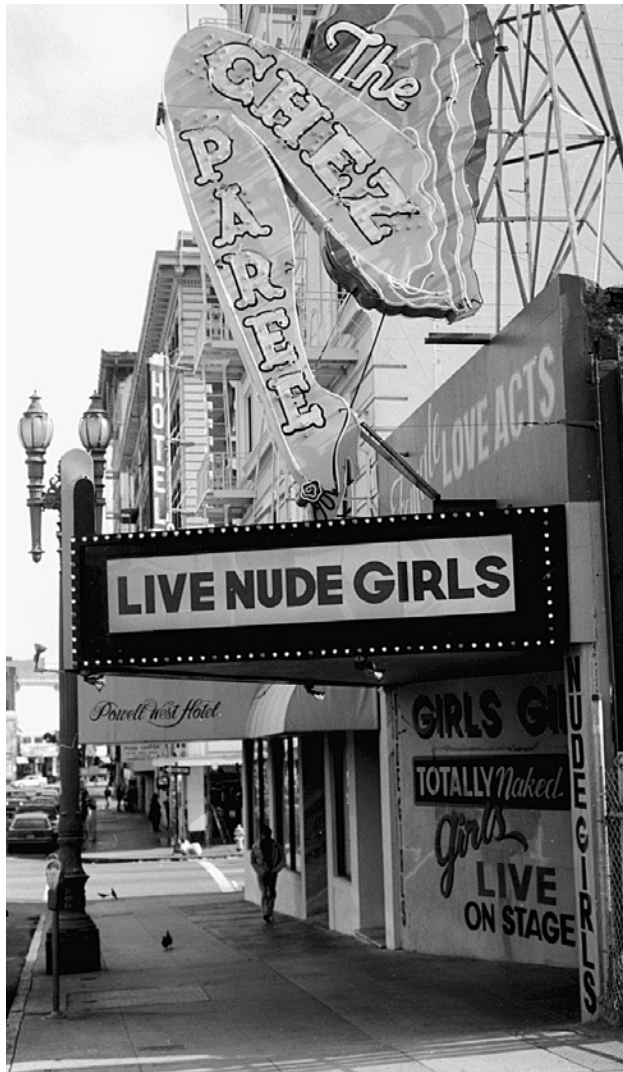
The generally tolerant atmosphere that drew the Beats and hippies to the area also appealed to many gay Americans. In the early 1970s as gays “came out” all over the United States, this community was especially prominent and vocal. San Francisco, particularly the Castro district, became a gay mecca and was the setting for gay novels, movies, and, increasingly, politics. San Franciscan

Harvey Milk became the first avowed gay city councilman in the United States in 1978 and was murdered that same year. Another tragedy followed close on the heels of this incident: human immunodeficiency virus and acquired immune deficiency syndrome (HIV/AIDS), which was initially known as the “gay plague,” killed thousands of young men in the city. As a consequence, many places of gay assignation such as baths and certain clubs were closed. Today, the “Castro” is known as a largely gay neighborhood and retains a lively cultural and social life.

Crime Today

Not surprisingly, much of the area’s crime is centered in the old Tenderloin district and the area directly south. This area is known for assaults, larceny with contact (pickpocketing, purse snatching), public intoxication, and drug- and sex-related crime. Tourists and conventioners straying from their meeting venues are frequent victims. Police actions over decades have had little impact on this historic skid row. Other high-crime areas are the North Beach area—a tourist destination and secondary sex industry locale—the Haight, and the touristy Embarcadero. The city, particularly in the Tenderloin and the Haight, has a large homeless population who account for a disproportionate amount of police and social services. Western residential areas of the city, such as the Richmond district, enjoy much lower crime rates. Most crime in these areas involves property offenses.

The city and county are completely coterminous today but the sheriff handles the jails (there are seven, including a hospital ward), protects courts and civic buildings, deals with taxes and emergency communications, and is considered a significant public official. All routine law enforcement is handled by the San Francisco Police Department (SFPD). The SFPD began operations in 1849, at the beginning of the gold rush, with Malachi Fallon as captain. Fallon had a force of some 35 officers, and the department, like many municipal police organizations of its time, was reputed to be corrupt and politically dominated by a Tammany-like Democratic machine. It was a focus of vigilante frustration. The first jail was built in this period: Prisoners were lodged in a beached ship in Yerba Buena Cove. In 1856, a



The Chez Paree in 1991 in San Francisco's sex district known as the Tenderloin. In the 1800s, the area also housed many of the city's vices, including gambling halls and speakeasies.

member of the vigilance committee was made chief. In the early 1900s, the SFPD was one of the first departments on the west coast to embrace police modernization and technical innovations. It developed a reputation for efficient riot control when dealing with labor issues in the 1930s and continued to sharpen those tactics during the unrest of the 1960s and 1970s. The SFPD enjoys a reputation of being somewhat lenient and tolerant of minor and vice-related offenses today, a significant change in public perception since the 1960s. In the mid-1990s, the SFPD created a Crime Response Unit to Suppress Homicides (CRUSH) to deal with a large number of drug-related homicides. This unit purported to have solved more than half of the homicides to which it was assigned but was reputed to have used questionable methods and to have arrested innocent people. City police are called upon to deal with protecting hundreds of thousands of tourists and conventioners yearly, as well as to handle the problems emanating from the city's skid row, the Tenderloin.

The city has also been the locale for several police and crime movies; the *Dirty Harry* franchise and both *Bullitt* productions were filmed there. Hitchcock's *Rear Window* was set in the city as well. Also, *The Streets of San Francisco*, a popular television series of the 1970s, was based on the interaction of a young criminal investigator and an old veteran of the SFPD.

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See Also: 1851 to 1900 Primary Documents; Alcatraz Island Prison; Oakland, California; Pornography; Vigilantism.

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San Quentin State Prison

San Quentin is California's oldest state prison and houses California's death row for male inmates (the largest in the nation). Prior to 1848, the California Territory was sparsely populated and required little in the way of law enforcement. However, the discovery of gold that year set off a growth boom known as the California gold rush; the territory's population increased by more than 100 percent in just three years, and sleepy towns like San Francisco were transformed overnight into bustling cities. Not surprisingly, the massive population growth strained California's meager infrastructure and led to a substantial increase in crime. When California became a state in 1850, the newly elected legislature began making moves to regularize the territory's criminal justice system and to establish a state prison to house the burgeoning criminal population.

Initially, the new state incarcerated state inmates on a wooden ship known as *The Waban*, which was anchored in San Francisco harbor. Beginning in 1852, the ship's inmates were put to work building the new prison, located near the San Francisco Bay on a strip of land known as Point San Quentin, which is how the prison got its name. San Quentin opened in 1854, and almost immediately became a magnet for scandals, including brutal guards, lax oversight, and frequent escapes.

Undoubtedly, this was because of the fact that, at least initially, the prison was a for-profit venture. Originally, the state of California had "leased" San Quentin's convict labor to two speculators, Mariano G. Vallejo and James M. Estell, both former military men. From the state's perspective, leasing the convict labor was a great deal: The speculators were responsible for feeding, clothing, and securing the prisoners, and paid the cash-strapped state \$100,000. In order to make a profit, Estell forced the inmates to work seven days a week from sunrise to sunset



An aerial view of San Quentin State Prison in Marin County (the north San Francisco Bay area) in California. The facility houses the only gas chamber and death row for condemned male inmates in the state. San Quentin is the oldest correctional institution in California and a dungeon built there in 1854 is believed to be the state's oldest surviving public structure.

quarrying clay for the prison brickworks or gathering wood to heat San Quentin's kilns. As early as 1855, the legislature was forced to investigate the prison's operation because of the notoriously questionable management, finances, and discipline procedures that Estell employed, and by the Civil War, the lease (which by this point had been sold to John F. McCauley) was voided and the prison officially came under state control. Since that time, the prison has developed a fearsome reputation reinforced by its role in such films as *San Quentin* (1937), *San Quentin* (1946), *Dark Passage* (1947), *Duffy of San Quentin* (1954), *Want to Live!* (1958), and *Take the Money and Run* (1968).

In the 20th century, a new generation of reformers tried to end some of the worst abuses at San Quentin. Most notable is Clinton Duffy, who served as the prison's warden between 1940 and 1952 (the prison's second-longest-serving war-

den up to that point). Duffy eliminated corporal punishment, instituted an Alcoholics Anonymous chapter at the prison, desegregated San Quentin's dining hall, and established vocational and recreational programs, including an inmate-produced newspaper and an inmate-staffed radio station. Yet San Quentin remained a dangerous, violent place, a fact symbolized by the prison's most infamous riot. In August 1971, a riot broke out following an escape attempt by George Jackson, author of *Soledad Brother* and cofounder of the Black Guerrilla Family prison gang; Jackson was shot to death during the uprising, an event that galvanized African American inmates across the country and contributed to the infamous Attica prison riot the following month.

Since 1893, San Quentin has housed California's death row for male inmates, and in 2001, it was awarded the dubious distinction of the largest death row in the Western Hemisphere.

Between 1893 and 1937, San Quentin hanged inmates who were condemned to death; the prison then moved to lethal gas for executions. When this method of execution was ruled unconstitutional by the 9th Circuit Court of Appeals, California adopted lethal injection as its official method of executing inmates.

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See Also: Alcatraz Island Prison; Attica; Capital Punishment; Penitentiaries; Riots.

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Santobello v. New York

In *Santobello v. New York* (404 U.S. 257), Rudolph Santobello's case was remanded for reconsideration to the trial court by the U.S. Supreme Court in 1971. The issue in question was whether a new trial is warranted if there is a breach of promise by the prosecution with regard to a negotiated plea resulting in a significant material effect on the disposition of the defendant's case, even if the breach of promise by the prosecution was inadvertent or unintentional.

In June 1969, Santobello was originally charged with two felony counts related to gambling. The charges were promoting gambling in the first degree and possession of gambling records in the first degree, N.Y. Penal Law §§ 225.10, 225.20. Under the advice of his attorney, Santobello agreed to plead guilty to the lesser included charge of possession of gambling records in the second degree, N.Y. Penal Law § 225.15. In addition to dismissing the two more serious charges, the prosecutor agreed not to make any sentencing

recommendations. The court accepted the plea bargain and set a date for sentencing. However, upon sentencing, a different prosecutor, having reviewed Santobello's lengthy criminal history from his pre-sentence report and unfamiliar with the previously established negotiated plea, recommended that Santobello be given the maximum sentence. The judge concurred and followed the prosecutor's recommendation. Santobello then filed a motion to withdraw his plea of guilty, re-enter his plea of not guilty, and have the case go to trial. His motion was denied by New York's court of appeals. The U.S. Supreme Court granted certiorari in this case. Upon review, the court sided with Santobello, vacated his guilty plea, and allowed him to resume his plea of not guilty and regain his right to a trial.

The Supreme Court found fault with the prosecution reneging on its promise to abstain from making any sentencing recommendations to the judge. The original prosecutor of the case had been replaced by another prosecutor who had no knowledge or official record of the original plea bargain. Like the judge, acting on the pre-sentence evaluation, the second prosecutor inadvertently violated the agreement by recommending that Santobello receive the maximum sentence.

According to the Supreme Court, this prosecutorial mistake had a significant impact on the voluntariness of Santobello to enter into such an agreement. The importance of questions on voluntariness and what constitutes coercion had long been addressed prior to *Santobello*. It was this issue of fundamental fairness, involving one's right to a trial by jury or judge, which was the basis for the decision to remand the case. In so doing, the Supreme Court again was balancing the need for plea bargaining against the most fundamental due process rights of an individual. In the majority opinion of the Supreme Court, it was decided that when a prosecutor did not honor a plea negotiation, the sentence must be vacated and the state court decide if (a) the plea bargain must be honored or if (b) the defendant be given the opportunity to go to trial on the original charges, with the preference of the defendant being given consideration. The dissenting court agreed with the majority decision, but suggested that the petitioner also be able to replead the original charges on the indictment.

It is estimated that approximately 90 percent of criminal sentences are the result of plea bargains, which is critical to the efficient functioning of the courts. However, the court also recognized the importance of the office of the prosecution to honor negotiated pleas with defendants. Thus, the Supreme Court obligated trial courts to make record of any plea agreement and the sentence to be vacated if the plea agreement was not honored. Congruent with other Supreme Court decisions, it was not decided exactly how a sentencing court must rectify any such error made by the prosecutor's office. These types of decisions, according to the Supreme Court, should be the venue of the state courts.

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See Also: Courts; District Attorney; Judges and Magistrates; Mandatory Minimum Sentencing; New York City; Plea.

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Schenck v. United States

The late 1800s and the early 1900s were a time of great political unrest in the United States. There were a number of political movements, including anarchism, socialism, and communism. Strongly linked with the socialist and communist movements was the labor movement. With the end of World War I and the success of the Bolshevik Revolution in Russia, a fear of communism coalesced into the Red Scare of 1919–20. Little distinction was made between socialists and communists, and all social activists were generally considered to be part of the threat.

During World War I, a number of socialist organizations actively opposed the entry of the United States into World War I. Charles Schenck, who was the secretary for the Socialist Party of America, was actively involved in opposing the war. The records of the Socialist Party of America showed that a resolution had been passed by the party authorizing the printing of 15,000 leaflets to be mailed and distributed and authorizing the expenditure of \$125 for Schenck to accomplish the task. On one side of the leaflets was a comparison of conscription to slavery, in violation of the Thirteenth Amendment to the U.S. Constitution. The other side of the leaflets contained statements encouraging the reader to assert his or her rights to oppose the draft of men into the military and to not submit to intimidation. Schenck and various members of the party then engaged in the production and distribution of the leaflets. After a search warrant was executed on the Socialist Party of America's headquarters with the concurrent seizure of the party's records, Schenck was indicted and arrested and brought to trial for violation of the Sedition Act of 1917 and illegal use of the U.S. mail service.

At his trial, Schenck was convicted of conspiracy to cause insubordination in the military and to obstruct recruiting and enlistment in the military. He was also convicted of conspiracy to illegally use the U.S. mail and the actual illegal use of the U.S. mail. He appealed to the Supreme Court on the grounds that the convictions violated his rights to freedom of speech and freedom of the press under the First Amendment of the U.S. Constitution.

The Supreme Court agreed to hear the appeal in 1919. The Supreme Court acknowledged that in ordinary times, the words and ideas expressed in the leaflet would have been constitutionally protected. However, the Supreme Court recognized that the right of free speech is not absolute and the circumstances of particular speech might cause the speech to be outside the protection of the First Amendment. It is at this point that Justice Oliver Wendell Holmes, Jr., coined the famous phrases that: "[t]he most stringent protection of free speech would not protect a man from falsely shouting fire in a theater and causing a panic." Accordingly, the Supreme Court affirmed Schenck's conviction on the grounds that the state

of war existing between the United States and the German Empire was a circumstance that placed Schenck's attempts to interfere in the draft outside the protections of the free speech clause of the First Amendment. Justice Holmes expressed this prohibition on certain speech when there is a clear and present danger that the words will bring about the evils prohibited by Congress.

The *Schenck* case is extremely important in the history of the American criminal justice system. It is one of the first cases of the Supreme Court to address the applicability of the First Amendment to the interpretation and application of the criminal laws. Its importance to the criminal laws is that the *Schenck* decision recognized that the protections of the First Amendment and the Bill of Rights are not absolute and are, occasionally, subordinated to criminal laws. The *Schenck* decision is also very important for its application of criminal law during wartime to limit the constitutional rights of individuals. This position during wartime has been followed in a number of subsequent Supreme Court decisions. It is also important in that the *Schenck* decision affirmed the use of the criminal law to address what might otherwise be considered political speech, which appears to raise a serious issue in the United States of America, which ostensibly recognizes political freedom. Some critics of *Schenck* have suggested that the affirmation of Schenck's convictions was due, in part, to the Red Scare that was occurring in the United States and that, in another time, Schenck's convictions might have been reversed.

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See Also: Civil Rights Laws; Political Crimes, History of; Political Dissidents; Political Policing.

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School Shootings

The decade of the 1990s was traumatic for parents, students, and public schools as 10 school shootings left 43 people dead and more than 60 wounded. The shootings led to extensive media-engendered speculation about the nation having a culture of violence. In the locales impacted—suburbs, bedroom communities, and rural areas—the question reporters and researchers continually encountered from bewildered residents was "Why here?" Those who lived in the school districts were completely flummoxed by apparently random rampage violence inflicted in areas that had previously known almost no violent crime or student victimization whatsoever.

The national focus suddenly shifted from inner-city, minority-based gangsters to the angry, mal-adjusted kids next door. Parents became obsessed with safety, driving their children to school, insisting that their children have cell phones in class, and demanding that schools institute tough policies to identify, label, and deal with potential offenders. This tendency manifested itself in predictably reactive and draconian ways, typically with new rules such as zero tolerance policies, which expelled offenders for even trivial technical violations of drug or weapons policies. A new concern with bullying was in evidence, and schools tried to find ways of dealing with that issue. The media continued to obsess about the United States having a "gun culture," but new gun control legislation was not passed. Gun availability, though a factor in these incidents, played only a small part in these tragedies.

Shooter Characteristics

The most dominant characteristic of the school shooter in this period was his marginal status. Almost all school shooters were white, male, middle class, and socially isolated. Some were clinically depressed, and many showed other symptoms of mental illness. Their schoolwork, computer postings, and artistic works frequently displayed morbid, violent, and suicidal themes and content. Additionally, some were obsessed with violent cinema, television, and video games. It is not incidental to note that some experts have indicted violently themed video games with increasing desensitization to violent behavior in

general. Specifically, it is alleged that the U.S. Armed Forces use such role-playing shooting games to overcome the socially ingrained aversion to killing noted among enlistees. Therefore, students voluntarily and frequently using such games would be less reluctant to use deadly force in a stressful situation. Indeed, one scores in such games by accumulating victims.

School shooters frequently report being the victim of bullies. It has been suggested that the shootings are attempts to get even with those who bullied them—rejecting females, queen bees, obnoxious jocks—the “popular kids.” However, anecdotal evidence suggests that the shooters themselves occasionally took on the role of bully. One of the Westside Middle School shooters was alleged to be a bully. The role of getting even with “popular kids” in the process of motivating a school shooter is important but is considerably more complex than has been suggested by media. As a marginal student, not really belonging to an “in group” or even an “out group” of any kind,

the typical shooter is in limbo among his peers and within the system. Ignored by school administrators and, more importantly, held in scant regard by peers, including desirable females, he clumsily struggles to get attention and a place in the sun. Usually meeting frustration in areas athletic, scholastic, and social, he grimly soldiers on. Finally, his almost total rejection by adolescent peer culture becomes intolerable. At last, the shooter wants to demonstrate masculine power and mastery over something within his reach; his real and symbolic tormentors become the objects of his dramaturgical action. Thus, the shooting event is less an attempt to assassinate individual tormentors than a symbolically charged endeavor to show the school and community at large that he is as worthy of their attention and regard as are jocks, cheerleaders, and other types who are valued and celebrated by conventional others.

Before the fact, school shooters fantasize about avenging the manifold indignities and ostracism that they have encountered from their peers. As



A memorial located in Clement Park in Littleton, Colorado, to honor victims of the Columbine High School massacre. The tragic incident, using an intricately planned attack involving propane bombs and firearms, was carried out by two alienated students in April 1999. After 12 students and one teacher were killed and 23 were wounded, the shooters committed suicide.

in the case of the Columbine shooters, the ostracized students often plan detailed attempts to wreak havoc on all and sundry in the school and share this with their friends, sometimes online. In the case of Columbine, Dylan Klebold and Eric Harris actually planned to blow up the school with compressed gas and were only prevented from doing so by technical problems. This, too, was known to some cohorts. But because the youth subculture is characterized by a code of silence, this information was seldom vouchsafed to adults. Those shooters whose plans manifested more specificity, for example, “I am going to kill Vice Principal Jones on Thursday,” were more likely to follow through. This was probably to maintain the articulated fantasy of being a “man of action.”

Media attention focused on school shooters being drug users or members of a Goth-like subculture. Neither stereotype has much basis in reality. Most shooters were so marginal that even low-status groups like Goths and dopers were leery of them and their motivations. They were often seen as “wannabees” even by marginal groups. Surprisingly few used recreational drugs for fun or to self-medicate, but several, including one of the Columbine killers, had taken or were taking antidepressants at the time of the shootings. The use of such prescription drugs (which have been linked in media to suicide) by these youth suggested to some that they perpetrated the school shootings in order to be shot by police, that is, to commit “suicide by cop.” It is extremely unlikely that these drugs had any causal impact. If the school shooters were suicidal, as some demonstrably were, it was because they were depressed and the medication was not working, and not because of the medication used to treat them.

Many of these shooters had experienced a traumatic event or events in their lives immediately prior to the shooting event. One of the Columbine shooters had been turned down for military service because of his depression and use of drugs. Kip Kinkel, a shooter in Oregon, had endured one rejection and indignity after another because of his hyperactivity and learning disorders. Another shooter feared being forced to move to another state as punishment for a phone sex-related offense. Yet another, a middle school student in Arkansas, had been specifically rejected

by a girlfriend. Coupled with systemic indifference, parental inattention, and the omnipresent undercurrent of peer judgment and concomitant rejection, these traumas seemed to precipitate the shooting events.

Though guns themselves possess no evil agency, their presence and or easy accessibility in the parental home or in the homes of others provided the mechanism for the commission of the act. Some guns used in shootings were low-quality, low-caliber revolvers and pistols, but some shooters used expensive imported Glock and Taurus pistols. Only a few used sniper-like tactics and deer rifles. One boy’s parents bought him a police-quality Glock pistol to use in father-son shooting activities. The boy, Kip Kinkel, shot both parents dead, then took the gun with other weapons to school and continued his shooting spree at that location.

School Factors

Large, impersonal public schools received substantial criticism from media and concerned citizens as a result of these events. That students could easily get lost within such institutions was axiomatic. Such schools routinely honored and rewarded athletes and other favored groups but did almost nothing to engage or celebrate the achievements of others, let alone marginal students. The continuing overemphasis on athletics (e.g., weekly pep rallies where athletes received the collective adoration of the student body) specifically rankled and further alienated school shooters and other students who were less than engaged. There were more systemic issues, as well. Marginal students frequently make the claim, and not without some justification, that not only do teachers ignore them and their concerns but that they systematically ignore bullying and culturally oriented ostracism.

It is alleged that the victimized student is used as a “negative social resource,” that is, as an example of what not to be. As a stigmatized loser, he is a walking boundary-maintenance device. That such students have little intrinsic value to the system, except as a negative resource, is a fact that is not lost on the students themselves; they come to resent it deeply. And some are moved to act radically to affirm selfhood in an adolescent world that demeans, disconfirms, and devalues them to the core. That their actions are

also aimed at the adult world, which ignores the evident injuries and injustices they experience, seems manifestly obvious.

Almost all teachers and administrators are unaware of what is really going on in their institutions. Dealing with bureaucratic reality and system-dictated necessities, they are happily oblivious to the authentic hunger, alienation, and increasingly unquiet desperation that haunt their halls. In all fairness, some of this ignorance stems from the adolescent code of silence, which ensures that little of interest or importance is passed to school, police, or social service agents. That being said, schools continue to celebrate athletics, the high-profile province of a tiny minority, while underfunding other avenues for expression such as art, drama, dance, and music that might appeal to a much wider spectrum of students.

Social Reaction

It was foreseeable that much of the reaction to school shootings would promote ill-conceived programs. Experts on juvenile delinquency are almost uniform in their critique of zero tolerance policies. Such policies punish all drug possession (even of prescribed drugs), firearm or ammunition possession, and fighting with expulsion. Some schools deal with those caught with drugs or firearms or fighting by having the student arrested and taken to juvenile court, as well as having them expelled. Whether these policies deter shooters is beside the point; they trample on the notion of basic fairness and evade and avoid any form of due process. No extenuation is possible. An empty shotgun shell rolling on the car floor is as culpable as a loaded AK-47 and will lead to expulsion. A girl discreetly taking an over-the-counter remedy for a headache is as blameworthy as a drug dealer. Students allege that preferential treatment is routinely granted to favored classes of students.

School resource officer (SRO) programs, much beloved by administrators, have not proven effective in fighting or averting school shootings. In schools in which they were employed prior to shooting incidents, they played no part in curtailing the events. SRO programs are simply a way for police departments to gather intelligence, often of a sort peripheral to the school, such as gang intelligence. School administrators support SRO programs because they purport to deter crime on

campus and because the programs allow them a zero tolerance way to deal with routine troublemakers. There is no evidence that they provide any protection for students. On the contrary, there are numerous examples of SRO officers taking advantage of suggestible young students.

Even more ominous has been the fortification of public education. At many schools, students are forced to file through metal detectors, use clear backpacks, and work under prison-like conditions. This includes razor wire-enhanced fencing, stone walls, and video cameras in all areas. Urinalysis is also routinely used in some school systems, though its relationship to school programs and effectiveness in deterring violence seems incidental. Although none of these safeguards would deter any but the most minimally motivated of potential offenders, it would seem that in the name of safety, no program, no matter how intrusive or transparently unfair, would be deemed excessive by the public at large.

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See Also: 1981 to 2000 Primary Documents; Child Murderers, History of; Colorado; Klebold, Dylan, and Eric Harris.

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Schultz, "Dutch"

Born Arthur Flegenheimer in the Bronx to Herman and Emma Flegenheimer, Schultz drifted into criminal activity after his father, a saloon keeper, abandoned the family in 1916. Schultz went on to become one of the pre-eminent bootleggers and gambling entrepreneurs of the 1930s, and his violent death sealed his place in the pantheon of organized crime. Apprenticed to a roofer, then a printer, as a teenager, Schultz found the street life of Bronx petty criminals more attractive than regular work and took to crime; at the age of 17, he was arrested for burglary. After a 15-month stint in prison (the only jail time of his career, despite many arrests), Schultz returned to the Bronx with the sobriquet "Dutch" Schultz, borrowed from a well-known local boxer. This was in 1920, after the gold rush of national Prohibition had started. But Schultz, then only 18 and relatively inexperienced at organized criminal activity, did not immediately rise to prominence. Instead, those slightly older than he, who had a few years of serious racketeering under their belts but who retained ambition, took the lead.

Schultz, meanwhile, started at the bottom, working on trucks that delivered beer in the Bronx. In 1928, he opened a speakeasy in partnership with fellow gangster Joe Noe; they parlayed Schultz's experience in trucking into their own beer distribution network. The speakeasy was so successful that Schultz took over a larger rival. By 1931, he was working in partnership with the larger operators like Frank Costello, "Lucky" Luciano, Meyer Lansky, and others, and had expanded his operations to include Manhattan as well as the Bronx. Yet, it was not always friendly. It was alleged that Schultz was behind the nonfatal shooting of Jack "Legs" Diamond, in retaliation for Diamond's supposed complicity in the murder of Joe Noe. Some believe that Schultz engineered the murder of Arnold Rothstein, Diamond's mentor, as well.

In 1931, Schultz survived an attempt by the insurgent Coll brothers to take over his bootlegging organization. Around this time, he diversified into both gambling and union rackets. His gambling interests were chiefly in policy, an illegal lottery game that was virulently popular in the slums of New York City and other urban centers. Though the bets were small, often pennies,



One of "Dutch" Schultz's many mug shots, having started his criminal career at age 17. The Jewish American gangster made his fortune in bootlegging and gambling.

cumulatively, they represented big business. To succeed, an operator needed a sense for organization and protection from political/police harassment and the depredations of other gangs. With his beer fortune and an army of strong-arm men at his command, Schultz had both. He effectively forced his partnership on the chiefly African American entrepreneurs who had been running policy games in Harlem. Adding his own organizational genius, he turned policy into a large source of income.

Schultz also ventured into labor extortion, unionizing restaurant workers and then demanding protection money from both employees and business owners. His brutal tactics made this a successful line of business. But while he didn't fear rivals or those he strong-armed, he was forced into hiding after being indicted for federal income tax evasion. Finally surrendering in 1934, he was tried for tax evasion in Syracuse, New York, in the following year. Schultz freely spread money throughout the city, and, after a hung jury (amid charges of tampering), the case was moved to Malone for a retrial. Despite being acquitted by the jury, Schultz was not welcome to return to New York City; agents were ready to arrest him on an outstanding indictment. He attempted to resume control over his criminal empire by remote control, first from Connecticut, then from New Jersey.

On October 23, 1935, gunmen burst into Newark's Palace Chophouse, which Schultz had been using as a temporary meeting place, and gunned

down Schultz and three of his associates. A fourth Schultz lieutenant was also gunned down in New York City. As his wounds were being tended to, Schultz denied any knowledge of his assailants. Following the shooting, Schultz alternated between refusing to answer questions and speaking incoherently before succumbing to his wounds the day after his shooting.

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See Also: Corruption, History of; Gambling; Genovese, Vito; Luciano, "Lucky"; Rothstein, Arnold.

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Scopes Monkey Trial

In the United States, and especially in education, the issue of evolution and creation has been a continuing problem. The fundamental religious/conservative part of the population believes that the biblical account of creation is true and wants only that account taught in schools, or wants it to be taught with equal emphasis as given to evolution. In opposition, the liberal/scientific portion of the population wants the theory of evolution, which was formulated by Charles Darwin in his book *The Origin of Species*, to be taught in schools, and want creation to be limited to courses in religion.

Because this controversy involved what was being taught in school, and because there are numerous public schools in America, the propriety of teaching evolution and/or creation became a serious political issue. In the early part of the 20th century, there were many efforts undertaken by religious

fundamentalists to make the teaching of creation in public schools mandatory and to criminalize the teaching of evolution. This effort was successful in Tennessee, which passed the Butler Act on March 21, 1925, making it a crime to teach evolution in school. In Tennessee, the American Civil Liberties Union (ACLU) offered to defend anyone accused of teaching evolution in violation of the Butler Act. A group of businessmen in the town of Dayton, Tennessee, thought that such a trial would be good publicity for the town. Subsequently, a young high school biology teacher in Clark County, John T. Scopes, agreed to be the test case and he proceeded to teach evolution in his classes.

In May 1925, Scopes was indicted for violating the Butler Act. The indictment became national news with the press descending upon Dayton. Over 200 reporters came to Dayton from all across the nation. For the length of the trial, newspapers across the nation were focused on "the Monkey Trial" (coined by famous commentator and author H. L. Mencken). The trial was the first in America to be nationally broadcast on radio. The nation was enthralled. A number of attorneys were considered to represent both sides. Ultimately, Williams Jennings Bryan was selected to assist as a special prosecutor for the state to prosecute Scopes. Bryan was a nationally known politician and a religious Presbyterian. Clarence Darrow, the famous defense attorney, was selected to be the lead counsel for Scopes. Darrow was an agnostic.

At trial, Darrow and the trial judge, John T. Raulston, had a number of disputes. The trial judge quoted from Genesis in the Bible and the Butler Act, which revealed Raulston's bias. The ACLU originally became involved in the issue because of the potential violation of the First Amendment. However, Darrow had other ideas. Darrow attempted to introduce testimony from various experts on evolution, but Raulston refused to allow them to be presented to the jury. At trial, the prosecution attempted to focus the jury on the legal issue, which was whether Scopes had taught evolution, the crime he had been charged with violating. The defense concentrated on the literal interpretation of the story of creation in the Bible and that it was not inconsistent with evolution. One of the defense attorneys, Dudley F. Malone, gave an inspiring argument, raising fears

of an “inquisition” if evolution were contained by the discipline of theology, and that evolution belonged in the discipline of science. The courtroom exploded in support.

Finally, in a most unusual request, Darrow asked for Bryan to be examined as an expert witness on the Bible, as the trial judge had refused to allow any of the defense’s expert witnesses. Bryan agreed to take the stand, even though he was an attorney for the prosecution. After a few exchanges between Darrow and Bryan, the trial judge closed the proceedings. Neither the prosecution nor the defense made any closing arguments. The matter was placed before the jury, which found Scopes guilty after only a few minutes deliberation. Scopes appealed. The Tennessee Supreme Court found that the Butler Act was constitutional under free speech because the state



John Scopes, a month before the Tennessee v. John T. Scopes trial. Scopes violated the Butler Act, passed in 1925 making it a crime to teach evolution in school in Tennessee.

had a right to regulate Scopes’s conduct. Further, it found that the Butler Act did not violate the religious preference clause of the Tennessee constitution because the law did not establish a state religion. However, the court reversed the conviction on a legal technicality. The state of Tennessee declined to retry the case.

The effect of the trial across the United States was significant. Initially, many textbooks stopped including evolution. Numerous states began to consider enacting antievolutionary statutes. Most of these efforts, however, failed. This did not stop the antievolution movement. In the last half of the 20th century, the antievolution movement morphed into the intelligent design movement, which posits that there is an intelligent being that designed and created the universe and that intelligent being is God. With the advent of the modern scientific age in the 1950s and the 1960s, with America focusing more on science and education in fear of falling behind the Soviet Union after the launch of Sputnik, the teaching of evolution became widespread, as it is considered one of the fundamental principles of biology. There are still calls from religious fundamentalists attacking the teaching of evolution and advocating more attention to intelligent design, but it appears that evolution will stay in the science books.

The Scopes Monkey Trial was immortalized in the famous play and movie *Inherit the Wind*. It is frequently used today, whether correctly or not, as an example of how a closed-minded perspective can inhibit the advance of science and knowledge.

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See Also: 1921 to 1940 Primary Documents; Darrow, Clarence; News Media, Crime in; Trials.

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Scottsboro Boys Cases

On March 25, 1931, a small town in Alabama was changed forever. A group of hoboes accused black youths who were on a train bound for Memphis of assault and throwing the hoboes off the train. The train was stopped in Paint Rock, Alabama, and the sheriff deputized a posse that was ordered to capture all the black men on the train. Later, two women, Victoria Price and Ruby Bates, accused the men of rape. Nine men were arrested: Olen Montgomery, Clarence Norris, Haywood Patterson, Ozie Powell, Willie Rober-son, Charlie Weems, Eugene Williams, and brothers Andy and Roy Wright. All men were teenagers. As word began to grow in the small community of Scottsboro where the men were jailed, a lynch mob developed, and the governor had to order the National Guard to protect the jail. In the Jim Crow south, these men were not allowed to consult a lawyer and most were illiterate.

The trial brought national and international attention, with the Communist Party, National Association for the Advancement of Colored People (NAACP), and International Labor Defense (ILD) vying to represent the defendants. The ILD won the rights. The first trial began on April 6, 1931, before Judge A. E. Hawkins. On April 9, 1931, eight defendants were convicted and sentenced to death, with only 12-year-old Roy Wright not receiving the death penalty. On June 22, 1931, all executions were stayed pending appeal to the Alabama Supreme Court. On January 5, in a letter to Earl Streetman, Ruby Bates denied she was raped. However, the Alabama Supreme Court, in a 6–1 ruling, affirmed seven of the eight convictions, granting only Eugene Williams a new trial on the grounds that he was a juvenile. In May 1932, the U.S. Supreme Court announced that it would review the Scottsboro boys case; in a 7–2 ruling in November 1932, *Powell v. Alabama* reversed the convictions and ordered a new trial on the grounds of inadequate counsel in a decision written by Charles Evans Hughes.

Due to the press coverage of the original trials, the next trials were set in Decatur, 50 miles from the birthplace of the Ku Klux Klan in northern Alabama. For the Decatur trials, Samuel S. Liebowitz was retained by the ILD to be the attorney for the Scottsboro boys. The case was assigned to District

Judge James Edward Horton. The first case to be retried was that of Haywood Patterson on March 27, 1933. Patterson was once again found guilty and sentenced to death on April 9, 1933. Due to increasing local tensions and the fact that the other defendants could not get a fair trial, Judge Horton ordered the other trials postponed. During this postponement, there were many marches across the nation, including one in Washington, D.C., that protested the Alabama trials. On June 22, 1933, Judge Horton, in a move that he knew would cost him re-election, granted a new trial for Haywood Patterson. The Scottsboro cases were removed from Judge Horton's jurisdiction and transferred to Judge William Callahan.

During the Callahan trials, from 1933 to 1937, the judge banned photographers and typewriters from the courtroom to try and get the trial off the front pages. Judge Callahan excluded evidence that Judge Horton allowed. Often, Callahan would interrupt the defense in cross-examining, especially during Victoria Price's testimony. The cases went to the Alabama Supreme Court, which once again affirmed the conviction, and back before the U.S. Supreme Court, which once again overturned the convictions of Norris and Patterson in *Norris v. Alabama* due to African Americans being excluded from the jury.

The final round of trials were significant because Creed Conyers became the first black to serve on a grand jury post-Reconstruction. Local attorney Charles Watts was the lead attorney for the defendants with Samuel S. Liebowitz assisting the case. Haywood Patterson was once again convicted and sentenced to 75 years in prison, becoming the first black man to avoid the death sentence for raping a white woman in Alabama. Clarence Norris was once again convicted of rape and sentenced to death. Andrew Wright was convicted of rape and sentenced to 99 years. Charlie Weems was convicted of rape and sentenced to 105 years in prison. Charges were dropped against Willie Rober-son, Olen Montgomery, Eugene Williams, and Roy Wright. Many of the ones who were convicted were later paroled, or in the case of Haywood Patterson, escaped from prison. Clarence Norris was pardoned in 1976 by Governor George Wallace.

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See Also: African Americans; Alabama; Civil Rights Laws; Juries.

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Secret Service

Established in 1865, the Secret Service is a federal law enforcement agency of the U.S. government. It was the Federal government's first detective force. The agency was previously under the auspices of the Department of the Treasury until March 2003, when it was transferred to the newly created Department of Homeland Security, which was established by the federal reshuffling following 9/11. Otherwise referred to as the "USSS" or simply the "Service," sworn members of the Secret Service are divided into two categories—special agents and the uniformed division—and perform one of two responsibilities in accordance with their mission: "To safeguard the nation's financial infrastructure and payment systems to preserve the integrity of the economy, and to protect national leaders, visiting heads of state and government, designated sites and National Special Security Events."

While the Secret Service agency initially held a treasury role with primary investigative responsibilities to suppress currency counterfeiting, the agency has evolved considerably over the years. Consequently, some responsibilities were transferred to other agencies—namely, the Federal Bureau of Investigation (FBI), Internal Revenue Service, Immigration and Customs Enforcement, and Bureau of Alcohol, Tobacco, and Firearms. Today, the agency holds a dual protective role for the safety and protection of current and former national leaders and their families, such as the president, and the provision of diplomatic security for visiting foreign leaders, a service for

which the agency is more commonly known. Both roles are reflected in the Secret Service's motto—"worthy of trust and confidence." Recently, the Secret Service inherited a third responsibility—the investigation of crimes committed electronically—which is shared through concurrent jurisdiction with the FBI. Based in New York City until 1874, the Secret Service is currently headquartered at 245 Murray Drive in Washington, D.C. Operating on \$1.43 billion annually as of 2010, the agency includes more than 4,400 sworn members working in 150 offices in the United States and abroad under the command of Mark J. Sullivan—the 22nd director of the Secret Service, who was appointed on May 31, 2006.

Evolution

The Secret Service can be traced back to the early 19th century, when the surge of counterfeits and forgeries plaguing the country required the creation of a federal agency specifically tasked to tackle these growing crimes. As such, on October 25, 1860, the U.S. Treasury allocated \$10,000, and on July 5, 1865, Chief William P. Wood was officially sworn in by Secretary of the Treasury Hugh McCullough to command a new agency. Only two years after inception, responsibilities of the Secret Service were greatly expanded to include any person committing frauds against federal law, such as smugglers, illegal distillers, mail robbers, land frauds, and a range of other criminals, until other federal agencies were formed to take over these duties. In order to arm the Secret Service with the necessary investigatory powers, Congress enacted a plethora of new laws before the 20th century, for example, prohibiting the counterfeiting of any coin—gold or silver—in 1877 and outlawing counterfeiting and possessing forged stamps in 1865.

Finally, on August 5, 1882, an act was passed by Congress to officially recognize the agency as a division of the Treasury Department. In 1894, the Secret Service informally began to provide protection to presidents, starting with Grover Cleveland, and was officially assigned in 1902 to provide full-time protective services following the 1901 assassination of President William McKinley. Congress in 1907 enacted the Sundry Civil Expenses Act in order to supply the necessary funds for this new dual responsibility of the Secret



Flanked by Secret Service agents, President George W. Bush along the inaugural parade route inside an armored limousine headed toward the White House after his re-election.

Service, budgeting \$125,000 to cover 56 agents stationed in 31 offices. In 1908, nine Secret Service agents resigned from the Department of Justice in order to help establish the Federal Bureau of Investigation. In 1922, the Secret Service created the White House Police.

Much of the expansion of the Secret Service between the early 1900s and the 1980s involved the protective diplomatic role. In the 1980s, the emergence and growth of credit and debit card usage was complemented by a rise in electronic fraud, which prompted Congress in 1984 to pass legislation making this a federal offense. In turn, this granted authority to the Secret Service to investigate these crimes, including federal-interest computer fraud and false identification

documents. In 1990, the Secret Service began to share jurisdiction concurrently with the FBI in order to civilly and criminally investigate any cases related to federally insured financial institutions. During this decade, Congress enacted two key laws—the 1994 Crime Bill Public Law, which prohibited the manufacturing, trafficking in, or possession of American currency counterfeited abroad, making this an offense punishable as if committed in the United States.

In 1998, Congress enacted the Telemarketing Fraud Prevention Act, which allowed the Secret Service to confiscate fraud proceeds in convicted cases, including conspiracy to perpetuate such an offense if done through telemarketing. In the same year, the Identity Theft and Assumption Deterrence Act was also enacted, thereby creating the crime of identity theft with penalties for anyone knowingly and illicitly using another person's identity for the purpose of committing unlawful activity.

The new millennium saw many changes and some high-profile cases for the Secret Service. Shortly after September 11, 2001, the USA PATRIOT Act armed the agency with the necessary legal artillery to rapidly expand operations, for example, with increased investigative powers to deal with fraud and other crimes involving computers. In addition to increasing penalties for counterfeiting violations and forgeries and vesting the agency with more power to respond to transnational terrorist financing, this legislation provided former director of the Secret Service Brian Stafford with the authority to establish an extensive nationwide network of electronic crime task forces for purposes of detecting, preventing, and investigating electronic financial crime and similar activities, such as cyber attacks, committed through computers against financial infrastructures, government agencies, private industry, and academic institutions in the United States. In 2006, this database greatly expanded from 15 to 24 nationwide task forces, in cities around the United States, because of productive public-private partnerships.

During this decade, the Secret Service was also involved in many high-profile cases, for example, Operation Firewall in 2004, leading to the arrests of 28 American and foreign suspects in six countries for identity theft, electronic fraud, and conspiracy charges; in 2008, 11 American and

foreign individuals were charged with the theft of more than 40 million credit cards. Since 2003, these efforts have resulted in more than 29,000 arrests with a 98 percent conviction rate and have led to the seizure of \$295 million in counterfeited currency. Since this time, the Secret Service has also closed cases with losses amounting to \$3.7 billion and has helped thwart more than \$12 billion in potential losses.

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See Also: Computer Crime; Counterfeiting; Federal Bureau of Investigation; Federal Policing; Identity Theft; Terrorism; USA PATRIOT Act of 2001; Washington, DC.

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Securities and Exchange Commission

The Securities and Exchange Commission (SEC) is a federal government agency established by the Securities Exchange Act of 1934. The primary role of this agency is to regulate all business related to the sale and purchase of securities in the United States. What we know today as the SEC began in 1933 with the passage of the Securities Act during the early months of the presidency

of Franklin D. Roosevelt. The purpose of this act was to clean up the securities industry by requiring that all information about securities sold to the public be made available to investors and to prohibit actions considered to be fraudulent and illegal as defined by the act. Congress took this course of action toward regulating the securities industry because false information, sales lower than market prices, and other illegal practices contributed to the stock market crash in 1929. Prior to this point, the securities industry did not come under government regulation.

The Securities Act of 1933 was a good start but it failed to create a mechanism to oversee and regulate the securities industry. Congress created the SEC as an independent government agency under the president to oversee the regulation and practices of companies selling securities to the public. Under the law, the SEC has the power to require the registration of brokerage firms, transfer agents, and self-regulatory organizations (SROs) in the United States. The agency also has the power to determine which activities related to securities are considered illegal and to enforce disciplinary actions on the individuals and firms with which they are associated. In accordance with these areas of regulation, the various firms and persons regulated by the SEC are required to submit a report on a regular basis fulfilling the requirement of public information.

Structure and Organization

The SEC's organizational structure includes five commissioners appointed by the president who serve five-year terms that are staggered so all five seats are not vacant at once. One of these commissioners is named chair by the president. The agency currently has five divisions and 18 offices in Washington with 11 regional offices all over the country and a working staff of more than 3,500 people. The first of the five divisions of the SEC is the Division of Corporation Finance, which is responsible for meeting the public information requirement of corporate finance. The division reviews the documents that companies must submit to the SEC such as filings, annual shareholder reports, and filings related to mergers and acquisitions. In the Division of Trading and Markets, the SEC reviews proposed changes to regulations and practices submitted by the self-regulatory organizations, thus

watching over NASDAQ and the New York Stock Exchange, and also offers advice for new regulations and changes within the agency.

Another SEC division is the Division of Investment Management, which has the responsibility of oversight of U.S. capital markets such as mutual funds. This division regulates the information provided to investors, monitors fees paid, and reviews the information provided to consumers about the funds. The fourth division of the SEC is the Division of Enforcement, which takes its name from its primary responsibility. Within this division, investigations are initiated and information is collected about possible illegal activities from informers, consumer tips, and review of reports and other agency documents. Investigations are informal, and findings are first presented to the commission. In most cases, investigations are settled out of court, although the commission can require a trial in the district courts or another form of administrative action. The final division is the Division of Risk, Strategy and Financial Innovation, which was created in 2009 in response to the economic crisis and the need for more detailed information regarding risks and trends in the markets. This

division researches strategic developments, financial innovations, and risk and economic analysis to help the SEC predict trends and anticipate changes in the financial markets.

Function

The SEC tracks the securities industry and requires that companies disclose their information. Companies that have assets greater than \$10 million and that also have more than 500 members holding securities are required to file quarterly and annual statements, which can be viewed by anyone via the EDGAR database. Other related laws require the disclosure and monitoring of how stockholder votes are obtained, particularly in the case of proxy settings and tender offers in the case of one person trying to gain control of a company.

The SEC monitors investors for prohibited activities such as insider trading. Recent high-profile cases related to insider trading include the cases brought against E. F. Hutton, Martha Stewart, Enron, and Bernard Madoff, who created a Ponzi scheme that collapsed in 2008, along with the fortunes of countless investors. Investigations resulted in not only Madoff's conviction but in further changes to how the SEC regulates the securities industry.

The influence and activity of the SEC has varied over time since its 1934 inception. During the presidency of Dwight Eisenhower, for example, the SEC maintained a low profile, which continued during subsequent administrations until the election of Ronald Reagan, when the agency began to regulate the industry more heavily. During subsequent administrations, regulation of the financial sector became increasingly lax; banks and mortgage companies made increasingly complex and risky trades that were allowed under these lax regulations and led directly to the financial crisis that began in 2008. With the election of Barack Obama and a Democratic-controlled Congress in 2008, steps have been taken to rein in bank fees and credit card fees and to monitor financial institutions to protect consumers.

Conclusion

The SEC can trace its roots back to the post-World War I financial boom that resulted in businesses selling securities for a fraction of what they cost and individuals borrowing money to purchase them.



The U.S. Securities and Exchange Commission (SEC) headquarters is located in Washington, D.C. The SEC was created by section 4 of the Securities Exchange Act of 1934.

When this practice ultimately led to the stock market crash of 1929, it became very clear that federal regulation of the securities industry was necessary. Congress then passed laws in 1933 and 1934 that created the SEC and provided the agency its mandate. As a regulatory agency, it not only provides oversight for securities and related businesses, but it also sets regulatory policy. Today, the SEC works in combination with the Federal Reserve Board, the U.S. Department of Treasury, and the Commodity Futures Trading Commission to advise the president on economic matters. Since the 1930s, only two major legislative updates have modified the SEC: the Investment Company Act of 1940 and the Sarbanes-Oxley Act of 2002.

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See Also: Great Depression; Reagan, Ronald (Administration of); Roosevelt, Franklin D. (Administration of).

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Sedition Act of 1918

The Sedition Act of 1918 was a law that forbade the use of “disloyal, profane, scurrilous, or abusive language” about the U.S. government, its flag, or its armed forces from its signature by President Woodrow Wilson on May 16, 1918, through its repeal on March 3, 1921. The law also allowed the U.S. Postmaster General to refuse to deliver mail that met the same standards. It applied only during times when the United States was at war; in 1918, the United States was actively engaged in the combat of World War I. The law was actually part of a set of amendments to the Espionage Act of 1917, so many scholars report on both acts simultaneously as the Espionage and Sedition Acts.

When it was enacted in 1917, the Espionage Act made it a crime to aid enemies of the United States or to interfere with World War I efforts or military requirements. The Sedition Act of 1918 expanded these provisions to include a broader range of offenses possibly subverting the war effort, including speech and the expression of opinions that cast the U.S. government in a negative light, or interference with the sale of government bonds. Offenders convicted under the act typically received prison sentences lasting from 10 to 20 years.

During congressional debate, one argument made in the law’s favor was that the country was witnessing instances of mob or vigilante behaviors from members of the public punishing unpopular speech. The Sedition Act, thus, would help to preserve a rule of law by preventing mobs from doing what the government was unable to do. Critics of the law, including former president Theodore Roosevelt, argued that the law attacked the U.S. Constitution’s guarantees of free speech and expression. Senator Hiram Johnson accused the Wilson administration of failing to use laws already in place to prosecute offensive speech or actions. The final vote for passage of the act was 48–26 in the Senate and 293–1 in the House of Representatives.

Approximately 2,000 people were prosecuted under the Espionage and Sedition Acts. Perhaps the most famous prosecution was that of Socialist Party leader Eugene Debs. Debs was arrested after giving a speech that jurors believed was meant to obstruct the military draft. He was sentenced to 10 years in prison but was released after two, following commutation by President Warren Harding. Similar prosecutions occurred for less conspicuous offenses. Peter Holzmacher of Illinois was sentenced to five years for calling the American flag “a dirty rag.” Women made up approximately 10 percent of the prosecutions. They included labor activist Helen Gurley Flynn, as well as the frustrated Amanda Murphy, who was arrested after denouncing the war, President Wilson, and the Red Cross following too many solicitations for donations.

The U.S. Supreme Court upheld the constitutionality of the Sedition Act in *Abrams v. United States* in 1919. In a famous dissenting opinion that shaped First Amendment law for the rest of the 20th century, however, Justice Oliver Wendell

Holmes encouraged scrutiny of sedition prosecutions to ensure that only individuals whose activities constituted a clear and present danger to society were convicted.

Approximately 800 people were convicted on sedition charges during the life of the act. The law was rendered void with the end of World War I, though some leaders advocated a peacetime version of the law. Attorney General A. Mitchell Palmer, who was also seeking the Democratic Party nomination for president, proposed a peacetime Sedition Act, citing dangerous foreign-language presses and growing civil rights unrest among African American communities. J. Edgar Hoover, then head of the General Intelligence Division of the Bureau of Investigation at the Department of Justice, also supported the peacetime law. At one point, Congress reviewed 70 versions of the proposed peacetime Sedition Act but chose not to act upon any. Congress formally repealed the Sedition Act in 1921. The act has been described by historians as the nation's most extreme anti-free speech legislation.

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See Also: 1941 to 1960 Primary Documents; *Abrams v. United States*; Alien and Sedition Acts of 1798; Espionage Act of 1917; *Schenck v. United States*.

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Segregation Laws

Segregation constitutes a policy of physically separating socially designated "races" in residential, educational, recreational, and public facilities.



The St. Louis, Missouri, National Association for the Advancement of Colored People (NAACP) holds a 1960s protest march against the segregation of U.S. schools.

Segregation may be defined as either *de jure* (sanctioned by law) or *de facto* (segregation in "fact," persisting in varying degrees) and can exist within institutions such as the U.S. military, which employed the policy until 1947. Segregation laws in U.S. history are often referred to as Jim Crow laws. The phrase *Jim Crow* originated in the 1830s and is believed to have been first associated with the minstrel show performances of Thomas "Daddy" Rice. Rice (a white American) blackened his face with burnt cork and danced a jig while singing the tune *Jump Jim Crow* as based on his observation of an African American man while traveling through the south. By the 1850s, the Jim Crow character created by Rice had become a main feature in the 19th-century minstrel show while the term *Jim Crow* became an adjective utilized by writers in the late 19th century. Some historians have argued that "Crow" was actually the surname of the owner of the slave that Rice witnessed singing a similar tune. The term *Jim Crow law* was first listed in the *Dictionary of American English* in 1904. Segregation laws or Jim Crow

laws dominated U.S. social relations from the 19th century through the 1960s and ended as a result of the activism of African Americans during the civil rights movement.

The policy of segregating the races began before the end of slavery in the northern section of the United States. Segregation laws began to appear in the southern section of the United States following the Civil War and Reconstruction through 1877. These laws, as they appeared in the south, were based on the pro-slavery argument that claimed the inferiority of African Americans. The segregation laws that appeared in the north were largely characteristically *de jure* forms of segregation after Reconstruction while the laws that emerged in the south were also a manifestation of *de jure* forms of segregation. As segregation laws became less noticeable in the north, through the first few decades of the 20th century, the segregation laws in the south became increasingly visible and more rigid. Segregation laws in the south divided whites from blacks in nearly every social setting, including hospitals, schools, hotels, churches, recreational facilities, and forms of public transportation. The history of segregation laws and practices, north and south, through the 21st century signifies an important aspect of the social history of crime and punishment in U.S. society.

Segregation Laws in the North

Segregation laws appeared in the northern U.S. states before becoming an integral feature of social relations in the southern states. In fact, segregation laws governed nearly every interaction between whites and blacks in northern states through 1860. These laws were grounded in white supremacist beliefs that African Americans were inferior and must be regulated. African Americans were systematically separated from whites on stagecoaches and railcars, and in theaters, restaurants, churches, hospitals, prisons, and lecture halls. States such as Indiana, Illinois, and Oregon had provisions in their constitutions prohibiting the admission of African Americans into the borders of these states. South Boston did not have one African American family among its various neighborhoods in 1847, and this was not unusual for the time. In Cincinnati, African Americans were segregated into “Little Africa,” while in Boston, “New Guinea” became the dwelling of African Americans in the

city. Only five northern states (Massachusetts, New Hampshire, Vermont, Maine, and Rhode Island) permitted African Americans the right to vote before the Civil War. African Americans were excluded from serving on juries in northern states until Massachusetts allowed the practice in 1855. Some northern states prohibited African Americans from testifying in court. There were bans on African Americans serving in positions as jurors, witnesses, and judges throughout northern states before the Civil War.

Segregation laws and practices continued to be present in northern states through the 20th century. African Americans were separated from whites in residential housing, schools, employment, and other public facilities. States such as Illinois, Ohio, Pennsylvania, and New Jersey maintained segregation laws in the public school system through the modern civil rights era. The Great Migration north of African Americans from the south after 1919 compelled many northern cities and locales to uphold segregation in jobs, trade unions, neighborhoods, and public facilities. In fact, one of the preeminent civil rights organizations created in the 1940s, the Congress of Racial Equality (CORE), practiced “sit-downs” in downtown Chicago to protest segregation in public facilities long before the mass movement for civil rights began in 1955. The growing black northern population through the 1920s became increasingly isolated into ghettos through the 1930s and 1940s as a result of restrictive residential covenants that barred African Americans from securing housing in specific neighborhoods, coupled with the policies of redlining and block-busting. Despite the persistence of segregation laws and policies in northern states through the 20th century, the term *Jim Crow law* is often more routinely associated with the southern section of the United States and with a particular historical period, from roughly the era of Reconstruction through 1954; specifically, in the years between the Supreme Court decisions in *Plessy v. Ferguson* (1896) and *Brown v. Board of Education* (1954).

Segregation Laws in the South

Segregation laws emerged across the south upon the end of the Civil War. These laws began as early as 1865. In slavery, African Americans were heavily regulated by white slaveholders; thus, the south



A young boy drinks from a segregated water fountain designated for “colored” people on the county courthouse lawn in Halifax, North Carolina, in 1938. Segregation laws existed in the United States from the 19th century through the 1960s and also required African Americans to be separate from whites in stagecoaches, trains, restaurants, public toilets, and schools.

did not require comprehensive segregation laws to regulate the civil liberties of African Americans before the Civil War and emancipation. In fact, the physical proximity between blacks and whites during the slave era was far greater than it was after emancipation. The first major postwar legal restrictions on African American civil liberties in the south came in the form of Black Codes during the presidency of Andrew Johnson in 1865. These codes were reminiscent of the slave codes that were first developed in the late 17th century to restrict African American autonomy in servitude. Three states adopted laws that allowed discrimination on railroads between 1865 and 1866. Mississippi did not allow African Americans to ride in any first-class passenger cars set aside for whites, the Florida legislature forbade whites to use cars set apart for use by black passengers, and a Texas law required all railroad companies to attach to passenger trains one car for African American accommodation. In the 1870s, a series of Supreme Court cases helped to undermine African American civil rights despite the passage of the Civil Rights Act of 1866 and the ratification

of the Fourteenth Amendment, which guaranteed citizenship to the freed slaves.

The *Slaughter House Cases* (1873) and the Supreme Court decision in *United States v. Cruikshank* (1876) both weakened the federal ability to protect African American citizens. In 1883, the Supreme Court declared the Civil Rights Act of 1875, a law that guaranteed the freed slaves equal access to public places, unconstitutional, stating that Congress had no power to prevent acts of discrimination. The series of decisions by the Supreme Court helped to anchor a system of segregation in the American south as various states and locales began to pass laws requiring the separation of the races. In 1890, Mississippi wrote a disenfranchisement provision into its state constitution; that same year, in Louisiana, African Americans were required to ride in separate rail cars. The Louisiana law was challenged by people of color in Louisiana such as Homer Plessy, who boarded a Louisiana railcar in defiance of the law and was arrested. The Supreme Court decision in *Plessy v. Ferguson* (1896) declaring the doctrine of “separate but equal” constitutional sanctioned the

separation of the races from the late 19th century through 1954.

By 1910, every state of the former Confederacy had Jim Crow laws on the books. Segregation laws were taken to the extreme in some locales throughout the southern section of the United States. Louisiana required separate entrances for blacks and whites by 1914; in 1915, Oklahoma segregated telephone booths. Mississippi made it a crime to publish notions of equal rights as applied to African Americans in textbooks in 1920. Texas prohibited integrated boxing matches, while Georgia barred black ministers from performing marriage ceremonies for whites. New Orleans segregated its prostitutes, and most southern states banned interracial marriage, African American voting rights, and civil rights in general through the laws of segregation. Southern states implemented the poll tax, literary test, and grandfather clause to prevent African Americans from exercising their voting rights. The system of segregation was kept in place by vigilante violence exercised by whites determined to maintain segregation through extreme measures. Thousands of African Americans were lynched by white mobs between 1890 and 1954. African Americans responded by creating such groups as the National Association for the Advancement of Colored People (NAACP), organized in 1909, and the National Urban League, developed in 1911, among other agencies.

The NAACP, through its Legal Defense Fund, began to fight segregation laws in the first decade of the 20th century, securing a series of legal victories against all-white primaries and the grandfather clause. In these years, the NAACP developed a strategy of legal gradualism (fighting segregation through the courts) as evidenced in its support of *Guinn v. United States* (1915), a case that challenged the grandfather clause in Oklahoma; *Buchanan v. Warley* (1917), in which the Supreme Court stated that residential segregation may not be required; and other landmark decisions such as the 1944 Supreme Court decision in *Smith v. Allwright* that declared all-white primaries unconstitutional. The legal assault against segregation laws advanced by the NAACP led to the emergence of the modern civil rights movement, particularly in terms of the NAACP challenges to segregation in schools. As a result of this legal

campaign waged by the NAACP, the Supreme Court was compelled to declare the doctrine of “separate but equal” to be unconstitutional in the historic case *Brown v. Board of Education* (1954), thereby effectively clearing the way for the dismantling of segregation laws throughout the American south. The Civil Rights Act of 1964 allowed all citizens equal access to public facilities and equal employment opportunities. The Voting Rights Act of 1965 gave African Americans access to the ballot without restrictions. Fair housing practices were implemented in the Fair Housing Act of 1968. Jim Crow laws began to disappear across the American south through the decades following the civil rights movement. Patterns of de facto segregation continue to exist in U.S. society, particularly in terms of housing, education, and employment, while segregation laws or *de jure* segregation once sanctioned by state and local governments are no longer on the books.

Conclusion

Segregation laws have been an important facet in the social history of crime and punishment in U.S. society. Interracial social relations were criminalized on nearly every level in the American south. African American men were lynched across the American south and southwest, by the hundreds, at the mere hint of any contact with white women through 1955. The crime of interracial association, voluntary or not, sanctioned the punishment of lynching with or without trials. Race relations between blacks and whites were anchored in the laws of segregation for decades following the Civil War. Indeed, southerners in support of segregation often made the argument that to maintain law and order, the “races” must be separated as a measure of public safety through the police powers of the state. The Supreme Court’s support of segregation laws in the late 19th century was shaped by the accepted notions of the majority about African American inferiority. Stereotypical ideas about nonwhite ethno-racial groups continue to shape governmental policies related to law, order, crime, and punishment in U.S. society. This is evidenced in the high rates of arrests, incarceration, and punishment experienced by African American communities. The racial attitudes that influenced segregation laws in regard to the supposed “inferiority” of nonwhites must

be dispensed with completely before all forms of segregation can disappear.

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See Also: 1851 to 1900 Primary Documents; *Brown v. Board of Education*; Lynchings; *Plessy v. Ferguson*; Racism.

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Selective Service Act of 1967

The United States began conscription during the American Civil War in 1863, and it proved unpopular, culminating in draft riots. During World War I, the Selective Service Act passed in May 1917 established the Selective Service system. Originally, the act gave the president the power to draft men for military service. Males 21 to 30 were required to register for a service period of one year, and in 1918, the age was raised to



Draft-age Americans being counseled by Mark Satin (far left) at the Anti-Draft Programme office on Spadina Avenue in Toronto, Canada, in August 1967. About 30,000 deserters and draft dodgers fled to Mexico and Canada while the mandatory draft was in effect in the United States during the Vietnam War. A volunteer armed service replaced the U.S. draft in 1974.

45. In 1920, the draft was discontinued, but in 1940, the Selective Training and Service Act of 1940 established the first peacetime draft in U.S. history. This version stated that all males 18 and older must register, with those between 19 and 26 viable for service of 21 months. With the outbreak of the Korean War, the Universal Military Training Service Act (1951) extended service to 24 months and the minimum age to 18.5 years. Then, after the outbreak of the Vietnam War, President John F. Kennedy signed Executive Order 11119 giving exemption to married men aged 19 to 26. President Lyndon Johnson revoked the married clause, to exempt only those with dependent children, with Executive Order 11241.

During the height of the Vietnam War, and at the beginning of the Tet Offensive, the Military Selective Service Act of 1967 again altered the conscription law. It stated that all men from 18 to 35 must register for selective service, with exemptions for dependent children and education. Student deferments ended upon graduation or the student's 24th birthday, whichever came first. Coinciding with the unpopular war, the education exemption set off further social discontent. Critics claimed that deferments for education discriminated against the working class and the poor, since the majority of those eligible for school deferments were males from middle- and upper-class backgrounds.

Critics also began arguing that a disproportionate amount of nonwhites were being drafted, and, in an effort to counter the perceived discrimination, the lottery system was instituted. President Johnson signed this as an amendment to the Military Selective Service Act of 1967 in November 1969. The voices of critics and the public acts of draft protesters forced this change. Beginning in 1965, resistant males began publicly burning their draft cards, and draft dodgers began fleeing to Mexico and Canada (predominantly) to avoid service. The first draft lottery occurred in December 1969 with random numbers being called; those whose draft ID numbers fell within the parameters were required to report for service. This new system of blindly calling individuals into service was thought to ease the tensions of those who were conscripted, but the unpopularity of Vietnam did not die. By 1973, the draft was revoked, in favor of an all-volunteer army, and President Gerald Ford

gave many draft dodgers and draft-card burners clemency in 1974.

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See Also: Johnson, Lyndon B. (Administration of); Military Courts; Military Police.

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Sentencing

Sentencing is the imposition of a punishment by a court for a violation of the criminal law. Sentencing takes place after the defendant has been found guilty or has confessed to a crime. Although sentencing occurs post-conviction, it is deemed an essential phase within the criminal justice process, and defendants are entitled to legal counsel during these proceedings. While sentences are usually imposed by trial judges, they may also be imposed by juries or sentencing councils. Sentences are crafted to achieve multiple philosophical goals, including deterrence, incapacitation, rehabilitation, and retribution. Fines, incarceration, or community supervision are all common sentences. In some jurisdictions, under more elaborate sentencing procedures, the death penalty is still imposed.

Goals of Sentencing

Commentators have identified a number of sentencing objectives, but four goals comprise the cornerstones of sentencing: deterrence, incapacitation, rehabilitation, and retribution. The first three (deterrence, incapacitation, and rehabilitation) are consequentialist theories of punishment, focusing on the prospective reduction of future crimes; retribution is a nonconsequentialist and

retrospective theory of punishment, focusing on the punishment that is deserved for previous conduct. These four goals of punishment sometimes harmonize, such as incarcerating a dangerous offender to prevent him from injuring others (incapacitation) and to discourage others from committing comparable crimes (deterrence). Sometimes, however, the goals of punishment are more difficult to reconcile. Playwright George Bernard Shaw described the tension between retribution and rehabilitation, noting that if we are to punish defendants retributively, we must injure them; conversely, if we are to rehabilitate them, we must improve them; but we cannot do both simultaneously, for men are not improved by injuries.

Deterrence is based on the view that humans maximize their pleasure and minimize their pain. In order to induce people to forgo the pleasures of crime (e.g., the taking of goods or services without payment or the euphoria of illegal drugs), the state must establish penalties for crimes. The threat of punishment is enough to deter people from committing crimes. The theory of deterrence comes in two forms: specific deterrence and general deterrence. Specific deterrence suggests that if an offender commits a crime and is punished for it, that offender will be less likely to reoffend. General deterrence is based upon the fact that people learn vicariously (not only from punishments imposed on them directly). General deterrence suggests that punishment imposed upon an offender may deter future crime not just for him, but for others.

Incapacitation is a straightforward theory: Punishment can make it difficult (or impossible) for an offender to commit further crimes. Offenders can be incapacitated by spatially removing them from society (e.g., imprisonment or banishment) or by physically eliminating the capacity to offend (e.g., cutting off the hand of a thief or chemically castrating sex offenders). Capital punishment is the ultimate incapacitating punishment: Executed offenders never reoffend.

Rehabilitation is rooted in the idea of crime as disease. If people commit crimes because of inherent defects, one obvious way to reduce future crime is to simply correct the defect, regardless of whether the defect is physical (e.g., a chemical imbalance), psychological (e.g., criminal thinking

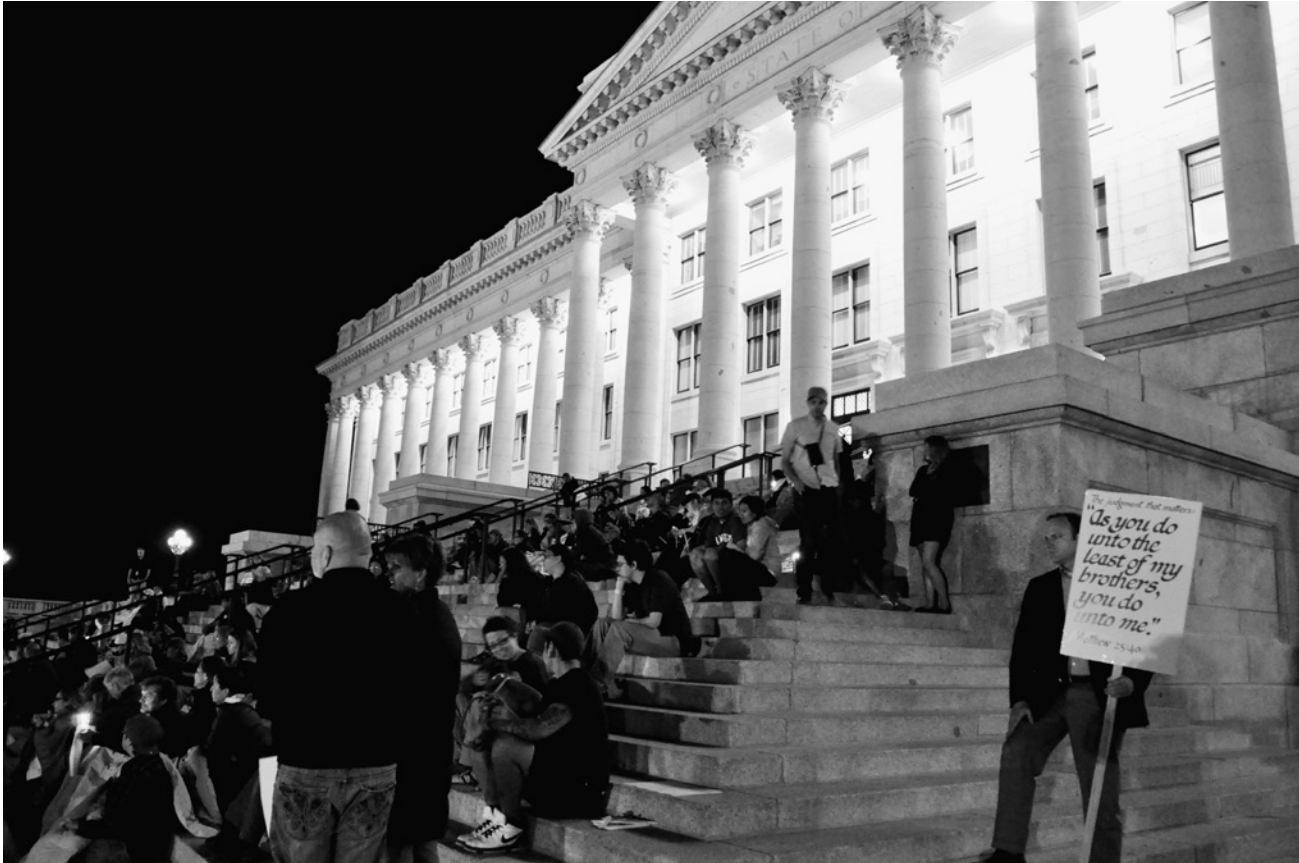
patterns), or social (e.g., association with criminal peers). During the 1960s, there was great interest in the United States in rehabilitation. In the 1970s, however, catalyzed by Robert Martinson's 1974 article that dismissed rehabilitation programs as ineffective, public opinion shifted, and rehabilitation was rejected as a legitimate basis of punishment. Only recently has interest in rehabilitation re-emerged within mainstream policy circles.

Retribution (sometimes called "just deserts" or simply "desert") is a nonconsequentialist theory of punishment, suggesting that criminals should be punished because they deserve it. Retribution, it is suggested, redresses the unfair advantage of society that the criminal has taken. Georg Hegel explained that when the criminal violates the law, his crime is the negation of the right of society. Punishment is the negation of this negation and thus an affirmation of right, brought upon the criminal by himself. Retribution takes two forms: negative and positive. Negative retribution requires that only the guilty may be punished and then only to the extent they deserve, but it does not require that punishments must be imposed. Positive retribution, on the other hand, requires that the guilty must be punished to the full extent of their desert. The view of positive retribution was articulated by Immanuel Kant, who argued that even if an island society was about to disband, the last murderers lying in its prisons should be put to death. Society not only has a right to punish them, but it has a duty to do so.

While deterrence, incapacitation, rehabilitation, and retribution operate as the principal goals of sentencing, there are other goals that inform sentencing decisions. For example, Joel Feinberg's expressive theory of punishment suggests that criminal sentences communicate moral opprobrium to offenders, relating social attitudes about criminal behavior. In this vein, just sentences can reinforce legal norms, enhance respect for the law, and provide catharsis for crime victims. Sentences that include restitution may help to ameliorate the financial, physical, emotional, and/or social harms to victims of crimes by requiring the criminal to compensate the victim (usually financially).

Types of Sentences

Historically, a variety of penalties have been imposed at sentencing, including financial penalties



The night before the execution of Ronnie Lee Gardner in June 2010, a protest against the death penalty was held at the Utah State Capitol. Gardner was serving a life sentence for murdering a man during a robbery and killing another man in an escape attempt while being transported to a court hearing. He received the death penalty for the second killing. Gardner threatened to sue to force the state of Utah to execute him by firing squad, which he claimed to prefer because of his Mormon background.

(fines, forfeiture, and restitution), corporal punishment, capital punishment, carceral punishment (jail and prison), community supervision (probation and parole), and intermediate sanctions (intermittent confinement, electronic monitoring, and community service orders). Judges might impose multiple types of penalties to accomplish the goals of sentencing. For minor offenses, defendants might be fined and/or assigned community service. For more serious offenses, defendants might be placed on probation or be incarcerated. Very serious crimes might result in a sentence of death.

The sentences imposed by courts have changed throughout history. In the American colonies, serious crimes were punished by execution (usually hanging) and less serious crimes were punished with nonlethal physical penalties (e.g., branding or whipping). Jails existed, but they served prin-

cipally as places of detention for those who could not post bail or pay their fines. Between about 1750 and 1850, however, punishment underwent a transformation. Prompted by humanitarian reformers, the prison was reinvented from a place where criminals awaited punishment to the vehicle of their punishment. In *Discipline and Punish*, Michel Foucault traces this evolution from a system of corporal punishments to one of carceral punishments, using the prison as a metaphor for society at large.

Financial penalties are common at sentencing. Like taxes, criminal fines may be used to deter undesired conduct, but fines differ from taxes in that they express moral opprobrium. Fines may involve modest sums of money (e.g., for parking violations or speeding) or millions of dollars (e.g., for corporate antitrust or environmental

violations). Some jurisdictions have experimented with day fines, penalties that are adjusted to income levels. The forfeiture of assets involved in criminal activity (including high-ticket items such as real estate, automobiles, aircraft, and boats, as well as cash) is another means of deterring criminal conduct. Restitution, the defendant's compensation of crime victims for their losses, is often part of a criminal sentence.

Corporal punishment, as such, is no longer part of U.S. sentencing. Whippings and canings are no longer imposed. Indeed, after the 1968 case *Jackson v. Bishop*, the practice of imposing physical punishments all but disappeared. Still, for some crimes, some jurisdictions do impose physical penalties on offenders. For example, several states chemically castrate recidivating child molesters with a birth-control drug. Federal courts and the majority of state courts may also impose the death penalty, which, by definition, punishes offenders physically. In the United States, most executions are conducted via lethal injection, although four other methods are still authorized: electrocution, gas chamber, hanging, and firing squad.

Carceral punishments are also common at sentencing. Approximately 2 million U.S. citizens are incarcerated in jails or prisons. For misdemeanors, crimes punishable by one year of incarceration or less, confinement usually takes place in a jail; for felonies, crimes punished by more than one year, confinement usually takes place in a prison.

Community supervision is less restrictive than incarceration. Offenders might be supervised by a probation officer, as an alternative to jail or prison, and offenders who have been deemed ready might be released from prison on parole and be supervised in the community by a parole officer. Offenders on probation or parole may be required to meet with their supervising officer on a regular basis, to maintain employment and residence, and to submit to drug tests. Community supervision is even more common than incarceration: Approximately 5 million U.S. citizens are on probation or parole.

When a sentence combines aspects of incarceration and community supervision, it is called an intermediate sanction. Intermediate sanctions fall between probation and incarceration in terms of severity. Other varieties include house arrest, electronic monitoring, intensive supervision probation, and boot camp programs.

Occasionally, courts impose other types of punishment. Modern courts do not sentence offenders to confinement in stocks or pillories, but they do occasionally impose shaming punishments, such as requiring men who solicit prostitutes to advertise their convictions in a newspaper or requiring shoplifters to wear placards that read, "I steal things." Although sentences of banishment are no longer imposed by federal or state courts, the penalty is sometimes imposed by tribal courts on Indian reservations. In some jurisdictions, sex offender residency restrictions functionally banish offenders from their communities.

Determinate Versus Indeterminate Sentencing

There is great variation among states in terms of how sentencing authority is allocated. At root, sentencing authority lies with the legislature, but other actors in the criminal justice system—judges, jurors, prison officials, sentencing commissions, release authorities, even executives such as state governors and the president of the United States—often play key roles. Which individuals are involved in sentencing decisions and how much discretion they wield depends in large part upon whether the structure in a given jurisdiction is determinate or indeterminate in nature.

In a jurisdiction with determinate sentencing, the sentence imposed by the court is the sentence that the defendant will actually serve. The judge considers the range of sentences authorized by the legislature (penal codes usually establish maximum, and sometimes minimum, terms of incarceration for crimes). The judge then considers the goals of sentencing and imposes a sentence (say, five years in prison). This defendant then serves five years in prison (less any "good time" subtracted from his sentence for good behavior at the discretion of prison authorities). There is truth in sentencing. Unless the sentence is reversed upon appeal or the executive branch modifies the sentence through amnesty, pardon, or commutation (both of these events are relatively rare), the defendant knows the length of his upcoming prison sentence on the very day he leaves the sentencing proceeding. Determinate sentencing is closely linked to the sentencing goals of desert and retribution.

In a jurisdiction with indeterminate sentencing, the legislature creates a release authority

(usually known as a parole board) that has the discretion to grant early release to offenders. In an indeterminate jurisdiction, a judge might impose a statutory sentencing range for the offense (say, for example, five to 10 years). Under such an indeterminate sentence, the defendant goes to prison for a term of at least five years but no more than 10 years. The actual time of release depends upon the decision of the parole board, which considers the defendant's conduct in prison, rehabilitative progress, and other relevant factors. Indeterminate sentencing is closely linked to utilitarian goals of sentencing, especially rehabilitation.

Colonial sentencing was almost entirely determinate, and early U.S. judges had little or no authority to modify the punishments imposed by law. But during the late 19th and early 20th centuries, indeterminate sentencing became increasingly widespread. Associated with reformers such as physician Benjamin Rush, indeterminate sentencing promised a more humane system of punishment. Instead of incarcerating prisoners for fixed periods of months and years, sentences might operate as maximums, but in practice, offenders could be incarcerated until they were rehabilitated (and no longer). Indeterminate sentencing also became popular for pragmatic reasons: It provided an effective means for prison administrators to control prison crowding. Between the early 1930s and 1970, U.S. sentencing was dominated by the indeterminate model. Indeed, in California, one of the states most committed to the indeterminate and rehabilitative punishment, almost all serious offenders were sentenced to a term of between one year and life in prison. The actual sentence was determined by California parole authorities. During the late 1970s (around the time Robert Martinson published his "nothing works" article), however, many U.S. jurisdictions denounced indeterminate sentencing (and rehabilitation) and asserted new determinate sentencing regimes based upon nonconsequentialist principles of retribution and desert.

Sentencing Disparity

It is easy to see that in an indeterminate sentencing system, sentencing disparity may be commonplace. Identical defendants, with equivalent criminal histories and backgrounds, guilty of

identical crimes, might be required to serve very different sentences. One offender, saying the right things to a parole board, might be released after just five years; another offender, less eloquent but no more blameworthy, might be incarcerated for 10 years. Disparity also can affect determinate systems. Identical defendants, appearing before different judges with different sentencing philosophies, might receive wildly different sentences. One judge, guided by rehabilitative philosophies, might sentence an offender to probation; another judge, guided by philosophies of retribution, might impose a lengthy prison sentence. Neither would be "wrong," and because historically, sentences that fell within the legislatively prescribed range were virtually unreviewable, defendants had no recourse to challenge disparately imposed sentences.

Judge Marvin Frankel condemned this kind of disparity as "judicial lawlessness." He noted that many federal statutes imposed absolute judicial discretion (rape committed within federal jurisdiction was punishable by death or imprisonment for any term of years or life) and warned against the potential abuses inherent in any sentencing system that conferred such broad discretion. Sentencing disparities between racial, gender, and class groupings plague many jurisdictions. Eliminating judicial disparity, however, is difficult and sometimes creates other sentencing inequities.

Mandatory Minimum Sentences

One approach to limiting judicial discretion is to impose mandatory minimum sentences. Cesare Beccaria and Jeremy Bentham both advocated such an approach, suggesting that once the penal law is written, the role of the judge should be limited, so as not to be swayed by personal prejudices. In practice, mandatory minimum sentences operate as sentencing "floors." Judges still have discretion to impose higher sentences (up to the limits authorized by law), but cannot impose a sentence below the mandatory minimum, no matter which considerations might lead them to do so. If, for example, the law requires that all those trafficking five grams or more of crack cocaine are punished by at least five years in prison, it does not matter whether it is the defendant's first offense or whether he sold crack to support his own drug habit. The goals of sentencing, which



A tin foil package of crack cocaine found on a patient who survived a gunshot wound to the head. Under mandatory minimum sentencing laws, a first offense of possession of 25 grams of crack will trigger a five-year sentence.

might determine the judge's sentence in other cases, are trumped by the law.

Although mandatory minimum sentences are popular with politicians and useful to prosecutors, they are criticized by many academics and judges as being blunt and inflexible tools, often using just one aggravating factor (such as drug weight or possession of a firearm) as a basis for the penalty. Mandatory minimum sentences also create sentencing "cliffs," disparities created by the mandatory nature of the sentence. For example, the first offender convicted of trafficking 4.98 grams of crack might receive a sentence of probation, but an identical offender convicted of trafficking 5.01 grams must serve five years in prison—a great disparity in sentence—even though their crimes are virtually indistinguishable.

Three Strikes Laws

Three strikes laws are another form of mandatory minimum sentences. Instead of focusing upon drug weight or firearm possession, they focus on criminal history. Habitual felon laws (enhancing sentences for recidivists) have a long history, extending at least as far back as 1797 in New York, but they became politically popular in the 1990s as "three strikes laws." Washington State passed the first modern three strikes law in 1993, California in 1994, and then more than 20 states

followed during 1994 and 1995. Today, half of the states have three strikes laws, although California's infamous three strikes law accounts for more than 90 percent of the three strikes cases in the United States.

California's three strikes law requires that any defendant who has committed an enumerated serious or violent felony and then commits another felony (the second strike) must serve twice the term otherwise required by law, and that any defendant with two or more serious or violent predicate offenses who then commits another felony (the third strike) must serve 25 years to life for that felony. Defendants can receive multiple third strikes (which must be served consecutively, not concurrently), and "good time" is reduced: Whereas most California prisoners can reduce their sentences by 50 percent, those convicted of a second or third strike can reduce their sentences, at most, by 20 percent. The California three strikes law is unquestionably strict but was upheld by the Supreme Court in 2003 in the cases *Ewing v. California* and *Lockyer v. Andrade*.

Sentencing Guidelines

Sentencing guidelines are one mechanism to channel sentencing discretion without resorting to mandatory penalties. Formulated by the U.S. Parole Board as a means of improving transparency and predictability in parole decisions during the 1970s, guidelines were adapted to the sentencing context in Minnesota in the early 1980s.

Sentencing guidelines typically assume the form of a two-dimensional grid. One axis identifies the range of offenses, from least serious to most serious; the other axis identifies criminal history, from those with no criminal record to those with extensive criminal records. At the intersection of the appropriate row and column, judges will find the expected sentencing range. Judges may choose to depart upward or downward from the specified sentence when special circumstances are present (and may be expected to do so), but as a general matter, the guideline range is considered to be the correct sentence for the offender, given the offense and the criminal history.

Guidelines-based sentencing has been successful in many jurisdictions that implemented it, but it has been criticized. It has been noted, for example, that guidelines are not very different from

mandatory minimum sentences; whereas mandatory minimum penalties are imposed on the basis of one variable (e.g., drug weight or criminal history), guidelines use two (offense severity and criminal history). All of the other factors that might lead a judge to impose a severe or lenient sentence are subordinated to these two factors; what should be a solemn exchange between the government's criminal justice authority and the convicted defendant is reduced to a desiccated exercise in accounting.

Guidelines-based sentencing also faces legal limitations. Systems in which sentences are imposed based upon judge-found facts may violate the Constitution. In 2004, in *Blakely v. Washington*, the Supreme Court held that the Sixth Amendment prohibits judges from enhancing sentences based on facts other than those admitted by the defendant or found by a jury beyond a reasonable doubt. In 2005, in *United States v. Booker*, this holding was applied to the federal sentencing guidelines, which, deemed unconstitutional, were made advisory. In 2007, in *Cunningham v. California*, the Supreme Court held that California's determinate sentencing law (allowing judges to impose a low, middle, or high term for offenses) was subject to the holding in *Blakely*.

Evidence-Based Sentencing

Some courts are beginning to explore the possibility of evidence-based sentencing, an actuarial approach that uses risk prediction instruments to guide the imposition of sentences. Since the 1970s, risk assessment instruments have become ubiquitous in community corrections and are frequently used to determine the appropriate conditions of probation or parole. Some judges have asked if these risk instruments can also be used at sentencing. Research indicates that statistical assessments outperform the clinical judgment of even trained experts (like judges). If actuarial assessment instruments can distinguish recidivists from those who will not reoffend, then law enforcement resources can be reallocated to minimize crime. Individuals who are likely to commit future crimes can be incapacitated for longer periods (selective incapacitation), while low-risk defendants could receive noncustodial or alternative punishments. Virginia has adopted this approach, and it may prove to be attractive to

other jurisdictions struggling with swelling prison populations and dwindling corrections budgets.

Capital Sentencing

Sentencing in death penalty cases is different from noncapital sentencing, perhaps because as the Supreme Court frequently notes in its opinions related to capital punishment, "death is different." The same tension that exists in noncapital sentencing exists in capital cases: On the one hand, sentencing discretion must be channeled to ensure that resulting sentences are just and not imposed upon arbitrary or impermissible grounds; on the other hand, defendants must be afforded individualized consideration. But in capital cases, the stakes are literally life and death, which has resulted in a kind of super due process.

In 1972, in the watershed case *Furman v. Georgia*, the Supreme Court held that imposition of the death penalty (as then applied) constituted cruel and unusual punishment under the Eighth Amendment of the U.S. Constitution, resulting in *de facto* abolition of capital punishment. Four years later, however, with the court's decisions in *Gregg v. Georgia* and *Proffitt v. Florida*, capital punishment was reinstated in the United States. Capital sentencing proceedings differ from noncapital proceedings in at least three ways. First, capital cases provide for an automatic appeal. Second, capital proceedings employ bifurcated trials, consisting of guilt and penalty phases. The question of whether a defendant should be put to death is not raised unless and until the defendant is found guilty of an offense punishable by death. Third, capital defendants are free to introduce a variety of mitigating evidence during the penalty phase in order to rebut the prosecution's evidence of aggravating factors. In 2002, in *Ring v. Arizona*, the Supreme Court held that the jury—not the judge—must determine whether statutory aggravating circumstances have been proven.

Other restrictions apply to capital cases that do not apply in noncapital sentencing proceedings. For example, the death penalty equivalent of mandatory minimum sentencing—the mandatory imposition of the death penalty upon a finding of first-degree murder—was struck down as unconstitutional in *Woodson v. North Carolina*. In noncapital cases, legislatures enjoy broad discretion in setting the penalties for various crimes,

but the death penalty has been limited to the most serious of crimes. While upheld in cases of first-degree murder where aggravating circumstances distinguish the crime as especially egregious, capital punishment has been struck down as unconstitutional in cases of the rape of an adult woman (*Coker v. Georgia*) and the rape of a child (*Kennedy v. Louisiana*).

Whereas juveniles or mentally handicapped individuals can be punished, including the imposition of life imprisonment without the possibility of parole, the Constitution bars their execution (juveniles in *Roper v. Simmons* and the mentally handicapped in *Atkins v. Virginia*). While offenders who go insane in prison can be kept in prison, in *Ford v. Wainwright*, the Supreme Court held that death row prisoners who go insane in custody cannot be executed.

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See Also: Capital Punishment; Corporal Punishment; Cruel and Unusual Punishment; Deterrence, Theory of; Incapacitation, Theory of; Rehabilitation; Retributivism; Sentencing, Indeterminate Versus Fixed; Three Strikes Law.

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Sentencing: Indeterminate Versus Fixed

Indeterminate sentencing refers to sentencing practices where judges incarcerate offenders for statutory ranges of time, generally later determined by a release authority (often known as a parole board). Fixed sentencing refers to sentencing practices where offenders are incarcerated for a legislated fixed length of time and whose release is nonconditional; this may include determinate sentencing, mandatory minimum sentencing, and three strikes law sentencing.

Indeterminate Sentencing

Colonial American punishments were often corporal in nature, ranging from the death penalty for serious crimes to nonlethal forms of corporal punishment (e.g., flogging or branding) for less serious crimes. Fines were also common for those who could pay. Jail was primarily used to confine offenders to await trial if they could not post bail or if they could not pay any accrued fines. However, between 1750 and 1850, the system of punishment in the United States (particularly in northern states) moved toward an increased use of imprisonment, as opposed to corporal punishment, largely in response to calls for humanitarian reforms and in the growing belief that criminals could be rehabilitated. During the 19th century, prison became the primary form of punishment for more serious offenders.

In 19th-century American prisons, the use of indeterminate sentences became common in response to a number of factors. Such sentences were seen as a way of providing relief for convicts in acknowledgement of rehabilitation and good behavior. In effect, convicts were given to

correctional facilities for an indeterminate period of time until rehabilitated. Another factor was the economic pressures caused by incarcerating increasing numbers of offenders. Overcrowding and expense of maintaining offenders in prison often forced states to pardon or release convicts early on in their sentences. Due to the possibility of bribery and corruption in the use of pardons, new systems were required to achieve these reductions in prison populations and expense. This can be seen in the advent of “good time” provisions that allowed sentences to be shortened due to convict cooperation and good behavior. New York introduced these provisions as early as 1817, the federal government in 1867.

The basis for the use of indeterminate sentencing was the belief that criminal activity was in part a result of poor environment and in part a result of poor heredity. This understanding of criminal activity assumed that, given enough time, many offenders could be taught how to lead

productive lives and rehabilitated back into society. The term *correctional facility* reflects the idea that convicts might be corrected of their criminality through exposure to hard work, religious reflection, and separation from corrupting influences. Further underlying the logic of indeterminate sentencing was a utilitarian goal. While strict utilitarian approaches such as that proposed by Cesare Beccaria in his work *On Crimes and Punishments* (1764) had argued for fixed sentences as a means of both general and specific deterrence, the rehabilitative logic of indeterminate sentencing retained the aim of specific deterrence insofar as it required that offenders be kept in confinement only for the time required for them to desist from committing further crimes. There was also a belief that indeterminate sentences would actively promote convicts’ good behavior in prisons, because their release would be conditional on their rehabilitation. The expectation that as a convict one could be held for an indefinite amount



President Barack Obama talks with members of Congress after signing the Fair Sentencing Act in August 2010. It reversed the Anti-Drug Abuse Act of 1986, which held that crack cocaine was more dangerous and harmful than powder cocaine and required a five-year mandatory minimum sentence for possession of five grams of crack cocaine.

of time, for perhaps even a small crime, would ensure that convicts complied with the rules and actively worked toward rehabilitation.

Fixed Sentencing

Indeterminate sentencing was the predominant form of sentencing throughout the United States until the late 1960s and early 1970s. Beginning in the late 1960s, however, the United States had begun to experience a marked increase in violent crimes, as well as widespread social unrest linked to civil rights and other social protest movements. This led to public and political impressions, particularly within white and middle-class America, that crime was out of control and that the government was doing an inadequate job in maintaining law and order. However, between conservatives and liberals there was a marked split as to the specific ways that the government was in fact failing to address these issues. Conservatives generally saw the criminal justice system as too lenient and too accommodating to the needs of criminal offenders, while liberals generally saw the criminal justice system as racially biased and not rehabilitative enough. However, both positions held the same opinion that use of indeterminate sentencing was problematic. For conservative critics, indeterminate sentencing was too soft on violent or habitual offenders, while for liberal critics indeterminate sentencing was seen as resulting in widely varying punishments between white and minority offenders for similar offenses. Questions were raised about indeterminate sentencing's fairness in other ways as well. Similar offenders displaying similar criminal histories were often at the mercy of parole boards for release, and not infrequently the decisions of such boards varied widely from one offender to the next.

A primary catalyst in the debate over the merits of indeterminate sentencing emerged in Robert Martinson's report in 1974 of 231 correctional rehabilitation programs, where Martinson suggested that there was little empirical evidence to support the idea that such programs effectively rehabilitated offenders. This study, commonly called the "nothing works" study, had wide-ranging political impact. Even though Martinson was primarily concerned with addressing what he saw as gross failures in the potential of rehabilitative programs, as well as gross racial

discrepancies in the use of indeterminate sentencing, his report coincided with a growing and influential body of conservative criminological literature that advocated punishment, not rehabilitation, as the primary legitimate function of the criminal justice system. Criminologists such as James Q. Wilson and Charles Murray argued that punishment, not rehabilitation, was a more effective means of deterring offenders and reducing crime. At the same time, other scholars such as Andrew von Hirsch argued that criminal offenders should be held accountable for the social harms of their offenses, and that the primary function of the criminal justice system should be to ensure that criminals received their "just deserts" for the harms they caused.

In this regard, even for the differences between conservatives and liberals, as well as differences within these groups, they agreed that indeterminate sentencing was not working. The work of Marvin Frankel in particular provided the shape and form of a solution to the problems of indeterminate sentencing. Frankel's 1973 work *Criminal Sentences: Law Without Order* argued that the combination of indeterminate sentencing and the wide judicial discretion afforded to judges constituted a type of "judicial lawlessness," which had resulted in a failure to reduce crime and to administer justice equitably. Frankel proposed that sentencing discretion should be removed from individual judges and invested rather in expert commissions that could set binding and uniform recommendations on sentencing regulations. Frankel argued that such a move would provide more uniform application of sentencing and less arbitrary and capricious uses of incarceration.

As a result of the work of Frankel and others, in the late 1970s and early 1980s, a number of states and the federal government moved to implement laws and policies that restricted judicial discretion in sentencing in favor of legislatively mandated sentences. In 1984, Congress passed the Sentencing Reform Act to provide "truth in sentencing" by requiring all convicted offenders to serve at least 85 percent of their sentence, and to help mitigate the wide disparities in federal sentencing. The act also abolished the use of parole in the federal prison system and established the U.S. Sentencing Commission. By 1987, the commission had produced and implemented a set of mandatory sentencing

guidelines for all federal felony and Class A misdemeanor crimes. The guidelines consisted of 43 variants of offense level, which could be cross-matched with six differing levels of criminal history. The intent was to produce a system that would deliver a standardized sentence for each possible combination of offense and history.

The use of mandatory sentencing guidelines is commonly referred to as determinate sentencing, where the range of sentences for specific offenses is determined by legislative action or by sentencing commissions. Aside from determinate sentencing, however, two other types of fixed sentencing used by many U.S. states and the federal government are mandatory minimum sentencing and three strikes laws. Mandatory minimum sentences have been used to a lesser degree for decades, particularly for drug offenses. They differ from determinate sentencing in two ways, namely, they usually have a lower fixed range of punishment before an offender can be eligible for release, and they are often targeted at specific types of crimes. Beginning in the late 1980s and early 1990s, mandatory minimum sentences began to replace determinate sentences for several reasons, most directly because determinate sentences were increasingly seen by policy makers as a cumbersome and blunt instrument of sentencing reform. On the other hand, mandatory minimums faced fewer legal challenges, were easier to legislate, and were increasingly seen as able to more precisely target specific types of offenses or offenders.

Three strike laws are aimed at habitual offenders and impose graduated penalties for each serious conviction. As the offender commits repeat offenses that are deemed strike eligible, the mandatory sentences for criminal activity increase in duration until a minimum predetermined threshold, frequently 25 years or more is reached. Habitual offender laws date back to at least the 19th century, but three strike laws differ in the important respect that they are usually mandatory. Washington State passed a three strikes law in 1993 and California in 1994. Today, at least 24 states have some form of habitual-offender laws.

Debates and Directions in Sentencing

Today, mandatory minimum sentencing and three strike laws have largely taken the place of

earlier determinate sentencing guidelines in terms of fixed sentences. While determinate sentencing was already waning in popularity, a series of Supreme Court decisions, including *Blakely v. Washington* (2004), *United States v. Booker* (2005), and *Cunningham v. California* (2007), effectively gutted the mandatory aspect of determinate sentencing laws.

Mandatory minimum sentences are not without their own problems, however. While popular with legislators and policymakers, they have been criticized by judges and academics for their inflexibility. Sentencing is often apportioned on the strength of one aggravating factor alone, rather than taking into account all the factors of a criminal activity. Mandatory minimum sentences also tend to produce sentencing disparities due to severe gradients between similar offenses, particularly in the case of drug crimes, where a very minor difference in the amount of drugs possessed by an offender can lead to widely different sentencing outcomes. Similarly, three strikes laws are criticized as being inflexible and arbitrarily punitive. The most widely used three strikes laws are the California statutes. Offenders are increasingly subject to longer periods of incarceration depending on their criminal history. Little account is made of time between offenses or the nature of the offenses that count toward criminal history as a strike. Also, strikes are accrued off single charges, not single cases, so one case might accrue multiple strikes. Perhaps the largest criticism is that life sentences can be imposed for non-violent felony convictions. This length of sentence does not accurately reflect the seriousness of the criminal activity or the actual risk of the offender.

In the face of these criticisms, new approaches to dealing with sentencing have been investigated to better match sentence type and duration with offender nature and risk. One approach discussed is the use of evidence-based sentencing. Evidence-based sentencing calls for actuarial risk assessment tools to be applied to convicted offenders in sentencing. This allows the sentence to be proportionate to the offender's likelihood of further criminal activity and chances of being rehabilitated. High-risk assessed offenders can be incarcerated for longer periods (selective incapacitation), while low-risk assessed offenders can be shifted into noncustodial or alternate punishment

schemes. Such actuarial sentencing is neither indeterminate in the traditional sense nor fixed in a manner similar to mandatory minimums or three strikes, but rather it is ideally fixed according to the relative risk and likelihood of rehabilitation for individual offenders. Currently, Missouri, Pennsylvania, and Virginia have adopted some form of actuarial sentencing, and it is likely that other jurisdictions will follow.

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See Also: Corporal Punishment; Corrections; Discretionary Decision Making; History of Crime and Punishment in America: 1970–Present; Incapacitation, Theory of; Judges and Magistrates; Mandatory Minimum Sentencing; New Punitiveness; Parole; Penitentiaries; Probation; Rehabilitation; Retributivism; Sentencing; Three Strikes Law; Wilson, James Q.

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Serial and Mass Killers

Society is deeply intrigued by serial killers and mass murderers, who are considered to be some of the most dangerous, callous, and capricious criminals known to man. Stories of sadistic individuals who inflict torture on their victims and stories of psychologically disturbed individuals who "go berserk" have spread fear and trepidation about unpredictable violence committed by strangers. Further, numerous novels, television

series, and movies have helped to increase this anxiety as well as heighten fascination with these extreme killers. However, disinformation and hysteria have long inhibited a true understanding of these criminal events. Social scientists and practitioners alike have studied serial killers and mass murderers in an effort to better understand these individuals. Social research offer some insights about serial killers and mass murderers, in addition to a framework for discussing commonalities found in their crimes. It is useful to examine each form of extreme murder (i.e., serial killings, mass murder) and discuss the characteristics and typologies of offenders. While examples of extreme murderers are provided, this entry does not intend to provide a comprehensive listing of these killers. Rather, it examines the commonalities of these crimes and perpetrators, then touches upon responses and emerging initiatives to the phenomenon of extreme killings.

Defining serial and mass murder is not always an easy task; definitions vary from study to study. Serial killers and mass murderers are alike in that they both engage in the unlawful, purposeful, and unjustifiable killing of multiple persons. Nonetheless, they differ in many aspects. In general, serial murder has been described as the intentional killing of multiple victims in multiple events. Typically, it involves the killing of three or more victims in three or more events. However, according to the Federal Bureau of Investigation's (FBI's) criteria, it can involve as little as two victims in two events. Mass murder, on the other hand, has been defined as the intentional killing of multiple victims, typically four or more, in a single event or events that last a short period of time. Another distinction between serial killers and mass murderers is that serial killers often revert back to ostensibly normal lives in-between killings, whereas mass murderers usually do not; serial killers also are more likely to attempt to evade law enforcement.

A Little History

As long as mankind has existed, so too has murder. Many historical accounts focus on members of the upper class, as no mind was paid to the lower class because they were deemed insignificant to society. These accounts have been questioned and debated but nonetheless exist. One of the earliest accounts of a serial murder dates back

to 144 B.C.E. Liu Penli, cousin of the emperor of China during that period in time, was said to have murdered more than 100 people and taken their belongings for sport. He was later banished from the area, as the emperor could not bear to kill his kin. Gilles de Rais was also a historical serial killer dating back to the 1400s. This wealthy man, a leader in the French army and comrade to Joan of Arc, was said to have been a pedophile who gruesomely murdered hundreds of children as part of an occult ritual to appease demonic forces. He was condemned to death and was hanged in 1440.

Elizabeth Bathory (Blood Countess, or Blood Queen) and Thug Behram have been dubbed the most prolific serial killers in history. Born into Hungarian nobility, Bathory was a legendary countess said to have killed as many as 650 young female peasants so that she could bathe in their blood in an attempt to preserve her youthfulness. She was also said to have committed numerous other unspeakable atrocities prior to their deaths. Bathory was arrested in 1610 and was imprisoned in a castle, where she later died. Thug Behram, a member of the Thuggee Cult in India, was said to have murdered nearly 1,000 individuals by strangulation with a ceremonial cloth during a 40-year reign of terror from the 1790s through the late 1830s. His fellow cult members are likely to have been responsible for some of these murders as well. The violent behavior of this group eventually gave way to the English term *thug* (although this term today is used in a different context). Besides being classified as serial killers, Behram and his cult members could also be classified as mass murderers, since they would kill a group of individuals in one setting.

Herman Webster Mudgett, aka Dr. Henry Howard Holmes, was the first known serial killer in American history, at least according to historical records. Dr. Holmes committed more than 20 murders during Chicago's World Fair in 1893. He designed, built, and opened a hotel with the intent to murder his victims, many of whom were employees who named him as the beneficiary of their life insurance policies as a condition of employment. Dr. Holmes used his "murder castle" as a place to suffocate, torture, and mutilate his victims; he was arrested for his crimes in 1894. Known as the Mad Butcher of Kingsbury Run, the Cleveland Torso Murderer was another early



Nineteenth-century mugshots of Herman Webster Mudgett, aka Dr. Henry Howard Holmes. The first documented serial killer in the United States confessed to killing 27 people but may have killed hundreds at his Chicago World's Fair hotel.

infamous serial killer who murdered at least 12 victims from 1935 to 1938 by decapitating them, cutting their torsos in half, and inflicting other heinous acts. His identity remains unknown, as do the identities of many victims, since their heads were never found.

Although extreme killers have been present throughout the course of history and all over the world, many people in U.S. society are aware of only a few; namely, American serial killers who have received media attention in the past few decades like Ed Gein (the Butcher of Plainfield), the Zodiac Killer, Charles Manson, Ted Bundy, David Berkowitz (Son of Sam), John Wayne Gacy, Jeffrey Dahmer, and Gary Ridgeway (the Green River Killer), to name a few. Nevertheless, there have been countless others who are less well-known or well-researched killers.

Beyond Race, Gender, and Nationality

Although there are many listings of killers, the actual acts of serial killing and mass murder are rare in comparison to other crimes. Yet much attention has been drawn to such extreme events. Movies, television series, and the media have sensationalized these killings and used the killers as inspiration for a myriad of novels (*The Devil in the White City*, *American Psycho*, *Red Dragon*, *Manhunter*) as well as movies (*Texas Chainsaw Massacre*, *Hannibal*, *Along Came a Spider*, *Kiss the Girls*, *Copycat*, *Silence of the Lambs*, *The*

Deliberate Stranger) and television shows (*Dexter*, *CSI*, *Criminal Minds*, *Deadly Women*, *California Hillside Strangler*). These novels, movies, and shows are often based on rare and shocking events involving heinous crimes against strangers rather than violent acts against family members, loved ones, or acquaintances. The media influences public fear of such events by casting stories about random acts of violence, creating alarm and feelings of defenselessness when it comes to going outdoors. Consequently, there is an increasing belief that these crimes are more commonplace than they are. In reality, rates of homicide are declining, and these extreme events represent only a minute portion of all homicides. Yet people fear these killers the most. Public perception of these events is also fueled by unique cases. People are shocked and infatuated by the reality of what the killers have done and how they have done it, as it challenges them to think about the evil that exists in this world.

In general, serial killers and mass murderers have been stereotyped as mentally ill, middle-aged white men. Although many of these extreme killers have mental disorders, have experienced some form of psychological stress, and/or are disconnected from society at large, such factors do not always pervade them. Extreme killers have also ranged in age from very young to very old. They have come from diverse racial and ethnic groups. For instance, Luis Garavito (La Bestia) was a Colombian serial killer who raped and murdered approximately 140 boys; John Floyd Thomas, Jr. (the Westside Rapist), was an African American serial killer who raped, choked, and killed numerous elderly women in California during the 1970s and 1980s; Yang Xinhai was a Chinese serial killer who confessed to 65 murders between 1999 and 2003; Mohammed Bijeh (the Tehran Desert Vampire) was an Iranian serial killer who raped and killed 16 boys in 2004; and Anders Behring Breivik is the Norwegian right-wing extremist responsible for the 2011 Norway attacks that killed eight people in government offices and 69 others at a youth camp. The list goes on and on. These murderers come from all social classes and commonly live and work in the very same neighborhoods where they strike.

In some cases, females and males co-offend, although women do represent a portion of

extreme killers, albeit a small one. For instance, Miyuki Ishikawa was a female serial killer responsible for an estimated 100 infant deaths in the 1940s. Aileen Wuornos was also a female serial killer. Wuornos worked as a prostitute and killed seven men in Florida from 1989 to 1990 after they had sexually assaulted her or attempted to do so. Most of her victims were truck drivers and/or “johns” (patrons of prostitutes). She was sentenced to death and was executed via lethal injection in 2007. Jennifer San Marco was a female mass murderer who shot and killed her neighbor and six others at a postal facility in California. She then took her own life.

In an effort to understand extreme murderers, multiple methods have been used, including academic research, crime reports, databases, diaries, autobiographies, and personal interviews when possible. Although the validity of some of these methods has been questioned because of recording errors, exaggeration of events, and other issues, they help to provide a more precise understanding of these killers than their portrayals on television and in movies. They have also assisted in understanding the motivation underlying the killings.

Similarities Between Serial Killers and Mass Murderers

In earlier times, serial killers and mass murderers were thought to be individuals possessed by some form of evil or those who had undergone some unexplainable transformation (e.g., werewolves, vampires, monsters, or other creatures of the night); now, much more is known about these killers. The epistemology of serial and mass killers has been interdisciplinary, involving biology, psychology, criminology, sociology, and even political science, among other branches of study.

These areas of study have aimed to find answers as to the prevalence of extreme murderers, why people engage in such heinous crimes, and how law enforcement and other personnel should respond to it. For instance, biology examines the role of genetics in influencing one's behavior; psychology studies the mental state of offenders and conditions at the time of killing; criminology gives insight into the extent of the problem, risk factors for the crimes, and how to respond to the problem; sociology assists in understanding

the social meaning behind killings; and political science helps provide an understanding of how actions guide public policy. In short, all of these fields have been relevant in understanding extreme killers.

Serial killers and mass murderers are alike in that they have engaged in extremely violent behavior. Their actions have been facilitated by the availability of handguns, semiautomatic guns, and rifles, though other methods of violence have been used. It has been thought that alcohol consumption, having an extra Y chromosome, and even observing behavior on television, in the movies, or in games influence the use of such violence; yet many people who drink,



In 1975, serial killer Ted Bundy was stopped for a traffic violation. Police searched the car and found an ice pick, handcuffs, a crowbar, a ski mask, and gloves, and believed he was a burglar.

have the hereditary trait, or watch violent video games, films, or pornography do not engage in such behavior. Also, it is commonly thought that killers start off with early disturbing behaviors such as animal torture, although this has not always been the case. Thus, caution should be used when interpreting the actual influence and strength of these factors.

Although no single factor can explain extreme murder, numerous theories have been proposed to explain such behavior. One grouping of theories that has commonly been used is that of social process. According to social process theories, behavior is the product of our interactions with others. When one's interactions are negative, it can be very detrimental to one's well-being. Research has supported this notion and found that rejection is a key element present in serial killings and mass murders.

This may include rejection by the family, peers, or society at large. Family violence in the forms of physical, sexual, and/or emotional abuse, neglect, or abandonment, as well as family characteristics like the death of parents, divorce, and corporal punishment have often disproportionately been found in the lives of killers. It may be possible that negative consequences of these experiences (e.g., psychological disorders, mental illness, or brain injury) are heightened by social and environmental issues that trigger the events. Perceived victimization by others (e.g., by classmates in the form of bullying or dismissal from employment) has also been thought to relate to killings and to contribute to feelings of inadequacy and low self-worth, which are often characteristic among extreme killers.

Characteristics of Serial Killers

Serial killers are cyclical in their behavior: They kill, have a "cooling off" period, then kill again. During the cooling off period, they return to their normal daily lives, where they tend to blend in with mainstream society. They may work, have families of their own, and seem to be otherwise law-abiding. When they engage in killings, most are alone, but it is estimated that about one out of every five cases involves team killers. They vary in their relationships from lovers who offend to siblings who offend to friends who offend, just to name a few. While men represent the vast majority

of serial killers, women make up approximately one out of every six offenders. However, this may be an underestimate given the less obvious methods of killing females typically use that may go undetected and therefore, overlooked. Males are much more likely to use extremely violent tactics (e.g., handguns, knives, mutilation, torture, or beatings), while females use more covert methods (e.g., poison or suffocation).

Yet there are always exceptions. Females may use extreme methods like guns but have generally been found to be more likely to aim for parts of the body other than the head. Other important gender differences in serial murderers also exist. Females are more likely to kill someone close to them than are males and oftentimes lure their victim in. Males, on the other hand, are more likely than females to kill acquaintances or strangers and often stalk their victims prior to the killings. Females also tend to be older, are more likely to use drugs/alcohol, and have mental diagnosable disorders in comparison to their male counterparts, who are more likely to have personality disorders. Yet there are always exceptions.

Serial Killer Typologies

Researchers have developed numerous classifications of serial killers that assist in understanding serial murderers and why they take lives. These typologies vary from study to study, but nonetheless hold underlying themes. Classifications exist according to mental state as well as patterns in the nature of the offense and motive underlying the crimes. When attempting to understand what drives people to kill, two of the main classifications focusing on mental state include psychotic killers and psychopathic killers. Psychotic killers are those individuals who cannot tell right from wrong. They may experience auditory and/or visual hallucinations that have compelled them to engage in lethal violence.

These killers can be considered legally insane. For example, Ed Gein was one of the most bizarre and mentally disturbed thrill killers in U.S. history. A grave robber, necrophiliac, and cannibal, Gein engaged in abnormal behavior. He exhumed corpses from graveyards and turned the decomposing parts into souvenirs; lampshades and bodysuits were made from skin.

He later killed two victims in Wisconsin in the 1950s. Although some may not consider Gein to be a serial killer, he meets the criteria for a serial killer according to some standards. He has also been thought to have killed his brother as well as several others. Gein ultimately served as the source of inspiration for characters in numerous movies and novels, including *Psycho*, *The Texas Chainsaw Massacre*, and *The Silence of the Lambs*. Conversely, psychopathic killers do not suffer these symptoms. These killers are in touch with reality but lack empathy and remorse for their victims and actions.

Classifications of killers based on patterns include thrill, visionary, mission, and expedience. Thrill killers are the most commonly portrayed killers. They kill for excitement, power, and lust, all of which provide killers with psychological gratification. Thrill killers can derive excitement from simply killing victims. The Zodiac Killer is another thrill killer who killed at least five victims between 1968 and 1969 and stated that killing “is so much fun.” The Zodiac Killer was particularly well known for the cryptic letters he sent to the police and claimed to have killed many more victims. Thrill killers also kill because they wish to establish control in their lives. They look for vulnerable victims to dominate (e.g., women with low social status, or children) and may enjoy watching their victims suffer/die. By engaging in such behavior, they gain a sense of power. These perpetrators may also fantasize about dehumanizing victims and obtain a high by engaging in sexual assaults, mutilations, and/or torture, among other behavior. Dennis Lynn Rader, known as the BTK Killer (for “bind, torture, kill”), fits into this classification. Rader killed 10 individuals in Kansas between 1974 and 1991. Like the Zodiac Killer, Rader sent taunting letters in an attempt to gain media attention and even sent various items symbolizing his bizarre killings to police. He was a sadistic killer who engaged in paraphilia (i.e., abnormal sexual behavior) by stealing lingerie from his victims and wearing it himself.

John Wayne Gacy, known as the Clown Killer, is another example of a thrill killer who strangled, sexually abused, and killed 33 young males from 1972 to 1978. He later buried the bodies of his victims under his house and property. Another

infamous example is that of Jeffrey Dahmer. Between 1978 and 1999, he killed and dismembered 17 men and boys, saved some of their body parts, and engaged in necrophilia.

While some serial killers are sadistic in their offenses, numerous other classifications exist outside this typecast. Visionary killers are psychotic killers who engage in murder because of severe psychological disturbances. These murderers may kill in response to commands from voices or visions. For example, individuals may claim to hear voices from a higher power that trigger their violence. David Berkowitz, known as the Son of Sam, was a visionary killer who killed six victims and shot several others from 1976 to 1977. He claimed to have heard voices from his neighbor's dog, which he said was possessed by a demon. Berkowitz could also fit into a mission killer typology, if the killings occurred as part of a satanic cult ritual, as some claim. Mission killers kill for a sense of purpose. They may have a strong desire to rid the world of a group of people. Gary Ridgway, known as the Green River Killer, was notorious for killing approximately 50 prostitutes during the period spanning 1982 to the early 1990s. He had stated that they were easy to pick up and he hated them. Jack the Ripper could also fit this typology. This unidentified killer operated in the late 1800s, killing an estimated 11 prostitutes and performing graphic mutilations on their bodies.

Mission killers may also kill to end suffering among those who are in pain. Typical examples of this are employees at hospitals and nursing homes who kill patients. These killers are often referred to as "angels of death." Some have also been noted to murder individuals for ideological reasons.

Expedience is another classification for killers who kill for financial gain or profit. This may involve individuals who kill while committing other crimes (e.g., a gang member who killed multiple victims during multiple street robberies) or those who kill for insurance money (e.g., a woman who has killed several husbands, commonly known as a "black widow"). Serial killers in one classification may permeate into other classifications as well. Nevertheless, the classifications help to understand the perpetrators and may help in their apprehension.

Characteristics of Mass Murders

Mass murderers engage in behavior commonly labeled by society as "random acts of violence," although these acts are not truly as random as they seem. High rates of mental illness, especially depression, paranoia, and personality disorders, are prevalent among these killers. These psychological dysfunctions are often the result of chronic or acute stress, and the source of this stress is often targeted by perpetrators of mass murders. This enables the killer to gain a sense of power and control. Mass murderers can attack in homes, schools, workplaces, places of worship, restaurants, malls, subways, streets, or just about anywhere. These include the deranged lovers, school shooters, disgruntled employees, terrorist bombers, mentally ill offenders, and violent criminals whom society constantly fears. Examining characteristics of mass murderers, virtually all mass murderers to date have been male.

Unlike serial killers, these individuals are typically unemployed males, some of whom have had military training (e.g., the Fort Hood shooter) and they do not have a cooling-off period. Further, they differ in that their crimes are rarely, if ever, sexual in nature. Rather than having one victim at each event like serial killers do, the perpetrator takes action against a group in a single outburst. Firearms are the most common weapon of choice, although bombings and other methods have been used. Many mass murderers commit suicide directly after their massacre, while others are arrested or killed at the scene by law enforcement.

Mass Murderer Typologies

Mass murderers have been classified according to their motives: love, revenge, profit, and mission. Love murderers are typically people who annihilate their immediate families and then kill themselves. An example of this occurred in 2009 when Curt Wheat killed his wife and three children before killing himself. Similar cases are often covered in the news. However, love mass murderers have also been known to kill their children and not their partners, families of intimate partners, or other persons, and they do not always kill themselves. Their actions may be the result of mental illness, relational stress, financial strain, or feelings of "saving" loved ones because no one



A candlelight vigil was held on April 17, 2007, after Seung-Hui Cho opened fire and shot 57 people, killing 32 at Virginia Tech, the deadliest U.S. massacre by a single gunman.

can take care of them. Andrea Yates is an example of a love mass murderer who gained great media attention by drowning all five of her children in a bathtub in 2001. Yates had suffered severe depression and psychosis. She thought that by killing her children, God would “take them” since she was an unfit mother; if she didn’t, they would go to hell. After she committed the murders, she called the police and phoned her husband, repeatedly saying “It’s time.”

Seung-Hui Cho, who shot 57 people resulting in 32 deaths in the 2007 Virginia Tech massacre before taking his own life, could also be classified as a love murderer. It is believed that he was infatuated with a fellow female student, who turned him down. Cho also fits the revenge murderer typology. Revenge murderers are a classification of mass murderers involving those who commit a mass murder out of anger, making it an expressive crime. Cho wrote notes that signified that his actions were payback to the “rich kids” and all

those who mocked him. His actions resulted in the deadliest school shooting (and shooting by a single gunman) ever documented. In addition to school shooters and those rejected by their peers, revenge mass murders may involve disgruntled employees or any persons whose actions were perpetrated with vengeance in mind. Examples of revenge killers include Jiverly Wong, a paranoid man who killed 13 people at a New York immigration center in 2009 before killing himself (he believed the police were trying to ruin his life); Eric Harris and Dylan Klebold, bullied “outsiders” who killed 12 students and one teacher in 1999 before killing themselves in the Columbine High School massacre; Gang Lu, who killed five people at the University of Iowa when he was not nominated for a prestigious award for his dissertation in 1991; Patrick Sherrill, a U.S. Postal Service employee, who shot and killed 14 employees in a post office in 1986 after being reprimanded for his performance, a mass murder that led to the phrase *going postal*; and Richard Farley, who shot and killed seven coworkers in 1988 after being fired for stalking a coworker.

Unlike love and revenge killers, profit murderers kill for an instrumental purpose. They pursue their self-interest and want to achieve financial gain. This type of killer may engage in a mass murder when, for instance, he or she is involved in the commission of another felony (e.g., a bank robber who kills multiple people at the scene). By killing any witnesses to a crime, the offender hopes to avoid detection. Mission murderers are another typology whose purpose may be instrumental or expressive. These killers wish to change society by ridding the world of a certain group of people or achieving a certain purpose. Targets may be selected based on religious beliefs, sexual orientation, belonging to a certain racial or ethnic group, or for some other ideological reason.

For instance, the 16th Street Baptist Church bombing in 1963 was committed by a Ku Klux Klan group, resulting in the death of four young African American girls. Terroristic murderers, or those who engage in killings due to politically or socially motivated reasons, can also fit into the mission category. Among the most notorious mass murders are the Oklahoma City bombing by Timothy McVeigh in 1995, where more than 500 were injured and 168 were killed as a result

of hatred for the government, and the September 11 attack on the World Trade Center in 2001 that produced immense terror among the public. The impact of this event caused widespread sorrow and panic about where violence would strike next. Finally, cult suicides may also be classified as mission mass murders when leaders of these esoteric groups persuade individuals to take their own lives. For instance, Marshall Applewhite convinced members of Heaven's Gate in 1997 that by taking their lives, they would be able to leave Earth in a spaceship that would take them to the comet Hale-Bopp to live a better life.

Responses to Extreme Murder

Because of the extreme and horrific nature of serial killings and mass murders, an enormous amount of pressure has been placed on police personnel as well as researchers to identify who will become involved in these acts. However, recognizing and catching extreme killers can be a difficult task. Their victims are often unknown strangers, and their targets and actions can be unpredictable. Further, there may be a lack of warning signs, or little evidence may exist at the crime scene(s). For serial killings, different methods of killing can also hinder investigation. In the case of the organized crime member Richard Kuklinski (the Iceman), police were unable to link the murders given the assortment of tactics used to kill. Such matters increase the complexity of the cases, and if personnel are not trained well, they may fail to make the link. Many police departments lack training in the detection of these criminals. They are also ill equipped and lack investigative tools, and many do not communicate effectively with other departments. However, preparing investigators to identify risk factors and to know how to properly search, identify, collect, and record information from crime scenes is advantageous. This can assist law enforcement in obtaining evidence and in understanding how to locate information on motives and signatures left at crime scenes. Training law enforcement in interviewing individuals can also provide invaluable information.

Police departments have been interdisciplinary in collaborating with others in regard to examining evidence and linking offenders to their crimes. They have worked with criminologists, who analyze DNA, hair and fiber evidence, toxicol-

ogy reports, ballistics, and other evidence gathered at crime scenes. The Combined DNA Index System (CODIS) and the National DNA Index System (NDIS) along with the Automated Fingerprint Identification System (AFIS) are examples of databases containing the results of such analyses that can be used by law enforcement. These tools integrate data at the local, state, and federal levels and assist in investigations. The analysis of such evidence and the sharing of information are crucial in arrest, securing prosecution, and ensuring the conviction of these individuals.

In addition, law enforcement officers have teamed up with criminologists and psychologists in what is referred to as "offender profiling." This is a behavioral and investigative technique involving the creation of criminal portraits to help assist law enforcement and other personnel in understanding criminals and their crimes. It provides a social and psychological assessment of an offender as well as evidence or clues about the crime. Offender profiling focuses on the victims chosen, the method(s) used to kill the victims, and the motivation underlying the crime to generate a profile. The FBI uses offender profiling to gather as much information as possible about offenders and subsequently classifies them into "organized" or "disorganized" murderers. Organized murderers are seen as intelligent and gregarious individuals who meticulously plan out their murders while disorganized murderers are of average or lower intelligence, may be socially immature, and spontaneously carry out their killings. Organized murderers are often driven by thrill; they have been found to return to the crime scene, interact with police, and sometimes seek attention for their crimes. Disorganized killers may return to the scene, but they tend to be much more anxious and act in a more erratic manner. These classifications may overlap in some cases, but they generally help to determine if patterns are present.

Local, state, and federal agencies have collaborated in investigations via information sharing, resource maximization, and apprehension of offenders. The Investigations and Operations Support Section (IOSS) in the Federal Bureau of Investigation's (FBI's) Critical Incident Response Group, located in Quantico, Virginia, is a prime example. It encompasses the National Center for the Analysis of Violent Crime (NCAVC), which consists of

the Behavioral Analysis Unit (BAU) and the Violent Criminal Apprehension Program (ViCAP), which assist in investigations of serial killings and mass murders, among other serious crimes. The NCAVC focuses on repeat offenders and is a clearinghouse for unusual and vicious or repetitive crimes. Its four units include three in the Behavioral Analysis Unit (i.e., BAU for terrorism, BAU for crimes against adults, and BAU for crimes against children) and one in ViCAP, a repository of cases that contains information about solved and unsolved homicides, attempted homicides, missing persons information, and other violent crimes involving unidentified victims. These units assist in numerous ways and can be accessed by law enforcement personnel through Law Enforcement Online (LEO), a database that serves as an information-sharing system for law enforcement personnel.

Other efforts have also been made in an effort to prevent extreme murders. For instance, numerous school systems have begun to employ school resource officers (SROs), who are police who operate in the school to prevent what is considered to be increasing violence within schools. Surveillance systems, metal detectors, and numerous other forms of situational crime prevention measures have also been used in various settings to deter potential offenders from engaging in their crimes. In short, many advances have been made in the criminal investigation of serial killers and mass murderers and the way they are responded to. Specialized programs have also been developed in the treatment of some offenders, but there is still a long way to go in eliminating these crimes.

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See Also: 1961 to 1980 Primary Documents; 1981 to 2000 Primary Documents; Autobiographies, Criminals; Ballistics; Berkowitz, David; Billy the Kid; Bundy, Ted; Child Murderers, History of; Crime Scene Investigation; Dahmer, Jeffrey; Kaczynski, Ted; Kevorkian, Jack; Ku Klux Klan; Manson, Charles; McVeigh, Timothy; Yates, Andrea; Zodiac Killer.

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Sex Offender Laws

Sex offender laws represent the societal response to sexually based crimes such as rape, sexual assault, child molestation, and child pornography. Crimes of this nature are typically considered to be among the most heinous acts an offender can perpetrate against a victim. Although sex offender laws are often portrayed as a new response to societal dangers, the United States has had sex offender laws since the establishment of the original thirteen colonies. Borrowing from the tradition of English common law, all the colonies established laws that made sodomy punishable by death. Each new state that joined the union either codified a law against sodomy or accepted existing common law regarding this act. The punishment for sodomy slowly decreased as the nation moved toward a more secular rather than religious system; however, by 1960, all states had laws prohibiting sodomy. Rape was also considered a crime in the early colonies, but it was considered a criminal trespass by one man against another man's property. The punishment for this crime was extremely harsh corporal punishment. It was not until the 1970s

that rape laws reflected a woman's right to refuse sexual relations with any man—including her husband—with imprisonment resulting in those convicted of felony rape.

Clearly, there has always been some form of sex offender laws—against rape, sodomy, or other acts—but modern legislation is particularly detailed and focused, taking sex offenses out of the realm of ordinary felonies and misdemeanors. The current legal response to rape, sexual assault, child molestation, and other sexually based offenses has increased significantly since 1994, when a series of legislation intended to increase the punishment and monitoring of sex offenders began to be passed throughout the United States at the state and national level. Many of these laws involve limiting where a convicted sex offender may live and work and requiring him/her to report his/her work and home addresses on sex offender registries available for public review. Sex offender laws often prohibit sex offenders from living near a school, park, day care, or playground and are intended to reduce the opportunity for sex offenders to reoffend. These requirements vary by state, but in some jurisdictions, convicted sex offenders are required to report their whereabouts and remain on the sex offender registry for life. While most sex offender laws and registry requirements target felony offenders, some states also require registration for sexually based misdemeanors such as public indecency and sexual misconduct. The continued introduction of new or expanded sex offender laws reflects the categorization of sex offenders as the most stigmatized group of criminal offenders in the United States.

Origin of Sex Offender Laws

The 1990s are recognized as a significant period in the development of sex offender laws and the sex offender registry, but such laws existed far earlier in the country's history. In 1931, in anticipation of organized crime activities expanding to California, Los Angeles County passed a convict registry that required offenders convicted of any felony, and some drug and weapons charges, to register with the sheriff. This requirement was adopted in other jurisdictions throughout California and in other states as well. Eventually, these laws were used to target those involved in consensual sexual

acts that offended the common moral sensibility, such as homosexuality; thus, even consensual acts between legal adults were considered felony. Many states practiced indefinite civil commitment following an offender's release from prison for a sex offense, thereby keeping a person in prison for several years or for life after serving a sentence for a sex offense. The Los Angeles Police Department extended its focus on sex offenders by developing a Bureau of Sex Offenses in 1938 focused upon maintaining fingerprints, photographs, and other records of those convicted of sex crimes. California subsequently became the first state to develop an official state sex offender registry in 1947, and by the early 1990s, 12 additional states adopted similar registries.



A mural painted by artist Symeon Shimin titled Contemporary Justice in Relation to the Child is displayed at the Department of Justice Building in Washington, D.C.

Sex Offender Legislation

Although states were beginning to require sex offender registries on their own, in 1994, legislation passed by the federal government required all states to develop a registry within three years or face a financial penalty. The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, which was enacted as a part of the Omnibus Crime Bill of 1994, mandated states to confirm the place of residence of persons required to register as sex offenders for a period of 10 years; offenders convicted of violent sex crimes have their place of residence confirmed on a quarterly basis for the rest of their lives. This law was enacted after the stranger abduction of 11-year-old Jacob Wetterling, whose whereabouts were never discovered. Following the passage of this act, the remaining 38 states developed sex offender registries by August 1996, the same year that a national registry was established.

Within two years of the new registration requirements, the Wetterling Act was amended in 1996 by Megan's Law. Megan's Law was named in honor of 7-year-old Megan Kanka, who was raped and murdered by a convicted sex offender just 30 yards from her home. This law provides for the public dissemination of information from state sex offender registries, and that any information collected under state registration programs can be disclosed for any purpose permitted under a state law. The law also requires state and local law enforcement agencies to release relevant information necessary to protect the public about persons registered under a state registration program established under the Wetterling Act.

The Jacob Wetterling Act was amended again by the Pam Lychner Sexual Offender Tracking and Identification Act of 1996. This law was named after Pam Lychner, who survived a brutal assault in 1990 by a convicted felon. Following her assault, Lychner went on to develop a victims' rights advocacy group lobbying for a national database to track sex offenders. Congress named the new act after Lychner, who died in the TWA Flight 800 explosion in July 1996, in recognition of her extensive advocacy efforts for victims' rights. The Lychner Act amended the Jacob Wetterling Act by requiring the attorney general to establish a national database (the National Sex Offender

Registry, or NSOR) to enable the Federal Bureau of Investigation (FBI) to track certain sex offenders. The law also required sex offenders living in a state without a sufficient sex offender registry to register with the FBI and required the FBI to confirm the addresses of those sex offenders under the act's jurisdiction. The Lychner Act also permitted the release of information collected by the FBI to federal, state, and local officials responsible for law enforcement activities considered necessary to protect the public or for running background checks pursuant to the National Child Protection Act. The act also provided for the notification of the FBI and state agencies when a sex offender moved to another state.

In 1997, Congress passed the Jacob Wetterling Improvements Act as part of the Appropriations Act of 1998 and amended several provisions of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, the Pam Lychner Sex Offender Tracking and Identification Act, and other federal statutes. The Improvements Act expanded the manner in which state courts determine whether a sex offender should be considered a sexually violent offender to include the opinions of victims' rights advocates and law enforcement officials in addition to treatment experts on sex offender behavior. The act also gave states the right to assign the responsibility of notification and registration, including FBI notification, to a state agency not affiliated with each state's law enforcement agency. Under the Improvements Act, offenders who move to a new state must register under the provisions of their new state, and offenders are required to register in states where they work or attend school if those states are different from the offender's state of residency. In addition to other administrative changes involving registration and notification, the Improvements Act provides states with the discretion to register offenders whose committing offenses do not include Wetterling's definition of registerable offenses.

Between 1998 and 2003, several smaller sex offender acts were passed, including the 1998 Protection of Children From Sexual Predators Act, which directs the Bureau of Justice Assistance to carry out the Sex Offender Management Assistance program to assist eligible states in complying with registration requirements. This act also

prohibits federal funding to programs found to give federal prisoners Internet access without appropriate supervision.

In 2000, the Campus Sex Crimes Prevention Act, passed as part of the Victims of Trafficking and Violence Protection Act, required any person who is required to register under a state's sex offender registry to alert his/her institution of higher education, whether the sex offender be a student or employee, and to notify the institution of any changes in enrollment or employment status. Included in the Campus Sex Crimes Prevention Act is the provision that all information collected under this act be reported to local law enforcement immediately and entered into the state's registry and recording system. This act also amends the Higher Education Act of 1965 to require institutions of higher education to report campus security policy and crime statistics and to provide notice of how information about registered sex offenders on the campus can be obtained. The Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003 requires states to maintain a Website containing registry information and requires the Department of Justice to maintain a Website with links to each state Website. This act also provided appropriations to assist states with defraying the costs of complying with new sex offender registration requirements.

The final significant piece of sex offender legislation in recent years is the 2006 Adam Walsh Child Protection and Safety Act. This act includes the Sex Offender Registration and Notification Act. This act established new baselines for jurisdictions to adhere to regarding sex offender registration and notification, with the definition of "jurisdiction" expanded to include 212 federally recognized Indian tribes. This act expanded the sex offenses that must be contained in a jurisdiction's registry to include all state, territory, tribal, federal, and Uniform Code of Military Justice (UCMJ) sex offense convictions, as well as certain foreign convictions. The act also created the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, a division of the Department of Justice, Office of Justice Programs, to coordinate training and technical assistance and administer sex offender and notification standards. The act also established a

Sex Offender Management Assistance (SOMA) program within the Department of Justice.

The culmination of the progression of sex offender laws has resulted in requirements that sex offenders register their whereabouts in jurisdictions where they reside, work, and attend school. They are also required to report in person to verify their existing information on file or to update their information; the committed offense controls how often offenders have to check in to verify their information. Sex offender legislation has also created a national registration database that is uniform across jurisdictions and requires the inclusion of certain information about offenders who are required to register that must be made available on the Internet. The registration and notification requirements apply to states, the District of Columbia, territories, and federally recognized Indian tribes.

In addition to laws requiring registration and notification, laws limiting where registered sex offenders may live have become increasingly popular during the 2000s. By 2007, 27 states passed laws that prohibited sex offenders from living near schools, parks, playgrounds, or day care centers. These laws have been accused of interfering with reentry and reintegration and limiting an offender's chances of being successful after release from prison. The same argument has been made about many of the provisions in the extensive sex offender registration and notification laws. Some of the unanticipated consequences include limiting housing options for sex offenders so severely that they report false addresses or don't report at all, which makes it almost impossible for law enforcement and community corrections staff to monitor sex offenders' whereabouts.

Constitutional Challenges

Sex offender registration laws have been challenged at the state and federal level. The U.S. Supreme Court has made rulings on two constitutional issues regarding sex offender registration laws. Two noteworthy cases, both decided in 2003, are *Smith v. Doe* and *Connecticut Dept. of Public Safety v. Doe*. In *Smith v. Doe*, at issue was whether an Alaska state law violated the constitutional guarantee against ex post facto, or punishment after the fact. In this case, the court upheld the constitutionality of the law,



Assemblyman Todd Spitzer with Governor Arnold Schwarzenegger (right) as the governor signed California's Assembly Bill 488 to provide the public with Internet access to detailed information on registered sex offenders.

stating that the Alaska legislature intended the law to be regulatory, not punitive, in nature. The next case, *Connecticut Dept. of Public Safety v. Doe*, involved a challenge to Connecticut's sex offender registration law as a violation of due process because offenders were not allowed hearings to determine if they continued to pose a danger to society. The court ruled that even if an offender could prove he/she is no longer dangerous, the state retains the right to disclose public information about all offenders.

Conclusion

Supporters of sex offender registration and notification laws argue that these convictions are already public record, and therefore, states are only disclosing information that the public already has access to. In addition, the argument has been made that the public has a right to know when a violent or sexual predator is living or working in their vicinity. Others argue that these laws only serve to continue punishing offenders who have fulfilled the terms of their criminal sentence, and that sex offender laws only extend the stigma of persons committed for sexual offenses. Public opinion surveys consistently demonstrate support

for sex offender registration laws, and it is not anticipated that public sentiment in the current political climate of getting tough on crime is going to result in a reversal of these provisions anytime in the near future. What makes modern sex offender laws unique, however, is the depiction of these acts as distinctly different from other felonies and misdemeanors, with increasingly harsher punishments and limitations placed upon those who commit sex offenses. Although the United States has always had laws against sex offenders, current trends in legislation reveal a distinct focus upon shaming and labeling in addition to punishing those who commit sex crimes.

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See Also: Rape, Contemporary; Rape, History of; Rape, Sociology of; Sex Offenders; Sodomy.

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Sex Offenders

Society's concept of and attitude toward sex offenders have evolved from those based primarily on religious tenets to those based, in large part, on psychological theories, scientific research, and public safety concerns. This change reflects the lessened authority of organized religion in modern society and the concomitant increase in reliance on science to solve problems, including ones on the societal level. Psychology and psychiatry played leading roles in the use of science to understand sex offenders, especially those who commit multiple offenses, and the use of this knowledge

to design interventions to prevent sex offenders from committing further offenses. This scientific approach found itself in competition with a public safety approach that focused primarily on incapacitating sex offenders through incarceration, open-ended institutionalization, and strict monitoring of offenders upon their release. The increased emphasis on public safety was a response to several highly publicized incidents in which known sex offenders committed atrocious crimes. This evolution continues, as society struggles with how best to prevent sex offenders from committing further offenses.

History of Sex Offenders

The historical view of sex offenders found in the holy books of the three major religions—Judaism, Christianity, and Islam—calls for the punishment of sex offenders based on the degree that the offense lessened the value of the victim of the sexual assault, the woman. Women were viewed as property, their value dependent upon whether a woman was a virgin. Raping a woman decreased her value, so the punishment given the rapist varied as a function of whether the woman was a virgin. The purpose of the sanction was to punish the offender for damaging another man's property, not retribution for harming the woman as an individual. Rapists were not considered deviant or unfit for society. They were viewed in the same way as other criminals who damaged the property of another, or anyone who failed to adhere to the tenets of their society's religion. This view was consistent with the fact that rape was condoned or promoted as a legitimate part of war.

The belief that rapists are pathological became widespread with the development and increasing acceptance of Sigmund Freud's psychoanalytic theory. Freud theorized that there were three major components of the human personality the id, ego, and superego. In Freud's model, the id is the repository of instinctual needs and desires. It is guided by the pleasure principle, demanding immediate gratification of all desires. It is home to both sexual desire and the instinct for aggression and destruction. The id is amoral; it has no concept of right or wrong. The superego, the part of personality that serves as the conscience, is the last part of the personality to develop. It counterbalances the demands of the id for immediate

gratification. The superego develops as the individual matures. It represents the internalization of social mores. Its development depends in large part on the extent that parents have been able to instill a sense of morality and social responsibility in the child.

The remaining component of Freud's theory is the ego. It seeks to fulfill the instinctual needs of the id for the immediate gratification for all desires within the constraints set by the superego and external reality. The ego is guided by the reality principle. It understands that not all desires can be gratified immediately or in ways that are harmful to the individual or violate the limits set by the superego and society regarding acceptable behavior.

Healthy development of the ego and the superego depend on the child successfully completing each stage of psychosexual development. In Freud's theory, men rape because of insufficient ego and superego development. The person lacks the conscience, constraint, and sense of morality that is part of a healthy superego. The rapist also has an underdeveloped ego, as the rapist seeks immediate gratification of his desire for sex and aggression without benefit of the constraints that would prevent the person from acting in ways that ultimately are self-destructive. These deficiencies are attributed to pathological parenting, with most of the blame being given to the mother, as parents have the responsibility of instilling a sense of morality in the child. In this perspective, the rapist is, at least in part, a victim in need of treatment.

Although Freud made a valuable contribution to psychiatry and psychology, his theories have not been supported by research. Despite this, psychoanalysis, and the theoretical orientations it spawned, continues to have many adherents. It has had a profound and long-lasting impact on society, as is evident from its influence on movies, literature, and language. Freud's theory implies that rapists can be treated successfully through psychoanalysis. The belief that sex offenders suffered from a mental illness that could be treated led many states, beginning in 1937, to pass statutes for the civil commitment of sex offenders to treatment programs.

The scientific study of sex offenders did not end with Freud. As psychology matured, it developed

into a scientific discipline based on empirical evidence derived from increasingly rigorous research. Current research on sex offenders uses the biopsychosocial model, examining the biological, psychological, and social factors that distinguish sex offenders from other offenders to predict the likelihood of recidivism and the offender's amenability to treatment.

Sex Offender Characteristics

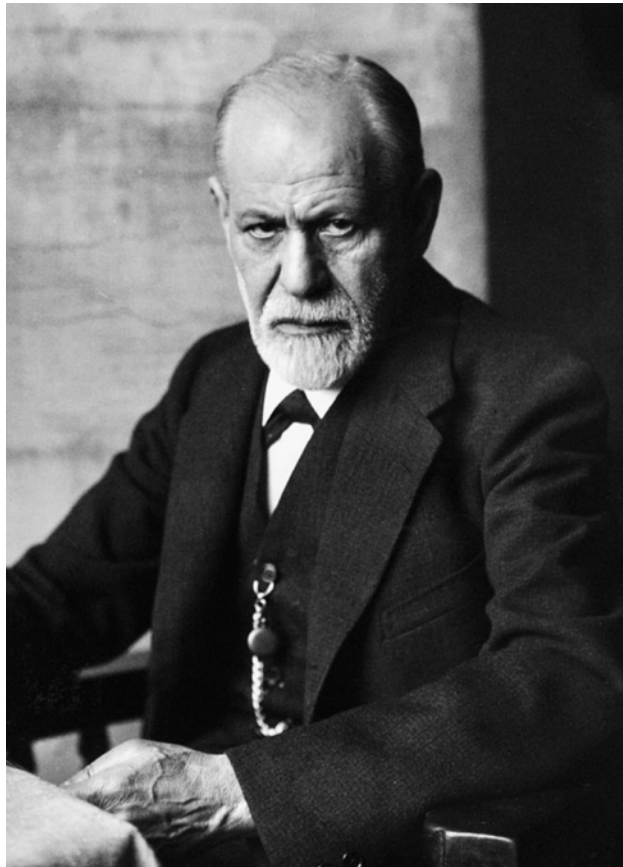
The scientific and public safety approaches to sex offenders share a common goal, that is, to prevent sex offenders from reoffending. In response to the public outcry following several highly publicized crimes committed by known sex offenders, most states passed laws requiring the registration of sex offenders, notification of the community in which the offender lives, and laws authorizing the civil commitment of

sex offenders after the offender has served his or her criminal sentence. These laws are designed to protect the public by reducing sex offender recidivism. Research has focused on determining the factors that identify the offenders who are at highest risk to reoffend. These predictive factors are discussed in detail below.

Although the likelihood of a specific sex offender reoffending cannot be determined with absolute certainty, a determination, to a reasonable degree of certainty, can be made of the relative risk that the offender will commit another sex offense. This determination is made using the multiple factors research has shown to be the best predictors of sex offender recidivism. These factors can be divided into three major categories: predisposing, disinhibiting, and inhibiting. Within each category, factors can be divided into static or historical factors and fluid or dynamic factors. This is important in efforts to minimize recidivism risk as these efforts address those factors that can be changed, that is, those factors that are fluid or dynamic.

Predisposing factors are traits, characteristics, or experiences that result in the proclivity or inclination to engage in nonconsensual or otherwise illegal sexual activity. Predisposing factors tend to be static and related to past behavior or events rather than malleable, as with dynamic factors, and may be biological, psychological, social, or cognitive. Disinhibiting/destabilizing factors serve to trigger the offender to commit an offense. Even individuals who are predisposed to engage in a certain form of inappropriate behavior do not engage in this behavior constantly. Some factor "triggers" them to engage in the inappropriate behavior. Disinhibiting factors tend to be dynamic or fluid factors, that is, factors that can change as a function of variables such as time and situation. Inhibiting factors act to prevent the individual from engaging in sexual misconduct. Inhibiting factors include static and dynamic factors.

Predisposing, disinhibiting, and inhibiting factors work in concert. Behavior is thus multiply determined. For example, if an individual's predisposition is sufficiently strong, only a slight disinhibiting factor or trigger is necessary. Alternatively, if the predisposition is weak, a stronger trigger will be necessary. A similar type of analysis is applicable to inhibiting factors. An evaluation



Acceptance of Sigmund Freud's psychoanalytic theory of human personality led to a belief that rapists are pathological and are seeking immediate gratification of sexual desire.

of sexual dangerousness is designed to determine whether and to what extent the offender possesses the predisposing, disinhibiting, and inhibiting factors that have been found to be characteristic of offenders at high risk for reoffending. The relevant evidence is best obtained using multiple data-gathering methods (interviews of the offender and collateral sources; observation of behavior; review of educational, mental health, medical, and criminal records; and psychological testing) and multiple sources of information about the offender's life.

Predisposing Factors

Research has shown that the following predisposing factors are the best predictors of a sex offender's recidivism risk. A deviant sexual arousal pattern, a stable pattern of sexual arousal to inappropriate stimuli (e.g., children, rape, sadism, animals, or inanimate objects), is an exceedingly powerful predisposing factor. Individuals with deviant sexual arousal patterns tend to commit sexual offenses consistent with their sexually arousing fantasies. Thus, individuals with a stable and exclusive pattern of sexual arousal from thoughts or acts of rape are predisposed toward committing this sex offense. It is important to note that many rapists do not show this pattern. Rape is complex; a rapist's primary motivation may be nonsexual, such as anger, power, revenge, or humiliation.

Some deviant sexual arousal patterns have formally been recognized as paraphilias, or mental disorders. The paraphilias of greatest concern are pedophilia and sexual sadism. In pedophilia, the individual's primary sexual interest is in children. Treatment to change the sexual orientation of pedophiles has not been shown to be successful. However, pedophiles can be taught coping strategies to minimize the likelihood that they will act on their sexual urges and molest a child. The effectiveness of this approach depends on the motivation and commitment of the individual.

Sexual sadists are sexually aroused, often exclusively, by inflicting pain and suffering on nonconsenting victims. Victims may be severely injured or killed by the sexual sadist, since the degree of sexual satisfaction depends on the degree of pain inflicted. Death at the hands of a sexual sadist may be unintentional; for many sadists, the death of the victim means the loss of their source of

sexual gratification. For others, the death of the victim after being tortured results in the ultimate sexual satisfaction.

A common assumption about sex offenders is that they are mentally ill. The validity of this assumption depends on what is meant by mental illness. If mental illness is defined as a psychosis, one of the disorders that significantly impair an individual's capacity for rational thought and reality testing, then sex offenders, as a group, are not mentally ill. Although some individuals diagnosed with a psychotic disorder may commit a sex offense, most do not. Similarly, most sex offenders are not psychotic. This also is true for neurological disorders such as mental retardation, dementia, tumors, and brain damage caused by a traumatic brain injury or infection. While these disorders may result in impaired judgment and poor impulse control, they account for a very small proportion of sex offenses.

Certain mental disorders have been found to predispose the individual to engage in antisocial behavior, including sex offenses. One such disorder is psychopathy. Interpersonally, psychopaths are characteristically grandiose, manipulative, domineering, and cold-hearted. Emotionally, they are shallow, lack empathy, and are unable to form long-lasting bonds to people. Behaviorally, they are impulsive and thrill seeking. Psychopathy and deviant sexual arousal are two of the most potent predisposing factors. Individuals with both factors are at extremely high risk of committing future sex offenses.

Cognitive distortions, as used in research on sex offender recidivism, are an individual's attitudes or beliefs that support or condone his or her sex offenses. Although the research literature is mixed, there is evidence that attitudes or beliefs that support or condone sex offenses increase the likelihood that an individual will commit a sex offense. Typically, cognitive distortions are thoughts or beliefs that place blame for the offense on the victim, relieving the perpetrator of any responsibility for the offense. They are more than convenient rationalizations, as they accurately reflect the offender's mind-set.

A history of incidents in which the sex offender is the aggressor and a pattern of engaging in violence are risk factors, especially for sex offenses in which violence plays a prominent role. The

inability to develop and maintain close interpersonal relationships has also been found to be a risk factor. Other predisposing factors include a history of supervision failure, which refers to violations of parole, probation, or other legally imposed restrictions; a high density of sex offense, as in the commission of several sex offenses close together in time; and multiple sex offense types. Rapists who have committed multiple types of sex offenses are at increased risk for recidivistic sexual violence. Multiple sex offense types refers to whether the perpetrator's sexual offenses have varied in nature of offense and/or victim selection.

Physically harming a victim of a sex offense is suggestive of the presence of a deviant sexual arousal pattern, as in sexual sadism, cognitive distortions that support or condone sexual violence, and poor impulse control. Other related predisposing factors include the use of weapons or threats of death in sex offenses and escalation in frequency or severity of sex offenses.

Research has shown that a history of childhood physical or sexual abuse is a general risk factor for criminality, nonsexual violence, and sexual violence. It is important to note that while most sex offenders report that they were abused physically or sexually, most people who have been abused do not become sex offenders or commit other violent crimes. However, this knowledge is useful in treatment planning, thus playing a role in minimizing the likelihood of a re-offense.

A history of difficulty sustaining employment, unless accounted for by a physical or mental disability or other valid external cause, can be a predisposing factor for antisocial behavior, as can extreme minimization or denial of sex offenses.

Disinhibiting and Inhibiting Factors

The next major category includes factors that serve a disinhibiting or triggering function. Intoxication is one of the most common disinhibiting factors in all offenses, including sex offenses. Psychological stress and availability of victims can also serve as triggers for sex offenders.

The final major category includes factors that act to inhibit or stabilize an offender and thus reduce the likelihood of a re-offense. The absence of inhibiting factors increases the likelihood of a re-offense. These factors include employment; social support from family, friends, mental health

and social service professionals, and community organizations; active religious involvement; personal growth and maturation; treatment; and fear of reincarceration.

Given the high stakes of making an incorrect determination of sexual dangerousness, sex offender evaluations must be thorough. Among the methods typically used for this purpose are clinical interviews and psychological testing. The best psychological tests for this purpose aiding in the diagnosis of relevant mental disorders include the Minnesota Multiphasic Personality Inventory, Second Edition (MMPI-2), the Personality Assessment Inventory (PAI), the Millon Personality Inventory, and the Hare Psychopathy Checklist, Revised (PCL-R). These tests are supported by decades of research. In addition, each include validity indicators, measures to determine whether the person taking the test is "faking good," falsely denying symptoms of a psychological disorder or maladaptive traits, as is often seen in evaluations of sex offenders, or "faking bad," falsely reporting such symptoms and traits, usually for some personal gain.

A thorough assessment of sexual dangerousness includes one or more of the following sex offender specific tests: the Violence Risk Appraisal Guide (VRAG), Sex Offender Risk Appraisal Guide (SORAG), Rapid Risk Assessment for Sex Offender Recidivism (RRASOR), Static-99, and the Sexual Violence Risk-20 (SVR-20).

Conclusion

Society's understanding of and attitudes toward sex offenders have evolved from those primarily based on fundamentalist religious beliefs to, in large part, those based on science and public safety concerns. Sigmund Freud's theory on the structure of the personality and psychosexual development opened the door for the scientific examination of sex offenders. Current research has focused on determining the biological, psychological, and societal factors that predict an offender's recidivism risk and identifying and refining sex offender treatment approaches. Sex offenders are a heterogeneous population, most of whom do not fit the common stereotypes of rapists and child molesters. Research has identified multiple factors that, taken together, allow sex offenders to be classified as to their risk of

re-offending. This ability is central to the success of sex offender registration and notification laws, as well as to laws that provide for the indeterminate civil commitment of sex offenders until they are no longer at high risk for committing additional offenses.

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See Also: Rape, Contemporary; Rape, History of; Rape, Sociology of; Sex Offender Laws; Sexual Harassment.

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Opportunity Commission (EEOC) Fact Sheet on Sexual Harassment states, "Title VII applies to employers with 15 or more employees and includes state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government." In addition to these employers, most universities and colleges have detailed sexual harassment policies to which all members of the university community must adhere. Under Title IX of the Education Amendments of 1972, sex discrimination is prohibited under any educational program or activity that receives federal funding. The coverage of sexual harassment policies at universities often extends to faculty, researchers, staff, students, vendors, contractors, and visitors to a university.

Concomitant to the formation of laws to protect individuals from sexual harassment was a change in society's attitude toward and tolerance of sexually harassing behaviors that occur in a professional setting. The feminist movement in the late 1960s and the 1970s brought to light how girls and women were objectified in society and called for equal rights for women. Specifically, the women's movement demanded that women, like men, enjoy an environment free of harassment, sexual and otherwise, in the workplace. Before this time, what is now considered sexually harassing behaviors, such as comments about a woman's attractiveness, touching, telling sexually charged jokes, and even asking for sexual favors in return for favors at work, were more commonplace, and even considered "part of the job." Sexual harassment in the workplace did not violate legal standards or behavioral norms. The women's movement brought the current heightened awareness of the issue of sexual harassment and consequently much less tolerance of sexually harassing behavior in the professional sphere. The feminist movement in essence influenced a marked change in social values, which led to laws that criminalized sexual harassment, behavior that prior to this movement victims had no legal recourse to fight.

Types of Sexual Harassment

Sexual harassment claims fall into two categories: quid pro quo and hostile environment. Quid pro quo, meaning "this for that," describes situations in which a supervisor makes unwelcome sexual

Sexual Harassment

The term *sexual harassment* was first used in the early 1970s. Sexual harassment is considered a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Under Title VII, employers may not discriminate against employees on the basis of race, color, religion, sex, or national origin. The U.S. Equal Employment



A protest was formed at Arnold Schwarzenegger's gubernatorial inauguration on November 17, 2003, protesting the fact that several women had made allegations of sexual harassment against the governor. The Equal Employment Opportunity Commission defines sexual harassment as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature ... which can include offensive remarks about a person's sex."

advances, requests or demands sexual favors, or explicitly or implicitly communicates to the victim that his or her employment or conditions of employment (for example, getting a raise or promotion) is contingent on submitting to those advances. In the university setting, a classic example would be a professor who promises an "A" to a student if she has sexual relations with him. A power relationship is an important element in a quid pro quo sexual harassment complaint.

The form of sexual harassment termed *hostile environment* involves unwelcome verbal, written, or physical conduct of a sexual nature that is severe and is considered to interfere unreasonably in the victim's work setting or academic environment or that creates an intimidating, hostile, or offensive atmosphere at work or in the context of one's access to education. A power differential is not required to prove that the complainant is

a victim of sexual harassment involving a hostile environment situation. At work, employees of the same status may be perpetrators or victims of the hostile environment form of sexual harassment. A supervisor may be a victim of sexual harassment if his or her subordinate continually makes unwelcome jokes of a sexual nature, for example. Likewise, in an educational setting, fellow students and academic colleagues may be either offenders or victims of sexual harassment involving a hostile environment.

Complaints of either quid pro quo or hostile environment may be claimed by both males and females against both males and females. In other words, the protections against sexual harassment in the workplace and at universities cover both same-sex and opposite-sex situations of unwelcome sexual advances, requests for sexual favors, and other forms of unwelcome conduct, behavior,

and writings of a sexual nature that create a hostile environment.

For both quid pro quo or hostile environment situations of sexual harassment, it must be determined that the behavior of the accused was unwelcome. Sexual harassment policies generally distinguish between welcome and unwelcome sexual advances. Some employers and universities have separate policies that outline rules for consensual sexual relationships between supervisors and employees, employees who work together, and professors and students. Whereas these policies vary widely from one company to another and differ across universities and colleges, most sexual harassment policies are relatively consistent, as they draw on Title VII of the Civil Rights Act of 1964. Title VII also makes it unlawful for the accused to retaliate against the complainant for making an allegation of sexual harassment and going through the employer's complaint procedures.

Employers and universities often distribute information about sexual harassment prevention to the institution's members in an effort to take a proactive approach to avoiding situations that may be considered sexual harassment. These may include requiring training that defines what sexual harassment is, what situations may or may not constitute sexual harassment, proper grievance procedures, and the steps that should be taken if an allegation of sexual harassment is made.

Complaints of Sexual Harassment

Employers should provide information about complaint procedures to all employees. In the case of universities, these complaint procedures are made public to the entire university community. These procedures direct the person who believes that he or she is a victim of sexual harassment to report the conduct to his or her supervisor and/or to an office of affirmative action within the organization. The complainant is also often directed to tell the harasser that the conduct is unwelcome and that it must stop. If the complaint is found to be legitimate, the harasser will face penalties outlined by the organization, which may include suspension or dismissal.

It is important to understand that the victim's perspective is key to understanding how sexual harassment complaints are handled. Whether the

perpetrator *meant* to create a hostile and intimidating environment through discussions about sex, for example, is usually irrelevant to findings that sexual harassment occurred.

In some respects, quid pro quo situations involving sexual harassment are more obvious than hostile environment situations. Arguments may be made that people vary in their tolerance and sensitivity to talk regarding sexual subjects and that it is harder to establish that the alleged offender has created a hostile working environment. The same discussion or comments that offend one woman, for example, may not offend another. In *The Morning After: Sex, Fear and Feminism*, Katie Roiphe suggests that sexual attention is a part of nature, and that for sexual attention to be wanted and reciprocated, people sometimes have to risk offering what she characterizes as unsolicited sexual attention. Otherwise, she suggests, we would all be alone. Indeed, some would argue that the line between flirtation and harassment is thin.

American Association of University Women Study

The American Association of University Women (AAUW) published *Drawing the Line: Sexual Harassment on Campus* in 2005. It reported findings from a nationally representative survey of undergraduate students at colleges and universities. This study shows that almost two-thirds of students attending colleges and universities in the United States experience some form of sexual harassment. More than one-third of college students indicated that they were sexually harassed during their first year in college. The nature of the harassment varied in seriousness from unwelcome remarks concerning sex to forced sexual contact. Most of the students who reported sexual harassment described incidents without contact, which included hearing sexual remarks, having sexual messages posted about them on the Internet, being the target of sexual rumors, and being called a homophobic name. Approximately one-third encountered incidents of physical harassment, such as having someone pull off their clothing, being forced to kiss someone, or being forced to do something sexual.

The results of this survey research showed that the probability of being sexually harassed

on campus was similar for males and females, but that the nature of the harassment differed. Females were more likely to be victims of unwanted sexual looks, gestures, comments, and recipients of unwanted sexual jokes. Males who were harassed most often were called gay or homophobic names. Lesbian, gay, bisexual, and transgender students were more likely to be harassed, compared to straight students. Both male and female students who are victims of sexual harassment are more likely to be victimized by a male. Most students identify the harasser as another student. About one-third of female and one-half of male students admitted to sexually harassing someone on campus.

The AAUW concludes that the experience of being a victim of sexual harassment can affect one's emotional health and one's academic well-being. The impact of being sexually harassed on female students was more pronounced, compared with male students. Sexually harassed females were more likely to report negative emotional effects, including feelings of embarrassment and anger, compared to sexually harassed males.

Findings also included that more than one-third of college students do not tell another person about the harassing incident(s) that they experienced. When they do talk about their sexual harassment victimization, they often do so with a friend. Females are more likely to report sexual harassment to another person than males. Fewer than 10 percent of college students report their harassment to a university official. Reasons for not reporting vary and include embarrassment, their belief that nothing could be done, not knowing who the contact person is in the university, and feelings of guilt about some aspect of their own behavior. The most common reason students fail to report sexual harassment, however, is that they feel that it is not that big a deal.

The AAUW study also found that there is not a consensus among college students about what constitutes sexual harassment. It also found that students often shy away from discussing the issue.

Male Victims of Sexual Harassment

Recent figures have shown that the percentage of sexual harassment claims made by males has been increasing. Figures from the EEOC during the 2009 fiscal year show that males filed 2,094

sexual harassment claims, which constitute 16.4 percent of all claims made. This is double the number of claims made by men during the previous decade and reflects a steady increase of sexual harassment claims made by men over that time period. During the same time period, the total number of sexual harassment claims has declined. The increase in male claims of sexual harassment may reflect an actual increase in the number of males being sexually harassed at work, or it may suggest that they are more likely to report sexual harassment than they were in the past.

The majority of these claims are of male-on-male sexual harassment. While some incidents have involved unwanted sexual advances, many involve sexual comments or horseplay. The nature of some of this behavior has been described as straight men trying to express their "masculinity." In 1998, the EEOC represented a group of male employees from Long Prairie Packing Company (LPPC) who complained that they were victims of repeated sexual harassment (both physical and verbal) by coworkers in the first class-action sexual harassment case that involved male-on-male behavior. A \$1.9 million voluntary settlement was agreed upon by the EEOC and the LPPC.

There are some indications that female-to-male sexual harassment complaints are also rising. In 2009, the Regal Entertainment Group paid a male employee \$175,000 in damages after he claimed that a female employee groped his crotch repeatedly at work.

Relevant Court Cases

The issue of sexual harassment was first considered by the federal courts in *Williams v. Saxbe* (1976). In this case, sexual harassment was deemed a form of sex discrimination in the workplace under Title VII of the Civil Rights Act of 1964.

In *Meritor Savings Bank v. Vinson* (1986), the Supreme Court decided that a claim of hostile work environment can be considered a form of sex discrimination that may be brought under Title VII of the Civil Rights Act of 1964. The decision meant that quid pro quo incidents were not required to establish sex discrimination. Specifically, the court held that for a sexual harassment claim to be actionable, it must be sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive



Male and female members of the U.S. Army attend a "Sex Signals" class presented by civilians who perform skits showing social scenarios of sexual harassment and assault. The army maintains a SHARP (Sexual Harassment/Assault Response Program) resource and informational Website to tackle the problem of sexual harassment and assault in the armed forces.

working environment. Additionally, the fact that sex-related conduct was voluntary is not a defense to a sexual harassment suit brought under Title VII. The court also stated that the prohibition against sexual harassment is not limited to discrimination that causes economic or tangible injury, and that the EEOC guidelines fully support the view that harassment leading to noneconomic injury can violate Title VII.

In *Harris v. Forklift Systems, Inc.* (1993), the Supreme Court ruled that sexual harassment is not required to be psychologically injurious to constitute an abusive work environment. The court stated that Congress intended to prohibit all disparate treatment of men and women in employment practices. Hence, Title VII is violated when a workplace is permeated with discriminatory intimidation and ridicule that is sufficiently pervasive so as to alter the condition of the victim's working environment. Harassing conduct that both objectively and subjectively is so severe and pervasive as to create an abusive environment

is required to implicate Title VII protections. According to the court, this level of harassment may be determined by looking at all the circumstances, including the frequency of the conduct, its severity, and whether it interferes with an employee's work performance. Prior to this decision, other courts had been urged to adopt a reasonable woman standard in contrast to a reasonable person standard for sexual harassment cases. This decision explicitly states that the harassment must be objectively abusive to a reasonable person and also subjectively abusive to the victim.

In *Burlington Industries Inc. v. Ellerth* (1998), the court ruled that employers are subject to vicarious liability for a hostile working environment created by a supervisor with authority over a victimized employee. The court acknowledged that Title VII harassment claims may include allegations that employment threats were carried out for declining sexual advances, or if there are no employment consequences, if the work environment becomes hostile and abusive. In this decision,

the court attempted to clarify the law surrounding employer liability for harassment. Until 1991, damages were not available to victims of hostile work environment. Rather, only injunctive relief was an option before Title VII was amended.

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See Also: 1851 to 1900 Primary Documents; 1981 to 2000 Primary Documents; Bill of Rights; Civil Rights Laws; Gender and Criminal Law.

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creation of a person's identity. Shame is an internal emotional response to embarrassing actions, ideas, words, or thoughts. When these embarrassing actions are made public, they threaten to damage a person's value or standing in the community. Shame can be a very effective means of social control, having the ability to both enhance group cohesion and deter unwanted behaviors.

Shaming sanctions in the U.S. criminal justice system are punishments that are directed primarily at publicizing an offender's illegal conduct in a way intended to reinforce the existing social values that disapprove of such behaviors. The primary goal of shaming sanctions is to increase the amount of unpleasant emotions experienced by the offender in the hope of compelling the individual to begin conforming to community norms. Shaming sanctions are explicitly designed to make a public spectacle of the offender's conviction and punishment and to trigger a negative change in the offender's self-concept.

While shaming sanctions can be used to punish crimes of varying seriousness, they have most often been used to sanction minor, first-time offenders. Shaming sanctions were the primary form of punishment during colonial times, but today are most likely to be used as alternative sanctions to jail time, probation, or minor fines when those sanctions are not considered cost-effective or deserved punishments. While traditional sanctions such as incarceration and fines may have secondary shaming effects for an offender, with shaming sanctions, embarrassment and change of self-concept are the principal goals of the punishment. Shaming penalties attempt to mark the defendant publicly as a criminal, whereas that is not the primary goal of sanctions such as incarceration or minor fines. Historians and criminologists have noted the extent to which shaming and shunning sanctions emerge from the public's frustration with conventional punishment options of prison or parole. While there are countless ways that societies have implemented shaming penalties over history and across cultures, these types of penalties can be categorized into three main groups: public exposure, public humiliation, and banishment.

Public Exposure Penalties

The most common form of shaming penalties attempt to expose the offender and his/her

Shaming and Shunning

The application of shame and shunning as a means to control behaviors that society views as undesirable is not new. Almost every religious and cultural tradition throughout the world has referred to the role that shame can have for controlling behavior. From the first European settlement in Massachusetts to the modern day, criminal justice systems in the United States have utilized the application of shame and shunning as one of the main objectives of punishment.

The concept of shaming has its intellectual roots in the sociological conception of the self that emphasizes the importance that others play in the

offense to the public. Public exposure penalties often include the literal application of a badge of shame to the offender, allowing the crime to come to the attention of the public, so that the public may in turn respond to the offender with shunning. Probably the best-known example of shaming comes from Nathaniel Hawthorne's 1850 novel *The Scarlet Letter*, which depicts the punishment of its protagonist, Hester Prynne, who is convicted of the crime of adultery in a 17th-century Puritan community and is sentenced to wear a visible scarlet letter "A" on her clothes for the rest of her life.

The Puritans were especially matter-of-fact when it came to methods of public punishment. There is evidence that similar punishments, such as forcing drunkards (habitual drinkers) to sew the letter "D" into their clothing and wear the badge for an entire year, were also commonplace during this time. Among the more severe punishments administered by the early American Puritans was the amputation of ears, slitting of the nostrils, and branding of the face and hands. Repeat property offenders were branded on the cheek or forehead or mutilated, leaving a mark of infamy to expose their criminal histories. Unlike shame letters sewn into a garment, these were permanent reminders to both offender and community of the transgression against society. A less severe and more widely utilized form of public exposure throughout American history has been the use of the dunce cap, especially within the education system. Also referred to as a dunce hat, dunce's cap, or dunce's hat, the dunce cap is a pointed hat, typically made of paper and often marked with a "D" or the word *dunce* and given to schoolchildren to wear as punishment for misbehavior.

More recently, many states have forced sentenced offenders convicted of drunk driving to attach a large bumper sticker or special license plate to their vehicle in an attempt to alert others to their prior undesirable behavior. In Escambia County, Florida, for example, a judge forced those convicted of driving under the influence to attach a red and yellow bumper sticker to their car that read: "How is my driving? Call Toll-Free 1-866-I-SAW-YOU, The Judge wants to know!!!" Historically, one of the main goals of Puritan punishment was to have a church member repent and then return to the congregation. Judges would

often force offenders to write formal apologies to newspapers or in front of church members. These variations of public exposure penalties still exist today. In 1988, Champaign, Illinois, Circuit Court Judge Jeffrey Ford required first-time drunken driving offenders who pled guilty to publicly apologize in ads in their hometown newspapers, with their photos included. Apologies to the community often include exposure of the offender's behaviors to the community.

The most prominent example of the public exposure of offenders over the last 20 years has been in regard to those convicted of sexual offenses against children. In 1994, Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, mandating all states to require convicted sex offenders to register with law enforcement agencies. The first amendment to this act was passed in 1996. Named after Megan Kanka, a 7-year-old girl who was murdered by a convicted sex offender, Megan's Law mandated that all states also develop programs to allow the public to access information about sex offenders who are living in their community.

Public Humiliation

The primary goal of public humiliation penalties is to personally degrade or humiliate the offender. Humiliation penalties are created for the sole purpose of embarrassing and demeaning the offender by forcing him/her to engage in some form of humiliating activity. The belief is that others in the general public will avoid criminal or unwanted behavior simply to avoid the potential of having to experience similar humiliation, and that the offender will experience sufficient shame to not want to repeat the behavior. Embarrassment becomes a formal tactic of punishment rather than an unintentional by-product or outcome. Examples of these types of policies range from the silly and absurd to the brutal and severe.

The use of stocks and the pillory are well documented during the American colonial period. When someone was put into stocks, boards were placed around the legs or the wrists; whereas in the pillory, boards were placed around the arms and neck and fixed to a pole. A key aspect of the pillory and stocks included public exposure. As a result, offenders were often placed in the middle of busy markets in an attempt to expose them to



Hester Prynne, the protagonist of Nathaniel Hawthorne's 1850 novel The Scarlet Letter, symbolically pictured near the stocks and holding her daughter, the product of an adulterous affair.

as many members of the community as possible. Crowds were encouraged to ridicule and mock those on display and would often throw mud, rotten food, animal entrails, and excrement. While in the pillory, offenders could receive further punishments such as having their hair cut or heads shaved, as well as repeated corporal punishment such as flagellation, hence the term *whipping post*.

In the United States today, more subtle and less painful forms of the stocks and pillory still exist. While restraints are no longer involved, many offenders are sentenced to remain in public spaces (such as the local courthouse or shopping center) for a determinate length of time with signs describing their offenses. Many shopping malls now display billboard-sized photos of convicted shoplifters. More imaginative sentences attempt to match the humiliating penalty to the nature of the offense. For example, a Louisiana woman convicted of

pirating cable television service was told that she would be held in contempt of court if she didn't stop watching cable TV shows for one year. In 1987, Judge Veronica Simmons-McBeth ordered Dr. Milton Avol, a Beverly Hills neurosurgeon convicted of being a slumlord, to spend 30 days in one of his run-down, rat-infested buildings with an electric device strapped to his ankle to assure authorities that he had not left. The case was portrayed in the 1991 Hollywood film *The Super*.

Banishment

One penalty reserved for the most serious crimes in New England until the 18th century was banishment. Banishment was often the last resort to longtime residents faced with patterns of criminality. At that time, the causes of crime were believed to be the result of some supernatural force or spirit. Allowing offenders who had shown evidence that they were "tempted" or "possessed" by these evil forces to remain in the community was only believed to bring further harm to its members. The shunning and condemnation of family members, neighbors, and the community remained, often because of anger over losing a valuable source of labor at a time in history when labor was very scarce. However, that punishment often seemed fleeting, as eventually the challenge of physical survival outside one's protected community would often lead to death. As settlements and communities grew closer together, banishment was less likely to become a death sentence because the ability to travel to another location increased. Today, the effect of banishment on an individual has been greatly reduced. States such as Georgia and Arkansas continue to use banishment for certain crimes such as drug distribution as an alternative to jail time, but their constitutions stipulate that banishment can only be within the state.

As alternatives to incarceration, punishments that incorporate public shaming and shunning remain enduring judicial sanctions in the United States. From colonial America to the current day, the use of shame as a social control mechanism has played a major role in the historical development of the American criminal justice system. Just as the application of shaming as a punishment has evolved over the past 400 years, there should logically be an expectation that it will continue to evolve and adapt to larger social changes such as

globalization and innovations in technology such as the development of social networks.

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See Also: Colonial Courts; Cruel and Unusual Punishment; Puritans; Sentencing.

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Sheppard, Sam

Sam Sheppard (1923–70) was an osteopathic physician and neurosurgeon turned professional wrestler who was convicted of murdering his pregnant wife Marilyn in 1954. He served 10 years of a life sentence before his conviction was overturned. He was later acquitted in his second trial. Sheppard's case is well known for a variety of reasons. First, it has often been compared to the O. J. Simpson trial due to the carnival feel of its coverage and proceedings. Second, it was one of F. Lee Bailey's first high-profile cases as an appellate defense attorney. It now stands as one of the better known unsolved murder cases in the United States.

On July 4, 1954, in Bay Village, Ohio, Marilyn Sheppard was killed. Sam claimed the killer had attacked him and twice knocked him unconscious. Despite his story, Sheppard was considered the only viable suspect and was arrested and brought to trial in fall 1954. The trial, however, was by no means typical. The prosecuting attorney, John Mahon, was running for a seat on the Cuyahoga County Court of Common Pleas and believed a win in this case would clinch his electoral victory. Newspapers throughout the region ran stories appearing to be biased against Sheppard. *The Cleveland Press*, for example, ran a story with the headline "Why Isn't Sam Sheppard in Jail?"

As the prosecution began making its case, jurors learned that Sheppard allegedly had a three-year-long affair with a nurse named Susan Hayes who worked at the hospital with him. Prosecutors argued that Sheppard's motive for murder was that his wife's pregnancy would force his extramarital affair to end. In his defense, Sheppard called on a neurosurgeon to explain the injuries he had suffered in the attack and describe why they were not possibly simulated or faked. Further, the neurosurgeon explained to jurors that the particular injuries could not be self-inflicted. There was also a lack of blood evidence. Despite the scene having had large amounts of blood, authorities were only able to find transfer bloodstains on Sheppard's watch. Medical evidence indicated that two of his wife's teeth had also been broken. If it had been an injury caused by her being beaten, the pieces would have been found in her mouth; however, the broken pieces were pulled from her mouth, suggesting that she had bitten her attacker. Since Sheppard had no bite marks and the broken teeth were not in his wife's mouth, the defense believed they had shown that the murderer was someone other than Sam Sheppard.

On the stand, Sheppard testified that he was sleeping downstairs when he was awakened by his wife's screams. He explained that after the attack, he had chased a bushy-haired intruder down to the shore of Lake Erie before being knocked unconscious by him a second time. Sheppard's testimony was rambling and seemed as if he were trying to recall a created story rather than reliving horrific events. Jurors did not believe Sheppard's story and found him guilty, and he received a life sentence in December 1954.

Ten years later, Sheppard had a writ of habeas corpus granted by a U.S. district court judge. In *Sheppard v. Maxwell*, the Supreme Court ruled Sheppard had been denied due process and pointed to the "carnival atmosphere" permeating the entire trial. Further, the Supreme Court found that the judge refused to sequester the jury, did not order them to ignore media accounts, and had even gone on the record prior to the trial saying, "Well, he's guilty as hell. There's no question about it." In the retrial, F. Lee Bailey decided that neither Sheppard nor Hayes would testify. The strategy worked, and Sheppard was acquitted.

In the aftermath of the trials, Sheppard attempted a return to practicing medicine, but as he was facing two malpractice suits, he turned instead to writing about his life and professional wrestling. He ultimately became an alcoholic and died of liver failure in 1970. His son, Samuel, who was 7 at the time of his mother's death, launched a civil suit in 1999 alleging his father had been falsely imprisoned and that his estate was owed compensation. After a 10-week trial, however, the jury did not believe Sheppard had met the burden of proof. Sheppard's story and court case have been referred to in literature and on the screen. *The Shawshank Redemption* bears many similarities to the story, and television shows *American Justice*, *Cold Case*, *Law & Order*, and *Notorious* have all aired episodes based to some degree on Sheppard's case.

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See Also: Murder, History of; Murders, Unsolved; *Sheppard v. Maxwell*.

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Sheppard v. Maxwell

The case of *Sheppard v. Maxwell*, 384 U.S. 333 (1966), stands for the principle that, in the interests of justice and due process, it is not possible to proceed in an environment where a defendant's right to a fair trial pursuant to the Sixth Amendment shall, in any way, be infringed upon. Extensive public reporting of the crime and the events, through the trial/appellate process, are key aspects of a free press. The Sixth Amendment to the U.S. Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have

been committed." The First Amendment provides that "Congress shall make no law ... abridging the freedom of speech, or the press...." These rights apply equally to the federal government and to the states through the due process provisions of the Fourteenth Amendment and must be protected. Finding the appropriate balance of these rights is never an easy task in a free society.

The Facts

The facts of this case read like a screenplay, perhaps a television show starring David Jansen or a movie starring Harrison Ford; it might even be the basis for a best-selling book that questions whether anyone is really presumed innocent and can receive a fair trial once the various media have taken the sensational facts for a spin. Dr. Sam Sheppard was a bright doctor from a family of doctors, including his father and two brothers. He married his high school sweetheart; they had one child and were expecting another. After several years, they returned to their hometown so that he could join the family medical practice. Sheppard was rumored to have been unfaithful to his wife, and that simply added to his problems on the evening of July 4, 1954.

Sheppard recalled having fallen asleep on the couch but was awakened in response to a call of help from his wife, who was four months pregnant at the time. Upon arriving in his bedroom, he observed his wife fighting with one man but was immediately struck from behind by someone else. When he awoke, he saw his wife and checked her vital signs before checking on his son, who was fine. He heard something on the first floor and then proceeded to follow two individuals toward a nearby lake. As he got close, he recalled being struck again on the back of his head and passing out. By the next month, Sheppard was arrested for his wife's murder; he was tried and convicted by the end of the year. It took 10 years for the court to identify all of the constitutional errors that had taken place during the trial, but the result was that Sheppard received a new trial.

The Right to Freedom of Speech and Freedom of the Press

In its review of the events both outside and inside the courtroom during Sheppard's trial, the

Supreme Court opinion described the atmosphere at the trial as a “carnival.” The opinion noted, “The court’s fundamental error is compounded by the holding that it lacked power to control the publicity about the trial. From the very inception of the proceedings the judge announced that neither he nor anyone else could restrict prejudicial new accounts.” The opinion went on to conclude that the court should have limited publicity and the number of reporters in the courtroom, and limited access to the court as Sheppard’s counsel requested. The court should have insulated witnesses and jurors from the press. To further inflame matters, at about the same time this trial, elections were taking place; both the judge and the prosecutor in the case were candidates for judicial office. In exercising its freedom, the press published the names of the prospective jurors.

The Holding

The Supreme Court, in an 8–1 opinion, held the following:

Due process requires that the accused receive a trial by an impartial jury free from outside influences. Given the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors, the trial courts must take strong measures to ensure that the balance is never weighed against the accused. But where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue the case until the threat abates, or transfer it to another county not so permeated with publicity.... If publicity during the proceedings threatens the fairness of the trial, a new trial should be ordered.... Since the state trial judge did not fulfill his duty to protect Sheppard from the inherently prejudicial publicity which saturated the community and to control disruptive influences in the courtroom, we must reverse the denial of the habeas petition. (384 U.S. 333, 364)

Conclusion

In 1966, Sheppard was retried for his wife’s murder and was acquitted.

The right to a speedy and public trial by an impartial jury is essential in a free society. Our

courts do not operate in a Star Chamber. The freedoms of speech and the press are necessary to ensure that the trial process is open and fair. On the other hand, the process is not designed to adversely affect the outcome and jeopardize every defendant’s presumption of innocence.

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See Also: Bill of Rights; *Estes v. Texas*; Sheppard, Sam.

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Sheriffs

The sheriff may be the oldest law enforcement office, and its origins can be traced to biblical times. Sheriffs attended the dedication of Nebuchadnezzar’s golden image in the Book of Daniel. The Roman *proconsul* and the German *burgermeister* are believed to be the earliest forms of sheriff. Throughout history, wherever laws need enforcing, some form of sheriff can be found in a judicial capacity, law enforcement capacity, administrative capacity, or some combination of all three. Despite its history and the vital role it has played in law enforcement, courts, and corrections, little research has been conducted on the office of sheriff.

English Sheriffs

Before the Norman Conquest (1066), kings appointed county reeves who played numerous roles in the administration of royal law and policy. These were precursors to the modern American sheriff. These men administered policy in certain territories. Maintaining order, arresting and punishing criminals, serving in the military, and collecting taxes were among their duties. It was not uncommon for sheriffs to use their own money to support their offices. After the Norman Conquest,

as the population grew and people organized into larger governmental units, the king appointed shire, as opposed to county, reeves to manage courts, collect taxes, and maintain the peace.

As the result of becoming the king's agent, the sheriff's official power increased. Shire reeves were political appointments, and the candidate had to meet various requirements. In addition to loyalty to the king, he had to own property and reside in the shire he served. As Parliament became more powerful, counties nominated men whom Parliament would then appoint. The appointee took an oath that enumerated his duties, both administrative and legal. Among these duties were collecting taxes, serving writs, keeping the peace, and protecting the lands of the shire.

The Normans abused the English. When King John took the throne in 1199, he also abused his power. Hated by his subjects for a variety of reasons, not the least of which was excessive taxation, the sheriffs and barons revolted. John was forced to sign the Magna Carta, which mentions the office of sheriff nine times. The sheriff's power waxed and waned from 1215 until the 1500s. As local police power grew, the duties of sheriffs, who remained under the control of the Crown, became more administrative. In England today, the office of sheriff is primarily ceremonial, although sheriffs do continue to carry out administrative duties for the court.

American Sheriffs: The Colonies

In what would become the United States, the office of the sheriff evolved in a manner similar to that of its English counterpart. In early colonial history, small communities relied on their members to keep the peace, appointing constables and night watchmen only as necessary. As population grew and counties were formed, sheriffs were appointed by the king, representing both the colonial and the English governments. Duties in the colonies were similar to those in England, with perhaps more emphasis on administration than on law enforcement. The earliest record of a sheriff in the colonies is believed to be William Stone of Virginia, who took office in 1634.

Like English sheriffs, colonial sheriffs were landowners. Because sheriffs were compensated through fees for their work, they tended to focus on those activities that were more lucrative, such

as collecting taxes, serving subpoenas, and running the jail. They charged the county for keeping the prisoners, and many even charged the jail inmates for food. Because of the economic opportunities it provided, the office of sheriff was highly sought after. The collection of fees in the colonies made the office of sheriff there more lucrative than it was in England. Additionally, colonial sheriffs did not have the expense of entertaining royal or parliamentary officials like English sheriffs.

Nonetheless, sheriffs had to adapt to the rigors of colonial life. In England, where there were established roads and addresses, it was relatively easy for sheriffs simply to go to someone's address to collect taxes. No such infrastructure existed in the colonies. Sheriffs often waited outside churches to locate the people who owed taxes or to whom they had to serve papers. Since law enforcement duties did not pay nearly as much as administrative duties, it was common for sheriffs to neglect them.

American Sheriffs: The West

During the settlement of the west, sheriffs began to be elected by the people they represented. The western sheriff has a colorful history, including such people as Wyatt Earp, Wild Bill Hickok, and Bat Masterson. In the west, private concerns like banks and railroads hired their own police forces, often private detectives. Sheriffs were hired to keep control of the criminals and cowboys who regularly came to town; consequently, they were often as tough and disreputable as those they were hired to control. In addition, sheriffs had to insure that merchants—the people who ran the saloons, prostitutes, and businesses—continued to make money. Since aggressive law enforcement could drive business away, sheriffs ensured that vice continued, albeit under some measure of control. Because merchants hired the sheriffs, it was not uncommon for sheriffs to practice one or more of the vices on display in town. As a result, many law-abiding citizens often looked down upon sheriffs, equating them with the trouble-making criminals and cowboys.

American Sheriffs: The South

Historically, southern sheriffs were white and male, and they were instrumental in maintaining white supremacy and upholding Jim Crow laws.

During the Civil War period, sheriffs operated with little oversight and ran inept and corrupt administrations. They focused on more lucrative duties and avoided those that paid nothing or might alienate voters.

As major providers of local law enforcement, sheriffs were in a unique position to maintain the status quo. They helped local elites control disorder, such as labor strikes. Sheriffs were also responsible for running local elections and investigating voter fraud. In this position, they were able to suppress the voting of “undesirables,” especially African Americans. While they did not take the lead in lynchings, sheriffs seldom did anything to stop them. Likewise, they seldom quelled the vigilantism of the Ku Klux Klan; in fact, many were active members.

Today, white males continue to hold the majority of sheriff's offices, even in counties that are predominately African American. Sheriffs perform three main duties in the contemporary south: countywide law enforcement, jail operation, and acting as the state court officer. It is still a job that is attractive to local male citizens with limited formal education.

There are four reasons why African Americans are underrepresented in the ranks of southern sheriffs: (1) few African Americans have supervisory experience in law enforcement; (2) African Americans in the south have less money than whites, and it is hard to mount a campaign or to attract moneyed supporters; (3) African Americans tend to vote less than whites, or not to be registered to vote; and (4) the stereotype of the white southern sheriff may make the office distasteful to most African Americans

American Sheriffs Today

According to the National Association of Sheriffs, counties in 46 states elect a sheriff. In 41 states, sheriffs are elected to four-year terms; in three states, they are elected to two-year terms; in one state, they are elected to a three-year term; and in another state, they are elected to a six-year term. Forty states conduct sheriff's elections using partisan ballots, while the remaining six use nonpartisan ballots.

In Rhode Island, sheriffs are appointed by the governor. In Hawai'i, sheriffs, along with narcotics enforcement, comprise the law enforcement

division of the Department of Public Safety. Although they share a name and some of the duties of mainland sheriffs, their role is more similar to that of police officers. In Connecticut, as a result of an election in 2000, the office of sheriff was eliminated. Deputy sheriffs became state marshals in the state judicial branch. Alaska does not have the office of the sheriff. The county executive appoints the sheriff in Dade County, Florida, and in two counties in Colorado.

One thing that separates the sheriff from the municipal police chief is that he/she is elected, whereas the chief is promoted or appointed. A further distinction is made between the sheriff's office and the police department. Where a department is a subordinate division of city or county government, an office is relatively independent and autonomous; where a department has its power delegated to it by a higher governmental authority, the power of an office is granted to it by the constitution of the state. The sheriff has a public trust and powers conferred on him/her, making him/her answerable to all citizens in the county.

The independence inherent in the elected office of sheriff creates a political personage, one whose concerns extend far beyond merely doing his/her job. Like politicians, sheriffs must raise money and spend a good deal of time campaigning, something that sheriffs argue they do not only during the campaign season but also during the rest of their term. Like politicians, they are beholden to the public as a whole. The public includes numerous constituencies: citizens, courts, the state, political party, police, county officials, and his/her staff. Staff problems may exist for many sheriffs as a result of the divergent duties carried out by the office. Studies have revealed tension between deputies who do law enforcement work and those who work in the jails or courts. It is not uncommon for internal strife to make its way into the public eye.

Other political pressures dealt with by sheriffs include requests to use office funds for various causes, to influence routine legal matters, to provide additional services, and to dispense patronage. The causes that sheriffs are asked to support monetarily tend to be political and charitable, so it is hard to refuse help. However, like any public budget, the sheriff's is limited, meaning that he/she has to weigh the political cost of contributing—or not contributing—to certain causes.

Sheriffs are also asked to use their influence in routine matters. For example, they may be asked to dismiss traffic tickets, increase or decrease the pace of evictions, or provide special treatment for jail inmates.

Those who demand additional services tend to hold a certain amount of political and social power. Sheriffs may find themselves obligated to certain community members to whom they promised political favors, or they may see opportunity in providing such favors to certain citizens. These often take the form of extra patrols, greater visibility, and preferential treatment. Provision of such services may give the impression that the sheriff's office is controlled by special interests. Patronage, which gives the sheriffs the ability to appoint people to jobs in order to gain some advantage, may be used to fill certain positions, but not all positions are filled for political advantage. Sheriffs are often limited by budget constraints and the scarcity of positions that they have to fill. Most are careful to fill such positions with people who are not only politically favorable but who are also capable of doing the job well.

As the only elected law enforcement official in the United States, the sheriff tends to be more open to community influence than hired police officials. In order to be re-elected, the sheriff

has to maintain a positive public image. Some believe that this means that sheriffs are involved and invested in community policing to a greater degree than municipal police. Sheriff's offices are also sensitive to new methods of serving the public. Sheriffs have traditionally been responsible for patrolling unincorporated areas in the county. In addition, sheriff's offices, especially those serving populations of 100,000 or more, also provide foot, marine, motorcycle, bicycle, and horse patrol. More than half of the sheriff's offices serving a population of 100,000 or more are responsible for investigating homicides, arsons, drug offenses, and cybercrime. Given the rise in the use of methamphetamine and heroin in rural areas, many have full-time units that deal specifically with drug crimes. Nearly half assign one or more officers to multiagency drug task forces.

Sheriff's departments typically have three functions: road patrol, court-related functions (e.g., courtroom security), and management of the county jail. In 2008, road patrol was the major function, with 59 percent of full-time sworn deputies assigned to it. Operating the jail was next, with 23 percent of deputies assigned to it. Finally, 12 percent of deputies were assigned to court-related operations. The remaining 6 percent were assigned to other duties.



Sheriff vehicles in Monroe County, New York, participate in the 2011 Independence Day parade in Irondequoit, New York. The sheriff's office in Monroe County was established in 1821 at a time of rapid expansion and settlement in western New York. The first sheriff appointed was Brockport merchant James Seymour in 1821. The department now has 1,200 employees.

More than 80 percent of sheriff's offices perform services related to the court. These include serving civil process orders and eviction notices, providing court security, executing arrest warrants, enforcing protection orders, and enforcing orders of child support. More than 60 percent of sheriff's offices operate one or more jails, and more than 80 percent transport inmates from court to jail. Sheriff's offices often play a large role in controlling motor vehicle traffic. More than 70 percent enforce traffic laws, and more than 60 percent perform accident investigations and direct traffic. Sheriffs may also be involved in enforcement of parking and commercial vehicle laws.

The American sheriff today plays an integral role in law enforcement, employing roughly one-fourth of sworn law enforcement personnel and nearly one-half of non-sworn, or civilian, law enforcement personnel. As of 2008, Texas had the largest number of sheriffs' offices (254) followed by Georgia (159), Kentucky (120), Missouri (114), and Kansas (104). As noted earlier, four states do not have sheriff's departments. Duties normally performed by sheriff's departments are dealt with by various state agencies.

Thirteen sheriff's offices employ more than 1,000 full-time sworn personnel. As of 2008, the five largest departments are the Los Angeles County Sheriff's Office, with a total of 9,461; the Cook County (Illinois) Sheriff's Office, with a total of 5,655; the Harris County (Texas) Sheriff's Office, with a total of 2,558; the Riverside County (California) Sheriff's Office, with a total of 2,147; and the San Bernardino County (California) Sheriff's Office, with a total of 1,797.

As of 2008, American sheriffs employed approximately 353,000 people full-time, which included approximately 183,000 sworn officers. Of all sworn law enforcement personnel, about 24 percent were sheriff's deputies. Throughout the country, nearly 60 percent of the sheriff's offices had fewer than 25 sworn personnel, while approximately half of the officers served populations lower than 25,000. As of 2007, 12 percent of sworn full-time officers were females, 19 percent were racial and ethnic minorities, and 8 percent were Hispanic or Latino.

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See Also: Community Policing and Relations; Court of Common Pleas; Police, Contemporary.

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Sherman Anti-Trust Act of 1890

The aim of the Sherman Anti-Trust Act of 1890 was to ensure that the United States maintained a free and competitive marketplace. The broad principles of interstate commerce had been articulated by the drafters of Article I of the U.S. Constitution, but Congress needed to address how to prevent monopolistic business practices from destroying these ideals.

The federal government after the Civil War had actively encouraged private business growth. But big businesses had then turned to creating trusts that unfairly influenced natural supply and demand market forces. While some states had attempted to slow the growth of trusts, the Sherman Anti-Trust Act was the first federal law enacted to prohibit trusts. On April 8, 1890, the U.S. Senate voted 51–1 to approve the law. The U.S. House of Representatives followed with unanimous approval (242 votes) on June 20, and the bill was signed into law by President Benjamin Harrison on July 2.

The chief architect of the act was Senator John Sherman of Ohio, who at the time served as chair

of the Senate Finance Committee and had previously served as secretary of the treasury during the Hayes administration. Since 1890, Congress has passed additional bills to prohibit anticompetitive activities, including the Clayton Act and the Federal Trade Commission Act in 1914 and the Robinson-Patman Act in 1936.

At the turn of the 19th century, trusts were created with the purpose of gaining trade advantages in specific industry sectors. Some of the most famous American business trusts included those connected to the sugar industry, the steel industry, the oil and gas industries, and the tobacco industry. When a trust is formed, the corporate stockholders transfer shares to just a few individuals who then, in the future, act as trustees for the company and its subsidiaries.

These trustees manage all aspects of the business, including price regulation. As a result, it becomes difficult for competitors to enter markets, set their own prices, or acquire raw materials to make their products. When a monopoly dominates the marketplace, producers, manufacturers, and suppliers are more likely to sustain financial losses while the monopoly acquires huge profits. At the height of their power in the United States, business trusts were predatorily capturing both the horizontal and vertical means of production and transportation across most business sectors. Agreements between businesses to restrict trade within a particular sector are described as horizontal practices, whereas agreements among producers and other organizations involved in the trade of the goods or services create a vertical restraint to competition. It is up to the courts, however, to decide whether these arrangements are per se illegal under the Sherman Anti-Trust Act or whether a Rule of Reason test should be applied to determine whether harms resulted directly from unfair competitive practices.

Under the provisions of the act, business trusts that were found to monopolize the market were prohibited. The act made it possible for the U.S. government to bring actions against these trusts, either to break them into smaller parts or to eliminate them altogether. The law provided for fines of \$5,000 and up to a year of incarceration for individuals who created trusts, and also created remedies for competitors who sued the trusts. If

successful, they could receive treble damages in federal courts.

Challenges and Implications

The law's critics argued that much of the Sherman Anti-Trust Act's language was ill defined. Consequently, it was left to the courts and to the executive branch to narrow its meaning. The first judicial challenge arose in 1895, when the U.S. Supreme Court upheld the law as constitutional but diluted the act's enforcement powers. In *United States v. E. C. Knight Company*, an 8–1 decision, Justice Fuller, writing for the majority, noted that while the American Sugar Refining Company had dominated the manufacturing market for refined sugar, it had not violated the act because the trust had not monopolized the sale or transportation of refined sugar. In 1904, the U.S. Supreme Court decided another significant case applying the act, which resulted in the dissolution of the Northern Securities Company, and in 1911, the Taft administration used the Sherman Anti-Trust Act to dismantle Standard Oil as well as the American Tobacco Company. The law was not used extensively thereafter until the U.S. government brought an action against Microsoft in 1998.

Sections 1 through 7 of the act cover several anticompetitive practices. Section 1 broadly references that no contract, combination, trust, or conspiracy can restrain trade and that there must be proof of a “concerted action” to conduct unfair practices for competitors to claim financial losses. Price-fixing in any form is expressly prohibited by the act. Monopolies are forbidden under the act, but the courts are left to interpret the extent of market power that is monopolized. This may extend to the market share for the product itself as well as the geographic areas in which the product is bought and sold. The act addresses market allocations as a predatory anticompetitive maneuver. The U.S. Supreme Court opinion in *Standard Oil Company of New Jersey v. United States* (1911) specifically required that a Rule of Reason be applied when courts examine how markets are divided up by competitors. The act also makes a boycott illegal. If two or more businesses refuse to deal with another company, creating a boycott, this practice is considered anticompetitive. Any form of a tying arrangement, when

the trading of one product is dependent on the trading of another, is also considered prohibited under the provisions of the act.

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See Also: Antitrust Law; *Standard Oil Company of New Jersey v. United States*.

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Simpson, O. J.

Prior to the mid-1990s, Orenthal James (O. J.) Simpson (1947–) was best known for his career as an NFL running back and an actor. After the infamous night of June 12, 1994, Simpson was best known for his suspected involvement in the murder of his ex-wife, Nicole Brown Simpson, and her friend, Ronald Goldman. Although a jury found him not guilty of the murders, he was found liable for the wrongful death of the two victims in a civil trial and ordered to pay \$33,500,000 in damages. Simpson and his wife, Nicole, married in 1985, six years after his divorce from his first wife. Simpson was no stranger to the law. He pleaded no contest to a domestic abuse charge against his then separated wife in 1989.

On the night of June 12, 1994, police were called to 875 South Bundy Drive in Brentwood,

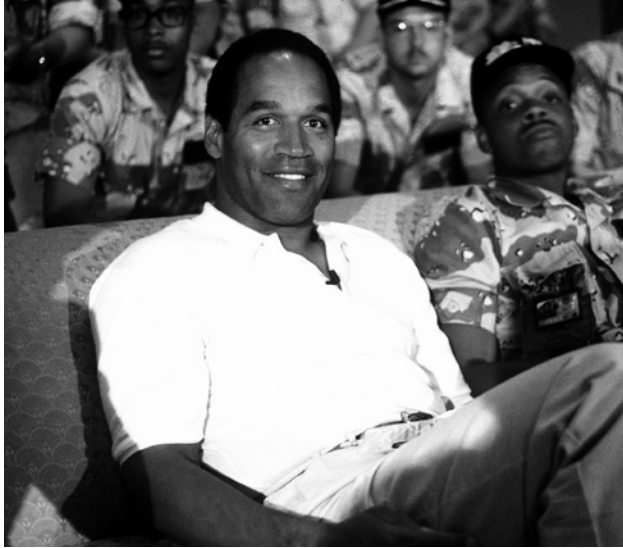
California, after a white Akita with red, matted fur led two individuals to a house, where they saw what appeared to be a body lying at the bottom of the stairs. They called the police, who discovered the bodies early in the morning, covered with blood and stab wounds. The police tried to reach Simpson, whose son and daughter with Nicole were asleep upstairs in the house, but discovered that he had taken a red-eye flight from Los Angeles to Chicago. Simpson was considered a possible suspect, but without direct evidence linking him to the murders, he was not the immediate prime suspect.

Evidence began piling up against Simpson, including a leather glove that was found at the scene of the crime and had blood on it. DNA tests indicated that the blood on the glove belonged both to Simpson and to the victims. The limo driver who had been hired to drive him to the airport stated that he arrived at the house early and made several unsuccessful attempts to contact Simpson. He saw a man dressed in black enter the house several minutes later, and he finally made contact with him, who claimed to have overslept. A neighbor of Nicole Brown Simpson stated that she saw a man about six feet tall, dressed in black, enter the premises about 20 minutes before Simpson answered the limo driver's call. When he failed to arrive at the police station on June 17, Simpson was declared a fugitive, and a warrant was issued for his arrest. What ensued was a slow-speed chase down the 405 Freeway on June 17, 1994. Once stopped, Simpson was arrested for the murders.

Murder Trial

Simpson's trial, which began January 23, 1995, was nothing short of a media spectacle. Both the defense and the prosecution were comprised of teams of lawyers, presided over by Judge Lance A. Ito. The defense team, often referred to as "The Dream Team," included Robert Shapiro, F. Lee Bailey, Alan Dershowitz, and Johnnie Cochran. Deputy District Attorney Marcia Clark led the prosecution's team, assisted by Christopher Darden.

The defense tried to spin the murders as drug related and called Faye Resnick, a friend of Nicole Brown Simpson, to testify, indicating that drug dealers had murdered Simpson and Goldman in an attempt to scare Resnick into paying off her



In 1990, O. J. Simpson was a popular sports commentator and former professional football player. Here he watches a Thanksgiving Day football game with U.S. troops.

drug debts. Mark Fuhrman, the detective who discovered the leather glove in a pool of blood at the crime scene, also came under serious fire from the defense team. Fuhrman's credibility was strained when the defense questioned him regarding his denial of using a racial epithet.

The prosecution, however, had mountains of evidence against Simpson, including DNA. Several expert witnesses testified concerning blood samples found at the scene. Barry Scheck testified on behalf of the defense, questioning the methods used by the police department when obtaining and preserving evidence. Much of the testimony was technical, and it has been argued that the jury was unable to comprehend the evidence presented. Blood samples found at the scene matched O. J. Simpson, and the blood on the socks found in the main bedroom matched that Nicole Simpson. Blood from both victims was discovered in his Bronco, and a glove matching the one found near the bodies was discovered in his home. The DNA evidence was tested at two separate facilities, and the prosecution argued this was a clear indication of Simpson's guilt. Throughout the investigation, the Los Angeles Police Department committed grievous errors, including not properly preserving the crime scene. This may have planted the seed of reasonable doubt within the jurors'

minds, thus influencing their decision at the end of the trial.

The glove was tried on by Simpson in court. Cochran insisted that he wear a latex glove before trying it on, and in front of the jury and TV cameras, Simpson declared that the glove was too small. This public display has been scrutinized since the trial, with critics stating that Simpson had scrunched his hands before putting the glove on, in order to make it impossible to fit. Others insisted that a leather glove that had been soaked in blood would shrink, thus nullifying the entire demonstration.

The jury began its deliberation on October 2, 1995, and was out for only approximately five hours before a verdict. Simpson was found not guilty, a decision that seriously exacerbated already existing racial tensions nationwide. The common assumptions throughout the country regarding his guilt were heavily divided by race. The white assumption of guilt and the black assumption of innocence were only heightened by the verdict. These assumptions heavily indicate the issues within the system as viewed by members of both racial groups. A year later, however, Simpson was found to have contributed to the deaths of Nicole Brown Simpson and Ron Goldman in the civil trial brought against him. Simpson was in trouble once again in 2007, after being arrested for his participation in an armed robbery in Las Vegas. In 2008, he was convicted of armed robbery, kidnapping, and assault charges, and is currently serving a sentence of a minimum of 15 years, and will be eligible for parole after serving at least nine years.

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See Also: Famous Trials; Murder, Contemporary; News Media, Crime in; Trials; Violent Crimes.

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Sin

The concept of sin is one that today is frequently relegated to questions of theology and religious practice. However, it has also long been recognized by sociologists and historians as a foundational one in the formation of law, social organization, and social responses to deviance and crime.

What is Sin?

In the Judeo-Christian tradition, sin has been understood as an act of transgression against God or other people, as well as an ontological state of being. The former is most clearly epitomized in the Ten Commandments, as well as in the medieval Christian practice of compiling sins according to their severity (i.e., mortal and venial) or typology (i.e., the Seven Deadly Sins). The latter is most clearly epitomized in the Pauline tradition of understanding Adam and Eve's expulsion from the Garden of Eden as the beginning of "original sin," constituting an inherent state of human imperfection.

The Ten Commandments form the foundation of Judeo-Christian understanding of sin as transgression. In the Torah, the Commandments are delivered to Moses by Yahweh on Mt. Sinai and subsequently appear in slightly different forms in the *Shemot* (Exodus) and the *Devarim* (Deuteronomy). The consequences for violations were not listed along with the Commandments but rather interspersed throughout broader Mosaic law in the Torah, and included everything from restitution to death. One consequence not possible was that of eternal condemnation, or "hell." Rather, both the wicked and the righteous descended to *Sheol*, the abode of the dead.

In many respects, early Christians adopted Jewish views on laws and punishments, which was not surprising because many of them were and thought of themselves as Jews. The Apostle

Paul, however, differed from many of his contemporaries by arguing that sin was not merely an act but rather a state of being that was inherent in all people. In his Epistle to the Romans (5:12), Paul argued that, "just as sin came into the world through one man, and death came through sin, and so death spread to all because all have sinned." The idea of sins being passed down through generations was not new, but Paul suggested that through Adam's original transgression, all future generations were sinners, regardless of their individual actions. For Paul, the only resolution for this state of original sin was grace, or more specifically, the acceptance of the grace of God as delivered through the suffering and subsequent resurrection of Christ.

In early Christianity however, there was much debate about the eternal consequences of sin. Origen of Alexandria (185–254 C.E.) argued, for example, that it was probable that at some time in the distant future all things would be "restored to the creator," including the souls of the wicked. At the time, in popular Hellenic thought, this was not a radical proposition. Nevertheless, it was one that was later rejected by the church, as well as by theologians such as Augustine of Hippo (354–430 C.E.), who set forth what was to be the most influential understanding of sin for at least 1,500 years. Augustine argued that individual sins, for example, carnal acts, were a result of separation from God in all people as a result of original sin. In other words, sex was not shameful until Adam and Eve became "ashamed of their own nakedness" as a result of their eating from the tree of knowledge. The result of this knowledge was subsequently inherent in the human condition itself. People were not merely "sinners," they were "of sin" and thus inclined toward corruption as a result of their "nature."

In this regard, the later practice of monks in the Middle Ages, who frequently categorized and ranked "sins" according to their severity and typology, had an underlying logic. They did not believe they could free themselves from sin as an original state, but they did believe that specific acts of transgression were linked in type and in a gradient fashion that might lead them further astray from recognition of their own imperfect nature. In many respects, the lists of these sins compiled by monks in the Middle Ages remain

dominant in contemporary views of sin the Seven Deadly Sins, for example. The French historian Philippe Ariès provides an important clue as to why these monks placed such emphasis on their typologies and rankings of sin, and perhaps why these lists have endured to present day. Beginning in the 12th century, argued Ariès, there began a slow shift away from communal views of death and salvation, toward the idea of individual judgment. Prior to this, to be in good standing in the Catholic community was seen as a promise of salvation. Over time, however, depictions of the Book of Life increasingly resembled what Ariès termed a “personal account book” of each person’s sins and deeds. To be a member of the communal church was no longer sufficient to ensure salvation; rather, salvation was increasingly seen as requiring faith and good works.

Sociology of Sin

The sociologist Stephen Pfohl has argued that sin, as it has been conceptualized in the Christian tradition, is central to what he terms a “demonic perspective” of social explanations and responses to deviance. This perspective, argues Pfohl, is the oldest of all known social explanations of deviance and views human action as existing within a larger cosmological struggle between good and evil. It was particularly dominant in the Middle Ages, when explanations of deviance were tightly bound to a religious worldview, as well as to the power of the Church, which defined many (but not all) criminal acts as a result of temptation or possession. The Salem witch trials in the late 1600s, for example, paralleled witch trials throughout Britain and continental Europe that viewed the crime of witchcraft as the result of



Sixteenth-century painter Pieter Bruegel the Elder created a work for each of the Seven Deadly Sins, all meant to serve as warnings with their depictions of debauchery and excess. U.S. settlers brought European values with them and prized hard work and frugality in the realms of politics, literature, and art, as well as working, saving, and investing.

temptation by the Devil. As Elliot Currie has noted, however, a primary difference between such trials in Britain and America, and continental Europe, was that the latter employed “trial by ordeal” (torture) as a means of extracting confessions. On the other hand, British and American trials relied on the tradition of English common law, which allowed for jury trials and the right of the accused to confront their accusers. Currie suggests that these differences reflected distinct histories between legal systems, with one consequence being that far fewer witches were tried and executed under the English common law system than in continental Europe.

Currie’s argument speaks as well to differences in Protestant and Catholic views regarding the proper role of the church in the administration of criminal law. Even where many witch trials in 16th-century continental Europe were conducted by secular courts, Currie argues that the use of trial by ordeal was largely informed by the use of torture in ecclesiastical courts common throughout various inquisitions. In this vein, the Protestant Reformation set forth more than an irreconcilable theological schism. As the sociologist Max Weber argued, it also set forth, at least in part, the conditions for the historical development of capitalism. Weber proffered that the emphasis placed on original sin by Calvinists in the 16th century led to a theological quandary within their understanding of God as omniscient. If God knew everything, including the outcome of those who would be saved and those who would be damned, then such outcomes were in a sense “predestined.”

Weber argued that this quandary of predestination was resolved by the Calvinists through Martin Luther’s argument that worldly labor (i.e., work not directed toward charity or the benefit of the church) nevertheless constituted a legitimate “calling” that benefited individuals and society. One no longer had to be involved in higher callings such as the clergy or charity to be doing “God’s work.” Such works became not a means of achieving salvation but rather an obligation of grace itself, and one’s likeliness of being among the elect was thus evidenced in the commitment that individuals demonstrated to work. Yet, the Puritan ethics of frugality and material depravity, argued Weber, led Calvinists to return the material fruits of their labors into further

“productive” works, allowing them to amass wealth in a way that did not contradict their evidence of being elect.

This ethic of “working, saving, and investing” was for Weber a prime example of how changes in ideas led to changes in the material structures of society. Capitalism, he argued, emerged most prominently in areas in Europe and the United States where this ethic was dominant. Even where this ethic lost its overt religiosity over two centuries, noted Weber, it retained a core morality that linked material success to attributes of individual character, perhaps nowhere more so than in the United States where the narrative of the “self-made man” has long played a central role in the value placed on hard work and frugality within politics, literature, and art, and social attitudes toward wealth and social welfare.

While Weber’s investigation of the Protestant work ethic was rooted in a broad historical investigation of changes in society over time, other sociologists have focused more on the social “functions” of sin. In his work *The Elementary Forms of Religious Life* (1912), Emile Durkheim argued that all societies contain systems of involving people in practices and rituals that lead to a collective sense of belonging, as well as systems of ideas that explain and make sense of the world for people. Durkheim argued that religion has historically been the primary means by which these two systems are linked in a concrete way for individuals, even where the specific forms of these systems exist as a reality *sui generis*. While earlier societies were characterized more by the sacredness of inanimate objects (totems) and/or ancestral worship, Durkheim argued that even modern forms of morality and law have their basis in religion. To this end, Durkheim suggested elsewhere that morality and deviance were two sides of the same coin, whereby all societies require some level of deviance to maintain a balance between social cohesion and social adaptation.

In a functionalist analysis, sin thus reflects less a uniquely religious explanation of deviance and more a means of explaining this particular form of deviance within systems of collective belonging and making sense of the world. This was an idea explored in Kai Erikson’s work *Wayward Puritans* (1967), in which Erikson investigated the “society of saints” in the Puritan Massachusetts Bay

Colony in the 17th century, and found that even in this society of rigid social norms there existed a fairly standard rate of deviance experienced by the community over time. What varied, argued Erikson, were the specific types of deviants that threatened the cohesion and norms of this community: Anne Hutchinson in the 1630s, the Quakers in the 1650s, and the “witches” in the 1690s. These represented different internal or external threats to the social cohesion of the colony, argued Erikson. Yet, even in this relatively rigid society, social norms adapted as a means by which to counter these threats and maintain a sense of social stability.

Sin in America

Erikson’s work also speaks to the early centrality of sin as a means of explaining and understanding the social world in early American history. In Puritan colonies such as Massachusetts Bay, sin was inexorably wound to social explanations of and responses to deviance, as in the case of the Salem witch trials. Historically as well, the concept of sin played a central role in the rise of two distinctly different but ultimately intertwining institutions in early America that justified the depravation of liberty as a result or consequence of sin. The first of these is slavery. To the degree that early slavery in the United States was justified as means of converting heathens, as it grew, it also saw the conversion of large numbers of slaves. By the 19th century, however, slavery was increasingly justified not as a means of salvation (where many slaves had already been converted), but rather under the “belief” that blacks were the descendants of Ham, the son of Noah, who in Genesis has cursed Ham’s son Canaan and his descendants. Although the Bible says nothing about race, it was widely proffered that blacks bore the sin of Ham in the color of their skin.

While the sin of Ham was a primary justification for slavery in the 19th century, the rise of the modern penitentiary system in the northern United States was also rooted in the concept of sin, albeit in a different fashion. Early prisons such as those based on the Auburn and Pennsylvania models in the early 19th century combined hard labor with austere living conditions and solitary confinement as a means to rehabilitate offenders. The use of labor and solitary

confinement were vestiges of the monastic tradition, where it was thought that the combination of hard work and religious self-reflection led to spiritual growth. The word *penitentiary* has at its core the idea of “penitence,” and the early prisons of the 19th century were seen as places where criminals could be separated from their corrupting environments and learn to lead productive lives. In reality, however, many of these prisons were brutal. Floggings and other tortures were not uncommon, and prisons frequently used prisoners for profitable labor.

Reemergence of Sin

In his work *The Sacred Canopy* (1967), sociologist Peter Berger argued that in the late 19th and 20th centuries much of the Western industrialized world had become secularized. Religion as a predominant means of understanding the world had become less central to people’s lives. Berger drew from a variety of sources, in particular Max Weber’s idea of the “demystification” of the natural and social worlds. For Weber, Western industrial society had become increasingly characterized by the formal rationalization of social, cultural, and economic life. Highly complex bureaucratic institutions, namely, the state and the modern corporation, had largely replaced the church as predominant forms of social and economic organization.

Berger was not alone in his assessment, and it was widely held among sociologists in the mid-20th century that there was a strong causal link between processes of modernization, such as industrialism and science, and the growth of secularism. This process had not been uniform, nor had it occurred in a linear fashion. The temperance movement, for example, many of whose members viewed alcohol as a sin, was influential in passing the Volstead Act in 1919, which banned the manufacturing, sale, and distribution of alcohol. Throughout the 20th century as well, sin was frequently in the foreground as a justification for laws against homosexuality, interracial marriage, and drugs. Nevertheless, by 1967, Berger had good reason for his thesis. Church attendance had been falling for some time; religion by this point played only a perfunctory role in national politics (although in some regions a much larger role); and in the case of social responses to crime, the

predominant approach was a mix of social programs (i.e., the war on poverty) and, for criminal offenders, rehabilitation programs.

By the end of the 20th century, however, Berger's thesis was quite different. The world, he argued, was not becoming less religious, and in many ways over the latter part of the 20th century it had become more so. Most notable was the emergence of fundamentalist Christian movements in Europe, Latin America, Asia, and particularly the United States. Islam had also continued to grow in the Middle East but also in Africa, Asia, Indonesia, and other areas. Berger called this resurgence of religion a type of "counter-secularization," particularly where it involved the rapid growth of fundamentalism in countries such as the United States, even where participation in mainstream Protestant denominations had continued to wane. It was no longer the religious enclaves of modernity that required explication, argued Berger, but rather the secular holdouts.

The significant growth of fundamentalist religious movements in the United States, beginning in the early 1970s, had significant political and social consequences. As the sociologist Robert Wuthnow has argued, the failure of more traditional forms of political conservatism in the late 1960s, which had focused primarily on fiscal restraint and anticommunism, set the stage for the emergence of more grassroots-based evangelical movements that viewed questions of individual morality as legitimate political platforms. Organizations such as Moral Majority and Focus on the Family helped to push questions of "traditional" morality, particularly abortion and homosexuality, to the forefront of politics in the 1980s and early 1990s. With the election of Ronald Reagan, the nation experienced a shift toward conservatism, but in particular, a type of conservatism that brought the concept of sin into the forefront of politics and policy in a way that had not occurred for perhaps a century or more.

In the beginning of the 21st century, the concept of sin continues to play a dominant yet contested role in social understandings of crime and deviance. Debates over the placing of the Ten Commandments in courtrooms and schools, over the protesting of military funerals by the Westboro Baptist Church in Kansas, and over "sins" such as abortion, homosexuality, and the teaching of

evolution have become central in American politics. These debates have spilled over more directly as well into questions of social responses to crime. Under George W. Bush, for example, a significant emphasis was placed on "faith-based" initiatives such as the Prison Fellow Ministries as a means of rehabilitating prison inmates, a move criticized by opponents for the use of public funds to proselytize prisoners. More recently, the move toward drug-testing welfare recipients reflects an assumption that those who do not engage in productive work must prove their moral worthiness to receive such benefits, a policy that echoes Weber's causal link between morality and hard work in the Puritan work ethic.

These debates signify a real and sustained shift in American views on the relationship between religion and sin, and crime and deviance. However, the biggest shift has been an increased polarization in American social and political attitudes around the proper role of religion and "sin" in public policy and polity. Each side of these debates sees the other as largely "winning," either in the increasing secularization and immorality of the United States or, conversely, in the increasing influence of fundamentalism and conservative religious morality. In this sense, the "re-emergence" of sin in American politics and society has brought into question what Durkheim identified as structures of belonging and structures of meaning in a way that has not occurred since at least the Great Depression. Even in the face of the most severe economic crises in 70 years, debates surrounding sin and morality remain central to politics and social life in the United States.

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See Also: Abortion; African Americans; Bible; Capital Punishment; Colonial Courts; History of Crime and Punishment in America: Colonial; Massachusetts; Morality; Puritans; Racism; Religion and Crime, History of; Religion and Crime, Sociology of; Salem Witch Trials; Slavery.

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Sing Sing Correctional Facility

Sing Sing is New York's second-oldest continuously occupied state prison. Opened in 1826, the institution still functions as a maximum-security prison. Sing Sing is located near Ossining, New

York, and its name is thought to be derived from "Sinck Sinck," the name of a group of Native Americans who originally inhabited the area. Sing Sing was the third New York state prison built, following Newgate (1797–1828) and Auburn (opened 1816).

The prison's construction and early administration were overseen by former Auburn Prison warden and army captain Elam Lynds, who became infamous for his brutality. Operating under the Auburn (or New York) system of penal discipline, inmates were housed separately at night but worked together in factories on the prison grounds. Because inmates spent most of their time working, Sing Sing's cells were initially only seven feet long by three wide and six feet seven inches high. At all times, inmates were forbidden to speak to one another under pain of physical punishment. Moreover, inmates were required to march in lockstep when transported to or from their cells, and failure to maintain military discipline usually resulted in physical punishment. Though Lynds did not design this system, he methodically and brutally enforced it through floggings. Despite his



Sing Sing prison in Ossining, New York, circa 1910. In 1825, 100 convicted criminals were transported from the Auburn Prison to the new site of Sing Sing prison, but no structure stood to house them. Prisoner labor was used to excavate marble from a nearby quarry and construct the prison. Like most post-Civil War American prisons, Sing Sing became overcrowded and cells that were hardly large enough for one inmate (less than 125 square feet) were used for two or three prisoners.

fearsome reputation, Lynds enjoyed the support of some New York legislators because Sing Sing's factory system consistently produced a profit; this was in marked contrast to the prison's ideological rival, Eastern State Penitentiary, which was never profitable. In many ways, the Auburn system was eclipsed by the reformatory movement pioneered by Zebulon Brockway in the 1870s, and the Auburn system's distinctive features (silence, marching in lockstep) slowly disappeared. Unfortunately, Sing Sing also experienced the pervasive overcrowding that affected most American prisons after the Civil War, so cells that were barely large enough to house a single inmate became home to two and sometimes even three, degrading living conditions at the prison.

Reform Attempts

Periodic calls for reform bore fruit in the early 20th century with the benevolent administrations of Thomas Mott Osborne (1914–16) and Lewis Lawes (1920–41). Osborne was a wealthy industrialist and political reformer who was twice elected mayor of Auburn, New York, and was appointed to the New York State Public Services Commission. In 1913, Osborne was appointed to the New York State Commission on Prison Reform; he then had himself incarcerated at Auburn to get a sense of how the prison worked from the inmate perspective. Osborne wrote a book about his experiences, *Within These Walls*, and was named Sing Sing's warden in 1914, after which he instituted sweeping reforms. The best-known and most controversial reform was the Mutual Welfare League, which created an inmate-administered "government" that was given partial responsibility for enacting and enforcing prison regulations. Because of this, Osborne ran afoul of entrenched political interests both inside and outside the prison, and his political enemies engineered Osborne's indictment for perjury, mismanagement of the prison, and engaging in sexual relations with the inmates. Though Osborne was acquitted of these charges and briefly returned to Sing Sing, he resigned shortly thereafter.

Osborne's short tenure at Sing Sing was distressingly common; between 1900 and 1919, the prison had 10 different wardens, each averaging less than two years in office. This all changed in 1920 when Lewis Lawes became Sing Sing's

warden. Lawes was in many ways very similar to Osborne: Lawes introduced or expanded Sing Sing's educational and recreational programs as a method of reforming inmates. In addition, Lawes oversaw the construction of several new cellblocks and ancillary buildings in an attempt to transform the aging penitentiary into a modern prison. He encouraged celebrities to visit the prison, many of whom entertained the inmates. Lawes also allowed, and even encouraged, directors to film movies at the prison; some of these included *The Big House* (1930) and *Castle on the Hudson* (1940). There was even a film adaptation of one of Lawes's book, *20,000 Years at Sing Sing* (1932), starring Spencer Tracy.

Despite all of Lawes's attempts at reform, Sing Sing's fearsome reputation (perhaps burnished by the movies he encouraged directors to set at the prison) only grew. In part, this was because the prison was the site of 614 spectacular and gruesome executions. The prison's electric chair was installed in 1891, and by 1916, all of New York's executions took place at Sing Sing. This necessitated a "death house," or a place where inmates waiting to be executed could be segregated from the general population, which only added to the prison's infamy.

Today, Sing Sing continues operation as a maximum-security state prison. In 1983, a massive riot broke out at the prison and 17 guards were held hostage for two days, a testament to the ongoing tensions within Sing Sing. Due to its infamous history of brutality, the prison looms large in the American popular consciousness and has contributed the phrases *up the river* (meaning going to jail) and *the big house* (the prison itself) to the American lexicon. Moreover, the prison is frequently referenced in movies, novels, musicals, and video games, perpetuating its legend.

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See Also: Auburn State Prison; Penitentiaries; Pennsylvania System of Reform; Prison Riots.

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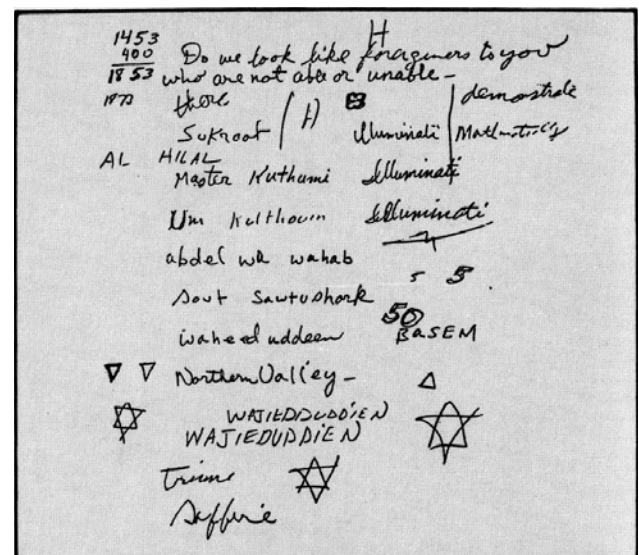
Sirhan Sirhan

Sirhan Bishara Sirhan is a Palestinian-born assassin who killed Senator Robert F. Kennedy (RFK) on June 5, 1968, in the Ambassador Hotel in Los Angeles following Kennedy's Democratic primary victory in California. Born on March 19, 1944, in Jerusalem to Palestinian Christian parents, Sirhan and his family witnessed the destruction of their homeland from the 1948 Arab-Jewish War. Pivotal to the development of Sirhan's later geopolitical beliefs, his family was forced to leave Jerusalem when Sirhan was 4-years-old, though not before Sirhan witnessed several violent attacks. According to psychiatrists who later evaluated Sirhan after the RFK assassination, these incidents took a toll psychologically that resulted in Sirhan suffering from multiple neuroses as a child, including bed wetting, nail biting, fear of the dark, and insecurity about his body. When he was eight years old, Sirhan witnessed the death of his brother, Munir, who was struck by a runaway army truck. At 12 years old, Sirhan and his family secured the sponsorship of two families from the First Nazarene Church in Pasadena, California, to immigrate to the United States. Although Sirhan was resistant to moving to the United States based on his belief that the United States was aligned with Israel and therefore the enemy of Arabs, his family traveled to New York City in 1957, settling in California soon thereafter.

Struggling to acculturate after settling in Pasadena, Sirhan's father, Bishara, was described by others as physically abusive toward his wife, Mary, and Sirhan. Distraught over the loss of his patriarchal status as his family embraced Western values as well as his difficulty finding adequate employment, Sirhan's father abandoned his family in 1958 and returned to the Middle East, leaving Sirhan without a father and a mother raising

him and his four siblings alone. Initially placed two grades below his same-age peers, Sirhan impressed his teachers as polite through junior high school. While Sirhan began to express anti-American sentiments during high school, he became much more vocal in his Arab nationalism and hatred of Jews as a student at Pasadena City College. During this period, Sirhan began attending meetings of the Organization of Arab Students. After earning five F's, however, Sirhan was dismissed from school for poor attendance.

Forced to find employment, Sirhan obtained a variety of odd jobs, including working at several service stations, as an assistant to a gardener, and at several horse tracks. Describing his time working at the Granja Vista del Rio Thoroughbred Horse Farm to NBC News, Sirhan stated that this job was "the most enjoyable experience of my life." Following two horse-riding accidents, however, Sirhan was fired from this job. Disappointed at the demise of his goal of becoming a jockey, Sirhan began drinking, gambling, and experimenting with mysticism. Motivated by his reading, Sirhan applied to join a Rosicrucian order in San Jose, California, and began practicing "white magic," including staring at lit candles to improve his mental powers. After nearly one



After Sirhan Sirhan was arrested, a notebook was found in his apartment containing diary entries that seemed to focus his anger on Robert Kennedy, who had made campaign promises to send 50 fighter jets to Israel if he were elected president.

year of unemployment, Sirhan's mother became concerned and helped him to secure a job in a health food store. However, Sirhan was fired after less than a year because of an altercation with his boss that culminated in an angry Sirhan airing his grievances against the store owner to a local labor tribunal, to no avail. During this brief period of employment, Sirhan engaged several coworkers in heated debates in which he expressed strong Arab nationalist views. On May 16, 1968, Sirhan watched a CBS documentary, "The Story of Robert Kennedy," on television. Due to RFK's support of Israel, Sirhan wrote, "Robert Kennedy must die..." in his notebook two days later.

Hiding in the pantry of the Ambassador Hotel in Los Angeles on June 5, 1968, following RFK's victory speech after winning the California Democratic primary, Sirhan fired eight shots at RFK and his aides, killing Kennedy and wounding five others. Leading up to his trial, Sirhan underwent extensive psychological and psychiatric evaluation with eight different clinicians. With one exception, all of the psychologists agreed on a diagnosis of paranoid schizophrenia; however, Sirhan refused to introduce a mental disability defense at trial. While a variety of conspiracy theories would surround the case, Sirhan was convicted on April 17, 1969, and sentenced to death on April 23, 1969. Following the California Supreme Court's decision in *California v. Anderson* in 1972, Sirhan's death sentence was commuted to life in prison, where he continues to undergo parole hearings every five years.

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See Also: California; *Furman v. Georgia*; Kennedy, Robert F.; Murder, History of; Retributivism.

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Slave Patrols

Slave patrols were public efforts to regulate slavery. They were part of a broader trend of restrictions placed on slaves and their movements. Slave patrols were initiated in the 16th and 17th centuries in the West Indies by English and Spanish settlers. Patrols grew out of colonial efforts to regulate slavery by creating laws to restrict slaves that required all white colonists to assist in enforcing the resulting slave codes. In South Carolina, for instance, landowners were obligated to punish slaves who wandered onto their property. Slave patrols were charged with questioning wandering slaves, dispersing slave gatherings, searching slave quarters, and patrolling roads between settlements.

In towns and cities, slave patrols usually operated on foot, investigating suspicious gatherings and questionable behavior. After slavery was established in the south, slave patrols were adopted as a way of policing the enslaved population. White southerners were determined to maintain their dominant social position. White citizens were induced to serve on slave patrols through various penalties and inducements such as fines or tax abatements. Substitutes could be hired for those who wished not to perform their turn at patrol service. Many patrollers were non-slaveholders who came to resent their forced duty that largely benefited the elite planter class. The slave patrols evolved from impromptu voluntary vigilante groups to organized institutions staffed by salaried civil servants.

Justification

Slave patrols were established as a reaction to white southerners' pervasive fear that with respect to the potential lawlessness of slaves, including the possibility of an outright rebellion. These fears were partly based on real concerns as slaves were far more numerous than whites in many parts of the south, and there had been instances of slave violence against whites and even of bloody insurrections. For example, in 1739 in Stono, South Carolina, several dozen intoxicated slaves armed with knives and guns set out for Florida, where they would be free; on the way, they slaughtered more than two dozen whites. Other notable acts of insurgency by slaves included the Gabriel Prosser

conspiracy of 1800 and Nat Turner's Rebellion in 1831, both of which were in Virginia.

In response to these actions, many restrictions were imposed on slaves across the south. These slave codes included measures, for instance, where a slave could not be off a plantation without a specific pass from the master. Many communities passed laws that required most white males to serve as members of armed patrols; certain professionals were exempt from serving.

Slave patrols were charged with monitoring the activities of slaves. The patrols could stop and question unaccompanied slaves anywhere, and if they could not produce a note from their master or an identification pass, the patrol could seize and hold them. Slave patrols generally functioned as an agent of intimidation to suppress the enslaved populace, as well as free blacks. It became common practice for patrols to beat and sometimes maim blacks, enslaved or free, they encountered, with little fear of repercussion. In effect, the state legitimized violence against slaves through these patrols. Slave patrols searched slave quarters and homes looking not only for runaway slaves but also for weapons, stolen goods, and evidence of literacy such as books, paper, and pens. A patrol returning a runaway slave to a master generally received a bounty.

Organization

Two major models were followed in creating slave patrols. The patrols were sometimes linked with compulsory local militia units intended to protect white settlers from Native Americans, foreign invasion, and other hostile threats. The militia model was used, for example, in South Carolina and Virginia. In other places, such as North Carolina and Texas, county courts were charged with forming local committees that were responsible for creating slave patrols to cover their territory.

In 1704, South Carolina was the first U.S. colony to establish slave patrols. Virginia formed its first slave patrol in 1727. In 1757, the Georgia colonial assembly passed An Act for Establishing and Regulating of Patrols, which required white citizens to serve on patrols of seven or fewer riders to work in districts that were 12 square miles. In 1811, militia officers in the Natchez District in Mississippi were ordered to form patrols in response to a slave uprising in

the neighboring parish of St. John Baptist along Lake Pontchartrain, Louisiana, where about 500 slaves had organized and marched toward New Orleans. In 1822, a statute was passed in Mississippi that made each militia captain responsible for maintaining a list of slave patrol detachments of three men each, which were obligated to perform patrol duties once every three weeks. This law was repealed in 1833, when another Mississippi statute granted each Board of County Police the authority to appoint leaders of patrols for each police district. In 1822, another statute in Mississippi authorized slave patrols to kill all dogs owned by slaves. In 1825, Arkansas passed its first regulation establishing slave patrols. In Texas, officials became concerned about the number of slaves escaping to Mexico. In 1846, the Texas legislature directed county courts to form local patrols to cover specific districts. In the antebellum south, every slaveholding state had established slave patrols, principally to prevent slave rebellions.

After passage of the 1850 Fugitive Slave Law, federal commissioners were appointed for every county in the country, charged with responsibility for enforcing the law. Further, U.S. marshals and, if necessary, the U.S. Army, could also be used to return runaway slaves. In 1857, the southern-dominated U.S. Supreme Court under Chief Justice Roger B. Taney handed down the *Dred Scott* decision, which asserted that slaves, and even free blacks, were not citizens and had essentially no rights. The pervasive paranoia on the part of southern whites against slave violence and resistance was fueled by the continued existence of slave patrols. Slave patrols generally came to an end with the cessation of the Civil War. However, the sentiments that led to the formation and maintenance of slave patrols led to the emergence of groups like the Ku Klux Klan during Reconstruction as well as to the evolution of modern policing and, perhaps, also to the tacit acceptance of violence toward African Americans by police.

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See Also: Buchanan, James (Administration of); *Dred Scott v. Sandford*; Ku Klux Klan; Slavery; Slavery, Law of.

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Slavery

There is a fundamental difference between societies that exist with slavery and those that are based upon it. In the world before about 1450, slavery was not an institution as such; rather, it was simply a part of life. The Narmer Palette, an ancient Egyptian artifact depicting the ascension of Narmer, the first pharaoh of the Old Kingdom, depicts Narmer towering over his conquered foes and either crushing them with a mace-like object or driving them before him in chains. Traditional slavery is often represented in this way. This type of slavery persists to the present day in many areas dominated by tribal cultures. Individuals or groups were taken by war parties and then used as personal slaves when the conquering group returned home. In most cases, slaves took part in domestic work and often became part of the family unit they were brought into, raising and caring for children or functioning as housekeepers. In such systems, slaves and other subject classes such as laborers had a porous relationship. Slaves who proved their worth often worked their way into other parts of the lower classes, and in rare cases, went up the social ladder. Systems such as these supported only small slave markets, because of the small-scale nature and limited opportunity for slave acquisition. Because of the nature of records from the earliest periods, it is extremely challenging to arrive at specific numbers or percentages for slave populations.

Early History

Slavery was viewed as a circumstance and as a natural part of life. Aristotle’s “great chain of being” was a constructed hierarchy meant to explain the existence of all of the various levels of human society. Traces of this manner of thinking were visible for centuries after Aristotle’s time. In his case, the top of the hierarchy was the Athenian citizen, and the slave (anyone not of Greek birth) was at the bottom of the pile. For Aristotle and his contemporaries, slavery was a method of existence that suited certain groups far better than others. For this reason, slaves were normally sought outside one’s home territory, because they were seen as more “naturally inclined” for enslavement and less likely to revolt. Many ancient Greek city-states had a significant slave populations. It is estimated that almost all citizen-owned homes had at least one slave in the 5th and 6th centuries B.C.E. in Athens, for example. In the system of many of the city-states, it was possible for a slave to save up the small wage he earned for his work and purchase his freedom. This was reflected particularly in the records of Athens, along with various rules for slave treatment, such as a prohibition on physically striking a slave. In addition, many classifications of slaves existed within Athens: The house slave



A correspondent for Harper's Weekly in 1860 reported on a slave ship that had been captured by an American steamer with more than 400 illegally imported slaves onboard.

was a domestic servant, the public slave served as a scribe or keeper of records for the city government, and the freelance slave was essentially independent, but paid his owner a tax. The type of slave most familiar to a contemporary reader is the war slave, a slave taken during a raid or battle. This slave was forced into unskilled labor, such as rowing a ship or undertaking public building projects, and was often chained by the neck to other slaves in a chain-gang arrangement.

Roman slavery was at first similar to traditional forms of slavery. A farmer bought a slave taken during some campaign of warfare, then used him for assistance in farming his land. As the Roman Republic aged and grew in size, slavery took on modern characteristics. The Roman economy was largely based on slaves—they performed a huge number of functions—they farmed, mined, performed unskilled labor, moved trade goods from one locale to another, and in some cases, collected the taxes for municipalities. Although the Romans took slaves from many sources, the main area of collection was Asia Minor, where an estimated 10,000 slaves were moved each day in Delos, the largest of the slave markets. Slaves were employed throughout the empire, but the largest concentrations were in the mining areas—present-day Spain, for example, or the “breadbasket” areas such as Etruria, where they were used in field labor in a way similar to the American and West Indian system of plantation slavery. In urban areas, such as Rome, slaves were put to work in many domestic fields. Female slaves often worked as housekeepers or caretakers for children, and male slaves (often Greeks) were sometimes employed by upper-class families as tutors for their children.

Slaves could be freed for essentially any reason that a master decided. The entire process was to appear before a regional judge and sign a paper of “manumission,” which granted freedman status to the slave. Slaves were also often freed at the time of their master’s death in a will. Although slaves existed in a non-person status during the Roman Republic, some later emperors took steps to reform slavery in the Roman Empire. Claudius passed a referendum that stated that all abandoned slaves became free; under Nero, slaves gained the right to complain formally against their masters; and Antoninus Pius declared that slaves

could not be executed without reason, and if they were, their masters could be tried for murder.

Slavery in the United States

Several aspects of slavery that were present in the ancient world carried forward into and through the ascendancy of European imperial powers and their offspring, such as the United States. English colonies, especially those in the Caribbean, had a particular taste for chattel slaves, which were treated as property in the Roman sense, rather than a person who happened to be enslaved, such as in the Greek or traditional Middle Eastern thought processes. Caribbean slavery was used, in one scholar’s view, as a testing ground for various crops and farming techniques. Over a period of roughly 50 years in the mid-18th century, the British learned that plantation agriculture with one specific sort of crop was far more conducive to the use of slave labor than a diversified and changing planting schedule, which required slaves to have experience with various crops and, furthermore, gave them access to a variety of tools, which could be used as weapons in uprisings against white masters, for example, the uprising of Toussaint l’Ouverture in the French slave plantation of St. Domingue, which was run in a similar style to a British colony such as Jamaica.

The lessons and methods drawn from Jamaica and Barbados were transplanted almost fully into the American south. Slave labor was not particularly useful in colonies north of Virginia, because the sorts of crops grown were not as labor intensive as those grown from Virginia going south, such as tobacco, and rice (South Carolina), and cotton (Mississippi). Although the British tried several forms of slave labor, including Native American slavery and indentured, contracted servitude, a number of issues made the continuation of such practices almost worthless. Escapes were common among Native American slaves, who knew the lay of the land far better than their masters. Indentured servants had a great deal of social mobility, because they could easily escape their contracted master and go to a different township or colony and have very little issue with assimilation. Furthermore, indentured servants were freed after a time and were legally given a plot of land and a “freedom stipend,” which meant that over time, indentured servants took the knowledge they gained while working their master’s land and used

those techniques to build competitive, albeit much smaller, farms.

The most common and longest-lasting slavery institution in America, particularly the south, was the enslavement of blacks from Africa. Much like Jamaica or Barbados, the southern United States' climate was well suited for growing tobacco, rice, and cotton. Growing and harvesting these crops is very time consuming and in some cases very dangerous to maintain and process. Therefore, African slaves, seen as chattel by those who owned them, were seen as an economic necessity.

Slaves and slavery in the U.S. south were key catalysts for the Civil War. Although not ostensibly a war based on the elimination or retention of slavery as a means of production, overwhelming evidence exists that politicians in both the federal government and state and local governments were concerned about the admission of new states to the Union, which would tip the free slave state balance in favor of either direction. Tensions over slavery erupted first in Kansas, and then in Virginia. John Brown, a radical abolitionist, beheaded several suspected slaveholders in the Kansas Territory and then led a raid with the help of his numerous sons and daughters, along with other radical abolitionists, to assault the National Armory in Harper's Ferry, Virginia. Brown's stated purpose was to bring to light the evil of slavery and to start a war against it; however, present interpretations of these events based on Brown's letters and recorded conversations indicate that he had a desire to become a martyr for abolition.

Effect of the Thirteenth Amendment

Lincoln's 1863 Emancipation Proclamation freed the slaves in "enemy territories" throughout the United States, and so effectively did nothing outside Union-held territory, although at that time, the Union Army had already taken a great deal of the slave south. After the war and reunification of the United States into one legislative body, the Thirteenth Amendment formally abolished chattel slavery in the United States. Regardless, a number of forms of enslavement persist to the present day. Convict slavery, that is, the use of prison convicts as forced, hard laborers with little or no recompense to the inmate in question, was enforced by the wording of the Thirteenth Amendment, which freed all other forms of slaves.

Wording in the document reveals that slavery was completely abolished, except that which was given as a penalty for the commission of a crime. A great deal of scholarship has gone into the level of involvement that these prisoner slaves had in recreating the infrastructure of the American south during Reconstruction following the Civil War. Although a number of former slaves and white abolitionists argued against this practice, court cases such as the 1871 decision handed down in *Ruffkin v. Commonwealth* (Virginia) stated that when a person was placed into criminal custody, all of his rights and his estate likewise were forfeit. This sort of legislation is reminiscent of the Roman slave model, which maintained that a person enslaved was to be treated as a dead person. Because of how the Thirteenth Amendment was worded, Virginia was granted sovereignty on the issue of prisoner treatment, and so the federal government was helpless to effect any change. Key scholars have argued that because of this legislation, the vast majority of the infrastructure of the Reconstruction-era south was rebuilt by prisoner slave labor that was overwhelmingly black. States holding sovereignty on this issue could, and did, create unequal treatment under the law for black and white offenders, which led to a massive disparity in the racial demographics of prisons, and thus prisoner slaves, in the Reconstruction south.

The ability for correctional facilities to "lease" their prisoners to go work for private companies stirred a great deal of controversy at the turn of the 20th century, particularly among labor union leaders who were concerned that unpaid convict labor would overwhelm wage-earning labor because of the lower cost. As early as 1913, legal agitation for the end of prisoner slavery was presented before a number of courts in the United States. Arguments made by a Rhode Island ex-convict in 1913 were similar to views expressed by Adam Smith in 1776's *The Wealth of Nations*—that wage labor was superior to free, and that the convict who volunteered to work would do a far better job than the one forced to work. Furthermore, the point was made that if the state was actually attempting to rehabilitate a prisoner, it should always, without question, be voluntary. The system of convict leasing was abolished in 1928 in Alabama, the last state to allow its practice. Other forms



Africans being auctioned off in front of a crowd of men in the southern United States circa 1861. By the 1800s, slavery was illegal in the United States, but the fact that existing slaves were not freed in the south helped lead to the Civil War.

of forced prison labor continued, though. Chain gangs, for example, were and are a central figure in American prison mythology. Although these have largely fallen out of use in the United States, Alabama attempted to reinstate the practice in the mid-1990s, although it was called off soon after re-establishment because of pressure from various civil liberties groups.

Other Types of Slavery

Sexual slavery was a common practice in the ancient world and remains one to the present day. Although women were heavily trafficked in Greece, Rome, the ancient Middle East, and other areas, the issue came to the forefront for Britons in the late 18th and early 19th centuries. Although there had been concern about the enslavement of whites in the Middle East and north Africa for quite some time, the practice was highly publicized in Elizabeth Marsh's 1769 *The Female Captive*, a narrative of her captivity in Morocco. Marsh's story contained descriptions of not only her captivity but also the seduction that she underwent in the palace of a Moroccan prince. Although in Marsh's account, her captor never actually sexually assaults her, this book opened the door for a variety of increasingly lurid accounts and, as time wore on, concern by a number of moralists and humanitarians to end the trade of sex slaves, particularly in the Middle East. Although the present

concern with sex slavery often focuses on south-east Asia and the infamous sex tourism that has become interwoven with Western perceptions of places like Thailand, there remains a sizable population of forced or coerced sex workers in the United States.

Sexual slavery, coerced prostitution, child pornography, and child prostitution were not eliminated by Victorian moralists, however. To the present, it is estimated that some 50,000 sex workers in the United States have been brought in illicitly and engage in any number of sex-related businesses. Strip clubs, street prostitution, massage parlors, and makeshift brothels in bars and other locations make up the base of many of these operations. Often, women, girls, and children are brought into the United States from locations as diverse as Latin America, the former Soviet bloc nations, and south-east Asia and are forced into prostitution stateside. Estimates for the number of people involved in this trade are difficult to ascertain, given the mobility and desired anonymity that is present. Scholars estimate that the number of persons forced into sex slavery or coerced sex work is growing steadily. Trafficking rings run by organized crime groups based in former Soviet countries, particularly Russia, and also in southeast Asia, are thought to be the major source for foreign nationals brought into the United States for these purposes.

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See Also: 1600 to 1776 Primary Documents; 1777 to 1800 Primary Documents; 1801 to 1850 Primary Documents; 1851 to 1900 Primary Documents; African Americans; Slave Patrols; Slavery, Law of; State Slave Codes.

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Slavery, Law of

Laws regulating slavery are as old as slavery itself, and only in the latter half of the 20th century has the world been without widespread legal forms of slavery. American laws of slavery had their origin in Roman law. They came together piecemeal and not systematically. Slavery in the United States involved municipal, state, and federal law. Centuries of Anglo-American common law affected the quotidian lives of slaves across America. Slavery dominated life in the south, and a substantial body of law made slavery functional, institutionalized, and pervasive. The relation of slavery to law is highly complex because slavery implicated many areas of the legal system from criminal law to property law, because it developed over time and in response to changing social conditions, and because it entailed many levels of government from the local to the national. In 1654, John Casor of Northampton County in Virginia, a black man, became the first legally recognized slave in America when his master, Anthony Johnson, a black colonist who had become a free man, prevailed over Casor in a court matter regarding Casor's claim of freedom. The court found that Johnson had a legitimate claim to ownership over and control of Casor. The court decision officially recognized slavery as a valid institution.

Books of history, morals, law, and economics began to address slavery extensively during the 18th century, when Europeans, particularly those in the New World, sought to reconcile the paradox that their society celebrated liberty yet perpetuated slavery. In America, the development of slavery along racial lines was more pronounced than in slave societies in previous eras and regions. In early America, moreover, the institution of slavery retained elements of medieval laws and ethos holding that, as Augustine proclaimed, slaves should be treated as brothers in Christ and that a baptized slave had to be manumitted. But these ideas gradually faded as the American system of slavery hardened during the course of the 18th century and reached the height of its intensity during the 19th century.

Slave Codes

Individual states had their own slave codes that, among other things, defined who qualified as

slaves, detailed punishments for assisting escaped slaves, regulated relationships between whites and slaves, prohibited sexual intercourse between different races, and explained the rights of masters over their slaves. Children of slaves followed the condition of their mother into bondage. Laws regulating slavery were mostly consistent at the state level, but they varied from state to state. In 1740, South Carolina became the first state to forbid the education of slaves. Other states followed suit, usually making slave education punishable by fine. Slaves were typically flogged for learning how to read or write. By law, masters could dictate to slaves the type of work slaves were to perform, the amount or kind of clothing slaves could wear, and the rights of property slaves could enjoy.

To varying degrees, slave codes authorized violence as a technique for punishing slaves. Branding and whipping were frequently employed forms of punishment. Other forms included slitting the nose or an ear. Slave codes generally treated slaves as persons in criminal matters but as property in all other matters. Some civil cases, interpreting these slave codes, deemed slaves to have the legal status of a horse or a buggy. The North Carolina case *State v. Mann* notoriously declared that the "power of the master must be absolute to render the submission of the slave perfect." Courts treated slaves differently from time to time and place to place. In *Ford v. Ford*, a Tennessee case, the court wrote, "A slave is not in the condition of a horse or an ox. His liberty is restrained, it is true.... But he is made after the image of the Creator. He has mental capacities, and an immortal principle in his nature, that constitute him equal to his owner but for the accidental position in which fortune has placed him." State laws criminalized black rape of white women but did not criminalize the reverse. In South Carolina, according to that state's Negro Act, the murder of a slave by a white man constituted a misdemeanor only. Criminal trials against slaves were not always held in courtrooms; sometimes, they were held in stores or taverns.

One slave code—the one passed by the Louisiana legislature in 1806—took away slaves' rights to institute any legal action whatsoever. These laws eliminated slaves' previous right to petition the courts for sale away from abusive masters. These same slave codes authorized the criminal

prosecution of any individual who mutilated, killed, or severely mistreated a slave. Nevertheless, Louisiana appellate courts rarely heard appeals from criminal trials for cruelty against slaves. If a slave did not prevail in his initial cause of action, he had little recourse available to him.

Property and Criminal Laws

Property and contract law dominated rules about buying and selling slaves. Many if not most slave sales took place at court sales or slave auctions—spectacles meant to degrade and ensure the perpetuation of white supremacy. A slave trader might have been sued for fraud or for breach of warranty for selling a “defective” slave. A slave owner might have sued a hirer or overseer for damaging a slave. Some states criminalized the abuse of leased slaves on the grounds that the hirer or overseer had destroyed or impaired property. Some states designated slaves as freehold property to distinguish slaves from chattel property. Freehold property was property that was not severable from an owner’s estate. Cases for fraud or deceit reached the courts when buyers of slaves sued sellers for falsely alleging—often in writing—that purchased slaves had a good character and did not, for example, drink, steal, or run away. Slaves were included in divisions of assets in probate court or for foreclosure of property. Masters could also use slaves to hold liens.

In the courtroom, as elsewhere, slaves were treated differently than whites. Slaves generally could not testify against whites in courts of law because they did not count as people unless they were being punished. This was not always the case. During the period of American history from the Revolutionary War to the 1820s, some courts admitted evidence of slaves in both capital and noncapital cases. A slave’s testimony usually was admissible only if two witnesses were present to corroborate the slave’s account. Some laws required slaves to take an oath that they were Christians before being allowed to testify. One South Carolina law required preliminary examinations of all potential slave witnesses, after which the judge would decide which evidence would be admissible during trial.

Manumission laws regulated and in some cases restricted the freeing of slaves by their owners. Vermont was the first state to require manumission of

slaves within its territory. A typical manumission law might have mandated that owners post bond for each slave he freed. It also might have required owners to petition local courts and to provide notice of manumission. Manumission laws sometimes but not always required manumitted slaves to leave the state in which they had been enslaved. News of slave rebellions, both real and fictional, resulted in stricter manumission laws. Plotting slave rebellions was a prosecutable offense.

Even after the Civil War, all southern states enacted Black Codes, which were regulations maintaining an unofficial, *de facto* system of slavery. Black Codes replaced slave codes in form and function. Black Codes controlled such activities as migration and labor among former slaves. Although these codes allowed former slaves the right to marry and own property, they also mandated labor contracts, the violation of which entailed criminal penalties involving, among other things, physical labor. Black Codes also prevented blacks from testifying against whites in courts of law.

Federal Laws

The most famous laws about slavery developed at the national rather than at the state level. They involved the admission of new states into the Union, an issue that mobilized proslavery and antislavery activists alike. Promulgated by the Congress of the Confederation, the Northwest Ordinance of 1787, also known as the Freedom Ordinance, created the Northwest Territory and prohibited slavery in that region. The Missouri Compromise of 1820 prohibited slavery in the former Louisiana Territory north of the 36°30’ parallel. The compromise did not prohibit slavery in the proposed state of Missouri. The Kansas-Nebraska Act, which created the territories of Kansas and Nebraska, repealed the Missouri Compromise and allowed settlers to those regions to vote to allow or abolish slavery there. Passage of this act resulted in violent border disputes that came to be known as “Bleeding Kansas.”

The international slave trade was banned in America according to Article One, Section Nine, Clause One of the U.S. Constitution. This provision was a heated topic during the Philadelphia Convention of 1787, which designed the Constitution to replace the Articles of Confederation.

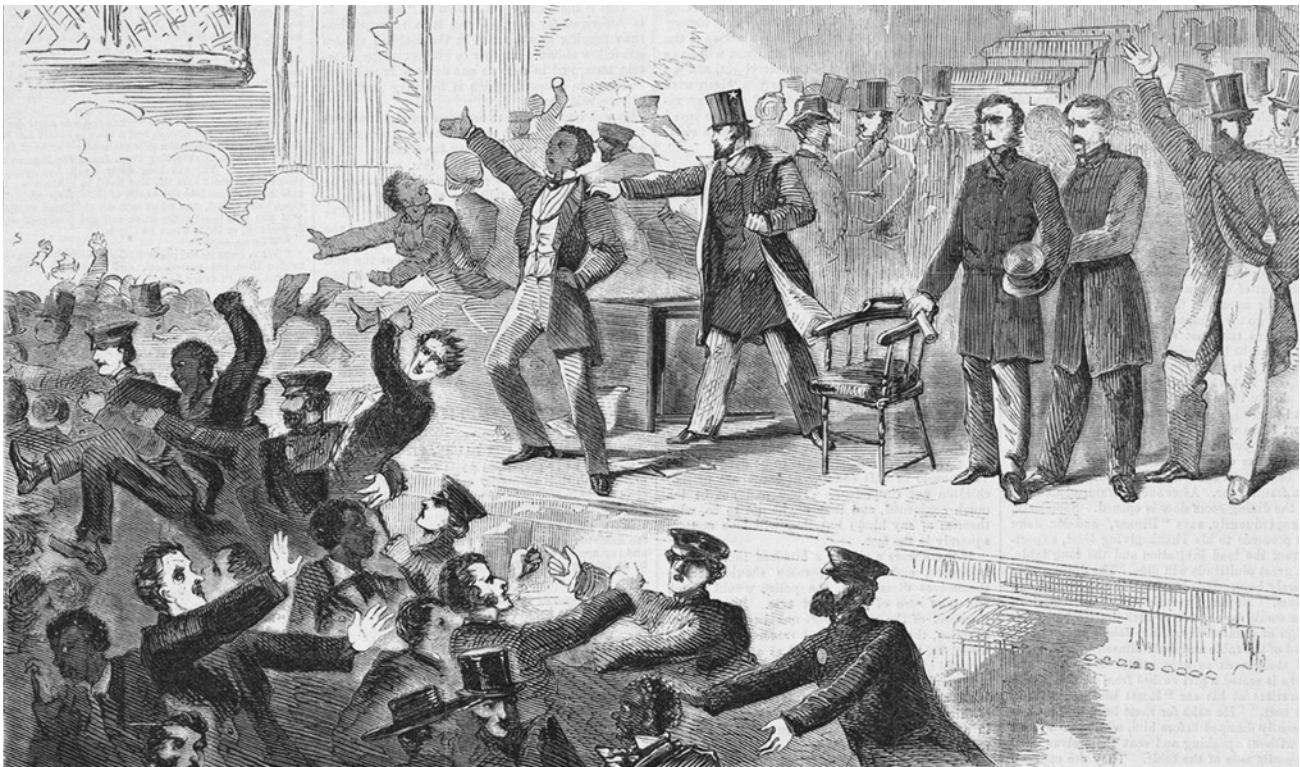
The Philadelphia Convention also established that three-fifths of the slave population would count for tax and apportionment purposes. Many southerners had wanted to count slaves as full people in order to secure for the southern states a greater power in national affairs.

The Fugitive Slave Act of 1793 was a precursor to the Fugitive Slave Act of 1850. The Fugitive Slave Act of 1793 provided for the return of slaves who had fled slave states for free territory. The Fugitive Slave Act passed by Congress in 1850 required citizens and authorities in non-slave states to return runaway slaves to their masters in slave states. The 1850 act was meant as a compromise between southern slaveholders and northern free-soilers. By making northerners complicit in the institution and perpetuation of slavery, the 1850 act forced northerners to either accept or refuse slavery as a systemic practice.

Dred Scott v. Sandford was probably the most notable U.S. Supreme Court ruling on slavery. Decided in 1857, with southern Chief Justice

Roger B. Taney writing for the majority, the opinion maintained that Congress did not have the power to create citizenship for slaves, that free slaves were not citizens as contemplated by the U.S. or Missouri constitutions, that the Missouri Compromise was unconstitutional, and that the right of property in slaves was affirmed in the U.S. Constitution. One of many catalysts for the Civil War, the court's decision denied people of African descent the right to citizenship and constitutional protection. It established that individuals of African descent were not citizens of the United States. In 1873, the Supreme Court declared in the *Slaughter-House Cases* that the Fourteenth Amendment, one of three Civil War amendments, overruled the *Dred Scott* decision.

The Civil War amendments, also known as the Reconstruction amendments, are the three amendments to the U.S. Constitution that, respectively, abolished slavery, guaranteed equal protection and due process to people of all races, and guaranteed voting rights for black men. The Thirteenth



In December 1860, a group of abolitionists, including Frederick Douglass and William Lloyd Garrison, met at Tremont Temple in Boston to commemorate the anniversary of John Brown's execution: Brown was an American revolutionary abolitionist. Some Bostonians took over the proceedings, passed resolutions to condemn John Brown's raid, and expelled the abolitionists.

Amendment passed in the Senate in 1864 and in the House in 1865. It was adopted in December 1865. Section One of the Thirteenth Amendment reads “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.” Section Two of the Thirteenth Amendment reads “Congress shall have power to enforce this article by appropriate legislation.” The Thirteenth Amendment effectively abolished slavery in America.

Adopted in 1868, the Fourteenth Amendment served as the basis for overturning discriminatory state laws, such as a West Virginia statute prohibiting blacks from serving on juries. The Supreme Court ruled this West Virginia statute unconstitutional in *Strauder v. West Virginia* (1880). The Fourteenth Amendment includes the citizenship clause, the privileges or immunities clause, the due process clause, and the equal protection clause. All of these clauses are important to later Supreme Court decisions based on race. The court relied on the equal protection clause in its decision in *Strauder*. The citizenship clause was deemed to have reversed the *Dred Scott* decision by providing that “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” The Fourteenth Amendment effectively secured new rights for former slaves.

The Fifteenth Amendment, ratified in 1870, prohibited both states and the federal government from denying voting rights because of a citizen’s race or status as a former slave. Section one of the Fifteenth Amendment reads “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.” Section Two of the Fifteenth Amendment reads “The Congress shall have power to enforce this article by appropriate legislation.” The Fifteenth Amendment effectively established voting rights for all male people of color.

The Emancipation Proclamation was law by executive order. Issued by President Abraham Lincoln on January 1, 1863, the Emancipation Proclamation freed all slaves in the states that made up the Confederate States of America. The

Emancipation Proclamation did not free any slaves in the border states: Delaware, Maryland, Missouri, and West Virginia. Slavery remained legal in these states until the passage of the Thirteenth Amendment.

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See Also: 1777 to 1800 Primary Documents; 1801 to 1850 Primary Documents; 1851 to 1900 Primary Documents; *Dred Scott v. Sandford*; Fugitive Slave Act of 1850; Race, Class, and Criminal Law; Race-Based Crimes; Racism; Slavery; *Strauder v. West Virginia*; Supreme Court, U.S.

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Smith, Susan

Susan Leigh Vaughan Smith was sentenced to life in prison for murdering her two children in 1994. Initially, Smith had claimed that an African American man stole her car and kidnapped her sons. Subsequently, she admitted to drowning her two

sons by rolling her car into a lake with the boys trapped inside.

Smith was born on September 26, 1971 as Susan Leigh Vaughan in Union, South Carolina, to Harry and Linda Vaughan. She was the youngest of three children and the couple's only daughter. Her parents divorced when Susan was 7, and five weeks later Harry, age 37, committed suicide. Her mother, Linda, then married Beverly (Bev) Russell, a local businessman. When she was 16, Susan Vaughan reported to the local authorities that she had been molested by her stepfather. No charges were ever filed. In 1991, he married David Smith, whom she met at the supermarket where they both worked. She gave birth to two sons, Michael Daniel Smith (October 10, 1991), and Alexander Tyler Smith (August 5, 1993). The marriage was troubled, with numerous separations and affairs, and divorce papers were filed days before the murders.

On October 25, 1994, Smith knocked on the door of the home of Shirley and Rick McCloud and told them that an African American man had taken her car and her two boys. She said she had stopped at a red light when a man jumped into her car and told her to drive. After driving for a time, she said that he told her to stop and get out of the car. He then drove off with the boys, who she said she could hear crying out for her.

A nine-day nationwide search ensued, with Smith appearing on television to plead for the safe return of her boys. However, Smith subsequently confessed, admitting that she let her 1990 Mazda Protegé roll into nearby John D. Long Lake, drowning her children inside. Her motive for the murder was to enable a relationship with Tom Findlay, the son of her employer. She and Findlay had been having an affair, but Findlay broke it off because he did not want children or to raise someone else's children.

Smith's Trial

Sheriff Howard Wells had been skeptical about Smith's story from the beginning and believed she had killed her own children. They began searching area lakes and ponds, including the lake in which the children were eventually found. Both Susan Smith and her husband took polygraph tests two days after the boys disappeared. The results indicated that Susan Smith was lying when

she said she did not know where the boys were. There were no other cars near the intersection where Smith said the carjacking had occurred. This was an important fact, because the traffic light at the intersection would have been triggered by an oncoming vehicle. With no cars in the area, there would have been no reason for her car to be stopped.

On November 3, 1994, David and Susan Smith appeared on *CBS This Morning*, and David voiced his full support of Susan and her story about the abduction. Following this appearance, Smith again met with Sheriff Wells, who challenged her story, explaining to her that the traffic light on Monarch Mills would have stayed green because no other car was in the area. Susan confessed to Wells. She said that she had wanted to kill herself and her children but got out of the car and then rolled it into the lake, drowning her boys. She told the police where the car had floated out before it sank. Divers found the car turned upside down, with the children in their car seats. Also found in the car was the letter Tom Findlay had written to Smith breaking off their relationship. An autopsy of the children concluded that both boys were still alive when the car went underwater.

At trial, the defense offered evidence to try to explain Smith's behavior. They disclosed that she had been molested in her teens by her stepfather, who admitted that he had molested her, and had consensual sex with her as an adult. Her biological father committed suicide when she was 6 years old and she very rarely had a stable home life. At 13, she attempted suicide. She made a second attempt after graduating from high school in 1989. The prosecution countered the defense, asserting that Smith's only concern was her own desires. Her children were in Smith's way: By killing them, she believed that Tom Findlay would resume their relationship.

Smith was found guilty of two counts of murder and was sentenced to 30 years to life in prison. While she has been incarcerated, two corrections officers have been convicted of having sexual intercourse with Smith. In 2001, Alfred Rowe, Jr., was sentenced to five years probation, and Houston Cagle received three months in jail for engaging in sexual intercourse with Smith while she was an inmate at the Women's Correctional Institution in Columbia. She is presently (May 2011) an inmate

at the Leath Correctional Institution, located near Greenwood, South Carolina. She will be eligible for parole in 2025. Her ex-husband has sworn to attend every parole hearing to keep Susan Smith in prison for life.

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See Also: 2001 to 2012 Primary Documents; South Carolina; Women Criminals, Contemporary; Women Criminals, Sociology of; Women in Prison.

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Smith Act

The Alien Registration Act of 1940 (Smith Act) was passed as the world stage was set for World War II. Like the Alien Sedition Acts of 1798, the law was intended to protect Americans from “corrupting” foreign political influences (e.g., socialism and communism) and domestic political dissent. The Smith Act accomplished this goal in two main ways: It made it a federal criminal offense to advocate or organize the overthrow of any U.S. government, and it required noncitizen adults to register their occupational status and political beliefs with the federal government. The Smith Act remains on the books today. However, there have been no prosecutions under the law since 1957.

The first Smith Act prosecutions occurred in 1941, when 18 members of the Socialist Workers Party were targeted; it was then used again in 1942 against 28 alleged Nazis. However, the largest number of prosecutions under the law occurred



Benjamin Davis surrounded by supporters as they left the Federal Courthouse in New York. Davis was an African American communist who was represented Harlem on the city council. Davis was a target of the McCarthy investigations and was tried and imprisoned with 11 other Communist Party leaders under the infamous anticommunist Smith Act.

during the beginning of the cold war, when fears that communists were infiltrating American society and the U.S. government inspired government officials to aggressively prosecute members of the Communist Party who resided in the United States. Senator Joseph McCarthy and members of the House Un-American Affairs Committee spearheaded these efforts during the 1950s. During this time period, 131 members of the Communist Party were indicted for advocating the violent overthrow of the U.S. government, 98 of whom were convicted. Use of the act declined in the mid-1950s as McCarthy's influence in the Senate waned.

The first major legal challenge to the Smith Act was in *Dennis v. United States* (1951), a case examined during the height of the Red Scare. Eugene Dennis, an officer of the Communist Party, U.S.A., was indicted under the act for conspiring to overthrow the government. Dennis was found guilty, despite the fact that he had only been making plans to write documents in the future—he had not actually engaged in any actions to overthrow the government. In a 6–2 decision, the court ruled that Dennis's First Amendment rights were trumped by the security needs of the general public. The court drew from *Schenck v. United States* (1919) and concluded that Dennis's actions created a “clear and present danger” for the public. It ruled that while Dennis's actions were unlikely to be successful, the likelihood of success was not required in order to sustain a conviction under the act.

The Supreme Court examined the Smith Act again in *Yates v. United States* (1957), as the Red Scare of the 1950s was coming to a close. The case involved the convictions of 14 Communist Party leaders from California. Oleta Yates and his colleagues were convicted in 1951 of organizing an effort to advocate the violent overthrow of the U.S. government. Yates appealed to the Supreme Court. In a 6–1 decision, the court ruled in favor of Yates. First, the court interpreted important provisions of the Smith Act narrowly. Yates and the others were charged with organizing a conspiracy to overthrow the U.S. government. The court's interpretation of the term *organize* meant that the statute of limitations contained in the Smith Act precluded prosecution for Yates's actions. Second, the court distinguished between two different kinds of advocacy. The first is the advocacy

of an idea—a greater overarching philosophy or principle. The First Amendment protects this form of advocacy. The second is advocacy for specific and concrete action, such as advocating the violent overthrow of the government. This form of advocacy is not protected. Yates and his codefendants engaged in the first type of advocacy, general advocacy of a principle. Therefore, their action was protected by the First Amendment. The court found that the evidence in five of the cases was so weak that it dismissed the Smith Act charges against them outright. The cases of Yates and the remaining defendants were returned to the lower courts, where the government, realizing that the Supreme Court's ruling virtually precluded it from continuing the cases, declined to prosecute Yates again. The *Yates* decision effectively ended government prosecutions under the Smith Act.

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See Also: Alien and Sedition Acts of 1798; *Dennis v. United States*; McCarthy, Joseph; *Yates v. United States*.

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Smuggling

Smuggling is the covert transportation of individuals or goods across points of entry in violation of laws and regulations. U.S. government agencies concerned with smuggling include the U.S. Border Patrol, U.S. Coast Guard, U.S. Customs Service, and Drug Enforcement Administration. Smuggled goods include those that are illegal, like drugs, Cuban goods, and some firearms; those that are subject to legal controls, like prescription drugs,

most firearms, many plants and animals, and people; and those that are smuggled to evade a tax, like cigarettes.

Points of Entry

There are a number of goods that are smuggled across land borders and ports of entry. These include but are not limited to undocumented immigrants, weapons, drugs, and endangered wildlife. Ports of entry are, in federal law, geographical areas overseen by a port director, where people and goods may enter the country under the supervision of customs and other authorities. For instance, international airports are usually ports of entry, as are major seaports. Some ports of entry may include multiple border crossings; since 2001, there are almost no roads entering the United States without a border inspection station. Unguarded entry points, including overland routes and unguarded shoreline, are of particular importance because it is believed that they are the preferred way of entry for smugglers. While all borders require enforcement and security measures, land borders are of particular importance to the federal government. In terms of resource allocation, land borders tend to receive a larger amount of funding, but securing airports and ports is also significant in matters of national security.

The United States has major ports that respond to a lot of activity on a daily basis. The Los Angeles and Long Beach ports together make up two of the largest port facilities in the world. Slowing down or closing the ports could cost the American economy billions of dollars. A brief lockout in 2002 at ports in the western United States cost the U.S. economy \$1 billion a day. Some measures could be taken to increase safety measures at ports.

Land borders are a vital point of entry into the United States. The United States protects approximately 7,000 miles of border with Canada and Mexico. Along the 5,525-mile U.S.–Canada border, there are 84 land points of entry, and a fairly small security presence compared to the southern border. Smuggling is the major issue of concern along the American–Canadian border, with drugs smuggled in both directions, and cigarettes and firearms smuggled in significant numbers from the United States to Canada. In both cases, international crime cartels are involved, as well as local criminal groups. Much of the smuggling passes

through Akwesasne, a quasi-sovereign Mohawk territory in which bordering authorities in New York and Ontario have no jurisdiction.

The land border between Mexico and the United States is 1,933 miles across and has 25 points of entry that include land points in California, Arizona, New Mexico, and Texas. For a time in the 1990s, U.S. Army personnel stationed along the Mexican border worked with the border patrol to contribute helicopter support and high technology to attempts to slow the flow of illegal drug smuggling across the border. The attacks of 9/11 also had a tremendous impact on land border security enforcement, though with a focus on security, rather than smuggling.

History of Smuggling

The United States has a long and complex history with smuggling, dating back to colonial times. The colonies under British control were meant to enrich the British Empire, rather than the individual colonies. Using the mercantilism system helped the British Empire to maintain control over goods found in the colonies. The economic philosophy in place was mercantilism. Based on this system, the colonies had many restrictions placed upon them. These included who they could trade with, the ships they could use, and how much they were permitted to manufacture. American colonists were expected to purchase British goods, rather than Spanish or French goods. Americans were expected to pay for the goods they imported as a way to discourage trading. The Navigation Acts and the Molasses Acts were instituted by the British government as a way to restrict colonial trade. One way that colonists were able to defy these restrictions was by smuggling. Smuggling became a way of defying British rule and evading the heavy taxes and regulations imposed upon them. Americans became skilled at avoiding British naval ships. Smuggling became a vital skill for Americans during the Revolutionary War.

Smuggling again became a prominent issue in the United States in the 1920s during Prohibition. Prohibition in the United States lasted from 1920 through 1933. Under Prohibition, it was illegal to purchase, sell, manufacture, and transport alcohol. Rum-running or bootlegging were methods of defying Prohibition. Rum-running became a lucrative business and became a way for organized



Smugglers walking across the Rio Grande from Mexico in 1866 with packs full of contraband on their backs. U.S. customs officers (wearing brimmed hats) can be seen hiding in the bushes on the right. At that time, tobacco was commonly smuggled. Smuggling in the United States dates back to the nation's early years because of strict British control on many goods.

crime to control the distribution of alcohol. Cities like Chicago were faced with an increase in crimes like theft and murder, which were linked to the criminal activities of bootlegging and control over that enterprise by criminals such as Al Capone. An increase in the unpopularity of Prohibition led to the repeal of the Eighteenth Amendment by ratification of the Twenty-First Amendment.

Motivation for Smuggling

Smuggling of other goods, such as wildlife and endangered species, has also dominated U.S. history. A demand for exotic species has led to a lucrative business of smuggling wildlife. As a response to the smuggling of wildlife, CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) was established in Washington, D.C., to regulate the movement of exotic species across borders.

Smuggling has also become popular for those attempting to avoid taxes on goods. One example is the purchase of cigarettes from states with low taxes that are smuggled into states that have higher

taxes for cigarettes. These cigarettes are then sold for a lesser amount, but still allow a profit. Smuggling also occurs when there is a demand for illegal goods or services or if those goods or services, are heavily taxed. One of example of this is weapons smuggling. In some countries such as Mexico there are strict gun control laws, whereas the United States has lenient gun control laws. Recently, the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) launched Operation Fast and Furious, which entailed purposely allowing firearms to be smuggled from the United States into Mexico. These weapons were supposed to be tracked as part of this operation but the Mexican government was not notified of that intent. This example provides an illustration that smuggling is also enforced by government action against other sovereign nations. There is often a reciprocal relationship between smuggling weapons in exchange for drugs.

In 1973, the Nixon administration established the Drug Enforcement Administration (DEA). The DEA was charged with enforcing federal drug

laws and control of drug activity. Since the 1980s, the U.S. government has been waging an unsuccessful War on Drugs. Drugs are trafficked from other countries into the United States across the northern and southern border, as well as through other ports of entry.

Human Smuggling

One of the other lucrative businesses that entail smuggling is human smuggling. Human smuggling has been used in the past to remove individuals from oppressive or dangerous environments. For example, during the times of slavery in the United States, slaves in the south were smuggled to the north through the Underground Railroad and other means. During the Holocaust, Jews were smuggled out of Germany and other territories where they were met with hostility.

Human smuggling has become a booming business because of the increase in border enforcement. The human smuggling business is now just as profitable as drug trafficking. Many individuals who feel incapable of crossing the border on their own turn to human smugglers, without considering the hidden dangers. The people who smuggle them across the border often deceive and victimize women. In many cases, women are smuggled across the border into other countries, and upon their arrival, they are told that they have to pay off their smuggling debt by prostituting themselves for years. In some cases, they are held as prisoners until they have repaid the debt for being smuggled into the United States. Countries around the world have taken action against human smuggling and trafficking organizations by setting up laws and regulations against smuggling operations. One of the steps that the U.S. government has taken to control smuggling operations is focusing on the southwest border, where there is a booming business of smuggling people across the southern border into the United States.

In 2004, in an effort to increase safety around the southwest border, the Department of Homeland Security (DHS) created the Arizona Border Control Initiative (ABCI), which aims at dismantling smuggling and trafficking operations. The ABCI is also supported by Mexican government officials, who have expressed their concerns over immigrant deaths and hope to eliminate human

smuggling. ABCI has contributed to the prosecution of 335 individuals facing charges for human smuggling and has been responsible for the seizure of more than \$7.2 million from smuggling organizations.

Technological Advances

Those who cross into the United States are required to stop at customs and identify themselves, as well as the items they are bringing with them. Customs agents are required to search the belongings of those who seek entry into the United States as a way to control smuggling. The introduction of new technology has allowed for advances in protecting against illegal goods crossing the border. Some of the ways that technology has played a vital role in eliminating smuggling of goods or people include the use of x-ray machines in vehicles, wiretapping, and other resources.

There are various tools and techniques used to increase control over land borders. One of the most recent tools developed to deter illegal activity around the U.S.–Mexico border is the building of a fence along the southern border. Some regions around the southern border already have a 10-foot-high fence in place and funding for additional fencing along the rest of the southern border has recently been approved by Congress. Border patrol agents use an array of tools to apprehend unauthorized people and goods from crossing the border.

In order to complete this mission, border patrol agents use surveillance techniques, follow up on leads, respond to alarms, monitor checkpoints, and conduct anti-smuggling investigations. The surveillance techniques are used to monitor uninhabited deserts, rivers, mountains, and canyons. The border patrol uses electronic sensors to detect people and vehicles that attempt to cross the border illegally. Some of the tools that they use include night-vision scopes, cameras, radar towers, UAVs, vehicles, boats, horses, bicycles, snowmobiles, all-terrain motorcycles, and air surveillance to supervise the border. All of these measures are used to deter and prevent unlawful entry across the border but the effectiveness of these tools has not yet been proven.

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See Also: 1961 to 1980 Primary Documents; Border Patrol; Drug Enforcement Administration; Immigration Crimes.

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Snyder, Ruth

An infamous Long Island, New York, murder case from 1927 is reputed to be the inspiration for James M. Cain's works of crime fiction *The Postman Always Rings Twice* (1934) and *Double Indemnity* (first published in serialized form in 1936).

In the early hours of March 20, 1927, 32-year-old Ruth Snyder and her lover, Henry Judd Gray, brutally murdered her 42-year-old husband Albert, a quiet, unsuspecting magazine art editor, as he slept in the family home and as Snyder's 9-year-old daughter Lorraine was asleep in a room across the hall. Gray and Snyder bludgeoned Albert with a sash weight, strangled him using a picture wire tourniquet tightened with a metal pencil, and stuffed chloroform-soaked cloths into his nose and mouth. They then set about ransacking the house and removing items of value to stage the crime scene as a burglary gone wrong. As a finishing touch, Gray tied Ruth up, gagged her, and left her in the hallway where she would claim she had been attacked by two Italian thugs. However, Ruth Snyder's version of events aroused police suspicions from the start, particularly as there was no sign of forced entry to the house and the "stolen" jewelry and fur coat were found under a mattress.

Within days, Snyder had confessed, recanted, and then blamed Gray who admitted his involvement but accused Ruth of being the mastermind. The motive was money. Ruth had persuaded her husband to sign a double indemnity life insurance policy worth nearly \$50,000 shortly before the murder. The story of the greedy housewife, her corset salesman lover, and the murder of her

husband was a boon for the press. In the 1920s, growing chain newspapers were engaged in a war for increased circulation in which sensationalism and "human interest" stories were published, often at the expense of legitimate news. The tabloid *New York Daily News* was particularly adept at melodrama and the use of photographic features.

Despite protests from their attorneys, Snyder and Gray were prosecuted together and the eagerly anticipated trial began on April 18. Each defendant testified against the other. The trial testimony and proceedings were later reproduced by crime reporter John Kobler, but tabloid and broadsheet newspapers provided daily accounts. In attempting to establish the roles played by each defendant, press and public engaged in a wider gendered discourse about the boundaries of acceptable and disreputable female behavior, wifely loyalty, and respectable motherhood. The picture of Snyder that emerged from the testimony and in the context of the burgeoning field of psychology was of a predatory, sexually aggressive, and therefore abnormal woman who had dominated her cuckold husband. Gray's attorney, William J. Millard, used his summation on May 9, 1927, to characterize Snyder as "a poisonous snake" who had drawn Gray "into her glistening coils, and there was no escape" from her "all-consuming, all-absorbing sexual passion and animal lust, which seemingly was never satisfied." Snyder's attorney countered by describing Gray as a "human anaconda," but this had less impact.



The gravestone of Ruth Snyder (born Ruth Brown) in Woodlawn Cemetery in the Bronx, New York. Snyder and her accomplice murdered her husband and were executed in Sing Sing prison.

The all-male jury deliberated for one hour and 40 minutes before finding both Snyder and Gray guilty of first-degree murder with a sentence of death. Both New York Governor Alfred E. Smith and professional executioner Robert G. Elliott professed anxieties over the prospect of electrocuting a woman, but all appeals failed. Smith refused to grant clemency and Elliott without dissent presided over the third female electrocution in the state. Snyder and Judd were executed minutes apart at Sing Sing prison in upstate New York shortly after 11 P.M. on January 12, 1928. The moment of Snyder's electrocution was captured in an infamous photograph published in the *Daily News*. The image was taken by photographer Tom Howard, using a small camera strapped to his ankle and operated from his pocket.

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See Also: Executions; Murder, History of; New York City; Sing Sing Correctional Facility; Women Criminals, History of.

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Sodomy

Often referred to as "the infamous crime against nature" and "unmentionable crime," the term *sodomy* refers to an ecclesiastical sin that was codified into secular criminal law in the 16th century. What constitutes sodomy changes over time and reflects the social and cultural sexual mores of the particular time and place. The term *sodomy* has included

acts such as bestiality, masturbation, fellatio, cunilingus, and anal sex, as well as referencing sexual acts between both men and women and same-sex partners. In the United States, for example, it changed from a capital offense in the 18th century to a serious felony in the 19th century to an act equated with homosexuality in the 20th century.

Biblical Definition

In its earliest form, sodomy refers to a religious crime and is defined in biblical terms. The crime against nature was the sin of Sodom, the city whose citizens, in an inhospitable moment, assaulted an angel of God and were punished with fire and brimstone, as described in Genesis 19:24. In Leviticus, the third book of the Hebrew Bible that establishes laws, rituals, and codes of behavior, sodomy is described as a man lying with a male as with a woman, and it becomes an abomination to the Israelites punishable by death. Though Jesus never mentions the act, sodomy appears in the New Testament book Romans (1:27), described as a dishonorable passion, condemned by Paul, and punishable by death. Ancient civilizations, such as the Assyrians and the Romans, also adopted laws that banned or restricted homosexual acts.

English Common Law

By the 16th century, most Western nation-states adopted laws outside the biblical tradition. The Bible, however, remained influential on laws governing sexual activity, marriage and family, including sodomy laws. In 1533, King Henry VIII of England introduced the first legislation under English criminal law against sodomy. The Buggery Act of 1533 defined buggery as an "unnatural sexual act against the will of God and man," punishable by hanging. This law and penalty remained intact until 1861. Sodomy's meaning expanded after William Blackstone referred to it as "the infamous crime against nature" in his *Commentaries on the Laws of England*. Lawyers and citizens adopted this vague term, which allowed for some confusion in what constituted sodomy and led to a wide range of rulings.

American Laws

This history directly influenced the legal status of sodomy in the North American British colonies where sodomy, buggery, and bestiality carried



Although the U.S. Supreme Court declared that private, consensual sexual contact was protected by the Fourteenth Amendment's due process protections, sodomy can still be a contentious issue. Here anti-gay rights demonstrators and Christian proselytizers stage a protest during the Proposition 8 debate to recriminalize sodomy at San Francisco's City Hall in 2008.

the death penalty. John Winthrop, the founder of the Massachusetts Bay Colony, reacted to the execution of William Plaine for sodomy by defining sodomy not only as a crime against nature but also an act that threatened the stability of the core social institution of the colony and British society, marriage, and the family.

Throughout the 17th century, colonial governments executed five men. In 1778, Thomas Jefferson attempted to liberalize the sodomy laws in Virginia by authoring a law that would make sodomy punishable by castration. This revision of the Virginia law did not pass the legislature. By the 18th century, colonial governments no longer executed men for sodomitical acts but instead issued severe whippings, burning with a hot iron, or banishment.

Each colony and state adopted its own sodomy law. The state governments' purpose reflected Winthrop's, to protect sexual intercourse as a

procreative act to be practiced solely within the legal bonds of marriage. However, enforcement remained sporadic. In the 19th century, *homosexuality*, a term coined by Karoly Kertbeny in 1868, and masturbation fell under the ever-expanding definition of sodomy. After the Civil War in 1865, however, Americans increased their migratory patterns into the cities. Homosexuals, who had been more isolated in rural areas where there was little access to differing opinions on sodomy, found opportunities to form subcultures in urban areas, especially in the arena of intimate male friendships.

Enforcement of sodomy laws increased in the late 19th and early 20th centuries. Two main factors contributed to this increase in sodomy arrests in the nation's cities. First, cities such as Philadelphia and New York expanded their sodomy laws to include explicitly oral sex, with other cities following their lead. Second, urban areas

experienced a rise in anti-vice organizations. The most famous of these squads—a mixture of police and zealous middle-class citizens—were the New York Society for the Suppression of Vice, founded by Anthony Comstock in 1873, and the Committee of Fourteen, founded in 1904. These organizations and Comstock, in particular, not only accelerated arrests for sodomy, but also influenced cities to use laws such as vagrancy and morality laws against homosexuals.

Greater Tolerance

By the mid-20th century, sodomy was a felony in every state, with a long prison term or hard labor as punishment. In 1961, however, the Model Penal Code Commission, developed by the American Law Institute, recommended that states remove consensual sodomy from their criminal codes, while maintaining it as a crime to solicit or force sodomy. Illinois was the first state to adopt these recommendations, and by 2002, 36 states had repealed their sodomy laws or their courts had overturned them. State governments also received pressure to decriminalize sodomy from the gay rights movement and to depathologize homosexuality by the American Psychological Association in 1973.

In its 1986 *Bowers v. Hardwick* decision, however, the U.S. Supreme Court held that a right to privacy did not extend to private, consensual homosexual sex. Though states continued to dismantle their state sodomy laws, it was not until *Lawrence v. Texas* (2003) that the court reversed its ruling in *Bowers* and declared that private, consensual sexual contact was protected by the substantive component of the Fourteenth Amendment's due process protections.

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See Also: *Bowers v. Hardwick*; Gender and Criminal Law; *Lawrence v. Texas*.

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South Carolina

One of the original thirteen colonies, South Carolina was also the first to secede from the Union to found the Confederate States of America.

Police and Punishment

In South Carolina's early days, law enforcement duties fell primarily to the town watch and constables. Militias could also be raised by the colonial government when necessary. After statehood, many cities replaced their town watch with a city guard, with expanded duties. Modern police departments evolved out of the city guard and were reorganized during and after Reconstruction.

South Carolinians actively resisted the idea of building a state prison for a surprisingly long time, though it was first proposed in the 18th century. The opposition was predicated on the belief that the availability of a state-run facility, rather than the small-capacity county jails, would encourage judges and juries to issue longer sentences, and that this constituted an inhumane punishment. (Elsewhere, long prison sentences were opposed for the more pragmatic reason that they were a financial burden on the taxpayers who funded the prison; in South Carolina, the argument for humane discipline seems to have been sincere.) It was under a Reconstruction government, with many northerners and their allies serving in the General Assembly, that the legislature finally authorized the construction of a state prison in 1866. Construction was not completed until the 1880s, owing largely to the chaos of the Reconstruction period. Overcrowding quickly became a problem in the South Carolina Penitentiary, and convicts were leased to outside contractors in order to reduce crowding within the prison walls. Chain gangs were also in wide use, using prisoners with short sentences to work as road maintenance crews close to their hometowns.

South Carolina is a capital punishment state. Until 1912, executions by hanging were carried out by the counties. From 1912 to 1990, executions were carried out at the Central Correctional Institution in Columbia; in 1990, the state's death row and execution facilities were relocated to the Capital Punishment Facility in the Broad River Correctional Institution. By law, executions are seen by three media witnesses—one from print media, one from broadcast media, and one from the wire services (the Associated Press)—and up to three witnesses from the victim's family. In cases where there is more than one victim, the number of family members may be restricted because of space constraints. Executions are typically also witnessed by the solicitor or assistant solicitor and the chief law enforcement officer from the county where the murder occurred, a minister, and the inmate's lawyer. Since 1912, the electric chair has been used in executions (replacing hanging); since 1995, the inmate to be executed has been given the choice between the electric chair and lethal injection, a choice to be submitted in writing 14 days before the date of execution.

Since South Carolina began carrying out executions in Columbia in 1912, there have been 282

executions: two women and 280 men, 74 whites and 208 blacks. Before the redrafting of death penalty statutes following the Supreme Court's 1970s decisions, the death penalty could be used in rape and kidnapping cases in addition to murder cases. In 1976, South Carolina's attorney general found that the state's mandatory death penalty for specific circumstances was unconstitutional, and the legislature passed a new death penalty statute in 1977. The new statute has been upheld both by the state supreme court and by the U.S. Supreme Court, in *South Carolina v. Shaw*.

Crime

Racial tensions and racially motivated crimes have been a persistent problem in South Carolina. During Reconstruction, when the federal government imposed a new order on the defeated Confederacy, the Ku Klux Klan was founded in Tennessee as a vigilante group determined to expel Republicans, blacks, northerners, and their allies from the south. The Klan quickly spread through the former Confederate states. Its actions were often carefully orchestrated and politically motivated, and its political assassinations included three South Carolina legislators. When the Klan



Downtown Charleston, South Carolina, as seen from the Cooper River Bridge. The spires of St. Philips church (built in 1860) and St. Michael's church (built between 1751 and 1761) rise in the center. As one of the first states to secede to become the Confederate States of America, South Carolina has experienced persistent racial tension.

refused to dissolve after a federal grand jury determined it was were a terrorist organization, a series of acts empowered the federal government to enforce civil rights provisions. President Grant suspended the writ of habeas corpus and sent federal troops into the nine South Carolina counties where the Klan's presence was the strongest. Hundreds of Klansmen were fined or imprisoned following federal trials.

Following the Klan trials, the Klan declined in power and faded out. It was replaced by new white supremacist paramilitary groups in various parts of the south. In South Carolina, these groups were called the Red Shirts, named for the shirts they wore to identify themselves. Though the various Red Shirt groups shared a cause, there was no centralized organization. In South Carolina, many Red Shirts prominently supported Democratic candidate Wade Hampton in his 1876 and 1878 campaigns for governor and continued the Klan's work of acting as the Democratic Party's paramilitary wing. While the Klan had been secretive, though, the Red Shirts worked fairly openly and were even more politically minded, considering their actions carefully and directing them for maximum progress toward the goal of reestablishing white Democratic rule in South Carolina. They participated in parades and rallies throughout the state, broke up Republican meetings, barred blacks at the polls, and used violence freely. As many as 150 blacks were killed by Red Shirts in South Carolina alone. The Red Shirts are sometimes symbolically revived in the present day, having made an appearance in 2006 at the state capital to protest the observation of Martin Luther King Day.

After Reconstruction, South Carolina established a number of Jim Crow laws aimed to limit the power and rights of blacks, including the establishment of segregation in public places and a law against black guardians having control or custody of white children. New requirements were added for voting eligibility, as well, including an educational requirement and the "eight box law," which required that separate ballot boxes would exist for eight separate offices, and that in order to be counted, a ballot had to be inserted in the correct box—a way of requiring literacy of voters. Democrats also attempted to treat primaries as a private party in order to exclude blacks.

A new Klan, positioning itself as a fraternal organization but with all the violence and hatred of the original, was formed in Georgia in 1915 and again soon spread—not only through the south, but throughout the country. This Klan was dissolved in the World War II years as a result of back taxes. The Klan name was revived by numerous groups throughout the country from the 1950s to the present, none of them with any formal ties to either the first or second Klan. In South Carolina, the Klan's terrorist activities targeted the civil rights movement and activists seeking to end segregation.

South Carolina's crime rate (597.7 violent crimes per 100,000 inhabitants in 2010) is a fair bit higher than the national average (403), mostly because of a large number of aggravated assaults. The rate of aggravated assaults and burglaries has been steadily dropping, however, nearly halving since a 1994 peak, which had been reached after decades of increase. The rates of rape and murder have fallen to close to the national average.

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See Also: 1801 to 1850 Primary Documents; 1851 to 1900 Primary Documents; Civil Rights Laws; Ku Klux Klan; North Carolina.

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South Dakota

South Dakota was admitted to the union as a state in 1889, when the Dakota Territory was divided into North and South Dakota. Settlement of the area increased following the 1861 establishment of the Dakota Territory, assisted by the

1873 construction of a railway to Yankton and motivated in part by the discovery of gold in the Black Hills.

Police

Early South Dakota law enforcement was handled by federal marshals, private forces hired by business interests, and town officials. County sheriffs had jurisdiction over such large and sparsely populated areas that they were of little help to many small settlements. Constables were often elected officials, and the night watch—which doubled as a fire watch—was often filled by volunteers. In the late 19th and early 20th centuries, modern police departments began to form, staffed by professionals who were trained for the job.

The South Dakota State Penitentiary, built in 1881, began as a territorial prison. Built fairly early in the history of South Dakota settlement, relative to the history of prisons in other states, it was funded with federal appropriations. A number of other facilities were opened in the late 20th and early 21st centuries: the Mike Durfee State Prison, opened on the site of the defunct Springfield campus of the University of South Dakota in 1984 and named for the deputy director of corrections (a former student athlete); the Yankton Minimum Unit, a minimum-security all-male facility opened in the 1970s; the Rapid City Minimum Unit, a minimum-security all-male facility opened in 2004; and the South Dakota Women's Prison, opened in 1997.

Punishment

The town of Deadwood, infamous in Wild West history, was founded in the midst of the Black Hills gold rush. The lawless town was technically an illegal white settlement on Indian land, the whole area having been promised to the Sioux by treaty. The town grew rapidly, reaching a population of 5,000—considerably larger than its modern population—with a Chinatown of several hundred, a brisk opium trade controlled by saloon and brothel owner Al Swearengen, and multiple brothels and gambling dens. The first execution in South Dakota was that of Jack McCall, who killed gunslinger and former lawman Wild Bill Hickok for unknown reasons. Hickok was shot in the back of the head while playing poker, and the hand he held—two pair, aces and eights—has

been known as the “dead man’s hand” since, an old poker idiom that had previously referred to various hands.

McCall was tried in a Deadwood court and was acquitted; he fled Deadwood to escape lynching by a mob assembled by Hickok’s friend Calamity Jane. He made the mistake of bragging about killing Hickok while in Wyoming and was rearrested. Because Deadwood was an illegal settlement, a federal court in the Dakota Territory ruled that the court system there was not legally constituted and that, therefore, retrying McCall would not constitute double jeopardy. He was tried in the Dakota court, found guilty, and hanged on March 1, 1877, a few months after the initial crime.

South Dakota has retained capital punishment since, though it has rarely been used. Between the execution of Jack McCall and the 1972 Supreme Court case, *Furman v. Georgia*, which temporarily suspended death penalty statutes while they were being rewritten, 14 more men were executed. Unlike many jurisdictions, South Dakota has never executed a criminal for a crime other than murder.

Until 1915, hanging was always the method of execution; the death penalty was outlawed in 1915, but when it was reinstated in 1933, the electric chair was introduced as the method of execution. George Sitts, in 1947, was the only person executed in South Dakota by this method. Having escaped from prison while serving a life sentence for the murder of a liquor store clerk during a robbery, Sitts shot and killed Butte County Sheriff Dave Malcolm and Division of Criminal Investigation Special Agent Tom Matthews before being apprehended.

After *Furman*, a new death penalty statute was passed in 1979, defining capital murder—the only crime punishable by death in South Dakota—as first-degree murder with at least one aggravating circumstance (such as the murder of a police officer or a child, the murder of a witness, and other factors used in most states). Juveniles and the mentally unfit are exempted, and the sentence is decided by a jury that chooses between the death penalty (execution by lethal injection) and life without parole. Two men are on South Dakota’s death row as of 2011, and Elijah Page was executed for murder in 2007, the first post-*Furman* execution in the state.



The South Dakota State Penitentiary in Sioux Falls, South Dakota, as seen in 2010. The facility was built as a territorial prison and became the state penitentiary when South Dakota was granted statehood in 1889. A large part of the original buildings are still in operation but newer structures have been added. The state's only death row and execution facilities are located here.

Crime

One of the most famous incidents in South Dakota history is the second incident at Wounded Knee, at the Pine Ridge Indian Reservation, from February 27 to May 5, 1973. Tensions had been high between federal authorities and the Sioux reservation, which was run by tribal chairman Dick Wilson, whose opponents saw him as a corrupt dictator supported by his private militia.

The American Indian Movement (AIM) occupied Wounded Knee and demanded that Wilson be removed from office when he evaded impeachment hearings over technicalities. The federal government brought a significant military presence to attempt to force the AIM off the land, including armored personnel carriers, grenade launchers, helicopters, snipers, and .50-caliber machine guns. In the course of the conflict, two AIM activists were killed and a marshal was paralyzed. Charges against AIM leaders Russell Means and Dennis Banks were dismissed as a result of prosecutorial misconduct.

The South Dakota violent crime rate is considerably lower than the national average, at 268.5 violent crimes per 100,000 inhabitants, but has been rising steadily since 2001 (154.4) after fluctuating back and forth between 100 and 200 through the 1970s, 1980s, and 1990s. While the murder rate is low, the rate rape (47.9) is nearly double the national average of 27. Rape and murder both increased by more than 50 percent in 2008 and 2009 but have since returned to their 2006 levels.

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See Also: Death Row; Executions; Frontier Crime; Native Americans; North Dakota; Peltier, Leonard; Racism.

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Spillane, Mickey

Mickey Spillane is a well-known American writer of crime novels. He is best known for his Mike Hammer series of books and he wrote many other crime fiction works. Frank Morrison Spillane, better known as Mickey Spillane, was born on March 9, 1918, in Brooklyn, New York. He was raised in Elizabeth, New Jersey, and attended Erasmus Hall High School, graduating in 1936. After graduating from high school, Spillane briefly attended Kansas State Teachers College at Fort Hays on a football scholarship.

During the Great Depression, he traveled around and held various odd jobs, including summer lifeguarding at Breezy Point, in Queens, Long Island. The day after Pearl Harbor was attacked, Spillane enlisted in the U.S. military; he served in the U.S. Army Air Corps during World War II, becoming a fighter pilot and training air cadets. After the war, he was briefly with the Barnum and Bailey Circus, working as a trampoline artist and knife thrower. Spillane is also reputed to have worked briefly as an undercover operative with the Federal Bureau of Investigation (FBI) to break a narcotics trafficking ring.

Mickey Spillane had three wives. He married his first wife, Mary Ann Pearce, in 1945; they had two sons and two daughters and were divorced in 1962. He married his second wife, Sherri Malinou, a model and nightclub singer, in 1965; they were divorced in 1983. He married Jane Rodgers Johnson, his third wife, in 1983. Mickey Spillane had a long career as a professional writer. At the age of 14, he began professional writing, publishing pieces in the *Elizabeth Daily Journal*. In 1935, he began submitting articles to illustrated magazines. In the 1940s, Spillane wrote for assorted comic books, such as *Batman*, *Captain America*, *Captain Marvel*,

and *Superman*. In 1947, he published his first novel, *I, the Jury*, reportedly written in nine days because he needed money to purchase land to build a house for his growing family.

Mickey Spillane's signature character was Mike Hammer, a tough private investigator (P.I.) who reflected the prevailing values of Americans during the cold war. The Mike Hammer series and similar pulp fiction was created for the generation of American men who had served in World War II. These inexpensive paperback books, many of which were crime related and usually sported lurid cover art, revolutionized American reading habits. Mike Hammer was created as a crime-fighting figure who was not afraid to use his two big fists or his .45 handgun, the same gun that had been issued as the service pistol to World War II American infantrymen. Mike Hammer was portrayed as an ardent foe of "Commies" or "Reds"; this character served as a red-blooded opponent to cold war-era enemies, real or imagined, who might try to use subversive tactics to weaken the freedom-loving United States. Mike Hammer did not hesitate to resort to violence, nor did he shy away from sexual encounters. These steamy, violent plots were widely popular with his many avid readers. In fact, more than 225 million copies of his books have been sold internationally.

There were two significant gaps in Spillane's writing career. The first gap began in 1952 after both the release of the sixth novel in his Mike Hammer series, *Kiss Me, Deadly*, and after his conversion to a Jehovah's Witness. His next novel, *The Deep*, another in the Mike Hammer series, was first published in 1961. He published 12 other novels between 1962 and 1973, including five additional Mike Hammer works and four in his new Tiger Mann series. Tiger Mann, a secret agent, was introduced in 1964 with *Day of the Guns*. Spillane then wrote two acclaimed young adult books, *The Day The Sea Rolled Back*, which came out in 1979, and *The Ship That Never Was*, released in 1982. However, there was another hiatus in his crime novel writing that was broken in 1989 with another installment in the Mike Hammer series, *The Killing Man*, which was followed by a few other crime fiction works. In 1995, he received the Edgar Allan Poe Grand Master Award. Mickey

Spillane died of pancreatic cancer on July 17, 2006, in Murrells Inlet, South Carolina, at the age of 88. In 2008, the 13th novel of his Mike Hammer series, *The Goliath Bone*, was completed by Max Allan Collins, Mickey Spillane's literary executor.

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See Also: Dime Novels, Pulps, Thrillers; Literature and Theater, Crime in.

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St. Louis, Missouri

In 2010, *US News and World Report* rated St. Louis to once again be the most dangerous city in America—beating out competitors Detroit, New Orleans, Camden, and Oakland. When considering property crimes, such as vehicle theft and burglary, along with violent crimes, such as robbery, rape, and murder, St. Louis ended up with a crime risk index of 530 based on Federal Bureau of Investigation (FBI) crime data from 2003 to 2009. A crime score of 100 indicates equivalence with the national average. While major crimes are down from recent years, there is still an uneasy feeling for many involved in the city's police force and politics. Officials regularly choose to criticize the rankings of their city, saying that they do not accurately provide data since each city reports data in its own way. As a result, St. Louis could simply be victim to its willingness to report all crimes that occur within the city, county, and surrounding areas.

The criminal history of St. Louis is vast. As early as the mid-1890s, a mafia presence had been established. By 1910, Dominick Giambrone

was recognized as the Mafia boss. Throughout Prohibition, Mafia violence dominated the area as seven rival ethnic gangs fought for control of the city. By the time Prohibition was over, the families had come together to work as one cohesive unit as much as possible. Anthony Giordano became St. Louis boss and moved for independence from Kansas City. In 1982, Matthew Trupiano became the new leader of the St. Louis family. A powerful boss, he was a union leader, but would ultimately be convicted of illegal gambling and labor racketeering. Today, there is no known boss of the St. Louis family because the group aims to lie low with regards to state and federal authorities.

Beyond the Mafia influence, St. Louis has suffered from rapid urban growth and decline. Due to its river position, St. Louis was home to significant industrialization and urbanization. With this growth came more citizens and more potential for conflict. The city helped refine uranium to be used in the first atomic bomb, but at the same time, was crippled by severe air pollution as a result of the coal-fired furnaces that were so popular to heat homes throughout the region.

As with the rest of the country, as the economy declined and local manufacturing plants closed their doors, people became unemployed and violence rose sharply. Throughout the 1960s, 1970s, and 1980s, crime rates soared and the city gained its reputation for being a dangerous city—especially East St. Louis. East St. Louis has one of the most violent criminal histories in the country. In 2007, it had a murder rate of 101.9 per 100,000. For comparison's sake, St. Louis rate was 37.2, New Orleans was 37.6, and Detroit was 47.3. Perhaps even more shockingly, the city's rape rate was over 250 per 100,000 in the population.

In 2010, crimes statistics showed a 9.2 percent decline from 2009, marking the lowest overall crime rate for the city since 1967. Scholars have argued over the possible causes. Some have argued that the decline in St. Louis has little to do with crime prevention, but instead merely reflects a drastic decrease in population figures for the city. Consider that in 1970, St. Louis had almost 625,000 citizens, while in 2009, the city had barely over 350,000. Along with population decreases, there is also the unemployment

issue. Normally we have witnessed spikes in criminal activity when unemployment increases, yet that has not been the case for St. Louis in the current recession. Some have argued that the decreased popularity of crack cocaine has led to fewer drug-related offenses. While prescription drug abuse and meth have become more prevalent, these drugs are not associated with violent crime like their predecessors. Some policymakers refuse to believe the statistics. As with most cases, individuals that have experienced some type of crime firsthand, in recent memory, will be more skeptical. Many individuals believe that crime is cyclical and that St. Louis is merely hitting a low point from which crime rates will once again continue to rise.

In 2010, the homicide victims were typically African American males between 17 and 40 years old. A vast majority had prior felony arrests and drugs or alcohol in their system. As many would expect in modern St. Louis, around 20 percent were believed to be affiliated with gangs. The St. Louis police have made concentrated efforts to educate citizens—especially at-risk youths—about the crime problem and potential dangers. At the same time, however, high-ranking police officials have regularly explained that they are policemen, not teachers. In an era of budget cuts across the board, there will be less police on patrol, fewer resources available to investigate crimes, and perhaps most importantly, less time for officers to continue working with the youth of St. Louis in an effort to curtail the cycle of violence that is clearly at play in the city.

St. Louis is a city with a deep criminal history. From the Mafia to extreme race wars, the city has long been regarded as violent and dangerous. While the numbers seem to rise and fall annually, St. Louis regularly measures as an area that citizens may rightfully not feel safe at all times. Into the 21st century, the question now becomes what the city can do to start curbing the vicious cycle and its past. Given how drastically different crime rates are in St. Louis (and especially East St. Louis) from state and national averages, the one thing we can clearly see is that this is a city in desperate need of help.

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See Also: Crime Prevention; Crime Rates; Urban Police; Urbanization.

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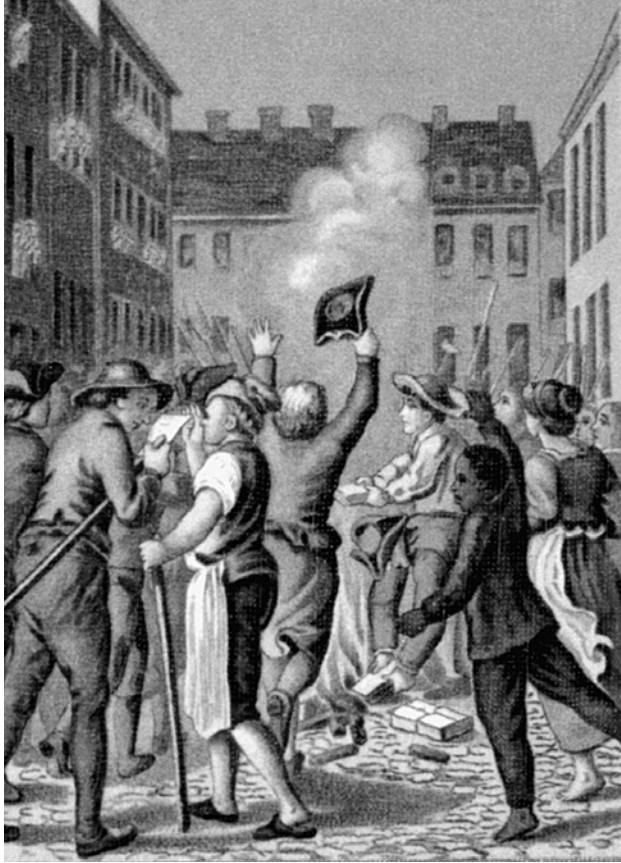
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Stamp Act of 1765

After the French-Indian War in 1763, Parliament sought to regain some of its losses from the colonists. Continual warfare, with Native Americans and other countries attempting to usurp British control, left the Crown £123 million in debt. The colonists engaged in warfare 50 percent of the time from 1690 to 1763. George Grenville established his taxation program to counter this growing debt and to make continual defense of the colonies feasible. The three main taxes of his program were the Revenue Act of 1764 (Sugar Act), Currency Act, and Stamp Act. The Stamp Act proved the most controversial because Parliament had never before levied a domestic tax on the colonists. The Stamp Act, seeking to raise defense funds, placed a tax on all paper goods, to be paid in sterling. Local stamp collectors kept 8 percent of the takings. Those hardest hit by this tax were merchants, lawyers, and editors.

The colonists instantly opposed the new tax, with their primary justification stemming from the argument that they paid taxes to their local governments via elected assemblies. Others opposed to the program argued that postwar depression left the colonists short on cash, with inflation growing and customs reforms and currency limits reducing the flow of money into the colonies. The colonists created the Stamp Act Congress to discuss these issues. The Stamp Act Congress set the path for key constitutional issues that later arose in the framing of the national government.

Patrick Henry led the Virginia Assembly in creating its strong statement against the Stamp Act. The six points of this statement proclaimed



The British Stamp Act of 1765, the first direct tax on the American colonies, caused outrage and dissent. Colonists protest by burning Stamp Act papers in Boston.

that (1) Virginians were British citizens, (2) they enjoyed the same liberties as British citizens, (3) self-taxation was a right, (4) they taxed themselves via their own representatives, (5) they denied taxes originating outside the colonies, and (6) anyone who disagreed with these points of order was an enemy of Virginia. Henry used the Virginia Assembly's points as a guide for the Stamp Act Congress, and it proclaimed the same points except it stated that all colonists were British citizens, denied taxes originating outside the colonies, and the final point that those who disagreed were enemies was omitted. The Stamp Act Congress did not use the word *enemy* in its proclamation because, in 1765, the colonists were not ready or even talking about separating themselves from the Crown. The Congress also grappled with the debate on what to do about the Stamp Act: boycott British goods, defy the law and do

business without stamps only to face jail or fines, or destroy goods and prevent delivery.

The decision of what to do about the Stamp Act quickly unfolded as the Sons of Liberty and other vigilante groups used mob violence and forceful coercion to prevent the tax from being collected throughout New England. In August 1765, Samuel Adams, leader of the Sons of Liberty, led street demonstrations in Boston. One of these involved an effigy of tax-collector Andrew Oliver. Oliver resigned his post the next day after crowds burned the effigy and officials took no action to appease the public. Twelve days of rioting followed, as the act was to go into effect on November 1.

The growing violence caused the Stamp Act Congress, in October 1765, to declare a boycott of British goods. Local community groups and social networks encouraged and forced the colonists to adhere for fear of social shame. The Crown repealed the Stamp Act in March 1766, but it responded with the Declaratory Act. The Declaratory Act said that Parliament could tax the colonies in any way it deemed fit, and the Crown used this act as a countermeasure to the claim that it could not tax the colonies. Both parties asserted their rights, but the Crown's repeal of the act did little to quell the colonial uprisings. Democratic ideas would flourish throughout the colonies, directly leading to the American Revolution.

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See Also: American Revolution and Criminal Justice; Tax Crimes; Tea Act of 1773.

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Standard Oil Co. of New Jersey v. United States

Standard Oil Co. of New Jersey v. United States was a 1911 Supreme Court case in which the court held that the Anti-Trust Law of 1890 prohibited all contracts or combinations that constituted an “unreasonable” or “undue” restraint of trade in interstate commerce. Here, the court upheld the decision of the Circuit Court of the United States for the Eastern District of Missouri and found Standard Oil guilty of monopolizing the petroleum industry through a series of anti-competitive actions. The court’s remedy was to divide Standard Oil into several competing firms.

The federal government brought an action against Standard Oil under the Sherman Anti-Trust Act. The Sherman Act, sponsored by Republican Senator John Sherman of Ohio, made it illegal to establish or attempt to establish monopolies as part of trade or commerce in the United States. It also prohibited “contracts, combinations, or conspiracies in restraint of trade.”

Background

By 1906, when the Justice Department initiated the litigation, Standard Oil had become the dominant oil company in the United States, controlling more than 80 percent of the country’s oil production. For products for which they controlled the market, such as kerosene, the company charged exorbitant prices. In cases where they faced competition, the Standard Oil Trust was known to cut its prices to the point where it could drive its competitors out of business or force them to sell out. The company was also known to buy up all the materials needed to make oil barrels, making it difficult for competitors to get their products to the market. When all else failed, it was alleged that Standard Oil hired criminals to physically threaten competitors to drive them out of business.

The company’s tactics were brought to light by Ida M. Tarbell, who wrote a series of articles that appeared in *McClure’s* magazine between November 1902 and October 1904. Tarbell wrote about the unethical tactics of John D. Rockefeller and the company as it came to dominate the industry. Writing of Rockefeller, Tarbell asserted, “Our national life is on every side distinctly poorer, uglier, meaner,

for the kind of influence he exercises.” Tarbell’s 19 articles were then published in book form as *The History of the Standard Oil Company* (1904). In response to the public outcry, the Federal Commissioner of Corporations began an investigation into Standard Oil. The commissioner’s report, released in 1906, found that “the dominant position of the Standard Oil Company in the refining industry was due to unfair practices.”

The U.S. Department of Justice, at President Theodore Roosevelt’s direction, sued Standard Oil under the Sherman Anti-Trust Act of 1890, charging the company with engaging in anti-competitive practices that resulted in restraint of trade. The government alleged that a conspiracy had “been formed in or about the year 1870 by three of the individual defendants: John D. Rockefeller, William Rockefeller, and Henry M. Flagler,” and that this conspiracy had continued. The purpose of this conspiracy was “to restrain the trade and commerce in petroleum, commonly called ‘crude oil,’ in refined oil, and in the other products of petroleum, among the several States and Territories of the United States and the District of Columbia and with foreign nations, and to monopolize the said commerce.”

On June 24, 1907, Judge Franklin Ferriss was appointed special examiner to take the evidence in the case, and his report was filed March 22, 1909. The case was then heard from April 5 to 10, 1909, by four judges on the Circuit Court of the United States for the Eastern District of Missouri. The federal government’s case was argued by special prosecutor Frank Kellogg. The circuit court decided for the government, although it did dismiss a number of charges made by the Justice Department because the violations had taken place before the passage of the Sherman Act.

The court found that “the combining of the stocks of various companies in the hands of the Standard Oil Company of New Jersey in 1899 constituted a combination in restraint of trade and also an attempt to monopolize and a monopolization under § 2 of the Anti-Trust Act.”

Supreme Court Ruling

Standard Oil appealed to the U.S. Supreme Court, arguing that Congress lacked the authority to enact such legislation under the commerce clause. In making this argument, Standard Oil’s attorneys

(who included John G. Johnson, described by the *New York Times* in 1917 as “the greatest lawyer in the English-speaking world”), cited the court’s decision in *United States v. E. C. Knight*, an 1895 case in which the court held that sugar refining was a form of manufacturing and that manufacturing was a “local activity” that was beyond the reach of congressional power under the commerce clause of the U.S. Constitution. In that case, Chief Justice Melville Fuller wrote, in the majority opinion, “That which belongs to commerce is within the jurisdiction of the United States, but that which does not belong to commerce is within the jurisdiction of the police power of the State.” While acknowledging that manufactured goods often cross state lines, he concluded that their affect on commerce is “only incidentally and indirectly,” placing such goods beyond congressional regulatory authority.

The government’s case was argued before the Supreme Court by Attorney General George W. Wickersham and Special Prosecutor Kellogg. They contended that Congress had the constitutional authority under the commerce clause to enact the Sherman Act. The case was initially argued before the Supreme Court March 14–16, 1910. On April 11, 1910, the court ordered that the case be reargued, and the case was again before the court on January 12, 13, and 16, 1911.



Ida M. Tarbell, author, journalist, and “muckraker,” exposed John D. Rockefeller’s business practices in a series of articles published in McClure’s magazine between 1902 and 1904.

On May 15, 1911, the court upheld the lower court’s decision, declaring the Standard Oil Company to be an “unreasonable” monopoly under the Sherman Anti-Trust Act. It ordered breakup of Standard Oil into 34 independent companies with different boards of directors.

In this decision, the court articulated the “rule of reason” as the basis for whether a company has violated the antitrust law. What this meant is that monopolies were not necessarily in violation of the Sherman Act but would be found to have violated the law if they “unreasonably” restrained trade. In the case of Standard Oil, the court concluded that the actions of the company, dating back to the 1880s, constituted unreasonable restraint of trade.

Justice John Marshall Harlan wrote a separate opinion concurring in the result but dissenting from the court’s adoption of the rule of reason. He argued that the decision was a departure from prior precedents holding that the Sherman Act banned any contract that restrained trade “directly.”

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See Also: Antitrust Law; Constitution of the United States of America; Supreme Court, U.S.

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State Blue Laws

Blue laws, also known as Sunday closing laws, or simply Sunday laws, were originally established to set aside a day to celebrate or honor particular

God(s) where no government business or private labor was conducted. This practice began with the Roman observance of a day of worship to the sun god and carried over into the Christian faith as an observation of the Sabbath. British colonists brought the practice to the Americas, where it became a lynchpin in the growing American culture. Over time, both businesses and citizens have approached the courts over the legality of blue laws in such areas as their religious validity, workers' rights, and economic feasibility. Changing cultural expectations in the late 20th century have resulted in the repeal of many state blue laws.

The origin of the term *blue laws* is obscured by time and is thought to have been a reference to the blue parchment or blue books the laws were printed on during the early Puritan times. Another possibility is that the term referred to the strict moral standards, meant either descriptively or disparagingly, much in the way that the slang term *bluenose* used to describe someone puritanical or prudish. In either case, the first known written reference of this particular term surfaced in the 1781 *General History of Connecticut* authored by Reverend Samuel Peters.

Historical Context

Historically, blue laws or Sunday laws were not a product of Christianity but were pagan in origin. The Roman Emperor Constantine, with the pronouncement of the Edict of Milan in 313 C.E., gave equal opportunity to many religions, including Christianity. As Sunday was already the designated day of worship, this began Christianity's Sunday observance of the Sabbath.

Blue laws have their roots in the observance of "the Venerable Day of the Sun." Worshipping of the sun was prevalent during this time as the Roman Emperor Constantine was personally inclined to favor Apollo, the sun god (he later converted to Christianity). Sunday was the day set aside for rest from all judicial business as well as trade, excepting for those in agriculture as needed to tend fields or perform tasks needed for immediate health and welfare. This observance was more political than ecumenical and was an attempt to unify the empire to include various religious proclivities. No mention of "the Sabbath," "The Lord's Day," or the Fourth Commandment was made in this edict.

It wasn't until 386 C.E. (when Christianity was becoming more integrated into the politics of the day) that the term *The Lord's Day* was used in an edict set forth by Gratianus, Valentinianus, and Theodosius in which "the Lord's Day" was pronounced as the proper title for the day of the sun. These edicts limited business and labor on this day, and as Christianity gained more power, the laws also came to forbid participation in the theater, horse races, gaming, and other recreational activities.

Sunday laws became more and more specifically Christian in context and design. They required all followers to attend services and denied activities to "heathens" that might result in undesirable behavior (drunkenness and other works of the devil). This also removed temptation for otherwise devout Christians. Sunday laws prevailed throughout Christian Europe. Upon arrival in America, the early colonists fashioned their legal guidelines on the 29th Parliament of King Charles II, who, in 1676, compelled each person over the age of 14 to refrain from all acts on Sunday unless they were works of necessity or charity. Each transgression resulted in a fine of 5 shillings.

Colonial Blue Laws

Many of the original colonists left Europe to seek freedom to practice their own religion; this religious ideology became the legal authority for the New World. Church attendance and worship were compulsory. In order to limit temptation to stray from the word of God or hinder the observance of the Sabbath, colonists were "encouraged" by legal mandates to adhere to stringent religious standards. There was little tolerance for any disobedience. As early as 1610, records show that Virginia required its citizens to attend worship service or suffer a loss of provisions for the first offense, whipping and loss of provisions for the second offense, and the possibility of death for the third offense.

The Puritan settlement at Plymouth strictly observed the sanctity of the Sabbath. In 1650, following the lead of the settlers in Virginia, the General Court forbade the colonists in Plymouth to engage in work on the Sabbath—failure to comply with the decree resulted in a 10-shilling fine or a whipping. Later Plymouth records show a continued refinement of this edict to the

extreme. Unnecessary travel on Sunday, gaming or hunting, all manner of labor or sport, and the consumption of alcohol were forbidden. Punishment for any infraction mirrored the perceived severity of the indiscretion ranging from fines, whipping, and confinement in the public stocks to death in extreme cases.

In 1662, the Sunday Excise Law was passed, by which the courts mandated that no wine or liquor could be dispensed on Sunday unless needed to relieve the infirm. Over time, each of the colonies enacted its own versions of the Sunday laws that later would become known simply as “blue laws.” All sought to uphold the sanctity of the Sabbath by restricting unnecessary travel, smoking, drinking, gaming or sporting, all manner of labor and, in 1665, expanded the restraints to include people caught sleeping in church. Even Native Americans living within the confines of the colonies did not escape these pious proclamations, as they were prohibited from hunting, playing, or working within the colony grounds. Those found in violation of the law suffered the same fate as the nonobservant colonists.

As the legal apparatus of each of the colonies grew stronger and more structured, the colonists appointed certain men (tithes men) to monitor and enforce the laws and to collect fines for non-compliance on behalf of the towns (church). These men had the authority to search homes where they suspected people were negligent in their devotion and to report their blasphemy to the courts. No one was above the Sunday law edict; even George Washington suffered the ignominious fate of being stopped for unlawful travel on the Sabbath. As the colonies expanded and the reach of the physical church grew strained and people became more involved in life outside the church, they became less enthusiastic about observing the strict Sunday law restrictions. Ecclesiastical groups called for more severe punishments, and the people empowered to enforce the morality implicit in the Sunday laws were given more authority and power to ensure compliance. With greater concern for the survival of the Sunday laws, restrictions increased to the point that children could not play in the streets, funerals were prohibited, and no activity on land or at sea was tolerated. Connecticut enforced the law to such an extent that criminal activity conducted on Sunday resulted in greater

punishment; for example, a burglary committed on the Sabbath resulted in the additional punishment of having one’s ear cut off.

Evolution of Blue Laws

Rapid urban growth, industrialization, and an increasing immigrant population paralleled an equally rapid rise in crime. Gambling, prostitution, and alcohol were seen as major contributors to the problem. Still, blue laws were not popular with many citizens, were ignored by others, and, coupled with the often meager and untrained police force, resulted in less than diligent enforcement. This presented many opportunities for corruption, especially in the larger, crowded cities where the enforcers could be enticed to “turn a blind eye” to violators. Many of the immigrants concentrated in the larger cities like New York, Boston, and Chicago profited from the saloon, tavern, and brewery business. It didn’t help that Sunday was generally the only leisure day for workers, and that the German and Irish cultures promoted the leisurely consumption of alcohol, which often led to noisy celebratory public displays. When police cracked down on enforcing mandatory Sunday tavern closings, many saw this as discriminatory toward the immigrants, and riots ensued. In New York City, riots lasted for three days when taverns in the Little Germany area were pressed into Sunday closings. April 1855 saw Chicago’s Lager Beer Riots, which left one dead and many arrested. Similar riots played out in Davenport, Iowa, and Boston, Massachusetts, as German and Irish immigrants tested out their newfound American right to protest.

It wasn’t until the late 1800s, more than 200 years after the Puritans, that the first legal complaint about the constitutionality of blue laws appeared before the Supreme Court. In 1885, the Supreme Court ruled on the case of *Soon Hing v. Crowley*, a Chinese public laundry owner arrested for operating his business on Sunday. In response to part of the complaint, the court ruled that the Sunday laws would be upheld, not for any governmental preference to any particular religious observance, but because the laws were essentially good for the laborer. In 1898, the Ohio Supreme Court, in *State v. Powell*, upheld the state’s right to prohibit baseball games on Sundays, saying the ban did not violate religious freedom.

Baseball, the all-American pastime, continued to be a blue laws issue as baseball leagues continually appealed the Sunday ban through the early 20th century. In 1917, the managers of the New York Giants and the Cincinnati Reds suffered arrest for staging a game on Sunday in direct violation of the blue laws ban. Because of increasing pressure from the community and business leaders, the New York State legislature lifted the ban on Sunday games but prohibited alcohol sales. This concession illustrated a shift in legal support for enforcing the long-standing blue laws. As consumerism became more a way of life, citizens and businesses largely ignored the blue laws. Even those charged with enforcing the restrictions tended to ignore any indiscretions unless a complaint was registered. Because the Sunday laws resided in the legal realm of the individual states, legal restrictions varied drastically from state to state.

In the late 20th century, four major cases came before the U.S. Supreme Court in 1961, testing the legality of Sunday laws. The most significant of these cases, *McGowan v. Maryland*, received a Supreme Court decision on May 29, 1961. Several employees of a large department store in Anne Arundel County, Maryland, were charged and fined for selling nonexempt items on a Sunday. This violated the county statute that allowed the sale of tobacco, foodstuffs, newspapers, gasoline, and medicines. The complaint was filed based on the establishment clause of the First Amendment and the equal protection and due process clauses of the Fourteenth Amendment, arguing that the law required all persons to comply with specific (Christian) beliefs. Chief Justice Earl Warren stated that even though the laws originally complied with religious doctrine, they have historically become more secular in observance. Acknowledging the secular argument that the laws provided the working people with a day of rest, without which they could be compelled to work with no break, he went on to say the restrictions violated no one's freedom of religion, and the only harm caused was economic in nature.

The second case, *Two Guys From Harrison v. McGinley* (decided May 29, 1961), brought to the courts by a retail establishment in Pennsylvania, claimed discriminatory enforcement of the blue laws as the government's endorsement of a particular religion and as a discriminatory practice. The



A cartoon in a left-wing journal *Good Morning*, possibly meant to satirize blue laws that prohibited all labor and business activities on the Christian Sabbath, reads "Hey, take your arm down, don't you know this is Sunday?"

court upheld its previous decision, stating that the restrictions did not violate religious freedom, and that since the statutes were no longer considered religious in intent, the argument was moot for the establishment of government endorsement of a particular religion.

The Supreme Court went on to provide decisions in two cases filed by Jewish merchants. A group within the Orthodox Jewish faith that included stockholders from the Crown Kasher Super Market, several customers, and a rabbi filed the case *Gallagher v. Crown Kasher Super Market*. Their argument centered on the fact that their religious faith did not allow shopping on the Sabbath (the Jewish Sabbath began on Friday at sundown and lasted until sundown on Saturday). Furthermore, their religion required a diet of kosher foods, and they were only allowed to remain open until 10 A.M. on Sunday. Crown contended that this was not economically feasible and that prior to enforcement of the Sunday closing laws, they had taken in a third of their weekly profits on Sunday alone. They contended that

the preponderance of exceptions to Massachusetts' Sunday closing laws, especially those that did not necessarily come under the necessity or charity clauses (these exemptions covered a number of professional sporting events, dancing and concerts of a religious nature, and the sale of deserts and live bait, as well as a number of other business ventures), provided adequate precedent to allow their business to remain open on Sunday to provide kosher food products to their Jewish clientele. Once more, Justice Warren upheld the states' rights, stating that these laws were not in violation of the equal protection clause.

The second case brought before the Supreme Court by Jewish merchants was *Braunfeld v. Brown*. These Orthodox Jewish merchants argued that forcing them to comply with the Sunday closing laws, which required them to close on the day after their Sabbath, unfairly discriminated against their religious faith in favor of their Christian counterparts. The court again pointed out that the purpose of the Sunday closing restrictions was to provide a day of rest for all citizens and felt this intent outweighed any religious injury. Since the blue laws allowed Sunday sales of "necessary" items, a number of state legislatures provided questionable legal interpretations when providing exemptions. Most state blue laws prohibited alcohol sales in general on Sundays, but exceptions could be and were made for New Year's Eve and New Year's Day when the holidays fell on a Sunday. Additionally, while one could not purchase alcohol in an establishment specifically designed for alcohol consumption, alcoholic beverages could accompany a meal in a restaurant. Massachusetts restricted dancing on Sundays, but allowed exemptions for folk and square dancing. Pennsylvania prohibited hunting except for foxes, crows, and coyotes. Virginia also banned Sunday hunting yet made exemptions for hunting raccoons until 2 A.M.

Today, most states have repealed their blue laws as they pertain to retail sales for economic and convenience reasons, and all but 14 states allow Sunday alcohol sales. In addition to alcohol restrictions, some states still ban automobile sales on Sunday, as well as hunting for sport. The punishment for blue law violations are usually small fines, with minimal jail time for more egregious violations. Because of the number of exemptions granted in the past and changing cultural attitudes,

a multitude of complaints is normally required for enforcement of current blue laws.

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See Also: 1941 to 1960 Primary Documents; Drinking and Crime; Puritans; Religion and Crime, History of.

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State Police

When one uses the term *state police* in reference to the United States, the meaning may fall into one of three general categories. These generalized meanings are directly related to the history of the development and functionality of police agencies with statewide authority. The term *state police* may encompass agencies formally named "State Police," agencies that are identified as the primary police force in a state, and agencies that are not the primary police force in a state but nonetheless hold statewide law enforcement jurisdiction.

Formal State Police Units

In the early days of the United States, policing was left to the local jurisdictions, and there were no agencies with statewide police authority. Arguably, one could say that the local officers had the authority to pursue criminals out of their original jurisdiction, but the officers had no authority to patrol outside of their local jurisdiction.

There is great debate over the issue of which agency was the first state police. The Texas Rangers, today a unit of the Texas Department of Public Safety, make the claim on the basis that Stephen F. Austin created the force in 1823, while serving as empresario of the Mexican province of Tejas. There are issues that make the claim weak:

Texas did not attain statehood until 1845; the Texas Rangers largely acted in the role of militia until the Civil War, then lacked funding and support until 1874; it wasn't until the early 1900s that the Texas Rangers began to function as a true law enforcement agency; as in many states, the institution of national Prohibition helped to define the force.

Massachusetts State Police also claim to be the first, identifying 1865 as their founding. This claim also has weaknesses: The agency that was created was known as the State Constabulary and had limited authority, serving mostly in an investigative capacity; this first group went through name changes and worked in relative obscurity until it disappeared completely; the term *state police patrol* was not used by Massachusetts until 1921.

An excellent argument can be made that Pennsylvania State Police have the honor of being the first recognizable state police, if that definition includes a uniformed police with statewide jurisdiction. Founded in 1905, its task was broad in scope, from protecting wildlife to patrolling rural areas, and it became a model for other states in developing their own forces.

Another argument could be made for a state police agency with a short operational span, again in Texas. In 1870, during Reconstruction, the Texas legislature created the Texas State Police, specifically to combat a statewide crime spree. Its creation was innovative in that it was based on the outcome of a crime survey; it actually used the term *state police*; and it employed white, Hispanic, and African American men. The force was unpopular and was dissolved in 1873, largely because of its employment of African Americans. There have been competing claims for and against the work this agency did, but more recent research shows that it was effective in reducing crime in Texas. The state has never assigned the formal name of Texas State Police again.

Only 22 states have an agency with the formal name of "State Police." Of the 27 states east of the Mississippi River, 16 use the formal name of State Police. Only five of those west of the Mississippi River use this as the formal name. Hawai'i is the only state that does not have a state police agency with general authority. Reviewing the history of the agencies reveals that some were created in response to specific criminal activity.

As examples, the Pennsylvania State Police was created in response to the violence of a coal miner strike; the New York State Police was created in response to the murder of a sheriff and the subsequent disorganized manhunt for his killer; and the institution of national Prohibition contributed to the beginning, or reorganization, of many agencies.

The vast majority of those agencies formally known as State Police have evolved from pre-existing forces. This conflicts with the common misconception that agencies with the formal name State Police have more authority, or were established earlier than those using other names. Many evolved from agencies created to combat crime, such as the Arkansas State Police, established in 1939, which evolved from the Arkansas Rangers, which was established in 1935; the Delaware State Police, established in 1923, replaced the Highway Traffic Police, established to patrol highways in 1919; and the Kentucky State Police, established in 1948, replaced the Kentucky Highway Patrol, which had been created in 1936.

Primary State Police Agencies

Of the 49 states with agencies having general police authority statewide, but not using the formal name State Police, 19 have the formal name Highway Patrol, and seven use State Patrol; Alaska uses State Troopers. The 49 primary state police agencies commonly use the term *state trooper* to identify their officers, although some use *highway patrolman*.

Using the founding of the Pennsylvania State Police as a benchmark for the first modern state police agency, and recognizing the Alaska State Police as the most recent addition in 1959, we can reasonably observe that the modern primary state police agency developed and spread in a period of only 54 years. As a note, the Alaska State Police underwent a name change in 1967 to become the only state police agency with the official name State Troopers.

Entry-level training within these agencies generally occurs in a formal academy operated by the specific agency. The academies are typically paramilitary and instill in trainees high ideals and standards of conduct. These agencies have typically led advanced in-service training programs and in most states are highly regarded for their professionalism.

Many of the agencies are still evolving, having other specialized state enforcement agencies merged into their organizations. The catalyst for these mergers is usually an attempt to increase professionalization across the spectrum, centralize operations, and save costs. An excellent example is the 1991 Massachusetts Police Consolidation Act, which merged the state police with the metropolitan police, registry police, and Capitol police. Sometimes a merger is initiated to increase the number of troopers without increasing the number of officers employed by the state, which is addressed in the next category.

Becoming a trooper in one of the agencies was once viewed as entering a stable work environment. In recent years, in large part because of taxpayer demands for tighter budgets and the weak economy, some state police agencies have witnessed a reduction of positions. As an example, according to a press release from the Oregon

State Police, the agency witnessed a reduction between 1995 and 2008 of more than 30 percent. This situation is aggravated by the fact that for the past two decades, the growth of these agencies has fallen behind that of the general population.

Many of these agencies complain that their ability to recruit qualified candidates is becoming more difficult. Some causes for this include the fact that local agencies have experienced increased benefits and wages, many surpassing those of the state police agencies; many states are increasing the standards for police officers; agencies are becoming better at detecting behaviors that exclude applicants, partially through the increasing use of pre-employment polygraph examinations.

Agencies With Statewide Jurisdiction

Most estimates indicate that there are close to 20,000 law enforcement agencies operating with state authority and funded through state revenues



Massachusetts State Police display a police cruiser, a jet ski, and a state patrol vessel at a 2004 event. Boston is the headquarters for the State Police Marine Section, which has two jet skis, an airboat, a dive boat, and a motor lifeboat. Troopers with tactical weapons are also on patrol in Boston Harbor in support of U.S. Homeland Security.

in the United States. The vast majority of these organizations operating as state police agencies serve a special purpose, sometimes referred to as limited or restricted jurisdiction. This refers to either a restriction of the enforcement authority or the physical limitation of the jurisdictional boundary.

These agencies clearly are modeled on the federal agencies and often have similar purposes. Such agencies include those that monitor and protect wildlife, whatever name is used to describe them, but are commonly referred to as game wardens. In many states, game wardens have full police authority but are encouraged to focus on their official role. In other states, they are restricted to game-related violations.

Other examples may include agencies whose purpose it is to investigate certain felonies or assist local agencies when requested, enforce weight and size limits, enforce tax revenue laws, investigate parents accused of child neglect and abuse, patrol and enforce laws at state institutions and Capitols, and enforce other specific sections of law. Many of these agencies have high levels of specialized training.

In many states, public university campus police are given state police authority within the jurisdictional boundaries of the property associated with the institution. This authority is often extended to include adjoining property and the areas where the officers travel from one facility to another. Even though these agencies may have general policing powers, the jurisdiction within which they operate is special thus they serve in a special purpose policing role.

In recent cases, these agencies have been merged with the primary state police agency. Some have suggested this is a slow trend that will lead to most states having a single state police agency serving multiple purposes. Others argue that it is simply a recurring process, and that the trend will turn at a future point. The latter argument has support from previous attempts by states to consolidate. As an example, in the mid-1970s, Arkansas created a Department of Public Safety and quickly moved several agencies into divisions of what was planned to be a single state enforcement command system. Before the end of the decade, the agency was scrapped, and in ensuing years, a plethora of new state police agencies was created.

When one of these specialized state police agencies merges into the primary one, there are often strained feelings on both sides. The members of the primary agency reject the idea of incorporating the merged organizational members as troopers. The merged members have concerns about being a subclass member of the agency but not a trooper. In fact, the transition most often results in some restrictions being placed on the merged members. These restrictions have ranged from prohibiting promotion to disarming the merged members.

State Police in the Current Era

Writers are fond of noting that the events of September 11, 2001, changed everything. While that phrase is broad in relationship to the role of state police, there have been role changes. This is particularly true of the post-9/11 primary state police agencies, which have had to incorporate anti-terrorism considerations into enforcement and response. Many of these agencies have introduced increased tactical response training and created special units to collect and analyze intelligence and monitor reports of suspicious behavior.

Many of these primary state police agencies have a traditional role in providing executive protective services for the state governor and other officials. After the events of 9/11, many of these agencies experienced significant growth in the calls for their assistance in executive protection. This is also true of their assistance in providing security for special events.

Increasingly, these agencies are being called on to enlarge their role in other areas of law enforcement. When state legislators meet, it is seldom to reduce the number of laws on the books. Each state legislative session results in new and refined laws that add to the burden of these agencies. Unfortunately, with these added duties and increasing responsibilities, there is seldom an associated funding stream provided to help the agencies cope with the costs.

In spite of the difficulties they are facing, the primary state police agencies continue to strive for the image of being elite police officers. In turn, many young men and women develop the goal of being a part of their state's primary agency. These state troopers have generally enjoyed a long heritage of being recognized as capable of handling

any incident. The trooper attitude and public view have traditionally been supported by these agencies providing training across the wide spectrum of policing. With the increasing roles they now face, the current philosophy is to provide general police training for all troopers and specialized training for specifically chosen ones.

Typically, these primary state police agencies require some term of service in their highway patrol function before a trooper can apply for a specialized unit. These units range across a broad spectrum of specializations from motor carrier enforcement to undercover drug investigation. Thus, the climate is being improved for the merging of the other agencies with state police authority into the primary agency; these agencies bring the specialization with them.

In the immediate future, as states are faced with increasing taxpayer demands for tighter budgets and greater accountability, and as the economy continues to struggle, it is very likely that instances of the merging of state police agencies will increase. In most instances, it only makes sense to merge into the primary agency. The evolution of state policing continues.

Just as the United States is unique in its traditional rejection of a national generalized police force, it is also unique for the way it has embraced the concept of a state police. The 20th century was the "Era of State Police Development"; the 21st century will be era of their refinement.

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See Also: Police, Contemporary; Police, History of; Police, Sociology of.

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State Slave Codes

Between the 1640s and the 1860s, an extensive body of laws was developed in the United States to regulate the institutions of slavery. The earliest codes were Virginia's, passed in 1705. Slave codes were laws enacted in each U.S. state that defined the relationship between slaves and slave owners. These laws codified the permanency of slavery, inherited through the mother, denying slaves all basic rights—citizenship, education, legal marriages, property assembly, and associating with each other. With the explosion of the slave trade between the 16th and 19th centuries, and the widespread establishment of the chattel system—which allowed for ownership of human beings and their descendants—certain laws were needed to allow for more authority and regulation of the slave population.

The fundamental objective of the slaveholding codes was to define slaves as human chattel. Slaves were considered property, and these laws established slaves as tangible personal property or goods. The laws provided that slaves would be treated as goods—sold, transferred, or pawned. These laws were used to codify that slaves had no status as human beings because they were defined as property—a common thread in many state codes. They defined slaves as property that had no power. Slave owners had absolute power over any slaves they owned. Most slave codes outlined which rights a slave did not have versus which rights slaves did have. A common feature among most state slave codes was that slaves did not possess any civil, religious, or political rights as outlined in different variation in the various state codes.

There were an estimated 4 million black Africans and people of African descent in slavery by 1860; these slaves resisted this system of labor exploitation through rebellions, noncompliance, and escaping to Canada and to other non-slave states. Fugitive slave laws were passed in 1793 and 1850 by the U.S. Congress as a means of managing slaves and dealing with the problems slave owners were encountering, particularly with regard to fugitive slaves.

Themes of the State Slave Codes

The various state slave codes outlined the legal relation between master and slave. The statutes



An African American slave family posed in front of the Gaines house in the Virginia area circa 1861. Strict and harsh slave codes were passed in Virginia in 1705 and the rest of the south and the colonies followed suit. Common punishments included maiming, branding, placing slaves in stocks, and receiving 60 lashes for an offense as minor as robbery.

also made provision for punishment; slaves could be punished in any manner, including death, although some state codes did make provision against extreme punishment such as death, maiming, or mutilation. For example, Louisiana's code, passed in 1724, stated that punishment should not mutilate, disfigure, or kill the slave. Florida's code, passed in 1821, had similar provisions. The evidence suggests that these provisions were rarely adhered to. Codes were constantly being revised and tended to get harsher. Codes were also contradictory, as seen in the 1724 Louisiana code that mandated capital punishment for any slave who hit a white person.

The statutes emphasized the domination of slave masters over slaves and the slave as personal chattel with no rights and in the same stead as animals or inanimate properties. This was consistent throughout all the state slave codes. Kentucky's slave code of 1798 defined slaves as property and stipulated

that slaves could be passed down only to heirs and not to executors. Virginia's 1705 statute mandated that slaves could be used to pay a master's debts. Slaves were considered personal property, and this was highlighted even in statutes in what eventually came to be known as free states. For example, in the Maryland Act of 1798, slaves were classified as personal property in the same category as furniture, plates, books, working beasts, or animals. This was also seen in the New Jersey slave codes that referred to slaves as property, held with no higher regard than other properties.

South Carolina's slave code deemed slaves to be chattel of their owners to do whatever the owner intended. The objective was to define slaves as possessions, but South Carolina's code, consistent with Virginia's laws, defined slaves as personal chattel. Louisiana's code was even more explicit in what slaves could possess—slaves were permitted to possess or acquire nothing. Not only

did Louisiana's slave code outline the relationship between slave and master, it focused on the absolute rights of the slave master or owner. It highlighted not only the power of the master to dispose of a slave as he deemed appropriate but also the master's right to punish the slave. Louisiana's slave code of 1724 stipulated that slaves could be rented and mortgaged as laborers. This provision was popular in other state slave codes as it provided for the prevention of sale of slaves from plantations.

Slave codes were supposed to minimize slave revolts or rebellions. Slaves were forbidden to attend church services unless accompanied by a white person. Slaves were not seen as credible, so they could not testify against any white person in court. Between 1810 and 1860, the slave codes started to include manumission—the freeing of slaves. These statutes restricted the rights of slave owners and made it difficult to free any slaves. Slave owners' ability to free their slaves was limited even if it was outlined in a will. Free blacks were seen as dangerous and might incite other slaves to revolt, thus slaves who were freed were required to leave the state within 30 days.

Another common theme in slave codes defined business relations. Individuals could not engage in business relations with a slave without the consent of the slave owner. Since slaves were viewed as property, they could be used as security for loans, offered as prizes in raffles, and given away as gifts. Education and marriage were also harshly regulated. Education was forbidden for slaves. Anyone found trying to educate a slave faced both fines and imprisonment. Slaves could marry but their marriages were not legally binding. This allowed for slave owners to split families up when selling them.

Most of these codes limited slave movements and gatherings. Slaves could not move freely, nor could they gather without a white person being present or supervising. The physical exploitation and abuse of slaves were also common among various slave codes. Acts such as arson, conspiracy to cause a rebellion, or rape of any white woman were punishable by death. The opposite was not true of the relationship between slaves and whites. Slaves were seen as chattel, thus they could be maimed or killed by owners without any punishment for the owners. However, if someone

killed a slave owned by someone else, that person could face a fine because they deprived the owners of their property. White men raping slave women were usually charged with trespassing as a slave woman was viewed only as chattel—property. Although weapons were a common part of life in the colonies, slaves were not permitted to own, keep, or carry guns. Slaves could face between 40 and 60 lashes and had to relinquish the gun as was defined in the codes. Slave codes in many states defined not only the status of slaves but of also free black citizens. This was evident in Alabama slave codes of 1833.

Influential State Slave Codes

The most influential codes were those of Virginia passed in 1705. Virginia's code set the precedent not only throughout the south but throughout the colonies. The 1705 Virginia codes outlined harsh physical punishments and bodily disfigurement. Slaves could have their ears cut off for such things as associating with whites or leaving the plantation without written permission. Common punishments for slaves were maiming and branding. Under the Virginia code, slaves could be placed in stocks and receive 60 lashes for such offenses as robbery. Slaves who were found guilty of murder under this statute were hanged. The slave codes of 1705 eliminated the rights of slaves to bring disputes with their masters before the courts for hearings. Slaves had no means of protection against even the most abusive master.

States that found themselves with a larger black population than white tended to have harsher statutes; this was evident in southern state codes. Alabama, Florida, Louisiana, South Carolina, and Virginia codes are good examples. A 1690 revised South Carolina code outlined harsh punishment for runaway slaves and slaves who hit a white person. Punishments included whippings, slitting the nose, and burning the face with a hot iron. Any slave who was accused of a second offense of hitting a white person could be put to death. Runaway slaves were branded with an "R" on their cheek and had one of their ears cut off. Slaves who ran away two or more times could be castrated (male slaves), have a tendon cut in one leg, or be put to death. South Carolina's 1712 statute provided for the whipping of any slave who left the plantation without written permission.

In 1705, Virginia statutes absolved slave masters of any punishment if they killed a slave during punishment. Some slave statutes extended beyond enslaved persons to other minority members in the population. In 1833, Alabama passed a series of slave codes outlining the punishment for not only educating enslaved individuals but also free blacks, who were referred to as mulatto, Indian, and indentured slaves. The statute provided for fines and whipping on the bare back for anyone who taught slaves or any free person of color to read, write, or spell. Alabama's 1833 statute also punished a slave who wrote for another slave with 50 lashes the first time and 100 lashes to the bare back for every subsequent offense. Any person who wrote for any slave was also subjected to 39 lashes on the bare back, and that person also had to leave the state of Alabama within 30 days.

The District of Columbia codes were viewed as an exception to these harsh southern codes. The District of Columbia was governed by the slave code of Maryland when it was first established in 1800. Slaves in the District of Columbia could hire their services, and these slaves also did not live with their masters. It is important to note that these urban slaves were servants to government elites. Unlike other southern slaves, free blacks were allowed to live in the city and operate schools. By 1850, the sale of slaves within the District of Columbia was outlawed.

Revisions of State Slave Codes

States were constantly revising their codes, and the revised codes usually provided for harsher treatment of the slave population. Florida's slave codes had many revisions influenced by news of uprisings in other locales. Florida lawmakers gave additional power to slave patrols after the Nat Turner Rebellion in 1831. The Florida legislature empowered slave patrols to capture and whip any slave violating the pass laws. Other revisions included the death penalty for anyone accused of inciting slaves to revolt and an automatic verdict of justifiable homicide in the case of any slave killed in the act of revolting. In 1686, South Carolina established a slave status in its code as a freehold property, a higher status than being chattel. Freehold property was attached to a specific estate or plantation and could not be moved or sold from that estate. By 1696, slaves

had been degraded to chattel property, provided for in a 1690 revised code that also outlined harsh punishment for the slave population. In 1740, South Carolina again revised its code, passing the Negro Act in response to the Stono slave rebellion of 1739. This act served as a model for Georgia's code of 1755. Under the 1739 Negro Act, slaves had no protection under the law. Murder of a slave by a white person was only punishable by a fine. Slaves could be executed for plotting riots, plotting to run away, or offering any cultural education such as knowledge about poisonous roots and plants. This act controlled all aspects of enslaved population life from what clothes slaves could wear to what fabrics could make these clothes. It also included additional prohibition on learning to read and write, as well as assembling and socializing with one another. Any violations of these laws were subject to flogging.

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See Also: 1801 to 1850 Primary Documents; 1851 to 1900 Primary Documents; African Americans; Civil Rights Act of 1866; Civil Rights Act of 1875; Slavery; Slavery, Law of.

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State v. Heitman

At issue in *State v. Heitman*, 262 Neb. 185 (2001), is whether the police went so far in enticing a man to commit a sexual offense as to entrap him. The case is a significant example of the subjective or

predisposition test for entrapment: The entrapment defense was rejected, even though police induced Heitman to commit a crime that otherwise might not have occurred, on the ground, that Heitman was predisposed to commit the crime.

Heitman, 53, approached the drive-up window of a restaurant and gave an envelope with \$100 and three condoms to a 14-year-old girl referred to as A. S. The envelope also contained a letter saying how cute the girl was and inviting her to use the money to buy a sexy dress for her lover or to save it for school. It also included Heitman's e-mail address. The girl showed the letter to her manager, who called the police. Detective Steven Henthorn, with A. S.'s consent, posed as A. S. and exchanged e-mails with Heitman, using the name Rodeo Queen. The detective provided opportunities for Heitman to cease contact, but Heitman continued to respond. At one point, Heitman, suspicious, asked Rodeo Queen which color nail polish she wore, and wanted to speak to her on the phone. Henthorn then arranged for A. S. to phone Heitman. In their conversation, A. S., following detective Henthorn's instructions, encouraged Heitman to tell her how he could be sexually creative. After several more e-mail exchanges, Rodeo Queen suggested they finally meet in a motel room. Henthorn then arranged for A. S. to again phone Heitman. During the call, Heitman suggested a "more innocent" place to meet, but A. S. pressed Heitman by saying she'd be going away soon. Heitman agreed, arrived at the motel carrying sexual paraphernalia, and was arrested.

To establish a legal defense of entrapment, the state of Nebraska requires that the government must have induced the crime and that the defendant not be predisposed to commit the crime. This is called a subjective test because it appeals to the state of mind of the defendant and not to whether the police took measures that objectively could induce a normally law-abiding person to commit a crime. On this test, defendants are guilty if they were predisposed to commit the crime even if the police used objectionable methods to induce them—as was arguably the case when Detective Henthorn had a 14-year-old girl engage in sexual banter with Heitman. The subjective test was adopted by the U.S. Supreme Court in *Sorrells v. United States*, 287 U.S. 435 (1932).

The district court sentenced Heitman to 8-12 years in prison for conspiring to sexually penetrate someone under 16 years of age. It held that Heitman was predisposed: He first approached the girl and chose to ignore several opportunities to break off contact. On appeal, the Supreme Court of Nebraska upheld his conviction in a 7-0 decision written by Justice Connolly Wright. The court conceded that there was government inducement: The detective suggested the meeting in the motel and created a sense of urgency; but Heitman was predisposed. Heitman, in his defense, claimed that initially he thought A. S. was 16, but the court noted that mistake as to a victim's age is not a defense to this crime. Heitman also claimed he simply used his e-mails and phone calls to express his fantasies and had no predisposition to have sex with her, but the court held that a reasonable jury could find predisposition.

The predisposition test is sometimes criticized because in using it, the state seems to base punishment on a person's character rather than his present conduct. This may be less a concern in *Heitman*, since the evidence for the defendant's predisposition was not his character as revealed by his past but his making first contact with a 14-year-old girl.

Other courts have allowed an entrapment defense where the defendant was led on or encouraged by undercover agents posing as children. In *United States v. Poehlman*, Judge Kozinsky of the 9th Circuit Court of Appeals reversed the conviction of a man who initiated an online chat with an agent posing as a woman seeking a sexual mentor for her children. That court found that Poehlman was not predisposed to have sex with children; that idea was suggested by the agent.

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See Also: Nebraska; Sex Offender Laws; Sex Offenders.

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Steenburgh, Sam

Samuel Steenburgh (1833–78) was an African American convicted of the murder of Jacob S. Parker, a white farmer, in Fonda, New York, on November 17, 1877. Shortly before his execution, he confessed to 10 additional murders, which caused great interest in his execution and attracted throngs to witness the event.

Steenburgh's trial was conducted February 26–27, 1878. The prosecution charged that Steenburgh, who knew the victim for more than 20 years, had spent the evening of the murder at a saloon with Parker. Afterward, they entered an area known as Ross' Woods, where Steenburgh struck Parker on the head with a stone and then, to be certain he was dead, crushed Parker's head with a boulder. The motive for the crime was robbery.



Public hanging was the most common method of execution; the first recorded historical mention dates from 1300 C.E. More than 15,000 witnessed Steenburgh's 1878 hanging.

Steenburgh was sentenced to death by hanging. Efforts by Steenburgh's attorney to obtain a new trial based on new evidence were abandoned.

Steenburgh maintained his innocence. However, shortly before his execution, Steenburgh confessed to 11 murders, numerous arsons, robberies, and other crimes. He is also said to have hinted without providing details, that he may have committed other crimes. Steenburgh received \$100 from the sheriff and county clerk for his confession, and it was printed in a 22-page pamphlet and sold for 25 cents a copy. More than 5,000 copies were printed.

Steenburgh was executed by hanging in Fonda, New York, on April 19, 1878. According to contemporary newspaper accounts, more than 15,000 people came to the village for the execution, notwithstanding an 1835 law that required executions to take place "within the walls of the prison ... or within a yard or enclosure adjoining" (*New York Laws*). The *New York Times* reported that "Two special trains from the east, aggregating 12 cars, and one of 7 cars from the west," brought many of the spectators. Farmers came in from the surrounding countryside. Home and business owners in the vicinity of the prison charged admission for the purpose of witnessing the execution from their roofs, which overlooked the prison. The day of his hanging was declared a public holiday in Fonda and the surrounding area. Following the execution, onlookers were permitted to pass the coffin and view, and even touch, the corpse of the condemned man.

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See Also: African Americans; Executions; Murder, History of.

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Strauder v. West Virginia

The 1880 U.S. Supreme Court decision in *Strauder v. West Virginia* looked to the equal protection clause of the Fourteenth Amendment to invalidate a West Virginia policy excluding individuals from serving on juries because of their race. The policy was carried out in a statute limiting jury service to “all white male persons.” The case was argued before the Supreme Court on October 21, 1879. It was decided on March 1, 1880. The decision struck down jury exclusion practices common among southern states, which sought to empanel white-only juries despite the provisions of the Civil Rights Act of 1875 that made it a crime to violate the principle that all citizens had a right to serve on both state and federal juries.

The case began when the plaintiff (or defendant, in the initial action in state court) was indicted for first-degree murder in Ohio County, West Virginia, in 1874. The plaintiff was an African American man named Taylor Strauder. Convicted at trial by an all-white jury and sentenced by a white judge, Strauder petitioned to the Supreme Court of Appeals of West Virginia, which affirmed the trial court’s decision. Strauder was scheduled to die by hanging.

The case came before the U.S. Supreme Court on a writ of error alleging that West Virginia had denied the plaintiff the rights entitled to him under the Constitution. Because he was not granted a fair trial, the plaintiff had standing to bring his claim alleging a constitutional violation under the due process and equal protection clauses.

Changing the Makeup of Juries

Justice William Strong, a former Republican in the U.S. House of Representatives, a former abolitionist, and an appointee of President Ulysses S. Grant, delivered the opinion of the court. His opinion focused on equal protection rather than on due process. Strong exposed the hypocrisy of a system whereby whites were entitled to juries made up of all whites, while blacks, forced to stand trial before all-white juries, did not enjoy the same entitlement. Strong concluded that the statutory scheme discriminated against blacks and recalled the badges and incidents of slavery. The statutory scheme asserted the inferiority of nonwhites and generated racial prejudice and

therefore could not stand. The statutory scheme was ruled unconstitutional because all U.S. citizens, regardless of their race, were deemed to have constitutional rights to criminal trials before juries selected and impaneled in nondiscriminatory ways.

The *Strauder* case represents one of the most prominent antidiscrimination holdings after the Emancipation Proclamation was issued and before the civil rights movement began roughly a century later. The court, liberally construing the Fourteenth Amendment to keep with the putative purposes of the amendment’s framers, held that the amendment granted citizenship and the privileges of citizenship to people of color; therefore, states had to ensure the equal protection of the laws to people of color. The West Virginia statute did not ensure the equal protection of the laws to people of color because it denied such individuals the right to serve on juries.

The court also held that Congress, even without an express delegation of power, could protect a right or immunity whether it was created or only guaranteed by the Constitution. According to the court, the Fourteenth Amendment conferred a right or immunity to “the colored race” because it was designed to protect “colored races” when states denied them any rights enjoyed by whites.

The court did not eliminate all forms of discrimination—only discrimination based on race. For instance, the court decision left room for discrimination against nonlandowners. That the decision invalidated exclusion policies based on race did not mean that later attorneys could not impanel all-white juries. Nevertheless, the decision went great lengths toward establishing equal rights for black citizens.

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See Also: Race, Class, and Criminal Law; Racism; Supreme Court, U.S.

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Strikes

A strike occurs when people simultaneously refuse to work and try to encourage everyone in a workplace to stop working there. Strikes tend to be organized by labor unions, since they provide the social solidarity necessary to persuade people to take action that may be dangerous and certainly expensive for them. Strikers are not paid and unless their union can provide funds, the strike will soon be ended by lack of money and the pressure of feeding a family. It is easier, therefore, for younger and single individuals to mount a strike than older workers who have more personal responsibilities.

Strikes are most commonly organized in response to workplace grievances, including but not limited to desire for higher wages. Other reasons for strikes include concern over health and safety issues, reduction in the number of hours worked, better working conditions, concern over the strategy being pursued by the organization or in support of a political dispute not directly related to the employees at all (this may take the form of a sympathy strike in solidarity with workers elsewhere in the same or a different industry). Historically, one of the goals of the labor movement was to achieve the ability to organize a general strike, in which all workers would strike simultaneously, and the state would be forced to yield to the demands being made. However, antipathy to labor unions in the United States has meant that the level of unionization has always been low by international standards, particularly in the private sector, and that means strikers have been more isolated and hence vulnerable to the force customarily used against them.

A case in which, perhaps as a result of a labor dispute, the owners of a workplace refuse to allow workers onto the premises, is known as a lock-out. The opposite occurs when workers occupy a workplace to prevent work taking place or to prevent new employees (sometimes referred to as “scab” workers) to replace the strikers. This is known as a sit-in or workers’ occupation.

As labor unions became recognized in American law, restrictions were placed on how and when strikes may be conducted. Generally, an official strike can only be called after a ballot has been held and a majority for strike action reached, as well as other restrictions. Strikes that take place without official union sanction are called wildcat strikes and may follow a spontaneous walkout in response to a new event, which may subsequently become an official strike.

Labor Strikes

Strikes have taken place in the United States almost since settlements were established. The first recorded strike was by Polish crafts workers in 1619 in Jamestown, Virginia. Since then, the number of strikes has waxed and waned in line with overall economic conditions (reaching a peak of more than 4,300 in 1937) and changing in the nature of workers represented. Early strikes tended to affect a comparatively small group of workers, usually skilled, of common ethnicity, and working in close proximity with each other. Just like the Polish crafts workers, they would have been recruited to the New World because they had economically valuable skills that could be transferred to the new economy. However, once relocated, they found in some cases that the terms and conditions of their work were not acceptable, and their personal liberties and rights were constrained in comparison with other people. They called strikes, then, purely for their own benefit and that of their families but had little if any solidarity with any other group of workers. Strikes in these early periods were restricted to those areas that had been settled by Europeans and in the various occupations that were then important to the economy: indentured service, fishing, transportation, and so forth. As the geographical scope of the colonies broadened and the economy became more sophisticated, strikes broke out in different areas and sectors. In the 18th century, for example, they

included representatives of river pilots, weavers, construction workers, and tailors. However, these strikes continued to be focused primarily on local issues, with a few exceptions, and had little if any intention of bringing about any meaningful political change.

It was not until the spread of advanced industrialization throughout the country and the entry into the factory age that large numbers of unskilled workers were brought together in a single place with shared working conditions and terms of employment. Such labor unions as existed prior to this were mainly focused on the position of a limited number of skilled workers, almost certainly men. One area of general interest that did arise as an issue of contention was the length of the working day and of the working week. The

Boston 10-hour strike of 1832, for example, was portrayed by industrialists as symptomatic of the struggle for overall control of the economy.

The factory age brought a new stage of industrial confrontation and the emergence of inclusive unions. By the time of the year of revolution in 1848, also the year in which the *Communist Manifesto* was also first published, labor unions around the world were beginning to integrate socialist and communist ideas into their thinking, such as the Industrial Workers of the World (IWW) in the United States. Compared to a number of European countries, American labor always had a comparatively limited number of revolutionaries wishing to link strike action with political change. The nature of the country and its geography also lessened the role of revolution; for example, one



African American and Hispanic International Ladies Garment Workers Union members on strike against the Kellwood Company, wearing signs that ask for public support for them to earn more than "poverty wages," circa 1967. In the 1960s, antiunion southern states, the rapid growth of the middle class, and corruption by larger unions hurt American labor unions.

of the principal areas of contention in the years after the Civil War was the railroads. Strikes in the railroad industry tended to be limited to individual occupations (railroad construction, carriage maintenance, or service) and to be characterized by race issues. Black workers were far from welcome in every occupation and tended therefore to crowd into certain jobs. Slavery may have been officially ended by the Civil War but wage slavery still seemed to many to remain firmly in place. The intersection of international economic forces and local labor conditions was seen in the Great Railroad Strike of 1877, which took place amid America's worst economic depression up to that time. This strike led to violence in several states and a violent crackdown by troops, during which dozens were killed.

The encompassing nature of the railroad system was represented by the Pullman Company. Customers were treated to considerable luxury and paid handsomely for the privilege, while the workers waiting on them could scarcely afford to live. Worse, many lived in a Pullman company town and so feared that making any complaint would mean that they lost their homes as well as their livelihoods. In 1894, the company unilaterally reduced salaries by 25 percent while keeping rents at the same level. Facing beggarmdom, the workers went on strike, and a violent confrontation began. The workers were led by Eugene V. Debs, who called for a national boycott of Pullman cars, and dozens of sympathy strikes began. However, once President Grover Cleveland sent 2,500 armed troops to Chicago to break the strike, the end was inevitable. Government and commerce then colluded to have Debs imprisoned for impeding interstate economic activities, and the Sherman Anti-Trust Act was used to demonstrate that the courts would break labor actions.

In the years following, strikes were conducted nearly always on the basis of limited legality and the threat of violence. Left-wing ideologues were stripped out from the emergent unions of the early 20th century, and the struggle returned to specific, mostly workplace issues, and the concept of widespread worker solidarity fell into abeyance. Strikes were therefore conducted on the basis of limited local resources and often in an atmosphere of public hostility. The resolve needed by family members to continue to support a strike

in the face of great economic hardship gave rise to a strand of cultural memory and its productions of music and anecdotes that are of considerable importance in the history of the American people.

Nevertheless, women union leaders and workers led strikes in the garment industry in particular, since factory work in that sector was deemed most suitable for women. The Shirtwaist strike of 1909 was led by female Jewish workers (and largely, therefore, poorly protected migrants) and was known as the Uprising of the 20,000. It provided a notable example of the desire of women to be properly emancipated in society. The strike was settled in 1910, and a year later, the Triangle Shirtwaist Factory fire, which killed 146 workers, highlighted the dangerous working conditions of such women.

Strikebreaking and Rats

Strikebreaking is the attempt to end a particular strike or to reduce the likelihood that a strike will take place through intimidation of union members, attempts to drive union organizers away from companies, blacklisting workers considered to be troublemakers, and a range of other dirty tricks. U.S. authorities have been very willing to tolerate or even encourage the growth in power of employers by permitting the raising of armed mercenary forces to commit strikebreaking acts. As Stephen Norwood put it, labor spies in the country were reminiscent of Czarist secret police tactics and had no counterpart in western Europe: "Labor spies identified union sympathizers and reported them to the employer, undermined confidence in the union by spreading false rumors, and divided the labor force by stirring up ethnic and racial conflict."

The mercenaries hired were overwhelmingly young men, physically strong, and often African Americans, the homeless, or those associated with organized crime. Of course, the state contributed to the strikebreaking process by turning a blind eye to abuses and crimes committed and, in a number of cases, police joined in with strikebreaking, especially on those occasions which further enflamed already existing issues of ethnic conflict. Pinkerton agents, as well as members of Baldwin-Felts, Burns, and other agencies, were paid directly by companies to work on their behalf in order to end strikes. Since such agents

could be members of the same communities from which strikers were drawn, enmity could be all the fiercer. The social proximity between strikers and members of the official police and military meant that the loyalties of the latter could be divided. This situation did not really occur in large cities (e.g., Chicago and New York), which were large enough that different neighborhoods had become strangers to one another, but in other cases, out-of-town or out-of-state forces might be introduced to deal with local strikes.

Unions did their best to resist by identifying spies or “rats” and making their names and methods widely known to workers and, where necessary, meeting violence with violence. In contemporary America, popular media customarily portray unions as being dominated by corrupt fat cats primarily interested in their own status and power, and the desire to strike as a means of feathering their own nests. The reality, of course, has throughout history been rather different. The struggle against strikebreakers brought the end to child labor, dangerous workplace conditions, payment of starvation wages, and the absence of freedom of association and collective bargaining. Although there have been some ethical and philanthropic employers in American history, they have been in the minority, and the company town mentality has generally led to freedom-restricting paternalism. When evidence exists of secret pro-worker agents, such as the Molly Maguires, that evidence depends almost entirely on the testimony of unreliable observers. The Maguires were said to be a secret group of Irish American miners who kidnapped and murdered their enemies, either as part of personal vendettas or in support of striking union workers. Little actual evidence survives either way.

Legislation

Since 1935, strikes have been regulated by the National Labor Relations Act (NLRA), or Wagner Act, which guarantees the right to strike within certain limitations. The act does not apply to railway workers (who are covered by the Railway Labor Act) or to most government-sector employees, agricultural and domestic workers, and some other categories of employees. The NLRA may be used to force strikers to return to work if a court determines that there is a threat to

national security. This follows the principle that, in many states, a varying number of state-sector employees are forbidden to strike because of security issues or damage to the state as a whole. This generally includes the police and firefighters and, in some states, teachers in the public sector. When individuals are denied the right to strike but have a grievance they wish to have addressed, they must resort to other methods, mostly based in the workplace, in order to make their feelings known. This includes various types of go-slow or work-to-rule, which generally mean strictly keeping to the letter of any employment contract in order to demonstrate the numerous other tasks that employees are expected to undertake. The Taft-Hartley Act of 1947 (the “slave-labor bill”) was introduced as a means of suppressing a range of union activities and free speech in the wake of the labor uprising of 1946 and the pro-Communist sentiment in society at the outset of the cold war.

The bill passed despite President Truman’s veto, though the president nevertheless called upon its use on numerous occasions. In public discourse subsequently, anti-union spokespeople have regularly labeled union activity as being Communist in nature and anti-American. No administration has shown much appetite subsequently for opening the political debate required to negotiate a new law covering labor as a whole, although both Ronald Reagan and Jimmy Carter found themselves in conflict with workers undertaking important jobs that administrations wished to bring into the security state category, irrespective of claims from some that they wished to reduce the size of the state. In recent years, attempts to restrict workers’ rights further have generally taken place at the state rather than the national level.

Syndicalism

Syndicalism refers to the process of establishing a parallel state organized by labor unions and workers’ councils or according to anarchist principles in the case of anarcho-syndicalism. In this case, the strike is generally seen as the precursor to the establishment of the independent state. In the United States, this movement is most closely associated with Big Bill Haywood and the Industrial Workers of the World (IWW) union, also known as the Wobblies. The IWW is particularly



Men striking at Ford Motor Company in a physical altercation in 1937. Strikebreakers could be coworkers or physically imposing mercenaries hired by the company.

influential in American history in that it marked the creation, at least in theory, of a mass organization that would admit workers of all categories and, thereby, cut through the problems that unions had traditionally faced of representing the interests of just one sector of the workforce. Syndicalism was never a major part of American strikes, at least compared to international strike efforts, and although a commune was organized in Goldfield, Nevada (1906), and an occupation took place of the General Electric facility in Schenectady, New York (also in 1906), few expected that these events would lead to revolutionary political change at the national level.

Rent Strikes

Rent strikes occur when people in a neighborhood or other location jointly refuse to pay their rent, relying on the strength of numbers to deter

the landlord from having them all evicted. A rent strike can only really be feasible when the people involved are in sufficiently close proximity to offer social solidarity and support when landlords use physical confrontation to intimidate the strikers. Consequently, they occur overwhelmingly in urban settings. Confrontation might also come with representatives of the state because failure to pay for goods or services received is a crime. Rent strikes, like strikes at factories staffed primarily by women, bring a gender distinction to the action. Strikes organized and controlled by women generally have tended to be less violent than those organized by men on both sides, although violence by the state was still used on occasion.

The best-known rent strikes in American history have taken place in New York City. In 1907, a 16-year-old Jewish woman named Pauline Newman, who had worked in factories since age 9, completed a year of action in a city gripped by economic recession by helping to organize thousands of households threatened with eviction because of inability to pay rent. This example sparked decades of tenant action, which eventually resulted in the imposition of rent control in the city. A subsequent generation of protest was led by Jesse Gray, who in 1964, after a decade of tenant organizing, led a rent strike aimed at improving housing conditions. Many carried the rats that infested their buildings in protest at the insanitary conditions. As is often the case with strikes, public sentiment had a significant impact on the result. When the strikers are perceived to have a just cause, politicians in a democratic society will often consent to at least some of their demands.

It is possible to link strikes with other forms of civil disobedience, including tax protests and rioting and looting, although there are clear differences in terms of legality and method. In all cases, those participating in the protest believe that their grievances will not be met through the normal political or negotiating processes available to them.

Prison Strikes

Prison strikes occur when a group of prisoners jointly refrains from working or eating with the purpose of trying to win some concessions from

the prison or state authorities. Some prison strikes take place as the result of harsh treatment or conditions while others, benefiting from the wider distribution of information in the modern age, result from the feeling of inequality that arises from working for extremely low wages in industrial activities from which others are making significant profits. Because of the extremely high propensity of American courts to sentence people to jail, this represents a substantial labor force being required to work in conditions of no freedom. Authorities customarily respond to prison strikes with the maximum possible force because any incident of disorder can rapidly spread and be remembered, whereas private-sector operations may be concerned about the loss of their contracts.

Student Strikes

Student strikes occur when a group of students, irrespective of the nature or level of the institution, join together and refuse to participate in the normal programs or activities expected of them. This might occur as part of the desire to change the nature and practices of the educational establishment or in solidarity of another cause. Since students are young and do not immediately lose money by refusing to study, they have often been associated with leading large-scale strikes and political protests, as seen most famously in opposition to the war in Vietnam.

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See Also: Chicago, Illinois; Civil Disobedience; Prison Riots.

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Students for a Democratic Society and the Weathermen

The radical student group Students for a Democratic Society (SDS) developed out of the Student League for Industrial Democracy, the youth arm of the League for Industrial Democracy, in 1960. It held its first meeting in Ann Arbor, Michigan, on the campus of the University of Michigan. At that time, it formulated its famous manifesto, the Port Huron Statement, in which the group articulated a critique of U.S. policy and society. Specifically, U.S. domestic and foreign policy were found wanting in that they failed to address the continuing realities of racial discrimination, domination of the economy by big business, and the hegemony of the two-party system. Spending priorities that focused on continuation of the arms race, the threat of nuclear war, and foreign policy were criticized. Reforms suggested included a focus on grassroots citizen involvement and getting workers involved in management of corporations. Other reforms proposed a systematic war on poverty and increasing welfare, and advocated nonviolent civil disobedience in order to foster participatory democracy.

By 1963, the SDS had nine chapters and a highly decentralized organizational structure. The group's first president was Tom Hayden, who became a fixture in radical politics and later was known as a California state senator and as the husband of controversial actress Jane Fonda. When the Berkeley campus of the University of California was paralyzed by the free speech movement in October 1963, it brought radical student movements to the attention of the media, politicians, and other students. By 1965, the now 52 SDS chapters and

unaffiliated student peace groups used “teach-ins” and demonstrations to focus public attention on the expanding war in Vietnam. Adopting a proletarian style of dress and demeanor, the group’s appearance was not applauded by mainstream and conservative politicians. Local chapters often concerned themselves with campus issues such as expansion into minority neighborhoods, bad food, military presence and recruitment on campus, and seemingly arbitrary university administrative policies. At Louisiana State University, for example, the campus chapter of SDS engaged in helping students evade the draft and picketed a local factory that exploited minority workers.

Other chapters encouraged soldiers to desert or to refuse to fight. The Dow Chemical Company, the makers of various chemicals used in the war effort, became the object of picketing and was a special focus of SDS attention. This sort of activity nationwide drew the ire of politicians and officeholders on the state level. On the federal level, the Federal Bureau of Investigation (FBI) began to direct its counterintelligence program (COINTELPRO) against the SDS. This involved the use of informants and spies, misinformation campaigns, and “dirty tricks,” some of which were illegal. That notwithstanding, SDS chapters and SDS-inspired students began to stage sit-ins on campuses nationwide and attempted to draw attention to the inequities of the military draft in 1967. The high point of their activities was a successful march on the Pentagon in October of that year. The following year, SDS leaders, including Columbia University student Mark Rudd, made a trip to Cuba to meet with North Vietnamese and Cuban officials. Most significantly that year, a strike at Columbia University in which the administration building was occupied and trashed drew media attention, much of it negative, to the national organization; its chapter leader Mark Rudd, and the student movement in general.

The Weathermen

The Weather Underground Organization (WUO), founded in 1969, was a dedicated splinter group of the SDS. The goal of this faction was to create a small, covert, elite group that could operate with minimal scrutiny and interference from federal authorities—like Lenin’s theoretical construct of the “vanguard of the party” in the early days of

the Soviet Union. Another goal was to generate more serious threats to the American capitalist corporate “warfare” state. This group was much more militant and confrontational than the largely disorganized and informer-infected SDS. The name “Weathermen” came from Bob Dylan’s song *Subterranean Homesick Blues*, in which the words “You don’t need a weatherman to know which way the wind blows” seemed particularly appropriate and visionary to radicalized youth. It became the title of a position paper presented at the SDS Convention, in June 1969. The aim of the Weathermen, which went largely unachieved, was to involve the masses in revolutionary activity; this was to be realized by “bringing the war home.”

Accordingly, the members of this faction, living largely underground, commenced a campaign of street actions, jailbreaks, and bombings throughout the 1970s. Many of their activities were aimed at disrupting the efforts of the U.S. government during the Vietnam War. Accordingly, bombings were carried out against the Pentagon, the U.S. Capitol, and the U.S. Department of State. Other



Former Students for a Democratic Society (SDS) National Secretary C. Clark Kissinger with young members of the new SDS at the Left Forum in New York City in 2007.

violent activities were attributed to the Weather Underground but have never been confirmed.

One of the faction's most infamous activities was the Days of Rage street action, carried out in Chicago on October 9, 1969. The motive behind this relatively small but alarming planned riot was to "bring the war home"—to make the American people experience violence as was the norm in Vietnam. During the Days of Rage, a few windows were broken and businesses and cars were vandalized. Police and Weathermen were injured, and numerous arrests were made. A second riot occurred two days later, and more than 100 people were arrested. Several Weather Underground operatives were killed while constructing bombs in Greenwich Village, New York, in 1970. These bombs were supposed to have been used against military targets. After this event, members of the group met and decided to reject the use of more violent methods in order to avoid casualties.

The group dissolved over a variety of personal and ideological issues in the mid-1970s. Federal agencies were unsuccessful in their efforts to capture the members. Many who had been arrested could not be prosecuted because illegal means were used to obtain the evidence against them. Some remained at large until they turned themselves in years, and even decades, later. Some former members are now academics or are involved in community work or social services.

Conclusion

The experience of SDS and Weather Underground radicals of the 1960s and 1970s represents a fugitive and quixotic episode in American history. Their violent rhetoric and activities and disorganized approach alienated potential allies, and the end of the Vietnam War deprived them of their most salient issue. Recent attempts to resurrect the SDS have been met with notable lack of success on college campuses. The American political scene took a decidedly rightward shift, leaving few left-radical groups of any significance on the American scene.

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See Also: Civil Disobedience; Police, Contemporary; Riots; Strikes; Terrorism.

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Supermax Prisons

Supermax prisons are highly automated institutions, designed to maintain prisoners in long-term solitary confinement, with minimal sensory stimulation. Supermax prisoners spend 23 or more hours per day alone in their cells. Three or four times per week, a prison officer pushes a button in a central control tower, which opens one cell door at a time, allowing each prisoner, in turn, to shower, or go out alone to the caged yard area, usually a concrete area the size of a prison cell, with a roof partially exposed to the sky. Individual supermax cells usually have no windows exposed to natural light and only fluorescent lighting. Supermax prisoners have no physical contact with other human beings. Meals are pushed through small slots in the cell door. No provisions are made for educational or therapeutic programming; visits take place through Plexiglas shields, or by videoconference. During medical appointments, prisoners are locked into upright cages on wheels, often called therapeutic treatment modules.

Supermax prisons, also known as Security Housing Units, Control Units, or Departmental Disciplinary Units, are different from administrative segregation, a correctional term that references shorter-term isolation, of a month or two, within a given prison facility. By contrast, supermaxes are often freestanding facilities, or isolated wings of a given prison, where prisoners are sent for months or years at a time, following an administrative disciplinary process. Correctional administrators assign prisoners to supermaxes after determining that the prisoner presents a threat to institutional security, either because he has broken a prison rule, such as participating in a riot or destroying state property or



The nation's most dangerous criminals, those who are seen as serious physical threats or at high risk for escape, are sent to supermax prisons. At these super-maximum security facilities, they are kept in solitary confinement in darkened cells for more than 22 hours a day and have no access to social contact or environmental stimuli.

because he is identified as a gang leader. (The vast majority of supermax prisoners are men.) Usually, if a prisoner breaks a prison rule, he is sent to a supermax for a fixed period of months or years. On the other hand, if a prisoner is identified as a gang leader, he might be sent to a supermax for an indefinite term. In sum, supermax assignment is an administrative process, independent from both the initial security classification of prisoners entering prison and from the judge-imposed criminal sentence.

Arizona opened the first of these modern supermaxes in 1986 (the Special Management Unit); California opened the second in 1989 (Pelican Bay). In 1994, the Federal Bureau of Prisons opened its supermax (the Administrative Maximum) in Colorado; now almost every state has some form of supermax facility. Estimates of the number of U.S. supermaxes range from 20 to 57. Estimates of the total population of U.S. supermax prisoners range from 5,000 to 100,000. This variation stems from state-based differences in definitions of which conditions constitute supermax confinement.

Supermaxes developed as a way to institutionalize long-term lockdowns, during which prisoners were not allowed to leave their cells for any reason, commonly implemented in U.S. prisons following riots and gang violence in the 1970s. For instance, the maximum-security federal prison in Marion, Illinois, was locked down from 1983 until 1994, when the federal supermax opened. Similarly, California's San Quentin and Folsom State Prisons had certain wings locked down from the mid-1970s until the late 1980s, when California opened its first supermax. In the 1970s and 1980s, federal district courts found many of the conditions in these locked-down, older prison facilities to be unconstitutional.

However, supermax prisons have been more resistant to litigation. According to the U.S. Supreme Court, these institutions are basically constitutional, as long as certain, minimal procedural safeguards are in place: a prisoner must have notice of why he is being placed in a supermax, and he must have some minimal opportunity to respond to the claims against him, either in writing or through some kind of administrative

hearing (*Austin v. Wilkinson*). One federal district court recently agreed to hear an Eighth Amendment challenge to supermax prison conditions (*Silverstein v. Federal Bureau of Prisons*); the challenge alleges specifically that the plaintiff's length of confinement (27 years) is so long as to be cruel and unusual. Other lower federal courts have held that severely mentally ill prisoners may not be placed in supermaxes, because long-term solitary confinement might potentially exacerbate pre-existing mental health problems.

International legal bodies are more skeptical of the use of long-term solitary confinement than U.S. courts. In 2010, the European Court of Human Rights refused to extradite two alleged terrorists to the United States until the court further investigated the conditions in the federal supermax in Colorado, where the terrorists were likely to be sentenced to spend the rest of their lives (*Ahmad v. the United Kingdom*). Similarly, in reports on Guantanamo, the United Nations has interpreted the International Covenant on Civil and Political Rights to prohibit the use of long-term solitary confinement for specifically punitive purposes.

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See Also: Arizona; California; Prison Riots; Prisoners' Rights.

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membership, or specific authority. Beyond outlining the types of cases that could be considered, the framers did amazingly little to define the function and structure of the country's highest court. Due to the general provisions contained in the Constitution, the court has varied over time in composition, caseload, and influence. The Supreme Court was first implemented by the Judiciary Act of 1789, and it first convened on February 2, 1790, under the guidance of Chief Justice John Jay.

The Supreme Court originally comprised six justices. The Constitution does not specify the size of the Supreme Court, but Article III does authorize Congress to fix the number of justices. In its history, the court has fluctuated from six to 10 members. Since the Judiciary Act of 1869, nine justices have sat on the court. In 1937, President Franklin Roosevelt tried to expand the size of the court. During Roosevelt's first term, the court invalidated many of the New Deal measures intended to strengthen economic recovery during the Great Depression. His plan would have appointed an additional justice for every incumbent justice who attained the age of 70 and a half. These appointments would have continued until the court reached a maximum size of 15 justices. Roosevelt's intention was to pack the court with justices who would uphold New Deal legislation. This plan, known as the "court-packing plan," ultimately failed and hurt Roosevelt politically.

The Supreme Court serves primarily as an appellate court, but does retain original jurisdiction over a small range of cases. The court has both mandatory appellate jurisdiction and discretionary appellate jurisdiction. A case must be reviewed by the Supreme Court if a U.S. District Court invalidates a federal law, if a U.S. Court of Appeals invalidates a state law, or if a state's highest court invalidates a federal law. Most cases heard by the court are discretionary appeals. These cases must be of sufficient national significance and pertain to a question of constitutionality. The court accepts these cases by a writ of certiorari—an order that a higher court issues in order to review the decision and proceedings of a lower court—from the U.S. Court of Appeals and a state's highest court. To accept a case, at least four of the nine justices must grant certiorari. In extremely rare occurrences, the court retains original jurisdiction.

Supreme Court, U.S.

The Supreme Court of the United States is the only court formally established by the U.S. Constitution and is the highest judicial body in the country. In drafting Article III of the Constitution, the founding fathers established the Supreme Court, but they did not make any stipulations regarding its size,

It acts as a trial court if the litigious action is between two or more states, if an ambassador is a party to the action, or if the action is between a state and the federal government.

While some appellate courts sit on panels during the hearing of a case, the justices of the Supreme Court are always “en banc.” That is, the full court participates in every case (except cases involving conflicts of interest). After the court hears oral arguments in a given case, the justices retire to their conference room to begin deliberations and conduct a vote. After the vote, the majority opinion is assigned. If the chief justice is in the majority bloc, he can assign the opinion to himself or another justice in the majority bloc. If the chief justice is in the minority bloc, the senior associate justice in the majority bloc will assign the majority opinion. Draft opinions are then circulated among the justices for consideration. Justices typically do not change their vote, but it is during this time that changes in voting will occur. Sometimes the authoring justice may carefully word the opinion in hope of swaying other justices to his/her opinion.

When a vacancy arises on the court, justices are nominated by the president of the United States. The Constitution does not specify qualifications for service; thus, the president may nominate anyone to serve. Traditionally, justices have previously served as lawyers, law professors, and federal appellate court judges. Justices are confirmed with the “advice and consent” (i.e., majority vote) of the U.S. Senate. The Senate Judiciary Committee holds confirmation hearings of all nominees. The nominees are subjected to a vote of both the committee and the full Senate. Under the Constitution, justices are confirmed with life tenure and serve during “good behavior.” A justice’s tenure terminates only upon death, resignation, retirement, or conviction of impeachment. Only one justice (Samuel Chase in 1805) has ever been impeached by the House of Representatives. He was subsequently acquitted by the Senate.

The 2012 justices of the U.S. Supreme Court, along with the president who made the nomination and the year service began, were as follows:

- Chief Justice John Roberts (George W. Bush, 2005)
- Antonin Scalia (Ronald Reagan, 1986)

- Anthony Kennedy (Ronald Reagan, 1988)
- Clarence Thomas (George H. W. Bush, 1991)
- Ruth Bader Ginsburg (Bill Clinton, 1993)
- Stephen Breyer (Bill Clinton, 1994)
- Samuel Alito (George W. Bush, 2006)
- Sonia Sotomayor (Barack Obama, 2009)
- Elena Kagan (Barack Obama, 2010)

Traditionally, the court is recognized by its chief justice. Subsequently, historical periods of the Supreme Court are named after the presiding chief justice of that time. The earliest courts, under Chief Justices John Jay (1789–95), John Rutledge (1795), and Oliver Ellsworth (1795–1800), heard few cases of national significance. The Supreme Court’s first decision was in *West v. Barnes* (1791), a case that originated out of Rhode Island and involved a procedural issue of contract law.

The Marshall Court

Under the leadership of Chief Justice John Marshall (1801–35), the court issued what was perhaps the most important decision in its history. In *Marbury v. Madison* (1803), the court declared itself to be the supreme arbiter of the U.S. Constitution. In his opinion, Marshall wrote, “It is emphatically the province and duty of the judicial department to say what the law is.” The court invalidated a section of the Judiciary Act of 1789 on the basis that it violated the Constitution by expanding the original jurisdiction of the Supreme Court. It was the first case in which the court ruled an act of Congress unconstitutional, and it firmly established the doctrine of judicial review. The power of judicial review designates the Supreme Court as the final authority to decide whether or not actions of the president or of the Congress are within the powers granted to them by the Constitution.

The Marshall court made several important rulings giving further substance to the constitutional balance of power between the federal government and the states. In *Martin v. Hunter’s Lessee* (1816), the court wrote that it had the authority to correct interpretations of the federal Constitution made by state supreme courts. In *McCulloch v. Maryland* (1819), the court established that states could not tax federal institutions; that decision also upheld the congressional authority to



The front facade of the U.S. Supreme Court building, a national landmark, in Washington, D.C. The court was originally located in the basement of the U.S. Capitol building before construction began on the current structure in 1932. Although not designated by the U.S. Constitution, the Supreme Court can overturn executive actions it deems unlawful or unconstitutional.

create the Second Bank of the United States, even though the authority to do so was not explicitly stated in the Constitution. The court reasoned that because federal laws have supremacy over state laws, the State of Maryland had no right to hinder the bank's operation by trying to tax it. Accordingly, *Marbury*, *Martin*, and *McCulloch* each established and affirmed that the Supreme Court was entrusted with maintaining the consistent and organized development of federal law.

During the tenure of Chief Justice Marshall, the court consistently interpreted the Constitution broadly to ensure the federal government would have the power to become a respected nation. As chief justice, Marshall embodied the majesty and power of the judicial branch of the government as fully as the president stood for the power of the executive branch. The Constitution does not specifically grant the power of judicial review to the court, and President Thomas Jefferson did not agree with Marshall's opinion in *Marbury* because he believed the president

should decide whether executive acts were constitutional. The *Marbury* decision established an American tradition and legal system based on the concept of "government under law." Judicial review states that no person (e.g., the president) and no institution (e.g., Congress) may act in violation of the Constitution. The Marshall court also ended the established practice of each judge issuing an individual opinion, a remnant of British tradition. Instead, it began issuing a single majority opinion. Justices in the majority voting bloc may also submit concurring opinions. In nonunanimous decisions, one or more of the justices in the minority bloc will typically write a dissenting opinion.

From Taney to Vinson

Under the leadership of Chief Justice Roger Taney (1836–64), the court made several important rulings. In *Sheldon v. Sill* (1850), the court held that while Congress may not limit the subjects the Supreme Court may hear, it may limit

the jurisdiction of lower federal courts to prevent them from hearing cases dealing with certain subjects. The Taney Court is most noted for its ruling in *Dred Scott v. Sandford* (1857)—a case that many argue helped precipitate the Civil War. Taney authored the opinion; he wrote that people of African descent who were imported into the United States and held as slaves (or their descendants, whether or not they were slaves) were not protected by the Constitution and could never be American citizens. The court further ruled that slaves, as chattel or private property, could not be taken away from their owners without due process of law. Though infamously known for the *Scott* case, this court is also remembered for *Charles River Bridge v. Warren* (1837). This decision ruled against legislature-granted monopolies in favor of competition and was a major victory for laissez-faire economics.

During the post-Civil War and Reconstruction eras, many of the Supreme Court's decisions interpreted the new Civil War amendments (Thirteenth, Fourteenth, and Fifteenth Amendments). Under the direction of Salmon Chase (1864–73), Morrison Waite (1874–78), and Melville Fuller (1888–1910), the court also further developed the doctrine of substantive due process. In *Lochner v. New York* (1905), the court held that the liberty to contract was implicit in the due process clause of the Fourteenth Amendment. The case involved a New York law that limited the number of hours that a baker could work per day. The law also limited the number of hours that bakers could work each week. The court ultimately rejected the contention that the law was necessary to protect the well-being of the employees. It concluded that the labor law was an attempt to regulate the terms of employment, and it stated that it amounted to an arbitrary and unreasonable intrusion into the right of the individual to contract.

Another important case during this period was *Plessy v. Ferguson* (1896). Here, the Fuller court upheld the constitutionality of state laws requiring racial segregation in private facilities under the equal protection clause of the Fourteenth Amendment. The decision created the doctrine of “separate but equal.” This doctrine was later overturned in 1954. In a major victory for criminal defendants, in *Weeks v. United States* (1914), the court established the exclusionary rule, thus

marking the first federal decision to uphold the exclusion of evidence without a proper search warrant in violation of the Fourth Amendment.

During the Charles Hughes (1930–41), Harlan Stone (1941–46), and Fred Vinson courts (1946–53), the Supreme Court gained notoriety for interpreting the Constitution to facilitate President Franklin Roosevelt's New Deal legislation. However, many of these cases were not decided until after Roosevelt's court-packing scheme failed. In *West Coast Hotel Co. v. Parrish* (1937), the court validated the constitutionality of minimum wage legislation in the state of Washington. It further stated that the Constitution permitted the restriction of the right to contract by state law in such cases where the restriction protected the community or the health and safety of employees.

During this era, the court also gave a broader reading to the powers of the federal government. In *Korematsu v. United States* (1944), the court considered the legality of a presidential order that forced Japanese Americans into internment camps during World War II. In the controversial decision, the Supreme Court ruled in favor of the government and upheld the constitutionality of the exclusion order. It held that the need to protect the country against espionage outweighed the defendants' individual rights.

The Warren Court

Under the leadership of Chief Justice Earl Warren (1953–69), the court made many celebrated and controversial rulings. This era in the court's history was known as the “due process revolution” because it expanded the application of the Constitution to civil liberties, most notably for criminal defendants. The Warren court is remembered for extending the Bill of Rights to states, the general principle behind most of its criminal justice decisions. In *Mapp v. Ohio* (1961), the court ruled that evidence obtained in violation of the Fourth Amendment, which protects individuals against “unreasonable searches and seizures,” cannot be used in criminal prosecutions in state courts, as well as federal courts. Until this case, the *Weeks* precedent only applied to search and seizure violations committed by federal law enforcement.

In *Miranda v. Arizona* (1966), the Warren court concluded that statements made during a custodial interrogation by a criminal defendant

can only be admissible at trial if the prosecution can prove that the defendant was made aware of the right to consult with an attorney before and during police questioning, and of the right against self-incrimination prior to police questioning, and that the defendant understood and voluntarily waived these rights. If a defendant invokes his right to remain silent, the police must immediately cease questioning. This ruling had a major impact on law enforcement practices in the United States. By making the “Miranda rights” a part of routine police procedure, the court ensured that suspects would be informed of their rights. Moreover, in *Gideon v. Wainwright* (1963), the Warren court also concluded that the Constitution grants the right to a court-appointed attorney for criminal defendants unable to afford one.

In a landmark case, *Brown v. Board of Education* (1954), the court reversed *Plessy* by holding that segregation in public schools was unconstitutional. By doing so, it invalidated the long-standing doctrine of “separate but equal.” With respect to the separation of church and state, the court held in *Engel v. Vitale* (1962) that public schools cannot administer official prayer sessions, and in *Abington School District v. Schempp* (1963), it ruled that public schools also could not administer mandatory Bible readings. In *Griswold v. Connecticut* (1965), the Supreme Court ruled that the Constitution protects a general right to privacy. The case centered on a Connecticut law that prohibited the use of contraceptives. The Warren court invalidated this law on the basis that it violated married couples’ right to marital privacy.

The Burger Court

Since the Warren Court, the Supreme Court has returned to a more conservative political leaning by interpreting the Constitution very narrowly. The court, under the direction of Warren Burger (1969–86), made one of its most controversial rulings in *Roe v. Wade* (1973). In this case, the court struck down outright bans on abortion by holding that the Constitution protected a woman’s right to privacy and control over her own body.

The Burger court also reached controversial rulings on affirmative action and campaign finance reform. In *Regents of the University of California v. Bakke* (1978), it wrote that while affirmative action systems are generally constitutional, a quota

system based solely on race is unconstitutional. In *Buckley v. Valeo* (1976), the court upheld federal limits on campaign contributions, and it also ruled that spending money to influence elections is considered constitutionally protected free speech.

In another landmark decision, the Supreme Court emphatically stated that it is the ultimate and final authority in determining constitutional questions. In *United States v. Nixon* (1974), a case involving President Richard Nixon and the Watergate scandal, the court ruled that no person, not even the president of the United States, is completely above the law. In a unanimous decision, the court opined that the president cannot claim executive privilege as an excuse in withholding evidence that is pertinent in a criminal trial.

During the Burger court, the American capital punishment system also underwent significant changes. In *Furman v. Georgia* (1972), the court ruled that the arbitrary and capricious implementation of the death penalty was unconstitutional. By making this ruling, the court invalidated the capital punishment sentencing schemes of many states. It ruled that the death penalty was not itself unconstitutional, so several of the states began modifying their sentencing schemes to comply with the *Furman* ruling. In *Gregg v. Georgia* (1976), the court reinstituted capital punishment so long as states followed a system comprising three parts: a bifurcated trial (to determine guilt and sentencing separately), mandatory appellate review, and the inclusion of mitigating as well as aggravating factors. In *Coker v. Georgia* (1977), the court held that capital punishment for the crime of rape was grossly disproportionate and excessive; therefore, it is forbidden by the Eighth Amendment as cruel and unusual punishment.

The Rehnquist Court

The Supreme Court under William Rehnquist (1986–2005) was noted for its revival of the concept of federalism and a strict interpretation of the Constitution’s original meaning. It restricted congressional power under the commerce clause in *United States v. Lopez* (1995) for the first time since the New Deal legislation. It also strengthened the power of state sovereign immunity in *Seminole Tribe v. Florida* (1996). The Rehnquist court might be most known for its controversial 5–4 decision in *Bush v. Gore* (2000). Following

the 2000 presidential election, the justices split along party lines and effectively ended the electoral recount in Florida, which led to the presidency of George W. Bush. The court concluded that the Florida Supreme Court's system for recounting ballots was in violation of the equal protection clause of the Fourteenth Amendment. The majority decision stated that no alternative method could be implemented within the time limits set by the State of Florida. Three of the justices also maintained that the Florida Supreme Court violated the U.S. Constitution by misinterpreting Florida election law, which had been enacted by the Florida Legislature.

Additionally, the Rehnquist court upheld rights to privacy by decriminalizing private homosexual sex in *Lawrence v. Texas* (2003). It altered the *Roe* framework pertaining to abortion regulations in *Planned Parenthood v. Casey* (1992). It upheld the power of Congress to lengthen copyright terms in *Eldred v. Ashcroft* (2003). It also expanded the government's eminent domain authority in *Kelo v. City of New London* (2005).

The Roberts Court

The John Roberts court (2005–present) was the presiding court in 2012. It has been seen as more conservative than previous courts. *Ayotte v. Planned Parenthood* (2006) was an abortion case in which the court stated that entirely invalidating a parental notification statute was unnecessary if the statute's unconstitutional implementation could be fixed by other judicial actions. The court also limited the scope of *Miranda* by restricting the right to remain silent. In *Berghuis v. Thompson* (2010), the court ruled that a suspect's silence during a custodial interrogation does not explicitly or implicitly invoke the suspect's right to remain silent under the Fifth Amendment. To invoke one's *Miranda* rights, one must do so in an unambiguous fashion.

The Roberts court has also decided two important death penalty cases in its brief history. In *Kennedy v. Louisiana* (2008), the court opined that it is unconstitutional to impose capital punishment in nonfatal child rape cases. The court used *Coker* as precedent to determine that the death penalty should only be used in cases involving the death of an individual. Additionally, in a Kentucky case, *Baze v. Rees* (2008), the court ruled that

the traditional three-drug lethal injection cocktail (sodium thiopental to induce unconsciousness, pancuronium bromide to cause muscle paralysis and respiratory arrest, and potassium chloride to stop the heart) used for execution is constitutional under the Eighth Amendment.

Other important cases concerning unsettled issues have also been decided by the Roberts Court. In *District of Columbia v. Heller* (2008), it concluded that the Second Amendment guarantees an individual's right to possess a firearm irrespective of militia service. In *Hudson v. Michigan* (2006), it concluded that a violation of the "knock-and-announce" rule by the police during a search does not necessarily infringe on the Fourth Amendment. In *Crawford v. Marion County Election Board* (2008), the court ruled that an Indiana law requiring voters to show photo identification was constitutional. In *Garcetti v. Ceballos* (2006) and *Morse v. Frederick* (2007), the court upheld First Amendment free speech protections by government employees and high school students, respectively. In *Citizens United v. Federal Election Commission* (2010), a campaign finance case, the Roberts Court held that corporate funding of political broadcasts during elections cannot be restricted under the First Amendment.

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See Also: 1777 to 1800 Primary Documents; 1801 to 1850 Primary Documents; 1851 to 1900 Primary Documents; 2001 to 2012 Primary Documents; Appellate Courts; Constitution of the United States of America; Due Process.

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Suspect's Rights

Suspects have rights from the time of engaging in the crime to the point of conviction. The Fourth, Fifth, Sixth, and Fourteenth Amendments are the most common amendments in criminal procedure. These amendments are essential to the idea of due process—a philosophy that assumes the suspect is presumed to be innocent and the state has the burden to prove a defendant's guilt. Through employing due process, the state's prosecution follows applicable case law and rules of evidence. This, in turn, protects private citizens from arbitrary governmental abuses.

Due process can be divided into two main areas: substantive and procedural due process. Substantive law creates, defines, and regulates rights. This allows one to be protected from biased, discriminatory, and unfair law, such as Jim Crow laws, which maintained segregation in the U.S. south before the Civil Rights Act of 1964. In contrast, procedural due process ensures no person will be deprived of freedom without adhering to proper legal procedures. Due process includes proper notice of charges, a formal and unbiased hearing, the right to attorney, to be able to respond

to charges, opportunity to confront and cross-examine witnesses and accusers, ability to present one's own witnesses, prohibition against forced self-incrimination, and the right to appeal.

Under due process, there are several amendments that are pertinent to suspect's rights before the commission of a trial. This includes the Fourth Amendment, which guards against unreasonable searches and seizures of a person's home or personal property without a warrant. This warrant is to be issued by a magistrate, a judge-like official, in which the threshold of evidence must reach the probable cause standard. This amendment was produced in response to the abuse of writ of assistance by the British courts before the American Revolution. Warrants are to be limited to the specific information issued by the magistrate's court.

Exclusionary Rule

There are several pivotal Supreme Court cases pertinent to this amendment. One specific area is the exclusionary rule, which provides that evidence obtained in violation of the U.S. Constitution may be excluded at trial. The exclusionary rule was first established with *Weeks v. United States*, 232 U.S. 383 (1914). In this case, Weeks was suspected of using the mail to send lottery tickets, a prohibited gambling. U.S. marshals entered the person's home, without a warrant, and discovered lottery tickets, after a search. These tickets were used as evidence against him in court, in which he was convicted of the unlawful use of the mail. Weeks appealed the case, arguing the officers should have obtained a warrant before search. The appeal was successful with the Supreme Court, which overturned the conviction. Weeks was unlikely to be a flight risk, since he was gainfully employed. Additionally, the U.S. marshals had time to obtain the warrant. This ruling became binding to federal law enforcement officials. Some states voluntarily complied with the ruling. An unusual situation developed in which states that did not comply could obtain evidence without going through the more rigorous legal requirements and could provide evidence to federal agents. This was known as the "silver platter doctrine." However, with the cases *Elkins v. United States*, 364 U.S. 206 (1960) and *Mapp v. Ohio*, 367 U.S. 1081 (1961), this was eliminated.

This silver platter doctrine was reinforced through the Supreme Court ruling in *Wolf v. Colorado*, 338 U.S. 25 (1949). Wolf was a physician in Colorado, a nonexclusionary state. He was suspected of performing illegal abortions. The state officers entered his office and seized various documents. There were various violations of procedural law and the warrant had numerous errors. He was convicted. He appealed and wanted to apply the same standards established under *Weeks* to the states, citing the Fourteenth Amendment's equal protection clause. The Supreme Court upheld the conviction and avoided having the states comply with *Weeks*.

With *Mapp v. Ohio*, 367 U.S. 1081 (1961), police in Cleveland, Ohio, believed a suspect was making or possessed bomb-making materials. Police obtained a warrant for Mapp, a female friend. When the police came to the residence, they asked to come in. Mapp refused and suggested the officers obtain a warrant. Mapp called her attorney when the officers left. The attorney arrived at the same time as the officers. The officers arrived waving a piece of paper. Neither Mapp nor the attorney were permitted to review the "warrant." A search of the home produced no bomb materials; however, the police were able to find pencil sketches of what the officers believed to be "pornography." Mapp was then arrested for possessing pornographic materials. The Supreme Court overturned her conviction and it was not known whether what was produced by the police was a warrant. In this case, the exclusionary rule became binding to the states. Thus, any evidence obtained illegally is inadmissible in court, neutralizing the silver platter doctrine.

Also pertinent to the exclusionary rule is the fruit of the poisonous tree doctrine, in which evidence derived from an illegal search or illegal interrogation is inadmissible because of the original illegally obtained evidence. In this case, federal agents illegally seized tax records and produced copies of the books. The Supreme Court ruled permitting derivatives from original illegally obtained evidence was tainted and therefore inadmissible.

This Supreme Court principle was refined with *Wong Sun v. United States*, 371 U.S. 471 (1961). Police searched the area where he lived and found no narcotics on the premises and was subsequently

released. Statements, several days later, were provided to Wong Sun and another suspect, but were not signed. Wong Sun and his associate returned to the agents several days later and admitted to the original statement. He and his associate were subsequently convicted based upon charges of transporting and concealing heroin.

Upon appeal, Wong asserted his statements were inadmissible in court because several illegal acts were conducted by the federal agents. The Supreme Court agreed there were a number of illegal procedural actions committed by the federal officers that nullified certain evidence. However, when Wong and his associate came back and admitted to the accuracy of the original statement, this action nullified the taint of the original evidence and it could be utilized against him.

The exclusionary rule has been commonly associated with the Fourth Amendment; however, the exclusionary rule also applies to pretrial



A 2010 protest in Minneapolis, Minnesota, against the Arizona SB 1070 law, which mandates that Arizona officials and law enforcement check for proof of citizenship without defining "reasonable suspicion" or "probable cause."

confrontations in a lineup or photo array. For example, police cannot do anything that persuades the witness to choose the person they prefer, as this would be a violation of due process. The exclusionary rule can be applied to confessions and interrogations that violate the Fifth Amendment against self-incrimination or the Sixth Amendment's right to counsel.

Interrogation

According to the Fifth Amendment, "...shall not be compelled in any criminal case to be a witness against himself." This amendment has precedent in English common law, in which involuntary confessions are not admissible in court. For the past 70 years, the Supreme Court has placed limits on how the police can interrogate suspects. Under *Brown v. Mississippi*, 287 U.S. 278 (1936), physical coercion cannot be utilized to force confessions. In this case, Brown was a suspect of murder. A deputy sheriff hanged him from a tree, let him down, and hanged him up again. He was later tied to a tree and beaten. Several days later he was arrested at his home and taken to jail where he was repeatedly beaten and was told the beatings would continue until he confessed. He confessed and subsequently was found guilty of murder. Upon appeal, he contended he was denied due process under the Fourteenth Amendment. The Supreme Court concurred. Physically coerced confessions and statements are inadmissible.

Neither may a confession be admitted into court if the statement was obtained through psychological coercion. In *Ashcraft v. Tennessee*, 322 U.S. 143 (1944), Ashcraft and another man were suspected of killing Ashcraft's wife. He was interrogated by officers for eight hours and was later interrogated for over 36 hours. During this last period, had he only had a five-minute break and no rest. He appealed, stating his confession was coerced. The court agreed. Thus, psychologically coerced confessions are not voluntary, therefore are not admissible in court.

The paramount Supreme Court case on the issue of interrogation was *Miranda v. Arizona*, 384 U.S. 436 (1966). Miranda was suspected of rape and kidnapping and was arrested. Miranda was not allowed to speak to an attorney nor was he informed of his right to have one. He was interrogated for several hours and eventually confessed

to the crime and signed a confession. Upon appeal, Miranda contended he was not advised of his right to an attorney nor of his right to remain silent; therefore, violating due process. The Supreme Court concurred and established the Miranda warning. This decision required that suspects must be advised of certain rights for their confessions to be admitted as evidence. These rights include the right to remain silent, the right to an attorney, and the right to free counsel if the suspect cannot afford one.

Later decisions by the court have refined *Miranda* for a variety of situations. In *Rhode Island v. Innis*, 466 U.S. 291 (1981), the high court ruled that a "spontaneous" statement by a suspect can be admissible in court as long as the responses were not given in response to police questioning or other action that might induce an incriminating response by the suspect. In this case, Innis was suspected of killing a taxi driver. He was presented his Miranda rights, twice; but on both occasions, Innis stated he did not want to speak to the officers and would prefer to have his attorney present. While transporting Innis to the police station, the officers discussed how dangerous it would be if a child discovered a shotgun, since the murder occurred near a school. The suspect, Innis, then showed the police officers where the murder was committed and the location of the shotgun. This evidence was utilized to convict Innis. Upon appeal, Innis contended the evidence was inadmissible, since he asked for an attorney and indicated his desire not to speak to police. The court disagreed because the police were talking to themselves and he interjected into their conversation. This was admissible since the police officers did not question him, nor did they know he would provide self-incriminating response.

Miranda does not have to be delivered in emergency situations as well. This decision was made in *New York v. Quarles*, 467 U.S. 649 (1984). A woman reported she had been raped by an armed man who had run into a supermarket. Police were able to approach Quarles and conduct a pat-down search and found an empty holster. The officers asked where the gun was and he indicated he threw it into some empty cartons. The gun was retrieved by the police and then Quarles was read his Miranda rights. He was convicted of rape. Quarles argued that the initial statement

he made should have been excluded because he was not issued his Miranda rights. Upon appeal, Quarles argued the location of the gun should be excluded from evidence because the officers had not told him his rights prior to questioning. The Supreme Court upheld the conviction of Quarles; public safety justified the absence of *Miranda*. This established the public safety exception to the Miranda warning.

A similar ruling was made when police asked routine questions in *Pennsylvania v. Muniz*, 496 U.S. 582 (1990). Muniz was stopped by police on suspicion of drunk driving. Muniz was given a sobriety test but failed it. The suspect stated he failed these tests because he had been drinking. These tests were also given a second time, which were videotaped. Muniz was asked to take a Breathalyzer test, but he refused. He was then read his Miranda rights and admitted he had been drinking and driving. The videotaped evidence was used in court and he was convicted of driving while intoxicated (DWI). However, the Supreme Court upheld the conviction since the questioning before Miranda was routine and the procedures utilized were standard with DWI stops. Thus, police may videotape suspected drunken drivers and ask routine questions, such as age, height, and residence without providing the Miranda warning.

There are other exceptions. With *Illinois v. Perkins*, 496 U.S. 292 (1990), the court concluded that an officer could pose as a fellow inmate and obtain a confession from another inmate without having to provide a Miranda warning. Perkins was held in jail for aggravated battery. An undercover officer entered his cell and Perkins provided information about another crime and a murder. This information was used to convict Perkins of murder. On appeal, Perkins argued the evidence should not have been used in court because he was not read Miranda by the undercover police officer. The Supreme Court stated Miranda is not required when a suspect provides information to people who they do not believe to be undercover officers.

In *Illinois v. Patane*, 542 U.S. 630, (2004) physical evidence derived from information during questioning can be used as evidence in court, even if Miranda was not provided. Police came to Patane's house for violating a restraining order by calling his ex-girlfriend. While he was being

arrested, the officers began providing Patane his Miranda rights, at which point the officers ceased reading them. Patane then informed them he had a gun in his house. He was an ex-felon and not permitted to have such a weapon and was prosecuted. Patane contended the gun was found without proper presentation of a Miranda warning. The court ruled that since the testimony was not entered into trial as evidence, the Fifth Amendment had not been violated. Physical evidence obtained through statements in which the suspect was not provided Miranda was permissible, as long as the statements were not forced.

Assistance of Counsel

Under the Sixth Amendment to the Constitution, assistance of counsel is to be provided for proper defense. The Supreme Court has articulated clear standards that are to be adhered to during the interrogation process. This issue was highlighted in the watershed case of *Escobedo v. Illinois*, 378 U.S. 478 (1963). An informant told police Escobedo had committed a murder. Without an arrest warrant, police arrested Escobedo and interrogated him on the way to the police station and at the station. Several times during the interrogation, Escobedo asked to speak to an attorney. His attorney arrived and was denied permission to see Escobedo. Eventually, Escobedo confessed to the murder and was convicted. The Supreme Court overturned the conviction because Escobedo was denied counsel and an accusatory interrogation proceeded, thus violating Escobedo's due process rights. The court stressed that when an investigation switches from investigatory to accusatory, suspects are allowed an attorney and can refrain from speaking.

This ruling was refined in *Edwards v. Arizona*, 451 U.S. 477 (1981). Edwards, through a taped confession by an accomplice, was implicated in a crime. Edwards was provided a Miranda warning. He wanted to strike a deal with the police but he also requested an attorney. At that point, questioning ceased and an attorney was appointed. The following day, two officers came to his cell and provided Miranda rights again. The officers then asked if Edwards would like to talk to them. Edwards initially refused but then requested to hear the taped confession again. After hearing this, Edwards provided incriminating evidence that was

used in court and he was subsequently convicted of various crimes. Upon appeal, he sought to suppress the confession. The court agreed, stating that once he requested council, all police questioning should have ceased—even though Miranda had been provided a second time. During the second round of questioning, his attorney was not present. In addition, the officers continued questioning, despite Edwards's desire to have his attorney present. Thus, even if Miranda has been presented twice, police cannot continue interrogation by a suspect represented by an attorney and requests to remain silent. However, if the suspect initiates conversation that may be incriminating, it is permissible to use such statements in court.

The Supreme Court reinforced this ruling with *Minnick v. Mississippi*, 498 U.S. 146 (1990). Two men escaped from a county jail in Mississippi and killed two men while burglarizing a trailer. Minnick was arrested in California on August 22, 1986, by the Lemon Grove police. The Federal Bureau of Investigation (FBI) advised Minnick of his right to remain silent and his right to have an attorney present on Saturday. Minnick began a partial confession but told the agents to “come back Monday” when an appointed attorney would be present. Also on Saturday, Minnick was provided an attorney, who advised he should not say anything to the police. Denham, a deputy sheriff from Mississippi, flew to California and Minnick was told he “had to talk,” despite his reluctance. He admitted to one of the murders and was eventually found guilty of two counts of capital murder and sentenced to death. Upon appeal, he moved to suppress the incriminating statements made to Denham and the FBI. The court agreed. Once *Miranda* has been given and an attorney has been appointed, further police questioning cannot continue without an attorney present.

What if a suspect makes an ambiguous statement concerning his attorney? This issue was decided in *Davis v. United States*, 512 U.S. 452 (1994). Davis was an officer of the U.S. Navy who murdered another officer with a pool cue over a \$30 pool game debt. Naval investigators read Davis his Miranda rights. During the interrogation, Davis admitted to the murder and made the statement “maybe I should speak to an attorney.” The investigators then asked if he wanted one and he stated “no.” Thus, the court

ruled an ambiguous request for an attorney does not establish that right. Clear and unambiguous requests for counsel must be articulated.

Strip Searching

A recent issue concerning suspect rights has been the issue of strip searching. The Supreme Court granted certiorari and heard arguments in October 2011 concerning this issue. In *Florence v. Board of Chosen Freeholders of the County of Burlington*, 621 F.3d 296 (2010), the Third Circuit considered whether a suspect's Fourth Amendment rights were violated after twice being strip searched for a noncriminal offense and circumstances suggested he was not carrying contraband. In New Jersey, Florence was pulled over and arrested, once it was discovered he had a warrant for not paying a fine, a noncriminal offense in New Jersey. Florence was able to produce a letter stating the fine was paid but an arrest was made by the officer anyway. The suspect was transported to a local jail and was forced to undergo a strip search. A week later, he was transferred to another custodial facility, where he was again strip searched. Florence alleged his Fourth Amendment rights were violated and filed suit under 42 U.S.C. § 1983. Summary judgment was ruled in favor of the defendants by the U.S. District Court for the District of New Jersey, but the Third Circuit of Appeals reversed.

There was no reasonable suspicion for a strip search, Florence has argued, but based on jail policy, every arrestee was subject to strip search. Under *Bell v. Wolfish*, 441 U.S. 520 (1979), the Supreme Court ruled the possibility of innocence should not preclude the performance of searches for the security of the facility. However, *Florence* makes a distinction between minor and major offenders. These matters should be conducted by reviewing each case. Reasonable suspicion, according to the opposing council, was not required because the search was cursory and not invasive. In addition, contraband may be carried by a minor offender as well as by a major offender. Custody officials should determine the appropriateness of action for security. The Supreme Court was due to provide a decision in early 2012.

Conclusion

Suspects rights are essential to due process. As indicated, the Fourth, Fifth, Sixth, and Fourteenth

Amendments are critical to the issue of suspect's rights. This matter has evolved through various Supreme Court rulings during the past decades and will continue to be a pertinent and controversial question in the near and distant future.

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See Also: 1941 to 1960 Primary Documents; *Brown v. Mississippi*; *Mapp v. Ohio*; *Miranda v. Arizona*; *Weeks v. United States*; *Wolf v. Colorado*.

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Sutherland, Edwin

Edwin H. Sutherland (1883–1950) was the third of seven children born in Gibbon, Nebraska to George and Lizzie Sutherland. Edwin Sutherland's father, George, was devoutly religious and somewhat strict but nonetheless had a lasting impression on his son. Sutherland grew up and studied in Ottawa, Kansas, and Grand Island, Nebraska. He received his bachelor of arts from Grand Island College in 1904, and by age 21, he was teaching Greek, history, Latin, and shorthand at Sioux Falls College in South Dakota. After teaching for two years, he left Sioux Falls College to pursue graduate school at the University of Chicago, where he studied sociology and received his doctorate in 1913. While studying under the guidance of Charles Henderson, Albion Small, and W. I. Thomas, Sutherland concentrated on criminal behavior as a social process. However, some scholars argue that Sutherland became disenchanted with the University of Chicago's department of sociology and chose to reroute his efforts toward

the department of political economy, studying under Robert Hoxie and James Field. Ultimately, when he completed his studies, Sutherland had earned a Ph.D. in both sociology and political economy and a minor in psychology.

Shortly after receiving his doctorates, Sutherland became a faculty member at William Jewel College (1913–19) in Liberty, Missouri, and later became an assistant professor at the University of Illinois (1919–26), where he published his eminent book *Criminology*. Following the success of his book, Sutherland was offered a promotion at Illinois and later a professorship at the University of Minnesota (1926–29), where he amassed a reputation as one of the country's leading sociological criminologists. Toward the end of his career, Sutherland was briefly employed at the University of Chicago (1930–35) and then the University of Indiana (1935–49), where he was the chairman of the department of sociology. Sutherland eventually had to relinquish his position as department chair due to poor health, but he continued independent research at Indiana. Edwin Sutherland suddenly passed on October 11, 1950, from cerebral hemorrhage.

Influence on Criminology

Although his untimely demise left many in a state of gloom, Edwin Sutherland's academic works continued to profoundly shape the field of criminology. With four major book publications and more than 50 articles, chapters, and book reviews, there is no denying that Sutherland's scholarship left a lasting influence. In his highly influential book *Criminology*, which transcended most criminological thought at the time, Sutherland cultivated a field that was primitive and lacked structure. Straying from the Lombrosian legacy of biological determinism, Sutherland's first edition of *Criminology* avoided the pitfalls of biological theories by emphasizing a sociological perspective; this novel perspective combined W. I. Thomas's attitude/value concept with the sociological concepts of imitation, isolation, mobility, personality, assimilation, and human nature. In later editions, Sutherland included Robert Park and Ernest Burgess's four processes (the economical, the historical, the political, and the cultural). With time and a few revisions, Sutherland's book became the dominant criminology text in the United States.

By his third edition of the book, which was renamed *Principles of Criminology*, Sutherland had successfully developed a theory on crime causation. Relying on the Chicago school theorists Clifford Shaw and Henry McKay, the culture conflict approach, and his own interviews conducted for *The Professional Thief*, Sutherland formulated the theory of differential association. In a series of nine propositions, Sutherland asserted that individuals become delinquent because the excess of definitions favorable to criminal conduct outweighs the definitions unfavorable to breaking the law. Put simply, criminal behavior emerges when one is exposed to individuals (i.e., friends, family) who both engage in criminal conduct and positively reinforce breaking the law. Not only was his concept applied at the individual level, but Sutherland also believed that differential association could explain why individuals at the group level differ in levels of criminal conduct. Ultimately, he viewed crime as a consequence of conflicting values. It should be noted, however, that Sutherland's theory did not go without criticism. A major criticism of differential association is that it does not apply to perpetrators of individual and personal crimes, and that it fails to account for irrational and impulsive criminals.

With his *Principles of Criminology* published and the theory of differential association afloat, Edwin Sutherland quickly became one of the country's leading sociological criminologists. His insight and scholarship continue to influence the field of criminology.

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See Also: Crime in America, Causes; Criminology; History of Crime and Punishment in America, 1900–1950.

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Taft, William Howard (Administration of)

William Howard Taft (1857–1930), 27th president of the United States, is the only American to serve both as president and as chief justice of the Supreme Court. He graduated second in his class at Yale University in 1878 and was admitted to the Ohio bar in 1880 after graduating from Cincinnati Law School.

Taft served in a number of public offices before becoming an Ohio superior court judge in 1887. In 1890, President Benjamin Harrison appointed him solicitor general for the U.S. government. In 1892, he was appointed to a seat on the Sixth Circuit Court of Appeals. In 1900, Taft was appointed president of the U. S. Philippines Commission; he was named civil governor of the Philippines on July 4, 1901. In 1904, he was appointed secretary of war.

Presidency

In 1908, Taft was elected president of the United States. An excellent administrator, he was soon faced with difficult political choices. He wanted to continue the Progressive policies of Roosevelt, which included consumer advocates' goals of cutting tariffs. The House passed a tariff bill that lowered rates, but Taft did not exercise enough

political pressure on the more conservative Senate to see the bill through. Instead, the Senate effectively rewrote the bill into a tariff bill with even higher rates. As events unfolded, Taft was increasingly less graceful in handling the Progressives, alienating them even more.

Among Taft's legislative accomplishments were the establishment of the Postal Savings Plan and the passage of the Mann-Elkins Act (1910) strengthening the Interstate Commerce Commission and the White-Slave Traffic Act of 1910 (Mann Act). During his term, the Department of Commerce and Labor became two separate departments, the Federal Children's Bureau was established, and Arizona and New Mexico were admitted into the Union. Two constitutional amendments were ratified during his term in office: the Sixteenth Amendment (addressing income tax) and the Seventeenth Amendment (direct election of senators).

Despite his many accomplishments, many Progressives were unhappy with Taft's administration. As the election of 1912 approached, supporters of Teddy Roosevelt called for him to come home from his foreign travels. Roosevelt, disappointed that Taft had not followed his conservation policies as well as his other policies, challenged Taft for the presidential nomination. Roosevelt was able to win support in the states that had direct primary elections, but he failed to win the Republican Party nomination, which went



William Howard Taft was elected president of the United States in 1908. In 1921 he was nominated to be the 10th chief justice of the Supreme Court, where he delivered 253 opinions in his tenure, including upholding Prohibition.

to Taft. Roosevelt then chose to create a factional party to use to run for president. The Progressive Party, popularly known as the Bull Moose Party, was successful in splitting the Republican Party, effectively giving the election to the Democratic Party candidate, Woodrow Wilson.

Supreme Court

Upon leaving the White House, Taft became professor of law at Yale University. He left Yale in 1921 when he was nominated to be the 10th chief justice of the Supreme Court by President Warren G. Harding. The Senate approved the nomination without debate. Taft was able to unite the court and to clear away its large backlog of cases. He delivered 253 opinions in his eight and a half years on the court.

The Taft Court upheld Prohibition, which led to an era of crime during the Roaring Twenties.

He issued opinions in a number of criminal justice cases. In 1922 (*Balzac v. Porto Rico*), he wrote in one of the *Insular Cases* that the Fourteenth Amendment did not apply the criminal provisions of the Bill of Rights to overseas territories.

His most important criminal law case was *Carroll v. United States* (1925), which interpreted “reasonable search and seizure” to allow police officers to search a vehicle for alcohol. Also in 1925, Taft wrote *Ex Parte Grossman*. The opinion held that the power of the president to pardon extends to persons jailed or imprisoned for criminal contempt by a court. In *Olmstead v. United States* (1928), Taft wrote for the court that police or federal agents could engage in warrantless wiretapping without violating the Fourth Amendment.

In 1929, Taft persuaded Congress to build a permanent home for the Supreme Court for the first time. Taft saw the designs of architect Cass Gilbert but not the finished building, which was dedicated in 1935. Taft stepped down from the Supreme Court February 3, 1930, as a result of illness and died on March 8 in Washington, D.C.

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See Also: 1777 to 1800 Primary Documents; 1941 to 1960 Primary Documents; 1961 to 1980 Primary Documents; Mann Act; Roosevelt, Theodore (Administration of); Supreme Court, U.S.

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Tax Crimes

A tax crime is any form of activity aimed at illegally avoiding paying taxes levied by the state on personal income and a range of other financial

transactions. Tax crimes are generally met with a severe response by the authorities, and the threat of a personal or organizational audit helps to deter at least some people from being creative with their tax returns. The notorious gangster Al Capone, for example, was convicted on tax crimes when insufficient evidence could be mustered to prosecute him for his numerous other alleged illegal activities. Personal income tax and corporate tax issues are administered by the Internal Revenue Service (IRS) on the federal level, while other national and some state-level agencies regulate the levying and collection of other forms of taxes.

In addition to financial gain, there are various ideological positions that might persuade people that it is morally acceptable or imperative for them to withhold paying tax of one sort or another. This includes people whose tax protest is aimed at one or more specific policies and the anarchism of some libertarian positions that hold that all taxes are an undue imposition. Irrespective of their ideological position, most people are united in adherence to the romantic view of the Boston Tea Party, at which the call for no taxation without representation became central.

Tax Avoidance and Tax Evasion

It is recognized in American law as well as custom and practice that individuals and organizations are entitled to minimize the amount of tax that they are required to pay. Doing so by means that remain within the law is known as tax avoidance (or mitigation), while resorting to illegal means is known as tax evasion and is a criminal offense. Determining the distinction between avoidance and evasion is a constantly changing undertaking as accountants develop new means of minimizing tax, and tax authorities make rulings concerning which new activities are legal and which are not. New forms of commerce (e.g., e-commerce) emerge that require new national and international norms of regulation, and people will naturally wish to take advantage of them while they remain legal. Since tax codes tend to be very complex and subject to differing interpretations (e.g., when it comes to the classification of expenses as being for personal or business use), the decisions made by authorities are often accompanied by a fair amount of negotiation in the many cases where actions are not clear-cut.

Means of tax avoidance include changing legal status, transferring assets, or making payments to charitable foundations that reduce tax liability. Means of tax evasion include underreporting the value of income and assets, hiding assets, or not declaring money earned by illegal means. The last-named of these is the provision by which suspected criminals may be prosecuted if insufficient evidence exists to mount a case concerning prostitution, illegal gambling, drug dealing, or other illegal activity. Al Capone was successfully prosecuted using this method. When a claim is made that a certain activity is a victimless crime and should, therefore, be legalized, the state can respond that the state itself is the victim because it is deprived of its legal tax income.

Smuggling is also classified as a form of tax evasion in addition to being a crime when goods are imported that are illegal to own, including drugs, weapons, and human trafficking, as well as in the cases in which appropriate inspection or custom fees should be levied. This provides an alternative means of prosecuting suspected criminals when other evidence is not available.

The difference between the amount of money raised by officials from taxation and the amount of money that would be raised if every person reported his/her income fully is known as the “tax gap” and is, by definition, impossible to determine exactly. Efforts were made in the 1970s and 1980s, through the use of the Taxpayer Compliance Measurement Program (TCMP), when the country was struggling to reestablish its economic dynamism amid oil shocks, military defeat, and rising state expenses. The TCMP was considered very intrusive and hence was increasingly unpopular to the extent that it has subsequently been abandoned. Nevertheless, using estimates based on TCMP findings, it has been estimated that the tax gap remains in the hundreds of billions of dollars. Famous Americans who have been jailed for tax evasion include Wesley Snipes, Leona Helmsley, and Henry David Thoreau, one of the first tax resisters, who spent one night in prison.

Transfer Pricing and Corporate Crime

Corporations tend to have many more resources to minimize their tax liabilities and in some cases may be more willing to take chances because responsibility might be spread among many people and

the likelihood of avoiding personal punishment is greater. One of the principal ways in which corporations reduce tax, in addition to the constant lobbying of politicians to reduce taxes and regulations, is to ensure that ownership of assets is registered in overseas tax havens. These are countries or territories that offer low or zero rates of taxation, confidentiality of personal or organizational records, and little transparency of the system to outsiders. Many tax havens are to be found in the Caribbean, where otherwise poverty-vulnerable states make themselves open to receiving untraceable amounts of money and associated tourism industry. This is problematic for national governments, which lose income, and also in terms of establishing who owns which company and, thus, has responsibility for its acts.

Despite recent international attempts to force more transparency from tax-haven countries, in efforts stimulated by the 2001 terrorist attacks on the United States and the possibility that terrorism might be combated in this way, little tangible success has been achieved. However, on the domestic front, the desire to force corporations to make proper levels of payment has become popular. Following the 2008 economic recession caused by the underregulated banking industry and reckless and greedy corporate risk taking, the bailout of many companies cost an enormous amount of money that will have to be paid for by the taxpayer; groups such as US Uncut have begun high-profile campaigns arguing that no cuts to public services should be made while corporations fail to pay their taxes. Companies such as Apple, FedEx, and BP are being targeted for use of tax havens, excessive lobbying for corporate tax breaks, and failing to meet their legal or ethical obligations with respect to their impact on society and the environment.

Although there are corporations that are larger and richer than some small countries, and the language of globalization tends to portray them as being so powerful they can effectively ignore governments and their laws, it is still possible for countries to act together to reduce some of the abuses that corporations practice with respect to tax. One notable example of this has been the international effort to bring an end to improper transfer pricing, which has been led by the Organisation for Economic Co-operation and Development (OECD).

Multinational corporations may own assets in a number of different countries, and those countries have varying rates of taxation and other regulatory frameworks. Since corporations can save money by declaring profits in low-tax countries and losses in high-tax countries in which they operate, it was possible to transfer assets at prices that brought about the desired arrangement. This meant that very valuable assets could be transferred for next to nothing or vice versa in order to manipulate the bottom line of each unit in the company. This practice has now been effectively ended by the OECD and international leadership through application of an arm's-length principle that demands the realistic pricing of assets by objective observation.

Tax Protesters

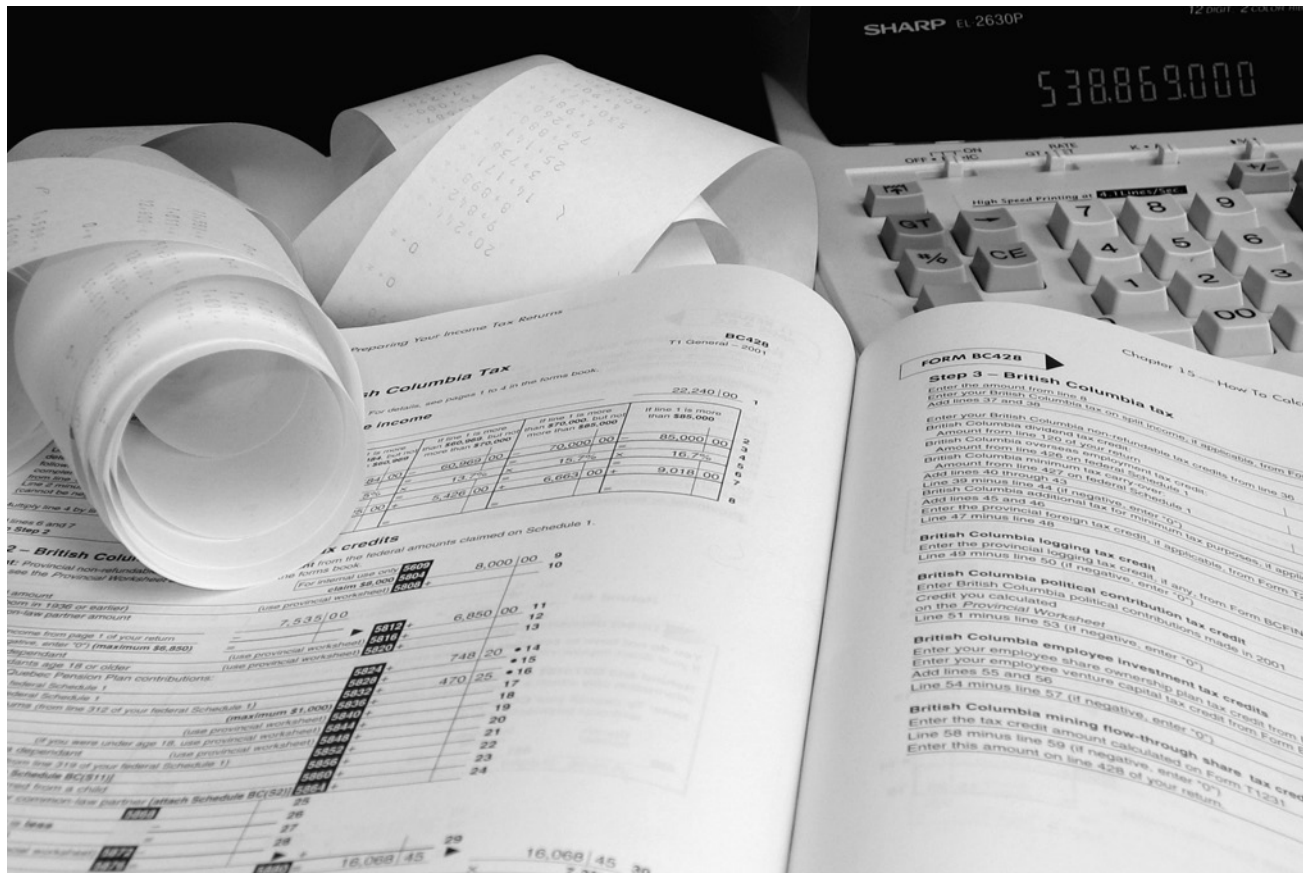
Tax protesters are people who refuse to pay all or part of the taxes levied upon them by the government, primarily in the form of the IRS. Within this category are people who argue that paying any form of tax is wrong and who may be classified as tax resisters. It is practically impossible to determine the extent to which tax resisters are genuinely motivated by ideology rather than simply interested in financial gain.

Tax protesting really began as an important phenomenon in the second half of the 20th century, although probably the first known example was the so-called Whiskey Rebellion in Pennsylvania, which was sparked by the imposition of duties on liquor in 1791 as a means of recouping money spent during the Revolutionary War. This was predictably unpopular and resulted in the deployment of some 12,700 militia by President George Washington to break up the rebellion in 1797. The justification of liquor producers in this rebellion concerned "unjust taxes," and this rhetoric resurfaced after the excise tax was reinstated during the Civil War. Attempts by the Bureau of Internal Revenue to prosecute distillers unwilling to pay the tax were severely hampered by the Whiskey Ring scandal of 1875, in which leading members of the Grant administration were discovered to have looted some \$3 million of revenues. However, the fight was taken up by the Bureau of Alcohol, Tobacco, and Firearms (ATF), which continues to pursue mostly cottage industry level producers of moonshine or unlicensed liquor to the present

time, mostly in relatively remote mountainous regions of the south.

Intellectual respectability was given to tax resistance in part by Henry David Thoreau, who wrote about it in *On the Duty of Civic Disobedience* in 1849, and political respectability provided by the desire of some rich merchants to avoid import taxes inspired the so-called Boston Tea Party. The Quakers, opposed to all forms of violence, have been protesting against portions of their tax requirements throughout the history of the United States. However, to some extent, it is the spread of mass media that enables people to develop social solidarity in joining tax protests for specific purposes. For example, protests against the Vietnam War brought about a tax protest led by celebrities and intellectuals. In 1964, the singer Joan Baez declared that she

would withhold the 60 percent of her tax assessment that she calculated would be used for military activities of which she disapproved. A committee was subsequently established to promote this cause nationally and included notable figures such as Noam Chomsky, Albert Szent-Gyorgi, and Gloria Steinem. It is estimated that 20,000 people nationally participated in this tax withholding. When the state subsequently imposed an additional telephone tax to support the escalating costs of the war, as many as 500,000 people participated in the subsequent tax protest. Similar protests were also made as a result of the increased spending on nuclear weapons, particularly during the Reagan administration. In 1981, notably, Roman Catholic archbishop of Seattle Raymond Hunthausen gained support for his call for people to withhold the 50 percent



The most common tax crimes include failure to file a tax return or requested information, tax evasion, preparing false tax returns, submitting false tax documents, making untrue statements to governmental tax officials, or failing to file currency transaction reports. These popular-culture tax crimes are often portrayed as a contest between the individual and the state, which is a contest that can have only one winner in the long term, most often the state.

of their income tax demands that might be spent on weapons of war. In all cases, the government has responded strongly to tax protesters, understanding that loss of revenue would have a serious impact upon the ability of the state not just to deploy military force but to undertake any of its scheduled activities.

Tax resisters have attempted to use a variety of arguments to justify the decision not to pay their taxes. These have ranged from supposed unconstitutionality of tax demands to the attempted redefinition of income to the claim that only coinage containing a proportion of gold can be counted as real money. Again, the state has rejected all of these arguments and, through the judiciary, branded most of them as “trivial,” thereby reducing the need to argue through the merits of such arguments whenever they are put forward. The same approach is used to disallow tax returns that are used as a medium to make additional tax resister protests; such attempts might attract financial penalties. Nevertheless, far-right ideology that denies the legitimacy of government altogether has bloomed in the United States since the latter part of the 20th century and has led to the notion of the tax defier, who is defined according to the TAXDEF Initiative of 2008 as a person who is fundamentally opposed to the state almost to the extent of being considered an enemy.

Tax Amnesty

Since collecting taxes from recalcitrant people can be a lengthy, complex, and expensive business and also serves to criminalize those who are involved, some states have in recent years offered limited tax amnesties to recoup at least some portion of what they are owed. This involves making a time window available for people to repay their back taxes without incurring the late fees or penalties that might otherwise apply. In 2003, for example, Illinois authorities collected a total of \$522 million and New York state authorities collected \$520 million in back taxes during amnesties, while other states collected rather smaller amounts. Amnesties cannot, by their very nature, be used too frequently or they will provide an incentive to people to delay paying, since the amount they owe will decline in value. Amnesties are also useful in the case of migrant or temporary workers who may not be aware of their tax

liabilities in a certain state since education will accompany the marketing of the campaign.

Responsibilities of the Internal Revenue Service

The Internal Revenue Service (IRS) is the branch of the U.S. Treasury that has responsibility for administering the tax code and, hence, leading the fight against the various types of tax crime. The forerunner of the IRS, the Bureau of Internal Revenue, was first established in 1862 when the costs of the Civil War necessitated the first imposition of an income tax. A form of the bureau has been in operation in all years subsequently in which income tax has been in action. Throughout its history, the IRS has been challenged by those who consider it to be unconstitutional or illegitimate and those who consider its choice of subjects for intrusive investigation to be tainted by political interests. It has also faced its share of corruption allegations and abuses, and faces the continual battle to convince people that its actions are in the best interests of society and that the revenue gathered is used in appropriate ways. Unfortunately, the IRS has little actual control over how the money it collects actually is used.

Tax Crimes in Popular Culture

Benjamin Franklin famously observed that the only things inevitable in life are death and taxes, and this inevitability has brought tax crimes into popular culture. Nearly every comedy or drama on television has referred to one or more of its characters struggling to fill out the annual tax return or threatened with a tax audit or weighing the possibility of charging a personal lunch as a business expense. Although subversively portraying people failing to pay tax is beyond the pale apart from the case of obviously criminal characters, cultural productions regularly portray the struggle to minimize tax liability to be a type of game or contest between the individual and the state, which is a contest that has only one winner in the long term.

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See Also: Capone, Al; Civil Disobedience; Internal Revenue Service; Thoreau, Henry David.

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Taylor, Zachary (Administration of)

Renowned General Zachary Taylor (1784–1850) served as the 12th president of the United States after his election in 1848, despite his earlier political indifference. Although he was a Whig, his moderate views alienated many party members. He died in office in 1850, just 16 months into his presidency. The biggest crisis of the Taylor administration involved the fate of slavery in the newly acquired Mexican Cession territories that he had helped to gain. Taylor encouraged two of those territories, California and New Mexico, to apply directly for statehood to avoid the need for Congress to legislate slavery's legal status. Although Taylor was a southern slaveholder, he was a staunch unionist and opposed the proposed Fugitive Slave Act that allowed slave catchers to pursue fugitives into free states.

Zachary Taylor was born in Virginia and raised in Kentucky. He was a professional soldier with 40 years' experience in the U.S. Army beginning in 1808; he rose to the rank of brigadier general and

earned the nickname "Old Rough and Ready." He was known as an effective but argumentative and undiplomatic military leader. His distinguished service included the War of 1812, the Black Hawk War (1832), the Second Seminole War (1835–42), and the Mexican–American War (1845–48). His service in the latter, his last military campaign, made him a popular national hero and helped carry him to the presidency. He owned a home in Baton Rouge, Louisiana, and a slaveholding plantation in Mississippi.

Taylor returned from the Mexican campaign in 1847 and entered the race for the presidency late in that year, despite having made earlier statements that he would not run if asked. He had previously never even voted, much less run for office. He enjoyed broad popular support because of his status as a war hero. He also appealed to both sections of the country, as northerners supported his strong unionist stance while southerners felt secure in his status as a fellow southerner and slaveholder. Taylor received the Whig Party nomination for the presidential election of 1848, in which he defeated Democratic candidate Lewis Cass.

Moderation and Compromise

Taylor's earlier lack of political interest and experience limited his effectiveness in office and his relations with Congress. Taylor took a moderate position on many political issues and was willing to compromise with opposing politicians, seeking to build a coalition that was not limited by party or sectional loyalties. His moderate views, combined with the fact that he failed to reward loyal Whig Party members with patronage jobs, alienated many. Northern Whigs, known as "Conscience Whigs" for their opposition to slavery, were already alienated by their party's selection of a southern slaveholder for office and his appointment of several southerners to cabinet positions; Taylor also alienated loyal Whigs through his belief that he was above party politics.

The ongoing debate over the expansion of slavery proved to be the Taylor administration's biggest legal challenge. Taylor assumed the presidency as sectional tensions were rising over questions of whether slavery would be allowed into the newly acquired Mexican lands known as the Mexican Cession. Debate also surrounded the question of

who should make the decision. Some advocated allowing the territorial governments or Congress to legislate the question while others called for popular sovereignty, a doctrine that would allow the residents of the territory to vote on the issue. Taylor stated that he would not veto the Wilmot Proviso, which would ban the extension of slavery into any part of the Mexican Cession, if Congress approved it. Taylor, however, did not support the abolition of slavery in those southern states where it was already in legal existence.

The question of statehood was active for both California and New Mexico, although the latter was less ready for admission. Taylor encouraged both territories to directly apply to Congress for statehood, knowing that they would likely do so as free states. Such an action would also avoid the necessity for Congress to enact legislation with regard to the slavery question, which would be sure to further inflame already heightened sectional tensions. California voted to enter the Union as a free state where slavery would be legally prohibited.

Southerners were opposed to California's admission because it would upset the balance of power in Congress in favor of the free states, allowing the future possibility of legislation banning slavery throughout the country. Southerners were also angered over Taylor's opposition to Texan claims to all lands east of the Rio Grande River, as Texas allowed slavery. Senator Henry Clay of Kentucky offered a series of acts designed to settle the issues, which became collectively known as the Compromise of 1850. Taylor voiced his opposition to most of the acts, including the harsh Fugitive Slave Act allowing southern slave catchers to pursue fugitive slaves into northern states and territories. His objections have led some historians to conclude that he most likely would have vetoed this and most of the other acts.

The sectional debates over the Mexican Cession and other issues such as tariffs spurred secessionist talk among southern radicals commonly known as "fire-eaters." Taylor was a staunch unionist despite his southern background, declaring secession and disunion to be treasonous offenses punishable by death. Although he was prepared to take a harsh stand against secessionists, he actively sought sectional reconciliation as the more favorable solution to the repression of open rebellion. Zachary Taylor died of cholera in Washington, D.C., on

July 9, 1850, just 16 months into his presidency, and was buried near Louisville, Kentucky. He was the last of the Whig presidents, as sectional divisions within the party led to its demise. His successor, Vice President Millard Fillmore, signed the Compromise of 1850 into law.

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See Also: Fillmore, Millard (Administration of); Fugitive Slave Act of 1850; Slavery, Law of.

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Taylor v. State

Taylor v. State of Mississippi (1943) was a landmark freedom of speech case. The U.S. Supreme Court held in *Taylor* that communications cannot be criminalized by state or federal governments, unless the government can prove that the communication had an evil or sinister intent, advocated or incited subversive action against the government, and presented a clear and present danger. The Mississippi legislature passed the statute under dispute in *Taylor* in 1942, during World War II, when patriotic feelings were heightened. The statute criminalizes communications intended to encourage violence, sabotage, or disloyalty to the state or the national governments, including refusals to salute and otherwise honor the state and federal flags.

Mandatory flag pledges were first instituted by public schools in 1898 during the Spanish-American War. The practice grew during World War I (1914–18). In 1935, Jehovah's Witness schoolchildren began to refuse to participate. Jehovah's Witness students were expelled, and



The Pledge of Allegiance is an expression of loyalty to the flag and the United States. It was composed in 1892 and has been modified four times, with the most recent change in 1954 being to add the words "under God."

Jehovah's Witness teachers were fired by schools across the nation. The U.S. Supreme Court held in *Minersville School District v. Gobitis* (1940) that the First Amendment does not prohibit public schools from requiring students to salute the flag and recite the Pledge of Allegiance. In this case, the students were Jehovah's Witnesses who had declined to salute the flag and recite the pledge on religious grounds. Jehovah's Witnesses suffered increased persecution in the wake of the *Minersville* decision. Mobs attacked Jehovah's Witnesses in 300 communities across the country after the decision was published. Many Jehovah's Witnesses were jailed for proselytizing.

The Mississippi statute under dispute in *Taylor* was part of the response to *Minersville*. Mississippi prosecuted three members of the Jehovah's

Witnesses religion for distributing literature alleged to have encouraged Jehovah's Witnesses not to salute the flags of Mississippi and the United States. Taylor, the appellant, had spoken out against the war and against saluting the flag and the government, and had distributed books and pamphlets containing similar arguments. Taylor's co-appellant Betty Benoit had distributed a publication containing a reprint of a newspaper editorial that opposed the U.S. Supreme Court decision holding that public schools could compel Jehovah's Witness students to salute the flag. The editorial also compared flag salutes to a primitive form of idol worship and alleged that flag worship was part of a Catholic conspiracy, possibly imported from France. Taylor's co-appellant Cummings had also distributed literature criticizing mandatory flag salutes.

The *Taylor* defendants moved to quash the indictments, arguing that the statutes violated the First Amendment right to freedom of speech. They were convicted and sentenced to a prison term that would expire at the end of World War II, then still in progress, and which could not exceed 10 years. The U.S. Supreme Court reversed the appellants' conviction. Justice Owen Roberts, writing for the majority, argued that the appellants' speech did not constitute a clear and present danger, and that they were merely expressing "beliefs and opinions concerning domestic measures and trends in national and world affairs. Under our decisions criminal sanctions cannot be imposed for such communication."

In the same year that the court decided in favor of the *Taylor* appellants, it also overturned its *Minersville* decision of only three years previous, in *West Virginia State Board of Education v. Barnette*. In *Jones v. City of Opelika* (1943), the court held that states cannot prohibit distribution of religious literature. The court also decided in favor of Jehovah's Witnesses in several other significant cases that year. Thus the "Jehovah's Witnesses" cases of 1943 helped lay the groundwork for modern religious freedom doctrine.

In subsequent decisions, the court would create a variety of religious exemptions. During the 1940s and 1950s, the court refined its conception of conscientious objectors exempted from wartime service. In *Sherbert v. Verner* (1963), the court agreed that a worker fired for religiously

motivated absences from work could qualify for unemployment benefits. In *Wisconsin v. Yoder* (1972), the court exempted Amish parents from mandatory education laws once their children had completed eighth grade. However, beginning with *United States v. Lee* (1982), the court decided against a request for tax exemptions that were based on religious grounds. *Lee* began to reverse the trend, as the court moved away from religious exemptions. Nonetheless, the court's ruling in *Taylor* against the criminalization of unpopular speech remains a fundament of contemporary free speech doctrine.

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See Also: Religion and Crime, History of; Religion and Crime, Sociology of; *Whitney v. California*.

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Tea Act of 1773

After the French-Indian War, the British Crown enacted the Proclamation of 1763. This proclamation created a line intended to protect the colonists from Native American attacks and ease the Crown's role of protecting the colonists by prohibiting anyone from crossing over it. It extended from Canada to Georgia, along the crest of the Appalachian Mountains. This act angered the colonists because they felt the Crown no longer trusted them, and by 1773 hostilities intensified. In conjunction with the Proclamation Line, the Crown also instituted the Grenville Taxation Program, which aimed to recover the losses the Crown had incurred while defending

the colonists and winning the French-Indian War. Three basic taxes were the Revenue Act (dubbed the Sugar Act as it placed a tax on molasses), the Currency Act (forbidding the issuance of paper money on the colonies), and the Stamp Act (taxing all paper goods).

Almost instantly, the colonists began protesting these new taxes and boycotting British goods. During the next decade, the Crown continually fought the colonists, and one of the most infamous incidents was the Boston Massacre of 1765. With each new tax, the colonists created a new plan for boycott and protest, and the avoidance of tea and coffee hit the Crown particularly hard. The Crown reacted by placing a tax on tea. The Tea Act of 1773 was meant to support the East India Tea Company. The company was nearly bankrupt, as it was a key supplier to the colonies and colonial boycotts prevented sales. The Tea Act removed the tax on tea, but it allowed tea to be sold in the colonies only via its own agents. The act functioned as a default tax. The colonists had been relying on Dutch or homemade teas since the beginning of the Grenville Taxation Program.

In November 1773, the first of three ships arrived at Boston Harbor carrying tea for the East India Tea Company. A standoff immediately ensued, with the *Dartmouth* standing at the center of the controversy. Samuel Adams quickly gathered a crowd—as he had been a key leader for colonial protests—and the militant group the Sons of Liberty joined the masses. Massachusetts Governor Thomas Hutchinson insisted that the tea would be delivered, and he refused to settle for anything else. On December 16, an estimated 8,000 gathered at Boston's Old South Meeting House. The owner of the *Dartmouth* and its captain feared the crowds, and they agreed to return the tea to England. Hutchinson again refused, ordering the blocking of Boston Harbor so that no tea-bearing vessel could leave until all goods had been delivered.

The newly arrived *Beaver* and *Eleanor* waited with the *Dartmouth*. Members of the Sons of Liberty, thinly veiled as Native Americans, headed that night to the harbor to dispose of the tea. The tea was brought up to the hold, dumped overboard, and smashed so that it was ruined. By daybreak, nearly 90,000 pounds of tea was dumped into the harbor, costing the Crown £10,000 or \$1.87 million in 2007 currency. Nothing else

was damaged or stolen. A padlock was broken in the surge for the tea, and it was anonymously replaced the next day.

A fourth East India Tea Company ship ran ashore in Provincetown, Massachusetts. All 58 tea chests were salvaged and smuggled into Boston via a fishing schooner, but the effects of the Boston Tea Party were still felt. Parliament responded with the Coercive Acts, which closed Boston Harbor, removed the trials of royal officials out of New England, allowed for the quartering of troops in colonists' homes, and extended Quebec's boundaries south. The colonists viewed this act as another token of Britain's distrust of them. The First Continental Congress formed in 1774, establishing the "Declaration of Rights and Grievances" and the Continental Association to prohibit importing British goods. War broke out before the second congress could meet.

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See Also: 1600 to 1776 Primary Documents; American Revolution and Criminal Justice; Colonial Courts; Tax Crimes.

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Technology, Police

Almost from the beginning of American history, the colonists recognized the need for developing some form of policing power in order to maintain order and enforce laws. The first law officers were generally justices of the peace. In 1635, Boston became the first city to use patrol officers to monitor its streets at night. Dutch New York created the Schout, an officer combining the functions of sheriff and justice of the peace, and the rattle watch, a patrol force, in 1651. The first combined

day and night patrol was New York's in 1845. The men were armed only with a night stick and were not uniformed until 1853. Technology was limited to providing reliable methods of backup for when assistance was needed. Scholars of the history of American policing identify three major periods during which technology developed: the political era, the professional model era, and the community policing era. In this final era, police technology finally came into its own. A survey conducted by the Police Executive Research Forum in April 2011 revealed that 70 percent of all departments in large cities planned to increase their use of technology over the coming year.

The chief use of police technology has generally been engaging in crime analysis. That analysis may be tactical, involving short-term goals that focus on crime control; strategic, dealing with long-term organizational goals; or problem-specific, identifying and responding to ongoing issues in specific communities. During economic downturns, departments cut back on the number of officers hired, and technology has helped to fill some of the gaps left by decreased manpower. Police departments frequently make use of free forms of modern technology, such as the Nixle alert system or Alert-ID-My Neighborhood, to keep the public up to date on crimes that occur in their neighborhoods. However, most technology is costly and may require training in proper use. It may also call for intensive service and maintenance. Requests for such purchases must be accompanied by explanations of how they can be expected to improve officer safety or enhance job efficiency.

The technology explosion that began in the late 20th century and continued into the 21st century has sometimes overwhelmed police departments, leaving them uncertain of which technology best fits their needs and budgets. To respond to this need, the International Association of Police Chiefs has developed the *Best Practices Guide on Acquisition of New Technology*. The guide has been particularly helpful in assisting small departments with limited budgets. At all levels, police departments are required to justify the need for particular equipment and must be able to explain why certain items should be budgeted and how those items are expected to improve policing. There are approximately 17,000 agencies that make up the highly fragmented police marketplace. Funded by

the U.S. Congress, the National Institute of Justice (NIJ) fulfills the role of researching and developing policing technology and making that information available to state and local law enforcement. One of the major accomplishments of NIJ has been to develop soft body armor designed to protect police officers in the course of duty. Current NIJ projects deal with improving the quality and availability of DNA technology and developing technology to allow officers to accurately detect concealed weapons and contraband.

The Political Era

The first phase of police technology, which began in 1840 and continued until 1920, has been identified as the political era. In virtually every large city in the United States, political bosses controlled all official positions, including that of chief of police. While the relationship was mutually beneficial to a large extent, police executives were limited in their ability to make decisions. Technology during this period focused entirely on keeping police officers safe and on making them more effective on the job. In 1850, the Texas Rangers became the first law enforcement entity to use a multi-shot pistol. Around 1854, San Francisco began using systematic photographing technology for identifying criminals. By the late 19th century, police officers were carrying handguns in addition to nightsticks. In New York, for instance, firearms began to be issued to police officers in 1887. Seven years later,



A demonstrator offers a flower to military police at an anti-Vietnam War protest in 1967. Police departments faced many challenges dealing with the growing civil unrest and the counterculture movement during the 1960s.

the city established a School of Police Practice and began requiring regular target practice in 1895. The following year, a .32-caliber double-action Colt revolver with a four-inch barrel became standard issue. By 1901, the weapon of choice was a .38-caliber revolver, and each gun was marked with individual shield numbers to facilitate identification. Albany, New York, became the first city to use the telegraph for police work in 1877. Shortly thereafter, other departments also began using the telegraph to facilitate communication within departments and with outside parties. Washington, D.C., became the first city in the nation to use telephones in policing in 1878, police in Chicago and Detroit first used police call boxes in 1884, and soon the telephone and police call boxes were in use around the country.

Until the early 1890s, American police departments had no reliable way of identifying criminals and tracking their arrest records. European law enforcement had been dealing with the same problem, which was alleviated when ethnologist Alphonse Bertillon (1853–1914) of the Prefecture of Paris Police developed the system that bore his name. The Bertillon system consisted of measurements of particular bony parts of the body that were recorded via photographs of an arrestee standing against a cardboard form. Using this information, along with hair and eye color, arrestees could be grouped into distinct categories for the purpose of identification. The Bertillon system was first used in the United States in 1887 by the Illinois State Penitentiary System. In 1863, French scientist Paul-Jean Coulier (1824–90) developed a method by which latent fingerprints could be permanently transferred to paper by the use of iodine fuming. Because no two are alike, fingerprints proved more reliable than the Bertillon system. Scotland Yard began using fingerprinting as a means of identifying criminals in 1901, and American police departments followed suit. By the end of the 19th century, fingerprinting had become standard practice among American police forces. The first crime lab was established in France in 1910 by Edmund Locard (1877–1966), and it became the model for police departments throughout the world.

Professional Model Era

By the 1920s, efforts were accelerating to remove police departments from political control. The

new emphasis was on promoting discipline and equally enforcing the laws. The professional model era began in 1920 and continued for five decades. The most influential figure during this period was August Vollmer (1876–1955), a self-educated expert on police technology who is credited with promoting the use of fingerprinting and handwriting classification systems in the United States. Vollmer was police chief in Berkeley, California, from 1909 to 1931. His innovations set the standards for American police technology. Vollmer established the first evidence training school in the world in 1907. He was the first to use bicycles and motorcycles for patrol officers and later became the first to use automobiles. The crime lab that Vollmer established in Berkeley was the first to use blood, fiber, and soil analysis in solving crimes. In 1921, Berkeley also became the first department to use the lie detector. Not only did Vollmer start the criminal justice program at Berkeley, he also helped to modernize police departments in Los Angeles, Chicago, San Diego, and Dallas. Philadelphia was the first city to use the teletype in its police departments, and Detroit became the first to employ the two-way radio in 1934. In 1932, the Federal Bureau of Investigation (FBI) established its own lab, gaining the reputation of being the most comprehensive crime lab in the world. From the beginning, the FBI lab employed state-of-the-art technology. Radar was introduced in the United States in the 1940s, providing police with the means for tracking the speed of motorists as a means of making roads and highways safer.

During World War II and the postwar years, crime rates began to climb in the United States, doubling between 1940 and 1965. The sweeping changes to the American social structure during the 1960s required police departments to face new challenges when dealing with the developing drug culture and growing civil unrest. A number of riot control technologies were introduced and quickly discarded. The discarded technologies included wooden, rubber, and plastic bullets; tranquilizing dart guns; a volt-shock baton; and strobe lights that caused targets to faint or become ill. Only the TASER, a weapon that released tiny darts containing a 50,000-volt shock, survived. Most police departments still used only the technology that had been developed decades earlier. One exception was New Orleans, where a data

processing machine was already in use. In 1958, a former marine invented the side-handled baton, which added versatility and effectiveness to the traditional weapon.

During the presidential campaign of 1964, which followed on the heels of the assassination of President John Kennedy, candidate Barry Goldwater made restoring law and order a cornerstone of his campaign. Goldwater lost the election to incumbent Lyndon Johnson, who established the President's Commission on Law Enforcement and Administration of Justice. In 1967, the commission's report offered 11 recommendations that dealt with police technology. Noting that most police departments were using technology that was several decades old, the commission recommended the use of a 911 system that would allow the entire nation to use a single number to contact police and fire departments during emergencies. AT&T initially attempted to block the 911 system but was eventually forced to come on board. By the mid-1990s, 95 percent of police departments had created 911 systems. Other recommendations of the commission addressed the use of technology in fingerprinting, the allocation of manpower, the implementation of a police call-box system, and the use of comparative studies among police departments. President Johnson also began pressuring Congress to increase funding to state and local law enforcement bodies to the tune of hundreds of millions of dollars. In 1968, Congress passed the Omnibus Crime Control and Safe Streets Act, establishing the Law Enforcement Assistance Administration (LEAA) to manage disbursement and monitoring of federal funds delegated to state and local police agencies.

Community Policing Era

Beginning in the 1970s and continuing into the present, the community policing era of American policing has predictably been the most highly involved in technological advancement. Modern technology allows police departments to work closely with diverse members of the public, and many departments regularly use social networks such as Facebook and Twitter to disperse information quickly when crimes such as child abduction occur. In a 2011 Police Executive Research Forum survey, 86 percent of police departments acknowledged that they use Facebook, Twitter, MySpace,

YouTube, or Nixle alerts to monitor threats and follow leads. Some departments, including those in California, Georgia, Minnesota, New Mexico, and Washington State, have developed their own interactive Websites to maintain ongoing contact with the public and to gather information that helps them to identify theft rings, locate suspects, and track fugitives.

From the beginning of this period, there was a push for the use of computers in policing. Unfortunately, not many police departments had computers in the 1970s. Among those that did, computers were often used only for routine tasks that had previously been done on typewriters or by hand. As police departments became more comfortable with computers, policing capabilities advanced rapidly. The use of databases that compared fingerprints and sophisticated crime mapping software that allowed the police to identify areas in which area crimes occurred or in which they were likely to occur made it possible to enhance performance and improve arrest records. However, few police officers or administrators had received more than basic computer training. By 1990, around half of all police departments had purchased computers, but their use was still somewhat limited because of the lack of software geared toward police work.

By the mid-1990s, computers were coming into common use, and the “information superhighway” was being touted by Vice President Al Gore. A 1996 survey conducted by the Bureau of Justice Statistics revealed that three-fourths of police departments owned computers and were using them in criminal investigations and for crime analysis in addition to depending on them for tasks such as budgeting and manpower allocation. Despite the creation of the Automated Fingerprint Identification System, criminals were still able to slip through the cracks because of fragmentation of the system. The establishment of the FBI’s National Crime Information Center, on the other hand, provided dependable nationwide access to databases containing information on fugitives, stolen property, and missing persons.

Over the course of the decade, computer technology became an essential tool of community policing. In New York, for instance, William Bratton developed CompStat, a system of predicting where crimes would occur in order to place police officers in designated areas before crimes took place.

DNA Analysis

The National Institute of Justice (NIJ) has been closely involved in the development of police technology. Working through Community Oriented Policing Services (COPS), NIJ had dispersed approximately \$24 billion for technology use at the state, local, and tribal levels by 2009. The NIJ’s role has included establishing compliance standards for technological equipment such as mobile and base station transmitters, handheld metal weapons detectors, portable x-ray devices used to disarm bombs, and night vision devices. In 1986, the NIJ began pushing the use of DNA analysis in criminal investigations. Deoxyribonucleic acid, commonly known as DNA, is a highly developed technology that analyzes hereditary materials that are unique to each individual. DNA allows investigators to pinpoint eye color, hair color, height, and bone structure of suspects to substantiate the presence of individuals at particular locations or in connection with specific victims. DNA technology has resulted in the release of numerous individuals who had been falsely convicted of crimes before the technology existed.

DNA is also used to identify victims of crimes and catastrophes when other forms of identification are inadequate. For instance, DNA analysis was an invaluable tool for identifying victims of the terrorist attacks of September 11, 2001. Similarly, the Shoah Project maintains samples of the DNA of victims of the Holocaust to aid them in locating the bodies of missing family members or to put them in touch with lost family members. Both the Olympics Committee and the National Football League (NFL) have used DNA as a means by which official sports memorabilia can be authenticated as a fraud-fighting tool.

Technology currently under development at the NIJ includes an improved weapons detection device that could be concealed under clothing using passive millimeter wave technology, making the current handheld device obsolete. Researchers are also working on a disabling net and launcher system that could ensnare fleeing subjects without the use of firearms, a retractable barrier strip that uses retractable spikes to force drivers of fleeing vehicles to come to a halt, and a siren that uses acoustical energy to prevent a suspect from hearing approaching police cars.



Portable navigation systems are widely used by the general public and police departments alike. Law enforcement teams are using many of the myriad of systems available to keep track of vehicles without endangering themselves or others; one of these systems emits global positioning system (GPS) darts from a launcher mounted on a patrol car.

Global Positioning Systems

Members of the general public often form their perceptions of police technology through sophisticated films such as the James Bond series or from the myriad of police shows that have become a staple of American television. By the early 21st century, many of those fictional technologies had become reality. Some southwestern states are currently trying out a device that shoots a tiny dart equipped with GPS (global positioning system), which is a locating system that employs satellite-based technology. The GPS has been available for general use since the 1980s. Once the device is attached to a fleeing vehicle during a high-speed chase, law enforcement teams are able to keep track of a vehicle without endangering themselves or others. The Star Chase Pursuit

Management System emits the GPS darts from a launcher mounted on a patrol car, and a laser pointer provides precision when aiming to keep the dart from going astray. At the same time, a dispatcher is able to monitor the action on a computer screen and to keep officers informed of the suspect's exact location and identify the speed and direction of the targeted vehicle. All the while, the suspect remains completely unaware of being monitored. The device can also be used to track stolen cars or smuggled humans. GPS technologies are also being attached to ankle bracelets to keep track of criminals under house arrest. One of the most advanced tracking systems available is now being tested in Miami, Florida, where federal grant money has allowed law enforcement to use T-Hawk Micro Air Vehicles about the size of

a garbage can to engage in intelligence, surveillance, and reconnaissance. GPS systems are also used to track the actions of police officers. In Albuquerque, New Mexico, for instance, patrol officers assigned to targeted high-crime areas are tracked by a computerized system that monitors their presence in the area according to a designated schedule.

Other 21st-Century Innovations

On the west coast, one department is testing a miniature video camera that is mounted on an officer's ear, recording the officer's view of events during traffic stops or crimes in progress. On the east coast, a number of police departments are routinely using cameras to scan license plates of all passing cars in order to track drivers who may have outstanding fines for motor vehicle violations. A routine check of license plates sometimes yields unexpected results. In 2011, a dispatcher in Greenwich, New Jersey, discovered the whereabouts of Anthony D. Saxton, who was wanted for an execution-style murder. Cameras are also used to monitor public places in high-crime areas. Budget cuts that have curtailed the use of updated technology have forced some officers to equip themselves, as is the case in Austin, Texas, where officers are using their own video cameras on the job.

Modern databases and new technologies have provided law enforcement with a wide range of opportunities for identifying and tracking criminals and for predicting where crimes will occur. Most large American cities are now using technology to fight gangs, employing large databases that keep tabs on members, analyze gang behavior, and recover weapons stolen by gangs. Originally designed for commercial use, Google Earth software is being used in police work. In some areas, police use Google maps on a daily basis. Such maps have even been used to locate areas where hidden fields of marijuana are being grown. Geographic profiling has been used to draw information from a variety of sources to target suspects. This was used in the Washington, D.C., sniper case in 2002 to track John Allen Muhammad, who, assisted by a minor, killed 10 people chosen at random and critically wounded three others. In Orange County, California, in 2005, police were able to use geographic profiling to locate the perpetrator of more than 200 burglaries. Geographic

prediction is also gaining attention. In California, programmers at Santa Clara University have developed software that uses geographic data on past crimes to predict where and when additional crimes will occur. This allows officers to be at the scene before a crime occurs.

Visual technology has also made great strides, and laser cameras have been used to great effect. In 2004 in Redwood City, the California Highway Patrol was able to use evidence from its cameras to disprove that an Acura's brakes had failed before slamming into a Volkswagen Beetle and killing the driver. Laser cameras can accurately pinpoint the distance between one car and another in the case of tailgating citations or during the investigation of accidents. Photographic evidence was also used to convict Roberto Vellanoweth, a prominent member of the California Republican Party, of killing four in an accident while driving under the influence (DUI). Fingerprinting technology has also advanced rapidly. While still on the scene, officers are able to immediately identify criminals by using a handheld device. Even technology used by criminals can occasionally help police to locate them, as in the case of an Orange County thief tracked by dispatchers after his cell phone inadvertently called 911. Cell phones and satellite phones have become important tools for American police departments, and software applications for both are now being designed solely for law enforcement use.

Some of the most important technology used by contemporary police officers is employed in on-site criminal investigations, and such equipment has become entirely portable. Concealed weapons and explosive devices have long posed threats to investigating officers. New handheld x-ray devices are being used to locate such items. Some bomb squads are using robots to hunt down explosives. Special ultra-red flashlights are being used to locate hair, fibers, or body fluids that are invisible to the naked eye. Thermal imaging is widely used to locate missing children or fleeing suspects. Imagers are also used to locate graves or disturbed ground that might indicate the presence of a body or concealed evidence and to locate tire marks on roads. Laser technology makes it possible to analyze the chemical makeup of suspicious substances while officers are still on the scene. Handheld translators allow officers to communicate with non-English-speaking suspects or witnesses without waiting for

a human translator to arrive at the scene. As new technologies are developed, existing technologies will become obsolete, and police departments must perform remain in the vanguard of developing technology.

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See Also: Boston, Massachusetts; New Orleans, Louisiana; New York City; Police, Contemporary.

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key role in creating and increasing drama, though once in a while it becomes part of elevating humor as well. Crime serves as part of the organization in episode plot lines and in generic formulas. More recently, it has become the subject of reality television shows, which comprise a significant and growing part of nonfiction programming. The use of crime within television programming has evolved since the 1950s and 1960s, and overall, its use reflects a combination of general social attitudes, dominant ideologies, and industry motivations, which deal primarily with the bottom line.

By definition, a crime consists of three parts: a perpetrator, an illegal act, and a victim. These three components fall into four different categories of crimes. The first category is interpersonal, which is a crime committed by one person against another, such as a fist fight or some other scuffle. The second category involves the more powerful perpetrator violating the human or civil rights of a less powerful victim. Domestic and gendered violence crimes fall under this category. The third category involves those with less power challenging those with more power. In these instances, the less powerful attempt to undermine or bring down those in power. An example of this category includes a plot against a mob boss by some of his own hit men. The last category consists of victimless crimes, wherein no one's rights get violated. Crimes cover a wide variety of acts, including check forgery, theft, property destruction, personal injury, neglect, prostitution, adultery, civil disturbances, abuse, sexual assault, domestic violence, and murder. These acts carry varying levels of effects on people, from victimless crimes that threaten no one's rights to extremely violent crimes that result in severe injury, permanent injury, or even death.

Representations of the Criminal Justice System

Almost all representations of crime on television involve the criminal justice system in some way. This system includes law enforcement such as police officers and detectives; judiciary personnel such as hired lawyers, public defenders, district attorneys, and judges; and corrections officials such as wardens and guards. Members of this system help determine the perpetrators and their motivations in order to help the victims, figure out the crime's extent, and bring the accused to

Television, Crime in

Print media, radio, and film provide the precedents for representations of crime in television. In fiction-based television programming, crime plays a

trial. An enormous number of television shows have represented the system from the police point of view. Other shows focus more on the judicial aspects, including *The Defenders* (1961–65), *The Black Robe* (1949–50), *L.A. Law* (1986–94), *Matlock* (1986–95), and *Perry Mason* (1957–66). These roles later expanded to include other personnel or different facets of the system. *Quincy, M.E.* (1976–83) featured a forensic pathologist who often found foul play during supposedly routine autopsies, and more recent series such as *Crossing Jordan* (2001–07) and *Body of Proof* (2011–) feature a female forensic pathologist who sometimes works with the police to solve crimes and other times investigates situations on her own. More recent shows shift the investigations away from police detective work toward the forensic investigations, particularly the series *CSI: Crime Scene Investigation* (2000–), *CSI: New York* (2004–), and *CSI: Miami* (2002–). In these shows, experts attempt to solve the crime through scientific analyses of hair, fibers, fingerprints, DNA traces, and other means to identify a crime's perpetrator and sometimes the victim. Other shows pair individuals with particular abilities or interests in order to help with criminal investigation, such as a novelist in *Castle* (2009–), a genius forensic anthropologist in *Bones* (2005–), psychics in *Medium* (2005–11) and *The Mentalist* (2008–), and a math professor in *NUMB3RS* (2005–10). While most television representations of the justice system focus on cities or states, some shows expand to include government agencies.

Starring Efrem Zimbalist, Jr., as fictional agent Louis Erskine, *The FBI* (1965–74) included an epilogue mentioning people on the real Federal Bureau of Investigation's (FBI's) Most Wanted List. Other series focusing on the FBI include *Without a Trace* (2002–09) and *Criminal Minds* (2005–). *NCIS: Naval Criminal Investigation Service* (2003–) and *JAG* (1995–05) represented investigation into the realm of military crime. Several shows also bring the criminal justice system into the realms of the paranormal or supernatural, wherein the personnel investigate crimes that involve potential aliens, ghosts, demons, vampires, and others mystical or mythological creatures. Examples include the short-lived *Moonlight* (2007–08), about a vampire detective, and the long-running *The X-Files* (1993–2002),

about FBI agents Fox Mulder and Dana Scully, who investigate these crimes of the paranormal and the conspiracies within the government.

How the criminal justice system, perpetrators, victims, and crimes get represented on television shows depends on the social and ideological attitudes of the times. These attitudes have shifted during the decades since television's start and early growth. The 1950s crime dramas largely projected the mentality that criminals held no value in society and needed to be hunted down. *Dragnet* (1951–59) offered one of the first manifestations of this thinking. The 1960s saw multiple social movements, including civil rights, women's rights, and war protests. In that decade, social attitudes toward crimes and their punishments focused more on treatment and rehabilitation of the perpetrators than seeking the fullest punishment possible. In shows from this era, criminals became more humanized, and the explanation for their crimes became sickness, not inherent evil. *The Mod Squad* (1968–73), for example, brought forward the idea that criminals needed pity, not extreme punishment. In the 1970s, the social attitudes moved toward a law-and-order focus, which emphasized rehabilitation less and punishments more. This law-and-order attitude continued into the 1980s and the decades following. The terrorist attacks of September 11, 2001, reinforced this view even further. Aside from a few sanctioned exceptions, television programming about crime often reflects these attitudes and their shifts through their ideologies.

Police Procedurals

The most common representations of crimes, their perpetrators, and their victims appear in police procedural dramas. Even with the wide range of all three components of a crime, the generic formula for the police procedural varies only slightly over the decades. Each episode begins with the revelation of a crime and possible victims. Aspects of the justice system get involved, and representatives of those systems begin to unravel the mysteries behind the crime, which might include the perpetrator, the perpetrator's motivations, the crime's impact, and even other victims. The clues lead the investigators (be they police officers, medical examiners, or other motivated individuals) down a winding path that twists and turns, doubles back, stops, redirects, and finally leads to a conclusion. The

drama associated with the investigation emerges through the obstacles that appear toward solving the mystery and thus the crime, bringing the perpetrator to justice, and bringing peace to the victims and their families. Most often, these mysteries get solved, and the perpetrator gets brought to trial and receives punishment. Every once in a while, however, the crimes remain unsolved or perpetrators get away with them in order to maintain viewer interest and to promote entertainment value. Most often, these shows take place in urban areas, such as New York, Chicago, Los Angeles, Las Vegas, and Miami.

The crime plot formula carries with it the connotations of being “real” or “realistic.” Part of the connotation comes from crime shows drawing on real cases for their story lines. *Dragnet* (1951–59) relied on actual cases from the Los Angeles Police Department. Other shows were made in cooperation with police departments, such as *Adam-12* (1968–75) with the Los Angeles Police Department. Some shows even were created by police officers, such *Police Story* (1973–78) created by Los Angeles detective sergeant Joseph Wambaugh. More recently, *Law and Order* (1990–2010) claimed its stories often came from the press and were “ripped from the headlines.” These relationships with the police and connections to the press help support this connoted realism. Another aspect of this connotation comes from the “gritty” style used to film these shows. Many, such as *Hill Street Blues* (1981–87), relied on a documentary-like style, and aspects of this style include handheld cameras, rapid cutting, and off-screen dialogue. A final aspect of the realism connotation comes from the crime plot formula’s consistent and constant repetition. Its formula has become so pervasive that it has assumed mythic proportions.

These police procedures also appear in the ever-growing genre of reality television. Reality shows sometimes prove difficult to define, but their primary distinction from other programming is that they draw on the principles of documentary, particularly in their claims of showing reality. Two general approaches offer the structures for these shows. Vignettes comprise one structure, which uses re-enactments and interviews with victims, the friends and relatives of victims, and law enforcement officials to depict each case. Examples of these types of shows include *America’s Most Wanted*

(1988–) and *Rescue 911* (1989–96). Ride-alongs comprise the other structure, wherein production crews record the action from inside police cars and from behind police officers while they do their jobs. The long-running *Cops* (1989–) offers the best example of this format. Several of these shows claim connections with law enforcement and thus claim an even greater connection to reality than the fictional shows. The FBI’s Public Affairs Office cooperates with the production of *America’s Most Wanted*, while local law enforcement officers in the various cities work with the producers of *Cops* on every episode. *Cops* appears dedicated exclusively to crime, but actually is highly constructed with footage created in other cities edited in with others to achieve certain effects. Reality shows prove divisive in that they mobilize people to help or contribute to the perception that television show quality continues to decline.

Crime in Different Genres

While crime procedurals and reality shows provide the primary generic television forum for crime representations, crime appears in a variety of genres. The genre shapes how the crime becomes part of the plot and its narrative tension. Some genres, such as mysteries and westerns, mimic police dramas in their focus on law-and-order justice. Several comedies have focused on crime, including *The Andy Griffith Show* (1960–68), *Barney Miller* (1975–82), and *Night Court* (1984–92). *The Andy Griffith Show* dealt more with small-town life because almost no crime occurred for Sheriff Andy Taylor to solve. Crime’s absence allowed the values and ruminations to take center stage in the series. *Barney Miller* took place primarily within the walls of the fictional 12th Precinct in New York’s Greenwich Village, and each episode showed not only the officers’ lives but also the witnesses, criminals, and other people they brought in as part of investigations. *Night Court* featured multiple cases of petty crimes in each episode, but the laughs generated by the characters’ interactions took priority over the crimes themselves. Though some of the crimes on *Night Court*—such as runaways and bomb threats—proved serious, most sought to make audiences laugh more than to scare them. Crimes also appear as part of children’s shows, specifically animated

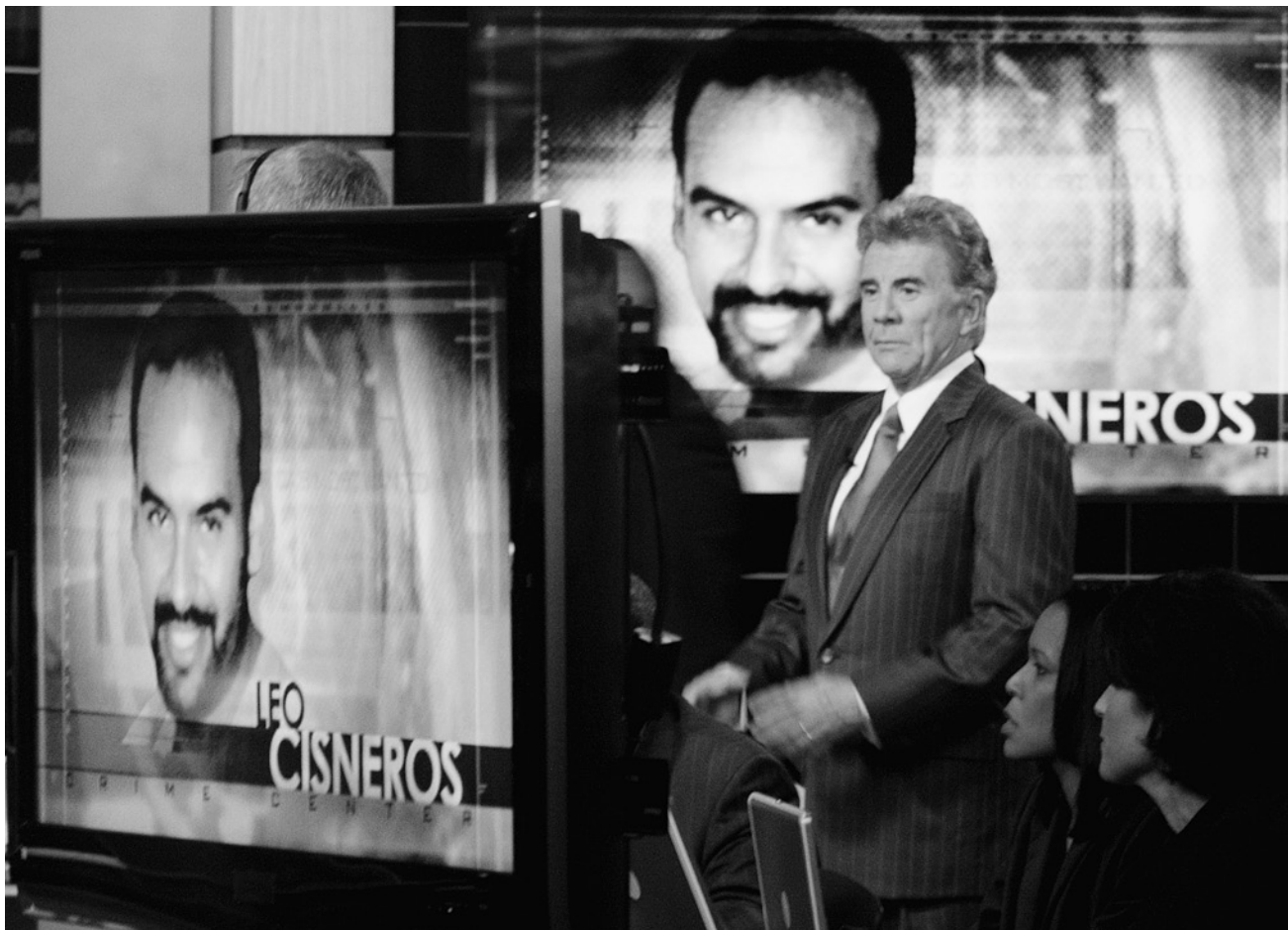
ones. For comedic cartoons, such as *Scooby-Doo* (1969–86), crime becomes part of a caper that Scooby and his friends solve, such as finding the lost object or uncovering who stole something. For action-related cartoons, the crimes committed by highly exaggerated criminals become the motivations for the heroes to save individuals or whole populations, such as in *The Justice League of America* or other superhero cartoons adapted from comics, such as Spider-Man, Batman, and Superman. Children's shows in particular support the criminal justice system.

Violent and Victimless Crime in Television

Crime itself, then, serves as more of a plot device than a subject of deep examination with television programming. In terms of fiction programs,

interpersonal crimes, violent crimes, and sexual crimes get more focus than other types of crime, primarily for their potential entertainment factor. Crimes get shown, get described, or get presented through a corpse, depending on the type of show. Some crimes get constructed through flashbacks with interviews with witnesses and suspects, some crimes get shown at the opening of the episodes, and procedurals such as *Law & Order* and *CSI* typically begin with a dead body found in part of a crime scene. In those cases, the body represents the crime and the mystery behind it.

Violence becomes a key part of television crimes, particularly in dramas. Violence intersects with crime in four ways: through its overt depiction, through the amount of physical force, through the credibility of its threat, and through the intended



John Walsh of *America's Most Wanted* filming a segment for his show in the studio located in the National Museum of Crime and Punishment. This type of reality program takes a vignette approach to its structure, using re-enactments and interviews with victims, the friends and relatives of victims, and law enforcement officials to depict each case.

harm to people or sometimes property. Ways to consider the levels of violence and crime include the type of act, the act's motivation, its degree of harm, its openness, and its level of reality. While older television shows offered more suggestions of crime and violence, contemporary programs actually show more frequent and graphic violence. Shows such as *Criminal Minds* elevate the level of violence in crimes through depicted scenes of torture, repeated stabbings, and brutal killings. Perpetrators on that show kill entire families, including children, and engage in killing sprees for reasons such as revenge, twisted moral justice, and psychotic breaks. The crime representations also reach deeper into subcultures and alternative cultures, including sexual fetishes, though these fetishes become motivations or explanations as means to heighten the spectacle for the crime.

Fictional prime-time programming tends to avoid victimless, white-collar, and other civil crimes because of their potential lack of entertainment value. These crimes do end up on daytime reality programming, however. Crimes such as property damage, fraud, and other similar conflicts end up on reality justice shows such as *The People's Court* (1981–93, 1997–), *Judge Judy* (1996–), *Texas Justice* (2001–05), *Judge Joe Brown* (1998–), and *Judge Mathis* (1999–). Issues related to marriage and adultery become part of some of these shows, though *Divorce Court* (1957–69, 1985–92, 1999–) addresses them specifically. Other reality shows become part of getting a kind of justice for the partners whose spouses are suspected of committing adultery. *Cheaters* (2000–), for example, followed suspected adulterers and attempted to catch them in the act. These issues also become fodder for the more sensational daytime talk shows such as *Maury* (1991–), *Steve Wilkos* (2007–), and *Jerry Springer* (1991–), which regularly use DNA testing as evidence to prove whose child is whose as part of shouting matches about who cheated on whom.

Representations of Criminals

Aside from the more sympathetic views of criminals in the 1960s and 1970s, perpetrators largely get represented as one-dimensional during the law-and-order eras. At those times, criminals were shown as pathological and were dehumanized. In fiction programming, perpetrators are often men,

and unlike criminals in news coverage, are often white. Reality shows follow the news patterns of overrepresenting criminals as African American and Hispanic.

In fiction programming in these eras, criminal representations served to reinforce the ideologies of the criminal justice system, though more recent shows attempt to move beyond that single dimension and create a richer picture. Several shows attempt to show the criminals' points of views. *Law & Order: Criminal Intent* provides selected points of view from the suspects and their victims as the detectives attempt to unravel the mystery. *Criminal Minds* (2005–) specifically offers sequences that reveal the suspects' influences and their actions, though not all episodes portray them in an evil light. Some episodes feature people who experience psychotic breaks that spur them into murdering sprees, such as one graphic novel artist whose pregnant fiancée was killed by a gang; he gets revenge by killing all of them even though he is not aware of what he is doing. HBO's *The Wire* (2002–04, 2006, 2008) offered a series-wide balance in representation of the law's attempts to get wiretaps and the criminals' drug running. Another HBO show, *The Sopranos* (1999–2007), showed a mob family with crime as a way of life, though not as an untroubled one. Instead of the mob family getting shown as one-dimensional, *The Sopranos* offered a more nuanced portrait, with its father seeking psychiatric help, several women playing strong roles, violence pushing boundaries in multiple directions, and an overall ambivalence about violence in general. Instead of providing clear-cut distinctions between protagonists and antagonists, between strength and weakness, *The Sopranos* blurred those boundaries and left them open to question.

Women sometimes become criminals in the drama crime series. Often, their roles as criminals serve as extensions of traditionally feminine roles, such as mothers, nurses, and other caretakers. Mothers assume a "monstrous" dimension in taking their caretaking too far, abusing their children, drugging them, or even killing them. A reality show on the Oxygen channel, *Snapped* (2004–) focused on true crime stories of women murderers and their motivations. The show plays on the uniqueness of women murderers, who represent less than 10 percent of murderers.

Not all shows about crime represent criminals in a negative light. Some shows follow criminals in their activities as well. Some criminals exhibit a type of vigilante justice, stepping in where law enforcement fails, such as *The A-Team* (1983–87). This vigilante justice becomes extreme in *Dexter* (2006–), a Showtime series about a serial killer whose “moral” code allows him to kill only other killers, even though his day job is as a forensic expert in blood spatter. The ambiguity forces some questioning and reconsideration of each side’s motivations.

Representations of Victims

Victims of crimes typically include young women and sometimes children. Most crime victims are white. Often, these victims are represented as helpless and defenseless. A key crime against women shown in television programming is rape. Among fiction programs, rape representations started during the 1970s. Most rape stories followed the myths surrounding rape, including an anonymous male, usually an African American, attacker raping a young, defenseless woman attacked in a questionable location. These stories, particularly the earlier ones, engaged in victim blaming, implying that the woman victim was “asking for it.” Officers investigating rape cases called into question the victim’s profession (such as a prostitute, nude model, or stripper), her clothing, or her location in an attempt to disprove the victim’s rape claim. Officers questioned the validity of the claim if she attempted to fight back, and they also believed victims lied about being raped in order to get attention. More recent representations of rape-based crimes, or sex-based crimes, attempt to undo aspects of this myth and show more nuance, including victims other than young women, attackers other than African Americans, victims other than the defenseless, and attackers other than anonymous people. *Law & Order: SVU* offers the primary show in which to see these changes, and Detective Olivia Benson actively challenges these assumptions in her comments and through her investigations. In terms of reality programming, some reality shows such as *America’s Most Wanted* also attempt to expand the ideas of women’s needs as victims of crimes.

Representations of children and teenagers as victims and perpetrators of crime offer a complicated

case for television programming. Child victims often are white, middle-class teenagers. Television docudramas show their stories in both fiction and based-on-a-true-story format. The problems these docudramas address include drinking in *Sarah T: Portrait of a Teen Age Alcoholic* (1975) and run-aways who become prostitutes in *Off the Minnesota Strip* (1981) and *Little Ladies of the Night* (1977). In these narratives, the crimes become ways to force broken families to address their issues and work toward resolution. The based-on-true-stories programs attempt to fit this mold even with more complicated cases. Seven-year-old Steven Staynor was kidnapped and held for seven years, during which time he was abused sexually. His story got made into a television movie titled *I Know My First Name Is Steven* (1989), though the formula showed Steven adapting to life back at home in the televised version. On occasion, children become the perpetrators of crime, at least in fiction programming. These shows represent these children as extremes. On the one hand, children commit crimes because they are psychologically or biologically damaged by their parents or other family members through abuse, drugs, or alcohol. On the other hand, less frequently children become killers because they represent pure evil.

Conclusion

Crime-based programming draws audiences, and audiences bring in ratings, which translate into advertisers and money. The television industry makes a significant investment in police procedurals in particular, though it often relies on creators, producers, and executive producers with successful track records of creating such programs for developing new ones. Jack Webb offers the earliest example here with several series, including *Dragnet*, *Adam-12*, and *77 Sunset Strip* (1958–64). Aaron Spelling produced a variety of crime-related series throughout the 1970s and 1980s, including *Starsky and Hutch* (1975–79), *Charlie’s Angels* (1976–81), *Hart to Hart* (1979–84), and *T. J. Hooker* (1982–86). Steven Bochco focused on both police and lawyers in his series, including *NYPD Blue* (1993–2005), *L.A. Law*, and the musical *Cop Rock* (1990). The more recent trends in television producers and their programming involve multiple variations or spin-offs from an original series. Dick Wolf took his *Law &*

Order franchise into five variations and several long-running ones, including the original, *Law & Order: Special Victims Unit* (1999–), *Law & Order: Criminal Intent* (2001–), *Law & Order: Trial by Jury* (2005–06), and *Law & Order: Los Angeles* (2010–). These episodes gain new life, audiences, and profits through reruns on basic cable networks, with A&E getting the first syndication rights to the original series in the 1990s and TNT getting them in the early 2000s. In addition to syndication, the show gets adapted for international audiences, with a British version and a Russian version. Episodes also get broadcast globally through satellite television. Producer Jerry Bruckheimer shows how the television industry crosses with the film industry, as he produces both popular film series and television shows, including the *CSI* franchise (which Anthony E. Zuiker created), *Without a Trace*, and *Cold Case* (2003–10). Carol Mendelsohn, one of the few women producing these shows, also serves as an executive producer on the *CSI* franchise. While crime programming continues, these trends toward global programming and franchising move development toward further standardization. Since these shows attempt to appeal to the widest audiences possible, any innovation occurs within the confines of this form, the industry, and social ideas of criminal justice.

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See Also: Dime Novels, Pulp, Thrillers; Fear of Crime; Film, Crime in; News Media, Crime in.

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Television, Police in

Police officers have maintained a high-profile presence on television since the earliest days of commercial network broadcasting in the 1940s and 1950s. From police procedurals such as *Dragnet* and *Adam-12* to early 21st century crime dramas such as *The Shield* and *The Wire*, police programs have proven to be among the most durable and popular of all television genres. In their hundreds of iterations, cop shows have sought to depict law enforcement in a "realistic" manner, striving to capture the "true" nature of police work with gritty authenticity. At the same time, cop shows have also tended to emphasize the most visually sensational aspects of police work—gunplay, car chases, physical action, and the like—in order to satisfy the desire of a mass audience to experience the illicit thrills of crime and violence while remaining safely within the parameters of the law.

The long-standing popularity of television cop shows has enabled them to play a pivotal role in shaping the American public's perceptions of the police. Approaching the social problem of crime from the point of view of law enforcement, cop shows have traditionally valorized police officers as heroic guardians of the public welfare, tasked with protecting ordinary citizens from criminals. Television has also familiarized audiences with

the minutiae of police work, from the proper technique for handcuffing suspects to the exact language of the Miranda warning (“You have the right to remain silent ...”), a staple on nearly all cop shows.

In their more mature incarnations, however, police dramas have explored the most urgent complications attending the role of law enforcement in a democratic society. Cop shows have trained a critical gaze on police authority by depicting corruption and the limits and abuses of police power, as well the substantial personal and emotional costs of working in law enforcement for the officers themselves. As agents of the state, cops have the ability to arrest citizens and compel them to obey commands (“pull over!” “freeze!”), but they are also public servants required to uphold the law as it exists. Police shows frequently figure this relationship as a tension between the institutional constraints of the “system” and the cops’ own personal pursuit of justice, presenting police officers as rule-breaking individualists whose own private moral code potentially supersedes their devotion to the law or their tolerance for the bureaucracy of the justice process. In many cases, this intolerance is presented as a justified form of anger against a system hamstrung by regulations that favor criminals over victims.

The American cop show’s emphasis on out-law individualism has, paradoxically, tended to reinforce the conservative political bent of police programs; because cop shows have traditionally seen crime as a problem of law enforcement rather than of social justice, they devote more attention to the contact point between cops and criminals rather than to the underlying social conditions that help to produce crime in the first place. Cop shows have also exhibited evolving social attitudes on race, gender, and authority. Traditionally white and male, police officers on television have diversified significantly over the years, as evidenced by the multiracial ensemble casts of countless TV cop dramas. Because police officers, due in part to television’s influence, hold such a prominent position in the American cultural imaginary, the question of who gets to carry a badge and a gun on TV is also, in some sense, the question of who gets to be considered an “American.” Thanks to their pervasive presence in U.S. popular culture, television cop

shows offer a revealing window into the way that America understands itself and its complex relationship to authority, crime, and justice.

Early Cop Shows

While short-lived crime dramas such as *Stand By for Crime* (1949), *Photocrime* (1949), and *Chicagoland Mystery Players* (1949–50) technically count as television’s first cop shows, the most seminal police program of the medium’s early years was *Dragnet* (1952–59; 1967–70). Created and produced by actor Jack Webb, who starred as Los Angeles Police Department (LAPD) Sergeant Joe Friday and directed several of the show’s episodes, *Dragnet* defined the conventions of the police “procedural” by envisioning police work as a set of routines carried out by detectives committed to preserving establishment values and serving the public good. A typical *Dragnet* episode, shot in semidocumentary style and narrated by Webb in a terse monotone, followed Friday and his partner through the city of Los Angeles as they interrogated suspects and witnesses, pursued leads, and foiled crimes, all within the show’s tightly constructed half-hour format. In contrast to earlier radio police serials that tended to emphasize shoot-outs and melodrama, *Dragnet* focused on the details of crime-solving with little action or gunplay; one of Webb’s “rules” for the show was that no more than one bullet could be fired every four weeks. “Just the facts, ma’am,” Friday’s familiar admonition to witnesses, was also an unofficial mantra for the show’s no-frills depiction of law enforcement.

Unlike many subsequent cop shows, *Dragnet* also displayed an unshakable faith in the efficacy of the justice system; each episode concluded with a summary of the arrested criminal’s successful prosecution and incarceration. The show’s positive portrayal of police professionalism made it a virtual promotional vehicle for the real-life LAPD in the Eisenhower era. Not only did *Dragnet* draw many of its story lines from actual LAPD case files, but it also represented the police as moral, rational agents of the law. Webb followed his *Dragnet* success by creating another long-running police procedural, *Adam-12* (1968–75), this time centering on two uniformed patrol officers who cruised the streets of Los Angeles in a black-and-white squad car.



Jack Webb (left) and Harry Morgan from the popular 1950s television program *Dragnet*. Webb created and produced the show and starred as no-nonsense Sergeant Joe Friday.

Though *Dragnet* established an early benchmark for “realism” in televisual depictions of the police, its staid tone and establishment values put it at odds with the social and political transformations taking place in American society in the late 1960s. As U.S. television audiences became increasingly exposed to images of real-life police officers turning dogs and fire hoses on black civil rights demonstrators, predominantly white police forces repressing distressed black communities in northern inner cities, and even America’s vexed role as “global policeman” during the cold war and Vietnam, the received notion that the police automatically stood for peace and justice began to seem outmoded and simplistic. In part as a result of these changes, cop shows in the late 1960s and early 1970s began to move away from *Dragnet*’s emphasis on unquestioned white male authority and to absorb, if not wholly endorse, the energies and ideologies of the counterculture.

These changes became apparent in such disparate cop shows as *The Mod Squad* (1968–73), which centered on three former juvenile delinquents—“one black, one white, one blonde”—who worked undercover to fight crime in the southern California “beat scene”; *Ironside* (1967–75), which starred Raymond Burr as a wheelchair-bound ex-San Francisco police detective who combated crime outside the conventional channels of the police department with the help of male and female deputies and an African American bodyguard; and *Hawaii Five-O* (1968–80), a long-running procedural starring Jack Lord as Steve McGarrett, a liberal-minded detective whose Hawai’i state police unit includes both a trusted white deputy and Asian and Polynesian officers. The show’s exploitation of Hawai’i’s colorful tropical locations, like *The Mod Squad*’s appropriation of the youth culture or *Ironside*’s inclusion of women and people of color on the side of law enforcement, demonstrated how television police shows attempted to leaven traditional police authority with nontraditional elements.

The 1970s

These strategies became increasingly standardized as the cop show genre proliferated in the 1970s, a decade in which over 40 police-themed series hit the airwaves. The sheer abundance of cop shows on TV during this era suggested public ambivalence toward law enforcement. On the one hand, the cop show’s ubiquity signaled a reassertion of law and order after the anarchic decade of the 1960s; on the other hand, television cops of the 1970s, though overwhelmingly white and male, tended to be streetwise, ethnically specific individualists who adhered as much to their own personal codes as to the exigencies of law enforcement. Representative examples included *Columbo* (1971–77), which starred Peter Falk as a trench coat-clad LAPD detective whose pose as a polite bumbler masked his skill at solving murders; *Kojak* (1973–78), which featured Greek American actor Telly Savalas as a tough, bald, lollipop-sucking New York police lieutenant whose hardscrabble upbringing gave him special knowledge of the streets; and *Baretta* (1975–78), starring Robert Blake as an Italian American undercover cop who lived in a dilapidated hotel and used his mastery of disguise to infiltrate various criminal organizations.

Perhaps the decade's signature cop show was *Starsky & Hutch* (1975–79), which blended an apparent glorification of police brutality with a tongue-in-cheek emphasis on the homoerotic male bonding between its two odd-couple detective-buddies, Dave Starsky (Paul Michael Glaser) and Ken “Hutch” Hutchinson (David Soul). Taking its cue from movie cops like Dirty Harry and Popeye Doyle, *Starsky & Hutch* depicted its two heroes routinely intimidating, browbeating, and assaulting an array of suspects, often chasing them down in Starsky's tomato-red Gran Torino. The cops' streetwise credibility also hinged on their bond with their loyal black informant, Huggy Bear (Antonio Fargas).

The 1980s

The cop show's tendency toward either cartoonish action or rigid proceduralism made the genre ripe for reinvention by the early 1980s. While *Police Story* (1973–77), an anthology series created by crime novelist and former LAPD officer Joseph Wambaugh, had sought to bring renewed realism to the police drama, the series that best exploited this opportunity was the critically acclaimed *Hill Street Blues* (1981–87). Cocreated by Steven Bochco, *Hill Street Blues* sought to reinvigorate the police drama by taking a humanist, documentary-like approach that balanced procedural elements with a nuanced exploration of the cops' private lives and personal travails. Set in a chaotic police precinct in a crime-ridden section of an unnamed eastern city that seemed to symbolize the decline of America's inner cities during the Reagan era, the show's “tele-vérité” style involved the kind of overlapping dialogue and distracted camerawork characteristic of a Robert Altman film. Moreover, its writers deliberately avoided the cop-show tradition of wrapping up cases neatly at the end of each hour, instead stretching them out across multiple episodes or even leaving them unsolved altogether.

At the heart of the series was the intense but stoic Captain Frank Furillo (Daniel J. Travanti), a recovering alcoholic whose supervision of the dilapidated Hill Street station required him to deal with overworked cops, dangerous criminals, and a tangled city bureaucracy while also coping with a combative ex-wife and carrying on a secret romance with liberal public defender Joyce

Davenport (Veronica Hamel). Picturing the police precinct as a quotidian American workplace, each episode began with an early-morning “roll call” in which Sergeant Phil Esterhaus (Michael Conrad) briefed a roomful of weary cops on the day's important cases. Esterhaus's memorable catchphrase, “Let's be careful out there,” captured the show's empathy for police officers who, though neither invulnerable action heroes nor robotic civil servants, found themselves on the front-lines of urban chaos. *Hill Street Blues* was also notable for its effort to challenge at least some of the conservative assumptions of the traditional cop show. In addition to its matter-of-fact depiction of a diverse police force that included women and people of color, the show addressed issues of police corruption and tensions between the police and ghettoized minorities.

If *Hill Street Blues* redefined the cop show's commitment to “realism” in a way that would prove hugely influential on later police dramas such as *Law & Order* and *NYPD Blue*, another 1980s cop show, *Miami Vice* (1984–89), sought to move beyond realism altogether by wedding the police drama to the visual and aural innovations of the then-new Music Television (MTV). Executive produced by feature film director Michael Mann and starring Don Johnson and Philip Michael Thomas as undercover vice detectives Sonny Crockett and Ricardo Tubbs, the show reportedly had its genesis as “MTV cops,” two words scrawled on the notepad of an NBC entertainment executive.

In addition to a contemporary rock soundtrack, rapid-fire editing, and stylized camera angles that made the cop show akin to a music video, the series also exploited the seedy tropical glamour of Miami in a way that recalled but far surpassed *Hawaii Five-O*'s use of Hawai'i. Crucially, Crockett and Tubbs were “hip” cops, clad in expensive designer clothing and driving flashy cars designed to maximize their undercover image as drug dealers. That the show's two leads were also interracial male buddies—a staple of countless cop shows from *CHiPs* to *Hill Street Blues* to *The Wire*—made the implicit argument that differences in race, background, and culture could be elided through a shared commitment to police work—and, of course, a shared aura of “cool.”

Though the show tended to glamorize the various forms of “vice”—drug use, arms dealing, and

prostitution—suggested by its title, it also examined the personal cost of prolonged undercover work; in one story line, Crockett sustained a head injury that made him believe that he was his criminal alter-ego. *Miami Vice* was equally notable for its critical, even despairing, attitude toward the Reagan-era “war on drugs,” an outlook that later shows, such as *The Wire*, would echo. Numerous episodes ended with Crockett and Tubbs finding their own quest for local justice hamstrung by federal agencies (such as the Federal Bureau of Investigation [FBI] or Drug Enforcement Agency) whose skewed priorities exposed politically motivated U.S. complicity in drug trafficking in Latin America and Southeast Asia.

While *Hill Street Blues* and *Miami Vice* featured female police officers in their ensemble casts, neither show challenged the cop show’s essentially masculine point of view. *Cagney and Lacey* (1982–88) was groundbreaking for doing just that; in its depiction of two female New York City police detectives, recovering alcoholic Christine Cagney (Sharon Gless) and married mother of three Mary Beth Lacey (Tyne Daly), the show represented a serious effort to examine the complexities of law enforcement from a female, even feminist, point of view. While women had occupied starring roles in cop shows before—notably Angie Dickinson in *Police Woman* (1974–78) and Teresa Graves in *Get Christie Love!* (1974–75)—those programs tended to treat the female star primarily as a sex object. In contrast, *Cagney & Lacey* presented its female cops as tough, compassionate, and highly competent, and the show melded traditional procedural plots with story lines involving date rape, abortion, domestic abuse, and the workplace sexism of the police precinct.

The show itself was forced to contend with the conservative gender politics of the TV industry. Though actress Meg Foster played Cagney in early episodes, she was replaced by Gless, a “softer” presence on screen, after TV executives noted “lesbian overtones” between Foster and Daly. In pushing past these hurdles and showing women who succeeded in a traditionally male line of work, the series laid important groundwork for later cop shows that featured women in ensemble casts (*NYPD Blue*) or as the stars of their own shows (*The Closer*, 2005–11; and *Saving Grace*, 2007–10).

The 1990s

The innovations in storytelling, style, and gender politics that emerged in TV cop shows of the 1980s were further extended and complicated in the 1990s. Steven Bochco, cocreator of *Hill Street Blues*, teamed with *Hill Street* writer and producer David Milch to create *NYPD Blue* (1993–2005), billed as an “adult” police drama that brought R-rated language, partial nudity, and a renewed sense of gritty urban realism to the genre. Set in Manhattan’s lower east side and filmed in a jittery, handheld style, *NYPD Blue* was most notable for its mature, complex handling of the personal drama of cops’ lives—variously involving office romance, marriage, infidelity, alcoholism, cancer, and racism—and for interweaving these serial elements with gripping procedural plotting.

The long-running *NYPD Blue* was also notable for its valorization of the Angry White Male cop. In part because of its countless cast changes over 12 seasons, the show’s moral core increasingly became the portly, bald, alcoholic, rage-prone Detective Andy Sipowicz (Dennis Franz), who routinely beat up suspects, spouted racist epithets, and derided “perps” who opted to “lawyer up” rather than confess to their crimes. The show arguably excused Sipowicz’s compulsive police brutality as the righteous fury of a cop who suffered mightily for the job; though he trampled on the civil rights of his suspects, those suspects were usually shown to be guilty, and Sipowicz was further ennobled by a series Job-like personal trials, including alcoholism, prostate cancer, the murders of his older son and second wife, and the tragic deaths of two of his partners.

The impact of the job on the lives of cops was also a central theme in *Homicide: Life on the Street* (1993–99), another ensemble police drama frequently compared to *NYPD Blue* but which eschewed the latter’s soap-opera-like melodrama. Set in inner-city Baltimore and based on former police reporter David Simon’s book *Homicide: Life on the Killing Streets* (1991), a gritty nonfiction exposé that detailed 12 months in the life of a Baltimore homicide unit, *Homicide* was a visually stylized, cerebral, character-driven cop show that focused not so much on acts of murder themselves but on the impact of those murders on the detectives who investigated them.



A scene being filmed for *Law & Order: Criminal Intent* in November 2007. *Law & Order* premiered in September 1990 and completed its 20th and final season in May 2010, making it the longest-running police show in the history of television. It also tied with *Gunsmoke* for the longest-running prime-time drama series of all time.

Unlike the flawed-but-valorous cops of *NYPD Blue*, *Homicide*'s detectives were eccentric and chatty, and the show, under the guidance of executive producer Barry Levinson, used cinematic innovations of the French New Wave, including jump cuts, roving handheld camera work, and philosophical dialogue. This approach was particularly evident in the show's acclaimed first-season episode "Three Men and Adena," in which erudite African American detective Frank Pembleton (Andre Braugher) and his white rookie partner Tim Bayliss (Kyle Secor) spend the entire episode trying unsuccessfully to wring a confession out of a suspected child murderer. Perhaps the signature image of the series was the homicide squad's "murder board," a white chart that tracked the progress of the detectives' cases in red marker (for unsolved) and black marker (for solved); the board seemed to symbolize both the fleeting victories and perpetually unfinished nature of urban police work.

As the police drama increasingly became a vehicle for exploring the human costs of both crime and police work, the old-fashioned police procedural reinvented itself as well, as evinced by two crime shows that wrung fresh ideas from technical aspects of the investigative process. *Law & Order* (1990–2010), the longest-running cop show in the history of television, combined the police procedural and the courtroom drama, while *CSI: Crime Scene Investigation* (2000–present) focused on forensic detectives who solved crimes through scientific analysis of physical evidence. That both series became enormously successful "franchises" comprising numerous spin-offs (including *CSI: Miami*, *Law & Order: Special Victims Unit*, and many more) reaffirmed the durability—and profitability—of "stand-alone" episodes in which cops crack cases in under an hour.

Episodes of *Law & Order* were split into two halves: the first tracked the police investigation of

a crime, and the second followed the district attorneys' prosecution of that crime. Backgrounding the characters' private lives in favor of ripped-from-the-headlines cases, *Law & Order* nonetheless managed to provide an unusually nuanced view of the antagonistic and symbiotic relationship between cops and district attorneys. While many cop shows portrayed the legal system as inert and attorneys as ethically suspect, *Law & Order* dramatized the intricate chess game that police and lawyers must play in order to convict criminals within the constraints of the legal system. The show's ever-changing cast also suggested the diversification of the cop show genre as a whole: In the series' early days, the cops and lawyers were mostly white and male; in later seasons, African Americans and women took over key roles.

CSI, by contrast, took the police series in a more scientific direction, focusing on forensic "criminalists" who work the night shift at a high-tech crime lab in the Las Vegas Police Department. Instead of familiar cop-show staples such as interrogations, shoot-outs, and car chases, *CSI* immersed viewers in the minutiae of shoe etchings, anal swabs, torn hair follicles, bullet wounds, voice analysis, DNA evidence, and other state-of-the-art techniques that enabled the police to re-create crimes in hypothetical, often gory, flashbacks. While *CSI*'s appeal stemmed in part from its flashy visual style and emphasis on blood and guts, the show's scientific bent also offered viewers a reassuring vision of police work as an exact science in which catching a criminal was often a matter of analyzing evidence correctly. As the unit's brilliant leader, Gil Grissom (William Petersen), admonished his team: "People lie. The evidence doesn't lie." This seductive premise generated what some called the "CSI effect," in which real-life families of crime victims expected swifter resolutions to murder investigations and juries required more direct, less circumstantial evidence to convict defendants.

Perhaps the most durable, though least acclaimed, police procedural of this era was *COPS* (1989–present), a so-called "reality" show that used handheld video cameras to track real-life patrol officers on the job. Familiar to American TV audiences for its "Bad Boys" theme song and lowbrow sensibility, *COPS* offered an endless parade of traffic stops, domestic disturbances, and

drug arrests in low-income neighborhoods while providing little if any context or social analysis—just the vicarious thrill of watching police apprehend "criminals."

The 2000s

While procedurals such as *COPS*, *CSI*, and *Law & Order* continued to thrive on traditional network television well into the 21st century, two cop shows that appeared on cable in the new century's first decade—*The Shield* (FX, 2002–08) and *The Wire* (HBO, 2002–08)—took the police drama into deeper and darker territory than it had ever been before by offering sociologically grim, dramatically layered examinations of crime and corruption in the urban ghetto. Shot in a grainy, handheld style in some of Los Angeles's grimmest locations, *The Shield* centered on an experimental LAPD "Strike Team" that used illegal methods to combat gangs, drug dealers, and murderers while essentially operating as a gang unto itself. The Strike Team's leader, Vic Mackey, played by the bald, charismatic Michael Chiklis, was the apotheosis of the cop as antihero, far exceeding *NYPD Blue*'s comparatively tame Andy Sipowicz. Dubbed by one TV critic as "Tony Soprano with a badge," Mackey brutalized suspects, planted evidence, stole drugs and money, and, in a shocking act whose consequences rippled throughout the show's seven seasons, shot and killed a member of his own unit.

Like the film *Training Day* (2001), *The Shield* was inspired by the LAPD's Rampart corruption scandal of the late 1990s, and the series arguably glorified, even as it critiqued, the figure of the outlaw cop. That Mackey was a doting father of three ensured audience sympathy, even as his violent acts made him repugnant. By presenting Mackey as an extremely effective but extremely immoral cop, *The Shield* posited corruption as a distasteful but potentially necessary tool for effective crime-fighting. Moreover, *The Shield* showed that Mackey was far from alone in his manipulations; indeed, the series took a pitilessly Hobbesian view of the police as an institution irretrievably shaded by the self-interest of its personnel at all levels.

The Wire's take on the police drama was less sensationalistic but no less unsettling. Created by David Simon and drawn, like *Homicide*, from

his years of crime reporting in Baltimore, *The Wire* was equal parts cop show and sociological exposé, examining not just police work but the painful decline of the American inner city. In its first season, the show focused on a single police drug investigation in the blighted housing projects of West Baltimore (the show's title came from the wiretapping technology used to monitor drug dealers) but distinguished itself from cop-show norms by exploring the lives of the dealers and addicts as fully as it did of the police officers. In subsequent seasons, the show's scope expanded to examine labor unions, city politics, public education, and the news media, implicitly arguing that the institution of law enforcement and the war on drugs could not be understood without accounting for the systemic rot in all of these institutions, as well as the human cost facing individuals who live and work within them.

In articulating these critiques, *The Wire* rejected the tidy closure of the police procedural as well as the often ahistorical, decontextualized picture of crime offered in even the most sophisticated police dramas. Moreover, in a genre often prone to glorifying white male heroes (and anti-heroes), *The Wire* was notable for featuring perhaps the richest and most varied cast of African American actors in the history of television; its maverick white cop, Jimmy McNulty (Dominic West), was often relegated to the periphery. Perhaps the central theme of *The Wire*'s depiction of law enforcement was the way in which political opportunism and limited resources hamper cops' ability to conduct meaningful long-term investigations; the show revealed how cops are pressured to fudge crime statistics and engage in aggressive street-level arrests that look good in the eyes of the public but actually enable the drug trade to continue unabated and, worse, tend to alienate minority communities. *The Wire*'s bleak position on the drug war was perhaps best expressed by one officer's remark that the "war" on drugs is a misnomer, because "wars end."

Even as *The Wire* characterized police work as an exhausting war of attrition, the television cop show itself appeared to be anything but exhausting in the early 21st century; indeed, police officers on TV continued to become at once more outlandish and more familiar with each new show. The pay-cable series *Dexter* (2006–present), for

example, took the cop-as-antihero concept to a new extreme by focusing on a Miami police "blood-spatter" expert who is secretly a serial killer of serial killers, while *Southland* (2009–present) used cinema-verité techniques to follow flawed patrol officers and detectives through the same sun-bleached LA-noir landscape featured in *Dragnet* and *The Shield*. As these and other cop shows attest, U.S. audiences remain fascinated by the men and women who wear badges, carry guns, and make television their beat.

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See Also: Film, Crime in; Film, Police in; Literature and Theater, Police in; Television, Crime in.

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Television, Punishment in

Compared to the police, there is significantly less television programming devoted to the punishment side of the American criminal justice system. To a

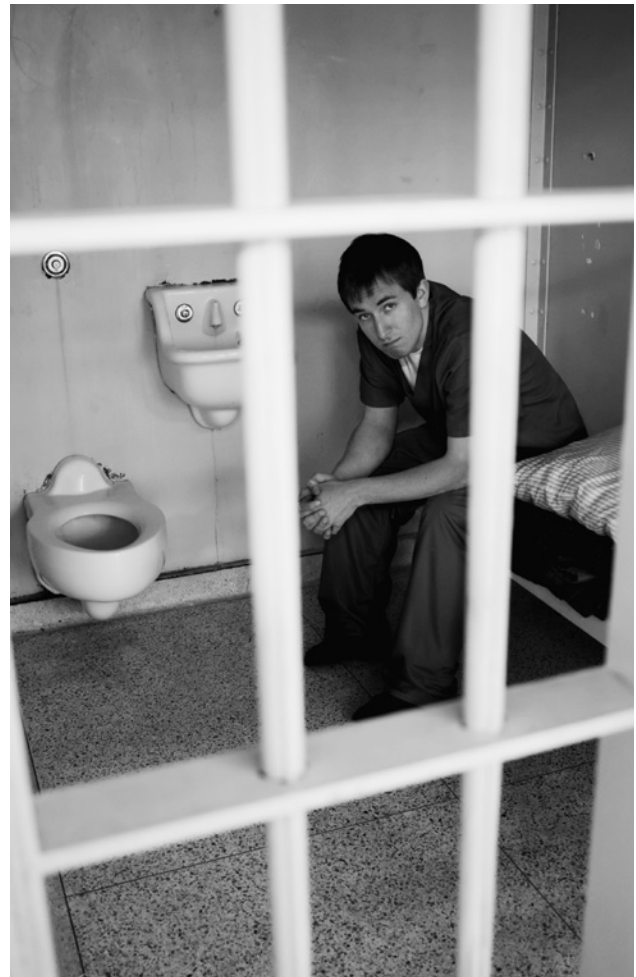
large degree, this can be attributed to the fact that punishment in and of itself is not riveting television. If prisons were set up to look like Bentham's panopticon, for example, viewers would simply spend an hour watching the front of cells just as guards do on a daily basis. Further, the most serious form of punishment in the country—the death penalty—is not broadcast publicly. Television writers and producers are consequently left with two options. First, they need to create reality or documentary series that demonstrate to the average television viewer what life in prison is like. Or second, they can create dramatic series that involve punishment and prisons but are not necessarily meant to always accurately depict punishment in the American system.

Scared Straight

In 1979, Arnold Shapiro released a documentary titled *Scared Straight*, which followed a group of juvenile offenders as they entered Rahway State Prison for a three-hour encounter with actual inmates. The convicts would berate, scream at, and attempt to terrify the juveniles in an effort to make them want to avoid prison. It allowed the public to envision the dark side of prison life, and the producers hoped to help the juveniles right their lives before it was too late. In the aftermath of the original documentary, many states began scared straight programs in an attempt to keep young individuals fearful of life in prison and, as a result, less likely to commit criminal acts. Shapiro's initial concept was followed by a second story in 1980, a 10-year follow-up and then a 20-year follow-up. These follow-up episodes showed that most of the individuals from the original documentary were in fact scared straight and went on to live productive lives.

After years of relative dormancy, A&E brought the concept back to television in 2011 with *Beyond Scared Straight*. In each episode, at-risk teenagers are taped as they experience an inmate-run program. Cameras follow them before their arrival, during their time in prison, in its immediate aftermath, and then checks on them a month later to see if there has been any impact. Episodes in the series have shown teens being yelled at, forced into bathroom stalls, pulled out of line into areas away from the cameras, and repeatedly told of how awful life in prison can be. While it may

be difficult to watch young individuals in this setting, many of the teen offenders are visibly moved throughout the episode. Campaign for Youth Justice, however, has publicly called for the series to be taken off the airwaves. Likewise, individuals in the Department of Justice have publicly acknowledged they believe the shows to be potentially harmful. They worry that the shows present anecdotal evidence for citizens rather than long-term policy proposals that would better prevent youth offenders. While the experience has the potential to be traumatic for the juveniles (especially those under 10 years old), the scare tactics are typically matched with appropriate counseling components to help alleviate this concern.



A young man in a jail cell shows the reality of life in prison. Crime is a popular theme for television series, but the actual punishment is often ignored or neglected, possibly considered not suitable for television audiences.

Lockup and Inside American Jail

Two other documentary series regularly air on TV that show life in prison. Rather than focusing on the impact punishment has on the offenders, these shows instead tend to focus more generally on the prison environment. First, MSNBC airs a series titled *Lockup* (and its related shows *Lockup Raw* and *Lockup Extended Stay*). The original series has now gone through 22 iterations in 22 different facilities across the country. In each episode, the show follows guards and administrators as they go about their workdays, interacting with prisoners and the criminal justice system. Some episodes add a series of interviews with inmates on issues they face in their day-to-day life. For educational purposes, the series does a good job of helping to explain concepts like inmate classifications, expectations of behavior, and modern issues of punishment in America. Viewers are able to understand the structural and procedural differences between low security, high security, and supermax prisons and see how inmate lives differ based on these classifications. They also take steps to show how guards and administrators respond to inmate misbehavior and violence.

Another show that builds on the same format is *Inside American Jail*, which takes a more comprehensive look at punishment by following individuals from booking through incarceration. This show, unlike *Lockup*, does not base entire seasons from the same location but instead bounces from location to location more regularly. Since the show includes the booking process, there is more of a police element and presence than in *Lockup* or *Beyond Scared Straight*. Although this detracts from the consideration of punishment in some respects, it also presents a more holistic approach to the punishment process as it traces each prisoner's full journey through the system. One of its most famous episodes involved the booking of O. J. Simpson into Clark County Jail after his conviction in the stolen goods case. Airing on truTV, this show tends to focus more on the dramatic scenes than on helping viewers to understand the penal system in the United States.

What these three documentary shows collectively demonstrate is how television can use documentaries to introduce the American public to different facets of punitive justice and punishment in the country. In *Beyond Scared Straight*, inmates

attempt to prevent juvenile offenders from making the same mistakes that they made by introducing them to life in prison. *Lockup* presents punishment in a different way, by taping one prison for a longer period of time and helping Americans understand the structures and functioning of a penitentiary and the culture of inmates within it. And with *Inside American Jail*, inmates are followed from the moment they are booked through their incarceration. Such an approach offers a different perspective on life as an inmate and how prisoners adapt to their new surroundings.

Law & Order, Oz, and Prison Break

While the documentaries offer a real glimpse into punishment in America, there have also been numerous dramatic series that show prison in their own way. The least direct example is the *Law & Order* franchise. While none of the *Law & Order* shows deal directly with prison, they do involve numerous scenes in a prison setting and occasional episodes that look at punishments. Regularly, interviews take place with prisoners in prison settings where inmates are shackled or call for guards when they are done talking to prosecutors. Yet, the actual punishment portion of the proceedings is not aired as all episodes end prior to prison. Rather, the show focuses on the investigation and trial and typically ends with the announcement of a verdict or sentencing.

Unlike *Law & Order*, HBO's *Oz* shows a dramatic interpretation of life in a maximum-security penitentiary. Built on the idea that "it's no place like home," Oswald State Correctional Facility is home to Em City, an experimental unit that emphasizes rehabilitation and responsibility as goals of prison rather than punishment. In order to try to ease tensions among different racial and social groups, select numbers of each are brought together in a controlled environment. While the intent is to be lauded, the process is not as clear. The inmates struggle in Em City to fulfill their own needs. Much fighting occurs as different groups and individuals attempt to control the drug trade or inmate factions. Yet, in the violent setting, many inmates—and corrections officers—wish for nothing more than to survive to parole or the next day. Throughout the series, the show demonstrates a clear vision of what prison life would be like in the system created by the writers.

More than anything, *Oz* highlights the role played by different power groups within a prison. Over the course of the show, viewers see the influence of the African American Homeboys, the Muslims, the Wiseguys, the Aryans, the Latinos, the Irish, the gays, the bikers, and a series of unaffiliated individuals that still manage to cause havoc. Mixed in, however, are characters like Tobias Beecher, who comes across as a normal man who happened to make one disastrous mistake—in his case, a fatal drunk-driving accident. The show demonstrates many of the worst elements of prison and seems to focus on the alignments that arise within prison populations over time. Due to its dark nature, some critics have failed to fully discuss and consider the concepts presented and their potential applicability to the actual prison system. A set-up like the one found in Em City has not been attempted in many real-life prisons but carries many potential benefits. If the justice system could bring together groups of individuals that are regularly in conflict outside prison walls and help them see their commonalities, they may be able to better curb group conflict when they are freed. Pragmatically, such an effort is hard to conceive of. After all, it relies on the belief that these groups are truly willing to be rehabilitated and change. Without their buy-in, an Em City system will have no chance at succeeding.

Another prison drama that helps viewers learn about elements of punishment in America is *Prison Break*. The series—which aired on Fox for four seasons—focuses on two brothers. The first has been sentenced to die for a murder he did not commit, and the second intentionally gets himself put into prison to help his brother escape. Lincoln Burrows, who was accused of murdering the vice president's brother, was held at Fox River State Penitentiary. To gain access to help him escape, his brother, Michael Scofield, commits an armed robbery and then pretends to have diabetes to gain access to the prison doctor. Because of his unlimited access to the prison infirmary, he is able to begin thinking of ways to escape. The first season concludes with the escape. Seasons two, three, and four all focus less on the punishment side of criminal justice because the main characters are already out of prison. While the series is clearly fictitious, it does provide interesting ways of viewing punishment in society. Lincoln is shown to have been set up because of his

father's poor decisions and is set to be executed as a result. While the idea of prison breaks is fairly far-fetched on television and in movies compared to real life, the process by which Michael gets himself into prison and then fakes health issues to gain access to the prison infirmary does point to potential loopholes in the system.

What the three dramatic series show about punishment is difficult to ascertain. Most of the more famous criminal justice series focus more on forensic science and legal matters than on actual punishment. There are many possible explanations for this. Perhaps punishment is simply not interesting enough to create entire series wrapped around the idea. Or maybe it is difficult to create enough material to have a full series without having less believable plot lines. Another possibility is that punishment in the justice system is just not suited for television. Perhaps it is viewed as inhumane or against viewer's ideals and consequently viewed as not suitable for television audiences. Ultimately, crime is a popular theme for television series, but the aftermath is often ignored or neglected.

Between documentary and drama series on television, the ideas behind punishment in the modern American criminal justice system can be watched by viewers. While documentaries try to demonstrate the reality of prison in the country, even they fall victim in many cases to emphasizing the drama that arises in the system. This is partly because the mundaneness of a regular prison day would likely lose most viewers, but by overexaggerating what happens in prison, nothing but public misconceptions and concerns are added. Many Americans believe what they see on television to be the truth. Whether it is a documentary that focuses too heavily on inmate violence or a dramatic series that shows routine prison abuse, both versions plant a seed in the viewer's head that these depictions are representative of reality. To better educate citizens on punishment in society, it is essential to further refine television depictions of what goes on in our prisons. While great strides have been made to help average citizens who will never see the inside of a prison cell to see what inmates, correction officers, and administrators deal with on a daily basis, there is still much more to do.

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See Also: Corrections; Television, Crime in; Television, Police in.

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Tennessee

When one thinks of the state of Tennessee, several things may spring to mind: the beautiful Smoky Mountains, several different types of music, the University of Tennessee Volunteers, or a sense of southern hospitality. What one might not think of immediately is the amount of crime Tennessee has; the state's checkered past probably does not factor in. In fact, Tennessee is responsible for several vital changes in the legal system, from the way education is taught to individual rights. Unfortunately, these changes tend to come about as a result of the mistakes people have made or the crimes they have committed.

Police

It was against the threat of night raids from the American Indians, specifically the Cherokee, that the first sheriff's office in Tennessee was established in 1795, still a year away from statehood. These early Tennessee lawmen were expected to handle both civil and criminal matters. When Sir Robert Peel introduced his metropolitan style of policing in 1829 London, America took notice. It was not until after the Civil War, however, that Tennessee developed its metropolitan police force, first in Memphis, and then in Nashville and Chattanooga. The early 20th century brought the automobile and the radio transmitter to policemen all over the world. With these inventions came the transition from foot and horse patrols to automobile and motorcycle. The 1970s wrought further changes, this time in the area of civil rights. Although African American men were first



The Ku Klux Klan was started in Tennessee in 1865. Ironically, Tennessee also had areas that were part of the Underground Railroad, where a slave could travel north to freedom.

hired as police officers in 1948, it was not until the 1970s that it was an accepted practice. It was also during this decade that women were given patrol duties for the first time. Education was also becoming a primary focus, and although separate cities instituted training curriculums for their officers, it was not until 1966 that the Tennessee Law Enforcement Training Academy opened its doors. The Tennessee Bureau of Criminal Identification, later to be called the Tennessee Bureau of Investigation, was created in 1951. The 1950s and 1960s brought with them the creation of K-9 and Special Weapons and Tactic (SWAT) units, as well. Today, Tennessee is protected by the city police and the sheriff's office, as well as the state highway patrol.

Crime

Along with the change in the structure of policing has come a change in what is considered criminal. Today, Tennessee concentrates on its small population of gangs and its larger problem of drug manufacturing and trafficking, where methamphetamines are now the main target. At its roots, however, Tennessee was originally infamous for its illegal production and distribution of moonshine, a high-proof liquor distilled from corn. Buford Pusser, the tough-on-crime Tennessee sheriff

whose likeness is the basis for the “Walking Tall” franchise, was well known for targeting moonshiners. It was not until 2010 that the practice was officially legalized. The state also practiced slave labor, though it was prohibited in 1784, years before Tennessee was a recognized state. Ironically, Tennessee also has several spots that were part of the Underground Railroad, a path of safe places where a slave could travel north to freedom. Unfortunately, parts of the state have in the past been known for their less than tolerant attitude on civil rights. The original Ku Klux Klan was started in Pulaski, Tennessee, in 1865, and lynching, for instance, occurred well into the 1900s. The lynching of Ed Johnson led to the only criminal trial ever held by the U.S. Supreme Court, in which Sheriff Joseph Shipp, who had arrested Johnson, was found guilty. African Americans were not the only race discriminated against: Red Clay, Tennessee, held one of the largest groups of Cherokee Indians in the United States and the Trail of Tears started there.

This intolerance extended beyond skin color; religion and later, sexuality were also targets for hatred. One of the most famous trials in the history of the United States took place in Dayton, Tennessee, in July 1925. In the spring of that year, the Butler Act was passed by the Tennessee legislature, which made it illegal to teach evolution in public schools. The American Civil Liberties Union (ACLU) offered to pay the legal expenses of anyone willing to challenge that law, and John Scopes, a teacher at the local high school, agreed. The trial drew national publicity, especially with the addition of the two lawyers: for the defense, Clarence Darrow, and for the prosecution, William Jennings Bryan. Because it was being argued theologically, modernism against fundamentalism, the trial soon turned into a circus, literally. Trained chimpanzees even performed on the courthouse lawn. Despite the antics of both sides, Scopes was found guilty and was asked to pay a \$100 fine, which was later overturned by the Tennessee Supreme Court on a technicality. The Butler Act was not repealed, however, until 1967. In 2004, the same county where the Scopes trial occurred tried to implement a legal ban on homosexuality and failed.

In 1985, the state also became famous for the landmark decision of the U.S. Supreme Court,

Tennessee v. Garner. It was held that under the Fourth Amendment, when an officer is pursuing a fleeing suspect, he or she may only use deadly force to prevent escape if the suspect poses a significant threat of death or serious injury to the officer or others. Prior to this law, it was reasonable under the “fleeing felon” common law to shoot the suspect after a warning.

Punishment

Until the 1831 establishment of the Tennessee State Penitentiary House in Nashville, punishment was always public and corporal. Depending on the offense, the punishment could range from being set in the stocks and whipped to hanging and dismemberment. The 1831 penitentiary contained 200 cells, along with a hospital, warden’s dwelling, and other structures. This facility was used until 1898, when the Tennessee State Prison was built in Davidson County. In 1930, the first facility for women was built on the grounds of the Tennessee State Prison, and in 1955, the Tennessee Department of Corrections was established. Three years later, a statewide system of juvenile probation became operational. After decades of correctional reform, treatment facilities started appearing in the 1970s; in the 1980s came a more conservative ideology. In 1989, the Riverbend Maximum Security Institution opened in Nashville, and in 1992, the first private prison in Tennessee, established by Corrections Corporation of America, opened its doors.

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See Also: Corrections; Courts; Darrow, Clarence; Indian Removal Act; Ku Klux Klan; Lynchings; Race-Based Crimes; Scopes Monkey Trial; Slavery.

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Terrorism

One of the greatest social, political, and military problems in the modern world is terrorism. It is present around the globe, in both modern developed countries and countries that have not advanced into the technological age. Terrorism is the great fear of most peaceful modern societies, a fact not lost on the leaders and politicians who use it to justify all types of social, political, economic, religious, and even personal agendas. However, defining terrorism is difficult, and it must be realized that terrorism is not just the current (and inaccurate) Western media political portrayals of all terrorists as dirty and ignorant Arabs with beards and burnouses mindlessly reciting the Koran and screaming themselves hoarse for jihad. Terrorism has a long and bloody history in America and highlights the uneasy and frequently contradictory American relationship between its crimes and its politics.

Definition of Terrorism

As a general matter, terrorism can be defined as the threat or the actual use of force or violence aimed at innocent people or noncombatants to attain a political goal by creating a climate of fear or demoralization. This is an admittedly broad definition of terrorism and is arguably open to refinement. But terrorism is not an easy concept to strictly define. The reason for this difficulty is that labeling or defining a threat or an act as terroristic is often a matter of perspective. For example, when a group of people in a society decide to revolt to gain their political independence, they are frequently labeled as terrorists by the then current parties in power. However, to the people who are trying to gain their political freedom, they are viewed as freedom fighters and heroes. A specific example of this contradiction in definition is the situation involving the Contras in the Central American nation of Nicaragua in the 1980s. The Contras were a right-wing revolutionary group who were trying to overthrow the socialist government of Nicaragua. The Reagan administration of the United States supported the Contras and was covertly supplying them with arms. To the established Nicaraguan government, the Contras were terrorists, but to the Contras and the Reagan administration, the

Contras were freedom fighters. As is a matter of historical record, the activities of the Reagan administration in the infamous Iran-Contra scandal resulted in numerous indictments, criminal convictions, and subsequent presidential pardons of American officials. Further, Nicaragua took the United States to the World Court over its mining of Nicaragua's harbors, which would qualify as a war crime, where Nicaragua prevailed, but the United States refused to acknowledge the judgment. Thus, it is apparent that it is difficult to objectively determine who is a terrorist and whether certain activities constitute terrorism.

One aspect of terrorism is that it frequently occurs in conjunction with a concurrent or subsequent political revolt. Individual terrorist activities, whether random or coordinated, are usually the precursors to the actual revolution itself. Thus, the concepts of terrorism and revolution cannot be easily separated.

Purposes of Terrorism

Terrorism can involve several purposes or goals. These purposes or goals can include social, political, economic, or religious aspects. There is frequently overlap between these goals. For example, a single terrorist group might use political, economic, and social goals to justify their terroristic activities. Also, religious terrorist groups frequently have political goals that involve the installation of a theocracy as a form of government. The revolt in Iran in 1979, which was preceded by years of demonstrations and terroristic violence and resulted in the overthrow of the shah with the subsequent installation of the Ayatollah Khomeini as the religious and political head of state, is an excellent example of religious and political overlap.

An example of a social goal involving terrorism is the Environmental Liberation Front (ELF), an American terrorist group whose goal is the protection of the environment. Somewhat related to ELF is the Animal Liberation Front (ALF), whose social goal is the protection of animal rights. The Federal Bureau of Investigation (FBI) has ranked ELF and ALF as the most serious domestic terrorism threats to America because of the millions of dollars of property damage they are alleged to have caused. ELF's activities are reported to include the arson and vandalism of buildings that

ELF considers to be environmentally damaging and the staking of trees with nails so that when lumberjacks try to cut those trees down, their chain saws are broken. Through these activities, ELF hopes to advance the social cause of environmentalism. Of course, ELF's activities also have political aspects, but ELF's primary goal appears to be social. ELF apparently does try to avoid harming people and focuses primarily on property destruction.

An obvious example of a religious goal involving terrorism in the modern world is Al Qaeda. Al Qaeda is an extremely well-organized political group and has become international. Al Qaeda is an Islamic group, one of whose goals is the protection and expansion of the Islamic religion and the removal of Western influence from Saudi Arabia. Al Qaeda was led by Osama bin Laden, a Saudi Arabian whose family is extremely wealthy. Al Qaeda is infamous for its use of violence to accomplish its goals and is not hesitant to cause injury to or the death of innocent human beings. The most famous act of terroristic violence committed by Al Qaeda is the destruction of the World Trade Center on September 11, 2001.

An example of a political goal involving terrorism is the Irish Easter Uprising of April 1916 and the subsequent Irish War of Independence, which lasted from 1919 to 1921 and resulted in the creation of the Irish Republic and Northern Ireland, which remained within the British Empire. The Irish Republican Army (IRA) at that time engaged in a guerrilla war of terrorism from 1916 until the war started in 1919. The IRA of that time must be differentiated from the Provisional Irish Republican Army of modern times, which has engaged in numerous acts of terrorism, although in recent years, it has significantly lessened and even ceased—and arguably renounced—its violent terroristic activities. The primary goal of the IRA was the liberation of Ireland from the British Empire.

An example of a purely economic goal involving an extended campaign of terrorism is difficult to find. Most terroristic activities and revolts involve political or religious issues, with economic issues as a corollary issue. However, the Boston Tea Party in 1773 by the American colonists is an excellent example of economic terrorism. In 1767, the British parliament enacted the Townshend Acts, which

included a duty on tea imported to the American colonies. The American colonists refused to pay the duty, and a group of American colonists disguised as Indians forced their way onto three British merchant ships in Boston Harbor and dumped all of the cargo of tea into the harbor. In retaliation, the British parliament enacted the Intolerable Acts of 1774, which essentially lit the fuse for the subsequent American Revolution in 1776.

Methods of Terrorism

One of the essential problems with terrorism is that it does not target just the parties who commit the acts that are used to justify the terrorist activities (e.g., torture by police, political oppression by rulers, religious suppression by theologians, economic oppression by oligarchs). It also targets innocent people, in part because those who commit the acts used to justify the terrorism are usually protected by the police, the military, and security services. Further, terrorism's purpose encompasses the terrorism of an entire social group or society, including innocent people. Thus, many terrorists attempt to effect change by terrorizing the general populace in an effort to indirectly force or compel the actual targets of the terrorism (e.g., political rulers, religious leaders, or economic magnates) to act or cease to act.

As previously stated, terrorism involves the threat or the actual use of force or violence to accomplish its goals. Terrorism can be accomplished by various acts, which include threats, extortion, assaults, vandalism to property, arson of property, kidnapping and ransom, and murder and assassination. Thus, terrorism can be considered in light of the degree of violence. The property damage caused by ELF cannot rationally be considered to be on the same level of terrorism as the attacks on the World Trade Center on 9/11, which resulted in the deaths of thousands and the destruction of internationally recognized economic and political symbols: the Twin Towers of the World Trade Center. Moreover, the economic damage caused by the 9/11 attacks was much greater than any ELF attacks.

Terrorists generally cannot effectively operate without weapons. Weapons such as individual firearms are used. Such individual firearms are favored when terrorists are seeking a specific individual for assassination or kidnapping, as

they are easily transportable. Explosives are more favored by many terrorists because of the greater amount of harm and damage that can be inflicted by them. For example, a single terrorist with a machine gun can fire into a crowded market and inflict a number of casualties. But that terrorist would likely be swiftly caught and interrogated, hopefully revealing the identity and location of his or her compatriots. In contrast, explosives can be set and detonated later, minimizing the chances of the perpetrators being caught and maximizing the potential harm and damage. Further, as demonstrated so frequently in the Middle East, the use of suicide bombers and explosives is extremely effective. The terror caused by a person willing to sacrifice himself or herself in an explosion for what is believed to be a greater cause while causing the deaths of numerous innocents cannot be underestimated. Further, the fact that the victimized populace will not have any warning of the explosion only heightens the level of fear and terror as a result of it. And there are other methods that raise the level of fear and terror to almost Olympian heights: weapons of mass destruction. Weapons of mass destruction include biological, chemical, and nuclear weapons. The use, or even just the threat of use, of such weapons magnifies the resulting terror to a level that can cripple an entire nation. Thus, obtaining such weapons is the ultimate step for the most committed and unscrupulous terrorists.

Terrorism as a Tool

Regardless of any social, political, philosophical, religious, legal, or ethical arguments that can be made against the employment of terrorism, it cannot be rationally disputed that terrorism works. Many nations have been formed through the use of terrorism and subsequent revolutions. Unfortunately, it is frequently the tool of the fanatic, who cannot employ any logical reason, or the desperate, who have tried to apply reason, logic, and ethics but have been unable to succeed. The examples of terrorism and revolution that have occurred throughout the world that have resulted in the successful attainment of the stated goals are many. The American Revolution and the Irish War of Independence are only two examples. This is not meant to be a blanket acceptance of terrorism or revolution as a legitimate tool of social,

political, economic, or religious change. However, it must be acknowledged that the Declaration of Independence of 1776, signed by the founding founders, expressly recognized the right to revolt. The moral conundrum is determining when such an action is justified.

Early Terrorism in America

There have been hundreds if not thousands of incidents of terrorism in the history of the United States. A brief and hopefully representative list of them will be presented to demonstrate the presence of terrorism in America and its strange relationship to crime and politics, especially considering the perhaps arrogant American position that the United States is the leader and ultimate shining example of justice, law, and democracy in the free world.

The United States of America was founded on a series of terroristic acts and a revolution. King George III was the legitimate ruler of the thirteen colonies and the founding fathers displayed episodes of terrorism, such as the tarring and feathering of British tax collectors. They employed violence to accomplish a political goal. It is axiomatic that history is written by the winners of any war, but even American history does not try to hide the role of the colonists as revolutionaries. Indeed, the Declaration of Independence of 1776 specifically recognizes the right to revolt.

In 1841, Thomas Wilson Dorr and many citizens of Rhode Island attempted to change the voting laws, which allowed only landowners to vote under the original state charter. Their legitimate attempts to change the voting laws through the established political process failed, and Dorr and his followers held a Peoples' Convention and adopted a new state constitution, which was subsequently approved by a referendum. The following election found Dorr elected to the governorship under the new constitution; Samuel Ward King was elected governor under the original charter. In what is known as Dorr's Rebellion, Dorr and his supporters unsuccessfully attacked an arsenal; the rebellion failed. However, the limited electorate under the original charter was persuaded of the legitimacy of the cause, and a new state constitution was created. Unfortunately, despite the obvious legitimacy of Dorr's cause, he was tried and convicted of treason to the state, although he

was later released. The issue of which state government was valid subsequently came before the U.S. Supreme Court in the case *Luther v. Borden* (1849). The Supreme Court refused to address the issue and held it was a “political question,” meaning that it was not for the courts to decide. Interestingly, given the Declaration of Independence and the American Revolution, it would seem that this decision seemed to acknowledge that if there was a rebellion with associated terroristic activities, then the terrorists had better win.

The Civil War, which lasted from 1861 to 1865, was the ultimate political and military act to prevent terrorism against a group of people. The enslavement of the African American people was an extreme form of terrorism directed against a specific group of people for illegitimate social (and economic and political) reasons. Theoretically, with the Emancipation Proclamation

and the end of the Civil War, the issue of terrorism against African Americans was over. Reality proved otherwise. Even the enactment of the Thirteenth, Fourteenth, and Fifteenth Amendments and the Civil Rights Act of 1871 did not stop it. Despite all of these attempts to stop it, the Ku Klux Klan formed in the 1860s in the south to terrorize African Americans. Although it died out, the group resurfaced in the 1920s and after World War II in opposition to civil rights and minorities. The Ku Klux Klan has morphed over the years into various modern white supremacist and Aryan Nation organizations, many of them borrowing from the Ku Klux Klan, ultraconservative Christian groups, and the fascism and racial purity theories of Nazi Germany. These organizations continue to engage in extensive terrorist activities to frighten and harm minority groups, especially racial and religious groups.



President Lincoln (in top hat) visiting the battlefield at Antietam, Maryland, on October 3, 1862 during the Civil War, which was the ultimate political and military act to prevent terrorism against a group of people. The slavery issue addressed the question of whether slavery was an anachronistic evil incompatible with American values.

In the 1800s, the political principle of anarchy, that is, society without government, was popular. Famous anarchists included Josiah Warren and Henry David Thoreau, although these proponents were relatively peaceful compared to their subsequent followers. During the late 1800s and the early 1900s, there were a number of violent anarchists operating in America who used bombs, many of them being immigrants from Europe. Coincident with the anarchy movement in the 1800s and the early 1900s was the American labor movement. The cause of the anarchists received much attention when on May 4, 1886, at Haymarket Square in Chicago, a bomb was thrown at police dispersing a labor rally. Eight anarchists, participating in the labor rally, were arrested and convicted of murder even though the police conceded there was no evidence that they had thrown the bomb. Four of the anarchists were executed and one committed suicide in prison. The event was immortalized as the Haymarket massacre and was a rallying point for anarchists and the nascent American labor movement. Anarchists continued to operate in America through the early 1900s, when in the infamous case of Nicola Sacco and Bartolomeo Vanzetti, two Italian immigrant anarchists were executed on August 23, 1927, for an armed robbery, allegedly to obtain funds for more bombings. The case of Sacco and Vanzetti has been a cause célèbre for many years because of the questionable evidence and lack of a fair trial received by Sacco and Vanzetti. After the early 1900s, the anarchist movement and its use of terroristic violence died out, but was reawakened in the 1960s.

Terrorism in Twentieth-Century America

In the late 1800s and the early 1900s, the American labor movement began to form to fight unjust and unfair economic treatment from the corporations and the robber barons. Labor strikes and rallies often turned violent, with the corporations and businesses obtaining the use of military troops and private Pinkerton troops to violently suppress the labor advocates, and the labor advocates responding with violent acts of their own. Despite the widespread violence on both sides, the American labor movement, the socialists, and the communists had great success in forcing through much legislation to address such serious social and economic problems as child labor, the eight-hour workday, minimum

wage, workers compensation, and the National Labor Relations Act, which allowed workers to organize and to create labor unions to bargain over conditions of employment and to protect their rights. Interestingly, although the socialists and the communists in America contributed greatly to the enactment of labor laws, they were still considered to be a significant terroristic danger to America, although relatively few were convicted of terroristic crimes when compared to the political hysteria associated with them, as personified by the infamous McCarthy hearings of the 1950s.

During the late 1800s and through the 1930s, the United States participated in the Banana Republic Wars, a number of police actions, occupations, and small wars in a number of countries in Central and South America. The countries that were subject to American military might included Cuba, Panama, Nicaragua, Haiti, Honduras, and the Dominican Republic. Generally, none of these countries had engaged in any acts that warranted invasion, and the overriding reason for the presence of the U.S. military was to protect the economic interests of American sugar companies, fruit companies, and Wall Street banks. These American military actions can only be defined as terroristic in nature, especially as they had no legitimate justification under international law.

In the 1950s and the 1960s, America was very concerned about the revolution in Cuba that resulted in the eventual establishment of a communist government headed by Fidel Castro. Even though the dictatorial Batista government that was overthrown was infamous for its corruption, it received the support of the United States. Even though Cuba had not initiated a war against the United States, America supported, equipped, and financed an invasion of Cuba at the Bay of Pigs by Cuban refugees, which ended disastrously for America, both politically and militarily. Subsequently, the United States engaged in a campaign against Castro and Cuba that included unsuccessful attempts to assassinate him, which can only be considered terroristic. Historically, the activities of the United States and especially the Central Intelligence Agency (CIA) concerning Cuba and the Bay of Pigs brought international criticism for their activities.

The 1960s were a turbulent time for America, socially, politically, and economically. It was the

time of the Vietnam War and civil unrest when minorities were seeking equality. Campus unrest was rife. Student protests reached their height when the Ohio National Guard opened fire on student demonstrators at Kent State University in 1970 with live ammunition, killing four students; this event became known as the Kent State massacre. A number of organizations started to engage in violence to protest the social injustice. The Students for a Democratic Society was one of the major organizations trying to effect social change. One of its splinter groups, the Weathermen, started to engage in violent protest and criminal activities that can only be characterized as terroristic. The Black Panthers, a political party that focused on opposing racial injustice for African Americans, were frequently the targets of government attack, but relatively few charges brought against them resulted in convictions. And 1968 was famous for the Democratic National Convention, in which the abuses of the Chicago police against protestors were nationally televised. One official termed the event a police riot. There were many other organizations that fought, both peacefully and violently, for social, political, and economic justice. Despite all of the violence and the associated terrorism, it has been persuasively argued that all of the advancements of the 1960s (e.g., civil rights, racial equality) would not have been achieved without it. The historical effect of the civil unrest and violence of the 1960s on the criminal justice system was enormous. Gun laws were passed. Police training was increased. Formal recognition of civil rights in the criminal justice process was accomplished. Even more important, however, was the social perception of the police. After the 1960s, even some conservatives began to question police activities, and the free pass that police officers and agencies had previously enjoyed was gone.

Individual Action and Terrorism

Terrorism as a function of individual action was brought to the forefront in the 1960s with the assassination of John F. Kennedy in 1963 by Lee Harvey Oswald, of Robert F. Kennedy in 1968 by Sirhan Sirhan, and of Martin Luther King, Jr., in 1968 by James Earl Ray. Although each assassination was originally thought to be the act of a lone gunman, subsequent evidence and investigations have cast serious doubt on each of these

theories. The historical effect of these assassinations and the subsequent questions raised as to the involvement of the government in them on the criminal justice system and society was incredible. A level of social and political distrust in government and of the criminal justice system entered into the American consciousness.

The pro-life movement in America is an example of domestic terrorism that has divided the nation. The pro-life movement is against abortion and is violently opposed to the U.S. Supreme Court decision in *Roe v. Wade*, which essentially legalized abortion in the United States. The past few decades have seen a number of abortion clinics vandalized and bombed and have seen doctors willing to perform abortions murdered. The ultrareligious, far-right-wing pro-life movement has essentially made heroes of those who committed these terroristic activities.

In 1975, with the American public becoming weary of government corruption, the U.S. Senate formed the Church Committee to investigate the CIA and the FBI. The results were astounding and shocked America. The Church Committee revealed the activities by the CIA and the FBI of not only spying on American citizens but also of being involved in the attempted assassinations of foreign leaders, which can only be termed terroristic in nature. The effect on America and the criminal system was profound. Legal limits were placed on the CIA and the FBI to prevent them from engaging in such activities again.

From the 1970s through the 1990s, America was subject to a series of mail bombings by Ted Kaczynski (the Unabomber), a brilliant but psychologically disturbed individual who espoused an antitechnology political philosophy. Although Kaczynski's effect on the American criminal justice system was negligible, the investigation, arrest, and prosecution of him were extremely costly and time consuming, spanning several decades. However, Kaczynski is illustrative of the ability of a single disturbed individual to be an effective terrorist and that such people exist in free societies such as the United States.

From the 1970s through the 1990s, with distrust of government increasing, a number of militias, independent of either state or federal government, began to form. Many of them were associated with white supremacists and

the Aryan Nation, but some of them were based primarily on political beliefs and an expansive interpretation of the Second Amendment to the Constitution. Although there were not a large number of prosecutions for terrorist activities against these militia groups, a number of them were convicted of associated criminal charges such as possession of weapons and explosives. The high-water mark for militia groups in America was the Oklahoma City bombing of 1995, executed by Timothy McVeigh, a militia movement sympathizer. McVeigh used a truck bomb to destroy the Alfred P. Murrah Federal Building; 168 people were killed. McVeigh was arrested, convicted, and executed. Some militia organizations disavowed McVeigh's actions, and the militia movement lost a lot of its support. The effect on the American criminal justice system was immediate. Awareness of domestic terrorism was brought home and defensive measures at government buildings were increased. Numerous laws were passed, including the Anti-Terrorism and Effective Death Penalty Act of 1996. This bombing also brought home to America that terrorism could be homegrown.

In 1993, Muslim extremists attempted to blow up the World Trade Center in New York City. The attempt failed, although six people were killed and more than 1,000 people were injured. The practical effect on America of the 1993 World Trade Center bombing was a clear demonstration that foreign terrorists could strike inside the territory of the United States.

Terrorism in 21st-Century America

The most devastating terrorist attack on American soil was the September 11, 2001, attack on the World Trade Center and the Pentagon by Al Qaeda. Thousands of people were killed, and the World Trade Center was destroyed. Nothing can be said here about it that has not been already stated in other works. It is probably the most influential act of terrorism on American society and the way that America views criminal justice. Essentially, 9/11, despite the previous attempt to destroy the World Trade Center in 1993, was the act of terrorism that destroyed American innocence about the reality of international politics and terrorism. As a result of the 9/11 attack, the USA PATRIOT Act of 2001 and numerous other



View of the World Trade Center after the second tower fell on September 11, 2001. The World Trade Center and the Pentagon were attacked by Al Qaeda, killing thousands.

laws were enacted. The PATRIOT Act, despite its name, provided for a comprehensive reduction of American civil liberties and privacy in exchange for a much greater degree of protection against terrorist attacks. The effect against terrorism of all the restrictions placed on civil liberties has been seriously challenged. Since 9/11, the huge expansion of government power in the criminal justice system over the people has been seriously questioned, especially concerning the activities of the National Security Agency in surveilling the private communications of American citizens. Further, there have been a number of challenges to the government's version of what actually happened at the World Trade Center and how the towers collapsed. However, the most serious result of the terrorism of 9/11 is the ease with which the American people have acquiesced to the curtailment of their civil rights. It was Benjamin Franklin who stated that those who would

give up a little liberty for a little security deserve neither and will lose both.

Shortly after 9/11, another terrorist act occurred in America. Anthrax powder was mailed to several Democratic senators and some media outlets. The effect was a national scare about biological terrorism. Initially, there was a huge amount of fear that it was the work of Islamic terrorists. True horror set in when scientific analysis proved that the anthrax originated in America. What was even more frightening was that it was directed only at Democratic senators and not at conservative politicians. FBI investigations focused on one U.S. government scientist who was, with some embarrassment, later cleared. A second U.S. government scientist was then suspected, but he committed suicide. Later revelations indicated that the second scientist might not have been the perpetrator. The anthrax attacks reawakened the fear, raised many decades earlier with the Kennedy and King assassinations, that the American government could have been involved in a terrorist plot against its own people.

Conclusion

Terrorism and revolution work. History demonstrates it. Moreover, domestic terrorism has had some positive effects in America. The labor movement and the civil rights movement probably would not have developed as much as they did, with the concurrent expansion of civil rights and protections to the people as a result of those movements, if they did not involve violence and, by definition, terrorism. History seems to prove the proposition that terrorism works, no matter how distasteful it might be. But the problem is, under what standard can violence and terrorism be considered justified? The U.S. Supreme Court, when it considered Dorr's Rebellion, refused to address the issue and has uniformly refused to recognize the Declaration of Independence as binding legal authority.

Terrorism has a long and bloody history in America, both within its borders involving its own people and outside its borders in actions against other nations. The civil liberties of American citizens generally survived the terroristic threats of the Civil War, the anarchists, the labor movement, the civil rights era, domestic assassinations, and highly questionable foreign interventions

and occupations. With the militia movements, domestic terrorism, government abuse, and the threat of terrorism from Al Qaeda, the survival of American society, at least as to its theoretical base of individual liberty according to some authorities, is not only uncertain—it seems unlikely. The powers of government for criminal investigation, individual surveillance, violation of privacy, and criminal conviction of people who might otherwise not have been convicted have been greatly increased. Further, internationally, the United States has developed not only an arrogant sense of superiority concerning the terroristic activities of other nations but a frightening posture of national privilege and willful blindness when it engages in such activities. The final effect of such an attitude on the American society and its standing in the world has yet to be determined, but the universal condemnation of the activities of George W. Bush involving the “war on terror” may provide us with a warning.

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See Also: 1961 to 1980 Primary Documents; 1981 to 2000 Primary Documents; 2001 to 2012 Primary Documents; American Revolution and Criminal Justice; Anarchists; Bush, George W. (Administration of); Chicago Seven/Democratic National Convention of 1968; Civil Disobedience; Homeland Security; Kaczynski, Ted; Kennedy, John F. (Administration of); Kennedy, Robert F.; King, Martin Luther, Jr.; Ku Klux Klan; McVeigh, Timothy; Oklahoma City Bombing; Oswald, Lee Harvey; Ray, James Earl; Sacco and Vanzetti; Sirhan Sirhan; USA PATRIOT Act of 2001.

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Terry v. Ohio

Terry v. Ohio (1968) revolutionized Fourth Amendment search and seizure law. It is one of the most significant cases that examined the constitutional underpinnings of the officer-citizen dynamic. *Terry* explored the permissible bounds of a seizure and provided a lasting framework to scrutinize the constitutionality of police-citizen encounters. The “*Terry* stop,” a by-product of the Supreme Court’s decision, represents an exception to the Fourth Amendment’s probable cause requirement, which allows for a limited police detention. The *Terry* decision was culturally salient because of its exposition on the “wholesale harassment by certain elements of the police community, of which minority groups, particularly Negroes, frequently complain.”

The Case

In *Terry*, a veteran plainclothes Cleveland police detective named McFadden was patrolling downtown Cleveland, Ohio, at approximately 2:30 in the afternoon on October 31, 1963. The detective observed two men, Chilton and Terry, standing on the corner of a commercial street. Officer McFadden had never seen the two men before and could not precisely identify what about the two men caught his attention. Nonetheless, he relied on his 39 years of experience as a police officer—during which he had been regularly assigned to patrol the downtown area for “shoplifters and pickpockets”—to instinctively investigate further.

Officer McFadden assumed an observation post at a storefront entrance approximately 300–400 feet away from the two men. From this perspective, he witnessed the two men engage in a pattern of behavior that consisted of one man standing watch on the corner as the other man paced back and forth across various storefronts, momentarily pausing to stare into one particular store window. The two men regrouped at the corner and conferred. The duo, which was eventually joined by a third man, repeated this process various times. Given his observations of their reconnaissance of the store, the officer suspected the men were “casing a job, a stick-up.”

Although he feared the men might be armed with a gun, McFadden approached the group, identified himself as a police officer, and asked for their names. When the men mumbled something following the inquiries, the officer grabbed Terry, spun him around, and patted the outside of his clothing down. In the left breast pocket of Terry’s overcoat, the officer felt a pistol. He reached inside the pocket but could not remove the firearm. The officer ordered all three men inside the store, entirely removed Terry’s coat, and extracted a .38-caliber revolver. A similar search of Chilton’s pocket revealed another revolver.

Both men were arrested and indicted for violating Ohio’s concealed firearm statute. They filed pretrial motions to suppress the physical evidence. Because the trial court found the officer had a reasonable suspicion based on his experience, the defendants’ motions were denied. Both men were tried and convicted. On appeal, the convictions were affirmed. The U.S. Supreme Court granted certiorari.

Supreme Court Ruling

The Supreme Court identified the issue for decision as one regarding the propriety of the police conduct and the admissibility of the seized evidence. With regard to the validity of the modern-day “stop and frisk,” the court delineated a two-pronged analysis. First, in the interest of crime deterrence, the police may briefly detain a citizen if the officer has a reasonable suspicion based on specific and particularized facts that the person is involved, has been involved, or will be involved in criminal activity. Reasonable suspicion is more than a mere hunch or inchoate suspicion. Second,

to ensure officer safety during an investigative detention, a limited authority to search the suspect for weapons may be exercised upon the reasonable belief that the person is armed and presently dangerous. The search must be carefully limited to the outer clothing.

The impact of *Terry*'s legitimization of the "stop and frisk" on the racial landscape of urban policing has been long-lasting. The *Terry* opinion recognized that forceful police tactics were often used to harass, humiliate, and dominate African Americans. Ever cognizant of the police-racial tension, the court nevertheless sanctioned street stops or investigatory detentions on less than probable cause. Nearly four decades later, the issue of race is still very much relevant in the police-citizen dynamic. On the one hand, opponents of *Terry* feel that the Supreme Court should have taken a more activist approach in curtailing law enforcement practices to properly protect the liberty and privacy interests of the citizenry. Critics contend the validation of the stop and frisk does not provide sufficient protection for minorities who are most impacted living in urban areas. Specifically, some critics argue the stop and frisk has done more to undermine, rather than safeguard, the privacy interests of African Americans for decades since its inception. One significant flaw noted is the pliable standard of reasonable suspicion the *Terry* court delineated, which affords police officers far too much discretion in carrying out their duties. On the other hand, supporters maintain the *Terry* decision has provided a flexible framework to adapt to an ever-changing political, racial, and societal landscape. The decision, advocates argue, is an ideal compromise between the compelling interest to have law enforcement perform their function and the liberty interests of the citizenry.

Today, law enforcement continues to possess wide latitude in pursuing investigations and ferreting out crime with only the amorphous reasonable suspicion standard to guide or curtail their conduct. Judicial discretion remains the means for ensuring government conduct adheres to, does not trample, and balances the protections inherent in the Fourth Amendment.

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See Also: Cleveland, OH; Constitution of the United States of America; Defendant's Rights; Due Process.

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Texas

Texas is the second-largest state in the United States in both area (after Alaska) and population (after California). In 2010, the state's population was 25,145,561, a 20.6 percent increase since 2000. The majority of the population is white (70.4 percent) with large minorities of blacks (11.8 percent) and Hispanics (37.6 percent; a Hispanic person can be of any race). Native American tribes lived in the area that is now Texas before (and for some time after) the arrival of Europeans in the 16th century. Texas was colonized by both France and Spain and was also governed by Mexico for part of the early 19th century, and Texas was for 10 years an independent nation (the Republic of Texas) before becoming the 28th U.S. state in 1845. Texas allowed slavery and during the Civil War seceded as part of the Confederacy. On June 19, 1865, federal troops arrived in Texas to restore order and enforce emancipation, a day now celebrated as Juneteenth. Texas was readmitted to the Union in 1870.

Texas had a reputation for lawlessness before the Civil War and became a home to many outlaws and desperados of all types. The initials GTT ("gone to Texas"), chalked on houses by individuals leaving other southern states to indicate they had vacated the properties and left for Texas, came to acquire the metaphorical meaning of

fleeing to avoid prosecution for criminal activity, and more generally of embracing a life of crime. The first group of lawmen known as the Texas Rangers was formed in 1835, although some date its history to an unofficial group formed by Stephen F. Austin in 1823. The Texas Rangers played important roles in fighting against Native American and were noted for their role in the Mexican War of 1846–48. After the Civil War, they helped curb lawlessness in the broad ranges of the state and continued battling the Native American tribes. They were also called upon to contend with cattle thieves and to intercept marauders crossing the Rio Grande into Texas. A number of abuses in the early 20th century led to the Rangers, being reorganized in 1919. In the early 20th century, their duties included patrolling the Rio Grande and guarding against cattle rustlers. During Prohibition, they were also charged with intercepting liquor smugglers at the state border. The Ranger budget was slashed during the Depression and in 1933 the force was reduced to 32 men. In 1935, with the establishment of the Texas Department of Public Safety, the Texas Rangers became one of three basic units (the others being the Highway Patrol and Headquarters Division, the latter a crime laboratory and detection center). Today, the Texas Ranger Division (consisting of 144 commissioned officers and 26 support staff) is responsible for leading investigations of major crimes, unsolved and serial crimes, public corruption, officer-involved shooting, and border security.

Conflict about land use in the range areas of Texas in the late 19th century resulted in a number of disputes sometimes referred to as the range wars. One group of disputes was between cattlemen and sheep ranchers when nomadic sheep and cattle herders were also seen as the enemies of the settled ranchers, both because their flocks could spread disease and because the herders often cut fences to allow their herds free passage. In 1881, a law forbidding sheep herding on the open range and requiring quarantine of diseased sheep was passed but not enforced. In 1883, a stronger law was passed requiring a certificate of inspection to prove that sheep were healthy before they could be moved across county lines. A drought in 1883 also heightened tensions between the itinerant and the land-owning cattlemen as the available supply of pasture and water was reduced: More

than half of Texas counties reported fence-cutting in that year. In 1884, fence-cutting became a felony and enclosure of public lands a misdemeanor, and this, along with the enforcement of the health inspection law, largely brought the practice of itinerant sheep and cattle herding to an end.

Capital Punishment

Texas used hanging as the means of execution between 1819 and 1923; between 1819 and 1923, the state authorized the use of the electric chair for executions and ordered that all executions take place in Huntsville under the direction of the state. The first offender executed by electrocution was Charles Reynolds, on February 8, 1924; four additional offenders were also executed on that day. From 1923 to 1973, 506 individuals were sentenced to death, all but three of them male and with a racial breakdown of 33.8 percent white, 56.9 percent black, 9.1 percent Hispanic, and 0.2 percent other. In these years, 361 individuals were actually executed, with a racial breakdown of 29.9 percent white, 63.4 percent black, 6.4 percent Hispanic, and 0.3 percent other. After the U.S. Supreme Court declared capital punishment to be cruel and unusual punishment on June 29, 1972, the 52 prisoners on death row or in county jails had their sentences commuted to life sentences by the governor. In 1973, the Texas Penal Code was revised, and this allowed executions to resume in 1974. The first man placed on death row under the new statute was John Devries, who committed suicide before he could be executed.

Although Oklahoma was the first state to legalize lethal injection as a form of capital punishment, Texas was the first to use this method, in 1982 (it has since become the primary method of execution in most states). Texas leads the United States in the number of executions since reinstatement of the death penalty (as of December 2009, 36 U.S. states authorize the death penalty). Between 1982 and 2010, 462 criminals were executed in Texas, of which 46 percent were white, 36.3 percent were black, and 78 percent were Hispanic. As of June 2011, 313 individuals were on death row, of whom 30 percent were white, 38.7 percent were black, 30 percent were Hispanic, and 0.2 percent were other. Ten (3.2 percent) of those on death row in Texas are female, and 23 (7.3 percent) are not

U.S. citizens, the most common non-U.S. nationality being Mexican. Eight categories of murder are eligible for the death penalty in Texas: murder of a public safety officer or firefighter; murder of a correctional employee; murder during a kidnapping, burglary, robbery, aggravated sexual assault, arson, or obstruction and retaliation; murder for remuneration; murder during a prison escape; murder by a state prison inmate also serving a life sentence for murder, kidnapping, aggravated sexual assault, or aggravated robbery; multiple murders; and murder of an individual younger than six.

Reproductive Rights and Sexual Behavior

Texas played a key role in the expansion of abortion rights in the United States because *Roe v. Wade* was originally filed in the U.S. District

Court for the Northern District of Texas in 1970. At that time, Texas had strict antiabortion laws, and Norma McCorvey agreed to take part (using the pseudonym Jane Roe) in a lawsuit filed by Linda Coffey and Sarah Weddington requesting that she be allowed to obtain an abortion. The district court declined to grant McCorvey an injunction that would allow her to obtain a legal abortion, and the case was appealed to the U.S. Supreme Court. In 1973 in a 7–2 decision, the U.S. Supreme Court declared that women had a right to privacy that included obtaining a legal abortion, with few restrictions in the first trimester (12 weeks) of pregnancy and increasing restrictions possible in later-term pregnancies. Because this right to privacy was considered fundamental, all state laws restricting it were immediately overturned. However, since 1973, Texas has added a number of conditions that restrict a woman's ability to obtain an abortion: As of January 2001, these include the stipulation that the parent of a minor must be notified and give consent; that public funding may only be used in cases of rape, incest, or life endangerment; and that a woman seeking an abortion must receive counseling designed to discourage her from having the abortion and then must wait 24 hours before it can be performed.

A Texas case also played a pivotal role in the evolution of gay rights in the United States. In 2003, the U.S. Supreme Court, in its decision in *Lawrence v. Texas*, struck down a Texas antisodomy law that prohibited “deviant sexual intercourse” with a person of the same sex. The case involved two adult men, John Geddes Lawrence and Tyron Garner, who were engaging in consensual sex in Lawrence's apartment in Houston. They were arrested by Joseph Quinn, a sheriff's deputy responding to a false report of a domestic disturbance. Lawrence and Garner were charged and convicted of violating the Texas antisodomy law. After a failed appeal to the Texas Supreme Court and a denied review from the Texas Court of Criminal Appeals, the case was appealed to the U.S. Supreme Court. In the 6–3 decision to strike down the Texas law, the justices found that it violated the guarantees of due process and equal protection. However, Texas still has many laws that discriminate against gay and lesbian people, including a 2005 amendment to the state



An antiabortion protester quotes the Bible. *Roe v. Wade* was originally filed in Texas, at the time a state with very strict antiabortion laws. The Supreme Court ruled that women had the right to privacy, which included obtaining a legal abortion.

constitution that bans same-sex marriages and civil unions.

Cameras in the Courtroom

In 1937, the American Bar Association (ABA) recommended prohibition of movie and still cameras in the courtroom, motivated in part by the disruptions caused by photographers during the 1935 trial of Bruno Hauptmann for the kidnapping and murder of the Lindbergh baby (then called “the trial of the century” because of extreme public interest in the case). In 1944, radio broadcasting and still photography were banned from criminal trials in federal court, and in 1962 this was amended to include television broadcasting. Most states followed the ABA recommendation and banned television cameras from the courtroom but a few, including Texas, had no such prohibition.

In 1963, Billy Sol Estes, a financier involved in several schemes, including leasing of nonexistent anhydrous ammonia tanks and fraudulently obtaining federal cotton subsidies, was convicted of fraud totaling more than \$24 million and was sentenced to 15 years in prison. However, in June 1965, this conviction was overturned in the U.S. Supreme Court decision in *Estes v. Texas*, which upheld Estes’s claim that he had not received a fair trial because of intensive television and radio coverage of his trial (including live broadcasting from the courtroom while the trial was in progress). The court ruled in a 5–4 decision that the right to a fair trial overruled the rights of free speech and a free press, and that the mere presence of cameras was a distraction that could affect testimony and that placed additional burdens on the defendant, witness, and jurors. Estes was retried and convicted.

James Byrd, Jr.

James Byrd, Jr. was an African American resident of Texas killed by three white men (Shawn Berry, Lawrence Brewer, and John King) in Jasper, Texas, on June 7, 1998. Byrd was beaten and chained by his ankles to a pickup truck and dragged for several miles until his head was severed from his body. Berry, Brewer, and King dumped Byrd’s body near an African American cemetery, where it was discovered by local authorities who found evidence linking the men to the crime; all three were

convicted of murder. The brutality of this crime drew national attention and created the impetus for passage, in 2001, of the James Byrd, Jr. Hate Crimes Act in Texas. This law increased penalties for hate crimes against specified groups, including on the basis of sexual preference, race, color, religion, national origin, ancestry, disability, or sex (a 1993 hate crimes law prohibited violence based on group membership but did not define the protected groups, making prosecution difficult). Byrd’s murder, along with that of Matthew Shepard (a gay university student in Wyoming murdered in 1998) also spurred passage of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act in the U.S. Congress. This act broadened federal hate crimes law to include crimes motivated by the victim’s disability, gender identity, sexual orientation, or gender; provided funding for the investigation and prosecution of hate crimes; and ordered the Federal Bureau of Investigation (FBI) to collect statistics on hate crimes motivated by the victim’s gender or gender identity.

Current Crime Statistics

Texas has a large number of reported crimes, a fact influenced by the state’s large population, but the rate of various crimes per 100,000 population is not remarkable: The murder rate of 5.6 per 100,000 in 2008, for instance, is neither particularly high nor low related to other U.S. states (Louisiana had the highest rate of 12.7 per 100,000 and North Dakota the lowest at 0.9 per 100,000 that year). The rate of major crimes (per 100,000 population) in Texas decreased 2.9 percent between 2007 and 2008, with property crimes decreasing 3.2 percent and violent crimes 0.6 percent. In 2008, 969,807 property crimes were reported in Texas along with 123,621 violent crimes. The property crimes include 230,263 burglaries, 645,133 larceny-thefts, and 85,411 motor vehicle thefts. The violent crimes included 1,373 murders, 8,004 rapes, 37,757 robberies, and 76,487 aggravated assaults. In 2008, 6,363 arson offenses were reported with resultant property damage of more than \$128 million. There were total arrests of 1,191,155 in 2008, including the arrest of 134,575 juveniles and 1,056,580 adults. There were 246 hate crimes reported in 2008, a 1.2 percent increase from 2007. The most common motivation reported for hate crimes was

racial (53 percent, mainly anti-black), followed by sexual orientation (22.3 percent, mainly anti-male homosexual), ethnicity (14.6 percent, mainly anti-Hispanic), and religion (10.1 percent, mainly anti-Jewish). There were 193,505 domestic violence incidents reported in 2008, with the most common offenses being simple assault (73.3 percent), aggravated assault (14.9 percent), intimidation (8.7 percent), forcible fondling (1 percent), and forcible rape (0.9 percent).

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See Also: 1851 to 1900 Primary Documents; Capital Punishment; Confidence Games and Frauds; *Estes v. Texas*; *Lawrence v. Texas*; *Roe v. Wade*; Texas Rangers; *Texas v. White*.

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Texas Ranger history is divided into five distinct eras of protecting the frontier, fighting in revolutions and wars, avoiding abolishment, and formal organization.

History

The Texas Rangers were established for the protection of settlers against Indian raids and attacks by Mexican bandits. Additionally, during this first era, 1823–64, Texas Rangers fought in the Battle of San Jacinto, at the Alamo, and in the Texas Revolution, the Mexican–American War, and the Civil War. The Rangers were inactivated after the Civil War, from 1865 to 1870, while Texas was under military protection. The second era of Texas Ranger history occurred from 1865 to 1900. The Reconstruction Republican government's state police of Texas was abolished in 1873, which led to the reestablishment of the Rangers in 1874 by a Democratic legislature. Collecting taxes, monitoring elections, acting as labor mediators, and protecting prisoners from vigilante mobs were some of the duties of a Ranger during this time. During this era, the Texas Rangers distinguished themselves in the El Paso Salt War of 1877 and in various riots.

The third era, 1900 to 1935, saw increases in the two Ranger units in response to protection needs in west Texas and along the Texas-Mexico border. In an attempt to upgrade the professional conduct of individual rangers through better pay, a 1919 investigation revealed allegations of unprofessional conduct and criminal behaviors. Allegations of prisoner torture, drunkenness, disorderly conduct, and the alleged deaths of numerous Mexicans resulted in limitations in the law enforcement authority of the Texas Rangers. More than 1,000 men were on the force, and many were disreputable. As a result of the investigation, Rangers could not initiate investigations, and involvement came in response to requests from other law enforcement agencies.

The fourth era, 1935–70, was a turning point in Ranger history. By 1935, more than 3,000 individuals had received a Texas Ranger badge, either as the friend of a state official or as an honorary ranger. Rapid urbanization was cause for some to believe the Texas Rangers had outlived their usefulness as protectors of the frontier. Others believed in the modernization of the Texas

Texas Rangers

In 1823, Stephen F. Austin hired 10 men to ride the range and protect settlers from Indian attacks. These 10 men, known as range riders, were the first organized police force in Texas and perhaps the first mounted militia in the United States.



The Stephen F. Austin monument in the Texas State Cemetery in Austin, Texas. In 1823, Austin hired a group of elite men to ride horseback on the range, protecting settlers from Native American attacks and keeping the peace in the state. They were the first organized police force known in Texas and perhaps the first mounted militia in the United States.

Ranger legend as a part of Texas history. In 1935, the Texas Rangers, along with the Texas Highway Patrol, came under the responsibility of the newly formed Texas Department of Public Safety. The Texas Department of Public Safety resolved key issues that plagued the Texas Rangers. Standardized employment practices were established in the form of set qualifications and promotions based upon ability instead of favoritism. Formalized training became routine for Texas Rangers.

Formal organization, training, and higher standards did not eliminate the threat of abolishment of the Texas Rangers in the fifth era, 1970–2005. The last attempt to abolish the Texas Rangers failed in 1970.

Law enforcement officials and criminals attested to the respect commanded by the presence of a ranger during investigations. This respect showed the investigative abilities of Texas Rangers had evolved from their legendary status.

Duties

The four basic duties of the contemporary Texas Rangers evolved in the 1970s: (1) using criminal state statutes to enforce the laws for protection of life and property; (2) aiding local law enforcement with order maintenance during riots or insurrections; (3) assisting local law enforcement, prosecutors, and the courts with major criminal investigations and other felonies upon request; and (4) aiding in the capture, arrest, and transport of fugitives and prisoners.

Since 1823, the Texas Rangers have protected the Texas frontier and borders, fought in wars, faced abolishment, and reorganized under the Texas Department of Public Safety. As in the past, today's Texas Rangers are few in number and work independently. The focus of the modern-day ranger is interagency cooperation with local, state, federal, and international law enforcement officials. The 70th legislature in 1987 eliminated

the threat of abolishment, and the Texas Rangers became a permanent law enforcement agency. In 1993, an amendment to the 1987 statute established the Texas Rangers as a major division in the Texas Department of Public Safety.

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See Also: 1851 to 1900 Primary Documents; Political Policing; State Police; Texas.

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Texas v. White

Texas v. White, 74 U.S. 700 (1869) was a post-Civil War case heard by the U.S. Supreme Court on February 5, 8, and 9, 1869, and decided by a 5–3 vote on April 12, 1869. The ruling is significant because the Supreme Court decided that the Union was indestructible and states could not secede. The Supreme Court exercised original jurisdiction in this case based on Article III, Section 2, which states that, "In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction." The case was argued by George W. Paschal and R. T. Merrick for the state and Philip Philips, Albert Pike, J. W. Carlisle, and J. W. Moore for the defense.

The case involved a claim by the Reconstruction government of Texas that U.S. bonds that

had been owned by the state since 1851 had been illegally sold by the Confederate state government during the Civil War. Ten million dollars in bonds had been transferred to Texas by an act of Congress in 1851 to settle border claims following the annexation of Texas in 1845. These bonds were payable to the state of Texas, or to the bearer, and were redeemable in 1864. The state had sold some of the bonds but was still in possession of about \$800,000 in bonds at the time of the state's secession from the Union in 1861.

On January 11, 1862, the state legislature approved the creation of the Military Board of Texas (composed of the governor, state comptroller and state treasurer) to sell or exchange state bonds for the purpose of financing the state's war efforts. In their efforts to finance the war, the military board found that munitions suppliers in Mexico and England preferred receiving the U.S. bonds instead of Confederate bonds.

The Texas state legislature authorized the sale of the remaining bonds. A law requiring that the bonds be endorsed by the governor prior to their sale was repealed.

After becoming aware of the planned sale, the U.S. Treasury published a legal notice in the *New York Tribune* that it would not honor any bonds from Texas unless they were endorsed by Sam Houston, who had resigned as the state's governor on March 18, 1861, because he opposed secession. Despite the treasury's public notice, a brokerage owned by George W. White and John Chiles purchased the remaining bonds from the state. The brokerage then resold the bonds to private investors, some of whom were able to redeem the bonds through the U.S. government. When the treasury became aware of the sale, it refused to redeem bonds presented by White.

The government formed pursuant to the Reconstruction Acts filed a lawsuit on February 15, 1867. The Reconstruction government claimed that the state government that existed during the Confederate era was illegal, that the sale of the bonds to White by the military board was illegal, and that the brokerage's subsequent sale of the bonds to other investors was invalid.

White and Chiles raised the issue of jurisdiction. They contended that Texas was not a state; rather, that it was a territory governed under the Military Reconstruction Act and lacked the ability to bring

a suit as a “state.” White and Chiles also argued that the sale of the bonds, even if conducted by an illegitimate government, was not in violation of the Constitution. The other defendants in the lawsuit, who had purchased the bonds from the brokerage, claimed that they had purchased bonds on the open market and had no way of knowing that the bonds were invalid.

In deciding the case, the court’s majority held that the Union was indestructible and that the Constitution did not permit states to secede from the United States, and that the ordinances of secession, and all the acts of the state legislatures of the Confederate states were “absolutely null.” The significance of this holding was that the court rejected the doctrine of state sovereignty.

The court’s opinion was written by Chief Justice Salmon Chase. Chase considered Texas’ relationship to the Union. He rejected the defendants’ claim that Texas was not a state at the time that it filed the suit. He wrote that once Texas entered “an already existing indissoluble political body,” it could not secede.

Since Texas could not leave the Union, any actions taken to declare secession or to implement the Ordinance of Secession were null and void. This included “acts in furtherance or support of rebellion against the United States, or intended to defeat the just rights of citizens, and other acts of like nature.” Chase wrote that the state’s relationship (during the Confederacy era) with White and Chiles was “treasonable and void.” He ruled that Texas still retained ownership of the bonds and was entitled to either the return of the bonds or a cash payment from those parties who had successfully redeemed the bonds. As a result of the decision, the proceeds from the transferred bonds were turned over to Paschal, as the Texas representative. He claimed all of the proceeds he collected, \$47,325, plus \$17,577 for his legal fee. Governor Edmund J. Davis refused the claim and fired Paschal. Paschal then sued and won his case and was allowed to keep his fee.

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See Also: Constitution of the United States of America; Supreme Court, U.S.; Texas.

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Thaw, Harry K.

The son of a Pittsburgh coal and railroad baron, Harry Thaw is best known as the man who murdered famed New York City architect Stanford White. On a summer evening in 1906, Thaw shot White at Madison Square Garden, a building that White had designed. The motive for Thaw’s crime was jealous rage over Evelyn Nesbit, the artist model and chorus girl who once had been White’s mistress and whom Thaw had married. This “crime of the century” received extensive newspaper coverage and provided spectators with a window into the lives of the upper class.

Even before he married Nesbit, Harry Thaw had been obsessed with White, whom he both envied and hated. Although he was rumored to be a drug addict, Thaw sought out crusading reformer Anthony Comstock to tell him that White was a debaucher of young girls. Both from Pennsylvania, Thaw and Nesbit met in New York City. Nesbit’s widowed and impoverished mother had allowed her beautiful teenage daughter to accept employment as a model. Soon, Nesbit was in demand by painters, illustrators, photographers, and advertisers. She was sketched by illustrator Charles Dana Gibson, becoming a “Gibson Girl,” the iconic image of the “New Woman.” Then Nesbit was hired as a chorus girl in the Broadway musical *Floradora*.

Nesbit caught the eye of Stanford White. Married and in his 40s, White was known for his larger-than-life personality, his lust for living, and his pursuit of young women. At her husband’s trial for White’s murder, Nesbit, dressed like a schoolgirl, titillated spectators with her lurid account of her drugged rape by White and

their subsequent affair. She told of her first visit to White's apartment in the company of another young woman. Nesbit said she had sat in a "red velvet swing" that White would later have her swing in nude after they became lovers. Determined to have Nesbit for himself, Thaw had begun his courtship by sending her flowers and other gifts under an assumed name. He eventually revealed his identity. He was able to make progress in his courtship when Nesbit needed an emergency appendectomy. Thaw sent a physician to perform the operation. Then, he took Nesbit and her mother abroad to allow Nesbit to recuperate.

When her mother left the two of them alone in Europe, Thaw took Nesbit to an isolated German castle. Revealing the sadism that he reportedly had displayed toward other women, Thaw beat Nesbit with a whip. He questioned her about White until Nesbit told him about the rape that had preceded the affair. Nesbit persuaded Thaw to return to New York. She told White what had happened. But in April 1905, she married Thaw and returned with him to Pittsburgh to live with his mother. On June 25, 1906, Thaw and Nesbit were in New York and spent the evening with friends. White dined with his son, who was home from college. Nesbit glimpsed White in a restaurant. Later that evening, both White and the Thaw party were at the rooftop theater at Madison Square Garden for the premiere of a musical *Mam'zelle Champagne*. As an actor sang "I Could Love a Million Girls," Thaw walked over to White's table. Pulling a revolver from beneath his coat, he shot White three times.

Thaw was arrested at the scene of the crime and taken to jail. His family mounted a public relations campaign aimed at portraying White as the seducer of a young and innocent Nesbit. In one of the three plays the family underwrote the villain was "Stanford Black." The hero, "Harold Daw," gave a speech about "the unwritten law" that allowed a man to defend the honor of his wife. During the trial, Thaw's lead defense attorney, Delphin Delmas, argued that Thaw had killed White while in the grips of "Dementia Americana," that form of temporary insanity that any red-blooded man would have experienced when defending the sanctity of his home and avenging his wife.

The first trial ended in a hung jury. During the next trial, Thaw's defense team settled on an insanity plea (rather than a defense of temporary insanity). Thaw's mother testified about her son's irrational behavior and the mental instability in their family. Committed to Matteawan State Hospital for the Criminally Insane, Thaw escaped to Canada. He was deported and returned to the asylum until his release in 1915. He divorced Nesbit but did not give her the money that his mother was supposed to have promised for her testimony. In 1917, Thaw was accused of horse-whipping a 19-year-old boy. He was recommitted to an asylum and released in 1924. He died of a heart attack in Florida in 1947.

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See Also: Insanity Defense; Murder, History of; Rape, History of; Trials.

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Theories of Crime

Theories of crime are defined in relation to modernity, spanning their development from the Enlightenment to the present, with the advent of post-modernism. Modernity involved the search for natural and human-based explanations and reasons for behavior and actions. Theories of crime became scientific in principle if not in practice.

Approaching behavior and seeking explanations in the human world using logic and/or experience and the reduced reliance on a shared set of morals as the primary factor distinguished modern approaches from premodern ones. Postmodern views stress language as a source of power allowing for the dominance of particular theoretical (and methodological) perspectives at the expense of particular ideas and schools of thought. Even postmodernist thinking would similarly criticize the exclusive use of spiritualistic or metaphysical explanations of crime and deviance behind the dynamics of language and culture. Implicitly or indirectly, most explanations for crime and social control use the instrumental model of rationality as the basic condition of modern societies.

This type of rationality permeates all spheres of modern societies and entails determining the best means to achieve particular ends. While factors may be differently presented in these explanatory models, the means of achieving goals in the form of constraints and facilitators toward crime and social control and the ends motivating individuals and ordering the distribution of conditions are always included. Environmental conditions are the other main aspect of criminological theories that are the source of the origins of both means and ends. In particular, criminological explanations include the notion that means and ends are pertinent to any explanation and criminal and social control behaviors operate through instrumental rationality.

Another relevant fact about many criminological perspectives concerns their focus on urban crime and social control. Modern societies moved toward urban dominance in all respects. Intellectually, socially, economically, and politically, ideas and conditions in urban areas were the motor forces of the historical development and evolution of modern societies. From the lens of urban elites of all types as well as governments, explaining crime included understanding the causes and effects of order derived from criminality. While disorder strongly signifies the political nature of deviance in 19th-century Europe and America, the political nature of criminological theories is closely connected to the notion that all theories of crime and deviance are associated with particular theories of social order and social control. Stephen Pfohl and Dario Melossi converge in emphasizing

how theoretical images of deviance and social control correspond historically, spatially, and through disciplines. This includes the notions of theories being partial and non-neutral. Historically, the politics of crime control in any given era synchronized with the predominant social controls utilized in the same time period. Spatial patterns and the distribution of crime and its control are also striking. The geographical nature of a large number of criminological theories supports this particular characterization. The disciplinary bases for many criminological theories is vital to their differences in terms of identification and analysis of the main causes of crimes, their effects on individuals and societies, and what are considered to be the proper social control responses. Classical, biological, psychological, and social-psychological theories all share roots in the disciplines of psychology, biology, sociology, or a combination of two or more of these disciplines.

More recent criminological theories are essentially sociological but borrow from geography, cultural studies, philosophy, and political science. Maintaining order through understanding and controlling crime reflects conflicts within society and the need to shape consensus. The bases of order and crime differed historically with criminological theories. Views of order gained through consensus were evolutionary theories, including premodern theories, biological and psychological theories in the 19th century, and social-psychological theories from the 20th century to the present. Conflict views of order saw order maintained through force, selective enforcement of laws, and oppression. Critical and radical theories fall into these categories, with Marxist, feminist, and labeling variants as examples.

Premodern Theories

Order and morals also have earlier historical precedents. Premodern theories were entirely based on religious explanations of why people committed crime and sin, and the appropriate responses to such behaviors largely involved religious punishments. There was a distinct lack of empirical validation of these theories, and punishments were determined solely by elite leaders to counteract supernatural forces driving crime. Ancient and feudal societies were more homogeneous, punishment more public with strong shaming



Psychological theories of crime can include the perspective that differences in behavior may make some people more likely to commit a criminal act. Personality characteristics and biological factors often contribute to these differences.

components, and enforcement and social controls worked mostly through monarchical and community surveillance and monitoring. Most spiritualistic theories converged in equating crime with sin and worked well with smaller-scale, feudal, and homogeneous societies. While criminological theories became more secular, the influence of religion (to a lesser extent) and morals (to a greater extent) still retained their power to the present. Morality expressed itself in many theories but in different ways, whether through effects on individuals, communities, institutions, or the entire society. In this regard, the transition to modern theories, while considerable and transformative, has not been complete and pure. The closeness of demonological and early positivistic theories in 19th-century Europe is a case in point. Biological and sociological positivists in Europe shared with earlier premodern theories the moral failures of criminals and contrasted criminals with non-criminal members of society. Morality and science

were then and remain intertwined with major positivistic theories. Criminological theories may have evolved methodologically, but the ideological trajectories to the present demonstrate strong historical roots.

The decisive transitions to modern criminological theories resulted from major societal changes such as urbanization, industrialization, rapid population growth, and the growth of science and technology toward the end of the 18th century. This time period forward also saw the development of the modern system of government. Heterogeneity in morals, work, and thinking were prominent characteristics of modern societies, and this heterogeneous development was the major context within which modern theoretical perspectives developed and evolved. Modern criminological theories distinguished themselves as using and applying reason to develop a fair, consistent, and reasonable system of crime and punishment. The Age of Reason is a common thread and shared set of contextual forces for most all modern theories of crime. Even those perspectives that deemphasize the rationality of behavior operate and utilize a rational, logical methodology, analytical principles, and data collection in positing the irrationality of criminal behavior or the construction of criminality.

Most notably, the normative and idealistic aspects of these theories were not eliminated due to the use of rational thinking and the scientific method. Theories were prescriptive and reflected varied ideological orientations. Individual defects (and moralizing these failures) have been one prominent ideological strain throughout history (the “nature” part of the nature versus nurture controversy). The other major ideological orientation emphasizes nurture factors, making up the environments influencing crime. Based on the prevailing urban conditions responsible for crime, these theoretical perspectives recommended alternatively utilitarian goals of punishment and rehabilitation, which continue to characterize criminological theories (and associated social control components) to the present. The oscillations of exclusionary and inclusionary social controls are direct evidence of the cyclical nature of criminological theories. During times of societal crises, reestablishing order through the state, community, or other social controls signified the

dominance of nature approaches. This included harsher deterrence, more retributive, and incapacitation-focused penal systems. In contrast, inclusionary penal systems in more prosperous times emphasize rehabilitation more than deterrence, the need to reform and change to improve criminals and enhance reintegration, and appreciative perspective of deviants and the forces responsible for their criminality. A combination of deterrence, rehabilitation, retribution, and incapacitation underpinned these perspectives in the past and continue to do so today.

Classical and Positivistic Theories

Early modern criminological theories included classical theories emphasizing free will, rationality, and deterrence that developed toward the end of the 18th century and sociological positivistic ones followed in the early 19th century. Crime prevention was a shared focus of these early theories, whether through an analysis of robbers in mid-18th century England conducted by Henry Felding, or the distribution of property and violent crimes conducted by Lambert A. Quetelet and André M. Guerry in continental Europe in the 19th century. Another element of classical theories was the emphasis on social contract between members of society and governmental institutions. The main roles of the state were to provide security and protection of citizen freedoms in exchange for acceptance of punishment if citizens broke this contract. The rights to punish and use force are integral elements of modern legal and criminal justice systems today. The neoclassical model and more recent rational-choice theories are dominant in social science disciplines consistent with the positivist emphasis on application of scientific methods to validate any study.

Marxist and positivist theories developed almost a century later and dominated from the end of the 19th century and continuing to have influence today. The origins of the criminal class and forces responsible for this class were the distinct questions studied by these perspectives and then moved to related questions about the institutional and organizational aspects of crime and social control. These perspectives developed out of the disciplines of political economy in earlier periods and added the growing subfield of law and society in the 20th century. Developing even later, radical

and postmodernist perspectives were influential (not as significantly as the classical and positivist approaches) from the 20th century onward. Not part of mainstream criminology, these perspectives blossomed in the 1960s, a period of significant economic, political, and cultural changes in Europe and North America. Building on detailed studies of modern societies and their social control systems, these theories concentrated on how a significant amount of crime and deviance was directly caused by the actions of social control institutions and actors and powerful groups in society pressuring formal social control agencies to selectively enforce laws.

Three overarching philosophical frameworks with distinct historical evolutions are the main sources of most existing criminological and criminal justice theories today: classical, positivist, and legal (social control) behaviorist. Within these frameworks, there are numerous internal divisions. However, the divisions between and across theories are not absolute. Rather, these theoretical frameworks have considerable overlap and their historical development followed trajectories based on existing conditions of modern society and, particularly, the shared intellectual heritage (including the importance of empirical validation, development and testing of concepts, and collective debates about the validity and utility of theories as well as associated methodologies). Theories are grounded in what is considered commonsense views of criminality and appropriate social control responses. By providing rationalizations to criminal justice policy and practice, theoretical perspectives were consistent and supported visions of crime and social control.

In relation to the extremist tendencies of these broader theoretical frameworks, David Matza noted the tendency to polarize classical and positivist approaches (even by theorists from each camp) and the ensuing overgeneralizations and problems that resulted from these practices. A prominent example is the common practice of stressing the discontinuities between classical and positivist approaches, which is not consistent with the historical record. The classical approach emphasizes human agency and exercise of free will, but also recognizes the positivist focus on external factors on behavior (albeit the particular constraints are different between the two approaches). Similarly,

the positivist emphasis on causality and deterministic explanations was easily accommodated with the emphasis on deterrence and free will operating in conjunction whereby external forces influence individual decision making.

Social Control and Environmental Theories

The growth of capitalism and the modern nation-state, along with the development of ideas accompanying the growth of science, were pertinent realities for both these theoretical schools of thought. The political imperative of controlling crime grew with the development of the legal and criminal justice systems in Europe and America. Classicism emphasized the political aspects of crime, and positivism and radicalism jointly centered on the threats to order from growing inequalities in industrial societies. Even radical perspectives are not necessarily incompatible with classical and positivist approaches, as the emphasis remains on understanding the social determinants of criminal behavior from the actions and exercise of power of dominant societal actors. The legal social control behaviorist perspectives, in the same vein, discuss the determinants of choices driving law enforcement and criminality and the relevant environmental conditions that are influential in these choices. The common thread across seemingly divergent perspectives is use of a choice and conditions (environments providing constraints or facilitators for actors) model of criminality and social control with differing emphasis on the choice and conditions aspects behind criminal and social control behavior. Structural approaches focus on environmental conditions, which are the sources for means and ends in different forms in criminological theories. The selection of conditions, means, and ends varies across criminological theories and many perspectives simply assume away either of these components as being uniform or unimportant. For example, many individual positivistic and classical theories simply posit environmental conditions in a static fashion being a fixed set of parameters in their theories. Alternatively, structural theories assume that variations in individual characteristics are unimportant for explaining crime rates.

The classical perspective shares with individualistic-centered positivistic theories the emphasis on attributes of individuals and differences between

criminals and noncriminals as being critical to explaining crime and criminality. These include 19th-century biological theories and 20th-century psychological, social-psychological, sociological, and rational-choice theories. These theories are closer to the historically dominant volitional criminological model of modern criminal justice (crime is a product of free choices requiring appropriate responses and environmental factors are ignored in this model). Explaining criminality and the incidence of crime in individuals are the main goals of these approaches. Surprisingly, some radical and postmodernist theories also pay attention to individual-level factors and choices, although extra-individual processes and structural contexts are also stressed. Process-level factors bridge these micro individualistic theories with more macro structural ones.

Structural theories mainly examine the organization of society and environmental conditions as being critical to explaining major crime and social control patterns. These perspectives are radical and positivistic (even combined), emerging in the late 19th century and intensifying in the 20th century. Whether Marxist or Durkheimian versions, these schools of thought coincided with the transformation of societies, the concentration of economic and political power, and the development of mass production and consumption. Based heavily in sociology and political science, these approaches highlight the aggregate distributions of crime and social control within and across societies as products of the arrangements of society in terms of values, status, class, and other related dimensions. Unlike individualistic theories, rates of crime are the main dependent variable. Macro theories remain popular in academic criminology but have been less so with criminal justice practitioners due to their emphasis on the societal origins of crime and social control. From the view of practitioners and policy makers, changing these conditions is extremely difficult and beyond their control. The political economy of crime policy and practice, coupled with the cultural constraints, limit wholesale adoption of macro-structural policies. Crime control policy and practice is heavily skewed toward status quo approaches that warrant traditional individualistic/legal views of crime and traditional individualized social control responses. Criminological

history has been covertly a history of competing theories at different levels of analyses. Microtheories have won these historical battles for the most part with some notable exceptions. From the end of the 19th century to the 1960s, critical and radical theories dominated.

Modern Trends

Recent theoretical trends are toward use of integrated and developmental crime theory perspectives. Integrating theories has been proposed as recognition that crime is a result of a combination of multiple factors rather than by unifactorial approaches become prevalent throughout criminological theories. Integration has been impeded by recognition that theories are better suited for explaining specific aspects of crime and do not operate at the same level of analysis. The origins of developmental theories lie with the attention given to career criminals and the need to understand the developmental processes translating crime at younger ages into serious criminality at later stages of criminal career. This trend is consistent with academic criminology being driven by policy and practical concerns. Other, more recent criminological perspectives such as routine activities and environmental criminological theories similarly cater to the needs to understand, explain, and control crime patterns impacting the formal criminal justice apparatus of modern societies. Developmental and integrated theories remain tied to the dominant social control and physical environmental crime theories today, as well as consistent with historical variants of these theories in classical and positivistic forms.

Most of the differences among theoretical perspectives, historically to the present, are overlapped and those promoting the inherent incompatibilities and discontinuities fail to recognize each perspective developed concurrently and involved active exchange and interplay between different theoreticians responding to the same historical conditions of their time. A persistent theme in each criminological perspective involved detailed examination of changing forms of criminality and social control. In early modern classical and positivist theories, serious property and violent crimes were being discovered as following particular trends in society. Vagrancy was treated as a direct threat to capitalism and violence in dense, crowded, and

anonymous settings threatened social stability and predictability vital for modern living. Later modern theories, especially those developed in the 20th century, moved to looking at the institutional and technological aspects of crime and social control with specific attention to how socioeconomic diversity posed distinct challenges to understanding and controlling crime. Most changes took a significant amount of time to develop as well as had uneven impacts, which was reflected in the significant overlap between different criminological theories. Most theoretical frameworks and perspectives evolved over long periods of time and were modifications of prior theories to changed historical conditions.

The long historical progression of criminological theories with associated continuities and discontinuities can be better understood through a deprivation and control framework. Most current theories trace their roots back to earlier theories emphasizing individual moral, psychological, and biological deprivations to macro social, economic, political, and cultural deprivations in later theories. Premodern and 19th-century-based theories favored the micro deprivations perspective with emphasis on restoration of formal governmental and community controls or, for the worst criminals, incapacitation or sterilization. Institutions emphasized in these theories include family, peers, community, and socialization ones in general but all of them are linked ultimately to individual deprivations. Modern-day versions of these theories include social control, social disorganization, routine activities, and rational-choice theories.

The other major deprivation and control perspective historically to the present is environment focused. Twentieth-century criminological theories began to focus more on macro social deprivations (or a combination of deprivations particularly micro psychological ones) and penal reform and rehabilitation as the main forms of control. This continued even with more radical and critical theories developed more recently that moved to cultural and political deprivations. The associated controls required for addressing macro deprivations include economic and political investments, emphases on treatment and rehabilitation, and reduced reliance on formal social controls as well as traditional familial and community social controls. Classical, positivistic, and

legal behaviorist perspectives of both the micro and macro variety share the need to use particular control types and strategies. While many do not view positivism and critical theories as control-oriented perspectives, these types of theories along with classical ones have promoted the use of particular controls academically and normatively. The history of crime theories and social control can be fruitfully seen as between a history of integration and separation.

The current state of criminological theorizing exhibits theoretical and methodological pluralism. Historically to the present, pluralism has not meant equal influence of each theoretical perspective over time and across space but rather dominance and influence of particular theoretical perspectives during specific time periods and for specific areas. Criminology has become more utilitarian over time and serves the legal and criminal justice systems more directly. Crime has become a prominent political issue and can be used to justify particular ideological and political agendas. The emergence of permanent and extensive criminal justice systems in modern societies has resulted in the favoring and dominance by particular criminological theoretical perspectives. The perspectives favoring family and traditional institutions of social control have stronger currency today than they did 40 years ago.

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See Also: Corruption, Sociology of; Criminology; Morality.

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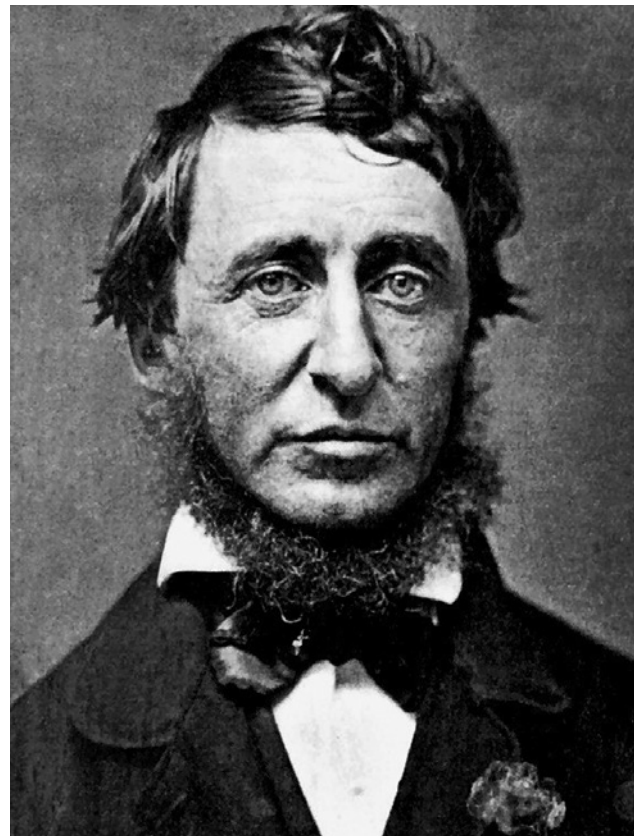
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Thoreau, Henry David

A renowned transcendentalist writer and radical, Henry David Thoreau was born on July 12, 1817, in Concord, Massachusetts, where he spent most of his life. He is best known for his essay "Resistance to Civil Government" (1849), a provocative assertion of individualism, and the book *Walden; or, Life in the Woods* (1854), a reflection on the spiritual value of simple living. Thoreau started his intellectual career in 1837 after he graduated from Harvard University and returned to Concord. He befriended Ralph Waldo Emerson, a prominent cultural figure, and other well-known writers in Emerson's circle. At his suggestion, Thoreau started to write essays for Emerson's journal *The Dial*.

Walden grew out of Thoreau's personal experience; in the summer of 1845, he constructed a small house by the Walden Pond, on Emerson's



This portrait of Henry David Thoreau is by Benjamin D. Maxham from 1856. There are over 20 volumes of Thoreau's writings in books, articles, essays, journals, and poetry.

property, and lived in it for over two years. His goal was, among other things, to prove the benefits of uncomplicated living. He spent most of his time there observing nature and writing his diary, which served as a basis for *Walden*. The central point of the book can be summed up in the following refrain: “Simplicity, simplicity, simplicity!” Thoreau condemned the increasing sophistication of his age, particularly technological innovations and industrialization, because in his view it undermined individual independence and connection with nature.

Some of Thoreau’s comments in *Walden* invite readers today to compare his views to that of Ted Kaczynski, the Unabomber, a Harvard-educated mathematician who gave up his stellar academic career to move to rural Montana, from where he waged a bloody campaign against modern technology. The similarities between Thoreau’s and Kaczynski’s views, however, are superficial. There is at least one major difference between them—Thoreau was not a proponent of violence.

Thoreau was noted for his political radicalism and support for such controversial figures as John Brown. His essay “Resistance to Civil Government,” which was later republished under the more memorable title “Civil Disobedience,” offers a provocative argument about man’s relation to the state. Thoreau asserted that the value of individual freedom always outweighs the interest of the state. He wholeheartedly believed that it is up to individuals to determine whether they can tolerate the state’s power rather than for the state to determine whether it can tolerate individual freedom. In one of the most provocative passages in his essay, he went so far as to declare that governments should not govern at all.

“Resistance to Civil Government,” which grew out of Thoreau’s lecture “The Rights and Duties of the Individual in Relation to Government,” was inspired by Thoreau’s brief imprisonment for refusing to pay the poll tax. The episode took place in 1846, at the beginning of the Mexican–American War (1846–48), while Thoreau still lived at Walden Pond. His refusal to pay the tax was prompted by his opposition to the war, which he believed was completely unwarranted. What is more, Thoreau, like many other Americans, was convinced that the war reinforced the institution of slavery in the United States. As an

ardent abolitionist, he argued that the government had no right to force him to pay taxes, which could be used to finance the war fought for the benefit of slave owners.

Thoreau was also a vehement opponent of the Fugitive Slave Act (1850), which required northerners to return runaway slaves to their owners. On several occasions, Thoreau flaunted the fact that he aided fugitive slaves. In 1854, he delivered a speech in support of the runaway slave Anthony Burns, whose trial and extradition to the south generated much controversy.

Thoreau’s radicalism was even more apparent in his reaction to John Brown’s raid on the federal armory at Harpers Ferry, Virginia, in 1859. Brown, a militant and controversial abolitionist, was captured after an unsuccessful attempt to start a slave rebellion in the south. The episode provoked uproar throughout the country. The public opinion, in both the south and the north, was clearly against Brown, who was decried as a fanatic and criminal. Even in the abolitionist circles, his actions were condemned as misguided and even insane. Thoreau was only one of few well-known figures to publicly defend John Brown. Prior to Brown’s execution in December of the same year, Thoreau delivered a series of lectures that served as the basis for his essay “A Plea for Captain John Brown” (1860).

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See Also: Anarchists; Kaczynski, Ted; Literature and Theater, Crime in; Literature and Theater, Punishment in; Massachusetts.

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Three Strikes Law

A three strikes law is a criminal provision intended to incapacitate serious, repeat offenders that a number of states passed beginning in the mid-1990s. These initiatives epitomize the selective incapacitation movement (which sought to protect the public from potentially violent and repeat offenders) and the “get tough on crime” movement in general. Although states vary as to which crimes and offenders three strike provisions apply, the penalty for conviction of a third strike offense is typically severe and often results in life imprisonment. States have had habitual offender provisions on the books for many decades. Laws passed under the label of three strikes were generally broader than the older laws, but the three strikes movement was largely symbolic in many states. However, in some states such as California, three strikes provisions significantly expanded existing habitual offender laws and brought about noticeable changes in sentencing practices.

The three strikes movement began in Washington State, which passed the first three strikes law in 1993; other states followed suit and by 1996, almost half of the states and the federal government had passed new legislation under the three strikes banner. Much of the impetus behind the movement came from media attention given to horrendous crimes committed by repeat offenders such as in California, where 12-year-old Polly Klaas was kidnapped and murdered in 1993 by Richard Allen Davis. Davis had an extensive criminal past, and the attention given this tragic crime committed by a repeat offender who had been released from prison caused public outrage that eventually led to the adoption of three strikes in California. Similar high-profile (yet atypical) incidents contributed to a spirit of moral panic, which provided support for various get-tough initiatives, including three strikes.

States differ greatly in how and against whom the laws apply, including how many previous felonies are required to “strike out,” what types of crimes are considered strikes, and what happens upon conviction of a third strike. In some states, only serious violent offenses qualify as a strike, but in others a number of crimes are counted as strikes, including property offenses and drug possession. In many states, a third strike brings

a life sentence (with or without the possibility of parole, depending on the jurisdiction), while others mandate a long specified sentence enhancement (e.g., 30 years), and still others leave the penalty enhancement to the discretion of the judge. In some states, three strikes laws are actually two strikes laws—offenders convicted of a second qualifying strike offense can be incarcerated for life under the provisions.

Three strikes laws have been criticized for being ineffective at controlling crime, contributing to serious corrections concerns such as prison overcrowding and an aging prison population, and even for increasing homicide rates in jurisdictions that adopt the laws. As for the first concern, studies generally have failed to find any crime-reducing results from three strikes laws. The laws do not appear to deter would-be offenders, and any incapacitating effects are too small to impact overall offending rates. As to the second criticism, the laws may be an unwise use of resources, since third strikes are invoked against older offenders. Criminologists generally agree that criminal offenders eventually age out of crime—that is, as criminals grow older, they tend to desist from serious offending. Three strikes laws may be putting away offenders for life at the time when incapacitation will be least effective: just as they are about to age out of offending. Incarcerating older offenders for decades may also put a strain on corrections budgets since, as these offenders advance in age, their medical care needs become increasingly costly. Finally, studies have found that homicide rates tend to increase in jurisdictions that pass three strikes laws. It is possible that an offender with two strikes is more willing to use violence against victims, potential witnesses, and even police in order to lower the likelihood of being identified, captured, and convicted for a third strike offense.

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See Also: Incapacitation, Theory of; Sentencing; Sentencing: Indeterminate Versus Fixed.

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To Kill a Mockingbird

To Kill a Mockingbird is one of those rare novels that, like *Uncle Tom’s Cabin*, was a widely acclaimed work of social criticism that also exposed the injustice in the criminal justice system in America. It gave a realistic and very unflattering portrayal of the criminal courts in America. The book was written by Harper Lee (1926–) and was published in 1960. Lee was awarded the Pulitzer Prize for her work, which became a classic and is today required reading in many schools across the nation. Interestingly, it is the only work to be published by Lee. Lee was born and raised in Alabama. As *To Kill a Mockingbird* is focused on racial injustice, it has been suggested that Lee’s work encompasses her own observations and experiences in the south.

During the 1920s and 1930s, it was very difficult for African Americans in the south. It was during this time period in 1931 that the infamous Scottsboro Boys cases were decided. Nine African American boys were arrested in Alabama and charged with the rape of two white girls. The case became a national *cause célèbre*, with numerous trials and appeals involving, among other things, the use of all-white juries. Some of the boys were eventually convicted and sent to prison.

Art Mirrors Life

To Kill a Mockingbird is a story about the arrest and trial of an African American man, Tom Robinson, accused of raping a white girl in the south.

The main character is Atticus Finch, a white man and a local attorney in a small southern town. Atticus had two children, a boy named Jem and a girl named Scout. The book employs a literary device of having Scout narrate the events. When Atticus is appointed by the court to defend Tom Robinson, he agrees.

Atticus and his children are repeatedly harassed because of Atticus’s acceptance of the case. The town is very angry with Atticus and about the incident. At one point, Atticus barely prevents a lynching of Tom Robinson at the jail. The trial is a classic example of racial injustice in the south during this time period. Scout and Jem watch the trial from the African American balcony, as their father did not want them to attend. Atticus is able to prove that the girl and her father, who is the town drunk, are lying about the incident, and Atticus presents significant evidence to show that Tom Robinson is innocent. Despite the evidence, Tom Robinson is convicted by the all-white jury. Unfortunately, while Atticus is starting an appeal, Tom Robinson is shot while trying to escape from jail.

As a literary technique, Lee presented Scout as an independent observer of the events that transpired surrounding Robinson’s arrest, trial, and escape. The technique significantly added to the impact and credibility of the novel, as Scout, being a young girl, would not have and had not developed the racist attitudes that were so prevalent in the south at that time. Further, Scout presented a figure of innocence who was trying to understand the obvious injustice that was occurring. Even Scout, who dearly loved her father, Atticus, had to be told by an elderly African American to rise after the trial when her father was passing. Not even Scout, for all of her love for her father, understood what a great and honorable act Atticus had performed by representing Robinson.

One of the great and terrible ironies of the novel was that Robinson was killed trying to escape after he was convicted. Robinson, to avoid the great injustice of having been convicted for a crime he did not commit, was then visited with the even greater injustice of being killed by trying to save his own life when trying to escape the first injustice.

To Kill a Mockingbird had a significant and long-lasting effect on American society and the criminal justice system. It has been cited as one

of the best literary examples of racial injustice in America. As it was published in the 1960s, its effect on subsequent civil rights legislation and judicial decisions has been acknowledged. Moreover, Atticus Finch has been used as an example of what the practice of law is, ethically and ideally, all about. In 1962, the book was made into a critically acclaimed movie starring Gregory Peck. The movie was nominated for numerous Oscars and won three. Despite its acclaim, the book has been subjected to numerous attempts to censor it and remove it from the shelves of public libraries.

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See Also: African Americans; Civil Rights Laws; Literature and Theater, Crime in; Scottsboro Boys Cases.

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Tocqueville, Alexis de

Alexis Charles Henri Clerel de Tocqueville (1805–59) was a 19th-century French political theorist, historian, writer, and politician best known for his two-volume study of America, *Democracy in America*. Between May 1831 and February 1832, de Tocqueville and his friend, Gustave de Beaumont, toured the United States to investigate the applicability of the country's two main penal systems (the Pennsylvania system and the New York system) for adoption in the prisons of France; their report *Du système pénitentiaire aux Etats-Unis, et de son application en France* (*On the*

Penitentiary System in the United States and Its Application in France), published in 1833 in two volumes, strongly recommended that the French government adopt the Pennsylvania system.

De Tocqueville was born in July 1805; his father, Herve Louis Francois Jean Bonaventure Clerel, Comte de Tocqueville, was an officer of King Louis XVI's Constitutional Guard and was later noble prefect under the Bourbon Restoration. At age 25, de Tocqueville entered parliament, representing the Manche department for 21 years. The following year, France's July monarchy commissioned de Tocqueville and Beaumont to visit the United States in order to examine the country's prisons and penitentiaries. This visit, in addition to providing the information for *Du système pénitentiaire aux Etats-Unis, et de son application en France*, also resulted in de Tocqueville's famed *De la Démocratie en Amérique* (*Democracy in America*), which was published in 1835. In addition to his observational tour of the United States, de Tocqueville visited England, about which he wrote *Memoir on Pauperism and Algeria*, which inspired his *Travail sur l'Algérie* (*Report on Algeria*). Following the revolution of February 1848, de Tocqueville was elected to France's Constituent Assembly, where he served on the commission that drafted the Constitution of the Second Republic. The following year, he served briefly as minister of foreign affairs but left government in 1851 after opposing Napoleon II's coup. He died in April 1859.

De Tocqueville is considered by scholars to be among the most perceptive observers of American politics and culture, and *Democracy in America* is still widely read today (it has never been out of print). De Tocqueville was particularly impressed by what he considered the relative social equality he found in the United States. Though de Tocqueville was generally enthusiastic about American politics and supported the democratic movement, he observed in the early 1830s (he later called himself "... an old and sincere friend of America"), he was under no illusion about the challenges facing the new nation, including the need to resolve the clear tension between equality, democracy, capitalism, and slavery.

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See Also: Eastern State Penitentiary; Pennsylvania System of Reform; Sing Sing Correctional Facility.

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Torrio, John

Mentor to Al Capone and organizer of what would later grow to become Chicago's "Outfit," Torrio was born near Naples and came to the United States with his parents at the age of 2. Torrio grew up on Manhattan's Lower East Side and soon became the leader of the James Street Boys, part of New York's infamous Five Points Gang. Known as "Terrible Johnny," Torrio, small in stature, had nevertheless acquired a fierce reputation as a tough, cold, and calculating young man, adept with his fists or weapons and able to inflict severe punishment on those who crossed him. After working for a time as a bouncer, Torrio became connected to a brothel/bar in Brooklyn in the early 1910s and soon expanded his criminal activities to include hijacking and drugs. He also became an associate of two other gangsters who would figure prominently later in his life: Frankie Yale, co-owner with Torrio of a bar in Coney Island, and one of their employees, a teenage thug named Al Capone.

Torrio occasionally traveled to Chicago at the behest of prostitution kingpin James (Big Jim; Diamond Jim) Colosimo, to whom Torrio was distantly related through Colosimo's wife. Colosimo, a flashy and ostentatious gangster, had made his fortune by running his wife's prostitution business. He also ran the immensely popular and successful Colosimo's Café, patronized by Chicago's elite society. Because of his lavish lifestyle, Colosimo had begun being harassed by a local Black Hand extortion gang and called on Torrio to help. Torrio led the extortionists into



Dumping wine from barrels to avoid detection in 1921. John Torrio was one of the first gangsters to see the money making potential presented by the new Prohibition law.

an ambush, where his hired guns, led by Yale, had been dispatched to end Colosimo's extortion problem. Staying on in Chicago, Torrio, by this time, was not only soon running Big Jim's criminal enterprise, he was also expanding and building Colosimo's business and soon brought his young protégé, Capone, to Chicago to assist him. Also known as "the Brain" and "the Fox" by this time, as much for his business acumen as for the violence of his younger days in New York, Torrio was quick to spot the moneymaking potential presented by the new Prohibition law, making the manufacture, sale, and distribution of alcohol illegal in the United States. Colosimo, however, was not convinced and, content with his income from the prostitution business and his café, refused to let Torrio enter the bootlegging market. Torrio, for his part, was sure that bootlegging would help him build a criminal empire and once again brought former associate Yale to Chicago, this time to carry out Colosimo's murder.

Torrio's bootlegging idea was a good one, and with Capone as his assistant, was soon bringing in millions of dollars. With his success, however, came competition, and Torrio was soon involved in a struggle to control Chicago's illegal booze market with others, most notably, Dion O'Banion's North Side organization. In 1924,

feigning a peace overture, O'Banion double-crossed Torrio in the sale of a brewery, and Torrio decided to have O'Banion killed, touching off a bloody conflict between the rival gangs. In late 1925, in retaliation for their leader's murder, O'Banion's men lay in wait for Torrio as he returned from a shopping trip with his wife. When they left, Torrio's body lay riddled with bullets, but the resilient Torrio was still alive, barely. He fought back and eventually recovered but had enough of the gang lifestyle.

After his recovery, Torrio left Chicago and retired, turning over his entire organization to Capone. The legacy he left behind has been heralded as a solid business organization and criminal enterprise that set Al Capone up as arguably the nation's most notorious gangster, an organization that would endure for decades and would come to be known as "the Outfit," and would influence national, international, and political events in the 1950s and 1960s under the leadership of Sam Giancana. Torrio eventually returned to New York, where, although "retired," he came to be looked upon as somewhat of an elder statesman of the Mafia underworld, his advice sought by Charles "Lucky" Luciano and other top Mafia bosses throughout the years. Torrio died of natural causes in 1957 at the age of 75.

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See Also: Bootlegging; Capone, Al; Chicago, Illinois; Illinois; Italian Americans; Organized Crime, History of; Organized Crime, Sociology of; Prohibition.

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Torture

In the modern world, torture is almost universally condemned by civilized nations and societies as a barbaric practice. Yet even in modern times, torture still occurs, and with much greater frequency than the average person would feel comfortable accepting. Despite the commonly held opinion, at least among Americans, that the United States is the world leader when it comes to freedom, liberty, and individual rights, torture has been and does continue to be practiced in and by the United States of America.

Torture has been used throughout history. The ancient Egyptians used torture against prisoners of war. In ancient Greece, both slaves and prisoners of war were subject to torture, although the Greeks rarely resorted to the torture of free citizens. Torture was also freely used against slaves and foreigners and for treason by the ancient Romans, although it was used for crimes in Rome's later years. During medieval times, torture was institutionalized by the Catholic Church through the infamous Inquisition. Torture was also employed by the medieval lords, who had absolute authority over their subjects. Starting in the 12th century, torture became legitimized in many European nations. Reform movements resulting from the work of such notable intellectuals as the French philosopher and writer Voltaire and the Italian criminologist Cesare Beccaria, who wrote *On Crimes and Punishments*, culminated in the general abolition of torture in the 18th century. Despite this enlightened step, in modern times, torture has once again assumed the mantle of official policy. During the 20th century, torture was an official tool of the German Nazis and the Communists of the Soviet Union. The use of torture, unfortunately, has not been limited to tyrannical states but is also employed by "civilized" nations such as the United States of America, as so sadly illustrated by the scandals of Abu Ghraib prison and Guantanamo Bay.

Today, torture is prohibited by numerous national and international laws and treaties. The primary international treaty on torture is the Convention Against Torture. The United States is a signatory to the convention. Further, the United States prohibits torture as a criminal act under Title 18 U.S.C. §§ 2340, 2340A, and 2340B. The

United States also defines torture as a war crime under Title 18 U.S.C. § 2441. It is also considered a war crime under international law.

Definitions

Torture is not an easy term to define. Since the scandals of Guantanamo Bay, Abu Ghraib prison, and extraordinary rendition in the United States to other countries so that extreme torture may be inflicted on prisoners that would otherwise not be done in the United States, politicians, academics, and the law have failed to adequately define torture. Indeed, the recent public criticisms of the Bush administration tend to gloss over what constituted torture. In fact, the issue of defining torture became an international political nightmare for the administration of George W. Bush, when memos written by his advisers, including John Yoo and Jay Bybee, provided a very limited definition

of torture that allowed physical and psychological abuse of persons just short of death.

The Convention Against Torture defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering only from, inherent to or incidental to lawful sanctions.” In the United States, under Title 18 U.S.C. § 2340, it is a crime to commit torture, which is defined as “an



The Salem witch trials were held to prosecute people accused of witchcraft in Massachusetts between 1692 and 1693. Women who were suspected of witchcraft were strapped to a stool over a body of water and dunked until they either confessed or died. If the suspect died, she was found innocent, although it was little consolation.

act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or control.”

Unfortunately, these definitions do not state what specific acts constitute torture. However, if only specific acts were listed, an unscrupulous and imaginative government official could avoid a criminal charge of torture by simply devising a new method of inflicting pain.

Methods

Some of the better known historical methods of torture include the rack, in which a person was strapped to a table and tied to wheels at both ends, whereupon the victim was stretched until his joints were dislocated; the strappado, in which a person's arms were tied behind his back, and then he was tied to a rope through a pulley attached to the ceiling and then hung until his shoulders were dislocated; the Iron Maiden, which was an iron coffin with spikes in the interior side of the hinged cover, which would be slowly closed on the subject inside; the ripping out of finger- and toenails; the burning of flesh; the blinding of people with hot irons; the attachment and activation of electric cables to a person's genitalia; and the deprivation of food, water, and sleep.

More modern techniques of torture involve waterboarding, the use of high technology to facilitate the infliction of pain listed above, and psychological methods. Two examples of psychological torture were employed by the United States against Islamic prisoners by forcing them to eat pork or by having a female pretend to rub the subject with menstrual blood.

Using waterboarding, which simulates torture, as an example of torture the Bush administration employed it as a lawful interrogation technique, even though most authorities consider it a form of torture. For example, at the end of World War II, Japanese military officers were executed for employing waterboarding and U.S. military personnel, prior to the Bush administration, have been court-martialed and punished for employing it.

Justifications

In recent times, the debate concerning the propriety of torture is whether it is justified in the face

of modern threats such as terrorism and the use of weapons of mass destruction. Some people hold the position that torture is justified to prevent possible terrorist attacks. The primary justification for this position is the balancing of the harms done to a few people subjected to torture against the potential harms of hundreds or thousands of people dying from a nuclear, chemical, or biological attack. Most civilized authorities and laws in the modern world take the position that torture is never justified.

One of the major issues concerning torture is extraordinary rendition. This occurs when a nation in which torture is prohibited transfers its prisoners to other countries for interrogation, where the receiving country permits torture. Thus, the renditing country is able to receive all of the “benefits” of having its prisoner tortured to, among other things, reveal needed information without having to be liable for the crime of torture. This rationalization, however, does not account for accomplice liability or conspiracy, which would result in the renditing country being criminally liable. This situation occurred during the Bush administration, which had authorized and employed extraordinary rendition for enemy combatants in the war on terror, resulting in a political firestorm.

As previously stated, American citizens prefer to view their country as a nation that rises above such cruel and inhumane practices as torture. Unfortunately, the history of the United States is replete with examples of institutionalized torture. It is impossible to list every example of torture that has occurred in American history, but a brief chronology of events demonstrates its historical widespread use and acceptance in American society.

The Colonists and Early America

When America was first colonized by English citizens attempting to escape religious persecution in England, many of these new colonists were religious zealots who were very strict in their observance of religious laws. In many of the new colonies, people who broke the law were often subject to punishments or even inquisitorial techniques that would be considered torture today. For example, for minor offenses, violators could be sentenced to the stocks, which were wooden constructs that held the subject in place by locking his/her hands and/or feet in the device, keeping

the subject in either a sitting or standing position, sometimes for days. The subject would then be abused by the village populace with insults, mud, stones, or rotten food thrown at him/her until his/her penance was done. For more severe offenses, violators were publicly whipped or flogged, causing serious physical injury.

Torture was not just reserved for the guilty but also for those who were merely suspected of a crime. Women who were suspected of various offenses, such as witchcraft, were strapped to a stool at the end of long pole over a body of water and dunked until they either confessed or died. If the woman died, she was considered innocent. Another method of interrogation was pressing, which was also used to force a suspect to plead to the charges. The suspect was placed between two boards, and rocks were heaped onto the board on top of the suspect until he/she pled, confessed, or died from the pressure. The colonists were also quite effective at psychological torture. The primary example of psychological torture during the early days of America is found in the famous Nathaniel Hawthorne novel, *The Scarlet Letter*. Hester Prynne, a woman accused of adultery, was forced to wear a scarlet letter "A" on her chest for the rest of her life in punishment for her crime. Although a novel, *The Scarlet Letter* was illustrative of the social disapproval that the colonists would bring against a person. A number of authorities do not consider such treatment to be torture but more akin to shaming. However, shaming can and does have the same effect as psychological methods of torture. Support for this position is found in modern times when Islamic prisoners were tortured by being forced to eat pork, which would cause no physical harm but would cause serious shame and psychological harm to the victim.

Slavery and Racism

With the advent of slavery in America, torture became a fine art that was employed much more frequently against African American slaves than against the occasional white violator of the law. African Americans were kidnapped from Africa and transported for sale to America in horrible conditions. The men, women, and children were chained below the decks of a ship, frequently without food, water, medical care, or access to

sanitary facilities. Many died from the horrible conditions before they ever reached America. Such neglect was worse than what the prisoners at Guantanamo Bay suffered and can only be considered torture.

Once slaves arrived in America to be sold, the torture continued. Families were separated. Slaves who were insubordinate or escaped were beaten, whipped, or flogged. Female slaves were frequently subjected to sexual abuse and rape at the hands of their masters. Slaves were denied basic human rights, both in practice and under the law, at least until the end of the Civil War and the Emancipation Proclamation. But even with their freedom, African Americans continued to be subjected to torture and terrorism.

After the Civil War, the people of the south resented the loss of their slaves, whom they viewed as subhuman. One of the results was the formation of the Ku Klux Klan. The Ku Klux Klan was an organization dedicated to oppressing the African American race and denying them their civil rights. Members dressed in white sheets to hide their identities and kidnapped, beat, and lynch African Americans. Starting in the early 20th century, their universal symbol was a burning cross. Over the years, the Ku Klux Klan waxed and waned several times, in modern times expanding its attention to other minorities and not just African Americans. In modern times, with a major shift in social attitudes and the enactment and enforcement of numerous civil rights laws, the numerous lynchings are no longer practiced by the Ku Klux Klan, but beatings and occasional murders of minorities still occur. Now, minorities have legal recourse, both civil and criminal, against those who would torture or terrorize them.

The Police and the Third Degree

Well-organized police forces did not become widespread until the 1900s. However, police did exist in the United States prior to the turn of the century. These police forces, in both the enforcement of the law and the protection of politicians, frequently employed brutality. The employment of brutality by police forces was usually called the "third degree." The third degree frequently involved being beaten with a rubber hose, placing the suspect under a hot lamp so that the interrogators could not be seen, and questioning the

subject for hours on end until he/she confessed. Another method used by the police after the Civil War was the “sweat box.” The suspect was placed in an iron box, which often did not even let the prisoner stand. Next to the sweat box, the police would place a stove, fill it with combustible material, light it, and literally cook the suspect until he confessed. Police frequently used black jacks or saps to beat prisoners. A sap was a small leather bag that was filled with lead shot and was used to hit suspects over the head. All of these activities can only be considered torture.

The problem of police brutality was officially recognized as early as 1931, when the Wickersham Commission, an official investigation into the cause of criminal behavior, criticized police torture. But it was not until the 1960s, with the Warren court, that police brutality began to be seriously addressed. Under Title 42 U.S.C. § 1983, victims of police brutality started to bring an ever-increasing number of civil rights lawsuits. The resulting jury verdicts forced police departments to increase training and stop the brutality. However, even these measures have not stopped police torture.

With the advent of modern technology, torture has become more subtle. Using a TASER, which is an electronic device through which a suspect is electrically shocked into submission, police can and occasionally have tortured suspects by continually shocking them. For example, the Rodney King case in California and the Abner Louima case in New York City show that police brutality still occurs.

The CIA and Interrogations

After the end of World War II, the Central Intelligence Agency (CIA) was formed to help keep track of the new nemesis, the Soviet Union, in the ensuing cold war. From 1952 until 1962, the CIA engaged in a massive program to research mind control and developed what was called “no-touch” torture. Essentially, the CIA developed expertise in how to psychologically break a suspect. The CIA researched sensory disorientation, sensory deprivation, and what was termed *self-inflicted pain*. The research was phenomenally successful, employing such techniques as unpredictability, betrayal, false charges, mock executions, and isolation. The method was codified under the

title of Kubark Counterintelligence Interrogation and was exported to Latin American and Asian nations for use by their police forces. Even with the no-touch torture technique, America’s intelligence agencies began a history of physical and mental torture that was present in Vietnam during the Vietnam War (i.e., the Phoenix Program), in Central America during the 1980s, and in the Middle East since 2001 (i.e., Abu Ghraib and Guantanamo Bay). The recent revelations of the extraordinary rendition program and the secret overseas prisons run by the CIA affirm the continued involvement of the CIA in torture.

The Military and Interrogations

With the close link and operating relationship between America’s intelligence and security agencies and special operations units in the U.S. military, such as the Special Forces and military intelligence, the military was frequently involved in and a partner in torture activities. The Phoenix Program during the Vietnam War in the 1960s and the Abu Ghraib and Guantanamo Bay prisons all involved military forces, including military police and military intelligence personnel. Indeed, the revelation of the torture memos of the Bush administration highlight the fact that torture was not only overlooked but was actively encouraged by the highest level of leadership.

Conclusion

It has been generally accepted that the Eighth Amendment’s prohibition against cruel and unusual punishment also protected against torture. Further, some authorities hold the position that because some practices were accepted as being appropriate for their time, they did not violate the Eighth Amendment or constitute torture. However, this argument is refuted by the principle that under the Bill of Rights, the society and the protections are subject to growth and refinement. Thus, even though the stocks in colonial times or the shower bath (the equivalent of waterboarding) during the 19th century would have been considered appropriate then, now they are unquestionably considered to constitute torture.

It cannot be reasonably disputed that torture has a long and infamous history in American culture and government. The effect on American society has fostered a significant amount of contempt

and disrespect for the government. Even in modern America, many citizens seem to approve of the use of torture, especially in certain limited circumstances. Whether the problem can be adequately addressed remains to be seen.

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See Also: 2001 to 2012 Primary Documents;
Ku Klux Klan; Lynchings; Police Abuse;
Professionalization of Police; Racism; Salem Witch
Trials; Slavery; Wickersham Commission.

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Townshend Acts of 1767

The Townshend Acts of 1767 are a combination of four independent acts passed by the British parliament under Chancellor of the Exchequer Charles Townshend. The acts placed duties on various goods sent to the American colonies and increased colonial dissatisfaction with Great Britain. The duties began in 1767 and were repealed in 1773 after protests by the colonists. In 1767, the British government continued to seek out ways to support the stationing of troops and other government officials in the American colonies. After a change in government from William Pitt to Charles Townshend in 1767, the main emphasis for Townshend was how to raise money for the government. His solution was to add import duties to key items that the colonists would need

for day-to-day life. Townshend felt that the colonists would not object to paying import duties for these items if the taxes placed on the items before they left Great Britain were removed.

The first act was the Suspending Act, which was the British government's reaction to the New York Assembly's failure to comply with the Quartering Act of 1765. The citizens of that colony could not afford the expense of building shelter and supplying the army's needs, so the assembly voted against it, leading to the suspension of the assembly. The Revenue Act sought to raise funds using import duties on items that colonists could only acquire from Great Britain because of existing restrictions on imports. Imports affected by this act included lead, paper, glass, and tea. This act was part of Townshend's goal of raising revenue for the government that would be used to pay royal officials stationed in the colonies. The act received opposition from both American colonists and British merchants. From the Americans' point of view, the officials would fall under the influence of the government in England versus the local assemblies who used to pay their salaries. Colonists boycotted the goods, found suppliers who would evade the law, and used this opportunity to begin manufacturing the goods in America. British merchants opposed this act because it encouraged American industry to the detriment of British manufacturers.

In connection with the Revenue Act, the third act created a board of customs commissioners located in Boston to collect the levied duties. The board established a system of inspectors and sought to oversee all American trade. Colonists opposed this new agency and protested by capturing British ships like the *Liberty* and burning ships like the *Gaspee*. Customs officials became so concerned that they asked for British troops to be stationed in Boston, which ultimately led to the 1770 Boston Massacre after a confrontation between British soldiers and American colonists. The fourth act contributed to the first protest about duties on tea. The act removed the taxes on tea on the British mainland and thus it arrived in the colonies without prior taxes. However, the import tax on tea remained. When the acts were repealed in 1770, this act remained in effect as the Tea Act. Colonial protests against this act led to the Boston Tea Party, which forced the repeal of the Tea Act in 1773.

Ultimately, Townshend did not live to see the outcome of the duties that carried his name. He died suddenly in 1767, after a life of poor health. This left the succeeding government to deal with the fallout in the colonies from the taxes. When the British government finally repealed the acts in 1773, it became apparent that the duties did not raise funds for the government. Merchants who produced the goods lost over £700,000—almost three times the amount of revenue collected. The Townshend Acts contributed to colonial protests and conversations about taxation without actual representation. As British subjects, the colonists did not agree with the taxes and actively protested the laws. They took issue with being taxed by act of Parliament to support the stationing of British soldiers in America and to additionally pay for the government officials stationed in the colonies. Ultimately, the Townshend Acts contributed to the decision by the colonists to declare independence.

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See Also: 1600 to 1776 Primary Documents; American Revolution and Criminal Justice; Boston, Massachusetts; Tea Act of 1773.

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Traffic Crimes

Automobile-related traffic crimes include a range of activities involved with driving or controlling an automobile that have been designated as criminal in themselves or that facilitate or are otherwise related to some form of criminal activity. The most common of these involve speeding, failing to obey safety and maintenance standards, and disobeying



A car wreck caused by drunk driving. The act of operating a motor vehicle while under the influence of alcohol and/or drugs is illegal in all jurisdictions within the United States. Punishment varies widely between and within those states.

traffic signs. Many people believe these offenses to be trivial and even that they should be considered either victimless crimes or not crimes at all. Nevertheless, each of the offenses listed leads to injury and death every day, even if not every incidence of the offense leads to such a negative outcome. Automobiles have been described as inherently dangerous, even deadly weapons in the wrong hands, which require strong laws that are strongly policed in order to make sure that they are used safely. The danger is magnified greatly when the machine is in the hands of a person who is driving under the influence (DUI) of alcohol or narcotics or who is driving while intoxicated (DWI).

Many traffic accidents involving automobiles are not the result of criminal activity but just reflect the difficulties involved in manipulating what are complex and sophisticated machines in a dynamic and busy environment in which other road users might behave in unpredictable or even irrational ways. Generally, other road users (e.g.,

pedestrians, cyclists, and motorcycle riders) come off worse in any collision with an automobile, and smaller automobiles similarly fare worse when struck by larger ones, bearing in mind also the importance of momentum. While improvements in the safety features of automobiles are in many ways impressive, they cannot protect people entirely, and they provide little help to people outside the automobile. The first person to be killed in America in an automobile accident was H. H. Bliss, in 1899, who was reportedly struck by a horseless carriage while helping a female passenger from a streetcar. Since then, Americans have been introduced to a range of new requirements and legislation as a means of trying to educate people about how to use the roads safely, what kind of insurance is required by law (first introduced in 1925 and then spreading state by state over subsequent decades), and which safety measures are necessary (up to the contemporary focus on child safety seats and the dangers of texting while driving). The rapid increase of automobile ownership and driving culture in the interwar years led to the introduction of most of the initial regimes of laws and safety features. Regulations concerning the way that people use automobiles are continually evolving in light of new technologies and of new forms of understanding of the interactions between the forces involved. However, such regulations appear to many people to be contrary to the American tradition of the open road and the freedom given to an individual and his/her passengers provided by ownership of an automobile. Indeed, the importance of the automobile in daily life is such that driving or riding in one represents the most common encounter with committing or being the victim of a crime in the course of normal living.

Common Driving Offenses

The most common driving offenses include speeding, driving without due care and attention, or disobeying traffic laws relating to maintenance and safety of the automobile. Since a large proportion of these offenses are never identified—or, if the offenses are identified, they are passed off by police without an official charge—it is impossible to know how often they occur or have occurred in the past. In rural areas in the past, the likelihood of meeting any police officers on the

road was very low, and in close-knit communities, most minor offenses could be safely overlooked. The situation has become different as technological advances have caused vehicles to be faster and larger, and falling prices have enabled more people to buy automobiles and, hence, increase the volume of traffic on the roads. In suburban and, particularly, urban areas, the volume of traffic means that accidents of various sorts are almost inevitable and the level of police coverage is very high. Police coverage of traffic now extends to the use of computerized systems and helicopters in high-volume areas, and monitoring the automobiles of suspects for more serious crimes via these means has become a new option.

As more roads were built and upgraded to link urban areas and, in comparison with most of the rest of the world, public transport systems outside of large conurbations have been neglected, the demographic nature of people using roads has also changed. Initially, the first automobiles in the United States were slow and expensive machines scarcely capable of competing with horse-drawn carriages and certainly not with the railroad. As time passed, more of the middle and upper classes were drawn into road use and, consequently, also became more likely to be the victims of traffic crime. Broadening automobile ownership resulting from higher incomes in the country as a whole has also broadened the experience of this type of crime. As lower-income people enter the automobile market, most had limited funds, so they would drive secondhand vehicles in need of repair or possibly dangerous to operate. When traffic police have stopped automobile drivers, therefore, they have always had an incentive to stop a larger proportion of young, working-class men than people in any other category.

This custom has persisted as people from ethnic minorities and particularly African Americans have been able to buy and drive their own automobiles. The proportion of young African American men (and young men from some other ethnic groups) stopped and questioned by the police has become a flash point of potential conflict. It was the way in which certain white police officers stopped and questioned Rodney King after a high-speed chase that led to the riots in Los Angeles in 1992 when, despite video records of the police brutally beating King, they were exonerated. In

a curious reversal of the race and class issues involved, the famous African American football player O. J. Simpson was involved in a low-speed highway chase when police wished to question him concerning the murder of his estranged wife and one of her friends, and the whole course of events was televised live across the nation, even interrupting coverage of the finals of the National Basketball Association.

Pressure of modern society—especially in the high-volume traffic environments of cities and amid high-value automobiles, some of which represent important status symbols for their owners—has given rise to the phenomenon of road rage. When traffic-related incidents occur, one or more of the protagonists might resort to anger and even violence to try to resolve the subsequent argument. When the perpetrators of such actions are associated with elderly or vulnerable people, the result can appear to be comical because of the indignity, but when young, physically fit, and perhaps armed individuals are involved, the outcome can be very serious. This is particularly the case with respect to urban gang culture, in which the desire to maintain face is of enormous importance and in which the automobile is a direct extension of the status of not just the individual owner but also her or his gang members and, by extension, the territory and perhaps ethnic group from which gang members are primarily drawn. Fear of an armed response has, at least on an anecdotal basis, contributed in some cases to people tolerating outrageous and reckless acts of driving on public roads.

DUI and DWI

Perhaps the most serious and tragic form of traffic crime is when an accident occurs as a result of the responsible person being incapable of operating the machine properly because of intoxication. The intoxication might be caused by alcohol, illegal drugs, or some form of prescribed medication that is not illegal to take. This crime is known as driving under the influence of drugs (DUI) or driving while intoxicated (DWI), which are terms used more or less interchangeably. The exact definition of these crimes varies from state to state but usually a range of potential intoxicants is involved, with a specific amount of the intoxicant in the blood level defined as representing a

legal upper limit and a variety of circumstances involved in which guilt may be determined. While once it was the case that only people actually driving a vehicle could be held responsible for what that vehicle did, more recently it has come to be seen that ownership and control of a vehicle while under the influence also means culpability.

There has been quite considerable debate and scientific research concerning the amount of alcohol or other substance that should be present in the blood before an individual can be considered to have broken the law. The limits and the ways in which testing should occur have varied over time and from state to state. The most obvious problem relates to the fact that measuring the amount of alcohol or other substance imbibed as a simple measure does not take into account the fact that individuals range in size, shape, and tolerance. There are also problems concerning the buildup of substances over time and the length of time that should be permitted to have elapsed between the final drink and the use of the automobile.

When DUI offenses result in the death or serious injury of a loved one, the loss felt by survivors appears to be particularly difficult to bear in many cases. If the deceased was the one responsible, then guilt can pass to the relatives who may be damaged psychologically by the events. The damage appears to be worse for those who have lost a loved one because of the illegal DUI offense of another, particularly when the perpetrator receives a sentence that is not held to be commensurate with the severity of the crime. The principle of sentencing is to match the punishment with the nature of the offense and not with the actual outcome of secondary effects of the offense. To some extent, the inclusion of victim statements and similar approaches have been used to try to narrow the gap between the sentence according to principles and the type of sentence believed by the victims to be appropriate.

Reckless Driving

As the number of vehicles on the roads and their size and speed have increased, the possibility of accidents has increased, as has the severity of their outcomes. Notwithstanding improvements in the safety features of automobiles, frequent drivers or passengers face close misses on a quite regular basis. Despite this, people continue to make

risk-taking driving decisions because they are able very quickly to forget about past incidents of near misses. The ability to forget within a couple of weeks enables most people to continue driving and even to intensify their level of risk-taking behavior.

The number of people killed internationally on the roads continues to increase because economic growth means that more people are able to afford cars personally. Additionally, the emergence of very small and cheap cars by the Indian manufacturing company Tata has caused the domestic market to expand significantly. The fatalities in such countries are projected to increase considerably, by as much as 147 percent between 2000 and 2020 in the case of India and by 66 percent globally. However, the United States is one of a group of high-income countries in which overall rates are declining because of better policing of road behavior and better safety features. Other countries will join this group when their own level of modernization reaches a certain level. In the United States, road safety came under the administration of the Department of Transportation in 1966.

Clearly, the numbers of collisions and road traffic deaths varies on a state-by-state basis, considering the total size of population, relative number of urban and rural populations, and income and provision of police services. Since so much of the country remains out of immediate police reach, many possible cases of reckless driving are undetected or may be unproven, despite the best effort of forensic scientists and detectives. One of the best-known such examples involved Senator Edward Kennedy, who in 1969 left a party in the company of a young woman, Mary Jo Kopechne, driving his own automobile. He subsequently drove off a bridge, and the car was submerged in water. He was unable to rescue Kopechne and finally left the scene, a crime for which he was subsequently prosecuted. Despite numerous attempts subsequently to come to the truth, uncertainty remains over the nature of which crimes, if any, were committed that night. There are other cases in which individuals, if they have a high profile or have already committed other offenses, claim to be passengers rather than drivers with the collusion of other passengers. The use of closed circuit television cameras and other forms of technology have reduced this problem but there are limits to

what might be achieved. An additional problem concerns the distribution of automobiles with significant safety defects, most notably by Toyota but by other companies as well. These models have in a small number of cases contributed to or caused traffic accidents and have led to substantial fines for those corporations involved.

Other Forms of Crime

Some crimes require a means of transportation, and an automobile is the most convenient means of providing that transportation, especially since independent movement is required. Gangsters in the 1920s and 1930s, for example, became associated with the use of limousines and other automobiles as means of transportation for senior figures, to transfer armed individuals as required, and to move prohibited alcoholic products. The automobile as combination transportation device and status symbol has persisted into the age of contemporary drug-dealing and gang activities.

The emergence of mobile or cell phones and other portable personal equipment have made new types of activity illegal or semilegal in nature. This includes distracted driving, which involves taking calls, texting, or otherwise engaging in an activity that significantly detracts from the ability to drive safely. Large numbers of people, especially young people, have, however, come to the conclusion that they are sufficiently skilled as to be able to perform several engrossing activities at the same time.

Traffic Crimes in Popular Culture

American popular culture is replete with the notion of the automobile (or other road vehicle) representing the freedom of the individual, escape from social and state strictures, and the ability of the individual to transcend difficult circumstances in one location. *Easy Rider*, for example, portrays motorcycle riders as outsiders, somewhat romantic in nature but essentially rebellious against the encroaching bourgeois nature of society. The central legends of early American history celebrate the journeys across the prairies to possible future wealth in the face of the hostility of nature and the native peoples, through the medium of the forerunner to the automobile. Away from the trappings of society, according to the myth in any case, the individual (customarily the male leader

of a family or social group) is empowered to use all means to protect the vulnerable passengers. Contemporary productions from *Thelma and Louise* to *The Blues Brothers* to *Supernatural* feature iconic cars as the means of bringing about not just a change of location but the ability of the protagonists to meet their goals and affect the external environment. The NASCAR racing circuit has become an important part of the sporting and television worlds but has also become a cultural market of political significance.

The increase in the importance of surveillance as a detective technique for both official police and private detectives meant that they spent more time in their stationary cars waiting for something to happen. This frames a scene familiar to viewers of such programs in which protagonists enact their personal life dramas while waiting for suspected criminals to take some action that makes their job meaningful. In the postapocalyptic genre or productions in which disasters threaten mankind, automobiles become one of the key resources in empowering people to escape a horrible death from radioactivity, zombies, violent neofascists, or other nemeses. Such stories typically portray a world in which any form of act is permitted, whether previously considered legal or illegal, because of the total breakdown of the state and society. In American popular culture, then, very often it is the case that only those in possession of an automobile and a gun are able to navigate the dangerous environment of the world.

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See Also: Automobile and the Police; Gangs, Contemporary; Simpson, O. J.

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Training Police

Historically, American law enforcement agencies dedicated little time and few resources to the formalized training of their officers. While some training and education inevitably did occur, much of this training was informal and lacked specificity, coherence, and continuity. In other instances, officers brought formalized military or vocational training with them to the law enforcement profession. However, this training was not directly related to their law enforcement duties or to the practices of the agencies that employed them. As a result, much of the training that officers brought with them to the profession was not directly conducive to policing a civilian population. The widespread belief that formalized training was superfluous and unnecessary continued to characterize early American law enforcement agencies for some time to come. In part, these beliefs were driven by perceptions that police work was an unskilled profession that did not require formalized training. The rampant political corruption that characterized many early American law enforcement agencies contributed to this perception. This corruption crippled many agencies and resulted in an organizational culture that valued avarice and loyalty above all else. As public dissatisfaction with police corruption intensified, tentative efforts to improve hiring and training standards began to take shape. These initial efforts were largely the result of emerging public attitudes and expectations that valued greater professionalism and improved efficacy.

Some of the earliest formalized police training efforts took the form of preservice law enforcement training academies. The earliest of these academies began to appear during the 1800s

and early 1900s. These initial training efforts were minimal in prevalence, scope, and duration when compared to contemporary standards and normally involved only nominal levels of instruction in the most rudimentary police duties. Even these modest training efforts did not become the standard for American law enforcement until the middle and later parts of the 20th century. While the efforts were tentative and halting, their importance should not be overlooked, as they helped establish the legitimacy of formalized police training and paved the way for the more ambitious training efforts that followed. Widespread professional acceptance of formalized police training was slow to come, but by the close of the 20th century, police officer training had become an integral part of the law enforcement profession, an accepted standard among police administrators, and an important part of the socialization experience of new law enforcement officers. Further, the scope of the training provided to officers expanded dramatically across time to include a more diverse set of topics like communication skills, community problem solving, and cultural sensitivity.

Reasons for Training

One significant factor that contributed to the growing acceptance of formalized police training was the emergence of the police professionalization movement. The police professionalization movement began during the early 20th century and grew out of larger efforts to reform the criminal justice system. The police professionalization movement resulted in the introduction of substantive reforms that continue to influence the American law enforcement profession. Proponents of this movement believed that the law enforcement system should be reformed in such a way that it would be viewed by the public as a reputable and honorable profession, in much the same manner that the legal or medical professions were viewed. In order to accomplish this objective, the corruption and political influence that characterized early law enforcement agencies needed to be eliminated. While eliminating corruption was certainly important, advocates of professionalization believed that this alone was insufficient; law enforcement agencies also needed to employ highly qualified employees, internalize an efficient

managerial structure, integrate technological advances in an attempt to improve outcomes, and create an organizational culture that advocated a proficient and effective response to criminal activity. In order to accomplish each of these objectives, it was necessary for law enforcement agencies to improve the quality of the training that they provided to their employees. The opinions of some of the most respected Progressive reformers associated with the police professionalization movement supported this contention.

August Vollmer was the chief of police of Berkeley, California, and O. W. Wilson was the chief of police of Wichita, Kansas, and Chicago, Illinois. Collectively, Vollmer and Wilson advocated the creation of programs of study related to law enforcement in the American system of higher education and the implementation of improved hiring and training standards for police officers. Given their positions and status, Vollmer and Wilson were able to advance the cause of police professionalization, and in the process, they were able to ensure the greater acceptance of efforts to expand and improve police training.

In more recent times, police training has taken on even greater significance and importance for a variety of reasons. First, political demands for greater accountability have increased during the past several decades. These demands have frequently accompanied high-profile governmental investigations of the American criminal justice system. For example, the National Commission on Law Observance and Enforcement recommended a number of ways in which the American law enforcement profession could be improved. One of the most commonly identified recommendations made by committees of this nature has pertained to the need to increase both the quality and quantity of police training. High-profile incidents of police corruption or brutality are frequently accompanied by public calls for increased professionalism and enhanced personnel standards. One commonly suggested method of achieving both of these objectives is the implementation of more exhaustive education and training requirements for law enforcement officers. The legal system has gradually provided greater civil liability for law enforcement agencies, resulting in an increased potential for financial losses stemming from civil lawsuits. Law enforcement agencies have increasingly



In recent years, police training has taken on greater significance and importance due to political demands for greater accountability and higher requirements for levels of domestic security. High-profile incidents of police corruption or brutality have also resulted in public calls for increased professionalism and enhanced personnel standards.

viewed training as one way that they can protect themselves from the ongoing threat of civil liability. The environment in which policing occurs has become increasingly complicated, and law enforcement duties have taken on greater complexity. This increasing complexity has necessitated the introduction of institutional expectations for a better trained and educated law enforcement officer. For example, community policing philosophies have necessitated the employment of law enforcement officers who have superior communication skills, an ability to relate well to a diverse group of community stakeholders, and the capacity to problem solve and identify innovative ways in which the root causes of crime and neighborhood disorder can be permanently resolved.

Methods of Training

The increased importance of formalized police training has been reflected in the greater amount

of time and organizational resources that law enforcement agencies have dedicated to the training of their officers and in the greater variety of training to which those officers are exposed. Early training efforts focused primarily on providing rudimentary vocational skills to new police officers. This training signified a departure from the ways of the past, but it also failed to account for the diverse training needs of law enforcement officers and the way in which training needs changed at various stages of a law enforcement career. This is a significant limitation given that the training needs of new officers with limited amounts of experience are substantively different from the training needs of more experienced officers with multiple years of practical experience in the field. Over time, police training has become more holistic by providing a greater variety of training to law enforcement officers with the intent of better meeting both current and evolving training

needs across the entire course of an officer's law enforcement career.

Today, vocational police training is generally divided into one of three broad categories: preservice or academy training, field training or on-the-job training, and in-service or ongoing training. Most law enforcement officers will be exposed to training from each of these three different categories at multiple points throughout the course of their policing careers. Pre-service or academy training refers to that portion of law enforcement training that is meant to prepare law enforcement officers for the duties that they will encounter during the course of their employment. The term *pre-service* is a bit misleading as some states have provisions that allow officers to begin their employment before they have completed a formalized police training academy. This is especially common in locations where the existing system of law enforcement training academies is unable to operate at the capacity necessary to meet the demand of the law enforcement community. Despite some minor geographic variations, this type of training is typically intended to be a prerequisite to employment as a law enforcement officer. Field training or on-the-job training is typically viewed as a continuation or extension of the pre-service or academy training that officers receive. This type of training provides officers with the opportunity to work in the field in a controlled manner under the supervision of a more experienced senior officer. The senior officer is typically referred to as a field training officer and is charged with both the provision of ongoing instruction in the field and the production of evaluation reports regarding the performance of the officers assigned to him/her.

In-service or ongoing training is a mandated requirement for law enforcement officers. In order to maintain their law enforcement certifications and continue their employment, law enforcement officers must acquire a certain number of training hours each year. A failure to secure the required number of training hours could result in the revocation of certification and the inability to maintain employment. While the specific requirements for in-service training vary somewhat from state to state, the purpose and intent of this type of training is generally the same. More specifically, this type of training is mandated in an attempt to

ensure that police officers remain up to date on current developments in the field and proficient in the skills and knowledge that are required of them. In addition, many departments use this type of training as an opportunity to update officers on any changes made to existing policies and procedures and to inform officers of any new initiatives that the department has undertaken. In addition to the formalized types of training that new officers receive, they are also exposed to and influenced by the informal training that they receive from their more seasoned and experienced colleagues.

During the course of their careers, many officers learn that there are both formal and informal ways of getting things done. Informal interactions with colleagues, private conversations, and observational role modeling serve to underscore the importance of informal practices and advance a new, albeit unofficial, dimension to police training. This type of informal training may also contribute to the creation and continuance of the police subculture.

Scope and Delivery

The scope of police training has also changed dramatically during the course of the past several decades. Early training efforts focused almost exclusively on teaching officers the most basic of vocational skills. While officers did need at least some basic instruction of this type, early training efforts did not reflect the true diversity of the police mission or the complexities of the duties undertaken by law enforcement officers. As a result, initial training efforts did not provide new officers with the scope or depth of information that they needed to effectively perform many of the more nuanced aspects of their jobs. As the amount of time devoted to training officers increased, it became possible to integrate new topics alongside those that were already being taught. Training dedicated to patrol tactics and firearms usage began to be supplemented with training regarding problem solving, cultural sensitivity, communication skills, and a number of other topics that had previously been overlooked. Today, police officers are required to go through hundreds of hours of academy and field service training in addition to the mandated number of annual in-service training hours that they must attain.

At the same time that the scope of law enforcement training expanded, the way in which training was provided to officers also began to change. Classroom training has increasingly been supplemented with hands-on training that allows officers to practice new skills under controlled conditions. The intent of this type of training is to provide a realistic training experience for officers in an attempt to ensure that they are prepared for the types of duties that they will face during the course of their employment. This transition process has accelerated recently with the advent of new technologies and their infusion into the realm of law enforcement training. Today, law enforcement officers are able to engage in realistic training simulations of high-risk law enforcement duties, such as pursuit driving or firearms usage, through the use of training simulators that mimic real-world conditions and provide officers with immediate feedback concerning their performance. These new training technologies have the benefit of providing officers with the opportunity to learn about high-risk duties through experience and repetition in a safe environment where mistakes are not irrevocable.

Many officers decide to supplement the vocational training that they receive with additional education and educational credentials that they can attain through the American college and university system. While most law enforcement agencies do not require their employees to have a college degree, some do require prospective law enforcement officers to have either prior law enforcement or military experience or some college credits as a precondition of employment. For officers who lack prior military or law enforcement experience, higher education may become a pragmatic method of securing employment. Even in agencies that do not have any formal educational requirements, many officers have still pursued an advanced education, which has resulted in American law enforcement officers becoming increasingly well-educated over time. This process accelerated dramatically as a result of the Law Enforcement Education Program (LEEP). LEEP was a part of the Law Enforcement Assistance Administration (LEAA), which was established by the Safe Streets Act of 1968. The LEAA was the federal agency that provided assistance and financial resources to local and state law enforcement agencies in an

attempt to improve effectiveness and reduce crime. LEEP's purpose was to provide funding for education and training programs. During the course of its existence, LEEP provided funding to colleges and universities for both research and the establishment of criminal justice programs of study. In addition, the program provided funding for law enforcement officers who wished to pursue such a program of study.

Today, the benefits of higher education and the need for educational requirements remain controversial topics. Advocates of higher education requirements argue that a college education improves communication skills, enhances critical thinking aptitude, cultivates a greater appreciation for diverse viewpoints, and ultimately results in improved performance and enhanced police-community relations. Critics of educational requirements counter that there is no definitive proof that educated officers perform better than their noneducated counterparts, that educational requirements can limit both the size and the diversity of applicant pools, and that they can result in increased personnel costs for agencies. Debates of this nature underscore the dynamic and evolving nature of police training and educational practices. This idea is further underscored by the dramatic changes that have taken place in police training and education in the past and the many changes that are expected to continue occurring in the future.

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See Also: National Commission on Law Observance and Enforcement; Professionalization of Police; Reform, Police and Enforcement; Vollmer, August; Wilson, O. W.

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Trials

Criminal trials have been a source of public fascination since the colonial era not only for the lurid details often involve but for the fear and horror they often invoke in the public. In the United States, criminal trials may take place at the federal, state, or municipal level, depending on the statute violated. Felony trials occur at either that state or federal level. The majority of cases are misdemeanor cases that are handled at the municipal level and often by bench trial, but though numerous, such cases rarely evolve into full trials.

Although trials are seen as the normal course for all criminal prosecutions, there are actually relatively few cases that reach the trial stage. It has been estimated that only 10 percent of all cases go to trial across the United States, although this percentage fluctuates by jurisdiction and can be as low as 7 percent. The number of criminal acts that reach trial are far lower because not all crimes are reported, nor are all criminals apprehended, nor are all crimes prosecuted. Among cases that are filed, the primary reason for a case not proceeding to trial is the reaching of a plea bargain between the defendant and prosecutor's office.

Plea Bargains

A plea bargain can be reached at any point in the trial process before the jury has reached a verdict. A plea bargain is technically the defendant's waiving his/her Sixth Amendment right to a jury trial. It is called a "bargain" as the defendant is often enticed to accept the plea by the promise of the ability to plead to a reduced charge or to receive consideration in sentencing. Before a defendant may enter a guilty plea, he/she must be advised by the judge of the nature of the charge to which he/she is pleading in detail; the maximum possible penalty for the offense plus any mandatory minimum penalty; that he/she (the defendant) has

the right to plead not guilty; and that by pleading guilty, he/she is waving the right to a trial. Once sentencing has occurred, there are only four possible reasons to revoke a plea agreement: that the plea was not voluntary, that the court that took the plea did not have jurisdiction over the case, that the defendant did not have effective assistance of counsel or counsel misrepresented the plea agreement to him/her; and that either side failed to keep to the terms of the plea bargain.

It has been argued by some commentators that plea bargaining is not only the norm in the American judicial system but that the system would not be able to process all the cases if no one took a plea bargain. There has been criticism of the use of plea bargaining to induce innocent victims to plead guilty rather than risk wrongful conviction. Innocent defendants often are willing to plead guilty if the sentence is for time already served, for probation, or for a duration shorter than it is likely to take for a trial to conclude if they cannot afford bail and thus would be in custody anyway. This has become of particular concern in states with recidivist statutes, as an earlier plea can mean a severe increase in sentencing should the person be convicted of a subsequent felony later in life. Some commentators have called for restrictions to be placed on plea bargaining, including a possible ban on plea bargaining altogether, but this seems unlikely to occur given the system's dependence on plea bargaining to process cases.

Evolution From Common Law

Under modern American law, any defendant who refuses to plea is assumed to have pled innocent, and a trial date is set. Under traditional English common law, this was not the case, and a defendant who stood mute was simply not pleading. This was because of the historical development of the jury trials, which meant that trial by jury was an option but not a requirement for Englishmen. The other options were trial by battle or ordeal. However, the Lateran Council's prohibition of clergy's assistance in ordeals in 1215 removed them as an effective trial procedure, and the use of battle faded over the course of the 14th century, leaving jury trials as the only viable option. If a defendant refused to plea under the common law, they were in effect refusing trial by jury, which meant that there was no way to try

them. Under the common law it was beneficial to not enter a plea if you had property or title to pass to descendents as a felony conviction meant that you forfeited all property and titles to the Crown. Some defendants refused to plead out of stubbornness or to preserve their good name from being tarnished by a wrongful conviction and execution they knew was coming anyway. To discourage defendants from refusing to plead, the system of pressing, placing large weights onto the defendant's chest until he/she either agreed to plea or died, developed. This was technically the law in all North American colonies until independence. The most infamous use of this procedure in North America was the pressing death of Giles Corey during the Salem witch trials. It is often erroneously reported that he was pressed to death as a punishment for being a witch, when it was in fact a result of his refusal to enter a plea.

In the colonial era, the colonies implemented English common law trial practices. The primary mode of trial was the "accused speaks" form of trial, in which the defendant was expected to answer the accusations made by prosecution witnesses. It was believed that an innocent person had nothing to hide from the court and that any instruction in the law would come from the judge. This form of trial rested on the lack of defense counsel; indeed, there was a prohibition against defendants receiving legal counsel until the 1720s in England, although some North American colonies did provide for defense counsel beginning in the 17th century. By the mid-18th century, most North American colonies provided for the assistance of counsel, even though they made no provision for providing counsel for indigent defendants.

Early colonial legal systems rested on English criminal procedure, but some did deviate to include more morals-based crimes than the common law. Among the more notorious criminal codes was the call for capital punishment for adultery, children being disobedient or striking their parents, bestiality, sodomy, and witchcraft. Although these acts were criminalized in several New England colonies, capital punishment was rarely implemented. In addition to reduced sentencing for adults, all colonies had provisions for reduced punishment for children and took youth into account in sentencing. Some colonies also provided that foreigners, including Englishman

from other colonies, would be granted lenience if they lacked knowledge of the local criminal laws.

Public Interest in Trials

The Salem witch trials were an early form of mass interest in a trial, but more importantly, they helped shape the type of evidence that would be deemed acceptable in a capital trial. Until the Salem trials, spectral evidence, or evidence that could only be sensed (seen, heard, smelled, tasted, or felt) by the victim was admissible to convict a person of witchcraft or sorcery. It was common but not required to have some form of corroborating evidence before a person was convicted of witchcraft. Judge Stoughton, presiding over the Salem trials, dispensed with this requirement and convicted numerous individuals based on spectral evidence alone. This lack of evidence was defended by the minister Cotton Mather, but the subsequent doubt cast on the guilt of the persons convicted in the trials led many, including Mather's own father, Increase Mather, to doubt the validity of spectral evidence alone. The Salem witch trials were the last major witch trials in the North American colonies, although anti-witchcraft statutes remained on the books in some jurisdictions into the 20th century.

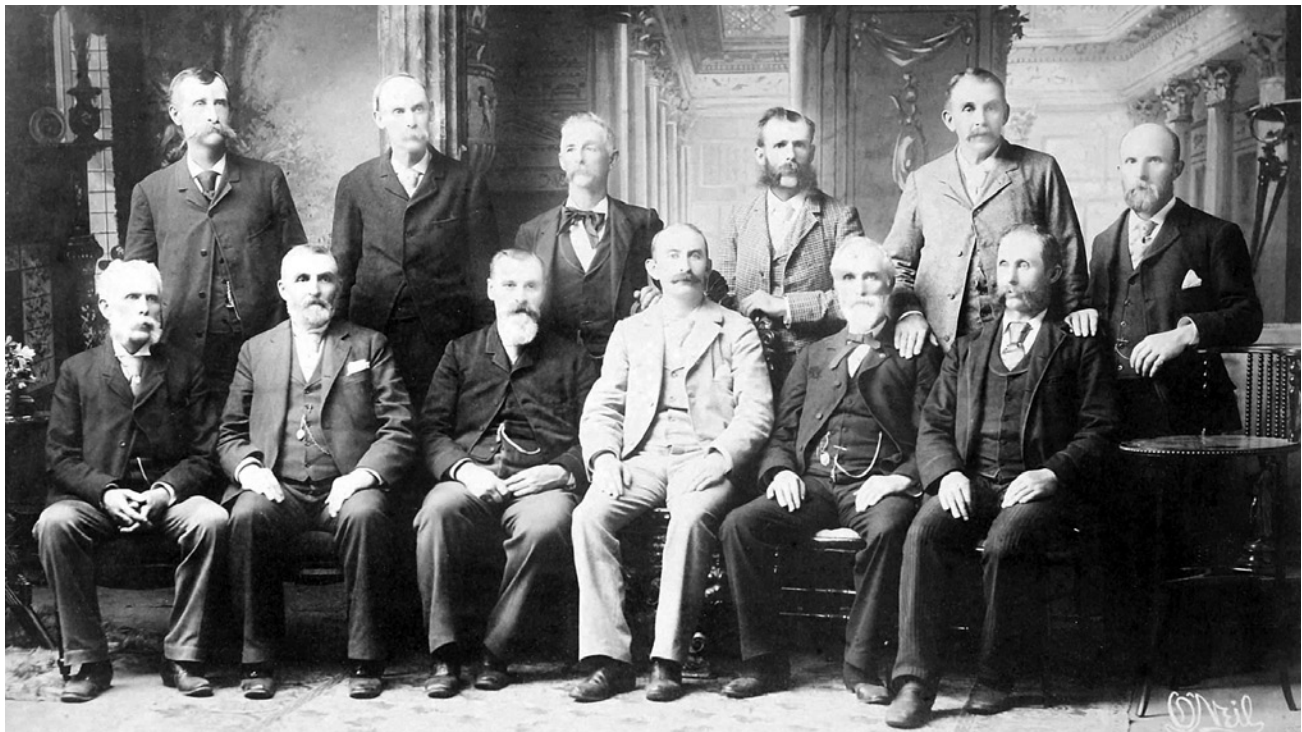
The use of criminal law, and thus trials, to advance a moral or political agenda has continued to the present day. In the United States, these attempts have often backfired and created public disdain for those who attempted to criminalize moral or political beliefs. One of the best known of these cases was the Scopes Monkey Trial of 1925. The Tennessee legislature had passed a law making it a crime to teach any theory that man descended from a lower order of being or that contradicted the divine creation of man as described in the Bible at any university or school supported in part or entirely by state funds. Within a few weeks of the law being passed, a group in Dayton, Tennessee, decided to set up a test case to challenge the law. They arranged for a local biology teacher, John Thomas Scopes, to be caught in the act of teaching evolution. This was done, and he was arrested. William Jennings Bryan volunteered to assist the prosecution, and Clarence Darrow was retained to assist the defense. The trial also was one of the rare instances in the history of common law trials that the prosecuting attorney, Bryan, was called as a defense witness. Bryan's testimony proved fatal

to the cause of anti-evolution laws but not to the prosecution's case. Scopes was found guilty and was fined \$100. The verdict was overturned on appeal, but the law was allowed to remain on the books. While technically a victory for anti-evolutionary politicians, the drubbing that Darrow submitted Bryan to on the literalness of the Bible was broadcast across the country on radio and undermined their long-term goals; it is now legal to teach evolution in all states.

Public fascination with trials can be traced to the colonial era when ministers would preach sermons on the occasion of public executions. These sermons often provided lurid details of the crime, but their primary purpose was to persuade the condemned to repent and to instruct the audience in proper moral behavior. These sermons were often printed for wider distribution. The tradition of printing execution sermons continued into the early republic era. In the 18th century, the genre of true-life crime stories began to emerge in England, although the detective novel would not arise for another century with

the publication of Edgar Allen Poe's *The Murders in the Rue Morgue*. The public's fascination for salacious details about criminals and trials continued to be satisfied by dime novels and media coverage in the "penny press," tabloids, and by yellow journalism in the 19th century.

The introduction of radio and television as forms of mass communication revolutionized the speed and depth of media coverage that could be achieved of a single trial. The term *trial of the century* has been applied to numerous trials, but its originator is not entirely certain. The first trial that the term was applied to was the murder trial of Harry Kendall Thaw, accused of killing Stanford White, the renowned architect, for sleeping with his wife, Evelyn Nesbit, before they were married. The two trials that followed were heavily covered by the media, and public attention was captivated by the sensational testimony of Nesbit and Thaw. The jury deadlocked in the first trial, and then Thaw was acquitted using a defense of temporary insanity based on Nesbit confessing to him that she had lost her virginity to White and



Lizzie Borden was tried for killing her father and stepmother with a hatchet in 1892: pictured is the jury from her trial. The murders and the trial became an infamous case, arousing widespread controversy and public debate. Borden was acquitted and no other individual was ever arrested for the murders. The dispute over the identity of the killer continues to the present day.

that he, White, had abused her. Since the Thaw trial, numerous other trials have been termed *trial of the century*, and it is generally used to mean any sensational trial, such as the Leopold and Loeb kidnapping and murder trial in the 1920s, and the 1930s trial of Bruno Richard Hauptmann, convicted and executed for the kidnapping and murder of Charles A. Lindbergh, Jr.

Pretrial Proceedings

As a defendant moves from arrest to trial, there are several steps that are normally undertaken prior to the start of a formal trial. The exact names and order vary from jurisdiction to jurisdiction; however, the following is a rough idea of the pretrial, postarrest process that most criminal defendants go through. The initial appearance, also called arraignment in some states, must take place within 48 hours of arrest, as must some form of hearing to determine if there is probable cause to detain the defendant. During the initial appearance, the judge reads the defendant his/her rights, appoints counsel, and set bail. In some states, this is also the stage at which the defendant will enter a plea (guilty or innocent). In all federal cases, the Fifth Amendment of the Constitution requires that a grand jury hear the prosecution's evidence to determine if there is probable cause to prosecute. The level of evidence required is low, and the defendant has no right to present evidence. In many states, an indicting jury can be used with a simple written statement of facts presented by the district attorney's office, as the Supreme Court determined in *Hurtado v. California* that the Fifth Amendment's requirement for a grand jury is not incorporated to the states. At the preliminary hearing, which can take place several weeks after arrest, both sides are represented by counsel, who present evidence before a judge to see if there is sufficient evidence to go to trial; if there is, then a trial date is set. Initial motions to suppress evidence, change the venue, request discovery, or even dismiss the case are often made at this stage. Some states have a separate taking of the plea that occurs after or during the preliminary hearing rather than at the initial appearance.

Trial by Jury

The traditional method of trial in the United States is trial by jury. The defendant does have

a right to waive a jury trial in favor of a bench trial, but this is usually only done if the defendant believes that the jury will be swayed by the emotional nature of the case into deviating from the black-letter law. The Constitution of the United States provides multiple safeguards for a fair trial and gives criminal defendants several rights. However, until after the Civil War, these rights were not applicable to the states. Indeed, it was not until the 20th century that the Supreme Court began to use the Fourteenth Amendment to incorporate the rights guaranteed in the Bill of Rights to the states. The Supreme Court incorporated the jury requirement of the Sixth Amendment in *Duncan v. Louisiana*. The defendant was convicted of a simple misdemeanor battery, with a potential sentence of two years' imprisonment, but was sentenced to only 60 days. The court held that the Sixth Amendment did apply to the states in all cases that would be tried by a jury under federal law. Today, this means that a defendant has a right to trial by jury for all crimes that can lead to more than six months in prison.

The majority of cases involving violation of the right to a jury have revolved around the impartiality, composition, and number of jurors. In *Irvin v. Dowd*, the court held that because eight of the 12 jurors believed the defendant guilty before the start of the trial, a violation of the Sixth Amendment had occurred. In *Apodaca v. Oregon*, the court held that the Constitution does not require a unanimous 12-person jury to convict. In *Taylor v. Louisiana*, the court found that the jury must represent a cross-section of the county, though in the United States, women were not permitted to serve on juries until the 1950s in most states. In *J.E.B. v. Alabama ex rel. T.B.*, the court held that a juror cannot be excluded on the basis of gender.

Presentation of Evidence

The primary part of a trial is the presentation of evidence to prove that the defendant was the perpetrator of the crime. The elements of a crime that need to be proven are actus rea (a voluntary act or culpable omission), mens rea (the state of mind the defendant must have when he/she perform the actus rea), causation (cause-in-fact and proximate), and result. Conversely, the defense presents evidence to prove that one element of the crime was not proven by the prosecution

or that there is a valid defense for commission of the crime. The elements of most crimes have not changed much over the past 300 years, but the methods of detection of criminal acts have improved dramatically over that same period. The burden of proving all elements of the case is on the prosecution. The standard for all felonies in the United States is beyond the reasonable doubt of an average person.

A defense can challenge any element of the crime. Defenses that challenge the *actus reus* are case-specific as they attempt to show that the defendant did not commit the criminal act or had no duty to act. In common law, there is no duty to aid another person unless you put the person in danger or have a special relationship that creates a duty to aid. If a person enters into a conspiracy to commit a crime, it is not enough to withdraw from the conspiracy; the person must also notify authorities of the conspiracy. Similarly, defenses that attempt to show that there was no causation between the defendant's actions and the resulting criminal act are case-specific. Some well-established defenses have developed regarding the *mens rea* required for the commission of a crime under the common law.

In establishing his/her defense, a defendant is given wide leeway in presenting his/her case. The complexity of trials has grown dramatically in the past 100 years as more sophisticated scientific techniques have been introduced to detect, investigate, and prosecute criminals. The increased use of scientific techniques has given rise to the use of expert witnesses in criminal trials. An expert witness is a person who, through education or experience, has developed knowledge on a given subject, typically scientific, business, or technical. The witness can only be called to provide testimony that is not common knowledge of the average fact finder or to establish the chain of custody of evidence tested. Today, the most common expert witnesses are crime lab technicians to explain evidence gathered at the scene of a crime, including DNA, fingerprints, and other samples.

Technology and Evidence

The use of fingerprints in the United States began in New York City in 1902. It was initially used as a method to track civil servants but was quickly adapted to criminal detection. Although used in previous convictions, the first case to clearly state

that fingerprint evidence was admissible against a criminal defendant was the 1911 *People v. Jennings*, in which the Illinois Supreme Court upheld their use against Thomas Jennings in a case of murder and robbery of Clarence Hiller. Jennings had previously been fingerprinted after a parole violation had led to his temporary reincarceration the previous year; these prints were matched to a set found in the victim's home. An expert was called to testify that in his opinion the prints from the crime scene matched Jennings's. After conviction, Jennings appealed, claiming that fingerprint evidence was inadmissible under the common law, but he lost the appeal. The admissibility of fingerprints was upheld by other states and extended to include palm prints in Nevada in 1918 and footprints in Massachusetts in 1938. Early use of fingerprints was not without its flaws.

The use of deoxyribonucleic acid (DNA) in criminal trials to establish both the identity of victims and perpetrators has become so universally accepted that it is often forgotten that it was only introduced in the 1980s. DNA profiling, pioneered by Alec Jeffreys, is the comparison of a biological sample (e.g., blood, hair) taken at a crime scene for comparison to a sample taken from an individual to link him/her to the crime scene. In *State v. Searles*, the Kansas Supreme Court upheld the admissibility of expert testimony that the blood found in the back of the defendant's truck was the same blood type as the victim's blood and that only a small percentage of the population had that blood type. The defendant had argued that statistical evidence was speculative and therefore was not admissible. The court denied the appeal, holding that statistical evidence based on facts was admissible in felony trials.

The United States Supreme Court has upheld the admissibility of scientific evidence if it derives from a well-recognized scientific principle and the test has been sufficiently established in the scientific community. In *Frye v. United States*, the court upheld the use of the systolic blood pressure test as lie detector test as it had received general acceptance among the scientific community. The standard of general acceptance remained in place until the court overturned it in *Daubert v. Merrell Dow Pharmaceuticals Inc.*, replacing it with a much laxer standard arising from scientific method and pertaining to scientific knowledge. This new

standard meant that all scientific evidence was admissible if relevant, reliable, and previously subjected to peer review of the scientific community.

Insanity and Temporary Insanity

One of the early uses of expert witnesses was to prove an insanity defense. With the rise of the view that insanity was a medical condition came the defense that the defendant lacked the competence to know he/she was doing wrong and therefore should be excused from his/her actions. The concept that idiots and lunatics should not be held criminally accountable for their acts was well established in the common law before the 19th century. The related defense of provocation was well established before the 19th century. Provocation is when a person is pushed into temporary loss of control, which is limited to physical assault, mutual combat, or catching a spouse in the act of adultery. But provocation is limited to the crime of murder and only serves to mitigate the murder to voluntary manslaughter, thus making it only a partial defense. In contrast, temporary insanity can be a full defense as it asserts that the defendant lacked the intent to commit the crime.

The standard for determining insanity was established in the English case of *Daniel McNaghten*, who murdered Edward Drummond, the prime minister's private secretary. The court held that for a defense of insanity to be valid, the defendant had to be laboring under such delusions that he/she could not tell right from wrong. This test was adopted by most U.S. jurisdictions, although a few used broader definitions such as irresistible impulse akin to a wild beast or that mental disease in general could be grounds for acquittal. The first use of the defense of temporary insanity in the United States was made by Daniel Edgar Sickles in 1859. Sickles admitted to killing Phillip Barton Key, then district attorney for the District of Columbia, because he found out that Key was having an affair with his wife. His attorney, Edwin Stanton, argued that Sickles was driven temporarily insane by the graphic confession of the affair given to him by his wife before he murdered Key. The jury accepted the defense and acquitted him of the murder. Sickles went on to become a major general in the army, and his lawyer later became secretary of war.

The temporary insanity defense has given rise to many of the memorable defenses in the lexicon

of American trials, including the Twinkie defense, taxicab driver defense, the closely related Matrix defense, and, more recently, the gay panic defense. In 1978, Dan White was charged with the murders of San Francisco Mayor George Mascone and City Supervisor Harvey Milk. During the trial, he asserted the defense of insanity based on depression. Part of the evidence presented by psychiatrist Martin Blinder that White was depressed was his change in diet from health foods to junk foods. The media ran with this depiction and erroneously reported that he was claiming to have been driven insane by the sugar in the foods, which is incorrect as the change in diet was evidence of mental illness, not its cause. White was found guilty of the lesser crime of voluntary manslaughter. A few years later John Hinckley, Jr., attempted to assassinate President Ronald Reagan, wounding him and his press secretary, James Brady. At trial, Hinckley's lawyers argued that the shootings were the result of Hinckley's fixation on Jodie Foster and his belief that if he reenacted part of a movie, he would impress her. The jury found Hinckley not guilty by reason of insanity, and he was committed to a state mental hospital.

A combination of provocation and temporary insanity has arisen in the gay panic defense, which claims that the defendant was provoked into attacking because of homosexual romantic or sexual advances that drove him/her into a state of unusual violence. This defense has been less successful than other insanity defenses. However, it has led to some deadlocked juries in the United States and has been successfully employed in other countries to mitigate murder to voluntary manslaughter.

Sentencing

A defendant has the right to present mitigating factors that would lean toward a lesser sentence. Among the factors that are often taken into account are age, maturity, lack of a previous criminal history, and probability of recidivism. During the sentencing phase, the victim or his/her family is usually granted the right to address the court. The effect of mitigating factors has been limited by the increased use of mandatory minimum sentencing in the last quarter of the 20th century as legislatures sought to remove discretion from trials. As several commentators have

noted, the introduction of mandatory sentencing simply transferred discretion from the hands of judges to district attorneys, as the crime with which the defendant is charged or pleads to will have a greater effect on the sentence than mitigating factors presented to the judge or jury.

Conclusion

The core crimes and method of criminal prosecution for felonies in the United States has remained fairly constant since the colonial era. The major changes that have occurred are the increased use of scientific evidence in trials, increased media attention to a select group of trials, and the increase of defendant rights. However, the increased use of plea bargaining and other changes have led some academics to argue that the death of the American trial is imminent as jury trials become more costly and less frequent.

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See Also: Colonial Courts; Common Law Origins of Criminal Law; Court of Common Pleas; Court of Oyer and Terminer; Court of Quarter Sessions; Courts; Courts of Indian Offenses; Defendant's Rights; Due Process; Famous Trials; Insanity Defense; Juries; Sentencing.

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Truman, Harry S. (Administration of)

President Harry S. Truman (1884–1972) played direct and indirect roles in the understanding of crime and punishment in the United States during his time in the White House. The Truman administration was particularly concerned about youth crime. For example, Attorney General Tom Clark noted as early as 1946 that juvenile crime was on the rise. According to Attorney General Clark, boys under the age of 18 were increasingly arrested for crimes such as homicide, theft, and rape. Because of these concerns, Truman issued a presidential proclamation in 1948 that called for a national conference to address the prevention of juvenile delinquency. The concerns of the 1940s spilled over into the 1950s, a decade that saw numerous news and magazine reports of depravity among the youth. In the minds of many, the budding concerns of the Truman administration seemed to be realized when pop culture embraced the music of Elvis "The Pelvis" Presley and movies such as James Dean's *Rebel Without a Cause*.

Influence in the Law

President Truman nominated Tom Clark, his attorney general, and Sherman Minton to the U.S. Supreme Court; Justice Clark served for nearly 18 years, and Justice Minton for seven. These justices were involved in several noteworthy cases that impacted crime and punishment in the United States. These cases include *United States v. Rabinowitz* (1950), a case in which the Supreme Court ruled that the Fourth Amendment permitted warrantless searches incident to lawful arrest; *Feiner v. New York* (1951), in which the court ruled that speech inciting a riot was not protected by the First Amendment; and *Stack v. Boyle* (1951), which ruled that bail could not be set higher than necessary to ensure the defendant's presence at his or her trial.

Perhaps the case most related to crime and punishment decided by the Supreme Court during the Truman administration was *Wolf v. Colorado* (1949). *Wolf v. Colorado* is a case in which the U.S. Supreme Court incorporated, or made applicable to the states, the protection of the Fourth Amendment's prohibition against unreasonable search



President Harry S. Truman issued a unusually large number of presidential pardons (1,913), many of which were conscientious objectors who refused to fight in World War II.

and seizure. *Wolf* had a widespread legal impact, and the extent of the rule against unreasonable search and seizure is still being determined.

The Truman administration played a major role in these cases beyond the participation of Truman's appointments to the Supreme Court. The Justice Department, in particular the solicitor general, who is a presidential appointee, must decide which cases the federal government will appeal from lower courts and also serves as the U.S. attorney during oral arguments at the Supreme Court. The solicitor general also must decide whether to issue an amicus, or friend of the court, brief detailing the position of the federal government in a particular case. The importance of these briefs should not be understated, as they have impact on which cases the Supreme Court chooses to hear and, potentially, on how the court decides a case.

Civil Rights and Pardons

Truman played a major role in protecting the rights of African Americans while he was president. Isaac

Woodward, a veteran of World War II, was beaten and blinded, while wearing his uniform, by police officers in his home state of South Carolina. When President Truman was told of this event, he was furious, and ordered a Justice Department probe. The investigation led to a federal trial of several police officers, all of whom were found not guilty. Although the verdict was a political hit against the Truman administration, the impact of the Isaac Woodward incident perhaps led Truman to later sign Executive Order 9981, which desegregated the armed forces. Truman also formed the President's Commission on Civil Rights, which recommended antilynching laws, and the Truman administration offered an amicus brief in *Shelley v. Kraemer* (1948), a case in which the Supreme Court unanimously deemed housing covenants to be illegal.

Communism was among the biggest fears in American history, and the so-called Red Scare began during the Truman administration. During the Truman administration, there were several key international events that led to fears of communism at home. After World War II ended, the Soviet Union increased its satellite nations in eastern Europe, the pro-United States government in China fell to communist Mao Zedong, and communist North Korea invaded American ally South Korea. At home, the fear of spreading communism led to many actions by Congress and the president. President Truman himself issued Executive Order 9835 requiring the loyalty of any federal worker. Although President Truman was a committed anticommunist, he took issue with the tactics of Senator Joe McCarthy's crusade against communism.

One key to understanding how presidents impact policy, lawmaking, and law enforcement is to understand the unilateral powers of the presidency. One such unilateral power is the constitutional power to pardon. The power to pardon is found in Article II, Section 2 of the Constitution. The pardon is intended to be a check on the judicial branch; a fear of the authors of the Constitution was that a judge might provide a punishment that was not commensurate with the crime the person committed. There are few limits to the president's power to pardon, with impeachment being the lone instance in which a presidential pardon is not allowed. Truman issued 1,913 pardons. This was an unusually

large number of pardons. By comparison, President Dwight Eisenhower issued 1,110, President John F. Kennedy issued 472, and President Lyndon Johnson issued 960 pardons. Perhaps the most interesting pardon issued by Truman was one in which he pardoned approximately 1,500 conscientious objectors who had refused to fight in World War II, and also who had refused alternative service to the country. The pardon returned voting rights and other rights of U.S. citizenship, in addition to deleting the conscientious objectors' charges and imprisonment from official records.

Conclusion

In many ways, from the appointment of Supreme Court justices and other federal judges to the issuing of pardons that limited those judges' influence to involvement in expanding civil rights of African Americans to roles played in key anti-communist legislation, Truman and his administration had major impact on the understanding, implementation, and enforcement of key aspects of crime and punishment in the United States.

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See Also: 1941 to 1960 Primary Documents; Dewey, Thomas; Eisenhower, Dwight D. (Administration of); Roosevelt, Franklin D. (Administration of).

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Twining v. New Jersey

The Fourteenth Amendment (ratified in 1868), states that "No state shall deprive any person of

life, liberty or property without due process of law." It was intended to limit state power to enact laws regulating certain areas of life, and the procedures states use when prosecuting the criminally accused. *Twining v. New Jersey* (1908) raised an issue under the Fourteenth Amendment of procedural fairness in criminal proceedings. In *Twining*, the Supreme Court considered whether the Fifth Amendment's privilege against self-incrimination (which at the time applied only to the federal government) is a procedural guarantee that also applies to criminal proceedings in state courts. The court held that the right against self-incrimination is not part of the meaning of due process found in the Fourteenth Amendment. Rather, it is a nonessential procedural guarantee that is unnecessary to prevent arbitrary abuse of state power. In doing so, the court adopted the doctrine of selective incorporation, an approach that considers on a case-by-case basis whether some provisions of the Bill of Rights also limit the power of the states.

State regulators charged Albert Twining and David Cornell, directors of the Monmouth Trust & Safe Deposit Company, with a misdemeanor for falsifying documents on the financial condition of the bank. At trial, Twining and Cornell refused to take the stand in their own defense. New Jersey law allowed a trial judge to instruct a jury that they could draw the inference of guilt from a defendant's refusal to testify. The judge appeared to do so by stating "... the fact that they stay off the stand, having heard testimony which might be prejudicial to them, without availing themselves of the right to go upon the stand and contradict it, is sometimes a matter of significance." However, the judge later indicated that the jury should not interpret Twining's refusal to testify as prejudicial. Because the Supreme Court determined that the privilege against self-incrimination was a nonfundamental procedural guarantee, it never took up the issue of whether these jury instructions actually impaired Twining's right. Twining was found guilty and sentenced to six and one-half years in prison.

In upholding the New Jersey law, the Supreme Court defined due process in the Fourteenth Amendment as any legal concept or guarantee that is "a fundamental principle of liberty and justice which inheres in the very idea of free government and is the inalienable right of a citizen of such a government." The right against self-incrimination,

the court argued, is not part of the meaning of due process based either upon this formulation or upon historical analysis. Rather, while a guarantee against self-incrimination is a useful principle of law, the court determined it is not essential for preventing a state from acting arbitrarily through its courts. States may include the guarantee in their own laws or state constitutions (in 1908, all but Iowa and New Jersey did), but the Fourteenth Amendment does not require this.

The court outlined an organic approach to due process that emphasized historical developments in law, and the norms, traditions, and usages of a people. For example, the Supreme Court explicitly refused to apply the entire Bill of Rights as a limitation on the power of state government, opting instead for selective incorporation. Under the selective incorporation doctrine, the court may apply some of the Bill of Rights to limit the power of the states, "... not because those rights are enumerated in the first eight amendments, but because they are of such a nature that they are included in the conception of due process of law." The court went on to examine the historical evolution of the concept of due process, and to explore the American tradition of rights identified as "fundamental principles of liberty and justice which lie at the base of all our civil and political institutions." Historically, the privilege against self-incrimination was distinct from due process, and thus could not be considered part of the meaning of due process in the Fourteenth Amendment. Furthermore, it is not fundamental to ordered liberty because state courts comply with all constitutionally mandatory procedural due process requirements when they determine that they have jurisdiction, act in conformity to general laws, act upon evidence, provide notice to parties, and provide an opportunity for them to be heard.

The selective incorporation approach in *Twining* typifies the Supreme Court's early 20th century analysis when balancing individual interests against governmental power. For example, in *Twining*, the court stated that nothing is more fundamental than the right of a state to govern in accordance with the wishes of its people. The presumption in favor of the state rarely resulted in the vindication of the individual exercise of liberty. However, by the latter half of the 20th century, societal conceptions of fundamental fairness

had changed. In 1964, the Supreme Court overturned *Twining*, holding that the privilege against self-incrimination is part of the due process found in the Fourteenth Amendment.

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See Also: Due Process; *Gideon v. Wainwright*; Trials.

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Tyler, John (Administration of)

Vice President John Tyler (1790–1862) served as the 10th president of the United States, assuming office after the death of President William Henry Harrison. He was the first vice president to ascend to the presidency upon the president's death. In the wake of constitutional silence on the succession issue, Tyler established the precedent of assuming full presidential powers rather than the lesser role of acting president. Tyler was a Democrat turned Whig whose conflicts with Congress led to his use of the presidential veto power. The key event of the Tyler administration was the debate over Texas' admission to the Union as a slave state.

John Tyler's political career began in 1811, when he was elected to the Virginia legislature as a Democrat at the age of 21. He also served as Virginia governor and in the U.S. House of

Representatives and Senate. Tyler's early political career shaped his views and he became known as an advocate of the supremacy of states' rights over the federal government and a strict interpretation of the Constitution. He was a southern slaveholder and opposed federal restrictions on slavery's expansion. He also became known as a political maverick willing to oppose Democratic Party leader Andrew Jackson. Although he was a Democrat, the Whig Party chose Tyler as vice presidential candidate on the ticket with William Henry Harrison in the 1840 presidential election because of his differences with Jacksonian Democrats and his ability to attract southern voters.

The Whig ticket defeated Democratic incumbent Martin Van Buren, but Harrison died one month into his presidency. Tyler assumed the office on April 4, 1841, creating a constitutional crisis, as he was the first vice president to succeed to the presidency upon the president's death. Some politicians argued that he was simply an acting president. Tyler disagreed and assumed the full powers and duties of the office, thereby establishing future precedent, despite critics who nicknamed Tyler "His Accidency." There was no constitutional guidance on succession, which would not be added until the Twenty-Fifth Amendment in 1967.

Tyler's ascension to the presidency led to his rejection by Whigs, who were willing to accommodate his political differences as vice president but not as president. They were also angered over his vetoes of a Whig-supported act to establish a national bank, resulting in the resignation of most of the cabinet members he had inherited from Harrison. He had already alienated the Democrats and thus largely functioned as a political independent. Tyler's divisions with Congress were apparent through his use of the presidential veto power against several key pieces of legislation, including the chartering of the Third Bank of the United States, a tariff he believed violated the principles of an earlier compromise tariff of 1833, and the distribution of public land sale proceeds to the states.

Tyler demonstrated his belief in state sovereignty through his reaction to Dorr's Rebellion in Rhode Island in 1842. The rebellion, led by

Thomas Wilson Dorr, sought to implement universal manhood suffrage by force when legal means had failed. Dorr himself traveled to Washington, D.C., and personally petitioned Tyler for his assistance, but Tyler denied the request, as he believed the affair to be a state matter with which the federal government should not interfere. Tyler's administration also ended the lengthy, expensive Second Seminole War (1835–42) in Florida as the U.S. Army stopped its pursuit of the few hundred remaining Seminoles who refused to emigrate west under the Indian Removal Act of 1830.

The most prominent issue facing the Tyler administration was the congressional debate over the annexation of Texas, which had recently won its independence from Mexico. Most northerners opposed annexation, while most southerners supported annexation as Texas allowed slavery. Tyler approved its annexation, which was accomplished just before he left office when Texas entered the Union as a slave state. Tyler had run for reelection in 1844 through his own third party, but withdrew after receiving little support. He remained a defender of states' rights, but also sought to avoid disunion through participation in the Washington Peace Convention of 1861. He supported Virginia's secession when that failed and was elected to the Confederate House of Representatives. John Tyler died on January 18, 1862, in Richmond, Virginia.

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See Also: Constitution of the United States of America; Indian Removal Act; Slavery, Law of.

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Uniform Crime Reporting Program

Uniform crime reporting refers to a standardized system of offense reporting that allows or mandates that different law enforcement agencies report on the same types of events (such as offenses known to the police or arrests), for the same time periods, using the same offense classifications, and the same rules for counting and classifying offenses.

Uniform Crime Reports

The American history of police reports on crime mirrors the history of American law enforcement in general: Crime reporting is local and of widely varying quality. In order to provide a measure of crime that is comparable across jurisdictions, the International Association of Chiefs of Police (IACP) initiated a uniform crime reporting system in 1927. This became the Uniform Crime Reports (UCR), which are compiled by the Federal Bureau of Investigation (FBI) from information submitted by local and state law enforcement agencies. For most of the last century, Americans have used the Uniform Crime Reports as their measure of the nature and extent of crime.

In his review of the history of crime statistics in America, Michael D. Maltz describes the

sequence of events leading up to the creation of the Uniform Crime Reports. In the legislation creating the U.S. Department of Justice in 1870, Congress mandated that the attorney general report annually on federal and state crimes. In the following year, the National Police Association called for police to compile crime statistics. It was not until 1927 that the IACP (the successor organization to the National Police Association) formed a Committee on Uniform Crime Records. The committee included William P. Rutledge, commissioner of the Detroit Police Department, as chairperson, and August Vollmer, who was chief of the Berkeley, California, Police Department.

At its first meeting, the committee formed an advisory committee that included J. Edgar Hoover and W. M. Stuart of the Bureau of the Census. The committee's work led to the publication of *Uniform Crime Reporting* by the IACP in 1929, and police departments around the country began to collect data based on the uniform format. The first monthly reports of offenses known to the police were published by the IACP in 1930. The FBI took over the task of publishing the Uniform Crime Reports later that year. As Maltz observes, any attempt to measure crime confronts three questions: (1) What type of data should be collected? (2) Who should collect the data? and (3) How accurate are the data?

Types of Data

Early advocates of uniform crime statistics favored the use of statistics based on court convictions. But the IACP Committee on Uniform Crime Records favored the view of August Vollmer that reports of “offenses known to the police,” either through citizen complaints or through police observation, furnished the best measure of the amount of crime occurring. His view was seconded by pioneering criminologist Thorsten Sellin, who argued that the value of a measure as an indicator of the “criminality” of a jurisdiction decreased as the number of procedures between the criminal event and the report increased. Judicial and correctional statistics, because they exclude crimes in which no offender is identified, underestimate the amount of crime. Further, these statistics are influenced by all the variables that affect judicial and correctional decision making.

A related question concerns which offenses should be included in uniform crime reporting. The IACP committee selected seven offenses: murder (including non-negligent manslaughter), rape, robbery, assault, burglary, larceny, and auto theft). Clayton J. Mosher, Terance D. Miethe, and Dretha M. Phillips note that these crimes are prevalent and widely agreed to be serious offenses and are likely to be reported to the police. These seven offenses are referred to as “Part I Offenses” and “Index Offenses.” In 1978, arson was added by an act of Congress as an eighth Part I Offense. The FBI compiles data on the Part I offenses for offenses known to the police and for arrests. For a second set of offenses—Part II offenses—local law enforcement agencies report arrest data to the FBI.

The Part I Offenses have a long history in the common law of crime and capture the main elements of criminal behavior, namely theft and violence. Nonetheless, the index offenses do not include many crimes of great interest to police, policymakers, and the public. Notably, offenses involving possession and dealing in controlled substances are excluded, as are acts of intimate partner violence that do not rise to the level of aggravated assault. Another of the foremost criminologists of the 20th century, Edwin Sutherland, noted that white-collar crimes are also ignored. More broadly, the crimes of the wealthy and powerful (crime in the suites) are neglected compared

to the crimes of the working class and poor (crime in the streets).

Collection of Data

Because law enforcement is administered in the United States through thousands of local agencies, there was an obvious need for oversight and administration of data collection at the national level. Although some groups advocated using the Bureau of the Census, the IACP report on Uniform Crime Reporting called for the effort to be housed at the Bureau of Investigation (later the FBI) in the U.S. Department of Justice. This arrangement was implemented in 1930 and has remained in place ever since.

Accuracy of Data

There is no gold standard in the measurement of crime. All crime measures are based on compiling reports from observers with their own biases, including victims, offenders, and police officers. All police statistics, no matter how scrupulously they are collected, can capture only those offenses that citizens report or that the police detect. There is a “dark figure of crime”—offenses that are not reported. Crime analysts generally assume that, with the exception of rape, more serious crimes are more likely to be reported than minor crimes. Therefore, more reliance is placed on murder data from the UCR than other data. Another problem that plagues police measures is “cooking the books.” Because crime statistics may be used to measure the effectiveness of the police in reducing crime, there is always the temptation to manipulate the statistics to make crime problems appear less extensive than they really are.

The uniform classification and reporting of offenses under the uniform crime reporting system also leaves room for error. There may be discrepancies between the definitions of offenses in the *UCR Reporting Handbook* and state statute. Further, the rules for counting are complicated in their treatment of attempted crimes, the number of separate offenses to be counted in multiple offense incidents, and the application of the FBI’s hierarchy rule, which mandates that when multiple offenses are committed in the same incident, only the most serious offense is to be counted and the rest are to be ignored. For example, in the case of an offender who breaks into a house,

steals some credit cards, and rapes one of the occupants, only the rape is counted. Yet another issue is who reports a crime when several different agencies respond to the same call for service.

Many agencies submit incomplete reports to the FBI, omitting data for some time period. The FBI uses imputation procedures to estimate the number of crimes occurring annually in such cases. Researchers have questioned these procedures, which ignore seasonal variations in the number of crimes reported and assume that similar size population units have similar crime rates. The FBI uses several methods to improve data quality, including training and education, tests of the logic of and reasonableness of the data, the soundness of the aggregated statistics, and a quality assurance review process.

Interpreting Crime Statistics

Every year when the Uniform Crime Reports are released, media outlets report that crime has increased or decreased in a local jurisdiction or nationwide. Although the bureau notes

that they cannot vouch for the accuracy of such statistics, these disclaimers are usually ignored. For the media and for many politicians, crime as measured by the UCR is actual crime. Mosher, Miethe, and Phillips note that the FBI has done little to discourage this practice. In fact, J. Edgar Hoover used the UCR to bolster his own assertions about trends and causes of serious crime. This practice continues to this day: the press release from the FBI for the 2010 Uniform Crime Reports begins by making assertions about the estimated number of violent crimes and property crimes (and not numbers of offenses known to the police).

In 1958, the FBI began to estimate national crime rates for each of the Part I Offenses and to report indexes of violent crime, property crime, and “total” crime based on the rates of index offenses. The UCR crime rates are crude crime rates that are computed by simply dividing the number of offenses occurring in a calendar year by the estimated population of the jurisdiction, and multiplying this number by 100,000. This yields a rate per 100,000 population. It is described as a crude rate because it is computed for the population as a whole and not for subgroups or other units that are most likely to be affected. For example, the rate of motor vehicle theft is not reported per 100,000 motor vehicles, but per 100,000 persons.

The rates for each offense may be added to create the index offense rates for violent crimes, property crimes, and a total crime rate. Great care must be taken in interpreting these rates, because generally, the more serious a crime is, the less frequently it occurs and the less it contributes to overall crime rates. Thus murder, the most serious of the index offenses, is typically around one tenth of 1 percent of all index crimes, while larceny-theft, the least serious index offense, is about 60 percent of all index crimes. There are more larceny-thefts committed each year than the combined total of all other index offenses. Another issue is the comparison of crime data across time and across jurisdictions. The accuracy of UCR data is plagued by a number of different threats. As a result, attempts to determine whether City A has more crime than City B, or whether crime has increased or decreased over time in City A, must proceed with caution. One method of smoothing



J. Edgar Hoover, the director of the Federal Bureau of Investigation (FBI), and W. M. Stuart headed a committee to create a uniform crime reporting system, which the FBI continues to use. Hoover is pictured in his FBI office in 1940.

out random fluctuation in crime rates is to average them over a three-to-five-year period.

Incident-Based Crime Measures

In 1962, the FBI began collecting data on the characteristics of homicide offenses, victims, and offenders and reporting them in the *Supplementary Homicide Reports*. This was the first example of collecting data based on the characteristics of crime incidents, as opposed to a summary count of offenses such as the Uniform Crime Reports. After extensive review and consultation with the IACP and a number of experts on crime measurement, the FBI and the Bureau of Justice Statistics issued the *Blueprint for the Future of the Uniform Crime Reporting Program* in 1985. The *Blueprint* recommended that law enforcement agencies move to an incident-based reporting system for all offenses. After piloting these ideas in South Carolina, the FBI presented the National Incident-Based Reporting System (NIBRS) in 1988.

NIBRS does not present an aggregated, summary count of offenses like the UCR. Instead, it presents data on characteristics of victims, property targets of offending, offenders, incidents, and offense characteristics. This creates a wealth of offense data that is potentially of great utility, but it also demands that law enforcement agencies have crime information system software and hardware that are up to the task. There are other variables to implementing NIBRS (or similar incident-based systems). Since police officers are not primarily concerned with the completeness of data for research purposes and may not be diligent in completing the detailed reports, missing data is a problem. Mosher, Miethe, and Phillips note that the incentives for the police to go to the trouble and expense of participating in NIBRS are not immediately clear. They also note that, since NIBRS eliminates the hierarchy rule used in the UCR (described above), reporting NIBRS data may make it appear that index offenses have increased dramatically.

Incident-based data is regarded as essential by crime analysts. Crime analysis involves using crime data and other relevant information for the purposes of detecting, analyzing, and responding to crime and related problems. Many police departments have incorporated crime analysis into their

strategic and tactical responses to crime. But in addition to the information that NIBRS provides, analysis requires data on locations and their characteristics for purposes of mapping and crafting responses based on making locations less tempting places for crime to occur. As incident-based reporting becomes less cumbersome with technological advances, and as police officers begin to find utility in this approach, it should become more common. Since the change to incident-based systems is voluntary for most law enforcement agencies, the process will take some time.

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See Also: Common Law Origins of Criminal Law; Crime and Arrest Statistics Analysis; Crime Rates; Federal Bureau of Investigation; Hoover, J. Edgar; International Association of Chiefs of Police.

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United States Attorneys

The 93 U.S. attorneys represent the United States in all legal matters in which the United States has an interest. While the United States has interests in both civil and criminal matters, the bulk of the work performed by U.S. attorneys involves the prosecution of federal criminal offenses. Created

in 1789, the function of U.S. attorneys has not changed significantly. This does not mean the position has remained static. Over time, the position has gained stature, grown in numbers, increased its workload, and lost some independence. As a result, U.S. attorneys have featured in most of the nation's significant legal battles. As the legal representatives of the United States, U.S. attorneys appear before federal district and circuit courts throughout the nation. They represent the government in cases when the government is sued, such as civil rights violations, and they prosecute federal criminal offenses. This latter role generates the most attention and controversy.

History

Created by the Judiciary Act of 1789 by the first Congress, U.S. attorneys were spread among the 13 district courts to represent the government in all legal matters occurring in the respective courts. Congress gave the president the power to appoint each U.S. attorney. The first U.S. attorneys primarily brought civil lawsuits to collect money owed to the United States either by its officers or those who evaded taxes. They were paid on a fee basis, meaning that they could only work for the government on a part-time basis.

While their civil function consumed much of their time, their prosecutorial role garnered the most controversy. U.S. attorneys soon became a means to implement government policy. In 1793, the government proclaimed neutrality when war began between Great Britain and France. To enforce neutrality, U.S. attorneys prosecuted Americans who fought for one side or the other. Five years later, U.S. attorneys prosecuted newspaper writers and a congressman who criticized President John Adams's policies. U.S. attorneys, however, were not merely tools of the president. They exercised independent authority to pursue, or refuse, criminal charges. President Thomas Jefferson imposed an embargo on all foreign trade. Though he had selected all of the U.S. attorneys, not all enforced the embargo as Jefferson wished. Instead, they sided with local merchants who strongly opposed the trade embargo. Despite his efforts, Jefferson could not force cases upon them.

Over time, the U.S. attorney position changed but maintained its original function. The position's independence decreased while it increased

in reputation, workload, and numbers. At first, few people wanted to become U.S. attorneys. It was not a lucrative position, and it detracted from private practice. Over time, the position became more prominent. Those who held U.S. attorney positions used them to obtain higher offices or to move to the judiciary. As the position rose in prominence, attorneys with more ability filled the positions, providing the United States with better representation.

Evolution

While the initial workload of U.S. attorneys was burdensome only to their private practices, with the end of the Civil War, the government's legal business increased dramatically. At first, they handled claims for reimbursement from veterans. Soon after, they began enforcing new civil rights laws. These cases proved remarkably difficult for U.S. attorneys. They often lacked the support of the attorney general, the presiding judges, and the members of juries. After that, U.S. attorneys turned to antitrust and national security. Throughout this process, the need for assistants increased. As more assistants were appointed, the power of U.S. attorneys increased.

To check this increasing power, discretionary authority for some crimes began shifting from the U.S. attorneys to the Department of Justice. To cope with the increasing workload and to unify the government's legal positions, Congress created the Justice Department in 1871 and mandated that U.S. attorneys answer to the attorney general. Prior to that point, there had been several executive officials to whom U.S. attorneys answered but these officials lacked significant power. With the creation of the Justice Department, a cabinet-level official controlled all government litigation.

Despite this control, U.S. attorneys still filed criminal cases without oversight from the Justice Department. This led to questionable prosecutorial decisions. For example, during World War I, ambitious U.S. attorneys prosecuted speech-related Espionage Act cases, which was not consistent with the Justice Department's policy regarding such cases. It also led to pretextual prosecutions, prosecutions designed to incapacitate criminals for crimes committed but not prosecutable. The most notorious example of this was the prosecution of Al Capone for

tax evasion. Soon after, the Justice Department began issuing directives requiring department approval prior to filing tax charges. Similar directives followed for racketeering and national security–related offenses.

The ever-increasing workload, coupled with westward expansion and population growth, created the need for more U.S. attorneys. New states meant new judicial districts, and as the population increased, districts within states divided. As the number of U.S. attorney positions increased, the president delegated the appointment task to others. Senators began making recommendations to the president regarding whom to appoint.

Expansion and growth also increased the workload, necessitating assistants for the U.S. attorney. The number of assistants was established by the attorney general, and later by the Justice Department. While this gave the administration some measure of control, the U.S. attorney selected the assistant, making the assistant loyal to the U.S. attorney. In most instances, the assistants left office when the U.S. attorney did. This left the government with talented but inexperienced representation. To resolve this problem and to provide more central control, assistant U.S. attorneys were given the same protections as other government employees.

These changes to the U.S. attorney position made federal prosecutors central players in the legal battles that shaped the United States throughout its history. Today, they serve on the front lines of the domestic war against terrorism. Prior generations dealt with problems of organized crime, Soviet espionage, antitrust, civil rights, and slavery. In each instance, the U.S. attorneys represented the government's position, for better or for worse.

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See Also: Adams, John (Administration of); Alien and Sedition Acts of 1798; Antitrust Law; Capone, Al; Espionage Act of 1917; Fugitive Slave Act of 1793; Fugitive Slave Act of 1850; Jefferson, Thomas (Administration of); Judiciary Act of 1789; Justice, Department of; Neutrality Enforcement in 1793–1794; Organized Crime, History of; Washington, George (Administration of).

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United States v. Ballard

United States v. Ballard, 322 U.S. 78 (1944), is the Supreme Court case prohibiting the government from inquiring into the truthfulness of a religious belief. Edna and Donald Ballard had been convicted for using the mail system to defraud people by falsely asserting that they had the supernatural power to cure illnesses and disease. Fraud is obtaining property under false pretenses. A majority of the court held that a jury may not inquire into whether the Ballards' beliefs were true, only whether the Ballards sincerely believed their beliefs to be true. Guy Ballard was the founder of the I AM movement, one of several 1930s theosophical movements popular at the time. The I AM movement claimed to have 1 million followers in the United States and may have reached over 3 million people through classes and meetings. It taught that a society of liberated and immortal souls worked to guide the evolution of humanity. St. Germain, Jesus, and George Washington were among these ascended masters. Ballard claimed that he was an embodiment of some of these souls and that he possessed miraculous powers to cure afflictions that medical science could not. Ballard, his wife Edna, and their son Donald solicited contributions through the mail in exchange for the promise of being cured. The Ballards alleged that they had healed hundreds of people.

Several former members of the I AM movement questioned the Ballards' claims. After Guy



A portrait of Guy and Edna Ballard hangs at the Saint Germain Foundation, located in Schaumburg, Illinois, outside Chicago. Saint Germain Foundation is the parent organization for about 300 groups using variations of the name I AM.

Ballard's death, his wife and son were tried and convicted of using the mail to defraud their victims by professing to have the power to cure all illnesses. The government charged that the Ballards "knew well" that they were making false claims and that the beliefs about miraculous healing were themselves false. The defendants had allegedly extracted over \$3 million from their followers in their scheme.

The trial judge instructed the jury not to consider the truth or falsity of the Ballards' religious beliefs but only whether they honestly believed they had the powers they claimed. The jury convicted the Ballards on one count of fraud. The government asked the Ninth U.S. Court of Appeals to overturn the judge's instructions and order the trial court to determine whether the Ballards in

fact had the power to heal. The Ballards' attorney responded that the government intended to attack the Ballards' religious beliefs, the free exercise of which is protected by the First Amendment. The Ninth Court sided with the government.

In a 5–4 decision, the Supreme Court overruled the Ninth Circuit Court. Justice William Douglas, supported by Justices Hugo Black, Stanley Reed, Frank Murphy, and Wiley Rutledge, held that the judge's instructions were proper. A jury should only decide whether a religious belief is sincerely held. There should be no attempt to determine whether the belief is actually true. The First Amendment's free exercise of religious belief clause prohibits the government from placing religious beliefs on trial. "Men can believe what they cannot prove." Chief Justice Harlan Stone, along with Justices Felix Frankfurter and Owen Roberts, dissented. He argued that the truthfulness of the claims should be considered by the jury. Stone feared that a religious exemption for fraudulent beliefs would turn the "freedom to worship" into the "freedom to procure money by making false statements about one's religious beliefs." Justice Robert Jackson dissented. He believed that the case should have never come to trial because the government must never entwine itself in disputes over the truth or falsity of any religious belief or doctrine.

Neither Edna nor Donald Ballard served time for their conviction. In a second case, *Ballard v. United States*, the Supreme Court overturned the original conviction. The exclusion of women from their jury violated the federal law on jury selection. *United States v. Ballard* established the constitutional doctrine that the sincerity of religious beliefs may be challenged but not the beliefs' truthfulness. The First Amendment's free exercise clause prevents the government from unfairly burdening individuals' constitutional right to the free and unhindered exercise of their faith. Supreme Court rulings in a long line of cases support the right of small and unpopular groups to spread their message. The *Ballard* case protects minority religions disfavored by mainstream culture by shielding them from government harassment.

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See Also: Douglas, William O.; Religion and Crime, History of; Religion and Crime, Sociology of.

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United States v. E. C. Knight Company

Enacted in 1890, the Sherman Anti-Trust Act was a federal government effort to combat the increasing monopolization of industries during the latter decades of the 19th century. This effort was impeded by the 1895 U.S. Supreme Court's decision in *E. C. Knight*, which held that under the Constitution, the act could only be used to regulate commercial activities, which the court distinguished from the processes of manufacturing.

When the American Sugar Refining Company purchased stock in four sugar refineries in Philadelphia, it gained almost complete control of the nation's sugar refining business. It was charged with violating the Sherman Act, which made it illegal to engage in any "contract, combination in the form of trust, or otherwise, or conspiracy in restraint of trade or commerce among the several States." The Supreme Court was asked to decide whether this was a constitutional exercise of Congress's power to regulate interstate commerce. Article I, Section 8 of the Constitution states that Congress may "regulate Commerce with foreign nations, and among the several States, and with the Indian Tribes." In an 8–1 decision, the court ruled that the Sherman Act was constitutional, but that it could not be used to restrict the purely manufacturing processes of the sugar refineries. Chief Justice Melville W. Fuller wrote the opinion for the majority of the court.

Emphasizing the need to maintain a distinction between congressional power to regulate interstate commerce and the police power of the states (to regulate for the health, safety, and welfare of

their citizens), Fuller reasoned that manufacturing was not a part of commerce. He rejected the government's argument that refined sugar was a "necessary of life" and that the monopolization of its manufacture inevitably affected the commercial relations of "a large part of the population of the United States." Fuller explained that "Commerce succeeds to manufacture, and is not a part of it." He argued that when a company manufactures a product that is intended to be transported across state lines, the manufacturing is not itself a commercial activity. Fuller distinguished between indirect and direct effects on interstate commerce, concluding that manufacturing had only an indirect effect. As such, the manufacturing processes in this case were not commerce and were therefore not subject to the terms of the Sherman Act. They were local activities that could only be regulated by the states.

This approach was emblematic of the formalistic approach to interpreting the Constitution that prevailed in a majority of the court's cases during the late 19th and early 20th centuries. In *Gibbons v. Ogden* (1824), the court concluded that Congress was empowered to "prescribe the rule by which commerce is to be governed." In decisions such as *E. C. Knight*, the court placed significant constraints on this prescription power by adopting a narrow definition of "interstate commerce." In a lengthy dissenting opinion in *E. C. Knight*, Justice John Marshall Harlan argued that the Sherman Act could regulate the sugar manufacturing monopoly because the company was controlling much more than just the manufacture of refined sugar. Adopting the approach of legal realism, which would later dominate the court's decisions, Harlan accounted for the way in which the nation's economy was changing and looked at the economic effects of the sugar trust. He concluded that when "manufacture ends, that which has been manufactured becomes a subject of commerce."

E. C. Knight dealt a blow to efforts to rein in industrial monopolies. However, in *Northern Securities Co. v. United States* (1904), the court held that Congress had the constitutional power to break up a railroad monopoly because at issue was transportation which, unlike manufacturing, was a commercial activity. This demonstrated that the Sherman Act could still be used to achieve some of its original goals. The 1895 decision represented a

triumph for the conservative laissez-faire approach to the regulation of business and a strong fidelity to principles of federalism. However, by the 1930s, changes in the court's personnel had brought a new, more liberal majority to the bench, a majority that adopted many of the realist principles of Justice Harlan's *E. C. Knight* dissent.

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See Also: Antitrust Law; *Gibbons v. Ogden*; Sherman Anti-Trust Act of 1890.

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United States v. Hudson and Goodwin

A U.S. Supreme Court case decided by the Marshall Court in 1812, *U.S. v. Hudson and Goodwin* (11 U.S. 32) held that federal courts lack authority to adjudicate common law crimes. Prior to an inferior federal court rendering a criminal conviction, Congress must statutorily declare the activity to be criminal, assign penalties, and extend jurisdiction over the offense to the federal courts. The defendants in the case, Barzillai Hudson and George Goodwin, were charged with having libeled Congress and President Thomas Jefferson by alleging a conspiracy with Napoleon Bonaparte. As libel was a common law crime that had not been codified by Congress, the broadly defined question of law concerned the power of federal courts to exercise common law jurisdiction in criminal cases.

No Punishment Without Law

Writing the majority opinion, Justice William Johnson, Jr., commenced by observing that the Constitution concedes only express limited powers to the federal government and reserves all others to the states. With reference to the judicial branch, the Constitution provides original jurisdiction only to the Supreme Court, and only with regard to particular cases and controversies. All inferior federal courts, along with their respective jurisdictions, depend entirely upon the will of the legislature. By statute, Congress both creates lower federal courts and defines the authority of their operations. To assume otherwise, according to the court, would permit inferior courts to infinitely and unconstitutionally expand their own authority.

Although the case presented an issue of first impression—that is, an original question of law for which no precedent by earlier courts yet existed—the Marshall Court noted a general acquiescence among legal scholars and public opinion in affirmation of the outcome. The decision served as a validation of Republican convictions, which held—in opposition to Federalist views—that the powers of the federal government were strictly limited to the express grants of the Constitution. Republicans thus denied that federal judicial jurisdiction encompassed a federal common law of crimes.

In dicta, the court recognized an exception for ancillary implied powers of the judiciary deemed necessary for the exercise of vested powers. In order to manage proceedings, vindicate authority, and effectuate decrees, the court admitted that federal courts possessed inherent authority to hold litigants in contempt and to enforce court orders. Later decisions expanded this ancillary jurisdiction in order to appoint prosecutors for criminal contempt actions (*Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787 [1987]) and to compel payment for misconduct sanctions (*Chambers v. NASCO, Inc.*, 501 U.S. 32 [1991]). Although these implied administrative powers are exercised without direct authorization in statute, the court reiterated that federal courts possess no criminal jurisdiction absent statutory authority.

The Marshall Court ratified within American federal jurisprudence the concept of *nulla poena sine lege* ("no punishment without law"), which

prohibits punishment for actions that are not specifically prescribed in law. The principle mirrors the related axiom, *nullum crimen, nulla poena sine praevia lege poenali* (“neither crime nor punishment without previous penal law”), reflected in the Constitution’s prohibition against ex post facto laws. These principles required clarification in light of America’s recent independence from the English common law system and transition to a constitutional republic of limited federal powers.

Effect on Common Law

Within common law jurisdictions, substantial areas of law are almost entirely defined by the common law rather than legislative statute. An inheritance of immemorial custom, ancient reason, and natural law, the English common law is understood to have been discovered over many centuries as courts developed a corpus of judgments suitable to safeguard English liberty. Judicial decisions therefore serve as legal precedent for new cases, which are resolved by analogical reasoning and the principle of *stare decisis et non quieta movere* (“to stand by decisions and not disturb the undisturbed”).

Nearly all U.S. criminal law statutes are codifications of common law crimes and rely heavily upon precedent for clarity and meaning. In order to preserve this common law tradition, some state legislatures have enacted statutes that incorporate the entire common law—insofar as it does not conflict with federal or state statutory law—and thereby permit state courts to continue the common law tradition. Yet the Marshall Court effectively terminated the enforcement of common law crimes at the federal level.

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See Also: Common Law Origins of Criminal Law; Federal Common Law of Crime; Judiciary Act of 1789; Supreme Court, U.S.

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United States v. Nixon

The decision of the U.S. Supreme Court in *United States v. Nixon* (1974), an important landmark in constitutional law, held that even the president of the United States has to comply with requests for evidence from criminal prosecutors.

In this case, President Richard Nixon was attempting to withhold audio recordings of Oval Office conversations that implicated him in a conspiracy to cover up burglaries orchestrated by members of his campaign. The episode as a whole—known as the Watergate scandal—represents one of the worst instances of government corruption and abuse of official power in American history.

United States v. Nixon was the key legal battle in the scandal and led to Nixon’s resignation as president. The conflict began with the botched burglary of the Democratic National Committee headquarters in Washington’s Watergate complex on June 17, 1972. The burglary was part of a wider effort, financed by supporters of the president and led by members of his administration, to use illegal tactics to gain every advantage in Nixon’s bid for re-election. Following the discovery of the break-in, Nixon and his aides used campaign money to bribe the five burglars into silence after they had been tried and convicted.

Under pressure from the press, the president authorized appointment of a special prosecutor to investigate the Watergate break-in. In the course of the investigation, it was revealed that Nixon had maintained an audio recording system in the White House that could confirm allegations of high-level involvement in the crimes. Special prosecutor Archibald Cox subpoenaed the president, asking for these tapes, but the president fired Cox and refused to comply with the subpoena, releasing only edited transcripts of the tapes. Nixon was forced to appoint a replacement



First Lady Pat Nixon kisses Betty Ford while Gerald Ford (left) and President Richard Nixon stand by. The Nixon family was leaving the White house for the last time after Nixon resigned.

special prosecutor, Leon Jaworski, who took the case to the Supreme Court.

Before the court, President Nixon invoked the principle of executive privilege, arguing that the president's conversations with his advisers must remain private in order to ensure frank and open counsel. Nixon argued that this executive privilege was absolute and not subject to judicial review. Further, it was argued, because the special prosecutor was a member of the executive branch (the Department of Justice), this was an intrabranch dispute, and the court's involvement would violate the separation of powers. Because of the intense scrutiny and the importance of the case, the justices strove for a unanimous decision. On July 24, 1974, Chief Justice Warren Burger delivered an 8–0 decision that President Nixon had to comply with a subpoena for copies of the “Watergate tapes.” (Justice William Rehnquist, a former official in the Justice Department under Nixon, had recused himself from the case.) In his ruling, Burger rejected the attempt to bar the court's review, even though the dispute occurred

between two executive branch officers, citing the court's historic duty to “say what the law is.”

Supporting the doctrine of executive privilege for the first time, the court stated that the privilege is “fundamental to the operation of Government.” However, the court ruled that Nixon's claim of an absolute privilege went too far. Except in cases of “military, diplomatic, or sensitive national security secrets,” the public interest is best served by allowing criminal proceedings to function. The justices ruled that, in order to create a “workable government,” the president's “generalized assertion of privilege must yield to the demonstrated, specific need for evidence in a pending criminal trial.”

Just three days after the decision was released, the House Judiciary Committee passed articles of impeachment against the president. Complying with the court's judgment, Nixon released the audio recordings. Among the tapes was a “smoking gun,” in which the president can be heard agreeing to end the Federal Bureau of Investigation (FBI) investigation into the Watergate burglary. Facing certain conviction in the Senate, Nixon resigned on August 8, 1974. In the wake of the episode, a number of important reforms were aimed at ensuring the powers of oversight and investigation into high-level political corruption. The decision in *United States v. Nixon* remains a major landmark in American law, often taken to represent the principle that no individual or crime is “above the law.” While unquestionably a defeat for Nixon, however, some legal commentators have argued that by recognizing even a limited executive privilege, the court in fact helped to expand executive power.

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See Also: 1961 to 1980 Primary Documents; Corruption, History of; Nixon, Richard (Administration of).

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United States v. One Book Called Ulysses

United States v. One Book Called Ulysses was a 1933 case in which James Joyce's novel *Ulysses* was examined for obscenity. The case originated in the U.S. District Court for the Southern District of New York, where Judge John Woolsey ruled that the novel was not obscene, but protected under the U.S. Constitution as free expression. Woolsey's decision was affirmed by the U.S. Court of Appeals for the Second Circuit. Woolsey's decision helped to encourage the importation and publication of serious literature, even if it contained explicit language or sexual situations.

Novelist James Joyce's most famous novel, *Ulysses*, was published in 1922. The novel was first published in serial installments in the literary magazine *The Little Review* from 1914 to 1921. One of the installments, "Nausicaa Episode," which contained a masturbation scene, was the subject of a complaint to the U.S. district attorney after it shocked a girl of unknown age in New York. Publishers Margaret Caroline Anderson and Jane Heap were fined for publishing the installment, which the court declared seemed "like the work of a disordered mind," and was found to be obscene. Publication of the novel *Ulysses* in the United States was subsequently implicitly banned.

In 1933, Random House, which maintained rights to publish the novel in the United States, arranged for a test case to challenge the informal ban. Random House hoped to publish the novel without fear of prosecution. The publisher made arrangements to import a French edition of the novel into the United States, where it would be seized by the U.S. Customs Service upon its arrival. Initially, U.S. Customs agents neglected to seize the novel, with an official reasoning, "everybody brings that in." Officials were convinced later to confiscate the novel. In spite of declaring it a literary masterpiece, the U.S. attorney found

the novel to be obscene and brought charges against the novel under the Tariff Act of 1930, which allowed for the forfeiture and destruction of such imported works.

Random House contested the seizure of *Ulysses* in the U.S. District Court in New York City. The United States asserted that the novel was obscene because it contained sexual and "unparlorlike" language; was blasphemous, particularly in its treatment of the Catholic Church; and openly printed coarse thoughts and desires that were traditionally not shared in public. Such attributes were perceived as a threat to long-held moral, religious, and political beliefs and thereby subversive of the established order. The lawyer for Random House, Morris Ernst, concentrated on downplaying the novel's potentially offensive or subversive elements and emphasized its artistic integrity and literary success.

Trial judge John Woolsey ruled that *Ulysses* was not obscene. He acknowledged the success of the novel and declared that the author was sincere in showing how the minds of his characters worked and what they were thinking. He suggested that eliminating the sexual themes from Joyce's characters would have been an artistic failure. Finally, Judge Woolsey ruled that the novel, when read in its entirety, was not predominantly sexual or lustful. *Ulysses* was not obscene and could be published openly in the United States. Within minutes of the decision, Random House started work on printing the book. One hundred copies were published in 1934 in order to establish official copyrights. This was the first legal publication of *Ulysses* in any English-speaking nation. England did not publish *Ulysses* until 1936.

The U.S. attorney appealed Judge Woolsey's decision to the U.S. Court of Appeals for the Second Circuit, where a three-judge panel affirmed the decision by a 2–1 vote. The trial and appellate court decisions established that a court evaluating obscenity characteristics of a work should consider the entire work, rather than isolated excerpts; its effects on an average, rather than an overly sensitive, person; and its relationship to contemporary community standards. These principles ultimately contributed to the Supreme Court's establishment of obscenity standards. Judge Woolsey's trial court opinion has been reproduced in Random House printings of the novel and is believed to be one of

the most widely distributed judicial opinions in history. The opinion continues to be recognized as a perceptive analysis of Joyce's work.

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See Also: 1921 to 1940 Primary Documents; Appellate Courts; Obscenity; Obscenity Laws; Pornography.

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Urbanization

Urbanization refers to the process in which people move from rural areas to cities; it also involves the transformation of rural areas into cities. It is a historical as well as contemporary worldwide phenomenon, with criminological, cultural, economic, environmental, and social dimensions and implications.

Although anatomically modern humans originated about 200,000 years ago, cities have existed for fewer than 10,000 years. Social scientists often claim that human history has been marked by three “urban revolutions.” The first urban revolution—from around 8000 to 2000 B.C.E.—occurred with the advent of agriculture; animal husbandry, along with the cultivation of plants and fungi for food and other by-products, afforded humans a sedentary lifestyle for the first time. The second urban revolution—from around 1700 to 1950—coincided with the Industrial Revolution; changes in agriculture, manufacturing, mining, transportation, and technology turned cities into loci of commerce, and many people flocked to cities to take advantage of the opportunities provided by the new urban-based economy. The third urban revolution is currently under way and in 2008, for the first time in history, half of the world's population lived in cities. (In comparison, less than 30 percent

of the world's population lived in cities in 1950.) Though on a global scale people are increasingly concentrating in cities, the greatest population growth is occurring in cities in developing countries. Demographers predict that by 2025, developing nations will account for 85 percent of the world's population, and that in 2025–50, the percentage of the global population living in cities will rise to 67 percent.

Characteristics of Urban Areas

Cities differ with respect to climate, culture, economic development, and size. Early modern writers on cities such as Germans Max Weber, Georg Simmel, and Oswald Spengler treated the city as a “unitary phenomenon” by contrasting the city with other kinds of social entities. Subsequent writers such as those affiliated with the Chicago School of Sociology at the University of Chicago (sometimes referred to as the “Ecological School”), which emerged in the 1920s and 1930s, took a different approach.

These scholars treated the city as a living organism—they thought of “the city, that is to say, the place and the people, with all the machinery and administrative devices that go



The streets of a 1920s ghetto in Chicago. The social characteristics of urban life have been studied extensively by the Chicago School of Sociology at the University of Chicago.

with them, as organically related”—and endeavored to understand the “ecology” or internal workings of the city by asking questions about the relations between the parts in the city and about the different kinds of experiences people had within the same city at the same time. For example, Louis Wirth, who defined the city as “a relatively large, dense, and permanent settlement of socially heterogeneous individuals,” explained that “[u]rbanization no longer denotes merely the process by which persons are attracted to a place called the city and incorporated into its system of life. It refers also to the mode of life which is associated with the growth of cities, and finally to the changes in the direction of modes of life recognized as urban which are apparent among people, wherever they may be, who have come under the spell of the influences which the city exerts by virtue of the power of its institutions and personalities operating through the means of communication and transformation.” Wirth suggested that the characteristics of urban life and the differences between cities of various sizes and types could be explained on the basis of three variables—number, density of settlement, and degree of heterogeneity.

According to Wirth, urbanism, as a characteristic mode of life, could be approached empirically from three interrelated perspectives: (1) as a physical structure comprising a population base, a technology, and an ecological order; (2) as a system of social organization involving a characteristic social structure, a series of social institutions, and a typical pattern of social relationships; and (3) as a set of attitudes and ideas, and a constellation of personalities engaging in typical forms of collective behavior and subject to characteristic mechanisms of social control.

Today, scholars of cities and urban areas agree that characterizing an area as “urban” on the basis of size alone is an arbitrary endeavor; what constitutes a city will vary from country to country. Rather, when distinguishing between urban and rural areas, they frequently look to how people make a living. Whereas most people residing in rural areas engage in occupations that involve the cultivation or harvesting of natural resources (e.g., farming, fishing, and logging), most individuals in urban areas hold jobs that are not directly connected with natural resources

and thus need to rely on rural areas for food, fibers, and other by-products.

Many contemporary urban ecologists, who employ methods from natural science and the social sciences, take inspiration from their German and, to a larger extent, Chicago predecessors and study urban patterns, processes, and trends in the context of four variables: (1) population (i.e., the number of people in a city and factors that affect this number such as births, deaths, emigration, immigration, and the composition of the city in terms of age, ethnicity, and sex); (2) organization (i.e., the social structure of the city); (3) environment (i.e., its natural environment, such as its proximity to or presence of deserts, forests, mountains, and water bodies, as well as its built environment such as its roads and bridges); and (4) technology (i.e., human inventions that affect the urban environment, such as aqueducts and air conditioning).

Regardless of the approach taken to the study of cities, and regardless of the size, density of settlement, sociopolitical-economic organization, natural and physical environment, or technological features of the city, certain traits are common to urban populations in general. As both the German and Chicago scholars identified, city populations generally possess far greater heterogeneity with respect to ethnicity, race, religion, and socioeconomic status than rural populations. People residing in cities also tend to be younger than those in the hinterlands. While urban and rural areas tend to have different proportions of men and women, cities in developing nations tend to have more men, who migrate to the city in search of employment (leaving the women to remain in rural areas to farm and tend to children), whereas cities in developed countries frequently have a higher ratio of women to men (because women in rural areas often have few employment prospects after graduating from high school and thus move to urban areas in search of economic opportunities).

Criminological Issues

While the Chicago school is distinguished for its ecological approach to understanding the city, it is also renowned for exploring and developing links between environmental factors and crime. But in order to understand the Chicago school’s impact on criminological theory, it helps to consider the ways in which Chicago had changed in

the years leading up to and during the Chicago school's heyday.

When Chicago was incorporated in 1833, it had a population of just over 4,000. By 1890, this figure had climbed to 1 million and by 1930, Chicago's population had exceeded 3 million—in large part because of immigrants from Europe and African Americans migrating from the south. This influx of people served to transform Chicago from a small frontier trading post to a vibrant city with a wide range of ethnic groups and social worlds.

Building on Robert Park's ideas about the social ecology of the city, Ernest Burgess developed his concentric zone theory, which maintained that modern cities expand radially from their inner-city core in a series of concentric circles. Focusing on Chicago, Burgess identified five main zones. At the center was the central business district, the Loop—a place with low population and high property values. Encircling this downtown area was the “zone in transition”—an area with run-down housing, lots of residential mobility and turnover (due, in part, to immigrant families who would stay until they had secured sufficient funds to move farther from the business district), some business and light manufacturing, and high rates of poverty and disease. The zone in transition was surrounded, in turn, by a zone inhabited by industry workers who had escaped the second zone. The “zone of workingmen's homes” was a residential area containing high-class apartment buildings and single-family dwellings. Beyond the “residential zone” lay the “commuters' zone”—suburban areas.

The Chicago school focused on the zone in transition—a region of great flux where residents developed mostly impersonal relationships with each other and possessed few ties to the community. Such neighborhoods were sometimes described as “socially disorganized,” and it was within these urban spaces that the Chicago school sought to understand the city's many social problems, including the causes of crime and delinquency.

Park contended that the best way to identify the causes of crime and delinquency and other social problems was through close observation of the social processes endemic to urban life. To accomplish this goal, the Chicago school developed and

employed new research methods, such as participant observation (which anthropologists had been using in their studies of small, autarchic groups with little or no connections to the modern world) and the focused interview—methods that allowed them to “enter the world of the deviant.” Such methods were subsequently adopted by Nels Anderson in *The Hobo: The Sociology of the Homeless Man* (1923) and Clifford R. Shaw in *The Jack-Roller: A Delinquent Boy's Own Story* (1930), which provided tremendous insights into two different urban subcultures. These methods continue to be used by criminologists and sociologists interested in studying social action.

Juvenile Delinquency

Clifford R. Shaw and Henry McKay, who worked at the Institute for Social Research in Chicago, were heavily influenced by the Chicago school thinkers. In particular, they believed that Burgess's concentric zone theory might help guide their investigation of juvenile delinquency. Shaw and McKay hypothesized that rates of delinquency would be higher in the socially disorganized inner-city areas. To test this assumption, they analyzed how measures of crime and delinquency (e.g., youth referrals to juvenile court, truancy) were distributed in Burgess's zones of the city. (More specifically, they mapped the addresses of each juvenile delinquent, compiled them, and then computed rates of delinquency by census tract and city zone.)

They found that over time, rates of crime and delinquency were highest in the inner-city zones and became progressively lower as one moved out into the more prosperous zones. They also discovered that rates of crime and delinquency by zone remained relatively the same, irrespective of the neighborhood's ethnic or racial composition. These findings allowed Shaw and McKay to conclude that crime and delinquency were products of sociological factors rather than individual pathology—that characteristics of the zone, not the individuals living in the zone, regulated levels of crime and delinquency. Having established this important position, Shaw and McKay then proceeded to claim that socially disorganized areas perpetuate a phenomenon whereby criminal conventions and delinquent behavior patterns are culturally transmitted—that is, these traditions

are passed down through successive generations of boys in much the same way that language is transmitted. In contrast, socially organized communities are those where conventional values are deeply ingrained and where residents can control youths or prevent competing forms of criminal organization such as gangs from emerging.

Aside from serving to dispel the then still popular criminological theories that criminality was a product of innate biological or pathological factors, Shaw and McKay's work proved to be seminal for the development of two main theoretical traditions in criminology: differential association/social learning theory and control theory. Shaw and McKay's contention that social areas have different mixes of criminal and conventional influences—and that exposure to learning about criminal values from fellow neighborhood residents is a key source of crime—proved inspirational for Edwin Sutherland's theory of differential association, which sought to systematize the insights of Shaw and McKay. Shaw and McKay's efforts to tie delinquency to the attenuation of control in

inner-city areas would serve as the foundation for early permutations of control theory, such as those developed by Walter Reckless and Albert J. Reiss, Jr.

Although Shaw and McKay's work was subsequently criticized for suggesting that individual action can be explained solely by the larger environment in which the individual resides—and while some have expressed reservations about basing empirical research about juvenile delinquency on official statistics—Shaw and McKay's research—and, more generally, the Chicago school's promulgation of linkages between environmental factors and crime—have had considerable bearing on the development of criminological theory. Today, important researchers such as Robert J. Sampson (who has extended social disorganization theory and who has developed the concept of collective efficacy) as well as Robert J. Bursick, Jr., and Harold G. Grasmick (whose scholarship has investigated the relationship between neighborhood dynamics and criminal events) can trace their roots back



The National Aeronautics and Space Administration (NASA) Earth Observatory captures Brooklyn, New York, from space in 2009. Some patches (dark gray) of green parkland can be seen amid the crowded urban landscape. The two largest ones in the upper left corner are Prospect Park (right) and Greenwood Cemetery, but their relatively small size does little to help the urban heat island effect.

to early thinking on the connections between urbanization and crime, and the work of Shaw and McKay and the Chicago school.

Environmental Issues

Cities present a number of problems for and threats to their natural environments. Urbanization affects land use patterns, frequently destroying or dividing wildlife habitat and consuming natural areas and farmland. The large number and high density of automobiles, commercial businesses, and factories results in emissions of sulfur dioxide, nitrogen oxide, carbon dioxide, particulate matter, mercury, and other toxic heavy metals—air pollution that increases rates of morbidity (especially respiratory illness and cardiovascular disease) and mortality in humans and contributes to a loss of biodiversity. In addition, while soil absorbs rainfall, buildings and paved roads are impervious.

In areas with high levels of precipitation, urban runoff—which is often polluted with animal feces, fertilizers from lawns, garbage, and motor oil—can overwhelm city storm sewage systems, resulting in the release of untreated urban runoff into water bodies. This contaminated water can cause harm to aquatic and human life and can adversely affect ecosystems far downstream. Even cities with low levels of precipitation can experience the negative effects of polluted runoff. Parking lots, streets, and rooftops of buildings absorb solar radiation during the day and radiate heat into the atmosphere at night, making the high-density urban areas significantly warmer than their surrounding rural areas—a phenomenon known as the urban heat island effect. The heated air from the city cools when it rises, causing water vapor to condense into clouds, producing thunderstorms. Such thunderstorms can increase the volume and velocity of runoff, resulting in flooding and property damage, and can alter the biological, chemical, and physical composition of receiving waters, creating an unhealthy environment for aquatic organisms, wildlife, and humans.

While the high concentration of people in urban areas frequently has a harmful effect on the local and surrounding natural environment, urbanization does not necessarily have to result in environmental problems such as air pollution, water pollution, and the loss of wetlands and

biological habitats. Compact development, in which tall, multiple-unit residential buildings are in close proximity to jobs, shopping, and eating establishments—which are all connected by public transportation, thereby decreasing dependence on motor vehicles—results in lower amounts of air and water pollution than sprawling cities and preserves surrounding rural areas. Smart growth, which incorporates compact development, mixes land uses (commercial, manufacturing, and residential) to create communities where it is easy for residents to walk or bike from homes to jobs to businesses and entertainment, thereby lessening the need to expand highway systems that carve up open space and farmlands. Such pedestrian-friendly cities are frequently people-friendly, where poor and rich residents may come into greater contact with each other. This can help lessen the social gulf between classes, and such areas often enjoy lower crime rates. Well-planned cities that use land efficiently (e.g., Portland, Oregon) not only can sustain population growth, but by creating or maintaining space for parks and open space, and by decreasing the noise pollution caused by construction and heavy traffic (which can result in physiological and psychological harm), they can be desirable locations to live.

Urbanization Trends

Urbanization has become a worldwide phenomenon. Although the percentage of people living in urban settings compared with rural areas is greater in highly developed countries than in developing countries, urbanization is increasing rapidly in developing countries—and, as a result, most of the world's largest cities are in those countries. According to the United Nations Population Division, most of the world's largest urban agglomerations—cities plus their surrounding suburban areas irrespective of administrative boundaries—are located in developing countries. In 2010, eight of the top 10 urban agglomerations were located in developing countries: Delhi, India; São Paulo, Brazil; Mumbai (Bombay), India; Ciudad de Mexico (Mexico City), Mexico; Shanghai, China; Kolkata (Calcutta), India; Dhaka, Bangladesh; and Karachi, Pakistan. (The other two were the Tokyo-Yokohama-Osaka-Kobe agglomeration in Japan and the New York, New York–Newark, New Jersey agglomeration in the United States.)

In addition, almost 400 cities worldwide have a population of at least 1 million inhabitants—284 of which are located in developing countries. The number of megacities—urban areas with more than 10 million inhabitants—is also growing and is projected to increase from 19 to 26 worldwide by the year 2025; all seven of these new megacities will be in Asia and sub-Saharan Africa.

Future Directions and Considerations

The recent rapid rate of urbanization in developing nations has outpaced the limited capacity of many of those cities to provide basic services to their residents. Many cities—especially those in the developing world—will not (or will continue not to) be able to provide basic services such as adequate housing, clean water, garbage collection, medical care, new schools, police and fire protection, and sewage treatment to their rapidly expanding populations and will face challenges regarding poverty, unemployment, and violence. When cities grow too quickly, competition for land causes real estate prices to rise, which can drive poor residents into crowded squatter neighborhoods, which are frequently marred by crime, disease, and social unrest. In addition, most megacities, including some of the seven new megacities, are located in coastal areas, making them especially vulnerable to rising sea levels—and subsequently, loss of life and property damage—that experts predict will result from global climate change in the 21st century.

By 2070, approximately 150 million individuals will reside in urban areas—primarily in parts of Bangladesh, Burma, China, India, Thailand, and Vietnam—that could be in danger from the effects of global climate change. In order to ensure that urbanization does not conflict with goals for economically, environmentally, and socially sustainable cities in the 21st century, government officials and representatives of the public sector, members of nongovernmental organizations, and those involved with corporations, finance, and industry in the private sector will need to understand the interaction between population growth, energy demand, regional climate, transportation, and water use.

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See Also: Chicago, Illinois; Los Angeles, California; New York City.

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USA PATRIOT Act of 2001

The USA PATRIOT Act was signed into law on October 26, 2001. The name of the act stands as an acronym for Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. A young 23-year-old congressional staffer, Chris Cylke, is credited with creating the acronym for the bill. The PATRIOT Act reduced restrictions on law enforcement's ability to search telephone and e-mail communications along with medical, financial, and other records. Foreign intelligence surveillance abilities were expanded inside the United States, the Department of Treasury gained more allowance with restricting transactions, and the detaining and deporting of individuals was broadened. Access to and use of toxins, biological agents, and poisons were further restricted in the

act. Most significantly, the act expanded the definition of terrorism to include domestic terrorism. Prior to 2001, domestic terrorism was treated differently within the U.S. justice system. Initially, the act received overwhelming support from Republicans and Democrats in both houses of Congress.

The bill stemmed from the aftermath of the 9/11 attacks on New York City, the Pentagon, and the failed attack on the White House. These attacks, linked to the Middle Eastern terrorist group Al Qaeda, caused holes in American intelligence agencies to surface along with questions on U.S. homeland safety. Since the nature of the attacks stemmed from an Islamist militant group, the initial days of the act's enforcement saw a disproportionate number of Middle Easterners detained and subjected to vigilante violence. Backlash and criticisms of the law primarily center on the indefinite detentions of immigrants or those perceived (even loosely) to have connections to terrorist's fronts. Further abrogations of civil liberties from the act are the allowed searches of homes or businesses without the owner's or occupant's knowledge, allowing the Federal Bureau of Investigation (FBI) to search personal records without a court order, and expanding law enforcement access to records including library and church records.

Restricted Persons Identified

Controversial parts of the act describe restricted persons. According to the confines of the PATRIOT Act, a restricted person is anyone who is under indictment for a crime punishable by a term of a year or more, convicted of a crime punishable by imprisonment for more than a year, a fugitive, an unlawful user of a controlled substance, is unlawfully in the United States, has been committed to any mental institution or deemed mentally unfit, a national of any country believed to be a threat to the United States (primarily Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria), or received a dishonorable discharge from the U.S. armed forces.

Information Sharing Between Agencies

Aside from expanding the role of law enforcement personnel, the law also encouraged and enabled the sharing of information between agencies. Lack of information sharing was seen as a primary fault leading to the events of 9/11. Previous legal restrictions preventing sharing of information, usually



President George W. Bush signs PATRIOT Act antiterrorism legislation in 2001. "With my signature, this law will give intelligence and law enforcement officials important new tools to fight a present danger," said the president.

concerning search warrants, right of access, and privacy have been lifted under the PATRIOT Act. Direct effects of this expansion of powers can be seen with the "Virginia Jihad" case. The case centered upon members of the Dar al-Arqum Islamic Center who trained for terrorist activities in Northern Virginia. Training involved paintball maneuvers and paramilitary training, with eight individuals traveling to Pakistan and Afghanistan for further instruction. These individuals, associated with the extremist Islamic group Lashkar-e-Taiba, are also connected to Al Qaeda. Interagency communication enabled these individuals to be brought to trial, with six pleading guilty and three convicted in March 2004.

Digitally Expanded Search Warrants

In conjunction with enabling agencies to communicate with one another, the act allows law enforcement personnel to use digital technologies to catch suspected criminals. Search warrants can be issued in any area where terrorism activities occurred, even if the event were to appear elsewhere. These warrants cross jurisdictional boundaries, facilitating the process. More so, the law allows law enforcement agencies to monitor computers for suspected terrorist behavior and victims of computer crimes can request law enforcement to assist in tracking hackers. The premise of these later developments stems from previously sanctioned laws allowing burglary

victims to invite law enforcement into their homes for the pursuit of a criminal.

Penalties Increased

Finally, the act increased penalties for terrorists and those connected to terrorists. The act prohibits the harboring of terrorists, doing business with terrorists, or facilitating an atmosphere where terrorist activities can occur. More so, acts of hijacking, computer hacking, and money laundering have been added to the list of terrorist offenses. Maximum penalties and conspiracy penalties have been strengthened under the PATRIOT Act. Previously, conspiring to commit terrorist offenses could only be tried under general federal conspiracy laws, which did little if terrorist activities targeted private property. The general conspiracy laws only held five years in prison, but the new laws can imprison a person for life. Terrorist attacks or threats to mass transit and bioterrorists are also included in the law, and the statute of limitations does not apply to terrorist crimes.

Many of the act's provisions were to end December 31, 2005, but supporters of the act pushed to make the law permanent. In July 2005, the Senate passed its reauthorization of the act with significant changes, particularly to those concerning perceived civil liberty violations. The House, on the other hand, passed its reauthorization with little changes to the original language. The two bills faced reconciliation in a conference committee, and Republicans and Democrats argued that civil liberty concerns were not taken into full account. A large share of the civil liberty concerns relate to the detaining of suspected terrorists, targeting of restricted persons, and the removal of need for search warrants. The bill passed Congress in March 2006, and President George W. Bush signed it. Democratic Senator Joseph Biden wrote most of the final legislation.

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See Also: Civil Rights Laws; Homeland Security; Terrorism.

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Utah

Admitted to the Union as a state in 1896 on the condition that it outlaw polygamy, Utah is one of only two states in which more than half the population belongs to the same religious denomination—in this case, the Church of Jesus Christ of Latter-day Saints (LDS). Though the Utah region had been explored by the Spanish and by fur traders, the LDS were principally responsible for the area's settlement, large groups of them having relocated to the Salt Lake Valley in the 1840s, 1850s, and 1860s, fleeing religious persecution in the midwest. Utah has sometimes been characterized as a partial theocracy, but this can be misleading; many of its laws were religiously motivated, but this is equally true of laws passed by the Puritans in New England, or blue laws throughout the country.

Crime

Despite that religious heritage and the political power of the LDS Church, prostitution was generally tolerated in Salt Lake City in the territorial and early statehood eras, treated much as it was in other western cities: While there was no openly acknowledged red-light district, prostitution was rarely prosecuted. When it was, it was nearly always the prostitute who was arrested, not the man hiring her—with a set of notable exceptions. In the 1880s, the dispute between the LDS

Church, which then still proclaimed the doctrine of polygamy, and federal authorities and non-Mormons (“gentiles”) had become vigorous, and several prominent LDS leaders had been arrested, while others had been forced into hiding. Polygamy was not simply disliked by the LDS’s opponents, it was openly despised and condemned as sexually immoral—a condemnation many LDS, who considered that they held themselves to a higher standard of moral conduct than gentiles, could not abide. Brigham Young Hampton, a Salt Lake City bureaucrat, used prostitutes to attempt to entrap federal officials in order to demonstrate that it was the non-Mormon side of the dispute that suffered from immorality—and thus in these cases it was the male client who was arrested for lewd and lascivious conduct, while the prostitute generally went free.

Polygamy was officially condemned by the LDS Church and outlawed by the Utah government as a condition for statehood, a decision that upset many LDS at the time, and forced some polygamists unwilling to give up the practice into hiding, or into secret double lives. Others started separatist denominations, and many Mormon fundamental-

ist sects persist in Utah and nearby states, some of them integrated into society, others operating their own communities. The official ban on polygamy led to a shift in feelings about prostitution, and in the early 20th century, as many young women became more active in the public sphere than in previous generations—taking jobs or spending more time in public places instead of in the home—middle- and upper-class older women and social reformers worried that this would lead to their descent into prostitution. LDS and gentile reformers worked together in an attempt to eradicate prostitution to prevent this eventuality. Police raided brothels and rooming houses, regulations that had to some degree protected sex workers were abolished, and the law very firmly focused on prostitutes as the cause of prostitution and any attendant ills, while ignoring the role of their clients.

One of the most violent incidents in Utah history was also part of the story of the territorial-era conflict between the LDS settlers and the federal government: the Mountain Meadows massacre in 1857. Nervous about the announcement that President James Buchanan had ordered federal troops into Utah, an LDS militia led by John D. Lee attacked a wagon train of emigrants moving from the Arkansas region to California, which had about 120 members at the point that it reached the Salt Lake City area. Intending to make their attack look like Native American aggression, members of the militia attacked the wagon train for five days while dressed as natives. Following the initial attack, two militiamen approached under a white flag, claimed to have negotiated a treaty, and offered to escort the wagon train safely to Cedar City. When the emigrants accepted the help, the men were separated from the women and children, a signal was given, and the rest of the militia ambushed the group. Only children too young to tell anyone what they had seen were spared. The militiamen were sworn to secrecy, determined to blame the massacre on the local Paiutes.

Investigations both territorial and federal followed, but only Lee was found guilty. Under the Utah Territory’s death penalty statute, he was allowed to choose his method of execution: hanging, firing squad, or beheading. Lee was executed by firing squad.

Utah’s crime rate is well below the national average. At 212.7 violent crimes per 100,000



An 1850s Mormon, or Church of Jesus Christ of Latter-day Saints (LDS), baptism ceremony. The LDS church holds its followers to high standards of moral conduct, which keeps Utah’s crime rate well below the national average.

inhabitants in 2010, it is nearly half that of the United States as a whole. While Utah followed the national trend of a rising crime rate after World War II that eventually peaked in the 1990s before falling again, its overall numbers were never high—even at that peak (334 in 1997), crime was well below the present-day national average. Of course, this also means that, proportionally, crime has not declined in Utah as much as it has elsewhere in the country: The 2010 level is about the same as the 1970s levels, when crime was considered to be climbing rapidly. Most of the decrease in crime has also been in aggravated assaults and robberies; the rape rate of 34 per 100,000 is actually higher than the national rate of 27.5.

Police and Punishment

Apart from local jails, the first prison in Utah was the Utah Territorial Penitentiary, later called the Sugar House Prison, built in the Sugar House neighborhood of Salt Lake City in 1853, during the territorial era. The original prison consisted of 16 small cells dug into the ground, covered with iron bars—a common prison design for the time. Federal marshals assumed control of the prison from 1871 until 1896, when the new state government took control. As Salt Lake City grew, residents inevitably complained about the placement of the prison in their midst, but not until 1951 was a new Utah State Prison built, south of the city in Draper. The old prison was razed and became the site of Sugar House Park and Highland High School. In 1990, the Utah State Prison was joined by the Central Utah Correctional Facility in Gunnison.

While further east, city and town police departments often weren't established until a lengthy period in which the law was kept by elected marshals and part-time constables, the Salt Lake City Police Department was established in 1849, two years after the first settlers arrived. The city was the product of centralized planning, developed with future growth in mind, and the early establishment of a well-organized police department was part of this. The city, after all, was intended to be a Latter-day Saint alternative to the "Babylon" of mainstream America, and the outlawry so

common in the frontier was not acceptable to the city fathers.

Utah remains a capital punishment state and was the first (and for a long time the only) state to allow a death row inmate to choose the method of his execution. Upon becoming a state, Utah ended beheading as a method of execution; in the territorial period, it was used because of the LDS concept of blood atonement as taught by Brigham Young. According to the doctrine, murder is so vile a sin that Jesus's sacrifice is not sufficient to atone for it; the perpetrator's blood must be shed on the ground for forgiveness in the afterlife to be possible. Both the firing squad and beheading accomplished this, while hanging did not. No prisoner ever chose beheading.

Utah executed both the last inmate before the nationwide suspension of death penalties resulting from the Supreme Court decision in *Furman v. Georgia* in 1972 and the first inmate after the resumption of death penalties with the Supreme Court decision in *Gregg v. Georgia* in 1976. Lethal injection replaced hanging in 1980, and in 2004, the firing squad was abolished and lethal injection made the only method of execution; however, the law was not retroactive, and the three inmates on death row who had already chosen the firing squad were allowed to retain that choice.

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See Also: 2001 to 2012 Primary Documents; Frontier Crime; Religion and Crime, Contemporary; Religion and Crime, History of.

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Vagrancy

The common law definition of the term *vagrant* refers to an individual who is idle, has no visible means of support, and travels from place to place without working. Historically, individuals found to be in violation of vagrancy statutes were viewed with suspicion and tended to be treated by local communities as beggars or to be viewed as potential criminals. In practice, vagrancy statutes have been used to discourage individuals considered to be undesirable from remaining in a community. Accordingly, the crime of vagrancy is one more of code violation than of harm to person or threat to property as with traditional crime connotations.

English Origins

Vagrancy and vagrancy statutes in the United States have origins in the criminal laws of England that stipulated where laborers could reside, as well as compensation rates. Laborers were prohibited from wandering and could be prosecuted for a criminal violation for doing so. Punishments for being found to be a vagrant included branding, whipping, conscription to military service, and even banishment to English penal colonies in Australia. As the feudal system of England began to break down, the crime of vagrancy was born, as vagrants were commonly runaway serfs. The collapse of the feudal system

also prompted various additional peccadilloes, such as begging, drunkenness, and prostitution, which also were generally defined as vagrant activity. Early in the 19th century, the Vagrancy Act of 1824 consolidated existing vagrancy laws toward the goal of removing individuals considered to be undesirable from public view. The act made it a criminal offense to engage in behaviors associated with extreme poverty (e.g., public begging, homelessness) and ascribed homelessness to elective idleness (i.e., that being homeless was a deliberate act), making vagrancy, by definition, a social class-based offense.

In the United States, vagrancy statutes in the American colonies closely followed doctrines established in English common law. In early America (and in contemporary times as well), the primary basis of vagrancy laws was to control criminals as well as those who were deemed by society at large to be undesirable. The largest shift in the formation and implementation of laws between England and America is that in England, vagrancy laws were originally intended to maintain a pool of laborers as the feudal system began to decline, and in America, the original intent was an attempt to control individuals perceived likely to engage in criminal activity. Individuals who were labeled “paupers” or “vagabonds,” for example, were excluded from the privileges set forth in the Articles of Confederation. During

the Great Depression of the 1930s, some states, most notably California, also used vagrancy laws in an attempt to control the migration of transient workers, not unlike the earlier incorporation of vagrancy law into the post-bellum era, which was focused on the newly freed slave population.

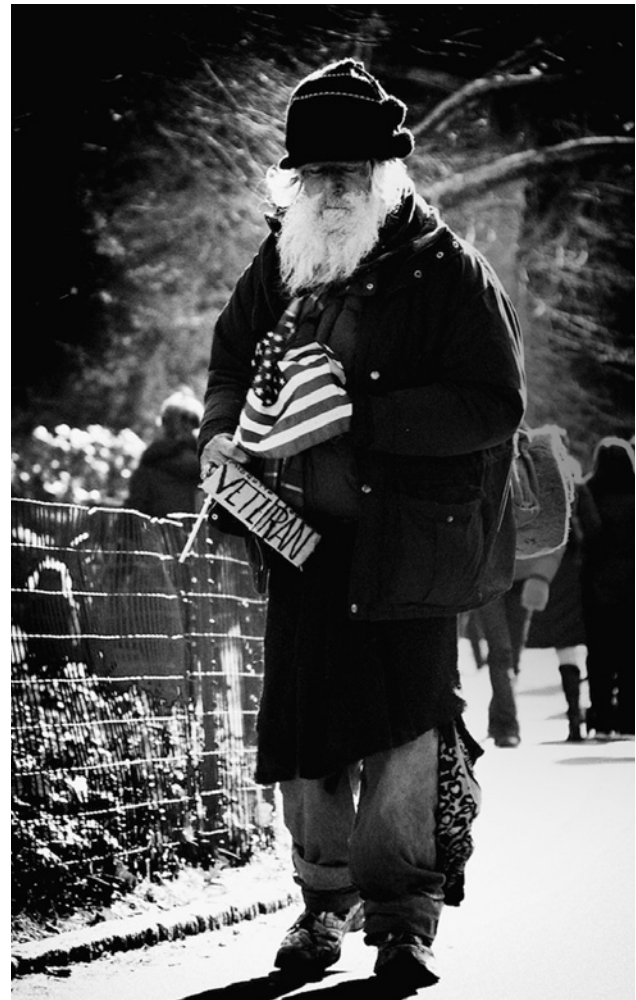
Application of Vagrancy Laws

One of the main criticisms levied against the practice of vagrancy laws centers on observations that various statutes implemented around the country were either vaguely worded or were arbitrarily applied. An examination of magistrate courts in Philadelphia during the early 1950s provides a good example. Due process protections were largely ignored, and magistrates oftentimes decided to discharge or incarcerate individuals charged with being vagrant based on extralegal factors, most notably, personal appearance. Moreover, most were found guilty almost immediately with little or no consideration of the merits of individual cases. On one specific day, 55 cases were heard by a magistrate in a mere 15 minutes. During the examined hearings, four individuals were tried, found guilty, and sentenced in only 17 seconds. While these observations reflect vagrancy law application in only one city, figures from the Uniform Crime Report (UCR) for 1951 suggest that vagrancy laws were adjudicated in a similar manner across the United States. Somewhat telling of how significant and far-reaching vagrancy laws had become, the 1951 UCR figures also reflect that 39 percent of all arrests reported were for charges falling under the heading of vagrancy-type offenses (vagrancy, disorderly conduct, drunkenness, and suspicion).

Enforcement by courts as discussed above appears indicative of how vagrancy statutes were applied in the United States until 1972, when the U.S. Supreme Court issued a ruling in the case of *Papachristou v. Jacksonville*, which ultimately struck down the majority of vagrancy statutes that were then in effect throughout the country. The case originated when several individuals were arrested and charged with various offenses such as prowling by auto, being a vagabond, and loitering. The Supreme Court found in a unanimous decision that vagrancy laws were too vague in wording and that the statutes were enforced in an inconsistent and arbitrary manner. The court also

found that the manner in which vagrancy statutes were drafted gave law enforcement officials an unfettered amount of discretion when applying the vagrancy ordinances in place and time. Accordingly, the majority of vagrancy laws in effect in the United States were found to be unconstitutional.

While vagrancy-type statutes remain in effect across the United States, there is a higher burden placed on law enforcement officials to observe some type of prohibited behavior (e.g., public begging, panhandling, or disorderly conduct) before making vagrancy arrests. There is some degree of controversy regarding the impact of vagrancy statutes on the homeless population, and there are also questions concerning the



A homeless veteran panhandling in New York City with a sign that reads "veteran." Controversy exists regarding the vagrancy statutes and the homeless population in New York.

racial profiling of individuals accused of violating vagrancy-type ordinances, especially in the context of gang intervention and suppression.

The underlying related issue of social class conflict continues to lend controversy to socio-legal dialogues on vagrancy. It is important to note that vagrancy determinations are heavily based on the perception of criminal justice system functionaries, often resulting in the law being used as a mechanism of social control. Processes of social control and politics imply that those holding legitimate authority create rules of conduct and designate officials to implement and enforce those rules. This translates into the group that holds the most powerful position in a society is able to codify the values and beliefs that it finds to be the most important into law, and that the powerless will remain so. To present this concept in a more succinct manner, the decision of what is criminal depends heavily upon who formulates, enacts, and enforces the laws, echoing Marxist and related critical theoretical perspectives on social control mechanisms.

Relative to other crimes, very little empirical research has been conducted on vagrancy legislation and its effects. More detailed and scientifically informed future dialogues regarding vagrancy should certainly include the topics of racial profiling; the proper role of government with regard to creating, implementing, and enforcing legislation; and the impact of constitutional restraints upon the criminal justice apparatus. In a very real sense, the seemingly low-level offense of vagrancy speaks directly to issues such as freedom of movement and appropriate law enforcement intervention sans violence, property threat, or moral affront—important considerations inseparable from the democratic ideal.

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See Also: 1941 to 1960 Primary Documents; Articles of Confederation; Equality, Concept of; Prostitution, History of.

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Vermont

The second-least populous state in the country, Vermont was the first state to join the United States after its formation, having been established as a sovereign republic during the Revolutionary War. One of the only states to have once had a sovereign government, it abolished slavery during its 14-year Republic period and thus became the first state to do so; the state was a strong supporter of nationwide abolition in the 19th century.

Police and Punishment

For 140 years, Vermonters relied on county and town jails for incarceration, and particularly in the colonial era, nonincarcerating methods of punishment were used, like stockades and flogging. The first state prison was built in Windsor and opened in 1809. Made entirely of stone, it was three stories high, with a 170-prisoner capacity (though there were then only 24 convicts), riveted iron doors, and a three-foot-thick prison wall. The legislature appointed five commissioners—Ezra Butler, Samuel Shaw, John Cameron, Josiah Wright, and Elihu Luce—to oversee the prison, an antecedent to the modern Department of Corrections. An additional building for solitary confinement was added to the complex in 1830. Prisoners were put to work making shoes and nails originally, with textile industries later replacing these industries.

The first chartered municipal police department was established in the town of Bennington in 1856, and other towns soon followed. Prior to this, towns relied on town marshals and constables, many of whom were elected; the advent of formal police departments meant the creation of a full-time professional policeman, complete

with training; the eventual creation of a police academy toward the end of the century; and certification, uniforms, and officially issued firearms. Law enforcement remained based at the town and county level, with each county electing a sheriff responsible for law enforcement in towns without police departments, until 1947, when the Vermont State Police was formed. A statewide police force had been discussed for over a decade and was strongly supported by the Vermont State Grange, a powerful farmers group, because of the disproportionate distribution of law enforcement in rural areas. But it took the 1946 disappearance of Bennington College student Paula Jean Welden (never solved) to end the last opposition to such a system. The state police headquarters was established in Montpelier, and the uniform was based on that of the Marine Corps. Predominantly white, Vermont has never had serious problems with race relations, but there have been scattered incidents of racial tension and racial violence. In 1968, three weeks after Reverend David Lee Johnson, an African American Baptist minister, moved to Irasburg, shots were fired into his home. The police were reluctant to respond, but eventually arrested a 21-year-old soldier on leave from the army, charging him with breach of the peace, rather than an assault or firearms charge.

Further, Johnson and a white woman staying in his house were arrested on adultery charges, a charge rarely used except when brought by one spouse against another in a divorce case. The woman was given a fine and a suspended sentence and left the state; Johnson received a significantly higher fine and a suspended sentence, and continued to face harassment. A board of inquiry appointed by the governor found that the state police had acted inappropriately toward Johnson both in their investigation of the shooting and their unnecessary adultery investigation (which never succeeded in proving adultery had actually occurred). Johnson relocated to California.

Capital punishment was legal in Vermont until 1965, and 26 people had been executed by hanging and electrocution since the Republic era. Today, only treason remains punishable by death.

The role of county government has diminished since Vermont's early days, and today the 14 counties are responsible only for maintaining

a sheriff's office and a courthouse. None except Franklin County continues to operate its own jail, because of simple lack of demand.

Crime

Sparsely populated even relative to its small size—the largest city, Burlington, has fewer than 50,000 people—Vermont has enjoyed a fairly low crime rate. However, this has been punctuated by several high-profile crimes that have commanded national attention.

On the morning of New Year's Eve, 1957, Newbury farmer Orville Gibson disappeared; his body was found in the Connecticut River three months later by the state police, and the case became a national news story. The murder remains officially unsolved, and the reward staked by the state of Vermont unclaimed. The national press at the time described Gibson's death as a vigilante punishment for beating one of his farmhands a week earlier, and the media latched onto the idea of a quaint little Vermont town covering up a murder by one of its own. Two men were arrested for the murder the following year, but both were acquitted, leaving no other known suspects.

In 1966, Paul Lawrence moved to Vermont as a young man after being discharged from the army for behavior problems and took a job with the Burlington Police Department, which did not subject him to a background check—nor did the Vermont State Police when he began working for them. Over the next decade, he was involved in hundreds of arrests, which became increasingly problematic because of inconsistencies in his testimony against defendants and the charges he leveled against them. Before long, several prosecutors refused to prosecute his cases, and in 1974, his own partner began to suspect that Lawrence was regularly fabricating crimes. A sting organized by the Burlington police proved that Lawrence lied about buying drugs from police decoys while acting as an undercover agent. Other lies soon came to light, and the state was soon given no choice but to drop pending charges against defendants accused by Lawrence and to pardon those who had been convicted based on his previous testimony.

Even for a small state, Vermont's crime rate is very low. At 130.2 violent crimes per 100,000

inhabitants in 2010, its crime rate was less than one-third the national average. While many states with a low crime rate still maintain a close-to-average rape rate, Vermont rates well there, too, at 21.1 per 100,000 compared to the national average of 27. Most of the remaining violent crimes are aggravated assaults. Vermont has for the most part bucked the trend—while in most of the country crime rose steadily in the post-World War II decades to reach a 1990s peak before declining, Vermont followed in rising until the 1970s, and has fluctuated back and forth since. Its highest crime rate, 184.2 in 1979, came well before most states' peaks; and in the 1990s, when most of the country was breaking violent crime records, Vermont hit a 20-year low of 96.9. Currently, crime is on a slight decline after an equally slight bump corresponding to the 2008 financial meltdown.

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See Also: New Hampshire; News Media, Crime in; State Police.

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investigation of prostitution often pointed to the practice of drug use, such as opium, heroin, and cocaine. Progressive reformers viewed prostitution and drug use as part of the new urban vices and felt the need to understand them in a scholarly manner.

The vice commission reports focused on three themes: environmental and systemic explanations of the vices, the larger urban and industrial transformation of the time, and the scientific and medical authority in explaining issues pertaining to sex and drug use. While the discourses surrounding the vice commission were mostly academic and technical, the overarching moral beliefs denounced the impropriety of vices and the culpable agents.

Progressive reformers employed a rigid moral dichotomy on various disconnected and related practices, refusing to see the nuances in the living contexts of the working classes. Behaviors that appeared to deviate from the contemporary norms were condemned. In Philadelphia, for instance, the vice commission decried the direct exchange of sex for money, as well as any sexual practices that they deemed perverted, including homosexual contact, close physical contact or sensuous movements in dancing, and burlesque shows. Proclaiming its role in upholding proper middle-class behavior, the vice commission viewed all related matters through a homogenous lens, aiming to suppress all deviant forms of urban amusement and drawing the line between legitimate and illegitimate conduct.

A close-up view of some vice commissions will show why and how they were formed and their goals. The cases of Chicago and Louisville show the variation in locales and local experiences.

Vice Commission

Vice commissions emerged during the early 20th century in metropolitan U.S. cities such as Chicago or Louisville as a way to suppress social problems. In New York, the equivalent would be the Bureau of Social Hygiene. The main focus of the vice commissions was prostitution and combating white slave traffic.

The context of the vice commissions was interlinked between sex, drugs, and vice reform. An

Chicago Vice Commission

On January 31, 1910, the Church Federation organized a meeting at the Central YMCA Building in Chicago to discuss the “social evil problem” in Chicago. The federation was comprised of clergy representing 600 congregations in the city. Dean Sumner read a paper on the topic, and presented a resolution for the mayor of Chicago to appoint a commission to investigate the social evil problems. Members of the commission had to include men and women who were respected and trusted by the public.



The "red-light district" known as Murder Bay at the corner of C Street NW and 13th Street NW, in Washington, D.C., in April 1912. Leaning against the tree at left is a "night messenger" or child laborer who directed customers to brothels. U.S. vice commissions were heavily focused on mitigating prostitution and white slavery.

The resolution proposed that upon the completion of a thorough investigation, measures should be undertaken to provide relief from these conditions. The resolution called for the support of the people of Chicago from all walks of life to execute the suggested plans. Should the city administration be unable to carry out this plan, it was asked that this resolution be made a ballot issue at the next election.

The resolution, having been unanimously adopted, was presented to the mayor by a committee from the Federation of Churches. The committee members were exclusively religious, including Professor Herbert L. Willett at the University of Chicago; Reverend J. A. Vance of the Hyde Park Presbyterian Church; Reverend Smith T. Ford of the Englewood Baptist Church and president of the Church Federation Council; Reverend Frank D.

Burhans of the Washington Park Congregational Church and vice president of the Church Federation Council; and Professor Benjamin L. Hobson, Secretary of the McCormick Theological Seminary.

On April 16, 1911, the *New York Times* reported the Chicago Vice Commission (CVC) as the first salaried municipal commission of its kind. The CVC was formed to address the social problem of crime and vice, especially prostitution. The CVC provided a thorough review of the current status of the social ills in Chicago and recommendations on how to repress them. The recommended course of immediate action was ongoing and tenacious suppression. The recommendations were in opposition to the European principle of segregation. The CVC was created via the appointment of a morals commission and the establishment of a morals court.

The CVC made other recommendations such as the physical examinations of applicants for marriage license, more equitable pay for girls, removal of the fining system against members of the vice districts, a logical adult probation system, a home for old offenders, monitoring of the employment agencies, laws that evoked public attention to the social ills, women officers in the police force, municipal dance halls, and hotels and homes for working women and girls.

The CVC lists poverty as the most prominent cause of these social ills, alongside the want for basic needs, desire for luxuries, lack of protection for immigrant girls, and insufficient pay for girls. Other causes include the lack of ethical and religious teachings, the influx of seasonal trades for women, unhappy home conditions, reckless and ignorant parents, desertion, want of ease and luxury, and the lure of excitement.

Louisville Vice Commission

Another prominent vice commission was established in Louisville, Kentucky. In its 1915 report, the Louisville Vice Commission (LVC) provided reasons for combating evil, examined its commercialized aspect, and argued why it should be a public concern. The LVC argued that the need to combat social problems was extensive and permeating. First, the LVC stated that commercialized prostitution was cancerous to a community and had detrimental consequences. The commission believed that prostitution affects both the innocent and the guilty, resulting in numerous cases of paralysis, blindness, idiocy, insanity, and unspeakable physical and moral degeneracy. The LVC was also concerned with the degradation of womanhood and the greed and passion of men found in commercialized prostitution.

Like the CVC, the LVC realized that prostitution cannot be eradicated or entirely suppressed. It suggested instead a steady and gradual repression, in tandem with moral and physical education. The LVC believed that there were enough conscientious citizens in Louisville to engage the public conscience and to offer a realistic picture of the city's prostitution problems. The goal was to reach the greatest possible level of control.

The LVC also stated that this battle was for everyone, expressing trust in how each responsible party would act accordingly. While there was an

emphasis on the law enforcement agents and regulations, the commission pointed out that the key to a sustainable campaign lay with the citizens. People from all walks of life, from the professional to the religious, from the business sector to the social sphere—all must take initiative to show a progressive attitude toward commercialized vice. There must be a strong sense of uniform and connected opinion among the people and a spirit of hope in succeeding with the task at hand.

The LVC also supposed that every woman sought to be decent and respectable, avoiding unnatural sexual immorality. The commission asserted that it had not encountered a single case in which the “poor, unfortunate creature” was not brought into prostitution through misuse, abuse, or dissipation of indecent men. The LVC argued that it was the degraded men who took advantage of loneliness, the lure of the street, and the economic pressure upon the women.

The LVC also judged that the fulfillment of the need for women to lead a wholesome and respectable life could also help discourage prostitution. The commission pointed out that community attitudes and public view had made it hard for a “fallen woman” to regain her moral strength. Therefore, the commission suggested the formation of an institution for the training, direction, and education of young girls who had been made victims of immorality. Such an effort was believed to have been long neglected and was thought to help the young girls pursue a decent life through trade or other jobs.

It was observed that the order of things had been altered as a result of the technological advances in the 20th century, coupled with the commercialization of entertainment, rapid transportation, the communication industry, and all the convenient and amusing things that had become available.

As the workday became shorter, the time for recreation was expanded. Human interests were commercialized, and the search for pleasure became a focus. The LVC believed that this condition contributed to the decrease of morality among women. Pleasure seeking and commercialization was a two-way street, where the need for pleasure worked to raise the supply for it.

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See Also: Prostitution, History of; Vice Reformers; Victorian Compromise.

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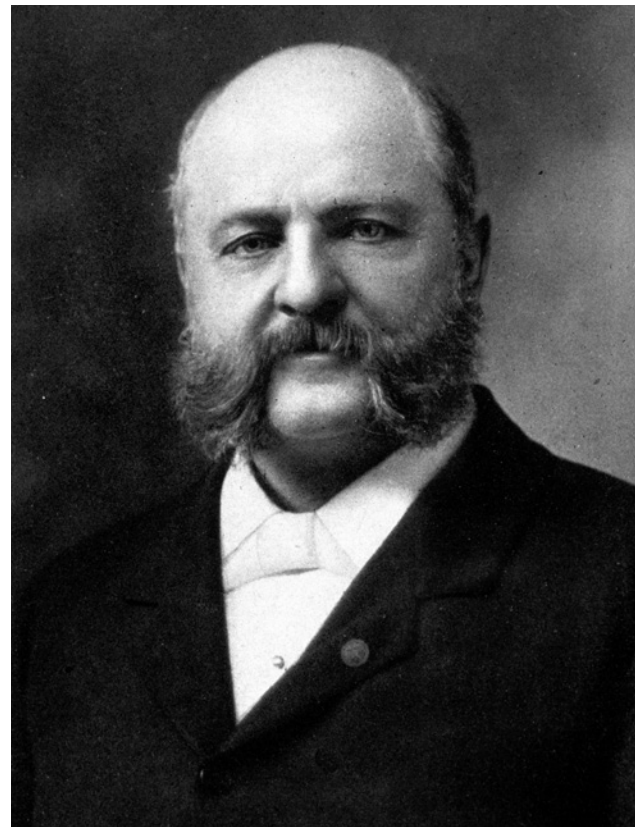
Vice Reformers

Vice laws aimed to control acts that many people engaged in for pleasure and about which the question of who was the “victim” and who the “offender” were often debated. Attempts to enforce existing laws and to enact new legislation occurred within the context of public discourse about the family, gender, sexuality, race/ethnicity, class, and immigration. During the late 19th and early 20th centuries, reform-minded individuals and organizations focused their attention on activities such as prostitution, drug sale and use, gambling, and pornography. Such “vice” activities were often carried out in areas that were known as “red-light districts.” In the early 20th century, such areas existed in every major city and many smaller ones. A debate was ongoing regarding what should be done about vice crime. Some, including some police chiefs, acknowledged the existence of these districts, but argued that such activities could never be eliminated. Therefore, they favored continuing to “segregate” gambling houses and brothels (also known as “houses of ill-fame” or “disorderly houses”) in designated areas. Others, particularly reformers, favored abolishing the red-light districts and claimed that these flourishing districts were symbolic of police and political corruption. The efforts by reformers to eliminate these vice crime areas involved both direct action and attempts to influence public officials. The individuals who took part in

these reform activities ranged from evangelical Christians to professionally trained social workers. Their goals overlapped, but their perceptions of the people involved in vice activities sometimes differed. These reformers who focused on vice crime were active during the Progressive Era when a cross-section of activists was involved in efforts to improve and reform public institutions.

Anthony Comstock

Many of these reformers believed that the weakest and the vulnerable, specifically women and children, needed to be protected. However, the women and children who were perceived as most in need of protection reflected the racial/ethnic and class biases of the reformers. For example, Anthony Comstock, the founder of the New York Society for the Suppression of Vice (1872), was concerned with the distribution of works that he considered pornographic. Of particular concern



Anthony Comstock as pictured in the 1913 book *Fighter: Some Impressions of a Lifetime Adventure in Conflict With the Powers of Evil* by Charles Gallaudet Trumbull.

for him was that these readily available works might fall into the hands of upper-class adolescents who might be tempted by the ads to buy and read the books. Comstock placed much of the blame for these obscene materials on foreigners and immigrants.

Comstock's campaign to suppress what he considered offensive literary works had begun when he arranged to have woman's rights activist Victoria Woodhull arrested on the charge of obscenity. Woodhull had published an article alleging that New York minister Henry Beecher Stowe was involved in an adulterous relationship. Comstock arranged the arrest using an 1865 postal law. He was able to successfully advocate passage of a stronger law suppressing mail circulation of "obscene literature and articles" in 1873. The word "Comstockery" was used to describe the effort to ban or expunge literary works because of their content. In the same vein, "banned in Boston" became a popular description of works that had been banned by the censorship efforts of the New England Society for Suppression of Vice (1878), founded with advice from Comstock.

Committee of Fourteen

In 1905, the Committee of Fourteen, a private anti-vice organization, was founded in New York City. The committee focused its attention on the abolition of hotels that violated the Raines Law. Enacted in 1896, the law forbade the selling of liquor on Sunday. To get around the law, some saloon owners added rooms for rent and applied for a hotel liquor license that allowed Sunday liquor sales. Concerned that these rooms were available to prostitutes and unmarried couples, the Committee of Fourteen worked to have the law amended to require a city inspection of a hotel before a license was issued. The group hired investigators to gather evidence against violators. In 1928, four years before it disbanded, the Committee of Fourteen hired a young black schoolteacher to undertake an investigation of prostitution and other vice activities in Harlem. As a result of this five-month undercover operation, mass arrests were made and cabarets and speakeasies were closed. Future singer Billie Holiday, only 14 years old at the time, was among those arrested in the sweep of alleged prostitutes. The arrests that began with this surveillance

report continued over several years, with increasing numbers of black women being arrested and causing the suppression of Harlem nightlife.

Woman's Christian Temperance Union

Another organization, the Woman's Christian Temperance Union (WCTU), was national in its antiliquor efforts. However, the group also created a "department of social purity." This department agitated for revision of sexual consent laws. In conjunction, the WCTU had a "department of rescue" that was charged with saving women from the sex trade. Investigators were sent to the midwest to look into forced prostitution in lumber camps. As did other antivice groups, the WCTU appealed to legislatures for tougher laws.

Chicago Vice Commission

In 1910, after several years of agitation on the part of reformers, the mayor of Chicago appointed the Chicago Vice Commission to investigate the presence of vice crime. Ironically, when the commission's report, *The Social Evil in Chicago*, was released to the public, it was temporarily banned from distribution by the post office because it was alleged to violate the obscenity law. The commission had focused its attention on prostitution ("the social evil") in red-light districts in the city. It found the concentration of vice in or near those areas that were becoming African American (Negro) ghettos. The commission also found that a number of factors contributed to the entry of young women into prostitution, including environment, lack of moral training, the craving for excitement, economic pressures, and the temptations offered by male seducers. The commission made recommendations that included establishing a permanent morals commission and setting up venereal disease wards in the city hospital. The commission also recommended the Chicago Police Department create a morals squad and recruit female police officers to assist with women and children.

Over the next four years, other cities followed the example of Chicago and established vice commissions. These cities included New York City, Philadelphia, Atlanta, Baltimore, Newark, and Louisville. In 1914, in Virginia, the mayors of Richmond and Danville were recognized for their efforts to eradicate the red-light districts in their

cities. But by 1917, the local newspaper reported that Danville officials had noticed that several men had purchased houses in the city and women had come to the city, apparently to work in these intended brothels. The city faced the issue of what to do with those women who were found to be infected with venereal diseases. Aside from the health of the women, there was the concern that if released, they might infect their clients.

In the early 20th century, the “social hygiene” movement was under way across the country. Beginning in 1905, the movement aimed to educate young people about the dangers of venereal disease. This movement overlapped with concerns about “white slavery,” the sexual trafficking of women. The social hygiene movement reflected the wariness that reformers had felt since the 19th century about the intermingling of young men and women in the city. The “wayward” or “fallen” woman, either promiscuous or a professional prostitute, was seen as the source of contagion, spreading venereal disease to young men. This perception of the fallen woman carried with it stereotypes of poor women, immigrant women, and women of color. In the stereotypes of these women, they were seen as oversexed and diseased as opposed to the virginal and pure white upper-class women. However, reformers such as settlement house founder Jane Addams rejected these wholesale stereotypes, while at the same

time expressing concern about the involvement of young working-class women in prostitution. At Hull House, Addams and the other workers offered a variety of programs aimed at helping the women navigate the challenges of their lives in the city.

In the red-light districts, prostitution flourished alongside other activities such as drug sales and gambling. During this era, gambling, alcohol, and drugs were seen as threats to the nuclear family. A man who drank, took drugs, and/or gambled might never marry or might cause his wife and children to go hungry because he had spent his paycheck instead of bringing it home. These vices were also associated in popular culture and law enforcement with groups who were considered outside the mainstream, such as musicians and actors or racial/ethnic minority groups.

Just as those reformers who were concerned about prostitution sometimes invaded brothels to gather information, since the 19th century, antiliquor reformers had favored direct action. Perhaps the most notorious of these direct action reformers was Carrie Nation, who in cartoons was often pictured with the axe she was supposed to wield in saloons. The antiliquor crusade by prohibitionists was an effort by reformers to deny access to alcohol to both present drinkers and young people who would take up the vice. In the 19th century, drinking had become associated not only with the lifestyle of young bachelors in the city but also with “saloon culture.” Irish immigrants, who used saloons as sites for political meetings, were identified as drinkers and brawlers by nativists (who favored the native-born over immigrants).

Prohibition

The passage of the Eighteenth Amendment and the enactment of the Volstead Act empowered the federal government to enforce the ban on alcohol and represented the culmination of a decades-long struggle by prohibitionists. However, as the Roaring Twenties demonstrated, passing the legislation was not sufficient to eliminate drinking. In New York and other major cities, people who had not formerly violated the law were now going to speakeasies. In the post–World War I era, the consumption of alcohol became a part of the youth culture of flappers and college men. Moreover, as



Prohibition laws alone did not eliminate drinking. Hooch Hound, a dog trained to detect liquor, sniffs a flask in the back pocket of a man fishing on a pier on the Potomac River in 1922.

the Wickersham Commission found, Prohibition had created a situation in which police officers and public officials were susceptible to bribes by organized crime. In New York City, Chicago, and other major cities, the rise of organized crime during Prohibition provided opportunities for mobsters to move into and solidify their hold over gambling operations. For example, in New York City, mobster “Dutch” Schultz moved into Harlem and took over the numbers rackets formerly operated by African American gangsters.

At the same time, the political machines present in major cities sometimes worked to control the structure of the vice activities. Upstate in Albany, New York, the entrenched Democratic machine resisted the efforts of Jack “Legs” Diamond and other gangsters to establish liquor operations in the city. The lucrative gambling operation in Albany that began as a baseball pool and later spread into neighboring states was allegedly operated by machine politicians rather than gangsters. Protests by reformers and opposing politicians about the harm caused by gambling and related vices had little impact. Investigation and prosecution of the alleged operators of the pool was necessary.

By the 1930s, the various reform movements had died out as Prohibition proved to be unworkable and as society in general experienced the changes of World War I and its aftermath. In part, the war had speeded up the social changes that were already under way. Attitudes about gender, sexuality, race/ethnicity, and even class had been challenged.

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See Also: Chicago, Illinois; Comstock Law; Corruption, History of; Prohibition; Prostitution, History of; Schultz, Dutch; Wickersham Commission.

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Victim Rights and Restitution

Emphasis upon victim rights and restitution was once a prominent feature of the American criminal justice system. In the 19th century, the state began to replace the role of the victim as the party damaged by criminal acts. Eventually, the victim was reduced in importance to a secondary consideration and little more than a witness in criminal cases. By the latter 20th century, sentiment and public policy began to shift to once again stress the role and rights of victims within the legal process. A range of circumstances acted in combination to facilitate the resurrection of the once prevalent theme of victims rights in the United States: Civil rights activists viewed victims as having inadequate rights and protections within the unbalanced legal system; supporters of law and order and opponents of offender-centric and failed rehabilitative programs sought to redirect attention in support of victims; feminists endeavored to ensure criminal law and police policy properly addressed crimes directed toward women; and legislators and other politicians increasingly lent support to the victims’ rights cause, correctly judging the movement to have considerable public support. Proponents of victims’ rights have advocated a range of initiatives, including social welfare support of victims, increased victim participation in the criminal justice process, and financial restitution for the losses and suffering incurred by victims.

In the colonial and early Republic periods, victims played key roles in the criminal justice

process. Victims or their family and friends were principally responsible for apprehending offenders, at which point victims would hire a private attorney to prosecute, with the goal often being reparations rather than imprisonment. Indigent offenders who could not pay compensation often agreed to perform service to the victim to retire the debt owed. Such arrangements and emphasis upon the role and needs of victims had been typical of many Western societies for centuries. In the 19th century, police forces became increasingly common and began to assume sole responsibility for apprehension. Simultaneously, criminal acts began to be regarded as offenses against society rather than against individual victims. Criminal charges were pursued by professional prosecutors and victim indemnification began to give way to fines that were levied and retained by the government. A broad societal transformation both in policy and perception changed the role of the victim from an integral part of the process to merely initiating reports of incidents and testifying in court on behalf of the state. Within the U.S. criminal justice system, the victim gradually faded in importance and eventually become an afterthought within the system, but this trend would eventually be reversed.

In the 20th century, the reform and rehabilitation of offenders gradually replaced punishment as the primary goal of the criminal justice system. Laws were interpreted and new laws enacted to protect the constitutional rights of those accused or convicted of criminal conduct. Calls for empathy toward offenders became increasingly common in academic and governmental circles, alleging offenders were in fact the victims of poverty, unequal opportunity, untreated mental illness, lack of education, or other societal shortcomings. Rather than being punitive, proponents of offenders' rights argued that incarceration should provide opportunities to better detainees through such means as vocational training or even college educations funded by taxpayers. However, few new laws, governmentally funded programs, or other forms of positive redress existed or were being proposed to assist the victims of crime. Rates of recidivism among offenders remained high and public support for and confidence in rehabilitation eroded, along with sympathy for offenders. In fact, sentiment in favor

of safeguarding and adding to the civil liberties of criminal offenders and in favor of allocating large amounts of public funds toward their well-being and rehabilitation began to generate public outcry in the United States. The public and many elected officials began to voice concern that attention had been at least partly misdirected, and that attention, governmental support, and efforts aimed at preserving and expanding rights should also be focused upon the victims of criminal acts. The victim rights movement, including calls for financial restitution for victims, came into existence partly in response to policy trends favoring rights and entitlements for offenders, illustrating the core principle underlying victim rights advocacy, that of balance. If offenders are entitled to a range of rights and services, victims should have guarantees of rights and services that address their unique status and needs.

Significant government action on behalf of crime victims was uncommon prior to the 1970s. Reports of many crimes were often not taken seriously, and victims could be treated dismissively or otherwise inappropriately by authorities. The privacy and security of victims and witnesses was often not guaranteed, inspiring fear of retribution. The bureaucracy of the legal system and the trauma of the criminal proceedings, including unnecessarily aggressive and intrusive cross-examination of victims by the counsel for defendants, was a traumatic experience for many, who regarded their experience with the criminal process as a "secondary victimization." Such experiences contributed to widespread victim dissatisfaction with the criminal justice process. In turn, many victims declined to report crimes, fully cooperate in investigations, or testify in court. Without victims to initiate formal complaints and to support the prosecution process, the criminal justice system was compromised. Reforms related to victims' rights, contributing to victim satisfaction, were a practical step to ensure the continued effective functioning of the criminal justice process.

Victims' Rights and Women's Rights

Another catalyst for the emergence of the victims rights cause was the feminist movement that arose in the 1960s and 1970s. Throughout much of the 20th century, certain crimes that typically involved women as victims were commonly

treated dismissively or with lack of sympathy by law enforcement. Victims of domestic violence or sexual assault would often be blamed for their own victimization, discouraged from filing formal complaints against their attackers, or otherwise treated with condescension, contempt, or lack of sensitivity. Women's rights activists played an effective role in improving the experience of women who had been victimized by crime in many ways, including sensitivity training for law enforcement, enactment of numerous laws such as mandatory arrest in spousal abuse cases in many states, and establishment of facilities such as women's crisis centers and assistance hotlines.

Also of practical importance to the victims' rights movement was the increase in the crime rate in the 1960s and 1970s and the concomitant anticrime stance adopted by lawmakers and the general public, which in part manifested in support for victims' rights programs. In 1965, Cali-

fornia became the first U.S. state to award public compensation to crime victims. By the 1970s, numerous victim/witness assistance programs had been established across the United States, funded by the Law Enforcement Assistance Administration and organized largely through prosecutors' offices.

The decade was also witness to the country's first sexual assault crisis centers, though initially due to previous negative experiences, not all such centers actively cooperated with police or prosecutors, a situation that would change over time. By the 1970s, domestic and child abuse also began to receive greater attention from both law enforcement and the general public. Perhaps the single most important development of the period was the founding in 1976 of the National Organization for Victim Assistance (NOVA), one of the nation's principal catalysts for awareness and legislative action in support of victims rights.



Marchers display signs in Knoxville, Tennessee, during Slutwalk Knoxville. The anti-sexual violence march was one of numerous worldwide Slutwalk rallies held throughout 2011 to raise awareness for the rights of rape victims and protest against explaining or excusing that a rape was warranted because of any aspect of a woman's appearance.

The 1980s witnessed significant advances, in part reflecting the strong support of the Reagan administration. The first National Victims of Crime Week occurred in 1981. The President's Task Force on the Victims of Crime was established the following year, which was to prove instrumental in issuing policy recommendations and advancing the movement. Many of the task force's recommendations were implemented over time, including the Crime Victims Fund, which has financially supported thousands of separate initiatives and provided funding for state-level programs for victim assistance and compensation. Other recommendations implemented include the Witness Protection Act, which criminalized witness harassment or retaliation, and the Bail Reform Act, which required courts to consider the risk to public safety posed by criminal defendants in bail hearings. Most states have implemented pro-victim laws/policies recommended by the Task Force, and nationally, over 5,000 programs have been established in support of victims' rights and restitution.

The victims' rights movement has varied goals, some of which have proven controversial. The three principal dimensions of victims' rights advocacy are victim satisfaction/services, victim impact, and restitution/compensation. Near universal agreement exists that victim satisfaction should be a goal of society and that crime victims are rightly entitled to a range of quality social welfare support services to assist in their recovery. However, questions remain as to exactly how many victims exist in society, how many need assistance, to what extent their needs are being met, and what types of services are the most appropriate to various circumstances. For example, victims of violent or sexual assault are often severely traumatized and in need of professional services in order to aid in the recovery process. However, universal agreement does not exist as to the type of assistance that is most appropriate for all cases. Many advocate mental health counseling and other assistance but not formal psychiatric treatment for the average victim, as the victim is not mentally ill but undergoing a normal psychological response to a traumatic experience. Although the current situation in terms of victim support services is not ideal, the United States at present does provide a wider range of support services to victims than at

any point in its history, and many (though not all) studies indicate far higher levels of victim satisfaction than in decades past.

Victim impact broadly refers to the ability of victimized parties to directly participate in the criminal justice process as related to bringing offenders to justice. Many proponents of victim rights contend that victims have entitlement to direct involvement in each phase of the legal process: pre-trial, trial, and post-trial. An example of pre-trial victim involvement would be granting the victim power of veto with regard to plea bargains. Since the majority of criminal cases in the United States never reach the trial phase due to plea bargaining, the victim veto would be a meaningful step toward empowering victims in the process if they feel the state's offer to the defendant is either too lenient or too harsh. An example of trial participation is a right to provide testimony if so desired. Examples of victim rights in the trial stage include the right to meet with the judge and prosecutor and the possibility of added victim protections from overly aggressive or otherwise inappropriate cross-examination from defense council. Perhaps the best example of a post-trial goal of victim rights advocates is the right to make a victim impact statement in order to convey the extent of harm inflicted to those responsible for sentencing the offender.

Restitution

Another dimension of victims' rights is the issue of restitution. There are two basic types of victim restitution programs: traditional and punitive. Traditional (or simple) restitution involves direct compensation from the offender to the victim for the loss of or damage to property, or physical or emotional injury. Punitive restitution supports compensation while simultaneously seeking to inflict some measure of punishment beyond the direct cost of losses incurred. In a traditional restitution scenario, a victim who had been robbed of \$10,000 could expect compensation for that amount plus certain incidentals such as anguish, distress, or lost work time. With punitive restoration, additional compensation would be demanded, going beyond mere reimbursement in making the offender undergo additional penance for criminal acts, addressing society's need for punishment and in so doing possibly act as

an additional deterrent beyond simple compensation. In such a scenario, the amount paid in restitution could significantly exceed the amount actually owed to the victim.

Restitution programs can serve multiple purposes, including financial assistance for victims (often regarded as the most important purpose) and alternative or additional means of punishment of offenders. Such programs might also relieve some stress from the overburdened criminal justice and correctional systems and potentially help reduce and/or redirect some public expenditures. Restitution could provide additional incentive for victims to report crimes and assist with prosecutorial efforts. Restitution also forces offenders to accept financial responsibility, and in so doing, ostensibly assume psychological or moral responsibility for their actions.

The latter is a component element of another potentially important aim of restitution, that of offender rehabilitation. Some studies have shown that many perpetrators of serious crimes such as homicide desire to make some form of reparation, though critics note that such sentiment can be insincere and may often be conveyed by offenders to curry favor with parole boards or other authorities. Many behavioralists and penologists contend that by obliging offenders to engage in meaningful work to meet this financial obligation, it could help instill positive work habits, impart ethical understanding/reflection with regard to issues such as reward-punishment outcomes for individual choices, and instill responsibility and alleviate feelings of anger toward and detachment from society, all of which are positive steps in the rehabilitation process.

Presently, 30 states in the United States have mandatory restitution programs. Ordinarily, judges are provided the latitude to overrule mandated restitution provided they can document a justifiable reason for doing so, such as the inability of an indigent offender to pay. All states permit courts to order victim restitution if deemed suitable to the circumstances. Historically, judges tend not to order restitution unless they are obligated to do so by mandates, and considerable variation exists among states as to the amounts awarded and the procedures through which restitution is determined and implemented. Many supporters of victim restitution advocate that the

practice become mandatory and that procedural protocols related to restitution be standardized across the country.

Those who do not support court-ordered restitution programs note that victims of crimes have the option of pursuing civil actions against offenders separate from the criminal process. However, a number of problems have historically existed with initiating civil suits against offenders: such legal action costs the victim both time and money that may not be at their disposal; the offender is often never identified or convicted; and civil judgments can be difficult to obtain, certainly when the offender is financially destitute. Proponents of victim restitution note that the first problem can be addressed by making restitution a mandatory part of criminal prosecution and judicial and probationary purview. Many victims' rights advocates contend that all such problems and the necessity of bringing civil actions against criminal offenders can be superseded by implementing programs of state compensation for victims of crime.

Whereas "restitution" or "reparation" refers to payments made by an offender directly to the victim in order to at least partly compensate for the harm inflicted, "compensation" refers to payments made via public funds to victims of crimes. Supporters of public compensation argue that governments should regard assistance to crime victims including compensation for their losses as a standard component of a broad social welfare policy. Also, since the government failed in its duty to protect the victim against crime, compensation by the state is appropriate and necessary. An additional argument of practical importance is that even if restitution is ordered or a civil judgment levied, the government often imprisons criminal offenders, limiting their ability to pay indemnities to victims; therefore, the government should accept the financial responsibility for compensating victims.

Compensation of crime victims from public funds has been implemented as policy in a number of nations including Great Britain. Several U.S. states have also implemented public compensation programs as component elements of their social welfare compensation models, including California, Hawai'i, New York, and Massachusetts. In the United States, compensation plans generally share several characteristics in common:



A young girl photographs posters of Marsy Nicholas during National Crime Victims' Rights Week in 2009. Marsy Nicholas was stalked and killed by her ex-boyfriend in 1983. Marsy's mother was later confronted by the accused murderer, not knowing he had been released on bail. Surviving family members of murder victims had no legal rights before Marsy's Law was passed; courts must now consider the safety of victims and families when setting bail and release conditions.

The state assumes no legal liability for the occurrence of crime but offers compensation as a social policy consideration, compensation is paid from public revenues derived from taxpayers, limits are usually placed upon conditions that justify compensation (e.g., only crimes involving violence and/or physical injury), and eligibility for public compensation often requires victims to demonstrate acute financial need or hardship. Opponents of public compensation contend that such action is not the responsibility of government and that taxpayers bear no responsibility for the acts of criminals and should not be taxed to indemnify the actions of offenders.

Criticisms

Criticism has also been levied against restitution programs. Since poverty and lack of economic

opportunity is an underlying factor behind at least much if not most criminal activity, it may be unrealistic to expect many offenders to pay restitution, even if wages are garnished and meager assets are seized. Compounding this practical consideration is the fact that prisoners have limited if any opportunity to earn income. Although prison manufacturing and other forms of labor were common in the United States in the 1800s, in part due to the protests of competing private businesses, numerous federal and state statutes began restricting prison industries in the 20th century and as of today, it would be uncommon for inmates to be able to earn significant wages via prison labor. The inmate jobs that do exist are usually menial, low paying, and ill suited to the goal of victim restitution. One option to assist in the goal of restitution would be advocacy of work-

release programs wherein certain offenders could be permitted or even required to maintain outside employment while completing their sentences and probations. Additional options to address the issue of offenders' ability to pay include adjustment of restitution levels based upon financial capability (i.e., offenders with resources pay more, those without resources could still be expected to pay, but a reduced amount reflective of their realistic economic ability); direct arbitration between victims and offenders could be incorporated in the plea bargaining process or some other stage of prosecution or sentencing; and indigent offenders in some instances (e.g., nonviolent offenses) could substitute personal services/labor to the victim or to an institution of the victim's choosing in lieu of payment.

A significant concern with restitution systems is the problematic nature of determining appropriate amounts to award and no single simple model of restitution will be applicable to all offenses and victims. When restitution programs were initially implemented in some parts of the United States, the amounts awarded generally relied upon victims to provide clearly demonstrable evidence of tangible losses of money or property, and the victim's ability to provide detailed estimates of losses remains the most accurate predictor of restitution judgments. In reality, victims do not incur only tangible, measurable losses such as stolen items/funds, lost wages, and medical costs. Victims also experience subjective, less measurable losses, such as psychological trauma, pain, and stress. It has been proposed that typical jury awards in similar cases be used to establish appropriate restitution levels for intangibles such as pain and suffering and that judges should consider both tangible and intangible losses in determining restitution amounts. Victims' cost also varies widely according to the type of crime. For example, petty larceny or simple assaults pose significantly less overall cost to victims than sexual assault.

Numerous additional criticisms have been offered regarding victim restitution. Since crime impacts society in general and combating and prosecuting criminal acts incurs expenses for society at large, many contend that society in general should also receive financial compensation from offenders rather than a single victim. Many proponents of victim restitution cite its

effects as an additional deterrent of crime, that is, if crime does not pay, fewer individuals will pursue crime. However, the evidence supporting restitution as an effective deterrent is scant at best. If restitution is tied to plea bargaining, sentencing, or early release, then issues of class, privilege, and egalitarianism are raised. For example, offenders with financial resources could receive reduced or even commuted sentences via their ability to pay restitution, whereas indigent offenders who perpetrated similar crimes could serve significantly longer sentences. The latter shortcoming could be addressed at least in part by adjusting amounts of restitution appropriate to the wealth level of offenders.

Additionally, some studies have revealed that offenders ordered to pay restitution have more difficulty successfully completing probation and were more likely to have probation revoked and to report health or financial problems, undermining the contention that restitution can aid in the process of rehabilitation. One of the strongest criticisms of restitution is opposition to its use as a substitute to traditional punishments. However, most supporters of victim restitution advocate the approach not as a substitute for other punishments, but to be used in conjunction with other forms of correctional justice.

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See Also: 1981 to 2000 Primary Documents; 2001 to 2012 Primary Documents; Gender and Criminal Law; Plea; Rehabilitation; Retributivism.

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Victimless Crime

A victimless crime is one in which, in the perception of perpetrators and observers, no other individual has been harmed. Since no one is harmed by a crime, many people argue that the act should not be considered a crime at all. This includes a variety of sexual activities that contravene some religious texts (e.g., homosexuality) or personal ethical standards (e.g., gambling) or activities people believe they should be allowed to do because criminalizing them is meaningless (e.g., jaywalking). The basis of objection to these claims includes the role of the state as a victim (e.g., through lost revenue) and that some participants do not have the genuine ability to make an informed decision about whether to take part (e.g., prostitution or polygamy). In any case, as society has developed, changing awareness of the threats posed by certain activities and the changing nature of acceptable ethical norms in society have together brought about amendments to the way that such victimless crimes are policed and judged, adding some new categories and removing others.

Prostitution

Prostitution is representative of a group of activities in which it may be argued that since people are involved in the acts voluntarily as part of a commercial transaction, then no one should be considered a victim. Other activities that might be included in this category include pornography, polygamy, and bare-knuckle fighting. Typically, American federal and state governments have permitted prostitution in certain places apart from when pressure has been placed upon them for reasons of morals or public health. In the early history of the United States, prostitution was just as legal and was considered a necessary part of society as it was in the countries from which settlers had originally arrived.

In newly settled colonial societies and in distant frontier settlements, it has generally been accepted throughout history and around the world that prostitution on a casual or organized basis not only services a demand among groups of unmarried men but also provides a means of income of last resort for women without alternatives. Men generally prefer sex workers of a similar ethnicity

to themselves, and so, as new waves of migration came to America, men were followed by women destined for one aspect of the sex trade or another. Chinese women, following Chinese men working on building the railroads, were apparently held as items of great interest and were exhibited in peep shows for customers interested in determining whether their genitalia were any different from those of other women.

It was not until the early 20th century that prostitution began to be outlawed in many states, largely in the years leading up to World War I. In this period, a combination of the Woman's Christian Temperance Union, suffragists, and labor unions was actively campaigning for reform of society through moral and aesthetic issues such as reduction in public drunkenness and promotion of family life (hence the ban on prostitution) as well as improvements in workplace safety and conditions. As ever, criminalizing an activity for which demand continues unaffected means the burden of punishment falls on the providers of the service, in this case the sex workers themselves. With the outbreak of human immunodeficiency virus and acquired immune deficiency syndrome (HIV/AIDS), further legislation was introduced in some states to intensify the punishment for sex workers aware of an HIV-positive status. Once their status became illegal, women in the sex work industry lost their opportunity to appeal to the state authorities when abused or threatened, or simply cheated.

There are arguments that sex work is such a demeaning and traumatizing activity that no woman or indeed man can ever truly work in it voluntarily. This seems to contradict empirical evidence that shows at least some sex workers to be reasonably content with their choice of lifestyle given the alternatives open to them. What does seem to be the case is that when the techniques of industrialized capitalism are applied by pimps to their sex workers, increasing productivity by maximizing the number of customers while minimizing costs, then there is little doubt that the sex workers become victims. The same is true of other types of work related to sex, such as acting in pornographic films or exotic dancing. It is possible for workers in these areas to be reasonably well empowered and to control their own means of production, which is their own bodies.

However, there are many cases in which their power is removed from them and their position becomes similar to if not exactly the same as victims of a crime.

The situation of multiple wives in societies such as Mormons, which once accepted the practice, or in an earlier period the brides for sale in frontier settlements, was similar. Depending on the particular circumstances they found, the women might have a tolerable or even comparatively pleasant life, given the alternatives open to them, or they might be very badly treated in the way that continues to happen to disempowered mail order or Internet brides in various countries today. The principle involved is whether the women actually have genuine economic alternatives to explore apart from selling themselves.

Gambling

Gambling is an example of a victimless crime that is based on a sense of personal morality. Religious texts tend not to emphasize restrictions on gambling, although most religious authorities do tend to preach against it because of its impact on families and because of the possibility of addictive or compulsive gambling. However, gambling has long had a relationship with the state in the form of lotteries, which have been used in America since the time of settlement to help fund state government budgets. This has led to tension across the centuries between the authorities and the moral establishment that has resulted in a series of compromises restricting gambling to specific licensed casinos in restricted locations, which can, it is imagined, be easily controlled and regulated. This led to the creation of riverboat casinos operating out of New Orleans and the casinos located on the reservations of some Native Americans as well as the construction of gambling-based conurbations such as Las Vegas and Atlantic City. Despite attempts to control these activities, gambling establishments have continued to be bedeviled by connections with organized crime, money laundering, sex work, and the type of petty crime that is associated with addicted gamblers searching for money to repay debts, not to mention the violence that comes from attempts to regain unpaid debts. On a day-to-day basis for those people who did not live in a gambling-permitted location, neighborhood

numbers or underground lotteries or semiformal gambling at horse racing tracks or boxing arenas helped fill in the gap. These activities, too, because of their nature as occasionally illegal and cash-based, have been subject to the same forms of petty crime and possible corruption by bribing police to turn a blind eye.

The argument for legalizing gambling has been effectively won in contemporary America because of the influence of the Internet. This has given access to online gambling markets in sporting contests and has also popularized the online playing of poker for money. State-level attempts to restrict, control, and tax Internet-based activities have so far proven to be less than successful.



Gambling is said to be a victimless crime and is legal in many states in the form of lotteries. However, many experts warn of the potential for addiction and harm to families when the stakes get high enough to bet with borrowed money.

Homosexuality

The same has been true of other activities that are defined by some as being morally or ethically abhorrent based generally on a religious tradition. The most notable example of this is homosexuality or, more specifically, male homosexuality. The consideration of homosexuality focused primarily on the act of sodomy, which was criminalized in early America according to laws that were, as in most countries, largely ignored as long as those involved showed some discretion. It was not until the years following World War II and the onset of the cold war that any form of what was considered to be deviant behavior became stigmatized by the right-wing establishment and its allies in the emergent conservative Christian lobby. This resulted in stricter antisodomy laws, which had been enacted in all states by the 1950s. However, the tide of public opinion turned against this approach and a more tolerant attitude was evident by the 21st century, when most of those laws were removed. Opponents of homosexuality have transferred their hostility to new areas of the law by aiming to prevent gay people from getting married or enjoying other forms of basic rights. This debate continues.

Use of Drugs

Perhaps the area of greatest controversy in the issue of victimless crimes comes with the use of drugs ruled to be illegal. The drugs involved include heroin, cocaine, marijuana, and amphetamines. Each of these has either been legally available in the past or prescribed for various medical conditions or both. From the perspective of the individual, the principal issue concerns the right of the individual to enjoy a product that harms no one else; the argument against drugs on this level is that the drugs are addictive to the extent that an individual cannot make a rational decision to use or to stop using them. Clearly, there is a degree of inconsistency attached to these arguments as there are many products that are legally available and that cause damage to the health of an individual and an attendant cost to society in dealing with the health issues involved: foods promoting obesity, automobiles, and firearms are examples of such products.

Marijuana (or cannabis), in various forms, is the illegal drug most widely used and the most



There is a great deal of controversy as to whether the use of some illegal drugs constitutes victimless crimes, particularly regarding marijuana, which is prescribed to some patients.

contentious in this regard. Cannabis is prescribed by some doctors for conditions such as multiple sclerosis and also to stimulate favorable symptoms in patients who are HIV-positive or receiving treatment for cancer. The drug is also widely used in various spiritual belief systems, and its use has been decriminalized in a number of countries. However, the U.S. judiciary, as a whole, continues to criminalize the use, growth, or distribution of the drug, irrespective of the use to which it might be put. This has led to the prosecution of various individuals who are quite removed from the normal expectations of criminal behavior and has contributed to the public feeling that the banning

of some items rather than others is either inconsistent or is subject to the intervention of industry lobbying groups. This feeling is accentuated by the ways in which laws have been framed with respect to specific types of drugs that have usage linked to certain socioeconomic groups: for example, crack cocaine, more likely to be used by black Americans, is prosecuted with much more severity than those forms associated with middle-class white Americans.

Jaywalking

Some activities have been posited as being harmless to others; their practice is claimed to be part of the rights of any American under the freedoms provided by the Constitution. One of the most emblematic of these is jaywalking. This is a term that dates to 1909 and refers to a reckless or irresponsible act by pedestrians in crossing the road. This appears to be an innocent enough activity and not worthy of much consideration, but in fact, the implications of a motorist striking a pedestrian can be very severe for those directly involved and also to the state as a whole. While the psychological costs of such an incident are paid by the families of those involved, the physical costs have to be met at least in part by the state and by society at large in the form of increased insurance fees. There is no act, in fact, in which it is not possible for a person to become a victim in one way or another.

Jaywalking also has both class and racial implications. From the 1930s, the growing importance of the automobile vis-à-vis the pedestrian meant that police customarily sided with the former against the latter. Where once roads were part of the commons and a resource to be used by all, they became enclosed by automobile drivers whose speed and power forced all other would-be road users to stay on the sidewalks apart from occasional regulated periods when they are permitted to cross. Laws were enacted to enshrine the rights of usually wealthy automobile drivers above the rights of the often not-so-wealthy pedestrians. In poor districts of cities, some of the roads of the communities involved have been ruled out of bounds for residents and designated as the property of those passing through. Further, police in urban areas in particular have been accused of using jaywalking legislation as a means of stop-

ping and questioning pedestrians, particularly pedestrians who belong to certain ethnic minority and demographic groups. When it comes to a prosecution for jaywalking, the evidence presented at court will generally be little more than the testimony of one or more officers compared to that of the accused and, despite some checks and balances in the system, this is sufficient to inspire many people to believe that their odds of acquittal are reduced.

The Victim Is the State

In general, the American state has usually been prepared to retain criminal status for any act to which it has been attached, on the basis that the state can be declared as the ultimate victim and that this represents a useful stream of revenue. In the case of speeding or other acts of improper use of an automobile, it has been argued by one or more of the jurisdictions involved that the act itself represents a potential threat to safety and hence a cost to the state, while a fine may at least recoup some of the costs involved in documenting the action. The same approach has been used in the case of smuggling, failing to declare earnings from an illegal source, and any other act that might affect the health of that person or anyone else.

The one great anomaly in this long-term policy and perhaps the greatest failure in contemporary American political action is the so-called war on drugs. This disastrous and simplistic approach has had incalculable costs when an alternative approach could have reduced the harm done by regulating quality and taxing every transaction to pay for the costs incurred.

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See Also: Abortion; Adultery; Drug Abuse and Addiction, Contemporary; Prostitution, Contemporary.

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Victorian Compromise

The Victorian age was a time of great contrasts: moralism versus vice, philanthropy versus greediness, wealth versus poverty, and the like. Therefore, Lawrence Friedman, who coined the term, argued that the Victorian Compromise served as a double standard that tolerated sin and vice, so long as they took place in the private sphere, to protect the reputation of respectable men and women who deviated from the official norms.

The religious and philosophical elements of the Victorian Compromise stood in contrast to the Victorian era itself. Evangelicalism, created in the 18th century by John Wesley, focused on moral conduct, emphasizing humanitarian causes and social reforms. Utilitarianism, a theory by Jeremy Bentham, upheld reason as the means to overcome problems, abandoning human and cultural values.

Empiricism, an attack on utilitarianism headed by Charles Dickens and John Stuart Mill, relied on legislation to help men develop their natural

talents. As such, education and art had a significant role. Mill also launched a series of reforms to improve the lot of the disadvantaged population, namely, to provide free education, emancipation of women, and trade union organization, among others.

Given the competing realities in the society of the Victorian age, the rigid and nonnegotiable doctrines of the 19th century served to protect reputation. The Victorian Compromise forged a personal zone of privacy, which in turn permitted deviations from the norms. Because of its tolerance of sins, the Victorian Compromise was attacked by the moralists, but in the second half of the 20th century, it had become the norm. The legal and social control over sex, reproduction, gambling, and intimate relationships was normalized. At the core of the Victorian Compromise was the concealing of questionable practices in a fashion accepted by the elite.

Vice in the Private Sphere

The Victorian era was known for its pious moral codes and sense of propriety. Across history, Western societies have experienced intervals of licentiousness and reticence. The Victorian era was the symbol of prudish attitudes and shrouded deeds. In both England and America, strict laws penalized various sexual activities that were reprovved, from adultery to sodomy. At the same time, vice was nonetheless tolerated if found in small amounts, discreet, and well controlled. This duality was the essence of the Victorian period. An example of the double standard was the red-light districts, which sprouted up across cities. Brothels, casinos, and other houses of vice developed swiftly in these districts. The law and law enforcement tolerated them as part of normal urban activities.

Blackmail was another aspect of the Victorian Compromise. The blackmail laws acted in favor of elites to protect their public personas, shielding them from threats or extortion by illicit lovers or servants through blackmail. The blackmail statutes had basic principles found in the Victorian Compromise and came about at the same time.

The tolerance of hidden vices and misconduct, furthered by the blackmail statutes, spawned hypocrisy and asserted the view that sins could not be eradicated. While the Victorian Compromise relied on privacy and secrecy to sustain itself,



"IF WE LIFT OUR SKIRTS, THEY LEVEL THEIR EYE-GLASSES AT OUR ANKLES."

An 1854 cartoon describes a Victorian dilemma—"If we lift our skirts, they level their eye-glasses at our ankles." Men of the time did not often see the "titillating" display of an ankle.

hypocrisy worked to keep the “virtuous, respectable” class on its public pedestal in spite of its deviant indulgences.

The contexts in which the Victorian Compromise emerged deserve close attention. During the Victorian era, the middle class enjoyed their wealth, espoused their social etiquette, and their middle-class values. As such, the word *Victorian* came to denote a set of moral and sexual values. However, the Victorians had ignored the issues affecting the disadvantaged classes of England. The distressed working class faced stifling living conditions in urban slums, health problems, epidemics, and poor working situations. The New Poor Law of 1834 did not help resolve the problems, yet created the workhouse that was so loathed by the poor. Poverty, regardless of the circumstances, was qualified as a crime with penalty. Debtors were imprisoned in appalling conditions. Education also failed, with incompetent teachers who used corporal punishment as a disciplining method.

This coupling of prosperity and progress versus poverty and injustice gave birth to the Victorian Compromise. Other opposing forces included ethical conformism versus corruption, moralism and philanthropy versus money and capitalistic greediness, private life versus public behaviors. To some extent, the values the Victorians promoted indicated their preferred world and were not reflective of the social realities around them. The Victorian Compromise provided a sort of escape for them from social ills in that it allowed for deviance to take place behind closed doors, restraining much of the undesirable acts from flooding the façade of a moralistic society.

Another aspect of the contradiction inherent in the Victorian Compromise had to do with how it prompted theorists and reformers to improve the life of the disadvantaged populations, especially when it comes to public spaces such as hospitals, schools, and prisons. The concern to conduct the public space as respectable must have come from the idea of respectability, which discriminated the middle class from the working class.

Besides economic possessions, manners became the measure of class standing and altered greatly during this time. Queen Victoria had exerted her influences and caused the era to be highly puritanical. Sex became a taboo subject, and sex-related words were purged from daily use or replaced

with euphemized terms. Speech and act, therefore, underwent chastening, enabling respectability to be a key concept of the Victorian era.

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See Also: Adultery; Obscenity; Prostitution, History of; Sin; Sodomy.

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Vigilantism

Vigilantism is the practice of using private methods of obtaining justice and/or enforcing social control when the state is unable or unwilling to do so. A vigilante, in the formal sense of the word, is a member of a vigilance committee. This is a group or organization voluntarily constituted to “take the law into their own hands” in place of the justice system of an incipient, weak, or failed state. Vigilantes often create alternative courts and punishment mechanisms in lieu of those offered by the state. In the American narrative, such punishments included hanging (rarely), and more commonly, forms of public humiliation such as tarring and feathering, “running out of town on a rail,” or flogging. Modern forms of quasi-vigilantism in the United States include Internet vigilantism and extreme manifestations of neighborhood protectionism—using protests and pressure to coerce undesirables such as sex offenders into finding other housing arrangements.

Vigilantism is condemned by most legal writers and authorities as it denigrates and further delegitimizes the authority and majesty of the law and the state. It calls into question the very basis of the social contract through individuals collectively taking the state’s prerogative unto themselves.

This is why group vigilantism is almost uniformly condemned in fiction and cinema.

The raw-boned hero who takes vengeance as his own province, however, is paradoxically an American icon. Said hero, a cowboy or modern urban dweller in his own “frontier,” is forced to exact personal vengeance because legal institutions are not equal to the task of imposing justice. Examples of the former would include *Hang ’em High*, in which Clint Eastwood’s character tracks down and kills those who illegally (and imperfectly) lynched him. This theme is frequently encountered in classic Westerns. An example of the latter tendency would be the guy-next-door character played by Charles Bronson, whose family is destroyed by street punks. He embarks on a mission of revenge in the popular *Death Wish* series. The theme of private vengeance as problematic can be traced to Shakespeare and to ancient Greek plays.

Vigilantism in Early American History

The practice of vigilantism has existed in the United States since colonial times but it enjoyed its first florescence in the anarchic period immediately before and during the American Revolution. Generally, most American vigilantism arises from conservative roots. Vigilantism in the south after the revolution stemmed from the need to protect slavery and business interests, such as plantation or cattle interests. In other parts of the country, vigilante impulses generally stemmed from the

same conservative, locally oriented mercantile interest. Threats to the existing order were frequently targets; exemplars of the existing order were seldom victims of vigilantes. Such outstanding citizens and male members of rising elites were almost always holding the rope, not dancing on the other end. Victims were frequently members of pariah groups, strangers, slaves, union members and organizers, political outsiders, immigrants, and occasionally, real criminals. The involvement of such conservative elements may seem paradoxical given the critique of the existing order that vigilantism suggests. However, in the absence of an effective state, private justice functions admirably and may even be seen by practitioners as superior to the organs of the state.

The first major manifestation of vigilantism in the nascent United States was “Regulator” violence, which broke out in South Carolina in 1771. Regulators came into conflict with British forces and Crown loyalists before and during the American Revolution. They also punished outlaws and drove them from the colony or state. British authority and institutions were weak, and British taxes and laws were seen as hampering mercantile interests in the hinterlands. In rural Virginia, the situation was much the same, but not nearly as hard fought and bloody. One interesting note is that Judge Lynch of “lynching” notoriety was supposedly a real historical figure who frequently employed public humiliation of British sympathizers to make a point. “Lynching” came to mean an extralegal hanging only after the revolution. As the American state began to assert its authority in the last decade of the 18th century, these movements faded from the scene. The pattern of weak authority leading to vigilante activity and then losing its rationale in the emergence of growing state power occurred repeatedly throughout the next century.

State courts and local law enforcement existed in the frontier in the early 1800s but their authority was very weak. Fantasies of slave revolts or feared outlaw outrages occasioned the creation of vigilance committees. These were not anarchic mobs of toothless bumpkins but usually represented the gentry and rising elites. They often used the local press to post statements of concern and purpose to rationalize and defend their activities. The local press was almost always supportive, and many editors served as vigilantes.



A still from the trailer for the 1956 film *The Searchers*, starring John Wayne, who sought revenge for a kidnapped sister. Western films used the setting of the frontier and its unformed system of law and order to explore vigilantism.

In the south, such committees typically rounded up suspects and any strangers in the area if a slave revolt was feared. Many slaves were hanged in these situations; some were burned alive. Sometimes, however, vigilance committees tried to calm the situation and keep events from getting out of hand. After all, the wholesale hanging of slaves, while seen as a powerful deterrent, was a ruinously expensive experience for the planter aristocracy. Often, flogging a “symbolic enemy” such as an unfortunate New England traveler, or perhaps a few “uppity” slaves, might appease public opinion. In Mississippi in 1835, a minor slave revolt or reputed slave revolt at Beattie’s Bluff set off a mass vigilante movement. The famous Murrell conspiracy that same year generated even more hysteria. Purported “land pirates,” gangs of murderous thieves, were operating on the Natchez Trace. How much crime they committed and how much was imaginary is anyone’s guess. Most problematically, the Murrell gang was alleged to be fomenting a slave revolt. Vigilance committees put a stop to that and in the same year turned their considerable energies to expelling professional gamblers from Vicksburg and Natchez. Even in the presence of state mechanisms to deal with sedition, thievery, and cheating, getting rid of all these problematic enemy deviants through legal means would have been almost impossible. The extralegal methods that vigilantism exemplified allowed for an expeditious resolution when dealing with difficult legal issues and pariah groups. Thus, vigilantism was also seen as a practical way to get things done, both in the absence of an effective state and in the presence of one whose institutions did not offer expeditious-enough resolution of complex social and legal issues.

The Civil War Era to World War I

After the Civil War, various conservative groups such as the Red Shirts, tried to restore the old order by harassing former slaves, scalawags, and carpetbaggers. They were reasonably effective in their efforts and achieved the withdrawal of Union troops in 1877.

Texas was plagued by outlawry and vigilantism at two different periods in time. In the 1830s and 1840s, east Texas was plagued by outlaws and cattle thieves. Vigilantes known as “Regulators” used severe methods to root out escaped

slaves, outlaws, and criminals hiding in the border between Texas and Louisiana. So harsh were their methods that “Moderators” arose to counter their reign of terror, and a Moderator/Regulator war broke out. This was only subdued when the nascent Republic of Texas sent in militia to quell the disturbance. The second era of vigilantism was after the Civil War, when vigilante groups arose all over the state to deal with cattle rustlers and outlawry. Many hangings occurred, and reputedly corrupt lawmen were killed in their jails by armed vigilante bands. Finally, the Texas Rangers were called in to settle the violence and bring an end to family feuds. Complicating matters was extreme animosity between ex-Confederates and freed slaves and Republicans. Ambushes and public shootings were common up to the 1890s. Ironically, this era’s media promulgated a myth approving of both vigilantism and the actions of the Texas Rangers. This tension between private and public justice was to continue in the American narrative.

The most famous vigilante events in American history took place in California in the 1840s. The gold fields attracted both law-abiding prospectors and outlaws from all over the world. Law enforcement was nonexistent in the gold-producing areas, and crime was dealt with harshly by local vigilance groups and kangaroo courts. San Francisco, with weak and reportedly corrupt political controls, had a serious crime problem. Gangs of criminals were supposedly at large, and formerly respectable citizens turned to crime simply to survive. Isolated from family, friends, and home, and often heavily armed and drunk, prospectors turned violent when hitting the fleshpots of “Bagdad by the Bay.” The city was in chaos, if highly biased partisan contemporary accounts are to be credited.

This and Democratic control of local government, of course, were bad for business, and conservative elements created the San Francisco Committee of Vigilance in 1851. They held court and set up patrols. Most criminals they convicted were publicly whipped, and problematic members of a particularly obnoxious Australian gang were transported home, but only a few hangings took place. A second iteration in 1856 was more explicitly political, and harassed Democrats and their supporters. Backed by armed militia, this

group evolved into a wing of the Republican Party, and today it is difficult to assess how much of its activities were simply partisan violence and how much actually dealt with real crime and criminals.

New Orleans in the 1850s was an even more chaotic and corrupt political milieu than it is at present. Working-class whites, using the American (Know-Nothing) Party as their vehicle, were in the process of seizing power from the planter elite and for a brief period controlled the mayor's office and the police department. Democrats, in this case a very conservative group, merged with Whigs and staged an abortive coup in 1859 using a vigilance committee as a front. Respectable elements such as future Confederate General Beauregard and U.S. Senator (and political boss) John Slidell were deeply involved with the vigilante movement. Local merchant elites and planters were appalled that white workingmen would have the effrontery to challenge their hegemony, but their ham-fisted coup failed. After the war, vigilance groups tried to enforce white supremacy and even staged armed revolts in 1866 and 1874. Local authorities usually looked the other way when such white supremacist violence from groups like the Ku Klux Klan took place, even as late as the 1960s. Local juries would not convict those who attempted to enforce white racial norms in this period. In 1891, a vigilante group lynched 11 alleged Mafiosi in the parish prison, an event that precipitated a diplomatic frisson between Italy and the United States.

In an atypical departure from the prototypical nongovernmental and state-disavowed manner of operation, occasionally the state sanctions and even uses private vigilante organizations. An example of this rare occurrence is the case of the American Protective League, which operated during World War I. Enjoying the approval of the Bureau of Investigation, the precursor to the Federal Bureau of Investigation (FBI), this group harassed German Americans, socialists, pacifists, and radical unionists. It notably persecuted draft evaders and antiwar activists. Its actions were often undisciplined and uncontrolled, and the group was disavowed by the Department of Justice and disbanded after the war. Another example of private, state-sanctioned vigilantism that can be cited is the American Legion, in Washington State, which took action against the radical

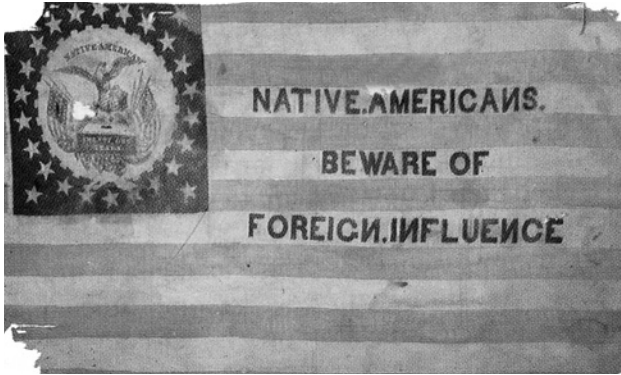
International Workers of the World in the post-war period.

Present-Day Quasi-Vigilante Activity and Impulses

During the 1970s, several quasi-vigilante groups emerged out of the crime crises of the urban United States. The most publicized was the Guardian Angels. Founded by Curtis Sliwa in 1979 and known for wearing red berets, the Guardian Angels attempted to deter crime through unarmed patrols and by calling attention to high-crime areas. They were media darlings but were heartily disliked by local police, who saw them as potential gang members or provocateurs. They were not a real vigilante group, as they had almost no support from elites or merchants and have mostly faded from the scene in recent decades.

The most celebrated vigilante case of modern times was that of Bernard Goetz. In 1984, surrounded and feeling threatened by four African American youth on a subway, Goetz shot them at close range. Dubbed the "subway vigilante" by an overstimulated media, Goetz was convicted of a minor weapons violation and faded into obscurity. Again, as he did not work in a group context and was not working in concert with local elites, he cannot be called a true vigilante, though his conduct certainly appealed to impulses for private justice. It was widely perceived that order had broken down, and that Goetz's actions made him a hero in the eyes of many. Others saw him as a maladjusted, dysfunctional advertisement for alienation and ill-conceived celebrity.

Anti-immigrant groups such as the Minuteman Project have often been in the news in the early 21st century. Angry about crime in Mexico and increased immigration, this group has established patrols along the Mexico-U.S. border. Group members, like Tea Partiers, link themselves to the founding fathers and seem unfazed by the knowledge that the founders, in fact, wanted to encourage immigration to build the nation. This group has been accused of far right-wing sympathies by progressives, and significantly, by former members as well. It is not a true vigilante group as it is not supported by local elites; local businesses want access to cheap immigrant labor. Furthermore, the group does not have courts or



The Native American or Know-Nothing party was founded in 1841. In 1854, the party adopted the policy that U.S. citizenship should be granted only after an emigrant had lived in the country for 21 years—thus the symbolism on this flag.

punishment mechanisms; they simply call the U.S. Border Patrol or local law enforcement when they encounter immigrants who have crossed illegally. Still, they articulate widespread and inchoate public frustration with a porous frontier and a dysfunctional immigration system.

Another manifestation of contemporary quasi-vigilantism is Internet or cyber vigilantism. In the largely unguarded and unprotected “frontier” that the Internet represents, law enforcement is ill equipped to deal with the myriad issues that have arisen. Sexual exploitation of minors by pornographers, predators, and pedophiles through the medium of the Internet has led individuals to get involved. Groups have targeted individuals for demonstrations or boycotts. Sexual offenders in group homes find angry groups of neighbors calling for their ouster. The situation is so severe that in some municipalities, ex-offenders simply have nowhere to live because of restrictive existing laws and continuing agitation by these groups.

One media-created group is Perverted Justice, a group that lures unwary would-be lotharios of underage girls and boys, that is, sexual predators, into supposed meetings with people the predators believe to be vulnerable minors. The “children” on the Internet are actually adult members of Perverted Justice. After “grooming” the supposed underage objects of their would-be affection, the predators agree to meet with their correspondents. Upon arriving at a private residence,

they are lured into the home with an invitation, a further intimation that something more rewarding than a talk will be forthcoming.

At this point, they are confronted by a reporter, and ultimately arrested by the local police. They are generally tackled unnecessarily and hectored at gunpoint. Attendant public humiliations such as booking and questioning follow and are duly recorded for the network audience. This is obviously very close to entrapment, and few of those arrested are actually charged and convicted with more serious sex crimes. But some members of Perverted Justice have reportedly harassed arrestees at home and work, causing some to lose their jobs. They have also used the Internet to post pictures of the offender, his home, and place of business. Perverted Justice does enjoy support from most in the criminal justice community; who would, after all, advocate for the sexual predator? Some Websites and groups of civil libertarians find these activities unfair, objectionable, and outrageous. A few have pointed out that the dedication of this group seems excessive and more than a bit perverse in its own self-righteousness.

Other Internet-based vigilantism might involve turning the tables on “Nigerian scam” artists by promising to cable them money in some distant or dangerous Nigerian locale. When the con artist arrives at the scene, there is no money, only peril. Some of these vigilantes have been able to obtain and post photos of such scammers in custody or in dangerous situations. Other vigilantes meet in chat rooms and other forums and agree to harass individuals or corporations that they feel are inimical to their goals or interests. In one case, an Internet service provider that had hosted malware sites and other scams was forced off the web by collective activist efforts. People who torment or do not take proper care of their animals have been the special target of Internet-based activists. In South Korea, a woman who failed to pick up her dog’s feces on the subway was the target of an intense campaign of Internet vilification. Eventually known as “Dog Poop Girl,” she resigned from her university and made a public apology. Companies that have refused to let children use their restrooms have been similarly targeted by Internet vigilantes.

Internet vigilantism is especially notable in China. A cuckolded husband’s pitiful postings about his wife’s romantic alliance got a strong

reaction, and the object of her affection was harassed on the street. Online groups coalesced and, meeting on the street, verbally tormented the lover unrelentingly until he quit his university and hid out in his home. More recently, Internet vigilantes in China have focused on government inefficiency in its reactions to disasters and perceptions about its perceived general corruption.

Vigilante Themes in Drama and Media

It is hard to delve into ancient or Renaissance literature without dealing with themes of private justice, if not true vigilantism. Among the first Greek dramas, Aeschylus's *Oresteia* deals primarily with vengeance and the gods' reactions. Shakespeare deals with similar themes in *Hamlet*, and other playwrights of his age were interested in retributive-oriented plots.

But in American cinema, private vengeance themes ring a responsive chord with the popular mind. Classic Westerns from the 1950s and 1960s, using weak law and order on the frontier as a backdrop, explore private vengeance at length. In *The Searchers*, John Wayne tracks down and kills the Indians who kidnapped his sister, recovers her, and restores order to a disordered post-Civil War Texas. Clint Eastwood seeks private justice in *The Outlaw Josey Wales*, as he does in *Hang 'em High*. John Wayne (again!), in one of his last Westerns, shoots down gunmen in *The Shootist*. *High Noon* and *The Man Who Shot Liberty Valence* also deal with private vengeance versus legal justice; this nexus is an interesting frontier of its own.

Clint Eastwood (again), although seemingly a modern law enforcement agent, is clearly on a series of private missions in the *Dirty Harry* franchise. Certainly, these are popularly viewed as vigilante-type films. In a more nuanced and sensitive portrayal, he becomes positively messianic in *Gran Torino* (2008), in which a vigilante-like everyman saves poor Asian immigrants from a gang of urban thugs.

Women as vigilantes go back to the Greeks, but in modern cinema they include Jodie Foster in *The Brave One* and Ashley Judd in *Double Jeopardy*. More films and television series with women as avenging protagonists include a growing number of police procedurals and standard cop shows.

It is strange that the rich vigilante tradition in America has spawned almost no television drama

that deals with this theme. Apart from a random *Bonanza* or *Rawhide* episode from the early 1960s where mistaken identities almost lead Hoss or Clint Eastwood (yet again) to be lynched in some godforsaken one-horse town, the vigilante theme is seldom taken up as a dominant motif. The notable exception to this generalization was the 1957 Western *The Californians*, which took place in gold rush-era San Francisco. The main protagonist was an editor who had mixed feelings about the extralegal proceedings in the city by the bay.

Still, it was a standard shoot-'em-up and did not raise many deep existential or philosophical questions. *Have Gun Will Travel* (1957) featured an erudite hired gun, Paladin, who was both detective and muscle for the downtrodden. His hidden derringer furnished a fitting denouement to many a desperado or plutocrat-employed hired gun. In this respect, it was both contemporary and forerunner to the plethora of detective dramas of the late 1950s, 1960s, and 1970s. A recent, somewhat distorted use of the theme of private vengeance visited on the truly deserving is *Dexter*. This cable network offering concerns a sociopathic CSI expert who systemically tracks down and murders sociopathic murderers. Its popularity raises serious question about the public's ability to distinguish right from wrong: In the show, it is permissible for evil people to use their privileged law enforcement position to hunt down, torture, and murder similarly evil malefactors. Still, it is clearly in the tradition of private vengeance, though technically not truly a vigilante series.

It is evident, then, that much that is labeled as "vigilante" in dramatic content is actually more correctly called "private justice" in terms of motif. Furthermore, it is interesting that private violence is often justified in media, but mob-based vigilantism is almost always subject to strong disapprobation. This reinforces the system but legitimizes the deep anger and alienation felt by many Americans. This tension may produce much more frustration and simplistic thinking about how to deal with crime and complex political issues than many in the media might suppose.

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See Also: 1901 to 1920 Primary Documents; Ku Klux Klan; New Orleans, Louisiana; San Francisco, California.

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Violence Against Women Act of 1994

The Violence Against Women Act of 1994 (VAWA) passed the U.S. Congress as Title IV, sec. 40001-40703 of the Violent Crime Control and Law Enforcement Act of 1994 (HR 3355), and President William Clinton signed it as Public Law 103-322. The basics of the law provide \$1.6 billion to enhance investigations and prosecutions of violent crimes against women. The bill also aims to increase pre-trial incarceration of those accused, automatic and mandatory restitution for those convicted, and civil redress for cases prosecutors fail to prosecute. The monies were originally allocated for disbursement over six years for

improvement in local and state justice systems, shelters, education, and training of court personnel. The bill also provides for paying for sexually transmitted disease tests, statistical records, and protection of battered women and children. The bill stemmed from perceived increases in violence against women and the UN Committee on Women calling for more federal intervention in the protection of women, children, and gender-based attacks.

Advocacy organizations like the National Coalition Against Sexual Violence, National Coalition Against Domestic Violence, and the National Organization for Women supported the bill with great applause. At its passage, VAWA supporters dubbed it the greatest achievement for women's rights in two decades. Senator Joseph Biden's office wrote the bill. Since its original inception, the VAWA has been reauthorized by Congress in 2000 and 2005. The act was up for reauthorization in 2011. The VAWA is a foundational piece of legislation because the U.S. Justice Department has no specific office dealing with violence against women. This legislation enabled the Office on Violence Against Women, in 2000, to begin administering monies to develop federal policy on domestic violence, sexual assault, dating violence, and stalking.

The VAWA first reached Congress in 1990, and testimony from victims and families helped support the legislation. The Clarence Thomas–Anita Hill confirmation hearings and a rise in the number of elected women in 1992 launched the bill's passage. In 1994, the VAWA was voted on as part of the Omnibus Crime Bill, and it was overwhelmingly favored in both houses. The VAWA makes it a felony to cross state lines with the intent to injure, harass, or harm a person's spouse or partner, allows protective orders to cross state lines, and lets victims testify to the threat or level of perceived violence in pre-trial hearings. Finally, the restitution clause of the law provides temporary housing, child-care expenses, lost income, attorney's fee, and other costs associated with the crime to be paid to the victim. While the bill was met with a great amount of applause, it was not without problems. The bill's provision allowed gender-based victims to have a course of action against attackers. In 2000, the U.S. Supreme Court struck down this section of

the law in *U.S. v. Morrison*, saying that only the states could provide these rights to victims.

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See Also: 1981 to 2000 Primary Documents; Rape, Contemporary; Rape, History of; Violent Crimes.

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Violent Crimes

Violence has been part of the fabric of American lives since the first settlement in 1607. In colonial America, there were vast distances between settlements, and traveling between them was often difficult and time-consuming. Thus, crimes tended to be concentrated in small areas. Most premature deaths in the colonies were caused by disease or violence, and both were seen as inevitable aspects of life. In this harsh environment, vigilante groups often sought out accused violators and exacted their own brand of justice. Vigilantism was more common in new settlements than in those that were well established. Historians have identified as many as 500 vigilante groups operating in America between the 1760s and 1905. In early America, highwaymen often roamed areas between settlements. While robbery was their goal, violence sometimes occurred. Within each colony, crime was dealt with according to the seriousness of the offense. Common punishments included public

embarrassment, branding, physical mutilation, fines, and incarceration. Some colonies adopted capital punishment as a means of dealing with a variety of serious crimes, including suspected witchcraft. In the years following the American Revolution, states began the debate over the death penalty that has been ubiquitous throughout much of American history. Political events and social upheavals have affected crime rates by causing them to decline during wars or soar during times of civil unrest, as was the case during the heydays of the labor and civil rights movements. In the twenty-first century, many Americans had become more afraid of terrorists than strangers wielding guns. The United States continues to be one of the most violent nations in the world, with twice the crime rate of France and four times the crime rate of Canada. While experts do not always agree on the reasons, most explanations focus on the prevalence of guns in the United States and on racial and ethnic relations, social inequities, and the ubiquity of violence in American media. Crime rates have continued to fluctuate. In 2002, the Federal Bureau of Investigation (FBI) reported that there were 1.4 million violent offenses committed in the United States. Breaking them down into categories, those offenses included 16,204 incidents of murder and non-negligent manslaughter; 95,136 incidents of forcible rape; 420,636 incidents of robbery; and 894,348 incidents of aggravated assault. In general, these are the same crimes that besieged colonial Americans, indicating that human nature does not change over time.

Pre-Twentieth-Century Violence

In the late 18th century, political violence was closely interwoven with the fight to win independence from England. During the Boston Massacre in 1770, a crowd of roughnecks began heckling British soldiers. The deaths of the five Americans that resulted from the confrontation were instrumental in the tightening of British control over Boston and in precipitating the colonists into war with the mother country. The Boston Tea Party, which is one of the most told tales of American history, was in large part due to the enlistment of members of Boston's South End mob, which helped to dump the tea in Boston Harbor. The mob continued to engage in violence throughout the revolutionary period. Even Americans

who considered themselves law-abiding were not always above harassing or even tarring and feathering Tory neighbors who refused to forswear allegiance to the British Crown. Slave uprisings also resulted in violence, with the first taking place in New York in 1712. South Carolina was the venue for a second uprising in 1739, and a third took place in New York two years later.

Reliable crime statistics were generally unavailable before 1900; but by the 1840s, some large cities were beginning to report homicide rates. Philadelphia experienced a homicide rate of 3.3 incidents per 100,000/population in 1840. Boston

was less violent, reporting an incident rate of 2.1 per 100,000/population. As might be expected, the rate of homicides declined during the Civil War since attention was focused on fighting and sheer survival of the hardships entailed in living in a nation at war with itself. After the war ended in 1865, crime rates began to increase sharply. In the south, the southern resistance to Reconstruction after the assassination of President Abraham Lincoln in 1865 led to an environment in which whites rioted in at least 80 incidents, railing against what was perceived as northern interference. The Ku Klux Klan instigated many of those incidents. After the election of Rutherford B. Hayes in 1876 and the official end of Reconstruction, power reverted to the white majority, and lynching was considered by many to be a legitimate method of dealing with African Americans who refused to stay in the place assigned to them by Jim Crow laws and discriminatory social practices. Between 1882 and 1951, some 3,400 African Americans were lynched. During the peak period of 1891–1901, more than a hundred African Americans were lynched each year.

Riots have been part of the American scene for centuries. The draft riots of 1863 were a result of federal conscription laws that allowed the wealthy to avoid the draft by finding a substitute or paying a fee of \$300. While many riots of the late 19th and early 20th centuries dealt with labor disputes, they became increasingly concerned with racial and ethnic tensions. Rioting broke out in Wilmington, North Carolina, in 1898 in response to the restoration of white supremacy. When Atlanta, Georgia, attempted to disenfranchise blacks in 1906, African Americans responded by rioting. Two years later, the alleged rape of a white female by a black man led to riots in Springfield, Illinois. Competition for jobs erupted into rioting in East St. Louis, Missouri, in 1917. Rioting continued into the 20th century, and 1919 became known as “the Red Summer” because of 26 separate riots. The most serious riot occurred in Chicago on August 2 after an African American youth was stoned until he drowned for daring to swim in a Whites Only section of a public swimming area. When it was over, 38 were dead and another 537 had been injured. One thousand people had been rendered homeless. Other riots broke out that summer in Washington, D.C.; Charleston, South Carolina; Knoxville



The Tory's Day of Judgment by E. Tisdale, circa 1795. American colonists prepare to tar and feather a loyalist seated on the ground as another loyalist hangs from a gallows. The loyalists would not abandon their loyalty to the British Crown.

and Nashville, Tennessee; and Omaha, Nebraska. More than a hundred African Americans were killed that summer, and thousands were left homeless. In 1921, another alleged rape ignited riots in Tulsa, Oklahoma. Tensions between whites and Filipinos broke out into riots in 1928 and again in 1930 in California and Washington State.

The Great Depression and World War II ushered in another rash of rioting. In 1935, New York's Harlem was the scene of widespread unemployment and underemployment. When the Depression forced African Americans out of the jobs they had managed to obtain, race riots resulted. A young Puerto Rican boy who had stolen a ten-cent pen-knife was removed from the store where the crime took place. When an ambulance and hearse arrived at the scene, onlookers assumed he had been murdered by police and began rioting. When it was over, three African Americans had been killed and approximately 60 had been injured. Damages were estimated at \$200 million. In 1943, competition for jobs in the automobile industry led to riots in Detroit, and Harlem again saw rioting after a black soldier was shot in the arm for trying to keep police from hitting an African American woman who was being arrested for disorderly conduct. Six people died in the Harlem riot, and another 400 were injured. Some 500 were arrested. That same year, the so-called Zoot Suit Riots broke out in Los Angeles as tensions rose between military men and the Mexican American community, which had become enamored of the broad-shouldered suits with narrow waists worn with balloon pants. After days of rising tensions, the worst rioting occurred on June 7 when 5,000 civilians headed toward the African American community of Watts and the Mexican American community of East Los Angeles. Watts was also the scene of the worst riot in American history in August 1965 when violence broke out after white police officers stopped an African American suspected of driving while intoxicated. The Watts riots lasted for six days and spread outward for 150 blocks. When it was over, 34 had been killed and 1,032 injured. Nearly 4,000 had been arrested. Estimates of property damage varied between \$40 million and \$100 million.

Violence on the Rise

Violence continued into the 1960s and 1970s in response to the drug scene, 500 race riots, and a

score of antiwar protests. It was a period when self-styled political revolutionaries frequently resorted to violence to make their views known. The Ku Klux Klan also launched a second wave of attacks during this period, continuing to promote its creed of white supremacy. Traditional criminal activities also continued to flourish. In 1971, the rate of aggravated assault reached 90.3 per 100,000/population. About a quarter of all fires were caused by arson, which became the second leading cause of death by fire, second only to smoking.

By the mid-1980s, violence was becoming even more common in the United States. It was also spreading its geographical reach, spreading out from traditional areas into the suburbs, and even reaching some rural areas. Nationwide, approximately 20,000 people were being murdered each year. The majority of those victims were young African American males, and homicide became the leading cause of death for young African Americans. Women were also frequent victims of violent crimes, and more than 75,000 rapes were being reported each year. Rape had the highest increase among all serious offenses between 1977 and 1984. Since rape is a vastly underreported crime, the number of actual rapes was assumed to be considerably higher. Another 650,000 women a year were being victimized through serious non-sexual assaults. One in every five females reported being physically abused by a male at least once. Child abuse rates were also soaring. In 1986, the National Committee for Prevention of Child Abuse reported that the results of a 50-state study indicated that at least 2 million incidents of child abuse and neglect had been recorded that year. Throughout the 1980s, approximately 500,000 robberies were reported annually. Automobile thefts and gang wars were also on the rise. Gun-shot wounds became the second leading cause of injury mortality in the United States, outranked only by deaths from automobile accidents. National figures on violent crime revealed that between 1986 and 1987, some 66,182 Americans died from firearm injuries. That number was greater than the number of Americans lost in eight and one-half years of fighting in Vietnam.

Much of the increase in violence in the 1980s was a result of the crack cocaine epidemic. Drug traffickers moved into the suburbs, where they found it much easier to sell their products. The

move also saved them money and time by cutting down on travel. Initially, police departments outside large cities were totally unprepared for the sharp rise in crime rates. By 1991 national polls revealed that most Americans were afraid to walk in their own neighborhoods after dark. Crime rates peaked that same year at 758.2 per 100,000/population. Although a decline was subsequently under way, violence was still very much in evidence. Experts blamed the rise in violence on increased divisions by race and class and on a declining sense of community throughout American society. Others pointed out that the existence of large shopping centers and community banks continued to provide increased opportunities for crime in the suburbs.

Despite the lack of safety in suburban America, violent crimes continued to be far more likely to occur in inner cities than in any other area. For instance, in the Washington D.C. area in 1992, incidents of violent crimes decreased 4 percent in Maryland's suburbs and 23 percent in Northern Virginia while rising 13 percent in the capital itself. The most vulnerable cities are those that contain impoverished areas where joblessness, dysfunctional families, inadequate schools, and the presence of gangs are a way of life. Most cities have "hot spots" where most crimes take place, leaving other areas of the city relatively safe. In Boston, for instance, violent crimes disproportionately take place in the "Combat Zone" located within Chinatown. Within the Combat Zone, assault and battery is more common than any other crime, fluctuating between 152 and 177 a year. Threats and armed robbery (46 to 113 per year) and rapes and other sexual offenses (25 per year) are also common occurrences. Some 210 to 374 incidents of property damage are reported in the Combat Zone each year.

In 1990, some 1,820,127 violent crimes were reported in the United States at a rate of 729.6 per 100,000/population. The year 1991 represents the peak of criminal activity in America, and there were 1,911,797 violent crimes committed that year at a rate of 758.2 per 100,000/population. In response to the national crisis, government leaders and law enforcement officials responded with a plethora of reforms and initiatives. Violent crime rates followed the general pattern of decline. As the most populated city in the United States, New

York City also experienced a crisis with drastic increases in rates of violent crime in 1990 with 2,245 murders. Mayor David Dinkins introduced community policing. His successor, Rudy Giuliani, also made crime fighting a priority issue, and Giuliani is generally given credit for the turnaround in New York's crime statistics. By 1996, the number of murders in New York had declined to 984.

After experiencing an unprecedented level of crime in 1991, it became clear that overall crime rates were beginning to decline in response to improvements in the field of policing, particularly as a result of the rise in community policing that brought law enforcement and local groups together to fight crime. Politicians also responded to rising crime rates by toughening sentencing laws in 26 states. That trend continued in evidence in the early 21st century. Between 1993 and 2004, crime rates fell from 747 per 100,000/population to 463. New York City, Chicago, and Los Angeles reflected this decline. Between 2000 and 2009, the national rate of violent crimes dropped from 506.5 per 100,000/population to 429.4 per 100,000/population.

However, some cities continued to report upsurges. In 2006, three cities reported homicide rates of three times the national average: Detroit, Memphis, and Sumter, South Carolina (a city with a population of less than 40,000). Between 2006 and 2007, homicides in Washington, D.C., rose from 169 to 181. In the first month of January, an 18-year-old female was shot and killed in a D.C. suburb while walking home from school, a 17-year-old male was murdered in a drive-by shooting, and two other shootings left eight young people and one adult dead. In 2008, rates also rose in Atlanta, Baltimore, Dallas, New Orleans, and Miami.

Gun Violence

One of the oldest debates concerning the constitutional rights of Americans involves the Second Amendment, which states that the necessity for maintaining a well-regulated militia establishes the basis for "the right of the people to keep and bear Arms." Proponents of a literal interpretation insist that the right to own guns was intended to apply in perpetuity, while opponents insist that it was only applicable before police departments and the National Guard were established to serve

in a protective capacity. The American Rifle Association has one of the most powerful lobbies in the United States and does a noteworthy job of keeping the issue of the right to bear arms before the public. The courts have not always agreed on the constitutionality of gun control, but they continue to uphold the right to bear arms. Washington, D.C., is considered one of the most violent cities in the United States, and officials attempted to deal with that fact by passing a law that made it illegal to own unregistered handguns. Registration was only available from the chief of police for one-year periods. Residents legally possessing a handgun in their home were required to keep the weapon unloaded or disabled with devices such as trigger locks. A police officer who had been denied a permit to keep a weapon in his home challenged the law. The Supreme Court heard *District of Columbia v. Heller* (554 U.S. 570) on appeal from the D.C. district court, which had upheld Heller's argument. The Supreme Court agreed, holding that the statute violated the Second Amendment's protection of the right to bear arms for lawful purposes. Firearms are generally available in every city in the United States. According to the Centers for Disease Control and Prevention, in one single representative year, some 99,000 Americans experienced nonfatal gunshot wounds. Wounds turned out to be fatal for approximately 38,000 Americans. Around half of all gunshot wounds were the result of homicides. The others were due to defensive gun use, accidents, or suicides.

Overall, gun-related violence costs the United States around \$100 billion each year. Violence also exacts a heavy cost in human life. In Chicago in 2009, 151 people were killed in a series of incidents within a 10-day period. Between 2006 and 2010, more than 23,000 people were killed along America's southern border in response to drug-related gun violence. Violent crime rates continue to be particularly high among African American youths living in inner cities. In 90 percent of those deaths, guns are the weapon of choice. Law enforcement is generally opposed to the easy accessibility of guns. In 2007, for instance, a survey of police chiefs and sheriffs revealed that more than half of them believed easy availability of guns was a major cause of violent crimes.

Drive-by shootings have become newsworthy events in contemporary America. In a drive-by shooting, shots can be fired from a vehicle before a victim is aware of the shooter's intentions, and the vehicle provides the perpetrator with an instant means of escape. While such crimes are far more likely to occur in gang-ridden urban areas, drive-by shootings can take place anywhere. The most common reasons underlying the crime are gang motivations, retribution for perceived wrongs, and road rage. During the 1990s when a wave of drive-by shootings was terrorizing Americans, analysis of violent crimes indicated that gun violence using a vehicle was far less common than other kinds of crimes involving guns.

In West Oakland, California, it was revealed that perpetrators of violent crimes were 10 times more likely to walk up to a victim and open fire than to shoot them from a vehicle. Similarly, in San Diego, between 1999 and 2003, drive-by shootings accounted for only 10 percent of incidents with gun violence. Since aim is not always accurate when shooting from a vehicle, particularly at night when most of these incidents occur, and since some perpetrators want to scare victims rather than kill them, not all incidents of drive-by shootings are fatal. Additionally, when medical help arrives quickly, fatalities are sometimes averted. A study of drive-by shootings in Los Angeles in 1991 revealed that more than 50 percent sustained nonfatal leg injuries. Some of the cases that have received the most media coverage are those involving innocent victims, particularly children, who became unintended targets. Such was the case with a 20-month-old who was killed in Chicago in 2009 when a rival gang member attempted to kill her father. A study of drive-by shootings in Los Angeles in 1996 revealed that innocent victims were shot in 38 to 59 percent of all incidents.

Youth Violence

While all violent American youths are not in gangs, it is gang members who continue to dominate the scene of youth violence. Modern gangs are also very different than those depicted in the award-winning movie and play of the 1960s, *West Side Story*. Even in the face of falling crime rates, youth violence has continued to plague cities throughout the United States. There are at least a million gang

members in the United States dispersed among 20,000 separate gangs. In 2008, some 24 percent of students reported that there was gang activity in their schools. As might be expected, the largest number (36 percent) was in urban areas, and the smallest gang showing was in rural areas (16 percent). In areas where gang activity is particularly pervasive, youth violence accounts for 80 percent of all crimes. Reasons cited for the phenomenon include easy availability of drugs and guns, peer pressure, violence in media, video gaming, and lack of parental responsibility. According to the Centers for Disease Control and Prevention, homicide is the leading cause of death for African Americans between the ages of 10 and 24, and it is the second leading cause of death for Hispanics in that same age group. In 2008, while walking home from school on Chicago's South Side, Derrion Albert, a 16-year-old honor student, was beaten to death. His murder was caught on a cell phone video. In Seattle, security guards refused to interfere when a girl began beating another in the head. The scene was captured and made available on the Internet. A video available on YouTube showed three teenagers attacking a homeless man just for the fun of it. The following year, in Richmond, California, a high school student was beaten, robbed, and sexually assaulted by a gang outside a homecoming dance.

School violence became a 20th-century phenomenon. Before the 1990s, students were more likely to use harsh words or fists to release anger. Even in worst-case scenarios, weapons were likely to be "brass knuckles," baseball bats, or knives. While these weapons were capable of killing others, most incidents involved inflicting injuries on a single victim. Psychologists have developed a profile of the typical school shooter, identifying him as a young male who feels alienated from his peers, is often fond of violence in video games, movies, television, and the Internet, and has trouble controlling anger. He may have begun to collect weapons, written about violence, or have tortured animals. He is likely to have talked about plans to commit his crimes before they happened, but either no one believed him or they chose not to act. The saga of school shootings began on February 2, 1996, when 14-year-old Barry Loukaitis brought a rifle to school in Moses Lake, Washington, killing a teacher and

wounding a classmate. A number of other shootings followed, but the one that forever afterward remains in the mind when the phrase "school shootings" is mentioned is Columbine. The high school is located in Littleton, Colorado, where the shootings occurred on April 20, 1999, when perpetrators Dylan Klebold, 17, and Eric Harris, 18, opened fire with a handgun, a rifle, and two shotguns. When the carnage was over, one teacher and 12 students were dead, another 23 students had been wounded, and the psyches of all Americans had been changed forever. No one would ever again feel entirely safe about sending a child off to school for the day.

Notorious Killers

Each day, approximately 45 people are murdered somewhere in the United States. The category of murder has now been broadened to include partner homicide, murder of children, hate group homicide, mass murder, serial murder, terrorism, sex-related homicide, and children who murder. While most partner homicides continue to be committed by males, the number of females who murder partners has risen. Most of them are involved with males who are either physically abusive or who regularly use drugs and alcohol. Many such women have records of suicide attempts. Hate crimes usually target their victims on the basis of race, ethnicity, religion, or sexual orientation. Some killers are remembered longer than others. They are the ones who have become so famous that books, magazine and newspaper articles, movies, and documentaries have been written or made about them.

The murders that have aroused the most attention are usually child murders, mass murders, serial murders, and celebrity-related murders. Mass murder is defined as one in which at least four people are killed at the same time. Such murders may be the result of gunfire, arson, or bombings. Experts believe that most mass murders are motivated by desire for power, profit, revenge, sex, loyalty, or control. The names of American serial killers have become legendary, and their deeds have continued to fascinate Americans for a variety of reasons. Some of the best-known are John Allen Muhammad, a sniper who terrorized the Washington, D.C. area in 2003; Gary Leon Ridgway, the Green River killer who strangled 48 women in the 1980s and 1990s; Ted Bundy, who

murdered 28 women in the western United States in the 1970s; David Berkowitz, better known as the Son of Sam, who killed six people in New York in the 1970s; Jeffrey Dahmer, who raped, murdered, and dismembered in the 1980s; and John Wayne Gacy, a purportedly upstanding citizen of Chicago, who murdered 33 young boys in the 1970s.

Boston is the setting for both a historical and a contemporary murder that caught the public's eye. The first murder involved the Boston Strangler, who began a 19-month killing spree in 1962. Subsequently, convicted rapist Albert De Salvo admitted to being the Strangler. From the beginning, his admission was questioned by experts in criminology, but his guilt was accepted among the general public. Contemporary research suggests that he likely had no connection with the Boston Strangler, leaving the identity of the true murderer unknown. The contemporary murder occurred in 2009 when a clean-cut medical student named Philip Markoff was arrested and charged with the murder of Julissa Brisman, a 26 year-old actress and model. Because he regularly offered his services on the Website Craig's List, the media dubbed Markoff the "Craiglist Killer."

One of the grizzliest murders in American history was committed in California on August 9, 1969, by members of the so-called Manson Family who later testified that they had been ordered to commit murder by leader Charles Manson. The murder victims were Sharon Tate, the actress wife of director Roman Polanski, and four guests at the Polanski home. Tate was eight months pregnant at the time. In all, the Manson Family inflicted 102 stab wounds on their victims and shot one other victim. The following day, the group murdered Leno and Rosemary LaBianca, neighbors of the Polanskis. Some reports of the crime have suggested that the intended victim was not Tate but musician Terry Melcher, the only child of singer-actress Doris Day. All members of the Family were convicted of first-degree murder. Manson's death sentence was reduced to life imprisonment after California's death penalty law was found unconstitutional. The courts have repeatedly denied his applications for parole.

The crime that became the cause célèbre for the last half of the 20th century was the O. J. Simpson case. The media frenzy surrounding all

aspects of the case was unparalleled in the United States. Simpson, a former football player and an occasional actor, was a popular public figure even though there had been rumblings of his violent temper. On the evening of June 12, 1994, someone waited near the entrance of the home of Simpson's ex-wife, Nicole Brown Simpson, and viciously murdered her and a visitor, Ron Goldman, when he arrived. Forensic evidence immediately pointed to Simpson's guilt. On June 17, television cameras caught Simpson apparently trying to evade arrest in a white Ford Bronco. All networks showed the Bronco chase, with some going to split screen to keep from cutting away from programs in progress or to offer commentary. Approximately 94 million Americans watched the chase. During the trial, both sides pulled out all the stops. The defense hired experts to help in picking a jury that was most likely to find Simpson innocent and ultimately pulled out what came to be labeled "the race card." On October 2, after less than four hours of deliberation, Simpson was cleared of the murders. Polls indicated that the



Urban areas hold the majority of youth gangs (36 percent), and in those areas with pervasive gang activity, youth violence accounts for 80 percent of all crimes.

majority of Americans still believed in his guilt. This was particularly true of white Americans. In 1997, the families of Nicole Brown Simpson and Ron Goldman were awarded \$8.5 million in compensatory damages for the deaths of their daughter and son, and Simpson was ordered to turn over his assets. No one else has ever been arrested in connection with the crime.

Most children who are murdered are killed not by pedophiles but by abusive or mentally ill parents or guardians such as Andrea Yates, the Texas mother who drowned her five children in a bathtub in 2001. Cases of parents cold-bloodedly murdering their children to promote their own self-interest are rarer. That is one reason that Americans were so shocked in 1994 when Susan Smith, the mother of two sons, calmly strapped them into car seats before pushing the car into a lake. She then “escaped” and began to play the role of the frantic mother making pleas for a mythical kidnapper to return her beloved children. In the first years of the 21st century, the case that attracted the most media attention had many similarities to the Smith case. It concerned the death of 2-year-old Caylee Anthony, who disappeared from her home in Orlando, Florida, on June 16, 2008. Her mother Casey did not report the child missing until July 15. During questioning, Anthony repeatedly lied to the police about facts that were easily disproved. Although Anthony was released, evidence continued to build. On October 14, Casey Anthony was charged with her daughter’s death. The trial was televised in 2011, becoming a media circus. The jury accepted the arguments of Anthony’s lawyer, who insisted that the child died in an accident that was covered up, and exonerated Anthony. Freed from jail on July 17, and besieged by death threats, Anthony went into hiding.

The United States continues to be a nation of violence. Street gangs remain a major threat, and schools and even churches have become frequent scenes of violent rampages. Even though great strides have been made since the late 20th century with the advent of community policing and work being done with imperiled youth, most Americans are still afraid to walk the streets of their own neighborhoods at night.

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See Also: 1941 to 1960 Primary Documents; 1981 to 2000 Primary Documents; 2001 to 2012 Primary Documents; Atlanta, Georgia; Boston, Massachusetts; Bundy, Ted; Chicago, Illinois; Gangs, Contemporary; Larceny; Murder, Contemporary; New York City; Organized Crime, Contemporary; Philadelphia, Pennsylvania; Police, Contemporary; Prohibition; Rape, Contemporary; Robbery, Contemporary; School Shootings; Serial and Mass Killers; Smith, Susan; Terrorism; Yates, Andrea.

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Virginia

The Commonwealth of Virginia is an east coast state in the south, and was one of the first thirteen colonies. As a Confederate state during the Civil War, it was subject to reorganizing under Reconstruction, which was resisted by vigilante groups

like the Ku Klux Klan, which was founded in Tennessee, but quickly spread throughout the south and midwest. The second Klan group was broader in its hatred, targeting immigrants and Catholics, as well as nonwhites. It was also more politically minded: In Virginia, it joined with several other social and activist groups, including the Sons and Daughters of Liberty and a white nativist group called the Junior Order of the United American Mechanics, to lobby the legislature to outlaw teaching evolution or any other science that conflicted with the Bible. This incarnation of the Klan was active, both legally and through illegal graft and corruption in state and local government, and managed to prevent the nomination of Catholic presidential candidate Al Smith at the 1924 Democratic National Convention. It also introduced the use of the burning cross as an intimidation tactic. The Klan's use of cross burning led to statutes in several states against cross-burning; in 2003's *Virginia v. Black*, the U.S. Supreme Court ruled that Virginia's statute and those like it were unconstitutional violations of free speech.

The second Klan formally dissolved in 1944 after being prosecuted for failure to pay federal taxes. This in turn was followed by a variety of Klan-aligned groups in the 1950s to the present, initially in response to the civil rights movement. It seems to have been the postwar Klan groups that first used the Confederate flag—the battle flag of the Confederate Army, strongly associated with the Army of Northern Virginia commanded by Robert E. Lee—as a symbol of white supremacy and racial violence.

Police and Punishment

In the colonial era, Virginia—like most of the country—relied principally on corporal punishment in order to avoid the expense to the taxpayers of long-term incarceration. Even county jails for short-term jail sentences were not initially used and the first prisoners in Jamestown were kept incarcerated in an anchored ship. Europe first began to build penitentiaries as places where criminals would be removed from society and, ideally, reformed. Thomas Jefferson began a campaign to build a Virginia penitentiary after the Revolutionary War, but the idea wasn't taken up by the General Assembly until the turn of the century. The Virginia State Penitentiary opened in 1800; in the

next 200 years, the state opened dozens of facilities of various levels of security for men, women, and juveniles. The Department of Corrections, established in 1974, employs some 13,000 people, overseeing more than 30,000 inmates.

The first formal law enforcement in Virginia was the provost marshal in the 1620s, but county sheriffs soon replaced them; the first were influential men chosen from among the colony's richest land owners. Police departments formed early in Virginia, displacing the earlier institutions of the town marshal, night watch, and elected constables. Richmond's police department, established in 1807, was one of the first in the country, preceding even the city jail (built in 1816). By 1840, Richmond had built a second police station, and soon after adopted the practice of appointing officers from the wards in which they would serve. By the turn of the century, Virginia police departments were modernizing: uniforms, call boxes, and officially issued equipment had been introduced, as had professional training and certification; fingerprinting was introduced in 1900, and police dogs and police cars followed in 1905. The Virginia State Police were founded in 1932, originally tasked with the enforcement of highway laws, with duties soon expanding.

Virginia is a capital punishment state. The first execution in what is now the United States took place in Virginia in 1608. Virginia leads the nation in executions, at 1,384 as of 2011. Until 1909, the primary method of execution was hanging, although a female slave was burned to death in 1737, and in 1700, three convicted pirates were gibbeted (hung from chains with their dead bodies displayed as a warning to would-be criminals). In 1909, the electric chair was adopted as the sole means of execution; in 1994, inmates were given the choice between the electric chair and lethal injection. Historically, crimes that could be and were punished by death included rape, arson, burglary, horse theft, and robbery.

After death penalties were interrupted by the 1972 *Furman v. Georgia* Supreme Court decision, Virginia's death penalty statute was rewritten along the lines of Georgia's new law, which was upheld in 1976's *Gregg v. Georgia* Supreme Court ruling. Under the current death penalty statute, only willful, deliberate, premeditated murder with one or more various aggravating factors (e.g., murder

committed during various other felonies, murder of special victims like police officers or children) is punishable by death, although Governor Bob McDonnell has supported an expansion of the death penalty to include participants in a homicide who did not themselves commit the murder.

The Supreme Court ruling in *Atkins v. Virginia* (2002) found that an execution of the mentally retarded is a violation of the Eighth Amendment's protection from cruel and unusual punishment. Atkins was an 18-year-old with an IQ of 59, who had abducted an airman from Langley Air Force Base, forced him to withdraw money from his ATM, and killed him. Atkins's codefendant William Jones was given life in prison in exchange for testimony against Atkins. Specifically, the court found that it has not been shown that executing the mentally retarded promotes the goals of retribution and deterrence and thus imposes purposeless pain and suffering. Dissenting justices Antonin Scalia, Clarence Thomas, and Chief Justice William Rehnquist criticized the decision for being based more on the personal feelings of the justices than on the language of the Eighth Amendment, which provided no clear basis for determining what is cruel and unusual. A Virginia jury found in 2005 that Atkins's frequent contact with his lawyers had made him more intelligent, and thus no longer retarded, and eligible to be put to death; however, this proved a moot development when allegations came to light of prosecutorial misconduct in the original trial that rendered Jones's testimony inadmissible. A circuit court judge commuted Atkins's sentence to life in prison, a decision upheld by the Virginia Supreme Court.

Crime

Virginia's crime rate is significantly lower than—nearly half that of—the national average, at 213 violent crimes per 100,000 inhabitants in 2010. Until the late 1960s, Virginia's crime rate was slightly higher than average; since then, it has fallen faster than the national rate. It has fallen steadily since 1995 (when it was 361) and had previously peaked at 380 in 1975.

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fallen faster than the national rate. It has fallen steadily since 1995 (when it was 361), and had previously peaked at 380 in 1975.

Modern Virginia has seen a surprisingly high number of spree killings. The Virginia Tech massacre, on April 16, 2007, is the deadliest shooting incident by a single gunman in American history, resulting in 32 murders in two separate attacks about two hours apart. Seung-Hui Cho was a senior-year English major with previous mental health problems who had been the subject of a stalking investigation involving two female students, and his attacks prompted the legislature to address the legal loopholes that had allowed him to purchase handguns despite having been ruled mentally unsound by a court. The incident also led to a strengthening of federal gun control laws for the first time in over a decade.

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See Also: 1600 to 1776 Primary Documents; 1801 to 1850 Primary Documents; 1921 to 1940 Primary Documents; 1941 to 1960 Primary Documents; Capital Punishment; Executions; Serial and Mass Killers; Washington, D.C.

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Vollmer, August

August Vollmer (1876–1955) is considered by many to be the father of American police professionalism. The literature on policing credits Vollmer as the primary advocate of modern police

reforms. He set the pioneering pathway for other police officers to follow and was on the cutting edge of police work. The son of hardworking immigrants, as a youth, Vollmer was an athlete interested in boxing and swimming. These experiences formed a foundation for discipline, excellence, and a competitive lifestyle. Vollmer strove for excellence his entire life, frequently demonstrating courage and dedication to the field of law enforcement.

A Service Career

Vollmer enlisted in the U.S. Marines and served from 1898 to 1899, fighting in 25 battles. He joined the U. S. Postal Service after his military tour in the Spanish–American War. Vollmer emerged as a local hero in 1904, after he leaped into a runaway freight car and applied the brakes, preventing a collision and the deaths of commuters at the Berkeley Station. His hero status provided the notoriety that eventually led to Vollmer's election in 1905 as the town marshal.

Vollmer was the first chief of police to implement a motorized police patrol and to incorporate the police radio system. Leading the crusade for modernizing American policing, Vollmer and his protégé O. W. Wilson advocated (1) centralized records, (2) organized investigative processes, (3) established communications through the call box system, (4) motorcycle patrol, and (5) marksmanship training for police officers. Vollmer served as a reform chief for the Los Angeles Police Department from 1923 to 1924. During this brief tour of duty on sabbatical leave from his position as chief of police in Berkeley, he became concerned with corruption. After his experiences in Los Angeles, Vollmer opposed the enforcement of vice laws because they encouraged police corruption and disrespect for law enforcement officers.

During his career, Vollmer served as a consultant to many police agencies. Many of his reforms continue to influence American policing. Vollmer authored the famous Wickersham Commission *Report on the Police*, which ultimately served the reform agenda well. Police agencies strove for modern management practices and established higher police entry requirements. Vollmer himself hired women and African American police officers, encouraging their training and professional development.

A Lasting Influence

August Vollmer served as the first chief of police in Berkeley, California, from 1905 to 1932. He eventually became a professor of police administration at the University of California, Berkeley. At Berkeley, Vollmer organized the first university police administration courses. Vollmer was the founder of many of the criminal justice programs that emerged and flourished throughout the 20th century. Among Vollmer's students at the University of California, Berkeley, was O. W. Wilson, who learned to modernize the police department in the Vollmer tradition. Because of Vollmer's teachings, Wilson strived for police modernizations and innovations that included (1) police cars for patrol, (2) mobile two-way radios, (3) the use of the mobile crime laboratory, and (4) academic degrees for police officers. Vollmer also advocated the use of the polygraph, or lie detector, technology.

Vollmer served as an advocate for disadvantaged children. He was concerned for the welfare of alcoholics and people addicted to drugs. He opposed police involvement with drug offenders and supported the federal distribution of habit-forming drugs. Vollmer was criticized for his leniency toward minor offenders and the marginal members of society.

Vollmer's distinguished career unfolded with extraordinary professionalism. He achieved excellence in fields of academia, law enforcement, and military service. On November 4, 1955, Vollmer, suffering from Parkinson's disease and cancer, ended his own life; his legend, legacy, and professional contributions live on wherever policing excels.

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See Also: Chicago, Illinois; Community Policing and Relations; Wilson, O. W.

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Volstead Act

The Volstead Act, or the National Prohibition Act, passed October 28, 1919. The act, which functioned as the enforcement arm of the Eighteenth Amendment, also made illegal the production, transport, or sale of any intoxicating liquor. “Intoxicating liquor” was defined as anything containing more than 0.5 percent alcohol by volume. The act was the result of a long-running temperance movement that began in the 19th century. The temperance movement wanted alcohol made illegal on the grounds that it corrupted the morals of those who drank it, ruined lives, and broke up families. By 1916, a total of 19 states had completely outlawed the sale or transport of spirituous liquors.

In 1917, Congress passed the Eighteenth Amendment, which limited the production of alcohol to only those to be used as sacraments (sacramental wine) or intended for medicinal use as anesthetic agents. At the war’s end, Wilson’s wartime measure was set to expire, which would return the ability to brew beer and ferment wine. However, long-running temperance groups such as the Anti-Saloon League and the Woman’s Christian Temperance Union, successfully lobbied Congress, which at that time held a rural, Progressive majority. Wilson, citing an imposition on private freedoms, and a belief that a long-term Prohibition would not solve the problems that its supporters railed against, vetoed the original Volstead Act, which strengthened the Prohibition amendment to outlaw any beverage with more than 0.5 percent alcohol content.

Congressional Progressives took another view. In his book *Why Prohibition?*, Charles Stelzle, a Presbyterian minister, informed that alcohol was the source of everything ailing America in the

early 20th century. Medical insurance costs were on the rise, and he blamed the damaging qualities of drinking for a degradation of national health. He argued further that alcohol and the saloon culture were incompatible with a nation’s progress. Crime was also on the increase, as was alcohol intake. Recalling the squalor and debauchery that he saw in Victorian London, he made an impressive case that Congress took very seriously. These views shaped the debate that resulted in the 1919 ratification of the Eighteenth Amendment and the quick overturning of Wilson’s veto by Congress by a vote of 176–55 on the same day that Wilson vetoed it. The Eighteenth Amendment and the Volstead Act both became effective in early 1920.

A debate in 1924 between Clarence Darrow and John Haynes Holmes exhibits the difference of opinion that was rampant throughout the country on this issue. Darrow represented the detractors of the act, whereas Holmes was in favor of it. Holmes presented the Volstead Act as another sensible law designed to protect the decency of the nation. He referred to the outlawing of opium and the abolition of slavery in the 19th century as acts that limited a person’s individual freedom at the cost of protecting the greater part of society. Darrow’s rebuttal was that slavery, opium, and whiskey were not in the same category at all, and that the whole thing was a circus. He further noted that Prohibition agents were not particularly “drier” than any other person, which proved, to him, the farcical nature of the law.

To combat bootleggers and enforce the Volstead Act, the government employed 1,520 men in 1920 as Prohibition agents. In 1930, their number was 2,836. These men, operating under the Treasury Department, attempted to stop smuggling and raid warehouses to halt the distillation or transport of the illegal liquors. The agents often employed local police departments, Coast Guard, or immigration agents in order to man raids or attacks on smuggling caravans because of their limited number and low budget. The salary was very low—\$1,200–\$2,000 in 1920 and \$2,300–\$2,800 in 1930—and many agents had no prior police or supervisory experience. Success was limited, to say the least. The public support for Prohibition began to wane as World War I

faded from immediate memory. As a result, the already poorly staffed and inexperienced Volstead enforcement officers found increasing difficulty in getting leads on warehouses or smuggling rings, and as the 1920s wore on, their position only became more challenging.

Repeal Efforts

Growing economic concerns for state governments in the late 1920s further restricted the budget allowed to Prohibition agents and deepened their frustration and ineffectiveness. An increasingly resentful public did not help matters. The federal government had expected localities to invest in enforcing Prohibition on their own territory, but this rarely happened. Municipalities were as badly off financially as other governments. Smuggling rings and large-scale production continued essentially unabated. As Wilson predicted, the law had failed to do anything except make criminals very wealthy. When Herbert Hoover took over the presidency in 1928, many expected him to make some sort of declaration about Prohibition. He called it a “noble experiment” but other than that, nothing was done to give satisfaction to either side. Hoover was personally in favor of Prohibition and called a committee to report findings. The 11 committee members reported that enforcement attempts were a complete failure, but nonetheless, they believed it was a necessary law.

The 1932 campaign was a hotbed of talk about Prohibition. Hoover steadfastly backed Prohibition,

while New York Governor Franklin Delano Roosevelt, the Democratic candidate, ran on a platform of repeal. The essence of Roosevelt’s platform was that repeal could be used to tax liquors and beer and raise a great deal of revenue for a national government ailing from the world economic depression. In March 1933, Roosevelt signed the Cullen-Harrison Act, which amended the Volstead Act to allow the manufacture and sale of light wines, and beers of up to 4 percent alcohol by volume. The act became law in April 1933. In December 1933, the Twenty-First Amendment was ratified, and Prohibition was officially repealed.

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See Also: Hoover, Herbert (Administration of); New York; Prohibition; Roosevelt, Franklin D. (Administration of); State Blue Laws; Wilson, Woodrow (Administration of).

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Waco Siege

The Waco siege is one of the most iconic examples of sect-related tragedies in America's history. Those events in 1993 sit alongside those in Jonestown in 1978 (which actually took place in Guyana, but involved the mass suicide of hundreds of American citizens) as the country's most devastating reminders of what can happen when highly charismatic leaders with alternative worldviews are able to exert their influence over followers. On February 28, 1993, members of the Branch Davidian sect made headline news around the world. Led by the highly charismatic David Koresh, the group holed up in the organization's ranch, the Mount Carmel Center close to Waco, Texas. Agents from the Bureau of Alcohol, Tobacco and Firearms (ATF) had attempted to execute a search warrant on the premises; however, the raid was repelled and a standoff ensued. The siege lasted until April 19, when a second attempt to storm the compound led to disaster as the compound was destroyed by fire. At the end of the siege, scores of people lay dead, predominantly sect members, including children and pregnant women, and a number of law enforcement agents. The leader, David Koresh, committed suicide.

The Branch Davidian Seventh Day Adventists is a Protestant sect originating in the 1950s. Vernon Howell, later known as David Koresh, took

control of one faction of the sect and eventually seized legal control of the Mount Carmel complex in 1989. Howell was a controversial figure and in the same year released an audiotape in which he claimed that he had received instructions from God compelling him to procreate with women in the sect in order to create a House of David. In 1990, Howell legally changed his name to David Koresh. Koresh exercised a profound influence over group members. Various allegations against the group surfaced, including child abuse and wider concerns for the welfare of the children living in the group. The group consisted of a number of families who had lived with Koresh at the center for a number of years, including some British followers. Another suspicion concerned the stockpiling of illegal arms, which prompted the attention of the ATF and the eventual raid on February 28, 1993. There is conflicting information regarding the exact behavior of the ATF in the period running up to the raid; however, the group was put under surveillance.

On the day of the raid, it has been reported that news of the pending action was inadvertently leaked to Koresh as a reporter in the know asked for directions to Mount Carmel from what turned out to be Koresh's brother-in-law. When officers arrived at Mount Carmel, Koresh and his followers were waiting for them. Exactly how the gunfire was initiated is a matter of dispute, both

ATF agents and sect survivors claiming that the first shots came from the other side. Nonetheless, a fierce battle erupted, with agents attempting to gain access to the compound via a roof. However, agents were eventually pushed back under heavy fire and sustained significant casualties. As ATF agents withdrew, they suffered four dead and a number wounded.

Following the failed raid, a state of siege ensued, with the Federal Bureau of Investigation (FBI) now taking charge. Communications with Koresh were established and negotiations were conducted. Yet, Koresh claimed that he had been instructed by God to stay in the compound. Remarkably, however, the FBI managed to facilitate the release of some children, who under interview claimed to have been sexually and physically abused. Agents stopped water and power supplies into the compound. Koresh released other members of the group, but most remained inside, including some children.

As suspicions grew concerning the possibility that cult members would commit suicide as in Jonestown in 1978, and fears grew for the well-being of children still inside, the FBI prepared for a second assault on Mount Carmel. They were eventually given the go-ahead by Attorney General Janet Reno. This time, the tactics had changed in light of the failed initial assault, and the new approach involved using tear gas to force out occupants. On April 19, armored vehicles punctured holes in the compound to deliver the gas. Several hours after the start of the raid, no members had left the compound. At about midday, fires started in separate parts of the compound; this forced out a small number of people; however, most remained inside. There are conflicting accounts regarding how the fires started. One explanation involves sect members deliberately starting these fires, while another suggests that the armored assault, purposely or not, was responsible. However, a government-sponsored report in 2000 cleared the FBI of responsibility. The remaining occupants died in the fires through smoke inhalation, gun shots, or other means—approximately 76 people died within the compound that day. Koresh is believed to have committed suicide.

Following the siege, those running the operation were criticized, and this has changed how such situations are dealt with. During resultant trials of sect survivors, all sect members were

cleared of the most serious charges relating to the deaths of ATF agents; however, some were convicted of lesser charges relating to firearms and voluntary manslaughter. In 2000, a claim against the U.S. government by relatives of sect members was thrown out of court.

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See Also: Religion and Crime, History of; Religion and Crime, Sociology of.

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Walling, George

George Walling (1823–91) was born in Middletown township, Monmouth County, New Jersey. He recounted his paternal heritage as Welsh and his maternal line from Denmark. His father was a small-business owner and had exposed Walling to sea life and minor trades. Through a friend's referral, he joined the police force. Walling was the police chief of New York City from July 1874 until June 1885. Walling earned the reputation of a tough but fair and honest law officer during his years of service.

When he served as captain of the 20th precinct on the Lower West Side of the city, his courageous deeds during the 1863 New York City draft riots prompted his elevation to chief of police. He played a crucial role in helping restore order to a city in crisis during the American Civil War. George Walling was respected during his term, having worked to bring professionalism to the New York police force by severing it from any link to corrupt city politics. Walling was noted

among those who helped professionalism in policing make great strides in the latter half of the 19th century. George Walling was known for several law enforcement efforts, one of which was the suppression of the Honeymoon Gang. The Honeymoon Gang was notoriously feared for their brutality among city street gangs in 1853. They assigned members to each corner of Madison Avenue and 29th Street to attack any passerby who looked wealthy. Their terrorism on 29th Street concluded each night with the Honeymooners adjourning at midnight to drink away their gains.

The Honeymoon Gang was so violent that even the gang-aiding Tammany politicians of the crime-laden 1800s refused to protect them. Walling organized the first Strong Arm Squad, in which tough cops beat gang members with vicious force. The Honeymooners dissolved after two weeks.

Ferretting Out Corruption

Walling was also famous for the arrest of the corrupt mayor of New York City, Fernando Wood. Wood was first elected mayor in 1854 and was reelected during a rigged election three years later. The state legislature intervened, shortening his term from two years to one and establishing a metropolitan police force to replace Wood's corrupt municipal police. The governor of New York appointed a board of commissioners to replace a municipal commission to hire police officers. However, Wood maintained that the amending legislation was unconstitutional and did not step down, even when faced with a Supreme Court order.

George Walling was among the lawmen signed on with the new state-created metropolitan police. Fifteen other captains and hundreds of patrolmen chose to side with Wood and the municipal police. Things heated up, and the people of New York were caught in the rivalry of patrolmen from both sides. At the same time, those arrested by one side were often set free by the aldermen or magistrates who were loyal to the opposite side. Gangs took advantage of this situation, and so did criminals from other places.

It was George Walling's personal assignment to arrest Mayor Wood. He entered City Hall alone with the warrant and reached the mayor's office. However, once he made clear his intent to arrest the

mayor, the Wood-sympathizing municipal policemen threw him out. Fifteen metropolitan officers joined him later, but they were outnumbered and pushed out. At this time, the board of commissioners brought out the militia, and the 7th Regiment surrounded City Hall. Wood surrendered and was charged with inciting a riot, but was soon released on bail and returned to his office.

As the feud went on throughout 1857 in the summer, disorder rose, with gangs feeding on the chaotic situation. Militia units came to help establish order. The state supreme court decided in the fall against the municipal police, causing the mayor to surrender and the municipal force to be dissolved. The metropolitan board of commissioners was confirmed as legal, commencing the process of rebuilding public trust and order.

In 1861, the American Civil War started, and social unrest was brewing. After the 1863 Conscription Act passed, a bureau was set up to draft those who had not volunteered for the war. Draft offices were unwelcome in New York when they were opened July 11, 1863. In the early morning of July 13, a draft riot started. George Walling, together with the newly formed police force, worked to return order to the city.

George Walling continued to contribute to the keeping of public safety and order over the years. On June 9, 1885, he left his post as superintendent of the New York police force, feeling a great sense of commitment and satisfaction, as he revealed in his out-of-print memoir *Recollections of a New York City Chief of Police*. Walling died on December 31, 1891, in New York.

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See Also: New York City; Police, History of; Riots.

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Walnut Street Jail

Walnut Street Jail was one of the most significant and early innovations in prison history. Situated in Philadelphia, Pennsylvania, it was built in 1776, altered in 1790, and demolished in 1835. One of the first jails used for punishment instead of administrative purposes, it incorporated labor and solitary confinement in order to reform its inmates. It was widely copied.

Early in the American Revolution, Pennsylvania created a constitution calling for the reformation of its penal laws. In particular, it was to have fewer capital offenses and punish instead with “houses of correction”; the state, it said, should reform rather than kill. Thus, in 1786, Pennsylvania both reduced its list of capital offenses and inaugurated its first experiment with public labor in the streets of Philadelphia. The experiment

with public labor, however, was an unmitigated disaster and came under swift attack from statesman, physician, philanthropist, and reformer Benjamin Rush, among other members of the Philadelphia Society for Alleviating the Miseries of Public Prisons, who also advocated the reformation of existing jail facilities. Rush began calling for a “penitentiary house” that would both reform its occupants and deter those who would hear of the institution. Thus, in 1790, Pennsylvania legislators passed a law changing the punishment of noncapital offenders to solitary confinement at Walnut Street Jail with the hope that it would reform them and deter others.

Walnut Street Jail Opens

The Walnut Street Jail had been taken over as a military prison soon after being built. In the late 1780s, Walnut Street was used to house the



Roughly 15 years after the Walnut Street Jail was built in Philadelphia, Pennsylvania, an addition was made called the penitentiary house. It was a series of small cells designed for individual prisoners, or solitary confinement. Prisoners could not communicate with each other with windows that were high up and louvered to prevent them from looking onto the street.

criminals laboring under the 1786 law when they were not in public. With the passage of the 1790 law, however, it was renovated and its purpose altered. Its new form consisted of large common rooms and workshops, as well as 16 new solitary cells. Unlike true prisons of the 1820s and later, the exterior architecture of the jail was not greatly dissimilar from other colonial architecture like that of a Quaker meeting house or a private home.

The new penal regime began well enough. To prevent the spread of vice to those less criminally inclined, prisoners were housed according to a classification system based on gender, the nature of the criminal (young or old, hardened or cooperative), and the criminal's period of confinement. Revenue from the prison labor helped to maintain the prison and some inmates could use the proceeds once they were free. But the reality of the experiment at Walnut Street never fully conformed to the plan. The "unremitting solitude" imagined by the statute was never actually part of prison management except as a punishment for misbehavior within the prison; those inmates who misbehaved were sent to the solitary cells. Nevertheless, crime rates and the rate of incarceration actually decreased during the first four years of Walnut Street's reformed regime. The jail appeared sufficiently terrifying to citizens. But the "good" days were short-lived, and even these were soon filled with violent episodes and instances of misbehavior.

Overcrowding and Disruptions

In the mid-1790s, the state moved to make Walnut Street Jail an institution for the whole state rather than just for Philadelphia. The jail soon became overcrowded, thus ending its record of a diminishing number of inmates, and embarked on a tangible decline. In June 1798, arson destroyed part of one of the workshops in the prison, preventing inmate labor. In a few months, a yellow fever epidemic broke out in Philadelphia, flooding the prison with more charges and disrupting the meeting schedule of the jail's inspectors. These two events occurring so closely together greatly disrupted the prison order.

The prison population continued to increase between the mid-1790s and 1820, a portion of which included recidivist criminals. Having too

many prisoners for the numbers of cells in the aging structure precluded any degree of separation (individually or by group classification) as well as inmate labor, a problem worsened by the loss of workshop space. During the following two decades, complicity of the guards in aiding or overlooking schemes of the inmates, increased numbers of successful and attempted escapes, and disobedience of inmates made prison discipline difficult if not impossible. There were four large riots between 1817 and 1821. As crime and the perception of crime in Philadelphia increased, citizens and reformers blamed Walnut Street's design. Its failure in the 1810s prompted Pennsylvania to adopt its first prisons. Finally, with Eastern State Penitentiary well established, the jail was demolished in 1835.

Model for Future Jails

Walnut Street Jail represented a significant break with the past. Punishment was now private rather than public. Jails were now a place of punishment, reformation, and deterrence instead of temporary confinement for administration purposes. However, Walnut Street was still like colonial jails in that it continued to house those awaiting trial, witnesses, debtors, vagrants, and other miscreants held for administrative and other nonpenal reasons along with convicted offenders held for punishment purposes, and as such was not a true prison. There was also the lack of cellular, solitary confinement as a regular part of the jail's regime. Walnut Street influenced the penal developments in other states, with similar jails adopted in New York, New Jersey, Virginia, Kentucky, Massachusetts, Connecticut, Tennessee, Vermont, New Hampshire, and Maryland by 1810. Moreover, it laid the foundation for the first prisons. When the New York legislature authorized the building of the first prison in the United States in 1816, it looked to the lessons of Walnut Street and the jails that copied it. New York adopted the solitary confinement that Walnut Street employed for only its most hardened offenders but used this punishment only at night. Pennsylvania in 1818 and 1821 also authorized solitary confinement for its inmates at Western and Eastern State Penitentiaries.

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See Also: Auburn State Prison; Eastern State Penitentiary; Pennsylvania.

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Wambaugh, Joseph

Joseph Wambaugh is a best-selling American writer known for both his fiction and nonfiction works about police and their work. His characters are portrayed in a gritty, realistic manner that has helped readers develop a sympathetic appreciation for the challenging expectations of modern police.

Joseph Wambaugh was born Joseph Aloysius Wambaugh, Jr., on January 22, 1937, in East Pittsburgh, Pennsylvania. On November 26, 1955, he married Dee Allsup; they had three children. He served in the U.S. Marine Corps from 1954 to 1957. Wambaugh received an A.A. degree from Chaffey College in 1958, a B.A. in 1960, and an M.A. in 1968 from California State College in Los Angeles, California. He served first as patrolman and then as detective sergeant with the Los Angeles Police Department from 1960 to 1974. He wrote his first two novels and his first nonfiction book while serving with the Los Angeles Police Department.

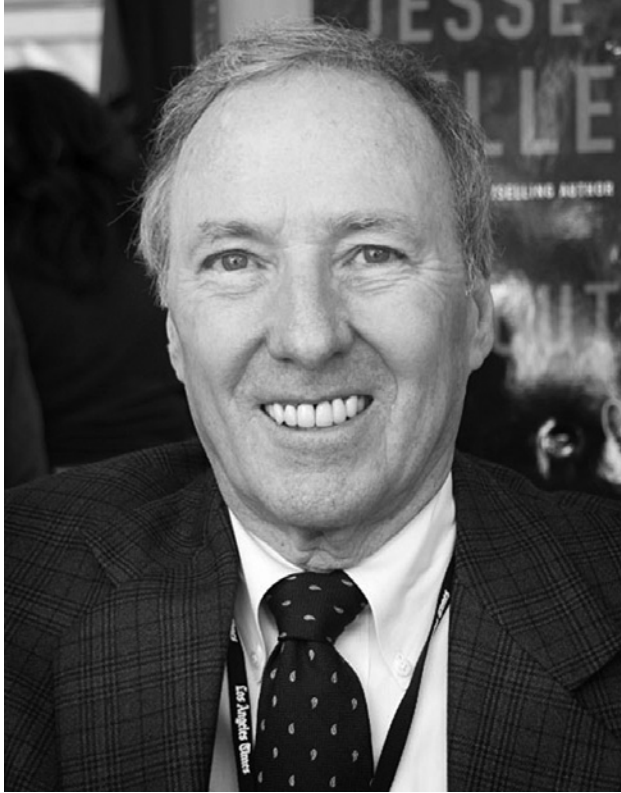
Wambaugh is best known for the empathetic and objective way that he portrays police officers in both his fiction and nonfiction writing. He depicts police officers as real human beings with all their fallibilities. Through his realistic style of writing, he helps his readers acquire a sympathetic understanding of real and imagined officers, even when they make unsavory choices. He

does not shy away from showing the violence and profanity often exhibited by police as they strive to protect people who may resent their presence. Many of Wambaugh's characters are referred to by nicknames that are commonly unflattering and, at other times, downright whimsical, but these help to instantly paint an image of the characters for readers.

Wambaugh's first novel, *The New Centurions*, follows three young males as they go through the police academy and on to serving in the streets of Los Angeles, culminating in the tumultuous 1965 Watts riots. These three lead characters are depicted as idealistic cadets who are unwillingly hardened into callous guardians of the social order. While Wambaugh's first novel was about those entering a career as police officers, his second novel, *The Blue Knight* (1972), was about a veteran policeman, "Bumper" Morgan, who was approaching retirement. Wambaugh's next book was nonfiction, *The Onion Field* (1973). In 1975, Wambaugh published his next novel, *The Choirboys*, which initiated his use of shocking incidents and dark humor to stress the psychological stress that modern police must endure. These were followed by 12 other novels and four nonfiction books.

Wambaugh wrote a series of Hollywood works about those serving in the Los Angeles Police Department. The Hollywood series is built around the title character "Hollywood" Nate, a policeman hoping to launch a career in movies, and other recurring characters, such as officers like "Flotsam" and "Jetsam," who are avid surfers, and "Compassionate" Charlie, who is a somewhat lazy night-watch detective. The first installment in this series was *Hollywood Station*, which came out in 2006. In 2008, he published his first sequel, *Hollywood Crows*; this was followed in 2009 with *Hollywood Moon* and this, in turn, by *Hollywood Hills* in 2010.

Always a keen observer, Wambaugh devoted considerable portions of some of his novels to showcasing aspects of the myriad extravagant lifestyles pursued in southern California. In his 1977 novel *The Black Marble*, he satirically discussed dog shows and a then-fading Pasadena milieu. In his 1981 *The Glitter Dome*, it was a reconnoitering of the making of pornographic movies, while his 1983 *The Delta Star* explored some of the



The son of a police officer, Joseph Wambaugh brought this unique familial perspective on police work to his first highly acclaimed novel and has continued to enthrall readers throughout his career.

intrigues involved in scientific research endeavors and the politics behind the Nobel Prize, and his 1985 *The Secrets of Harry Bright* exposed the extravagances of the wealthy of Palm Springs, saturated with alcohol and other drugs. Other locales exploited by Wambaugh include Orange County, California, for his 1990 *The Golden Orange* and San Diego, California, where his 1993 *Finnegan's Wake* and 1996 *Floater's* were set.

In addition to his 14 novels and five nonfiction books, Wambaugh has written a couple of acclaimed screenplays and a couple of teleplays. He has also served as creator and consultant for two television series for NBC-TV, the 1973 to 1977 *Police Story* and the 1977 *The Blue Knight*. Joseph Wambaugh has received numerous awards and honors for both his fiction and nonfiction writing. In 1974, his first nonfiction book, *The Onion Field*, was recognized with the Mystery Writers of America's Edgar Allan Poe Special Award for Non-Fiction. In 1981, he won

the Edgar Allan Poe Award for Best Screenplay for *The Black Marble*. In 1989, the International Association of Crime Writers gave him their Rodolfo Walsh Prize for Investigative Journalism for his *Lines and Shadows*. In 2003, his *Fire Lover: A True Story* garnered the Edgar Allan Poe Award for Best Crime Fact Book. In 2004, he was recognized with the Mystery Writers of America Grand Master Award.

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See Also: Dime Novels, Pulp, Thrillers; Literature and Theater, Crime in.

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Warren, Earl

Earl Warren was born on March 19, 1891, in Los Angeles, California. He attended the University of California at Berkeley where he received his bachelors' degree in 1912 and subsequently received his law degree from Boalt Hall in 1914. After serving in the U.S. Army in World War I, Warren worked as the deputy city attorney for the city of Oakland, California, from 1920 to 1925. In 1925, he was appointed to be the district attorney of Alameda County and was re-elected to the position three times. Warren gained a reputation as a tough district attorney who was strongly opposed to corruption.

Japanese American Internment Camps

After his stint as district attorney, Warren was elected to the post of attorney general for the state of California. Warren is known as one of the moving forces behind the Japanese American

internment camps during World War II. Despite the subsequent acknowledgment of this action in American history as one of the most despicable by America, Warren maintained that he thought that, at the time, it was the right thing to do. Several authorities hold the opinion that Warren's subsequent focus on civil and human rights in his later years as the chief justice of the U.S. Supreme Court was strongly influenced by his profound personal regret for his previous actions concerning the Japanese American internment camps.

In 1942, Warren was elected governor of California. Warren was very popular and was re-elected twice. Even though he was a Republican, Warren initiated numerous public works projects similar to those created by Roosevelt during the New Deal. Warren was also instrumental in expanding the University of California and public education. Warren was appointed to the U.S. Supreme Court as chief justice by President Dwight D. Eisenhower and was seated in January 1954. Eisenhower was a conservative Republican and he thought that he was appointing a fellow conservative when he appointed Warren to the bench. Warren's many subsequent liberal rulings prompted Eisenhower to later remark that his appointment of Warren to the U.S. Supreme Court as chief justice was "the biggest damn fool mistake I ever made."

Civil Rights Legislation

Warren wasted little time in asserting an activist judicial perspective based on human and civil rights. The first major decision of what was to become known as the Warren Court was the now famous decision of *Brown v. Board of Education* (1954). In *Brown*, the Warren Court overruled the long-standing precedent of *Plessy v. Ferguson* that had instituted the doctrine of separate but equal, which had only exacerbated the racial inequality in America. Of prime significance in *Brown* was Warren's ability to forge unanimous decisions. What was considered most notable about Warren was not his intellectual brilliance but his ability to bring the various justices together. This is not to say that Warren was not intelligent—far from it. However, he was not known for his ability as a legal scholar so much as his ability to bring differing perspectives together and form unanimous if not just strong majority opinions.

Warren was probably best-known for his sweeping changes to the law of criminal procedure and the Fourth and Fifth Amendments. It was through the criminal prosecution of African Americans that much of the racism in America found official expression. With the decision in *Mapp v. Ohio* in 1961, the Warren Court made it clear that the constitutional protections of the Fourth Amendment applied equally to all people, regardless of race. It was in *Mapp v. Ohio* that an illegal police search of an African American woman's home and illegal seizure of evidence was invalidated. And, in the famous decision in *Miranda v. Arizona* in 1966, a Hispanic man's criminal conviction was overturned because he did not understand his rights, resulting in the Miranda warning. In the decision in *Gideon v. Wainwright* in 1963, Warren led the U.S. Supreme Court in providing substance to the right to an attorney by requiring free counsel to indigent criminal defendants. Warren's ventures into civil rights engendered much criticism. Much of the criticism was focused in conservative and racist southern groups. Throughout his term in office, there were numerous calls to impeach Warren, none of which ever came to fruition.

Greater Fairness and Interpretation of the Law

However, Warren's fame as a jurist was not focused on just race relations and criminal procedure. The Warren Court was instrumental in bringing greater fairness to the U.S. political system of apportionment of votes. In several decisions, the Warren Court announced the doctrine of "one man, one vote," ending decades of the domination of state legislatures by rural areas over urban areas. The Warren Court also broke new legal ground with the recognition of a constitutional right to privacy in the famous case *Griswold v. Connecticut* in 1963. The Warren Court also continued to engender much criticism by declaring that mandatory school prayer was illegal in the case *Engel v. Vitale* in 1962. The Warren Court also breathed life into the, up to that point, little-used civil rights statute, 42 U.S.C. § 1983, which had been enacted during the time of the Civil War. With the decision in *Monroe v. Pape* in 1961, the Warren Court placed its approval on the employment of 42 U.S.C. § 1983 for individual victims of civil rights violations to pursue civil remedies in federal court.

Earl Warren's legacy was not limited to his work as chief justice of the U.S. Supreme Court. Warren had the unfortunate duty to chair the Warren Commission, which was the appointed body assigned to investigate the assassination of John F. Kennedy in 1963. Warren did not want the position but eventually agreed to accept it. The subsequent Warren Commission Report concluded that the assassination of President Kennedy was the work of a lone assassin, Lee Harvey Oswald. The report was strongly criticized as containing numerous inconsistencies, distortions of evidence, failures to consider evidence, and cover-ups of government involvement. Subsequent studies and books have raised numerous other problems with the investigation and the report, which include missing evidence.

Despite these problems, Earl Warren has been recognized as one of the greatest chief justices of the U.S. Supreme Court in American history. It has even been stated that Chief Justice Earl Warren breathed life into the Bill of Rights and made it much more than a mere form of words. Internationally, Earl Warren and the Warren Court have been recognized as true leaders in human and civil rights.

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See Also: California; Civil Rights Laws; Japanese Americans; Miranda Warnings; *Terry v. Ohio*.

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in the western half of the state; the eastern and central portions of the state are more rural and much more sparsely settled.

The Territorial Government of Washington authorized the creation of a penitentiary in 1883 for incarcerations of longer terms than local jails could be expected to accommodate. The town of Walla Walla was chosen as the site of the new prison, and construction of the brick and concrete facility began in 1886. The prison was candlelit until 1902, when electric lights were installed, and mixed-sex until female prisoners were relocated to the Washington Corrections Center for Women in 1971. From 1892 to 1921, prisoners worked manufacturing sacks; the new popularity of automobiles led to turning the jute mill used for sack manufacture into a license plate factory, and the penitentiary continues to manufacture 2 million license plates a year. Due to prison population increases, the late 20th century saw numerous other facilities built as well: the Larch Corrections Center (Yacolt, 1956), the Washington Corrections Center (Shelton, 1964), the Washington Corrections Center for Women (Gig Harbor, 1971), the Clallam Bay Corrections Center (Clallam Bay, 1985), the Airway Heights Corrections Center (Airway Heights, 1992), and the Stafford Creek Corrections Center (Aberdeen, 2000). The newest correctional facility is the Mission Creek Corrections Center for Women, built in Belfair in 2005, with a capacity of 305, bringing the statewide female inmate capacity to 1000.

Early Washington law enforcement was handled by federal marshals (until statehood) and town marshals. Seattle replaced its town marshal with the Seattle Police Department in 1886, soon creating a modern professional police force. The state police agency, the Washington State Patrol (WSP), began as the Highway Patrol in 1921, consisting of six patrolmen on motorcycles; it was reorganized as the WSP in 1933.

Washington's early history was marked by numerous incidents of anti-Chinese violence, similar to those in Oregon and Wyoming. The earliest major incident was an attack on sleeping Chinese hop pickers in Squak Valley (now Issaquah) in September 1885, resulting in three dead and three wounded. The details are unclear except that local white men were angry that hop farms had hired Chinese laborers—who would work more

Washington

A Pacific Northwest state, Washington was admitted to the Union in 1889. More than half of the population lives in the Seattle metropolitan area



A 2011 voter initiative in Washington ended state liquor stores, closing this location. Underage drinkers often find it easier to buy liquor from an independent seller as opposed to a state store clerk who makes no financial gain on sales.

cheaply—because of the low market price for hops, and retaliated violently. The attackers were acquitted. A month later, the Knights of Labor—the most important labor organization in the country at the time—stirred up anti-Chinese sentiment in Tacoma over the same issues (Chinese labor being cheap enough to make it difficult for whites to compete), and a mob of whites—led by the mayor and the police department—forced the residents of Tacoma’s Chinatown out of the city, marching them to the rail station and onto a Portland-bound train. Continued efforts by the Knights of Labor led to another riot in Seattle the following year, as whites rounded up Seattle Chinese and tried to force them onto ships that would transport them elsewhere. In Seattle, the police at least attempted to defend the Chinese but were outnumbered. Martial law was declared in the city and federal troops moved in to protect the Chinese. Restitution was paid by the U.S. Congress to the Chinese government, but not to the actual victims.

Washington’s most famous criminal is Gary Ridgway, better known as the Green River Killer, a serial killer who murdered at least 71 women—and possibly many more—from 1982 to at least 1998. His first five victims were found in the Green River, giving him his name. As a child, Ridgway had been troubled and was tested with a low IQ (82). As a teenager he stabbed a 6-year-old boy, who survived the attack. He was in his 30s when he began murdering women in the Seattle and Tacoma area, and in court statements he said he had killed enough that he had lost track of the numbers. Some were prostitutes or runaways, and his practice was to pick up a woman for sex and to strangle her from behind during or after sex. In some cases he returned to the corpses to have sex with them later. The Green River Task Force interviewed incarcerated serial killer Ted Bundy several times, hoping to shed light on their profile of the Green River Killer, with little luck. Ridgway was identified as a suspect as early as 1983 but passed a polygraph test, and no evidence was found sufficient for conviction. DNA evidence eventually led to his arrest in 2001, and he plea-bargained a life sentence in exchange for his full confession and information about the location of the remains of his victims.

Washington voters approved Initiative 593 in 1993, making it the first state with a “three strikes” law. Washington is a capital punishment state and has carried out 110 executions since its territorial era, predominantly by hanging. The death penalty was abolished twice—in 1913 (revived in 1919) and in 1975 (reinstated the same year). The current form of the law dates to 1981, the 1975 statute having been rewritten twice to correct problems of constitutionality. Since 1996, inmates have been allowed to choose between lethal injection or hanging. Washington is the only state with an active gallows, though no inmate has chosen it since lethal injection was introduced. Since 2010 Washington’s lethal injection has been conducted with a single-drug protocol using sodium thiopental, although the 2011 expiration of extant supplies of the drug following the manufacturer’s discontinuation of it will force the state to change its protocol.

Under the 1981 law, the death penalty may be used for treason or for first-degree murder aggravated by one or more of several factors

(including murder committed during the commission of a felony, contract killings, and murder of a police officer). Most of the aggravating factors that qualify a murder for the death penalty are the same as in other capital punishment states, but Washington also allows several less common aggravating factors: murder of a reporter with the intent of obstructing the reporting of a story, murder of someone who held a restraining order against the murderer, and murder committed in order to obtain or advance position in a gang or other criminal organization. The last factor reflects Washington's growing concerns with gang violence and the specter of initiation killings.

Gang representation in Washington is substantially the same as that of nearby Oregon, with the largest gangs being chapters of the Texas-based Bandidos Motorcycle Club, the Oregon-based Brother Speed Motorcycle Club and Free Souls Motorcycle Club, the Boston-based Friends Stand United, and the California-based Gypsy Joker Motorcycle Club and Hells Angels. Motorcycle gangs are largely responsible for the traffic and sometimes manufacture of methamphetamine in Washington.

The violent crime rate in Washington, 313.8 crimes per 100,000 inhabitants in 2010, is substantially lower than the national average and has been falling steadily since a 1992 peak of 534. As in most of the country, crime climbed steadily in the decades leading up to that peak. In Washington, it grew especially quickly in the late 1960s (nearly doubling from 1966 to 1969) and from 1973 to 1975. The rape rate of 38.1 per 100,000 inhabitants is significantly higher than the national rate of 27 but has fallen from its 1992 high of 72.

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See Also: Chinese Americans; Chinese Exclusion Act of 1882; Oregon.

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Washington, D.C.

The U.S. capital is a metropolitan region like no other. For the average American, Washington, D.C., houses the infrastructures sustaining the federal government, and the city represents one of the most revered symbols of national power. Though the city has been the center stage of much of American history, the district government is also, like metropolitan regions throughout the country, immensely preoccupied with providing adequate services, including public safety.

This means that while different federal agencies attempt to protect elected officials from terrorism and other subversive activities, much of the success and popularity of local representatives is measured to a great extent by how well these officials pursue policies to control the crime rate. Judging from published statistics, the metropolitan police and other law enforcement responsible for deterring crime have succeeded considerably in recent years, for while the general population continues to rise, practically all recorded categories of criminal offenses have actually decreased. In fact, in 2009, the crime rate per 100,000 reached levels not seen in Washington since 1968.

However, there is more to this issue than the mere variations in the crime trend indicate. A careful examination of the social history of crime in the city reveals three considerations deserving further study. The first is the extent to which the distribution of crime historically has fluctuated in characteristically similar patterns to other municipalities around the nation and whether a careful mapping of the city's crime confirms at least some of the conclusions proposed by recent structural criminologists and sociologists.

The second observation relates to whether the recent influx of immigrant families and, concomitantly, the changing social fabric in the city have had some or no effect on the crime rate. Another area deserving further research is the degree to which the juxtaposition of the local and national

character, function, and cosmology of the city has impacted the crime rate in the district.

Washington, D.C., according to the latest census data, has a population of just over 500,000 permanent residents. Blacks continue to constitute the majority of residents with 54 percent of the overall district population, followed by whites with 41 percent and Hispanics with 9 percent. Some 13 percent of all residents in 2009 were born overseas. The median household income of \$58,553 places the city well above the national average, but a sizable portion of the district's residents (17 percent in 2008) also live below the poverty line. Finally, the Metropolitan Policy Program at the Brookings Institution (2010) ranks the Washington metro region the highest in educational attainment in the nation, with close to half (47 percent) of its residents age 25 and over holding at least a bachelor's degree in 1990 and 2008. Similarly, the number of those holding a college degree topped 39 percent in 2009 in Washington, D.C., alone.

Background

Crime in the nation's capital often spills over from the ideological, racial, and economic battles that define American history. The growth of the crime rate during the early 1900s resulted primarily from the racial tensions of the epoch. The rise of extremist nationalism exacerbated racial tensions in the city, as was primarily characterized by the 1925 Ku Klux Klan march in Washington, which is said to have attracted close to 500,000 followers. During the Great Depression, the social tensions brought about by unemployment and the frequent confrontations among organized labor, anarchists, Bolshevik sympathizers, and New Deal enthusiasts mainly accounted for the violence and property deterioration.

During the upheavals of the 1960s, social tensions erupted again, contributing to a surge in the crime rate that resulted in the doubling of the crime index per 100,000 between 1966 and 1969. In particular, the aftermath of the 1968 riots, brought about by the assassinations of Martin Luther King, Jr., and Robert F. Kennedy, still resonates in the city as one of the most regrettable series of events in the history of its urban dwellings.

The growth of such conventions of social control as the police department and correctional

institutions also reflect the uneven trajectory of crime. The creation of the Metropolitan Police Department dates back to the summer of 1861, when its personnel did not exceed 200 officers. To accommodate the growth and professionalization of the department, a training school was established in 1930. However, by 2007, the D.C. police department had grown to more than 4,000 enlisted and civilian personnel. The Three Prisons Act of 1891 established three penitentiaries to service the district. After a brief reorganization in 1907, the Bureau of Prisons was established under the Justice Department in 1930. By the end of the decade, the correction agency consisted of 14 facilities housing more than 13,000 inmates. Ten years later, the agency grew to 24 facilities and more than 24,000 recruits. When the 1990s came around, the inmate population topped 130,000 and the number of correctional employees was close to 20,000. This latest jump was directly attributed to the increased rate of convictions as a result of the war on drugs.

Mapping Crime

Oscillations in the crime rate in Washington, D.C., have been conditioned by structural and exogenous factors. Among the former, perhaps the most important is the racial divide in the city as illustrated by current levels of residential segregation. In fact, to talk about the crime rate in D.C. is a misnomer, for there is a very strong correlation between the character of neighborhoods, social isolation, dispersion of low-income households, and crime. To take one startling illustration, according to recent data reported by the Metropolitan Police Department, in Precinct 2 of the district, which is mostly white and affluent, there were 16 homicides reported from 2001 through 2009. On the other hand, in Precinct 7, one of the least affluent and most isolated, the police reported 496 homicides, 31 times more than in Precinct 2, during the same years.

Another feature is how the racial and class disparities in the city relate to the type of crime committed in its neighborhoods. Paradoxically, while the number of thefts reported in Precinct 7 ranged from 903 to 1,279 between 2001 and 2009, Precinct 2 reported almost three times that amount, from 2,027 to 4,398, during those years. The point that should be made clear with this comparison is



Soldiers stand guard on a Washington, D.C., street after the assassination of Martin Luther King, Jr. Rioting destroyed many buildings and social tensions erupted during the aftermath of his death, as well as the tragic death of Robert F. Kennedy, both considered the most regrettable series of events in the history of the city.

that more violent crimes tend to cluster in poor and working-class neighborhoods, whereas more affluent neighborhoods experience the break-ins and other less violent offenses. In this sense, the evidence from the district is not very different from the national trend. One of the reasons for this particular finding is that most violent crimes are interracial and interethnic, while the victims of robberies are more often than not class based. This observation may seem inconsequential but there is enough evidence from other cities to overwhelmingly corroborate this conclusion.

Moreover, data compiled by the Urban Institute and the Washington, D.C., Local Initiative Support Corporation (LISC) reveal an additional possible explanation for the dispersion of crime in D.C. Ward 7, which dominates most of Precinct 7, which is overwhelmingly black and poor. From

2005 through 2009, blacks accounted for 96 percent of the residents and whites and Hispanics for just 1.5 and 1.8 percent, respectively. In addition, the poverty rate amounted to 26 percent and the unemployment rate was twice the city's average, reaching 19 percent. Ward 3, on the other hand, is 5.3 percent black, 7.8 percent Hispanic, and predominantly white (78 percent). Its poverty rate was 7 percent and the unemployment was 3.4 percent. This data, therefore, seems to support most of the tenets and conclusions proposed by contemporary cultural and structural criminologists; along with the high dispersion of income and residential segregation, distressed areas also experience social distance and isolation. The sociology and criminology literature is emphatic about how, in socially isolated distressed communities, residents develop a particular code of the

street as a conforming mechanism to gain respect and survive in inner-city neighborhoods. This culture, which tends to informally reproduce itself through generations and socialization, distrusts institutional mediating regimes, in particular, those sponsored by or involving law enforcement, adhering instead to popular norms of conflict mediation that condone violence and other forms of deviant behavior.

When one adds the effects of exogenous factors to these structural conditions, the effects on crime are evident. In the case of D.C., one of the most transcending factors determining crime has been the influx of drug trafficking into and around the city. The Office of National Drug Control Policy (ONDCP) summarizes the impact of drug-related crimes in communities as follows: "Drugs are related to crime in multiple ways. Most directly, it is a crime to use, possess, manufacture, or distribute drugs classified as having a potential for abuse (such as cocaine, heroin, marijuana, and amphetamines). Drugs are also related to crime through the effects they have on the user's behavior and by generating violence and other illegal activity in connection with drug trafficking."

In Washington, the complex relationship between drugs and crime is evident when one considers the number of Drug Enforcement Administration (DEA) drug-related arrests in the city between 2004 and 2007. In 2004, the DEA made 170 arrests, according to the ONDCP, and the same year the number of homicides reached 198. As the number of DEA arrests decreased in 2005 and 2006, so did the number of homicides, but in 2007, when the number of DEA arrests jumped to 41, the homicides also swelled to 12.

Drug crimes have also been impacted by the proliferation of youth gangs as they fight for turf to become distributors themselves. To make matters worse, there is ample evidence to ponder the significance of the transnational dimensions of drug trafficking. Mexican cartels, for instance, are known to have contracted local gangs to take advantage of their extensive networks and keen local knowledge that enables them to distribute and sell cocaine in multiple cities throughout the United States. In Washington in particular, the estimates are that in 2009, the 130 criminal gangs and crews operating in the district were responsible for as many as 60 percent of the city's homicides.

The Impact of Migration on Crime

Another point deserving close attention is the extent to which migration flows contributed to the amount of crime in the city. This issue has been, and continues to be, a point of contention among sociologists and criminologists. In recent years, the district has become increasingly diverse and multicultural. For instance, it is now well documented that the number of blacks residing in Washington is down by roughly 4 percent while the number of foreign-born residents has continued to soar since the 2000 census. Some, like Harvard professor Robert J. Sampson, have concluded that between 1990 and 2004, the rise of immigration did not impact the homicide rate across the nation in any meaningful way. In addition, Sampson demonstrates that some immigrant groups, notably Mexican Americans, have a significantly lower rate of violence compared to whites and blacks. Proponents of a different position have argued forcefully that when it comes to migration and crime, findings should be inferred from reported crime incidence with some reservations. The rate of violence among immigrants is actually much higher, and instances usually go underreported because of the lack of trust immigrants usually demonstrate toward law enforcement agencies and personnel for fear of deportation.

Data from Washington tends to partially corroborate Sampson's findings, although immigrant youths are generally overrepresented in the criminal justice system. From 1980 when migrants began to settle in the city in significant numbers to 2009, the total number of violent crimes decreased by 676 citywide while the Hispanic population alone rose by 14 percent. Reasons for this inverse relationship may include the imminent fear of deportation among offenders, the sustained levels of economic opportunities in the region, or the close-knit supporting ties one finds among immigrant communities. Admittedly, other factors unrelated to migration might also have contributed to this downward trend because the city has become more gentrified since 1980, the unemployment rate consistently scores below the national average, and the metropolitan police have successfully adapted policing tactics to embrace community policing, more efficient intra- and interagency coordination, and multiple innovative problem-solving initiatives. All of these factors usually

contribute positively to the reduction of violence. However, the fact remains that the presence of immigrants has not significantly undermined the efficacy of these deterrence strategies.

When one examines more specific neighborhoods, the picture changes a bit from the citywide perspective. In the cluster of Adams Morgan, Columbia Heights, Mt. Pleasant, Pleasant Heights, and Park View, where most first- and second-generation immigrants reside, the reported crime per 1,000 people more than doubled from 15 in 2000 to 46 in 2009. When one takes into account the demographic diversity in these neighborhoods along with how well integrated the community is with the rest of the city, the social isolation arguments become less persuasive. It seems that other structural conditions such as the relatively low levels of educational attainment and high concentration of deprivation and despair provide more feasible causal explanations to account for the phenomenon of violence.

The Culture

One of the unique features of Washington, D.C., is its juxtaposition of identities between the symbolic power associated with serving as the nation's capital and simultaneously as the home for families with deep roots in the area. As any Washingtonian would likely corroborate, the possibility of forging a distinct Washingtonian identity is severely impaired by the transient culture of many city residents and the amount of transplanted dwellers who settle in Washington every year to seek professional opportunities. And yet the neighborhoods that embrace norms associated with hope, prosperity, achievements, and other positive attitudes tend to support a sense of ownership, of belonging, and are more likely to sustain an affable social character and order.

To what extent, however, these norms contribute to crime prevention is open to speculation. In 1938, urban sociologist Louis Wirth asserted that such intrinsic urban conditions as population density and heterogeneity multiply opportunities for diverse social interactions, reducing allegiance to a single group and compromising the effectiveness of the various mechanisms of social control more homogeneous populations usually assert. Perhaps for this reason, the uniqueness of the district's character as the nation's capital has made

the city more susceptible to instances and situations when political discontent and frustration translates voice into violence. Thus, Washington experienced a steady increase in violent and property crimes during the aftermath of the 1968 urban riots than at any other time in its recent history. During years of urban neglect and depopulation, the damage caused by the upheavals of the late 1960s left the city in despair. It was not until 1998 when a new generation of elected officials firmed their control over city hall and instituted incentives for working professionals to move back into the city that the overall rate of violence began to recede and Washington experienced a renaissance of sorts.

Conclusion

In short, this brief social history of crime in Washington, D.C., reveals numerous lessons worthy of serious reflection. First, the evidence calls us to reconsider some of the tenets of the social isolation perspective. The evidence from the city seems to suggest that structural conditions possess equally if not more plausible explanatory power than culture when it comes to explaining violent crimes. Second, the impact of migration also needs to be carefully reexamined. Third, to what extent the role of identity, place, and diminishing social control influence the propensity for crime should certainly be of interest to scholars and students alike. But perhaps the finding that must resonate is that when it comes to analyzing crime, the city as a social unit of analysis needs to be disaggregated by race, class, and ethnicity.

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See Also: Drug Enforcement Administration; Gangs, Contemporary; Ku Klux Klan; Urbanization.

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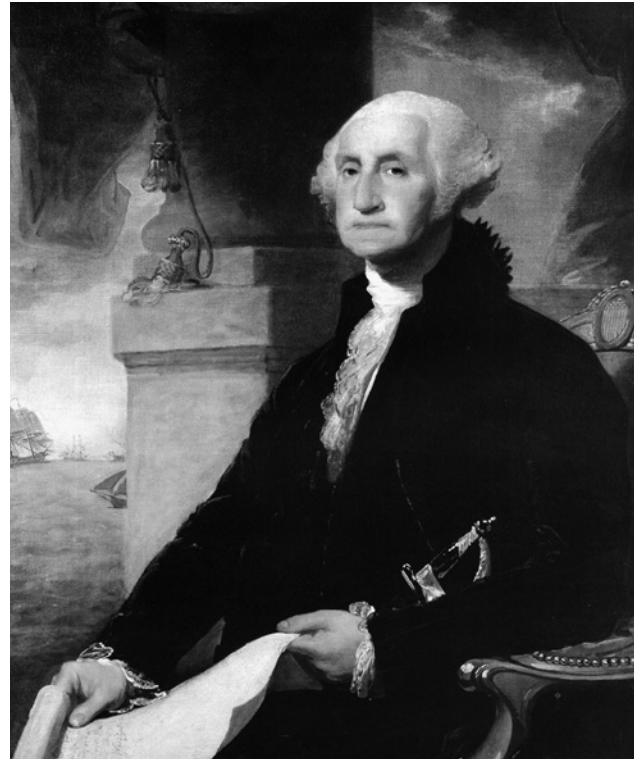
Washington, George (Administration of)

The first president of the United States, George Washington (1732–99) was called the "Father of His Country" for leading the victory over Britain in the American Revolutionary War. Washington was born in Westmoreland County, Virginia, the eldest son of Augustine Washington and his second wife, Mary Ball Washington. Washington's father died in 1743, and the younger Washington, then 11, went to live with his half-brother, Lawrence. Washington did not attend college but developed excellent handwriting, became a skilled and prolific writer, and was good in mathematics, which suited his interest in surveying, through studying on his own.

By the age of 17, Washington was managing a successful career as a surveyor and bought unclaimed land to establish himself as a member of the aristocracy. When his brother died in 1752 from tuberculosis, Washington inherited the Mount Vernon estate, obtained Lawrence Washington's place in the Virginia militia, and received a major's commission.

Military Service

Washington first gained public recognition in 1753, when the rivalry between the British and French over control of the Ohio Valley erupted into the French and Indian War (1754–62). As adjutant in one of Virginia's four military districts,



When George Washington assumed office, his first acts established federal judiciary policy, including the Judiciary Act of 1789, which set up a six-member Supreme Court.

he was dispatched by Governor Robert Dinwiddie in October 1753 to warn the French against further encroachment on territory claimed by the British. In delivering the message, he learned that the French were organizing further advances. Commissioned a lieutenant colonel in 1754, Washington was sent to reinforce a post that was under construction at the junction of the Allegheny and Monongahela rivers, where he fought the first skirmishes of the French and Indian War. Disappointed by his capture and defeat by the French at Fort Necessity in July 3, 1754, Washington resigned his commission near the end of that year. Both Britain and France escalated military actions and sent troops to North America in 1755 and formally declared war in 1756.

In 1755, Washington returned to the frontier as the senior American aide to British General Edward Braddock, who had been sent by the king of England to drive the French from the contested Ohio Country. In Braddock's ill-fated expedition,

his army was defeated by the French and their Indian allies in the battle of the Monongahela River. Washington was able to rally the broken survivors of the British and Virginia troops to an organized retreat and safety. At age 23, he was promoted to colonel and commander in chief of the Virginia militia to defend the frontier. In 1758, the British finally took the abandoned forks of the Ohio, with Washington as commander of one of the three brigades headed by General John Forbes. He thereafter resigned his commission and returned to Mount Vernon.

In 1759, Washington married Martha Dandridge Custis, a wealthy young widow with two small children. From 1759 to the start of the American Revolution, he was a farmer, member of the House of Burgesses (1759–74), and leader of Virginia opposition to the British colonial policy. He served as a delegate to the Continental Congress (1774–75). Britain, in an effort to pay for the French and Indian War, taxed the American colonists without representation, angering them. The colonists revolted and dumped precious tea into Boston Harbor, called the Boston Tea Party. In 1775, the Continental Congress organized for defense and commissioned Washington as the commander in chief of the colonial army. In 1776, the colonists declared their independence from Britain, and the Revolutionary War began.

Presidency

After many bloody battles, Washington's army defeated the British in 1781 with some help from the French, and America became independent. In 1787, Washington presided over the Constitutional Convention, during which the written U.S. Constitution delineated a representative form of government. The Constitution was ratified in 1788 and went into effect in 1789. Washington was unanimously elected president in 1789 and again in 1792.

Washington's administration was challenged by violent resistance and uprising from a 1791 excise tax on whiskey, commonly known as the Whiskey Rebellion, or the Whiskey Insurrection. Protesters of the tax, mostly western farmers, used violence and intimidation to prevent officials from collecting it. In July 1794, more than 500 armed Pennsylvanians criminally terrorized and attacked the home of tax inspector General John Neville. In

response, Washington's administration sent negotiators and militia forces to control the violence. That action gave credibility to the administration for its capability and willingness to suppress violent assault and resistance to its laws. Washington's administration set a precedent of valuing democracy and the will of the people for decision making. Washington is viewed as one of the greatest presidents to ever serve. His legacy includes the naming of the capital, Washington, D.C., numerous ships, the state of Washington, and hundreds of schools. His portrait is on the \$1 bill.

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See Also: 1777 to 1800 Primary Documents; Constitution of the United States of America; Declaration of Independence; Tea Act of 1773; Washington, D.C.

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Watergate

In the evening on June 17, 1972, at the Watergate Hotel in Washington, D.C., because of the alertness of a security guard, five men were arrested for burglary inside the Democratic National Committee's office. These otherwise unremarkable arrests would launch a criminal investigation and prosecution and a political scandal that would have serious political and legal repercussions in the American criminal justice system and American society.

Arrest and Investigation

Richard Nixon was seeking reelection to the office of president of the United States. The national committee of the political party of the president was

active in seeking the reelection. The five men who were arrested were James W. McCord, Jr., Virgilio Gonzalez, Bernard Barker, Eugenio Martinez, and Frank Sturgis. E. Howard Hunt, Jr. and G. Gordon Liddy were later indicted for their activities in support of the burglary and the wiretapping. The men were attempting to gain information to support the reelection of President Nixon.

The subsequent investigation showed a financial link between the men and their crimes with the Committee to Re-Elect the President (ironically known as CREEP). Thousands of dollars had been funneled to the men through the Republican political apparatus. Initially, John Mitchell, the former attorney general of the United States, and Nixon denied any knowledge of or involvement with the Watergate incident. On October 10, 1972, the Federal Bureau of Investigation (FBI) reported that the Watergate burglary was part of a huge organization of political espionage and sabotage in support of the reelection campaign of President Nixon. Despite the revelations, President Nixon was reelected.



The interior of the Watergate Hotel complex. Richard Nixon's second term as president of the United States saw an Arab oil embargo, his vice president's resignation, and the Watergate scandal—the main reason for Nixon's resignation in 1974.

However, two *Washington Post* reporters, Bob Woodward and Carl Bernstein, initiated an intensive investigation into the conspiracy. Through the use of a then-confidential informant known as “Deep Throat” (who many years later was revealed as a high-level FBI official), they were able to discover that the conspiracy led deeply into the FBI, the Central Intelligence Agency (CIA), the Justice Department, and the White House. Attempts at damage control by White House aides H. R. Haldeman and John Ehrlichman were unsuccessful.

The U.S. Senate created a committee chaired by Sam Ervin to investigate the matter. Subpoenas were issued. Initially, the White House resisted the subpoenas. However, White House attorney John Dean became a star witness against the conspirators, and Alexander Butterfield revealed that there was a tape recording system in the White House that recorded the president's conversations. One of the taped conversations between Nixon and John Dean established that Nixon was not only aware of the cover-up but that he was an active participant. This tape would not be revealed for some time.

White House Tapes

At that point, Archibald Cox, the special prosecutor appointed to investigate the matter, subpoenaed the White House tapes. The White House ordered Cox to drop the subpoena and he refused. The president then went through several Justice Department officials in an attempt to find someone willing to fire Cox. Robert Bork was appointed acting attorney general and he subsequently agreed to do it. The forced resignations of various Justice Department officials and the firing of Cox were dubbed the “Saturday Night Massacre.” Numerous charges of wrongdoing were raised against Nixon and he subsequently stated to the press that “I am not a crook.” Nixon then appointed another special prosecutor, Leon Jaworski, to continue the investigation. Jaworski also subpoenaed the tapes. Nixon refused and only produced transcripts with large portions redacted.

The issue went to the courts and ultimately was presented to the U.S. Supreme Court. President Nixon argued that he should not have to produce the tapes under the principle of executive privilege. Finally, on July 24, 1974, in the case *United States v. Nixon*, the U.S. Supreme Court rejected the argument of executive privilege and ordered

President Nixon to produce the tapes. On July 30, 1974, President Nixon turned the tapes over to the special prosecutor. As a result of the cover-up, indictments were issued against a number of White House staff, including Haldeman, Ehrlichman, Mitchell, and Charles Colson. John Dean and Jeb Stuart Magruder had already pled guilty. Numerous other officials were indicted and convicted.

Resignation

The political pressure on President Nixon was enormous. On July 27 through July 30, 1974, the House Judiciary Committee voted to recommend impeachment of President Nixon. Then, on August 5, 1974, the June 23, 1972, tape of President Nixon and Haldeman organizing a cover-up of the Watergate burglary using the CIA was released. After the release of this tape, Congressmen on the House Judiciary Committee who had previously voted against the impeachment of President Nixon changed their minds. On August 8, 1974, President Richard Nixon resigned from the office of president. Gerald Ford succeeded him. The political effects of the Watergate scandal were enormous. The Republican Party was severely damaged and many credit the election of Jimmy Carter to the next term as president as one of the results. Politically, politicians were almost universally branded as crooks and the phrase “I am not a crook” became a national joke.

From a historical context concerning the criminal justice system, the Watergate scandal gave substance to the principle that no man is above the law, not even the president. In one sense, it allowed popular America to think that the criminal justice system worked. However, that belief was challenged when President Gerald Ford, before any charges were ever brought against Richard Nixon, pardoned him. Ford endured a significant amount of criticism but held firm on the grounds that the nation had to heal and that the prosecution and possible conviction of Nixon would harm the nation. Some authorities hold the position that Ford was not elected to the presidency because of his pardon of Nixon. One principle of criminal law that the Watergate scandal established is that executive privilege is limited and cannot be used to cover up criminal behavior. However, that principle has been seriously undermined by the administration of George W. Bush from 2000 to

2008 with revelations of such executive activities as torture, secret rendition, and secret surveillance of American citizenry. If nothing else, the Watergate scandal serves as a historical illustration and a warning as to how far politicians will go—even to the point of criminal behavior and cover up—to maintain personal political power.

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See Also: 1961 to 1980 Primary Documents; Nixon, Richard (Administration of); Political Crimes, History of; *United States v. Nixon*.

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See Students for a Democratic Society and the Weathermen.

Webb v. United States

Webb v. United States was decided by the U.S. Supreme Court in 1919. The decision held that prescriptions of narcotic drugs for the sole purpose of maintenance treatment were not permissible. This was because such prescriptions were not interpreted to be within the discretion of physicians and thus not privileged under the Harrison Narcotics Tax Act. This act was a U.S. federal law that taxed and regulated the production and delivery of opiate drugs. The act was proposed by

New York Representative Francis Harrison, and it was approved by the U.S. Congress on December 14, 1914.

The case was accepted on certiorari from the Sixth Circuit Court of Appeals. It was argued before the Supreme Court on January 16, 1919, and was decided on March 3, 1919. The case ended in a 5–4 split decision, with Justice William Day writing the majority opinion. He was joined in the majority by Justices Oliver Wendell Holmes, Mahlon Pitney, Louis Brandeis, and John Clarke. Chief Justice Edward White wrote a dissenting opinion and was joined by Justices Joseph McKenna, Willis Van Devanter, and James McReynolds.

The case involved Webb, a physician and Goldbaum, a pharmacist. They were both convicted and sentenced in the U.S. District Court for the Western District of Tennessee on a charge of conspiracy to violate the Harrison Narcotic Tax Act. Webb wrote prescriptions for morphine that was furnished by Goldbaum to habitual cocaine users for addiction maintenance, not in an attempt to cure the patients' cocaine habit. In *Webb*, the court interpreted part of the act to mean that physicians could prescribe narcotics to patients in the course of normal medical treatment but not for the maintenance treatment of drug addicts.

During the 1800s, opiates and cocaine were generally unregulated drugs in the United States. However, beginning in the early part of the 20th century, cocaine began to be linked to crime. Some journalists claimed that cocaine use caused African Americans to rape and assault Caucasian women, and that Chinese immigrants were to blame for importing opium into the country. In 1908, President Theodore Roosevelt appointed Dr. Hamilton Wright as the first U.S. opium commissioner. In 1911, Dr. Wright stated that the United States consumed the most addictive drugs per capita, and that opiates were the most harmful drugs known at the time. The act is partly concerned with the marketing and taxation of opiates.

However, a clause applying to doctors allowed distribution “in the course of his professional practice only.” This clause was interpreted to mean that a doctor could not prescribe opiates to an addict, since addiction was not considered

a disease. A number of doctors, including Webb, were arrested and convicted under this law.

In *United States v. Doremus* (1919), the U.S. Supreme Court ruled that the act was constitutional. After upholding the constitutionality of the act, the *Webb* decision focused on a case that specifically pertained to the act. In *Webb*, the main question before the court was this: If a practicing physician issues a prescription for morphine to a habitual user, not being issued in the course of professional treatment for the attempted cure of the habit, but being issued for the purpose of providing the user with morphine sufficient to keep him comfortable by maintaining his customary use, is such an order justified under the act? The court's majority answered in the negative, meaning that opiate prescriptions for maintenance treatment were not a permissible exception under the law.

In 1925, the act's applicability in prosecuting doctors who prescribed narcotics to addicts was successfully challenged in *Linder v. United States*. Dr. Charles Linder was arrested and convicted of prescribing opiates to addicts, which was in violation of the Harrison Act. Linder appealed, and the court unanimously overturned his conviction. Justice McReynolds wrote the majority opinion, which stated that the federal government had overstepped its authority, had no power to regulate medical practice, and that the Harrison Act could not be used to prosecute doctors who prescribed narcotics to drug addicts. Much of the act's current authority has been superseded by the Controlled Substances Act of 1970.

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See Also: Drug Abuse and Addiction, History of; Narcotics Laws; Supreme Court, U.S.

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Weeks v. United States

Weeks v. United States was a monumental case decided by the U.S. Supreme Court in 1914. Prior to *Weeks*, it was common for American courts to accept evidence without scrutinizing the means by which such evidence was procured. *Weeks* set forth the exclusionary rule, which dictated decades of case law upholding the protection against unreasonable searches and seizures. Specifically, the case dealt with the safeguards of the Fourth Amendment to the U.S. Constitution, which provides “The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describe the place to be searched and the persons or things to be seized.” At its inception, *Weeks* was “not viewed as a means to achieve police conformity with law or indeed as a means to anything ... [but] [i]t was viewed as an expression of the Fourth Amendment itself.”

Without an arrest warrant, the Kansas City Police Department arrested Fremont Weeks. Similarly, without a search warrant or consent, several other police officers went to Weeks’s home and after “being told by a neighbor where the key was kept, found it and entered the house.” After searching his room, the officers took certain papers and articles into custody and later turned them over to the U.S. marshal. Later the same day, the police officers returned with the marshal. Without a search warrant, the marshal searched Weeks’s room and took custody of letters and envelopes that were found in a drawer.

Unlawful Search and Seizure

Weeks filed a pretrial motion for return of the seized property, arguing that his rights under the U.S. and Missouri constitutions had been violated. Specifically, the petition urged the court to order the return of his property because it was taken “without warrant or authority to do so” and that such property was “being unlawfully and improperly held” by the district attorney, marshal, and clerk of the court. Despite the initial violation of his rights occasioned by the police seizure of his belongings, Weeks argued that the

district attorney’s attempted use of the unlawfully obtained evidence at trial would constitute an independent violation, unless the court returned his property. The trial court entered an order requiring the return of Weeks’s materials, which were not pertinent to the charges against him, but denied the petition generally as to materials that were, or could potentially be, pertinent.

Weeks renewed his request for the seized property at the beginning of the trial before any evidence had been introduced. Yet again, the petition was denied. As each item was introduced into evidence, Weeks contemporaneously objected and argued that the materials had been obtained without a search warrant and by breaking into his home in violation of the Fourth Amendment to the U.S. Constitution. The trial court overruled the objections. On appeal, Weeks advocated for reversal of his conviction because of the prejudicial error consisting of the trial court’s denial of his petition and admission of the unlawfully seized materials at trial.

The government relied primarily on the decision of *Adams v. New York* (1904). Utilizing the *Adams* holding, the government argued that because the evidence was in the court’s physical control, it was competent evidence, and the court should not inquire into method used to acquire it. The Supreme Court found little merit in the government’s argument and found the facts in *Adams* were in stark contrast with those present in Weeks’s case. Specifically, the challenged evidence in *Adams* was recovered incidentally during the execution of a valid search warrant.

The court engaged in a historical analysis, which thoroughly examined centuries of American and English laws and customs, beginning with the 15th-century adage that a man’s home is his castle and that it shall not be invaded by general authority. The court explained that the Fourth Amendment was intended to “forever secure” against unreasonable searches and seizures as was evidenced by the founding fathers having placed it in the Bill of Rights. Ultimately, the court found that the taking and holding of Weeks’s items was a direct violation of his Fourth Amendment rights, further characterizing the violation as a “manifest neglect” or an “open defiance” of the proscriptions of the Constitution. The act of maintaining custody of the items and then later allowing

their introduction as evidence at trial was deemed prejudicial error. Accordingly, Weeks's conviction was reversed. The applicability of the *Weeks* holding was binding on federal courts only since the decision preceded the incorporation of various provisions of the Bill of Rights via the Fourteenth Amendment by decades.

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See Also: Bill of Rights; Constitution of the United States of America; Defendant's Rights.

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West Virginia

West Virginia originated as part of Virginia, one of the thirteen colonies, and seceded from Virginia in 1863 in order to break away from the Confederacy and rejoin the Union. From its conflicted beginning, crime, police, and punishment have had important roles to play in the development of the state.

Police and Punishment

At the time of West Virginia's secession, county sheriffs and town police departments were the extant forms of law enforcement. The West Virginia State Police was founded in 1919 in response to the mine wars and was the fourth statewide police agency formed in the United States. Secession from Virginia left West Virginia with a shortage of prisons, and the legislature's initial preference was to use existing county jails and send prisoners to facilities in other states when necessary. A prison escape turned public opinion in favor of a state prison, and the West Virginia



Matewan, West Virginia, is protected by a floodwall and is located along the Tug Fork River. Matewan played a major role in the historic mine wars in the early 20th century.

State Penitentiary began construction in 1867, finishing in 1876. The facility was based on the Northern Illinois Penitentiary at Joliet, and prison labor was used to construct the North Wagon Gate and two cellblock areas. A four-story tower provided housing for the warden and his family, and a separate space for female inmates. Once the prison was opened in 1876, prison labor was used to build secondary facilities and workshops for prison industries, including a paint shop, wagon shop, brickyard, hospital, and carpentry shop. The prison remained in use for more than a century but was decommissioned in 1986, after several decades of repeated riots and escapes, when the West Virginia Supreme Court ruled that the cells were small enough to constitute cruel and unusual punishment. Since then, inmates have been kept primarily in the Mount Olive Correctional Complex in Fayette County.

West Virginia abolished the death penalty in 1965. It had been a capital punishment state as part of Virginia and remained one for a century after its secession, as well as retaining Virginia's statute allowing the death penalty in rape cases. Hanging was used as the method of execution until 1949, when West Virginia became the last state to adopt the electric chair.

Crime

Coal mining has long been key to West Virginia's industry and economy, and the state was the site of historic "mine wars" in the early 20th century. The first such war, from 1912 to 1913, transpired in the southern part of the state between Paint Creek and Cabin Creek and led to at least 100 and maybe several hundred deaths. It began with a coal miner strike in April 1912. There were 96 coal mines in the region that employed 7,500 miners; the 41 mines on Paint Creek were unionized, though the Paint Creek miners were paid less than other unionized miners in the area. When the Paint Creek union negotiated a new contract and demanded that their pay be raised, the mine owners refused. When the Paint Creek miners began a labor strike, the Cabin Creek miners decided to join them, demanding that they be unionized under similar terms. The United Mine Workers Union pledged its full support and financing, and the strike lasted a month without violence—until mine operators hired the Baldwin-Felts Detective Agency as strikebreakers. The agency sent 300 armed guards, and the ensuing siege saw 50 deaths by gunfire and other violence, while many more starved to death while under siege.

The Baldwin-Felts agency was employed again by the mine owners in Matewan when a dispute arose with the local miners who were attempting to unionize in 1921. This culminated in the Battle of Blair Mountain, fought from August 25 to September 2, 1921, between 15,000 coal miners and an army of Baldwin-Felts agents and police. More than 1 million rounds were fired, and the army was ordered to intervene. In the end, 985 miners were indicted for treason, murder, conspiracy to murder, and accessory to murder. The southern part of the state wasn't able to fully unionize until 1935.

Crime in West Virginia is lower than the average rate, though significantly higher than in

neighboring Virginia, at 314.6 violent crimes per 100,000 inhabitants in 2010. While crime in West Virginia peaked in the 1990s (350 in 1999) as it did in much of the country before gradually falling, it has been on the rise again since 2005. The recent increase reflects a rise in aggravated assaults, which have increased almost 50 percent since 2002; rape and robbery have actually declined somewhat in recent years.

The most serious recent violent crime in West Virginia was the 2003 sniper attacks, which resulted in three deaths. Reminiscent of the Beltway sniper attacks in the Washington, D.C., area in the previous year, the 2003 sniper fired a single shot (apparently from a .22-caliber rifle) at victims stopped at stores or gas stations late at night. Two of the three victims had drug connections. A fourth person was shot twice in the chest five months later, and it wasn't clear if this was a victim of the same sniper. In 2011, a suspect was arrested for the murder of one of the victims; as of this writing, the investigation continues.

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See Also: State Police; Strikes; Virginia.

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White-Collar Crime, Contemporary

The first use of the term *white-collar crime* was in 1939. Sociologist Edwin Hardin Sutherland (1883–1950) used it in a speech given to the American Sociological Society. He coined the term in

order to refute the claims of those criminologists, social workers, and others who claimed that crime was the work of poor, disadvantaged young men from broken homes, or those from psychopathic or sociopath conditions. In contrast, Sutherland stated that people in business or in public positions of authority or in nonprofit organizations could commit crimes. The more sophisticated in society could and do engage in a number of practices or behaviors that are criminal acts against the peace of society and just not simply civil wrongs.

Sutherland defined white-collar crimes as crimes committed by people who are respectable, with high social status in the course of their occupations. In his last major book, *White Collar Crime* (1949), he argued that street crimes such as robbery and murder were less damaging to society than white-collar crimes. Yet, there were relatively few white-collar criminals in prison. Sutherland succeeded in focusing attention upon crime committed by prominent people and large corporate enterprises. Other definitions of white-collar crime have since been offered. Today, definitions of white-collar crime refer to the offense rather than to the social status of the offender. An example of a modern definition of white-collar crime was used in the 1983 annual report of the attorney general of the United States. It focuses on the acts of people who try to avoid payment obligations or financial losses or who take money, property, services, business advantages, or professional advantage, engaging in a form of robbery that is nonviolent and deceptive.

White-collar crimes often go unreported or unprosecuted because of the threat to the reputations of institutions such as banks, churches, or charities. The effect of reporting the crimes would be to weaken public confidence in these trusted institutions. Because of the damage to reputations and the broad nature of white-collar crimes, it is difficult to gather statistics on these kinds of offenses. One agency that gathers statistics on white-collar crimes is the Federal Bureau of Statistics, which collects statistics on fraud, counterfeiting and forgery, and embezzlement.

The people who commit white-collar crimes violate their positions of trust in business, industry, the professions, civic organizations, or the government. White-collar criminals may be bankers, business people, doctors, lawyers, computer experts, or others in socially responsible positions.

Because the number of deceptive practices that can be performed is so large, there is no set list of crimes that can be categorized as white collar. Historically, the courts have taken a broad view of crimes that can be categorized as white-collar crimes. The courts have included crimes such as mail fraud, wire fraud, conspiracy, racketeering, bribery, false statements, obstruction of justice, tax crimes, forgery, money laundering, bank fraud, false statements, securities fraud, and computer, environmental, health, and antitrust violations. Prosecution of white-collar criminals took a major step forward when the famous gangster, Al Capone, was convicted for tax evasion.

Since 2000, there have been numerous cases of white-collar crimes, but a drop in prosecutions occurred during the administration of George W. Bush. The drop was because of the redeployment of Justice Department assets to terrorism and illegal immigrant investigations. One area in which white-collar crimes rose was crimes that involved official corruption or political corruption, up 15 percent. Some of these cases involved notorious examples of adultery, prostitution, homosexual propositioning of young staffers, tweeting lewd pictures, extortion, and bribery.

Illegal Prescription Drugs and File Swapping

A category of white-collar crime that is frequently overlooked because the offenses are not usually prosecuted is the illegal importation of prescription drugs from pharmacies in Mexico and Canada. Thousands of senior citizens have purchased these drugs through the Internet. The amount is usually a 90-day supply for personal consumption. The need and the amount do not matter because such importation is a violation of federal law. To date, few if any prosecutions of senior citizens who have imported more affordable prescriptions have been made. Prior to 2006, small quantities of drugs were seized. Since then, the policy has been changed to one of supervision due to political pressure over the high price of American-made prescription drugs.

Another category of offense rarely prosecuted is downloading music and file swapping of entertainment over the Internet. It is a widespread practice. However, it is illegal and could result in prosecution. The justice department is unlikely to prosecute millions of teenagers and college stu-

dents for file swapping, but it is a nonviolent crime that involves deceptive practices. To prosecute such cases would raise a huge political uproar. So, such prosecutions are unlikely to occur on a mass scale. Only egregious cases are likely at the insistence of the recording industry or other media industries leaders. The costs to the industries are in the billions of dollars in losses, but the loss of public support could be even greater if the public does not support prosecutions of senior citizens, teenagers, or children.

Critics have denounced the refusal to prosecute an elderly grandmother for illegally importing medications while prosecuting an unknown accountant involved in a cover-up of financial malfeasance. They claim that the refusal to prosecute reveals the class warfare nature of white-collar crime prosecutions. The whole concept of white-collar crime is a sociological concept. White-collar crime prosecution seeks to punish the wealthy, powerful, or famous while ignoring others who have a low social status. The current practice is to prosecute on the basis of economic activity regardless of class or ethnic distinctions. The reality is a little more class oriented than some would like to admit.

Enron, Worldcom, Tyco, and Adelphia

There have been a number of famous white-collar criminal cases in recent years. In the 1990s, the deregulation of energy resources and the rising cost of energy put firms such as Enron into an excellent position for dynamic growth. Enron was deemed an energy giant at the beginning of the 2000s, until it was revealed that it was engaging in illegal accounting practices. Its manipulation of its financial records was aided by the Arthur Andersen accounting firm, one of the "Big Five." The Enron white-collar crimes were massive, cost billions, and ruined many people.

Jeffrey Skilling, Enron president and chief executive officer (CEO), along with a staff he assembled, hid billions of dollars of debt through fraudulent financial reporting, accounting loopholes, and the use of special-purpose entities. Andrew Fastow, chief operating officer (COO), fooled the board of directors into believing that Enron's accounting practices were sound. Accountants with Arthur Andersen were important players in the conspiracy. When the true financial condition

of Enron was revealed, its stock became virtually worthless. Securities and Exchange Commission (SEC) investigations led to Skilling's being sent to prison for a 24-year, four-month sentence. Andrew Fastow was given six years in prison. Kenneth Lay, the company's CEO and chairman from 1985 to 2002, died of a heart attack before he was sentenced. The accounting firm of Arthur Andersen, the nation's leading firm, collapsed. The Sarbanes-Oxley Act of 2002 was adopted to increase the criminal penalties for falsifying corporate financial information.

After Enron's collapse, Worldcom became the next scandal. It was a company created by CEO Bernard Ebbers. In the great telecom expansion of the 1990s, he built an enormous company. However, in 2000, there was a downturn in the telecommunications business. To protect the value of the company's stock, Ebbers used deceptive accounting methods in order to trick investors into believing the company was in sound financial health. In truth, there was an underreporting of \$3.8 billion, which eventually led to the company's bankruptcy. Ebbers was sent to prison for 25 years for conspiracy and fraud.

Executives stealing from a company seemed to reach new heights when Tyco CEO Dennis Kozlowski and former chief financial officer (CFO) Mark Swarts were found to have stolen over \$150 million from the company. Two million dollars was spent for a birthday party in Sardinia for Kozlowski's wife. Both were convicted and given prison terms of at least eight years and four months. Another manipulation involved the Adelphia Company. In 2002, it was the fifth-largest cable provider in the United States. In 2003, it generated \$3.6 billion in revenue; however, the figure was fraudulent. Adelphia's founder, John Rigas was given 15 years in prison and his son Timothy Rigas, the company's CEO, was given 20 years in prison for embezzling the company's funds for personal use. The company was sold to Comcast and Time Warner in 2006.

Healthcare Fraud and Martha Stewart

Credit card fraud, bankruptcy fraud, telemarketing fraud, embezzlement, money laundering, and home-repair fraud are also types of white-collar crime. Many white-collar crimes are carried out through the Internet via unsolicited e-mails. In

an effort to prevent this type of fraud, Congress passed the Controlling Assault of Non-Solicited Pornography and Marketing Act in 2003. Acts such as knowingly failing to list assets in a bankruptcy filing or the unauthorized use of a credit card are white-collar crimes. Healthcare fraud is a white-collar crime usually treated with severity. In 2001, Robert R. Courtney, a Kansas City pharmacist, was convicted of healthcare fraud for adulterating chemotherapy drugs. He was sentenced to 17 to 30 years in prison.

All of his property was forfeited and he was compelled to disclose the full range of his wrongdoing and those of his associates. Even greater healthcare fraud was committed by HealthSouth. It was revealed in 2002 that its leader, Richard Scrushy, had engaged in deceptive billing practices that had defrauded Medicare and other federal healthcare providers. Scrushy was not convicted,

but the company paid \$325 million in restitution to Medicare.

The advances in technology in computers have created stock fraud opportunities. If a stock offering deliberately withholds information, those responsible for bringing the shares to the market are committing a white-collar crime. Insider trading is also a form of white-collar crime. Insider trading is a white-collar crime that may receive less punishment. In December 2001, Martha Stewart, famous television home-maker-hostess, engaged in a stock trade of 3,900 shares of ImClone stock worth \$250,000 that she owned. The transaction was based on the advice of her stock adviser, Peter Bacanovic. The advice gave her what amounted to inside information, affecting the value of stock she held. She was not convicted of insider trading. During the course of the investigation, she lied to a



Before it was discovered in 2008 that Enron had managed to hide billions of dollars of debt by using fraudulent financial reporting, accounting loopholes, and special-purpose entities, it was thought of as an energy giant. Enron maintained this glittering headquarters complex in Houston, Texas, and claimed revenues of almost \$101 billion in 2000.

federal investigator, which is a crime. She was convicted of obstruction of justice for lying to government agents in a 2004 case involving sale of her ImClone stock following insider information. She was subsequently sent to federal prison and was fined. Peter Bacanovic, her stock broker, received a similar sentence.

Jack Abramoff and Bernie Madoff

The Jack Abramoff lobbying scandal was a case of political corruption. In the Abramoff case, a number of scandals emerged that involved politicians and the mob. In 2006, he pled guilty to fraud, conspiracy, and tax evasion. He had attempted to cheat Indian casino interests out of \$85 million. He also used a fake wire transfer in order to get a \$600 million loan in order to purchase SunCruz Casinos. The deal led to the murder of the former owner Konstantinon "Gus" Boulis. For his involvement in politically directed bribery, Abramoff was sent to prison.

In 2007, the housing bubble began to collapse as it was discovered that subprime lending had been based in many cases upon fraudulent housing pricing assessments, fraudulent lending to unqualified borrowers, and to other manipulations. Many of these activities were white-collar crimes that were not prosecuted. The resulting damage from the sale of securities based on the loans caused global losses. In New York, it was discovered that Bernard Lawrence "Bernie" Madoff, a well-known financier and former chairman of the NASDAQ Stock Market, had been running a Ponzi scheme and committing the largest white-collar crime in history. The losses from his financial manipulations were estimated to total about \$50 billion. In 2009, he pled guilty to 11 federal crimes, including theft from an employee benefit plan. He was given 150 years on prison and ordered to pay \$170 billion in restitution. His son, Mark, and three other people working in his business committed suicide.

The bursting of the housing bubble in 2008 not only exposed Bernie Madoff, but it also brought to light many deceptive practices in the housing industry. These included appraisers who submitted false appraisals for the value of a house; subprime lending practices that included loans to people who were completely unqualified; the development of financial instruments by Wall

Street brokerage houses that were not sound because they included bundles of billions of dollars of subprime loans, and many other dubious practices. Countrywide, a real estate loan company, was almost destroyed in the financial crisis. It was found to be engaged in lending to politicians at very advantageous rates to gain political influence. Industrial or economic espionage is of growing significance as a white-collar crime. If successful, foreign agents may cause the loss of billions of dollars for companies that have invested huge sums in product research and development. With their industrial or trade secrets stolen, companies will be put at a competitive disadvantage and may not survive.

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See Also: 2001 to 2012 Primary Documents; Enron; Madoff, Bernard; White-Collar Crime, History of; White-Collar Crime, Sociology of.

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White-Collar Crime, History of

The words *crime* and *criminal* inevitably conjure up images of street prowlers bent on stealing, raping, and even occasionally murdering innocent citizens. In the popular mind, these individuals share similar idiosyncrasies: born to lower-class families, physically foreboding and aggressive, vicious and remorseless, often addicted to drugs, uneducated but cunning, and animated by an uncontrollable lust for transgression. To some extent, this stereotypical description of the bogeyman is perpetuated by the media on a daily basis. Less covered, however, is another form of illegal behavior with an unfortunately larger scope and more deleterious impact on American society than street crime. Interestingly, this type of deviant act is not committed by financially precarious or antisocial persons. On the contrary, what makes it so special is the occupational prestige of its perpetrators.

First coined in 1939 by sociologist Edwin Sutherland during a speech given to the American Sociological Society, the term *white-collar crime* was subsequently defined as any “crime committed by a person of respectability and high social status in the course of his occupation.” Within the academy, this provocative conceptualization of criminals wearing the proverbial white collar—a symbol of professional success as opposed to working-class employees’ blue collar—created a scientific divide: While some maintained that burglary, armed robbery, sexual assault, and murder (i.e., illicit activities generally associated with disadvantaged neighborhoods) were the “real” crimes, others were impressed by Sutherland’s argument that large-scale fraud was not only more socially harmful but also, because of the culprit’s profile and respectability, had better chances of going unreported and/or unpunished.

Over the years, the term has grown to encompass a multitude of illegal activities ranging from petty scams and swindles to political corruption and even state crime (e.g., war profiteering). Much activity may be observed either among individuals (e.g., employee theft, consumer fraud, Ponzi schemes) or within corporations (e.g., anti-trust violation, labor exploitation, environmental crime). Given the myriad categories of activities falling under the white-collar crime umbrella, drawing a list of every act ever passed to regulate and sanction it is an impossible task. More useful is an examination of some of the most important cases and subsequent legal measures that have delineated the nature and impact of white-collar crime to the present day.

Fraud

Fraud is arguably one of the most common forms of white-collar crime. It can be defined as a deceptive practice by individuals or entities entrusted with money or property that they appropriate for their own use and benefit, resulting in financial losses for the other party during apparently legitimate business transactions. Fraudulent acts typically include employee theft (ranging from a clerk’s embezzlement to a CEO’s plunder) or consumer fraud (e.g., identity theft, telephone and mail solicitations, Internet fraud, consumer investment, credit card, financial and securities fraud), but also bankruptcy, illegal payments, money laundering, bribery, kickbacks, and other forms of corruption, including income tax evasion or counterfeiting.

It is important to note that although the academic definition of white-collar crime is fairly recent, historical records show that legal actions against what would now be considered cases of fraud were taken as early as the 15th century. The 1473 Carrier’s case was a landmark in the history of elite deviance. For the first time, a clear distinction was made between theft and the conversion of initially lawfully possessed goods for personal profit. The defendant, an English carrier, had been hired by a Flemish merchant to carry bales of wool to Southampton but eventually took them to a different location for his own gain. The carrier was arrested and charged with larceny (i.e., theft), a felony. The problem was that according to the common law, he could not technically be

found guilty of theft since the bales were already in his possession and were not actually stolen from the merchant. Nevertheless, the chancellor opined that although the case did not break common law statutes, it was still infringing on the laws of nature. Consequently, the defendant was found guilty. The case marked a precedent in the annals of English law. Unlike ever before, a court came to investigate, define, and criminalize embezzlement. In some respects, it paved the way for the future sanctioning of various white-collar crimes in the United States.

Throughout the American Civil War, the Union and Confederate armies were plagued by fraud. Notoriously unethical contractors took advantage of both parties' dire needs by selling them unhealthy horses, flawed guns and ammunition, and rotten provisions. Congress took action against such unprincipled activities by passing the 1863 False Claims Act (also known as the Lincoln Act). Nevertheless, during the Reconstruction era after the Civil War, the presidency of Ulysses S. Grant was marked by a succession of white-collar crimes, such as Black Friday, September 24, 1869, when an attempt by speculators Jay Gould and James Fisk (both linked to Grant) to corner the gold market and drive up its price caused a national panic, resulting in massive financial losses; the 1871 Emma Silver mine scandal, in which promoters Senator William M. Stewart of Nevada and James E. Lyon attempted to sell phony mine stock to British investors; or the 1875 Whiskey Ring, where a group of distillers and public officials defrauded the federal government of liquor taxes. Ironically, President Grant came to experience fraud himself when the Wall Street brokerage firm owned by his son and Ferdinand Ward (a dishonest speculator known as "the young Napoleon of finance") crashed in 1884, leaving Grant—who had invested large amounts of money in it—ruined.

Fraud, however, was not the main type of illegal behavior associated with economic transactions. In fact, dishonest practices flourished during the Industrial Revolution, with corporations creating monopolies and raising prices capriciously, which was easily done given the lack of penal definitions prohibiting those acts. Nevertheless, things changed with the creation and strict enforcement of antitrust laws.

Antitrust Violation

A trust can be defined as an illegal group of commercial enterprises in which the stock is controlled by a central board of trustees, which makes it possible for them to minimize production costs, fluctuate prices, and most importantly, get rid of competition, a symbolic and—according to the 18th-century economist and capitalist enthusiast Adam Smith—healthy component in any liberal economy. 1890 saw the passing of the Sherman Anti-Trust Act, a cornerstone in the history of competition laws. The act was christened after John Sherman, then chairman of the Senate Finance Committee and secretary of the treasury under President Rutherford B. Hayes. Sherman intended to use the constitutional power of Congress to regulate interstate commerce. Passed by the Senate by a vote of 51–1 on April 8, 1890, and by the House by a unanimous vote of 242–0 on June 20, 1890, the Sherman Anti-Trust Act was subsequently signed into law by President Benjamin Harrison on July 2 of the same year. Still, a substantial problem lay ahead: Because the bill was not clear in the terms it used (e.g., *trust*, *monopoly*), it remained open to interpretation and thus vulnerable to loopholes. Not surprisingly, the Supreme Court overturned the Sherman Act in *United States v. E. C. Knight Company* (1895). Accused of constituting a control trade, the defendant (the American Sugar Refining Company) was found not guilty even though it controlled an outstanding 98 percent of all sugar refining in the United States.

It took the hard work and determination of several journalists to reveal more such monopolistic policies. Lincoln Steffens, Ida Tarbell, David Graham Phillips, Ray Stannard Baker, Samuel Hopkins Adams, and Upton Sinclair proceeded to expose business abuses and corruption in politics. Although he lauded the group's efforts, President Theodore Roosevelt nonetheless disapproved of their unsubtle methods in a 1906 speech, nicknaming them "muckrakers" in reference to a character from John Bunyan's *Pilgrim's Progress* who was only interested in raking the filth. Regardless of the lack of propriety of their investigative processes, the muckrakers laid the path for a more serious scrutiny of white-collar crime, culminating in the 1914 Clayton Antitrust Act, which made the Sherman Anti-Trust Act

stricter by fixing a certain number of loopholes. The act was especially effective in uncovering the infamous Teapot Dome scandal (1927), a massive fraud and corruption case dealing with the conservation of U.S. public oil resources. Albert Fall, then secretary of the interior and a personal friend of President Warren G. Harding, was convicted for corruption. The investigation revealed that Fall had accepted bribes of \$400,000 in cash and gifts from oil executive Harry Sinclair in exchange for leases to drill for oil at Teapot Dome, Wyoming, and from Edward Doheny, another tycoon who had expressed interest in oil reserves at Elk Hills, California.

Because of the position and influence of the parties involved, the ensuing lawsuit created great sensation and sent shock waves along the corridors of power in America. Not surprisingly, the most important pieces of white-collar crime legislation during the 20th century sought to increase the depth and scope of their authority. With the rapid growth and influence of the U.S. stock market, new opportunities for fraud flourished. By the early 20th century, millions of dollars worth of stocks were traded on the market. As a result, stock market manipulation became a substantial problem.

Stock Market Manipulation

Originally passed to regulate the secondary trading of securities (e.g., stocks, bonds), the Securities Exchange Act of 1934 was really meant to crack down on stock market manipulation. One example of such manipulation is insider trading, which can be defined as a fraudulent act by individuals entrusted with confidential information about important events who use such knowledge to make a profit or avoid losses on the stock market at the expense of those buying or selling their stock without the advantage of such nonpublic information. Notorious instances of insider trading include the cases of Ivan Boesky and Martha Stewart. Another form of stock market manipulation is what is known as a Ponzi scheme. This type of scam was named after Charles Ponzi, who convinced thousands of New England residents to place their money into a fraudulent postage stamp speculation scheme back in the 1920s. The fraud consisted in having people buy international reply coupons, which could then be redeemed for return postage from the recipient's nation at a

much higher price. Ponzi promised his investors that he would double their investment in 90 days. The credibility of the plan was such that Ponzi managed to do so in only 45 days, which in turn attracted even more investors. The problem was that Ponzi had not bought the coupons, but only promised that he would, and early investors were actually paid with later investors' money. Ponzi was charged with 86 counts of mail fraud, tried and sentenced to five years in federal prison, then tried again on state charges in Massachusetts.

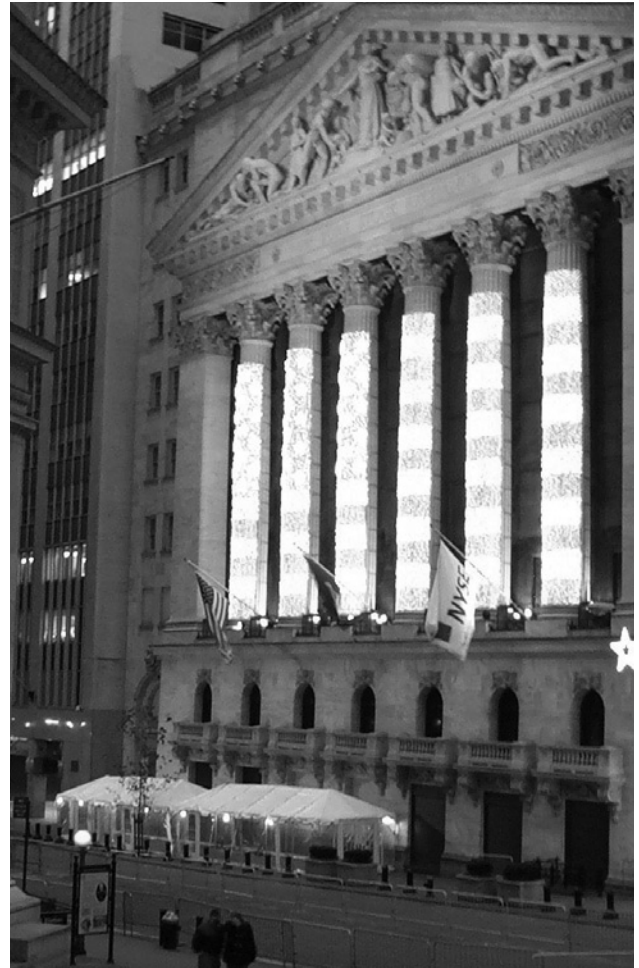
More recently, the Ponzi scheme by the non-executive chairman of the NASDAQ stock market Bernard Madoff cost investors an astounding \$50 billion. Nevertheless, this colossal figure pales in comparison with the total cost of corporate crime (i.e., the "organized" version of white-collar crime), which undeniably represents a higher financial burden on society than does street crime. Controlling for inflation, the current cost of corporate crime to the United States may be around \$500 billion, that is, between 20 and 25 times the cost of street crime. Importantly, this figure does not even include the combined costs of private sector corporate crime with fraud and government spending abuse.

The magnitude of the problem is such that even the Racketeer Influence and Corrupt Organizations (RICO) Act originally passed by Congress in 1970 to crackdown on organized crime was subsequently extended to apparently respectable corporate officials, particularly syndicate leaders suspected of ordering or assisting others in committing a large variety of offenses ranging from gambling and extortion to murder. In fact, RICO is very rarely applied to the Mafia *per se* and is mostly used against individuals, businesses, political protest groups, and terrorist organizations. The legal definition of racketeering includes unlawful activities such as embezzlement of union funds, bribery, money laundering, and other types of fraud. Not only did RICO facilitate the prosecution of corrupt organizations, it also allowed the seizure of the property of the accused (e.g., drugs, cars, mansions). A further novelty of RICO was the recovery of triple damages. That is, those found guilty would be ordered to pay a monetary compensation worth three times the amount of actual damages. Famous cases in which RICO was applied include the Hells Angels Motorcycle Club, Catholic sex

abuses, the Key West Police Department, Major League Baseball, and pro-life activists, as well as various fraud cases, which testifies to the wide array of applicability of the act. Such versatility is necessary, considering the myriad forms white-collar crime can take.

Medical Fraud

In a society that relies so heavily on drugs and surgical procedures, illegal behaviors are inevitably bound to extend to the medical arena. Consumer healthcare fraud includes filing claims for non-received services or medications, forging or altering bills or receipts, or using someone else's coverage or insurance card. Medical fraud encompasses such illegal activities as accepting kickbacks, billing for unperformed services, falsifying diagnoses to justify unnecessary surgeries, upcoding (i.e., billing for a more expensive service than the one that was actually performed), unbundling (i.e., billing every stage of the same procedure as separate procedures), waiving patient copays or deductibles and overbilling the insurance carrier, or billing more than the copay amount for services prepaid by the benefit plan. Since its creation in 1965, Medicaid has been plagued by such fraud. Congress responded by enacting the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977. Over the years, though, medical fraud has continued to be reported in general and psychiatric hospitals, ambulance services, laboratories, pharmacies, and nursing homes. Further, besides being financially detrimental to victims, healthcare fraud and abuse are particularly notorious for their impact on human life. Pharmaceutical companies and physicians have been shown to deliberately endanger human lives by releasing or prescribing dangerous drugs or inducing patients into unnecessary surgeries. The literature on white-collar crime is rife with examples of Hippocratic Oath violations, starting with the infamous Fen/Phen drug case, in which the injurious effects of a supposedly harmless anti-obesity medication were silenced until they had caused the death of more than 100 people. Another similar scandal was the thalidomide prescription disaster, in which a sleeping pill/tranquilizer caused 8,000 babies to be born deformed. Less reported examples of medical crimes include the countless numbers of health complications related to unnecessary—yet



The New York Stock Exchange in Lower Manhattan in New York City. The Securities Exchange Act of 1934 was meant to crack down on stock market manipulation, like insider trading—one of the most costly forms of white-collar crime.

highly lucrative—silicone breast implant surgeries or Viagra prescriptions.

Thus, the claim that white-collar crimes are victimless—in the sense that those abuses are committed for the sole purpose of maximizing profits and do not physically endanger people—is unwarranted. For example, street crime is less costly to society in terms of loss of human life than is corporate crime. The empirical evidence supporting this claim is abundant. Despite legislation such as the 1970 Occupational Safety and Health Act meant to protect employee health and safety in the workplace, research shows that between 9,000 and 11,000 people die from preventable work-related accidents every year. Further, workplace



A young girl works in a Georgia cotton mill. President Franklin D. Roosevelt signed the Fair Labor Standards Act in 1938 and effectively put an end to child labor nationwide.

killings caused by exposure to toxins claim the lives of 50,000–70,000 workers. In fact, the total number of workplace deaths because of violation of law has been estimated to be as high as 59,000 and perhaps closer to 100,000 per year, compared to the 24,330 homicides reported by the Federal Bureau of Investigation (FBI) when homicide rates peaked in 1990.

Environmental Crime

The popular enthusiasm that resulted from advanced manufacturing processes in industrial societies rapidly gave way to growing concerns regarding the harmful impact on the air, water, and land. Such concerns were addressed by important pieces of legislation such as the 1906 Pure Food and Drug Act, which was directed at protecting consumers from dubious ingredients in patent medicines and adulteration of food with

chemicals or inorganic material like sand. Legislation also included the 1956 Federal Water Pollution Control Act, the 1970 Clean Air Act, and 1976 Toxic Substances Control Act, which provided the U.S. Environmental Protection Agency (EPA) with authority to require accurate recording and testing of chemical and other hazardous substances from industrial companies. All too often, however, corporations would rather reach an out-of-court settlement with environmentally induced diseases or workplace manslaughter victims and their families, instead of investing in safety-conscious work environments. Man-made disasters such as the 1984 Union Carbide poisonous gas leak in Bhopal, India (which caused 558,125 injuries, including 38,478 temporary partial and nearly 4,000 severely and permanently disabling injuries), could have been avoided, but bribing officials and paying plaintiffs proven more cost-effective than prioritizing safety regulations in the workplace.

An important case in the history of physically harmful white-collar crimes was the 1972 Ford Pinto scandal, in which the car manufacturer giant Ford avoided a sentence for criminal homicide by paying millions of dollars in compensatory and punitive damages after its refusal to redesign a defective fuel tank on the Pinto model led to several deaths by burning in rear-end collisions. Such choice was the result of a risk/benefit calculation based on the National Highway Traffic Safety Administration's estimate for the dollar value of human life. Ford's decision to prioritize profit over public safety set a precedent in American understanding of illegal corporate behavior. Already impacted by the 1965 Federal Cigarette Labeling and Advertising Act and the 1971 Cigarette Advertising Broadcast Ban, defendant tobacco companies accused of lying to their clients regarding the dangers associated with smoking are also notorious for settling out of court. Further, filing for bankruptcy is yet another, albeit last-resort, alternative to avoid paying claimants. Such was the case for the Johns-Manville Company, which was found guilty of lying to its employees about the link between asbestos (a silicate mineral then commonly used as a building material) and the fatal lung disease asbestosis. The passing of important pieces of legislature such as the 1972 Consumer Product Safety Act and the 1986 Pure Food and

Drug Act also helped legally define, uncover, and penalize physically harmful corporate practices. As a result of these laws, large industrial corporations are regularly found guilty of dangerous chemical exposure, both in manufactured foods and products (e.g., lead in toys) as well as in hazardous waste dumping, particularly in the vicinity of ethnic minorities with very limited legal recourse.

Labor Exploitation

Following the Great Depression, President Franklin D. Roosevelt signed the 1938 Fair Labor Standards Act, which effectively ended child labor nationwide. The act also sought to regulate adult working conditions by requiring employers to pay covered employees at least the federal minimum wage and overtime pay of one and one-half times the regular rate of pay. Nevertheless, and albeit provocative, the claim that modern slavery still exists in 21st-century America holds some truth. While exposure to information regarding the ghastly working conditions in U.S. company-owned southeast Asian sweatshops may be disconcerting to many, learning about the existence of domestic slavery among foreign workers on American soil is surely more difficult to accept. Still, Berkeley's Human Rights Center and the Washington D.C.-based antislavery group Free the Slaves have evidenced illegal practices in more than 90 American cities, ranging from prostitution and sex services to forced labor.

Violation of Antidiscrimination Laws

The conflicted relationship between gender and power is also inherent in sexual harassment and employment discrimination cases. Consequently, any violation of antidiscrimination laws (e.g., sexual harassment, racial and gender discrimination in the workplace) by an employer is ipso facto considered a form of white-collar crime. Because historically the U.S. economic system was modeled by and for affluent European males, disparities in opportunities at the racial, socioeconomic, and particularly gender levels abound, both in the streets and within the corporate world itself. A substantial body of literature has evidenced unfair salary differentials between men and women, as well as the lack of representation of ethnic minorities at the top executive positions, and this is in clear violation of the 1980 Equal Employment

Opportunity Commission and affirmative action laws. In the age of globalization, some criminologists are calling for an even broader reconceptualization of the white-collar crime construct that would include a wider array of political deviant acts such as state and war crime, terrorist financing, and illegal invasion of sovereign nations. This proposition may have arisen from the fact that laypeople and social scientists alike tend to limit white-collar crime to petty frauds committed by unscrupulous but relatively modest employees (i.e., bank tellers) when in fact the worst, most socially harmful acts are perpetrated by high-ranking individuals or groups aware of their power and influence and confident in their legal immunity.

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See Also: 2001 to 2012 Primary Documents; Corruption, Contemporary; Madoff, Bernard; Pure Food and Drug Act of 1906; Sutherland, Edwin.

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White-Collar Crime, Sociology of

Sociologists study the social causes and consequences of human behavior. In reference to crime, sociologists aim to analyze the nature, cause, and control of criminal activity. White-collar crimes create widespread and dramatic social harm exceeding that of street crimes like homicide and robbery.

What Is White-Collar Crime?

The term *white-collar crime* was first introduced in 1939 by Edwin Sutherland in an address to the American Sociological Association. Sutherland defined white-collar crime as “a crime committed by a person of respectability and high social status in the course of his occupation,” reflecting Sutherland’s desire to move academics’ and society’s focus beyond lower-class criminals. Emphasizing the high social status and occupational prestige of offenders in his definition of white-collar crime, Sutherland advanced criminological theory by drawing attention to deficits in poverty-driven theories of criminal behavior and how the opportunities for learning and engaging in criminal behavior vary across social and economic groupings.

Sutherland’s landmark study of 980 law violations over 40 years by the 70 largest corporations of the early 1900s established that white-collar crimes like price-fixing, copyright infringement, or unfair labor practices were pervasive and committed early and often, with many corporations having multiple violations. These illegal practices often were committed early in the organization’s history, contributing to the organization’s success. Sutherland’s working definition of white-collar crime included violations that were criminal (harmful to the public to be handled by law enforcement), civil (private damages to be settled among the parties), and regulatory (violations of government agency standards like the Environmental Protection Agency [EPA], the Occupational Safety and Health Administration [OSHA], or the Securities and Exchange Commission [SEC]). Criminal infractions made up only 16 percent of the incidents, but 60 percent of the corporations had at least one criminal conviction. Sutherland favored this expansive definition of white-collar crime and focused on the offender’s status because even civil and regulatory violations inflict social harms and white-collar offenders are particularly unlikely to be criminally processed due to their high status.

Since Sutherland firmly established the study of white-collar crime in sociology, its definition has been greatly debated among scholars and enforcement agencies. Variations in the definition stem from the debate over whether the term should be offender- or offense-based. Both approaches

have implications for what is considered white-collar crime and who are considered offenders. Offender-based approaches focus on occupational crimes that take place during the course of one’s legitimate occupation and emphasize the high social status, power, and respectability of the actor. Offense-based definitions explore the modus operandi of how a particular crime is committed, regardless of the social status of the offender. In 1970, the Department of Justice proposed an offense-based definition, emphasizing crimes committed by nonphysical means that utilize deceit to gain personal or business advantage. This approach would include unemployed confidence men and low-rank employees as white-collar criminals along with politically powerful elites. By the 1980s, focus had shifted toward crimes committed within organizations, primarily corporations and government, with an emphasis on high-status employed individuals or groups and the organizational cultures and structures that facilitate or impede offending.

Types of White-Collar Crime

The majority of white-collar offenses typically share three common characteristics. First, white-collar crimes occur because individuals tend to have legitimate access to the location where the crime was committed. Second, the illegal actions of the offender have a superficial appearance of legitimacy. Third, white-collar crimes involve spatial separation between victims and offenders. These crimes tend to be comprised of complex and elaborate behaviors over periods of time, so researchers have tended to organize the offenses into several overarching categories.

Some of the most recognizable forms of white-collar crime fall under the realm of corporate fraud. These offenses are perpetrated within organizations and involve groups of offenders in collusion, or conspiring together. The majority of corporate fraud offenses that are studied include antitrust violations, securities fraud, tax fraud, bribery, credit fraud, false claims, mail fraud, and embezzlement. Often, the monetary sums that are involved with these types of crimes are large and require the use of organizational resources to commit.

Corporate violence is another major category of white-collar crime involving multiple offenders



A white-collar criminal is fingerprinted by a police officer. White-collar offenses range from various types of fraud to embezzlement to environmental and public safety offenses.

and organizational resources. Unlike corporate fraud, corporate violence involves organizations that produce and market products or services with knowledge that they are unsafe and may potentially injure or kill a consumer. Examples of this type of white-collar crime include the production of defective vehicles such as the Ford Pinto, cover-ups that result in health risks to the public as with the link between asbestos and cancer, and facilities with unsafe working conditions resulting in the harm or illness of workers.

Fraudulent activity by individuals in health and medical professions is another form of white-collar crime that also has the potential to directly endanger human life. Criminal activities in this category include administering unnecessary procedures or medications, directing patients to specific pharmacies, diverting prescription drugs for nonmedical use, insurance fraud, and filing false

insurance claims. These types of crimes are estimated to cost the public billions of dollars and thousands of lives each year. The increasing number of medical procedures that individuals receive in their lifetime suggests that the opportunity for such crimes to occur is growing.

Similar to white-collar crime, environmental crime has no commonly agreed-upon definition because of the wide and diverse nature of the offenses. Simply put, environmental crimes are acts that violate statutes meant to protect the environment. Committed by both organizations and individuals, they are extremely difficult to detect because of their nature and lack of directly identifiable victims. The system of enforcement of environmental regulations is continually negotiated, increasing the difficulty of uncovering and pursuing offenders. Hazardous-waste violations and fraudulent activities such as fabricating or falsifying data submitted to regulatory agencies are two primary types of offenses. Environmental offenses also include international smuggling of harmful toxins, improper training and handling of pesticides and other chemicals, and trafficking in endangered species. Environmental violations by organizations are often uncovered through self-reports, inspections by regulatory enforcement agencies, whistle blowing, or when accidents occur.

Instances of lower-level fraud, forgery, and embezzlement are common among employees and nonemployees and typically do not involve organizational resources or collusion. Such offenses typically include when a bank teller or accountant embezzles from his/her workplace for individual gain. Credit card and welfare frauds do not require employment, allowing more individuals the opportunities to offend, and tend not to involve large amounts of money. As such, it is debatable whether these offenses are properly considered white-collar crime.

Computers have played major roles in traditional white-collar crimes such as embezzlement; however, recently, they have enabled entirely new methods of crime. The illegal reproduction of digital materials and hacking are several of the most common computer white-collar crimes. Fraudulently obtaining personal and/or financial information via computers is a growing concern, but much of this information continues to

be gained through conventional methods such as theft from a trash receptacle. Unlike corporate crime and many forms of environmental crime, computer crimes do not require the use of organizational resources or the assistance of others and are less likely to impact large groups of people. Regardless, recent estimates suggest that nearly 80 percent of computer crimes are committed by employees within an organization, the majority of which go unreported to authorities.

Studying White-Collar Crime

Determining the extent of white-collar crime remains challenging. Due to their incongruence with societal views of typical criminals, many white-collar offenders are never prosecuted and first-time offenders are treated with leniency due to their status. Additionally, political pressures impact the types of regulations that organizations must adhere to and the enforcement of those regulations. The result is that officials tend to focus

their efforts on crimes committed by groups who lack power, such as youth or lower classes whose crimes are more easily uncovered and fall into more common categories of criminal activity.

A primary factor inhibiting the availability of systematic data on white-collar crime is that many violations take place over time. In such situations, it becomes necessary to determine whether an actual violation occurred, and if so, whether to count each specific instance as an individual violation or one continuous violation. These issues make data collection of offenses exceedingly problematic. Primary sources of data on criminal activities, including the Federal Bureau of Investigation's (FBI's) Uniform Crime Report (UCR), the National Crime Victimization Survey (NCVS), and self-report surveys are extremely valuable to researchers; however, these sources contain little to no information pertaining to corporate or occupational crimes. Criminal justice agencies and professional associations, with



The Federal Bureau of Investigation has broken down the white-collar crime of telemarketing into five categories: charity room (falsely collecting money for charity), prize room (callers send a fee to collect an alleged prize won), product room (purchased product is worth less than claimed or was never delivered), recovery room (fraud victims told they can recover their money by paying a fee), and rip and tear: scammers taking as much fraud money as possible and leaving town.

few exceptions, do not keep statistics of occupational crimes, and when violations do occur, most employers rely on unofficial sanctions, such as termination. Also, law enforcement is often the responsibility of state and federal regulatory agencies instead of criminal justice agencies.

Despite a lack of systematic data and funding, sociologists continue to study white-collar crime by performing qualitative case studies of regulatory agencies and/or organizations in addition to studying violations or victimizations of specific offenses such as embezzlement. From these studies, demographic information of both offenders and victims has been derived. Although the applicability of these studies is unknown, together they comprise the most comprehensive data sources available for addressing white-collar crime.

Opportunity influences who is able to commit white-collar crimes. Most white-collar crimes occur in the context of organizations, so factors such as the structure of the labor market determine which individuals will be in a position to offend. Overall, women and minorities are still less likely to hold senior-level positions, which restricts their ability to commit highly profitable white-collar offenses requiring high occupational status and accompanying resources. Crimes of fraud and embezzlement are less likely to require the offender to have a high occupational status or access to specialized resources, resulting in a greater opportunity for females and nonwhites to offend.

Using an offense-based definition of white-collar crime that includes antitrust violations, bribery, embezzlement, and various forms of fraud, previous research has shown that the majority of white-collar offenders are employed, middle-aged white males with at least a high school education. However, the demographics vary slightly depending on the particular offense. Most individuals who commit antitrust violations, securities fraud, tax evasion, and bribery tend to be middle-aged white males with medium to high incomes and at least a high school diploma. If one considers individuals who commit crimes of fraud and embezzlement to be white-collar offenders, they tend to be younger in age, have lower incomes and educational levels than those committing other white-collar offenses, and are also more likely to be nonwhite or female.

Victims of White-Collar Crime

Sutherland's emphasis on crimes involving organizations and corporations directs attention to how victimization is often diffuse and hidden, making the identification of victimization patterns difficult. In some instances, individuals may not be aware of their victimization, as with certain types of identity fraud, and in many instances, victims choose not to report the crime to police. To complicate matters, sometimes entire organizations or groups (e.g., consumers, workers, or the public) are targets of white-collar crime. Overall, the lack of systematic data and difficulty in detection means very little is known about white-collar crime victims. Criminologists agree, however, that personal fraud victimization is common and that the financial and social costs of serious white-collar crime far outpace those of street crime.

Sociological Theories of White-Collar Crime

Sociologists are concerned with and theorize about the factors that cause individuals and organizations to break the law. Rational choice theory has been used to explain white-collar crime based on its assumption that all actors are self-interested and make calculated decisions about whether to engage in criminal behavior by estimating the costs and benefits. Rational choice theory suggests that perceptions of the certainty and severity of punishment and other characteristics of the criminal event like potential profit affect the likelihood of offending. However, sociologists have identified other social influences besides an individual's perceived risk and potential reward that increase the likelihood of committing a white-collar crime, such as being presented with opportunities for offending and having the requisite motivation and know-how to capitalize on those opportunities.

Sutherland's differential association theory suggests that criminal behavior is learned from others who define the behavior favorably. In the organizational context, individuals are socialized to accept certain attitudes and behaviors that may be contrary to the law but that over time become viewed as acceptable and even necessary business practices. Deviant organizational cultures often do not promote obedience to the law and can persist over time because the informal norms remain, despite changes in written policies, procedures, or

personnel. As behaviors and attitudes pass from one cohort of executives and employees to the next, illegal practices become known as “business as usual.” Besides organizational norms, a consistently important factor is opportunity. Opportunities to engage in illegitimate practices vary depending on the individual’s social position, as well as the organizational structure, type of organization, and the regulatory structures that govern the rules for organizational behavior. Organizations that utilize complex procedures or that have elaborate vertical and horizontal hierarchies provide increased opportunities for offending due in part to the increased difficulty of discerning a violation.

Anomie theory explores America’s overemphasis on material success and individual achievement coupled with its lesser emphasis on using legitimate means to achieve success. Such pressures to achieve success influence both organizational and individual behavior; those who are less able to achieve success through legitimate means sometimes look to alternative and possibly illegitimate means. Success is often measured in comparison with others in similar life situations. Relative deprivation, and an increased propensity to offend, may develop when one perceives similar others as being unfairly advantaged. Thus, some wealthy individuals are likely to participate in criminal behavior because they compare themselves to others whose wealth exceeds their own and accept illegal means as permissible to gain ground. An integrated theory of white-collar crime incorporates crucial elements of several sociological theories, including differential association, anomie, and others to better understand causes of white-collar crime. This perspective emphasizes the important roles of opportunity, motivation, and rationalization of criminal behavior. Motivations originate from cultures of competition and are spread through organizational and occupational subcultures. White-collar crime is more likely to occur when actors who have learned motivations and techniques come across attractive opportunities.

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See Also: 2001 to 2012 Primary Documents; Crime in America, Distribution; Crime in America, Types;

Enron; White-Collar Crime, Contemporary; White-Collar Crime, History of.

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Whitney v. California

In *Whitney v. California* (1927), the U.S. Supreme Court upheld restrictions on free speech and association. During the early 20th century, the court struggled to define the constitutional limits of free speech. The court developed two competing tests for the constitutionality of government restrictions on speech. In *Patterson v. Colorado* (1907), the court established the “bad tendency” test. Under this test, the state did not have to prove that any illegal action resulted from the speech but merely demonstrate that the speech might have a tendency to cause illegal activity. In *Schenck v. United States* (1919), Oliver Holmes, writing for the majority, established the “clear and present danger” test for government restrictions on speech. Under this more rigorous test, unprotected speech must be likely to incite an imminent and substantive harm. However, in subsequent cases, the court continued to apply the looser bad tendency test instead.

Under dispute in *Whitney v. California* was the constitutionality of California’s Criminal Syndicalism Act, which criminalized participation in organizations that advocated political or industrial reform by means of sabotage, terrorism, or other illegal means. Between 1917 and 1920, more than 20 states passed criminal syndicalism statutes. States prosecuted and convicted people who did not actually engage in violence but who

merely advocated radical social change or who joined an organization devoted to radical social change. These laws were used to curb free speech and union organizing. The laws effectively criminalized membership in radical unionist organizations, such as the Industrial Workers of the World (IWW), and criminalized speech in support of such organizations and their goals.

In 1925, California convicted and jailed Charlotte Anita Whitney—who was former U.S. Supreme Court Justice Stephen Field's niece—for helping to organize the Communist Labor Party (CLP). The state held that the CLP advocated violent revolution. Whitney argued that violence was not the purpose for which she and the other organizers had created the CLP. Whitney argued that California's Criminal Syndicalism Act violated her First Amendment right to free speech. She lost in the lower courts. The *Whitney* majority denied her First Amendment claims, ruling that states may punish speech "tending to incite to crime." Another issue was whether or not California's Criminal Syndicalism Act violated the Fourteenth Amendment guarantee of due process and equal protection. The court unanimously found for California.

Whitney was notable for the minority concurring opinion signed by Justices Louis Brandeis and Oliver Holmes and authored by Brandeis. Brandeis and Holmes concurred on the Fourteenth Amendment issue, but Brandeis argued against the bad tendency test and for the clear and present danger test, asserting that "Fear of serious injury cannot alone justify suppression of free speech and assembly." Brandeis's opinion in *Whitney* eventually became the foundation of modern free speech doctrine, although this did not occur immediately. In 1937, 10 years after *Whitney*, the court ruled in *DeJonge v. Oregon* that the First Amendment protects the right to participate in a peaceful meeting of an organization that advocates criminal syndicalism. However, in *Dennis v. United States* (1951), the court again applied the bad tendency test, upholding a conviction for teaching from books written by communists. In *Yates v. United States* (1957), the court overturned convictions of U.S. Communist Party officials, this time using the clear and present danger test.

In 1969, the court overturned *Whitney* with its *Brandenburg v. Ohio* decision. *Brandenburg*

struck down Ohio's criminal syndicalism statute and established a new test for permissible speech, which distinguishes between mere advocacy of violent or illegal behavior—which is protected under the First Amendment—and incitement to such behavior, which is not protected. Under *Brandenburg*, unprotected speech deliberately creates a strong likelihood of imminent danger—a restatement of the clear and present danger rule.

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See Also: Alien and Sedition Acts of 1798; *Brandenburg v. Ohio*; Due Process; Sedition Act of 1918.

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Wickersham, George

George Woodward Wickersham, lawyer, Republican Party leader, attorney general of the United States, and chairman of the National Commission on Law Observance and Enforcement, was born in Pittsburgh, Pennsylvania. He was the son of businessman Samuel Morris Wickersham and Elizabeth Cox. Following the death of his parents when he was young, he was raised by his maternal grandparents in Philadelphia. His childhood home was frequented by the city's social elite. His grandfather founded what was to become the

Philadelphia stock exchange. Wickersham studied civil engineering at Lehigh University. There, he met a leading Republican politician named Matthew Quay; Wickersham became Quay's private secretary and a student of law in the office of a prominent attorney named Robert McGrath. Wickersham enrolled in the University of Pennsylvania Law School in 1879, graduated a year later, and was admitted to the state's bar in 1880. He practiced law for two years in Philadelphia, where he met and married Mildred Wendell in 1883. That same year, he moved to New York and joined the firm of Strong and Cadwalader. He was aggressive and quickly gained status in the firm, making partner in four years. He continued to work at this law firm for the rest of his life, except for several interludes of public service.

Wickersham's legal reputation increased rapidly during the time of President William McKinley's and Theodore Roosevelt's administrations. His partners in the law firm included Henry W. Taft, brother of the secretary of war and future president. Specializing in bankruptcies and corporate reorganizations, his clients included major transportation and manufacturing companies. This allowed him to socialize with important leaders. When William Howard Taft became president in 1909, he appointed Wickersham to be his attorney general. A centerpiece of Wickersham's administration as attorney general was enforcement of the Sherman Anti-Trust Law. This law prevented the combination of entities that could potentially harm competition between businesses, such as monopolies or cartels. Wickersham commanded respect and engendered fear for his readiness to prosecute any corporation for attempting to monopolize an industry. During Taft's administration, Wickersham brought almost twice as many Sherman Act prosecutions in four years as Roosevelt had filed in eight years, a total of 89, including indictments against U.S. Steel, Standard Oil, International Harvester, Alcoa Aluminum, and Burroughs Adding Machine. This unprecedented use of the Sherman Act alienated sectors of big business and was thought to have helped contribute to Taft's defeat in the 1912 presidential election.

After Taft's defeat, Wickersham returned to private practice in New York but always kept a close watch on state, national, and international affairs. Between 1912 and 1929, he served on the

commission for the reorganization of New York's state government created by Governor Alfred E. Smith. The outbreak of World War I and the debate about the nation's future role in world affairs brought Wickersham back into national politics. Aligning himself with the internationalist wing of the Republican Party, Wickersham backed the United States' participation in the League of Nations and supported the Allied cause. He continued to advocate a strong internationalist position for the country during the next decade.

Wickersham made his final contribution to public affairs at the age of 71, when he accepted the chairmanship of the National Commission on Law Observance and Enforcement, which later became known as the Wickersham Commission. This commission operated 1929–31. The commission produced 14 book-length reports, each dealing with a different topic of crime and justice. It was the 14th report that perhaps made the largest impact and became a catalyst for reforms involving new accountability for the police. This report addressed problems in police administration and called for more professionalization and proper training of officers. The Wickersham Commission gave a strong endorsement to the sociological approach to the study of crime, noting limitations of psychological and other approaches. In the years between the McKinley administration and the Great Depression, Wickersham made notable contributions to American law and politics in commercial law, enforcement of the Sherman Anti-Trust Act, international law, and criminal justice. A heart attack took his life in 1936 at the age of 78. He was buried in Rockside Cemetery in Englewood, New Jersey.

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See Also: National Commission on Law Observance and Enforcement; Police, Sociology of; Taft, William Howard (Administration of).

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Wickersham Commission

In May 1929, President Herbert Hoover established the National Commission on Law Observance and Enforcement, or the Wickersham Commission, to investigate the state of law and order in the United States. The bipartisan commission included 11 notable political and academic figures, among them Attorney General George Wickersham (chairperson); Dean of the Harvard Law School Roscoe Pound; Secretary of War Newton Baker; and the leader of the Chicago Crime Commission, Frank Loesch. Other members included Henry Anderson, Ada Comstock, William Grubb, William Kenyon, Kenneth Mackintosh, and Paul McCormick. The Wickersham Commission's findings were published in 14 reports and released to the public in January 1931. Topics covered in these reports include Prohibition (Reports 1 and 2); criminal statistics (Report 3); prosecution and the federal courts (Reports 4, 7, and 8); deportation and crime among the foreign born (Reports 5 and 10); child offenders and the causes of juvenile delinquency (Report 6 and 13); penal institutions, probation, and parole (Report 9); lawlessness in law enforcement and policing (Reports 11 and 14); and the cost of crime (Report 12). A 15th report on the Mooney-Billings case was submitted to the commission, but not published as part of the original reports.

Prohibition

In 1920, the U.S. Congress passed the Eighteenth Amendment, making it illegal to manufacture, sell, or transport intoxicating liquors in the United States. Prohibition was highly controversial, and nearly \$100,000 of the funds used to investigate it was donated by private groups. The commission's findings on the issue overshadowed criminal justice issues raised in remaining commission

reports. The report is divided into three sections: a lengthy discussion of liquor enforcement, a brief list of conclusions, and individual statements from each commissioner. The report highlighted the significant challenges faced by law enforcement agencies seeking to shut down bootlegging (smuggling of liquor) and speakeasy (illegal nightclub) operations. Challenges of Prohibition enforcement included corruption among public officials, waning public support, and the profitability of alcohol. Four of the commissioners recommended maintaining the Eighteenth Amendment; the remaining advocated alterations or the outright repeal of Prohibition. In his statement to Congress on the commission's report, Hoover discouraged repeal and stated that Prohibition enforcement was improving. Prohibition was repealed by the Twenty-First Amendment in 1933.

Cost and Measurement of Crime

The commission's report on the costs of crime is the lengthiest report. The commission states that comprehensive data on the costs of crime are insufficient, but it does draw some conclusions about federal, state, and local government spending on crime, as well as the toll of crime on private industry and the general public. The greatest costs for the federal government are enforcement of laws against alcohol, narcotics, and motor vehicle theft. The majority of state funds are spent on correctional institutions and parole agencies, while the greatest cost for local jurisdictions is policing. The commission recommends an increased focus on organized crime, such as fraud, organized extortion, and an overhauling of criminal codes to remove ineffectual or unenforceable laws. In the early part of the 20th century, national and state-level measurement of crime and criminal justice system responses were inconsistent and unreliable. No U.S. state compiled crime statistics, one state (Massachusetts) compiled arrests statistics, 23 states compiled trial court statistics, and seven states compiled adult probation statistics. State and federal prison and jail statistics had been collected by the federal Bureau of Census since 1923. The commission makes recommendations for the federal government to undertake research to determine appropriate state statutes for crime data collection and, upon adoption of such legislation by

the states, for creating a centralized federal location where state data can be submitted and then disseminated.

Prosecution and Courts

Three concerns about prosecution are discussed by the commission: prosecutorial susceptibility to political influence and whims, inadequate selection and oversight of prosecutors, and lack of suitable safeguards for suspect interrogation. Research on the federal courts concentrates on the District of Connecticut federal court and is incomplete at the time of publication.

Immigration and the Foreign Born

The commission states that the treatment of both legal and undocumented immigrants is unconstitutional, tyrannical, and oppressive. The commission recommends better-qualified immigration inspectors, increased transparency in legal processes, decentralization of immigration enforcement, the creation of an independent review board, and increased border enforcement. Like its report on Prohibition, the commission's report on crime and the foreign born is controversial. The first quarter of the report is devoted to tracing patterns in American public opinion on crime and the foreign born and describing successive waves of anti-immigrant sentiments in the country. The general conclusion of the remaining sections of the report is that the popular view that the foreign born commit more crime than the native born is overstated, if not altogether incorrect.

Child Offenders and the Causes of Delinquency

The commission's report on child offenders focuses on how young offenders are processed in the federal justice system. The report calls for the federal government to refrain from processing child offenders, except in cases where state juvenile justice systems are inadequate. Emphasis is placed on treating young offenders as distinct from adults and for punishments of juveniles to stress education and supervision rather than retribution. The commission's report on the causes of juvenile delinquency emphasizes the role of social disorganization as opposed to individual characteristics as the cause of delinquency. Causes of social disorganization include unregulated industrial growth in cities, nonexistent or weak

community or neighborhood organizations, and high residential turnover. No specific recommendations are made based on this report.

Penal Institutions, Probation, and Parole

This report was highly critical of American prisons. They are described as antiquated, overcrowded, inefficient, and incapable of meeting the objectives of reformation of the criminal and protection of society. Prison staff is described as unprofessional and overworked. Report authors advise against the building of new maximum-security prisons; for improving the health and sanitary conditions of existing facilities; for more humane disciplinary practices; for the reform of indeterminate-sentencing practices; and for improved processes to select, compensate, and train prison personnel.

They also argue for equitable prison work programs (and the elimination of prison contract labor) and for the provision of educational opportunities for prisoners. With regard to probation and parole, the commission argues for the establishment of well-compensated, central parole boards in each state; for the increase in competent parole and probation officers and the decrease of these officers' caseloads; and for the broadening of probation as a viable alternative to prison for sentenced offenders.

Policing

Investigations into the state of American policing were compiled by August Vollmer, a respected academic and police administrator. The commission highlights numerous problems with law enforcement. Police leadership is described as incompetent, unduly influenced by local politicians and criminal figures, and vulnerable to changing political whims—the average tenure for local police chiefs was less than four years. Rank-and-file officers are criticized as being untrained, uneducated, inefficient, overwhelmed, and corrupt. Policing organizations are described as having out-of-date communications systems and ineffective law enforcement tools. The commission makes several recommendations to improve policing, including insulating police agencies from the corrupting influence of politics, improving training and pay of officers, improving policing equipment and recordkeeping, and expanding state-level law enforcement agencies. Report authors

also emphasize a need for increasing the ethnic and racial diversity of local police forces. The focus of the report on lawlessness in law enforcement is on the “third degree,” or the infliction of physical or mental suffering to obtain information about a crime. Researchers conclude that use of the third degree by police officers is widespread and includes activities such as verbal and physical threats, beating with the hands or with objects, protracted questioning, and illegal detention. The practice was primarily used against suspects, though in some cases it was also used against witnesses. Victims of the third degree were most frequently young (under the age of 25), black, and poor. No specific recommendations are included in this section of the report.

Mooney-Billings Case

This report was the third federal investigation into the Mooney-Billings case. Though submitted to the commission in 1931, it was not published until a reprinting of the commission’s reports in 1968. The report examines the investigation and legal proceedings of labor rights advocates Thomas Mooney and Warren Billings. Both men were indicted and convicted of first-degree murder for exploding a bomb along the route of the Preparedness Parade in San Francisco on July 22, 1916. Billings was sentenced to life imprisonment, while Mooney was sentenced to death. Researchers pinpoint the problematic handling of the Mooney-Billings case from investigation to appeal, including ignoring of evidence pointing to other suspects; illegal methods of arrest, detention, and search; questionable methods of identification; use of unreliable, coached, and even perjured testimony by prosecutorial witnesses; deliberate attempts to provoke public prejudice against the defendants; and the use of propaganda to prevent the release of Mooney and Billings after evidence of illegal investigation and prosecution practices were revealed. Both Mooney and Billings were eventually pardoned by the California governor in the late 1930s.

Impact of the Wickersham Commission

Though the commission had issued the most comprehensive study of the American criminal justice system to date, its findings were overshadowed by popular debates on Prohibition and by the social and economic turmoil caused by the Great

Depression. Many of the challenges of crime and the problems with the U.S. criminal justice system discussed by the Wickersham Commission were echoed in President Lyndon Johnson’s 1967 Crime Commission on Law Enforcement and the Administration of Justice report, *The Challenges of Crime in a Free Society*.

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See Also: Corruption, History of; Deportation; Police Abuse; Prohibition.

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Wilson, James Q.

Professor, political scientist, and public policy expert James Q. Wilson has served on the faculty of several institutions, including Harvard, Pepperdine, the University of California, Los Angeles (UCLA), and most recently Boston College. Among the country’s most eminent scholars in his field, Wilson has authored numerous articles and authored or coauthored more than 12 books addressing various aspects of government, social issues, and public administration. He is the former president of the American Political Science Association (APSA) and has received numerous awards in recognition of his contributions to scholarship, including the Presidential Medal of Freedom, the APSA Lifetime Achievement Award, and honorary degrees from six universities, including Harvard. Wilson has held prominent leadership roles on a variety of federal commissions, beginning with his appointment to the White House Task Force on Crime in 1966, followed by service on the National Commission on Drug Use Prevention in the Nixon administration, the attorney general’s Task Force on Violent

Crime in the Reagan administration, and a member of the president's Foreign Intelligence Advisory Board from 1985 to 1991.

Causes of Crime

Among other issues addressed by Wilson in his research and writing is the relationship between crime and public policy. He has authored or coauthored several books on crime and related (societal morality/ethics) issues including *Thinking About Crime*, *Crime: Public Policies for Crime Control* with Joan Petersilia, and *Crime & Human Nature: The Definitive Study of the Causes of Crime* with Richard Herrnstein. Additionally, he has contributed a range of articles to the scholarly literature addressing public policy and crime. He is perhaps best known in criminology and sociology circles and for his innovative "broken windows" theory of urban decay and community decline.

In a March 1982 article published in *Atlantic Monthly*, "Broken Windows: The Police and Neighborhood Safety," Wilson and coauthor George Kelling outline their rationale as to how small-scale physical problems and petty crime can lead to the deterioration of the stability and safety of neighborhoods. If within a neighborhood small problems such as broken windows, or street lamps, or the presence of graffiti are dealt with swiftly and decisively, it reflects that residents care for their community and are proactive in response to problems that arise, including petty criminal acts. It reflects pride aesthetically and otherwise in the area and may signal willingness on the part of the community to actively monitor their area and contact the police or other appropriate governmental agencies swiftly as needed.

Broken Windows Theory

Conversely, broken windows theory holds that if a broken window, abandoned vehicle, or graffiti is left unreported and unresolved, it conveys that members of the community are less concerned and perhaps less prone to report problems in the community to local authorities. Such lack of concern for smaller problems can lead to escalation, as perpetrators may commit bolder and more frequent acts if they sense the community is apathetic about such occurrences and that there will be no consequences. What was a single damaged window or street lamp may escalate to widespread vandalism.

A single abandoned car being cannibalized for parts as it sits in the street can lead to other more serious property crimes such as burglaries. Tolerating some small-scale, localized loitering on the part of teenagers or transients can allow escalation to the point that the area becomes a focal point for gangs, drug users, or panhandlers. The physical condition of the area can decline rapidly, with buildings and property in disrepair, public utilities destroyed, and litter increasingly commonplace. As the community begins to deteriorate, law-abiding citizens out of safety concerns or a sense of helplessness may be increasingly less prone to intervene. Residents and perhaps businesses as well may begin to move out of the area, replaced by more lawless elements that potentially see the area as more tolerant of their activities, which further speeds the decline.

To avoid falling victim to such a vicious cycle of crime and urban decay, the theory contends that proactive responses must be implemented from the onset. In a prompt manner, broken or damaged windows, doors, or other physical infrastructure should be repaired. Abandoned items and litter should be removed. Aesthetic concerns should be addressed, such as repainting tagged fences or walls. Public areas such as streets, sidewalks, and bus stops should be properly maintained. Also, petty criminal acts such as loitering, panhandling, truancy, and disorderly conduct should be swiftly addressed by law enforcement and other appropriate agencies.

Theory in Action

Broken windows theory can serve as a geographical predictor of the potential for the development of problems, including increased crime in areas exhibiting early symptoms. Numerous studies have shown the validity of the theory in real-world conditions, including a much-publicized study of crime-prone neighborhoods of Lowell, Massachusetts, that exhibited marked reduction in crime stemming from a commitment by the city to implement the ideas espoused by this theory: cleaning up trash, bringing buildings up to code, repairing street lights and other damaged utilities, and ticketing loiterers and other offenders. Many law enforcement agencies and local governments have embraced the concept, along with the broader idea of pre-emptive approaches

to policing and neighborhood well-being. Historically, policing has been more reactive, in that officers would respond to occurrences only after the fact. However, if the onset of problems in communities can be predicted by certain physical or social indicators, as broken windows theory contends, the more severe problems can be averted via prompt positive action on the part of local authorities.

Wilson and Kelling's theory is not without its critics. Many scholars have noted that a complex range of other variables will collectively be more important in determining crime rates and urban decline. An example of the latter would be the socioeconomic makeup of a community and the financial stability of its residents and businesses, and correspondingly, the ability of the community's services to effectively meet the needs of infrastructure maintenance and repair and other demands.

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See Also: Crime in America, Causes; Crime Prevention; Urbanization.

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Wilson, O. W.

Orlando Winfield Wilson (1900–72) was an advocate of modern policing. He was born in South Dakota on May 15, 1900, which placed him at a pivotal point in American policing. Early in his career, O. W. Wilson attended the University of California, Berkeley, and graduated with a degree in criminology. He was a student of August

Vollmer, the chief of police in Berkeley, California, who was considered by many to be the father of modern law enforcement.

Early in his career, Wilson served as a police officer in the Berkeley, California, Police Department, a position that helped him finance his university tuition. An educated police officer with a university degree offered enlightened insight and had an exceptional law enforcement credential during that era. During the mid-1920s, Wilson gained his first law enforcement field executive experience as the Fullerton, California, chief of police, a term that lasted two years.

Wilson eventually became a professor at the University of California, Berkeley, leading the crusade to modernize American police work. He advocated the use of many of the same modern innovations as August Vollmer: centralized records, investigative process organization, communications through the call box system, motorcycle patrol, and marksmanship training for police officers.

After his tenure in academia, Wilson rejoined active duty with the Wichita, Kansas, Police Department in 1928 and served until 1939. Again, he modernized the police department in the Vollmer tradition and required a college degree for employment. He strove for police modernizations and innovations that included police cars for patrol, mobile two-way radios, and the use of the mobile crime laboratory. In addition, Wilson taught at Harvard University during the 1930s at the Harvard Bureau for Street Traffic Research.

Military and Academic Service

World War II changed national priorities and swept many young Americans into the crisis. Wilson joined the war effort with considerable energy and imagination. During the war, he served as provost marshal, the equivalent of a civilian chief of police. At the end of the war, many soldiers departed immediately; however, Wilson stayed on until 1947 as a consultant to German police agencies and other police forces in Europe to contribute to their reorganization and stability for peacekeeping functions. Wilson's four years of eminent military service included the posts of chief of the Supreme Headquarters of the Allied Expeditionary Force (SHAEP) in England and director of public safety in Germany, and two decorations, the Bronze Star and the Legion of

Merit. He eventually retired as a full U.S. Army colonel in the military police branch.

After World War II, Wilson became the dean of the School of Criminology at Berkeley, California, for a decade during the 1950s. His concepts served as the foundation for American policing. He increased efficiency by emphasizing the application of scientific management principles. His textbook on police administration, written while he served as professor, became a bestseller. Wilson's management and leadership strategies served as policing doctrine in the United States. He advocated the importance of crime analysis long before it became the current policing strategy.

Chicago and Beyond

The 1960s saw the Chicago Police Department hurled into turmoil and racial controversy. Mayor Richard J. Daley, in the midst of a corruption scandal, sought Wilson's help. His appointment to police commissioner served as a primary method for Wilson to conduct a nationwide search for a new superintendent of the Chicago Police Department. The search committee and the mayor eventually decided that Wilson himself was the best candidate, and he accepted the appointment in March 1960.

Wilson's administrative approach facilitated the reorganization of the entire Chicago Police Department. The first step was to move the superintendent's office from city hall to police headquarters. Wilson's hands-on approach to management and corruption reform was a challenge for any leader. Central to Wilson's reform was the establishment of a nonpartisan police board to assist with governance. Higher standards for recruiting and hiring police officers were the first priority. The new police board also assisted in supervising graft, corruption, and police discipline procedures. Superintendent Wilson restructured police boundaries and beats without considering the political ramifications. He was on the frontier of improving the communications system, recordkeeping systems, and even computer software. He eliminated many of the foot patrols in favor of the more mobile response of patrol cars to improve response time. Wilson favored single-officer patrol cars.

Wilson was quick to recognize the source of racial tension in Chicago, and he instituted many

political reforms in response. He tried to improve police community relations with the African American community. Wilson hired African Americans and sought their promotion through the ranks of the police department. Moreover, he demanded police restraint and good judgment in race relations. Morale improved in the Chicago Police Department under Wilson's leadership. He made a significant contribution that restored the public image until his retirement in 1967. His contributions in Chicago are legendary; his influence remains a reform model for police administrators across the nation. Wilson's firm guidance and leadership made a significant contribution to the field of law enforcement.

Unfortunately, Wilson's effective leadership did not lead to continued easing of racial conflict and political turmoil after his retirement. By 1968, police officers were poorly deployed and supervised throughout Chicago. Officers initiated attacks on demonstrators, reporters, and unwitting pedestrians. The adverse publicity from the Democratic National Convention in August 1968 reverberated around the world.

O. W. Wilson's distinguished career unfolded with extraordinary distinction in three fields: academia, law enforcement, and military. His influence and writing in the United States and Europe placed him in a category of his own that has been unmatched since. Wilson's career continues through his writing as the force in the field of law enforcement. Orlando Winfield Wilson, a legend in his field, died on October 18, 1972.

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See Also: Chicago, Illinois; Community Policing and Relations; Vollmer, August.

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Wilson, Woodrow (Administration of)

Thomas Woodrow Wilson (1856–1924), the 28th president of the United States, was a leader of the Progressive movement and won the Nobel Peace Prize in 1919. He was born in Staunton, Virginia, the third of four children of Reverend Dr. Joseph Ruggles Wilson and Jessie Janet Woodrow. Both of his parents were predominantly of Scottish heritage. Although Wilson was raised in an educated household, he was over 10 years of age before he learned to read, a difficulty that may have indicated dyslexia. In 1873, he attended Davidson College in North Carolina for one year, then transferred to Princeton University, where he graduated with a baccalaureate degree in 1879.

Wilson attended the University of Virginia law school in 1879, but his frail health caused him to withdraw. He continued his studies at home in Wilmington, North Carolina. In 1882, he practiced law in Atlanta, Georgia. He entered Johns Hopkins University graduate school in 1883, and three years later earned a doctorate in history and political science. Before becoming a professor of jurisprudence and political economy at Princeton in 1890, he lectured at Cornell University from 1886 to 1887, served as professor at Bryn Mawr College from 1885 to 1888, and was a professor of history at Wesleyan University from 1888 to 1890. Wilson was appointed president of Princeton University in 1902 and served until 1910.

His first marriage was in 1885, to Ellen Louise Axson, the daughter of a minister from Rome, Georgia. They had three daughters: Margaret Wilson (1886–1944), Jessie Wilson (1887–1933), and Eleanor Wilson (1889–1967). Ellen Wilson died in 1914, and Wilson married Edith Gait in 1915. In 1910, Wilson ran for governor of New Jersey. He focused his campaign on his independence from machine politics, with the promise that if elected, he would not yield to party elites. He was elected governor in 1911 and served in that post until 1913, when he became president.

As governor, Wilson successfully pushed for reforms, until the Republicans won control of both houses in 1912. He sought and received the nomination for president by the Democratic Party, with Thomas Marshall as his vice president.



A monument to President Thomas Woodrow Wilson stands in Poznan, Poland. Wilson had a vision of a world where freedom, justice, and peace could flourish.

Wilson won the presidential election of 1912, took office in March 1913, and set about instituting many reforms, including the changing of the tariff, the revising of the banking system, the monitoring of monopolies and fraudulent advertising, and the prohibiting of unfair business practices. During his two terms, he passed major domestic legislation such as improving safety conditions in factories and mines, giving women the right to vote, and ending child labor.

World War I and Beyond

While Wilson was successful in most of his domestic agenda, he spent 1914 through early 1917 attempting to keep the United States out of World War I. He maintained a neutral approach until 1917. Following the sinking of the British ship *Lusitania*, which killed 120 Americans, and after German submarines began sinking unarmed American merchant vessels, the United States entered the war. After the war, he used his famous Fourteen Points address to introduce the vision of a world in which freedom, justice, and peace could flourish.

Foreign influences that affected Wilson's administration included the first Red Scare, from 1919 to 1920, which began following the Russian Revolution of 1917, and the patriotic years of World War I. Fear of the Communist Party, labor union advocacy activities, and strikes were

associated with crimes against society, conspiracies against the government, and plots of the Communist establishment. The U.S. political and economic establishments were targeted for terrorist bombings by political radicals, and eight bombs simultaneously exploded in eight cities on June 2, 1919. Thousands of resident aliens were arrested and deported. From 1919 to 1920, laws prohibiting violent protests in demanding and achieving social change were enacted by several states. These criminal syndicalism laws supported aggressive investigation by police, jailing, and deportation of the accused or persons suspected of being either Communist or left-wing.

Wilson's administration was also challenged by crime and criminal activities of the Prohibition era. The prohibition of alcohol began in 1920, with the passage of the Eighteenth Amendment, and ended in 1933. Corruption and criminality were rampant during this time. Businesses dealing in alcohol were commonly raided, and many bar owners bribed police officers to ignore them or to notify them of raids. Law enforcement had difficulty controlling individuals who either wanted to drink or intended to profit from the sale of alcohol. The mob and other gangs held control of the majority of the illegal liquor trafficking.

Despite Wilson's expressed view of a world of freedom and justice, his administration was dangerous to the civil rights of African Americans. He maintained the well-established Jim Crow system of segregation, which restricted African American employment in the federal government.

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See Also: History of Crime and Punishment in America: 1900–1950; New Jersey; Prohibition.

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Wisconsin

Located in the midwest, Wisconsin is the 30th of the United States, admitted to the Union in 1848. Home to more than 5.8 million residents, Wisconsin is bordered by Minnesota and Iowa to the west, Illinois to the south, the Upper Peninsula of Michigan and Lake Superior to the north, and Lake Michigan to the east. Wisconsin encompasses urban areas such as its largest city, Milwaukee, and its capital, Madison, as well as many smaller communities and farms. Wisconsin's history of crime, police, and punishment buttresses its dual nature as a cradle of progressive policies and as a deeply traditional breeding ground for law-and-order procedures. The state courts are organized into circuit courts, appellate courts, and the Wisconsin Supreme Court. The Wisconsin state legislature was an early opponent of capital punishment, and its criminal laws have tended to be progressive in that they have stressed rehabilitation rather than punishment. Although a mid-sized state, Wisconsin has experienced several serial killers in its history. The Wisconsin State Patrol polices the highways, and county sheriffs and local constabulary provide other safety services.

The Wisconsin Supreme Court was established in 1841, five years after Wisconsin became a separate territory and seven years before it became a state, and is the highest appellate court in the state. The court comprises seven justices, who are elected for 10-year terms as a result of statewide, nonpartisan elections. If a vacancy occurs on the court, the Wisconsin governor may appoint a justice to fill the vacancy, but that justice must stand for election in the first year no other justice's term expires. The chief justice of the Wisconsin Supreme Court is that body's longest-serving justice, although that individual may decline the position. The Wisconsin Supreme Court has a long history as an independent and activist group. During the 1850s, for example, the Wisconsin Supreme Court battled the federal judicial system regarding the U.S. district court's ability to enforce the Fugitive Slave Act. The matter was resolved in *Ableman v. Booth* (1859), which held that state courts may not issue rulings that contradict the decisions of federal courts. Since 1977, the Wisconsin Supreme Court has been assisted in appellate matters by the Wisconsin Court of Appeals, which exists primarily to

correct errors that occurred at the trial level. The Wisconsin Circuit Courts are the primary trial venues in the state and hear and decide a wide variety of issues, including cases involving juvenile delinquency, traffic matters, and criminal law.

There are 69 circuits, 66 of which serve individual counties, and three of which serve two counties each (Buffalo/Pepin, Florence/Forest, and Shawano/Menominee). Circuit courts have personal jurisdiction over defendants in criminal cases if the defendant violates a Wisconsin law while in the state, or commits an act out-of-state that contributes to a crime the consequences of which occur in Wisconsin.

State highways are policed by the Wisconsin State Patrol, which, with slightly more than 500 sworn members, has a smaller per capita force than many other jurisdictions. County sheriff's offices are responsible for patrolling rural areas of Wisconsin, as well as towns and villages that are too small for their own independent police forces. All of Wisconsin's approximately 190 cities have their own independent police forces.

Corrections

Although the death penalty was included in the Wisconsin Territory's initial constitution of 1838, efforts immediately began to repeal its use. A bill to abolish the death penalty passed the Wisconsin Territorial Assembly in 1847 but failed to pass the senate. During the period in which Wisconsin was a territory, 1836–48, at least seven defendants were executed, although several of these executions were carried out pursuant to military or Indian law. After Wisconsin became a state in 1848, only one execution was carried out, that of John McCaffary in 1851. McCaffary's execution revived the move to abolish the death penalty in Wisconsin, which was accomplished in 1853. Since that time, no criminal defendant has been executed in Wisconsin. Efforts to reinstate the death penalty have been made from time to time, usually in response to current events. This occurred in 1866 when Wisconsin supporters of the execution of former Confederate President Jefferson Davis advocated such a move and when a bill was introduced asking for reinstatement in 1937, shortly after the kidnapping of Charles Lindbergh's baby. During the height of Wisconsin Senator Joseph McCarthy's influence during the

1950s, his supporters also unsuccessfully pushed to have the death penalty reinstated. In 2006, an advisory referendum showed that 55 percent of Wisconsin voters favored restoring capital punishment, but the Wisconsin legislature did not take action to do so at that time. Despite not having a death penalty, Wisconsin's per capita murder rate is below the national average. Wisconsin also faces less violent crime per capita than many other states. In 2009, for example, Wisconsin crime statistics reported 14,533 violent crimes, which included 144 murders or manslaughters, 1,108 forcible rapes, 4,850 robberies, and 8,431 aggravated assaults.

The Wisconsin Department of Corrections, an agency of the executive branch of state government, operates 20 adult and five juvenile facilities across the state, with the Waupun State Prison being the first such institution when it opened in 1851. Wisconsin correctional centers have traditionally attempted to balance protecting public safety with providing inmates with the necessary skills and insights into their past criminal behaviors to ensure a crime-free life upon their release. To that end, Wisconsin correctional centers have long offered programming that provides inmates with basic education, alcohol and drug counseling, work experience, and work release privileges. Wisconsin eliminated black-and-white striped prison uniforms in 1868, initiated the first prison newspaper in 1886, allowed parole of prisoners who were rehabilitated in 1907, opened the State Prison for Women in Taycheedah in 1932, and became the first state to treat sex offenders in 1952. Over the past few decades, however, Wisconsin's prison population has increased substantially. In 1981, the average daily prison population in Wisconsin was 3,821, but it tripled during the 1990s and totaled 23,987 by 2011. Much of this increase was a result of convictions related to drug violations. During the mid-1990s, Wisconsin led the nation in housing prisoners out of state, but by building a prison every two years had ceased doing this by 2005. The Wisconsin Department of Corrections estimates that by 2020, Wisconsin will have more than 26,675 individuals incarcerated.

Serial Killers

Despite its progressive attitude toward criminal justice, Wisconsin has been home to two of the

grisliest serial murderers in U.S. history. Edward “Ed” Gein, from Plainfield, was a murderer and body snatcher who murdered at least two individuals and exhumed other corpses from a nearby graveyard in order to fashion keepsakes from their bones and skin. Author Robert Bloch, a Milwaukee native, based his novel *Psycho* (1959) upon Gein’s story, which Alfred Hitchcock turned into his 1960 film of the same name. Between 1978 and 1991, Jeffrey Dahmer murdered 17 men and boys in and around Milwaukee. Many of Dahmer’s victims were of African American or Asian descent, and delay in his arrest caused criticism of police officers.

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See Also: 1901 to 1920 Primary Documents; *Ableman v. Booth*; Capital Punishment; Constitution of the United States of America; Dahmer, Jeffrey; McCarthy, Joseph.

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Witness Testimony

On November 28, 1976, Robert Wood, a Dallas, Texas, police officer, was shot and killed while making a routine traffic stop. Whenever a police officer is murdered on duty, there is great pressure to find the murderer; consequently, the search for Officer Wood’s killer was intense. Despite substantial evidence that the murder was committed by David Harris, a 16-year-old with a history of criminal behavior who had bragged to his friends

about killing a police officer the day of the murder, the police pursued another suspect, Randall Adams, a 27-year-old man who had recently come to Dallas looking for employment.

The day before the murder, Harris picked up Adams, whose car had run out of gas, as Adams walked along the highway with an empty gas can. Harris and Adams hit it off; the two spent the day and part of the evening together. Harris dropped Adams off before midnight on November 27, 1976, at the motel where Adams was staying with his brother. A few hours later, Harris had the fatal encounter with Officer Wood. Having been informed that Harris had bragged to friends that he had shot and killed a police officer, the police brought Harris in for questioning. Harris admitted to being present at the time of the killing, but stated that a hitchhiker he had picked up the day before, Randall Adams, was the killer. Based on Harris’s statement, Adams was arrested and charged with the murder of Robert Wood.

At trial, three eyewitnesses testified that they saw Adams in the car at the scene of the fatal shooting. Despite serious questions about the truthfulness of the eyewitnesses, Adams was convicted and was sentenced to death. It was later determined that the testimony of two of the eyewitnesses was false, given in exchange for a favorable disposition of charges pending against them. Adams remained in prison for 12 years, once coming within three days of his scheduled execution. His story was the subject of a documentary, *The Thin Blue Line*, which revealed substantial flaws in the murder investigation and the evidence presented by the prosecution at trial. As a result, lawyers for Randall Adams were able to have his conviction overturned. Twelve years after the murder, David Harris, who had been convicted and sentenced to death for a second murder, confessed to having murdered Wood.

Under American criminal law, the prosecution must prove guilt beyond a reasonable doubt. This heavy burden reflects the importance placed on liberty by the U.S. Constitution. Eyewitness testimony makes meeting this burden easier. Jurors tend to find this form of evidence exceedingly persuasive. Indeed, the vast majority of cases that include eyewitness testimony result in convictions, including cases where the testimony

of an eyewitness is the only evidence presented of the defendant's guilt.

Accuracy of Eyewitness Accounts

For centuries, the accuracy of testimony by an eyewitness has been challenged using common sense and logic. However, the multitude of factors that could compromise memory was not known. The persuasiveness of eyewitness reports comes from a common misconception that memory, similar to a recording, is an exact representation of what the eyewitness perceived. A substantial body of empirical research has documented that this assumption is incorrect. Two of the best-known researchers who have studied the accuracy of reports from eyewitnesses are psychologists Steven Penrod and Elizabeth Loftus. Their research findings are consistent with the exoneration, based on DNA testing, of hundreds of people who were wrongly convicted, as almost half of these wrongful convictions were based on eyewitness testimony.

Research by cognitive psychologists, neuropsychologists, and neuroscientists reveals that memory is a complex, active process that is vulnerable to a number of internal and external factors. Memory can be meaningfully conceptualized as a three-phase process, consisting of encoding, retention, and retrieval. Encoding is the input phase of memory. This phase includes focusing on, and

paying attention to, some concept, item, experience, person, or event; processing it; and storing it in short-term memory. The second phase of the memory process is storage, in which the information that was encoded into short-term memory is moved to long-term memory. The last phase of the memory process is retrieval. When asked to recall a certain event, the individual must retrieve, from all the memories that person has stored in long-term memory, the one specific memory requested. In order for a memory to be retrievable, it has to have been stored in such a way that it can be identified as the correct memory. Any factor that interferes with one or more phases of memory processing compromises the ability to recall a memory accurately. What is remembered is vulnerable to both witness and situational characteristics that may make the memory unreliable or irretrievable. Witness characteristics that may compromise the accuracy of recall include, but are not limited to, visual, auditory, or other sensory acuity; intelligence; education; emotional state; mental status; general health; capacity for attention and concentration; desire to give the police what the witness believes the police want; differences between the race and/or ethnicity of the witness and the perpetrator; and use of medication or drugs.

Factors Affecting Accuracy

Police cannot choose witnesses; they have to work with whoever happens to have witnessed the crime. However, they do have control over some factors such as police interrogation and investigative practices, which can contaminate the memory of an eyewitness. For example, research has shown that the way an interview, lineup, or photo array is conducted can affect the information provided by the witness, potentially leading to the prosecution of an innocent person. Police may inadvertently, or sometimes intentionally, provide the victim or witness with misleading information. This typically occurs when someone is interrogated using leading questions or statements that provide false information. This information may be incorporated into the memory of the victim or witness, leading witnesses to unknowingly change their memories and testify based on this false memory.

Stress affects the quality of individual performance. Studies have found that the effect of



At right, a witness being questioned in court. Research in eyewitness testimony is a field with broad implications, with some researchers finding that visual reports are unreliable.

stress on performance is predictable. This predictable pattern is known as the Yerkes-Dodson law. This law states that performance is best at moderate levels of stress. At very low levels of stress, performance suffers from lack of motivation or lack of focus. At very high levels of stress, performance suffers because the nervous system is overwhelmed, and the ability to exert control over performance is limited. Applying this to eyewitness memory, the Yerkes-Dodson law predicts that an individual's ability to remember an event varies as a function of the amount of stress associated with the incident. For example, witnessing a crime that does not involve violence, aggression, or threat to safety usually produces a low to moderate level of stress. Extreme stress is usually associated with witnessing crimes of violence, aggression, force, or if the witness is threatened. This is counterintuitive; the common belief is that someone will remember dramatic events better than less dramatic events because the drama of the event is riveting, making that person pay careful attention. For example, murder is a high-stress crime. The general belief is that someone who witnesses a murder will have every detail of that event seared into his or her memory. In reality, the opposite happens. The witness's anxiety level is extremely high, interfering with the encoding and retention phases of the memory process.

Related to this is the "weapon effect." When a weapon is used in a crime, the level of stress for the witness is extremely high. When the witness is the victim of the crime, the level of stress exceeds that of a "mere" witness. When a person is threatened with a weapon, that person's primary focus is on the weapon; characteristics that identify the perpetrator may be ignored or only peripherally noted. Since the focus is not on the perpetrator but on the weapon, the victim may have a very poor memory of the perpetrator's appearance.

Another factor that affects the ability to recall a particular event is the duration of the event. The longer an event lasts, the greater the likelihood that the witness will remember the event, and remember it accurately. Although a victim or witness may have experienced the crime as occurring over a long time, most crimes are over relatively quickly. Given the rapidity with which crimes are completed, most victims and witnesses only have a very short period of time, sometimes

mere seconds, to observe and encode information about the perpetrator. Counterintuitively, the victim or witness to a crime may not remember many details about the crime, due, in part, to the brief period during which the crime occurred.

Race and Memory

Cross-racial identification constitutes another source of misidentification. Research has found that members of one racial or ethnic group have greater difficulty correctly identifying a person from another racial or ethnic group than they do identifying a member of their own ethnic or racial group. The most likely explanation for this is the lack of experience members of one racial or ethnic group have with members of other racial or ethnic groups. With increased interaction, the high incidence of cross-racial misidentification diminishes.

Witness expectations may result in false memories. The human brain has evolved to respond rapidly when danger is present. One method to decrease response time to threats is to respond before a full analysis of the reality of the threat can be completed. Responding based on biases allows for a rapid response, one that is likely to be beneficial, despite resulting in many false positives (responding to a stimulus as if it were a threat, when the stimulus did not pose a threat). What may have been adaptive at an earlier point of human development may now be harmful, as it can distort what is perceived and recalled.

Witness expectations combine with racial prejudice, as people tend to recall what they think should have happened, based on their prejudice, rather than what actually occurred. This occurs most often when the person has some doubt about what actually occurred in an incident or crime. For example, in one study, participants were quickly shown a picture of a white male robbing a black male in the subway. After viewing the picture, each participant was asked to describe in writing the picture he or she had just seen. The majority of the research participants incorrectly recalled that the black male was the assailant rather than the victim.

The passage of time can decrease the accuracy of what is recalled. Memory of an event, or any material that is committed to memory, tends to deteriorate over time. The greater the length of time between the occurrence of the crime and

the testimony of the witness at trial, the greater the likelihood that the witness's recall of the event will be inaccurate. In some cases, the time between the crime and the trial of the accused can be over one year. Most people can state, for example, what they did last weekend; these same people would have great difficulty stating what they did a year ago. The longer the delay between the victim's or witness's statement and the crime or the statement and the trial of the accused, the greater the likelihood that person's memory of the events has deteriorated.

Wrongful Convictions

There have been numerous cases of wrongful convictions, many of which were based in large part on inaccurate eyewitness identification and testimony. In some cases, eyewitness testimony was the only direct evidence that the defendant was guilty. Stories abound of people wrongfully incarcerated for years before being vindicated. These stories are supported by statistics that confirm the incidents of wrongful incarceration. The work of the Innocence Project has brought to light the number of people wrongfully sentenced to death, only to be exonerated by DNA evidence. It is unknown how many people serving time in prison or sentenced to death are in fact innocent. The exact number of wrongfully convicted inmates serving time, sentenced to death, or executed may never be known. What is clear is that, based on the known incidents of wrongful conviction, there are many more than have been identified.

It is in no one's interest to punish the innocent. Convicting and incarcerating the wrong person deprives that person of part of his or her life, a loss for which that person can never be fully compensated. In addition to the irretrievable lost time, the wrongfully incarcerated suffer the humiliation, danger, and physical and psychological harm that are part of the prison experience. Justice also is denied to the victim of the crime, as the actual perpetrator goes unpunished and is free to harm another person.

There has been a growing awareness of the reality of false convictions and the injustice this causes for the one falsely convicted, the victim, and society. False conviction also sullies the reputation of the criminal justice system and raises questions about whether this system actually

serves justice. In order to decrease the probability of wrongful convictions based on inaccurate eyewitness testimony, guidelines have been developed. Two major groups have written guidelines for eyewitness testimony: the Technical Working Group for Eyewitness Evidence of the National Institutes of Justice, and the American Psychology and Law Society of the American Psychological Association. They both are based on social science research and reach similar conclusions.

The recommendations from the Technical Working Group for Eyewitness Evidence of the National Institutes of Justice involve the use of photo arrays, specific interview techniques, and bias-reducing techniques in lineups. Photos of previously arrested subjects may be shown to a witness to help the police identify the perpetrator for purposes of arrest. It is recommended that the photos be arranged in a manner that does not bias the witness toward selecting a particular person. For example, photos should be separated into groups with similar characteristics, such as type of photo, age, race, and hair color and style. The goal of an interview is to gather accurate information. The accuracy of this information is jeopardized when the interviewer asks leading questions or makes other types of suggestions indicating the desired answer. It is recommended that the interviewer begin the interview with open-ended questions, ones that do not suggest an answer and that encourage the interviewee to tell what was witnessed in the his/her own words. The witness should be told not to guess what happened but to report only what he/she can remember. In a lineup, the witness views a group of suspects, as well as some people known to be innocent, and is asked to identify the perpetrator. In order for this process to result in an accurate identification, care must be taken to design the lineup in such a way that it does not suggest who should be chosen. The people used in the lineup should be sufficiently similar so the suspect does not stand out. Specific recommendations include (1) instructing the witness that the perpetrator might not be included in the lineup, (2) instructing everyone other than the witness not to do or say anything that identifies the suspect, (3) having everyone in the lineup do the same actions.

The American Psychology/Law Society (AP/LS) published *Eyewitness Identification Procedures*:

Recommendations for Lineups and Photo Spreads. AP/LS stated that its guidelines “represent(ed) an emerging consensus among eyewitness scientists as to key elements that such a set of procedures must entail.” This group also has specific recommendations for the way photo arrays and lineups should be designed. Double-blind procedures should be used in lineups or photo arrays. In a double-blind procedure, the person who administers/conducts the lineup or photo spread should not be aware of which person is the suspect. This procedure is analogous to the scientific protocol used in drug testing. It ensures that whoever conducts the identification procedure does not inadvertently lead the witness to select a particular person. The witness should be instructed that the person who committed the offense might not be in the lineup or photo array. This lets the witness know that he/she should not feel that he/she must identify someone in the lineup as the perpetrator. The lineup or photo array must be designed so the suspect does not stand out from the group.

For example, every person used should share similar physical characteristics and dress. Jurors tend to give excess weight to the witness’s confidence that the person identified is the real culprit. Feedback from those conducting the identification process may make the witness more confident in his/her selection than he/she was at the time the witness made the selection. Therefore, it is recommended that prior to any feedback from the police, a statement should be taken from the eyewitness at the time of the identification as to his or her confidence that the identified person is the actual culprit. These recommendations are designed to prevent or minimize the likelihood that the beliefs of the police will affect the testimony of the eyewitness. While the police cannot prevent the numerous other causes of inaccurate memory, they can ensure that they do not serve as a source of contamination.

Conclusion

Eyewitness testimony has been shown to be exceedingly persuasive to jurors. It is generally assumed that eyewitnesses provide the best evidence about who committed the crime. Research has shown that eyewitness testimony is often inaccurate, despite the confidence the witness reports having about what he or she recalls. The common belief that memory is analogous to recording an

event has been shown to be incorrect. Memory is an active, constructive process that is vulnerable to a variety of factors that can modify or create memories, such that what a witness believes he or she can recall did not happen as he or she remembers it, or did not happen at all. Although there is no way to prevent uncontrollable factors such as victim and environmental characteristics that can contaminate the memory process, it is possible to make systemic changes to prevent or minimize the likelihood that police investigative procedures corrupt or compromise the ability of eyewitnesses to report accurately what he/she observed.

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See Also: 1801 to 1850 Primary Documents; 1901 to 1920 Primary Documents; 1961 to 1980 Primary Documents; 1981 to 2000 Primary Documents; Courts; Executions; Trials.

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Wolf v. Colorado

Wolf v. Colorado (1949) is a case in which the U.S. Supreme Court incorporated, or made applicable to the states, the protection of the Fourth

Amendment's prohibition against unreasonable search and seizure. The case began when a Colorado physician, Julius A. Wolf, was thought to be providing abortions illegally. However, the police were unable to gather conclusive evidence of the alleged activity. Therefore, local police, in an effort to find the evidence necessary to arrest and convict Dr. Wolf, absconded with his appointment book. After investigating the names in the book, police were able to gather the evidence they sought. Wolf was convicted in his criminal trial, and the conviction was upheld by the Colorado Supreme Court.

Upon issuing a writ of certiorari, the legal question facing the Supreme Court was whether or not the exclusionary rule, or the withholding of evidence that was gathered in violation of the Fourth Amendment, was applicable at the state level. Importantly, the Supreme Court, in *Weeks v. United States* (1914), had created the exclusionary rule to prevent illegally gathered evidence to be used in court. According to the court in *Weeks*, if evidence gathered illegally was used in criminal trials, then there is, in effect, no protection from illegal searches and seizures. However, the *Weeks* case dealt solely with federal agents in federal courts. In *Wolf*, the Supreme Court was to decide if this protection was to be made applicable to the states, as Wolf's attorney argued it should be.

Writing for a 6–3 majority of the court, Justice Felix Frankfurter argued that the Fourth Amendment's protection against illegal search and seizure should be incorporated by the states, as it was considered a fundamental right. However, the exclusionary rule, as but one method of protecting against illegal search and seizures, was not a fundamental right, and therefore would not be incorporated. Using evidence gathered from several global jurisdictions and every state, Justice Frankfurter noted that many states had rejected the exclusionary rule in the wake of the *Weeks* decision. However, that did not mean that these states welcomed illegal searches by their police officers. According to Frankfurter, the police departments could punish officers who participated in such activities. Moreover, Frankfurter opined that public opinion could protect against unreasonable actions of local police departments.

Importantly, Justice Hugo Black concurred with the majority opinion, in that he felt that

the exclusionary rule was a court-mandated remedy that could be overturned by Congress if it desired to do so. However, Black, using his understanding of legislative history, also felt that the Fourteenth Amendment was designed to incorporate the Fourth Amendment and the other amendments in the Bill of Rights, in its entirety, to the states. Black's view was largely defunct due to the Supreme Court's refusal, in several cases, to incorporate the Bill of Rights en masse. *Wolf* was altered somewhat in *Rochin v. California* (1952), a case in which the court ruled that if an illegal search was conducted in a shocking manner, then the evidence gathered could be excluded from trial. Much of *Wolf*'s holding was overturned in 1961 in *Mapp v. Ohio*, in which the Supreme Court, under the leadership of Chief Justice Earl Warren, incorporated the exclusionary rule to the states.

Wolf is an important case for understanding the evolution of the Supreme Court's view of protections of the criminally accused found in the Bill of Rights. Although it incorporated the Fourth Amendment's prohibition of illegal searches and seizures to the states, it fell short of mandating remedies in instances in which police violated the prohibition. *Wolf* did serve an intermediate role between the creation of the exclusionary rule in *Weeks* and its incorporation in *Mapp*. In that regard, it is an illustrative example of the Supreme Court's tendency to avoid major legal changes.

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See Also: *Hurtado v. California*; *Mapp v. Ohio*; *Weeks v. United States*.

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Women Criminals, Contemporary

Women's criminal behavior has only become a focus for criminologists and criminal justice officials since the 1970s. The social constructions of gender have guided the examination and treatment of the genders when responding to their criminal behavior. Earlier history uncovers the belief that women were above the lures of criminal behavior, and hence they had been ignored, while men were defined as possessing criminal tendencies. As a result, people know more about and respond more harshly to male criminal behavior. However, as social constructions change to encompass women as criminals, criminological theories and criminal justice responses have changed accordingly.

Historical Context

Historically, women were viewed to be passive, weak, sometimes naïve and gullible, but always possessing a higher morality than men. On the other hand, men were viewed to be aggressive, strong, competitive, and risk takers. Crime is something that is supposedly only committed by the aggressive and physically stronger individuals of society. How can an individual overpower a victim if he or she is weaker? As a result, women as the weaker sex were given the role of the victim. If she committed a crime, it was believed that there was something very unwomanly about her, something aggressive and masculine.

In the 1970s, society experienced a paradigm shift in how it understood female criminal behavior. It was argued that as a consequence of the Women's Rights Movement and the passage of Title VII of the Civil Rights Act in 1972, female criminal behavior would increase, reflecting that of males. This was known as the liberation hypothesis. Scholars hypothesized that once women had been liberated and gained access to the workforce, they would have freer movements in society that would mimic male behavior, including criminal behavior. Many believed that female access to the workforce would result in more competitive, risk-taking, and aggressive behavior that is often present among criminals. The result was a shift in how society handled female criminal behavior, more than a change in the behavior itself.

Changing Patterns in Criminal Activity and Justice Response

The main sources for understanding criminal behavior in the United States are the annual Uniform Crime Reports (UCR) released by the Federal Bureau of Investigation (FBI) and the National Crime Victimization Survey (NCVS) released annually by the Bureau of Justice Statistics. The UCR provides arrest data for a number of violent and nonviolent crimes nationwide, while the NCVS provides victimization from a large sample of the U.S. population. These statistics provide annual numbers, percentages, and rates, as well as crime trends over time. An examination of these statistics reveals that since the 1970s, arrests of females have increased substantially. In fact, from 1987 to 1998, the arrests of adult women for violent crimes increased by 80 percent. Additionally, arrests for males between 1997 and 2007 decreased by 7 percent, but increased for females by 4 percent.

Many have argued that the criminal behaviors of females, decades later, now mimic those of males. NCVS data, on the other hand, reveal that reported victimizations do not identify females as the offenders at such an increasing rate. As a result, many have argued that the statistics are more of a reflection of social reaction and tough-on-crime ideologies than of increased criminal behavior. Statistics also reveal that increased arrests involve crimes of forgery, possession of stolen property, and simple assault. By the mid-2000s, females represented 18 percent of all violent crime arrests. NCVS data reveal that females represent 11 percent of robbery offenders, 14 percent of aggravated assault offenders, and 23 percent of simple assault offenders.

Research reveals that major changes in women's crime took place between 1960 and 1991, though increases between 1980 and 1991 were small. Social factors that influenced these changes included the various social movements of the 1960s and 1970s, the drug epidemic and resulting war on drugs, and improved law enforcement technology. Social constructs changed to recognize women as potential criminals and brought about increased arrests. Research shows that females are most likely to commit nonviolent crimes and to commit minor crimes when violence is a factor. The most dramatic increase, however, has been in female drug offending.

Female Criminal Activity

By 2007, women represented 18 percent of individuals arrested for drug offenses. Women are more likely to be convicted for drug possession, while men are more likely to be convicted for drug dealing. UCR statistics reveal that between 2000 and 2009, the arrests of women for drug abuse violations increased by 12.5 percent, while the increase for males was 4.6 percent. Black women are three times more likely to be incarcerated for drug offenses than white women. Additionally, many men and women are arrested and prosecuted for other crimes that are drug related. One third of all women incarcerated in state prisons report that they committed their offenses in order to obtain money for drugs. Violence, robbery, and prostitution are crimes commonly committed in order to support drug habits. In fact, almost half of all incarcerated women require drug treatment.

Women's inroads into the illegal drug market are not the same as men. Just as gender inequality exists within the legitimate workforce, it also exists within the illegal drug market. Women make less money than men in the illegal distribution of drugs. Furthermore, women are more likely to procure their drugs through sexual transactions. Other research shows that women tend to play support roles in drug dealing, such as a girlfriend, spouse, or parent to a male primary drug offender.

In order to fully understand female criminality, race/ethnicity must also be examined. Race and ethnicity limit legitimate and illegitimate opportunities, making crime potentially attractive, but at the same time hard to accomplish. However, racial and ethnic minorities are more likely to be labeled criminal, are more likely to be arrested and convicted, and are more likely to be incarcerated. This discrimination tends to distort statistics and impedes the ability to gain a true understanding of criminal behavior. Research reveals that women of color are more likely to commit aggravated and other assaults, burglary, forgery, other thefts, drug violations, and prostitution. White women are more likely to use and possess drugs, and commit fraud, liquor law violations, drunkenness, and driving under the influence (DUI). Latina women are more likely to commit public order crimes, property offenses, and violent crime (in that order).

Women are more likely to commit property and vice offenses (prostitution and drug crimes) and minor violent crimes. Minor thefts are gender-related; that is, they are more likely to be committed by women. While males are still more likely to commit crimes of theft, female criminality in this crime type is growing. UCR data reveal that between 2000 and 2009, arrests of women for larceny-theft increased by 37.3 percent and by 32.4 percent for motor vehicle theft. Many argue that this, and other property and drugs crimes, is the result of the feminization of poverty (the increase of women and children living in poverty today). Females engage in large amounts of shoplifting, but males still dominate in this criminal activity. Between 2000 and 2009, arrests for women for buying, receiving, and possessing stolen property increased by almost 7 percent, while arrests for males decreased by 16 percent.

Female inroads into white-collar crime can be linked, to a point, to the liberation hypothesis. The increase of women in white-collar positions in the last decades is followed by an increase in opportunities to engage in these crimes. However, women still largely represent lower-level employees, and so their crime is more often petty. Women are more likely to work alone when committing a white-collar crime and report a family need. Official statistics reveal that between 2000 and 2009, arrests of females decreased by 28.8 percent for forgery and counterfeiting, 38.7 percent for fraud, and 3.8 percent for embezzlement.

Robbery and burglary are much more likely to be committed by males. Women represent 12 percent of robbery offenders and 15 percent of burglary offenders. One-third of female robbers act alone or with another woman, and financial need (usually for drugs) and peer pressure are the primary motivators for committing these crimes. Two-fifths of all women arrested for robbery were previously arrested for an offense as a juvenile. Female burglars are much more likely to work with others, are more likely to report a drug addiction, and report less contact with the criminal justice system.

Males represent 81 percent of individuals arrested for violent crimes, but females only represent 10 percent of those arrested for murder and 1 percent of those arrested for forcible rape. Further, women are more likely to kill their

husbands, lovers, or pimps. Between 1972 and 2002, 10 percent of homicides involved females killing males and 2 percent involved females killing other females. Thirty-five percent of female homicides involved killing intimate partners, while 65 percent of males killed their intimate partners. Compared to males, females represented 38 percent of infanticide offenders (the killing of an infant). And female murderers killed multiple victims in less than 10 percent of all homicides.

Overall, violent crime arrests for women between 2000 and 2009 increased by 0.1 percent. Juvenile females arrested for violent crimes decreased by 17 percent. During this same time, property crime arrests for females increased by 33 percent, but increased by only 0.1 percent for female juveniles. The questions pondered in the last four decades are whether female criminal

behavior is increasing, whether females are increasingly violent, and whether or not females are becoming as violent as males. Comparing statistics from the UCR and the NCVS reveals that female violent and property crime is increasing, but only slightly. This conclusion recognizes that the increase is more likely a result of criminal justice official responses than of increased criminality. However, there is irrefutable evidence that women are not becoming as violent as men.

Evolving Debates and Solutions

In addition to the debate on whether female criminal behavior will soon reflect male criminal behavior, society has debated why females commit crime. Criminologists have worked on explaining criminal behavior in the United States since the 1930s. However, these theorists have been guilty of the generalizability problem. Criminological theories historically have been developed by men to explain male behavior. They examined the behaviors of males and then generalized their conclusions to males and females. It was not until the 1970s that theorists started to bring women into the equation. However, with the disparate and sometimes discriminatory behaviors of criminal justice officials and policies, it is hard to determine the causes of crime.

Early theories explained female criminality as a biological deficiency, while others explained it as a mental deficiency. Today, biology and mental deficiencies are mixed to explain that social structures cause criminal behavior. When examining nonviolent offenses such as theft, fraud, drug abuse violations, and prostitution, officials and the larger society are comfortable in claiming that women are just doing what women choose or may be driven to do. However, when women commit crimes believed to be male behavior, it is harder to explain the causes.

If women are thought of and socialized to be passive nurturers and weak, then what causes them to commit such heinous crimes? Experts often explain extreme forms of violence by women as a result of mental instability. The female serial killer or serial rapist is a rare event; however, there are documented cases of such instances. As with the male serial killer, this is often explained as an extreme mental deficiency. Like the male serial rapist, these female criminals



Women represent 12 percent of robbery cases, 15 percent of burglaries, and 10 percent of those arrested for murder. Only 1 percent of forcible rape arrests are women.

are more likely to be tagged as evil and partly mentally unstable, as with Rosemary West and Karla Homolka. Brutal serial rapists/murderers among females are uncommon; however, female child molesters are not. These females are defined as having evil intentions, but as also being mentally unstable enough to sexually assault a child instead of desiring to nurture the child. Many of these convicted sex offenders were teachers, babysitters, or service providers. They were engaged in women's work but committing men's crime. The research has yet to uncover why women who tend to be socialized to be nurturers can turn to destroying the lives of children.

In other instances of female violence, society has focused on the female who murders her spouse or children. As with Andrea Yates, who drowned her five children, or Susan Smith, who drowned her two boys, officials tend to focus on the mental instability of women who kill their children. Andrea Yates, like many women who commit infanticide, was said to be suffering an extreme case of postpartum depression. On the other hand, Susan Smith's crimes were explained by post-traumatic stress disorder (PTSD), a severe psychological distress that follows traumatic events, such as victimization, and can result in destructive actions, both internal and external.

Some cases have been explained with a controversial disorder known as Munchausen syndrome by proxy. In this case, offenders (overwhelmingly women) are said to seek attention to the point of medically abusing their children. Offenders report frequent child illness or injury requiring multiple doctors' visits, medications, and sometimes surgeries. Munchausen syndrome by proxy is a very controversial diagnosis, as many in society claim that mothers are being wrongfully accused of child abuse. Nevertheless, women have been convicted of child abuse and child murder based on this diagnosis.

Women who kill tend to kill the men in their lives. Research shows that almost three-quarters of these women report having experienced abuse at the hands of the men they killed. Research has claimed that severely battered women may experience PTSD and as a result may kill as the only perceived option to survive the abuse. This has been termed "battered woman syndrome" and has been occasionally successfully used as a legal

defense in courts since the mid-1980s. While the diagnosis is still controversial as an appropriate legal defense to murder, states have increasingly allowed this type of evidence.

There is still much to learn about female offending. Theories continue to be male-focused and guilty of the generalizability approach. However, with the growing focus on women's issues, this problem is slowly being corrected. Since most crimes tend to be committed by males, criminal justice agencies tend to put most of their resources in apprehending, trying, and convicting male offenders. Most money in corrections tends to be put toward confining and correcting male criminal behavior. Female offending, however, is a problem and in some crime categories is increasing. As a result, there need to be greater criminal justice efforts placed toward understanding and responding to these crimes.

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See Also: Courts; Domestic Violence, Contemporary; Gender and Criminal Law; Insanity Defense.

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Women Criminals, History of

Historically, female criminality has centered on women's sexuality, their mental capacity, and their status as property of men. A study of the history of women criminals uncovers societal constructs of womanhood, femininity, family, and work. In addition to ideologies of gender and family,

women criminals must be understood within ideologies of race, class, age, and immigration. Analyses reveal that societies codify their constructs and ideologies within their legal systems. Hence, the ideologies of women's role in society have dictated their status as criminals.

Early Legal Traditions

One can trace the roots of current gender and family ideologies in the United States to the Code of Hammurabi (ca. 1780 B.C.E.), in which women were legally defined as the possession of men passed from father to husband. A woman's role was to provide healthy male heirs in order to continue her husband's family line, and her activities were highly regulated in terms of their property value to men. The Code of Hammurabi criminalized the bad wife, to include undisciplined and adulterous women. The code allowed the husband to send his adulterous wife away or to enslave her. The wife could legally deny the claim of adultery; however, if she could not prove her case, she could face execution by drowning. Many claim that it was the Code of Hammurabi that codified honor killings of females deemed criminal as adulterers.

Under Roman law and the early Christian doctrine, women's behaviors were strictly proscribed. Acts of drug use, use of magic, disobedience, and adultery were grounds for physical chastisement by a husband and for divorce. Under the Christian doctrine, all women carried the sins of Eve. In order to ensure that women maintained morality, the church stressed that they should be closely watched, have their speech and dress regulated, and be beaten when necessary. These early religious and legal codes created gender ideologies that defined women as inherently promiscuous and sinful and required corporal punishment as good for the soul of women. Christian Roman Emperor Constantine the Great was the first emperor to execute his wife in 298 B.C.E. Constantine the Great had his wife scalded to death in a cauldron of slow-boiling water because he suspected her of adultery. While the Christian church later tempered the violence placed on women when it was deemed to be extreme, these religious ideologies were codified within the legal system and later adopted by the English and the American colonies.

Early Female Crime in the United States

Colonial America, which lasted from the 1600s to the 1770s, adopted gender and family ideologies from European legal and religious practices. Woman's place was defined as belonging in the home. A woman was still deemed to carry the sins of Eve and so had to be controlled through her father and her husband. She was legally defined as their property and could be beaten for her offenses. Typically, as in Europe, the crimes of women consisted of fornication, bastardy, disorderly conduct, drunkenness, vagrancy, petty thievery, and prostitution. Serious violent and property crimes were committed by women but with less frequency than by men. For the most part, society was more concerned with the morals of women than the morals of men.

Early colonization of the American and Australian colonies saw a shortage of women and resulted in two common statuses for women: indentured servant and landowner. The first common status of indentured servant resulted in an attempt to increase the numbers of women in the colonies. English and European systems of law sent female (and male) convicts to the colonies in an agreement to serve 7–14 years of indentured servitude in place of being hanged. The latent consequence to women was that it became commonplace to send female offenders for first-time, nonviolent crimes.

The most common crimes committed by female indentured servants were petty theft and prostitution. These women worked in the colonies as servants, maids, or laundresses for masters who paid little and often abused them. Because of the profitability of sending women to the colonies, it was not uncommon for women to be snatched off the streets and forced onto ships bound for the New World. Historical accounts reveal that the conditions were so poor on the transport ships and the systematic rape of the women so horrendous that the survival rate was one in three.

Once these women arrived in the colonies, conditions were so poor, they often turned to theft and prostitution in order to survive. Hence, the criminality of women can be directly linked to their economic conditions. Yet the colonists held the same ideologies as the Europeans. They believed that the young, female, poor, and (later) immigrant were inherently immoral and needed



A sustained campaign to eliminate prostitution did not develop until the later 1800s. William Hogarth's depiction of Harlot's Progress (1731) shows Molly arriving in London, with Colonel Francis Charteris and Handy Jack leering in the background. In the foreground, a doting madam prepares her before sending her to the waiting customer.

stronger social controls. As a result, justice placed greater enforcement and harsher sanctions on most of these individuals.

The second common status the early female colonist held was landowner. In 1630, in order to correct the shortage of women, colonies passed laws that gave "maid lots" or ownership of land to unmarried women to serve as dowries to their future husbands. By the 1640s, laws also allowed husbands to will their property to their wives upon their death. Fathers without sons could also deed their property to their daughters. However, again, the property served as dowries for future husbands. As a result, initially it was common for women to own land. However, by 1650, in many areas women outnumbered men, and focus returned to women's morality and their place within the home. Adultery was a major focus regarding the criminality of women since inheri-

tance laws were a major concern. Additionally, it was a crime for women to run away from their husbands, even if escaping abuse. Some also claim that the desire for land was the primary drive of colonial witch hunts.

Witch Hunts

The most famous witch hunts in the United States are the Salem witch trials of 1692. However, a historical analysis can trace witch hunts throughout history. Particularly, the fear of witches in the United States can be traced to medieval Roman and Greek Catholic fear of demons and witches. History documents massive witch hunts by the dominant Catholic Church and its rejection of Greek and Roman religions as paganism, heresy, and demon worship.

The dominance of male leaders in the Catholic Church in the 12th century changed the status of

women in religion and society overall. Many of these so-called pagan religions honored and worshipped women and used plants in their spiritual rituals. Women who were influential among pagans suffered torture, mass burnings, and executions. While those accused of heresy and witchcraft were both male and female, more than 80 percent of people executed for witchcraft in Europe were poor rural women. Additionally, these women tended to be midwives, healers, unruly, and political dissenters. Historians have found that millions were executed.

The fear of witches was brought to the American colonies. However, as historians have explained, many of these witch hunts were the product of land greed. For example, it was found that many of the women accused in the Salem witch trials were accused by neighbors who coveted their lands. Many of the accused were female, single or widowed, land or business owners. In Salem, being accused was often followed by shoddy trials that allowed spectral evidence seen only by the accusers. Most of the accusers were young girls of the power- and land-hungry Putnam family. Additionally, many of the accused were midwives who were accused of witchcraft because of their healing powers. In all, 19 people were hanged (14 women) for the crime of witchcraft in Salem, Massachusetts, and many people died in prison. When the mass hysteria ended, more than 100 people were still being held in prison. The Salem witch trials lasted approximately six months and were only stopped when Governor Sir William Phips's wife was accused. It was at this point that the governor claimed the situation to be a farce and pardoned those people who were still incarcerated. The actual number of accused witches in colonial America is disputed; however, it is claimed that between 1620 and 1725, there were 344 accused witches in New England, and that 267 of the accused were women.

Women's Alcohol Consumption as Criminal

In Europe, Britain's gin craze (1720s to 1740s) helped to define female and poor people's alcohol and drug use as problematic to the integrity of a growing urbanized society. Gin, but not beer, was blamed for immorality, crime, and fertility and maternal problems. The Gin Act of 1751 identified

the young, illiterate, uneducated, poor, and female dreads of society as less moral and more dangerous to society, especially when consuming gin. Within the United States, Victorian ideologies were more commonly adopted by white, middle-class families and were not readily identified among nonwhite, working-class, and immigrant women. However, Victorian ideologies held powerful influence with U.S. legal policies and liquor license practices. Regardless, as researchers have uncovered, the morality of poor, immigrant, and racial and ethnic minority women was defined as more questionable than was the morality of white, wealthy women. This resulted in disparate treatment within the justice system.

Unlike the witch craze in colonial America, the colonists did not demonize alcohol consumption among women. The focus on female alcohol consumption was criminalized by Prohibitionists (most being women) during the Victorian era (1837–1901). During the Victorian era and with the onset of capitalism, ideologies of womanhood changed drastically. The idea that women belonged in the home, that they were pure, delicate, and possessed a higher morality, became identified as the cult of domesticity. However, the Christian doctrine still had dominance in holding women responsible for the sins of Eve. Thus, women were simultaneously more moral than men and had a greater potential for corruption. As a result, it was believed that women who indulged in alcohol created dysfunctional families, became sexually promiscuous, were possibly prostitutes, and were easily corrupted in other manners. In effect, they were “fallen women.” Victorian era progressives criminalized women who did not successfully play the role of the good woman in society (i.e., drunkards, unmarried women, landowners, poor women, promiscuous women, immigrants, and racial and ethnic minorities). Legal proscriptions for women's use of alcohol and drugs sought to minimize the sins of women.

During the Progressive Era (1890s–1920s), temperance reflected protection of women from the harms of alcohol. Temperance advocates and feminists sought to protect women from drunken husbands, while Progressives sought to protect women from society, but also from themselves. The Progressives influenced the passing of many access-limiting laws. Starting in the 1860s, many

state laws precluded women from working in establishments that served alcohol. By 1949, 10 states prohibited this activity. The 1890s, however, witnessed the most criminalized activity. Starting at this time, it became criminal to sell alcohol to women for the purpose of drinking in public places. These laws also criminalized women who bought alcohol for these purposes. Later, laws were expanded to include selling and buying anywhere for consumption, even in the home.

Much of the language of the law focused on the sexual promiscuity and the harm to the family that intoxicated women caused. However, married women could not be criminally prosecuted since, until the 1920s, women were legal extensions of their husbands. As a result, husbands were legally responsible for their wives' crimes, unless they could prove that they did not coerce their wives' actions or that they attempted to restrain their wives. It was not until the 1970s that the states moved to actively remove these laws from their criminal codes.

Following the Progressive Era and the repeal of Prohibition, drunkenness in the 1930s was still one of the three crimes that women were most likely to be arrested for (13 percent each for drunkenness, prostitution, and larceny). Drunkenness accounted for 19 percent of all male arrests during this same time. In fact, arrests for drunkenness were much more common than were arrests for liquor law violations and driving while intoxicated. The 1950s represented a very conservative time within U.S. history, with a focus on family values and fear of communism. Between 1952 and 1957, 35.7 percent of all female arrests were for the crime of drunkenness (49 percent for males); however, by the mid-1960s, 7 percent of female arrests were for drunkenness, compared to 40 percent for males.

Public concern for drunkenness decreased by the 1980s. Today, of all drug and alcohol arrests, drunkenness represents the smallest number of arrests; however, by 2000, females were twice as likely to be arrested for drunkenness as were males (12 percent and 6 percent, respectively). Currently, there is an upswing of police focus on female alcohol-related crimes. Male arrests for drunkenness, driving while intoxicated, and liquor law violations between 2000 and 2009 have substantially decreased (minus 9 percent,

minus 11 percent, and minus 22 percent, respectively), while female arrests for this time period have substantially increased (plus 18 percent, plus 32 percent, and plus 2 percent, respectively).

Wars on Drugs

The U.S. war on drugs may be examined from different angles. Colonial America did not place as great a focus on drugs as it did on alcohol. However, in the hunt for witches and in the medical field's pursuit to dominate even household health-care, women's use of drugs for midwifery and healing purposes was often defined as witchcraft at worst, or as dangerous and untrained at best. Even so, until midwifery and community healers were all but eliminated, drug manufacturers often appealed to female colonists to purchase their drugs, as most rural communities did not employ full-time doctors.

The use of narcotics was also not uncommon among colonial- and Victorian-era women. A common drug used within society was opium. It was not uncommon for women to frequent opium dens and to engage in public drug use. Opium was one of the most common drugs prescribed by doctors, usually for illnesses considered to be women's ailments. Cocaine and marijuana were also commonly used for medicinal purposes. By the late 1800s, cocaine began to be used for recreational purposes. In each of these instances, white, wealthy women (and men) were more likely to use these drugs because they could afford them. Historians describe that many narcotics users were not considered to be addicts and dysfunctional within society.

The idea of addiction was not applied to drug use until the mid-1800s and was first defined as a social problem in the late 1800s. Along with temperance activists, "anti-opiumists" emerged in the mid-1800s with claims of the destructions of opium to the moral fabric of society. Initial focus concerned the criminal and immoral nature of the Chinese as opium smokers. The Opium War (1840–42) in Europe extended to practices and policies within the United States and resulted in government regulation of opium trade, production, and smoking. However, drug manufacturing (including opium, cocaine, and marijuana) for medicinal purposes by Western countries was not a focus. Hence, there was an accepted and

even increased use of narcotics within tonics, potions, and pills, especially among the female members of society. Many claim that the Victorian ideology of temperance pushed women to secretly use opium, while men were able to engage in public drinking.

By the early 1900s, the fears of the dangers of women's independence were brought to focus again. The ideology of the day was that drugs were the cause of sexual deviance in women who frequented dance halls and speakeasies, worked as actresses and chorus girls, and dressed in unacceptable attire. Further, society feared the mixing of the races and of white female drug users being seduced by black men. By 1937, the criminalization of marijuana overnight drastically increased the number of female (and male) criminals in the country. In the 1930s, 3 percent of female arrests were for narcotics, while only 0.7 percent of male arrests were for narcotics. Today, marijuana continues to make up the majority of drug arrests in the United States.

The 1950s did not experience as strong a concern with drugs as it did with alcohol; however, the 1960s backlash to the youth counterculture's wide use of drugs resulted in another wave of drug arrests. By the 1970s, 7 percent of all female arrests were for narcotics, while 8 percent of all male arrests were for narcotics. In 1979, one in 10 women were sent to prison for a drug offense. By the late 1990s, this figure was one in three women. Although males are far more likely to be arrested for drug offenses and are far more likely to self-report a greater use of drugs, society's demonization of female drug offenders resulted in an increase in female drug arrests between 2000 and 2009 that was three times higher than the increase in male drug arrests. Records also show that women are more likely to be arrested for possession of drugs, while men are more likely to be arrested for the illegally selling drugs.

Gender-Specific Crimes

Males are more likely to engage in alcohol and drug crimes, violent crimes, and serious and minor property crimes (except embezzlement in the 2000s). Females, on the other hand, are more likely to engage in and be arrested and convicted for prostitution and running away. These are

known as gender-specific crimes. Historically, society's focus has been on the sexual behaviors of females and the evils of sexual promiscuity. Prostitution increased during the Civil War and reformers focused on eliminating it completely. In 1870 St. Louis, Missouri, passed a law known as the Social Evil Ordinance, which required the Board of Health to regulate prostitution. This law was similar to England's 1860s Contagious Diseases Act. Common beliefs held that prostitutes were evil women with venereal diseases and that good men such as soldiers needed to be protected. However, moral reformers defeated this regulatory approach in both the United States and England.

Between the 1890s and the early 1900s many states passed laws, later declared unconstitutional or highly problematic, that attempted to regulate, limit, or confine prostitution. However, the strongest concern for prostitution occurred between 1910 and 1914. While much of the earlier concern focused on contagious diseases and overall health, this period focused on what was claimed to be the moral debauchery of prostitution. The result is the continued focus on female prostitutes and not on their male clients. As a gender-specific crime, women dominate this field of illegal sex work and arrests and prosecutions reflect this. Arrest rates steadily remain well over 50 female arrests per 100,000 persons and well under 50 male arrests per 100,000 persons. The debate with prostitution in the United States today is whether prostitutes are victims or criminals. From colonial times through present times, prostitutes have predominantly been females with little economic means for survival. From stranded indentured servants to today's teenage runaways and human traffic victims, prostitutes have often found themselves turning to sex work as a means of obtaining food, clothes, and shelter, not as a means to obtain drugs or sexual gratification.

On the other end of gender-specific crimes are violent crimes. Criminological research has focused on the violent crimes of men because they are the most frequent offenders. Male arrest rates for homicide are eight times higher than female arrests. Felony assault arrests are 13 times higher for males. Gender ideologies tend to identify males as the predators of society. As a

result, unless the female was considered to be a “fallen woman,” or she was uneducated, poor, a racial/ethnic minority, or an immigrant, she was given the benefit of the doubt. Lizzie Borden was accused and tried, though found not guilty, for violently killing her parents with an axe in 1893. Because Borden was a wealthy white woman in the Victorian era, this was a shocking affair. There was even a children’s rhyme written for the crime. Aileen Wuornos was a female serial killer tried and executed in the early 2000s for shooting male clients she picked up as a prostitute on the Florida highways. These women were accused of very violent murders. However, historically, women have been identified as quiet killers whose choice of weapon is poison.

Since the time of midwifery, women have had easy access to poisons and medicines. As a result, we have seen many cases in which women have killed the individuals placed in their care with poison. Referring to them as “angels of death,” history has documented many cases of female nurses, caretakers, and midwives who have killed for money or out of a distorted sense of mercy. Amy Archer-Gilligan, known as Sister Amy, was found guilty of smothering or poisoning six of her patients and one husband while operating an elderly care facility between 1911 and 1916. In the 1930s, Anna Marie Hahn was executed for the poisoning murders of three elderly benefactors. The 1980s case of Genene Jones revealed that she murdered several babies while working as a nurse at a hospital. In 1996, Kristen Gilbert was convicted of four murders and two attempted murders while nursing patients at a

veterans’ hospital. In 2002, nurse Vickie Dawn Jackson was convicted of four murders.

The second most commonly identified female serial killing is referred to as the “black widow.” This is the female who, like the black widow spider, kills her husband after using him for his money and possessions. Famous black widows in the United States include Belle Sorrenson Gunness (1908), Nanny Doss (1965), Janie Gibbs (1967), Betty Lou Beets (1985), Blanche Moore (1990), Elfriede “Sugar” Blauensteiner (1996), Judi Buenoano (1998), and, most recently, Betty Neumar and Helen Golay (2008), and Olga Rutterschmidt (2008). There is no shortage of violent female criminals. However, as statistics show, violence is much more commonly committed by males.

A common misperception is that fraud and embezzlement (minor property crimes) are female gender-specific crimes. Society has linked this to the fact that females experience higher rates of arrests for these crimes than for most other crimes (except for prostitution and running away). Their arrests represent between 30 and 40 percent. Considering the trends of arrests, female arrests for larceny have increased substantially every decade. Between 1965 and 2000, female arrests for larceny doubled from a rate of 100 female arrests per 100,000 persons to 292 female arrests per 100,000 persons. On the other hand, male arrests increased slightly less from 321 male arrests per 100,000 persons in 1965 to 583 male arrests per 100,000 persons. While the increase in arrests over time is greater for females, males still commit twice as many larceny-theft crimes. Similarly, in 1965, male arrests for embezzlement represented 15 arrests per 100,000 persons, while female arrests represented three arrests per 100,000. By 2009, female arrests for embezzlement surpassed male arrests by 42 arrests.

Women’s criminal activities have predominantly reflected society’s concern with their sexual activity and morality. While there are violent female offenders, female arrests for homicide have steadily decreased. Currently, there is not a gender convergence (a decrease in the gap between male and female offending) in the most serious violent crimes. There is, however, a small gender convergence of minor property crimes. This is significant knowledge because throughout



Lizzie Borden, left, was accused of violently killing her parents with an axe in 1893. Amy Archer-Gilligan, right, known as Sister Amy, was found guilty of killing seven people in her care.

history, many of the poor turn to these crimes, and to prostitution, out of economic necessity. However, women have continued to suffer greater economic strain than men, yet have not turned to crime as frequently. Many argue that tighter social controls on women have worked to keep them in line.

With the changing ideologies and women's increasing independence, this is predicted to change. A vigilant watch should reveal the answers to this debate.

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See Also: 1921 to 1940 Primary Documents; Borden, Lizzie; Drug Abuse and Addiction, History of; Embezzlement; Gender and Criminal Law; Larceny; Prostitution, Contemporary; Race, Class, and Criminal Law; Racism; Salem Witch Trials; Violent Crimes; Wuornos, Aileen.

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Women Criminals, Sociology of

Examining theories of why women commit crimes in the United States reveals some remarkable changes over time, although some schools of thought have been perpetuated throughout the centuries. As research has revealed more about why women commit crimes, theories have progressed from the supernatural and biological realm to consider gender roles and socioeconomics.

The genesis of thought about women criminals in the United States has its roots in European history. In classical Greece and Rome and medieval Europe, when a primary function of women was to produce heirs, adulterous women could be executed, as their adultery threatened the legitimacy of the heirs. In 17th-century England, unmarried mothers were imprisoned, and by the end of the century, mothers of several illegitimate children and homeless women were being sent to the American colonies. It was not an option for married women to leave a husband who was violent or who did not provide for the family. Women who begged and stole for sustenance were imprisoned. Therefore, punishment was a form of social control, and women criminals were largely seen as "fallen women" and shunned.

Colonial Theories

In colonial times, although many women criminals were shipped to the colonies, others were arrested for crimes of vagrancy, morals, or theft. Starting in the 17th century in Europe, women were thought be dangerous sources of temptation and depravity. During these times of strict moral codes, criminal women were seen as more dangerous than criminal men, as they threatened the natural order and authority. The witch hunts occurring in Europe spilled over into New England during this time period.

In Salem, the conservative Puritan community, dominated by Calvinist ideas, forbade celebrating holidays, dancing, music, and other forms of paganism. Tension existed between the town of Salem and the village of Salem over property and churches, and there were serious family rivalries, all of which created a ripe atmosphere for violence. In this context of strife, the people of Salem

banded together to punish deviant women—witches—whose nonconformist, seemingly odd, or independent behaviors deviated from the strict moral codes of the time. Women at this time were not seen as frail and were punished in the same way as men. They were arrested, subjected to corporal punishment, incarcerated, or executed. Such practices ended by the early 1700s.

Emile Durkheim, a French sociologist who wrote during the late 19th century and early 20th century, posed theories that have been used to elucidate the history of beliefs about women criminals. Durkheim saw religion as a source of shared moral values and solidarity, a force that binds people together with a common conscience. Violations of these norms or shared values pose a threat to society and usually lead to punishment. This idea echoes the beliefs about societies' reactions to women criminals starting from the early Greeks and Romans, who executed women for adultery, through the genesis of the "fallen woman" and beyond. It is very clearly seen in the Salem witch hunts, during which time women were punished for straying from the strict Puritan moral codes. Durkheim also posited the idea of anomie, which refers to the lack of sufficient normative regulation during times of rapid social change. The solidarity that usually holds society together is challenged by the rapid pace of change, and people become estranged from the groups and norms that hold society together. The United States has been characterized by such rapid growth and constant changes. The 19th century, especially the period leading up to and following the Civil War, saw a great growth in technology, including the advent of the steamship and the railroad, and could be characterized as such a time in history.

Nineteenth-Century Theories

During the 1800s, until the Civil War, women continued to be arrested for moral crimes and for theft, and by the middle of the century, they were more likely to be incarcerated. This coincided with a shift in the thinking about women and femininity during the Victorian era, in which women were seen as more fragile than men. The growing rate of incarceration between 1815 and 1860 can be also linked to such changes as urbanization and the rise in urban police forces

and moral reformers. Both men and women were increasingly arrested for drunkenness and vagrancy. However, since stricter moral codes existed for women, they were more likely to be convicted of such crimes.

There were fewer jobs for women, and the wages for women were lower, so many women resorted to prostitution to support themselves and their families. During times of war, the problems increased, as women often had few, if any, options while their husbands were away. After the first offense, women were often seen as outcasts and entered a life of chronic criminality. Although men would consort with such women



The majority of women criminals are also trauma survivors, reporting higher rates of substance abuse, having been abused as children, and psychiatric diagnoses.

prostitutes, men would openly not associate with or hire “fallen women,” or even one suspected of questionable behavior, thus leaving women stigmatized and unable to support themselves by legal means. Once so labeled and incarcerated, women were taught to be “more feminine” and perform female duties such as cooking and cleaning. However, once released from prison and back in society, they continued to be ostracized and had limited options for taking care of themselves. During this period, single women and racial minorities were overrepresented among women criminals.

Prostitution, one of the most prevalent crimes committed by women, rose at the end of the 1800s. Women who became prostitutes were largely in their late teens and 20s. They were often illiterate, disgraced, homeless, and saw few other options. Many immigrant women, who came to the New World hoping for a better life, were forced into prostitution by the lack of opportunities they found upon arrival. Urbanization and the economic prosperity that accompanied the industrial age increased the demand for prostitutes. The irony of prostitution, then and now, is that despite societies’ moral objections, prostitutes were in demand by successful men, who, conscious of their reputations, would not interact with such women in other settings.

Starting in 1853, William Sanger conducted one of the earliest sociological studies on prostitution in New York City. Sanger had police interview 2,000 women incarcerated in a hospital for those with venereal disease. The result was his book *The History of Prostitution*, a large statistical study that surprised many with its findings. The median age of the women interviewed was 15, and most women were immigrants who were unskilled. However, about half of the women came from families of elite or of skilled workers. Although most had been deserted by men, or were single mothers or widows, about a quarter of the women reported that they were attracted to the easy money. Other causes cited were drinking, bad company, and being seduced on immigrant ships. That some women cited that it was a choice to make easy money surprised reformers. However, at this time, there were not many job options for women that paid well. Sanger estimated that the average life expectancy of prostitutes was four

years after starting to work, and that one-half of prostitutes had a sexually transmitted disease.

Early theories of women’s crime also focused on biological causes. Cesare Lombroso and William Ferrero published *The Female Offender* in 1895, which put forth the idea of the “born criminal.” Lombroso and Ferrero posited that criminality is a biologically determined masculine trait. Therefore, women who were criminals must be less evolved, prone to deviant behavior, and therefore incapable of being reformed. Lombroso and Ferrero theorized that, because of their biologically defective nature, female criminals were a lot more evil than male criminals. They even ascribed certain primitive physical features to them, including skull abnormalities, darker features, more hair, and shorter stature. They dismissed any ideas that society played any part in the criminality of women. These theories helped to further marginalize women who had been convicted of crimes and were reminiscent of the “whore/Madonna” duality of the times: Good women are submissive and know their place, and bad women step out of the prescribed boundaries and must be evil.

By the end of the 19th century, reformers who focused on women criminals had rejected such theories and began to look at other correlates such as poverty and lack of education. They espoused the idea of preventive training and training in prisons that prepared women to be self-reliant upon release, but prisons still focused on discipline, and women who had committed any crimes were still shunned upon release or given such low-paying jobs that they were unable to support themselves. Although female reformers had moved past such prejudicial notions of biological predetermination, society as a whole had not.

Twentieth-Century Theories

Well into the 20th century, theorists perpetuated biological and sexist theories of female criminality. W. I. Thomas, in his works *Sex and Society* (1907) and *The Unadjusted Girl* (1923), acknowledged that society did play a role in women’s criminality, but he did not acknowledge that society played a role in lack of opportunities for women. Thomas’s theories featured psychological needs to give and receive love, which led to promiscuity. Judge Marcus Kavanaugh, author

of *The Criminal and His Allies* (1928), stated that women criminals were more evil than men, and that all male criminals were influenced by at least one criminal woman. In general, his views on women were very biased. Among other beliefs he held during his career, Kavanaugh held that women's having the right to vote had damaged the natural order by compromising gender roles.

In 1951, Otto Pollak wrote *The Criminality of Women*. In his book, he theorized that women were as prone to crime as men, but that they were better at hiding their crimes because they are more cunning. Therefore, his theory encompassed both biological and sociological underpinnings of women and crime. Pollak believed that women were naturally deceitful, as evidenced by their ability to hide both their menstruation and orgasms. He did not believe that societal constraints and gender roles dictated that women play a passive role in sex. Pollak also believed that women used their innate cunning to obtain leniency in the criminal justice system. According to his theories, women committed as many crimes as men but the statistics were flawed because of this leniency.

Research in the 20th century has spawned other theories as to why women commit crime. Women reformers began exploring the causes of female criminality. They rejected the Social Darwinism of Lombroso and others and began to look at sociological factors, focusing on environmental sources of crime. Their research, which was conducted in women's prisons, led to a shift away from the notion of "fallen woman," although that notion is still invoked by some even in modern times. Their research revealed that such environmental factors as lack of education, poverty, and limited job opportunities for women were reasons that women committed crimes. They advocated less incarceration and more preventive services, which would give women the resources to support themselves by legal means.

Although Social Darwinist theories of women's criminality are still in existence, other theories have emerged, some similar to the ideas of the reformers of the early 20th century. As rates of crime by women have increased over the past few decades, researchers have developed new theories. Freda Adler's masculinity thesis equates criminality with being "masculinized." This theory posits that as women have taken on roles

traditionally limited to men, they have also adopted such male behaviors as aggression. It has its root in the early concept of the "fallen woman" in which women were punished for stepping outside traditional roles.

The opportunity thesis holds that as the employment patterns of men and women become similar, their patterns of criminality become similar because they have the same access to opportunities to commit crimes. Opponents of this theory point out that women's opportunities and socialization are still very different, and that the crime statistics do not uphold this theory. The marginalization thesis asserts the opposite of the opportunity thesis, that women commit crimes because of their lack of opportunities. It posits that jobs available to women often do not significantly improve their economic situation, so crime is necessary to improve their economic situation. Critics of this theory state that if this was true, crime would decrease as women's access to jobs increased, but this has not been the case. The chivalry thesis suggests that the women's movement bears some responsibility for the increase in women being convicted for crimes. It asserts that in the past, women received leniency for crimes. However, once they began campaigning for equal rights, the courts began to treat them as equals to men in terms of sentencing.

Feminist pathways theory posits that the pathways for women into the criminal justice system are different than those for men. Women offenders are much more likely to follow a path into criminal behavior that begins with childhood victimization, followed by mental health problems and substance abuse. Research indicates that women prisoners are more likely to have diagnosed mental health problems, report higher rates of childhood sexual abuse, and have higher rates of substance abuse problems than either incarcerated men or nonincarcerated women. Childhood stress created by adverse events is linked to psychological disorders such as substance abuse, depression, suicide attempts, and significant health problems. Childhood trauma is also linked to a higher probability of smoking, unintended pregnancies, sexually transmitted diseases, intimate partner violence, fetal death, and poor life quality related to health conditions. Further, these studies show that as the number of events increase, so does the risk for

these adverse outcomes and behaviors, including committing crimes.

Pathways models have become richer in their complexity over time. For instance, Beth Richie described six pathways that lead battered African American women into illegal activities. She also stresses the interaction between illegal activities and such contextual factors as personal history, cultural values, and economic circumstances. She posits six paths that combine in different ways and includes such variables such as poverty, drug use, sex work, battering, sexual abuse, and murder for survival. Each specifically defines a unique pathway into illegal activity for differing groups of African American women who have been battered. Current feminist psychological theory urges researchers and clinicians to look at multiple social contexts for women's mental and physical health issues. These ideas support the pathways models, which see these undesirable contexts (poverty, violence, lack of education) as leading to crime.

Corrections and Women

The treatment of women in prison has mirrored the thinking of the times. Prior to the beginning of the 19th century, corporal and capital punishment were the primary forms of crime deterrents in the United States. However, in the early 1800s, changes in economic and social institutions prompted the increasing use of prisons as means of punishing and reforming the characters of criminals. Differing ideas of reform included discipline, isolation, and religious study aimed at converting criminals into penitent citizens. Some institutions focused on turning inmates into productive citizens. However, the activities were gender stereotyped. The men were taught to be laborers who contribute to the growing economy. Women, however, were taught to be "better women."

Dealing with women presented unique problems. There was no room for women to be isolated, and they could not take part in the training that men received. Women criminals were thought to be more depraved than men as they had defied their feminine nature and were seen as a threat to societal order. This disdain led to the idea that they were beyond salvation, so they were largely ignored. However, they were subject to sexual abuse in the

penitentiaries. Consequently, 19th-century prisons did little, by design, to reform women.

In 1815, Elizabeth Fry began a prison reform movement in England that spread to the United States by the 1820s. Starting with Quakers in Philadelphia, the reform movement grew throughout the country, working for the spiritual redemption of fallen women. By the 1890s, as more prisons for women came into being (the first women's prison opened in 1873), the voluntary reform movement had become a vocation, and women reformers became politically active. Such early feminists as Susan B. Anthony helped refocus attention on the economic plight of women criminals, away from the idea of the "fallen woman."

Early women's prisons—"feminine prisons"—focused on reformation rather than punishment. Their retraining included domesticity, prayer, and education, and some tried to provide job training that was appropriate for women, including domestic servitude. However, women were not seen as fit for labor. In Massachusetts, women became part of an indentured servant program, working for pay upon release from prison in homes under the supervision of housewives.

By the turn of the century, reformers began questioning the mainstream ideas about the causes of female criminality and supported research on the economic causes of crime. Most notably, Frances Kellor's research became the foundation of theory on the economic factors, discrediting theories on biological determinism. Feminists argued that finding occupations for women would help keep women from such crimes as prostitution, while opposing forces still claimed that putting women in men's occupations would lead to more crime. Research during that time showed that most women in prison were from poor families, had little education, and needed to work to support themselves, often in low-paying and tedious jobs.

By the 1920s, the economic and social theories of women's crime became generally accepted. This prompted new entities, including preventive services and probation for women. However, at the same time, changes were made inside the prisons. Increased focus was placed on education and vocational training (including clerical work), recreational training, and outdoor work in gardens on the prison grounds. The prison took on more

of a campus format, with cottages replacing dormitories. Unfortunately, this system did not adequately prepare women to be self-sufficient. Prisons became overcrowded and were ill equipped to handle issues of physical and mental health, and they still were built around gender stereotypes.

By the 1920s, treatment of women in prison began to change, and in 1927, the first federal prison for women opened. The “softer” practice of the “feminine” prisons was replaced with an increased emphasis on social control. Strict enforcement of prostitution laws led to imprisonment of more prostitutes, who were seen as bad for social order. Prison started to develop into the prisons of the modern era.

Crime patterns in the 20th and 21st centuries are remarkably consistent with historical patterns. Crime rates for women have continued to rise, as have incarceration rates. Women have continued to be arrested for property offenses such as larceny, fraud, prostitution, and assault against their children or spouse. There has been an increase in substance-related and violent crimes committed by women over the past few decades.

Contemporary Theories

Today, although more modern theories have moved away from labeling women who commit crimes as innately deviant and much more is understood about why women commit crimes, women criminals are still largely shunned. Those in prison, locked away from our society, are unnoticed by the majority of the people in the United States. Behind bars, they are not in control of their lives. Every hour is scheduled for them, and access to important aspects of life such as food, exercise, contact with family, medical and psychological care, reading materials, and personal belongings are regulated. Although there have been advances in programming for women, there is still much room for improvement. Among female inmates, minorities are overrepresented. Research suggests that 40 percent or more are single mothers who are separated from their children upon incarceration. Women in prison often do not have a high school diploma and are from lower socioeconomic groups. Once in prison, there are not enough places in needed educational or treatment programs for all who need them, and the

vocational programming tends to be gender-stereotyped (food services, clerical), and therefore, women are not much better prepared to support their families than when they entered prison.

The majority of women in prison are also trauma survivors and victims of violent crimes who come from economically deprived, oppressive backgrounds. They report higher rates of substance abuse, abuse as children, and psychiatric diagnoses than incarcerated men or nonincarcerated women. Women in prison are likely to have experienced one or more types of trauma as a child or as an adult (or both), and research has shown rates as high as 80 percent for women having experienced at least one type of sexual or physical abuse.

Incarcerated women who have been diagnosed with mental health problems are likely to fight and have rules violations in prison, and are more likely to have committed violent crimes than those incarcerated women who do not have mental health problems. They are also less likely to have been employed before incarceration or to have lived with both parents, and they report higher rates of abuse, homelessness, having parents with substance abuse problems, having family members in prison, living in foster care or other agencies, and receiving public aid.

Women in prison suffer the same health issues as other women but with a higher frequency and greater severity. Incarcerated women have chronic health conditions, sexual and reproductive health issues, and health issues related to substance abuse and mental health issues. Some research suggests that the overrepresentation of minorities and women of lower socioeconomic status who have less access to healthcare or are less likely to access it contributes to this issue. During incarceration, women cannot easily access healthcare, and services in prisons are limited. Overall, incarcerated women are less healthy than men (incarcerated and nonincarcerated) and nonincarcerated women. They experience high rates of infectious diseases, respiratory conditions, digestive conditions, headaches, ear infections, musculoskeletal diseases, skin diseases, and genitourinary disorders. Substance abuse and sex work also leads to sexually transmitted diseases, including human immunodeficiency virus (HIV).

Conclusion

Theories about why women commit crimes have changed over the centuries, and research has led to a much greater understanding of women's criminality. The crimes that women commit and the treatment that they receive have been somewhat consistent for more than a century. Women's crimes continue to be economic in nature, fueled by lack of education and opportunities. Modern research has also revealed that women's crime follows a pathway that starts with violence and abuse and leads to prison. The needs of women today echo those of the early reformers, who called for better job opportunities for women and more preventive services.

Prisons continue to be overcrowded and gender stereotyped and do not adequately prepare women to be self-sufficient upon release. Prison programming has benefited from the research of those who have helped develop assessment and programming that are uniquely suited to women's needs. However, overall, much change is still needed.

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See Also: 1921 to 1940 Primary Documents; Gender and Criminal Law; Women Criminals, Contemporary; Women Criminals, History of; Women in Prison.

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Women in Prison

Women have always been considered an afterthought in prisons. When women have been taken into account, it has been in gendered ways where race and class have been structurally interwoven to shape women's prisons and their experiences in prison. Women have always been a small part of the prison system, averaging between 4 and 8.7 percent. However, in the 20th and 21st centuries, their rate of increase has outpaced men since the tremendous growth of incarceration beginning in the 1970s. New draconian drug laws intensified along with net-widening (the redefinition of certain behaviors as crimes (e.g., pushing a child in a fight) along with traditional crimes for which women always have been imprisoned (e.g., bad checks, petty larceny, prostitution). Race and class are equally as important as gender in understanding women's incarceration. In the 19th and early 20th centuries, poor white women were incarcerated in reformatories for their sexual activity, while poor black women post-slavery were imprisoned just like men in prisons for punishment, not reformation. With the jump in women's incarceration in the 1970s and 1980s, however, it has been poor women of color (black, Latina, and Native American) who are overrepresented in prisons today, with a very recent small drop due to new drugs (like methamphetamines) that have slightly increased white women's (and men's) incarceration.

History

In the United States, prisons as we know them have been in existence for the past 200 years. From the early 1800s, women were incarcerated in attics of the very buildings where men were being held and thus subject to the most egregious neglect and abuse by men—as well as by other women. Women defined as criminals were seen as impure, abnormal, a threat to the social order, and worse than incarcerated men. During the 19th century, white middle-class women reformers argued for separate state facilities for women prisoners; so by 1920, at least 20 states had developed female-only reformatories with the objective not to punish women so much as to focus on more feminine education and spiritual guidance that could rehabilitate them. Today, each state in the United States has

at least one prison for women; the states with the largest prison populations (e.g., California, New York, and Texas) have considerably more.

Both masculine environments (wings of male prisons where black women were still incarcerated) and feminine reformatories (rural single-sex facilities with dormitories and no external walls where poor and working class white women were kept) existed up until the 1950s. Poor white women in the early reformatories of the late 1800s and early 1900s were being trained to work in newly emerging middle-class reformers' homes as domestic workers. They were being trained to be "ladies"—because so many of them were incarcerated for nonmarital sexual activity, which was not necessarily against the law but was against the newly emerging middle class norms for women. By the 1990s, when women were increasingly incarcerated due to "tough on crime laws" and nonviolent drug offenses, many women's prisons underwent remodeling that reflected the security and punishment of male facilities. Black and Latina women were increasingly being incarcerated in these more "masculine" facilities. Moreover, during the 20th century, some of the prison training programs for women shifted from domestic labor to more nontraditional industrial and skilled jobs, though most remained sex stereotyped even in industrial and skilled training. Today, while there may be a greater variety of programs in some women's prisons, they are often fewer in number and of much poorer quality than in men's prisons.

Contemporary Picture

In 1980, there were fewer than 12,500 women in state and federal prisons. Today, over 200,000 women are in prison, with an additional 100,000 in jail. Add to that the over 800,000 women on probation and parole. Combining these figures yields a shocking result: Today, more than one million women are under the control of the criminal justice system.

The reality of this growth, however, is that there is a differential impact by race as to which groups of women end up in prison. African American women are two times more likely (142 per 100,000 African American women) than Latinas (74/100,000 Latinas) and three times more likely than white women (50/100,000 white women)



Incarceration of immigrants after 9/11 has grown significantly. Most have not committed a crime but have violated civil codes and are awaiting decisions regarding deportation.

to be incarcerated. Women in prison are among the most oppressed and vulnerable populations in the United States. They are typically young, poor, head of household, with limited education, mothers of young children, not infrequently homeless, have serious long-term substance abuse problems, are in poor physical and mental health, and are the victims of childhood physical and sexual abuse with continued abuse in adult life. While far too many men in prison have also been abused in their youth, this abuse generally does not continue into adulthood.

Most women are taken into custody today for the same kinds of crimes for which women have always been arrested: nonviolent larceny-theft, forgery, fraud, and prostitution—with the critical addition since the 1980s of drug possession and sales. Only a minuscule percent of women are arrested for violent crime (and less than 0.1

percent of men as well); and while more than half of all men are imprisoned for violent crime, this is true for less than one-third of all women. Even when women commit violent offenses, gender and abuse play an important role.

Thus, of women convicted of murder or manslaughter, a large proportion of that small number killed husbands or boyfriends who repeatedly and violently abused them. While intimate partner homicide accounts for just 4 percent of all the murders of men by their female partners, a full one-third of all murders of women are by their husbands or male partners. Further, while murder of wives decreased 25 percent over a 30-year period recently, murder of husbands decreased three times as much (by 75 percent). Two of the most common explanations proffered are (1) increased services available for abused women and their children, and (2) women's greater ability to get a divorce and greater access to jobs and wages. Finally, women's incarceration for violent offenses tends to be of a much less serious nature than those of men (e.g., pushing or shoving) and often, too, the behaviors have only recently been defined as "offenses." For example, laws enacted to protect battered women have resulted in the victim being arrested along with the batterer because the police officers do not know whom to arrest. This is called "boot strapping" or "net widening" and brings more women into prison for lower levels of all types of crimes, and especially violent crimes.

Overall, women's incarceration for drug offenses increased between the 1970s and 2000s from one in 10 of all women prisoners to almost two in five. In the federal prison system, two out of three women are in prison for drug offenses. Moreover, it is not all women but mostly women of color (primarily black and secondarily Latina) who are incarcerated on drug charges. Women are much more likely to be given mandatory minimum sentences—and for much smaller amounts of drugs—such as crack, which until recently carried a punishment 100 times harsher than powder cocaine, a drug more typically the drug of choice among the white and upper-middle-class population. In 2010, this was changed to 18 times greater. Women, lower down in the drug hierarchy, are far less likely to have information that they can exchange for a lower sentence. Thus, a case can be made that the war on drugs has been a

war on poor black and Latina women, who now comprise about 50 percent of the women's prison population, despite the fact that they represent only 25 percent of the general female population in the United States. In some states like New York, almost nine out of 10 women in prison for drugs are black and Latina. In short, what has changed are criminal justice policies, not the criminality of women, to explain much of the increase in women's incarceration.

With the expansion of detention and incarceration of immigrants after 9/11, there has been a mushrooming of the prison industrial complex and the privatization of immigrants' imprisonment. More than 32,000 undocumented immigrants are held by the federal government, while 1.6 million undocumented immigrants are held in some stage of immigration proceedings. In 2005, immigrants were no longer released on their own recognizance, and a massive building program by private prisons to detain them commenced. Because the federal government has not built more prisons, despite its immigrant detention centers filled to capacity, this has left a huge gap for private prisons to not only build prisons using government funds but also to treat immigrants as if they were criminals. Most detained immigrants have not committed a crime. They have violated civil, not criminal codes; yet they are treated like hardened criminals. This is equally true for women and children, as well as for whole families awaiting a decision about their legal status and deportation. While the majority of immigrants are incarcerated in county jails, private companies are paid to run many of these jails.

Experiences of Women in Prison

Drugs/Trauma/Mental Health: Drug arrests have led to the largest increase of women in prison in the last four decades. Women in prison have histories of higher levels of drug/alcohol use and abuse than men in prison, are more likely to have used drugs/alcohol when they were committing a crime or at time of arrest, and commit more crimes to support their habits. Despite their greater drug problems than men, drug programs are fewer and less effective in women's than men's prisons because they all too often have not addressed the specific and interrelated gendered/raced/classed needs of women. The most common types of drug

treatment for women in prison are 12-step programs like Alcoholics Anonymous and Narcotics Anonymous, which vary greatly in structure and content, do not take into account women's point of entry in the addiction process when they enter prison, and do not have a culturally appropriate gender-specific approach to understanding incarcerated women's use and abuse of drugs/alcohol. Feminist scholars have focused on developing a gender-responsive integrated model for the treatment of addiction of women in the criminal justice system. First is the need to identify the theory of addiction being used; second is to use a theory of women's psychological development that understands how women learn, grow, and heal; and third is to understand how a theory of trauma (both sexual and physical, both childhood and adult) must be expanded to include structural racism, the experience of violence in its many forms, and the stigma, stress, and abusiveness of incarceration itself.

Gender-responsive treatment involves the creation of an environment (including staff and programs) that reflects the lives of the women and responds to their strengths and difficulties. Six aspects of such a program include (1) acknowledgement that gender makes a difference; (2) creation of an environment based on safety, respect, and dignity; (3) program development based on relationships that promote healthy connections between staff and participants, and to children, family, and community; (4) addressing substance abuse, trauma, physical and mental health issues through comprehensive, culturally relevant services and supervision; (5) providing women with opportunities to improve their socioeconomic circumstances; and (6) establishing a system of community supervision and re-entry with comprehensive, collaborative services. Most recently, the need to understand the disadvantaged socioeconomic structure and barriers to education, employment, housing, treatment, family reunification, gender/race/class-responsive resources, and other institutions of the communities to which women will return is seen as equally important as the programs themselves in prison.

Women In Prison Are Mothers: Approximately 1.7 million minor children in the United States have a parent in prison. Almost two-thirds of all

women in prison are parents of children under age 18. Black children are 7.5 times more likely, while Latina/o children are more than 2.5 times more likely than white children to have a parent in prison. Nine out of 10 male prisoners rely on the child's mother for care while they are incarcerated; only 37 percent of women rely on the child's father when they are incarcerated. Instead, most female prisoners rely on the children's maternal grandmothers and other female relatives. Between 6 and 10 percent of women in prison are pregnant on any given day. All too often, women are still shackled when they are giving birth and the babies are taken away within 24–48 hours.

Parenting programs in women's prisons range from classes on parenting to nurseries where women can live with their infants until a certain age—typically not more than one year or 18 months. Until the 1950s, nurseries in women's prisons were not uncommon. Today, there are only nine prison nurseries in operation or in planning stages in the United States. While some prisons have specialized visitation programs for mothers and children, such visitations are uncommon for a variety of reasons: prisons are too far from children's residences, inadequate finances to get them there, and mothers and/or caretakers experience shame and embarrassment if they expose children to a mother in prison.

Prisoner Reentry and Collateral Consequences

Restrictive crime policies place impossible burdens on marginalized women leaving prison and on the communities to which they return. Financial penalties—including fines, fees, costs, surcharges, forfeitures, assessments, reimbursements, and restitutions—may be imposed on many people in prison. Though little recognized, these penalties form serious impediments to women's successful reintegration into the community. In addition, the vast majority of all ex-offenders cannot vote, although some can once they have finished their parole or probation. But women convicted of felony drug offenses are subjected to a host of additional restrictions that exacerbate their already vulnerable social status.

Implications of Incarceration for Drug Offenders: Laws at both state and federal levels require public housing facilities to deny residence to

convicted felons, including drug offenders. As a result, women leaving prison with limited financial means may be forced to seek alternative forms of shelter. Yet, subsidized housing may be one of the very few options open to them. This means women may not reside with their families who live in public housing facilities, as entire families can be evicted for providing housing to ex-offenders, especially those convicted of drug offenses. Public housing facilities are disproportionately located in poor, urban communities of color; thus, women returning to these communities feel the disparate impact of public housing bans. This places women with felony drug convictions at increased risk of homelessness and other substandard housing options, including returning to an abusive partner.

The Felony Drug Provision (FDP) of the 1996 Welfare Reform Act permanently bans receipt of cash assistance and food stamps for anyone convicted of a drug felony. While states can opt out of the FDP, only eight have done so; 22 enforce the ban in full and 20 states in part. Largely due to race- and gender-based socioeconomic inequalities making them highly susceptible to poverty and thus overrepresented in the welfare system, black and Latina mothers are disproportionately disadvantaged by this lifetime welfare ban. People with felony convictions also are banned from certain employment sectors. Typically, former offenders are restricted from civil service and working as beauticians and nurses, in child care and education, and as home health-care workers, all jobs that are heavily black and female. Thus, for black women, these employment restrictions are particularly harsh given race-based employment segregation that denies them jobs based on their race and criminal history, no matter how minor.

Victim service agencies may refuse treatment and resources to women with criminal convictions. Sometimes, funding requirements forbid service provision to ex-offenders. Denial of victim services is especially problematic for women of color, as well as poor white and immigrant women, who are at greater risk of intimate partner abuse than majority-group counterparts. These policies are particularly harmful to black women who have some of the highest victimization rates for rape, intimate partner abuse, and

murder in the country. Lack of access to victim services for poor black and Latina women exacerbates the intensity of poverty, segregation, and isolation within poor black and Latina communities to which formerly incarcerated drug offenders typically return.

Implications of Incarceration for Higher Education of Women Returning to Their Home Communities: Only 5 percent of all prisoners in the United States today participate in postsecondary education, the vast majority not in college classes. Only about 15 percent of college program providers are four-year public colleges, while the remaining 85 percent of programs are provided by community colleges. Education, and even more so college education, in prison appears to be the best predictor of decreased recidivism, greater probabilities for enhanced problem-solving skills, greater opportunities for steady employment and safety on the outside, as well as safer and more manageable conditions inside prisons. However, over the last two decades—with “tough on crime” laws and the elimination of Pell grants for prisoners in the 1990s—state funding of prisons nationally grew at six times the rate of state spending on higher education.

While correctional education reduces recidivism and improves employment for ex-offenders, this is best achieved along with an integrated set of services that meet the woman’s needs once she is back home, such as drug counseling and development of work skills, and health and sobriety support and insurance for women and their children. When back in their home communities, despite women’s greater challenges due to low levels of pre-incarceration employment, high levels of abuse in their lives, and inadequate healthcare, college education for women in prison has even greater potential benefits for women when they leave prison.

In addition, there is a multiplier effect for women, since they are much more likely than fathers coming out of prison to be living with their children and acting as a role model for them. However, a prison record can act as a real barrier to obtaining and continuing much-needed college work. Being able to begin that college education in prison is a major stepping-stone for some women to continue their education once back in the community.

Colleges and universities in the community today increasingly are including criminal history background checks in admissions processes. Exclusionary policies against ex-offenders have been used, despite the reality that almost no evidence exists showing criminal histories of college applicants are relevant to increasing crime on campus. Crime on campus is more likely committed by students without criminal records, leaving campuses less safe and more racially divided, given the special requirements for former prisoners. Because far larger numbers of African Americans and other people of color are incarcerated, these policies impact people coming out of prison in racially discriminatory ways.

Because of the race, class, and gendered disadvantages for poor marginalized women of color and poor white women, an even greater hurdle occurs for these women coming out of prison and trying to make a better life for themselves and their children. Along with the barriers to higher education for women coming out of prison, research has shown that for women specifically, a criminal record has a negative impact on employment opportunities, and the barriers resulting from them lead especially African American women to being heavily targeted in their pursuit of employment.

The communities to which most marginalized women return after prison are in very poor conditions as well. Most poor women of color leaving jail and prison return to a small number of communities in inner cities with the very same structurally debilitating conditions they left upon entering prison: disenfranchised communities with limited economic, social, and political resources. Affordable housing, jobs, healthcare, child care, and educational opportunities are limited at best, and seriously limited community resources are further inhibited by the women's inadequate education and criminal records. The women face multiple, competing demands as they simultaneously try to regain custody of minor children, juggle child-care, search for housing and employment, try to enroll in educational and substance abuse treatment programs, and keep in contact with their parole officer. Many of these demands are conditions of their release.

In short, the criminal justice system is dealing with social problems at the very end of the causal

system. Prevention, both in the community and in prisons, can provide comprehensive resources for culturally competent, antiracist and feminist drug treatment, education, job training, health-care, domestic violence and sexual abuse programs, as well as transitional services back into the community for women (and men) leaving prison. Next, it is important within communities to provide economic empowerment of residents, decent affordable housing, shelter and nonshelter approaches for battered and sexually abused women, safe affordable child care, and safe neighborhoods and infrastructures that can transform poor, racially segregated neighborhoods.

In addition, it is important to focus on eliminating tough on crime policies, to decriminalize drugs, and to provide alternatives to incarceration in communities outside the prison. Further, women leaving prison will be better served by ending prohibitions on people after they have served their time, including welfare, housing, jobs, voting, child custody, and food stamps. Finally, they need training, resources, and hope, both inside and outside prison. The problems facing women in prison, and before they get there, must include an understanding of these broader structural issues in addition to the lives and experiences of individual women who get entrapped within the criminal justice system.

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See Also: Gender and Criminal Law; National Organization for Women; Women Criminals, Contemporary; Women Criminals, History of; Women Criminals, Sociology of; Wuornos, Aileen.

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Wuornos, Aileen

Dubbed by newspapers as "the nation's first lesbian serial killer," the "lesbian whose hatred of men caused her to murder again and again," and the "Damsel of Death," Aileen "Lee" Wuornos murdered and robbed seven white, middle-aged men in north and central Florida during a period of 13 months in 1989 and 1990.

At this time Wuornos, a prostitute of nearly 20 years, was a so-called exit-to-exit hooker who picked up customers along interstate highways. Prosecutors later argued that she posed as a damsel in distress and used the promise of sex to lure her victims to secluded areas. As the number of murder victims increased—and it became clear that a serial killer was responsible—police were under intense media and political pressure to find the perpetrator.

Following state and national appeals to locate the victims' cars, Wuornos was arrested in January 1991 outside a biker bar called the Last Resort in Daytona Beach. Within a matter of days, she had confessed to the murders to her former lover Tyra Moore, who was assisting the police in return for immunity from prosecution. Wuornos was tried for only one murder, that of Richard Mallory, a 51-year-old Clearwater electronic technician whose body was found near Daytona Beach. Wuornos claimed initially that

she had acted in self-defense when her customers became violent or raped her. In January 1992, a jury took just two hours to return a verdict of guilty and then to vote unanimously for the death penalty. Wuornos pled no contest to five other murders and received life sentences for each. The body of one male victim, Peter Siems, was never found, and so Wuornos was not charged with his murder.

Born in 1956, Wuornos was originally from Michigan but had moved to Florida in the mid-1970s. Information on her troubled childhood and teenage years was reported in great detail during her trial. It was also presented as mitigating evidence in her unsuccessful appeals to the state and U.S. Supreme Courts to overturn the death sentence. This included a father whom she never knew who was a convicted child molester and who later committed suicide in prison. Wuornos was a victim of child rape and sexual violence, and she had given birth to a son at age 15, but was pressured into giving him up for adoption. She also had a long history of alcohol and drug addiction, mental health problems, and previous convictions for assault and robbery.

After nearly 10 years on Florida's death row, in July 2001, Wuornos appeared in court and "volunteered" to die, or opted not to make any further appeals against her convictions or death sentence. These actions disturbed Capital Collateral and other anti-death penalty groups in Florida, but in April 2002, the Florida Supreme Court ruled unanimously that Wuornos was mentally competent to fire her attorneys, stop her appeals, and accept her death sentence.

On October 9, 2002, 46-year-old Wuornos became the first woman in Florida to be executed by lethal injection, and the tenth woman to be executed in the United States since the reinstatement of capital punishment in 1976. The *St. Petersburg Times* concluded, "The best thing that Wuornos ever did for humanity was to volunteer to leave it."

Wuornos's life history, her sexual orientation and relationship with Moore, and her abrasive personality and verbal outbursts in court, as well as contemporary fascination with the serial killer, ensured that she captivated the popular imagination. She was the subject of several books, two movies—*Overkill: The Aileen Wuornos Story* and

Monster (starring Charlize Theron, who received several awards, including an Oscar for her performance)—documentaries, and an opera.

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See Also: Executions; Florida; Serial and Mass Killers; Women Criminals, Contemporary.

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Wyoming

The least populous state in the country, Wyoming was admitted to the Union in 1890. An often iconoclastic state, it was the first to extend the right to vote to women—having done so while still a territory in 1869 and subsequently guaranteeing the right in its state constitution. Even in its territorial days, when the area was reputed for its outlaws and frequent violence, Wyoming appointed the first female court bailiff and the first female justice of the peace.

The most famous of those outlaws congregated at Hole in the Wall in northern Wyoming in the Big Horn Mountains. The Hole in the Wall gangs included Butch Cassidy's Wild Bunch (no relation to the Wild Bunch in Missouri years earlier), which operated around the turn of the century. Butch Cassidy (born Robert LeRoy Parker) had alternated between ranching work and crime since his teen years and assembled the Hole in

the Wall Gang in the 1890s after his release from prison following a sentence for stealing horses and operating a protection racket. Other members of the gang included Harvey "Kid Curry" Logan, Ben Kilpatrick, "News" Carver, Harry Tracy, the Sundance Kid, and Cassidy's best friend, Elzy Lay.

In its day, and in dime novels for a long time thereafter, the Wild Bunch was described as a nonviolent gang, with newspapers and writers parroting the gang's claim that they abstained from killing. The pacifist boast was incorrect; while victims of their robberies were rarely killed, most of the gang had killed lawmen who pursued them, and Kid Curry alone killed nine lawmen during his stint with the gang. One of the Bunch's most notorious jobs was the robbing of a Union Pacific train near Wilcox on June 2, 1889, during which they wore masks made from napkins taken from a Harvey House restaurant, a job that netted about \$50,000.

Lay was wounded and captured after a New Mexico train robbery Cassidy wasn't part of, and the Sundance Kid replaced him as Cassidy's primary partner. Teenager Henry Longabaugh had been imprisoned in 1887 for stealing a gun, horse, and saddle from a ranch in Sundance and took the name Sundance Kid while in jail. Like Cassidy, his criminal activities came between periods as a ranch hand and cowboy. Famous for his quick draw—a skill that dime-novel characters often possessed but that only a handful of real-life gunslingers ever made use of—Sundance is one of the few members of the Wild Bunch not known to have killed anyone while with the gang. Cassidy and Sundance eventually fled to Bolivia while pursued by Pinkerton agents hired by the railroad companies.

Crime, Police, and Punishment

Early Wyoming law enforcement was the province of federal marshals and county sheriffs. The county sheriffs remained an important law enforcement institution after statehood and into the present, helping to provide law enforcement services to rural areas that cannot support a large or advanced police department. The oldest city police departments in Wyoming were established during the territorial era, such as Cheyenne's, established in 1867. Police departments,

unlike earlier constables or night watchmen, were staffed by full-time employees who were not elected, a professional class that coincided with the professionalization of fire departments and other industries.

The federal government built the Wyoming Territorial Penitentiary in 1873, in Laramie. It was decommissioned at the turn of the century and is today operated as a museum. It was replaced by the first Wyoming State Penitentiary, authorized in 1888 and opened in 1901, shortly after statehood, in the city of Rawlins. The Wyoming State Penitentiary closed in 1981 and was renamed the Wyoming Frontier Prison, a tourist attraction.

The end of the 19th century was also marked by anti-Chinese violence in Wyoming, some of it stirred up by the Knights of Labor. Anti-Chinese sentiment was at least superficially concerned with economics; Chinese immigrants would work more cheaply than whites would, and companies—sometimes as a matter of policy, sometimes because of economic problems of their own—began to hire Chinese labor instead of white labor, especially as more Chinese workers became available.

The number of Chinese miners working more cheaply than unionized white miners angered the Knights of Labor—the most important labor organization of the decade—who in several states and territories incited whites to attempt to expel the Chinese from their settlements. In Wyoming, this led to the Rock Springs massacre of September 2, 1885, in which at least 28 Chinese miners were killed in a riot.

Wyoming is a capital punishment state, its current death penalty statute dating to 1977, when Supreme Court decisions had forced death penalty laws to be rewritten. Defendants in first-degree murder trials with one or more of 11 aggravating factors (e.g., the shooting of a police officer) may face death or life in prison without parole, at the discretion of the jury. Lethal injection has been the sole method of execution under the current statute, the gas chamber and hanging having preceded it.

The violent crime rate in Wyoming, 195.9 crimes per 100,000 inhabitants in 2010, is less than half that of the national average, and falling. Crime peaked in 1981, much earlier than in most of the country, at 430, and has fluctuated since; crime has generally been falling since 1992, with minor upticks every few years. The 2010 levels are the lowest since 1974.

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See Also: Chinese Americans; Executions; Oregon; Washington.

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Xenophobia

Xenophobia, the hatred or fear of strangers or foreign persons—or of anything else, for that matter, that is strange or foreign—is common around the globe. Through various time periods, people or ideas that were “foreign” have been alternately embraced and shunned. These shifts in public thought are often tied to changing political parties, international conflicts, or economic conditions. In American history, these things have contributed to outbreaks of xenophobic behavior, but the United States, as a nation full of immigrants, has also seen such activity as the reaction to waves of immigrant arrival. These periods of immigration have always heavily favored one ethnic group or another, and almost always have resulted in a public outcry against individuals from the migrating group, which was then followed by a reaction by the migrant group against the pre-existing population. Scholars have argued that the prevalence of racially and ethnically self-segregated neighborhoods can be traced to these push and pull factors.

Early American Xenophobia

In early American history, xenophobic behavior was the result of tensions between social classes rather than racial groups. The white landowners were constantly in need of a steady labor source, and in the 17th century particularly, slave labor

was not widely available in many of the colonies, or the agricultural produce was not particularly attuned to a system of mass slave labor. Throughout the colonies, indentured servants, who voluntarily signed onto a period of labor in exchange for passage to the colonies and a small stipend upon completion of the term, made up a great deal of the labor population in this earliest period. Alongside them, the British attempted to use incarcerated criminals or native slaves, but the indentured servant was by far the most productive and least disruptive labor source. However, as indentured servant contracts expired and servants began to compete with their former masters, a sort of class conflict based on vast cultural differences between the laboring and planter classes began to crop up. These tensions increased over time and sometimes resulted in armed engagements. These xenophobic attitudes are apparent in the shift away from indentured servitude and toward slave labor in the latter part of the 17th century and into the early 18th century.

The first legislation that directly referenced a control on immigration was the 1790 Naturalization Act. Although passed in the young republic with reference to gaining citizenship, the act accurately portrays the level of xenophobic thought and fear that was with the ruling class and the politicians of the time. Because of racial and class tensions that had steadily grown over the 18th

century, the 1790 act refused citizenship to any person who was not a “free white.” However, not even all groups known as “white” were particularly welcome. In the years before his death, Benjamin Franklin, who had supported the 1790 act, spoke out publicly and in print against the legalization of German immigration. He was convinced that the two cultures were simply too different—and possessed of a different “characteristic spirit” to ever get along—and proposed limitations or complete prohibition on their legal immigration. This, of course, did not happen, and today German Americans are the most populous of the European-based immigrant communities in the United States, with an estimate of some 4 million persons settled.

Irish and Chinese Immigrants

In the 19th century, young America was the premier destination for immigrants. The opportunities for personal advancement and new beginnings often coincided with challenges in Europe and Asia to lead large groups to American shores. In many cases, these immigration waves were almost immediately followed by a local backlash wherever the populations began to settle. The two most powerful xenophobic reactions against these waves of immigration focused on the Irish in the 1850s and the Chinese in the 1870s.

After a period of incredible tension and anger in Ireland, which culminated in the 1848 potato blight and resultant famine, large numbers of Irish left for America. Economic conditions at home were dire, and there was little to indicate that conditions were going to change in the near future, if at all. Because of these difficulties, along with the growth of urban centers in America, which meant more economic opportunity, large numbers of Irish immigrated to the United States throughout the 1840s and 1850s. These people normally took up very low-paying menial jobs in urbanized areas, particularly New York City and the surrounding metropolis. Although the jobs they took were low paying and not desirable, there was a considerable backlash against the Irish initially because of anti-Catholic sentiment that had fomented for some time. A political party of the time, the Know-Nothing, or American Party, focused on anti-Irish sentiment in the lead-up to the elections of 1852 and 1854. This nativist group typified the anti-

Irish xenophobia of the time by calling for a limit or prohibition on Irish immigration, most importantly from the Catholic parts of the isle. Tensions erupted between the groups in 1857 when a group of Know-Nothing Party supporters arrived in Baltimore to try to control a polling location. A group including people from several well-known area Irish gangs such as the Plug Uglies began to riot, and a detachment of U.S. Marines was summoned to put down the brawl.

The Chinese began to immigrate to the United States in small numbers well before the 19th century; however, the largest influx of immigrants came following the conclusion of the Opium Wars between the British and Chinese. The end of these trade wars also marked a period of closeness between the American and Chinese governments. The 1868 Burlingame-Seward Treaty established formal friendly relations and guaranteed China “most favored nation” status. As a result, huge numbers of Chinese immigrants began to pour into the Americas, although the majority of them began in the western United States. As with Ireland, there were far more economic opportunities in mid-19th-century America than in China. American employers, eager for inexpensive Chinese labor, sometimes sent agents to employment agencies in China to find workers. These people, who could not pay their own way, were given a “credit-ticket,” which paid their way to the United States and then repaid the ticket cost by way of garnished wages.

Initially, the Chinese immigrants were overwhelmingly males who hoped to come to America, save as much money as possible, send as much back to China as possible, and then return to China. As time went on, relatively more women and children began to immigrate. However, because of high costs of living and low wages, Chinese women often turned to prostitution to increase family income. The connection between Chinese women and prostitution was made as early as the 1860s by moralists and others who decried the Chinese as decadent and a danger to society in the United States. In 1882, the first race-specific immigration act was passed. The Chinese Exclusion Act forbade “skilled and unskilled laborers and Chinese employed in mining” from entering the United States. The act was initially supposed to last 10 years, but was renewed in 1892 and then again in 1902, when the 10-year renewal was removed and

the law was made permanent. It was only repealed in 1943 with the Magnuson Act.

Xenophobic Legislation

American xenophobia has taken a number of forms. However, the most damaging and long-lasting has been legislation aimed at restricting or eliminating immigration. The earliest example of xenophobic legislation was the 1798 Alien and Sedition Acts, which gave immigration officials the right to question entering immigrants on their backgrounds and motivations for relocating. The Page Act of 1875 was the first legislation to be enacted that specifically limited immigration. This non-group-specific act prohibited the entry of any person deemed “undesirable” into the country. In this case, “undesirable” referred to anyone coming from Asia to perform contract labor or

prostitution, or those who were considered to be criminals in their country of origin. This was followed in 1882 by the much more specific and pointed Chinese Exclusion Act, which specifically forbade Chinese from entering the United States except in rare cases.

Following the renewal of the Chinese Exclusion Act, a law passed in 1903 that was the result of a growing American fear of labor movements and anarchists who were gaining popularity and prestige in Europe at the time. Officially, this act allowed those who described themselves as or were suspected to be anarchists to be denied entry. Provisions in the act allowed the deportation of immigrants who were legally admitted and then later found to be some sort of undesirable, or those who entered illegally and were later caught. This sort of ideological xenophobia was extended in 1906 with the passage of the Naturalization Act of 1906. Further restrictions were placed upon Asian immigration in the 1917 Barred Zone Act, which heavily limited immigrants from the parts of Asia that were still allowed as of that time. The final immigration restriction act of this period came in 1921. The Emergency Quota Act of 1921 limited annual immigration to 3 percent of whatever the population was of the group in question as of the 1910 census. As many groups had not begun to move in earnest to American shores before that time, it was restrictive for some, but less restrictive for ethnic groups that had been in the country for some time, such as the Irish and Germans.

Since the 1920s, xenophobic immigration laws have loosened somewhat. Although a new wave of restrictive immigration legislation is being considered in Arizona and other states, prohibitions have dropped off and regulations all around have been lessened in severity. The Chinese Exclusion Act was finally formally repealed with the 1943 Magnuson Act, and Asian immigration as a whole was liberalized a great deal with the Immigration and Nationality Act of 1952, which abolished specific racial and ethnic restrictions while maintaining a quota system. This act broke immigrants into three groups: Those with special skills or who were relatives of U.S. citizens were admitted without question. Average immigrants fell under the quota system; and for the first time, refugees were considered “immigrants” rather than persons seeking asylum.



A young Japanese boy is “tagged for evacuation” in Salinas, California, in 1942, his family’s belongings behind him. Japanese Americans were sent to internment camps following the attacks on Pearl Harbor, a clear example of xenophobia.

Xenophobic Actions

American xenophobia's more aggressive and shorter-term appearance is likewise multifaceted. From the Know-Nothing nativist party of the 1850s, xenophobic lynching and political agitation became the calling card of the Ku Klux Klan in the years immediately following the American Civil War. In the group's first incarnation, their hostility was pointed at the supporters of Lincoln's Republican Party as well as newly freed slaves and other free people of color within the United States. However, as the self-appointed defenders of American "purity," they focused on any particular group that seemed threatening at the time. Although the organized nationwide Klan fell apart soon thereafter, Jews and Catholics remained popular targets of white supremacists. The 1915 revival of the Klan saw an increased focus on anti-foreign xenophobia, particularly against Jews, Germans, and Irish, although the Klan still targeted blacks. Following World War I, Klan attention turned to communism and other ideologies found to be threatening.

The most famous directed xenophobic action by the U.S. government was the establishment of internment camps for Japanese Americans from 1942 following the Pearl Harbor attacks until the resolution of World War II. Executive Order 9066 was enacted by Franklin Roosevelt after anti-Japanese tensions and fears of full-scale invasion of the United States reached a high point in early 1942. A long-standing part of the Alien and Sedition Acts was the alien enemies clause, that stated that any person belonging originally to a state which was at war with the United States could be questioned and detained. During World War II, German, Italian, and Japanese Americans were required to register any change of address with the Federal Bureau of Investigation (FBI) and were restricted from entering a large number of areas on threat of arrest. Although any of these groups were under threat of detention, the widest-scale effort was the internment of Japanese Americans. A number of organizations—the U.S. military, the Department of Justice, and the War Relocation Authority—were responsible for the maintenance of these camps, which at the height of their use held as many as 120,000 people.

From the early 1980s, Hispanic immigrants have been targeted as the newest wave of "illegals." The

"cocaine boom" period of the early 1980s resulted in large amounts of narcotics shipped to ports in Florida from many Latin American countries, particularly Cuba. Since that time, a number of efforts have been made to reduce or eliminate the number of Mexican and other Hispanic persons coming into the United States. During the George W. Bush administration, a plan to construct massive blockade walls began, but has largely been abandoned because of prohibitive costs. However, border patrol efforts, particularly in the southwest United States, Texas, New Mexico, California, and Arizona, were increased a great deal during that time and remain strong.

The current controversy in this area is the attempt by Maricopa County, Arizona, Sheriff Joe Arpaio to require all persons who "appear" to be illegal immigrants to carry documentation of legality with them, because they may be legally stopped by police and asked to show visas or passports.

Since the Al Qaeda attacks of September 11, 2001, a great deal of xenophobic fear has been turned on the Muslim population of America. A number of murders, beatings, and a great deal of harassment have been leveled at this population in a way reminiscent of the attacks on Japanese Americans following Pearl Harbor. Most recently, the construction of a Muslim community center at the site of the attack was the source of a great deal of controversy before the imam in charge of constructing the center bowed out, as of summer 2011, in favor of finding a different spot in the face of public outcry.

Robert W. Watkins
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See Also: African Americans; Arpaio, Joseph M.; Chinese Americans; German Americans; Irish Americans; Japanese Americans.

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Yates, Andrea

Andrea Kennedy was born on July 2, 1964, to a middle-class family. Intelligent and athletic, she captained the swim team, was an officer in the National Honor Society, and graduated valedictorian of Milby High School in 1982. She graduated the University of Texas School of Nursing in 1986 and held a postoperative nursing position from 1986 until 1994. She gained international attention in 2001 when she drowned her five children, becoming an early case in the national debate over postpartum depression.

Andrea met Russell Yates, a computer designer for the National Aeronautics and Space Administration (NASA), in 1989; they married in 1993. Between 1994 and 2000, Andrea gave birth to five children and had one miscarriage. For a time, they lived in a 38-foot trailer in which Andrea home-schooled the children; she also cared for her father suffering from Alzheimer's. Mental health symptoms emerged after Noah's birth in February 1994. Her postpartum disorder included mood fluctuations and violent hallucinations. After John's birth in December 1995, Andrea became reclusive, abandoning running and swimming. Paul's birth followed in September 1997, Luke's in February 1999. During this time, Michael Woroniecki, an itinerant minister, influenced Andrea with his sermons that exhorted

Eve's sin as the reason "bad" mothers raised evil and damned children.

Events spiraled downward in 1999. On June 16, Andrea attempted suicide. Hospital psychiatrists diagnosed her with severe depressive disorder, yet released her a week later for insurance reasons; they prescribed Zoloft, which she did not take. Her depression morphed into hallucinations, self-mutilation, and a refusal to nurse Luke. In July, she again attempted suicide. In a private care facility, Andrea remained catatonic for 10 days. Haldol improved her condition, but doctors warned Russell and Andrea that another birth could ignite psychotic episodes. Andrea's family insisted that Russell buy a home rather than return to the trailer. Andrea stabilized: She resumed home schooling, cooked, sewed, and began swimming. Russell believed Andrea was strong enough to stop the medication to become pregnant. Mary was born in November 2000. Andrea remained stable until her father died in March 2001.

By spring 2001, psychotic episodes returned. She rebuffed food, recommenced self-mutilation, refused to nurse Mary, and frantically turned to religion. In March, she entered Devereux Texas Treatment Center and resumed Haldol, but a new psychiatrist deemed her not psychotic; he halted Haldol and discharged her. She returned to Devereux in May; the same psychiatrist released

her after 10 days and recommended a psychological consult. Two days later, she drowned her children in her bathtub. In her taped confession, she claimed she had raised the children badly; killing them had saved them from Satan. In her 2002 trial, the prosecutor charged her with capital murder and asked for the death penalty. The jury listened to her confession and deemed her cold and methodical; they found her guilty, but rejected the death penalty for life imprisonment.

Yates's lawyers appealed. In November 2005, the Texas Supreme Court overturned the verdict because of false testimony by Dr. Park Dietz, the prosecutor's psychiatric witness: He testified that Yates had viewed a *Law & Order* episode in which a mother drowned her children in her bathtub but pleaded insanity to avoid jail; no such episode existed. In Yates's retrial in July 2006, she pled not guilty by reason of insanity; the jury agreed. She eventually moved to a low-security facility for the mentally ill. Russell, who had divorced Yates in 2005, supported this verdict. Reaction to Yates has been harsh. The press resorted to traditional gender notions: Infanticide is the antithesis of woman as nurturer. While some Americans sympathized with her, they had trouble believing she was insane when committing the acts because she appeared cool and rational in the aftermath. As late as 2010, *Newsweek* listed Yates as the third most mesmerizing crime of the decade, titling the entry "The Horror of Andrea Yates." Yet, psychiatrists have used the case to draw attention to discrepancies between American and European law. Most Western countries provide probation and mandate psychiatric treatment, not murder charges and death penalties. Advances in neuroscience have allowed psychiatrists to understand how mental illness affects brain function, but public understanding has not kept pace with new knowledge, leading the public to demand justice for victims at the expense of criminals who are also victims of their own mental illnesses.

Simone M. Caron
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See Also: Gender and Criminal Law; Infanticide; Insanity Defense; Smith, Susan; Television, Crime in; Women Criminals, Contemporary.

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Yates v. United States

In 1940, Congress passed the Smith Act, making it a crime to advocate the overthrow of any U.S. government or organize in an attempt to do so. The act was a wartime measure primarily targeting Nazi, socialist, communist, and other unpopular political groups in the United States. In *Yates v. United States*, 354 U.S. 298, (1957), the U.S. Supreme Court was asked to determine whether the Smith Act's provisions on antigovernment advocacy were consistent with the First Amendment to the U.S. Constitution. In the 6–1 ruling for Yates and his codefendants, the court interpreted a number of the act's provisions in a manner that effectively put an end to all prosecutions under the Smith Act.

Oleta Yates was a Communist Party leader from California. In 1951, he and 13 of his colleagues were prosecuted for violating the Smith Act by organizing an attempt to overthrow the government. Prosecutors had no difficulty establishing that Yates and the other defendants were advocates of Marxist-Leninism. They were found guilty and sentenced to five years in prison. Yates and the others appealed their convictions, arguing that the Smith Act violated their First Amendment rights.

The U.S. Supreme Court heard the *Yates* case in 1957. Interpreting the Smith Act narrowly, the court found in favor of Yates. Writing for the majority, Justice John Marshall Harlan focused on two key terms found in the Smith Act: "organize" and "advocate." The majority determined that "organize" referred only to the actual founding of a group, not its ongoing daily operations. Since the Communist Political Association (CPA) disbanded and reformed into the Communist Party of the United States in 1945, the defendants' CPA

activities were the only ones that could be considered “organizing.” Unfortunately for the government, these actions fell outside the Smith Act’s three-year statute of limitations and were therefore not subject to prosecution.

The second question, the meaning of the term “advocate,” was equally challenging but had far greater First Amendment implications. The court determined that there are two different types of advocacy in which individuals and organizations may engage. These are advocacy of an idea and advocacy of an action. While the defendants often spoke about the need to radically change the U.S. government, they never advocated specific actions that would result in the overthrow of the government. Merely advocating a principle—even an illegal one such as overthrowing the U.S. government—the court held, was constitutionally protected by the First Amendment. However, advocating specific actions toward illegal ends, such as the overthrow of the U.S. government, was not protected by the Constitution.

The court’s interpretation of “advocate” significantly reduced the reach of the Smith Act. While the act had been in place, simply discussing the theories about the overthrow of the U.S. government could be deemed advocacy, which severely restricted the flow of ideas. The *Yates* ruling allowed the views of those seeking radical change in the U.S. government to be exchanged and even championed, but required that they be expressed in principle only. If the person advocating the overthrow of the government began trying to put the ideas to action, the person could still face prosecution under the Smith Act.

Because the evidence from Yates’s trial only demonstrated advocacy of an idea, additional

evidence would be required for a conviction. The court overturned Yates’s conviction and ordered a new trial. The court also found that the evidence against five of Yates’s codefendants was so weak that it ordered their acquittal outright. Given the court’s interpretation of the Smith Act, prosecutors declined to try Yates a second time.

Justices Hugo Black and William O. Douglas partially dissented from the court’s decision, arguing that Smith Act prosecutions were inconsistent with the principles of the First Amendment because they punished individuals for simply holding and expressing unpopular political beliefs. Justice Tom C. Clark would have upheld all the convictions as he read the term *organize* to include the defendants’ actions. Justices William J. Brennan and Charles E. Whittaker did not hear or contribute to the decisions of the case.

Darren A. Wheeler
Josh Thompson
Ball State University

See Also: *Dennis v. United States*; McCarthy, Joseph; Smith Act.

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Zeisel, Hans

One of leading figures in the quantitative study of law and society, Hans Zeisel was a data analyst and a committed scholar who employed statistical evidence to demonstrate various positions on law-related issues. He was noted for systematic research on the jury system, capital punishment, court delay, and the House Un-American Activities Committee (a committee investigating Communist activity and anti-American propaganda).

Born in 1905 in the city of Kadaň, Bohemia (Czech Republic), Zeisel was taken as an infant to Vienna, Austria. He studied law and political science at the University of Vienna, earning a doctoral degree. He practiced law and was a researcher at the Austrian Wirtschaftspychologische Forschungsstelle (Research Center for Psychology and Economics).

There he carried out, together with Marie Jahoda and Paul Lazarsfeld, his first noted study, *Die Arbeitslosen von Marienthal* (1933) (Unemployment in Marienthal), which investigated the detrimental effects that unemployment had on the psychological state of the unemployed. In the time of the *Anschluss* (the annexation of Austria to the German Third Reich) in 1938, Zeisel, who had just married Eva Striker, a Hungarian designer of ceramics, immigrated with his wife to New York. There he began a rich career in

research and lecturing. In New York, he taught economics and statistics at the University of New York and worked with the Bureau of Applied Social Research at Columbia University. Zeisel also worked for the market and media industry, most notably for McCann-Erickson, Inc., and served as consultant for the War Department, the Justice Department, and the American Bar Association.

In 1947, he published his first influential text on statistics titled *Say It With Figures*, which presented Zeisel's methodology for empirical study into various areas of human affairs. Soon after, he joined the University of Chicago Law School and led, with Harry Kalven, several research projects funded by the Ford Foundation. Of these studies, one was published in 1959 under the title *Delay in the Court*, which addressed the congestion and delay in cases brought before the Supreme Court of New York County and discussed various solutions.

Another was *The American Jury* (1966), which examined how often the jury disagreed with the judge, the direction of that disagreement, and the reasons for it. In 1983, Zeisel published *The Limits of Law Enforcement*, which argued that society should cease its exclusive reliance on law enforcement for the reduction of crime and pay more attention to youth education and early life guidance.

Zeisel's fruitful academic career produced numerous articles, most notably discussing the pros and cons of jury size, possible remedies for court delays, and the crime-reducing effect of monthly monetary allowances for ex-convicts. Zeisel believed in abolishing the death penalty, which he argued was hardly a deterrent, was race-biased, and relied on uncontrolled variations of each case that rendered it impossible to be impartial in imposing the death penalty. Zeisel received a number of awards for his work, most notably from the American Association for Public Opinion Research in 1967 and the American Sociological Association in 1992. In collaboration with David Kaye, Zeisel compiled many of his contributions on legal statistics discussing topics such as DNA profiling, composition and selection of juries, unconstitutional flaws in the House Un-American Activities Committee interrogation, trademark cases Zeisel was involved in, epidemiologic studies, and more. This work was published after Zeisel's death in 1997, under the title *Prove It With Figures: Empirical Methods in Law and Litigation*. Zeisel loved sports. He played tennis and swam on a regular basis and was known for his passion for baseball and the Chicago Cubs. Hans Zeisel died of cancer at his Chicago home in 1992.

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See Also: Capital Punishment; Crime Prevention; Deterrence, Theory of; Juries.

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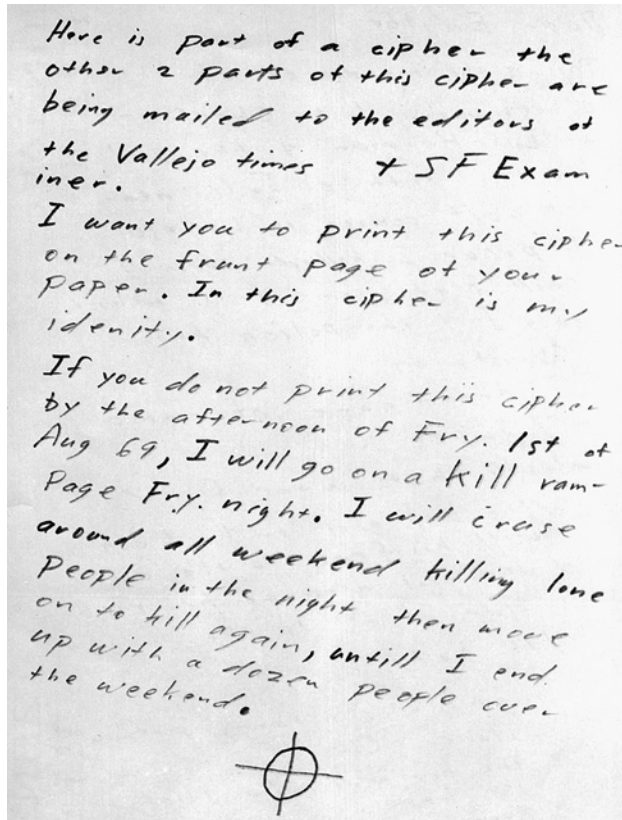
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Zodiac Killer

The Zodiac Killer is one of the most notorious unidentified murderers of all time. Perhaps the only greater unsolved mystery is that of Jack the Ripper. The Zodiac was active in the city of San Francisco from 1966 to 1970. The first possible victim of the Zodiac was Cheri Jo Bates, an 18-year-old who was brutally murdered outside a public library on October 30, 1966. She and the Zodiac conversed in a dark alley for over an hour and a half before she was killed as a result of 10 knife wounds. On November 29, Zodiac sent his first confession to the police, warning them to publish it or he would kill again. This was followed by another missive on May 29, 1967, this time sent to both the police and Bates's father. The police at the time were working on the assumption that she had known her killer, until the similarities of murders committed by the Bay Side or Zodiac Killer were later brought to their attention. There is still some debate as to whether he actually was responsible for Bates's death.

Meanwhile, he had been busy in the San Francisco Bay area. On December 20, 1968, around 10 P.M., he shot and killed David Faraday and Betty Lou Jensen while they were parked off Lake Herman Road. Six months later, shortly after 12 A.M. on Saturday, July 5, 1969, Darlene Ferrin and Michael Mageau were shot as they sat in Ferrin's car in the parking lot of the Blue Rock Springs Golf Course. However, Mageau survived. The Zodiac called in the murder himself, including the weapon he used and the fact that he had "killed those kids last year, too." On July 31, the Zodiac sent letters to the *San Francisco Examiner*, *San Francisco Chronicle*, and *Vallejo Times-Herald*. He also sent each newspaper one-third of a cryptogram, to be published on each of their front pages by August 1; he again promised a murder spree if his request was not met.

The next attack came on September 27, off the western shore of Lake Berryessa. This night, the Zodiac stabbed Bryan Hartnell six times and Cecilia Shephard 10 times with a double-edged knife while wearing ceremonial garb. He wrote the names and dates of his previous attacks on Hartnell's Volkswagen and, again, called the police. Unbeknownst to him, Hartnell was alive and, along with several others who had seen the



Here is part of a cipher the other 2 parts of this cipher are being mailed to the editors of the Vallejo times + SF Examiner.

I want you to print this cipher on the front page of your paper. In this cipher is my identity.

If you do not print this cipher by the afternoon of Fry. 1st of Aug 69, I will go on a kill ram-page Fry. night. I will cruise around all weekend killing lone people in the night then move on to kill again, untill I end up with a dozen people over the weekend.



In August 1969, three letters from the Zodiac Killer were sent to the Vallejo Times-Herald, the San Francisco Chronicle, and the San Francisco Examiner, demanding that they be printed on the front page of each paper or he would kill again.

Zodiac that day, was able to give the police a description of a clean-cut man, about 200 lbs., 5'8" to 6', with dark hair. On October 11, the Zodiac shot a cabbie at point-blank range, cut off a piece of his shirt and soaked it in blood, and left. Witnesses watched him do it and called the police. This time, along with his letter of admission and a piece of the cabbie's shirt, the Zodiac sent several taunts to the newspapers about the inadequacies of the police and a card begging for

help against the "thing inside him" to famed personal injury lawyer Melvin Belli, though nothing ever came of the latter.

On the evening of March 2, 1970, Kathleen Johns was driving with her infant when a car came up alongside her. A man leaned out the window, telling her that her wheel was loose. She pulled over, and he actually loosened the bolts, causing her tire to come off when she drove away. He offered her a lift to a service station, and she took it. After she became wary of his intentions, she jumped out of his car at a stop sign, clutching her baby to her chest, managing to successfully escape. This was the last time anyone ever saw the Zodiac, though he would continue writing the police letters for several years, intermittently; the San Francisco police have discounted any letters arriving after 1974 as being from the Zodiac. Perhaps one of the most shocking factors about this case is the sheer amount of forensic evidence—over 38 prints—which police collected from the crime scenes and letters. Somehow, even after getting DNA samples from 2,500 men, they were unable to match a single print to anyone, most frustratingly not to their number one Zodiac suspect: Arthur Leigh Allen.

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See Also: Murder, History of; Murders, Unsolved; Serial and Mass Killers.

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AN ENCYCLOPEDIA

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1600 to 1776

INTRODUCTION

The policing, criminal law, procedure, and punishments that are associated with the criminal justice system have their roots in the American colonial experience. Some institutions, such as the jury trial, were brought from England, where they had existed since time immemorial; others were colonial innovations. Many of the defendant safeguards that are now considered commonplace were implemented slowly by colonial legislatures and courts as they sought to reform the existing English common law. These developments were uneven across the colonies based on local conditions and the different age of the colonies. Spanish and French colonies followed national variants of Roman or civil law; under Dutch rule New York followed Dutch law. Only Louisiana retained some elements of Roman law in its civil code.

The North American colonies that would one day form the United States operated as independent governments that owed their loyalty to the crown of England. All of the colonies functioned within the framework of the common law of England, but the degree to which they held to English law varied widely. In Massachusetts Bay, the colonists attempted to enact God's law on Earth by basing their legal code on the Bible, while in Virginia the common law remained as close to its original form as possible. The dominant view of legal scholars has been that common law was transferred to the new world by the colonists. However, a growing body of literature has suggested that the colonists did not simply import the common law with them, but sought to adapt it to local conditions and beliefs.

In the 17th and 18th centuries, the state of policing, substantive criminal law, criminal procedure, and punishment as it was established under English common law provided the basis of the common law that was implemented in the North American colonies.

Substantive criminal law refers to the prohibitions and duties that a person is expected to follow in a legal system. This is opposed to criminal procedure, which sets out the mechanism by which a person is tried for a breach of substantive criminal law.

Criminal Procedures and Policing in Seventeenth- and Eighteenth-Century England

In England, felonies—crimes that were punishable by death—included murder, arson, burglary, robbery, rape, and theft (if over 15 pounds sterling). These crimes were tried

by judges from the central courts either in London at the Central Criminal Court (Old Bailey) or locally at an *assize* (periodic criminal court). Judges from the central courts would ride to several different assizes during their own court recesses, a practice that gave rise to the concept of riding circuit. The assizes were presided over by the central judge, who was assisted by the local justices of the peace. Assizes were used because it was too costly, inconvenient, and disruptive to transport all defendants, witnesses, and plaintiffs to London for trials. Crimes against the church, including blasphemy, witchcraft, and heresy, were governed by ecclesiastic courts until the reign of Henry VIII, when they were integrated as felonies into the common law. Treason cases were handled by the central courts, unless the crime was committed by a nobleman, in which case it was tried in the House of Lords.

The enforcement of criminal laws in England was extremely uneven until the 19th century. There was no professional police force anywhere in England until the formation of the Bow Street Runners in 1749, and then only in London. Until then, law enforcement consisted of village constables and local justices of the peace. County sheriffs were also employed in law enforcement, but they were more often involved in processing summons and other royal business. The common law required anyone who witnessed a crime or came across a dead body to raise the hue and cry, literally yelling about the crime and rousting their neighbors to look for the culprit. This system relied on the populace to serve as a law enforcement agency and provide information about any crime. The law also required local citizens to maintain weapons and horses in accordance with their stature in the community to aid in law enforcement, and made it a crime for any able-bodied male to refuse to assist in the apprehension of a criminal. In addition, the law required all unexplained deaths to be reported. All nonfelonies were handled locally by justices of the peace, who were also expected to bind over persons suspected of committing a felony for later trial and conduct the initial inquiry into felony cases. Justices of the peace did not deal exclusively with criminal matters; they were also expected to enforce numerous other regulations, from road maintenance to the licensing of taverns. The enforcement of criminal laws thus depended not only on the diligence of local officials, but also on the willingness of the populace to assist in prosecution and crime prevention at their own expense.

Once a suspect was apprehended, he or she would be brought before the local justice of the peace, who would hear the initial evidence against them and determine if they were to be bound over until the next assize. If a petty crime were committed, the justice could summarily try the case. This was an informal procedure and often occurred in the home of the justice of the peace. If the person were to be bound over, they would be turned over to the local jailer to be held or released on the bond of neighbors, friends, or family. At this point, the defendant was not formally charged. A grand jury, sometimes referred to as an indicting jury, would meet at the start of each assize and determine if there was enough evidence for charges to be brought. If the plaintiff failed to appear, the case was either dismissed or the plaintiff could be compelled to attend. Once all defendants were charged, the grand jury disbanded and individual trial juries would try the cases. The all-male juries often served on both grand and trial juries, especially in rural areas. In addition, one trial jury was often used to try several cases in quick succession.

Criminal trials under English common law in the 17th and 18th centuries were vastly different from modern criminal trials. The average felony trial lasted less than 30 minutes, and some were so quick that the defendant didn't know the result of their trial or even if they had been tried. The defendant was prohibited from having a defense lawyer until they were granted that right in 1839. Until the late 17th century, all prosecutions were brought by the victim, or in the case of murder, by the victim's heirs. The plaintiffs could have the assistance of lawyers, but they were expected to cover the costs themselves, without the

aid of the crown. In cases involving crimes against the government, the king or his royal prosecutor would be employed to argue the case. The plaintiff was allowed to call witnesses and could compel them to attend the proceedings by the issuance of writs, and only prosecution witnesses could be sworn in before their testimony. In contrast, the defendant was not usually allowed to call any witnesses and had no means to compel anyone to attend the trial. Defendants and their witnesses, if any, were not allowed to be sworn before they gave testimony. This was initially seen as an advantage to defendants because they were not imperiling their souls if they did not reveal everything in their defense, but later became a liability because they were not obliged to tell the truth.

Although the jury trial was the last viable, and therefore primary, method of trial by the 17th century, it was not the official method. Older forms of trial continued to be practiced under certain circumstances, especially in rural areas. The most frequently used was compurgation, or trial by the swearing of oaths that the defendant was innocent. The number of persons required for swearing varied by the seriousness of the crime and the degree to which the court believed the defendant was guilty. This method of trial began to decline in the 16th century, and was limited to some petty property offenses and in civil trials by the 17th century. Trial by ordeal was supposed to have been abolished in the 13th century, but the ducking of suspected witches was essentially the continuation of the ordeal of cold water. Contrary to popular belief, the person being ducked was always supposed to be saved before they drowned.

Because the jury was not the official method of trial, a defendant had to select trial by jury. If a defendant refused to plead or put themselves before a jury, then there was no method to try them. In order to coerce defendants to agree to a jury trial, *peine forte et dure* (punishment by force and strength) was developed. *Peine forte et dure* developed into “pressing,” which involved tying the silent defendants to the ground and placing rocks on them until they either agreed to a jury trial or died. Defendants were encouraged



This painting depicts Virginia planter Nathaniel Bacon confronting Governor William Berkeley in 1676, who refused to retaliate after Indians attacked the frontier. This first American rebellion involving frontiersmen included a mob of about 1,000 whites and blacks. Bacon obtained a militia commission at gunpoint in order to lead an attack on the Indians; then, his men burned and looted Jamestown.

to stand silent on the rule that the property of a convicted felon would be confiscated to the crown and the person's heirs would be disinherited. By standing mute, defendants could protect their estates, although they would suffer a terrible death.

There were no established rules governing the type of evidence that was permissible to submit to a court; hearsay, spectral evidence, uncorroborated accomplice testimony, and coerced confessions were all admissible to prove guilt or innocence. The standard of reasonable doubt was not firmly established as the required level of proof for a guilty verdict and a defendant could be convicted on the jury's persuasion of their guilt. Although an ill-defined level of proof, it was usually regarded as something more than mere presumption of guilt, but less than beyond reasonable doubt. One aspect working in favor of a defendant was that a jury's guilty verdict could be set aside if the defendant could show that a single juror had a reason to be biased against them. In contrast, an acquittal could never be set aside, even if it was subsequently shown that a jurors were biased toward the defendant.

This system appears very biased toward the prosecution, but acquittal rates were much higher in the 17th and 18th centuries than they are today. In general, the plaintiff or their attorney would present the evidence to the jury relating to the alleged crime and the defendant was expected to explain away the evidence presented against them. John Langbein has described this system as the "accused speaks" model of trial. This meant that there was no possibility of the defendant remaining silent, let alone having a right to remain so. The introduction of lawyers in the 18th century began the development of this right, as defendants were able to employ counsel to speak on their behalf.

The harshness of the system was initially mitigated by the fact that juries often knew the defendant personally and would therefore find them guilty of lesser offenses. Even after juries became more impersonal, there was an apparent continued impulse to mitigate the harshness of the common law, especially with first-time offenders and offenses against property. Plaintiffs were also prohibited from challenging any jurors, while the defendant could challenge 35 jurors without cause and an unlimited number for cause. Finally, benefit of the clergy allowed defendants to claim that they could not be punished because they were members of the clergy. This was established by requiring the defendant to read a passage from the Bible, but by the 17th century it was merely a proof of literacy, which could easily be circumvented by memorization of the passage, which was always the same. One could plead benefit of clergy only once, a brand on the thumb making that obvious.

The Writ of Habeas Corpus was originally designed to ensure that a person was being held in custody, not to challenge unlawful detention. In the 16th century, the Court of King's Bench began to use the writ to challenge detention by magistrates, particularly the Privy Council. The regular use of the writ as a means of challenging unlawful detention was in place by the early 17th century. In 1679, the Habeas Corpus Act improved the force of the writ by requiring that the prisoner be presented before the issuing court within three days and that they be tried within two terms or be granted bail.

Until the 18th century, the primary forms of punishment in England were death, flogging, pillorying, the imposition of fines, and transportation. Although jails did exist, they were used almost exclusively to hold defendants until trial or before their sentence was carried out, or for special political prisoners. The punishment for all felonies was death, but this could be mitigated to transportation to the colonies for 7 to 15 years. Transportation was embraced because it mitigated the harshness of the system and provided a source of immigrants and cheap labor to new colonies. All death sentences were to be carried out by hanging, although nobles were usually granted the more dignified death of beheading. The exception to this was the crime of treason, which encompassed attempts to overthrow the monarchy or harm the king, the murder of a husband by

his wife, or the murder of a master by a slave. A man who committed treason was to be hanged, drawn, and quartered, while a woman was to be burned. However, most women were strangled to death before they were set alight. Children over the age of 8 were subjected to all forms of punishment, including death, until the mid-19th century, although death was usually only imposed in murder cases when a child reached the age of 14. Fines were used for assaults and petty frauds, while pillorying was used for social disorder crimes such as adultery, selling defective goods, cheating at cards, sexual relations with a minor, homosexuality, and witchcraft that did not result in harm. Flogging was used as a punishment for petty larceny and eventually for grand larceny as juries began to mitigate grand larceny to avoid death sentences. Maiming, such as the mutilation of the nose or cutting off of one or both ears was a popular punishment before the English Civil War (1642–51) for bearing false witness, some property crimes against the church or government property, and repeat offenders. The linking of this punishment with the dreaded Court of Star Chamber, which was universally disliked before its abolition during the English Civil War, made these punishments less popular.

Substantive Criminal Law in the Colonies

All colonies diverged from the common law to some degree; some combined it with biblical or Mosaic law or new law reforms. During the 17th century, there was a widespread call for law reform in England to make the system more efficient and affordable. Some of these reforms were implemented by the American colonists before they were implemented in England. According to most charters, the laws of colonies were supposed to conform to the common law, but this provision was rarely enforced. In the late 17th century, when England began its attempt to force colonies to conform to the common law, the colonies retaliated by passing laws that were only in effect for three years and then reissued them after they lapsed. Therefore, if a law was struck down by the Privy Council, it would only remove the individual act under review. Three years was the average length of time it took the Privy Council to review and rule on a colonial act.

All substantive criminal laws indicate the type of behavior that is viewed by a particular culture as reprehensible and undermining of the established social order. There are numerous ways that substantive crimes can be subdivided, but can generally be categorized as traditional felonies, religious crimes, property crimes, state crimes, and social disorder crimes. Traditional felonies—murder, rape, arson, burglary, robbery, and theft of large sums of money—could be punished by death. In modern criminal law, felony is defined as a crime that carries imprisonment for more than a year. Religious crimes were those that undermined or challenged Christian beliefs, including heresy, witchcraft, blasphemy, and Sabbath breaking. Property crimes included the theft of property and its destruction, as well as trespassing onto another person's land. State crimes were technically the same as in England and included treason, sedition, counterfeiting, coin clipping, slave rebellion, and piracy. The final and largest category of social disorder usually included those that did not put the defendant's life at risk and included sex crimes, drunkenness, fighting, swearing, and family problems. The category of slave-related crimes is interesting because these laws prohibited both rebellions by slaves and excessive abuse of slaves, falling into the categories of social order, felonies, and state crimes.

The standard for traditional felonies was adopted in all colonies and, across the empire, included punishment by death. About half of all murders occurred within the family; there was a high number of infanticides and murders of servants or slaves. In North Carolina, infanticide was so common that all infant deaths not attributed to disease were investigated as potential homicides. Women were more likely to commit infanticide than men; however, both men and women were accused of killing servants. The



This mural by Rober Reid depicts the Boston Tea Party on December 16, 1773, one of the most famous uprisings by American colonists leading up to the country's independence. It was sparked by a dramatic increase in tea taxation by the British. Colonists costumed themselves as Indians, complete with war paint and hatchets for tomahawks.

murder of a servant or apprentice was usually caused by abuse or neglect and did not always result in the conviction of the defendant, because it was difficult to show intent to murder. The murder of a native by a settler often did not result in any charges being filed, let alone a conviction. In Plymouth colony, however, there were instances of settlers being convicted of robbing and murdering a native man. Omitting deaths occurring during war, the murder rate for colonial America was considerably lower than would be expected. There were fewer than 25 murder cases across all the American colonies before 1660. Almost all murders were committed by men.

There were few cases of rape tried in the 17th century, likely stemming from the problem of underreporting of rapes and the misclassification of the crime in some colonies. For example, in Massachusetts, consensual sex with a minor was not rape. In addition, many servants and few, if any, slaves would have reported rape when they were dependent on their masters for sustenance. The report of rapes increased in the 18th century, with around 200 cases per year by the eve of the American Revolutionary War (1775–83). Unsurprisingly, Virginia, Pennsylvania, and Massachusetts, the three most-populated colonies of the era, had the most rapes reported. Almost all rapes were committed by men, but there were instances of women being charged.

Arson was not unheard of, but was infrequent during the colonial era. Robberies and burglaries were more common in larger towns than in small villages. The number of

thefts increased dramatically in the 18th century as the number of larger towns increased and the close-knit nature of communities disappeared. It has also been reported that during the 17th century, there was little of value to steal, which depressed the overall charges of theft. In fact, most cases of theft were of a petty nature, such as yarn or ribbon. The majority of arsons, burglaries, and robberies were committed by men.

The category of religious crimes is often misunderstood, especially in regard to the New England colonies, due to their implementation of biblical punishments for social disorder crimes. In a narrow sense, the common law category of religious crimes was limited to blasphemy, Sabbath breaking, witchcraft, and heresy. All of these acts were punishable in colonial courts in accordance with common-law procedures. In the New England colonies, the statutes often called for the death penalty to be inflicted for these crimes, but it was rarely, if ever, inflicted; the exception was witchcraft. The Body of Liberties of Massachusetts Bay stated that blasphemy was punishable by death, but this was never implemented. Many New England colonies made adultery, buggery (sodomy and/or bestiality), cursing of parents by children, and rebellion by children capital crimes in accordance with biblical precepts. This has led many to believe that these were religious offenses, but adultery and buggery were punishable under the common law as noncapital offenses. There seems to be no incidence of a rebellious child or curser of parents having been put to death, although several were flogged or removed from their homes. While there were instances of men being executed for buggery, it appears that these parts of the code were intended more as a guide to societal expectations than enforceable laws. However, the terminology regarding buggery had various meanings within early New England colonists: buggery usually referred to bestiality and sodomy to homosexuality, although on occasion, buggery referred to homosexuality and sodomy to bestiality.

The most unusual crime from a modern perspective was the criminalization of witchcraft. The act of witchcraft was not well defined in the statutes, covering everything from simple fortunetelling or necromancy to purported compacts with the devil and infliction of harm on individuals by supernatural methods. The most famous witchcraft cases occurred in Salem Village in 1692, which resulted in the execution of 19 persons. Contrary to popular belief, men were also convicted of practicing witchcraft, although the majority of those accused and convicted were women. Also in 1692, there was a series of witchcraft trials throughout Connecticut that resulted in several executions, but raised fewer problems. However, witchcraft cases occurred throughout New England and even in some southern colonies such as Virginia, Maryland, and North Carolina. In fact, the only case in which a suspected witch was ducked occurred in early 18th-century Virginia. As in England, witchcraft prosecutions declined rapidly in the early 18th century due to a growing perception that witchcraft could not be proven in a trial.

A closely related crime is heresy. However, what constituted heresy depended on the established religion of a given colony. For example, Massachusetts Bay famously expelled Anne Hutchinson for heresy during the antinomian controversy with her resettling in Providence. Therefore, what was heresy in Massachusetts Bay was permissible in Rhode Island. Similarly, Virginia established the Church of England, which would have made Puritan beliefs heretical. Although the substantive law remained the same, the definition of heresy varied among the colonies. Other religious infractions such as blasphemy or Sabbath breaking were more universally applied. Heresy typically resulted in banishment from a colony rather than death, but there were numerous instances of Quakers being executed in New England colonies for practicing their faith.

The opportunity to commit property crimes was limited during the first 80 years of settlement due to the isolated nature of settlements. As the colonies became more settled,

roughly after 1740, the greater opportunity and increased impersonal nature of larger towns led to a dramatic increase in property crimes. Although men continued to commit a majority of serious property crimes, women began to commit an increasing percentage as the 18th century progressed. These crimes usually resulted in flogging or being forced to stand the pillory, as the thefts were often small amounts of linen, clothing, consumables, or other trifles. Most of these crimes were committed by apprentices, servants, or children, usually against their masters or neighbors. Trespasses were primarily civil matters by the 18th century. Although a few criminal cases of trespass did occur in North Carolina, the records are not sufficiently clear to determine if this correlated to the modern notion of trespassing.

Crimes against the state consisted primarily of sedition, piracy, the clipping of money, slave rebellions, and treason. Coin clipping was rarely punished in the colonies, likely due to the fact that coinage was scarce in all colonies and paper money was used beginning in the late 17th century to float colonial debt. Piracy was a major issue during the entire colonial era, but especially following the War of Spanish Succession (1701–14), when many privateers turned to outright piracy. In a few instances, such as the apprehension of Edward Teach in North Carolina, colonial magistrates worked with Royal Navy officials to pursue pirates. For the most part, piracy was a crime policed and punished by the navy in admiralty courts. The related crime of smuggling was often overlooked by colonial officials, especially with the rise in tensions with the crown leading up to the American Revolution and the fact that many legitimate merchants engaged in smuggling on the side; the increased view of the arbitrary nature of navigation laws also made smuggling a patriotic endeavor.

Treason was not a concern in the colonial era, with the notable exception of the execution of Jacob Liesler, a New York rebel against British authority in 1691. Of course, the British saw the American revolutionaries as traitors against Parliament and the crown. Petite treason encompassed the murder of husbands by wives or masters by slaves and was punishable as treason. However, there is no recorded instance of anyone being drawn and quartered or burned at the stake in any of the Atlantic colonies. Even during an incident in the West Indies, where a slave confessed to using witchcraft and poison to murder her master, she was not burned, but simply hung. The few instances of wives murdering their husbands also resulted in hanging, rather than burning. The one major state crime tried in the colonies was sedition. However, most sedition cases were in Maryland and Massachusetts Bay. The Rhode Island, Connecticut, and New Haven colonies did not have authorization to establish the charge of sedition. Although Virginia and Plymouth did have laws against sedition, they had relatively few cases. In Massachusetts Bay, all sedition cases were tied to heresy cases involving dissenting Puritans or Quakers and were resolved together. In Maryland, the key problem was a confrontation between the Catholic proprietors of the colony and the majority Protestant population that was exacerbated by Virginia's claim that Maryland had been illegally formed out of its territory. The political upheavals of 17th-century England were played out in Maryland and resulted in several cases of sedition and even a few treason cases. A few Virginians who had settled in the Chesapeake Bay area before the creation of Maryland attempted to use force to retain their land. In one instance, Virginia trader William Claiborne fought a naval battle against Maryland to defend a trading post he had established. After his defeat, the government of Maryland charged him with sedition in absentia, but he was never punished for the crime. Other than in these two colonies, sedition was a minor issue.

The largest group of criminal acts are lumped under the heading of social disorder crimes. These include sex crimes, simple assaults, slander, drunkenness, fighting, and

spreading of false rumors. These crimes can be further divided between those that disturbed the public peace and those that did not. Often, the difference was simply where the crime took place; for example, a fight in public was an affray in North Carolina, while the same fighting in private was an assault. Breaches of public peace were often punished more severely than private actions, but the imposition of capital punishment usually depended more on the severity of the breach than where it occurred. Slander was usually considered a breach of the public peace because it was liable to lead to provocations and possible physical retaliation by the victim. Criminal slander actions were begun, but it appears that

most of these cases were settled in civil court. Drunkenness, idleness, cursing, and excessive gambling were also punishable in most colonies, although idleness was a uniquely New England crime. Most of these crimes were punished with fines, although flogging and/or pillaring was also possible. In extreme cases, idleness could be punished by forcing the idler to be indentured or apprenticed to a master.

Sexually related crimes other than rape were sometimes severely punished, especially in New England colonies. However, sexual acts were prosecuted just as often in the middle colonies as in New England, but rarely carried a capital punishment. Sex crimes included incest, sodomy or buggery, adultery, and fornication, as well as more unclear behaviors that were described as lewd. The penalties imposed for these crimes varied widely across the colonies, and some colonies did not apply them that often; Massachusetts Bay appeared to have severe penalties in its codes. Sexual relations between unmarried persons was a criminal act but could often be mitigated if the parties subsequently married, especially if the woman became pregnant. Fornication was usually punished by flogging or pillaring, even where harsher punishments were available. Adultery was a relatively minor crime in the southern and middle colonies, but was regarded as far more severe in New England. Only two persons were ever put to death for adultery, although technically it was a capital crime; most others were fined or whipped. The courts appear to have been equal in punishing the parties, regardless of gender or marital status.

Sodomy was a capital crime across the colonies, but there were relatively few cases of persons actually executed for it. More often, the person was banished or flogged for the offense. Bestiality, like sodomy, was a capital crime; the death penalty was regularly applied in the few cases that arose.

Criminal laws relating to slavery varied in their frequency and severity depending on how widespread the institution was in the given colony. The first laws relating directly to slavery were passed in Virginia in 1650; however, the first definition of a slave was not given until 1662. Most colonial-era slave codes were passed in the late 17th century



Samuel de Champlain was instrumental in the fur trade of New France. He advocated alliance of the colonies with the Indians and even introduced firearms to them.

or early 18th century and generally prohibited slaves from striking their master, running away, leaving their master's property without permission, owning weapons, or plotting to rebel. These early codes were relatively milder when compared to the draconian codes of the antebellum era. Nevertheless, these codes still provided for much harsher punishments than for free persons or indentured servants, which included branding, nose slitting, and other forms of maiming that had been generally abandoned. In addition, Virginia and other southern and middle colonies decriminalized assaults on slaves if perpetrated by their master or overseer. In New England, slaves were accorded more protection on paper, if not in practice. More importantly, it was established that non-Christians were entitled to fewer rights than Englishmen and that they were little more than property.

Policing in the Colonies

Especially in the 17th century, the colonies relied on the traditional English methods of crime prevention: the populace. Most areas continued to rely on the hue and cry established in medieval England. The majority of communities in the colonies relied on a combination of sheriffs and justices of the peace. As in England, victims were expected to report crimes to their local justices of the peace, but often, there was no threat of prosecution for failure to report, which led to underreporting. As there was no formal police force, the community at large was also expected to report suspected criminal activity. A person's reputation in a small village was often enough to either arouse suspicion or help exonerate them. The rural nature of the colonies seems to have made the antiquated



This 1853 lithograph by Junius Brutus Stearns shows George Washington, the farmer, overseeing his land while African American field workers harvest grain; Mt. Vernon is in the background. Early slave laws were passed in Virginia in 1650 but most were established from the late 17th to early 18th centuries. Slaves were prohibited from hitting their master, escaping, leaving their master's property without permission, owning weapons, or rebellion.

medieval institutions of the common law once more serviceable. A jury could be self-informing because neighbors usually knew each other's activities and the justices of the peace often knew the majority of people in their jurisdiction.

The first police force of any type established in the colonies was the Night Watch in Boston, but it was more of a citizen patrol than a formal organization. In most communities, constables, or citizens who held the office for a fixed term, served as the primary policing agent. In all colonies, they were usually not drawn from the elite due to the nature of their work, and thus helped to bring men of lower social rank into the justice system. Unlike modern police, the town constable was expected to be investigator, jailer (even keeping defendants in his own home at times), a general keeper of the peace, and court assistant. They were thereby called upon to do anything from breaking up fights to appearing at court sessions to provide evidence and ensure that paperwork was processed properly. The system seems to have worked well over the era, although there were instances of constables being fined for failure to appear at court or being negligent in carrying out their duties. The office of constable was an unpaid position that was accepted primarily for social prestige. Over time, the office became a paid post, but in rural areas it often remained unpaid. Dutch New Amsterdam had distinct officers: the Schout, a combination of sheriff and public prosecutor, and Schepens or elected constables. In 1658 the colony created a paid "rattle watch" for nightly patrol.

The office of sheriff, as in England, also served a law enforcement role. The sheriff was responsible for issuing writs and ensuring that witnesses appeared at court sessions. There was usually one sheriff per county with a few deputies. It was generally believed that the office of sheriff was more prestigious than that of constable; therefore, men of higher social status usually filled the post. As a sign of this prestige, the sheriff was usually required to post a bond in the event of any misconduct or damages that occurred during his tenure and as a way to limit the pool of suitable applicants. However, in southern colonies there were shortages of men who wanted to fill the post, evidenced by the facts that the North Carolina legislature passed a law fining anyone who turned down the post and that many eligible men paid the fine rather than take the position. Thus, the position often went to unscrupulous individuals who sought to use the office for profit. In the end, the most reliable source of law enforcement came from the people, as had been the case in England for centuries.

Criminal Procedure in the Colonies

One area in which the colonies introduced numerous improvements into the common law was the area of criminal procedure. The colonies witnessed a transformation of criminal trial procedure from the mid-17th century to the eve of the American Revolution. In the early years of most colonies, the "accused speaks" mode of trial was the only form available. As the colonies became more settled and established legal codes, alterations to the common law helped create the adversarial criminal trial that exists today. This process occurred at different times in the various colonies, and there is limited research on the degree to which the colonies transmitted legal innovations to each other and back to England.

As in England, all minor, noncapital offenses were handled locally by justices of the peace throughout the year. As in England, when a major crime arose, the justice would bind the defendant over to the next court of quarter sessions. The hierarchy of courts varied throughout the colonies, but all had a system of trial courts and usually had appeals to the governor's counsel in place by the 18th century. Although civil cases were appealable to the Privy Council, criminal cases were not. After the Boston Massacre in 1770, all criminal cases involving British officials or violations of the Navigation Acts

were transferred to admiralty courts, which were then appealable in the common law system. In the early days of settlement, many colonies only had the central court in their primary city and would haul defendants and witnesses to that court. As in England, this system became impractical as settlements spread out. The colonies drew on their English heritage and established circuit courts to hear cases in the countryside. These courts were often given the same name as in England—quarter sessions—as they occurred four times a year. If a region became particularly backlogged with cases or if there was a series of interrelated cases, such as the Salem witchcraft trials, then a court of *oyer* and *terminer* (law French for “to hear” and “decide”) could be established to hear just those cases.

One universally adopted innovation was the conducting of all legal matters, written and oral, in English. Previously, law French had been the language of the court, with the writs composed in Latin, although witnesses were questioned in English. This led many on both sides of the Atlantic to complain that the average defendant had no knowledge of the judicial process. The implementation of English-only proceedings briefly occurred in England under the Protectorate, but Latin and law French were restored with the monarchy in 1660. The colonies did not use Latin or law French for any of their procedures. Some colonists were educated as lawyers, but abandoned the other languages for practical and ideological reasons. Some Latin and law French terms continued to be used, but the bulk of legal work proceeded in English.

The primary mode of trial in the colonies was jury trial. Even in colonies that adopted the common law entirely, such as Virginia, New Jersey, and North Carolina, the other modes of trial were not used. There was only one instance of any trial by ordeal, indicating that the practice had been so out of use in England that it was not imported to the colonies. Compurgation, or oath swearing, was still used in England in the 17th century, but was not used in the North American colonies. The reason for this is not entirely clear. Colonies did not initially take the logical step of mandating trial by jury. The colonies became split on what to do with defendants who would not put themselves before a jury. Initially, most colonies simply entered a guilty verdict against the defendant and proceeded to sentencing. In the 18th century, this was changed so that a defendant who stood mute was understood to have pled not guilty and the court proceeded with a jury trial.

Although the procedure of *peine forte et dure* was technically available to deal with defendants who refused to submit to a trial by jury, there is only one confirmed case of its use. Giles Cory was pressed to death during the Salem witchcraft trials when he refused to submit to a jury trial. He proclaimed himself innocent and then stood mute when asked if he would be tried by a jury. His reasons for enduring such an excruciating death are not clear in the records and he left no memoir prior to the event. Other than one witch ducking, there is no evidence that any trials by ordeal were conducted in the North American colonies, nor is there any evidence that compurgation was regularly practiced. Although dueling was a fairly regular occurrence, particularly in the southern colonies, these were duels of honor and not judicial combat to adjudicate a criminal matter.

As in England, juries were composed of 12 men from the town or village in which the defendant resided. The division of indicting or grand jury and trial jury was continued in all colonies. The manner of selecting grand juries varied across the colonies, but they were usually selected either by the sheriff, court, town officials, or some combination. While this created the tendency for juries to be composed of large landholders or wealthy merchants, these grand juries continued to provide a degree of safety against local prejudice because the jurors were of sufficient prestige to refuse to indict people simply for being unpopular. Later, they were able to shield some colonists from royal

overreaching by refusing to indict them for violating the unpopular Navigation Acts. The ability of defendants to challenge up to 35 jurors was also maintained, as was the requirement that guilty verdicts be unanimous and acquittals be ineligible for appeal. Initially, charges were brought by the victims of the accused, rather than by the state. The colonies generally followed the English lead and began to establish colonial prosecutors to handle the cases and thereby tie criminal adjudication closer to the state.

The colonists were particularly willing to expand the protections offered to defendants in criminal trials. In Massachusetts, the impetus for establishing a new code was actually the concern among colonists that the magistrates, Governor John Winthrop in particular, were too lenient in their application of the laws. The colonists insisted that the Court of Assistance pass a more rigorous set of laws based on biblical law. This resulted in numerous acts criminalized as capital offenses, as set forth in the Bible, but the lack of criminal procedure forced the colonists to rely on the common law. However, they did not feel bound by the literal word of the common law and implemented reforms to improve the law. One of the key reforms was the introduction of legal counsel for criminal defendants.

The Body of Liberties of Massachusetts Bay removed the prohibition of defendants having the assistance of counsel, but stated that a person could not practice law for profit. This stemmed from a conflict between the Puritan dislike of lawyers and the realization that legal counsel could benefit a criminal defendant. This was illustrated by the case against Anne Hutchinson, whom everyone believed was able to eloquently respond to her prosecutors because she was receiving legal counsel from her minister, Nathaniel



Men were also accused of practicing witchcraft in the colonies, as depicted by this 1892 lithograph by Joseph E. Baker titled "The Witch no. 2." The Capital Laws of New England provided that "If any man or woman be a Witch, that is, hath consulteth with a familiar spirit, they shall be put to death." The definition of "witchcraft" was broad and included fortunetelling, necromancy, pacts with the devil, and supernatural harm to others.

Ward. However, it is uncertain how often defendants utilized defense counsel. Massachusetts, Pennsylvania, and Rhode Island all allowed defendants to have the assistance of counsel by the end of the 17th century, a full 120 years before England would grant that right to defendants. The other colonies followed suit in the early 18th century, so it was in common practice by the time the U.S. Constitution was composed. There was no affirmative right for the state to provide a counsel to defendants, just the ability of defendants to employ one if so wished.

The introduction of lawyers into criminal proceedings enabled defendants to remain silent during their trials, leading to the right to not incriminate oneself. However, as the colonies were still transitioning from the “accused speaks” mode of trial to the adversary trial, this right was limited to defendants in their trial. The Fifth Amendment right against self-incrimination was far more sweeping in scope than any state law in effect at the time of the drafting, as it protected witnesses and theoretically all parties in any civil or criminal case. New Jersey, New York, Georgia, and South Carolina did not provide a right against self incrimination. The other states and Vermont, which was technically an independent republic, offered varying levels of the right to criminal defendants.

Another colonial innovation was the right to be secure against unlawful searches and seizures. However, this right was developed late in the colonial era and was tied to the growing disputes with England over the enforcement of imperial taxation. The repressive actions of the British in response to smuggling among colonial traders increased wariness regarding warrantless searches. There was a general common-law rule that required a warrant be issued before a person was arrested, a home searched, or items seized. However, customs officials used general warrants, which did not specify what was to be searched or seized, to search a home or business for smuggled goods. In addition, officials needed no additional authorization to seize any item they thought in violation of an act. In 1763, the Courts of England dealt with this issue in the case of John Wilkes, who successfully brought suit of criminal trespass against the officials involved in searching his home without a warrant. The case raised awareness in the colonies of the problem of general warrant searches, but the issue was not fully resolved until after the American Revolution.

The prohibition against double jeopardy in criminal cases stemmed from the prohibition against appeals of acquittals in the common law. Justice Coke was considered a driving force in affirming the rule that a defendant could not be tried twice for the same crime, although the burden to raise the issue was on the defendant. Given the speed of trials, it is likely that many defendants neglected to raise this objection. Colonial trials were no slower than their English contemporaries, which implies that the defense was not raised by them either.

By the eve of the American Revolution, many colonies had fully established criminal bars, and trials had begun to take the shape of the modern adversarial trial. A prime example was the trial of British soldiers following the Boston Massacre. John Adams offered to represent the defendants out of a belief that they could receive a fair trial only with legal representation, a staple of the modern criminal trial, but still rare in contemporary England. Although the trial would not have had the formal evidentiary or discovery rules of a modern trial, its basic form would have been familiar to a modern observer of criminal trials.

Punishment in the Colonies

As in England, most serious crimes were punishable by death, which was carried out by hanging. In most colonies, executions and the administration of all punishments were

carried out by the county sheriff. However, many colonies hired executioners to conduct the hangings with the sheriff supervising. The desire to have the condemned person repent before their execution was in place in New England from the initial executions and became standard in the rest of the colonies by the late 17th century. The final confession, and sometimes a sermon based on the condemned's life and crimes, were also often preached and then published as a warning to future miscreants. In New England, these confessions and sermons also assisted in reestablishing order in society by having the wayward citizen request God's mercy and apologize for the crimes, thereby being reintegrated into society spiritually, even if executed physically. In England and the southern colonies, these statements lost their religious overtones in the early 18th century and became an early form of lurid, true-life crime stories, making heroes of such men as the notorious thief and jailbreaker Jack Sheppard.

The desire to have the accused confess and thereby rejoin society reflected New England society's focus on stability over retribution in meting out punishment. In the early colonial period, this led to a focus on noncapital punishments and shaming methods. The most popular forms of punishment were corporal punishments, usually flogging or birching, and the pillory. Men, women, and children were all subject to the same punishments, although the manner in which they were carried out differed according to gender, age, and social rank. Adults were usually punished in public, although there were instances of women of high social standing being chastised in private.

Children, male and female, were usually subjected to flogging, especially in New England colonies. These punishments would often occur privately in their homes or in the magistrate's home by their parents, although it would often take place in front of a town magistrate or appointee. If the crime was minor, or if the child confessed, then the child would be turned over to the parents for private correction in the home. If the child was an apprentice and of good character, he or she might be turned over for private correction to the master. Parents and masters were allowed to punish their wards to preserve the social hierarchy of the family, which was seen as the basis for colonial society. If a parent was thought unfit to chastise their child, then the issue of removing the child to a home that would instill discipline was raised. Servants or apprentices who were out of their own homes were the most likely to be punished in public, as there was less incentive to preserve a family unit. Children also could be removed from parents who were thought unfit. The goal was not only to punish the wayward child, but also to correct for future behavior and ensure that they became good members of the church and society.

Being made to stand the pillory or in stocks was used as a shaming practice throughout the colonies. As in England, the person was usually made to stand for one market day. In Massachusetts, the guilty person was sometimes made to stand the pillory after church services in order for the entire town to observe them. It is not clear if colonial perpetrators were subjected to the physical attacks endured by many English convicts as they stood the pillory or sat the stocks. In many instances, particularly sexual crimes or frauds, the convicted person was made to wear a sign describing their crime. A related punishment adopted in New England was the simple requirement that the convicted person had to stand up before the congregation or town meeting to describe their transgression and request forgiveness for it. This was usually used for minor infractions such as swearing, drunkenness, or Sabbath breaking. Later, the punishment could be combined with private correction for children or flogging for adults.

Flogging was the most common corporal punishment in the colonies and was usually limited to the biblical precept of 39 lashes, although there were cases of 60 being imposed in Virginia. Women of higher social status might also be flogged in front of

few witnesses, usually their husbands or fathers and a few magistrates. Women of lower social status and almost all men were flogged in public. For reasons of modesty, women were usually flogged with their clothing on and men would be stripped to the waist. Some southern colonies, such as Maryland, prohibited the flogging of gentlemen as it was beneath their station. In that sense, the New England colonies were more egalitarian in their punishments. With the introduction of slavery, it became common practice for free men to be flogged with their shirts on, while slaves—male or female—were stripped to the waist. In New England colonies, flogging was the most common punishment inflicted, although it was often combined with a public apology before the town congregation. The flogging was typically carried out with a single stick or bundle of birch sticks, while in the southern colonies, a single stick or whip was more common.

There were a few instances of branding on the hand, which suggests that benefit of clergy may have been in practice in the colonies. However, no mention of the benefit was included in the records, so it is possible that, in a corruption of the technical English procedure, branding was the sentence. In Maryland, hog thieves were branded with an “H” on their shoulders after the second conviction. There were also a few instances of maiming as punishment in the middle and southern colonies. In Maryland, one of three burglars convicted before 1700 had his ear cut off as punishment for his crime, but this does not appear to have been a widespread practice. This is most likely due to the association of



"The Boston Massacre" in an engraving after the painting by Alonzo Chappel, 1868. On March 5, 1770, British soldiers, who were occupying Boston as a police force, fired into a crowd of Boston citizens after hostilities reached the boiling point. On March 27, the eight soldiers, Captain Preston, and four civilians who were alleged to have fired shots were all indicted for murder.

maiming penalties with the Star Chamber. Slaves were routinely subjected to maiming well after the practice was in decline in both England and the colonies.

The punishment of transportation did not exist in the colonies, as there was nowhere to transport the person. There were instances of a troublesome servant being sold to another owner, but this was not common. The courts could also reassign a servant due to neglect, abuse, or simply because they felt that the relationship was the root of the problem. However, having additional time added to their indenture was usually used as a punishment against servants who had committed a crime against their masters. Free men sometimes faced servitude if they could not afford to pay fines levied against them or if they were perceived as being idle.

Executions were carried out by hanging, regardless of the crime committed or social standing. As beheading was reserved for nobility in the common law, the lack of noblemen is the simple explanation for the absence of this form of punishment in the colonies. However, the lack of executions by burning may also point to the fact that the colonists were either attempting to create a universal criminal code or simplify the execution process. There were women convicted of petite treason who should have been burned under the common law, but this was never done. Similarly, no heretic was ever burned for their crime, although several were hanged. The atmosphere surrounding executions was far more somber in the colonies than in England, where salesmen, pickpockets, and conmen plied their trade before the scaffold and crowds jeered the condemned.

Primary Documents for Colonial Criminal Law

The archival sources available for colonial American law are extensive. A large portion of the archival material for colonies such as Massachusetts, Virginia, and New York have been microfilmed or printed in bound volumes. This has led to a proliferation of studies on the states that contain the most widely distributed materials. Many of the southern colonies have not had their records extensively published and have therefore generated far fewer case studies. There are numerous online sources that reproduce colonial charters and some of their legal codes. The Colonial Office papers have been printed for the entire era and contain the Privy Council's correspondence with colonial governors. As many colonial judges relied on justice of the peace manuals printed in England and shipped to the colonies, they are also a good source of information on the workings of colonial law in rural areas. In addition, copies of Edward Coke's commentaries were available in the larger colonial towns. English legal pamphlets, which also circulated to the colonies, would have been another source for contemporary lawyers and can shed some light onto the colonial legal system.

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1609

PRIMARY DOCUMENT

Excerpt of Samuel de Champlain's Introduction of Firearms to the Indians

An explorer, diplomat, trader, and soldier, Samuel de Champlain established a trading post at Quebec in 1608 and became the central figure in the early history of New France and its fur trade. His multivolume memoirs about his life in New France helped draw interest to the colony while disseminating important information such as the need for the French to ally themselves with some of the local tribes. Here he chronicles the local Indians' first experience with firearms.

Our Indians all night long also kept their canoes close to one another and tied to poles in order not to get separated, but to fight all together in case of need. We were on the water within bowshot of their barricades. And when they were armed, and everything in order, they sent two canoes which they had separated from the rest, to learn from their enemies whether they wished to fight, and these replied that they had no other desire, but that for the moment nothing could be seen and that it was necessary to wait for daylight in order to distinguish one another. They said that as soon as the sun should rise, they would attack us, and to this our Indians agreed. Meanwhile the whole night was spent in dances and songs on both sides, with many insults and other remarks, such as the lack of courage of our side, how little we could resist or do against them, and that when daylight came our people would learn all this to their ruin. Our side too was not lacking in retort, telling the enemy that they would see such deeds of arms as they had never seen, and a great deal of other talk, such as is usual at the siege of a city. Having sung, danced, and flung words at one another for some time, when daylight came, my companions and I were still hidden, lest the enemy should see us, getting our firearms ready as best we could, being however

still separated, each in a canoe of the Montagnais Indians. After we were armed with light weapons, we took, each of us, an arquebus and went ashore.

I saw the enemy come out of their barricade to the number of two hundred, in appearance strong, robust men. They came slowly to meet us with a gravity and calm which I admired; and at their head were three chiefs. Our Indians likewise advanced in similar order, and told me that those who had the three big plumes were the chiefs, and that there were only these three, whom you could recognize by these plumes, which were larger than those of their companions; and I was to do what I could to kill them. I promised them to do all in my power, and told them that I was very sorry they could not understand me, so that I might direct their method of attacking the enemy, all of whom undoubtedly we should thus defeat; but that there was no help for it, and that I was very glad to show them, as soon as the engagement began, the courage and readiness which were in me.

As soon as we landed, our Indians began to run some two hundred yards towards their enemies, who stood firm and had not yet noticed my white companions who went off into the woods with some Indians. Our Indians began to call to me with loud cries; and to make way for me they divided into two groups, and put me ahead some twenty yards, and I marched on until I was within some thirty yards of the enemy, who as soon as they caught sight of me halted and gazed at me and I at them. When I saw them make a move to draw their bows upon us, I took aim with my arquebus and shot straight at one of the three chiefs, and with this shot two fell to the ground and one of their companions was wounded who died thereof a little later. I had put four bullets into my arquebus. As soon as our people saw this shot so favourable for them, they began to shout so loudly that one could not have heard it thunder, and meanwhile the arrows flew thick on both sides. The Iroquois were much astonished that two men should have been killed so quickly, although they were provided with shields made of cotton thread woven together and wood, which

were proof against their arrows. This frightened them greatly. As I was reloading my arquebus, one of my companions fired a shot from within the woods, which astonished them again so much that, seeing their chiefs dead, they lost courage and took to flight, abandoning the field and their fort, and fleeing into the depth of the forest, whither I pursued them and laid low still more of them. Our Indians also killed several and took ten or twelve prisoners. The remainder fled with the wounded. Of our Indians fifteen or sixteen were wounded with arrows, but these were quickly healed.

After we had gained the victory, our Indians wasted time in taking a large quantity of Indian corn and meal belonging to the enemy, as well as their shields, which they had left behind, the better to run. Having feasted, danced, and sung, we three hours later set off for home with the prisoners. The place where this attack took place is in 43° and some minutes of latitude, and was named Lake Champlain.

Source: de Champlain, Samuel. *The Works of Samuel de Champlain*. Vol. 2. Toronto: Champlain Society, 1925.
<http://historymatters.gmu.edu/d/6594>

See Articles: History of Crime and Punishment in America: Colonial; Native Americans; New York.

1610 to 1611

PRIMARY DOCUMENT

Laws of the Colony of Virginia

The permanent English settlement in the New World began with Jamestown, Virginia, in 1607, established by the Virginia Company of London, a joint-stock company chartered by King James I the previous year. These early laws, the first English laws in the Western Hemisphere, were neither created by legislators nor enforced by courts,

but were adopted by orders of the governor and, notably, did not provide for trial by jury nor other elements of English common law.

Articles, Laws, and Orders, Divine, Politique, and Martiall for the Colony in Virginea: first established by Sir Thomas Gates Knight, Lieutenant General, the 24th of May 1610. exemplified and approved by the Right Honourable Sir Thomas West Knight, Lord Lawair, Lord Governour and Captaine General the 12th of June 1610. Againe exemplified and enlarged by Sir Thomas Dale Knight, Marshall, and Deputie Governour, the 22nd of June 1611.

2. That no man speake impiously or maliciously, against the holy and blessed Trinitie, or any of the three persons, that is to say, against God the Father, God the Son, and God the Holy Ghost, or against the knowne Articles of the Christian faith, upon paine of death.
3. That no man blaspheme God's holy name upon paine of death, or use unlawful oaths, taking the name of God in vaine, curse or banne, upon paine of severe punishment for the first offense so committed, and the second, to have a bodkin thrust through his tongue, and if he continue the blaspheming of God's holy name, for the third time so offending, he shall be brought to a martiall court, and there receive censure of death for his offense.
4. No man shall use any traitorous words against his Majesties Person, or royall authority upon paine of death. . . .
14. No man shall give any disgracefull words, or commit any act to the disgrace of any person in this Colonie, or any part thereof, upon paine of being tied head and feete together, upon the guard everie night for the space of one moneth, besides to bee publikely disgraced himself, and be made uncapable ever after to possesse any place, or execute any office in this employment.
15. No man of what condition soever shall barter, trucke, or trade with the Indians,

except he be thereunto appointed by law-ful authority, upon paine of death. . . .

31. What man or woman soever, shall rob any garden, publike or private, being set to weed the same, or willfully pluck up therein any roote, herbe, or flower, to spoile and waste or steale the same, or robbe any vineyard, or gather up the grapes, or steale any eares of the corne growing, whether in the ground belonging to the same fort or towne where he dwelleth, or in any other, shall be punished with death.

The Marshall Lawes

1. No man shall willingly absent himself, when hee is summoned to take the oath of Supremacy, upon paine of death. . .
21. He that draweth his sword upon the Court of Guard, shall suffer death by the Armes which he weareth.
22. Hee that should draw his sword in a towne of Garrison, or in a Campe shall lose his right hand.
23. That souldier that shall goe out of the Fort, Towne or Campe other then by the ordinary guards, issues, waies, or ports, shall suffer death by the Armes which he carrieth. . . .
31. No man shall depart from his guard without leave of his officer, upon paine of punishment: and who so shall be set Centinell, shall not depart from it until he be relieved, nor sleepe thereof upon paine of death. . . .
38. No Souldier may speake or have any private conference with any of the salvages, without leave of his Captaine, nor his Captaine without leave of his chiefe Officer, upon paine of death.

Source: Waldrep, Christopher and Michael A. Bellesiles. *Documenting American Violence*. New York: Oxford University Press, 2006.

Strachey, William, comp. *For the Colony in Virginea Britannia. Lawes Divine, Morall and Martiall*, &c. London for Walter Burre, 1612.

See Articles: History of Crime and Punishment in America: Colonial; Slavery; Virginia.

1637 PRIMARY DOCUMENT

Trial and Interrogation of Anne Hutchinson

Anne Hutchinson (1591–1643) was an English Puritan who emigrated to Boston in 1634 after her local preacher was forced out of England. She began giving religious talks, commenting on (and sometimes criticizing) recent sermons for audiences, which included Governor Harry Vane. When Vane lost his reelection to one of Hutchinson's critics, John Winthrop, she stood trial for traducing (slandering) local ministers. The Mr. Wheelwright mentioned in the document is her ally and brother-in-law.

The Examination of Mrs. Ann Hutchinson at the Court at Newtown.

Mr. Winthrop, governor. Mrs. Hutchinson, you are called here as one of those that have troubled the peace of the commonwealth and the churches here; you are known to be a woman that hath had a great share in the promoting and divulging of those opinions that are causes of this trouble, and . . . you have spoken divers things as we have been informed very prejudicial to the honour of the churches and ministers thereof, and you have maintained a meeting and an assembly in your house that hath been condemned by the general assembly as a thing not tolerable nor comely in the sight of God nor fitting for your sex, and notwithstanding that was cried down you have continued the same, therefore we have thought good to send for you to understand how things are, that if you be in an erroneous way we may reduce you that so you may become a profitable member here among us, otherwise if you be obstinate in your course that then the court may take such course that you may trouble us no further, therefore I would intreat you to express whether you do not hold and assent in practice to those opinions and factions that have been handled in court already, that is to say,

whether you do not justify Mr. Wheelwright's sermon and the petition.

Mrs. Hutchinson. I am called here to answer before you but I hear no things laid to my charge.

Source: Hutchinson, Thomas. *History of the Colony and Province of Massachusetts*. Boston, 1767. Some spelling has been modernized.

See Articles: Boston, Massachusetts; Colonial Courts; Massachusetts; Puritans; Religion and Crime, History of.

1641 PRIMARY DOCUMENT

Plymouth Colony Adultery Case

Early New England laws of sexual conduct were derived from the biblical Old Testament, especially before the codification of laws provided explicit Plymouth laws from which to refer. Adultery was treated as a serious offense but was difficult to prove without a confession. As here, 17th-century sentences often involved corporal punishment or public humiliation in order to forestall the expense of building and maintaining a jail.

December 7, 1641 Governor Bradford (Plymouth Colony Record 2:28):

Forasmuch, as Thomas Bray, of Yarmouth, a single person, and Anne, the wyfe of Francis Linceford, haue committed the act of adultery and vncleanesse, and haue diuers tymes layne in one bed together in the absence of her husband, which hath beene confessed by both parties in the publike Court, the Court doth censure them as followeth: That they be both seuerely whipt immediately at the publik post, [and] that they shall weare (whilst they remayne in the gouernment) two letters, namely, an AD, for Adulterers, daily, vpon the outside of their vppermost garment, in a

most emenent place thereof; and if they shalbe found at any tyme in any towne or place within the gouernment without them so worne vpon their vppermost garment as aforesaid, that then the constable of the towne or place shall take them, or wither of them, omitting so to weare the said two letters, and shall forthwith whip them for their negligence, and shall cause them to be immediately put on againe, and so worne by them and either of them; and also that they shalbe both whipt at Yarmouth, publikly, where the offence was committed, in such fitt season as shalbe thought meete by Mr. Edmond Freeman [and] such others as are authorized for the keepinge of the Courts in these partes.

Source: <http://www.histarch.uiuc.edu/Plymouth/Lauria2.html#II>

See Articles: Adultery; Colonial Courts; Fornication Laws; Massachusetts; Morality; Puritans.

1642 PRIMARY DOCUMENT

Capital Laws of New England

The codification of laws was necessary to ensure consistent court rulings. These Capital Laws appeared in a larger body of legal code called The Body of Liberties, which was comparable in scope to the Magna Carta. Its assembly was a collective effort spearheaded by the leaders of the colonial government and included the input of freemen and elders throughout the colony. Unlike the rest of the text, the Capital Laws specifically referenced biblical verses from which the laws were derived.

Capital Lawes of New-England, as they stand now in force in the Common-Wealth. By the Court, in the Years 1641, 1642.

Capital Lawes, Established within the Jurisdiction of Massachusetts.

1. If any man after legall conviction, shall have or worship any other God, but the Lord God, he shall be put to death. Deut. 13:6, &c and 17:2, &c. Exodus 22:30.
2. If any man or woman be a Witch, that is, hath consulteth with a familiar spirit, they shall be put to death.
3. If any persons shall blaspheme the Name of God the Father, Sonne, or Holy Ghost, with direct, expresse, presumptuous, or high-handed blasphemy, or shall curse God in the like manner, he shall be put to death.
4. [Murder by premeditated hatred]
5. [Murder by anger or passion]
6. [Murder by guile or poisoning]
7. If man or woman shall lye with any beast, or bruit creature, by carnall copulation, they shall surely be put to death; and the beast shall be slaine, and buried. Lev. 20:15, 16.
8. If a man lyeth with mankinde, as he lyeth with a woman, both of them have committed abomination, they both shall surely be put to death. Lev. 20:13.
9. If any person committeth adultery with a married, or espoused wife, the Adulterer and the Adulteresse, shall surely be put to death. Lev. 20:10, 18, 20; Deut. 22:23, 24.
10. If any man shall unlawfully have carnall copulation with any woman childe under ten years old, either with, or without consent, he shall be put to death.
11. If any man shall forcibly, and without consent, ravish any maid or woman that is lawfully married or contracted, he shall be put to death. Deut. 22:25, &c.
12. If any man shall ravish any maid or single woman (committing carnall copulation with her by force, against her will) that is above the age of ten yeares; he shall be either punished with death, or with some other grievous punishment, according to the circumstances, at the discretion of the Judges: . . .

Source: Broadside. Published in
New England, 1643.

[http://www.swarthmore.edu/SocSci/
bdorse1/41docs/50-cou.html](http://www.swarthmore.edu/SocSci/bdorse1/41docs/50-cou.html)

See Articles: Adultery; *Book of the General Lawes & Libertyes*; Colonial Courts; Massachusetts; Morality; Puritans.

1649 PRIMARY DOCUMENT

Maryland Act of Religion

Maryland was founded by Cecilius Calvert as a safe haven for Catholics such as himself who were persecuted in England. An early document in the development of religious freedom in the United States, this act guaranteed religious freedom for trinitarian Christians (including but not limited to Catholics), while criminalizing the denial of the divinity of Christ. Many Protestants opposed the law on the grounds that allegiance to Calvert would require allegiance to the pope.

Assembly Proceedings, April 2-21, 1649

Enacted and made at a General Sessions of the said Assembly held at St Marys on the one and twentieth day of April Anno Dom. 1649 as followeth viz:

An Act Concerning Religion

Forasmuch as in a well governed and Christian Commonwealth matters concerning Religion and the honor of God ought in the first place to bee taken, into serious consideration and endeavoured to bee settled. Be it therefore ordered and enacted by the Right Honorable Cecilius Lord Baron of Baltimore absolute Lord and Proprietary of this Province with the advise and consent of this Generall Assembly. That whatsoever person or persons within this Province and the Islands thereunto belonging shall from henceforth blaspheme God, that is Curse him, or deny our Saviour Jesus Christ to bee the sonne of God, or shall deny the holy Trinity the father sonne and holy Ghost, or the Godhead of any of the said Three persons of the Trinity or the unity of the Godhead, or shall use or utter any reproachfull Speeches, words or language concerning the said Holy Trinity, or any of the said three persons thereof, shall be punished with death and confiscation or

forfeiture of all his or her lands and goods to the Lord Proprietary and his heires. And bee it also Enacted by the Authority and with the advise and assent aforesaid that whatsoever person or persons shall from henceforth use or utter any reproachfull words or Speeches concerning blessed Virgin Marv the Mother of Our Saviour or the holy Apostles or Evangelists or any of them shall in such case for the first offence forfeit to the said Lord Proprietary and his heirs Lords and Proprietaries of this Province the sume of five pound Sterling or the value thereof to be Levied on the goods and chattells of every such person soe offending, but in case such Offender or Offenders, shall not then have goods and chattells sufficient for the satisfying of such forfeiture, or that the same bee not otherwise speedily satisfied that then such Offender Or Offenders Shall be publicly whipt and bee imprisoned during the pleasure, of the Lord Proprietary or the Lieut. or chief Governor of' this Province for the time being. And that every such Offender Or Offenders for every second offence shall forfeit tenne Pound or the value thereof to bee levied as aforesaid, or in case Such offender or Offenders shall not then have goods and chattells within this Province sufficient for that purpose then to bee publicly and severely whipt and imprisoned as before is expressed. And that every person or persons before mentioned offending herein the third time, shall for such third Offence forfeit all his lands and Goods and bee for ever banished and expelled out of this Province.

And be it also further Enacted by the same authority advise and assent that whatsoever person or persons shall from henceforth upon any occasion of Offence or otherwise in a reproachful manner or Way declare call or denominate any person or persons whatsoever inhabiting residing traffiqueing trading or commerceing within this Province or within any the Ports, Harbors, Creeks or Havens to the same belonging an heritick, Scismatick, Idolator, puritan, Independant, Prespiterian popish priest, Jesuite, Jesuited papist, Lutheran, Calvenist Anabaptist, Brownist. Antinomian, Barrowist, Roundhead, Separatist or any other name or terme

in a reproachfull manner relating to matter of Religion shall for every such Offence forfeit and loose the some or tenne shillings sterling or the value thereof to bee levied on the goods and chattells of every such Offender and Offenders, the one half thereof to be forfeited and paid unto the person and persons of whom such reproachfull words are or shall be spoken or uttered, and the other half thereof to the Lord Proprietary and his heirs Lords and Proprietaries of this Province, But if Such person or persons who shall at any time utter or speake any such reproachfull words or Language shall not have Goods or Chattells sufficient and overt within this Province to bee taken to satisfie the penalty aforesaid or that the same bee not other speedily satisfied, that then the person or persons soe offending shall be publicly whipt, and shall suffer imprisonment without bail or maineprise untill he she or they respectively shall satisfy the party soe offended or greived by such reproachfull Language by asking him or her respectively forgiveness publicly for such his Offence before the Magistrate or chief Officer or Officers of the Towne or place where such Offence shall be given.

And be it further likewise Enacted by the Authority and consent aforesaid that every person and persons within this Province that shall at any time hereafter prophane the Sabbath or Lords day called Sunday by frequent swearing, drunkennes or by any uncivill or disorderly recreation or by working on that day when absolute necessity doth not require it shall for every such first offence forfeit 2s 6d sterling or the value thereof, and for the second offence 5s sterling or the value thereof, and for the third offence and soe for every time lie shall offend in like manner afterwards 10s sterling or the value thereof. And in case such offender and offenders shall not have sufficient goods or chattells within this Province to any of the said Penalties respectively hereby imposed for prophaning the Sabbath or Lords day called Sunday as aforesaid, That in Every such case the party see offending shall for the first and second offence in that kinde be imprisoned till he or she shall publicly in open Court before the cheife Commander

Judge or Magistrate, of that County Towne or precinct where such offence shall be committed acknowledg the Scandall and offence he hath in that respect given against God and the good and civill Government of this Province. And for the third offence and for every time after shall also bee publickly whipt.

And whereas the inforceing of the conscience in matters of Religion hath frequently fallen out to be of dangerous Consequence in those commonwealthes where it hath been practised, and for the more quiet and peaceable government of this Province, and the better to preserve mutuall Love and amity amongst the Inhabitants thereof. Be it Therefore also by the Lord Proprietary with the advise and consent of this Assembly Ordeyned & enacted (except as in this present Act is before Declared and sett forth) that no person or persons whatsoever within this Province, or the Islands, Ports, Harbors, Creeks, or havens thereunto belonging professing to believe in Jesus Christ, shall from henceforth bee any ways troubled, molested or discountenanced for or in respect of his or her religion nor in the free exercise thereof within this Province or the Islands thereunto belonging nor any way compelled to the belief or exercise of any other Religion against his or her consent, so as they be not unfaithfull to the Lord Proprietary, or molest or conspire against the civill Government, established or to bee established in this Province under him or his heires. And that all & every person and persons that shall presume Contrary to this Act and the true intent and meaning thereof directly or indirectly either in person or estate willfully to wrong disturbe trouble or molest any person whatsoever within this Province professing to believe in Jesus Christ for or ill respect of his or her religion or the free exercise thereof within this Province other than is provided for in this Act that such person or persons so offending, shall be compelled to pay trebble damages to the party so wronged or molested, and for every such offence shall also forfeit 20s sterling in money or the Value thereof, half thereof for the use of the Lord Proprietary, and his heires Lords and Proprietaries of this Province, and the other half for

the use of the party so wronged or molested as a aforesaid. Or if the party so offending as aforesaid shall refuse or bee unable to recompense the party so wronged, or to satisfy such fine or forfeiture, then such Offender shall be severely punished by publick whipping & imprisonment during pleasure of the Lord Proprietary, or his Lieutenant or cheife Governor of this Province for the time being without baile or maineprise . . .

Source: Browne, William Hand, Clayton Colman Hall, Bernard C. Steiner, and Maryland Historical Society. *Archives of Maryland*, Vol. 1. Baltimore: Maryland Historical Society, 1883. <http://www.swarthmore.edu/SocSci/bdorsey1/41docs/56-mar.html>

See Articles: Corporal Punishment; Maryland; Maryland Toleration Act of 1649; Morality; Religion and Crime, History of.

1662 PRIMARY DOCUMENT

Virginia Slave Laws

Virginia was one of the first colonies to pass laws explicitly approving the institution of slavery, which even in the 17th century was widespread enough to bring about the need for these laws. They defined the children of slave mothers as slaves and gave slave owners broad powers of discipline over their slaves. In 1691, this law was amended to make children of white mothers and black fathers indentured servants (as well as the mothers, if they could not pay a fee).

December 1662

Whereas some doubts have arisen whether children got by any Englishman upon a Negro woman should be slave or free, be it therefore enacted and declared by this present Grand Assembly, that all children born in this country shall be held bond or free only according to the condition of the mother; and that if any Christian shall commit fornication with

a Negro man or woman, he or she so offending shall pay double the fines imposed by the former act.

September 1667

Whereas some doubts have risen whether children that are slaves by birth, and by the charity and piety of their owners made partakers of the blessed sacrament of baptism, should by virtue of their baptism be made free, *it is enacted and declared by this Grand Assembly, and the authority thereof*, that the conferring of baptism does not alter the condition of the person as to his bondage or freedom; that diverse masters, freed from this doubt may more carefully endeavor the propagation of Christianity by permitting children, though slaves, or chosed of greater growth if capable, to be admitted to that sacrament.

September 1668

Whereas it has been questioned whether servants running away may be punished with corporal punishment by their master or magistrate, since the act already made gives the master satisfaction by prolonging their time by service, *it is declared and enacted by this Assembly* that moderate corporal punishment inflicted by master or magistrate upon a runaway servant shall not deprive the master of the satisfaction allowed by the law, the one being as necessary to reclaim them from persisting in that idle course as the other is just to repair the damages sustained by the master.

October 1669

Whereas the only law in force for the punishment of refractory servants resisting their master, mistress, or overseer cannot be inflicted upon Negroes, nor the obstinacy of many of them be suppressed by other than violent means, *be it enacted and declared by this Grand Assembly* if any slave resists his master (or other by his master's order correcting him) and by the extremity of the correction should chance to die, that his death shall not be accounted a felony, but the master (or that other person appointed by the master to punish him) be acquitted from molestation, since it cannot be presumed that premeditated malice

(which alone makes murder a felony) should induce any man to destroy his own estate.

Source: Hening, William Waller. *Statutes at Large; Being a Collection of all the Laws of Virginia*, Vol. 11. Richmond, VA: 1809–23.
<http://www.swarthmore.edu/SocSci/bdorsey1/41docs/24-sla.html>

See Articles: Corporal Punishment; Slavery; Slavery, Law of; Virginia.

1676 PRIMARY DOCUMENT

Bacon's Rebellion: The Declaration

In 1676, Virginian planter Nathaniel Bacon led a rebellion against Governor William Berkeley, who refused to retaliate after a series of Indian attacks on the frontier. It was the first American rebellion to involve frontiersmen, who formed part of the mob of about 1,000 whites and blacks. Bacon obtained a militia commission at gunpoint, empowering him to lead an attack on the Indians, and his men burned and looted Jamestown. Twenty-three rebels were hanged, and Berkeley was recalled to England.

1. For having, upon specious pretenses of public works, raised great unjust taxes upon the commonalty for the advancement of private favorites and other sinister ends, but no visible effects in any measure adequate; for not having, during this long time of his government, in any measure advanced this hopeful colony either by fortifications, towns, or trade.
2. For having abused and rendered contemptible the magistrates of justice by advancing to places of judicature scandalous and ignorant favorites.
3. For having wronged his Majesty's prerogative and interest by assuming monopoly of the beaver trade and for having in it

unjust gain betrayed and sold his Majesty's country and the lives of his loyal subjects to the barbarous heathen.

4. For having protected, favored, and emboldened the Indians against his Majesty's loyal subjects, never contriving, requiring, or appointing any due or proper means of satisfaction for their many invasions, robberies, and murders committed upon us.
5. For having, when the army of English was just upon the track of those Indians, who now in all places burn, spoil, murder and when we might with ease have destroyed them who then were in open hostility, for then having expressly countermanded and sent back our army by passing his word for the peaceable demeanor of the said Indians, who immediately prosecuted their evil intentions, committing horrid murders and robberies in all places, being protected by the said engagement and word past of him the said Sir William Berkeley, having ruined and laid desolate a great part of his Majesty's country, and have now drawn themselves into such obscure and remote places and are by their success so emboldened and confirmed by their confederacy so strengthened that the cries of blood are in all places, and the terror and consternation of the people so great, are now become not only difficult but a very formidable enemy who might at first with ease have been destroyed.
6. And lately, when, upon the loud outcries of blood, the assembly had, with all care, raised and framed an army for the preventing of further mischief and safeguard of this his Majesty's colony.
7. For having, with only the privacy of some few favorites without acquainting the people, only by the alteration of a figure, forged a commission, by we know not what hand, not only without but even against the consent of the people, for the raising and effecting civil war and destruction, which being happily and without bloodshed prevented; for having the second time attempted the same,

thereby calling down our forces from the defense of the frontiers and most weakly exposed places.

8. For the prevention of civil mischief and ruin amongst ourselves while the barbarous enemy in all places did invade, murder, and spoil us, his Majesty's most faithful subjects.

Of this and the aforesaid articles we accuse Sir William Berkeley as guilty of each and every one of the same, and as one who has traitorously attempted, violated, and injured his Majesty's interest here by a loss of a great part of this his colony and many of his faithful loyal subjects by him betrayed and in a barbarous and shameful manner exposed to the incursions and murder of the heathen. And we do further declare these the ensuing persons in this list to have been his wicked and pernicious councilors, confederates, aiders, and assisters against the commonalty in these our civil commotions.

Sir Henry Chichley
William Claiburne Junior
Lieut. Coll. Christopher Wormeley
Thomas Hawkins
William Sherwood
Phillip Ludwell
John Page Clerke
Robert Beverley
John Cluffe Clerke
Richard Lee
John West
Thomas Ballard
Hubert Farrell
William Cole
Thomas Reade
Richard Whitacre
Matthew Kempe
Nicholas Spencer
Joseph Bridger
John West, Hubert Farrell, Thomas Reade,
Math. Kempe

And we do further demand that the said Sir William Berkeley with all the persons in this list be forthwith delivered up or surrender themselves within four days after the notice hereof, or otherwise we declare as follows.

That in whatsoever place, house, or ship, any of the said persons shall reside, be hid, or protected, we declare the owners, masters, or inhabitants of the said places to be confederates and traitors to the people and the estates of them is also of all the aforesaid persons to be confiscated. And this we, the commons of Virginia, do declare, desiring a firm union amongst ourselves that we may jointly and with one accord defend ourselves against the common enemy. And let not the faults of the guilty be the reproach of the innocent, or the faults or crimes of the oppressors divide and separate us who have suffered by their oppressions.

These are, therefore, in his Majesty's name, to command you forthwith to seize the persons above mentioned as traitors to the King and country and them to bring to Middle Plantation and there to secure them until further order, and, in case of opposition, if you want any further assistance you are forthwith to demand it in the name of the people in all the counties of Virginia.

Nathaniel Bacon
General by Consent of the people.
William Sherwood

Source: "Declaration of Nathaniel Bacon in the Name of the People of Virginia, July 30, 1676." *Massachusetts Historical Society Collections*, v.9 (1871).
<http://historymatters.gmu.edu/d/5800>

See Articles: Civil Disobedience; Political Dissidents; Riots.

1689 PRIMARY DOCUMENT

Samuel Prince Describes the Boston Uprising

From 1684 to 1686, English kings revoked the charter of the Massachusetts Bay Colony and assigned its territory to the Dominion of New

England, appointing Edmund Andros the governor. Andros restricted town meetings and bolstered the Church of England. In 1689, the Boston militia and many citizens revolted, arresting dominion officials and Church of England members and reinstating colonial governments. The dominion was soon officially dissolved.

Boston, April 22, 1689.

Honored Sir,

I knew not any thing of what was intended, till it was begun; yet being at the north end of the town, where I saw boys run along the street with clubs in their hands, encouraging one another to fight, I began to mistrust what was intended; and, hasting towards the town-dock, I soon saw men running for their arms: but, ere I got to the Red Lion, I was told that Captain George and the master of the frigate was seized, and secured in Mr. Colman's house at the North End, and, when I came to the town-dock, I understood that Boolifant and some others with him were laid hold of; and then immediately the drums began to beat, and the people hasting and running, some with and some for arms, Young Dudley' and Colonel Lidgit with some difficulty attained to the Fort. And, as I am informed, the poor boy cried very much; whom the Governor sent immediately on an errand, to request the four ministers, Mr. Joylife, and one or two more, to come to him at the Fort, pretending that by them he might still the people, not thinking it safe for him at that time to come to them; and they returned him the like answer. Now, by this time, all the persons whom they concluded not to be for their side were seized and secured, except some few that had hid themselves; which afterwards were found, and dealt by as the rest. The Governor, with Palmer, Randolph, Lidgit, West, and one or two more, were in the Fort. All the companies were soon rallied together at the Town House, where assembled Captain Wintroup, Shrimpton, Page, and many other substantial men, to consult of matters; in which time the old Governor came among them, at whose appearance there was a great shout by the soldiers.

Soon after, the king's jack was set up at the Fort, and a pair of colors at Beacon Hill:

which gave notice to some thousands of soldiers on Charlestown side that the controversy was now to be ended; and multitudes would have been there, but that there was no need. The frigate, upon the tidings of the news, put out all her flags and pennants, and opened all her ports, and with all speed made ready for fight, under the command of the lieutenant-swearing that he would die before she should be taken; although the captain sent to him, that if he shot one shoot, or did any hurt, they would kill him, whom they had already seized. But he, not regarding that, continued under those resolutions all that day. Now, about four of clock in the afternoon, orders were given to go and demand the Fort; which hour the soldiers thought long for: and, had it not been just at that nick, the Governor and all the crew had made their escape on board the frigate—a barge being sent for them. But the soldiers, being so near, got the barge. The army divided, and part came up on the back side of the Fort, and part went underneath the hill to the lower battery, or sconce, where the red-coats were; who, immediately upon their approach, retired up the Fort to their master, who rebuked them for not firing at our soldiers, and, as I am informed, beat some of them. One of them, being a Dutchman, said to him, “What the Devil should I fight against a thousand men?” and so ran into the house.

When the soldiers came to the battery, or sconce, they presently turned the great guns about, and mounted them against the Fort, which did much daunt all those within; and were so void of fear, that I presume, had they within the Fort been resolute to have lost their lives in fight, they might have killed an hundred of us at once—being so thick together before the mouths of their cannons at the Fort, all loaden with small shot: but God prevented it. Then they demanded a surrender; which was denied them till Mr. West and another should first go to the Council, and, after their return, we should have an answer whether to fight or no.

And accordingly they did: and, upon their return, they came forth, and went disarmed to the Town House; and from thence, some to the close jail, and he under a guard in Mr.

Usher’s house. The next day, they sent the two colonels’ to demand of him a surrender of the Castle, which he resolved not to give: but they told him, if he would not give it presently under hand and seal, that he must expect to be delivered up to the rage of the people, who doubtless would put him to death; so leaving him. But he sent and told them that he would, and did so; and so they went down, and it was surrendered to them with cursing. So they brought them away, and made Captain Fairwether commander in it. Now, by this time that the men came back from the Castle, all the guns, both in ships and batteries, were brought to bear against the frigate—which were enough to have shattered her to pieces at once—resolving to have her. But as it is incident to corrupt nature to lay the blame of our evil deeds anywhere rather than on ourselves, so Captain George casts all the blame now upon that devil Randolph; for, had it not been for him, he had never troubled this good people. So, earnestly soliciting that he might not be constrained to surrender the ship—for, by so doing, both himself and all his men should lose their wages, which otherwise would be recovered in Eng. land-giving leave to go on board, and strike the topmasts, close up the ports, and bring the sails ashore; and so they did. The country people came armed into the town in the afternoon, in such rage and heat, that it made us all tremble to think what would follow: for nothing would pacify them but he must be bound in chains or cords, and put in a more secure place;’ and that they would see done ere they went away, or else they would tear down the house where he was to the ground. And so, to satisfy them, he was guarded by them to the Fort. And I fear whether or no the matter of settling things under a new Government may not prove far more difficult than the getting from under the power of the former, except the Lord eminently appear in calming and quieting the disturbed spirits of people, whose duty certainly now is to condescend, comply, and every way study for peace. So prays the assured well-willer to New England’s happiness,

S. P.

Counseller Clark' writ a very grateful letter to Mr. Bullifant, intimating what a faithful friend he had been to said Bullifant, and withal desiring said Bullifant, that if Lhere should news come out of England of a change, which he hoped in God it never would (as to Government), that said Bullifant would do him the favor as to send him word with expedition, that so he might make his escape, living so dangerously in the midst of his enemies, who were even ready to devour him; and the merchants have gotten this pamphlet, and resolve forthwith to print it. Farewell!

Source: Andrews, Charles M. *Narratives of the Insurrections, 1675–1690*. New York: Charles Scribner's Sons, 1915.
<http://www.swarthmore.edu/SocSci/bdorsey1/41docs/42-pri.html>

See Articles: Boston, Massachusetts; Civil Disobedience; Political Dissidents; Riots.

1692 PRIMARY DOCUMENT

Accusations Against Elizabeth Proctor

John and Elizabeth Proctor were among the men and women tried for witchcraft during the Salem witchcraft trials of 1692 to 1693, one of several periods of mass hysteria and witchcraft paranoia in Anglo-American history. The Proctors were likely accused because of their criticism of witchcraft claims against others. Both were sentenced to death, but Elizabeth was spared due to her pregnancy. Only 10 years later, public opinion changed enough to force the courts to issue an apology.

Goody nurs: Samuel Nurs. Doth testifei to all above written

Rebcah Preson & Mary Tarbel for Rebecca Nurse.

We whos names are underwritten cane teftifie if cald to it that Goodde Nurs. Have been troubled with an infirmity of body for many years, which the juree of women seem to be afraid it should be something else.

Rebcah Preson Mary Tarbel

Rebecca Nurse petition to the Court.

To ye Honoured Court of Oryer and Terminer now fitting in Salem this 28th of June An^o 1692.

The humble petission of Rebeccah Nurse of Salem Village.

Humbly Sheweth

That whereas sum women did sarch your petissioner at Salem, as I did then conceive for sum Supernaturall Marke, And then one of the sd. women which is known to be, the Moaste Antiente skilfull, prudent person of them all as to any such concerne: Did express himself to be: of a Contrary opinion from the Reft, and Did then Declare that shee saw nothing in or aboute yoe Honors poare petissioner But what might Arife from a Naturall cause: And I then rendered the said persons a sufficient knowne reason as to myself of the moueing cause thereof which was by Exceeding weaknesses: decending partly from an overture of Nature and difficult Exigences that hath Befallen me In the times of my travels, And therefore yor yettissioner: Humbley prayes I that you Honours would be pleased to Admitt of some other women to Enquire into this Great: concerne, those that are Moast Grand wise and skillfull: namely: Ms. Higginson senr: Ms. Durkstone: Ms. Woodbery two of them being Midwives: Ms. Porter: together with such others, as may be choasen on that Account: before I am Brought to my trial: All which I hoape yor, Honours will take into yor. Prudent Consideration and find it requisite soe to doe: for my Life Lyes now in yor Hands, under God: And Being Conscious of my owne Innocency. I humbly begg that I may have liberty to manifest it to the wourld partly by the Meanes abovesaid: And yor

Poare pettitioner shall Evermore pray as in duty bound & c.

Rebecca Nurse:
hir Marke †

Complaint vs. Elizabeth Proctor

This 4th April 1692 Capt. Jonathan Walcott, and Leut Nathaniell Ingersoll personally appeared before us and exhibited their complaint in behalf of their Majesties sor yselves and severall of their Neighbours against Sarah cloyes of Selem Village and Eliz. Procter ye wife of Jno Proctor of Salem for high suspicion of severall acts of witchcraft donne or committed by ym upon ye bodyes of Abigail Williams and John Indian of ye family of Mr. Sam: Parris and Mary Walcott daughter of one of ye complainants and Ann butnam and Mercy Lewis. Of ye family of Thomas Putnam. Whereby great hurt and damage hath bin donne to ye bodyes of sd persons, and therefore craved Justice.

Warrant v. Elizabeth Proctor.

Salem. Aprill 4th 1692

There Being complaint this day made (before us) by Capt. Jonath Walcott, and Lt. Nathaniell Ingersull, both of Salem Village, in behalf of their Majesties for themselves and also for severall of their neighbors against Sarah Cloyse the wife of Peter Cloyce of Salem Village and Elizabeth Proctor the wife of John Proctor of Salem sarmes for high suspicion of Sundry acts of witchcraft donne or committed by them upon the bodyes of Abigaile Williams and John Indian both of Mr. Sam: Parris his family of Salem Village and Mary Walcott daughter of one of the above said complainants and Ann Putnam and Marcy Lewis, of the family of Thomas Putnam of Salem Village, whereby great hurt and damage hath beene donne to the bodyes of sd persons, aboue named therefore Craued Justice.

You are therefore in their Majests names hereby required to apprehend and bring before us Sarah Cloyce the wife of Peter Cloyce of

Salem Village and Elizabeth Procter the wife of John Proctor of Salem sarmes on Monday morning next, being the Eleventh day of this Instant Aprill aboute Eleven of the Clock, at the publike meeting house in the towne, in order to their examination Relating to the premises abousd and here of you are not to faile.

Dated Salem. Aprill 8th, 1692
John Hathorne
Jonathan Corwin

To George Herrick Marshall of the County of Essex.

You are likewise to warn and order Elis Hubert and Mary Warren not to faile of being present at ye aboue said tyme and place to give in wt evidence they know therein.

Aprill 11th, 1692. I have taken the persons of Sarah Cloyce and Elizabeth Proctor and brought them before this honorable Courte to answer as above.

I have also warned ye above named Elizabeth Hubbart to answer as above.

Pr George Herrick Marshall of Essex.

Source: "Records of Salem Witchcraft." Vols. 1–2 (1969). Library of Congress, Call Number: BF1575.R3
Copied from the original documents

See Articles: Puritans; Religion and Crime, History of; Religion and Crime, Sociology of; Salem Witch Trials.

1706
PRIMARY DOCUMENT

Ann Putnam's Confession

The daughter of a powerful Salem family, Ann Putnam was a key witness in the Salem witchcraft trials when she was 12 years old. Among those she accused were Martha Corey, who was hanged to death, and her husband Giles, who chose to endure peine forte et dure (trial by ordeal, in this

case being slowly crushed with layers of stones) rather than submit to a jury trial. The latter seemed to be named principally for defending his wife, a pattern seen throughout the trials. Putnam's recanting came nine years after the death of her parents, who may have coached her testimony.

"I desire to be humbled before God for that sad and humbling providence that befell my father's family in the year about '92; that I, then being in my childhood, should, by such a providence of God, be made an instrument for the accusing of several persons of a grievous crime, whereby their lives were taken away from them, whom now I have just grounds and good reason to believe they were innocent persons; and that it was a great delusion of Satan that deceived me in that sad time, whereby I justly fear I have been instrumental, with others, though ignorantly and unwittingly, to bring upon myself and this land the guilt of innocent blood; though what was said or done by me against any person I can truly and uprightly say, before God and man, I did it not out of any anger, malice, or ill-will to any person, for I had no such thing against one of them; but what I did was ignorantly, being deluded by Satan. And particularly, as I was a chief instrument of accusing of Goodwife Nurse and her two sisters, I desire to lie in the dust, and to be humbled for it, in that I was a cause, with others, of so sad a calamity to them and their families; for which cause I desire to lie in the dust, and earnestly beg forgiveness of God, and from all those unto whom I have given just cause of sorrow and offence, whose relations were taken away or accused.

[Signed]

"This confession was read before the congregation, together with her relation, Aug. 25, 1706; and she acknowledged it."

"J. Green, Pastor."

Source: http://pages.uoregon.edu/mjdennis/courses/wk3_putnam.htm

See Articles: Puritans; Religion and Crime, History of; Religion and Crime, Sociology of; Salem Witch Trials.

1741 PRIMARY DOCUMENT

Excerpt From the New York Negro Plot Trials Testimony

The increased use of slaves in New York led to widespread fears of riots and revolts. In 1741, the winter had exacerbated an economic depression, and a 1739 slave revolt in South Carolina was a fresh memory. Fires were a common danger in the city, but when they broke out on April 6, they were taken as a sign of a slave revolt. Soon, half of the city's adult male slaves had been jailed, most soon freed. Numerous slaves and several whites were burned at the stake, hanged, or banished.

Saturday, May 9.

This afternoon orders were given for apprehending the several negroes mentioned by Peggy, to have been present at Romme's, at the time she said Romme and the negroes were talking of the conspiracy; those of them whom she knew by name, and were not before committed, were soon found and brought to jail.

In the evening the judges came to the city-hall, and sent for Peggy, and had the several negroes brought one by one, and passed in review before her, viz. Patrick (English's) Cato (col. Moore's) Curacoa Dick, Caesar, (alderman Pintard's) Brash (Mr. Jay's) and Jack (Breasted's) and she distinguished them every one, called them by their names, and declared, those were at the above mentioned meeting.

These negroes were each of them separately examined, and denied being at any such meeting, or that they knew any thing of the conspiracy.

At first, Cork (English's negro) was brought by mistake instead of Patrick, and Peggy declared, he was not English's negro which she meant; Cork was unfortunately of a countenance somewhat ill-favoured, naturally of

a suspicious look, and reckoned withal to be unlucky too; his being sent for before the magistrates in such a perilous season, might be thought sufficient to alarm the most innocent of them, and occasion the appearance of their being under some terrible apprehensions; but it was much otherwise with Cork; and notwithstanding the disadvantage of his natural aspect, upon his being interrogated concerning the conspiracy, he shewed such a cheerful, open, honest smile upon his countenance (none of your fictitious hypocritical grins) that every one that was by, and observed it (and there were several in the room) jumped in the same observation and opinion, that they never saw the fellow look so handsome: Such an efficacy have truth and innocence, that they even reflect beauty upon deformity!

On the contrary, Patrick's visage betrayed his guilt: those who are used to negroes may have experienced, that some of them, when charged with any piece of villainy they have been detected in, have an odd knack or (it is hard what to call or how to describe it) way of turning their eyes inwards, as it were, as if shocked at the consciousness of their own perfidy; their looks, at the same time, discovering [revealing] all the symptoms of the most inveterate malice and resentment: this was Patrick's appearance, and such his behaviour upon examination, as served to induce one's credit to what Peggy had declared; so far at least, that he was present at a meeting when the conspiracy was talked of, and was one of the persons consenting to act a part in that infernal scheme; so that he was committed to jail, and the rest of them, whom Peggy declared, as they were produced, to be the persons she meant.

These negroes, impeached by Peggy, and committed upon her information, and which had passed in review before her, were likewise shewn to Mary Burton, who declared, that she did not remember, that ever she saw any of them at Hughson's, which seemed to add strength to what Peggy had declared in her examination, that this villainous scheme was carrying on at Romme's as well as Hughson's.

Deposition taken before one of the judges,—Abigail Earle, being sworn, deposeth, “that just

before the going in of the afternoon church, on the same Sunday that coals were found in Mr. Murray's haystack, she saw three negro men coming up the Broadway; that she was then looking out of her window up one pair of stairs in the house where Mr. Williams now lives; and as they passed under the window, she heard one of them say, viz. *Fire, fire, scorch, scorch*, A LITTLE, *damn it*, BY AND BY! and then threw up his hands and laughed. That after the said negroes were gone by she went into Mrs. George's house and told her what she had heard: and about an hour after, when church was out, she saw the same negroes coming down the Broadway; and then shewed Mrs. George the negro that had spoke the aforesaid words: whereupon Mrs. George said, that is Mr. Walter's Quaco.”

Lydia George being sworn, deposed, “that she heard the above written deposition of Abigail Earle read, and knows that all therein mentioned, which any ways relates to her the deponent, is true.”

Upon these depositions Quaco was recommitted this evening.

Source: Horsmanden, Daniel. *The New-York Conspiracy, or a History of the Negro Plot, With the Journal of the Proceedings Against the Conspirators at New-York in the Years 1741–42*. New York: Southwick and Pelsue, 1810.
<http://historymatters.gmu.edu/d/6528>

See Articles: African Americans; Civil Disobedience; Slavery.

1758 PRIMARY DOCUMENT

Mary Jemison's Account of Kidnapping by Indians

In 1824, James Seaver published a classic captivity narrative based on Mary Jemison's account to Seaver of her kidnapping at age 15, in 1758. Jemison was captured by a raiding party (which

included Frenchmen as well as Shawnee Indians) during the French and Indian War. Though the raiders killed most of her family, in time she chose to remain with the Seneca Indians they traded her to, marrying an Indian and helping the Seneca negotiate the 1797 Treaty of Big Tree.

Having made fast to the shore, the squaws left me in the canoe while they went to their wigwam or house in the town, and returned with a suit of Indian clothing, all new, and very clean and nice. My clothes, though whole and good when I was taken, were now torn in pieces, so that I was almost naked. They first undressed me and threw my rags into the river; then washed me clean and dressed me in the new suit they had just brought, in complete Indian style; and then led me home and seated me in the center of their wigwam.

I had been in that situation but a few minutes, before all the squaws in the town came in to see me. I was soon surrounded by them, and they immediately set up a most dismal howling, crying bitterly, and wringing their hands in all the agonies of grief for a deceased relative.

Their tears flowed freely, and they exhibited all the signs of real mourning. At the commencement of this scene, one of their number began, in a voice somewhat between speaking and singing, to recite some words to the following purport, and continued the recitation till the ceremony was ended; the company at the same time varying the appearance of their countenances, gestures and tune of voice, so as to correspond with the sentiments expressed by their leader:

“Oh our brother! Alas! He is dead—he has gone; he will never return! Friendless he died on the field of the slain, where his bones are yet lying un-buried! Oh, who will not mourn his sad fate? No tears dropped around him; oh, no! No tears of his sisters were there! He fell in his prime, when his arm was most needed to keep us from danger! Alas! he has gone! and left us in sorrow, his loss to bewail: Oh where is his spirit? His spirit went naked, and hungry it wanders, and thirsty and wounded it groans to return! Oh helpless and wretched, our brother has gone! No blanket nor food to nourish and warm him; nor candles to light

him, nor weapons of war:—Oh, none of those comforts had he! But well we remember his deeds! —The deer he could take on the chase! The panther shrunk back at the sight of his strength! His enemies fell at his feet! He was brave and courageous in war! As the fawn he was harmless: his friendship was ardent: his temper was gentle: his pity was great! Oh! our friend, our companion is dead! Our brother, our brother, alas! he is gone! But why do we grieve for his loss? In the strength of a warrior, undaunted he left us, to fight by the side of the Chiefs! His war-whoop was shrill! His rifle well aimed laid his enemies low: his tomahawk drank of their blood: and his knife flayed their scalps while yet covered with gore! And why do we mourn? Though he fell on the field of the slain, with glory he fell, and his spirit went up to the land of his fathers in war! Then why do we mourn? With transports of joy they received him, and fed him, and clothed him, and welcomed him there! Oh friends, he is happy; then dry up your tears! His spirit has seen our distress, and sent us a helper whom with pleasure we greet. Dickewamis has come: then let us receive her with joy! She is handsome and pleasant! Oh! she is our sister, and gladly we welcome her here. In the place of our brother she stands in our tribe. With care we will guard her from trouble; and may she be happy till her spirit shall leave us.”

In the course of that ceremony, from mourning they became serene—joy sparkled in their countenances, and they seemed to rejoice over me as over a long-lost child. I was made welcome amongst them as a sister to the two squaws before mentioned, and was called Dickewamis; which being interpreted, signifies a pretty girl, a handsome girl, or a pleasant, good thing. That is the name by which I have ever since been called by the Indians.

I afterwards learned that the ceremony I at that time passed through, was that of adoption. The two squaws had lost a brother in Washington's war, sometime in the year before, and in consequence of his death went up to Fort Pitt, on the day on which I arrived there, in order to receive a prisoner or an enemy's scalp, to supply their loss. It is a custom of the

Indians, when one of their number is slain or taken prisoner in battle, to give to the nearest relative to the dead or absent, a prisoner, if they have chanced to take one, and if not, to give him the scalp of an enemy. On the return of the Indians from conquest, which is always announced by peculiar shoutings, demonstrations of joy, and the exhibition of some trophy of victory, the mourners come forward and make their claims. If they receive a prisoner, it is at their option either to satiate their vengeance by taking his life in the most cruel manner they can conceive of; or, to receive and adopt him into the family, in the place of him whom they have lost. All the prisoners that are taken in battle and carried to the encampment or town by the Indians, are given to the bereaved families, till their number is made good. And unless the mourners have but just received the news of their bereavement, and are under the operation of a paroxysm of grief, anger and revenge; or, unless the prisoner is very old, sickly, or homely, they generally save him, and treat him kindly. But if their mental wound is fresh, their loss so great that they deem it irreparable, or if their prisoner or prisoners do not meet their approbation, no torture, let it be ever so cruel, seems sufficient to make them satisfaction. It is family, and not national, sacrifices amongst the Indians, that has given them an indelible stamp as barbarians, and identified their character with the idea which is generally formed of unfeeling ferocity, and the most abandoned cruelty.

It was my happy lot to be accepted for adoption: and at the time of the ceremony I was received by the two squaws, to supply the place of their mother in the family; and I was ever considered and treated by them as a real sister, the same as though I had been born of their mother.

During my adoption, I sat motionless, nearly terrified to death at the appearance and actions of the company, expecting every moment to feel their vengeance, and suffer death on the spot. I was, however, happily disappointed, when at the close of the ceremony the company retired, and my sisters went about employing every means for my consolation and comfort.

Being now settled and provided with a home, I was employed in nursing the children, and doing light work about the house. Occasionally I was sent out with the Indian hunters, when they went but a short distance, to help them carry their game. My situation was easy; I had no particular hardships to endure. But still, the recollection of my parents, my brothers and sisters, my home, and my own captivity, destroyed my happiness, and made me constantly solitary, lonesome and gloomy.

My sisters would not allow me to speak English in their hearing; but remembering the charge that my dear mother gave me at the time I left her, whenever I chanced to be alone I made a business of repeating my prayer, catechism, or something I had learned in order that I might not forget my own language. By practising in that way I retained it till I came to Genesee flats, where I soon became acquainted with English people with whom I have been almost daily in the habit of conversing.

My sisters were diligent in teaching me their language; and to their great satisfaction I soon learned so that I could understand it readily, and speak it fluently. I was very fortunate in falling into their hands; for they were kind good natured women; peaceable and mild in their dispositions; temperate and decent in their habits, and very tender and gentle toward me. I have great reason to respect them, though they have been dead a great number of years.

The town where they lived was pleasantly situated on the Ohio, at the mouth of the Shenankee: the land produced good corn; the woods furnished plenty of game, and the waters abounded with fish. Another river emptied itself into the Ohio, directly opposite the mouth of the Shenankee. We spent the summer at that place, where we planted, hoed, and harvested a large crop of corn, of an excellent quality.

About the time of corn harvest, Fort Pitt was taken from the French by the English.

The corn being harvested, the Indians took it on horses and in canoes, and proceeded down the Ohio, occasionally stopping to hunt a few days, till we arrived at the mouth of Sciota river; where they established their winter

quarters, and continued hunting till the ensuing spring, in the adjacent wilderness. While at that place I went with the other children to assist the hunters to bring in their game. The forests on the Sciota were well stocked with elk, deer, and other large animals; and the marshes contained large numbers of beaver, muskrat, etc., which made excellent hunting for the Indians; who depended, for their meat, upon their success in taking elk and deer; and for ammunition and clothing, upon the beaver, muskrat, and other furs that they could take in addition to their peltry.

The season for hunting being passed, we all returned in the spring to the mouth of the river Shenankee to the houses and fields we had left in the fall before. There we again planted our corn, squashes, and beans, on the fields that we occupied the preceding summer.

About planting time, our Indians all went up to Fort Pitt, to make peace with the British, and took me with them. We landed on the opposite side of the river from the fort, and encamped for the night. Early the next morning the Indians took me over to the fort to see the white people that were there. It was then that my heart bounded to be liberated from the Indians and to be restored to my friends and my country. The white people were surprised to see me with the Indians, enduring the hardships of a savage life, at so early an age, and with so delicate a constitution as I appeared to possess. They asked me my name; where and when I was taken—and appeared very much interested on my behalf. They were continuing their inquiries, when my sisters became alarmed, believing that I should be taken from them, hurried me into their canoe and recrossed the river—took their bread out of the fire and fled with me, without stopping, till they arrived at the river Shenankee. So great was their fear of losing me, or of my being given up in the treaty, that they never once stopped rowing till they got home.

Shortly after we left the shore opposite the fort, as I was informed by one of my Indian brothers, the white people came over to take me back; but after considerable inquiry, and having made diligent search to find where I was hid, they returned with heavy hearts.

Although I had then been with the Indians something over a year, and had become considerably habituated to their mode of living, and attached to my sisters, the sight of white people who could speak English inspired me with an unspeakable anxiety to go home with them, and share in the blessings of civilization. My sudden departure and escape from them, seemed like a second captivity, and for a long time I brooded the thoughts of my miserable situation with almost as much sorrow and dejection as had done those of my first sufferings. Time, the destroyer of every affection, wore away my unpleasant feelings, and I became as contented as before.

Source: Seaver, James E. *A Narrative of the Life of Mrs. Mary Jemison*. Canadaigua, NY: J. D. Bemis, 1824.
<http://historymatters.gmu.edu/d/5794>

See Articles: History of Crime and Punishment in America: Colonial; Kidnapping; Native Americans.

1773 PRIMARY DOCUMENT

A First-Hand Account of the Boston Tea Party

George Hewes was a shoemaker who later described his experiences of the Revolutionary era to historian James Hawkes. The Boston Tea Party is one of the most famous protests leading up to independence, precipitated by a severe increase in the tax on tea in order to raise money for the East India Company. It was the last straw in an ongoing dispute on British Parliamentary authority over the colonies. In other colonies, protests met little resistance; Boston was the exception.

Although the excitement which had been occasioned by the wanton massacre of our citizens, had in some measure abated, it was never extinguished until open hostilities commenced, and we had declared our independence. The citizens

of Boston continued inflexible in their demand, that every British soldier should be withdrawn from the town, and within four days after the massacre, the whole army decamped. But the measures of the British parliament, which led the American colonies to a separation from that government, were not abandoned. And to carry into execution their favourite project of taxing their American colonies, they employed a number of ships to transport a large quantity of tea into the colonies, of which the American people were apprised, and while resolute measures were taking in all the capital towns to resist the project of British taxation, the ships arrived, which the people of Boston had long expected.

The particular object of sending this cargo of tea to Boston at that time, and the catastrophe which befell it, have been referred to in the preface. It has also been recorded, among the most important and interesting events in the history of the American revolution; but the rehearsal of it at this time, by a witness, and an actor in that tragicomical scene, excites in the recollection of it a novel and extraordinary interest.

On my inquiring of Hewes if he knew who first proposed the project of destroying the tea, to prevent its being landed, he replied that he did not; neither did he know who or what number were to volunteer their services for that purpose. But from the significant allusion of some persons in whom I had confidence, together with the knowledge I had of the spirit of those times, I had no doubt but that a sufficient number of associates would accompany me in that enterprise.

The tea destroyed was contained in three ships, laying near each other, at what was called at that time Griffin's wharf, and were surrounded by armed ships of war; the commanders of which had publicly declared, that if the rebels, as they were pleased to style the Bostonians, should not withdraw their opposition to the landing of the tea before a certain day, the 17th day of December, 1773, they should on that day force it on shore, under the cover of their cannon's mouth. On the day preceding the seventeenth, there was a meeting of the citizens of the county of Suffolk, convened

at one of the churches in Boston, for the purpose of consulting on what measures might be considered expedient to prevent the landing of the tea, or secure the people from the collection of the duty. At that meeting a committee was appointed to wait on Governor Hutchinson, and request him to inform them whether he would take any measures to satisfy the people on the object of the meeting. To the first application of this committee, the governor told them he would give them a definite answer by five o'clock in the afternoon. At the hour appointed, the committee again repaired to the governor's house, and on inquiry found he had gone to his country seat at Milton, a distance of about six miles. When the committee returned and informed the meeting of the absence of the governor, there was a confused murmur among the members, and the meeting was immediately dissolved, many of them crying out, Let every man do his duty, and be true to his country; and there was a general huzza for Griffin's wharf. It was now evening, and I immediately dressed myself in the costume of an Indian, equipped with a small hatchet, which I and my associates denominated the tomahawk, with which, and a club, after having painted my face and hands with coal dust in the shop of a blacksmith, I repaired to Griffin's wharf, where the ships lay that contained the tea.

When I first appeared in the street, after being thus disguised, I fell in with many who were dressed, equipped and painted as I was, and who fell in with me, and marched in order to the place of our destination. When we arrived at the wharf, there were three of our number who assumed an authority to direct our operations, to which we readily submitted. They divided us into three parties, for the purpose of boarding the three ships which contained the tea at the same time. The name of him who commanded the division to which I was assigned, was Leonard Pitt. The names of the other commanders I never knew. We were immediately ordered by the respective commanders to board all the ships at the same time, which we promptly obeyed. The commander of the division to which I belonged, as soon as we were on board the

ship, appointed me boatswain, and ordered me to go to the captain and demand of him the keys to the hatches and a dozen candles. I made the demand accordingly, and the captain promptly replied, and delivered the articles; but requested me at the same time to do no damage to the ship or rigging. We then were ordered by our commander to open the hatches, and take out all the chests of tea and throw them overboard, and we immediately proceeded to execute his orders; first cutting and splitting the chests with our tomahawks, so as thoroughly to expose them to the effects of the water. In about three hours from the time we went on board, we had thus broken and thrown overboard every tea chest to be found in the ship; while those in the other ships were disposing of the tea in the same way, at the same time. We were surrounded by British armed ships, but no attempt was made to resist us. We then quietly retired to our several places of residence, without having any conversation with each other, or taking any measures to discover who were our associates; nor do I recollect of our having had the knowledge of the name of a single individual concerned in that affair, except that of Leonard Pitt, the commander of my division, who I have mentioned. There appeared to be an understanding that each individual should volunteer his services, keep his own secret, and risk the consequences for himself. No disorder took place during that transaction, and it was observed at that time, that the stillest night ensued that Boston had enjoyed for many months.

During the time we were throwing the tea overboard, there were several attempts made by some of the citizens of Boston and its vicinity, to carry off small quantities of it for their family use. To effect that object, they would watch their opportunity to snatch up a handful from the deck, where it became plentifully scattered, and put it into their pockets. One Captain O'Conner, whom I well knew, came on board for that purpose, and when he supposed he was not noticed, filled his pockets, and also the lining of his coat. But I had detected him, and gave information to the captain of what he was doing. We were

ordered to take him into custody, and just as he was stepping from the vessel, I seized him by the skirt of his coat, and in attempting to pull him back, I tore it off; but springing forward, by a rapid effort, he made his escape. He had however to run a gauntlet through the crowd upon the wharf; each one, as he passed, giving him a kick or a stroke.

The next day we nailed the skirt of his coat, which I had pulled off, to the whipping post in Charlestown, the place of his residence, with a label upon it, commemorative of the occasion which had thus subjected the proprietor to the popular indignation.

Another attempt was made to save a little tea from the ruins of the cargo, by a tall aged man, who wore a large cocked hat and white wig, which was fashionable at that time. He had slightly slipped a little into his pocket, but being detected, they seized him, and taking his hat and wig from his head, threw them, together with the tea, of which they had emptied his pockets, into the water. In consideration of his advanced age, he was permitted to escape, with now and then a slight kick.

The next morning, after we had cleared the ships of the tea, it was discovered that very considerable quantities of it was floating upon the surface of the water; and to prevent the possibility of any of its being saved for use, a number of small boats were manned by sailors and citizens, who rowed them into those parts of the harbour wherever the tea was visible, and by beating it with oars and paddles, so thoroughly drenched it, as to render its entire destruction inevitable.

by George Robert Twelve Hewes

Source: Hawkes, James. *A Retrospect of the Boston Tea Party*. New York: S. S. Bliss, 1834.
<http://historymatters.gmu.edu/d/5799>

See Articles: American Revolution and Criminal Justice; Civil Disobedience; Larceny; Magna Carta; Political Crimes, History of; Political Crimes, Sociology of; Political Dissidents; Proclamation for Suppressing Rebellion and Sedition of 1775; Tea Act of 1773; Townshend Acts of 1767; Tax Crimes.



1777 to 1800

INTRODUCTION

Just as in most other aspects of society, the criminal justice system in the United States experienced significant changes, both philosophical and tangible, between 1777 and 1800. As the country grew from a group of individual colonies to a united new country, the system of crime and punishment also transformed from a vestige of English colonial law to a structure arranged to meet the republic's new and unique challenges. This era marked a shift in demography in the patterns of criminal activity, a transition in judicial priorities, and a change in the country's laws and institutions. It is also highlighted by an alteration in the forms and methods of punishment to not only meet the period's new liberal philosophies, but also to address the efficacy of old punishments on new criminals. The fulcrum leveraging this change was the American Revolution and the break that it brought with previous colonial policies, ties, and philosophies. In the years leading up to the Revolution, the colonists administered justice in much the same way as their English forebears, adapting their policies to the unique circumstances of close-knit, church-centered villages. As U.S. demographics evolved and the challenge of constructing a new, post-Revolution government began, the American system of crime and punishment experienced a centralization of the penal system and a fundamental renegotiation of national and state jurisdictions.

Pre-Revolutionary Criminal Justice Officials and Jurisdictions

Just as today, crimes in the 1770s were categorized and their jurisdictions were distributed among several different authorities. For the most part, minor crimes in the category of disorderly conduct—gambling, breaking the Sabbath, unruliness, public intoxication, and fighting—were handled by a local justice of the peace. Generally, the governor of the colony appointed these justices; after the American Revolution, however, they would be elected by the towns for seven-year terms. Minor humiliation and, in many cases, nominal fines were assessed by the local justice of the peace to handle nuisance crimes such as these.

Although these justices still chose to utilize public humiliation tactics in many instances, they also commonly chose the assessment of monetary fines as a reasonable punishment for smaller offenses. However, pre-Revolutionary America was not

a particularly wealthy land, so in most cases fines simply proved unfeasible; offenders did not have the money to pay. Instead, justices exercised the option of sentencing offenders to servitude as an alternative to fining. Convicted criminals could then act as servants to the individual they had wronged until the court determined that their debt had been paid. In a small and intimate community, this served as a plausible alternative punishment. Although much of the criminal punishment code of the American colonies had been inherited directly from the English, uniquely American problems such as a lack of money made a difference in the way the courts handled crime and punishment. The American colonies' distance from England, their distinctive circumstances, and the individual colonies' isolation from one another meant that the local justices of the peace possessed a great deal of leeway and executive authority to interpret and adapt the old English common law practices that they had inherited to their own circumstances.

Most misdemeanors and minor felonies not handled immediately by the justice of the peace were handled by justices at the county level. County justices held court sessions four times a year. In these hearings, known as "quarter sessions," the officers of the county justice's court would process all those who stood accused or who awaited sentencing. These individuals were held most often in the county jail, or *gaol*, and would be tried, sentenced, or both during the quarter session. The removal and trial of the prisoners held in the county's *gaol*, known as "gaol delivery," was the key function of a county justice. In the *gaol* delivery process, the court or county judge ordered the county sheriff, via a document called a *mittimus*, to hand defendants over to the court's keeper (bailiff), who would be responsible for holding them until the end of trial. Crimes requiring these types of services by the county justice included most assaults, thefts, inciting riots, contempt of court or justice, the fathering of illegitimate children, and the running of unlicensed or disorderly taverns, inns, or other entertainments.

Crimes considered serious enough to warrant a death sentence, known as "capital felonies," fell under the jurisdiction of the court of oyer and terminer. These courts and their judges held appointments by the British monarch before 1776. Afterward, the courts' dockets became part of the duties of the U.S. Supreme Court. Courts of oyer and terminer met twice a year, delivering *gaols* by trying arson, armed burglary, treason, murder, and various sexual crimes. Those convicted of these offenses could still be given significant public punishments, and sentences of death were often carried out on the *gallops* in full view of the public in much the same manner.

Though the system of trying and punishing capital crime remained similar to England's methods even up to the eve of the American Revolution, cultural differences colored the justice system differently in the colonies. For example, even into the 1770s, American colonists still exhibited their Puritan backgrounds by focusing their police powers more intently on morality crimes such as sexual deviance, much more so than their English counterparts. Even for some years after the Revolution, sexual crimes such as sodomy were listed as capital felonies. Although the American system of correction and punishment remained for the most part a product of the English system, its occasional departure from the norm to address issues unique to the colonies, combined with a heavier emphasis on morality, made it distinctive.

Pre-Revolutionary Crimes of Sexuality and Immorality

The view of proper use of police powers as enforcing a morality that included raising sodomy and other sexual misdemeanors to capital status was the upshot of an American judicial philosophy inherited from the Puritans and religiously devout writers such as William Blackstone, who wrote extensively on the subject of criminal justice. The preoccupation with sexual morality was illustrated best by the cases of women in the

court system. Sexual offenses constituted by far the most common crime with which American women of the late 18th century were accused. Prosecutions and punishments of women for fornication and for adultery occurred at a much higher frequency in the American colonies than in Europe, with religiously devout colonies such as Pennsylvania and Massachusetts leading the others in the percentage of females accused and tried of these crimes. The strict prosecution of “immoral women” would continue well into the 1780s.

Although women in the colonies also appeared in court for theft and other common crimes, most accusations and prosecutions centered on immoral behavior or disruption of the “public order.” Assault cases involving females usually involved domestic violence, rather than public instances of assault or battery.

Offenses against the public order generally consisted of lewd conduct, adultery, or operating “illegal ordinaries,” a legal term for houses of prostitution, drunkenness, or gambling. For the authorities of the 1770s and 1780s, police powers were concerned as much with maintaining morality as with the prevention of property crime or other offenses not seen as acts of pure immorality. Common means of protecting society against all these threats were corporal or sanguinary punishments, with additional reliance on public humiliation and admonition.



American founding fathers relied heavily on the commentaries of William Blackstone (1723–80); the Ten Commandments and God’s law were his guiding philosophies. A statue of Blackstone in his judicial robes stands in Washington, D.C.

Pre-Revolutionary Punishment: Public Humiliation and Admonition

In the years leading up to the American Revolution, punishment in the United States differed little from the correctional systems of its European counterparts. The biblical concept of *lex talionis*, “an eye for an eye,” acted as the foundation for determining reasonable punishment. Mutilation was common; thieves would often lose fingers or have an ear “cropped,” and adulterers or those convicted of manslaughter would usually receive brandings. Brandings increased in popularity due to their use in identifying criminals; for example, B stood for burglary, C for counterfeiting, and H for horse theft. These physical forms of punishment easily transferred to colonial systems.

Public humiliation, also a common category of punishment in Europe, became even more popular in pre-Revolutionary America because of the unique social construction of the American colonies. Inherited from the Puritans of the 17th century and used throughout the 18th century, the stocks, the pillory, and public whipping provided a dual function. For those still associated with the church, the public punishment system mirrored the custom of public confession. Since the Puritans associated sin and crime so



The massacre at Cherry Valley, New York, on November 11, 1778, led by a combined force of loyalists and Indians, killed 14 officers and 30 civilians. America responded with the Sullivan Expedition in 1779, driving Iroquois villagers in New York out of their homelands.

closely, public confession of crime and involvement of the town seemed sensible and appeared to fit with the confession of sin and engagement of the congregation. Throughout the colonial period, the town was seen as an extended congregation, so the sharing (confession) of the crime (sin) generally provided an effective tool for crime prevention and correction, at least in Puritan colonies.

This system changed little in the 18th century. Judges in colonies such as Massachusetts used public whippings, brandings, mutilations, and standing in the gallows, stocks, or pillory as default punishments for crimes of all sorts. The judges expected the public not only to witness the punishment but also to participate in the identification of criminal elements and prevention of future crimes in the event that those individuals remained unreformed. In order to ensure the participation of the commu-

nity, judges usually scheduled the punishments on market days, important meeting days, or public holidays.

As the decades passed, the humiliation aspect of punishment increasingly came to be seen as the focus of the sentence rather than the corporal punishment. Thus, by the 1770s, public humiliation sentences usually lacked a lasting physical component such as branding or lashing, instead deferring to sentences of hours in the stocks or on the gallows with a rope around the neck. In either instance, it became increasingly common for the offender to wear a sign explaining his or her offense. Though relatively inane today, these punishments carried great weight and efficacy in the colonial period. The America of the late 18th century remained a group of small, closely knit towns separate enough to prevent much mobility of citizens. Most individuals lived and died within a few miles of their birthplaces. In a community where “everyone knew everyone,” time spent in this state of public disgrace proved to be fairly effective in correcting and preventing crimes of all sorts. Though punishment methods across the colonies were relatively uniform, crimes were not; the governments of the colonies (and after the Revolution, the states) had to determine which offices would handle which types of crimes. Concern over what

fell into federal jurisdiction, as opposed to state or local jurisdiction, became an issue as well. Despite the uniformity of humiliation punishment across the colonies, varying categories and degrees of crime nonetheless needed assignment to those most equipped to handle them.

Post-Revolutionary America

Following the U.S. victory over Britain, one of the major points of contact between the new republic and its citizens came from governmental enforcement of certain behaviors and protection of property, deriving from the state's police powers and strong property rights system. Police powers encompass legal policies directed toward the health, safety, welfare, and morality of a state's inhabitants, and by tradition (though not by codification in the U.S. Constitution), these have been largely the purview of the states, rather than the national government. Particularly in the earliest days of the United States, there was little national criminal law. This left much of the exercise of police powers, and thus the determination of what constituted unacceptable behaviors, to the 13 states to adopt and enforce upon their own residents.

The exceptions to this revolved around 18th-century concepts of property. Both the Articles of Confederation, ratified in 1781, and the U.S. Constitution, ratified in 1788, acknowledged and accepted the institution of slavery, the ownership of people as property, and the rights of the slave owner to control and to dispose of that property at will. Additionally, at the national level, there were strong protections of property rights more generally, built into the U.S. Constitution with lesser mention in the Articles of Confederation, which left such protections up to the 13 sovereign states. The protection of property (be it material or human) came to the forefront of American criminal justice policies. This shift of emphasis away from crimes of morality and toward more secular, financial crimes developed parallel to the country's urbanization, resulting in a loss of intimate village life in favor of the more anonymous and transient city lifestyle.

Although the 1770s resembled the American justice system of the preceding decades—close church ties, the litigation of morality, and punishments designed to use shame and humiliation to deter future crime—the years immediately preceding the American Revolution and the turbulent following decade resulted in alterations of criminal behavior, adjustments to the punishment structure, and shifts in the overall philosophy of crime and corrections.

Demographic Changes in Post-Revolutionary America

As the United States evolved from a collection of agrarian, rural colonies to a more centralized, rapidly urbanizing, and industrializing state, demographic trends associated with such changes began to produce a very different type of environment for both criminals and administrators of criminal justice. The country experienced rapid population growth during the last two decades of the 18th century, with the vast majority of the growth coming in the form of urban population. These individuals were newcomers, too; while earlier decades were highlighted by a population that rarely relocated, the post-Revolution period featured individuals who moved to bigger cities and had lived there for less than five years.

Besides independence and economic growth, another catalyst helped augment the sudden growth in urban population. A series of wars in the latter half of the century, from the War of Jenkins' Ear (1739–48) to the French and Indian War (1755–64) and, finally, the American Revolution (1776–83), produced a class of professional soldiers and a new segment in the American population. The existence of this occupational class

and the challenges that these individuals experienced during the ebb and flow of war and peacetime created a new test for the American justice system.

The challenge is illustrated in the crime rates of the United States during war and peacetime. During the three wars, crime rates fell to all-time lows, with the largest decrease coming during the Revolution. Immediately after the end of each war, especially in the 1780s following the Revolution, crime rapidly increased. Most researchers point to the postwar economy and the return of professional soldiers to civilian life as the root cause. In some colonies, furloughed soldiers made up over half of those tried for capital and property crimes in the decade following the American Revolution. With a lack of available jobs and a skill set that lent itself well to a life of crime, the unemployed soldier posed a significant challenge to the American criminal justice system.

New classes of criminals and growing cities led to changes in the types of crime occurring most often in the new republic. A challenging postwar economy produced a scarcity of money, particularly for newly unemployed soldiers. In addition, as cities filled with people possessing no familial “roots” in the community, instances of property crime and fraud increased. Individuals who needed money or goods to survive and possessed no real attachment to the community in which they lived were far more likely to commit crimes of opportunity such as petty theft and burglary.

In the last 30 years of the 18th century, each decade reflected a lower rate of sexual and “moral” offenses while simultaneously undergoing marked increases in crimes such as fraud and property theft. Records across all the former colonies reflect this trend, with the clearest trend away from moral prosecution and toward property crime prevention evident in Massachusetts. Studies made by Linda Kealey and others have reflected significant trends in the Supreme Judicial Court of Massachusetts’ dockets, painting a picture of a young republic wrestling with new types of crime and new types of criminals.

Changes in Post-Revolutionary Priorities: Property Crimes and Treason

Beyond just the demographic changes and the alteration in the types of crime being committed, the historical data from the courts of post-Revolutionary America reflect a fundamental shift in the priority of the judicial system. In the new, capitalist republic, crimes of morality moved behind crimes of economy in importance. In fact, property crimes not only dominated the crime rate, but also seemed to be the type of crime most doggedly pursued by the prosecutors of the 1780s and 1790s. Property crimes routinely exhibited the highest conviction rate, the lowest acquittal rate, and the lowest frequency of dropped cases in the two decades that closed the century.

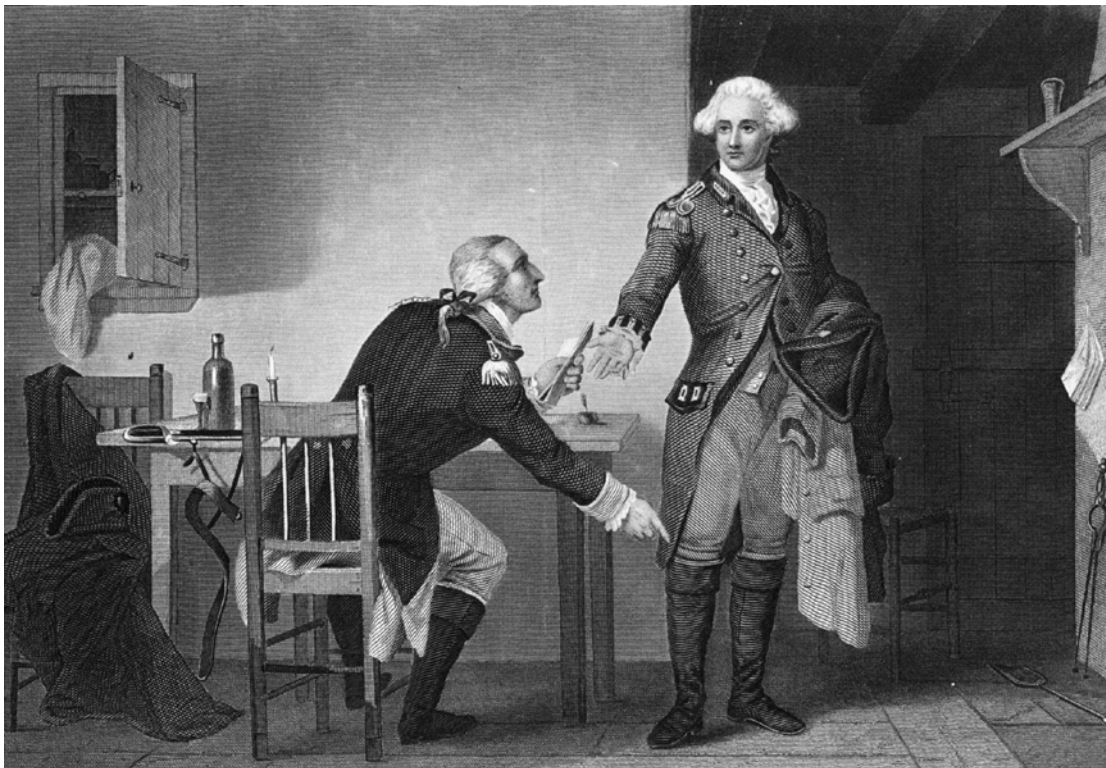
The same held true for the prosecution of women during this period. Just as women were prosecuted for crimes of immorality in the decades preceding the Revolution, the decades immediately after the Revolution featured a markedly higher percentage of women prosecuted for property offenses. In all jurisdictions and with all types of offenders, both male and female, the need to address the safety and security of finances and personal property became the primary focus of governmental police powers and the criminal justice system. By the 1780s, they had ceased to be the enforcer of the church’s code of morality and turned their focus to the more secular realm of business.

Property crimes did not represent the only issue the new republic found pressing, however. Although issues of morality found decreased interest in the American court system, crimes of sedition and treason increased in importance. Now leading a republic founded upon rebellious acts, the framers of the U.S. Constitution and the new state penal codes keenly felt the need to define and address the crimes of sedition and treason in their own courts. Because traitors to the British Crown now had the tricky task of defining treason, the state constitutions written in the late 1770s and early 1780s

reflected hesitation to attack the problem directly. Laws were written limiting the ability of the executive branch to pardon spies or those inciting rebellion, requiring jury trial in the county where the treasonous act occurred and creating other “auxiliary” treasonous crimes like “traffic [or congress] with the enemy,” “spreading disloyal utterances,” and “confiscation of property of disaffected people.”

A great deal of work took place on the treason laws, indicating a newfound interest in and squelching of this type of criminal offense, but it was a disjointed and scattered effort at best. In fact, the Committee on Spies, a creation of the Continental Congress designed specifically to assist the framers of the U.S. Constitution in bolstering internal security, recommended laws remarkably similar to those still on the books in England. While the rest of the country’s statutes, laws, and philosophies in general were being reworked and totally overhauled for the service of a new, extraordinarily different country, the treason laws remained unchanged. The final recommendation of the committee, made on June 24, 1776, suggested laws almost identical to those passed under King Edward III. Even revolutionary, liberal thinker Thomas Jefferson, who participated in drafting the final version of the treason act, recommended to his home state of Virginia basically the same law a few months later.

Despite this deference to older English laws, the American legislators of the time soon had to face unique challenges to the treason laws. Fearing war with France and in reaction to the heightened tensions following the XYZ Affair, in which French agents sought to extort money from the U.S. government, Congress passed the Alien and Sedition



In September 1780, the treasonous Benedict Arnold persuades Major John Andre, a British Army officer, to conceal in his boot six papers written by Arnold that showed the British how to take the fort at West Point, New York, which Arnold commanded. Crimes of sedition and treason increased in importance, which presented a challenge for the leaders of the republic—who were considered rebellious and traitors to the British Crown.

Acts (1798). These four bills increased by nine years the residency requirement for U.S. citizenship to 14 years, authorized the president to detain or to deport aliens he found “dangerous to the peace and safety of the United States,” and placed restrictions on free speech that was critical of the government. Both Jefferson and James Madison pushed the states to “interpose” themselves between these acts and their citizens, but neither, ultimately, was successful in finding support for the proposals. The rights of individuals, although identified in the Constitution, still required interpretation and dissemination by the framers of the new republic.

Criminal Law and the Articles of Confederation

In the post-Revolutionary United States, a move to codify “man’s law” to make it knowable to all participants in the new republic was in order. This was something largely left up to the 13 states, however. Under the Articles of Confederation, there were no national courts, save for the national Congress when it sat in that capacity. Its jurisdiction covered maritime cases, including admiralty law and piracy, and cases of final appeal in disputes between states. Thus, state courts continued to adjudicate the vast majority of crime cases and to mete out punishments but without any overarching colonial authority seeking to create uniformity among them. At the same time, the Articles of Confederation and Congress did protect the institution of slavery nationally.

The Articles of Confederation acknowledged the convention of slavery but did so indirectly. According to Article IV, the articles applied only to free people. As well, Article IX prohibited Congress from restricting the import of “any species of goods or commodities whatsoever.” Thus, while recognizing and allowing slavery, the articles left its regulation



This June 1798 British cartoon satires French–American relations after the XYZ Affair: America, represented by a woman in a headdress, is plundered by Frenchmen while Britain laughs. In May 1798, French agents attempted to extort money from the U.S. government, prompting Congress to pass the Alien and Sedition Acts of 1798. The bills increased the residency requirement for U.S. citizenship and authorized the president to deport “dangerous” aliens.

largely a matter for the individual states. One exception to this indirect support of slavery came with the British ceding of its lands in the United States up to the Mississippi River in settlement of the Revolutionary War. Congress passed the Northwest and Southwest Ordinances in 1787 to govern the vast territory. The Northwest Ordinance prohibited slavery north of the Ohio River but also included a Fugitive Slave Clause in Article 6, which provided that any escaped slave found in this territory could be “reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.”

The protection of property, human and material, strengthened with the Constitution, which the framers drafted to replace the Articles of Confederation and fortify the national government. The Constitution, together with its first 10 amendments, also codified criminal due process rights that guaranteed U.S. citizens certain protections meant to reinforce their position vis-à-vis the prosecuting government within an adversarial criminal justice system.

Criminal Law and the U.S. Constitution

The Constitution that the framers drafted in 1787 included several provisions that affected crime and punishment at the national and state levels. The Bill of Rights, the first 10 amendments to the Constitution agreed upon as part of the ratification bargaining over the Constitution itself, extended this federal influence over criminal prosecutions when ratified in 1791. Subsequent acts of Congress, including the Federal Judiciary Act of 1789, the Punishment of Crimes Act of 1790, and the Alien and Sedition Acts of 1798, led to limited federal involvement in the definition of crimes and the protection of those accused of them and provided some new tools for adjudication. Still, most prosecution and punishment of crime, as now, took place at the state level.

The U.S. Constitution tends to define the rights of those accused of crimes by the government negatively by outlining what the national and state governments cannot do—and therefore, what those accused are free to do. Consequently, Article I, Section 9 of the Constitution guarantees citizens the right of *habeas corpus*, or a procedural judicial challenge to their governmental imprisonment. As well, in Article I, Sections 9 and 10, the Constitution prohibits Congress and states’ use of *ex post facto* laws, which would criminalize behavior after the fact, and bills of attainder, or trials by the legislatures, a violation of the “separation of powers” concept. Furthermore, under the Privileges and Immunities Clause in Article IV, Section 2, states may not criminalize behaviors for nonresidents that are legal for their own residents, nor may they deny nonresidents significant legal rights that they accord to their own residents. Under the Full Faith and Credit Clause, Article IV, Section 1, states also must respect the decisions of courts in other states, rather than retry lawsuits.

Additionally, the Constitution protects the rights of citizens to property via the Contracts Clause, Article I, Section 10. This clause prohibits states from passing any law that retroactively impairs contract rights, thus ending the practice under the Articles of Confederation of state legislatures granting private bills that relieved debtors of their obligations. Finally, the Constitution prevented even nonslave states from intervening in the slave–master relationship with the Rendition Clause, Article IV, Section 2, which prohibited application of free states’ antislavery laws to fugitive slaves who had escaped there but instead required free states to return escapees to owners. These constitutional rights, prohibitions, and definitions shaped both criminal law and property rights through application at the national and state level.

Furthermore, the Bill of Rights crafted by the First Congress laid out a set of criminal due process rights. These familiar procedural protections include restrictions on the state’s conduct toward anyone suspected of a crime, arrested for a crime, tried for a

crime, and punished for a crime; thus, they encompass the entire spectrum of the criminal justice process. Among these mandates are the Fourth Amendment's right of an individual to be free from unreasonable searches and seizures (of person or evidence). As well, the Fifth Amendment, which applies largely to criminal proceedings, guarantees the accused the right to grand jury indictment, the right to be free from double jeopardy (being tried twice for the same crime), and the right to be free from self-incrimination. The Sixth Amendment deals with the rights of a criminal defendant as the trial takes place. Some of the pieces of this amendment include a speedy and public trial, an impartial jury, the right to compel favorable witnesses and to confront one's accusers, and the right to assistance of legal counsel.

Further, the Eighth Amendment prohibits excessive bails and fines and the state's use of cruel and unusual punishments. These amendments originally had an extremely limited application, concerning only those charged with federal crimes. Over time, however, two processes led to a broader adoption of this minimum standard of criminal due process. First, many states embraced all or some of the rights in the national Bill of Rights into their own bills of rights. Second, through various Supreme Court rulings, most of the rights found in the Bill of Rights now apply to the states as well as the national government.

The First Congress also acted to develop a court system to adjudicate crimes and define which crimes the federal government would pursue. Article III of the U.S. Constitution provided little structure for the national judicial system, beyond it consisting of "one Supreme Court, and ... such inferior courts as the Congress may from time to time ordain and establish." With the Federal Judiciary Act of 1789, Congress set up 13 district courts: One in each of the 11 states that had ratified the Constitution; courts for Kentucky and Maine, which then were parts of Virginia and Massachusetts; and three circuit courts—an eastern, a middle, and a southern court. The courts at both levels heard cases with original or trial jurisdiction, with the circuit courts trying the more serious cases. The circuit courts also heard district court appeals. Additionally, this act gave the Supreme Court the power of judicial review over state courts' decisions on federal questions, establishing a final federal say over federal laws and U.S. constitutional issues.

With the Punishment of Crimes Act of 1790, the First Congress also proceeded to define federal crimes. This Act defined 17 such offenses. Some were ordinary crimes federalized by the location where they occurred: U.S. forts, dockyards, arsenals, or other places under sole U.S. jurisdiction. Their unique national character—treason, piracy, counterfeiting of U.S. securities—federalized other crimes. This limited menu of crimes and places left most criminal prosecution and punishment in the hands of the states.

Congress also passed the Fugitive Slave Act in 1793, giving means to enforce the Constitution's Rendition Clause. This act allowed those hunting fugitives across the United States and its territories to capture runaways; upon simple oral confirmation of the person's slave status to a state or federal judge, the hunter won custody of the escaped slave, who had no legal recourse. Further, the act marked every escaped slave a lifelong fugitive, one who risked recapture at any time anywhere within the territory of the United States.

The Whiskey Rebellion (1794) highlighted the importance of the empowerment of federal courts in the prosecution of some criminal actions. When protestors in Pennsylvania and Kentucky reacted against higher excise taxes on distilled spirits, part of Treasury Secretary Alexander Hamilton's plan to pay off the national debt, President George Washington called on an overwhelming force made up of state militias to suppress them, labeling their acts as treason. Federal courts then prosecuted the protestors,

reducing the possibility of juries reflecting local sympathies affecting the verdicts in these cases.

Post-Revolutionary Failure of Traditional Punishment Methods

Yet, no matter how clearly codified—whether liberal or traditional—the newly written U.S. Constitution and laws were, the country could not expect to keep crime at bay without an effective deterrent and corrections policy. Whether for property crime, violent capital felonies, or treason and sedition, by the 1780s, most officers of the American justice system saw that the old methods of punishment had ceased to make a serious impact. The American system had relied heavily upon humiliation and admonition as both deterrent and punishment in the previous century, to a good degree of success. However, changing demographics, the waning influence of the church and other religious institutions, a smaller interest in moral offenses and a stronger focus on money-related offenses all worked against traditional shaming punishments.

Crime, particularly the growing problem of theft, stopped being an issue contained neatly within a close-knit, intimate village. Instead, it had become more commonly the act of a stranger, newcomer, or transient. This caused humiliation punishments to lose their punch because it was unlikely that an offender could be shamed in front of people he or she had never even met. Remorse and shame experienced from stealing from extended family or longtime neighbors often sufficed to set the offender on the “straight and narrow,” but facing total strangers during punishment did not hold the same weight, especially since the offender likely intended to move on to another town after the sentence anyway.



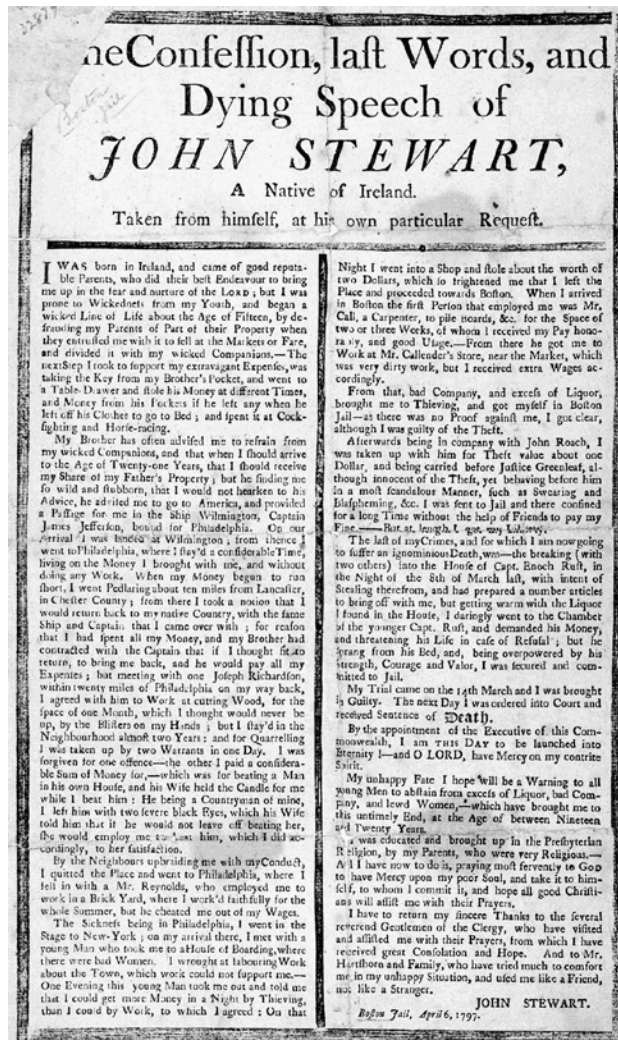
George Washington reviews his troops near Fort Cumberland, Maryland, in October 1794 before sending them off to suppress the Whiskey Rebellion in western Pennsylvania, where whiskey-grain farmers used violence to prohibit tax agents from collecting an excise tax intended to pay off the national debt. It was a test of the powers of the federal courts, which prosecuted for treason; the lack of local juries also diminished the effect of local sympathies.

Sentencing servitude upon an individual who was too poor to pay a fine also lacked real effect, for many of the same reasons. Townspeople proved far more willing to accept into their households people they had known their entire lives, than they were to take into service a transient with no family connections and no integration with the community. What would keep such an individual from using his sentence to steal again from inside the house he served, then move on to another unsuspecting community? This presented an issue rarely seen as a problem in the tightly constructed villages and hamlets of colonial America.

New trends in prosecution added to the changing criminal justice environment. An emphasis on retention and protection of personal wealth (now no longer being relocated to the British government, but instead being amassed within the country) and a more secular outlook on crime produced higher levels of property crime and fraud prosecution. Additionally, philosophical changes called for capital felonies to be defined more narrowly.

Further, the option of “benefit of clergy” offered to many first-time offenders was drastically scaled back and, in some states, totally removed from the code of trial and punishment. The benefit of clergy had been a popular option in the more religiously oriented colonies of the 17th century. At times, it accorded those accused of serious crimes an opportunity for leniency based on a common acceptance of religious values. For the same reason, admonition and servitude were falling out of favor, and the use of the church to “shield” offenders lost ground in the years immediately following the Revolution.

Up until the spike in urban population the United States experienced after the Revolution, reform in the penal code and punishment system hardly seemed necessary. Into the late 1760s and early 1770s, the vast majority of towns in Pennsylvania, Massachusetts, Connecticut, New York, and other relatively well-populated colonies contained fewer than 1,000 residents. The smaller, more agrarian colonies to the south enjoyed fewer still. Such low populations meant low



The April 6, 1797, confession of John Stewart from the Boston Jail warning “all young Men to abstain from excess of Liquor, bad Company, and lewd Women” details his early “wicked line of life” that culminated in attempted murder and a death sentence.

tax bases and little in the way of human resources. Thus, the concept of jailing convicts made little sense; the small towns could not afford to maintain penitentiaries, and the self-policing residents used shaming and a rudimentary “neighborhood watch” to keep crime sufficiently under control. Adding the fact that nearly all citizens were members of the local church, and therefore even easier to monitor and keep “in the family,” the old punishments had been doing the job.

After the Revolution, however, when populations began to concentrate in cities, the anonymous criminal confounded the old system. Increased industrialization provided more mobility, too, thus making cities even less like a family or congregation (and consequently less affected by familial or congregational punishments). Personal wealth, though, was on the increase, and the larger cities experienced a flood of new residents, many of them unemployed soldiers with the training to meet their economic needs through force, if necessary. Debates over what types of punishment to employ appeared throughout the states of the Union.

Development of New Punishment Alternatives in the New Republic

The county judges and justices of the peace, experiencing the changing crime problem on the front lines, developed into the proponents of new punishment solutions. Seeing that public chastisement or humiliation had lost all real effect, the judges used their flexibility in sentencing to explore new options. Selling convicts into servitude to pay off their criminal debts (either to society or a specific individual) had, in the past, provided a productive alternative, but townspeople rejected the idea when it meant taking in a total stranger. Moreover, the labor scarcity of the previous century turned into a labor surplus, so the need to find cheap labor (particularly in the bigger cities) was no longer an issue.

Gaols existed in every moderately sized city and in nearly every county. Although they had been used in the past only to hold individuals until their trial, some officials noted their possible use as a punishment instead. Local authorities, though, lacked the money to expand these buildings to accommodate the new usage. Judges and administrators at the state, rather than the county level increasingly took over the responsibility of criminal punishment out of necessity, especially in property crime cases.

With the renovation of county jails still lagging behind the problem and other punishments falling out of fashion, the state embarked on a new set of punishment options that included fines and hard labor. With more citizens gaining access to money and wealth, fining had developed into a more plausible option. As for those who lacked that monetary success, whom historian Michael Katz described as a “new dependent population,” serving the city through hard labor in a workhouse or state-run factory seemed to fit both needs. First, it could replace humiliation and admonition with a threat unaffected by the criminal’s connection to the community. Second, for a new cultural environment in which the factory and productivity were king, it made sure that the “undesirables” in society continued to be productive and useful.

By the close of the 18th century, the first state-run hard labor facility opened in the United States. Castle Island in Boston’s harbor, home of one of the country’s oldest forts, underwent reconstruction, resulting in a primitive type of penitentiary. Castle Island could be more accurately defined as a collection of state-run, hard-labor camps. The island camps were fully functional by 1785, with most of the labor camp construction completed by 1800. The island served as a bellwether for two important changes in American criminal justice. First, the camp complex signified a transition from older, community-based punishments designed to use the criminal’s inclusion in the town to rehabilitate him. Now, the goal of the justice system was to remove the criminal from

the town and separate him, either “fixing” his behavior, or at least getting some use from his labor. Second, because the Massachusetts state government built and administered the camp, it marked a movement toward centralization of criminal justice and a move from local, more intimate policing to organized, centralized methods. In short, punishment in the United States moved from being a public affair to a private one, marginalizing criminals out of the public eye and under the supervision of the state, not the community.

Sentencing convicts to Castle Island and later to other state-run facilities did not completely lack drawbacks. Debates began in the 1780s that still exist today, primarily about the standards applied when meting out punishment in such strict, harsh facilities. Those unable to pay fines were much more susceptible to hard labor sentencing, so places like Castle Island became not just a holding place for criminals but also one specifically geared to poor criminals. Slaves, minors, and unskilled workers received sentences of hard labor at double or triple the rate of farmers, landowners, or businessmen. Although the new types of punishment drew praise from proponents of industry and even the church, which routinely warned that “idle hands” led to crime, the fine/hard labor system in America also illustrated class discrimination at a new level.

Influences of the Enlightenment Philosophy on U.S. Criminal Justice

The conversion from an admonition-based, congregational system of punishment to a centralized scheme of workhouses and, eventually, penitentiaries, did not occur solely as a utilitarian response to changing demographics. The American Revolution and subsequently the French Revolution inspired significant movements in liberal philosophy. The thinkers and writers subscribing to the new “enlightenment philosophy” actively discussed crime and punishment, and their publications did much to encourage debate and experimentation. The United States was after all seen as a grand experiment in Enlightenment thought, as it was founded on principles including the inherent rights of man and the fair and equal treatment of citizens. There was no better place to establish experimental penitentiaries and workhouses and no better climate in which to debate their merits.

Reformation movements certainly were not unique to America, as the writings of philosophers like Montesquieu and Voltaire fueled the French Revolution and writers like Adam Smith, Thomas Paine, and Jeremy Bentham encouraged similar reforms in Britain. Each of these authors built on the ideas of the others, however, so American thought on criminal justice and reformation of punishment systems thrived. Of particular interest to the new country’s earliest administrators were the writings of Baron Montesquieu. Beginning with his book *The Spirit of Laws*, published in 1748, Montesquieu argued against severe corporal punishments like branding and even some of the shaming techniques so popular at the time. He suggested that corporal punishment and humiliation violated the natural rights of citizens and existed as symptoms of unfit government. Not coincidentally, these ideals were echoed in the myriad of declarations on human rights coming out of the United States in the middle of the 1770s. The codification of treatises against cruel or unusual punishment commenced with the approval of a cruel and unusual punishment amendment to the Virginia Declaration of Rights, submitted by George Mason, a fervent student of the early Enlightenment works of Matthew Hale and William Blackstone, both stringent opponents of branding and humiliation. The urbanization of the country later in the century, during the 1780s and 1790s, augmented ideas of individuality and individual rights at the expense of the old communal lifestyles, so arguments like Montesquieu’s achieved significant American support.

The development of individualist philosophies and the stress on natural, individual rights worked hand-in-hand with a country founded on and now emphasizing the importance of personal freedom. Ironically, though, this exceptional degree of freedom created unique problems for those fighting crime. An old adage manifested itself in Enlightenment America—where order thrives, so does oppression, but where freedom and liberty are the rule, crime inevitably follows. As a result, the president, governors, and county officials of the newborn country found themselves mired in a fight against exploding crime rates in excess of those in the more established European monarchies.

To reconcile policies designed to stem the tide of high crime with the religious ideals acting as the country's philosophical foundation, American Enlightenment thinkers addressed the legacy of Puritan theology and rationales concerning sin and law. The key to compromise rested in the Puritan theology of rehabilitation. Though the earliest Puritans strongly believed in innate human depravity and the inevitability of sin (which they equated with crime unequivocally), they believed just as strongly that the soul could be restored. Puritan thinkers such as Cotton Mather wrote extensively on "original sin" and "natural conscience," suggesting that sin clouded human conscience, but that proper instruction at the secular level, combined with heavenly grace, could clear it.

Consequently, although the early colonial forms of punishment involving humiliation tactics seemed antithetical to Enlightenment philosophy, they illustrated, at their simplest level, a belief in the ability of the criminal justice system to reform and rehabilitate criminals—an idea perfectly in line with writers such as Montesquieu. Further, the old Puritan notions about crime melded well with the new ideas when it came to the concept of separating the criminal from society. While the Puritans believed that criminal tendencies could be corrected through a practical approach, they also recognized that some criminals could become hardened and irreparable. The solution in the 17th and first half of the 18th century was banishment from the group. Now lacking community ties, the criminal could be banished instead to a state facility through hard labor or incarceration.

The concept of human perfectibility existed at the very root of the European Enlightenment, and it found a receptive audience in the new American republic, founded on similar ideas a century before. Activists then only needed to pose the optimistic idea that crime, and the human condition in general, could be repaired, restored, and rehabilitated. Work camps came to be seen as factories for rebuilding defective people; their evolution into the modern American penitentiary, defined as a house of corrections rather than punishment, existed as a logical next step.

Post-Revolutionary Role of Rationalism and Utilitarianism

Beyond ideologies on human rights and human rehabilitation, however, such writers as Montesquieu and Bentham prescribed a method of logical governance known as rationalism, or utilitarianism. The rationalists suggested rejection of scripture in favor of human logic and reason. To this end, rationalist writers suggested that government should be secular and, instead of basing policies on an interpretation of God's bidding, should attempt to maximize "secular utility" by providing the greatest possible level of happiness to the greatest possible number of citizens. For the rationalists, then, crime was no longer the same as "sin," because what made something a crime was not its biblical interpretation, but instead the harm it did to others. Beyond this, the only rational reason for punishment was to prevent future harm, not as retribution. Accordingly, the doling out of punishment was a necessary evil used only to prevent harm to the greater portion of society.

The most influential writings in America on the rationalist view of crime and punishment came from Cesare Beccaria. Though neither a lawyer nor a student of criminal justice, Beccaria wrote from the perspective of a logical outsider. His work on jurisprudence and punishment reached its apex with the 1764 publication of his *Essay on Crimes and Punishments*. In it, he recommended reforms and ideals still seen in the American justice system today. Besides proposing the utilitarian philosophy of “the greatest good for the greatest number,” Beccaria suggested that crime should be defined as an injury to society and that punishment should be proportional to the measure of the injury the crime inflicted. He further stated that no punishment was justifiable unless it deterred future criminal conduct and that it should be speedy and humane. He made special note of the growing problem of property crime, suggesting that the only proportional punishment for stealing money or goods was paying a fine equitable to the financial injury. Barring that, only imprisonment could be a reasonable reaction. Beccaria’s philosophies were studied extensively by Americans such as Jefferson, Madison, and Mason, and subsequently found their way into many aspects of American judicial and penal reform during their tenures in office.

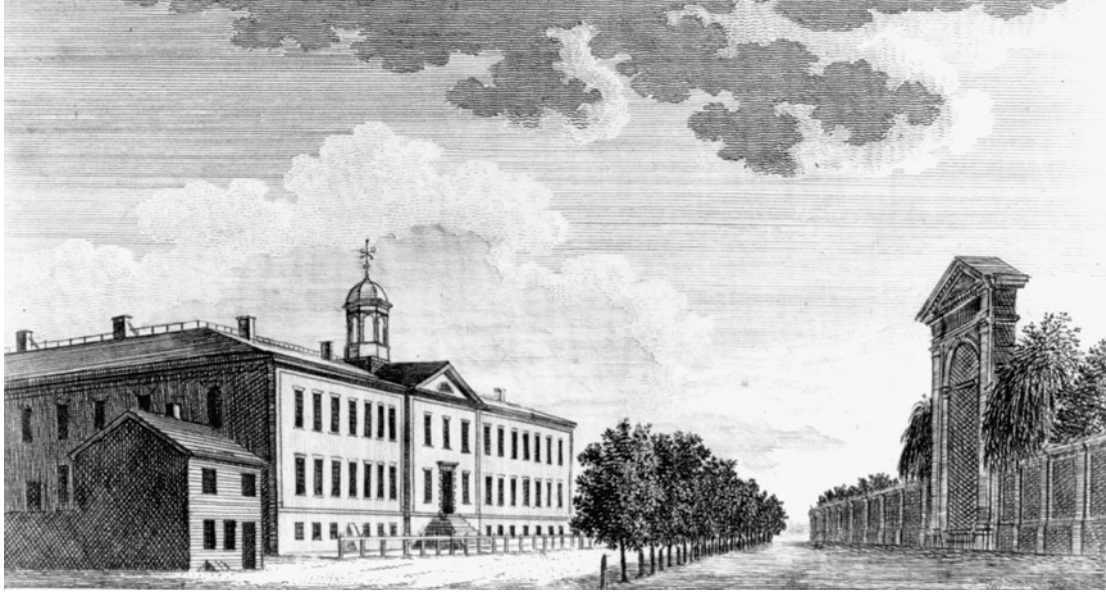
This rationalist view of crime and punishment opened the way to the penitentiary system. If punishment could no longer be seen as retributive, then at best it must serve as rehabilitative. If rehabilitation could not be achieved, the most basic necessity to protect the greater good would be to remove the offender from society in order to prevent further harm. Through incarceration, the offender would sacrifice his personal freedom for the good of the larger portion of society around him. Furthermore, the rationalists began rejecting the notion that crime was inherent in men, but instead suggested that criminals were a product of a dysfunctional environment. Removal of the criminal from that family or other faulty environment not only protected the other members of society but also provided an opportunity for possible reform, since the individual was now located safely away from the bad influences around him.

The rationalists included Thomas Jefferson, appointed in 1777 as the chair of a committee to revise the legal codes in the states and at the federal level. The committee was asked to completely overhaul the laws of the British Parliament and rewrite them with a new slant toward the utilitarian Enlightenment philosophies. The results of the committee’s work laid the foundation for the modern American criminal justice system. Among other changes, Jefferson’s reformed code abolished the death penalty for all crimes but murder and treason, prescribed hard labor sentences in public works facilities for all other felonies, removed sentencing options deemed inhumane, and emphasized restrained, reasonable treatment of prisoners that emphasized their rehabilitation above all else. Although Jefferson and his colleagues built these statements firmly on European writings, the implementation of these ideas and the correlative construction of new federal and state workhouses and penitentiaries proved to be uniquely American.

Trends in the States: North Versus South

With the Declaration of Independence in 1776 and the end of British rule over the colonies, the harmonized approach to criminal law and prosecution receded. Differences developed with few restrictions. Generally, the advance of two broadly different state approaches to crime and punishment were observed from 1777 to 1800. Northern states moved to advance a new, rehabilitative model, while southern states continued with colonial traditions, buttressed by their continued attachment to plantation systems of justice.

The more liberal states such as Massachusetts and Pennsylvania led the adoption of the new policies, while more conservative states such as Georgia changed over more



The Walnut Street jail in Philadelphia, 1789, which was converted to a prison in 1790. As the first U.S. state-run prison, it modeled the northern practices of small, solitary rooms for hardened criminals, where they were to become penitent through silent contemplation. Women and children were separated from male and adult prisoners, respectively; combining ages was previously common practice, which resulted in exploitation.

slowly from the English common law system to the new American rationale, further reflecting just how radically different the new American approach had become.

Because of demographic pressures and changing criminal patterns, executives in the state governments, particularly in the north, had been considering the transition to a penitentiary system for years. As early as 1765, the state assembly in Massachusetts entertained funding construction of a new prison and public workhouse designed specifically for punitive incarceration.

Proponents of the construction included Peter Oliver, justice of the Massachusetts Superior Court; James Otis, the advocate general and influential Boston representative; Edward Trowbridge, attorney general of Massachusetts (a Superior Court justice by 1767); and Lieutenant-Governor Thomas Hutchinson. Although the implementation of the policy was well backed, funding was lacking. It would take the Enlightenment philosophy and the tangible, radical change of the American Revolution, together with the demographic requirements, changing criminal patterns, revolutionary ideology of reform, and a self-conscious willingness of Americans, to build a new utopian society to merge and allow the creation of a new experimental form of crime control.

Following the Revolution, northern states began to move to the new approach to crime as defined by an emphasis on redemption and rehabilitation. Their move away from public forms of punishment and corporal punishment to the use of rehabilitative prisons and the reclassifying of many previously capital crimes to less than capital evidenced this. In the north, reformers pushed for consistent, rather than severe punishment as the best means of deterrence and prevention. As these states moved from English common law to statutory or code law, the discretionary power of judges and juries waned. Pennsylvania, for instance, took the common law crime of murder and defined it statutorily into degrees, beginning in 1794, with descriptions of the circumstances and punishments that each degree of the crime could trigger. The use of set prison terms

proportionate to the crimes committed and that included rehabilitative activity became the northern standard.

Pennsylvania's Walnut Street prison, converted from a jail in 1790, is illustrative of northern practices. The first state-run penitentiary in the United States, it included two housing models, common rooms, and small solitary rooms. Lesser criminals were allowed to interact with fellow convicts in the common rooms, but hardened offenders were closeted in extremely small cells and prohibited from most interactions to allow them to silently contemplate their failings and become penitent. Further, this prison separated women and debtors from male convicts as well as children from the adult population, reducing opportunities for exploitation. In another reform, Pennsylvania banned alcohol, which jailers would often bring and sell to prisoners. Additionally, the head warden of Walnut Street received a state salary, rather than "fees" paid by vulnerable prisoners. The prison employed convicts in useful industry, including nail making, shoe making, and weaving for outside contractors.

Southern states, on the other hand, did not typically respond to the opportunities offered in the post-Revolutionary period with a reform of criminal laws or punishments. In the south, slavery meant that the "adjudication" and punishment of much crime fell to private hands via the plantation system, which typically gave owners absolute power over slaves and "special courts," which enforced only slave codes, with unique and highly restrictive rules for the defendant slaves. Neither the plantation nor the state system focused on individual reform or rehabilitation, as did the north. Instead, slavery and its maintenance occupied much of the southern legal focus. Not only slave masters, but also any white had authority to summarily punish black-only crimes (such as owning hunting dogs) under southern slave codes, which usually applied to any black, regardless of status.

In the south, these systems provided a way for the dominant powers in local communities to ensure that their values were enforced, often violently, and sometimes outside of the legal system, although often with its tacit consent. For slaves, the transition from public punishment to private correctional punishment would continue to lag behind, with the plantation replacing the colonial village as the environment—the only one in which humiliation and admonition was still effective. For the rest of the country (and eventually the south as well), the general transition from community- and humiliation-based punishments to centralized, homogenized penitentiary systems administered at the state level proved to be the norm. This transition has been attributed to factors beyond demographic changes.

Transition to Penitentiaries: Other Factors Considered

Historians suggest a range of explanations as to why the penitentiary system finally took hold in the United States. David Rothman, in his *The Discovery of the Asylum: Social Order and Disorder in the New Republic*, suggests that reformers hoped the penitentiary would instill self-discipline in prisoners who had not received it from their dysfunctional environment. In his estimate, the penitentiary was seen more than just a disciplinary institution; it was a "total institution" that addressed rehabilitation, reduction of crime, treatment of insanity, and correction of poverty and idleness. In his writings, historian Michael Ignatieff stresses the capitalist aspects of the penitentiary and workhouse, which utilized factory-like schedules and rigid routines to help reform prisoners and, simultaneously, provided manufactured goods to the community. French philosopher Michel Foucault defines it as a new technology still designed to punish, but to punish "better" in a time when everything was being improved or modified to perform more efficiently. Finally, historian Michael Meranze uses the penitentiary's development in Philadelphia

to illustrate how it was a response to the breakdown of traditional hierarchies. Rich artisans and businessmen of the city, with newfound political power, preferred institutions focusing on hard labor, since as a group they tended to link idleness with crime. For them, the productive citizen could be the redeemed citizen.

The rise of the penitentiary system in the United States likely involves aspects of all these explanations. Although incarceration was hardly a new idea, its function and definition changed. Citizens in Europe and even colonial America had been imprisoned for debt previously, but this was more as a form of coercion to pay than of deterrence or rehabilitation. County gaols held the accused until trial, and a lack of funding to build facilities for prisoners of war led to their use—particularly in Massachusetts—as holding facilities for military internment. Additionally, the gaols could be used to hold such political prisoners as Indians, Quakers, Jesuits, and loyalists. Despite the existence of jails (by 1776, most states mandated that each county maintain one), they had always been a second choice of penalty and were treated as an afterthought. Jail terms before the Revolution rarely ran beyond three months, and for most offenses, terms could be as little as 24 hours.

Adoption of the Penitentiary System in the New Republic

Relative to these figures, the adoption of the penitentiary as a method of corrections signified a sea change. Institutions deemed more appropriate for the larger, more anonymous cities they now served replaced older concepts of crime control favored by the intimate villages of the previous century. Just as the 17th-century criminal was seen as a family member who had gone astray and could be goaded back to the fold by his peers, the criminal of the late 18th century came to be seen first as a danger to productive society who must be removed for the community's protection, then as a subject of correction and rehabilitation through the repair of his faulty upbringing and the introduction of the habit of doing an honest day's work.

In accordance with the philosophical changes, the model of Pennsylvania's Walnut Street penitentiary was followed by every state in the Union, though again, the more "British" and conservative states seemed slower to embrace the American philosophy; South Carolina waited until 1868. Despite the slow adoption of the philosophy in some regions, once the penitentiary was embraced as the preferred method of a humane, humanist, and liberal society, a movement began that has yet to be replaced.

In keeping with the new logic that criminals were born of a dysfunctional subculture, the American citizens of the 1790s attempted to identify these individuals, seek them out, and incorporate them into the penitentiary system of rehabilitation as quickly as possible. As a result, the institution of professional police forces, trained to identify and apprehend these products of broken society, followed. The first such institution began as a reorganization of Boston's night watchmen. This group, which had served the city as watchmen since 1635, was reorganized into a salaried, professional force in 1796. Officers received badges, uniforms, and a special hooked weapon designed to grab run-away offenders.

Thus, the development of the penitentiary replaced community policing and tactics of humiliation and admonition because of a combination of new demographic pressures and changing philosophies about the nature of crime and corrections. The old public punishments, which were also crafted as examples to others, now carried on inside the walls of the new state prisons. Public whipping or standing in the prison's gallows in front of the other inmates were the punishments for prisoners found guilty of a prison's community rules. The instances of community discipline within the penitentiary walls illustrate an interesting irony of American jurisprudence. The

Puritan model of congregational policing had not left the American psyche completely; instead, the interpretation of crime, the understanding of criminals, and the definition of “congregation” and “community” altered to reconcile new Enlightenment philosophies with the challenges of a newly formed republic of free citizens.

Conclusion

The post-Revolutionary United States reflected high ideals and practical realities as it haltingly developed new legal, judicial, and penal systems to define, adjudicate, and punish crime in the federal republic. Its founding ideologies, economic priorities and structures, and federal division of power all contributed to the unique solutions that its citizens developed in their making of the new country.

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1777 PRIMARY DOCUMENT

Slave Petition for Freedom to the Massachusetts Legislature

On January 13, 1777, Prince Hall and seven other black men submitted a petition to the Massachusetts Revolutionary Council and the House of Representatives. It was the fifth petition submitted by slaves in Massachusetts since 1772. Petitioning the legislature for freedom was one of the few tactics available to slaves. In the colonial era, although it was attempted numerous times, these petitions were routinely denied or ignored as the colonial legislature lacked the authority to act. This 1777 petition, however, was unique: It came during the Revolutionary War, less than a year after the signing of the Declaration of Independence, when Massachusetts no longer acknowledged the British Parliament; even more importantly, it explicitly challenges the commonwealth by tying the ideals of the revolutionaries to the freedom craved by slaves.

To The Honorable Counsel & House of [Representa]tives for the State of Massachusitte [Massachusetts] Bay in General Court assembled, Jan. 13, 1777.

The petition of A Great Number of Blackes detained in a State of slavery in the Bowels of a free & Christian Country Humbly shuwith [showeth] that your Petitioners apprehend that thay [they] have in Common with all other men a Natural and Unaliable [inalienable] Right to that freedom which the Grat Parent of the Unavers hath Bestowed equally on all menkind and which they have Never forfeuted by any Compact or agreement whatever—but thay wher Unjustly Dragged by the hand of cruel Power from their Derest friends and sum of them Even torn from the Embraces of their tender Parents—from A popolous Pleasant and plentiful contry and in violation of Laws of Nature and off

Nations and in defiance of all the tender feelings of humanity Brough hear Either to Be sold Like Beast of Burthen & Like them Condemnd to Slavery for Life—Among A People Profesing the mild Religion of Jesus A people Not Insensible of the Secrets of Rational Being Nor without spirit to Resent the unjust endeavours of others to Reduce them to a state of Bondage and Subjection your honouer Need not to be informed that A Life of Slavery Like that of your petioners Deprived of Every social privilege of Every thing Requisite to Render Life Tolable is far worse then Nonexistence.

[In Imitat]ion of the Lawdable Example of the Good People of these States your petitiononers have Long and Patiently waited the Evnt of petition after petition By them presented to the Legislative Body of this state and cannot but with Grief Reflect that their Success hath ben but too similar they Cannot but express their Astonishment that It has Never Bin Consirdered that Every Principle form which Amarica has Acted in the Cours of their unhappy Dificultes with Great Briton Pleads Stronger than A thousand arguments in favowrs of your petioners they therfor humble Beseech your honours to give this petition [petition] its due weight & consideration & cause an act of the Legislatur to be past Wherby they may be Restored to the Enjoyments of that which is the Naturel Right of all men—and their Children who wher Born in this Land of Liberty may not be heald as Slaves after they arrive at the age of twenty one years so may the Inhabitance of this Stats No longer chargeable with the inconsistancy of acting themselves the part which they condemn and oppose in others Be prospered in their present Glorious struggle for Liberty and have those Blessing to them, &c.

Source: Massachusetts Historical Society.
Collections of the Massachusetts Historical Society. Vol. III, Fifth Series. Boston: Massachusetts Historical Society, 1877.
<http://historymatters.gmu.edu/d/6237>

See Articles: African Americans; Massachusetts; Slavery; Slavery, Law of.

1780

PRIMARY DOCUMENT

George Washington's Writings on Benedict Arnold's Treason

Benedict Arnold was a New Englander who became a general in the Continental Army after early victories in the Revolutionary War. Despite his successes, he made numerous enemies, some who were promoted in his stead, others who charged him with corruption. When Congress claimed (inaccurately) that he had mismanaged his funds, he began secret negotiations with the British, planning to turn over West Point. His betrayal was exposed, prompting his flight.

This, the best disposition you can of your force, so as to have a proportion of men in each work on the Westside of the River. You will see or hear from me further tomorrow. I am etc.

To Lieutenant Colonel John Jameson

Headquarters, Robinson's House, September 25, 1780, O'Clock P.M.

Sir: I wish every precaution and attention to be paid to prevent Major Andre from, making his escape. He will without doubt effect it if possible and in order that he may not have it in his power. You will send him under the care of such a party and so many Officers as to preclude him from the least opportunity of doing it. That he may be less liable to be recaptured by the Enemy, who will make every effort to gain him. He had better be conducted to this place by some upper road rather than by the route thro Crompond. I would not wish Mr. Andre to be treated with insult, but he does not appear to stand upon the footing of a common prisoner of War and therefore he is not entitled to the usual indulgencies they receive, and is to be most closely and narrowly watched.

General Arnold before I arrived here went off today to the Enemy, and is on board the Vulture Sloop of War. I am etc. Andre must not escape.

To Major General William Heath

Robinson's House, September 26, 1780

Dr. Sir: In the present situation of things I think it necessary that You should join the Army, and request that You will do it. You will come to Headquarters: Yourself: the Route thro Litchfield will be the most eligible for You on account of security and You may direct your baggage to halt at Fish Kill for your further orders. I write to the Count de Rochambeau by this conveyance and I trust that your coming away now will not be attended with any material inconvenience to him.

I cannot conclude without informing You of an event which has happened here which will strike You with astonishment and indignation. Major General Arnold has gone to the Enemy. He had had an interview with Major Andre, Adjutant Genl. of the British Army, and had put into his possession a state of our Army; of the Garrison at this post; of the number of Men considered as necessary for the defense of it; a Return of the Ordinance, and the disposition of the Artillery Corps in case of an Alarm. By a most providential interposition, Major Andre was taken in returning to New York with all these papers in General Arnold's handwriting, who hearing of the matter kept it secret, left his Quarters immediately under pretense of going over to West Point on Monday forenoon, about an hour before my arrival, then pushed down the river in the barge, which was not discovered till I had returned from West Point in the Afternoon and when I received the first information of Mr. Andre's captivity Measures were instantly taken to apprehend him, but before the Officers sent for the purpose could reach Verplank's point, he had passed it with a Flag and got on board the Vulture Ship of War, which lay a few miles below. He knew of my approach and that I was visiting with the Marquiss, the North and Middle Redoubts, and from this circumstance was so straitened in point of time that I believe, he carried with him but, very few if any material papers, tho he has a very precise knowledge of the Affairs of the post.

The Gentlemen of General Arnold's family, I have the greatest reason to believe, were not

privity in the least degree to the measures he was carrying on, or to his escape. I am etc.

Source: Commins, S., ed. *Basic Writings of George Washington*. New York: Random House, 1948.

See Articles: American Revolution and Criminal Justice; Washington, George (Administration of).

1787 PRIMARY DOCUMENT

Thomas Jefferson on the Need for the Occasional Revolution

A Virginia lawyer, intellectual, and agitator for revolution, Thomas Jefferson was also the principal author of the Declaration of Independence and the wartime governor of Virginia, a job at which he fared poorly and was not reelected. At the time of this letter, the future president was minister to France, which was about to begin a bloody and ill-fated revolution inspired by America's war for independence. Busy in France during the Constitutional Convention held in Philadelphia, he wrote in praise of the recent Shays Rebellion.

To Colonel Smith.

Paris, November 13, 1787.

Dear Sir, I am now to acknowledge the receipt of your favors of October the 4th, 8th, and 26th. In the last, you apologize for your letters of introduction to Americans coming here. It is so far from needing apology on your part, that it calls for thanks on mine. I endeavor to show civilities to all the Americans who come here, and who will give me opportunities of doing it; and it is a matter of comfort to know, from a good quarter, what they are, and how far I may go in my attentions to them.

Can you send me Woodmason's bills for the two copying presses for the Marquis de

La Fayette and the Marquis de Chastellux? The latter makes one article in a considerable account, of old standing, and which I cannot present for want of this article. I do not know whether it is to yourself or Mr. Adams, I am to give my thanks for the copy of the new constitution. I beg leave through you to place them where due. It will yet be three weeks before I shall receive them from America. There are very good articles in it, and very bad. I do not know which preponderate. What we have lately read, in the history of Holland, in the chapter on the Stadtholder, would have sufficed to set me against a chief magistrate, eligible for a long duration, if I had ever been disposed towards one; and what we have always read of the elections of Polish Kings should have forever excluded the idea of one continuable for life. Wonderful is the effect of impudent and persevering lying. The British ministry have so long hired their gazetteers to repeat, and model into every form, lies about our being in anarchy, that the world has at length believed them, the English nation has believed them, the ministers themselves have come to believe them, and what is more wonderful, we have believed them ourselves. Yet where does this anarchy exist? Where did it ever exist, except in the single instance of Massachusetts? And can history produce an instance of rebellion so honorably conducted? I say nothing of its motives. They were founded in ignorance, not wickedness. God forbid we should ever be twenty years without such a rebellion. The people cannot be all, and always, well informed. The part which is wrong will be discontented, in proportion to the importance of the facts they misconceive. If they remain quiet under such misconceptions, it is a lethargy, the forerunner of death to the public liberty. We have had thirteen States independent for eleven years. There has been one rebellion. That comes to one rebellion in a century and a half, for each State. What country before, ever existed a century and a half, for each State. What country before, ever existed a century and a half without a rebellion? And what country can preserve its liberties, if its rulers are not warned from time to time, that this people

preserve the spirit of resistance? Let them take arms. The remedy is to set them right as to facts, pardon and pacify them. What signify a few lives lost in a century or two? The tree of liberty must be refreshed from time to time, with the blood of patriots and tyrants. It is its natural manure. Our convention has been too much impressed by the insurrection of Massachusetts; and on the spur of the moment, they are setting up a kite to keep the hen yard in order. I hope in God, this article will be rectified before the new constitution is accepted. You ask me if anything transpires here on the subject of South America? Not a word. I know that there are combustible materials there, and that they wait the torch only. But this country probably will join the extinguishers. The want of facts worth communicating to you, has occasioned me to give a little loose to dissertation. We must be contented to amuse, when we cannot inform.

Present my respects to Mrs. Smith, and be assured of the sincere esteem of, dear Sir, your friend and servant.

Source: Jefferson, Thomas, Andrew Adgate Lipscomb, Albert Ellery Bergh, and Richard Holland Johnston. *The Writings of Thomas Jefferson*. Washington, DC: Thomas Jefferson Memorial Association of the United States, 1903–04.

See Articles: Anarchists; Jefferson, Thomas; Jefferson, Thomas (Administration of); Massachusetts.

1788 PRIMARY DOCUMENT

Excerpts From the Memoirs of Abigail Abbot Bailey

Abigail Bailey published her memoir in 1815, a shocking story in which her religious devotion

contrasted with the violence and inhumanity of her husband, Town Selectman Asa Bailey, leading to Abigail's attempts to divorce him. Asa was physically and psychologically abusive in addition to raping the couple's teenage daughter, but Abigail was dependent on him and found it difficult to publicly defy him. The memoir has been compared to the captivity narratives of its era.

I Abigail Bailey do now undertake to record some of the dealings of the allwise God with me, in events, which I am sure I ought solemnly to remember, as long as I live.

April 15, 1767. I was married to Asa Bailey, just after having entered the 22nd year of my age. I now left my dear parent—hoping to find in my husband a true hearted and constant friend... But before one month, from my marriage day, had passed, I learned that I must expect hard and cruel treatment in my new habitation, and from my new friend.

Dec, 1788. He would spend his time with this daughter, in telling idle stories, and foolish riddles... had such conduct appeared toward any young woman besides his own young daughter, I should have no question what he intended. After a while Mr. B's conduct toward this daughter was strangely altered. Instead of idle songs, fawning and flattery, he grew very angry with her; and would wish her dead, and buried; and he would correct her very severely.

Among the many instances of his wickedly correcting her, I shall mention one. One morning Mr. B rose from bed, which it was yet dark. He immediately called this daughter and told her to get up. She obeyed. And as she knew her daily business, she made up her fire in her room, and sat down to her work. He sat by the fire in the kitchen. As my door was open, I carefully observed his motions... He sprang from his chair, and called his daughter. She left her work in her room and came immediately to him. In great rage, and with a voice of terror, he asked why she did not come to him, when he first called her? She respectfully told him that he called her to get up, which she immediately did, and

went to her work. But she said she did not hear him call her to come to him. He seized his horse whip, and said, in a rage, he would make her know that when he called her, she should come to him. He then fell to whipping her without mercy. She cried and begged, and repeated her assertion, that she did not know he called her to come to him. She had done as he told her.

None can describe the anguish of my heart on the beholding of such scenes. How pitiful must be the case of a poor young female, to be subjected to such barbarous treatment by her own father; so that she knew of no way to redress!

Source: Bailey, Abigail Abbot and Ann Taves. *Religion and Domestic Violence in Early New England: The Memoirs of Abigail Abbot Bailey*. Bloomington: Indiana University Press, 1989.

See Articles: Child Abuse, History of; Child Abuse, Sociology of; Children's Rights; Domestic Violence, History of.

1793 PRIMARY DOCUMENT

The Fugitive Slave Act of 1793

Under the Articles of Confederation, there were provisions for dealing with fugitive criminals but none for fugitive slaves. This was one of the concerns brought before the Constitutional Convention by the South Carolina delegates, resulting in the provision in Article Four, Section 2, Clause 3 of the Constitution requiring that fugitive slaves from another state be returned to their owner. The Fugitive Slave Act created the legal mechanism for this to occur.

Statutes at Large, Chap. VII, p. 302,
February 12, 1793
Chapter VIIC

An Act respecting fugitives from justice, and persons escaping from the service of their masters.

Sec. 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the executive authority of any state in the Union, or of either of the territories northwest or south of the river Ohio, shall demand any person as a fugitive from justice, of the executive authority of any such state or territory to which such person shall have fled, and shall moreover produce the copy of an indictment found, or an affidavit made before a magistrate of any state or territory as aforesaid, charging the person so demanded, with having committed treason, felony or other crime, certified as authentic by the governor or chief magistrate of the state or territory from whence the person so charged fled, it shall be the duty of the executive authority of the state or territory to which such person shall have fled, to cause him or her to be arrested and secured, and notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear: But if no such agent shall appear within six months from the time of the arrest, the prisoner may be discharged. And all costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the state or territory making such demand, shall be paid by such state or territory.

Sec. 2. And be it further enacted, That any agent, appointed as aforesaid, who shall receive the fugitive into his custody, shall be empowered to transport him or her to the state or territory from which he or she shall have fled. And if any person or persons shall by force set at liberty, or rescue the fugitive from such agent while transporting, as aforesaid, the person or persons so offending shall, on conviction, be fined not exceeding five hundred dollars, and be imprisoned not exceeding one year.

Sec. 3. And it be also enacted, That when a person held to labour in any of the United

States, or in either of the territories on the northwest or south of the river Ohio, under the laws thereof, shall escape into any other of the said states or territory, the person to whom such labour or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labour, (b) and to take him or her before any judge of the circuit or district courts of the United States, residing or being within the state, or being any magistrate of a county, city or town corporate, wherein such seizure or arrest shall be made, and upon proof to the satisfaction of such judge or magistrate, either by oral testimony or affidavit taken before and certified by a magistrate of any such state or territory, that the person so seized or arrested, doth, under the laws of the state or territory from which he or she fled, owe service or labour to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labour, to the state or territory from which he or she fled.

Sec. 4. And it be further enacted, That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent or attorney in so seizing or arresting such fugitive from labour, or shall rescue such fugitive from such claimant, his agent or attorney when so arrested pursuant to the authority herein given or declared; or shall harbor or conceal such person after notice that he or she was a fugitive from labour, as aforesaid, shall for either of the said offences, forfeit and pay the sum of five hundred dollars. Which penalty may be recovered by and for the benefit of such claimant, by the action of debt, in any court proper to try the same; saving moreover to the person claiming such labour or service, his right of action for or on account of the said injuries or either of them.

Approved, February 12, 1793

Source: <http://academic.udayton.edu/race/02rights/slave02.htm>

See Articles: Fugitive Slave Act of 1793; Slavery; Slavery, Law of.

1794 PRIMARY DOCUMENT

Runaway Slave Notice

While slavery is associated in hindsight with the southern states, this notice offering a reward for the return of a recently escaped slave comes from the Rising Sun newspaper in Ulster County, New York. The \$10 reward is comparable to other rewards offered in the period; in comparison, a slave would have sold for about \$800. Colden suspects a neighbor of harboring his slave; until the Fugitive Slave Act in 1850, there were few legal repercussions for doing so.

TWENTY DOLLARS REWARD.

Ran away from the subscriber on the 19th instant, a negro man named Peter, about 22 years of age, tall and of a yellowish complexion. He fled precipitately from his work in fear of a deserved correction. He only had on him a flannel shirt, a short jacket without sleeves, a pair of leather breeches, and woolen stockings. As this was the case, it is supposed that he must have been harboured by some ill-disposed neighbor, as not the least intelligence has been had of his being seen since. Any person taking up the said negro twenty miles from his master's house, and bringing him home, shall be entitled to the above reward of twenty dollars and all reasonable charges paid; but if in the neighbourhood, within twenty miles, then only ten dollars.

Alexander Colden
Coldenham, Ulster County,
May 21, 1794.

N. B. He speaks both English and Dutch, and has an impediment in his speech.

Source: http://www.hrvh.org/cdm4/item_viewer.php?CISOROOT=/hhs&CISOPTR=587

See Articles: Fugitive Slave Act of 1793; Slavery; Slavery, Law of.

1794 PRIMARY DOCUMENT

Washington Proclamation on the Whiskey Rebellion

The constitutional federal government was empowered to levy taxes, and in 1791 taxed whiskey in order to pay off some of the national debt. Frontiersmen immediately complained that they were unfairly targeted, as many farmers turned surplus grain into whiskey, not only for sale but also to pay their workers. Tax resisters threatened violence from the start, and armed insurrection began in 1794, in western Pennsylvania. Washington did his best to suppress it with minimal casualties or acrimony.

BY AUTHORITY

By the president of the United States of
America

A PROCLAMATION

Whereas, combinations to defeat the execution of the laws laying duties upon spirits distilled within the United States and upon stills have from the time of the commencement of those laws existed in some of the western parts of Pennsylvania.

And whereas, the said combinations, proceeding in a manner subversive equally of the just authority of government and of the rights of individuals, have hitherto effected their dangerous and criminal purpose by the influence of certain irregular meetings whose proceedings have tended to encourage and uphold the spirit of opposition by misrepresentations of the laws calculated to render them odious; by endeavors to deter those who might be so disposed from accepting offices under them through fear of public resentment and of injury to person and property, and to compel those who had accepted such offices by actual violence to surrender or forbear the execution of them; by circulation vindictive

menaces against all those who should otherwise, directly or indirectly, aid in the execution of the said laws, or who, yielding to the dictates of conscience and to a sense of obligation, should themselves comply therewith; by actually injuring and destroying the property of persons who were understood to have so complied; by inflicting cruel and humiliating punishments upon private citizens for no other cause than that of appearing to be the friends of the laws; by intercepting the public officers on the highways, abusing, assaulting, and otherwise ill treating them; by going into their houses in the night, gaining admittance by force, taking away their papers, and committing other outrages, employing for these unwarrantable purposes the agency of armed banditti disguised in such manner as for the most part to escape discovery;

And whereas, the endeavors of the legislature to obviate objections to the said laws by lowering the duties and by other alterations conducive to the convenience of those whom they immediately affect (though they have given satisfaction in other quarters), and the endeavors of the executive officers to conciliate a compliance with the laws by explanations, by forbearance, and even by particular accommodations founded on the suggestion of local considerations, have been disappointed of their effect by the machinations of persons whose industry to excite resistance has increased with every appearance of a disposition among the people to relax in their opposition and to acquiesce in the laws, insomuch that many persons in the said western parts of Pennsylvania have at length been hardy enough to perpetrate acts, which I am advised amount to treason, being overt acts of levying war against the United States, the said persons having on the 16th and 17th of July last past proceeded in arms (on the second day amounting to several hundreds) to the house of John Neville, inspector of the revenue for the fourth survey of the district of Pennsylvania; having repeatedly attacked the said house with the persons therein, wounding some of them; having seized David Lenox, marshal of the district of Pennsylvania, who previous thereto had been

fired upon while in the execution of his duty by a party of armed men, detaining him for some time prisoner, till, for the preservation of his life and the obtaining of his liberty, he found it necessary to enter into stipulations to forbear the execution of certain official duties touching processes issuing out of a court of the United States; and having finally obliged the said inspector of the revenue and the said marshal from considerations of personal safety to fly from that part of the country, in order, by a circuitous route, to proceed to the seat of government, avowing as the motives of these outrageous proceedings an intention to prevent by force of arms the execution of the said laws, to oblige the said inspector of the revenue to renounce his said office, to withstand by open violence the lawful authority of the government of the United States, and to compel thereby an alteration in the measures of the legislature and a repeal of the laws aforesaid;

And whereas, by a law of the United States entitled "An act to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions," it is enacted that whenever the laws of the United States shall be opposed or the execution thereof obstructed in any state by combinations too powerful to be suppressed by the ordinary course of judicial proceedings or by the powers vested in the marshals by that act, the same being notified by an associate justice or the district judge, it shall be lawful for the President of the United States to call forth the militia of such state to suppress such combinations and to cause the laws to be duly executed. And if the militia of a state, when such combinations may happen, shall refuse or be insufficient to suppress the same, it shall be lawful for the President, if the legislature of the United States shall not be in session, to call forth and employ such numbers of the militia of any other state or states most convenient thereto as may be necessary; and the use of the militia so to be called forth may be continued, if necessary, until the expiration of thirty days after the commencement of the of the ensuing session; Provided always, that, whenever it may be necessary in the judgment of

the President to use the military force hereby directed to be called forth, the President shall forthwith, and previous thereto, by proclamation, command such insurgents to disperse and retire peaceably to their respective abodes within a limited time;

And whereas, James Wilson, an associate justice, on the 4th instant, by writing under his hand, did from evidence which had been laid before him notify to me that "in the counties of Washington and Allegany, in Pennsylvania, laws of the United States are opposed and the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings or by the powers vested in the marshal of that district";

And whereas, it is in my judgment necessary under the circumstances of the case to take measures for calling forth the militia in order to suppress the combinations aforesaid, and to cause the laws to be duly executed; and I have accordingly determined so to do, feeling the deepest regret for the occasion, but withal the most solemn conviction that the essential interests of the Union demand it, that the very existence of government and the fundamental principles of social order are materially involved in the issue, and that the patriotism and firmness of all good citizens are seriously called upon, as occasions may require, to aid in the effectual suppression of so fatal a spirit;

Therefore, and in pursuance of the proviso above recited, I, George Washington, President of the United States, do hereby command all persons, being insurgents, as aforesaid, and all others whom it may concern, on or before the 1st day of September next to disperse and retire peaceably to their respective abodes. And I do moreover warn all persons whomsoever against aiding, abetting, or comforting the perpetrators of the aforesaid treasonable acts; and do require all officers and other citizens, according to their respective duties and the laws of the land, to exert their utmost endeavors to prevent and suppress such dangerous proceedings.

In testimony whereof I have caused the seal of the United States of America to be affixed to these presents, and signed the same with my hand. Done at the city of Philadelphia the

seventh day of August, one thousand seven hundred and ninety-four, and of the independence of the United States of America the nineteenth.

G. Washington,
By the President,
Edm. Randolph

Sources: *Claypoole's Daily Advertiser*
(August 11, 1794);
and
http://avalon.law.yale.edu/18th_century/gwproc03.asp

See Articles: American Revolution and Criminal Justice; Civil Disobedience; Presidential Proclamations; Tax Crimes; Washington, George (Administration of).

1795 PRIMARY DOCUMENT

United States v. Mitchell

John Mitchell was one of the insurrectionists in the Whiskey Rebellion, but the extent of his role isn't clear. He was talked into intercepting the U.S. mail—so that the rebels could ascertain local opinion on the whiskey tax—by one of the leaders, David Bradford, but he suffered from some degree of mental incapacity, and it's unknown how much he knew about the ramifications of his actions. He was one of only two insurrectionists convicted, but was pardoned by Washington.

*The United States
v.
Mitchell*

2 U.S. 348 (1795)

U.S. Supreme Court

Indictment for High Treason, by levying war against the United States. It was alledged, that

the prisoner was one of the party that assembled at Couche's Fort, armed; that he proceeded thence to Gen. Neville's, and assisted at the burning of the general's house; that he attended with great zeal at the meeting at Braddock's field; and that on the day prescribed for signing a submission to the government he was intoxicated, refused to sign himself, and was active in dissuading others from signing. The circumstance of the prisoner's being at Couche's was proved by a number of witnesses; his being at Braddock's field, by one witness and his own confession; but there was only one positive witness to the fact of his having been at the burning of general Neville's house, tho' a second witness said 'it ran in his head that he had seen him there,' and a third declared that he had passed him on the march thither. The scope of the testimony as it respected the general object of the insurrection, and as it particularly applied to the prisoner, will be found sufficiently stated in the course of the arguments and charge.

The Attorney of the District (Rawle) having closed the evidence, proceeded to state the law, in support of the prosecution. So frequently and fully has the offence of levying war against the government been defined, that a doubt can hardly be raised upon the subject. Kings, it is true, have endeavoured to augment the number, and to perplex the descriptions, of treasons, as an instrument to enlarge their powers, and to oppress their subjects; but in Republics, and, particularly, in the American Republic, the crime of treason is naturally reduced to a single head, which divides itself into these Constitutional propositions: 1st. Levying war against the government, and 2ndly. Adhering to its enemies, giving them aid and comfort: In other words, exciting internal, or waging external, war, against the State. The second branch of the crime, thus designated, renders it unlawful and treasonable for any citizen to adhere to a foreign, public, enemy, whether assailing the frontiers, or penetrating into the heart, of our country. But while such a co-operation endangers the success and prosperity of the community, the effects of domestic insurrection, (which the first branch of the division contemplates) strike at the root of its

existence; and, in free countries above all, must be prevented, or corrected, by the most vigilant and efficient sanctions of the law. What constitutes a levying of war, however, must be the same, in technical interpretation, whether committed under a republican, or a regal, form of government; since either institution may be assailed and subverted by the same means. Hence we are enabled, in the first stage of our own experience, to acquire precise and satisfactory ideas upon the subject, from the matured experience of another government, which has employed the same language to describe the offence, and is guided by the same rules of judicial exposition. By the English authorities, it is uniformly and clearly declared, that raising a body of men to obtain, by intimidation or violence, the repeal of a law, or to oppose and prevent by force and terror, the execution of a law, is an act of levying war. Doug. 570. Again; an insurrection with an avowed design to suppress public offices, is an act of levying war: And, although a bare conspiracy to levy war, may not amount to that species of treason; yet, if any of the conspirators actually levy war, it is treason in all the persons that conspired; and in Fost. 218, it is even laid down, that an assembly armed and arrayed in a warlike manner for a treasonable purpose is *Bellum levatum*, though not *Bellum percussum*. Those, likewise who join afterwards, though not concerned at first in the plot, are as guilty as the original conspirators; for in Treason all are principals; and whenever a lawless meeting is convened, whether it shall be treated as riot, or treason, will depend on the *quo animo*. 4 Bl. Com. 81. 1 H. H. P. C. 133. 4. Fost. 213. 210. 215. 218. 1 Hawk. P. C. 37. 4 Bl. Com. 35. 1 Hal. P. C. 440. 8 St. Tr. 247. 2 St. Tr. 586. 7. Keil. 19. 3 Inst. 9. The evidence, unfortunately, leaves no room for excuse, or extenuation, in the application of the law to the prisoner's case. The general and avowed object of the conspiracy at Couche's Fort, was to suppress the offices of excise in the Fourth Survey. As an important measure for that purpose, it was agreed to go to General Neville's house, and to compel him to surrender his office, and his official

papers. Some of the persons who were at Couche's Fort, went, accordingly, to General Neville's, and terminated a course of lawless and outrageous proceedings by burning his house. The prisoner is proved by four witnesses to have been at Couche's Fort; and so far from opposing the expedition to General Neville's, he offered himself to reconnoitre. Being thus originally combined with the conspirators, in a treasonable purpose, to levy war, it was unnecessary that the purpose should be afterwards executed, in order to convict them all of treason, and much less is it necessary to his conviction, that he should have been present at the burning of General Neville's house, which was the consummation of their plot, or that the burning should be proved by two witnesses. But he is, likewise, discovered, by one of the witnesses at least, within a few rods of the General's, at the moment of the conflagration; and he is seen marching in the cavalcade, which escorted the dead body of their leader, in melancholy triumph, from the scene of action to Barclay's house. It is not necessary to consider the meeting at Bradock's field as an independent treason, though the avowed intention was to attack the garrison at Pittsburgh, and to expel certain public officers from the town; but the conduct of the prisoner on that occasion, concurring in every violent proposition that was made; and his refractory and seditious deportment on the day prescribed for signing the declaration of submission to the laws; are corroborative demonstrations of that *mala mens*, that dark and dreary turbulence of soul, which is regardless of every social, moral, and religious obligation.* The Counsel for the prisoner (E. Tilghman & Thomas) premised, that they did not conceive it to be their duty to shew, that the prisoner was guiltless of any description of crime against the United States, or the State of Pennsylvania; but they contended, that he had not committed the crime of High Treason; and ought, therefore, to be acquitted upon the present indictment. The adjudications in England upon the various descriptions of treason, have been worked, incautiously, into a system, by the destruction of which, at this day, the government itself

would be seriously affected: but even there, the best judges and the ablest commentators, while they acquiesce in the decisions that have already taken place, furnish a strong caution against the too easy admission of future cases, which may seem to have a parity of reason. Constructive, or interpretative treasons, must be the dread and scourge of any nation that allows them. 1 Hal. P. C. 132. 259. 4 Bl. Com. 85. Take, then, the distinction of treason by levying war, as laid down by the Attorney of the District, and it is a constructive, or interpretative, weapon, which is calculated to annul all distinctions heretofore wisely established in the grades and punishments of crimes; and by whose magic power a mob may easily be converted into a conspiracy; and a riot aggravated into High Treason. Such, however, is not the sense which Congress has expressed upon this very subject; for, if a bare opposition to the execution of a law can be considered as constituting a traitorous offence, as levying war against the government, it must be equally so, in relation to every other law, as well as in relation to the excise law; and in relation to the Marshall of a Court, as much as in relation to the Supervisor of a District: And yet, in the Penal Code of the United States, the offence of wilfully obstructing, resisting, or opposing, any officer, in serving, or attempting to serve any process, is considered and punished merely as a misdemeanor. (1 Vol. Swift's Edit. p. 109. s. 22.) Let it be granted, that to compel Congress to repeal a law, by violence, or intimidation, is treason (and the English authorities rightly construed, claim no greater concession) it does not follow, that resisting the execution of a law, or attempting to coerce an officer into the resignation of his commission, will amount to the same offence. Let it be granted, also, that an insurrection, for the avowed purpose of suppressing all the excise offices in the United States, may be construed into an act of levying war against the government (and the English authorities speak expressly of the universality of the object, as an essential characteristic of this species of treason) it does not follow that an attempt to oblige one officer to resign, or to suppress all

the offices in one district, will be a crime of the same denomination.

Source: <http://supreme.justia.com/us/2/348/case.html>

See Articles: Civil Disobedience; Political Dissidents; Riots; Supreme Court, U.S.

1799 PRIMARY DOCUMENT

John Adams: Proclamation on the Insurrection in Pennsylvania

Shortly after the Whiskey Rebellion, another insurrection arose in Pennsylvania: Fries's Rebellion, led by John Fries, a veteran of the Revolutionary War. Congress enacted new taxes to pay for the Quasi-War against France and was clumsy in handling their collection. Fries organized a movement to drive tax assessors out of Pennsylvania. While Adams pardoned Fries upon his treason conviction, his Federalists lost their support among the German-American communities.

Whereas, combinations to defeat the execution of the law for the valuation of lands and dwelling-houses within the United States, have existed in the counties of Northampton, Montgomery, and Bucks, in the State of Pennsylvania, and have proceeded in a manner subversive of the just authority of the government, by misrepresentations to render the laws odious, by deterring the officers of the United States to forbear the execution of their functions, and by openly threatening their lives: And whereas, the endeavors of the well-affected citizens, as well as of the executive officers, to conciliate a compliance with those laws, have failed of success, and certain persons in the county of Northampton, aforesaid, have been hardy enough to

perpetrate certain acts, which I am advised, amount to treason, being overt acts of levying war against the United States, the said persons, exceeding one hundred in number, and, armed and arrayed in a warlike manner, having, on the seventh day of the present month of March, proceeded to the house of Abraham Lovering, in the town of Bethlehem, and there compelled William Nicholas, Marshal of the United States, and for the district of Pennsylvania, to desist from the execution of certain legal processes in his hands to be executed, and having compelled him to discharge and set at liberty certain persons whom he had arrested by virtue of a criminal process, duly issued for offenses against the United States, and having impeded and prevented the commissioners and assessors, in conformity with the laws aforesaid, in the county of Northampton aforesaid, by threats of personal injury, from executing the said laws, avowing as the motive of these illegal and treasonable proceedings an intention to prevent, by force of arms, the execution of the said laws, and to withstand by open violence the lawful authority of the government of the United States. And whereas, by the Constitution and laws of the United States, I am authorized, whenever the laws of the United States shall be opposed, or the execution thereof obstructed, in any State, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings or by powers vested in the marshal, to call forth military force to suppress such combinations, and to cause the laws to be duly executed; and I have accordingly determined so to do, under the solemn conviction that the essential interests of the United States demand it. Wherefore I, John Adams, President of the United States, do hereby command all persons being insurgents as aforesaid, and all others whom it may concern, on or before Monday next, being the eighteenth day of this respective abodes. And I do, moreover, warn all persons whomsoever, against aiding, abetting, or comforting the perpetrators of the aforesaid treasonable acts, and I do require all officers and others, good and faithful citizens, according to their respective duties and the laws of the land, to exert their utmost endeavors to

prevent and suppress such dangerous and unlawful proceedings.

In testimony whereof, &c.

John Adams

12 March, 1799

Source: Adams, John and Charles Francis Adams. *The Works [of] John Adams, Second President of the United States*. New York: AMS, 1971.

See Articles: Adams, John (Administration of); Civil Disobedience; Pennsylvania; Political Dissidents; Presidential Proclamations; Riots.

1799 PRIMARY DOCUMENT

The Shays Rebellion in Massachusetts

In 1799, farmer, soldier, and author William Manning published The Key of Liberty, a political treatise on the dangers of the “few” (the elite) ruling over the “many” (most others). In the following selection, he writes of the Shays Rebellion, an armed uprising in the months before the Constitutional Convention in 1787. The rebellion was led by Daniel Shays, a Revolutionary War veteran who, like many others, faced difficulties collecting his back pay from the government.

What most establishes me in the opinion that this plan will answer comes from my own observations of the operation of these causes in our own government, especially the causes, conduct, and final issue of the insurrection that happened in Massachusetts in 1785 and 1786. As I lived near the scene of action and received frowns from both sides for being opposed to their measures, it drew my closest attention and observation. And though I have been too lengthy already, yet I must here give a short history of it.

On The Shays Affair In Massachusetts

At the close of the British war, although our paper money died away and left the people greatly in debt by it, and a great public debt was on us by the war, yet there was a large quantity of hard money among us sufficient for a medium. But for want of the proper regulation of trade and with the prices of labor and produce being higher here than in other countries, our merchants shipped the hard money off, load after load, by the hundred thousand dollars together to Britain for trifling gewgaws and things that were of no service to us, until there was but little left. Taxes were extremely high. Some counties were two or three years behind. And with the prices of labor and produce falling very fast, creditors began calling for old debts and saying that they would not take payment in paper money. Those who had money demanded forty or fifty percent for it. And fee office officers demanded three or four times so much fees as the law allowed them, and were so crowded with business that sometimes it was hard to get any done. Property was selling almost every day by execution for less than half its value. The jails were crowded with debtors. And with the people being ignorant that all their help lay in being fully and fairly represented in the legislature, many small towns neglected to send representatives in order to save the cost—so that the Few only were represented at court [that is, the Massachusetts state legislature, known as the General Court], with an aristocratic Bowdoin as governor at their head.

Under all these circumstances, the people were driven to the greatest extremity. Many counties took to conventions remonstrances, and petitions to a court where they were not half represented. But not being heard, and in some instances charged with seditious meetings and intentions, under all these circumstances, some counties were so foolish as to stop the courts of justice by force of arms. This shook the government to its foundation. For instead of fatherly counsels and admonitions, the dog of war let loose upon them, and they were declared in a state of insurrection and rebellion.

In these circumstances, the Few were all alive for the support of the government, and all those who would not be continually crying, “Government, Government,” or who dared to say a word against their measures, were called Shaysites and rebels threatened with prosecutions, etc. But with a large majority of the people thinking that there was blame on both sides, or viewing one side as knaves and the other as fools, it was with great difficulty and delay before a sufficient number could be raised and sent to suppress those who had closed the courts.

But the suppression was done with the loss of but few lives. This put the people in the most zealous searches after a remedy for their grievances. Thousands and thousands of miles were ridden to consult each other on the affair, and they happily effected it in a few months only by using their privileges as electors. Bowdoin was turned out from being governor and Hancock was almost unanimously elected in his place. Many of the old representatives shared the same fate, and a full representation was from every part of the state, which soon found out means redress the grievances of the people, though they were attended with the most difficult circumstances, so that everything appeared like the clear and pleasant sunshine after a most tremendous storm.

This is a striking demonstration of the advantages of an elective government and shows how a people may run themselves into the greatest difficulties by inattention in elections, and how they can retrieve their circumstances by attending to them again. This Shays affair never would have happened if there had then been such a society as I now propose. Many people then would have sacrificed half their interest to have been possessed of such means of knowledge.

This affair, too, is a striking demonstration of the madness and folly of rising up against a government of our own choice when we have constitutional means of redress in our own hands. For although it was supposed by many that if Hancock had been governor at that time—even after the courts were stopped—that the whole affair might have been settled with less than a thousand dollars cost; yet

it was so managed that it cost the state (in time and money) near a million dollars, and it almost entirely ruined hundreds of honest, well-meaning men that only needed the means of knowledge I have described.

Thus, my friends, I have freely given you my opinion of the causes that destroy free governments and of a remedy against them, not in the language and style of the learned (for I am not able), but in as plain a manner as I am capable. And I have done it from a conviction that it was my duty, and for the happiness of mankind. If I have misrepresented anything or used any unbecoming language, it is for the want of knowledge and learning. For I am a true friend to all orders of men and individuals I are friends to true liberty and the rights of man. The remedy I have described is not a costly one, for confident I am that penny

laid out in it would soon save pounds in other needless expenses. Therefore, unless you see more difficulty in applying it, or less need of it than I do, you will immediately put it on foot and never give over until such a society is established on such a lasting foundation that the gates of hell will not prevail against it—which may the Almighty grant is the sincere desire of a Laborer

Source: Manning, William. *The Key of Liberty, Shewing the Causes Why a Free Government Has Always Failed, And a Remedy Against It*. Billerica, MA: Manning Association, 1922. Written in 1798, with notes and a foreword by Samuel Eliot Morison.

See Articles: Civil Disobedience; Massachusetts; Riots; Tax Crimes.



1801 to 1850

INTRODUCTION

Americans encountered new challenges of independence from 1801 to 1850: an increasingly mobile population, and the realization that earlier methods to address crime and punishment were no longer adequate. In the first years of the 19th century, reformers attempted to meet these new challenges by developing and reforming institutions, including legal codes, police departments, and carceral facilities. Differences emerged between treatment of criminals in state or local facilities and depending on the location of such institutions, both in the north and the south. Crime and punishment in the antebellum period signaled the shift from colonial to American enforcement.

From 1801 to 1850, the new nation experienced significant change. Americans increasingly moved westward, transplanting or adopting their eastern institutions in new towns and cities. Immigrants also added to the growth and mobility of American society. Urban areas, especially New York, Boston, and Philadelphia, experienced new growth from population movement. City residents perceived increased criminal activity, including theft, public drunkenness, prostitution, and violent actions. Attitudes toward crime and punishment in the first decades of the 19th century demonstrate the nation's shift from the village and stronger local connections between people to a more mobile and transient society.

Enforcement of criminal activity also reflected a clear shift from earlier English colony governance to a republican form of government. Americans perceived that earlier mechanisms to control crime and shame criminals were no longer effective. More critically, they were no longer seen as compatible with democracy but instead represented tyranny reminiscent of monarchical rule. The reformation of law enforcement methods was intended to avoid endangering the liberties of American citizens.

Laws and Crime in the New Nation

After the American Revolution, leaders sought to create a system of laws and punishments that differed from that of the colonial era. England's legal code was a compilation of court cases, rather than a codified set of laws. Recognition of the limits of common law prompted the nation's first leaders to codify laws at both the national and state levels. During the Revolution, states drafted constitutions to stipulate the liberties of

the people. Constitutions also presented the process for adding or amending laws in the future. Such written contracts were deemed critical to maintaining republican rule in the new nation. Laws could be amended as outlined by the constitutions, not changed as political leadership changed.

Nationally, this change was signified in the adoption of the U.S. Constitution and, more critically, the Bill of Rights. Americans wanted protections from the potential tyranny of their new national government. The new constitution and national laws meant that these protections should be available to all citizens in the nation. More importantly, Americans wanted to ensure that the law would be applied equally to all citizens. Under the English system, an individual could escape punishment (including death) if he or she was saved by the king's mercy. Such actions created a legal system based not on equity, but on patronage. As Americans wanted to create a more republican legal structure, crimes and punishments needed to be clearly articulated and equally applied to all.

Republican citizens and leaders were supposed to be educated, involved, and in pursuit of the good of the nation above individual desires. The definition of the term *citizen* was expanding to more individuals. As the antebellum period progressed, the nation increasingly emphasized the liberty of the white male population. States began to lift property restrictions on the franchise, meaning that more men than ever before could vote; therefore, participation in elections through voting and attending campaign events dramatically increased. Democracy replaced deference to political and social leaders, and politically, all white men were to be treated as equals. However, such changes were not beneficial to all.

New understandings of the role of the individual in society also influenced changes in defining and punishing criminals. Reformers sought to reform criminals, rather than use public humiliation, permanent alterations to criminals' bodies, or ostracization. In his 1996 book *Laboratories of Virtue*, history researcher Michael Meranze documents the shift from public punishment to the rise of the penitentiary and connects it to the rise of liberalism in the antebellum north, specifically in Philadelphia. He contends that imprisonment, through discipline, represented a different way of treating the body of the convicted. Public displays of corporal punishment were no longer generally accepted, and punishment moved out of the public eye. Reformers wanted to adopt more humane and equitable forms of law enforcement and punishment in the young nation.

A more mobile society also meant that previous communal connections between individuals were ineffective. Lower classes no longer deferred to the upper classes, residents no longer knew everyone within a village or small town, and encounters with strangers became more common. Worries about new types of crimes and criminals emerged in the first decades of the 19th century. "Confidence men," or men who presented themselves falsely for personal gain, were particularly dangerous in the new republic. Fears of gamblers and speculators who economically contributed nothing epitomized the potential dangers of a society that was more geographically mobile. Middle-class Americans feared criminals who would take advantage of them, often within the growing cities.

Urban areas especially saw a more visible underworld develop in the antebellum period. History researcher Timothy Gilfoyle examined the rise of prostitution in New York City during the 19th century in his book *City of Eros* (1992). Originally limited to specific streets near docks, brothels and streetwalkers expanded across the city. Madams enjoyed considerable power economically and legally before the professionalization of police enforcement. Rioters who targeted houses of prostitution had to repair the damage done to property, as protection of property was more critical than enforcement of sexual activity. An underworld of commercialized sex prospered in the antebellum city.

MRS. BIRD, Female Physician, where can be obtained Dr. Vandenburg's Female Renovating Pills, from Germany, an effectual remedy for suppression, irregularity, and all cases where nature has stopped from any cause whatever. Sold only at Mrs. Bird's, 83 Duane st, near Broadway. n24 3m*

TO THE LADIES—Madame Costello, Female Physician, still continues to treat, with astonishing success, all diseases peculiar to females. Suppression, irregularity, obstruction, &c., by whatever cause produced, can be removed by Madame C. in a very short time. Madame C's medical establishment having undergone thorough repairs and alterations for the better accommodation of her numerous patients, she is now prepared to receive ladies on the point of confinement, or those who wish to be treated for obstruction of their monthly periods. Madame C. can be consulted at her residence, 34 Lispenard st, at all times.—All communications and letters must be post paid.

An advertisement for Mrs. Bird and Madame Costello, "female physicians" to the "ladies," in the New York Sun newspaper, February 24, 1842. "Restoration" of feminine "irregularity" was often code for abortion. Women offering such services had knowledge of herbs and other "restoratives": medical procedures were risky because transmission of infection was not well understood.

The murder of Helen Jewett in April 1836 highlighted the visibility of prostitution. Jewett, a 23-year-old prostitute, was murdered in her room in New York City; a gash was on her head, her room was on fire, and there was a hatchet nearby. Earlier that evening, she had been visited by Richard Robinson, a frequent customer. Robinson was put on trial for Jewett's murder, but despite the overwhelming circumstantial evidence (including his cloak left at the scene), he was found "not guilty" by a jury in June. The case attracted national attention, not only because of the sensational nature of the murder, but also because it highlighted the increasingly visible underground world of prostitution in the city. Private citizens found that they could not compete with the financial power of the underground economy. Heightened visibility of crime further illustrated that new forms of enforcement were needed.

The media coverage of the Jewett Case highlighted the emerging "sporting culture" prevalent in New York City. Young men who worked as professionals during the day often spent their earnings on activities such as drink, gambling, and sex. Robinson symbolized the fluid nature of the early-19th-century city and the decreasing forms of earlier methods of supervision. Young men often headed to the city to make their fortunes. In this case, Robinson served as a clerk for the merchant Joseph Hoxie. During the colonial era, if young men were apprenticed out for a period of years to a master, they were under their constant supervision. They would work as an apprentice by day and live with the master at night, allowing them little freedom of movement. But by the 1820s and 1830s,

this system was no longer practiced. Rather, young men came to the city and worked during the day, but lived on their own in boardinghouses. Time away from work was their own, and they lived a vibrant lifestyle emphasized by their economic and sexual independence that was unrestrained by parents, employers, or wives.

The existence of a visible urban sexual underworld would become less tolerated as the 19th century continued. Similarly, abortion was more accepted in the early years of the 19th century than later in the century. Helen Lefkowitz Horowitz, who surveyed sexual knowledge in 19th-century America, including abortion, found that early medical knowledge stressed the importance of maintaining a woman's health. Since it was often difficult to determine with accuracy if a woman was pregnant in the 18th and early 19th centuries, the lack of menstruation was seen as a problem that needed to be corrected. Midwives and other females often had knowledge of herbs or medicines to "restore" a woman's health. Abortions were legal under common law as long as the fetus had not "quickened," meaning that as long as a woman did not feel movement of the fetus, she had miscarried and had not committed a crime. After she had confirmation of pregnancy by feeling the fetus move, any abortive actions were defined as illegal.

As earlier communal networks became strained, women increasingly learned of medicines or abortifacients from books, pamphlets, or male doctors. Urban areas provided women with opportunities to gain access to knowledge previously transmitted through female networks of married women, neighbors, and friends. Of the three New York City female abortionists who advertised their services, Madame Restell was the most famous. Restell, whose real name was Ann Trow Lohman, was an immigrant who supported herself and her daughter by working as a seamstress, and later as a practitioner of ways to "restore" a woman's menses. Her activities signify the shift of abortive medicines



"The Riot in Philadelphia" by H. Bucholzer shows how simmering ethnic tensions exploded on July 7, 1844. Nativist groups began a rumor that the Catholic Church was planning to remove the Bible from schools. When the Roman Catholic bishop persuaded school officials to use both the King James and Latin Vulgate bibles, Protestant mobs burned two Catholic churches on May 7 and rioted again in July, prompting intervention by the state militia.

from their private practice within female communities to a more public and commercial enterprise.

Medical procedures in the 19th century were dangerous, largely because germs and antiseptic procedures were unknown. Female abortionists were vulnerable to murder charges when women under their care died. In 1841, Lohman was arrested for the murder of Ann Maria Purdy and found guilty by a jury. Purdy had made a deathbed confession to her husband that she obtained an abortion from Madame Restell. However, Lohman's conviction was ultimately overturned by the New York Supreme Court, citing the inadmissibility of Mrs. Purdy's statements at the trial. Despite the reversal of her conviction, she continued to have legal troubles until her death in 1874.

New York strengthened its laws against abortions in 1845, making anyone found distributing or advising the use of abortifacients liable to serving up to one year in jail. The law also ended the open advertisements of such services. Lohman was convicted again, this time under the 1845 law, and served a year in prison on Blackwell Island in 1847. Lohman's legal troubles foreshadowed the implementation of the use of obscenity laws (especially the Comstock Law) against such practices toward the turn of the century.

Police

Early American cities drew upon English models of watchmen and constables for law enforcement. Constables patrolled during the day, enforcing local ordinances and arresting disorderly individuals. Watchmen patrolled urban neighborhoods at night, suppressing rowdy and disorderly behaviors such as drinking, prostitution, and gambling. However, appointment as a watchman did not pay well and was often a second job. Many watchmen fell asleep, drank, or neglected their duties. The creation of police departments presented another challenge to early American republicanism. How could law enforcers protect the rights of property owners without overstepping their authority and endangering the liberty of everyday citizens?

Reformation of the watch and constabulary forces emerged slowly during the antebellum period. The early patrols were inexpensive to maintain, but critics complained that they were no longer effective in suppressing criminal activity. Organized police departments appeared first in the eastern cities, but leaders wanted to ensure that the public did not see them as threatening to the public's liberty. Philadelphia's first police force was a compilation of the watch, constables, and policemen. The force was small in comparison to the number of city residents. Additionally, in an effort to avoid a comparison to a standing army in the city, the first policemen did not wear uniforms.

Forces in cities such as Philadelphia and Chicago often implemented requirements limiting the pool of potential policemen to native-born Americans. Chicago men wanting to serve on the force had to demonstrate their ability to read, speak, and write in English. Nativists argued that immigrants, especially the Irish, would not be good candidates for the position. Policemen, although not yet professional or with codes of conduct to follow, depended on their standing in the community for the position. Reformers often criticized their effectiveness at targeting crime and vice districts, arguing that they were complicit in the continued existence of such activities. Large forces with detectives and patrolmen in uniforms only emerged during the second half of the century.

Political science professor Ann-Marie Szymanski, who examined the role of private protective societies in 19th-century New England, argues that local constabularies and courts, rather than a state police force, were the only crime controls in Massachusetts until the end of the century. To better combat theft, residents often formed private, voluntary associations. Perceived threats of trespassing and theft became more pronounced after the revolution, resulting in such groups such as the Worcester Association for the

Protection of Fruit and the Sheffield Association for the Detection of Horse Thieves. Although large cities began to develop police forces, more rural areas depended on other organizations to control crime in New England.

Carceral Institutions

A new institution to house criminals for longer periods of time was also born in the antebellum period. Punishment shifted from swift public action to longer terms of confinement. Much of the historical studies of punishment address national or state reforms. There were generally four types of detention institutions in the 19th century: state prisons, jails, juvenile reformatories, and workhouses. Administrators of each type of facility adhered to different philosophical principals, depending on those detained.

While the public punishments of the colonial era such as whipping, confinement to the stocks or pillory, or banishment were intended to elicit shame and future compliance with the law, Benjamin Rush and other reformers pressed for incarceration in Philadelphia prisons following the American Revolution. Rush argued that the public, physical punishments were problematic because they were too short to effect change, did not sufficiently deter crime, and elicited public sympathy for the criminal. Their efforts resulted in the construction of the Walnut Street Jail, which opened in 1784, and served as an example that later prisons followed.

Prisons, which were large facilities designed to hold those convicted of felonies for sentences longer than a year, had a clear philosophical basis: to separate criminals from society during their term. Inmates were detained long enough to be reformed so they would not engage in criminal activity upon release. Prisons were largely funded by the state, with money made from contracting out inmate labor helping to defray expenses. Wardens and administrators sought to maintain order with labor, discipline, and inmates' reflections of their previous actions. Generally, they were large institutions located outside of urban areas that held a large population. Inmates had little contact with those outside the prison walls.

Two different prison philosophies and structures emerged during this period: the Auburn and Pennsylvania systems. Under the Pennsylvania system, as exemplified at Eastern State Penitentiary in Philadelphia, inmates were segregated during their entire sentence. They worked, slept, ate, and remained in their cells, with no contact with any other inmate. The Auburn system, named for the New York state prison located there, also stressed the lack of communication with fellow detainees, but they were not physically separated during their entire term. Rather, Auburn inmates would sleep alone in their cells but work during the day with other prisoners in workshops. Silence was maintained in order to prevent the spread of corruption from criminal to criminal. Most state penitentiaries in the United States followed the Auburn system, and the Pennsylvania system was later abandoned throughout the nation. However, its philosophies still remained influential into the 20th century.

States slowly constructed institutions similar to the Walnut Street Jail in the early republic. As Adam J. Hirsch documents in *The Rise of the Penitentiary* (1992), Massachusetts formally shifted from "pillory to penitentiary" in 1813. Corporal punishment was not abolished until 1826. Pennsylvania, through Eastern State Penitentiary; and New York, through Auburn, led the other states from corporal punishment to incarceration as a preferred mode of punishment.

Prison administrators emphasized order, routine, and isolation in both systems to create a corruption-free environment. They also often stripped prisoners of their individuality by replacing their clothing with prison uniforms and cutting their hair upon entrance. Regimentation was deemed necessary to maintain order; prisoners ate the same food

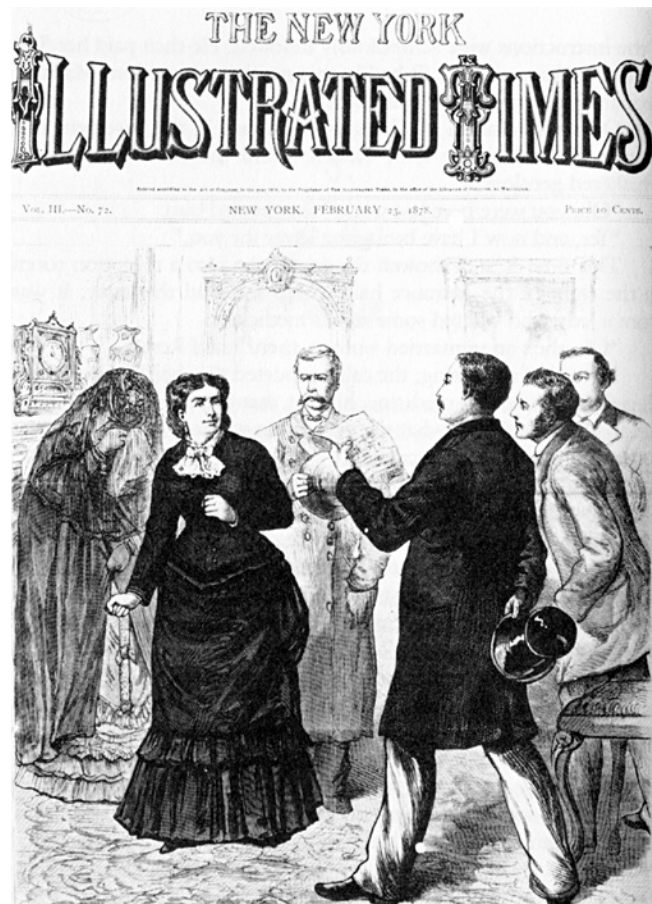
and moved in lockstep together, and some states included details in their laws that dictated the smallest details of an inmate's life, including what type of food would be served for meals, the specifications for uniforms, and the daily routine.

The ability of wardens and superintendents to achieve complete segregation, order, and discipline within the prisons was limited, however. Goals of complete isolation were unrealistic, because penitentiaries frequently housed more inmates than their capacity. Seeking to maintain order at all costs, wardens often resorted to punishments such as solitary confinement, along with physical measures, to maintain the silence deemed so critical to reformation.

Meranze details that prisoners at the Walnut Street Jail thwarted administrators' attempts to control and reform the inmate population, often working as slowly and poorly as possible. Rebecca McLennan relates in *The Crisis of Imprisonment* (2008) that prisoners held at Newgate, a New York prison, often rioted, slowed work, and sabotaged machinery and materials. They often used Sundays, set aside as a day of reflection, to gamble and sing bawdy songs. McLennan also asserts that in the 1810s and 1820s, reformers emphasized contract labor in hopes to counter shortcomings in the early prisons.

Smaller, local institutions, such as jails or lockups, held a variety of individuals, including those who were arrested, awaiting trial, and serving sentences for misdemeanors (less than a year). Local facilities had a diverse, ever-changing population of individuals who stayed for months, weeks, days, or even hours at a time. These institutions were often locally administered and funded, meaning that life inside largely depended on a variety of factors. Often, positions were filled by political appointees, based on an individual's connection to the party in power at the time. As a result, superintendents or jail officials may not have been well versed in penal philosophy or practices.

Facilities for juveniles also emerged during the era and sought to prevent young offenders from becoming adult criminals. Understandings of childhood as a separate period of time from adulthood did not fully develop



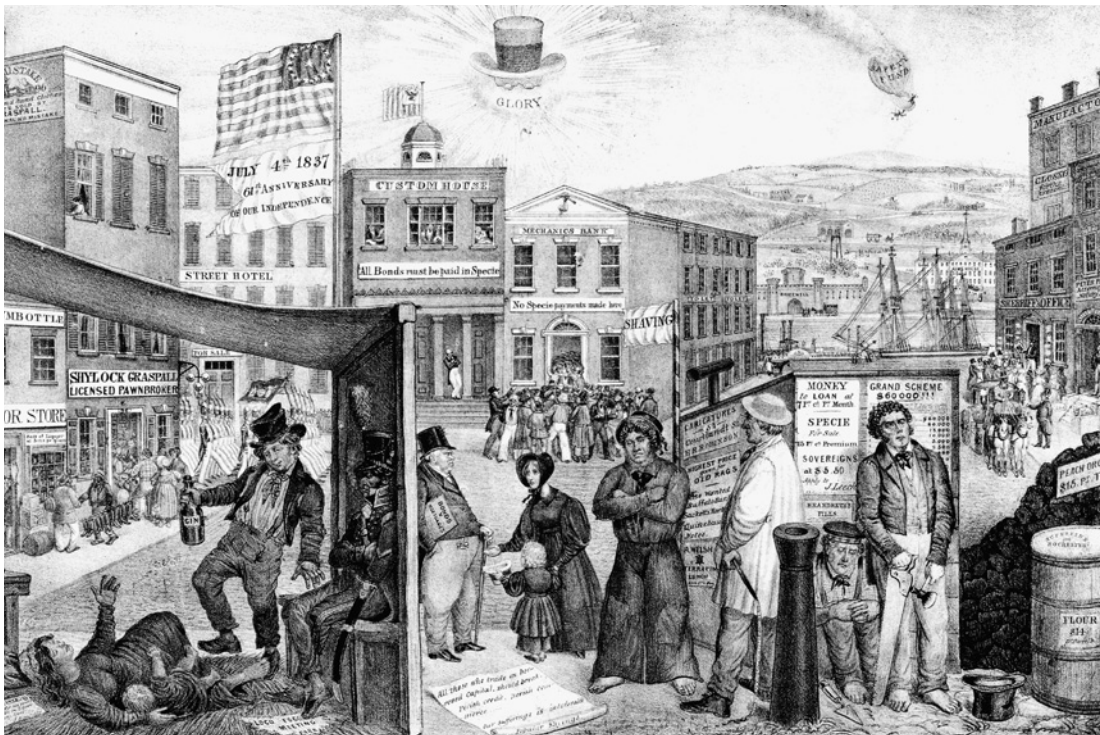
The arrest of abortionist Ann Lohman (Madame Restell) on the cover of *The New York Illustrated Times*, February 1878. Suspected in the 1841 death of Mary Rogers and a purported client, Restell was arrested in 1878 and committed suicide shortly afterward.

until much closer to the 20th century. The New York City House of Refuge became the first institution specifically opened to address the needs of juvenile offenders. The House of Refuge opened on January 1, 1825, in response to concern over the mingling of young and old criminals at Bellevue Prison. The institution was initially privately funded, but by 1829, public funds had replaced private monies. By 1850, five other cities followed New York's example: Boston, Philadelphia, New Orleans, Baltimore, and Cincinnati.

Administrators at houses of refuge attempted to relieve overcrowding and prevent recommitments by “placing out” inmates. Juveniles were indentured out, sometimes to farms in new states, including Illinois, Indiana, and Ohio. The indenture would last until their 21st birthday. Ideally, the youths would pick up the industrious habits and morals of an agrarian life that would keep them out of a future life of crime.

Initially, houses of refuge were privately or locally funded, but after the turn of the century, many states constructed and administered juvenile reformatories. The first state reformatory was established in Massachusetts in 1848. In Chicago, juvenile offenders were often held with adults in lockups, the jail, and the city prison. This changed during the Progressive Era, as city leaders built the John Worthy School at the House of Correction, eventually abandoned in favor of state institutions after 1915.

Workhouses, also known as houses of correction, were intermediate facilities between prisons and jails that shared the structural and administrative aspects of both. On one hand, they were often local institutions administered by city or county governments. Appointments were politically motivated, with little regard to previous experience in penal administration. Similarly, buildings and services for inmates were funded by city



"The Times," an engraving by H. R. Robinson, depicts the intoxication, violent mobs, and corruption rampant in the United States during the financial panic of 1837. In the background is a bridewell debtors' prison and an almshouse. In addition to overspeculation, the economic failure was blamed on President Andrew Jackson's economic policies, which were also responsible for the Cherokee relocation known as the Trail of Tears the following year.

budgets, dependent on revenues and popular will. However, because they only held those who had been convicted or fined for their offense, rather than those awaiting trial, they were more like prisons in structure, labor requirements, and discipline.

The Chicago Experience

Officials focused on detaining inmates, rather than reforming them. Additionally, since not all detainees were convicted of a crime or offense, the ability to punish or contract labor was significantly reduced. The Cook County Jail, along with the police lockups, served this function in Chicago. As a result, this population was the most fluid of the Chicago carceral institutions. Finally, lockups housed inmates within the city limits, allowing for more contact with outsiders, even during detainment.

Chicago illustrates the difficulties of the implementation of new penal philosophies, especially at the local level. An examination of Chicago's response to crime highlights the growing concern over criminal activity during the antebellum period. Early ordinances and laws in Chicago reflected its former status as a small frontier village. The first detention centers were small, temporary facilities, similar to those in colonial America. Community members self-policed and were wary of strangers. Most crimes were punished through fines, whipping, or the stocks. Americans began to emphasize detainment as a punishment as the 19th century progressed.

The first public law enforcers were nonprofessionals, selected for their standing in the community, not for previous experience. City officials relied upon watchmen and constables to maintain order in the frontier town. Men interested in patrolling as a member of the watch petitioned the city council for the post. For example, in 1843, Horace Scott submitted his petition as watchman along with the signatures of 30 neighbors who supported his request. City council members added more night watchmen as deemed necessary by citizens.

Watchmen or constables in Chicago who arrested ordinance violators took them to a justice of the peace for sentencing. If an arrest occurred overnight, the watchman detained the arrested individual in a watch house until the judge could be contacted the next morning. The construction of watch houses was sporadic and inexpensive. Often, the city council received requests for watch houses from citizens, then approved of the construction if it was deemed necessary. Council members would then accept bids for construction of the structures and select the cheapest one that met previously published specifications.

The appointment of watchmen and constables also reflected the informal procedure of early law enforcement in the burgeoning village. Much like the procedures for establishing watch houses, the process was informal. This did not mean that the post was without rules; the earliest watchmen in Chicago had to adhere to a limited code of conduct. Ordinances highlighted appropriate behavior while on duty. Watchmen could lose their position if they were not found on duty at night, if they did not report for duty at specified times, if they were found to be intoxicated while on patrol, or for other misconduct. For example, Alderman Levi Boone recommended the removal of Anthony Tierney as police constable in December 1846. Boone forwarded a petition to the council in which a complainant reported his experience in the watch house. The petitioner stated that although it was a cold night, Tierney made no accommodation for his comfort either in the form of a fire or blankets. The council concurred with Boone's proposal and removed Tierney.

Confinement in early Chicago was but one course of action available for punishment. Individuals convicted of petty crimes were also subject to public humiliation in the streets, such as performing work to benefit the city. During a two-month period, for

example, 25 men worked the equivalent of 109.25 days of labor; five of those worked multiple times for a total of 40 hours. Early violators of city ordinances found themselves detained in small carceral buildings or laboring in view of the public. Many years passed before county and city officials implemented more permanent structures, professional administrators, and cohesive philosophies regarding detention and punishment in the growing city.

Chicago's city leaders slowly created ordinances allowing for the separation of those awaiting trial from those already convicted. Chicago's city charter, which was created and adopted in 1837, contained a provision for the city council to construct and administer a bridewell, or house of correction to confine individuals who violated city ordinances or misdemeanors. Those awaiting trial would continue to be held at the Cook County Jail or police lockups. The charter provided that the city council would be responsible for feeding, maintaining, and employing inmates at the city institution. City council members did not implement this law until they opened the bridewell 15 years later.

City leaders finally began to plan and construct the new facility to meet two goals: relieve overcrowding at the county jail and employ those detained. The proposed bridewell or workhouse could detain some held at the Cook County Jail, which had been overcrowded for years. The jail housed those found guilty of violating a city ordinance, awaiting trial, and convicted of misdemeanor crimes. In addition, inmates were idle, since no provision existed for work or prison labor. The proposed institution could employ inmates to offset potential expenses.

The bridewell finally opened December 15, 1851. The structure illustrated a shift to holding minor criminals in a more permanent facility, but without the later "professionalization" of other institutions such as its successor, the Bridewell House of Correction. Selection of the officers of the bridewell depended on political connections, rather than any previous carceral experience. Appointees administered the day-to-day management of the bridewell while under the control of the city council. None of the administrators of the bridewell had previous experience in detention.

Unlike the earlier Chicago carceral facilities, the bridewell only held those convicted of violating city ordinances or misdemeanors. The two-story wooden structure had 85 cells, each designed to hold one inmate. Those held at the bridewell experienced the realities of 19th-century incarceration: overcrowded conditions, poor food, and punishment within the structure to maintain order.

Andrew Jackson and the Native Americans

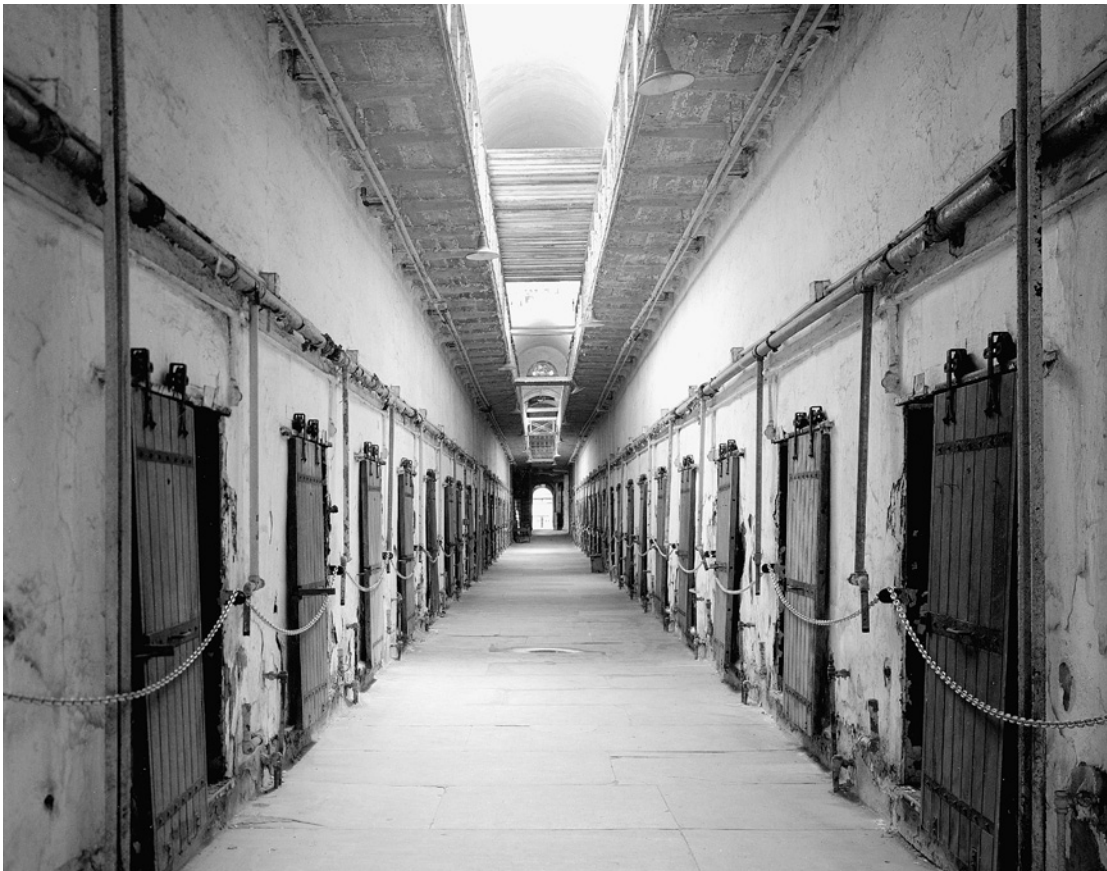
Native Americans also encountered the increasing strength of American laws designed to force their movement to the west. Early American settlers encountered Native Americans as they moved west in the early years of the republic. From the 1790s to the 1820s, the federal government negotiated treaties with tribes. Congress implicitly treated Indian tribes as foreign nations with sovereignty and rights to their lands by negotiating with them. However, it often proved difficult to negotiate treaties that proved workable to whole tribes who would accept money or goods for their land. In addition, treaties were often negotiated with native leaders who had no authority to speak for their tribes or to sell tribal lands, creating tensions on both sides.

Some leaders felt that assimilation of Indians into American society would benefit both sides. Missionary associations attempted to "civilize" Native Americans by converting them to Christianity and educating them about American culture. In 1819, Congress authorized \$10,000 for missions to instruct Indians in reading, writing, religion, and agricultural practices. Missionaries also sought to explain American ideals of private property and gender roles, hoping to persuade Indian tribes to limit women to

domestic activities, instead of farming. Additionally, they hoped to put men in the fields and refrain them from hunting. Such efforts were limited in success. For one thing, native women did not want to adopt a gender system in which they would be even more subordinate to men. Under the traditional system, women held power through growing crops and the freedom to leave a marriage when they wanted.

The Creek, Chickasaw, Choctaw, and Cherokee tribes each had tribal lands in Georgia, North Carolina, Tennessee, Mississippi, Florida, and Alabama. The land attracted white settlers wanting to grow cotton, and this attraction increased with rumors of gold in Georgia in 1829. The Cherokee had attempted to assimilate into American society, adopting written laws in 1808 and a constitution in 1827. Modeled after the U.S. Constitution, the Cherokee constitution set forth a bicameral legislature, an executive office, and a court system. Additionally, more than 200 of the wealthiest Cherokee had married with whites and adopted the white method of dress, cotton agriculture, and housing. Some even owned slaves. Finally, they declared their sovereignty from the state of Georgia.

However, President Andrew Jackson did not feel that native tribes should be seen as foreign. For Jackson, they were merely subjects of the U.S. government (not citizens who had the right to vote), who should be able to maintain villages and agricultural lands,

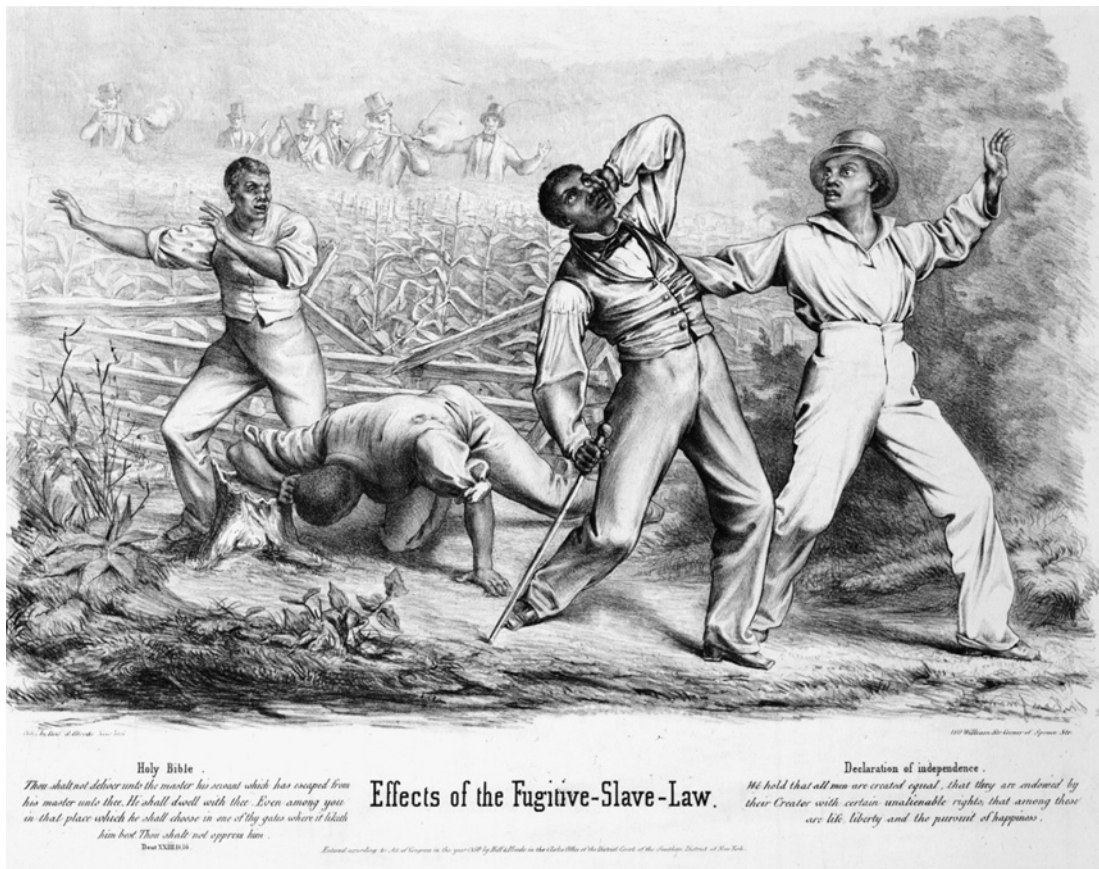


A restored cellblock in Eastern State Penitentiary, Philadelphia. The prison was abandoned in 1971 and is now a museum. Opened in 1829 and famous for its innovative, radial floor plan and segregated discipline, it was designed to inspire penitence in its inmates. The prison once held some of America's most notorious criminals, including bank robber "Slick Willie" Sutton and Al Capone. It became one of the most copied building designs in early America.

but not have their vast hunting grounds. In 1829, Jackson declared that Indians within U.S. borders could not remain independent and in sovereign control of tribal lands. One year later, Congress agreed and passed the Removal Act of 1830, appropriating \$500,000 to move tribes west of the Mississippi.

The Cherokee's declaration of sovereignty from the state of Georgia was ultimately challenged by the state. President Jackson sided with Georgia, which argued that natives were subject to laws that the Cherokee had no voice in creating. The Cherokee sued the state of Georgia to prevent them from being subject to state laws. While the 1831 case was thrown out on a technicality, the 1832 case verdict (*Worcester v. Georgia*) favored the Cherokees. In its decision, the Supreme Court recognized the existence of the Cherokee nation as sovereign, relying on the nation's earlier treatment of Native American tribes. In the process, Chief Justice John Marshall emerged as Jackson's enemy, and despite the court's decision, Jackson proceeded to ensure the expansion of white settlers on Cherokee land.

A few representatives of the Cherokee nation signed the Treaty of New Echota on December 29, 1835. The treaty stipulated that the Cherokee people would be paid \$4.5 million for compensation and granted equivalent land in the Indian Territory, and the federal government would cover the costs of relocation. In return, the Cherokee would



This 1850 lithograph condemns the Fugitive Slave Act, which Congress passed in September 1850. Federal commissioners could issue warrants for fugitive slaves and enlist posses and even civilians for apprehending slaves. The print shows two texts, one from Deuteronomy: "Thou shalt not deliver unto the master his servant which has escaped ..." and the Declaration of Independence: "We hold that all men are created equal..."

cede all their land east of the Mississippi. The treaty was ratified by the Senate, but several thousand Cherokee petitioned Congress to ignore the treaty, which was never signed by an official representative of the Cherokee Nation. As most Cherokee refused to leave by the voluntary deadline of May 1838, federal troops arrived to deport them. Most were removed at gunpoint from their homes over three weeks and gathered in camps. Moving in groups of 1,000 each, the Cherokee left for the 1,200-mile trip to Oklahoma known as the Trail of Tears.

Andrew Jackson's new policy of Indian removal highlighted the tensions of a new understanding of liberty in the 1820s. While Jacksonian democracy welcomed the "common man's" participation in politics, for Jackson and his Democratic supporters, this liberty only applied to white males. Women, African Americans, and Native Americans were excluded from attaining liberty because of their "dependent" status. No white man would be under another white man. The liberty of white men depended upon the exclusion of "inferior" others; white men could unite because they were socially "superior" to slaves and women. Even though elite men maintained political control over "common men," the idea of white male liberty served to gloss over class differences that could otherwise fracture white male unity.

The Antebellum Frontier

Violence in the form of criminal behavior is often associated with the frontier because of the perceived weak institutions of courts, police, and other modes of legal enforcement. In the antebellum period, Americans moved across the continent and new states entered the union. Researcher Nicole Etcheson argues that in the case of Massac County, Illinois, such violence was not extralegal, but rather reflected a battle over the function of the legitimate legal authority of the county. In a chapter in *Lethal Imagination: Violence and Brutality in American History* (1999), by Michael A. Bellesiles, she details violence that broke out between competing groups, the Flatheads and the Regulators, from 1846 to 1850.

The Regulators and Flatheads included respected members of the community, complicating traditional understandings of vigilantes seeking extralegal retribution for a lack of legal control. Regulators attacked an individual by the name of Mathis because they thought that he knew more about criminal activity in the area than he told authorities. The Flatheads, the local criminal gang, responded to the attack by countering that the Regulators threatened the civic order of the county.

Massac County was a sparsely populated, isolated frontier region. Etcheson contends that the outbreak of violence was not due to a lack of authority. Rather, she argues that the legal authorities did not have accepted legitimacy. Both the Regulators and Flatheads pointed to the violence of the other group as evidence of their threat to the county. Flatheads used the militia to thwart the Regulators' attack of the legal authority. Lacking a community consensus, the Regulators' efforts were unsuccessful. The violence largely ended by 1850, but continued to plague the region for part of the following decade.

The South and Slavery

Slavery shaped a distinct system of criminal laws and punishment in the antebellum American south. Although northern states abolished slavery after the Revolution, slavery became further entrenched in southern states. Slaves were limited by slave codes designed to further reinforce their status. Additionally, punishments deemed acceptable to use against a slave could not be used against white criminals. Masters violently enforced their will upon rebellious slaves. A master's power was codified through slave laws, which reinforced his complete ownership (and domination) of slaves. Whipping

was the most common form of punishment meted out in the antebellum south. Violence could also take a number of other forms.

Masters wielded considerable power in southern society, but other whites could also punish slaves, even those they did not own. States used legal means to further ensure control over the slave population, and such laws served this purpose. Some of these punishments could be meted out after a trial for minor or severe offenses. A justice of the peace could try a slave and order physical punishment such as whippings, branding, or cropping.

Slaves could be convicted of any crime that a white could be punished for, as well as other crimes specific to their status as property. Slaves who ran away, engaged in business illegally, or incited a rebellion could be tried for such actions. Maintaining the legal culture of slavery was critical.

Southern legal codes were designed to maintain the power of masters over slaves, but this control was limited in some instances. Masters in South Carolina had to bring slaves to be tried for offenses that carried the death penalty, such as murder. Virginia executed 58 slaves from 1785 to 1865 for raping white women. Trials were meant to reinforce the racial and social hierarchy in the south, and executions were not meant to deprive an owner of his property. Therefore, statutes in the south often provided some compensation to owners of executed slaves.

Theoretically, slaves were protected from abuse or killing by their masters. Such cases, which were rarely brought to trial, were generally unsuccessful. African Americans, whether free or slave, had few rights in court. They could not testify against white men in a court, meaning that they or any African American witnesses could not appear in court. Restrictions meant that slaves treated cruelly on a plantation had virtually no recourse.

Nationally, federal protection of slavery created increasing conflict between the north and the south and defined new crimes. The Compromise of 1850 illustrates this. In 1850, California asked to be admitted to the Union as a free state. Many southerners opposed the measure, arguing that it would upset the equal balance of power in the Senate. While northern (those that excluded slavery) states had more representation than southern slave states in the House of Representatives, both had equal representation in the Senate. As a result, the south could always block northern legislation that threatened the protection of slavery.

In an effort to avoid sectional conflict, Henry Clay, a senator from Kentucky, offered a plan with four components that came to be known as the Compromise of 1850. First, California would come in the Union as a free state. Second, the slave trade, but not slavery, would be abolished in the nation's capital. Third, the status of slavery in the remaining territory from Mexico would be decided by the local white inhabitants. Fourth, a new and stronger Fugitive Slave Act would be enacted to reclaim escaped slaves, even those in the north. Southerners wanted slavery protected by the national government and allowed to extend into all new territories, but some northern politicians disliked the law because of the stronger fugitive slave law.

The new Fugitive Slave Act allowed special federal commissioners to determine the fate of alleged fugitive slaves, without benefit of a jury trial or even testimony from the accused. Local authorities would be prohibited from interfering with the capture of fugitives and the act required citizens to assist in a capture when federal agents called upon them. Southern leaders, who were normally strong defenders of local autonomy or states' rights, supported a measure that increased federal power to override local law enforcement and judicial procedures to secure the return of runaway slaves. Abolitionists and other private citizens faced new federal punishment for helping escaped slaves or refusing to assist with the capture of escaped slaves.

Conclusion

Slavery, immigration, and new understandings of governance in the young nation influenced the evolution of laws and carceral facilities. Americans created and reformed earlier methods of legal enforcement that would better meet the demands of a more mobile and democratic nation. Cities, states, and the national government implemented laws to ensure order.

Police forces and penitentiaries emerged in the antebellum period, and along with new institutions to address juvenile offenders, were reformed during the second half of the 19th century and into the 20th century.

Susan Garneau
Loyola University Chicago

1807

PRIMARY DOCUMENT

Indictment of Aaron Burr

Best remembered as the vice president who killed Alexander Hamilton in a duel, in his day, Burr was much more infamous as a conspirator who sought to reshape North America. At a time when the United States was a young democracy and European governments still threatened domination of the continent, Burr conspired to seize the Louisiana territory and form an American empire in the west. He was found not guilty because of a narrow definition of treason given the jury by Chief Justice John Marshall.

This is the indictment against Aaron Burr, as read in his trial on August 17, 1807.

Virginia District

In the Circuit Court of the United States of America in and for the Fifth Circuit and Virginia District:

The grand inquest of the United States of America, for the Virginia district, upon their oath, do present, that Aaron Burr, late of the city of New York, and state of New York, attorney at law, being an inhabitant of, and residing within the United States, and under the protection of the laws of the United States, and owing allegiance and fidelity to the same United States, not having the fear of God before his eyes, nor weighing the duty of his said allegiance, but being moved and seduced by the instigation of the devil, wickedly devising and intending the peace and tranquility of the same United States to disturb and to stir, move, and excite insurrection, rebellion and war against the said United States, on the tenth day of December, in the year of Christ, one thousand eight hundred and six, at a certain place called and known by the name of 'Blannerhassett's Island,' in the county of Wood, and district of Virginia aforesaid, and within the jurisdiction of this court, with force and arms, unlawfully, falsely, maliciously and

traitorously did compass, imagine and intend to raise and levy war, insurrection and rebellion against the said United States, and in order to fulfil and bring to effect the said traitorous compassings, imaginations and intentions of him the said Aaron Burr, he, the said Aaron Burr, afterwards, to wit, on the said tenth day of December, in the year one thousand eight hundred and six, aforesaid, at the said island called 'Blannerhassett's Island' as aforesaid, in the county of Wood aforesaid, in the district of Virginia aforesaid, and within the jurisdiction of this court, with a great multitude of persons whose names at present are unknown to the grand inquest aforesaid, to a great number, to wit: to the number of thirty persons and upwards, armed and arrayed in a warlike manner, that is to say, with guns, swords and dirks, and other warlike weapons, as well offensive as defensive, being then and there unlawfully, maliciously and traitorously assembled and gathered together, did falsely and traitorously assemble and join themselves together against the said United States, and then and there with force and arms did falsely and traitorously, and in a warlike and hostile manner, array and dispose themselves against the said United States, and then and there, that is to say, on the day and in the year aforesaid, at the island aforesaid, commonly called 'Blannerhassett's Island,' in the county aforesaid of Wood, within the Virginia district and the jurisdiction of this court, in pursuance of such their traitorous intentions and purposes aforesaid, he, the said Aaron Burr, with the said persons so as aforesaid, traitorously assembled and armed and arrayed in manner aforesaid, most wickedly, maliciously and traitorously did ordain, prepare and levy war against the said United States, contrary to the duty of their said allegiance and fidelity, against the constitution, peace and dignity of the said United States, and against the form of the act of the congress of the said United States in such case made and provided And the grand inquest of the United States of America, for the Virginia district, upon their oaths aforesaid, do further present that the said Aaron Burr, late of the city of New York, and state of New York, attorney at law,

being an inhabitant of, and residing within the United States, and under the protection of the laws of the United States, and owing allegiance and fidelity to the same United States, not having the fear of God before his eyes, nor weighting the duty of his said allegiance, but being moved and seduced by the instigation of the devil, wickedly devising and intending the peace and tranquility of the said United States to disturb, and to stir, move and excite insurrection, rebellion and war against the said United States, on the eleventh day of December, in the year of our Lord one thousand eight hundred and six, at a certain place called and known by the name of Blannerhassett's Island,' in the county of Wood and district of Virginia aforesaid, and within the jurisdiction of this court, with force and arms unlawfully, falsely, maliciously and traitorously did compass, imagine and intend to raise and levy war, insurrection and rebellion against the said United States; and in order to fulfil and bring to effect the said traitorous compassings, imaginations and intentions of him, the said Aaron Burr, he, the said Aaron Burr, afterwards, to wit: on the said last mentioned day of December, in the year one thousand eight hundred and six aforesaid, at a certain place commonly called and known by the name of 'Blannerhassett's Island,' in the said county of Wood, in the district of Virginia aforesaid, and within the jurisdiction of this court, with one other great multitude of persons whose names at present are unknown to the grand inquest aforesaid, to a great number, to wit: to the number of thirty persons and upwards, armed and arrayed in a warlike manner, that is to say, with guns, swords and dirks, and other warlike weapons, as well offensive as defensive, being then and there unlawfully, maliciously and traitorously assembled and gathered together, did falsely and traitorously assemble and join themselves together against the said United States, and then and there with force and arms did falsely and traitorously, and in a warlike and hostile manner, array and dispose themselves against the said United States, and then and there, that is to say, on the day and in the year last mentioned, at the island aforesaid, in the county

of Wood aforesaid, in the Virginia district, and within the jurisdiction of this court, in pursuance of such their traitorous intentions and purposes aforesaid, he, the said Aaron Burr, with the said persons so as aforesaid traitorously assembled, and armed and arrayed in manner aforesaid, most wickedly, maliciously and traitorously did ordain, prepare and levy war against the said United States, and further to fulfil and carry into effect the said traitorous compassings, imaginations and intentions of him the said Aaron Burr, against the said United States, and to carry on the war thus levied as aforesaid against the said United States, the said Aaron Burr, with the multitude last mentioned, at the island aforesaid, in the said county of Wood, within the Virginia district aforesaid, and within the jurisdiction of this court, did array themselves in a warlike manner, with guns and other weapons, offensive and defensive, and did proceed from the said island down the river Ohio in the county aforesaid, within the Virginia district and within the jurisdiction of this court, on the said eleventh day of December, in the year one thousand eight hundred and six aforesaid, with the wicked and traitorous intention to descend the said river and the river Mississippi, and by force and arms traitorously to take possession of a city commonly called New Orleans, in the Territory of Orleans, belonging to the United States, contrary to the duty of their said allegiance and fidelity, against the constitution, peace and dignity of the said United States, and against the form of the act of the congress of the United States in such case made and provided.

Hay, Attorney of the United States, for the Virginia District

Indorsed: A true bill John Randolph

A copy Teste, William Marshall, Clerk

Source: <http://law2.umkc.edu/faculty/projects/ftrials/burr/burrtrial.html>

See Articles: Civil Disobedience; New Orleans, Louisiana; Political Dissidents; Riots; Virginia.

1823

PRIMARY DOCUMENT

Elkinson v. Deliesseline

In 1822, South Carolina passed the Negro Seaman Act, forcing free black sailors entering the state's waters into slavery if their captains did not pay an exorbitant fine. After Caribbean sailor Henry Elkison was accordingly jailed by Sheriff Francis Deliesseline, the law was found unconstitutional on the grounds that only Congress had such powers over interstate commerce; however, the federal government did not intervene when the state refused to acknowledge the ruling.

Ex parte HENRY ELKISON,
A Subject of his Britannic Majesty,
vs.
FRANCIS G. DELIESSLINE,
Sheriff of Charleston District.

On the unconstitutionality of the law under which this man is confined, it is not too much to say that it will not bear argument; and I feel myself sanctioned in using this strong language, from considering the course of reasoning by which it has been defended. Neither of the gentlemen has attempted to prove that the power therein assumed by the state, can be exercised without clashing with the general powers of the United States to regulate commerce: but they have both strenuously contended, that *ex necessitate* it was a power which the state must and would exercise, and indeed Mr. Holmes concluded his argument with the declaration that if a dissolution of the union must be the alternative he was ready to meet it. Nor did the argument of Col. Hunt deviate at all from the same course. Giving it in the language of his own summary, it was this: South-Carolina was a sovereign state when she adopted the constitution--a sovereign state cannot surrender a right of vital importance--South-Carolina therefore either did not surrender this right, or still possesses the power to resume it--and whether it is necessary, or when it is necessary to resume it, she is herself the sovereign judge.

Source: [http://memory.loc.gov/cgi-bin/query/r?ammem/llst:@field\(DOCID+@lit\(llst054div0\)\)](http://memory.loc.gov/cgi-bin/query/r?ammem/llst:@field(DOCID+@lit(llst054div0)))

See Articles: Racism; Slavery; Slavery, Law of; South Carolina; State Slave Codes; Supreme Court, U.S.

1831

PRIMARY DOCUMENT

Nat Turner's Jailhouse Confession

31-year-old slave Nat Turner was sentenced to death and hanged three months after leading a slave rebellion in Virginia. For years, Turner had experienced visions he interpreted as messages from God, and he considered two solar eclipses to be signs of approval for his rebellion. After months of planning, over 70 blacks (including 30 free blacks) went house-to-house, freeing slaves and killing whites. Blaming Turner's intelligence, many states made it illegal to teach blacks to read and write.

SIR,—You have asked me to give a history of the motives which induced me to undertake the late insurrection, as you call it—To do so I must go back to the days of my infancy, and even before I was born. I was thirty-one years of age the 2d of October last, and born the property of Benj. Turner, of this county. In my childhood a circumstance occurred which made an indelible impression on my mind, and laid the ground work of that enthusiasm, which has terminated so fatally to many, both white and black, and for which I am about to atone at the gallows. It is here necessary to relate this circumstance—trifling as it may seem, it was the commencement of that belief which has grown with time, and even now, sir, in this dungeon, helpless and forsaken as I am, I cannot divest myself of. Being at play with other children, when three or four years old, I was telling them something, which my mother overhearing, said it had happened before I was I born—I stuck to my story, however, and related some things which went, in her opinion, to confirm it—others being called on

were greatly astonished, knowing that these things had happened, and caused them to say in my hearing, I surely would be a prophet, as the Lord had shewn [shown] me things that had happened before my birth. And my father and mother strengthened me in this my first impression, saying in my presence, I was intended for some great purpose, which they had always thought from certain marks on my head and breast—[a parcel of excrescences which I believe are not at all uncommon, particularly among negroes, as I have seen several with the same. In this case he has either cut them off or they have nearly disappeared]—My grandmother, who was very religious, and to whom I was much attached—my master, who belonged to the church, and other religious persons who visited the house, and whom I often saw at prayers, noticing the singularity of my manners, I suppose, and my uncommon intelligence for a child, remarked I had too much sense to be raised, and if I was, I would never be of any service to any one as a slave—To a mind like mine, restless, inquisitive and observant of everything that was passing, it is easy to suppose that religion was the subject to which it would be directed, and although this subject principally occupied my thoughts—there was nothing that I saw or heard of to which my attention was not directed—The manner in which I learned to read and write, not only had great influence on my own mind, as I acquired it with the most perfect ease, so much so, that I have no recollection whatever of learning the alphabet—but to the astonishment of the family, one day, when a book was shewn me to keep me from crying, I began spelling the names of different objects—this was a source of wonder to all in the neighborhood, particularly the blacks—and this learning was constantly improved at all opportunities—when I got large enough to go to work, while employed, I was reflecting on many things that would present themselves to my imagination, and whenever an opportunity occurred of looking at a book, when the school children were getting their lessons, I would find many things that the fertility of my own imagination had depicted to me before; all my time, not devoted to my

master's service, was spent either in prayer, or in making experiments in casting different things in moulds made of earth, in attempting to make paper, gunpowder, and many other experiments, that although I could not perfect, yet convinced me of its practicability if I had the means. I was not addicted to stealing in my youth, nor have ever been—Yet such was the confidence of the negroes in the neighborhood, even at this early period of my life, in my superior judgment, that they would often carry me with them when they were going on any roguery, to plan for them. Growing up among them, with this confidence in my superior judgment, and when this, in their opinions, was perfected by Divine inspiration, from the circumstances already alluded to in my infancy, and which belief was ever afterwards zealously inculcated by the austerity of my life and manners, which became the subject of remark by white and black.—Having soon discovered to be great, I must appear so, and therefore studiously avoided mixing in society, and wrapped myself in mystery, devoting my time to fasting and prayer—By this time, having arrived to man's estate, and hearing the scriptures commented on at meetings, I was struck with that particular passage which says : "Seek ye the kingdom of Heaven and all things shall be added unto you." I reflected much on this passage, and prayed daily for light on this subject—As I was praying one day at my plough, the spirit spoke to me, saying "Seek ye the kingdom of Heaven and all things shall be added unto you."

Question—what do you mean by the Spirit.

Ans. The Spirit that spoke to the prophets in former days—and I was greatly astonished, and for two years prayed continually, whenever my duty would permit—and then again I had the same revelation, which fully confirmed me in the impression that I was ordained for some great purpose in the hands of the Almighty. Several years rolled round, in which many events occurred to strengthen me in this my belief. At this time I reverted in my mind to the remarks made of me in my childhood, and the things that had been shewn me—and

as it had been said of me in my childhood by those by whom I had been taught to pray, both white and black, and in whom I had the greatest confidence, that I had too much sense to be raised, and if I was, I would never be of any use to any one as a slave. Now finding I had arrived to man's estate, and was a slave, and these revelations being made known to me, I began to direct my attention to this great object, to fulfil the purpose for which, by this time, I felt assured I was intended. Knowing the influence I had obtained over the minds of my fellow servants, (not by the means of conjuring and such like tricks—for to them I always spoke of such things with contempt) but by the communion of the Spirit whose revelations I often communicated to them, and they believed and said my wisdom came from God. I now began to prepare them for my purpose, by telling them something was about to happen that would terminate in fulfilling the great promise that had been made to me—About this time I was placed under an overseer, from whom I ran away—and after remaining in the woods thirty days, I returned, to the astonishment of the negroes on the plantation, who thought I had made my escape to some other part of the country, as my father had done before. But the reason of my return was, that the Spirit appeared to me and said I had my wishes directed to the things of this world, and not to the kingdom of Heaven, and that I should return to the service of my earthly master—"For he who knoweth his Master's will, and doeth it not, shall be beaten with many stripes, and thus, have I chastened you." And the negroes found fault, and murmured against me, saying that if they had my sense they would not serve any master in the world. And about this time I had a vision—and I saw white spirits and black spirits engaged in battle, and the sun was darkened—the thunder rolled in the Heavens, and blood flowed in streams—and I heard a voice saying, "Such is your luck, such you are called to see, and let it come rough or smooth, you must surely bare it." I now withdrew myself as much as my situation would permit, from the intercourse of my fellow servants, for the avowed purpose of serving the Spirit more fully—and it appeared

to me, and reminded me of the things it had already shown me, and that it would then reveal to me the knowledge of the elements, the revolution of the planets, the operation of tides, and changes of the seasons. After this revelation in the year 1825, and the knowledge of the elements being made known to me, I sought more than ever to obtain true holiness before the great day of judgment should appear, and then I began to receive the true knowledge of faith. And from the first steps of righteousness until the last, was I made perfect; and the Holy Ghost was with me, and said, "Behold me as I stand in the Heavens"—and I looked and saw the forms of men in different attitudes—and there were lights in the sky to which the children of darkness gave other names than what they really were—for they were the lights of the Saviour's hands, stretched forth from east to west, even as they were extended on the cross on Calvary for the redemption of sinners. And I wondered greatly at these miracles, and prayed to be informed of a certainty of the meaning thereof—and shortly afterwards, while laboring in the field, I discovered drops of blood on the corn as though it were dew from heaven—and I communicated it to many, both white and black, in the neighborhood—and I then found on the leaves in the woods hieroglyphic characters, and numbers, with the forms of men in different attitudes, portrayed in blood, and representing the figures I had seen before in the heavens. And now the Holy Ghost had revealed itself to me, and made plain the miracles it had shown me—For as the blood of Christ had been shed on this earth, and had ascended to heaven for the salvation of sinners, and was now returning to earth again in the form of dew—and as the leaves on the trees bore the impression of the figures I had seen in the heavens, it was plain to me that the Saviour was about to lay down the yoke he had borne for the sins of men, and the great day of judgment was at hand. About this time I told these things to a white man, (Etheldred T. Brantley) on whom it had a wonderful effect—and he ceased from his wickedness, and was attacked immediately with a cutaneous eruption, and blood ozed from the pores of his skin, and after praying

and fasting nine days, he was healed, and the Spirit appeared to me again, and said, as the Saviour had been baptised so should we be also—and when the white people would not let us be baptised by the church, we went down into the water together, in the sight of many who reviled us, and were baptised by the Spirit—After this I rejoiced greatly, and gave thanks to God. And on the 12th of May, 1828, I heard a loud noise in the heavens, and the Spirit instantly appeared to me and said the Serpent was loosened, and Christ had laid down the yoke he had borne for the sins of men, and that I should take it on and fight against the Serpent, for the time was fast approaching when the first should be last and the last should be first.

Sources: Turner, Nat and Thomas R. Gray. *The Confessions of Nat Turner: The Leader of the Late Insurrection in Southampton, Va.* Richmond, VA: T. R. Gray, 1832; and <http://historymatters.gmu.edu/d/6533>

See Articles: African Americans; Civil Disobedience; Slavery; Riots; Virginia.

1835 PRIMARY DOCUMENT

President Jackson's Remarks to Congress on Indian Removal

Under Jefferson, the government's plan for Indians had been to encourage them to settle down in their own farming communities, and to leave them alone if they did so, but subsequent presidents rapidly shifted populations westwards by granting them new lands. Jackson formalized this in 1830, the second year of his presidency. Later in 1835, after this address, the Treaty of New Echota was signed, forcing the Cherokee Nation west on the Trail of Tears in 1938.

The plan of removing the aboriginal people who yet remain within the settled portions of the United States to the country west of the Mississippi River approaches its consummation. It was adopted on the most mature consideration of the condition of this race, and ought to be persisted in till the object is accomplished, and prosecuted with as much vigor as a just regard to their circumstances will permit, and as fast as their consent can be obtained. All preceding experiments for the improvement of the Indians have failed. It seems now to be an established fact that they cannot live in contact with a civilized community and prosper. Ages of fruitless endeavors have at length brought us to a knowledge of this principle of intercommunication with them. The past we cannot recall, but the future we can provide for. Independently of the treaty stipulations into which we have entered with the various tribes for the usufructury rights they have ceded to us, no one can doubt the moral duty of the Government of the United States to protect and if possible to preserve and perpetuate the scattered remnants of this race which are left within our borders. In the discharge of this duty an extensive region in the West has been assigned for their permanent residence. It has been divided into districts and allotted among them. Many have already removed and others are preparing to go, and with the exception of two small bands living in Ohio and Indiana, not exceeding 1,500 persons, and of the Cherokees, all the tribes on the east side of the Mississippi, and extending from Lake Michigan to Florida, have entered into engagements which will lead to their transplantation.

The plan for their removal and reestablishment is founded upon the knowledge we have gained of their character and habits, and has been dictated by a spirit of enlarged liberality. A territory exceeding in extent that relinquished has been granted to each tribe. Of its climate, fertility, and capacity to support an Indiana population the representations are highly favorable. To these districts the Indians are removed at the expense of the United States, and with certain supplies of clothing, arms, ammunition, and other indispensable

articles; they are also furnished gratuitously with provisions for the period of a year after their arrival at their new homes. In that time, from the nature of the country and of the products raised by them, they can subsist themselves by agricultural labor, if they choose to resort to that mode of life; if they do not they are upon the skirts of the great prairies, where countless herds of buffalo roam, and a short time suffices to adapt their own habits to the changes which a change of the animals destined for their food may require. Ample arrangements have also been made for the support of schools; in some instances council houses and churches are to be erected, dwellings constructed for the chiefs, and mills for common use. Funds have been set apart for the maintenance of the poor; the most necessary mechanical arts have been introduced, and blacksmiths, gunsmiths, wheelwrights, millwrights, etc., are supported among them. Steel and iron, and sometimes salt, are purchased for them, and plows and other farming utensils, domestic animals, looms, spinning wheels, cards, etc., are presented to them. And besides these beneficial arrangements, annuities are in all cases paid, amounting in some instances to more than \$30 for each individual of the tribe, and in all cases sufficiently great, if justly divided and prudently expended, to enable them, in addition to their own exertions, to live comfortably. And as a stimulus for exertion, it is now provided by law that "in all cases of the appointment of interpreters or other persons employed for the benefit of the Indians a preference shall be given to persons of Indian descent, if such can be found who are properly qualified for the discharge of the duties."

Such are the arrangements for the physical comfort and for the moral improvement of the Indians. The necessary measures for their political advancement and for their separation from our citizens have not been neglected. The pledge of the United States has been given by congress that the country destined for the residence of this people shall be forever "secured and guaranteed to them." A country west of Missouri and Arkansas has been assigned to them, into which the white settlements are

not to be pushed. No political communities can be formed in that extensive region, except those which are established by the Indians themselves or by the United States for them and with the concurrence. A barrier has thus been raised for their protection against the encroachment of our citizens, and guarding the Indians as far as possible from those evils which have brought them to their present condition. Summary authority has been given by law to destroy all ardent spirits found in their country, without waiting the doubtful result and slow process of a legal seizure. I consider the absolute and unconditional interdiction of this article among these people as the first and great step in their melioration. Halfway measures will answer to purpose. These cannot successfully contend against the cupidity of the seller and the overpowering appetite of the buyer. And the destructive effects of the traffic are marked in every page of the history of our Indian intercourse.

Some general legislation seems necessary for the regulation of the relations which will exist in this new state of things between the Government and people of the United States and these transplanted Indian tribes, and for the establishment among the latter, and with their own consent, of some principles of intercommunication which their juxtaposition will call for; that moral may be substituted for physical force, the authority of a few and simple laws for the tomahawk, and that an end may be put to those bloody wars whose prosecution seems to have made part of their social system.

After the further details of this arrangement are completed, with a very general supervision over them, they ought to be left to the progress of events. These, I indulge the hope, will secure their prosperity and improvement, and a large portion of the moral debt we owe them will then be paid.

Source: J. Richardson, ed. *A Compilation of the Messages and Papers of the Presidents*. New York: Bureau of National Literature, 1897.

See Articles: Indian Removal Act; Jackson, Andrew (Administration of); Native Americans.

1838 PRIMARY DOCUMENT

William Lloyd Garrison's Declaration of Sentiments

William Lloyd Garrison was the founder of the Liberator (1831), a weekly abolitionist newspaper, and of the American Anti-Slavery Society (1833), for which Garrison wrote this declaration. Unlike some abolitionist groups, the AASS was uncompromising, demanding the immediate emancipation of all slaves. The AASS soon became uncomfortable with Garrison's nonviolent stance and inclusion of women, and he and his supporters founded the New England Non-Resistance Society.

The Convention assembled in the city of Philadelphia, to organize a national Anti-Slavery Society, promptly seize the opportunity to promulgate the following Declaration of Sentiments, as cherished by them in relation to the enslavement of one-sixth portion of the American people.

More than fifty-seven years have elapsed since a band of patriots convened in this place to devise measures for the deliverance of this country from a foreign yoke. The cornerstone upon which they founded the Temple of Freedom was broadly this—"that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, LIBERTY, and the pursuit of happiness." At the sound of their trumpet-call, three millions of people rose up as from the sleep of death, and rushed to the strife of blood; deeming it more glorious to die instantly as free men, than desirable to live one hour as slaves. They were few in number—poor in resources; but the honest conviction that Truth, Justice, and Right were on their side, made them invincible.

We have met together for the achievement of an enterprise without which that of our fathers is incomplete; and which, for its magnitude, solemnity and probable results upon the destiny of the world, as far transcends theirs as moral truth does physical force.

In purity of motive, in earnestness of zeal, in decision of purpose, in intrepidity of action, in steadfastness of faith, in sincerity of spirit, we would not be inferior to them.

Their principles led them to wage war against their oppressors, and to spill human blood like water, in order to be free. Ours forbid the doing of evil that good may come, and lead us to reject, and to entreat the oppressed to reject, the use of all carnal weapons for deliverance from bondage; relying solely upon those which are spiritual, and might through God to the pulling down of strongholds.

Their measures were physical resistance—the marshalling in arms—the hostile array—the mortal encounter. Ours shall be such only as the opposition of moral purity to moral corruption—the destruction of error by the potency of truth—the overthrow of prejudice by the power of love—and the abolition of slavery by the spirit of repentance.

Their grievances, great as they were, were trifling in comparison with the wrongs and sufferings of those for whom we plead. Our fathers were never slaves—never bought and sold like cattle—never shut out from the light of knowledge and religion—never subjected to the lash of brutal taskmaster.

But those for whose emancipation we are striving—constituting at the present time at least one-sixth part of our countrymen—are recognized by law, and treated by their fellow-beings, as marketable commodities, as goods and chattels, as brute beasts; are plundered daily of the fruits of their toil without redress; really enjoy no constitutional nor legal protection from licentious and murderous outrages upon their persons; and are ruthlessly torn asunder—the tender babe from the arms of its frantic mother—the heart-broken wife from her weeping husband—at the caprice or pleasure of irresponsible tyrants. For the crime of having a dark complexion, they suffer the pangs of hunger, the infliction of stripes, the ignominy of brutal servitude. They are kept in heathenish darkness by laws expressly enacted to make their instruction a criminal offense.

These are prominent circumstances in the condition of more than two million of our

people, the proof of which may be found in thousands of indisputable facts and in the laws of the slaveholding States.

Hence we maintain—that, in view of the civil and religious privileges of this nation, the guilt of its oppression is unequalled by any other on the face of the earth; and, therefore, that it is bound to repent instantly, to undo the heavy burdens, and to let the oppressed go free.

We further maintain—that no man has a right to enslave or imbrute his brother—to hold or acknowledge him, for one moment, as a piece of merchandise—to keep back his hire by fraud—or to brutalize his mind, by denying him the means of intellectual, social and moral improvement.

The right to enjoy liberty is inalienable. To invade it is to usurp the prerogative of Jehovah. Every man has a right to his own body—to the products of his own labor—to the protection of law—and to the common advantages of society. It is piracy to buy or steal a native African, and subject him to servitude. Surely, the sin is as great to enslave an American as an African.

Therefore we believe and affirm—that there is no difference, in principle, between the African slave trade and American slavery:

The every American citizen who retains a human being in involuntary bondage as his property, is, according to Scripture (Ex. Xxi 16), a man-stealer:

That the slaves ought instantly to be set free, and brought under the protection of law:

That if they had lived from the time of Pharaoh down to the present period, and had been entailed through successive generations, their right to be free could never have been alienated, but their claims would have constantly risen in solemnity:

That all those laws which are now in force, admitting the right of slavery, are therefore, before God, utterly null and void; being an audacious usurpation of the Divine prerogative, a daring infringement on the law of nature, a base overthrow of the very foundations of the social compact, a complete extinction of all the relations, endearments and obligations of mankind, and a presumptuous

transgression of all the holy commandments; and that therefore they ought instantly to be abrogated.

We further believe and affirm—that all persons of color who possess the qualifications which are demanded of others, ought to be admitted forthwith to the enjoyment of the same privileges, and the exercise of the same prerogatives, as others; and that the paths of preferment, or wealth, and of intelligence, should be opened as widely to them as to persons of a white complexion.

We maintain that no compensation should be given to the planters emancipating their slaves:

Because it would be a surrender of the great fundamental principle, that man cannot hold property in man;

Because slavery is a crime, and therefore is not an article to be sold;

Because the holders of slaves are not the just proprietors of what they claim; freeing the slave is not depriving them of property, but restoring it to its rightful owner; it is not wronging the master, but righting the slave—restoring him to himself;

Because immediate and general emancipation would only destroy nominal, not real, property; it would not amputate a limb or break a bone of the slaves, but, by infusing motives into their breasts, would make them doubly valuable to the masters as free laborers; and Because, if compensation is to be given at all, it should be given to the outraged and guiltless slaves, and not to those who have plundered and abused them.

We regard as delusive, cruel and dangerous any scheme or expatriation which pretends to aid, either directly or indirectly, in the emancipation of the slaves, or to be a substitute for the immediate and total abolition of slavery.

We fully and unanimously recognize the sovereignty of each State, to legislate exclusively on the subject of the slavery which is tolerated within its limits; we concede that Congress, under the present national compact, has no right to interfere with any of the slave States in relation to this momentous subject:

But we maintain that Congress has a right, and is solemnly bound, to suppress

the domestic slave trade between the several States, and to abolish slavery in those portions of our territory which the Constitution has placed under its exclusive jurisdiction.

We also maintain that there are, at the present time, the highest obligations resting upon the people of the free States to remove slavery by moral and political action, as prescribed in the Constitution of the United States. They are now living under a pledge of their tremendous physical force, to fasten the galling letters of tyranny upon the limbs of millions in the Southern States; they are liable to be called at any moment to suppress a general insurrection of the slaves; they authorize the slave owner to vote for three-fifths of his slaves as property, and thus enable him to perpetuate his oppression; they support a standing army at the South for its protection; and they seize the slave who has escaped into their territories, and send him back to be tortured by an enraged master or a brutal driver. This relation to slavery is criminal, and full of danger; IT MUST BE BROKEN UP.

These are our views and principles—these our designs and measures. With entire confidence in the overruling justice of God, we plant ourselves upon the Declaration of our Independence and the truths of Divine Revelation, as upon the Everlasting Rock.

We shall organize Anti-Slavery Societies, if possible, in every city, town and village in our land.

We shall send forth agents to lift up the voice of remonstrance, of warning, of entreaty, and of rebuke.

We shall enlist the pulpit and the press in the cause of the suffering and the dumb.

We shall aim at a purification of the churches from all participation in the guilt of slavery.

We shall spare no exertions nor means to bring the whole nation to speedy repentance.

Our trust for victory is solely in God. We may be personally defeated, but our principles never! Truth, Justice, Reason, Humanity, must and will gloriously triumph. Already a host is coming up to the help of the Lord against the mighty, and the prospect before us is full of encouragement.

Submitting this Declaration to the candid examination of the people of this country, and of the friends of liberty throughout the world, we hereby affix our signatures to it; pledging ourselves that, under the guidance and by the help of Almighty God, we will do all that in us lies, consistently with this Declaration of our principles, to overthrow the most execrable system of slavery that has ever been witnessed upon earth; to deliver our land from its deadliest curse; to wipe out the foulest stain which rests upon our national escutcheon; and to secure to the colored population of the United States all the rights and privileges which belong to them as men and as Americans—come what may to our persons, our interests, or our reputations—whether we live to witness the triumph of Liberty, Justice, and Humanity, or perish untimely as martyrs in this great, benevolent and holy cause.

Of the three-score signers of the Declaration not one was a woman. Such was the custom of the times, in regard to the public relation of the sexes, that Lucretia Mott and her Quaker sisters did not ask or expect to sign; the male delegates—even the members of their own sect—did not think to invite them. It was a significant mark of liberality that they had been permitted to participate in the proceedings of the Convention on an equal footing in other respects. Moreover, on Mr. Garrison's motion, seconded by Dr. Cox, it was resolved on this third day "that the cause of Abolition eminently deserves the countenance, and support of American women," after the British example. By other resolutions, "the ladies' anti-slavery societies" already in existence were hailed "as the harbinger of a brighter day," and more were called for. In still another, moved by Dr. Cox and seconded by William Goodell, the Convention presented "their thanks to their female friends for the deep interest they have manifested in the Anti-slavery cause" during the long and fatiguing sessions. And finally, Miss Crandall was assured of approval, sympathy and aid. Resolutions relating to free produce; the recreancy of a pro-slavery clergy; the guilt of withholding the Bible from slaves; colored

conventions and societies for mutual improvement, and the like—concluded the business of the Convention. Beriah Green dismissed the assembly in words of thrilling solemnity, never to be forgotten by those who heard him, and ending “in a prayer to Almighty God, full of fervor and feeling, imploring his blessing and sanctification upon the Convention and its labors.” So ended the successful attempt to give a national basis to the movement begun only three years before by the publication of the *Liberator*.

Source: Garrison, W. and F. Garrison. *William Lloyd Garrison, 1805–1879: The Story of His Life Told by His Children*. New York: Arno Press, 1969.

See Articles: African Americans; Quakers; Slavery.

1844 PRIMARY DOCUMENT

***The Republic* Article on the Philadelphia Ethnic Riots**

The Philadelphia Ethnic Riots or Bible Riots took place from May 6–8 and July 6–7, 1844. Anti-Catholicism, which was persistent in the United States, had taken on new urgency with increases in immigration, and the nativism political movement condemned Catholics as antidemocratic and spread rumors that they tried to have the Bible removed from schools. The riots, which began with a fight between local Catholics and a nativist meeting, spiraled into the burning of churches and caused over a dozen deaths.

In conformity to the resolution adopted at the meeting of the preceding Friday evening, citizens favorable to the American Republican cause, assembled in Mass Meeting, on Monday afternoon, May 6th, at 4 o'clock, on an unoccupied lot, at the corner of Second and

Master Streets. This lot is about 100 feet wide and 150 feet in length, and is bounded on the west by the Public School House, which fronts on Master Street. The staging for the officers and speakers was erected about the centre of the west side of the lot, against the school house fence. The whole extent of the lot was covered with persons who had assembled to participate in the proceedings. The meeting was organized in the usual way, and several gentlemen were called upon to address the assembled multitude. Mr. S. R. Kramer and General Smith successively took the stand; neither of them, however, occupying over ten minutes' time. Their addresses were remarkably mild in their character, and contained nothing against which the most scrupulous could have reasonably objected. While these gentlemen were speaking, several Irish carters came driving their carts into the lot, and forced their way through the crowd, nearly up to the speakers' stand, greatly annoying the people, and even exposing them to danger.

Each of these carts contained something more than an ordinary wheelbarrow load of yellow dirt which was brought there at that particular time, in that remarkably singular manner, and in such small quantities, for no good reason which has yet been assigned. Five or six of these diminutive loads were successfully brought in, and emptied in the midst of the crowd, as near to the staging as the drivers could conveniently force their carts. These loads of dirt still lie upon the spot where they were then thrown. They were not needed there at that particular time; neither has any use been made of them since. Neither of them was brought in until the meeting had assembled, nor was one sent there after the assembly had dismissed! And when it is understood, that at the very time when these carters were committing this inexcusable outrage upon the meeting, there was assembled in the market house, running parallel with Second street, on the north side of Master street, and a few yards west of the school house, a number of Irishmen opposed to the meeting, armed with firearms and other offensive weapons, none can for an instant doubt that these carters

were sent there for the purpose of provoking an attack upon themselves, and of thus furnishing a plausible excuse for an assault in return upon the meeting, on the part of their friends in the market house and the surrounding buildings. There was evidently in all this a cunningly devised plan for the perpetration of a premeditated outrage, for the consummation of which the most fiendish preparation had been made.

But that Divine Providence which often takes the wicked in his own craftiness, and guards the innocent from harm, interposed most miraculously to avert the calamity which then pended over the American Republican cause. Had the carters to whom allusion has been made, been assailed with violence by the assembled people, a fearful and dreadful slaughter, far more extensive than that which really occurred, would doubtless have ensued. For in this spot, the citizens were almost entirely unprotected. They were surrounded by their enemies, as they fled in the only direction which could have promised security, toward the market house, they would have been met by the assassins who there remained concealed, awaiting a signal for the commencement of their work of death. Then, too, it would have been exceedingly difficult to have made it appear that the Native Americans were not the aggressors, and that their assailants were not only acting upon the defensive, of for the protection of their worthy friends, the carters. At the moment when the conduct of the carters was growing insufferable, and a slight demonstration of a disposition at interference was being manifested, Mr. Lewis C Levin was called to the stand. This circumstance restored tranquility for the space of a minute. But the moment that gentleman commenced his remarks, before a solitary sentiment had been concluded by him, and before the subject of the carts had again drawn off the people's attention, the clouds suddenly discharged a torrent of rain upon the assembled multitude. For a second there was a pause, which was followed by a simultaneous rush for shelter in the market house.

So suddenly and entirely unexpected was this movement, that those of the Irish who

were unquestionably awaiting some provocation for an attack upon the meeting, were confused and undetermined in regard to the nature of their further proceedings. The most of them, as the crowd rushed into the market, retreated to a row of buildings, consisting of a hose house and the dwellings of themselves and friends, situated in Cadwalader street, and facing the market house, at the distance perhaps of some 200 feet. Others, however, but their number was few, remained to contest the right of the citizens to the use of the market. This market house had previously been employed as a sort of rendezvous for the mob during the railroad and weavers' riots, which had previously disgraced that neighborhood, and they seemed to consider themselves solely entitled to its use. An attempt was here made to reorganize the meeting, but the few Irishmen who had now mingled with the native citizens, were determined that the organization should not take place. They produced the utmost noise and confusion, whenever any effort was made to speak, on the part of Mr. Levin, who had again arisen to continue his address; and so constant and violent was the uproar that it was impossible for that gentleman to be heard even by those who occupied places nearest to him. Among the most noisy of those who were now interrupting the proceedings of the meeting, was an athletic Irishman near the speaker, who brandished his naked arms above the heads of those around him, and swore terrible vengeance upon every one who should dare to come into contact with his clenched fists. So exceedingly violent was this man's conduct that some person at length attempted to eject him from the market house. A scuffle ensued between the two. The Irish rioter drew his antagonist to the outer side of the market, on that side which fronted the dwellings and the hose house of which mention has been made, when a stone was thrown from a party in the vicinity of the hose house, with tremendous violence, toward the market, which struck with great force against one of the stalls. This was instantly followed with the discharge of a musket from the same direction.

A scene of confusion and strife now took place which beggars all description. The first

impulse of those in the market was to rush upon the party near the hose house who first assailed them, which they did driving them off in a great affright in every direction. But no sooner were they thus drawn out from the shelter of the market, upon the open space in front, and their open assailants dispersed, than a destructive fire was opened upon them with fowling pieces, rifles, and muskets, from roofs, windows, loopholes, yards and alleys of the houses in front, which was kept up without intermission, until the ground was vacated by the American Republican party. During this firing the utmost consternation prevailed, and men were shot down while endeavoring to escape from the scene of danger, without knowing from whence their injuries were received, so cautiously were their enemies concealed. One young man, about nineteen years of age, was engaged throughout the afternoon, in supporting the American flag, which hung over the speaker's stand.

This laudible employment rendered him an especial mark for the aim of the enemies of the cause he was maintaining. Two or three times had the flag fallen to the ground, and as often did George Schiffler, with the assistance of several others, again raise it, and cause its stripes and stars to float above their heads. But his efforts were unavailing; for a bullet at length pierced his heart, and he fell as senseless as the flag he supported, to the ground. He was carried to the store of an apothecary near by, where, in a few minutes, he ceased to exist on earth; and before the sun had gone down, the lifeless body of the noble patriotic boy was laid at the feet of a widowed and distracted mother. The flag which he had supported was torn, and leveled with the dust. The triumph however, was of short duration. For at half past six o'clock, a party of those who had been driven off amounting to about twenty in all, returned to the field of action, armed with rifles and muskets. This small party took a station immediately in front of the buildings occupied by the Irish assailants on the open space where their friends had been shot, and opened a brisk fire upon their enemies, over whom in a very short time, they

obtained a complete victory. Soon after the fire was returned upon them, the Irish began to give way in evident alarm, the hose house was fired, and none of them dared to expose themselves sufficiently to attempt to extinguish the flames, which spread with astonishing rapidity until, within a very brief space of time, every house almost from which a gun was fired, was enveloped in the devouring element. The murderous creatures who occupied them, precipitately fled from the rear of their burning buildings, and were about falling into the hands of their conquerors, when the sound of the military was heard approaching, who, in a few moments, took possession of the entire ground, and arrested all further hostile proceedings.

Source: "The Kensington Massacre." *Republic, A Magazine for the Defence of Civil and Religious Liberty*, no. 1 (August 1845).
Pennsylvania Historical Society.

See Articles: Irish Americans; Philadelphia, Pennsylvania; Religion and Crime, History of; Religion and Crime, Sociology of; Riots

1844 PRIMARY DOCUMENT

An Eyewitness Account of the Murders of Joseph and Hyrum Smith

The founder of the Latter-day Saint (LDS) movement, Joseph Smith led his followers to settle in Nauvoo, Illinois, after repeated troubles in Missouri. In Nauvoo, he was both mayor and militia commander and announced his candidacy for president in the upcoming 1844 election. When he declared martial law to deal with attacks from a competing LDS church, he and his brother were arrested for treason against Illinois and were killed by a lynch mob, leading to an LDS succession crisis.

The Afternoon of June 27, 1844.—I do not remember the names of all who were with us that night and the next morning in jail, for several went and came; among those that we considered stationary were Stephen Markham, John S. Fullmer, Captain Dan Jones, Dr. Willard Richards, and myself. Dr. Bernhisel says that he was there from Wednesday in the afternoon until eleven o'clock next day. We were, however, visited by numerous friends, among whom were Uncle John Smith, Hiram Kimball, Cyrus H. Wheelock, besides lawyers, as counsel. There was also a great variety of conversation, which was rather desultory than otherwise, and referred to circumstances that had transpired, our former and present grievances, the spirit of the troops around us, and the disposition of the governor; the devising for legal and other plans for deliverance, the nature of testimony required; the gathering of proper witnesses, and a variety of other topics, including our religious hopes, etc.

During one of these conversations Dr. Richards remarked: "Brother Joseph, if it is necessary that you die in this matter, and if they will take me in your stead, I will suffer for you." At another time, when conversing about deliverance, I said, "Brother Joseph, if you will permit it, and say the word, I will have you out of this prison in five hours, if the jail has to come down to do it." My idea was to go to Nauvoo, and collect, a force sufficient, as I considered the whole affair a legal farce, and a flagrant outrage upon our liberty and rights. Brother Joseph refused.

Elder Cyrus H. Wheelock came in to see us, and when he was about leaving, drew a small pistol, a six-shooter, from his pocket, remarking at the same time "Would any of you like to have this?" Brother Joseph immediately replied, "Yes, give it to me," whereupon he took the pistol, and put it in his pantaloons pocket. The pistol was a six-shooting revolver, of Allen's patent; it belonged to me, and was one that I furnished to Brother Wheelock when he talked of going with me to the east, previous to our coming to Carthage. I have it now in my possession. Brother Wheelock went out on some errand, and was not suffered to return. The report of the governor having

gone to Nauvoo without taking the prisoners along with him caused very unpleasant feelings, as we were apprised that we were left to the tender mercies of the Carthage Greys, a company strictly mobocratic, and whom we knew to be our most deadly enemies; and their captain, Esquire (Robert F.) Smith, was a most unprincipled villain. Besides this, all the mob forces, comprising the governor's troops, were dismissed, with the exception of one or two companies, which the governor took with him to Nauvoo. The great part of the mob was liberated, the remainder was our guard.

We looked upon it not only as a breach of faith on the part of the governor, but also as an indication of a desire to insult us, if nothing more, by leaving us in the proximity of such men. The prevention of Wheelock's return was among the first of their hostile movements.

Colonel Markham went out, and he was also prevented from returning. He was very angry at this, but the mob paid no attention to him. They drove him out of town at the point of the bayonet, and threatened to shoot him if he returned. He went, I am informed, to Nauvoo for the purpose of raising a company of men for our protection. Brother Fullmer went to Nauvoo after witnesses. It is my opinion that Brother Wheelock did also. We all of us felt unusually dull and languid, with a remarkable depression of spirits. In consonance with those feelings, I sang a song, that had lately been introduced into Nauvoo, entitled, "A Poor Wayfaring Man of Grief," etc.

The song is pathetic, and the tune quite plaintive, and was very much in accordance with our feelings at the time, for our spirits were all depressed, dull, and gloomy, and surcharged with indefinite ominous forebodings. After a lapse of some time, Brother Hyrum requested me again to sing that song. I replied, "Brother Hyrum, I do not feel like singing;" when he remarked, "Oh, never mind; commence singing, and you will get the spirit of it." At his request I did so. Soon afterwards I was sitting at one of the front windows of the jail, when I saw a number of men, with painted faces, coming around the corner of the jail, and aiming towards the stairs. The other

brethren had seen the same, for, as I went to the door, I found Brother Hyrum Smith and Dr. Richards already leaning against it. They both pressed against the door with their shoulders to prevent its being opened, as the lock and latch were comparatively useless. While in this position, the mob, who had come upstairs and tried to open the door, probably thought it was locked and fired a ball through the keyhole. At this Dr. Richards and Brother Hyrum leaped back from the door, with their faces towards it. Almost instantly another ball passed through the panel of the door, and struck Brother Hyrum on the left side of the nose, entering his face and head. At the same instant, another ball from outside entered his back, passing through his body and striking his watch. The ball came from the back, through the jail window, opposite the door, and must, from its range, have been fired from the Carthage Greys, who were placed there ostensibly for our protection, as the balls from the firearms, shot close by the jail, would have entered the ceiling, we being in the second story, and there never was a time after that when Hyrum could have received the latter wound. Immediately, when the ball struck him, he fell flat on his back, crying as he fell, "I am a dead man!" He never moved afterwards.

Brother Joseph as he drew nigh to Hyrum, and, leaning over him, exclaimed, "Oh! my poor, dear brother Hyrum!" He, however, instantly arose, and with a firm, quick step, and a determined expression of countenance, approached the door, and pulling the six-shooter left by Brother Wheelock from his pocket, opened the door slightly, and snapped the pistol six successive times. Only three of the barrels, however, were discharged. I afterwards understood that two or three were wounded by these discharges, two of whom, I am informed, died. I had in my hands a large, strong hickory stick, brought there by Brother Markham and left by him, which I had seized as soon as I saw the mob approach; and while Brother Joseph was firing the pistol, I stood close behind him. As soon as he had discharged it he stepped back, and I immediately took his place next to the door, while

he occupied the one I had done while he was shooting. Brother Richards, at this time, had a knotty walking-stick in his hands belonging to me, and stood next to Brother Joseph a little farther from the door, in an oblique direction, apparently to avoid the rake of the fire from the door. The firing of Brother Joseph made our assailants pause for a moment. Very soon after, however, they pushed the door some distance open, and protruded and discharged their guns into the room, when I parried them off with my stick, giving another direction to the balls.

It certainly was a terrible scene. Streams of fire as thick as my arm passed by me as these men fired, and, unarmed as we were, it looked like certain death. I remember feeling as though my time had come, but I do not know when, in any critical position, I was more calm, unruffled, energetic, and acted with more promptness and decision. It certainly was far from pleasant to be so near the muzzles of those firearms as they belched forth their liquid flames and deadly balls. While I was engaged in parrying the guns, Brother Joseph said, "That's right, Brother Taylor, parry them off as well as you can." These were the last words I ever heard him speak on earth.

Every moment the crowd at the door became more dense, as they were unquestionably pressed on by those in the rear ascending the stairs, until the whole entrance at the door was literally crowded with muskets and rifles, which, with the swearing, shouting, and demoniacal expressions of those outside the door and on the stairs, and the firing of the guns, mingled with their horrid oaths and execrations, made it look like pandemonium let loose, and was, indeed, a fit representation of the horrid deed in which they were engaged.

After parrying the guns for some time, which now protruded farther and farther into the room, and seeing no hope of escape or protection there, as we were now unarmed, it occurred to me that we might have some friends outside, and that there might be some chance of escape in that direction, but here there seemed to be none. As I expected them every moment to rush into the room—

nothing but extreme cowardice having thus far kept them out—as the tumult and pressure increased, without any other hope, I made a spring for the window which was right in front of the jail door, where the mob was standing, and also exposed to the fire of the Carthage Greys, who were stationed some ten or twelve rods off. The weather was hot; we all of us had our coats off, and the window was raised to admit air. As I reached the window, and was on the point of leaping out, I was struck by a ball from the door about midway of my thigh, which struck the bone and flattened out almost to the size of a quarter of a dollar, and then passed on through the fleshy part to within about half an inch of the outside. I think some prominent nerve must have been severed or injured, for as soon as the ball struck me, I fell like a bird when shot, or an ox when struck by a butcher, and lost entirely and instantaneously all power of action or locomotion. I fell upon the window sill, and cried out, “I am shot!” Not possessing any power to move, I felt myself falling outside of the window, but immediately I fell inside, from some, at that time, unknown cause. When I struck the floor, my animation seemed restored, as I have seen it sometimes in squirrels and birds after being shot. As soon as I felt the power of motion I crawled under the bed, which was in a corner of the room, not far from the window where I received my wound. While on my way and under the bed, I was wounded in three other places; one ball entered a little below the left knee, and never was extracted; another entered the forepart of my left arm, a little above the wrist, and, passing down by the joint, lodged in the fleshy part of my hand, about midway, a little above the upper joint of my little finger. Another struck me on the fleshy part of my left hip and tore away the flesh as large as my hand, dashing the mangled fragments of flesh and blood against the wall.

My wounds were painful, and the sensation produced was as though a ball had passed through and down the whole length of my leg. I very well remember my reflections at the time. I had a very painful idea of becoming lame and decrepit, and being an object of pity,

and I felt as though I would rather die than be placed in such circumstances.

It would seem that immediately after my attempt to leap out of the window, Joseph also did the same thing, of which circumstance I have no knowledge only from information. The first thing that I noticed was a cry that he had leaped out of the window. A cessation of firing followed, the mob rushed downstairs, and Dr. Richards went to the window. Immediately afterward I saw the doctor going towards the jail door, and as there was an iron door at the head of the stairs adjoining our door which led into the cells for criminals, it struck me that the doctor was going in there, and I said to him, “Stop, Doctor, and take me along.” He proceeded to the door and opened it, and then returned and dragged me along to a small cell prepared for criminals.

Brother Richards was very much troubled, and exclaimed, “Oh! Brother Taylor, is it possible that they have killed both Brother Hyrum and Joseph? It cannot surely be, and yet I saw them shoot them;” and elevating his hands two or three times, he exclaimed, “Oh Lord, my God, spare Thy servants!” He then said, “Brother Taylor, this is a terrible event;” and he dragged me farther into the cell, saying, “I am sorry I can not do better for you;” and, taking an old, filthy mattress, he covered me with it, and said, “That may hide you, and you may yet live to tell the tale, but I expect they will kill me in a few moments!” While lying in this position, I suffered the most excruciating pain.

Soon afterwards Dr. Richards came to me, informed me that the mob had precipitately fled, and at the same time confirmed the worst fears that Joseph was assuredly dead. I felt a dull, lonely, sickening sensation at the news. When I reflected that our noble chieftain, the Prophet of the living God, had fallen, and that I had seen his brother in the cold embrace of death, it seemed as though there was a void or vacuum in the great field of human existence to me, and a dark gloomy chasm in the kingdom, and that we were left alone. Oh, how lonely was that feeling! How cold, barren, and desolate! In the midst of difficulties he was always the first in motion; in critical

positions his counsel was always sought. As our prophet he approached our God, and obtained for us his will; but now our prophet, our counselor our general, our leader, was gone, and amid the fiery ordeal that we then had to pass through, we were left alone without his aid, and as our future guide for things spiritual or temporal, and for all things pertaining to this world, or the next, he had spoken for the last time on earth.

These reflections and a thousand others flashed upon my mind. I thought, why must God's nobility, the salt of the earth, the most exalted of the human family, and the most perfect types of all excellence, fall victims to the cruel, fiendish hate of incarnate devils?

The poignancy of my grief, I presume, however, was somewhat allayed by the extreme suffering that I endured from my wounds.

Soon afterwards I was taken to the head of the stairs and laid there, where I had a full view of our beloved and now murdered brother, Hyrum. There he lay as I had left him; he had not moved a limb; he lay placid and calm, a monument of greatness even in death; but his noble spirit had left its tenement, and was gone to dwell in regions more congenial to his exalted nature. Poor Hyrum! He was a great and good man, and my soul was cemented to his. If ever there was an exemplary, honest, and virtuous man, an embodiment of all that is noble in the human form, Hyrum Smith was its representative.

While I lay there, a number of persons came around, among whom was a physician. The doctor, on seeing a ball lodged in my left hand, took a penknife from his pocket and made an incision in it for the purpose of extracting the ball therefrom, and having obtained a pair of carpenters compasses, made use of them to draw or pry out the ball, alternately using the penknife and compasses. After sawing for some time with a dull penknife, and prying and pulling with the compasses, he ultimately succeeded in extracting the ball, which weighed about half an ounce. Some time afterwards he remarked to a friend of mine that I had "nerves like the devil" to stand what I did in its extraction. I really thought I had need of nerves to stand such surgical butchery, and

that, whatever my nerves may be, his practice was devilish.

This company wished to remove me to Mr. Hamilton's hotel, the place where we had stayed previous to our incarceration in jail. I told them, however, that I did not wish to go. I did not consider it safe. They protested that it was, and that I was safe with them; that it was a perfect outrage for men to be used as we had been; that they were my friends; that I could be better taken care of there than here.

I replied, "I don't know you. Whom am I among? I am surrounded by assassins and murderers; witness your deeds. Don't talk to me of kindness or comfort; look at your murdered victims. Look at me! I want none of your counsel nor comfort. There may be some safety here; I can be assured of none anywhere, etc."

They G-- d----- their souls to hell, made the most solemn asseverations, and swore by God and the devil, and everything else that they could think of, that they would stand by me to death and protect me. In half an hour every one of them fled from the town.

Soon after a coroner's jury were assembled in the room over the body of Hyrum. Among the jurors was Captain Smith of the "Carthage Greys" who had assisted in the murder, and the same justice before whom we had been tried. I learned of Francis Higbee as being in the neighborhood. On hearing his name mentioned, I immediately arose and said, "Captain Smith, you are a justice of the peace; I have heard his name mentioned; I want to swear my life against him." I was informed that word was immediately sent to him to leave the place, which he did.

Brother Richards was busy during this time attending to the coroner's inquest, and to the removal of the bodies, and making arrangements for their removal from Carthage to Nauvoo.

When he had a little leisure, he again came to me, and at his suggestion I was removed to Hamilton's tavern. I felt that he was the only friend, the only person, that I could rely upon in that town. It was with difficulty that sufficient persons could be found to carry me to the tavern, for immediately after the murder

a great fear fell upon all the people, and men, women, and children fled with great precipitation, leaving nothing nor anybody in the town but two or three women and children and one or two sick persons.

by Elder John Taylor

Source: <http://law2.umkc.edu/faculty/projects/ftrials/carthage/carthagehome.html>

See Articles: Bigamy/Polygamy; Illinois; Religion and Crime, History of; Religion and Crime, Sociology of; Witness Testimony.



1851 to 1900

INTRODUCTION

The latter half of the 19th century was dominated by the U.S. Civil War, which brought new definitions to concepts of criminal justice. In the war's aftermath, the nation struggled to define criminal justice in its territories, and a series of moral crusades sought to rid the nation of vice and clean up corrupt criminal justice systems.

Antebellum Period

Concerns over slavery and its extension to new territories dominated criminal justice concerns in the period prior to the Civil War. Senator Henry Clay's Compromise of 1850 strengthened the Fugitive Slave Act of 1793 by criminalizing the conduct of those who assisted a runaway slave or refused to assist in the slave's return. One abolitionist, Sherman M. Booth, was arrested for arguing in his newspaper, the *Milwaukee Free Democrat*, against the capture of a fugitive Missouri slave named Joshua Glover. A mob stormed the jail and freed Glover, helping him escape to Canada. Booth was later rearrested and charged with violating the Fugitive Slave Act. The Wisconsin Supreme Court declared the act unconstitutional, resulting in the release of the state's fugitive slaves. The U.S. Supreme Court eventually chastised the Wisconsin court in *Ableman v. Booth* (1859), asserting that the federal courts and law were supreme in matters arising under the constitution and laws of the United States.

Dred Scott, a Virginia-born slave, had lived a significant period of his life in the free state of Illinois and the free territory of Wisconsin. After several years of suing for his freedom in state courts after his return to Missouri, in 1853, Scott sued for his freedom in federal court, which ruled against him. Scott then appealed to the U.S. Supreme Court, which ruled, in an opinion written by Chief Justice Roger B. Taney, that Scott's claim failed because he was not a citizen of the United States. In fact, Taney ruled that all African Americans, whether slave or free, were not citizens of the United States. The decision struck down the Missouri Compromise, since it deprived slave owners of their property under the Fifth Amendment to the U.S. Constitution. In effect, the decision denied blacks the most basic rights of citizenship and prohibited Congress from regulating slavery in the territories. However, for criminal justice purposes, *Dred Scott v. Stanford* was the first time the court invalidated congressional action through the due

process provision of the Bill of Rights. Ultimately, *Dred Scott* exacerbated the tensions between slave and nonslave states and helped push the nation to war.

In 1856, John Brown, a radical abolitionist, was part of a group of men who hacked five proslavery men to death outside their cabins at Pottawatomie Creek, Kansas. Brown fled to New England, where he gathered forces and sought to force a slave uprising. On October 16, 1859, Brown and 21 conspirators, including five African Americans, attacked the U.S. military arsenal at Harpers Ferry, Virginia. Colonel Robert E. Lee led a military response, and after two days of fighting, Lee's forces killed 17 of the 21 conspirators, including two of Brown's sons. Brown was captured and was unable to rally slaves to his cause. He was quickly tried, convicted after 45 minutes of deliberation, and sentenced to death. He was hanged on December 2, 1859, surrounded by 2,000 soldiers.

Growing racial tensions eventually led to South Carolina's secession from the Union in December 1860, and the Civil War followed soon after.

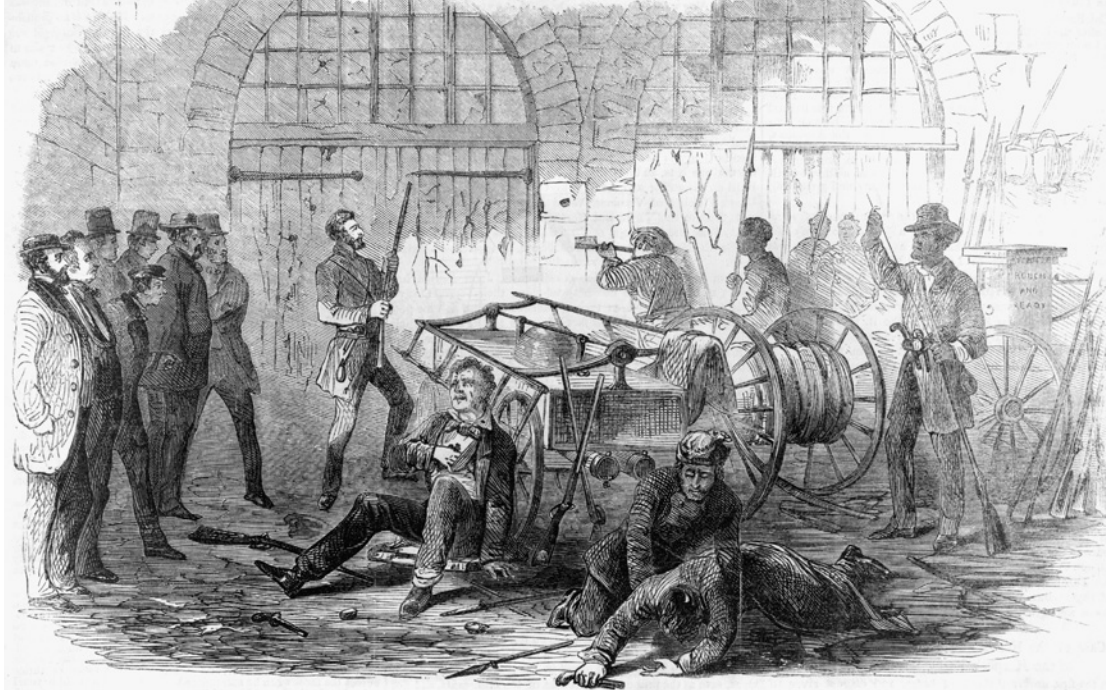
The Civil War

In many ways, criminal justice fell to a standstill during the Civil War, as the nation became preoccupied with the conflict. However, Abraham Lincoln felt it paramount to preserve the Union at all costs. Consequently, in 1861, he suspended the writ of habeas corpus. The Great Writ, as the writ of habeas corpus has been called, allows citizens to appear before a judge and challenge the validity of their arrests. Some have asserted that the writ acts as a bulwark against secret arrests and imprisonments. Lincoln directed General Winfield Scott to suspend the writ on the Maryland border, given its large secessionist population and proximity to Washington, D.C. Several prominent officials were arbitrarily arrested, including a Baltimore secessionist named John Merryman, who was taken by Union military forces and held without charge. In *Ex Parte Merryman* (1861), the Supreme Court ruled that only Congress could suspend the writ and that the government had to allow Merryman to appear before a judge. Lincoln and other military officials simply refused to enforce the court's order. However, Merryman, like several others who were arrested on pretext, was released after a short period of incarceration when the threat had subsided.

During the suspension of the writ, over 14,000 people were arrested and held in jail, often without any sort of hearing. Others had their charges heard by military commissions, rather than courts. Only the war's end brought the release of many of these prisoners. The Supreme Court again reaffirmed the unconstitutionality of Lincoln's actions in *Ex Parte Milligan* (1866), when it held that Congress could not create military commissions nor suspend the Constitution in times of crisis. Lincoln expanded the scope of the writ after the war.

The Civil War also saw a series of riots across the nation, called the "draft riots," as many protested the government's efforts to draft citizens into wartime service. For \$300, a rich white person could escape military service by hiring a replacement. Blacks, on the other hand, remained ineligible for the draft. The riots were motivated out of racial concerns, since many lower-class white people felt like they had to fight the war while blacks remained home and could take their jobs. Starting July 13, 1863, after the first names were drawn for the draft, hundreds of white men stormed the streets of New York City, beating, killing, and shooting people. They burned over 50 buildings to the ground, including two Protestant churches. It took the presence of thousands of state militia and federal military troops to restore order to the city. When the dust settled, over 100 people had been killed, including 11 black men who were lynched, and thousands had been injured.

Other riots occurred in Detroit, Charleston, Norfolk, Memphis, and New Orleans. Unseasoned local police forces had difficulty controlling riots and often turned to the



John Brown, the radical abolitionist, and a group of black and white conspirators hold officers captive at the Harpers Ferry military arsenal, Harpers Ferry, Virginia, on October 15, 1859, in the hopes of sparking a slave uprising. This scene from Frank Leslie's Illustrated Newspaper (1859) depicts the inside of the engine house just before the gate was broken down. Brown escaped but was soon captured, tried, and hung on the gallows on December 2.

military or militia for protection. The rioters were able to take advantage of the instability of the period, as well as police forces that were drastically unprepared for large-scale urban rioting.

Rioting continued after the Civil War, reflecting racial and ethnic tensions. In 1871, white laborers killed 18 Chinese workers in Los Angeles over labor contentions and a desire for Chinese exclusion. In 1871 and 1872, in New York, Catholics and Protestants clashed during Protestant parades celebrating Protestant William of Orange's victory over Catholic King James. While six were killed in the first parade, over 60 were killed in 1872 when the state militia opened fire on the largely Catholic crowd.

During the war, the Confederacy sought to facilitate prisoner-of-war exchanges, given the large burden of feeding and caring for Union prisoners. While Lincoln did not want to formally recognize the Confederacy, in July of 1862, his administration negotiated a prisoner exchange system that became known as the Dix-Hill Cartel. Under the terms of the agreement, each side was to meet at announced locations and parole its prisoners to the other side. Prisoners were to be exchanged no later than 10 days after their capture. Paroled prisoners were prohibited from returning to battle. However, the Dix-Hill Cartel was short lived. The Confederacy refused to parole black prisoners and even threatened to treat them as slaves. Additionally, many prisoners, once exchanged, simply returned to the battlefield. For example, after the battles of Vicksburg and Port Hudson, the Union found that many of the 37,000 Confederate soldiers it had pardoned had simply returned and continued fighting.

Both sides had serious issues housing prisoners. Together, the north and south held more than 674,000 prisoners during the war, and historians estimate that more than



Andersonville Prison in Georgia, one of the most notorious prisons in the Confederacy. Over 32,000 prisoners were crammed into 26 acres that was supplied by a filthy, sewage-infested stream, which spread disease throughout the camp. The conditions in the camp were so poor that from 90 to 130 prisoners died per day. The prison's director, Major Henry Wirz, was convicted of war crimes and was hanged on the gallows.

56,000 people died in Civil War prisons. In fact, more people died in the camps than in any single battle in the war. Approximately 12 percent of Confederate captives died in Union prisons, while 15 percent of Union prisoners died in Confederate prisons. Some of these prisons gained infamy. Andersonville, a southern city-style prison, was perhaps the most notorious. At its peak, Andersonville held over 32,000 prisoners spread over 26 acres. The prison was surrounded by a 15-ft. pine log stockade. Guards were stationed in “pigeon roosts” every 30 yards along the top of the stockade. A small stream called Stockade Creek provided water and sanitation to the prisoners. However, because prisoners lacked the means to adequately dispose of waste, the stream soon turned into a maggot and sewage-infested latrine. The filthy stream spread disease all over the camp, prompting prison bureaucrats to note severe medical conditions among the inmates. The prison averaged 90 to 130 deaths a day. By the end of the war, over 13,000 prisoners died at the prison, representing about 29 percent of its inmates. After the war, the prison's director, Major Henry Wirz, was convicted of war crimes and was executed for his role in the governance of the prison.

Together, the north and the south created over 150 prison camps, but the south was not alone in having camps with serious problems. Northern officials took vacant barracks in Elmira, New York, surrounded them with a stockade, and housed Confederate prisoners. Originally built to accommodate 4,000–5,000 people, Elmira's prisoner population soon swelled to over 10,000. Like Andersonville, sanitation became a huge problem. All water drained into a small pond on the 32-acre encampment, resulting in the spread of serious disease. Prisoners were crowded into barracks and others had to

suffer the winter packed into tents. Union doctors found thousands of cases of scurvy, since prisoners lacked adequate fruits and vegetables in their diets. In Elmira's 369 days of operation, 2,950 of the 12,122 prisoners died—a 24 percent death rate. The inmates called the prison “Hellmira,” and it has been labeled the death camp of the north.

Civil War prison camps were constructed as temporary solutions during the conflict. Yet, they largely failed to provide for basic human needs. Prisoners captured rats for food. Diseases like smallpox, cholera, and malaria spread rapidly through the close and extremely unsanitary quarters. It took the war's end, rather than any sort of compelled desire to improve conditions, to close the prisons. In fact, the only person ever held responsible for actions in any of the prisons was Andersonville's director, largely as a result of a northern propaganda campaign that ignored the issues in its own prisons.

Reconstruction

Immediately after the Civil War, the Republican Congress enacted a series of measures designed to strengthen the federal government's power over southern rebels. In 1865, Congress passed the Thirteenth Amendment, abolishing slavery in the United States. Southerners responded to these attempts with more subtle measures aimed at keeping slavery intact. Black Codes, passed by southern legislatures, forbid African Americans to work (except for white employers), marry whites, or carry weapons. Unemployed blacks, or those unable to pay fines, could be arrested and then hired out to pay their fines. Most found that the codes were merely shrewd attempts to return to pre-Civil War slavery. Congress responded with the Fourteenth Amendment, providing that no person could be deprived of life, liberty, or property without due process of law and that all persons were entitled to equal protection under the law.

The constitutional amendments did not eradicate southern attempts to retain aspects of slavery. Convict leasing, a system where prisoners were hired out to local contractors, was criticized as yet another subtle attempt to retain slave status, since most of its subjects were African American. Southern prisons also experimented with chain gangs and other forms of convict leasing—practices that proved quite lucrative. Additionally, Confederate veterans, angry about the war's outcome, founded the Ku Klux Klan in Pulaski, Tennessee, in 1865. The Klan eventually grew to include hundreds of thousands of members and soon turned to acts of terror and violence in an attempt to prevent black voting. The Klan threatened and intimidated both blacks and the whites who supported them, but it also lynched and tortured blacks who sought to exercise their right to vote. Congress responded with the Fifteenth Amendment in 1870, prohibiting government from denying the vote based on race, color, or condition of prior servitude. The first attempt to enforce the amendments came in 1870, when Congress made it a federal offense for anyone to discriminate based on race in state elections. In 1870, Congress also gave federal officials control over federal elections. Congress also passed the Ku Klux Klan Act of 1871, which allowed the president to use military force to protect individual constitutional rights, suspend the writ of habeas corpus, and suppress insurrections. Under the act, individuals who denied others their constitutional rights would be guilty of a federal offense. The act also allowed blacks to sue for damages against those who had deprived them of voting rights.

Violence against blacks remained commonplace. In Vicksburg, Mississippi in 1873, a paramilitary white group demanded the resignation of African American Sheriff Peter Crosby. The mayor declared martial law and had Crosby arrested. An African American militia gathered and demanded the sheriff's release. A large white militia gathered in response, and when the black militia decided to retreat, the white company fired, killing dozens of blacks. On April 13, 1873, in Colfax, Louisiana, a group of men from the

White League, a white paramilitary group, attacked and killed nearly 100 black militiamen defending the local courthouse, and even attempted to take the Louisiana state capitol by force. Only the intervention of the U.S. military kept the “Colfax massacre,” as it came to be called, from getting worse.

Citizen violence against African Americans remained common throughout the last half of the century. Ida B. Wells, a black newspaper owner, showed that as many as 188 lynchings occurred per year in the 1890s, nearly all of which were against southern blacks. In fact, historians estimate that between 1888 and 1903, over 2,000 blacks were lynched.

Federal intervention in state affairs, however, dropped dramatically in the latter half of the 19th century. In the *Slaughter-House Cases* (1873), the Supreme Court held that the privileges and immunities clause of the Fourteenth Amendment applied only to blacks who sought protection from discriminatory state laws, not to whites who alleged deprivations of their rights. The effect of the decision, however, was to ignore the importance of due process against discriminatory state laws. *Slaughter-House* prevented the due process clause from gaining importance in criminal cases. Additionally, in *Plessy v. Ferguson* (1896), the Supreme Court upheld southern laws establishing separate but equal public facilities, effectively excluding, for another half century, the equal protection clause as a constitutional remedy for the discriminatory treatment of minorities.

Southern prisons did not improve after the war; in fact, they were frequently used to imprison the black population. For example, between 1865 and 1890, the average number of white prisoners in southern prisons stayed fairly constant, at around 150. For blacks, however, the average of 150 in 1865 shot up dramatically to around 1,500 in the 1890s. In fact, many southern states opted to build or rebuild penitentiaries during this time. Many saw these actions as another attempt to enslave blacks.

Labor disputes were common in the era. In the 1870s, the Molly Maguires, Irish coal miners in eastern Pennsylvania, gained notoriety when they assassinated business executives, police officers, and mine administrative officials. A private detective from the Pinkerton National Detective Agency infiltrated the group and became the government’s key witness in a series of high-profile trials. Forty Maguires were convicted and 20 were executed, including 10 on June 21, 1877, which became known as Black Thursday. The convictions remain somewhat controversial, given the fact that Irish Catholics were excluded from the jury and that most of the evidence came from either employees of the railroad and mining companies or former Maguires who became state’s witnesses.

In 1865, the nation saw one of its most notable criminal trials when seven co-conspirators were tried for the assassination of Abraham Lincoln. John Wilkes Booth, a prominent actor and southern sympathizer, met in a boarding house owned by Mary Surratt with several other conspirators. Together, they decided to assassinate the president, Vice President Andrew Johnson, and Secretary of State William Seward. On April 15, 1865, Booth entered Ford’s Theater in Washington, D.C., where Lincoln watched a play from a box seat. He entered Lincoln’s box, shot him in the back of the head, then jumped from the balcony onto the stage, proclaiming, “sic semper tyrannus” (“thus always to tyrants!”). Booth fled the scene with the help of an accomplice. Seward’s assassin, meanwhile, managed to gain access to the secretary’s home and proceeded to stab him in bed. Seward survived the attempt. Johnson’s assassin, however, failed to make an attempt on the vice president’s life.

Booth fled mostly on land into Virginia, where he was eventually captured and killed by federal soldiers. Within days, the other conspirators were taken and charged. Attorney General James Speed, believing the crime to be an act of war, opted to try the case with a military tribunal, rather than a traditional civilian court. This had serious repercussions

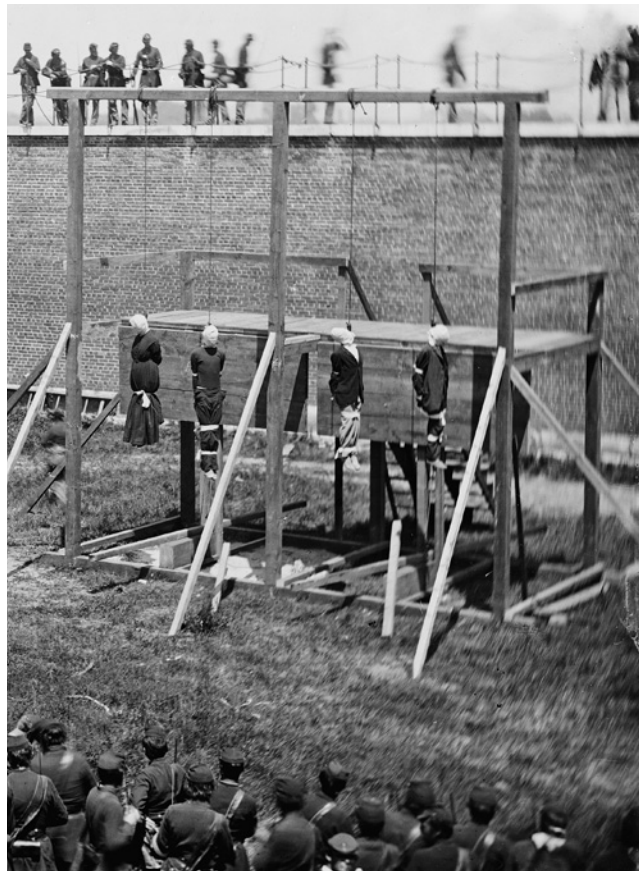
for the defendants, since the commission needed only find guilt, and a consequent death sentence, by a two-thirds majority. The defendants, charged with their parts in the conspiracy, were given a couple of days to prepare their defense. The military commission that tried the case operated in secret on its first day. It prevented the defendants from testifying and covered their heads with canvas hoods. The seven-week trial focused mostly on deeds of the Confederacy, and prosecutors presented little evidence to connect Mary Surratt with the conspiracy, except for her ownership of the boarding house where the scheme was entered into. The military judges ordered the execution of four of the co-conspirators, including Mary Surratt, a mere 12 weeks after Lincoln's assassination. Four other conspirators were sentenced to prison, three for life terms, and one for six years.

Another notable trial of the era was the impeachment of President Andrew Johnson. Early in 1868, Johnson made a series of moves to dismiss his secretary of war, Edwin M. Stanton, over disagreements about how Reconstruction should be handled. Congress supported Stanton's views, who in an attempt to stay, barricaded himself in his office for nearly 90 days. The House of Representatives moved to impeach Johnson on February 24, 1868, in 11 articles detailing crimes and misdemeanors, primarily his violation of the 1867 Tenure of Office Act, which prohibited presidents from removing officers while Congress was not in session. The three-month trial resulted in a verdict on May 26, which was one vote shy of convicting the president.

During this period, Congress also opted to adjust the number of members of the Supreme Court. In 1866, the Judiciary Act reduced the number of justices from 10 to seven. In 1869, Congress raised it to nine, its current number. Congress also eliminated the requirement that judges "ride circuit," having to travel frequently to hear cases.

The Old West

The 19th-century west appears to have been a place of glamour, gunfights, and masculine men who conquered the rugged frontier. This exaggerated, dramatized version neglects the reality that criminal justice in the west was far-flung and often neglected. In reality, when westerners opted to punish criminals, their system more often tended toward vigilantism, rather than justice.

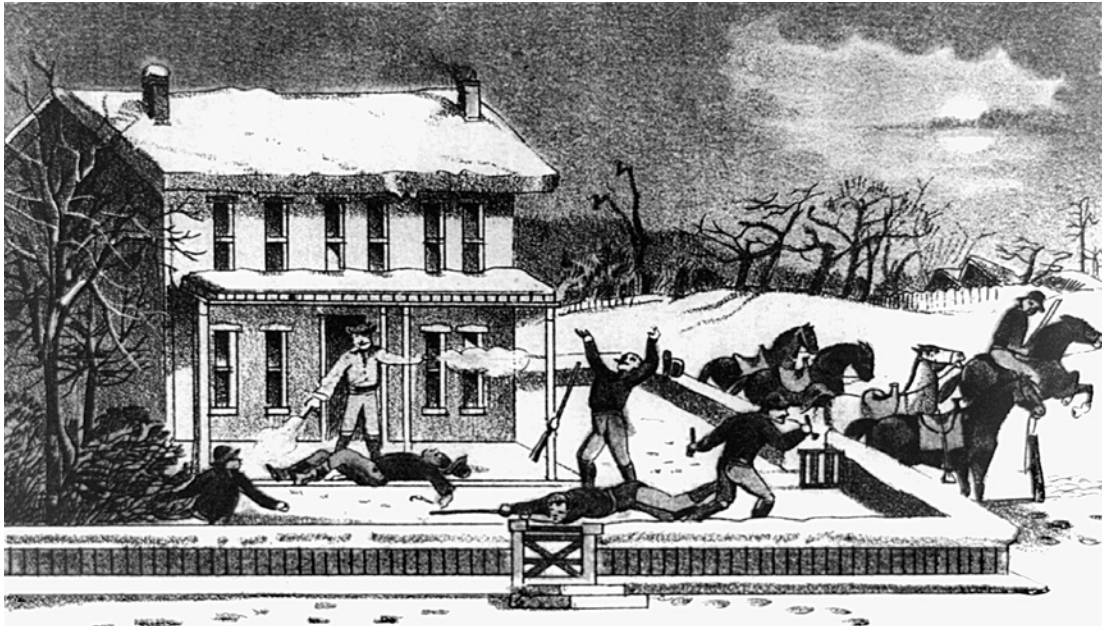


The hooded bodies of four of the Lincoln assassination conspirators—Mary Surratt, Lewis Payne, David Herold, and George Atzerodt—hang from the gallows on July 7, 1865, in front of a crowd. Surratt was the first woman executed by the U.S. government.

Towns sprang up where immediate needs arose, often the result of mining operations or cattle trains. Towns had few permanent residents and lacked the resources to provide stable, consistent law enforcement. Initially, some states and territories created anti-horse thief associations or other citizen-run vigilante groups or organizations, but they lacked the resources to support permanent police forces. Consequently, most law enforcement in the developing west was conducted by thinly spread military units. As towns grew, they often would gain a more consistent law enforcement presence, like a county sheriff or a U.S. marshal. However, local citizens also conducted much of their policing, if any policing existed at all. Communities also lacked the ability to create permanent jails or prisons, and until the advent of the railroad, many prisoners had to be transported by horseback to far-away territorial or state prisons. Western prisons tended toward the Auburn model—solitary confinement, silence, and labor. Most prisons were constructed by the territories, and later, when the territory became a state, became the local state penitentiary. These prisons placed little, if any focus on rehabilitation and tended, like most of their western counterparts, to focus on strict punishment.

Federal statutes dominated the law of the west. The Northwest Ordinance of 1787 gave lawmaking power to a federally appointed governor and three judges, who were charged with interpreting the common law until at least 5,000 adult males lived in the territory. When a territory became a state, it could adopt its own statutes and criminal procedure. However, states rarely innovated and created new laws. Usually, they would borrow the language and criminal code of a neighboring state, either in whole or in part, and adopt it as its own.

The west created its share of legends. After having been shot 11 times, James “Wild Bill” Hickok allegedly shot outlaw Dave McCandles and his gang of eight. In reality, Hickok shot McCandles in the back when he arrived to collect on a debt owed by Hickok’s



According to an account in The Border Bandits (1882) by J. W. Buel, on a cold February night in 1867, six men—each with a grievance—surrounded the home of Jesse James’s stepfather Dr. Rueben Samuels, where James was holed up with a fever. As Dr. Samuels delayed the party, Jesse opened fire on the surprised group. Three were killed and two were wounded; Jesse fled for the wilderness and escaped, even eluding 50 horsemen who searched for a week.

freighting company. Hickok fought in the Civil War (falsely claiming to have shot 50 Confederate soldiers with 50 consecutive bullets), and on the strength of his reputation he was able to win the election as sheriff of Ellis County, Texas, in 1869, and later as U.S. marshal. Hickok killed many outlaws but eventually was shot in the back during a poker game, holding the now famous “dead man’s hand”—a pair of aces and a pair of eights.

Wyatt Earp was no less corrupt a lawman. Arrested for horse stealing in California and fired for corruption in Wichita, Kansas, where he served as city marshal, Earp moved to Tombstone, Arizona, in 1879. Earp and his brothers ultimately confronted the Clanton gang and, in a famous gun battle at the O.K. Corral, killed three of five members of the Clanton family. Many historians say that the Clantons were actually surprised by the Earps, who refused to negotiate. Townspeople chased the Earps out of Tombstone on murder charges.

Western judges often had no better standards than their law-enforcing counterparts. Most judges did not have legal training, since lawyers were few and far between. Judges would often travel from town-to-town and set up a makeshift courts, often in the company of a traveling cadre of lawyers. Judges frequently made somewhat unjust decisions. Judge Roy Bean fined people when he patronized the saloon, and once dismissed a murder charge because he felt it was not illegal to kill a Chinese person. Judge Isaac C. Parker sentenced 172 people to death in the Arkansas Territory and had 84 of those sentences overturned on appeal. Congress formally stripped him of his power in 1895. Judges and lawyers would carry guns, which were sometimes used in duels as a means to settle disputes. Legal codes were rarely used, and judges would sometimes meet in bars or taverns and decide cases on a commonsense, rather than legal, basis.

The west produced its share of famous outlaws. Brothers Jesse and Frank James, former Confederate soldiers, went on a campaign of bank robberies and murder. Officials from the Pinkerton National Detective Agency who were pursuing the brothers threw a bomb into their mother’s house, killing their 9-year-old stepbrother and injuring their mother. Many saw the James, as Robin Hood figures. However, as the reward increased, the James’s accomplice, Bob Ford, shot Jesse in the back of the head in 1882.

Billy the Kid swore to gain revenge for the killing of his adopted father figure, John Tunstall. Billy’s gang, the Regulators, tracked down Tunstall’s killer, William Morton, and executed him. Billy offered the New Mexico governor his cooperation against other outlaws, but the governor betrayed him and allowed Billy to go to prison. Billy escaped prison twice, killing two guards, but was later caught and killed in an ambush conducted by Sheriff Pat Garrett.

In 1874, the state of Texas created a special militia called the Texas Rangers. The Rangers were the most elite law enforcement group in the west in the late 19th century. They quelled riots and feuds and successfully captured over 3,000 outlaws between 1874 and 1882. Other than some allegations of racism against Hispanics and American Indians, the Rangers remained largely free from claims of corruption.

The rates of violence in both the south and the west during this period were quite high—as much as 10 times the national rate. Some historians attribute these rates to the relative lawless nature of these societies. Others claim that both societies had “cultures of honor” in which people felt obligated to respond to offensive statements with violence. Still others assert that the relative lack of stable law enforcement, coupled with ubiquitous poverty, contributed to high levels of violence.

Birth of Organized Crime

The 1850s and 1860s saw the birth of several forms of organized criminal activity. During the Civil War, Chicago’s Michael McDonald found that he could collect commissions

on bounties that ranged from \$100 to \$1,000 from those wishing to avoid wartime service. He would then have his underlings enlist on these persons' behalf before deserting. Historians estimate that bounty jumping resulted in over 200,000 cases of army desertion during the war. Chicago particularly lacked a formal police force, prompting crime lords such as Roger Plant to operate gambling and prostitution rings with relative impunity.

This era saw the establishment of several political machines, or city bosses, most notably William M. Tweed, or "Boss Tweed," of New York City. Tweed rose to power when elected as a New York alderman and to a term in the U.S. Congress. When he returned to New York in 1857, he was elected to the New York Board of Supervisors, where he was able to manipulate city officials, control jobs and spending, and ultimately develop an army of supporters through political graft. At the peak of Tweed's power, he controlled the legislature, city government, police, and the courts. However, in 1871, Tweed was arrested and convicted for defrauding the city treasury of millions of dollars. His 12-year sentence was reduced to one year, after which he was rearrested but escaped to Spain. Tweed was eventually extradited to the United States and died in jail in 1878.

In 1872, a company known as *Crédit Mobilier* was created to assist in giving the appearance that the Union Pacific Railroad had chosen an independent contractor to build the railroad. The company sold stock in Union Pacific at huge discounts to congressmen to help them achieve political gain and financial profits. The *New York Sun* broke the scandal in 1872, resulting in a formal congressional investigation. Eventually, 30 members of Congress were implicated, including Vice President Schuyler Colfax and former Speaker of the House (and future president) James A. Garfield.

In 1899, America also became the home for a new group known as the Black Hand, a precursor to the Italian mafia. The Black Hand operated mostly from Sicily, its home, but soon exported its unique methods—kidnapping, extortion, and violence—to New Orleans. While gang members generally targeted Italians during this period, they would evolve into a national organized crime syndicate in the upcoming century.

Several crimes gathered significant public attention, given the increasing prominence of a media culture. In 1892, Lizzie Borden, the daughter of a high-society Massachusetts family, was charged with murdering her father and stepmother, Andrew Abbey Borden. The case captured wide notoriety, considering that Lizzie stood to inherit her family's fortune. Although the jury acquitted Lizzie, the case continues to remain controversial because the forensics and part of Lizzie's inquest testimony—which was barred from the trial and supposedly included a confession to her lawyer—were lost.

Another notable case involved Herman Mudgett, a con man who lived under the pseudonym of Dr. Henry Howard Jones. Holmes worked at a Chicago drug store, which he fraudulently purchased after murdering one of its owners. He built a three-story building across the street and opened it as a hotel during the 1893 Chicago World's Fair. The hotel contained a labyrinth of passages as well as a furnace for cremating bodies. Holmes lured mainly young females to the hotel where he tortured, killed, and burned their bodies. Others were locked in rooms while Holmes poisoned them with gas. He would then use acid to strip the bodies to skeletons and sell them to schools. Holmes was eventually captured and later confessed to having killed 27 people, though many claim his actual count is as high as 200. Holmes was hanged in 1896 and remains one of America's first documented serial killers.

Rise of Organized Police Forces

The latter half of the 19th century saw the increased development of organized police forces. Prior to the Civil War, local police forces either did not exist, or were poorly

trained and lacked the resources to effectively do their jobs. Consequently, in the early 1850s, New York City—followed by New Orleans and Cincinnati (1852), Chicago and Philadelphia (1855), St. Louis (1856), Newark and Baltimore (1857), Detroit (1865), and Buffalo (1866)—developed formal, uniformed police forces similar to the London model. However, these cities did not fully adopt all of London's practices, like those that prevented officers from voting or living in certain parts of town. The London police, or “bobbies,” also reported to Parliament; as opposed to the local authority, as in American jurisdictions.

These new police did not entirely replace local militias, which remained the predominant force in rural areas. Most communities required officers to live within the communities they policed. While this requirement was intended to keep officers close to their communities, it often resulted in a high proportion of Irish police officers, who often dominated urban political society. Furthermore, historians have been able to uncover the presence of black police officers in northern cities such as Chicago and Cincinnati beginning in the 1870s. Additionally, police departments did much more than provide traditional law enforcement during this time. Police departments in large cities housed hundreds of thousands of homeless people and held soup lines. In effect, the police department functioned as a general social service agency.

During the 1850s, urban police were accused of having overly strong ties to political machines, particularly in New York City. Many states decided that they could fix abuses by transferring police power from local authorities to states. Maryland, Massachusetts, Illinois, Ohio, Michigan, Indiana, Kansas, Louisiana, Nebraska, and Missouri all took



A caricature of notorious New Orleans prostitute Emma Johnson, from the Mascot, May 21, 1892. Johnson is depicted with tentacles reaching out to entrap others, including men, an old man, an adolescent boy, and a young woman. While the 1850s and 1860s witnessed the beginnings of organized crime activity, which capitalized on vices such as gambling and prostitution, the latter half of the century saw the growth of organized police forces.

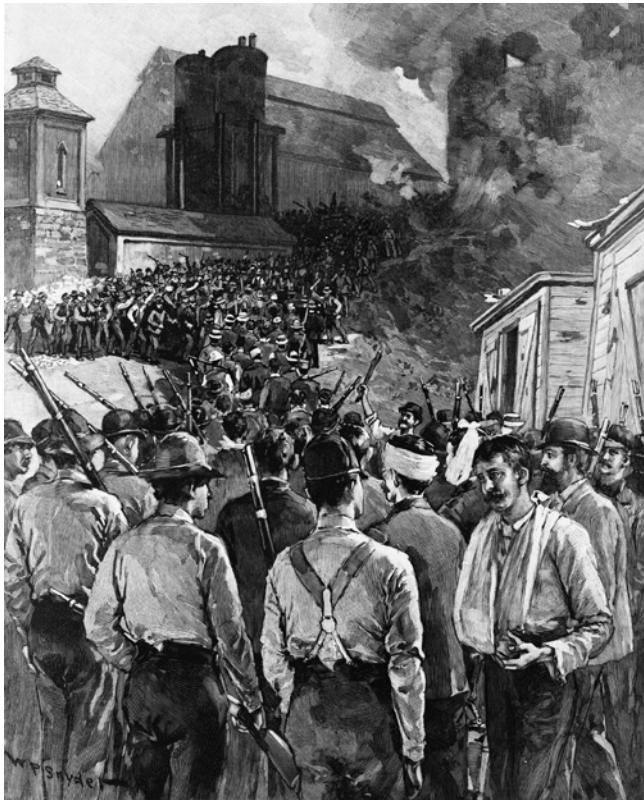
steps to replace large urban police forces with state forces. In New York, the two resulting police forces competed for control of the city. In 1857, the two forces violently rioted, but a subsequent court decision legitimated the state force, leading New York City to disband its municipal police force. Americans, however, largely favored local policing, and state police forces lacked broad enforcement powers. As a result, most state police forces died out within a year or two, although some state police forces lasted a few decades. Additionally, the police, both private and public, were alleged to be overly close to corporations, and in the Haymarket bombing (1886) and Homestead strike (1892), the police allegedly use force to prevent laborers from rallying.

Labor strife became a subject of repeated concern in the latter half of the 19th century, often called the Gilded Age. Rallies against railroad and mining companies, in particular, often resulted in high levels of violence. The police forcibly and violently removed Coxey's Army, a group of labor protestors in Washington, D.C., from their protest camp. Military police called in to restore order from striking railroad workers in Martinsburg, West Virginia, eventually killed over 100 strikers. In 1894, these strikes culminated in the Pullman railroad strike in Chicago. President Grover Cleveland ordered the military to stop the strike, but the involvement of soldiers resulted in a massive riot that required the response of over 14,000 military and police officers before the violence was over.

The federal government expanded its law enforcement power during this period. During the Civil War, U.S. marshals mostly arrested southern sympathizers. After the

war, however, the marshals helped maintain order during Reconstruction.

They arrested nearly 7,000 southerners for civil rights violations, guarded polling places, and protected prominent African Americans. The marshals were also prominent figures in the west, many of whom achieved popular folk status. In reality, the marshals were often the only organized law enforcement presence in some territories, and they were few and far between. The marshals only arrested for violations of federal law, which included robbing the mail, desertion from the armed forces, or killing federal officials. Marshals could also swear in local citizens as deputies and form posses to pursue offenders. Posses were quite common in the west and often dispensed their own forms of vigilante justice, including the trial



In this Harper's Weekly cover from July 16, 1892, armed Pinkerton men leave the barges of the Carnegie Steel Company at Homestead, Pennsylvania, after breaking the steel workers' strike. An armed battle killed and wounded several men.

and execution of offenders on the spot. The marshals assisted all U.S. courts, served subpoenas, and transported federal prisoners. As territories achieved statehood (requiring at least 60,000 residents), the marshals eventually ceded most of their authority to state and local law enforcement. In 1865, President Lincoln created the Secret Service to investigate counterfeiting problems. It set up field offices and ultimately arrested several hundred counterfeiters. By 1867, the Secret Service was assigned to investigate any fraud against the United States and subsequently played a large part in investigating Ku Klux Klan actions in the south. Not until 1901, after the assassinations of James A. Garfield and William McKinley, did the Secret Service take up presidential protection.

The latter half of the 19th century also saw the emergence of a dominant private police force, the Pinkerton National Detective Agency, started by Scottish immigrant Allan Pinkerton. Initially, the Pinkertons performed railroad security, but they gained notoriety when Pinkerton convinced president-elect Abraham Lincoln to avoid stopping his train in Baltimore because of an assassination plot. The successful prevention of the attack helped the Pinkertons get involved in everything from personally protecting the president during the Civil War to pursuing outlaws like Butch Cassidy and Jesse James. However, they were also accused of corruptly supporting large corporations because of their role in breaking up striking laborers, particularly at the Carnegie Steel plant in 1892.

Gilded Age police officers worked long hours, often 12 hours a day, for five- or six-day shifts. They spent much of their time on foot, patrolling their district. Police departments had high turnover, often attributable to their ties to political machines. For example, Cincinnati's police force experienced over 80 percent turnover when its city government changed to a different political party.

Not only did organized police forces come to fruition, they were also able to utilize the development of new technologies designed to assist in the apprehension of criminals. Cesare Lombroso's *Criminal Man* (1876) theorized that criminals had certain degenerative physical characteristics, such as overly large hands, large body types, and asymmetrical faces. Richard Dugdale also theorized that criminality ran in families in his multigenerational study of the Juke family (1874). Dugdale's and Lombroso's works were wildly successful and shifted the focus more toward a scientific study of crime. Additionally, police departments began to collect photographs of offenders and disseminate them to the public at large. They also started using crime scene photography. Frenchman Alphonse Bertillon created a system for measuring criminals in which officers would measure the person's head, arms, fingers, feet, and ears to help in subsequent identification. This system was quite popular until fingerprinting replaced it in the early 20th century. One other police technology to develop during this time was the callbox, first placed in New York City in 1867. An officer could turn a key in the box, which would send a signal to headquarters marking its location. Eventually, the boxes developed so that officers, by pulling levers and opening doors, could summon an ambulance or request emergency assistance.

Victorian Reformation Movement

Perhaps no other issue defines the latter half of 19th-century criminal justice more than national attempts to legislate morality through criminal statutes and to impose new Victorian images on components of the criminal justice system. These series of battles ultimately redefined American criminal justice and ushered in new 20th-century notions of fighting crime.

The first major battle involved drug addiction. The California gold rush brought Chinese immigrants, who popularized the smoking of opium, to America. Chinese immigrants

soon became railroad employees. However, once the transcontinental railroad was complete, Chinese immigrants returned to California cities. San Francisco, whose residents were fearful and suspicious of the Chinese and their opium dens, became the first city to restrict drug use and outlaw drug possession when it criminalized the smoking of opium in 1875. Eleven other western states followed suit and outlawed opium in the last two decades of the 19th century.

In 1856, the Republicans adopted a platform designed to reign in the “twin relics of barbarism—polygamy and slavery.” The Mormons of the Utah Territory practiced polygamy as part of their religious beliefs. While only a small subset of the population ever engaged in plural marriage, Mormon polygamists became the focus of a national criminal crusade. While Congress passed the Morrill Act in 1862, criminalizing polygamy and imposing five-year prison terms, prosecutors were unable to gain convictions without the cooperation of wives. After a Mormon polygamist challenged the act, the Supreme Court, in *Reynolds v. United States* (1879), ruled that the freedom of religion did not justify Mormons’ attempts to commit crimes. Emboldened, Congress passed the Edmunds Act (1882) and the Edmunds–Tucker Act (1887). Together, these acts criminalized the newly created crime of cohabitation (which allowed Mormon polygamist convictions to be based on relatively scant evidence); disincorporated the church; seized church properties; and prevented Mormons from serving on juries, voting, or holding political office. Some 2,000 polygamist males were prosecuted and sentenced to terms in the territorial prison. The Supreme Court repeatedly upheld the convictions and taking of church property. In 1890, the church ultimately capitulated and officially renounced polygamy, formally ending the federal criminal prosecutions.

During this period, penny presses often contained abortion-related advertisements that many Victorians found highly objectionable. Congress, led by the U.S. postal agent Anthony Comstock, passed the Comstock Law in 1873, prohibiting the mailing of obscene material or the mailing of any material discussing abortion or contraception. Comstock also started Societies for the Suppression of Vice in many American cities. Obscenity became defined broadly to include pregnancy; many of the arts, such as Walt Whitman’s *Leaves of Grass*; and books on birth control. Thousands of people were arrested for violations of the Comstock Laws, which many claimed was a result of Congress’s overzealous censorship.

The crusaders also took on the problem of gambling. Members of Congress objected to Louisiana’s state-run lottery on moral grounds, citing claims of alleged corruption. In 1868, Congress formally banned the lottery, using its power to criminalize the use of the U.S. mail to send lottery tickets. The Supreme Court ultimately upheld the ban under a massively expansive view of the Commerce Clause, reasoning that if an activity affected interstate commerce, then the federal government could step in, regulate, and criminalize it.

Victorian reformers turned their attention to police departments. Police officers in the Gilded Age were often hired not on their skill or merit, but on their loyalty to a particular political machine. Officers often had to bribe their superiors to advance or stay in the department and, as a result, regularly resorted to collecting protection money from local citizens and businesses. For example, in New York City, an officer who made \$1,200 a year had to pay \$1,600 to be a sergeant and over \$12,000 to be a captain. Higher-ranking officers received cuts from the bribes and shakedowns. Police officers also had to pay a \$250 annual fee to local politicians to keep their jobs. In Chicago, police officers were required to contribute to the local political party, as well as work in elections.

Allegations of severe police brutality were common. Police officers often resorted to beatings to extract confessions or to make public examples of those who disagreed with

their methods. With the Pendleton Act of 1883, Congress made all federal appointments based on merit as opposed to open appointment. While the act did not apply to cities and states, it set the precedent that political spoils should not be the basis for governmental positions.

In 1895, future president Theodore Roosevelt led a crusade to expose corruption in New York City's police department and reformed the department's hiring and promotion processes to make them less dependent on graft and more on merit. New York City was not alone. Reformers throughout the nation sought to depoliticize their police departments, often with mixed results, as politicians often found ways to skirt the reform attempts.

Reformers also sought to fix the prisons of the period to make them more humane. In 1867, Enoch Wines and Theodore Dwight published the 70-volume *Report on the Prisons and Reformatories of the United States and Canada*, criticizing the deplorable conditions of most prisons. In particular, they advocated solitary confinement, followed with a period of labor in which a prisoner could earn an early release for good behavior. In 1870, Zebulon Brockway, head of the Rochester penitentiary, proposed reforming penitentiaries in the United States with his "Declaration of Principles" given at the National Prison Congress. In the declaration, he advocated classifying prisoners based on individual history, improving sanitation, rewarding well-behaved prisoners, depoliticizing the appointment of prison administrators, and a more judicious use of the pardoning power. To Brockway, indeterminate sentences would put the prisoner's destiny into his own hands and would ultimately help him return to society as a functional member.



The Comstock Law, headed by U.S. postal agent and Victorian reformer Anthony Comstock and passed in 1873 by Congress, prohibited any "obscene" materials in the mail, including material discussing abortion or contraception. This caricature of Comstock, printed in the August 22, 1906, edition of *Puck*, depicts Comstock as a prudish monk chastising any display of flesh, including shaved French poodles, mannequins, and horses.

Brockway took over the Elmira reformatory and was able to put his principles into action. Prisoners were classified and graded based on school, work, and general behavior. The Elmira system consisted of a regimented, six-days-per-week study and work program followed by mandatory Sunday religious services. Prisoners who did well received more comfortable beds, clothing, and food, while prisoners who did poorly received less comfortable items. In later stages, prisoners had to obtain a job in the community to be eligible for release. Successful prisoners could be pardoned as soon as a year later. Elmira's success inspired similar programs across the country, including Michigan (1877), Colorado (1890), and Wisconsin (1899). Brockway ultimately resigned in scandal since the Elmira reformatory was overcrowded and numerous incidents of prisoner abuse came to light. However, Brockway paved the path for prison systems of the 20th century and the more modern concept of parole.

Perhaps one of the most notable results of Gilded Age reform movements was the invention by Thomas Edison's employee Harold Brown of the electric chair, which was thought to usher in an era of more humane methods of execution. On August 6, 1890, in New York's Auburn prison, convicted murder William Kemmler became the first person executed with the chair. Despite claims for its humanity, it took several attempts for the electric charge to kill Kemmler. Martha Place became the first woman executed with the chair at Sing Sing prison in 1899. Once most of the problems were worked out, the electric chair became the dominant method of execution in the United States.

Indiana opened the first all-female prison in 1874, recognizing that women had needs that were different from men. Movements to humanize prison conditions were often led by female reformers, such as Ph.D.-educated penologist Katherine Bement Davis. Usually, the reformers saw female offenders as childlike in their capacity and in need of guidance and structure. Male prisons often built female prison wings, which generally were more homelike in appearance. Female prisoners never numbered more than a few hundred in the latter half of the 19th century, although many prisons began to add wings for female prisoners. Yet, following Indiana's lead, 20 all-female reformatories were built from 1870 to 1935.

Reformers also sought to improve the lives of juveniles. Juveniles would often be tried, convicted, and sentenced in the same courts and prisons as adults. Reformers felt that juveniles deserved different treatment. Juvenile reformatories—places where juveniles with criminal or vagrancy issues were housed and treated—took strong hold during this period. Reformers also moved to create separate trials for children, passed first in Massachusetts (1874) and Rhode Island (1892). Activists, composed mostly of upper- and middle-class women, focused their efforts on the particular needs of children. As a result of their efforts, Illinois created the first full-fledged juvenile court system in 1899.

Conclusion

The latter half of the 19th century can best be characterized as a period motivated largely by attempts to form new institutions of criminal justice, as well as to reform existing institutions. This reforming influence spread to an expanding federal influence over criminal justice, as polygamists, lotteries, and slaveholders found themselves the subjects of prosecution. The Civil War, and the period of instability to follow, resulted in sporadic and sometimes corrupt criminal justice systems that required a generation of reforming influence for real changes to take effect.

Samuel P. Newton
Weber State University

1851 PRIMARY DOCUMENT

The *Alabama Journal's* Account of a Fatal Duel

Dueling was always more strongly associated with the antebellum south and its concerns with honor and reputation, though by the 19th century, it was falling out of favor. The death of Alexander Hamilton accelerated the decline of dueling, as did advances in firearms, which made the practice fatal more frequently. In New Orleans, however, dueling remained a tradition until the end of the century; it was not outlawed in City Park until 1890, the traditional site.

FATAL DUEL.—We learn from the New Orleans papers that a duel was fought at U. N. Barracks, below that city, on the 10th inst., between Mr. J. W. Frost, of the “Crescent,” and Dr. Thomas Hunt, which terminated in the death of the former. Double-barrelled guns were the weapons, and the distance forty paces. On the second fire Mr. F. was mortally wounded, the bullet passing through his left breast. He died within half an hour. Great excitement prevailed in relation to the matter, and efforts were being made to arrest those implicated, in accordance with a statute of that State prohibiting the practice of dueling. We clip the following from the N. O. correspondence of the Mobile Tribune:

“The immediate cause of offense was an altercation which took place at the Whig Meeting in Perdulo Street on Monday evening. It was, however, only the renewal of an ancient difficulty, arising out of the congressional election last fall, when Col. T. G. Hunt was a candidate before the Whig Convention, and Judge Hullard the law partner of Mr. Frost obtained the nomination. Another of the brothers of Col. Hunt became then involved in a personal difficulty with Mr. Frost, and the preliminary movements for a duel were made upon the part of Mr. Frost,

but they failed. The whole correspondence was published at the time and is doubtless familiar to our readers. The ill feeling has rankled ever since, and the new canvass, in which Col. Hunt is again a candidate, revived it, produced the collision at “The Shades,” and has ended in this lamentable manner. It has already been published that there was a meeting between the parties on Wednesday, which the police interrupted, and both challenger and challenged were bound over. They disregarded the bonds, went almost directly from the Recorder’s office to the United States barracks, and finally closed up this most unhappy quarrel with the death of Mr. Frost by the hands of Dr. Hunt.”

The Tribune learns, from a private source, that another duel, growing out of the above affair, is about to take place between Major Raney and Mr. Edwards.

Source: *Daily Alabama Journal*, v.5/136
(July 16, 1851).

See Articles: Murder, History of; Murder, Sociology of; New Orleans, Louisiana.

1854 PRIMARY DOCUMENT

Excerpts From the Memoirs of Counterfeiter William Stuart

William Stuart was born in 1788 to a Connecticut farming family; beyond that, knowledge of him comes from the memoir of his criminal career he published at age 66. Though claiming to warn the young against a life of vice, the memoir is written like an adventure tale, including daring escapes and double crosses. Though not a western gunslinger, Stuart’s memoir was published at a time when the public was devouring tales of outlaws and bad men on the frontier.

I hired a black man to put me across the river, and I entered the forests, which in those days covered almost the whole country. The weather was warm, and I took a nap upon the leaves. When day-light appeared I bent my course to the N.E. and before night arrived at Coosahatchie, a village on the river of the same name. A widow woman kept tavern in the place, and I stopped for refreshments and rest. A neighbor of her's soon came into the barroom and wanted to borrow money of her, but she declined to lend him. This man became furious because of her denial, and abused the woman in the vilest terms. I saw that she was becoming afraid of him, so I told him that I should not take part in the quarrel, nevertheless I should not sit by any longer and permit him to revile her. He looked at me with disdain and contempt, and commenced his tirade upon me, and I took him by the collar and put him into the street, then went back and closed the door. The woman thanked me for the service I had rendered her, and offered to keep me as long as I would stay, without charge. Having had a hard time on board of our ship, I gratefully accepted her offer, and tarried with her, as Paul said, "for the space of many days."

She was blessed by nature with genius adequate to any emergency, and her features were unrivalled by the choicest specimens of statuary; her tresses, black as the raven's wing, descended gracefully from her head; her eyes were black and lustrous as an hour's; her face seemed wrought with exquisite beauty; and her form was chaste and finely modeled. Her age about thirty, with all the charms of eighteen years, while a little daughter, fatherless, looked to her for support and protection. When I became more acquainted with her, I found that she, like myself, was hardened by fraud, dishonesty and corruption.

She kept her house open during the greatest part of every night, and when the outer world was clothed in darkness, the slaves from the neighboring plantations brought her corn, fowls and pigs, and articles of merchandise, for which she scantily paid them in gewgaws and whisky. She was ripe for almost every enterprise, and was willing to engage in any

object that promised a golden reward. As our acquaintance became more thorough, I often times recapitulated my pursuits, told her the stories of my life and escapes that fortune had cast in my way, and the stratagems to which I had had recourse in my eventful history. I gave her an outline of my counterfeiting process, and she entered into my plan with her whole heart. She gave me access to all her business, and reposed confidence in my ability to do all things well. She denied me nothing, but was eager to anticipate my wishes for the pleasure of obliging me. When the subject of counterfeit money was discussed, her anxiety to procure it banished almost every other thought from her mind, and she was willing to part with me for a season on no other terms than that I should obtain a large amount of funds, subject to her disposal. After staying at her house for three months, I agreed to go north, visit my friends, proceed to the Canadian mint, gather some thousands and return. She procured me genuine notes of the Savannah and Augusta banks as specimens for the engravers, and all things were in readiness for my absence during a month. I need not dwell on the parting scene though destined to be brief. It was accompanied with tearful eyes and throbbing heart.

I took my course for Charleston, and when in that city got a passage to New York on my way to Connecticut. At home I passed a few days, looked over my farm, called upon old associates, and laid plans for the future. I kept all my own special secrets. I never was guided by plans as advised in our conclaves, but adopted expedients as the time and circumstances indicated at the period of their occurrence.

Eliphalet Bennett and I started on foot for Canada together. He was a great genius in the way of wickedness, and the most heartless and graceless villain that I ever knew. His parents took great care in his having a thorough education. He passed through college and received its literary honors, engaged in the study of the law under the tuition of an able counselor and for a time promised to be an honor to his family and his profession. But he was a deeply wicked man, unmoved

by affection or kindness, and though married early to an amiable lady, the connection was only productive of misery. He set fire to his house because his wife, contrary to his will, attended Methodist meetings, and was arrested and put in jail, but his wealth and friends saved him from punishment. He drank deeply, and seemed to delight in crimes of the greatest magnitude and of the most horrid depravity.

This man went with me after funds. When we got into the bounds of Vermont he frequently preached to the Methodist brethren, and usually closed his services in appeals to their liberality. He stated to his audiences that while away upon his circuit, his house and all that it contained was burnt, and that he was on his way to a rich brother in Canada for aid, and that the smallest sums that they could spare would avail him much. We collected money for him, and he borrowed an over-coat of one, and many garments of others, promising to return them when he came back. Thus we worked our way to Canada.

I left Bennett on the frontiers and went to my old friends, produced my specimen notes, and in a fortnight returned home with \$40,000 in my belt. In latter days I had learned to take the by-paths, to save trouble and hindrance; said but little, and avoided respectable public houses. This purchase had exhausted all my means, and my family was poor, unless I made a saving in disposing of my counterfeit funds.

I now stowed my money in my favorite hiding places near home, and stayed a few weeks to prepare my household to live through the winter, while I was away in Georgia. My intentions were kept by me in perfect secrecy. No man was able to divine my purposes or even conjecture concerning them.

After a few weeks it was necessary that I should go to Cross River in Putnam County, NY, to transact some business, and on my way went through Ridgefield, and having lost my handkerchief, I stepped into the store of Abner Gilbert and bought one for one dollar, and by accident let his clerk have a bad five dollar note. I passed on eight or nine

miles, stopped at a tavern at evening, and it was reported that a man dressed in short clothes had passed it. I tarried a little while, then left the house and went across the fields into a barn. This was empty and no place to rest. I now went out and gazed over the country, and spied a light in a house upon an eminence, and drew near to it, asked admittance and was received to their fireside. Soon I went to bed and was getting sleepy, when several men entered and inquired for me. As these men entered my room, I aroused from my slumbers and was about to jump through the window, but they seized me and I became quiet. While they were about the room, I slipped 2 five dollar notes under the bed-post, and have not learnt up to this day that they were ever found. They escorted me to Ridgefield the same night and put keepers over me, and I passed the night with my hands tied behind me. Next morning I offered Gilbert one hundred dollars to let me go, and his wife begged of him with tears in her eyes, but he was determined that my career should be checked.

Next day came on my trial, and I was sent to Danbury jail until the session of the court. I told the jailer that I had got home again, and he gave me some rum and I went into my room. My prospects were fair for Newgate but I cared very little about it. I was aware of the looseness of the watch that was held over me. Six or eight times a day Mr. Crofut, the jailer, with the still and stealthy step of a cat, would approach the grief-hole and peak at me. He did not intend that I should see him; but nothing escaped my vision, and though my face was frequently averted while he was casting suspicious glances at me, yet he never caught me unawares in any of my movements. I did not try to disturb his peace as I did that of his predecessor. I was pacific as a spaniel, and was thus throwing a mist before his eyes for future purposes.

It was in the last of November, 1817, if I rightly recollect, when I re-entered this den of sinners. I now had full leisure to take a retrospect of my previous life, and upon a rigid examination, after casting aside all my prejudices, was disposed to give a verdict against

myself. Others had done wrong, violated the law, trampled upon justice, and outraged the good sense of the community, and were still abroad, verily leeches upon the country. In an evil hour I had been snatched up, and was compelled to look through grated windows and hear the rattling bolts of iron doors, while others were still bleeding the people at every pore. I comforted myself with the reflection that their turn, even if delayed, would eventually come.

But here I was, with irons about my ankles and wrists, that my keepers had unceremoniously brought into my presence unasked, introduced me to them, and compelled me to accept them as my present associates. Though I scorned them, for the sake of politeness and courtesy, I informally received them to my embraces and shook hands with them, not cordially, but because there was a necessity in the case. I thought of my contract with the Georgia widow, but was in no condition now to return to her hospitable home and carry out our intentions. I did not so much as write her a letter, informing her of the disabilities under which I labored, nor to inform her that I had used due diligence to augment her interests in pecuniary matters. In all these things I was silent.

My stay in Danbury jail was about four weeks, and the evening before I was removed the jailor came in and searched me. I had all my implements for jail breaking about my person, and gave them all up to him and abandoned the project. Next day I was waited upon the sheriff to Fairfield. I was as cheerful as if I was going to a dance or a quilting frolic. They put me in the prison, infected as it had been in summer with bugs, fleas, and lice. It was now cold weather, and they did not annoy me. A short time thereafter my trial came on, and as the testimony against me was positive, the jury brought me in guilty. One of the witnesses swore falsely against me, but there was truth enough to convict a saint in the testimony of the others. I was sentenced to five years' hard labor in the state prison.

After the judge had sentenced me, I rose and asked his honor this question: "Suppose,

sir" said I, "I die before my five years expire, shall I have to provide a substitute to serve out the remainder of my term? I hate to cheat the state; will you please inform me in these matters, for I am ignorant of the law?" The judge smiled, and told me that in case of death these things would not be required of me. I felt better after the sentence of the court, convinced that justice would be observed by my punishment.

While I lay in Danbury jail, the judges of the court, the lawyers the state's attorney, and many wealthy gentlemen engaged in mercantile pursuits, called on me and urged me to reveal to them the names of my associates, assuring me that I should leave the jail in a month and enjoy my liberty. My doctrine ever had been, and now is, if a person enters a secret society, no matter what its objects may be, and solemnly swears to keep secret all its operations and movements, none but those who are ready for perjury will be guilty of treachery. I told these men that I was my own counterfeiter, and that no man was acquainted with my operations. They knew I lied, and I knew it; but before I would entrap others to secure myself, I would be hanged on the nearest tree. I always inculcated a spirit of honor and integrity among our members, and if one of us should fall a victim to violated law, his mouth should be hermetically sealed in reference to his associates. I could keep a secret without effort, because it was pleasing to me to do so. The public are not benefitted by the confessions of a rascal, and his oath is worthless who accuses others to screen himself. Such men are obnoxious to the people, and whenever in after life they become witnesses in court, they are regarded by those who know them with scorn and contempt.

Source: Stuart, William. "Sketches of the Life of William Stuart." In *Bandits and Bibles: Convict Literature in 19th Century America*, edited by Larry E. Sullivan. New York: Akashic Books, 2003.

See Articles: Chain Gangs and Prison Labor; Connecticut; Counterfeiting; Prisoner's Rights.

1861 PRIMARY DOCUMENT

Telegram From Major Robert Anderson to the Secretary of War

Southern slave states threatened secession from the United States even before Lincoln was elected, and by the time he took office in March 1861, the first seven of 11 Confederate states had made good on the promise. The Buchanan and Lincoln administrations refused to acknowledge the legitimacy of secession. Armed hostilities began in South Carolina, which had been the first state to secede. During Reconstruction, the state was home to the most prominent white paramilitary groups. This telegram, sent by Major Robert Anderson, commander of the Union garrison at Fort Sumter, notified Secretary of War Simon Cameron of the outcome of the battle that began the serious fighting of the war.

S.S.Baltic. Off Sandy Hook Apr. Eighteenth. Ten Thirty A.M. via New York. Hon. S. Cameron, Secy. War. Wash. Having defended Fort Sumter for thirty four hours, until the quarters were entirely burned, the main gates destroyed by fire, the gorge walls seriously injured, the magazine by flames and its door closed from the effects of heat. Four barrels and three cartridges of powder only being available and no provisions remaining but pork. I accepted terms of evacuation offered by General Beauregard being on same offered by him on the Elem. Enoch. Inst prior to the commencement of hostilities and marched out of the fort Sunday afternoon the fourteenth Inst with colors flying and drums beating bringing away company and private property and saluting my flag with fifty guns.

Source: Records of Adjutant General's Office, Archival Research Catalog, ARC ID: 594525.

See Articles: Lincoln, Abraham (Administration of); Slavery; South Carolina; State Slave Codes.

1861 PRIMARY DOCUMENT

Excerpt From the Memoir of Harriet Jacobs, a Slave Girl

An escaped slave who became a prominent abolitionist, Jacobs published her memoir under the pseudonym Linda Brent in installments in the New York Tribune before the collected edition was released in 1861. Its depictions of the humiliations and cruelties faced by female slaves helped to support the moral argument for the Union effort in the Civil War, and Jacobs continued to write during the war, informing readers about aspects of life in the wartime south.

... I now entered on my fifteenth year—a sad epoch in the life of a slave girl. My master began to whisper foul words in my ear. Young as I was, I could not remain ignorant of their import. I tried to treat them with indifference or contempt. The master's age, my extreme youth, and the fear that his conduct would be reported to my grandmother, made him bear this treatment for many months. He was a crafty man, and resorted to many means to accomplish his purposes. Sometimes he had stormy, terrific ways, that made his victims tremble; sometimes he assumed a gentleness that he thought must surely subdue. Of the two, I preferred his stormy moods, although they left me trembling. He tried his utmost to corrupt the pure principles my grandmother had instilled. He peopled my young mind with unclean images, such as only a vile monster could think of. I turned from him with disgust and hatred.

But he was my master. I was compelled to live under the same roof with him—where I saw a man forty years my senior daily violating the most sacred commandments of nature. He told me I was his property; that I must be subject to his will in all things. My soul revolted against the mean tyranny. But

where could I turn for protection? No matter whether the slave girl be as black as ebony or as fair as her mistress. In either case, there is no shadow of law to protect her from insult, from violence, or even from death; all these are inflicted by fiends who bear the shape of men. The mistress, who ought to protect the helpless victim, has no other feelings towards her but those of jealousy and rage. The degradation, the wrongs, the vices, that grow out of slavery, are more than I can describe. They are greater than you would willingly believe...

Every where the years bring to all enough of sin and sorrow; but in slavery the very dawn of life is darkened by these shadows. Even the little child, who is accustomed to wait on her mistress and her children, will learn, before she is twelve years old, why it is that her mistress hates such and such a one among the slaves. Perhaps the child's own mother is among those hated ones. She listens to violent outbreaks of jealous passion, and cannot help understanding what is the cause. She will become prematurely knowing in evil things. Soon she will learn to tremble when she hears her master's footfall. She will be compelled to realize that she is no longer a child. If God has bestowed beauty upon her, it will prove her greatest curse. That which commands admiration in the white woman only hastens the degradation of the female slave. I know that some are too much brutalized by slavery to feel the humiliation of their position; but many slaves feel it most acutely, and shrink from the memory of it. I cannot tell how much I suffered in the presence of these wrongs, nor how I am still pained by the retrospect.

My master met me at every turn, reminding me that I belonged to him, and swearing by heaven and earth that he would compel me to submit to him. If I went out for a breath of fresh air, after a day of unwearied toil, his footsteps dogged me. If I knelt by my mother's grave, his dark shadow fell on me even there. The light heart which nature had given me became heavy with sad forebodings. The other slaves in my master's house noticed the change. Many of them pitied me; but none dared to ask the cause. They had no need to

inquire. They knew too well the guilty practices under that roof; and they were aware that to speak of them was an offense that never went unpunished.

I longed for someone to confide in. I would have given the world to have laid my head on my grandmother's faithful bosom, and told her all my troubles. But Dr. Flint swore he would kill me, if I was not as silent as the grave.

... I was very young, and felt shamefaced about telling her such impure things, especially as I knew her to be very strict on such subjects. Moreover, she was a woman of a high spirit. She was usually very quiet in her demeanor; but if her indignation was once roused, it was not very easily quelled. I had been told that she once chased a white gentleman with a loaded pistol, because he insulted one of her daughters. I dreaded the consequences of a violent outbreak; and both pride and fear kept me silent. But though I did not confide in my grandmother, and even evaded her vigilant watchfulness and inquiry, her presence in the neighborhood was some protection to me. Though she had been a slave, Dr. Flint was afraid of her. He dreaded her scorching rebukes. Moreover, she was known and patronized by many people; and he did not wish to have his villainy made public ...

I would ten thousand times rather that my children should be the half-starved paupers of Ireland than to be the most pampered among the slaves of America. I would rather drudge out my life on a cotton plantation, till the grave opened to give me rest, than to live with an unprincipled master and a jealous mistress. The felon's home in a penitentiary is preferable. He may repent, and turn from the error of his ways, and so find peace; but it is not so with a favorite slave. She is not allowed to have any pride of character. It is deemed a crime in her to wish to be virtuous.

Mrs. Flint possessed the key to her husband's character before I was born. She might have used this knowledge to counsel and to screen the young and the innocent among her slaves; but for them she had no sympathy. They were the objects of her constant suspicion and malevolence. She watched her

husband with unceasing vigilance; but he was well practiced in means to evade it ...

... Sometimes he would complain of the heat of the tea room, and order his supper to be placed on a small table in the piazza. He would seat himself there with a well-satisfied smile, and tell me to stand by and brush away the flies. He would eat very slowly, pausing between the mouthfuls. These intervals were employed in describing the happiness I was so foolishly throwing away, and in threatening me with the penalty that finally awaited my stubborn disobedience. He boasted much of the forbearance he had exercised towards me, and reminded me that there was a limit to his patience. When I succeeded in avoiding opportunities for him to talk to me at home, I was ordered to come to his office, to do some errand. When there, I was obliged to stand and listen to such language as he saw fit to address to me. Sometimes I so openly expressed my contempt for him that he would become violently enraged, and I wondered why he did not strike me. Circumstanced as he was, he probably thought it was better policy to be forbearing. But the state of things grew worse and worse daily. In desperation I told him that I must and would apply to my grandmother for protection. He threatened me with death, and worse than death, if I made any complaint to her. Strange to say, I did not despair. I was naturally of a buoyant disposition, and always I had a hope of somehow getting out of his clutches. Like many a poor, simple slave before me, I trusted that some threads of joy would yet be woven into my dark destiny.

I had entered my sixteenth year, and every day it became more apparent that my presence was intolerable to Mrs. Flint. Angry words frequently passed between her and her husband....

After repeated quarrels between the doctor and his wife, he announced his intention to take his youngest daughter, then four years old, to sleep in his apartment. It was necessary that a servant should sleep in the same room, to be on hand if the child stirred. I was selected for that office, and informed for what purpose that arrangement had been made. By managing to keep within sight of people, as such as

possible, during the day time, I had hitherto succeeded in eluding my master, though a razor was often held to me throat to force me to change this line of policy ... [Now] I was ordered to take my station as nurse the following night. A kind Providence interposed in my favor. During the day Mrs. Flint heard of this new arrangement, and a storm followed I rejoiced to hear it rage.

After a while my mistress sent for me to come to her room. Her first question was, "Did you know you were to sleep in the doctor's room?"

"Yes, ma'am."

"Who told you?"

"My master."

"Will you answer truly all the questions I ask?"

"Yes, ma'am."

"Tell me, then, as you hope to be forgiven, are you innocent of what I have accused you?"

"I am."

She handed me a Bible, and said "Lay your hand on your heart, kiss this holy book, and swear before God that you tell me the truth."

I took the oath she required, and I did it with a clear conscience.

"You have taken God's hold word to testify your innocence," said she. "If you have deceived me, beware! Now take this stool, sit down, look me directly in the face, and tell me all that has passed between your master and you."

I did as she ordered. As I went on with my account her color changed frequently, she wept, and sometimes groaned. She spoke in tones so sad, that I was touched by her grief. The tears came to my eyes; but I was soon convinced that her emotions arose from anger and wounded pride. She felt that her marriage vows were desecrated, her dignity insulted; but she had no compassion for the poor victim of her husband's perfidy. She pitied herself as a martyr; but she was incapable of feeling for the condition of shame and misery in which her unfortunate, helpless slave was placed.

Yet perhaps she had some touch of feeling for me; for when the conference was ended, she spoke kindly, and promised to protect me. I should have been much comforted by

this assurance if I could have had confidence in it; but my experiences in slavery had filled me with distrust. She was not a very refined woman, and had not much control over her passions. I was an object of her jealousy, and, consequently, of her hatred; and I knew I could not expect kindness or confidence from her under the circumstances in which I was placed. I could not blame her. Slaveholders' wives feel as other women would under similar circumstances. The fire of her temper kindled from small sparks, and now the flame became so intense that the doctor was obliged to give up his intended arrangement.

I knew I had ignited the torch, and I expected to suffer for it afterwards; but I felt too thankful to my mistress for the timely aid she rendered me to care much about that. She now took me to sleep in a room adjoining her own. There I was an object of her especial care, though not of her especial comfort, for she spent many a sleepless night to watch over me. Sometimes I woke up, and found her bending over me. At other times she whispered in my ear, as though it was her husband who was speaking to me, and listened to hear what I would answer. If she started me, on such occasions, she would glide stealthily away; and the next morning she would tell me I had been talking in my sleep, and ask who I was talking to. At last, I began to be fearful for my life. It had been often threatened; and you can imagine, better than I can describe, what an unpleasant sensation it must produce to wake up in the dead of night and find a jealous woman bending over you...

Why does the slave ever love? Why allow the tendrils of the heart to twine around objects which may at any moment be wrenched away by the hand of violence?... I did not reason thus when I was a young girl. Youth will be youth. I loved, and I indulged the hope that the dark clouds around me would turn out a bright lining. I forgot that in the land of my birth the shadows are too dense for light to penetrate....

There was in the neighborhood a young colored carpenter; a free born man. We had been well acquainted in childhood, and frequently met together afterwards. We became

mutually attached, and he proposed to marry me. I loved him with all the ardor of a young girl's first love. But when I reflected that I was a slave, and that the laws gave no sanction to the marriage of such, my heart sank within me. My lover wanted to buy me; but I knew that Dr. Flint was too willful and arbitrary a man to consent to that arrangement. From him, I was sure of experiencing all sorts of opposition, and I had nothing to hope from my mistress. She would have been delighted to have got rid of me, but not in that way. It would have relieved her mind of a burden if she could have seen me sold to some distant state, but if I was married near home I should be just as much in her husband's power as I had previously been, for the husband of a slave has no power to protect her. Moreover, my mistress, like many others, seemed to think that slaves had no right to any family ties of their own; that they were created merely to wait upon the family of the mistress. I once heard her abuse a young slave girl, who told her that a colored man wanted to make her his wife. "I will have you peeled and pickled, my lady," said she, "if I ever hear you mention that subject again. Do you suppose that I will have you tending my children with the children of that nigger?" The girl to whom she said this had a mulatto child, of course not acknowledged by its father. The poor black man who loved her would have been proud to acknowledge his helpless offspring.

... How I dreaded my master now! Every minute I expected to be summoned to his presence; but the day passed, and I heard nothing from him. The next morning, a message was brought to me: "Master wants you in his study." I found the door ajar and I stood a moment gazing at the hateful man who claimed a right to rule me, body and soul. I entered and tried to appear calm. I did not want him to know how my heart was bleeding. He looked fixedly at me, with an expression which seemed to say, "I have half a mind to kill you on the spot." At last he broke the silence, and that was a relief to both of us.

"So you want to be married, do you?" said he, "and to a free nigger."

"Yes, sir."

"Well, I'll soon convince you whether I am your master, or the nigger fellow you honor so highly. If you must have a husband, you may take up with one of my slave."

What a situation I should be in, as the wife of one of his slaves, even if my heart had been interested!

I replied, "Don't you suppose, sir, that a slave can have some preference about marrying? Do you suppose that all men are alike to her?"

"Do you love this nigger?" said he, abruptly.

"Yes, sir."

"How dare you tell me so! he exclaimed, in great wrath. After a slight pause, he added, "I supposed you thought more of yourself; that you felt above the insults of such puppies."

I replied, "If he is a puppy I am a puppy for we are both of the negro race. It is right and honorable for us to love each other. The man you call a puppy never insulted me, sir; and he would not love me if he did not believe me to be a virtuous woman."

He sprang upon me like a tiger, and gave me a stunning blow. It was the first time he had ever struck me; and fear did not enable me to control my anger. When I had recovered a little from the effects, I exclaimed, "You have struck me for answering you honestly. How I despise you!"....

[He answered] "... I have wanted to make you happy, and I have been repaid with the basest ingratitude; but though you have proved yourself incapable of appreciating my kindness, I will be lenient towards you, Linda. I will give you one more chance to redeem your character. If you behave yourself and do as I require, I will forgive you and treat you as I always have done; but if you disobey me, I will punish you as I would the meanest slave on my plantation. Never let me hear that fellow's name mentioned again. If I ever know of your speaking to him, I will cowhide you both; and if I catch him lurking about my premises, I will shoot him as soon as I would a dog. Do you hear what I say? I'll teach you a lesson about marriage and free niggers! Now go, and let this be the last time I have occasion to speak to you on this subject."

Reader, did you ever hate? I hope not. I never did but once; and I trust I never shall again. Somebody has called it "the atmosphere of hell"; and I believe it is so.

... My lover was an intelligent and religious man. Even if he could have obtained permission to marry me while I was a slave, the marriage would give him no power to protect me from my master. It would have made him miserable to witness the insults I should have been subjected to. And then, if we had children, I knew they must "follow the condition of the mother." What a terrible blight that would be on the heart of a free, intelligent father! For his sake, I felt that I ought not to link his fate with my own unhappy destiny. He was going to Savannah to see about a little property left him by an uncle; and hard as it was to bring my feelings to it, I earnestly entreated him not to come back. I advised him to go to the Free States, where his tongue would not be tied, and where his intelligence would be of more avail to him. He left me, still hoping the day would come when I could be bought. With me the lamp of hope had gone out. The dream of my girlhood was over. I felt lonely and desolate.

... [Slaveholders] seem to satisfy their consciences with the doctrine that God created the Africans to be slaves. What a libel upon the heavenly Father, who "made of one blood all nations of men!" And then who are Africans? Who can measure the amount of Anglo-Saxon blood coursing in the veins of American slaves?...

No pen can give an adequate description of the all-pervading corruption produced by slavery. The slave girl is reared in an atmosphere of licentiousness and fear. The lash and the foul talk of her master and his sons are her teachers. When she is fourteen or fifteen, her owner, or his sons, or the overseer, or perhaps all of them, begin to bribe her with presents. If these fail to accomplish their purpose, she is whipped or starved into submission to their will. She may have had religious principles inculcated by some pious mother or grandmother, or some good mistress; she may have a lover, whose good opinion and peace of mind are dear to her heart; or the

profligate men who have power over her may be exceedingly odious to her. But resistance is hopeless...

The slaveholder's sons are, of course, vitiated, even while boys, by the unclean influences everywhere around them. Nor do the master's daughters always escape. Severe retributions sometimes come upon him for the wrongs he does to the daughters of the slaves. The white daughters early hear their parents quarrelling about some female slave. Their curiosity is excited, and they soon learn the cause. They are attended by the young slave girls whom their father has corrupted; and they hear such talk as should never meet youthful ears, or any other ears. They know that the women slaves are subject to their father's authority in all things; and in some cases they exercise the same authority over the men slaves. I have myself seen the master of such a household whose head was bowed down in shame, for it was known in the neighborhood that his daughter had selected one of the meanest slaves on his plantation to be the father of his first grandchild. She did not make her advances to her equals, nor even to her father's more intelligent servants. She selected the most brutalized, over whom her authority could be exercised with less fear of exposure. Her father, half frantic with rage, sought to revenge himself on the offending black man; but his daughter, foreseeing the storm that would arise, had given him free papers, and sent him out of the state.

In such cases the infant is smothered, or sent where it is never seen by any who know its history. But if the white parent is the father, instead of the mother, the offspring are unblushingly reared for the market. If they are girls, I have indicated plainly enough what will be their inevitable destiny.

... I can testify, from my own experience and observation, that slavery is a curse to the whites as well as to the blacks. It makes the white fathers cry and sensual; the sons violent and licentious; it contaminates the daughters and makes the wives wretched. And as for the colored race, it needs an able than mine to describe the extremity of their sufferings, the depth of the degradation.

Yet few slaveholders seem to be aware of the widespread moral ruin occasioned by this wicked system. Their talk is of blighted cotton crops—not of the blight on their children's souls.

Sources: Jacobs, Harriet with L. Maria Child.
Incidents in the Life of a Slave Girl.
Boston, 1861;

and
Faust, Drew Gilpin. *James Henry Hammond and the Old South.* Baton Rouge: Louisiana State University Press, 1982.

See Articles: Rape, History of; Rape, Sociology of; Sexual Harassment; Slavery; Slavery, Law of.

1865 PRIMARY DOCUMENT

Excerpt From Thomas M. Harris's Documents on the Assassination Conspiracy

A physician and Union general, Harris served in the legislature of the new state of West Virginia after the war. He also served on the commission investigating the assassination of President Lincoln, which tried eight suspected conspirators: Samuel Arnold, George Atzerodt, David Herold, Samuel Mudd, Michael O'Laughlen, Lewis Powell, Edmund Spangler, and Mary Surratt. By that time, Booth had already been killed after a 10-day manhunt. The commission found all eight conspirators guilty in various degrees after 366 witnesses testified.

In lieu of General and Mrs. Grant, President Lincoln had taken Major Rathbone and Miss Harris, the step-son and daughter of Senator Harris, of New York, into the Presidential party. On reaching the theatre at a somewhat

late hour, and after the play had commenced, as soon as the presence of the President became known, the actors stopped playing, the band struck up "Hail to the Chief," and the audience rose and received him with vociferous cheering.

The party proceeded along the rear of the dress circle, and entered the box that had been prepared for them, the President taking the rocking chair that had been placed there for him on the left of the box, and nearest to the audience, about four feet from the door of entrance to the box. Major Rathbone and the ladies found seats on the President's right. During this time the conspirators were on the alert, scanning the situation, passing about so as to keep up a communication with each other, in preparation for their work. Booth had arranged with Payne to assassinate Secretary Seward at the same time that he would assassinate the President; and no doubt had planned for Payne, after accomplishing his task, to join him and Herold in their flight, crossing the Eastern Branch at the Navy Yard bridge, and then to pass down through Maryland and cross the Potomac, at a selected point, into Virginia, where they might consider themselves as being safe amongst their friends. Secretary Seward was known to have received severe injuries from the upsetting of his carriage, and to be lying in a critical condition under the care of Dr. Verdi. Booth had planned to take advantage of this circumstance for gaining admittance for Payne into the sick chamber, where, by springing with the ferocity of a tiger upon the sick man, he might make quick work in dispatching him with his dagger. To this end he had prepared a package rolled up in paper, and had schooled Payne in the artifice, teaching him to represent himself as having been sent by Dr. Verdi with this package of medicine, which it was necessary he should deliver in person, as he had important verbal directions as to the manner of its use, which required him to see the Secretary. About ten o'clock Booth rode up the alley back of the theatre where he had been accustomed to keep his horse and having reached the rear entrance, called for Ned three times, each time a little louder than before. At the

third call Ned Spangler answered to his summons by appearing at the door. Booth's first salutation was in the form of a question: "Ned, you will help me all you can, won't you?" To which Spangler replied, "Oh yes!" Booth then requested him to send "Peanuts" (a boy employed about the theatre), to hold his horse. Spangler gave the boy orders to do this, and upon the boy making the objection that he might be out of place at the time he had a duty to perform, Spangler bade him go, saying that he would stand responsible for him. The boy then took the reins, and held the horse for about half an hour, until Booth returned to reward him with a curse and a kick, as he jerked the rein from him preparatory to remounting for his flight. After entering the theatre, Booth passed rapidly across the stage, glancing at the box occupied by his intended victim, and looking up his accomplices, he passed out of the front door on to the walk where he was met by two of his fellow conspirators. One of these was a low, villainous-looking fellow, whilst the other was a very neatly-dressed man crossed the walk to the rear of the President's carriage and peeped into it. One of the witnesses, who was sitting on the platform in front of the theatre, had his attention arrested by the manner and conduct of these men, and so watched them very closely.

It was at the close of the second act that Booth and his two fellow conspirators appeared at the door. Booth said, "I think he will come down now"; and they aligned themselves to await his coming. Their communications with each other were in whispered tones. Finding that the President would remain until the close of the play, they then began to prepare to assassinate him in the theatre. The neatly-dressed man called the time three times in succession at short intervals, each time a little louder than before. Booth now entered the saloon, took a drink of whiskey, and then went at once into the theatre. He passed quickly along next to the wall behind the chairs, and having reached a point near the door that led to the passage behind the box, he stopped, took a small pack of visiting cards from his pocket, selected one and replaced the others;

stood a second with it in his hand, and then showed it to the President's messenger, who was sitting just below him, and then, without waiting, passed through the door from the lobby into the passage, closing and barring it after him. Taking a hasty, but careful, look through the hole which he had made in the door for the purpose of assuring himself of the President's position, and cocking his pistol and with his finger on the trigger, he pulled open the door, and stealthily entered the box, where he stood right behind and within three feet of the President. The play had advanced to the second scene of the third act, and whilst the audience was intensely interested Booth fired the fatal shot—the ball penetrating the skull on the back of the left side of the head, inflicting a wound in the brain (the ball passing entirely through the lodging behind the right eye), of which he died at about half-past seven o'clock on the morning of the fifteenth. He was unconscious from the moment he was struck until his spirit passed from earth. An unspeakable calm settled on that remarkable face, leaving the impress of a happy soul on the casket it had left behind.

Thus died the man who said, "Senator Douglass says he don't care whether slavery is voted up, or voted down; but God cares, and humanity cares, and I care."

As soon as Booth had fired his pistol, and was satisfied that his end was accomplished, he cried out, "Revenge for the South!" and throwing his pistol down, he took his dagger in his right hand, and placed his left hand on the balustrade preparatory to his leap of twelve feet to the stage. Just at this moment Major Rathbone sprang forward and tried to catch him. In this he failed, but received a severe cut in his arm from a back-handed thrust of Booth's dagger. Time was everything now to the assassin. He must make good his escape whilst the audience stood dazed, and before it had time to comprehend clearly what had happened. With his left hand on the railing, he boldly leaped from the box to the stage.

Source: Harris, T. M. *Assassination of Lincoln; A History of the Great Conspiracy: Trial of the*

Conspirators by a Military Commission and a Review of the Trial of John H. Surratt. Boston: American Citizen Co., 1892.

See Articles: Booth, John Wilkes; History of Crime and Punishment in America: 1850–1900; Lincoln, Abraham (Administration of); Murder, History of; Political Crimes, History of; Political Dissidents.

1865 PRIMARY DOCUMENT

A. G. Blair's Testimony on Inhumane Treatment at Andersonville Prison

Andersonville prison opened in February 1864, consisting of about 16.5 acres enclosed by a 15 ft.-tall stockade to contain the Confederacy's prisoners of war. As Blair testifies, conditions were terrible: 12,913 of 45,000 prisoners died. It is a matter of debate how many died of negligence and how many died of deliberate war crimes. This testimony is taken from the trial of Henry Wirz, who had run the prison; he was hanged, the only convicted Confederate war criminal.

I was in the military service of the United States, in the 122d New York. I was taken prisoner on the 23d of May, 1864, at the battle of the Wilderness. I was taken to Libby Prison first, and from that to Andersonville, where I arrived about the first of June. Captain Wirz was in command of the prison when I arrived there.

I have heard a great many questions asked Captain Wirz about rations whenever he would come into camp. His reply was generally an oath, saying that we would get all the rations we deserved, and that was damned little.

Q: Did he ever say he would not give you rations if he could?

A: I never heard him make that exact remark.

Q: Did he make any similar remark?

A: Several days during the fore part of my imprisonment there we had no rations. The report came from good authority that he was the cause of it, he being in charge of the camp. [Interrupted by counsel for the accused.]

Question repeated.

A: I have not heard those words from his mouth.

Q: Did you hear any similar language used by Captain Wirz to that which I repeated to you? If so, state what the language was.

[Objected to by counsel for the accused on the ground that witness had already answered in the negative. After deliberation the objection was overruled.]

A: On one occasion when he was asked by several of the prisoners who had not had any rations for twenty-four hours, when they were to have any, he made remark that if the rations were in his hands we would not get any. That was in the beginning of July, 1864, just before or after the 4th.

I have seen him stand at the gate when sick men were carried out. The men were very anxious to get out of the sun into the shade, and they would rush out to a small passageway made in the large doors coming out, to suit him. I have seen him shove the well, and the sick who were being carried, over on their backs; or sometimes he would order the guards to do it. The condition of the men taken out of camp into the hospital was hopeless—all that I ever saw taken out.

I escaped from Andersonville in the latter part of July or the fore part of August. And got about thirty miles from the stockade when I was captured and brought back to the camp. I was kept over night, and then was put in the stocks. The first day that I was taken out of the stocks I was not put in the stockade that night. I was put in the stocks the next day, and then was returned to the prison with three other comrades. I do not recollect the exact number of hours I was kept in the stocks; I should think five or six hours.

Q: Did the prisoner give any orders in reference to your being put in the stocks?

A: Just before I was put in the stocks I saw him give some orders from his headquarters, and I supposed that those were the orders.

I saw prisoners shot on or near the dead-line, on several occasions. I was down, in the fore part of my imprisonment, to get water at the creek. That was the only resource for obtaining water, except you had a right in one of the wells. The crowd was very great there. It was absolutely necessary sometimes either to get over the dead-line or to thirst. I have seen men on five or six occasions either shot dead or mortally wounded for trying to get water under the dead-line. I have seen one or two instances where men were shot over the dead-line. Whether they went over it intentionally, or unconsciously from not knowing the rules, I cannot say. I think that the number of men shot during my imprisonment ranged from twenty-five to forty. I do not know that I can give any of their names. I did know them at the time, because they had tented right around me, or messed with me, but their names have slipped my mind. Two of them belonged to the 40th New York Regiment. Those two men were shot just after I got there, in the latter part of June, 1864.

Q: Did you see the person who shot them?

A: I saw the sentry raise his gun. I hallooed to the man. I and several of the rest gave the alarm, but it was too late. Both of these men did not die; one was shot through the arm; the other died; he was shot in the right breast. I did not see Captain Wirz present at the time. I did not hear any orders given to the sentinels, or any words from the sentinels when they fired; nothing more than they often said that it was done by orders from the commandant of the camp, and that they were to receive so many days furlough for every Yankee devil they killed. Those twenty-five or forty men were shot from the middle of June, 1864, until the 1st of September. There were men shot every month. I cannot say that I ever saw Captain Wirz present when any of these men were shot. I had no chance of seeing him unless he was in

the stockade. The majority of those whom I saw shot were killed outright; expired in a few moments.

Q: Can you give a detailed description of those you saw killed and of the dates?

A: In regard to the dates I cannot give you any detail. I lost dates there, and did not know when Sunday came. I came very near being shot myself. A very large crowd had gathered at the stream of water, and I was reaching over the dead-line in order to get some water. I could not get it anywhere else, as I had no right to the wells. A bullet came, I should judge, within two or three inches of my right ear, striking one man through the arm, and mortally wounding another. These men were in their tents, unoffending.

Q: Were all these twenty-five or forty men shot by the sentries for crossing the dead-line or being near it?

A: Some were across it, and others not. I saw a man shot who was three feet inside the dead-line. I saw one shot on the 10th of July, just the day before the men whom we called the raiders were hung.

Q: Describe the circumstances that led to the men being shot.

A: I do not know, except from the great desire of sentries to get furloughs.

Q: Did you ever hear any order given by the prisoner in reference to firing grape and canister on the prisoners in the stockade?

A: He gave an order; I did not hear it; but there was an order given—

(Interrupted by counsel for the accused:)

Q: What order did you ever hear him give?

A: Captain Wirz planted a range of flags inside the stockade, and gave the order, just inside the gate, "that if a crowd of two hundred (that was the number) should gather in any one spot beyond those flags and near the gate, he would fire grape and canister into them."

Captain Wirz gave this order I was speaking of to the crowd of prisoners around the gate. He merely told them he would fire upon them if they gathered there. I did not hear him give the order to men outside. He warned us that if we gathered there in numbers he would fire upon us.

Q: Then it was not an order, but simply a warning.

A: Yes, sir.

Source: <http://law2.umkc.edu/faculty/project/ftrials/Wirz/WIRZ.HTM>

See Articles: Corporal Punishment; Georgia; Prisoner's Rights.

1867 PRIMARY DOCUMENT

Edwin M. Hale's Treatise on Abortion

Abortion has been practiced since ancient times, but advances in medicine in the 19th century made it safer (relatively speaking; one in six women died) and increased the number of skilled practitioners willing to perform a procedure or prepare a drug. Whether this led to an increase in abortions isn't clear, but abortion opponents believed that it did and supported increasingly stronger laws against it. Hale called for punishing the patient, not just the abortionist.

Great Crime of The Nineteenth Century.

Why Is It Committed?
Who Are the Criminals?
How Shall They Be Detected?
How Shall They Be Punished?

By Edwin M. Hale, M.D.
Chicago: C.S. Halsey, 147 S. Clare St.
—Buffalo, 238 Main Street.

SYMPATHY.—This emotion, so enabling and admirable in most cases, is often perverted from its proper channels, and made to be the cause of crime.

Even the best and purest of physicians cannot look upon the victim of a seduction, or

a rape, without the keenest sympathy. That the best of medical men have been tempted to relieve the woman of the fruits of seduction and violence, is not surprising.

But the sympathies of the medical man, or any other person, should be under the dominion of religious principle. The injunction—"Thou shalt not kill," is as binding here as elsewhere.

Evidently the only consisted rule of action to adopt, is that laid down on a previous page when speaking of the victim of seduction or of violence.

SECTION II.

WHO ARE THE CRIMINALS?

We deem it our duty, as a medical man and a citizen, to point out fearlessly and perspicuously those who are in any way connected, criminally, with this great evil.

Generally they consist of four classes, viz:

The Principals.

Accessories Before the fact.

Accessories To the fact.

Accessories After the fact.

THE PRINCIPALS.

There are generally but two persons in a case of criminal abortion, who are to be considered as principals. In rare cases there may be more. Usually they stand, relatively, as follows:

1. The Mother. That the mother, who carries in her womb her unborn child, should be the chief criminal, is a startling proposition. Many persons will be inclined to disbelieve that such is the case. Those, however, who have investigated the subject, or who have had opportunities for observation, will not dispute the assertion. When it is known that the cases are very rare in which the crime is committed without the consent of the mother; when it is known that the cases are few in which the child is destroyed without her urgent desire; the proposition will not appear to improbable as at first sight. Examine all the inducements to the crime, mentioned heretofore, and it will be found

that the cases are few in which the mother herself does not originate the plea, or act willingly from influences brought to bear on her from other sources.

In either case, she must be considered as one of the principals in the crime.

Even in cases where the husband or other person persuades the mother to its commission, or to allow another person to destroy the fetus, she is still a principal; for in no case need she succumb to influences not extending to actual physical force. The woman is individually responsible for all her acts of immorality.

In the married state, the wife has the moral and legal right to become a mother as often as possible. No law, human or Divine, can compel her to destroy, or permit the destroying of the fruits of conception.

Why then, in this view of the matter, should not the woman be considered the chief criminal, in nearly all cases, except when the abortion was induced on her person, by violence and against her will? The law in this respect, has not been strict enough to meet the demands of justice. It has recognized, in most instances, only the person who destroys the child by drugs, instruments, or some physical force.

In a few instances, it has named the mother, who, by either of the above means, has destroyed the child in her own womb.

In but one instance, (the law of California,) does the law make a principal of the woman on whom the abortion is induced. This should be done in nearly all instances. If the woman is innocent, and the crime was committed against her will, and she was powerless to prevent it, there are many ways in which her innocence could be made to appear.

Physicians are often informed against by one of the guilty parents, causing thereby, a malicious prosecution. Such a law would prevent such persecution.

In fact, she is often more guilty than the person inducing the abortion, for she may, by various improper means, as bribes,

threats, and other inducements, influence the physician or other person to commit the crime, when his better judgment and principle would revolt against it.

I do not hesitate to assert that if the woman be made a principal in most cases of abortion, it would diminish the crime two-thirds, and perhaps to a greater extent, especially in large towns and cities.

2. The Abortionist. Among the most prominent are a class of creatures, of both sexes, known to the law as Abortionists. These people have their corresponding analogies in the Thugs of India, and murderers everywhere, and make it their chief business to destroy, for money, or worse inducements, the innocent and unborn child.

Not only does their loathsome presence poison the moral atmosphere of great cities, but they infest the smaller towns. They even leave their slimy track in the quiet country, and pollute the green fields, the flowery prairies, and the pure forests, where the homes of good men and women should be found.

In the great cities, however, these vampires most abound. Certain streets and localities, not always low and abandoned in their moral surroundings, are selected by these creatures as their habitat. Sometimes their presence is known only by the bad location they occupy, for the simple "Doctor _____," on the sign would indicate no nefarious calling. At other times, the word "Accoucher," is prostituted from its legitimate significance, and means to the abandoned, and sinful, only an "Abortionist." More frequently, they sail under the name of "Astrologist;" the possessor of an "Anatomical Museum;" one who treats "secret diseases," or attends to "private matters."

Female Abortionists, assume the name of "Midwives," "Nurses," "Fortune-tellers," "Madam _____, Female Physician," et cetera, and under these apparently harmless avocations, ply their murderous trade. In the country, the business is managed differently. Hundreds of persons of both sexes, are constantly perambulating the

country, stopping in the smaller towns and villages, who have for their chief means of subsistence, no other means of support than the induction of criminal abortion.

Ostensibly they are "Professors," "Doctors," "Lecturers," etc., advertising to cure all the ills which flesh is heir to; perform wonderful surgical operations; lecture on anatomy, physiology, health, hygiene, phrenology, and various other topics of which they are perfectly ignorant.

In their advertisements, their harangues to the public, their conversations with private visitors, or in their lectures, they are sure to let drop some hint, by which the unprincipled may imply of what their secret business consists.

Follow these miscreants to their private consultation rooms, and you shall see where the most disgraceful scenes are enacted, and where hands and souls are stained by the blood of unborn babes.

Sometimes the vocation of "nurse," which should be a noble and holy calling, is prostituted to the sole purpose of criminal abortion. Such instances have come to the knowledge of medical men, as occurring in this, and other cities. In the instances alluded to, the monthly nurse has intimated to the lying woman, that there is no need of passing through the perils and pains of childbirth again; that in the early months of pregnancy the menses can be safely brought back; that they will instruct them how to accomplish it. By this means the mind of how many woman hitherto pure, may have been poisoned by such false and sinful temptations?

Among those who figure in the list of chief criminals, are the unnatural father, be he husband, seducer, or unlawful companion. Instances are on record, where the father has administered the potion, used an instrument, or resorted to physical force to destroy his unborn offspring.

We have even heard from undoubted evidence, that there have been instances where the mother of the pregnant woman—both

belonging to those circles of society considered as "respectable,"—has, with her own hands, given the drug to cause abortion, and most revolting of all, used upon the person of her daughter, an instrument which caused the death of the fetus.

In the name of humanity, religion, and civilization, is it not time that some serious and determined effort was made by men of the medical, legal, and religious professionals, to extirpate these murderers?

Shall we allow the end of the Nineteenth Century to close upon a scene which will make the devils laugh, and the angels weep?

Can no law be framed, having for its object the prevention and punishment of the crime of abortion; a law so broad in its scope, so perfect in its details, that the principals above named, cannot escape detection, trial, and condign punishment?

It is a hopeful sign to see that the clergy are becoming aroused to a sense of their duty in this respect, and I cordially endorse the remarks of the author of a recent article on this subject, who says: "Quack doctors, irregular practitioners, and the whole race of vagrant female hyenas who will take fetal life for fifty dollars, and gratuitously kill or ruin the credulous wife or "unfortunate," should be treated as pests to be "purified by fire," if necessary. The odor of such a burnt offering would be more grateful than their offenses which smell to Heaven."

To recapitulate; The mother may be said to the chief criminal (a) when the desire for, and the accomplishment of the crime originates within herself, i.e. when she destroys of her own will, by means of drugs or violence, the unborn child, or procures its destruction by others. She may be said to be a chief criminal when she is influenced by others, to the commission of the crime, and allows them to cause by any means the destruction of the child in utero.

Besides the mother, the person who administers, or causes to be administered, any drug, to a pregnant woman, or uses any instrument for the purpose of the destruction of the child, without the consent of the mother, becomes the chief criminal; but if the person giving the drug, or using the instrument, is employed or influenced in any way, by the

mother or others, to the commission of the crime, he or she, becomes a chief criminal.

Source: <http://www.archive.org/details/greatcrimeofnine00hale>

See Articles: Abortion; Religion and Crime, Sociology of; *Eisenstadt v. Baird*; *Griswold v. Connecticut*; *Roe v. Wade*.

1869

PRIMARY DOCUMENT

Article on Jesse James's Bank Robbery

A Confederate guerrilla during the Civil War, Jesse James began his career as a bank and train robber a year after the war ended. Much of the public sympathized with James and the James–Younger gang; the gang's activities transpired largely during Reconstruction, when the harsh treatment of the former Confederacy fueled the rapid romanticizing of the "lost cause" of the south. James's victims were the very wealthy, for whom the financially struggling common people had little affection.

The Bank Robbery At Gallatin, Mo.

The Cashier Shot and Killed.

We learned yesterday that John W. Streets, the cashier of the Davis county Savings Bank, at Gallatin, was shot and killed last Monday. The following are the particulars as told to us:

Two men rode up to the banking house and getting off their horses, one of them went in and asked Mr. Sheets to change a one hundred dollar bill. While doing so the other man went in and said:

"If you will write out a receipt, I will pay you that bill."

Mr. Sheets sat down to do so, and while he was writing, the man drew a revolver and shot him twice—once in the breast, and once

through the head. The unfortunate banker fell from his chair dead.

The ruffians then turned upon Mr. McDonald, the clerk, and fired upon him twice, one of the shots taking effect in the fleshy part of one of his arms. At time of the shooting, one of them said with an oath, that "Sheets and Cox had been the cause of the death of his brother, Bill Anderson, and that he was bound to have revenge."

The two then robbed the bank of all the money in the outside drawer, and mounting their horses deliberately rode away.

As soon as they had left the bank the alarm was given, and a number of the citizens started in pursuit. The men were overtaken a short distance from town, shots were exchanged, and in the running fight, one of the rascals was hit. He fell from his horse, and the animal galloped off free. The man's companion came to his rescue, and assisting him to mount behind himself, the two made their escape.

There is a boldness and recklessness about this robbery and murder that is almost beyond belief...

Sources: Kansas City Daily Journal of Commerce (December 9, 1869);

and

<http://www.pbs.org/wgbh/americanexperience/features/primary-resources/james-newspapers>

See Articles: Frontier Crime; James, Jesse; Missouri; Robbery, History of.

1871 PRIMARY DOCUMENT

Excerpt From Testimony in Congressional Hearings on the Ku Klux Klan

The first Klan was a white supremacist vigilante group that formed during Reconstruction to

provide anonymity to its members while targeting freed blacks, Republicans (both black and white), and northerners. After five years of Klan activity, the federal government passed a series of laws from 1870 to 1871 to criminalize their activities, provide federal oversight of elections, turn many Klan tactics into federal crimes, and ban suspected Klan allies from juries in Klan trials.

Atlanta, Georgia, October 21.

MARIA CARTER (colored) sworn and examined.

By the Chairman:

Question. How old are you, where were you born, and where do you now live?

Answer. I will be twenty-eight years old on the 4th day of next March: I was born in South Carolina; and I live in Haralson County now.

Question. Are you married or single?

Answer. I am married.

Question. What is your husband's name?

Answer. Jasper Carter.

Question. Where were you on the night that John Walthall was shot?

Answer. In my house, next to his house; not more than one hundred yards from his house.

Question. Did any persons come to your house that night?

Answer. Yes, sir, lots of them; I expect about forty or fifty of them.

Question. What did they do at your house?

Answer. They just came there and called; we did not get up when they first called. We heard them talking as they got over the fence. They came hollering and knocking at the door, and they scared my husband so bad he could not speak when they first came. I answered them. They hollered, "Open the door." I said, "Yes, sir." They were at the other door, and they said, "Kindle a light." My husband went to kindle a light, and they busted both doors open and ran in—two in one door and two in the other. I heard the others coming on behind them, jumping over the fence in the yard. One put his gun down to him and said, "Is this John Walthall?" They had been hunting him a long time. They had gone to my brother-in-

law's hunting him, and had whipped one of my sisters-in-law powerfully and two more men on account of him. They said they were going to kill him when they got hold of him. They asked my husband if he was John Walthall. He was so scared he could not say anything. I said, "No." I never got up at all. They asked where he was, and we told them he was up to the next house, they jerked my husband up and said that he had to go up there. I heard them up there hollering "Open the door," and I heard them break the door down. While they were talking about our house, just before they broke open our door, I heard a chair fall over in John Walthall's house. He raised a plank then and tried to get under the house. A parcel of them ran ahead and broke the door down and jerked his wife out of the bed. I did not see them, for I was afraid to go out of doors. They knocked his wife about powerfully. I heard them cursing her. She commenced hollering, and I heard some of them say, "God damn her, shoot her." They struck her over the head with a pistol. The house looked next morning as if somebody had been killing hogs there. Some of them said "Fetch a light here, quick;" and some of them said to her, "Hold a light." They said she held it, and they put their guns down on him and shot him. I heard him holler, and some of them said, "Pull him out, pull him out." When they pulled him out the hole was too small, and I heard them jerk a plank part off the house and I heard it fly back. At that time four men came in my house and drew a gun on me; I was sitting in my bed and the baby was yelling. They asked, "Where is John Walthall?" I said, "Them folks have got him." They said, "What folks?" I said, "Them folks up there." They came in and out all the time. I heard John holler when they commenced whipping him. They said, "Don't holler, or we'll kill you in a minute." I undertook to try and count, but they scared me so bad that I stopped counting; but I think they hit him about three hundred licks after they shot him. I heard them clear down to our house ask him if he felt like sleeping with some more white women; and they said, "You steal, too, God damn you." John said, "No, sir," They said, "Hush your

mouth, God damn your eyes, you do steal." I heard them talking, but that was all I heard plain. They beat him powerfully. She said they made her put her arms around his neck and then they whipped them both together. I saw where they struck her head with a pistol and bumped her head against the house, and the blood is there yet. They asked me where my husband's gun was; I said he had no gun, and they said I was a damned liar. One of them had a sort of gown on, and he put his gun in my face and I pushed it up. The other said, "Don't you shoot her." He then went and looked in a trunk among the things. I allowed they were hunting for a pistol. My husband had had one, but he sold it. Another said, "Let's go away from here." They brought in old Uncle Charlie and sat him down there. They had a light at the time, and I got to see some of them good. I knew two of them, but the others I could not tell. There was a very large light in the house, and they went to the fire and I saw them. They came there at about 12 o'clock and staid there until 1. They went on back to old Uncle Charley's then, to whip his girls and his wife. They did not whip her any to hurt her at all. They jabbed me on the head with a gun, and I heard the trigger pop. It scared me and I throwed my hand up. He put it back again, and I pushed it away again.

Question. How old was your baby?

Answer. Not quite three weeks old.

Question. You were still in bed?

Answer. Yes, sir; I never got up at all.

Question. Did they interrupt, your husband in any way?

Answer. Yes, sir; they whipped him mightily; I do not know how much. They took him away up the road, over a quarter, I expect. I saw the blood running down when he came back. Old Uncle Charley was in there. They did not carry him back home. They said, "Old man, you don't steal." He said, "No." They sat him down and said to him, "You just stay here." Just as my husband got back to one door and stepped in, three men came in the other door. They left a man at John's house while they were ripping around. As they came, back by the house they said, "By God, goodbye, hallelujah!" I was scared nearly to

death, and my husband tried to keep it hid from me. I asked him if he had been whipped much. He said, "No." I saw his clothes were bloody, and the next morning they stuck to him, and his shoulder t almost like jelly.

Question. Did you know this man who drew his gun on you?

Answer. Yes, sir.

Question. Who was he?

Answer. Mr. Much.

Question. Where does he live?

Answer. I reckon about three miles off. I was satisfied I knew him and Mr. Hooker.

Question. Were they considered men of standing and property in that country?

Answer. Yes, sir; Mr. Finch is married into a pretty well-off family. He is a good liver, but he is not well off himself.

Question. How is it with Mr. Booker?

Answer. I do not know so much about him. He is not very well off.

Question. How with the Monroes?

Answer. They are pretty well-off folks, about as well off as there are in Haralson. They have a mill.

By Mr. Bayard:

Question. You said they had been looking a long time for John Walthall?

Answer. Yes, sir.

Question. Had they been charging John with sleeping with white women?

Answer. Yes, sir; and the people where he staid had charged him with it. He had been charged with it ever since the second year after I came to Haralson. I have been there four years this coming Christmas.

Question. That was the cause of their going after him and making this disturbance?

Answer. Yes, sir; that was it. We all knew he was warned to leave them long before he was married. His wife did not know anything about it. When he first came there he was staying among some white women down there.

Question. Do you mean living with them and sleeping with them?

Answer. He was staying in the house where they were.

Question. White women?

Answer. Yes, sir.

Question. Were they women of bad character?

Answer. Yes, sir; worst kind.

Question. What were their names?

Answer. They were named Keyes.

Question. How many were there?

Answer. There were four sisters of them, and one of them was old man Martin's wife.

Question. Were they low white people?

Answer. Yes, sir.

Question. Had John lived with them for a long while?

Answer. Yes, sir. They had threatened him and been there after him. They had got gone there several times to run them off. My house was not very far from them, and I heard them down there throwing rocks.

Question. Was it well known among you that John had been living with these low white women?

Answer. Yes, sir.

Question. Did he keep it up after he was married?

Answer. No, sir; he quit before he was married. I heard that a white woman said he came along there several times last year and said he could not get rid of them to save his life.

Question. Did John go with any other white women?

Answer. No, sir; not that I know of.

Question. Was he accused by the Ku-Klux of going with any of them?

Answer. They did not tell him right down their names. I heard them say, "Do you 'feel like sleeping with any more white women?'" and I knew who they were.

By the Chairman:

Question. These women, you say, were a low-down class of persons?

Answer. Yes, sir; not counted at all.

Question. Did white men associate with them?

Answer. It was said they did.

Question. Did respectable white men go there?

Answer. Some of them did. Mr. Stokes did before he went to Texas, and several of the others around there. I do not know many men

in Georgia any way; I have not been about much. I have heard a heap of names of those who used to go there. I came by there one night, and I saw three men there myself.

Question. You say John Walthall had been going there a good while?

Answer. Yes, sir; that is what they say.

Question. How long had he quit before they killed him?

Answer. A year before last, a while before Christmas. He was still staying at old man Martin's. I staid last year close to Carroll, and when I came back he had quit.

Question. Did he go with them any more after he married?

Answer. No, sir; he staid with his wife all the time. He lived next to me.

Question. How long had he been married before he was killed?

Answer. They married six weeks before Christmas, and he was killed on the 22d of April.

Source: U.S. Congress. *Testimony Taken by the Joint Select Committee to Inquire Into the Condition of Affairs in the Late Insurrectionary States.* Georgia, Vol. I. Washington, DC: Government Printing Office, 1872.
and
<http://historymatters.gmu.edu/d/6225>

See Articles: Georgia; Ku Klux Klan; Race-Based Crimes; Racism.

1874 PRIMARY DOCUMENT

Final Ransom Note in the Charley Ross Kidnapping

In 1874, 4-year-old Charley Ross and his 6-year-old brother Walter were enticed into a horse-drawn carriage by the promise of candy and fireworks. Soon after Walter was dropped off unharmed, ransom notes for Charley were sent

to his father Christian, including a demand of \$20,000—roughly the equivalent of \$400,000 today. Though the Ross's lived in a wealthy neighborhood, they had fallen into deep debt in the 1873 depression. The kidnapping and subsequent involvement of the Pinkertons became the first widely publicized ransom case in the United States, but Charley was never found.

On the 7th of November the following reply was received, dated Philadelphia:

[No. 23.]

PHILA., Nov 6.

Mr. Ros: we told you in the last positively we would not write you any more. This dozing about puts us to no small amount of trouble we had left phila for New York thinking you were ready to close up the business. We told you positively procrastination is dangerous. Had we accomplished what we have been fishing for the last three months your child would now have been dead but we have not yet caught the fish we wanted. Yours is but a small item compared with something else. Walter said you owned the two new houses right opposite you or we should never troubled you. Mr. Ros you have asked to keep this negotiation a secret between ourselves it is a wise policy in your doings not that we fear being trapped in our own game. This is positively the last from us. If you are sincere you would be anxious to settle this business if you regard the life of your child. We mean to fulfill every promise we made you in good faith. The result depends entirely with yourself whom you appoint to transact this business for you we want at least two days notice before you come to New York for we may be 500 miles off and we ask for time to get there you can say Tuesday Nov. 10. Saul of Tarsus. (choose your own name say I will be stopping so and so all day. Do not leave the hotel wherever you may be stopping for one minute during the day). This thing must

come and shall come to a close in a few days.

In this, the last letter received from the abductors, they hint that they have been trying for three months to steal another child, and had they succeeded my child would have been killed, and a ransom demanded for their new victim, compared with which the twenty thousand required from me would be an insignificant sum. They also state that Walter misled them regarding my circumstances by telling them I owned two new houses which had been built opposite to my residence. Tuesday, November 10th, is fixed as the day on which my representative is asked to be in New York to pay over the money, and the address of the personal is changed to "Saul of Tarsus."

More than four months had now passed since CHARLEY had been stolen. The police and detective agencies, with all their unremitted and almost superhuman efforts, had failed to find the thieves, or get a clue to the place where they had hidden their victim. Twenty three letters written and mailed in different places had been received from the abductors, bidding defiance to the best detective skill. Contrary to our expectation and hope, the abductors had not made a single error or the smallest slip, by which they could be traced; but with a shrewdness and cunning far above ordinary criminals, they had successfully evaded pursuit, and baffled every effort at discovery.

Four months were these of acute suffering to my family and friends; and now I was so ill that for a time my life was despaired of, and it was thought by my medical attendants that nothing but the speedy return of CHARLEY could restore my broken mind and body—that the load of trouble which was crushing me must be removed in order to a mental and physical restoration. The want of success in the past led to little hope of recovery of CHARLEY by the same appliances in the immediate present. Besides, Mrs. Ross was weighed down with the accumulation of trouble; and thus, in the double hope of saving my life and recovering CHARLEY, she consented to have the child restored by paying the ran-

som. This her brothers determined to do in the way pointed out by the abductors, paying them the money and taking the risk of getting the child afterwards. As the authorities both here and in New York knew of the change of address of the personals from "John" to "Saul of Tarsus," they were informed that it was the purpose of Mrs. Ross's brothers to redeem the child by paying the ransom which the abductors demanded, and on the 13th of November, Superintendent Walling wrote as follows to Captain Heins:

Dear Sir. — Please see Mr. Lewis and say to him that I think it dangerous for parties to meet relative to any negotiations for the child, with a large amount of money, unless they have some officers within call, as the parties might be disguised, and in case the villains were to fail in making terms, they might take desperate chances to obtain the money.

Geo. W. Walling, Superintendent.

Source: Ross, Christian K. *The Father's Story of Charley Ross: A Full and Complete Account of His Abduction, With Incidents of the Search for His Recovery*. Philadelphia: Published for the Author, 1878.

See Articles: Kidnapping; Lindbergh Law; Philadelphia, Pennsylvania.

1875 PRIMARY DOCUMENT

***Chicago Daily Tribune* Story on the John C. Colt Murder Trial**

The brother of firearm manufacturer Samuel, John Colt spent time as a bookkeeper, teacher, engineer, and riverboat gambler before finding success as a

lecturer and author on the subject of double-entry bookkeeping. When a disagreement with printer Samuel Adams over the price of printing Colt's textbook turned violent, Colt struck Adams dead. He claimed self-defense, but was found guilty and died in a fire the day his execution was scheduled; conspiracy theories claimed that he escaped.

**JOHN C. COLT: Did the Slayer of Adams
Escape the Gallows? The Marvelous Story
Put Forth by E B T**

JOHN C. COLT.

Did the Slayer of Adams Escape the
Gallows?

The Marvelous Story Recently Put Forth
by the Paris "Figaro."

Statement by a Gentleman Connected with
the New York Press at the Time.

There Can Be No Doubt that Colt
Committed Suicide.

To the Editor of the *Chicago Tribune*:

CHICAGO, Dec. 1.—The strange "taking-off" of John C. Colt, who murdered Adams, a bookbinder, in a room corner of Broadway and Chambers street, New York, over thirty years ago, has excited the interest of the public at different periods ever since it occurred. In brief,

THE FACTS WERE THESE:

John C. Colt was the author of a system of bookkeeping, living in New York, and he gave his work into the hands of one Adams to bind in large quantities. One Saturday, Adams called at Colt's room, on Broadway, and urgently pressed the payment of his bill. Colt was living in rather a loose way, with a mistress, and had not the means to defray the amount presented. Colt disputed the bill, angry words ensued, and from this they came to blows. Colt, in his confession after his conviction, alleged that they fell on the floor together, and, as Adams had him in a tight place, gripping him in a tender part, he

reached a hatchet, lying on the floor, near at hand, and dealt a blow WHICH DID THE BUSINESS for his assailant. Alarmed at what he had done, he cast about to see what he had better do to conceal what he now, in a cooler moment, deemed a crime of horrid magnitude. He conceived the idea of packing the body in a dry goods box, in his room; which he did. After spending the afternoon in wiping up the bloody floor, he went out at nightfall, and walked in the park, near the City Hall, meditating what his next course should be. He says, "At one time I resolved to go to my brother Sam and tell him all about it; but this I was afraid to do." His brother Samuel boarded at that time at the Astor House, and had not then secured a patent for the six-shooter pistol (of which, by the way, he was not the inventor, but only the one who utilized the discovery or another), but was engaged in partnership with a Mr. Robinson, in a ship-news enterprise and merchants' reading-room near Wall Street.

Adams was a married man and had a family. His absence from his business and home soon created an anxious search for his whereabouts; but no crew for a week was found, until the box in which Colt had placed his victim, packed in salt,

**WAS TRACED TO THE SHIP
KALAMAZOO,**

lying at or near the foot of Wall street. The discovery was made by tracing the box through the carman who took it from Colt's rooms where he taught bookkeeping. The box was not "conveyed to New Orleans," as stated in the following narrative. The writer of this sketch was at that time on the editorial staff of the old *New York Times*, a Democratic paper then, and remembers very well the discovery, made on a Sunday evening, just eight days from the Saturday Adams was murdered. He was also engaged in assisting the reporters at the trial before Judge Kout.

No murder committed in New York in those days—not even the trial of Richard P. Robinson for the killing of Helen Hewett, in a house of ill-fame in Thompson street—created so great and wide-spread a sensation as that of Adams by Colt. Sheriff Gultek, after

Colt's conviction, received \$1,000 from an anonymous source to aid in Colt's escape. This he handed over to the Mayor.

A plan was set on foot to enable Colt to

ESCAPE THE GALLOWS,

after Gov. Seward refused his pardon. It was to set fire to the Tombs, in which he was incarcerated, and, by disguising him as a fireman, he would easily escape. But this, ? most likely to the Sheriff's integrity, failed.

It was said, at the time, that a plan of legal acquittal was entertained, to be brought about in this way: It was to appeal from Gov. Seward's refusal to a Judge of the Supreme Court, and by bringing the matter before him, got an order to delay the execution ten hours, while it was being argued, and, if the result was not favorable, then to bribe the steamer to run on a bar in the Hudson, and thus let the time go by at which the execution was to take place. There was no telegraph in those days.

The Rev. Dr. Anthon, Rector of St. Mark's in the Bowery, was Colt's spiritual adviser, and he married Colt to his mistress in the cell the day before the execution was to take place. Colt professed repentance, and the clergyman called next morning to have a religious service with the doomed man. The Sheriff unlocked the door of Colt's cell, and the Doctor entered first. But he shrank back in horror at the scene which presented itself! There Colt lay, stiff and stark, with a

KNIFE STICKING IN HIS HEART.

The Doctor turned and came out and burst into tears.

The day appointed for the execution was dark and dreary in November. Crowds gathered at the street-corners in the lower part of the city, and it was not generally known that Colt had robbed the gallows of its victim. Soon the City Hall bell boomed out an alarm of fire, and, sure enough, it broke out in the Tombs Prison. From this circumstance arose the story which is repeated below, and probably nine out of ten of the old inhabitants known to the writer believed that Colt did escape in the guise of a fireman.

In a conversation with Mr. Robinson, Samuel Colt's partner, who died who or three years since, he informed me of all the circumstances

which came under his own personal observation. He said, "There is

NOT A WORD OF TRUTH

about Colt's being alive. We, continued he, "had made an arrangement with Dr. — and Dr. — [leading physicians in the city] to be at the Shakespeare Hotel, on Duane street [a few blocks from the prison], with a galvanic battery, bath, etc., to resuscitate the body, which we were to secure immediately that the surgeon should pronounce him dead. But Colt killed himself, and there was an end of the matter. He was buried in St. Mark's ground, on Tenth street, near the Bowery, where he now lies."

This is written to explain the following letter from "Grace Greenwood" to the New York Times of Nov. 28, dated Paris, Nov. 7, 1875.

A STRANGE AND DISTORTED STORY.

Apropos of murder and Figaro, I am tempted to send you, for the benefit of your New York readers, a translation of a most astonishing and sensational story, which appeared here a few mornings since—of course, in the veracious journal of which I have spoken. Hartford papers will please copy:

"At Batignolles, Rue le Mercier, a man who once had a criminal celebrity in New York, United States, died the other day. After many vicissitudes, he had come to our great city to hide and to be forgotten. This man was Charles Colt, father of the inventor of 'Colt's revolver.' In 1847 he lived in New York, on the route to Harlem, in a frame house surrounded by a garden, and separated from all other habitations. He had with him there a mistress, with whom he often quarreled; and one evening, in a moment of anger, he killed this woman, by striking her a blow on the temple with a carafe. In presence of the corpse, the unhappy man was forced to consider how most speedily to rid himself of it. An internal thought crossed his mind; he cut the body in pieces, and packed it in a case, salting it very strongly. Then he placed this case in a second, and shipped the dreadful package to New Orleans to a false address, giving himself also a fictitious name as the sender. He

had, moreover, taken the precaution to keep the head, which he had interred in the garden of the house. Arrived at its destination, the case could not, of course, be claimed, as the address was invented, and after a little dulzy was sent back to New York, where it was opened, and the corpse discovered and identified by a peculiar mark on the neck. The buried head was found in the garden, and as suspicion pointed to Colt he was arrested, tried, and condemned to be hung. It is needless to say that the friends of the criminal took all the steps possible to clear him, but without success. On the evening before the day on which he was to be executed, a fire broke out in the interior of the Tombs, that celebrated prison of the Egyptian style in New York; the firemen penetrated into the jail, where one of them, killed by the family of Colt, carried to him a fireman's dress, by the aid of which he escaped in the tumult. When his flight was discovered it was too late; he had left New York and was lost in the American deserts. He went afterwards to Utah, to San Francisco, to Mexico, and from there to France, where he lived ignored in Paris, by the name of Kavanagh, which was that of his mother. Before his death, Colt, who was a Protestant, sent for a pastor, and, in his presence and before one of his neighbors, who has given us these details, revealed the truth concerning his life and his identity."

Mark the — touches, the mistress, the carafe, the birth-mark, the head buried in the garden. Set absurd as is this story, needlessly false and wildly improbable in most of its circumstances and details. It will remind many of the strange rumors which were afloat in New York after the suicide of young Colt, which occurred, I believe, on the eve of the execution to which he had been condemned for the murder of, not his mistress, but his creditor—rumors of the criminal having escaped through the connivance of certain under-officers of the Tombs, and of the body of another prisoner who had opportunely died in the Hospital, having been substituted for him. It also reminds me of a story which was told me in Hartford some fifteen years ago by a relative of mine, and a neighbor of

the Colt family. It was suggested by our meeting on the streets old Mr. Colt bowed with years and sorrows. My relative startled me by expressing the belief that the unfortunate younger son of this vulnerable man was not dead, but then living in Europe, and told me that an old acquaintance of the homicide—who, by the way, had never believed him guilty of deliberate murder—had confided to him (my relative) a strange fact. Being in Paris a short time before, he had come suddenly upon his old friend. He recognized him instantly and perfectly and exclaimed, "My God, Colt, is this you?" He said the poor fellow, thrown off his guard did not for the moment attempt to deny his identity, and even smiled, then turned pale as death, stammered out "You are mistaken in the person, sir," and hurried away.

I certainly do not endorse this story, but it was told to me in perfect good faith. Certainly it is strange that the whirlpool of time, which has since swallowed so many horrible crimes and mysterious events, should cast up from its depths upon this distant shore this ghastly and fearfully distorted tragedy of the New World.

Source: "John C. Colt: Did the Slayer of Adams Escape the Gallows? The Marvelous Story Put Forth by E B T." *Chicago Daily Tribune* (December 1, 1875).

See Articles: Chicago, Illinois; Executions; Murder, History of.

1875 PRIMARY DOCUMENT

N. A. Jennings Tells of the Texas Rangers

The Texas Rangers were formally established in 1835, functioning as both a law enforcement agency and a paramilitary force as they developed over time. When 18-year-old Napoleon Augustus

Jennings joined the Rangers in 1874, they had just been reinstituted after Reconstruction forcibly disbanded them. The sparsely settled state was home to numerous outlaws, American and Mexican alike. In the popular imagination, the Rangers were the only ones able to impose law on the lawless.

While we were encamped at a place called Las Eucias, which we reached on June 5th, a Mexican brought the information to Captain McNelly that a party of raiders was crossing into Texas, below Brownsville, and going in the direction of La Para. Our camp was about twenty-five miles from Brownsville. Many Rangers were out on scouts at the time we received the information and but seventeen of the boys were in camp. This was on June 11th. McNelly at once ordered us to saddle up, and within fifteen minutes we were trotting after him and a Mexican guide over the prairie. Lieutenant Wright was in the party. So was Lieutenant Robinson.

We camped that night by a little, half-dried-up creek, and early the next morning a Mexican scout came in and said he had discovered the trail of the raiders. We ate a hurried breakfast and started out after the Mexican. In a short time we captured an advance scout of the raiders—one Rafael Salinas—and, by threatening him with instant death if he did not divulge what he knew of the robbers, we obtained much valuable information from him.

A little later we managed to catch another of the raiders and his story agreed with the one the first man had told us. This second scout said that the raiders had turned the cattle loose, as the men had become frightened when the first scout failed to return.

It was three days after that before we managed to head off the raiders. They had fourteen men and we had eighteen, including Captain McNelly. We found them with the cattle on a little bit of wooded rising ground surrounded by a swamp called Laguna Madre. The water was eighteen or twenty inches deep in it.

They were drawn up in line and were evidently expecting us. When they saw us, they drew off behind the rising ground and fired at

a range of about one hundred and fifty yards with carbines.

“Boys,” said Captain McNelly, “the only way we can get at those thieves is to cross through the mud of the swamp and ride them down. I don’t think they can shoot well enough to hit any of us, but we’ll have to risk that. Don’t fire at them until you’re sure of killing every time.”

Following the Captain, we started across the swamp for the little hill, the Mexican marauders continually firing at us. When we got near the hill, the Captain put spurs to his horse and we followed him with a yell as we flew through the mud and up the hill. The Mexicans answered our yell with one of defiance and a volley. At first, we thought they had not done any execution, but we soon saw they had aimed only too well, for three of our horses went crashing to the ground, one after the other, throwing their riders over their heads. Lieutenant Robinson’s horse was one of those shot, but Robinson continued to fight on foot.

Then came a single shot from the Mexicans, and one of the Rangers—L. S. Smith, popularly known in the troop as “Sonny”—threw his arms above his head, reeled in his saddle for a moment and fell headlong to the ground. We all saw him fall and the sight roused a fury in our hearts that boded ill for the men in front of us.

The Mexicans fired at us again, but this time did no harm. The next instant we were upon them, shooting and yelling like demons. They stood their ground for a moment only; then turned and fled. As they went they leaned forward on their horses’ necks and fired back at us, but they were demoralized by the fury of our onslaught and could hit nothing.

Crack! bang! bang! went our revolvers, and at nearly every shot one of the raiders went tumbling from his saddle. We had ridden hard to get to that place and our horses were played out, but we never thought of giving up the chase on that account. The remembrance of poor young Smith’s face, as he threw up his hands and reeled from his horse, was too fresh in our minds for us to think of anything but revenge.

Some of our enemies were well mounted, but even these we gradually overhauled. We flew over the prairie at a killing pace, intent only on avenging our comrade's death. When we finally did halt, our horses were ready to drop from exhaustion; but the work had been done—every man of the raiders but one was dead. Some of them fought so desperately that even when dismounted and wounded four or five times they continued to shoot at us. Lieutenant Wright, during the running fight, killed two men with one shot from his revolver. The men were riding on one horse when he killed them and both were shooting back at him.

The leader of the raiders, Espinosa, was thrown from his horse early in the fight. McNelly was after him and as soon as he saw Espinosa fall he, too, sprang to the ground. Espinosa jumped into a "hog wallow" in the prairie and McNelly took shelter in another one. Then they fought a duel. At last McNelly played a trick on the Mexican. The Captain had a carbine and a six-shooter. He aimed his carbine carefully at the top of Espinosa's hog wallow and then fired his pistol in the air. Espinosa raised his head, and the next instant a bullet from McNelly's carbine had passed through it and the Mexican bandit was dead.

Espinosa was the most famous of the raiders on the Rio Grande and one of the head men under the Mexican guerilla chief, Cortina. Cortina was a Mexican general, and at the head of all the cattle raiding. He had a contract to deliver in Cuba six hundred head of Texas cattle every week. About three thousand robbers were under him, and he was virtually the ruler of the Mexican border.

When we rode back to the hill where we first met the raiders, we discovered that we had killed only thirteen of them. The fourteenth was terribly wounded. His name was Mario Olguine, nicknamed "Aboja." He was known to the Mexicans as Aboja (the Needle) because he had such a quiet way of slipping into ranch houses, on raids, and murdering the inmates while they slept. Aboja was sent to jail, but died there, after lingering several weeks. We recovered 265 stolen cattle after the fight. We procured a wagon and took the body of young Smith to Brownsville. The next

day the bodies of the thirteen dead Mexicans were brought to Brownsville and laid out in the plaza. Nearly the entire population of Matamoras, the Mexican town immediately across the Rio Grande from Brownsville, came over to see their dead countrymen. The Mexicans were very angry, and we heard many threats that Cortina would come across with his men and kill us all. McNelly sent back word to Cortina that he would wait for him and his men. Cortina's bandits outnumbered the Rangers and the United States forces at Fort Brown about ten to one at that time.

We gave Smith a fine military funeral. The Mexican raiders were all buried in one trench. The Mexican inhabitants of the town stood in their doorways and scowled at us whenever we passed, but they were afraid to express their hatred openly. They contented themselves with predicting that Cortina would come over and kill us. Had they but known it, one of our men, Sergeant George Hall, a cousin of McNelly's, was at that very time with Cortina, acting as a spy for us. Hall was on Cortina's boat, waiting with him for the cattle to ship to Havana. In the records of the United States Government at Washington there is doubtless a most interesting report which Hall made to the Federal authorities, for General Grant, who was President at the time, sent for Hall and personally received his report.

Grant was greatly interested in Cortina's movements, and it was said among those who knew how matters stood on the border and in Washington, that the President would have been glad to have a war break out between Mexico and the United States. Of that I will speak more fully in another place...

At the time of which I write, Matamoras was full of Mexican soldiers, and Cortina had put the place under martial rule. No person was allowed on the streets after sunset, except by special permit; that is, no Mexican was allowed on the streets. For some reason best known to Cortina, Americans were not included in the rule, and the Mexican sentries had orders to pass Americans. The Rangers were not slow to take advantage of this state of affairs, and we paid frequent visits to

Matamoras after nightfall. We went there for two reasons: to have fun, and to carry out a set policy of terrorizing the Mexicans at every opportunity. Captain McNelly assumed that the more we were feared, the easier would be our work of subduing the Mexican raiders; so it was tacitly understood that we were to gain a reputation as fire-eating, quarrelsome dare-devils as quickly as possible, and to let no opportunity go unimproved to assert ourselves and override the "Greasers." Perhaps everyone has more or less of the bully inherent in his make-up, for certain it is that we enjoyed this work hugely.

"Each Ranger was a little standing army in himself," was the way Lieutenant Wright put it to me, speaking, long afterward, of those experiences. The Mexicans were afraid of us, collectively and individually, and added to the fear was a bitter hatred.

Half a dozen of the boys would leave camp after dark and make their way over the river to Matamoras by way of the ferry. If we could find a fandango, or Mexican dance, going on, we would enter the dancing-hall and break up the festivities by shooting out the lights. This would naturally result in much confusion and, added to the reports of our revolvers, would be the shrill screaming of women and the cursing of angry Mexicans. Soldiers would come running from all directions. We would then fire a few more shots in the air and make off for the ferry, as fast as we could go.

Usually, at such times, we would be followed—at a safe distance—by a company or two of soldiers. Sometimes we would fire back, over their heads, and sometimes they would shoot at us; but we always got back safely to the Texas side. When we reached Brownsville, we would hunt up another *fandango* there were always some of these dances going on every night—and proceed, as in Matamoras, to break it up.

The news of our big fight with the raiders reached everyone's ears, and none was so bold as to attempt to resist our outrages upon the peace and dignity of the community, for such they undoubtedly were. But we accomplished our purpose. In a few weeks we were feared

as men were never before feared on that border, and, had we given the opportunity, we should undoubtedly have been exterminated by the Mexicans, but there was "method in our madness," and we never gave them the chance to get the better of us.

Sources: Jennings, N. A. *A Texas Ranger*. New York: Scribners, 1899;
and
<http://historymatters.gmu.edu/d/6534>

See Articles: Texas; Texas Rangers.

1875 PRIMARY DOCUMENT

Cole Younger's Account of the 1875 Northfield, Minnesota, Bank Robbery

A Confederate guerilla soldier who served with Jesse James, Cole Younger was the eldest of the four Younger brothers. Shortly after the war, they began robbing banks, trains, and stagecoaches with Frank and Jesse James and others. The James-Younger Gang dissolved after 10 years due to the Younger brothers' capture after the attempted robbery of the First National Bank of Northfield, recounted here. The James brothers escaped, but the heyday of the gang was over.

"In telling the story of the Northfield bank robbery and its frightful results I have only to say that there is no heroism in outlawry, and that the man who sows is sure to reap. After Lee surrendered I tried my best to live at peace with the world and earn a livelihood. I'd been made a guerrilla by a provocation that few men could have resisted. My father had been cruelly murdered, my mother had been hounded to death, my entire family had been tormented and all my relatives plundered and imprisoned.

"From the mass of rubbish that has been written about the guerrilla there is little surprise that the popular conception of him should be a fiendish, bloodthirsty wretch.

"Yet he was in many cases, if not in most, a man who had been born to better things and who was made what he was by such outrages as Osceola, Palmyra and by a hundred raids in less famous but not less infamous, that were made by Kansas into Missouri during the war.

"When the war ceased those of the guerrillas who were not hung or shot or pursued by posses till they found the hand of man turned against them at every step, settled down to become good citizens in the peaceful walks of life, and the survivors of Quantrell's band may be pardoned, in view of the black paint that has been devoted to them, in calling attention to the fact that of the members of Quantrell's band who have since been entrusted with public place, not one has ever betrayed his trust.

"As for myself and brothers I wish to emphasize that we made an honest attempt to return to normal life at the close of the war, and had we been permitted to do so the name of Younger would never have been connected with the crimes that were committed in the period immediately following the war.

"That my life was good or clean I do not assert. But such as it was, it was forced upon me by conditions over which I had no control. Before final judgment is passed upon the men of my kind who were with me in those days I ask that the fact be considered that we were born in days when hatred was the rule and reared among scenes of violence.

"But I have been accused of many crimes of which I have not been guilty, and I am willing to take my oath that the crimes that were charged against me in Missouri were not mine. Never in all my life had I anything to do with any of the bank robberies in the state of Missouri which had been charged against myself and brothers.

"In the fall of 1868 my brothers, Jim and Bob, went with me to Texas. The next two or three years we spent in an honest life, my sister joining us and keeping house for us at Syene, Dallas County. He and Bob sang in the church choir. At that time Bob, who was only

17 fell in love with one of the young ladies in the village.

"I went down to Louisiana, and the story was told that I killed five men and shot five others because I had been robbed by a lot of crooked cattlemen. There is just this much truth about this incident: There was a crooked race, with me as the victim. After the race I fought a duel, but not over the race.

"The duel was forced upon me by a man named Captain James White. He circulated a scandalous tale about the young woman Bob was in love with. I sent word to him that he would have to apologize or fight. After the race I referred to White and I went to a neighboring plantation and fought it out. At the first shot his right arm was shattered at the shoulder. When he thought he was dying he apologized and admitted that he had circulated the story for the purpose of forcing a fight upon me.

"It was about this time that the Kansas City fair was robbed. This was charged against the Younger brothers, although not one of us had anything to do with it. Bob felt so keenly the notoriety that resulted from my duel and from the stories of the Kansas City robbery that he left Dallas, and later Jim and I followed him. About this time my brother John, who was only 14 years old when the war closed, was forced into a quarrel and murdered as wantonly as a man was ever murdered in the history of the west.

"When I was on the Pacific slope Missouri adopted the famous Drake constitution, which prohibited Confederate soldiers and sympathizers from practicing any profession, preaching the gospel or doing many other things under a penalty of a fine of not less than \$500 or imprisonment for not less than six months. One section of this constitution gave amnesty to Union soldiers for all they had done after January 1, 1861, but held Confederates responsible for what they had done either as citizens or soldiers.

"The result of this was the persecution of all men who were not friendly with the carpet-bag administration following the war and there was no mercy shown to any of them. After a few days of seeing my friends and

old comrades hounded and imprisoned I saw there was nothing left for me to do but gather together with those that were left and do the best we could.

"In passing swiftly over the scenes of violence in which we took part, I will take up the Northfield case by saying that we had decided to find a good bank, make a big haul, get away with the money, leave the country and start life anew in some foreign land.

"We were told that General Benjamin F. Butler had a big lot of money in the First National bank at Northfield, and that A.A. Ames, son-in-law of Butler, who had been a carpet-bag governor of Mississippi after the war, had a lot there also. We were not very friendly to Butler because of his treatment of Southerners during the war, and accordingly decided to make a raid on the Northfield bank.

"My brothers, Jim and Bob, Clell Miller, Bill Chadwell and three men named Pitts, Woods and Howard, were those who decided to take up the expedition. This was in the middle of August, and we spent a week in Minneapolis picking up what information we could about Northfield and the bank and playing poker. Then we passed another week in St. Paul, also looking for information as to the amount of money and the precautions taken in the bank to take care of it.

"Chadwell, Pitts, Bob and myself procured horses at St. Peter, where we stayed long enough to break them and to train them for the hard riding to which we knew they would be submitted later on. It was at St. Peter that I made the acquaintance of a little girl who afterwards was one of the most earnest workers for our parole.

"A little tot then, she said she could ride a horse, too, and reaching down, I lifted her up before me, and we rode up and down. I asked her her name and she said it was 'Horace Greeley Perry,' and I replied.

"No wonder you're such a little tot with such a great name.'

"I won't always be little,' she replied. 'I'm going to be a great big girl and be a newspaper man like papa.'

"Will you still be my sweetheart then, and be my friend?' I asked her, and she declared

she would, a promise I was to remind her of years later under circumstances of which I did not dream then.

"Many years afterward with a party of visitors to the prison came a girl, perhaps 16, who registered in full, 'Horace Greeley Perry.'

"I knew there could not be two women with such a name in the world, and I reminded her of her promise, a promise which she did not remember, although she had been told how she had made friends with the bold, bad man who afterwards robbed the bank at Northfield.

"Very soon afterward, at the age of 18, I believe, she became, as she had dreamed, in childhood, 'a newspaper man,' editing the St. Peter Journal, and to the hour of my pardon she was one of the most indefatigable workers for us.

"A few years ago failing health compelled her removal from Minnesota to Idaho, and Minnesota lost one of the brightest newspaper writers and staunchest friends that a man ever knew. Jim and I had a host of advocates during the latter years of our imprisonment, but none exceeded in devotion the young woman, who as a little tot had ridden unknowingly with the bandit who was soon to be exiled for life from all his kin and friends.

"Preliminary work on the Northfield robbery was got down to during the last week of August 1876, and while Pitts and I were waiting for Bob and Chadwell, who had gone up there to look over the ground, we scouted all over the country thereabouts and around Madelia in order to get ourselves familiar with the lay of the land. When the two boys joined us we divided into two parties and started for Northfield along different routes.

"On Monday night, September 4, the party I was with reached Le Sueur Center, where we had trouble finding places to sleep, as court was in session. Tuesday night we put on at Cordova, and Wednesday we were in Millersburg. At the same time Bob and his crowd rounded up in Cannon City, which was south of Northfield.

"On Thursday morning, September 7, we all came together on the Cannon River, on the outskirts of Northfield. That afternoon I took a look at the bank, and in camp at dinner I

told the gang that no matter what came off we mustn't shoot anybody. While I was making this point as strong as I could one of the crowd asked what we should do if they began shooting at us. Bob at once said that if I was so particular about not having any shooting the best thing for me to do was to stay outside and take my chances.

"Well, at last the time came. Bob, Pitts and Howard started for town ahead, the scheme being that they should round up in the town square and not go into the bank until the rest of the party joined them. It was fixed that Miller and I should go on guard right at the bank, while the rest of the gang was to wait at the bridge and listen for a pistol shot signal in case they were wanted for help. We had it schemed out that as there were no saddle horses around anywhere we could get off with a flying start and get away before they could stop us, wrecking the telegraph office if necessary to prevent any alarm being sent out by wire.

"Whiskey spoiled the whole plan. Between the time they left camp and reached the bridge the men who went ahead got away with a quart of whiskey—the first time I had ever known Bob to drink, and as a matter of fact, I didn't know he had done so then until the day and its terrible events were over. The blunder was that when these three men saw us coming, instead of waiting for us to get up with them they slammed right on into the bank regardless, leaving the door open in their excitement.

"I was out in the street, pretending I was having trouble with my saddle. Meantime I had told Miller to close up the bank door. A man named Allen, who kept a store nearby, was then trying to get into the bank, but Miller foolishly shouted at him and told him to get away. Allen at once became excited and saw that something was wrong, and ran off up the street shouting to everyone to get his gun, as the bank was being robbed.

"A Dr. Wheeler, who saw that something was happening out of the ordinary, began to yell 'Robbery!' Then I saw we were in for it, and would need all the help we could get. I first called to Miller to come inside and get out of harm's way and then I fired a signal to

the three men at the bridge for them to come up and help us, as we had been trapped.

"Chadwell, Woods and Jim came galloping up, and at the same moment that they arrived I heard a shot fired inside the bank. The three boys were firing their guns as they rode along, shouting to everybody they saw to get out of the way and get indoors, but I am quite sure they never killed anybody. My theory always has been that the man Gustafson, who was shot down in the street, was struck by a glancing shot from some of the citizens' rifles, as they were out blazing away at this time.

"Miller was then shot by a man named Stacy and his face filled full of bird shot. A man named Manning killed Pitts' horse, and, as a matter of fact, the street was full of flying lead, coming from every direction. It wasn't long before I was wounded in the thigh by Manning, and the next instant he shot Chadwell through the heart.

"Dr. Wheeler, from an upper floor of a hotel, got a bead on Miller and brought him down, so that he soon lay dying in the middle of the street. Every time I saw a man pointing a gun at me I dropped off my horse and tried to drive the shooter under cover, but there were so many of them, and I couldn't see in every direction, so I soon found out that, wounded as I was, I was helpless. Meanwhile there was a tragedy going on inside the bank.

"Bob came out in a hurry and started down the street toward Manning, who ran into a store; hoping he would get a shot at Bob from under cover. Bob ran on, but didn't notice Dr. Wheeler, who was upstairs in the hotel, behind him, and Wheeler's third shot smashed Bob's right arm. Bob switched his gun to his left and got on Miller's horse, thinking that Miller was dead. By this Howard and Pitts had got out of the bank, and I told them that Miller was still alive and we'd have to save him. I told Pitts to put Miller on my horse, but when we lifted him I saw he was dead, so I told Pitts that I would hold off the crowd while he got away, as his horse had been killed. While Pitts ran, less than ten yards, I stood with my pistol pointed at anyone who showed his head, and then I galloped off and overtook him and took him up behind me.

"Pitts then confessed to me about the drinking, and said they had made an awful mess of it inside the bank. It had been arranged that they should hold up Joseph L. Heywood, the acting cashier, at his window, and after roping him get to the safe without any trouble. Instead of that, these three drink-crazed lunatics leaped over the rail and scared Heywood so badly that he immediately got on the defensive, and in a minute the alarm was out and it was all over.

"It seems that one of the robbers had waved his revolver at Heywood the minute he entered the bank and asked him if he was the cashier. Heywood had said he wasn't, and then the same question was put to the other two men who were in the bank. Each of the three said he was not the cashier, but the robber turned to Heywood, who was sitting at the cashier's desk, and said:

"'You're the cashier' open that safe d—n quick or I'll blow your head off.'

"Heywood jumped back and Pitts ran to the vault and got inside. Heywood then tried to shut him in, and was seized by the robbers, who told him to open the safe at once or he would not live another minute. Heywood told him there was a time lock on it that positively couldn't be opened, whereupon Howard pulled a knife and tried to cut Heywood's throat, the cashier having been thrown to the ground in the scuffle that had taken place. Incidentally, Pitts told me afterwards that Howard fired a pistol near Heywood's head, but only with the intention of frightening him.

"A. E. Bunker, the teller, by this time had tried to get hold of a pistol that was near where he was, but Pitts got the gun first, and it was found on him after he was killed, and consequently furnished just that much good evidence that we were the men at Northfield.

"The boys saw by this time that the safe could not be reached, so they asked Bunker about the money that was outside. Bunker pointed to a little tray full of small coins, and while Bob was putting them away in a sack Bunker made a dash through a rear window. Pitts fired at him twice, his second bullet going through his right shoulder.

"By this time the men in the bank had heard the commotion and firing outside and started to leave.

"Heywood, who had been on the floor, unfortunately rose at this instant, and Pitts, still under the influence of liquor, shot him through the head and killed him.

"Meantime we who had escaped slaughter in the terrible bombardment we had faced were trying to make out way to some safe place. Not far from Northfield we met a farmer, who lent us a horse for Pitts to ride, and we got past Dundas ahead of the news of the raid on the bank. We were also beating it at Millersburg, but at Shieldsville we ran into a squad of men who knew what had happened and were after us. These men had, foolishly for themselves, left their guns outside a house, and we didn't let them get hold of them until we had a good start, but they overtook us about four miles away and shots were exchanged without any trouble resulting.

"Soon there were a thousand men on our trail and about \$5,000 in rewards for our capture. We tramped and camped and rode and watched in a strange country and among the lakes. We didn't know the trails and were afraid to try the fords and bridges, knowing that our hunters would be sure to keep their eyes on these places. Saturday morning we abandoned our horses and decided to keep up the fight afoot. We tramped all night and put in Sunday near Marysburg. Bob's elbow by this time was in pretty bad shape and we had to go slow. Finally on Monday night and Tuesday we couldn't go anywhere, so we passed the time in a deserted house near Mankato. A man named Dunning found us there and we took him prisoner. On the theory that the dead are silent, some of the men wanted to kill him, but I wouldn't stand for that, so we made him swear by all that was holy that he wouldn't tell that he had seen us until we got away. Then we turned him loose. He lost no time in getting into Mankato and giving the alarm, and in a few minutes another posse was after us.

"That night Howard and Wood decided that they wouldn't hold back any longer and that we were losing valuable time because of Bob's wound, so they left us and went on

west. They stole two horses very soon, and this helped us as well as them, for the posse followed the trail of the stolen horses, not knowing that we had divided.

"On Thursday morning, September 21, just two weeks after the raid, the end came. A party of forty men soon surrounded us and opened fire. We were cut off from our horses and our case was hopeless. We were on the open prairie and not ready for our last fight against such odds, we fell back into the Watonwan river bottom and hid in some bushes.

"When the iron doors shut behind us at the Stillwater prison we all submitted to the prison discipline with the same unquestioning obedience that I had exacted during the military service. The result was that we gained friends both in prison and outside. We had been in prison a little over seven years, when, on January 25, 1884, the main building was destroyed by fire at night. George F. Dodd was then connected with the prison, while his wife was matron. There was danger of a panic and a terrible disaster. Dodd released Jim and Bob and myself. To me he gave a revolver, Jim had an axe handle and Bob a small iron bar. We stood guard over the women prisoners, marched them from the danger of the fire, and the prison authorities were kind enough to say that had it not been for us there must have been a tremendous loss of life.

"I can say without fear of contradiction that had it been in our minds to do so we could have escaped from the prison that night, but we had determined to pay the penalty that had been exacted, and if we were ever to return to liberty it would be with the consent and approval of the authorities and public. A little later Jim was put in charge of the mail and library of the prison, while I was made head nurse in the hospital, where I remained until the day we were paroled.

"As the years went by the popular feeling against us not only subsided, but our absolute obedience to the minutest detail of the prison discipline won us the consideration, and I might even say, the esteem of the prison officials. In the meantime it had been a life sentence for Bob, he having died of consumption September 16, 1889.

"Jim and I went out into the world July 14, 1901, after serving a few months less than twenty-five years. Each of us immediately found work, and life again took on its normal hues. Poor Jim, however, was subject to periodical spells of deep depression. The bullet that shattered his upper jaw in our last fight in Madelia imbedded itself near the brain and was not removed until long after we were in the prison at Stillwater. That bullet was the cause of his occasional gloominess. After our release from prison Jim's health continued precarious. He finally gave up the fight, and on October 19, 1902, took his own life in a hotel in Minnesota.

"I am not exactly a dead man, but I have been shot twenty-eight times and am now carrying in my body fourteen bullets that physicians have been unable to extract. Twelve of these wounds I received while wearing the gray, and I have ever been proud of them, and it has been one of my keenest regrets that I did not receive the rest of them during the war with Spain."

Source: Sullivan, Larry E. *Bandits & Bibles: Convict Literature in Nineteenth-Century America*. New York: Akashic, 2003.

Related By Thomas Coleman "Cole" Younger from: Wolfer, Henry. *Convict Life at the Minnesota State Prison, Stillwater, Minnesota*. St. Paul, MN: W. C. Heilbron, 1909.

See Articles: James, Jesse; Minnesota; Robbery, History of.

1878 PRIMARY DOCUMENT

Labor Leader Dennis Kearney's Anti-Chinese Address

An Irish immigrant to the United States, Kearney was the head of the Workingmen's Party of California, a nativist political party with the

simple slogan, "The Chinese must go!" The Long Depression had begun in 1873 and would last most of the rest of the century. Working-class whites were frustrated by railroad companies and others hiring Chinese immigrants at low wages. While some responded with mob violence, Kearney successfully pursued anti-Chinese legislation.

Our moneyed men have ruled us for the past thirty years. Under the flag of the slaveholder they hoped to destroy our liberty. Failing in that, they have rallied under the banner of the millionaire, the banker and the land monopolist, the railroad king and the false politician, to effect their purpose.

We have permitted them to become immensely rich against all sound republican policy, and they have turned upon us to sting us to death. They have seized upon the government by bribery and corruption. They have made speculation and public robbery a science. They have loaded the nation, the state, the county, and the city with debt. They have stolen the public lands. They have grasped all to themselves, and by their unprincipled greed brought a crisis of unparalleled distress on forty millions of people, who have natural resources to feed, clothe and shelter the whole human race.

Such misgovernment, such mismanagement, may challenge the whole world for intense stupidity, and would put to shame the darkest tyranny of the barbarous past.

We, here in California, feel it as well as you. We feel that the day and hour has come for the Workingmen of America to depose capital and put Labor in the Presidential chair, in the Senate and Congress, in the State House, and on the Judicial Bench. We are with you in this work. Workingmen must form a party of their own, take charge of the government, dispose of gilded fraud, and put honest toil in power.

In our golden state all these evils have been intensified. Land monopoly has seized upon all the best soil in this fair land. A few men own from ten thousand to two hundred thousand acres each. The poor Laborer can find no resting place, save on the barren mountain, or in the trackless desert. Money monopoly has reached its grandest proportions. Here, in San

Francisco, the palace of the millionaire looms up above the hovel of the starving poor with as wide a contrast as anywhere on earth.

To add to our misery and despair, a bloated aristocracy has sent to China—the greatest and oldest despotism in the world—for a cheap working slave. It rakes the slums of Asia to find the meanest slave on earth—the Chinese coolie—and imports him here to meet the free American in the Labor market, and still further widen the breach between the rich and the poor, still further to degrade white Labor.

These cheap slaves fill every place. Their dress is scant and cheap. Their food is rice from China. They hedge twenty in a room, ten by ten. They are whipped curs, abject in docility, mean, contemptible and obedient in all things. They have no wives, children or dependents.

They are imported by companies, controlled as serfs, worked like slaves, and at last go back to China with all their earnings. They are in every place, they seem to have no sex. Boys work, girls work; it is all alike to them.

The father of a family is met by them at every turn. Would he get work for himself? Ah! A stout Chinaman does it cheaper. Will he get a place for his oldest boy? He can not. His girl? Why, the Chinaman is in her place too! Every door is closed. He can only go to crime or suicide, his wife and daughter to prostitution, and his boys to hoodlumism and the penitentiary.

Do not believe those who call us savages, rioters, incendiaries, and outlaws. We seek our ends calmly, rationally, at the ballot box. So far good order has marked all our proceedings. But, we know how false, how inhuman, our adversaries are. We know that if gold, if fraud, if force can defeat us, they will all be used. And we have resolved that they shall not defeat us. We shall arm. We shall meet fraud and falsehood with defiance, and force with force, if need be.

We are men, and propose to live like men in this free land, without the contamination of slave labor, or die like men, if need be, in asserting the rights of our race, our country, and our families.

California must be all American or all Chinese. We are resolved that it shall be American, and are prepared to make it so. May we not rely upon your sympathy and assistance?

With great respect for the Workingman's Party of California.

Dennis Kearney, President
H. L. Knight, Secretary

Sources: Kearney, Dennis and H. L. Knight.
"Appeal From California: The Chinese Invasion.
Workingmen's Address." *Indianapolis Times*
(February 28, 1878);
and
<http://historymatters.gmu.edu/d/5046>

See Articles: California; Chinese Americans; Racism;
San Francisco, California.

1884 PRIMARY DOCUMENT

New York Times Article on the Greely Expedition

In 1881, the Proteus embarked on its expedition to the "farthest north"—a northern latitude beyond the point of any previous expedition. First Lieutenant Adolphus Greely commanded the expedition, which had been commissioned by the U.S. government to collect scientific data. When two relief parties failed to reach the expedition, the government had no backup plan. Proteus was stranded with depleted supplies, and the men eventually found themselves eating their dead to survive.

A Horrible Discovery

When the vessels of the Greely relief expedition reached St. John's the world was told that only six members of the Greely colony were living. One had been drowned, one had died on the way home, and seventeen, it was said, had perished miserably by starvation. This

was a shocking story, but to-day there must be told a story still more appalling.

When their food gave out the unfortunate members of the colony, shivering and starving in their little tent on the bleak shore of Smith's Sound, were led by the horrible necessity to become cannibals. The complete history of their experience in that terrible Winter must be told, and the facts hitherto concealed will make the record of the Greely colony—already full of horrors—the most dreadful and repulsive chapter in the long annals of arctic exploration.

The discovery that Greely and his surviving companions were forced to choose between death and this way of preserving life, and made the choice of which we have spoken, multiplies a hundredfold the burden of responsibility that has rested upon the officer whose blunders brought so successful an expedition to such an end. Is it possible that, after this dreadful revelation, Gen. HAZEN will be able to retain his position? We do not think it is. There must be an inquiry by a military court, and we predict that neither social influence nor any influence will shield him this time from the punishment he deserves.

"From July, 1882, to August, 1883," said the Proteus court of inquiry in its report, "not less than 50,000 rations were taken in the steamers Neptune, Yantic and Proteus up to or beyond Littleton Island, and of that number only about 1,000 were left in the vicinity, the remainder being returned to the United States or sunk with the Proteus." Two costly expeditions had taken those provisions to Smith's Sound, but, owing to HAZEN'S instructions, poor Greely gained practically no benefit from them. So ignorant was this officer that he told GARLINGTON that the colonists' supplies would be exhausted in the Fall of 1883, when in fact they had been provisioned for twelve months longer. We have heretofore shown how GREELY'S instructions and the plain teachings of common sense were disregarded by this man. GREELY foresaw that he might be compelled to retreat down the west shore of Smith's Sound. He could establish provision depots along the upper part of the line, but those below must be established by the

relief parties. In his letter of instructions he pointed out the spots on the west side where food should be placed, and then directed that a colony should be established on the other side. He even foresaw that he might reach Cape Sabine and then be unable to get across; therefore he directed that the relief colony should not only strive to find him by telescopes, but should also send sledge parties to the west side to rescue him. The instructions given to GARLINGTON were not in accordance with these.

The Proteus court make inquiry concerning the failure of the Garlington expedition. GREELY and his companions were absent, and could not testify. Therefore the court did not have all the facts before it. Now GREELY and five of his companions have returned and can testify. There is, moreover, additional subject matter to be investigated—the deaths of nineteen men and the horrible revelations concerning life in the tent. The inquiry should be completed, and Gen. HAZEN should be court-martialed without further delay.

Source: “A Horrible Discovery.” *New York Times* (August 12, 1884).

See Articles: Military Courts; Military Police.

1885 PRIMARY DOCUMENT

Testimony of Chinese Laborer Survivors

The recounting of the massacre at Rock Springs, Wyoming Territory, that was sent to the Chinese Consol in New York highlighted one of many anti-Chinese crimes in the late 19th-century west. Many labor organizations were powerful voices stirring up white hatred against Chinese workers, and companies made it worse by relying on cheap Chinese labor to weaken white workers' bargaining position. The massacre, which resulted in 28

dead Chinese, was a response to the hiring of Chinese miners to replace striking workers; there were no convictions, and the grand jury refused to indict suspects.

We, the undersigned, have been in Rock Springs, Wyoming Territory, for periods ranging from one to fifteen years, for the purpose of working on the railroads and in the coal mines.

Up to the time of the recent troubles we had worked along with the white men, and had not had the least ill feeling against them. The officers of the companies employing us treated us and the white man kindly, placing both races on the same footing and paying the same wages.

Several times we had been approached by the white men and requested to join them in asking the companies for an increase in the wages of all, both Chinese and white men. We inquired of them what we should do if the companies refused to grant an increase. They answered that if the companies would not increase our wages we should all strike, then the companies would be obliged to increase our wages. To this we dissented, wherefore we excited their animosity against us.

During the past two years there has been in existence in “Whitemen’s Town,” Rock Springs, an organization composed of white miners, whose object was to bring about the expulsion of all Chinese from the Territory. To them or to their object we have paid no attention. About the month of August of this year notices were posted up, all the way from Evanston to Rock Springs, demanding the expulsion of the Chinese, & c. On the evening of September 1, 1885, the bell of the building in which said organization meets rang for a meeting. It was rumored on that night that threats had been made against the Chinese.

On the morning of September 2, a little past seven o’clock, more than ten white men, some in ordinary dress and others in mining suits, ran into Coal Pit No. 6, loudly declaring that the Chinese should not be permitted to work there. The Chinese present reasoned with them in a few words, but were attacked with murderous weapons, and three of their

number wounded. The white foreman of the coal pit, hearing of the disturbance, ordered all to stop work for the time being.

About two o'clock in the afternoon a mob, divided into two gangs, came toward "Chinatown," one gang coming by way of the plank bridge, and the other by way of the railroad bridge. The gang coming by way of the railroad bridge was the larger, and was subdivided into many squads, some of which did not cross the bridge, but remained standing on the side opposite to "Chinatown"; others that had already crossed the bridge stood on the right and left at the end of it. Several squads marched up the hill behind Coal Pit No. 3.

One squad remained at Coal Shed No. 3 and another at the pump house. The squad that remained at the pump house fired the first shot, and the squad that stood at Coal Shed No. 3 immediately followed their example and fired. The Chinese by name of Lor Sun Kit was the first person shot, and fell to the ground. At that time the Chinese began to realize that the mob were bent on killing. The Chinese, though greatly alarmed, did not yet begin to flee.

The gang that were at the plank bridge also divided into several squads, pressing near and surrounding "Chinatown." One squad of them guarded the plank bridge in order to cut off the retreat of the Chinese.

Not long after, it was everywhere reported that a Chinese named Leo Dye Bah, who lived in the western part of "Chinatown," was killed by a bullet, and that another named Yip Ah Marn, resident in the eastern end of the town, was likewise killed. The Chinese now, to save their lives, fled in confusion in every direction, some going up the hill behind Coal Pit No. 3, others along the foot of the hill where Coal Pit No. 4 is; some from the eastern end of the town fled across Bitter Creek to the opposite hill, and others from the western end by the foot of the hill on the right of Coal Pit No. 5. The mob were now coming in the three directions, namely, the east and west sides of the town and from the wagon road.

Whenever the mob met a Chinese they stopped him and, pointing a weapon at him,

asked him if he had any revolver, and then approaching him they searched his person, robbing him of his watch or any gold or silver that he might have about him, before letting him go. Some of the rioters would let a Chinese go after depriving him of all his gold and silver, while another Chinese would be beaten with the butt ends of the weapons before being let go. Some of the rioters, when they could not stop a Chinese, would shoot him dead on the spot, and then search and rob him. Some would overtake a Chinese, throw him down and search and rob him before they would let him go. Some of the rioters would not fire their weapons, but would only use the butt ends to beat the Chinese with. Some would not beat a Chinese, but rob him of whatever he had and let him go, yelling to him to go quickly. Some, who took no part either in beating or robbing the Chinese, stood by, shouting loudly and laughing and clapping their hands.

Sources: "Memorial of Chinese Laborers, Resident at Rock Springs, Wyoming Territory, to the Chinese Consul at New York (1885)." In *Chink!* edited by Cheng-Tsu Wu. New York: World Publishing Company, 1972; and <http://historymatters.gmu.edu/d/5043>

See Articles: Chinese Americans; Racism; Riots.

1886 PRIMARY DOCUMENT

Anarchist Oscar Neebe's Commentary on the Haymarket Affair

The Haymarket affair began as a workingman's rally in Chicago's Haymarket Square on May 4, 1886. When police moved to disperse the crowd, an unknown person threw dynamite at them. The explosion and subsequent gunfight killed seven

police officers and at least four civilians. Labor activist and anarchist Oscar Neebe was one of several defendants accused of conspiracy, but there was virtually no evidence against anyone, and the police made no pretense of having identified the actual bomber.

I have been in the labor movement since 1875. I have seen how the police have trodden on the Constitution of this country, and crushed the labor organizations. I have seen from year to year how they were trodden down, where they were shot down, where they were “driven into their holes like rats,” as Mr. Grinnell said to the jury. But they will come out! Remember that within three years before the beginning of the French Revolution, when laws had been stretched like rubber, that the rubber stretched too long, and broke—a result which cost a good many state’s attorneys at that time their necks, and a good many honorable men their necks.

We socialists hope such times may never come again; we do everything in our power to prevent it by reducing the hours of labor and increasing wages. But you capitalists won’t allow this to be done. You use your power to perpetuate a system by which you may make your money for yourselves and keep the wage-workers poor. You make them ignorant and miserable, and you are responsible for it. You won’t let the toilers live a decent life.

Well, these are all the crimes I have committed. They found a revolver in my house, and a red flag there. I organized trade unions. I was for reduction of the hours of labor, and the education of laboring men, and the re-establishment of the *Arbeiter-Zeitung*—the workingmen’s newspaper. There is no evidence to show that I was connected with the bomb-throwing, or that I was near it, or anything of that kind. So I am only sorry, your honor—that is, if you can stop it or help it—I will ask you to do it—that is, to hang me, too; for I think it is more honorable to die suddenly than to be killed by inches. I have a family and children; and if they know their father is dead, they will bury him. They can go to the grave, and kneel down by the side of it; but they can’t go to the penitentiary

and see their father, who was convicted for a crime that he hasn’t had anything to do with. That is all I have got to say. Your honor, I am sorry I am not to be hung with the rest of the men.

Sources: Neebe, Oscar. “The Crimes I Have Committed.” In *Anarchism: Its Philosophy and Scientific Basis, as Defined by Some of Its Apostles*, edited by Albert R. Parsons. Chicago: 1887. Reprinted in *Haymarket Scrapbook*, edited by Dave Roediger and Franklin Rosemont. Chicago: Charles H. Kerr, 1986; and <http://historymatters.gmu.edu/d/47>

See Articles: Civil Disobedience; Executions; Political Dissidents.

1890s PRIMARY DOCUMENT

Advertising by the Pinkerton Agency

The Pinkerton Agency was an important force in both crime and labor history in the 19th century. It had a widely varied history that included not only tracking outlaws such as Jesse James, Butch Cassidy, and the Sundance Kid, which immortalized the agency in dime novels and film, but also breaking strikes. For example, a private militia of 300 Pinkertons was hired to protect strike-breakers during the 1892 Homestead Strike. For a time, the agency was contracted by the Justice Department.

Sirs: We take this method of calling your attention to the advantages of private police patrol in case you are at any time in need of such services.

The Pinkerton Preventive Patrol was organized by the late Allan Pinkerton in 1850, it being the first uniformed police patrol in the city of Chicago, and from that time to date

has had under its charge as watchmen all the banks and nearly all the wholesale and large retail business houses in Chicago. The members of this force are selected for their general aptitude for police duty, and are under strict discipline and in charge of experienced officers who have been trained to the business.

We are therefore prepared to furnish uniformed men whenever required, by the day, week, or month, for day or night duty, and we respectfully call the attention of those in charge of excursions, proprietors of public resorts, railroad and all other corporations who have to deal with large numbers of patrons or disaffected or striking employees, to the advantage of our patrol system.

A daily written report is furnished to our patrols, when required, of any irregularities or occurrences transpiring during the time our officers are on duty.

The Pinkerton Preventive Patrol has furnished the police for the Hocking Valley Coal and Iron Company of Ohio during their recent protracted strike; Chicago, Wilmington and Vermillion Coal Company of Illinois; Menominee Mining Company of Menominee, Mich.; Muskegon lumber merchants of Muskegon, Mich., lumber merchants of Saginaw City, Mich.; Rochester and Pittsburg Railroad and Coal and Iron Company of Pennsylvania; Burden Iron Company of Troy, N. Y.; and Troy Malleable Iron Works. Under its supervision was organized the first coal and iron police force in Schuylkill County, Pa., which was instrumental to a great extent by aiding our detectives in suppressing the Molly Maguires throughout the coalfields of Pennsylvania and preserving order there during the railroad riots of 1877.

The above list only comprises a few of the many corporations and individuals where the Pinkerton Patrol preserved order and protected property and employees who were willing to work while strikes were in progress.

Each season the Pinkerton Patrol furnishes the entire police protection for Manhattan Beach, Coney Island, N.Y.; Starins Glen Island (Long Island Sound), N.Y.; Coney Island Jockey Club, Sheepshead Bay, Long Island; the Rockaway Steeplechase Asso-

ciation, Cedarhurst, Long Island, N.Y.; the Washington Park Club and West Side Driving Park, Chicago; and the Illinois State Fair.

The Pinkerton Preventive Patrol is connected with Pinkerton's National Detective Agency, and is under the same management.

Corporations or individuals desirous of ascertaining the feeling of their employees, and whether they are likely to engage in strikes or are joining any secret labor organizations with a view of compelling terms from corporations or employers, can obtain on application to the superintendent of either of the offices, a detective suitable to associate with their employees and obtain this information.

At this time, when there is so much dissatisfaction among the laboring classes and secret labor societies are organizing throughout the United States. We suggest whether it would not be well for railroad companies and other corporations, as well as individuals who are extensive employers of labor, to keep a close watch for designing men among their own employees, who, in the interest of secret labor societies, are inducing their employees to join these organizations and eventually to cause a strike. It is frequently the case that by taking a matter of this kind in hand in time and discovering the ringleaders and dealing promptly with them serious trouble may be avoided in the future.

The reputation gained by the Agency and Patrol in the past will be a guarantee that any detective or officer furnished by us will be competent in every respect to discharge the duties required of him.

Watchmen for stores, docks, shipping, etc., etc., can be obtained at reasonable rates for permanent or special watching on application at either of the offices, which are connected by telephone.

Yours respectfully,
Robt. A. Pinkerton,
General Superintendent East Division,
New York.

Wm. A. Pinkerton,
General Superintendent West Division,
Chicago, Ill.

Sources: Senate Report 1280, 52nd Congress,
2nd Session: Investigation of Labor Trouble.
Washington, DC: Government Printing Office,
1892;
and
<http://historymatters.gmu.edu/d/5313>

See Articles: Police, History of; Private Detectives;
Private Police; Private Security Services

1891 PRIMARY DOCUMENT

George Sontag's Account of His First Train Robbery

The “he” and “me” of the first paragraph are John and George Sontag, respectively, brothers and train robbers from southern Minnesota. John had joined up with Chris Evans of California, and the Sontag Evans gang robbed trains for two years before petty thief George joined after a brief stint in the Nebraska State Prison. They were arrested in 1892; John was killed by a posse, and George served 15 years before dictating his memoir. He enjoyed a long career as a traveling lecturer.

This tale he recounted to me—the apparently free life he had led, the train robberies, the money he had secured from them, which appeared with but little effort, the easy manner in which he eluded capture; left a mighty deep left a mighty deep impression upon me. After he had gone, I spent many hours thinking of what he had told me.

Later, when he asked me to assist in holding up a train, he had to use no persuasion, for I had made up my mind that I would do so alone, if I could make arrangements.

John stayed at home only a short time, going back to California.

He had been back but a little while when he and Evans held up a train at Ceres. Their effort was not a success, as they were unable to get into the car.

Following this attempt John returned home. He had hardly been there a couple of days when he began to ask me about the trains in that section of the country. As I had spent many wears in braking, I was in a position to give him some valuable information.

I told him particularly of a train, No.3, thinking that he was gathering data for a robbery for himself and partner.

One day, however, he said: “George, let’s take the folks up to Chicago, and leave them there, while we hold up that No. 3 train.”

As I said, it did not take any coaxing to get me to go into a deal with him, so we took the folks up to the “Windy City,” with the purpose of holding up that train.

Train No. 3 ran out of Chicago, leaving there at 11 p.m. After going over the ground, we found that we could not ride her out of the Union station, so I took a trip down the line one night, and discovered that we could stop the train at Western Union Junction. This being the only place we could intercept her, we decided to make Racine, Wisconsin, the base of operation, and accordingly we left for that city leaving the other members of the family in Chicago.

The night was in November, 1891, when we left Racine. It was dark and stormy, and as we made the trip afoot out of Racine our progress was slow. Indeed, we were about to give up the idea during a lull in the storm, fearing that we could not successfully bring the deal off. Finally we concluded to stick it out. The fact that it was the first snow of the winter, when we, with everyone else, was caught unawares, made the deed more hazardous, and we were more than ordinarily cautious.

The train came in at the Western Union, on time, and we boarded it. When out where we thought we had decided was the right place, we “stuck her up.”

However, we ran one crossing too far, a fact that put the train in closer touch with the officials.

We were some time in getting into the car. We both had covered the engine crew and made them get out of the cab to assist us in getting into the car. The messengers would not open up, so we went to work to blow off

the doors. After firing three charges of dynamite the messengers, two of them, came out and delivered up the keys.

I went into the car, and told one of the messengers whom I took with me, to open the safe. He said: "Sorry; no coin tonight."

I stepped back and, cocking both barrels of my gun, told him to dig up. He said: "For God's sake, boy, don't shoot; I'll get it." He dug between some boxes where the money had been hidden. I made a search of the car and found three small safes. The messenger told me they were time locks, and could not be opened. I told him to get them out, as we could open any kind of a safe. They were too heavy, so I threw in a stick of dynamite and blew the safes out of the car, badly damaging the latter.

John started with the bunch for the engine, I hollering to him to wait while I blew the safes open. He answered back: "Here comes a special from Racine." Racine was only seven miles away.

We took what money we had secured from the first "dig," \$9,800, and left the scene.

The road was slushy, and we had a hard time getting to a cabin where we could break our guns and put them in their cases. We then proceeded to town. Arriving there we went home, our mother sleeping through the night and never dreaming that the sensation she saw in the papers next morning was caused by her two sons.

We learned that the safes that we blew out of the car contained \$110,000, which, had we times our stop more correctly, we could have secured.

The crossing at which we stopped afforded an opportunity for the train crew to get word to Racine.

After we left the train and broke our guns, we kept to the track, as we knew that the posse would come on a train, and we could step aside if we saw the special. The train went on to Milwaukee, after we told the engineer to pull out.

Source: Sullivan, Larry E. *Bandits & Bibles: Convict Literature in Nineteenth-Century America*. New York: Akashic, 2003.

See Articles: Gangs, History of; Posses; Robbery, History of.

1892 PRIMARY DOCUMENT

Captain Richard H. Pratt on the Education of Native Americans

The "Indian problem" confronted the United States throughout the 19th century and beyond, as American territory expanded and filled out until there was no "frontier" left by the time of the 1890 census. The federal government shifted from relocating Indians in the west to forcibly absorbing them into America's melting pot. The 1883 Code of Indian Offenses criminalized "inappropriate" behavior by Indian adults, while Indian schools forcibly Americanized children.

A great general has said that the only good Indian is a dead one, and that high sanction of his destruction has been an enormous factor in promoting Indian massacres. In a sense, I agree with the sentiment, but only in this: that all the Indian there is in the race should be dead. Kill the Indian in him, and save the man.

We are just now making a great pretence of anxiety to civilize the Indians. I use the word "pretence" purposely, and mean it to have all the significance it can possibly carry. Washington believed that commerce freely entered into between us and the Indians would bring about their civilization, and Washington was right. He was followed by Jefferson, who inaugurated the reservation plan. Jefferson's reservation was to be the country west of the Mississippi; and he issued instructions to those controlling Indian matters to get the Indians there, and let the Great River be the line between them and the whites. Any method of securing removal—persuasion, purchase, or force—was authorized.

Jefferson's plan became the permanent policy. The removals have generally been accomplished by purchase, and the evils of this are greater than those of all the others combined....

It is a sad day for the Indians when they fall under the assaults of our troops, as in the Piegan massacre, the massacre of Old Black Kettle and his Cheyennes at what is termed "the battle of the Washita," and hundreds of other like places in the history of our dealings with them; but a far sadder day is it for them when they fall under the baneful influences of a treaty agreement with the United States whereby they are to receive large annuities, and to be protected on reservations, and held apart from all association with the best of our civilization. The destruction is not so speedy, but it is far more general. The history of the Miamis and Osages is only the true picture of all other tribes.

The Indians under our care remained savage, because forced back upon themselves and away from association with English-speaking and civilized people, and because of our savage example and treatment of them....

We have never made any attempt to civilize them with the idea of taking them into the nation, and all of our policies have been against citizenizing and absorbing them. Although some of the policies now prominent are advertised to carry them into citizenship and consequent association and competition with other masses of the nation, they are not, in reality, calculated to do this.

We are after the facts. Let us take the Land in Severalty Bill. Land in severalty, as administered, is in the way of the individualizing and civilization of the Indians, and is a means of holding the tribes together. Land in severalty is given to individuals adjoining each other on their present reservations. And experience shows that in some cases, after the allotments have been made, the Indians have entered into a compact among themselves to continue to hold their lands in common as a reservation. The inducement of the bill is in this direction. The Indians are not only invited to remain separate tribes and communities, but are practically compelled to remain so. The

Indian must either cling to his tribe and its locality, or take great chances of losing his rights and property.

The five civilized tribes of the Indian Territory—Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles—have had tribal schools until it is asserted that they are civilized; yet they have no notion of joining us and becoming a part of the United States. Their whole disposition is to prey upon and hatch up claims against the government, and have the same lands purchased and repurchased and purchased again, to meet the recurring wants growing out of their neglect and inability to make use of their large and rich estate ...

Under our principles we have established the public school system, where people of all races may become unified in every way, and loyal to the government; but we do not gather the people of one nation into schools by themselves, and the people of another nation into schools by themselves, but we invite the youth of all peoples into all schools. We shall not succeed in Americanizing the Indian unless we take him in in exactly the same way. I do not care if abundant schools on the plan of Carlisle are established. If the principle we have always had at Carlisle—of sending them out into families and into the public schools—were left out, the result would be the same, even though such schools were established, as Carlisle is, in the centre of an intelligent and industrious population, and though such schools were, as Carlisle always has been, filled with students from many tribes. Purely Indian schools say to the Indians: "You are Indians, and must remain Indians. You are not of the nation, and cannot become of the nation. We do not want you to become of the nation."

We make our greatest mistake in feeding our civilization to the Indians instead of feeding the Indians to our civilization. America has different customs and civilizations from Germany. What would be the result of an attempt to plant American customs and civilization among the Germans in Germany, demanding that they shall become thoroughly American before we admit them to the country? Now,

what we have all along attempted to do for and with the Indians is just exactly that, and nothing else. We invite the Germans to come into our country and communities, and share our customs, our civilization, to be of it; and the result is immediate success. Why not try it on the Indians? Why not invite them into experiences in our communities? Why always invite and compel them to remain a people unto themselves?

It is a great mistake to think that the Indian is born an inevitable savage. He is born a blank, like all the rest of us. Left in the surroundings of savagery, he grows to possess a savage language, superstition, and life. We, left in the surroundings of civilization, grow to possess a civilized language, life, and purpose. Transfer the infant white to the savage surroundings, he will grow to possess a savage language, superstition, and habit. Transfer the savage-born infant to the surroundings of civilization, and he will grow to possess a civilized language and habit. These results have been established over and over again beyond all question; and it is also well established that those advanced in life, even to maturity, of either class, lose already acquired qualities belonging to the side of their birth, and gradually take on those of the side to which they have been transferred.

As we have taken into our national family seven millions of Negroes, and as we receive foreigners at the rate of more than five hundred thousand a year, and assimilate them, it would seem that the time may have arrived when we can very properly make at least the attempt to assimilate our two hundred and fifty thousand Indians, using this proven potent line, and see if that will not end this vexed question and remove them from public attention, where they occupy so much more space than they are entitled to either by numbers or worth.

The school at Carlisle is an attempt on the part of the government to do this. Carlisle has always planted treason to the tribe and loyalty to the nation at large. It has preached against colonizing Indians, and in favor of individualizing them. It has demanded for them the same multiplicity of chances which all others in the

country enjoy. Carlisle fills young Indians with the spirit of loyalty to the stars and stripes, and then moves them out into our communities to show by their conduct and ability that the Indian is no different from the white or the colored, that he has the inalienable right to liberty and opportunity that the white and the negro have. Carlisle does not dictate to him what line of life he should fill, so it is an honest one. It says to him that, if he gets his living by the sweat of his brow, and demonstrates to the nation that he is a man, he does more good for his race than hundreds of his fellows who cling to their tribal communistic surroundings ...

No evidence is wanting to show that, in our industries, the Indian can become a capable and willing factor if he has the chance. What we need is an Administration which will give him the chance. The Land in Severalty Bill can be made far more useful than it is, but it can be made so only by assigning the land so as to intersperse good, civilized people among them. If, in the distribution, it is so arranged that two or three white families come between two Indian families, then there would necessarily grow up a community of fellowship along all the lines of our American civilization that would help the Indian at once to his feet. Indian schools must, of necessity, be for a time, because the Indian cannot speak the language, and he knows nothing of the habits and forces he has to contend with; but the highest purpose of all Indian schools ought to be only to prepare the young Indian to enter the public and other schools of the country. And immediately he is so prepared, for his own good and the good of the country, he should be forwarded into these other schools, there to temper, test, and stimulate his brain and muscle into the capacity he needs for his struggle for life, in competition with us. The missionary can, if he will, do far greater service in helping the Indians than he has done; but it will only be by practising the doctrine he preaches. As his work is to lift into higher life the people whom he serves, he must not, under any pretence whatsoever, give the lie to what he preaches by discountenancing the right of any individual Indian to go into higher

and better surroundings, but, on the contrary, he should help the Indian to do that. If he fails in thus helping and encouraging the Indian, he is false to his own teaching. An examination shows that no Indians within the limits of the United States have acquired any sort of capacity to meet and cope with the whites in civilized pursuits who did not gain that ability by going among the whites and out from the reservations, and that many have gained this ability by so going out.

Theorizing citizenship into people is a slow operation. What a farce it would be to attempt teaching American citizenship to the negroes in Africa. They could not understand it; and, if they did, in the midst of such contrary influences, they could never use it. Neither can the Indians understand or use American citizenship theoretically taught to them on Indian reservations. They must get into the swim of American citizenship. They must feel the touch of it day after day, until they become saturated with the spirit of it, and thus become equal to it.

When we cease to teach the Indian that he is less than a man; when we recognize fully that he is capable in all respects as we are, and that he only needs the opportunities and privileges which we possess to enable him to assert his humanity and manhood; when we act consistently towards him in accordance with that recognition; when we cease to fetter him to conditions which keep him in bondage, surrounded by retrogressive influences; when we allow him the freedom of association and the developing influences of social contact—then the Indian will quickly demonstrate that he can be truly civilized, and he himself will solve the question of what to do with the Indian.

Sources: “Official Report of the Nineteenth Annual Conference of Charities and Correction” (1892). In *The Advantages of Mingling Indians With Whites, Americanizing the American Indians: Writings by the ‘Friends of the Indian’ 1880–1900*, edited by Richard H. Pratt. Cambridge, MA: Harvard University Press, 1973; and <http://historymatters.gmu.edu/d/4929>

See Articles: Indian Removal Act; Jefferson, Thomas (Administration of); Native Americans.

1896 PRIMARY DOCUMENT

Excerpt From the *Plessy v. Ferguson* Decision

In Plessy v. Ferguson (1896), the Supreme Court upheld state laws instituting racial segregation, and the “separate but equal” doctrine remained a part of American law until 1954. Segregation was adopted throughout the south after the Civil War to preserve the physical and social separation of blacks from whites. Segregation had already been acknowledged by the 1890 Morrill Act, which provided separate black colleges in states where blacks were barred from attending land-grant colleges.

Mr. Justice Brown:

This case turns upon the constitutionality of an act of the General Assembly of the state of Louisiana, passed in 1890, providing for separate railway carriages for the white and colored races ... The 1st Section of the statute enacts:

That all railway companies carrying passengers in their coaches in this state shall provide equal but separate accommodations for the white and colored races, by providing two or more passenger coaches for each passenger train, or by dividing the passenger coaches by a partition so as to secure separate accommodations: Provided, that this section shall not be construed to apply to street railroads. No person or persons, shall be admitted to occupy seats in coaches, other than, the ones, assigned, to them on account of the race they belong to ...

By the 2nd Section it was enacted:

That the officers of such passenger trains shall have power and are hereby required to assign

each passenger to the coach or compartment used for the race to which such passenger belongs; any passenger insisting on going into a coach or compartment to which by race he does not belong shall be liable to a fine of \$25, or in lieu of thereof, to imprisonment for a period of not more than twenty days in the parish prison; and should any passenger refuse to occupy the coach or compartment to which he or she is assigned by the officer of such railway, said officer shall have power to refuse to carry such passenger on his train, and for such refusal neither he nor the railway company which he represents shall be liable for damages in any of the courts of this state ...

The constitutionality of this act is attacked upon the ground that it conflicts both with the Thirteenth Amendment of the Constitution, abolishing slavery, and the Fourteenth Amendment, which prohibits certain restrictive legislation on the part of the states.

1. That it does not conflict with the Thirteenth Amendment, which abolished slavery and involuntary servitude except as a punishment for crime, is too clear for argument ... A statute which implies merely a legal distinction between the white and colored races—a distinction which is founded in the color of the two races, and which must always exist so long as white men are distinguished from the other race by color—has no tendency to destroy the legal equality of the two races or reestablish a state of involuntary servitude. Indeed, we do not understand that the Thirteenth Amendment is strenuously relied upon by the plaintiff in error in this connection.
2. By the Fourteenth Amendment, all persons born or naturalized in the United States and subject to the jurisdiction thereof are made citizens of the United States and of the state wherein they reside; and the states are forbidden from making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States, or shall deprive any person of life, liberty, or property without due process of law, or deny to any

person within their jurisdiction the equal protection of the laws.

The proper construction of this amendment was first called to the attention of this court in the *Slaughter-House Cases* ... which involved, however, not a question of race but one of exclusive privileges. The case did not call for any expression of opinion as to the exact rights it was intended to secure to the colored race, but it was said generally that its main purpose was to establish the citizenship of the Negro; to give definitions of citizenship of the United States and of the states, and to protect from the hostile legislation of the states the privileges and immunities of citizens of the United States as distinguished from those of citizens of the states.

The object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of states where the political rights of the colored race have been longest and most earnestly enforced....

While we think the enforced separation of the races, as applied to the internal commerce of the state, neither abridges the privileges or immunities of the colored man, deprives him of his property without due process of law, nor denies him the equal protection of the laws, within the meaning of the Fourteenth Amendment, we are not prepared to say that the conductor, in assigning passengers to the coaches according to their race, does not act

at his peril, or that the provision of the 2nd Section of the act, that denies to the passenger compensation in damages for a refusal to receive him into the coach in which he properly belongs, is a valid exercise of the legislative power. Indeed, we understand it to be conceded by the state's attorney, that such part of the act as exempts from liability the railway company and its officers is unconstitutional.

The power to assign to a particular coach obviously implies the power to determine to which race the passenger belongs, as well as the power to determine who, under the laws of the particular state, is to be deemed a white and who a colored person. This question, though indicated in the brief of the plaintiff in error, does not properly arise upon the record in this case. since the only issue made is as to the unconstitutionality of the act, so far as it requires the railway to provide separate accommodations and the conductor to assign passengers according to their race.

It is claimed by the plaintiff in error that, in any mixed community, the reputation of belonging to the dominant race, in this instance the white race, is *property*, in the same sense that a right of action, or of inheritance, is property. Conceding this to be so for the purposes of this case, we are unable to see how this statute deprives him of, or in any way affects, his right to such property. If he be a white man and assigned to a colored coach, he may have his action for damages against the company for being deprived of his so-called property. Upon the other hand, if he be a colored man and be so assigned, he has been deprived of no property since he is not lawfully entitled to the reputation of being a white man.

In this connection, it is also suggested by the learned counsel for the plaintiff in error that the same argument that will justify the state legislature in requiring railways to provide separate accommodations for the two races will also authorize them to require separate cars to be provided for people whose hair is of a certain color, or who are aliens, or who belong to certain nationalities, or to enact laws requiring colored people to walk upon one side of the street and white people upon

the other, or requiring white men's houses to be painted white and colored men's black, or their vehicles or business signs to be of different colors, upon the theory that one side of the street is as good as the other, or that a house or vehicle of one color is as good as one of another color. The reply to all this is that every exercise of the police power must be reasonable and extend only to such laws as are enacted in good faith for the promotion for the public good and not for the annoyance or oppression of a particular class....

So far, then, as a conflict with the Fourteenth Amendment is concerned, the case reduces itself to the question whether the statute of Louisiana is a reasonable regulation, and with respect to this there must necessarily be a large discretion on the part of the legislature. In determining the question of reasonableness, it is at liberty to act with reference to the established usages, customs, and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order. Gauged by this standard, we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances is unreasonable or more obnoxious to the Fourteenth Amendment than the acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures.

We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it. The argument necessarily assumes that if, as has been more than once the case, and is not unlikely to be so again, the colored race should become the dominant power in the state legislature and should enact a law in precisely similar terms, it would thereby relegate the white race to an inferior position. We imagine that the white race, at least, would not acquiesce in this assumption.

The argument also assumes that social prejudices may be overcome by legislation and that equal rights cannot be secured to the Negro except by an enforced commingling of the two races. We cannot accept this proposition. If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits, and a voluntary consent of individuals. As was said by the Court of Appeals of New York in *People v. Gallagher*,

This end can neither be accomplished nor promoted by laws which conflict with the general sentiment of the community, upon whom they are designed to operate. When the government, therefore, has secured to each of its citizens equal rights before the law and equal opportunities for improvement and progress, it has accomplished the end for which it was organized and performed all of the functions respecting social advantages with which it is endowed.

Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal, one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane.

It is true that the question of the proportion of colored blood necessary to constitute a colored person as distinguished from a white person is one upon which there is a difference of opinion in the different states, some holding that any visible admixture of black blood stamps the person as belonging to the colored race (*State v. Chavers*, 5 Jones, [N.C.]1, p. 11); others that it depends upon the preponderance of blood (*Gray v. State*, 4 Ohio, 354; *Monroe v. Collins*, 17 Ohio St. 665); and still others that the predominance of white blood must only be in the proportion of three-fourths (*People v. Dean*, 14 Michigan, 406; *Jones v. Commonwealth*, 80 Virginia, 538). But these are questions to be determined under the laws of each state and are not properly put in issue in this case. Under the allegations of his petition it may undoubtedly become a question of importance whether, under the laws of Louisiana, the petitioner belongs to the white or colored race.

The judgment of the court below is, therefore, *affirmed*.

Sources: *Plessy v. Ferguson*, 163, U.S. 537 (1896); and <http://historymatters.gmu.edu/d/5485>

See Articles: Equality, Concept of; *Plessy v. Ferguson*; Segregation Laws; Supreme Court, U.S.



1901 to 1920

INTRODUCTION

The first two decades of the 20th century served as the midpoint in a series of significant social and economic changes that had a profound impact on crime and punishment in America. These years made up the bulk of what historians call the Progressive Era, a period that marked America's shift from a rural country of island communities to an interconnected, transcontinental nation with international reach and an increasingly strong and important national government. It was also a time of change, during which a national state and its attendant regulation and legislation overlapped and superseded community rule and informal justice.

Organizations from the private or social sphere did not relinquish their role in protecting the safety and security of individuals, remaining important throughout this period. They encouraged an outpouring of collective efforts at moral suasion, communal organization, and crime reform. In the cooperation and coordination of public and private—previously a realm of the churches—more secular approaches to crime and criminal justice reform took hold. Furthermore, even as national approaches grew in scope and importance, progressive reformists encouraged the placement of greater police powers in the hands of the local, state, and federal governments. This in turn encouraged the overlapping, and sometimes conflicting, spheres of a federalized criminal justice system in America.

The period from 1901 to 1920, therefore, was the turning point in America's shift from local and informal law enforcement and community standards to organized, professional, and federal law enforcement and national standards of crime and punishment. These effects were seen in the change that occurred in the crimes committed, the development of American law enforcement, changes in the criminal law and court procedure, and the growth of the American prison system.

Crime and Criminal Behavior in the Progressive Era

Progressive thought on crime and other social issues was a hybrid of secular thought and religious sentiment, which was reflected in the treatment of crime—especially concerning imprisonment—from 1901 to 1920. During this period, the popular explanation of criminal behavior remained a mix of belief in human sinfulness, rational choice, and

human atavism; alternate names for these approaches were the religious, classical, and positivist theories of crime. Much of this came to be reified in later decades into other criminological theories, such as the Chicago School.

Social Darwinism played an important role in Progressive Era criminological arguments. It was a support for much of the positivist arguments promulgated by the nascent group's experts, a growing class of social scientists that included sociologists, political scientists, economists, and psychologists. They began positing environmental and other structural causes of crime. Socialist economic criticisms played a role, especially Karl Marx's theory of alienation, as did more race-oriented theories emerging from the Social Darwin camp. The psychological theories of the day, also deeply tinged by Social Darwinism, had an impact. The administration of intelligence tests to thousands of people who entered the criminal justice system lent support to the theory that criminals, delinquents, and other antisocial persons were feeble-minded. These people were often institutionalized or even sterilized to prevent them from harming themselves, others, and even future generations. Other elements of the Progressive Era eugenics movement encouraged setting limits on the propagation of the racial, ethnic, and economic groups that were seen as the source of criminal behavior.

This new understanding of human behavior, especially the antisocial element, was also grounded in religiously inspired sentiments. Ideals of reforming the sinful individual, forgiveness, and human charity marked much of the reformers' zeal for a "social gospel." There was an almost eschatological quality to many of the progressive dreams of creating a secular version of the heavenly kingdom. This approach culminated in the great political and legislative effort of 1919 to amend the U.S. Constitution and enact a prohibition regime, which commanded the attention of the criminal justice system through the next 15 years. Groups such as the Women's Christian Temperance Movement led this movement and many others that similarly sought to encourage the reform of wayward people, including criminals, and the brutality of systems in which they were found. Softer forms of social control were melded to harder forms of political control.

The industrial city, given its size, novelty, and profusion of immigrant classes, was the focus of these theories, and it would be the breeding ground for many private and public solutions to crime. Such explanations showed in the work of early muckraking journalists such as Jacob Riis. In his 1902 book, titled *The Battle with the Slum*, Riis adopted the observation of a New York inspector on whose work he had reported that slums were "the nurseries of crime." One such area, a slum on the East Side of New York at the southern end of Mulberry Street called the Bend, he recalled as "redolent of crime and murder." In the city, the older criminal justice system floundered and was rapidly replaced by new forms and approaches as America's urban population exploded between the end of the Civil War and the start of World War I. These changes eventually emerged in law enforcement, the courts, and the prisons.

This mix of new theories and old sentiments in progressive thought also had an impact on identifying criminals. The remnant means of logging criminal identities was the Bertillonage system, named after Frenchman Alphonse Bertillon, whereby elaborate measurements of physical characteristics were recorded to create what was thought to be a unique (or unique enough) set of numbers to indicate specific persons. The theory behind such measurements was that wicked acts correlated to physical abnormalities and atavistic traits. The failure of Bertillonage to predict or even uniquely identify criminals led to the system's disappearance, and fingerprinting soon supplanted it. Social Darwinism, though, continued to have an impact on the understanding of human behavior and led to more sociological understandings of crime.



Mulberry Street slum, New York City, ca. 1900. Author Jacob Riis, studying city slums with the eye of a New York inspector, observed that slums were rampant with crime. In particular, the southern end of Mulberry street was "redolent of crime and murder." New forms of law enforcement, including reformatory and progressive thought, were explored to handle the population and crime surge in the era between the Civil War and World War I.

Progressive social scientists, lawyers, judges, and politicians all wanted a more scientific understanding of crime and criminals, but the crime statistics of the day were problematic. Their call for more and better crime statistics would have a lasting impact. The U.S. Census Bureau collected data that was useful for understanding the scope of American criminality, but critics argued that this paled in comparison to the range of data collected by European nations. To remedy this, a National Prison Association created a Committee on Criminal Statistics in 1904. Other groups, from various prison associations, bar associations, and more academic groups such as the American Institute of Criminal Law and Criminology, published study upon study of the crime problem, drawing on a variety of research. It would take two decades for the International Association of Chiefs of Police (IACP), and then the Federal Bureau of Investigation (FBI), to make a formal, national effort to collect crime data, but the call for such data had been heard.

Of the crimes that can be documented in this period, murder has received the most attention. It is estimated that the murder rate was less than 1.5 per 100,000 in 1900, but rose precipitously from approximately 1906 to 1907 and continued to climb to more than 6.5 per 100,000 by 1920, according to the Justice Research Statistics Association. In comparison to other Western nations, however, this rate was significantly higher; for example, the murder rate in New York was six times higher than that of England and Wales between 1914 and 1918. Other crimes were harder to mark, but



The funeral of "Dago Frank" Cirofici, one of four New York City criminals convicted of murdering Herman Rosenthal, takes place in lavish style in April 1914. He and his associates Harry Horowitz "Gyp the Blood," Louis Rosenberg (Rosenweig) "Lefty Louis," and "Whitey" Lewis (Frank Seidenshner) were executed at Sing Sing prison. Murder rates climbed from 1.5 per 100,000 in 1900 to more than 6.5 per 100,000 by 1920.

some observations were made. Burglary, robbery, and automobile thefts in American cities were similarly more prevalent than in European cities.

The growth of federal crime may also be tracked, and generally quite accurately, but only because there were so few federal crimes committed. The annual reports of the U.S. Secret Service suggested a leveling off of counterfeiting investigations, and the Bureau of Investigation (BOI), the FBI's predecessor, reported a significant increase in general, federal investigations, as Congress gave the new agency money and personnel to investigate interstate prostitution. This latter category of cases exploded between 1910 and 1913, but quickly declined after changes in bureau policy and priorities such as gun running and cross-border (Mexican border) revolutionary activity took precedent. On the subject of other crimes, conclusions are murkier. Some researchers have found that references to corruption and fraud peaked around 1840 and steadily declined from the 1870s, with much smaller spikes in 1910. Incidents of kidnapping remained few, but other violent crimes tracked the murder rate. In all, the period from 1901 to 1920 did not experience a great increase in criminal activity, at least on a per-capita basis; but as for absolute numbers, crime was on the rise.

The aftermath of the collapse of Reconstruction in 1877 and the long, slow decline of the promised freedom for African Americans in the southern states led to many significant criminal issues. The institution of various Jim Crow laws across the southern states did not always create criminal violations, but the increasing legal segregation opened many opportunities to charge southern blacks with various breaches of the peace as they were effectively disenfranchised. One such insidious development was

the creation of a peonage system, whereby indebted status, whether from legitimate or manufactured debt, placed both southern whites and blacks (disproportionately blacks) into forced labor to pay off the debts. At times, the U.S. Department of Justice forcibly investigated such re-enslavement because the interstate impression of labor involved as civil rights law did not encompass such violations. Prosecution following investigation was a different matter; local legal culture and social pressure generally negated the government's ability to prosecute successfully against peonage under federal law, no matter how strong the evidence. Still, the Justice Department maintained positions dedicated to such investigations and continued to press them through the 1908 reorganization that created the BOI.

The threat of lynching remained in many places due to racial and ethnic animosity. The number of victims each year was a small percentage of overall murders and had been declining from its peak at the end of Reconstruction. As a tool of social control, though, its impact was disproportionate. Prominent cases of lynch mob "justice," such as the lynching of Leo Frank in Marietta, Georgia, in 1915 for the murder of Mary Phagen or the 1919 lynching of African American Willy Brown in southern Omaha, Nebraska, suggested an undercurrent of anti-Jewish and antiblack racism. For many decades, federal civil rights law could not touch the criminality of such acts and local forces tended to turn a blind eye. Often, however, there were also deeper issues involved. In the Brown case, for example, the background included violent labor clashes between black and eastern European workers and the economic dislocation that followed the rapid demobilization from World War I.

Racial conflict played a significant factor in another significant area of criminal activity: rioting. Over the first two decades of the 20th century, Americans engaged in at least 10 racially motivated riots. Some were fairly small, but several were quite large, including one that lasted several days in Washington, D.C. Riots were typically catalyzed by a single incident of violence, often committed by or against a law enforcement officer, and many exhibited the fault line between Caucasians and African Americans. Such clashes occurred across the country: riots in Atlanta and Brownsville, Texas, in 1906; a riot in Springfield, Illinois, in 1908, which partially led to the creation of the National Association for the Advancement of Colored People in Springfield in 1909; nationwide riots following the fight between boxer Jack Johnson and Jim Jeffries in 1910; riots in east St. Louis, Illinois, Philadelphia, and Houston all in 1917; and a riot in Washington, D.C., in 1919. Other ethnic conflicts, however, could also spark riots. The 1902 New York City riot, for example, was a conflict between Irish immigrants and New York police against local Jewish immigrants. Economic unrest, albeit tinged by racial conflict, was a catalyst in Nebraska in 1909, where a community of Greek immigrants, known as Greek Town, was attacked and driven out of the area by other groups. The fact that the Greek immigrants were strikebreakers added a deeper level of conflict to the cultural differences.

Criminal acts related to political ideas—that is, revolutionary ideologies—were also becoming a serious problem. On September 5, 1901, President William McKinley was assassinated by an anarchist named Leon Czolgosz. The same threat of violent anarchism had been roiling Europe for two decades prior to the murder, and would continue to be a worldwide issue and catalyst for many years. With the murder of the president, the threat of political violence became ensconced on the radical left of the political spectrum and was associated with eastern European immigrants.

In response, American immigration laws were changed to forbid the emigration of anarchists, and the U.S. Secret Service was assigned protective duties. The Secret Service and other federal agencies began to pay closer attention to developing domestic

intelligence on radical threats; their activities were a mélange of law enforcement and domestic espionage that became increasingly controversial over time. From its beginning, the BOI investigated national security matters, including neutrality law violations that forbade supporting foreign revolution from U.S. soil to anarchist statute violations. The New York Police Department created a bomb squad to investigate anarchist threats in the city. Even private detective forces such as the William Burns Detective Agency (shortly thereafter known as the William Burns International Detective Agency) got involved, investigating the bombing of the offices of the *Los Angeles Times* and gathering evidence for local prosecutors against union members accused of the act. The threat of political violence continued through the decade, culminating in the 1919 mail bomb campaign, most likely committed by a small group of Italian anarchists. The federal government's sweeping overreaction, known as the Palmer Red Raids, was an effort to detain and deport all anarchist and communist aliens, regardless of their roles in illegal activity.

Along with the organization of urban societies, a correlating change in the organization of crime began to develop. The corrupt political and economic practices of the political machines were under attack and on the wane, but new organizations based on criminal violence and other acts began to be noticed. Chief among these was the nascent Italian immigrant-based Black Hand gang and their associated crimes. New York City was becoming a center of organized gang activity, and groups claiming to be Black Hand appeared in many U.S. cities by the early 1900s. The historiography on the movement's origins, whether transplanted or indigenous, is developing, but it is clear that the movement did not migrate in whole from Sicily, even if persons and practices were connected to the Italian *Mafigoso*. Not yet as organized as the Mafia would be in later decades, Mafia techniques and immigrants from Sicily were developed in America and became known in major urban centers in the United States. Threats of violent extortion and retribution and notes left in such threats came to be attributed to the Black Hand, thereby making the reach of the group appear nationwide, whereas it was primarily a phenomena in New York, Chicago, and a handful of other cities.

Whatever its origins, the threat of organized crime was a reality in New York and other cities. Several large gangs operated within the wider New York community, including Italian ethnic gangs known as the Five Points Gang, out of which emerged notorious gangsters Johnnie Torrio and Alphonse Capone; the Black Hand gang under Giuseppe Morello; Irish ethnic gangs such as the White Hand Gang; Monk Eastman's Jewish ethnic gang; and a diverse collection of smaller criminal groups. Similar groups, though less well known, appeared in many major urban areas, including Boston, Chicago, and several west coast cities, but New York was the most significant.

In New York, elements of its police force became dedicated investigators of specific gang problems. The most well-known investigator at the time was New York police detective Joseph Petrosino, who came to be known as a chief investigator of Black Hand operations in the city. Despite the difficulty of acquiring willing witnesses and the code of silence adopted by gang members, Petrosino and other New York police officers were able to make advances against the gang. U.S. Secret Service agents, under the leadership of its New York agent in charge, William Flynn, also pursued gang members, especially their leader and known counterfeiter, Giuseppe Morello. In May 1909, in order to continue his investigations, Petrosino traveled to Palermo, Sicily, where he was murdered by elements of the Sicilian Mafia. Italian authorities launched major investigations, offering 10,000 lira for information. New York City held a large public funeral and awarded Mrs. Petrosino a lifetime pension in recognition of her husband's sacrifice.

Although such international connections were not usually pursued at that time, crime on the national level was rising in prominence. Theodore Roosevelt, as president and

candidate for reelection, touted his experience in seeking criminal justice reform in New York City. In the following presidential election, both Democrat and Republican parties had platform planks on criminal justice issues, specifically fraud in the awarding of mineral rights and other concessions on federal lands.

President Roosevelt had embarked on a massive campaign to bring western lands under federal control in order to conserve their natural state and control their exploitation for mining, drilling, and other commercial concerns. However, because federal bureaucrats and legislators gained control over vast areas of natural wealth for which there was great demand, significant fraud followed. Using Secret Service personnel, the Department of Justice began to investigate these matters in 1904, and one senator was indicted for bribery in connection with land issues. In a separate matter, another congressman was also indicted on a criminal charge related to misuse of his office. Soon afterward, the Subcommittee of the House Appropriations Committee began holding hearings on the use of Secret Service personnel to investigate federal criminal violations. Some people contended that these hearings were retribution for earlier investigations into congressional members. The hearing transcripts suggest that the members' concerns were aimed at the abuse of power under Secret Service Chief John Wilkie, but baser motives have not been ruled out.

Congress then used an appropriations bill to curtail the role of the Secret Service in providing investigative personnel for the executive branch. In reaction to this change in federal practice, the attorney general created a small detective force in his department.



Nineteen members of the Black Hand Society are arrested at Fairmont, West Virginia, on March 27, 1909. Attracted to the area's mines and factories, Italians were a large ethnic group in the state; their businessmen were frequent targets. Organized crime was on the rise in the early 1900s, and the Black Hand was notorious in many cities across the United States for threats of blackmail and extortion. During prohibition, however, bootlegging became more profitable.

The heated issues of abuse of power rose again, not because of the attorney general's actions, but because a "lame duck" President Roosevelt suggested to Congress in a public message that it had limited the Secret Service's role solely because its members did not like being investigated for criminal activity. The back-and-forth debate enlivened a dull Washington winter, but accomplished little else. When Roosevelt left office two months later, the issue faded.

Crime was also becoming more visible with the rise of intercontinental communications by telephone, telegraph, and radio. Heinous acts in New York could be news in Chicago and Los Angeles the same day and vice versa. The crusading stories of the muckrakers exposed acts of violence and depravity from the peonage system in the south to the practices of butchers in Chicago to the unsafe practices that fed the tragic fire of the Triangle Shirtwaist Factory Fire in New York City in 1911. The national attention a journalist could bring to such issues, though not always crimes or concerns for law enforcement, often led to state and national attention. Journalist Ida Tarbell's articles on the machinations of the Standard Oil Trust fueled federal efforts to rein in monopolistic practices. Richard Barry's article on how the peonage system effectively enslaved people encouraged public outcries against the system and its connection to prison labor. Ray Stannard Baker turned public attention toward lynching. Upton Sinclair's book *The Jungle* turned stomachs with its descriptions of Chicago meat-processing abuses and fed a national outcry that led to the 1906 Pure Food and Drug Act, one of a growing number of national regulatory acts with potential criminal sanctions. And the death of more than 140 women at the Triangle Shirtwaist Factory led to the promulgation and enforcement of new workplace safety laws in New York City and the indictments of several factory owners for manslaughter; they were acquitted.

The ability for crime news to travel quickly and universally did not mean that it exactly resembled today's sensationalistic coverage. The murder case of Belle Gunness, a Nor-

wegian immigrant who was thought to have lured dozens of people to their deaths—mostly men, but even some of her own children—is one example. Gunness's long trail of death began to unravel in May 1908 when the family of one of her victims began searching. Gunness disappeared, however, and authorities eventually discovered the remains of numerous homicide victims on her farm in La Porte, Indiana; her farmhand, Ray Lamphere, was arrested and charged with murder and arson. A headless corpse in a nightgown found in Gunness' burning house was thought to be Gunness; medical examination of the corpse, however,



Belle Gunness and her three children. The story of Gunness, who died a mysterious death and was suspected of luring and murdering dozens of others, including her own children, was covered by the nascent sensationalist press—a practice that was to grow over the decades.

cast some doubt, and the mystery remained. The newspapers of the day covered the events, but despite the sensationalist aspects of it—a “black widow” mass murderer, the mystery surrounding her disappearance, the grisly discovery of multiple bodies—the story did not achieve the attention that later cases, such as the Lindbergh Kidnapping (1932) or the hunt for Andrew Cunanan (1997), achieved as media sensationalism grew.

International communication contributed to both the advancement of criminological science and public interest in crime and its detection in other ways. In 1905, the International Police Exposition in St. Louis, Missouri, brought John Ferrier, a Scotland Yard officer, to the United States to expound on the utility of fingerprint identification. International concern over the trafficking of immigrant women led to conferences, debates, and legislative action throughout the Western world. In 1910, the U.S. Congress passed the Mann Act, also known as the White Slave Traffic Act, to combat this perceived threat. American law enforcement officers and researchers looked to Europe for the latest developments in police science and administration, and the exchange of ideas across the Atlantic was fruitful.

Another feature of the public’s awareness of crime led to efforts at crime prevention. In an August 1913 issue of a popular magazine, the *Outlook*, New York Police Department (NYPD) Second Deputy Commissioner George S. Dougherty presented an extensive article discussing “The Public: The Criminal’s Partner,” complete with pictures illustrating how careless citizens were ripe for the efforts of pickpockets. Dougherty argued that, “If the public would cease to cooperate with the criminal, crime could be reduced to a minimum within a single year. Approaching crime prevention in another way, the Anti-Profanity League—a group whose aim was to end public cursing—used a religious anticrime message as part of its wider effort, calling profanity “Satan’s hook” and suggesting that such moral failings could lead to greater ones such as crime. Many calls for greater social safety nets in the form of settlement houses and other charitable efforts used similar arguments.

Law Enforcement

American cities and towns were steadily building dedicated police forces from the end of the Civil War. Larger cities required changes in police management as the old watch and ward system gave way to a more military form of organization in larger cities. Typically, these police officers were politically appointed patrolmen, often making a decent wage but tied completely to the electoral spoils system of machine politics. They were prone to graft and an unbalanced administration of justice. They were also assigned to handle a variety of constituent services, from taking in boarders to reuniting lost children with their families, and they had a few investigative responsibilities. The very term *detective* often carried negative connotations, as investigative techniques—disguise, surveillance, and other subterfuge—were suspect and associated with criminal activity by the police.

The problem of law enforcement at the start of the 20th century was that the rapid growth of population and the proliferation of roads and communication lines made the local character of 19th-century enforcement untenable. Unlike European police, American police forces followed the style of local and municipal governments, meaning that smaller departments were often ad hoc, untrained, and underfunded, while the larger departments were creatures of the machine politics of America’s growing urban centers. Even these larger departments tended to be decentralized, much like the city governments that created them; the power of the machines lay in the electoral districts, city wards, and neighborhoods. Although the officers who came out of this system could be well compensated, that compensation too often came from protection money and other small-scale but widespread corruption.

In response to the machine influence on law enforcement, progressives sought to “professionalize” police work, a strategy that would persist throughout the 20th century. It is clear that such moves had a significant influence on American police forces during the first decades of the 20th century. Urban historian Eric Monkkonen found a clear change in police work between 1890 and 1920, when forces changed their mission from providing a variety of services that fell under the rubric of “police power,” such as returning lost children and housing the transient, to chasing robbers, thieves, and murderers. Arrests, or more accurately, temporary detentions for “victimless crimes” such as public drunkenness declined, while arrests for violent crimes increased. This change, which came from both internal and external forces, emerged from a narrowing of the purpose of police as other governmental and private structures like settlement houses took on the social aspects of police power and left the narrower enforcement role to police officers.

One significant progressive goal was to remove law enforcement from the reach of machine politics by bringing police forces under civil service rules. The establishment of police commissions and administrative boards had some influence as these reforms removed police administration, especially officer selection, from patronage politics. Even more significant was the use of civil service procedures, including the use of exam criteria to select candidate officers. By 1915, there were 204 police departments in the United States that hired personnel under civil service rules; although two-thirds of the federal government jobs fell under civil service requirements, it is not known how many of those were law enforcement related. Along with this move to “bureaucratize” law enforcement came a clear differentiation of various roles in the criminal justice system as the governing bodies of U.S. cities and states found that they needed police, detectives, prison officials, medical examiners, forensic scientists and, in general, a growing army of criminal justice workers, according to historian Thomas Friedman. This was followed by calls for professional standards and controls in order for law enforcement to be effective and to implement the latest organizational, scientific, and legal developments available. The institution of such standards and controls marked the first decades of the new century. This move toward professionalization during the first 20 years of the 1900s had a significant effect on the public image of the police officer and, eventually, their plain-clothes colleagues, the detectives; however, many hurdles remained.

The early 20th century, though, was not a period of vastly expanding law enforcement roles, at least on a per-capita basis. The large, mid-19th century increase in police forces had tapered off dramatically through the end of the 19th century. During the first decades of the 20th century, the number of police rose at much the same pace as the population as a whole. In Chicago, for instance, the number of residents per officer ranged from 478 officers per 100,000 to 512 per 100,000 in 1920, according to the Chicago Police Department.

The remuneration for police also varied. Those forces most in line with the progressive push for police professionalization offered reasonable salaries and advancement, as well as the job security of civil service positions. In other jurisdictions, police pay and benefits lagged and job requirements could be heavy. One answer to such problems was to organize. In 1915, two Pittsburgh, Pennsylvania, patrol officers formed “Fort Pitt Lodge #1” of a new organization called the Fraternal Order of Police (FOP). Its purpose was to offer a common voice to city officials on issues concerning police. Within two years, a national organization was formed and rapidly grew. However, the FOP was less of a union and more of a lobbying group and benevolent association; its name was deliberately selected to provide that impression because of the problematic relationship between law enforcement, unions, and politicians.

Other police jurisdictions, though, looked to the organized power of the union as a possible solution to labor unrest and job dissatisfaction with police work. The flash point of this movement occurred in Boston. In 1919, America faced a wave of labor unrest as more than 3,000 strikes took place throughout the country and terrorist violence threatened the peace. Seeing this unrest, many Boston police, unsatisfied with their pay and hours of work, made a petition to Edwin U. Curtis, the police commissioner, for permission to form a union and engage in collective bargaining. Curtis refused and suspended the leaders of the grassroots effort. Not long afterward, on September 9, a significant majority of the Boston Police Department, approximately 1,100 officers, went on strike. Rioting and unrest followed, and the mayor called in local militia units and petitioned the governor for additional aid. Massachusetts Governor Calvin Coolidge immediately called out the state National Guard units to restore the peace in Boston. Returning servicemen were offered the jobs of the striking officers, along with much of what the strikers had been requesting. The strike was broken and the process of unionizing American police was significantly delayed.

National law enforcement forces were even less developed and also experienced little growth; however, they underwent a significant change in focus and organization that would set their direction in the following decades. Prior to 1900, federal police

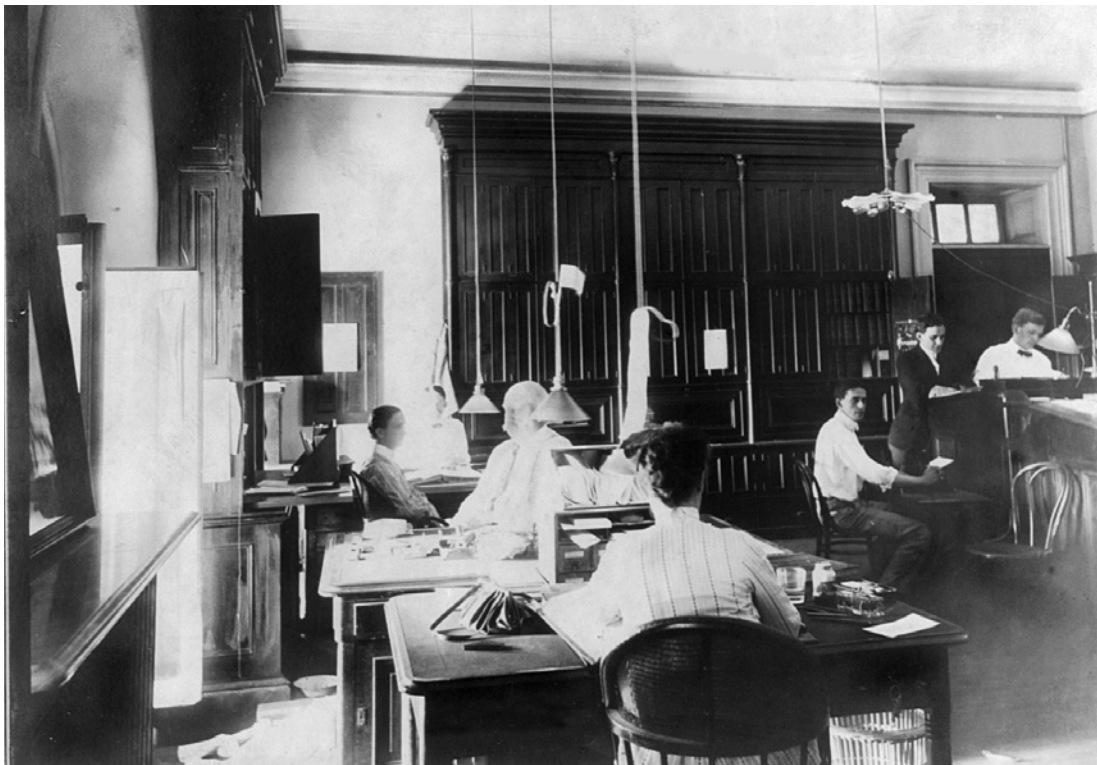


Rising standards of professionalism during the first two decades of the 1900s led to an improved public image of the police. A downtown Washington, D.C., officer uses a direct-to-station call box with an illuminated red globe to alert officers to the scene (left, ca. 1912). A policewoman directs traffic near the Carnegie Library in Washington, D.C. (right, ca. 1919). The first police matrons were relegated to clerical, juvenile, guard duty, and vice work.

personnel consisted of a variety of small investigative groups, some with law enforcement powers, and some without. The largest groups were the U.S. Secret Service in the Treasury Department, the U.S. Marshals in the Justice Department, and the U.S. Postal Inspectors. The term *secret service* was regularly used to describe all federal investigators. It was fraught with ambivalent, if not negative, connotations, much like the term *detective*. The connotations of “secret service” suggested spying, primarily in a domestic environment, which could lead to governmental abuses. The terminology for state and local police, although sometimes associated with strike-breaking activity, was not as shrouded.

The Secret Service, following federal laws that forbade the use of private detective services such as the Pinkerton Agency, provided investigations on an ad hoc, per diem basis to many agencies that required investigative assistance. The U.S. attorneys of the Department of Justice not only prosecuted criminals but also filled the role of detective and village constable, albeit with much hired help. Given the paucity of federal criminal law, this system was neither efficient nor optimal, but it was generally adequate to deal with the priorities and policies of the presidents and their attorneys general.

Under President Theodore Roosevelt, small changes with long-term consequences in this structure and approach began. He advocated the vigorous use of executive power and authorized his attorneys general to act against some trust combinations under the Sherman Antitrust Act of 1890, begin to enforce land fraud laws, and enact a more general expansion in the enforcement of federal criminal law. Federal legislation also



U.S. Secret Service employees at work, circa 1906. During that year, the U.S. Congress passed the Sundry Civil Expenses Act of 1907 to provide funds for the Secret Service to protect the president. The department had assumed the responsibility of protecting the president in 1902, with two operatives on the White House detail full-time.

continued to expand the scope of federal law. Anti-anarchist laws and neutrality laws began to form the basis for criminal subversion investigations and national security law. Even more important were laws aimed at political and economic corruption as people of the era feared the corruption between these entwined spheres of power. Roosevelt's vigorous application of older laws and the increase in newer ones began to tax the limits of this disorganized collection of agents and investigators.

August Vollmer represented and proselytized this new vision of professionalism in law enforcement. In 1905, he was elected town marshal and soon developed the Marshal Corps into a full-blown police department, of which he was appointed head in 1909. Other than a brief stint as chief of police in Los Angeles, Vollmer served in Berkeley, California, until 1932. During his tenure, he developed a police school, created a motorcycle and then automobile patrol, created the first unit to deal with juvenile crime and antisocial behavior, advocated the establishment of a criminology school, and experimented with the use of a newly developed lie detector. He brought radios into police work, created a system of police records, and insisted on using intelligence tests and educational qualifications to select new officers. In 1919, he was elected head of the IACP.

Professional organizations aimed at supporting and reforming enforcement continued to grow during the course of the Progressive Era. These organizations ranged in purpose from groups advocating the increased or decreased criminalization of various vices, from prostitution to alcohol and drug use. In 1902, an International Prison Association began meeting yearly to consider issues in prison reform. In 1909, the American Institute of Criminal Law and Criminology was organized in Chicago to consider and advance the development of the criminal justice system and its study. In 1915, the International Association for Identification was formed in Oakland, California, by Inspector Harry Caldwell of the Oakland Police Department and 21 other law enforcement officers; its purpose was to share information on criminal identification and to develop standards by which all law enforcement could regularize their identification work.

Citizen organizations also proliferated in the early 20th century. Chicago was a center for several key examples of these groups. In 1907, a group of leading Italian citizens, prominent businessmen, several ethnic organizations, and the Italian Chamber of Commerce in Chicago formed a group called the White Hand Society. Its aim was to combat Black Hand activities in the area. Several years later, in 1919, the Chicago Association of Commerce created the Chicago Crime Commission. The catalyst was a brazen payroll robbery in 1917, the murder of two security guards during the robbery, and an armed standoff between a handful of criminals and several hundred police officers. The association created a large committee to consider the problem of crime in Chicago and possible remedies to its perceived growth. The commission is still in existence today, working to improve the criminal justice system in Chicago by creating and supporting solutions to crime by educating the public.

Religious institutions also displayed keen interest in the problem of crime and enforcement. For many years during this period, the State Baptist Convention of Georgia had a standing committee on criminal law reform. It focused on the problem of the increase of crime in the country, its causes, and potential remedies. Business groups also became involved, sometimes significantly so. During the country's involvement in the World War II, an American Protective League—a force that numbered in the hundreds of thousands—was formed by three Chicago businessmen and allied itself to the Department of Justice. It provided the national government with a domestic security force that helped to identify political undesirables and draft dodgers, as well as a host of war-related

crimes; laws passed soon after American entry in the war had made many aspects of subversive speech and action illegal for a period of time. The group often went beyond its role as an “eyes and ears” for the government and assumed law enforcement–like powers. Strong criticism and the quick end of the war led to the immediate dissolution of the group and the destruction of most of its domestic intelligence files.

Between 1901 and 1910, the use of fingerprints in criminal identification began to be used alongside and to rapidly supplant Bertillonage—the idea that a unique personal description could be created if enough standard physical descriptors and measurements were taken. The Henry system of classifying fingerprints, promulgated in 1900, was rapidly adopted in law enforcement because it was much simpler and less prone to error than the Bertillon measurements. Its adoption in the early 20th century led to a revolution in criminal history and identification recordkeeping and would spur the development of worldwide law enforcement communication networks for the sharing of criminal identification information.

American fascination with fingerprints was foreshadowed in Mark Twain’s novel *Pudd’nhead Wilson: The Extraordinary Twins* in 1894, and individual law enforcement agencies began experimenting with fingerprints as evidence soon thereafter. As early as 1904, in the Sing Sing and Leavenworth federal prisons, the regular collection and collation of criminal prints began. The IACP also began to amass a collection, drawing on contributions from its membership to start the rudiments of a national criminal identification collection.

In 1910, following IACP discussion of the importance of fingerprints at its 1909 annual meeting, Frederick Augustus Brayley authored the first American textbook on taking, categorizing, and using fingerprints in criminal investigations. His book *Brayley’s Arrangement of Finger Prints Identification and Their Uses* became an important first step in the advancement of fingerprint identification in the United States. The following year, fingerprint evidence was first cited in a murder trial in Chicago. The murderer left a series of prints in some fresh paint at the scene of the crime, and Chicago police captured the images through photography. Prosecution witnesses matched these prints to the fingers of Thomas Jennings, who was arrested near the crime scene with blood on his shirt and a gun of similar caliber and ammunition to that used to kill Clarence Hiller. Jennings was convicted and executed, tied to the scene of the crime by the prints left in the paint.

Other advances in forensic science also helped to advance the professionalism of American law enforcement investigations. In the 1902 case of *The Commonwealth v. John C. Best*, Massachusetts Supreme Court Chief Judge Oliver Wendell Holmes allowed the first use of ballistic comparison in a U.S. court case when he wrote in favor of the Commonwealth’s case against the Best’s appeal. In the lower court, the government argued that the rifling on bullets taken from the victim’s body matched a test bullet fired from the accused’s rifle. Holmes noted that this was the best evidence available. In February 1913, the U.S. Congress passed a law admitting that “where the genuineness of the handwriting of any person may be involved, any admitted or proved handwriting of such person shall be competent evidence as a basis for comparison by witnesses, or by the jury, court, or officer conducting such proceeding, to prove or disprove such genuineness.” Many other examples of the courts and legislatures dealing with the admissibility of physical forensic evidence abound, as law enforcement officers and detectives secured positive and latent fingerprints, blood samples, handwriting samples, document exemplars, trace evidence, and a diversity of other evidence. The promise of progressive forensics seemed unbounded, and judges were open to considering the edges of science in the courts.

In a 1904 case in Colorado Springs, Colorado, police tried but failed to identify a body by its teeth; a few years later, a California dentist succeeded in identifying the remains of a murder victim by comparing the victim's teeth to the dental record of possible matches. The appointment of publically funded, medically trained personnel to provide forensic support developed steadily after Boston appointed a certified doctor as medical examiner in 1907. Chicago began to rely on people with growing expertise in aspects of forensic science such as T. Dickerson Cooke, a pioneer in criminal identification. The New York criminal justice system looked to medical professionals such as Alexander Gettler, a famous toxicologist, to supplement their investigative work, developing a small force of professional medical examiners and appointing Dr. Charles Norris as the first chief medical examiner in 1918.



In this political cartoon (ca. 1906), President Roosevelt scares up the "octopi" of the trusts: hard coal, beef, and Standard Oil. His administration used the Sherman Antitrust Act of 1890 against monopolies that were deemed dishonest or harmful to public interests.

The forensic fields that grew the most quickly were based on observation and comparison of evidence to collected standards. Questioned document examination grew rapidly and played a role at various stages of the criminal justice system. In the 1900 Rice-Jones case, a key piece of prosecutive evidence, the identification of forgery of a will by a professional document examiner, led to the conviction of New York attorney James Baker and valet Charles Jones in the murder of Jones's boss, William Marsh Rice, a wealthy New Yorker. Advances in the application of discoveries in chemistry and biology, especially related to identifying and understanding physical evidence, awaited further developments in those scientific fields. For example, blood could be identified as animal or human, but typing that blood awaited more research in medical science before it was of use to forensic investigation. Still, the criminal justice system eagerly awaited such advances and soon began investigations to further the field. In 1919, Edward Oscar Heinrich (1881–1953), a Wisconsin-born chemical engineer, set up the first forensic science laboratory at the University of California, Berkeley, where he advanced research into the application of scientific practices into criminal investigations.

Private detective forces also continued to play a serious role in law enforcement investigations. Although their employment in federal law enforcement was prescribed and they

were usually unwelcome in state or municipal investigations, private companies often brought them on as a supplement to, or a correction of, other law enforcement forces. Often, this was in the role as security guard, such as the more than 10,000 railroad police who were employed through much of this period, or on a more ad hoc basis as strike breakers or labor spies. In other instances, however, they provided the investigative muscle needed to break cases, such as William Burns's role in solving the bombing of the *Los Angeles Times* building that killed 21 people and wounded hundreds more. With much controversy and allegations of illegal tactics, Burns obtained evidence of the role of several labor radicals in the bombing, who were later convicted on their own admissions of guilt. Burns's example also indicated the revolving door that existed between public and private investigative work as he started his career in the U.S. Secret Service, ventured out to form the William J. Burns Detective Agency in 1909 (which in 2001 merged with Pinkerton to become part of Securitas Security Services USA Inc., the largest security services provider in the world), and returned to lead the BOI later in life. He spent his last years writing detective stories based on his experiences.

Some historians have argued that, ultimately, the progressive attempt to reform law enforcement failed. Econometric historian Robert Fogelson suggested that the political machines were too difficult to break and that officers resented the progressives' interventions. Reformers were viewed by the police as individuals who knew little about police work and whose proposals for change were ill conceived. Finally, the reforms failed because the idea of policing could not be divorced from politics—that is, the character of big-city police was interconnected with policymaking agencies that helped to decide which laws were enforced, which public was served, and whose peace was kept. Separating the police completely from politics could not take place in this environment. Against this backdrop, there were changing standards for law enforcement officers, from selection to training and assignment. Further, the growing application of more scientific-based detection techniques and the public fascination with these methods suggest positive change.

Criminal Law and Legislation

From 1901 to 1920, significant changes in the U.S. legal system developed in several areas. Progressives sought to strengthen national laws in several areas, from antitrust regulation to the creation of new federal criminal jurisdictions under Congress's authority to regulate interstate commerce. Efforts to regulate public safety through laws that regulated food production or those that controlled the use of narcotics were also characteristic of the times. This approach culminated in the institution of Prohibition between 1919 and 1920, an event that would have serious consequences in the following decade. Finally, as police forces began to adopt new, scientific procedures for identifying and gathering evidence, the courts had to consider these new sources of evidence and their applicability to determining guilt or innocence in criminal trials.

Nor was the legal system without its critics. In September 1909, President William Howard Taft commented to a Chicago audience, "It is not too much to say that the administration of criminal law in this country is a disgrace to our civilization." Perennial criticisms of the U.S. criminal justice system were all made during the Progressive Era, such as the length of time it took to bring a criminal to trial and conviction; the overturning of convictions due to technicalities; problematic personnel in law enforcement, courts, and prisons; and the sentimentality Americans bore toward certain crimes and criminal types.

Sumptuary regulation also introduced or continued to imbue certain "victimless" crimes with criminal elements. Antidrug measures using criminal violations also featured

prominently during this period. In 1906, Congress moved to strengthen poisoning laws regarding narcotics in the District of Columbia under “An act to regulate the practice of pharmacy and the sale of poisons in the District of Columbia, and for other purposes.” The Pure Food and Drug Act of 1906 also strengthened the regulatory regime over a wide variety of foods and drugs by Congress in 1906, and required that nationwide, all nonprescription sales of cannabis be properly labeled. Various state laws followed, some aimed at food production and others at the sale and use of various narcotics and cannabinoids. In 1914, the Harrison Narcotics Act (38 Stat. 785) limited the ability of doctors to prescribe certain narcotics and led to some criminal charges against those who prescribed such drugs contrary to the law. The argument over this later regulation sometimes took on a racial overtone, as proponents argued that drugs were having a disparate impact on various ethnic groups.

The regulation of other vices through civil and criminal means was also tied to progressive political goals. The national antiprostitution law known as the White Slave Traffic Act outlawed the transportation of women across state lines for immoral purposes. Aimed at progressive fears that pimps and traffickers from cities were luring immigrant and rural women into lives of prostitution in American cities, Congress provided the newly created BOI with significant resources to enforce the new act. In practice, though, few examples of serious trafficking were detected, and the law came to be criticized for its political and racial enforcement. The use of the act to target black boxer Jack Johnson for dating white women (some of whom had engaged in prostitution) and Farley Caminetti, the son of Democratic politician Anthony Caminetti and his friend Maury Diggs (married men caught in a prostitution sting) suggested a political component to its enforcement. In the latter case, an appeal to the Supreme Court in *Caminetti et al. v. United States* (242 US 470) upheld the Mann Act. It remains, albeit in amended form, a part of federal criminal law.

Laws regulating revolutionary speech and action were also significant in the early 20th century. Spurred by the assassination of President William McKinley in 1901, municipalities and the federal government looked to security legislation. The state of New York passed a criminal anarchy statute in 1902, not long after McKinley’s assassination in Buffalo. The NYPD took special interest in the issue. Earlier in 1914, it created the Bomb Squad under Inspector Thomas Tunney to investigate certain Black Hand crimes. Soon after the start of World War I in 1914, New York, the centerpoint of U.S. commerce with Europe, became the target of German sabotage operations. The purpose of Tunney’s Bomb Squad was to conduct investigations to protect the neutrality of the United States and the safety and property of New York’s businesses. Although this was clearly federal work, the U.S. government was conflicted on how to deal with German intrigue. There were few federal laws that addressed the issue, and as far as criminal law was concerned, the sabotage was a local matter. Tunney and his squad filled a significant gap until the United States entered the war and Congress crafted serious national security legislation. After the war, the squad turned its focus to the real and feared threats of anarchist violence.

In 1903, Congress passed an immigration law known as the Anarchist Exclusion Act. Although not a criminal statute, as it held alien anarchists excluded from emigration to the United States, its enforcement was executed by federal police forces. The following year, the Secret Service was legislatively tasked with protecting the president. The entry of the United States into World War I in 1917 led to the passage of a more broadly worded, antsubversive measure in the Espionage Act of 1917, and one of the most significant clashes over the scope of federal authority to police and punish revolutionary action versus the First Amendment guarantees of the U.S. Constitution. The context for these

battles was stark: a nation rapidly mobilized for a war that quickly ended, leaving a wake of international revolution, worldwide economic dislocation, and a series of politically inspired terrorist attacks.

Leading radicals such as perennial Socialist Party presidential candidate Eugene Debs, socialist Charles Schenck, well-known anarchists Alexander Berkman (previously convicted for the attempted murder of a financial magnate) and Emma Goldman, and many others fell under legal jeopardy of such laws. Debs was convicted of his antiwar rhetoric and his appeals were denied. Goldman and Berkman were deported under the Anarchist Exclusion Act; other anarchists, such as Jacob Abrams, Mollie Steimer, and Hyman Lachowsky were similarly convicted, culminating in the forced deportation of hundreds of alien anarchists to Soviet Russia in 1919. The cases of each of these groups or individuals led to significant Supreme Court hearings that eventually upheld their convictions. The victory was pyrrhic, however, as the dissents laid the rhetorical and philosophical groundwork for the overturning of several precedents: *Abrams v. United States*, 250 US 616 (1919); *Schenck v. United States*, 249 US 47 (1919); *Debs v. United States*, 249 US 211 (1919); and *Goldman v. United States*, 245 US 474 (1918).

Although the general legal, political, and cultural forces of the day were against the anarchists and more radical (or at least vocal) of the socialists—the exception was the widespread nature of union-oriented economic protest that roiled the nation between 1919 and 1920—a number of prominent individuals and groups emerged to challenge the application of the Espionage Act and similar laws. A number of well-known, left-



Anarchist Selig Cohen (aka Selig Silverstein) lies in a pool of blood in New York City's Union Square moments after the bomb he was carrying exploded prematurely in his hand, killing a bystander on March 28, 1908, during a demonstration of unemployed people. Cohen later died. When questioned, Emma Goldman denied knowing Silverstein, but blamed it on a police plot. March 1908 was an active day for anarchist violence across the country.

leaning lawyers came together in early 1920 to form the National Popular Government League to challenge the validity of the Palmer Red Raids. Later that year, the American Civil Liberties Union was created to combat actions of the government that it thought tread on the civil liberties of Americans.

In 1919, the most significant change in U.S. criminal law was enacted: The Eighteenth Amendment to the Constitution was ratified and then actuated by the Volstead Act. Together, these laws created Prohibition, the failed, 14-year attempt to outlaw the manufacture and sale of alcohol.

Trial and Punishment

American approaches to punishment changed significantly over the first decades of the 20th century. Although the number of federal prisoners grew—three federal prisons were created a few years before the new century—it remained an insignificant part of the overall total. A second trend, the slow rise in the overall number of prisoners nationwide, was more important. The Justice Policy Institute noted that the number of U.S. prisoners increased by 11,665 between 1900 and 1910 and by 13,224 over the next decade. However, with increases in the general population upward of 40 percent over the same period, these absolute increases in prison population represent a decline in the per capita incarceration rate. Given the sharp rise in the U.S. population, this trend gives further credence to a steady or slightly declining crime rate overall, or at least the number of arrests made. This would significantly change with the onset of Prohibition following the Volstead Act.

New philosophies of crime were a significant contributor to these changes. To some extent, progressive thought looked to the perfectibility of human nature, and reforms in criminal justice mirrored this. Prison reformers began to seek a rehabilitation model in many places, even as older models continued in others. These reformers looked away from punishment and pressed for innovative approaches to imprisonment such as parole, probation, and indeterminate sentencing—efforts that considered each potential prisoner as an individual who could be changed. Prison reform was such a popular approach that it explicitly entered the 1916 platform of the Democrat Party and was implicitly accepted in the Republican platform as the party argued that pursuing regulatory crimes of business was important, but should not be used to generally punish business. These prison reforms and even political stances set the tone for prison theory for much of the 20th century.

Progressive reformers also sought to challenge the treatment of juveniles as adults, the practice of leasing convict labor, and the abuses associated with chain gangs and work farms. Such practices were most closely associated with the criminal justice systems of the southern states. At the turn of the century, for example, Florida incarcerated 778 state convicts in 13 camps. These convicts were then leased out on contract for the hazardous job of harvesting materials used to make turpentine or phosphate. Several of these operations were investigated by the Department of Justice under federal anti-peonage laws, but few successful cases developed, despite serious investigative work by federal agents. Still, over the next several years, public pressure over the issue led to a significant reduction in chain gang practices, the ending of private hiring of convict labor, and the institution of prison-based and operated labor. The state of Mississippi found a way to deal with the end of the convict leasing system by opening Parchman Farm in 1901, a large-scale, plantation-style prison labor farm that by 1917 was divided into 12 camps (one for women).

Although the practice of considering probation and parole for convicts varied widely from state to state, the general adoption of both was a trend throughout the first decades

of the 20th century. In some states, the bureaucratic apparatus for probation and parole matters were combined; in others, they were monitored separately, with courts considering issues of probation and another institution weighing the justification for parole. Massachusetts developed the first state system of probation in the 1880s and remained a pioneer in corrections reform through the early decades of the 20th century. California followed in 1903, and in New York, the State Probation Commission was created in 1907 to coordinate probation. In 1917, a State Division of Probation was established within the New York State Department of Corrections. Parole was equally important; for example, the 1910 biennial report of the Kansas State Penitentiary noted that the institution of parole in Kansas law two years earlier “is one of the greatest forward steps in prison law.” By 1920, almost half of the states had adopted a statewide system of probation. The federal government adopted a similar practice of authorizing judges to consider probation and parole matters in the late 1920s.

Another significant change in prison matters was the beginning of efforts to remove juveniles from the regular criminal justice system, another social justice effort heavily supported by women’s groups. Prior to the 20th century, children as young as 7 years of age could be treated within the adult criminal justice system. Although the first juvenile court systems were set up in 1899, the idea of separating errant youth from hardened criminals emerged from changing ideas of childhood, education, and punishment. The juvenile judge was to look on the child not as a criminal, but as a delinquent needing fostering care by the state. Reform schools and juvenile detention facilities were set up to institute these new theories aimed at rehabilitation of the offender and protection of the delinquent.

Although this progress generally held true for juvenile males in the criminal justice system, there were some differences in the treatment of young women. The majority of criminals and delinquents were men, who were much more likely to commit property or violent crimes, usually against a spouse, family member, or other close social connection. Women more often came into the criminal justice system on suspicion of moral charges, prostitution, drunkenness, disorderly conduct and, in some cases, “female precociousness,” a euphemism for a woman perceived to be sexually advanced for her age. Incarceration could occur in either a state prison facility, usually reserved for more serious felonies; a municipal organization such as a city workhouse; or a privately run organization such as New York’s Magdalen House or a halfway house run by a religious or other charitable organization. The latter was typically for those convicted of misdemeanors. Over time, prostitution offenses increased in reaction to the effort to halt “white slave traffic,” and fines gave way to periods of confinement in some type of arrangement. In all, the system tended to be more paternalistic to young women (in some cases to the age of 35) than similarly aged men and boys.

Conclusion

By the end of the decade, criminal justice reformers looked back on their work and considered their successes and failures. Political scientist Raymond Fosdick wrote in his 1921 book *American Police Systems* that “American police do not favorably compare to European ones—in re local pride and public confidence in police, detailed training given to police, and care in shielding police from politics ... but if one looks at how far things have come in 20, 40 years, there is substantial basis for encouragement.” This, however, is a view from the front lines. Looking back at the changes over the first 20 years of the new century, there is evidence of significant changes in police structure, training, practices, and scope of work. Efforts to humanely deal with prisoners achieved national attention, and such pressure ensured an impact. Advances in

communication, transportation, and significant population growth meant newer and larger challenges, which the American criminal justice system met with innovation and change. Problems remained, especially concerning the extension of reasonable protections of constitutional liberties, the blight of racial segregation and injustice in the system, and other smaller problems, but the terms of debate had been set for much of the rest of the century.

John F. Fox, Jr.
Federal Bureau of Investigation

1906 PRIMARY DOCUMENT

New York Times Article on the Murder of Stanford White

Manhattan architect Stanford White was murdered on June 25 by Harry Thaw, the millionaire husband of Evelyn Nesbit. White and Nesbit had a brief relationship five years earlier, in which she lost her virginity. Nesbit later married Thaw, but only after turning down his proposal repeatedly and telling him all about White. Thaw's mother offered Nesbit \$1 million if she would testify that White had raped her. The resulting "trial of the century" was the basis for the 1955 movie The Girl in the Red Velvet Swing.

Thaw Murders Stanford White

Shoots Him on the Madison Square
Garden Roof

ABOUT EVELYN NESBIT

"He Ruined My Wife,"
Witness Says He Said,

AUDIENCE IN A PANIC

Chairs and Tables Are Overturned in a Wild
Scramble for the Exits

June 26—Harry Kendall Thaw of Pittsburg, husband of Florence Evelyn Nesbit, former actress and artist's model, shot and killed Stanford White, the architect, on the roof of Madison Square Garden at 11:05 o'clock last night, just as the first performance of the musical comedy "Mamzelle Champagne" was drawing to a close. Thaw, who is a brother of the Countess of Yarmouth and a member of a well known and wealthy family, left his seat near the stage, passed between a number of tables, and, in full view of the players and

of scores of persons, shot White through the head. Mr. White was the designer of the building on the roof of which he was killed. He it was who put Miss Nesbit, Mrs. Thaw, on the stage.

Thaw, who was in evening clothes, had evidently been waiting for Mr. Whit's appearance. The latter entered the Garden at 10:55 and took a seat at a table five rows from the stage. He rested his chin in his right hand and seemed lost in contemplation.

Thaw had a pistol concealed under his coat. His face was deathly white. According to A. L. Belstone, who sat near, White must have seen Thaw approaching. But he made no move. Thaw placed the pistol almost against the head of the sitting man and fired three shots in quick succession.

Body Fell to the Floor

White's elbow slid from the table, the table crashed over, sending a glass clinking along with the heavier sound. The body then tumbled from the chair.

On the stage one of the characters was singing a song entitled "I Could Love a Million Girls." The refrain seemed to freeze upon his lips. There was dead silence for a second, and then Thaw lifted his pistol over his head, the barrel hanging downward, as if to show the audience that he was not going to harm any one else.

With a firm stride, Thaw started for the exit, holding his pistol as if anxious to have some one take it from his hand. Then came the realization on the part of the audience that the farce had closed with a tragedy. A woman jumped to her feet and screamed. Many persons followed her example, and there was wild excitement.

L. Lawrence, the manager of the show, jumped on a table and above the uproar commanded the show to go on.

"Go on playing!" he shouted. "Bring on that chorus!"

Girls Too Terrified to Sing

The musicians made a feeble effort at gathering their wits and playing the chorus music, but the girls who romped on the stage were

paralyzed with horror, and it was impossible to bring the performance to an orderly close.

Then the manager shouted for quiet, and he informed the audience that a serious accident had happened, and begged the people to move out of the place quietly.

In the meanwhile Thaw had reached the entrance to the elevators. On duty there was Fireman Paul Broodin. He took the pistol from Thaw's hand, but did not attempt to arrest him. Policeman Debes of the Tenderloin Station appeared and seized his arm.

"He deserved it," Thaw said to the policeman. "I can prove it. He ruined my life and then deserted the girl." Another witness said the word was "wife" instead of "life."

A Woman Kissed Thaw

Just as the policeman started into the elevator with Thaw a woman described as dark-haired and short of stature reached up to him and kissed him on the cheek. This woman some witnesses declare was Mrs. Thaw.

The crowd was then scrambling wildly for the elevators and stairs. The employees of the Garden who knew Thaw, and nearly all of them did, as he visited the place often, did not seem greatly surprised at the tragedy. When Thaw entered the Garden in the early part of the show he seemed greatly agitated. He strolled from one part of the place to another, and finally took a seat in a little niche near the stage.

He was half hidden from the audience, but could see any one who might enter. It is believed that he knew just where White would sit, and had picked out this place in order to get at him without interference.

Henry Rogers of 222 Henry Street was seated at the table next to the one at which White was sitting when he was killed. He says that Thaw fired when the muzzle of his pistol was only a few inches from White's temple.

Another witness said that after firing three shots and looking at White as if to be sure that he was stone dead, Thaw uttered a curse and added:

"You'll never go out with that woman again."

A Woman Sat Near White

At another table adjoining that at which White was killed sat a woman dressed in white. It was believed for a time that she was a companion of White's and it was reported that she leaned over and kissed the face of the dead man, but this could not be verified, and it is positive that White was alone when he entered the Garden.

Some one in the audience hurried to the fallen man to see if assistance was needed. A great pool of blood had quickly formed on the floor. The tables had been pulled back and in the bright glare of thousands of electric lights it was quickly seen that White was beyond any earthly help.

A number of the actors and actresses left the stage, and away from the calcium and the footlights their painted faces showed strangely in the group of employees and friends of Thaw and the dead man which formed as the last of the audience left.

Thought it a Stage Trick

Two of them said that the reason the fright of the audience was not worse when the shots rang out was that just before the tragedy a dialogue concerning a burlesque duel had been carried on by two of the characters, and many people thought that the old trick of playing in the audience had been tried again.

As the lights of the Garden were dimmed, the body of White was straightened out, the arms brought to the sides, and the legs placed together. A sheet was obtained in one of the dressing rooms, and this was stretched over it.

While all of this was going on, Policeman Debes and his prisoner had reached the street entrance. Thaw never once lost his composure. His linen and his evening suit showed no signs of ruffling. Only the paleness of his face showed that anything had happened to excite him.

Wanted Mr. Carnegie to Know

"Here's a bill, officer," he said to the policeman before he started for the station. "Get Carnegie on the telephone and tell him that I'm in trouble."

The policeman and prisoner then walked through the crowd to Fifth Avenue, up the avenue to Thirtieth Street. As they turned the corner at the Holland House a number of cabmen who knew Thaw tipped their hats to him and he recognized their salute in return.

The trip up Thirtieth Street, across Broadway and Sixth Avenue, was without any excitement, and the prisoner reached the station without the usual crowd of curious people following.

Thaw did not seem to be intoxicated, but walked in a sort of daze. He made few comments on the way to the Tenderloin Station. Sergt. McCarthy asked him what his name was, and he answered:

"John Smith, 18 Lafayette Square, Philadelphia."

"What's your business?" he was asked.

"I am a student."

No charge was made on the books against this "John Smith." The detectives were sent out to investigate fully before a charge was made. Sergt. McCarthy asked him:

"Why did you do this?"

"I can't say," he replied apathetically.

Cards found on the prisoner read "Harry Kendall Thaw, Pittsburg." He made no comment when they were pulled out of his pocketbook.

Thaw Sent for Two Friends

Young Thaw walked dazedly to the back room. He waited a while, and then sent for Frederick W. Lowenfellow and Frederick Delafield. The reporters asked him to make a statement. He refused to do it.

Young Thaw had lighted a cigarette while he stood in front of the Sergeant's desk. In the back room he sat on a long bench that is used by reserves between two big policemen. He pushed his hat back on his head, stretched out his feet, and lit another cigarette. His eyes had a far-away look.

A number of his friends hurried over to the station to talk with the prisoner, but they were not allowed to see him. William Thaw, a brother of his who is stopping at the Holland House, had not been to see him up to nearly 3 o'clock.

When the detectives put on the case had brought in the witnesses and they had been examined in Capt. Hodgins's room, Thaw was charged with homicide and was locked in a cell.

The following witnesses were detained until the arrival of Coroner Dooley: Paul Brodin, a fireman, 698 Prospect Avenue, the Bronx; Lionel Lawrence, manager of the company playing at the Madison Square Roof Garden, 325 West Forty-second Street; Harry Silverstein, Marvin Pincher, 84 West Thirteenth Street; Warren Paxsen, 146 East Twentieth Street; Edward Carney, 467 Second Avenue.

Thaw Not Ready to Talk

Coroner Dooley reached the Tenderloin Station at 1:30 this morning and asked to see the prisoner. Thaw had sent the doorman out to buy him some cigars. He was smoking and seemed calm when the Coroner entered.

"Have you any statement to make to me?" the Coroner asked after he had made himself known.

"I don't care to make any statement now," Thaw replied. "I would appreciate it if you would tell Burr McIntosh or ex-judge Hornblower or Joseph H. Choate of what has happened."

"Mr. McIntosh is upstairs," he was told. "Do you want to see him?"

"No," he replied, "just tell him to call up Mr. Hornblower or Mr. Choate. Tell him not to call up Mr. Choate until morning. I would not like to get him out of bed."

Mr. Choate is at Stockbridge, Mass.

Mr. McIntosh took the message and left the station.

Coroner Dooley said that he found Thaw in good mental condition. He added that he believed the murder was done through jealousy.

When Thaw was searched in the station, \$125 in paper money, \$2.36 in coin, two silk handkerchiefs, two gold pencils, a gold watch, and a little pocket combination mirror case were found. These were taken by the Sergeant.

Mrs. White at St. James, L. I.

Mrs. Lizzie Hanlon, housekeeper for Mr. White at his residence, 121 East Twenty-first

Street, had not heard of the shooting when a reporter from *The Times* called shortly before midnight. She expressed the utmost horror, and could suggest no explanation.

The house is one of the most magnificently decorated in the city. Standing amid elaborate Italian decorations with carved marble and graceful fountains on every hand, Mrs. Hanlon gave what information she could. She said:

"Mr. White has been alone in the house for some time. Mrs. White has been away in the West for about three weeks or a month, but is now at her country residence at St. James, L. I.

"Lawrence White, Mr. White's son, came down from Harvard the other day. Both he and his father came in and dressed for dinner to-night, but they did not go out together, Mr. White leaving alone a few minutes before his son. I do not know where either of them went."

"Has Mr. Thaw been to the house to see Mr. White recently?" Mrs. Hanlon was asked.

"Mr. Thaw? I never heard of him. As far as I know Mr. White did not have any visitors here to-day."

Young White, with a friend, Leroy King, dined with his father last night at the Café Martin. Mr. White, his son says, was in the best of spirits and said nothing about any trouble.

After the dinner the party entered an electric automobile and went up to the New Amsterdam roof garden. There the two boys asked the elder White to stay and see the performance.

He said: "No, I thank you," adding that he was going elsewhere.

That was the last they saw of him.

Meant to Go to Philadelphia

Lawrence White says his father was thinking of going to Philadelphia last evening on a matter of business, and intended to up to the last possible moment, and only changed his plans in order to dine with the boys, who had just come down from Harvard.

"If he had only gone!" exclaimed the son in his grief.

Lawrence White said he had never seen Harry Thaw in his life and had never heard

his father speak of him, and that he knew of absolutely nothing that could lead to such a tragedy. He was then informed that his father was dead and that the body was still...Garden. He departed for thatce at one.

Only One Bullet in Head

After the body was taken to the undertaker's a hasty examination was made. Three wounds were found. The fatal bullet entered the left eye. The other two bullets grazed the shoulders, leaving a flesh wound on each. The top of the head showed a mark, this having been caused by striking the edge of the table as the body fell to the floor.

By a strange coincidence White and Thaw and his wife dined at the Café Martin last night. With White was his son, Lawrence, and Leroy King, a friend. This party had a table on the porch.

Inside the café Thaw dined with his wife and his father-in-law. At no time of the evening did the two parties meet. Both White and Thaw were well known by the employees, and when the news of the tragedy was being told over the tables by the after-theatre patrons this coincidence was recalled.

Detectives Look for Mrs. Thaw

Mr. and Mrs. Thaw have been stopping at the Lorraine, Fifth Avenue and Fourth-fifth Street. Detectives were sent there to get a her as a witness, but she had not returned by 3 o'clock this morning.

At that hour Policeman Debes, who arrested Thaw gave this account of what happened:

I was on post at Twenty-sixth Street and Madison Avenue last night, and asked the manager of the Garden if there would be any shooting in the show. I did this because the use of firearms at Hammerstein's last week made me hurry and scurry for awhile, thinking the shooting was done on the street. he told me there was not.

"I heard three pistol shots and started for the Garden. I met the electrician of the place, who was on the run. He said that a man and a woman had been shot in the audience. I hurried upstairs and the first I saw was a woman who had fainted. Then I found Thaw with the

firearm. I asked him if he had shot the man whose body I could see by the table?

"Yes," Thaw replied.

"Then he added that the man had ruined his life—or wife—I could not distinctly make out.

"Is he dead?" he asked.

"I told him he was.

"Well, I made a good job of it and I'm glad," he added. Then a woman, who Manager Lawrence told me was Mrs. Thaw, ran up and embraced him and kissed him.

"I didn't think you would do it in this way, she said. He whispered to her, patted her on the shoulder, and said that it would all come out all right.

"When we go to the street a number of women shook hands with the prisoner and sympathized with him. Some wanted to know why he had killed White but he did not answer."

A dispatch from Pittsburg last night said that Thaw and his wife were to have sailed for Europe to-morrow.

Mrs. William Than, mother of Mr. Thaw, sailed for London on the Atlantic Transport liner Minneapolis last Saturday. She is on her way to visit her daughter, the Countess of Yar-mouth, who was Miss Alice Thaw.

WHAT WITNESSES SAY.

One Man Is Sure That Thaw's Wife Was There

An eye witness thus described the shooting of Stanford White by Harry Thaw:

"Mr. Thaw had seats of the Twenty-sixth Street side of the theatre, down near the stage. A woman was near him. Thaw got up several times in the evening and walked around in the space in front of the stage.

"Mr. White entered about 11 o'clock. He had a little talk with Manager Stephens of the roof garden, and I heard him say to Mr. Stephens that he had just left the Manhattan Club. Mr. White took a seat just a few tables from Thaw. I saw Thaw walk up to Mr. White, say a word or two to him, and then

pull a small pistol for his pocket and shoot him three times.

"The wounded man dropped off this chair, tilting the table as he fell. The audience did not go into hysterics right away. One reason for that, I take it, was that Fuller Spice and Gustavus K. Hicks, two of the characters in the play, had just been having a dueling dialogue, and at the time of the shooting Spice was on stage with six chorus girls. The audience seemed to think that the shooting was in the play.

"After a moment or two several women near Mr. White's table began to get hysterical. The orchestra seemed to have known what had taken place because of their proximity, but that tried desperately to keep the lively tune going. Now and then it would bread, and the audience would shout, 'Go on, go on! What's the matter there?'

"The orchestra braced up several times, but the tune kept hitching more and more until finally it trailed off pitifully. By that time the audience seemed to know what had happened."

Still another man who was at the show said he was sure that the woman who rushed up to Thaw after the shooting was Mrs. Thaw. He added:

"As Mrs. Thaw passed the body of White, she turned to me and said:

"Is he dead?'

"I answered, 'Yes.'

"She cried: 'My God, Harry, you've killed him.'

"Thaw said, 'Kiss me, dear, before I go down stairs.

"That again said, 'Kiss me, dear.'

Once more his wife threw her arms about him and kissed him.

"I never saw a face more full of agony as she turned around.

"Then a policeman came and Thaw went down in the elevator."

"The show as going along nicely, it was 'Mamzelle Champagne,' and my attention was on the stage until I noticed a strange-looking fellow who walked about in a nervous sort of way. His throat was muffled up, and it appeared to me that he was a man who seemed on the verge of delirium tremens. I said to the man friend who was with me that the

fellow who was muffled up was either a prize-fighter or an athlete in training, but when he came near us I saw that he was wildly excited.

"He muttered to himself several times and paced up and down the floor, turning now and then to see who was near him, as if he thought he was being followed. As he passed toward the rear of the place a woman near the man who was shot later leaned forward and whispered something. It seemed to me that she was afraid of somebody or something.

"A waiter came along and I called his attention to the muffled man, remarking that he seemed foolish. The waiter said he had noticed the fellow around all evening and that something was wrong with him.

"Just then the fellow walked over to the side of the building where the tables were and craned his neck forward as if he suddenly spied the person he was looking for, and quickened his pace.

"That fellow's going to grab somebody," I said, turning to my companion, and when I again looked in the direction of the fellow I saw him with pistol in hand and pointing it downward at the man the table near by. Then he fired.

"Immediately after the shooting leaned forward and said something to the woman. It sounded like 'It's all right, don't worry. I'm not sorry I did it.'

"That settled the show. All about women were frantically pleading with their escorts to take them out of the place and into the street, but the escorts couldn't find a way out so easily.

"The woman who was sitting near the man who was shot evidently had lots of friends near at hand, for they got her away quickly. I think they took her behind the stage, for I saw a man leading her back.

"As that man who did the shooting had his neck muffled up, it seemed to me that he was trying to disguise himself while preparing to kill the other man.

Source: New York Times (June 26, 1906)

See Also: History of Crime and Punishment in America, 1900–1950; Murder, History of; New York City; Witness Testimony.

1909 PRIMARY DOCUMENT

The Department of Justice Creates the Bureau of Investigation

The Department of Justice's Bureau of Investigation was created to fill the need for federal criminal investigators. The 1887 Interstate Commerce Act had made the federal government responsible for interstate law enforcement, but Congress forbade the Department of Justice to use Treasury Department agents as investigators, resulting in the Bureau of Investigation. Its first project was investigating prostitution to enforce the Mann Act passed in 1910. In 1935, the FBI was made an independent bureau within the Department of Justice and acquired its modern name.

ORDER ESTABLISHING BUREAU OF INVESTIGATION OF THE DEPARTMENT OF JUSTICE

For the purpose of facilitating the investigation work under this Department, the office of the Chief Examiner shall hereafter be called the Bureau of Investigation, and the Chief Examiner is hereby authorized and designated to act as the Chief of the said Bureau, and as such shall have supervision over the work of all persons whose compensation or expenses are paid from the appropriation "Miscellaneous Expenses, United States Courts," or the appropriation "Detection and Prosecution of Crimes," and who are employed for the purpose of collecting evidence or of making investigations or examinations of any kind for this Department or the officers thereof.

George W. Wickersham,
Attorney General
Department of Justice
Washington 25, D.C.
March 16, 1909

Source: FBI FOIA,
March 16, 1909

See Articles: Federal Bureau of Investigation; Justice, Department of.

1909 PRIMARY DOCUMENT

"Lynching: A National Crime" Speech by Ida B. Wells-Barnett

African American journalist Ida Wells-Barnett (1862–1931) was active both in the women's suffrage movement and the early civil rights movement. Her campaign against lynching, a practice that had become rampant in the 1890s and would soon be glorified in the 1915 film Birth of a Nation, brought her on a speaking tour of the United States and Europe. During a European tour, she clashed with suffragist Frances Willard, who had made numerous racist comments in her lectures on suffrage and temperance.

The lynching record for a quarter of a century merits the thoughtful study of the American people. It presents three salient facts: First, lynching is a colorline murder. Second, crimes against women is the excuse, not the cause. Third, it is a national crime and requires a national remedy.

Proof that lynching follows the color line is to be found in the statistics which have been kept for the past twenty-five years. During the few years preceding this period and while frontier law existed, the executions showed a majority of white victims. Later, however, as law courts and authorized judiciary extended into the far West, lynch law rapidly abated, and its white victims became few and far between.

Just as the lynch law regime came to a close in the West, a new mob movement started in the South. This was wholly political, its

purpose being to suppress the colored vote by intimidation and murder. Thousands of assassins, banded together under the name of Ku Klux Klans, "Midnight Raiders," etc., spread a reign of terror by beating, shooting and killing colored people by the thousands. In a few years, the purpose was accomplished and the black vote was suppressed. But mob murder continued.

From 1882, when 52 were lynched, down to the present, lynching has been along the color line. Statistics show that 3,284 men, women and children have been put to death in this quarter of a century....

During the last ten years, from 1899 to 1908 inclusive, the number lynched was 959. Of this number, 102 were white, while the colored victims numbered 857. No other nation, civilized or savage, burns its criminals; only under that Stars and Stripes is the human holocaust possible. Twenty-eight human beings burned at the stake, one of them a woman and two of them children, is the awful indictment against American civilization—the gruesome tribute which the nation pays to the color line.

Why is mob murder permitted by a Christian nation? What is the cause of this awful slaughter? This question is answered almost daily: always the same shameless falsehood that "Negroes are lynched to protect womanhood." Standing before a Chautauqua assemblage, John Temple Graves, at once champion of lynching and apologist for lynchers, said, "The mob stand! today as the most potential bulwark between the women of the South and such a carnival of crime as would infuriate the world and precipitate the annihilation of the Negro race." This is the never-varying answer of lyncher! and their apologists. All know that it is untrue. The cowardly lyncher revels in murder, then seeks to shield himself from public execration by claiming devotion to woman. But truth is mighty and the lynching record discloses the hypocrisy of the lyncher as well as his crime. ...

Is there a remedy, or will the nation confess that it cannot protect its protectors at home as well as abroad? Various remedies have been suggested to abolish the lynching infamy, but year after year, the butchery of men, women,

and children continues in spite of plea and protest. Education is suggested as a preventive, but it is as grave a crime to murder an ignorant man as it is a scholar. True, few educated men have been lynched, but the hue and cry once started stops at no bounds, as was clearly shown by the lynchings in Atlanta, and in Springfield, Illinois.

Agitation, though helpful, will not alone stop the crime. Year after year statistics are published, meetings are held, resolutions are adopted. And yet lynchings go on...

The only certain remedy is an appeal to law. Lawbreakers must be made to know that human life is sacred and that every citizen of this country is first a citizen of the United States and secondly a citizen of the state in which he belongs. This nation must assert itself and protect its federal citizenship at home as well as abroad. The strong men of the government must reach across state lines whenever unbridled lawlessness defies state laws, and must give to the individual under the Stars and Stripes the same measure of protection it gives to him when he travels in foreign lands. Federal protection of American citizenship is the remedy for lynching. ...

In a multitude of counsel there is wisdom. Upon the grave question presented by the slaughter of innocent men, women, and children there should be an honest, courageous conference of patriotic, law-abiding citizens anxious to punish crime promptly, impartially, and by due process of law, also to make life, liberty, and property secure against mob rule.

Time was when lynching appeared to be sectional, but now it is national—a blight upon our nation, mocking our laws and disgracing our Christianity. "With malice toward none but with charity for all," let us undertake the work of making the "law of the land" effective and supreme upon every foot of American soil—a shield to the innocent; and to the guilty, punishment swift and sure.

Source: <http://patriotpost.us/document/lynching-a-national-crime>

See Articles: Hanging, Lynchings; Race-Based Crimes; Racism.

1911 PRIMARY DOCUMENT

New York Times Article on the Triangle Shirtwaist Fire

The 1911 fire at the Triangle Shirtwaist Factory is the third-deadliest disaster in New York history, after the 9/11 attacks and the 1904 steamboat fire. During the blaze, 146 workers died, most of them young, recent immigrants. Many of those who died were trapped on the highest floors because the doors to the stairwells had been locked—not because of the fire, but instead to prevent unauthorized breaks from work. The owners were acquitted of manslaughter but lost a civil suit for a small amount of damages.

DEATH LIST IS 141; ONLY 86
IDENTIFIED

But Several More of the Injured in the
Hospital are Expected to Succumb.

22 BEYOND RECOGNITION

Thirteen of the Dead Were Men—All the
Rest Women—the Coroner's Summary.

March 27—When all the bodies of the victims of Saturday's fire had been counted, recounted, and checked by officials of the Coroner's office Coroner Holtzhauser made official announcement last night that the total number of the dead was 141.

Of this number 133 were found at the scene of the fire, either out on the sidewalk or huddled on the ninth floor of the factory building. Three died of their injuries in Bellevue Hospital, there in St. Vincent's Hospital, and two in New York Hospital. The total number identified at midnight was seventy-eight at the Morgue; eight dead in hospitals.

The unidentified still number 33. Of these 28 are women and 5 men. The other bodies

are hopelessly charred and probably never will be identified. The total number of women who lost their lives in the fire, according to the Coroner's figures, is 128; the number of men is 13.

FIVE DYING IN HOSPITALS

Seven Others Who Are Less Badly Injured Being Cared For.

At the hospitals to which the victims of the Triangle waist fire were taken, it was stated last night that at least five more will probably die. The total number of survivors at the hospitals last night was twelve.

Three women who are in St. Vincent's Hospital are believed to be hopelessly injured. They are Sarah Kupla, 18, of 1,503 Webster Avenue, Bronx; Esther Harris, 21, of 131 Chester Street, Brooklyn, whose back is broken, and Annie Miller, 17, of 154 Attorney Street, who has a fractured leg and internal injuries. Five others at this hospital are expected to recover.

In the New York Hospital are Freda Valakowsky, 20 years old, of 639 East Twelfth Street, with a fractured leg and internal injuries, and Mrs. Daisy Fitze, of 11 Charlton Street, who has a compound fracture of the pelvic bone. Neither of these is likely to recover.

To these hospitals, as well as to Bellevue, where there were two survivors last night, crowds of relatives and friends of the injured and others who had been searching for hours without success for some one known to be in the building when the fire occurred and not accounted for, steadily streamed yesterday. If the physicians decided that the injured were strong enough to be seen the rules of the institutions were suspended for these visitors. Most of those in the hospitals received their injuries by jumping from the windows.

Freda Valakowsky graphically described to the attendants at the hospital her struggle to escape from the building. She remembered being pushed toward the window ledge by the frenzied girls and finally jumped from the window sill. The story told by Mrs. Fitze varied little.

One of the most pathetic scenes was the identification by her brother Louis of the body

of Becky Nerberer of 19 Clinton street, at the New York hospital. Nerberer had inquired at the hospital Saturday night about his sister's condition and was told that she had a chance to live.

He returned at 3 o'clock yesterday morning and found her dead. He was so crazed with grief that attendants had to hold him. He said that his parents were expected to arrive in this country from Russia within a few weeks, and that passage money had been sent to them from his savings.

Prof. Sommer Tells of the Heroic Work They Did at the Fire.

Refusing to admit that he had played the role of a hero at the fire disaster of Saturday, as was reported in the press, Prof. Frank H. Sommer of the New York University Law School, which adjoins the ill-fated loft building, said yesterday at his home, 156 Heller Parkway, Newark, that the lion's share of credit belonged to the students of his class.

"All I can say is that I have been through it," Prof. Sommer continued. "It is too horrible to recount. Even if I should try, words would fail me."

At the time the fire started, Prof. Sommer was delivering a lecture to his class. When he saw the seriousness of the situation, he directed them in the work of rescuing fifty girls from the burning structure. He said that the Law School Building caught fire, but its occupants were in no danger except that to which they exposed themselves to save those begging to be taken from the building that was fast becoming a roaring furnace.

"After such an experience the mind is dazed," continued Prof. Sommer. "The recollection of it comes back in flashes and piecemeal. I remember it was about 5 o'clock. I was lecturing to a class of about fifty boys. All was quiet and serene, when suddenly we heard the toot of whistles and the sound of gongs and fire engines. I threw open the door of the lecture room, and then the door of the Law School Faculty room, which opens on an areaway separating our building from the burning one.

“Some of the boys followed me, and we saw the ten-story building across the areaway was on fire. The open space between us and that building was filled with smoke. There were ear-piercing shrieks, and girls appeared at the windows of the lofts in which was the waist factory.

“We hurried to the roof of our building, where two ladders had been left by painters, and the boys used these in the work of rescue. They worked like beavers, apparently never giving a thought to the possibility that their own building might catch fire from the flames that were leaping out into the open space.

“How it was done I don’t know, but in surprisingly short time about fifty girls were brought across the ladders to safety. The boys paid no attention to the thick smoke and risked life and limb to steady the terror-stricken girls on the ladders. Some of the rescued were pitiable sights. In some cases it was necessary to beat out the flames that had caught their clothing, and many of them had blackened faces and singed hair and eyebrows.

“But our heroes were not ready to desert even after they had all of the girls in places of safety. They manned the standpipe and hose in our building and did efficient work, and other ran out to get the firemen to come in and save our property. As it was, the flames swept across the areaway, cracked the plate glass in our windows, and set fire to several of the rooms. Many books, papers, and documents were lugged out of the building by the volunteer workers.”

SAVED HER FRIEND’S LIFE.

Survivor Tells of a Heroic Deed in the Mad Rush to Escape.

Annie Sprinsock of 501 Pennsylvania Avenue, East New York, told yesterday at her home a thrilling story of her escape. She was employed on the eighth floor, and as soon as the alarm was given ran to the dressing-room and snatched up her street clothes. When she got to the elevator shaft she remembered that she had left on the table of the dressing room her bag containing her week’s wages, \$8. She ran for it but could not find it.

As she reached the elevator shaft again the car was about to make its last trip. She just managed to squeeze aboard, the last of those that could find room. As the door was being jammed-to a friend called wildly to her not to desert her. She took the girl in her arms and by main force raised her above the heads of the others in the car. There she held her till the car reached the ground floor in safety.

Esther Harris of 131 Hester Street, East New York, was less fortunate, but managed to make her escape. As she reached the elevator the last trip of the car was over. In her despair she caught hold of the elevator cables and slid down those to safety. She was injured in the descent and is now in a hospital.

Abraham Robinowitz was one of those who jumped from the eighth floor only to be crushed to pieces in the street. He was to have been married next week to Miss Minnie Greenberg of 369 Watkins Street, and it was she who identified his body. Mary Leventhal was a bookkeeper in the factory, and nothing has been seen of her since the fire. Her father and mother and two little sisters, who live at 604 Sutter Avenue, East New York, are nearly beside themselves with grief.

Source: <http://www.pbs.org/wgbh/american-experience/features/primary-resources/triangle-death-list>

See Articles: Children’s Rights; New York City; Witness Testimony.

1912 PRIMARY DOCUMENT

New York Times Article on Law Creating Shorter Factory Working Hours

Labor organizations had been advocating shorter work weeks for decades (and had made some

progress from the mid-19th century extremes), and progressives had been attempting to reform child labor laws. In 1904, the National Child Labor Committee formed with the goal of eliminating child labor altogether. The Triangle Shirtwaist Factory fire helped bring public attention to these causes, especially since so many of the dead were women and teenagers, the only beneficiaries of the law reported on in this article.

SHORTER FACTORY HOURS

Law Forbids Working Women and Boys More Than 54 Hours a Week

The law limiting the hours of employment in factories for women and boys under 18 years to fifty-four hours a week went into effect at 12 o'clock last night. This will affect more than 300,000 women, nearly two-thirds of whom are employed in New York City.

This amendment to the State labor laws was a result of the agitation that followed the Triangle shirtwaist factory fire. It permits women and boys to be employed overtime for one hour a day, provided that the total hours a week do not exceed fifty-four. A factory may employ women ten hours a day for five days, provided it does not keep them at work longer than four hours on the sixth day. Work by women and children on the seventh day is absolutely prohibited.

Canning factories are exempt from the operation of this law between June 15 and Oct. 15. Between those dates the present law, which permits the employment of women sixty hours a week, is allowed to remain in force in canneries.

The only protest which the State Labor Department has received from the manufacturers has come from candymakers. They have engaged Alfred J. Tolley as counsel and intend to attack the constitutionality of the law. They will make the plea that the exemption of canneries for a period of the year is an unjust discrimination and invalidates the entire law.

The new act further provides that women and children shall not be employed before 6 o'clock in the morning or after 9 o'clock at night. As there is a question whether the Leg-

islature has the constitutional right to restrict the hours of labor for a woman more than 21, the law is so worded that it will apply to women under 21 even if the regulation is not upheld by the courts in regard to older women. This provision reads as follows:

No female minor under the age of 21 years, and no woman shall be employed or permitted to work in any factory in this State before 6 o'clock in the morning or after 9 o'clock in the evening.

The act of the Legislature prohibits the employment in factories of children under 14 years of age. No children between 14 and 16 years can be employed unless they have certificates showing they have had an eight-year public school course and that their health is first rate after a physical examination by two physicians. Further than that, no child under 16 years is allowed to work except between 8 o'clock in the morning and 5 o'clock in the evening.

Before it was amended, the State labor law limited the hours of employment of women in factories to sixty a week and not more than eleven in any one day. Most factories in New York City have been running on this basis. First Deputy Labor Commissioner John S. Whalen said yesterday that a good many manufacturing establishments had cut down the hours for women to fifty-four a week before the amendment was passed.

It has been demonstrated that long hours do not pay. More than \$366,000,000 was reported lost last year to New York City and State factory workers by reason of 13,400,00 causes of illness. There are 31,000 factories in the State, with a total of 1,250,000 workers, by the last census. In a year these factories use \$2,409,000,000 in raw materials and produce finished products to the value of \$11,000,000 a day. Another reform which went into effect last night at 12 o'clock was an amendment forbidding smoking in factories, requiring fireproof receptacles for all waste and inflammable materials, directing that every factory shall be registered, with full particulars, at the State Labor Department, and prohibiting the employment of women within a month after they have given birth to children.

Yesterday the State Labor Department distributed printed notices to factories required them to give the hours during which the women in the different departments are to work. These notices are to be posted conspicuously, to aid State Labor Inspectors in learning how the law is being obeyed. The enforcement of the law against smoking and other safety regulations is left to the Fire Prevention Bureau.

Sources: *New York Times* (October 1, 1912);
and
<http://www.pbs.org/wgbh/americanexperience/features/primary-resources/triangle-legislation>

See Articles: Children's Rights; New York City.

1915 PRIMARY DOCUMENT

Atlanta Constitution Article on the Mob Abduction of Leo M. Frank

The lynching of Leo Frank was a watershed moment in American antisemitism. He had been convicted of the death of Mary Phagan, one of his workers, but the case against him depended heavily on class and ethnic biases. The governor, unconvinced, commuted his sentence to life imprisonment, and a lynch mob stormed the prison two months later. None in the mob were prosecuted, and several became the founders of the second Ku Klux Klan that November. Thousands of Jews fled the south.

POSSES CHASE FRANK MOB

Prisoner Rushed From State Farm In An
Automobile

Mob of Twenty-Five Men Invades
Dormitory, Overpowers the Warden and

Takes Charge of Prisoner. "Will Place Frank's Body on the Grave of Mary Phagan in Marietta" Declared Member of Mob. Frank made Desperate Resistance.

At 6 o'clock this morning posses of state officers and citizens from Baldwin and a number of other counties were still vainly seeking the mob which shortly before midnight last night abducted Leo M. Frank from the state prison farm, at Milledgeville, where he has been confined since his sentence was commuted to life imprisonment.

One posse from Milledgeville is headed by Captain J. H. Ennis, member of the legislature. He was one of the first to learn of the action of the mob at the state prison farm. Officials in practically every county in the state have been notified to be on the lookout, and the governor has announced that he will extend the Baldwin county authorities every aid in his power.

Milledgeville, GA, August 16.—A mob variously estimated at between twenty-five and seventy-five in number, overpowered warden, superintendent and guards at the Georgia state prison farm, near here, at 11 o'clock tonight and quickly got Leo M. Frank and rushed him away in an automobile.

First reports that it might be friends of Frank were dispelled when a prisoner said he had heard a member of the mob say that Frank's body would be placed tomorrow on the grave of Mary Phagan, at Marietta. Frank was serving a life term for the murder of the girl.

The mob was orderly, but worked with quick precision. Eight automobiles took the men to within a short distance of the prison. First all wires from the prison, and all except one from Milledgeville, were cut.

Five men went to the house of J. T. Smith, warden covered him with pistols and stood guard over him. Other men went to the house of J. M. Burke, superintendent of the prison, and held him under cover of their guns.

Practically every other member of the mob then rushed to the stockade gate the dormitory where Frank was being housed. Only yesterday the physicians discharged him from

the hospital, where he had been since being murderously assaulted in the dormitory by William Creen.

TWO GUARDS ON DUTY.

As on the night Frank was attacked only two guards were on duty. The mob quickly overpowered chief Night Guard Hester and the other man on duty. Proceeded to the dormitory and within a few minutes seized Frank and rushed him back to the automobiles.

Those who had been holding Smith and Burke left as soon as Frank was brought out and joined their fellows. The automobiles—reported to number eight—then were started in the direction of Eatonton. Nothing more had been heard of them hours after they left.

Only one member of that part of the mob that went to the dormitory talked. He gave the commands to the guards which were backed up by the arms of the other members of the mob.

FIVE MEN MASKED.

Five were masked out of the thirty-five. They said they were from Marietta. Warden Smith's gasoline was emptied out from his auto.

The five men brought Frank out, holding him by hands and feet and hair. Frank resisted but to no avail. He mumbled but the excitement was so nothing can be remembered. The mob left Warden Smith and Superintendent Burke handcuffed, and they tied Frank's legs. Everything was done quietly, members of the mob saying they didn't want anyone's head, only wanted Frank.

GOVERNOR SHOCKED.

When notified by The Constitution early this morning of the affair, Governor Harris declared: "I am both shocked and aggrieved, and in common with all good people of Georgia who stand for law and order. I feel that a great wrong has been done, that our state will not look with approval on such an act."

The governor stated that he would put forth every effort in his official power to apprehend

the members of the mob, should he be called on to furnish aid to the authorities at the state farm and in Baldwin county.

ENNIS HEADS POSSE.

Headed by Captain J. H. Ennis, representative in the legislature from Baldwin county, and the first in Milledgeville to learn of the smuggling of Frank from the prison farm, a posse of several automobiles filled with local officers started in pursuit of the mob of twenty-five shortly before 1 o'clock.

According to the story told to Captain Ennis by several negro convicts who were not locked up, a mob of twenty-five men in seven or eight automobiles arrives at the farm at 11:45 o'clock, overpowered and ties Warden Smith and two guards who were sleeping on the front porch, and went directly to the room where Frank was asleep.

The negroes rushed to the home of J. H. Satterfield, bookkeeper at the farm, and who lives on the state property, and told him that the mob had left with Frank, taking the road toward Eatonton, due north of here. Mr. Satterfield took one of the automobiles kept at the farm and went direct to Milledgeville, notifying Captain Ennis.

Captain Ennis sought to get in communication with the state farm, but found all telephone wires cut. The wires he found had also been cut on the Macon and Atlanta lines.

Notifying local officials a possee was formed that started in pursuit of the mob. At 2:30 this morning nothing had been heard from the searching party.

Prison Commissioners Davison and Rainey were at the farm and had retired to their rooms just before the mob came. They did not leave their room until the crowd had captured Frank and had left the farm. They will leave Milledgeville this morning for Atlanta. Mrs. Leo Frank was also in Milledgeville last night.

PLANNED WORK WELL.

Macon, GA, August 16—A long distance telephone message from Milledgeville via Augusta confirmed the rumor that a party of 25 men

in automobiles had taken Leo M. Frank from the state farm there at 11:45 p.m. and had left with him in the direction of Eatonton. A message from Eatonton stated the automobiles had not passed through that city at 1 o'clock this morning.

When the mob first reached the state farm they separated into three groups. One went to the home of Captain Burke, the farm superintendent, and after calling him from the house they covered him with their guns and slipped the handcuffs on him. This group took Captain Burke to the prison farm dormitory and forced him to open the door.

Another group secured and handcuffed Warden Smith in the same manner as the other had done Captain Burke. Two guards sleeping on the front porch were overpowered and handcuffed.

Warden Smith and Captain Burke both declared they failed to recognize any of the members of the mob, but one of the convicts overheard a remark dropped by one member of the mob that they intended to take Frank to Marietta.

When the party reached the farm they overpowered Warden Smith and the guards who have been sleeping on the front porch of the prison dormitory since Frank has been confined there. All of them, including the warden, were handcuffed, and with the loss of little time, Frank was secured and placed in one of the automobiles. The cars then hurried away at full speed in the direction of Eatonton.

SATTERFIELD NOTIFIED.

J. H. Satterfield, bookkeeper at the farm, was awakened by some of the negro convicts after the men had left with Frank. As soon as he learned what had happened he hastened to Milledgeville and notified Representative Ennis.

The mob apparently planned their work well, for they carried it through without a hitch. Between Milledgeville and the State Farm and between Milledgeville and Macon, they cut telephone wires and it was fully an hour or more after they had secured their man and hastened on their way before the news came out.

As far as could be learned at an early hour this morning, none of the members of the mob were recognized. Some of them are said to have worn masks and all were heavily armed.

Not a shot was fired and no one was injured as far as known.

ALL QUIET IN MARIETTA.

Marietta, GA, August 17—If any residents of this town were in the mob that took Leo M. Frank from the state prison farm last night, or if it was intended to bring him to Marietta it was not generally known here at 3:15 o'clock this morning. Nothing had occurred at that hour to disturb the usual calm of the town.

Leo M. Frank was found guilty of the murder of Mary Phagan on August 25, 1913. He was the superintendent of the National Pencil company in Atlanta, in the basement of which the girl's body was found by a night watchman on the morning of April 27, previous.

Repeated attempts were made in the state courts to obtain a new trial for Frank, but without avail. Attempts to obtain a writ of habeas corpus in the federal district court of Atlanta and finally in the supreme court of the United States were futile.

On the night of June 21, this year, two days before the date set for the prisoner's execution, he was removed from the county jail in Atlanta and rushed to the state prison farm upon orders from Governor Slaton, now retired. The next day the governor announced that he had granted the petition made in Frank's behalf asking that his death sentence be commuted to life imprisonment.

The taking of Leo M. Frank from the prison last night was the culmination of numerous rumors of threats of mob violence against his life.

But one attack, however, had previously actually been made upon Frank. This was about a month ago, when William Creen, also serving a life term for murder, cut Frank's throat so severely that his life for days hung in the balance. Creen stole out of his bunk about 11 o'clock one night and managed to slip across the large sleeping room to Frank's bunk unobserved. He then drew across Frank's

throat a large knife which he had smuggled from the kitchen.

Although Frank's head was cut practically half off by the stroke, his life was saved, largely through the efforts of Dr. McNaughton, also serving a term for killing.

The governor and the prison commissioners, a few weeks later, made an investigation at the state prison and, upon the confession of Green, who assumed all responsibility for the set, exonerated all prison officials from responsibility.

Green, in his confession to Governor Harris, swore that he committed the act without aid or suggestion from any one either inside or outside of the prison.

Frank, after he was wounded, was placed in a private room adjoining the warden's office, where he remained while he was convalescing. It is presumed that he was still in this room when he was taken by last night's mob.

For weeks all the guards of the prison, including Warden Smith, were required to sleep armed upon the front porch of the prison, which is just outside the room in which the wounded, convict was placed. It is not known whether this guard was still being maintained last night.

Source: <http://www.leofrank.org/newspapers>

See Articles: Posses; Prisoner's Rights; Vigilantism.

1918 PRIMARY DOCUMENT

John Deml's Account of Anti-German Sentiment

In addition to African Americans, Chinese, Jews, and Catholics, Germans faced periods of deep resentment from other Americans. The largest immigrant group in the early 20th century, they were hailed in a backward compliment as the most successful assimilators, but not all of them

assimilated enough to escape persecution. Violent attacks on Germans increased as World War I began; others simply severed their social ties to German families, and sauerkraut was rebranded as "liberty cabbage."

A Statement made by John Deml of Outagamie County, Wisconsin, at Madison, Wisconsin, Tuesday, October 22, 1918.

About half-past twelve (continuing for more than an hour) Sunday morning October 20th, my wife awaked me, saying, that there were a large number of men on the front porch, pounding and rapping on the door, besides talking in a loud tone of voice. I was upstairs; then I came downstairs and went to the front door, where they were, and I asked them, who was there! Several answered at once, "The Council of Defense." I then asked them, "What do you want?" and they replied, "We want you to sign up." I replied, "I have done my share." And they asked me when, and I replied, "I did my share in the spring." (That is, I meant to say I had done my share in the third loan, when I subscribed for \$450 in bonds.) To make it plain, on the 28th of September, at the opening of the fourth drive, I was notified by letter that my bond assessment would be \$800. When Henry Baumann came to see me, I told him I could not possibly take \$500 now but would take some, meaning a substantial amount, that is all I could afford; and he replied, "My orders are you must take \$500 or nothing."

After I had replied that I had done my share in the spring, they demanded that I open the door and let them in. I told them I didn't have to open the door; then they undertook to force the door open, and went so far as to tear the screen door open; then they threatened to break down the door, and I said, "Come on then, boys." Then they appeared to be planning, and while they were doing that, I took the time to put my shoes on. By that time they were at the kitchen door, and they made a demand that I let them in through that door; then I went to the kitchen door and opened it and found a crowd of men (much larger than I expected) around the door, and then

reaching out two by two around towards the front of the house. I left the door and walked to the front porch to see if they had done any painting (as they had previously painted a neighbor's mail-box); I walked to the road to see if they had painted my mail-box. And then I turned around to return to the house when they all at one time closed in on me like a vise; some grabbing my fingers or wrist, others my legs, and several of them were shouting, holding a paper before me, "Sign up." I said, "I will not sign up at this time of night." Then a man shouted, "Get the rope!" The first I knew was when the rope was about my neck and around my body under my arms. Someone then gave a sharp jerk at the rope and forced me to my knees and hands; at the same time some of them jumped on my back, and while bent over someone struck me in the face, making me bleed; then a man (whom I recognized) said, "Boys, you are going to far"; and then, as they got me away from them a little, I heard a man say, "You can't scare him." I answered, "I am not afraid of the entire city of Appleton." Then a man (whom I knew) got me to one side, and he said, "Let's go into the house and talk between ourselves." Then two men (whom I knew) went with me into the house, and we sat or stood around the table, and they still demanded that I sign up. I said, "I will not sign up for any man after being abused like this." Then a man (whom I knew) told me I would have to go with them, or, if I didn't go with them, would have to come to town that Sunday morning at 10 o'clock to see Mr. Keller. I told them that I would be there; they left; as they left, I noticed, and so did my family and neighbors, that they rode away in seven automobiles. I did not go to see Mr. Keller.

Signed, JOHN DEML.

Sources: "Prussianizing Wisconsin." *Atlantic Monthly*, v.11/1 (1919);
and
<http://historymatters.gmu.edu/d/1>

See Articles: German Americans; Race-Based Crimes; Racism; Wisconsin.

1919 PRIMARY DOCUMENT

Department of Justice Memorandum on Anarchists

This memo is notable not only for its subjects but also for the antisocialist viewpoint of its author, J. Edgar Hoover, which would tinge his direction of the FBI beginning in 1925. Alexander Berkman and Emma Goldman, friends and lovers, were in prison at the time for conspiracy to induce eligible men not to register for the draft; when released, they were deported to Russia, where they became disillusioned with Lenin's restrictions on the press and other disappointments.

Memorandum for Mr. Creighton.

I am attaching hereto a copy of a report received from the New York office relative to the cases of Alexander Berkman and Emma Goldman who are at present sojourning in the custody of the federal authorities but who will shortly be released, their sentences about to expire. Berkman by his own admission is an alien, while Emma Goldman has claimed at various times to be an American citizen through the naturalization of her father and again through the naturalization of her husband, but it appears that the immigration authorities who personally examined her claim reached the conclusion that she was not a citizen of the United States. Upon communicating with the Department of Labor this morning, I was informally advised that Emma Goldman's case had on several occasions been before the Department of Labor for consideration but that the Assistant Secretary, Mr. Post, had refused to sustain the recommendation of the immigration inspector, stating that there was not sufficient facts to warrant the issuance of the warrant for deportation. I have requested Mr. McClellan of the Bureau of Immigration to have a search made of their

files and to submit the same to me for consideration relative to these two cases.

Emma Goldman and Alexander Berkman are, beyond doubt, two of the most dangerous anarchists in this country and if permitted to return to the community will result in undue harm.

Respectfully,

J. E. Hoover
Department of Justice
Washington, D.C.
August 23, 1919

Source: U.C. Berkeley/Dept. of Justice

See Articles: Anarchists; Hoover, J. Edgar; Political Dissidents.

1919 PRIMARY DOCUMENT

Emma Goldman's Account of Her Deportation

Goldman and Berkman's deportation came during the Red Scare that followed the Bolshevik Revolution (and subsequent fears that Russian communism would spread elsewhere) and the devastation of World War I. In some cities, socialist political parties were too popular to be dismissed as fringe elements; the growing power of labor organizations made a labor/socialist alliance seem inevitable and fearsome to some. For them, deporting "reds" and removing their influence was paramount.

The steps halted at our room. There came the rattling of keys; the door was unlocked and noisily thrown open. Two guards and a matron entered. "Get up now," they commanded, "get your things ready!" The girls grew nervous, Ethel was shaking as in fever and helplessly rummaging among her bags.

Then the guards became impatient. "Hurry there! Hurry!" they ordered roughly. I could not restrain my indignation. "Leave us so we can get dressed," I demanded. They walked out, the door remaining ajar. I was anxious about my letters. I did not want them to fall into the hands of the authorities nor did I care to destroy them. Maybe I should find someone to entrust them to, I thought. I stuck them into the bosom of my dress and wrapped myself a large shawl.

In a long corridor dimly lit and unheated, we found the men deportees assembled little Morris Becker among them. He had been delivered to the island only that afternoon with a number of other Russian boys. One of them was on crutches; another, suffering from an ulcerated stomach, had been carried from his bed in the island hospital. Sasha was busy helping the sick men pack their parcels and bundles. They had been hurried out of their cells without being allowed even time to gather up all their things. Routed from sleep at midnight they were driven bag and baggage into the corridor. Some were still half-asleep—unable to realize what was happening.

I felt tired and cold. No chairs or benches were about, and we stood shivering in the barn-like place. The suddenness of the attack took the men by surprise and they filled the corridor with a hubbub of exclamations and questions and excited expostulations. Some had been promised a review of their cases, others were waiting to be bailed out pending final decision. They had received no notice of the nearness of their deportation and they were overwhelmed by the midnight assault. They stood helplessly about, at a loss what to do. Sasha gathered them in groups and suggested that an attempt be made to reach their relatives in the city. The men grasped desperately at that last hope and appointed him their representative and spokesman. He succeeded in prevailing upon the island commissioner to permit the men to telegraph, at their own expense, to their friends in New York for money and necessities [sic].

Messenger boys hurried back and forth, collecting special-delivery letters and wires hastily scribbled. The chance of reaching their

people cheered the forlorn men. The island officials encouraged them and gathered in their messages, themselves collecting pay for delivery and assuring them that there was plenty of time to receive replies. Hardly had the last wire been sent when the corridor filled with State and Federal detectives, officers of the Immigration Bureau and Coast Guards. I recognized Caminetti, Commissioner General of Immigration, at their head. The uniformed men stationed themselves along the walls, and then came the command, "Line up!" A sudden hush fell upon the room. "March!" It echoed through the corridor. Deep snow lay on the ground; the air was cut by a biting wind. A row of armed civilians and soldiers stood along the road to the bank. Dimly the outlines of a barge were visible through the morning mist. One by one the deportees marched, flanked on each side by the uniformed men, curses and threats accompanying the thud of their feet on the frozen ground. When the last man had crossed the gangplank, the girls and I were ordered to follow, officers in front and in back of us.

We were led to a cabin. A large fire roared in the iron stove filling the air with heat and fumes. We felt suffocating [sic]. There was no air nor water. Then came a violent lurch; we were on our way. I looked at my watch. It was 4:20 A.M. on the day of our Lord, December 21, 1919. On the deck above us I could hear the men tramping up and down in the wintry blast. I felt dizzy, visioning a transport of politicals doomed to Siberia, the tape of former Russian days. Russia of the past rose before me and I saw the revolutionary martyrs being driven into exile. But no, it was New York, it was America, the land of liberty! Through the port-hole I could see the great city receding into the distance, its skyline of buildings traceable by their rearing heads. It was my beloved city, the metropolis of the New World. It was America, indeed America repeating the terrible scenes of tsarist Russia! I glanced up—the Statue of Liberty!

Sources: Goldman, Emma. *Living My Life*. Vol. 2. New York: Dover Publications, 1970

(as an unabridged republication of the work originally published in 1931 by Alfred Knopf, New York; and <http://historymatters.gmu.edu/d/15>)

See Articles: Hoover, J. Edgar; Political Dissidents.

1919 PRIMARY DOCUMENT

W. M. Mink's Statement on the National Steel Strike

Red Scare fears are amply demonstrated in this testimony given by W. M. Mink, mill superintendent of the Homestead Steelworks, to the Senate Committee on Education and Labor. The committee was investigating the cause and character of the nationwide steel strike, which had all but halted the American steel industry as 350,000 workers left their jobs. The Senate was not persuaded of foreign influence, and the strike fell apart in January 1920 as a result of infighting among union organizations.

STATEMENT OF MR. W. M. MINK

Senator STERLING: What is your name?

Mr. MINK: W. M. Mink.

Senator MCKELLAR: And what is your position?

Mr. MINK: I have charge of these mills here. . . .

The CHAIRMAN: Well, will you give us your view of what this strike is about?

Mr. MINK: We think it is entirely the Bolshevik spirit.

The CHAIRMAN: Why do you think that?

Mr. MINK: Well, because they was gathering up the aliens; they have been practically alien, in my opinion, very few American citizens.

The CHAIRMAN: They worked among the foreigners, do you say?

Mr. MINK: They worked among the foreigners entirely.

The CHAIRMAN: And most of the foreigners are out?

Mr. MINK: Most of the foreigners are out; 99 per cent of the foreigners that are striking here—that is, the strikers that are out are foreigners.

The CHAIRMAN: Now, does this Bolshevik tendency that you speak of, do they get any literature from any sources?

Mr. MINK: Well, we have not seen any literature, but only stuff like this, they say that if the mills are not running - we do not see this ourselves, but we get it from other sources - that they are going to get a dollar an hour and are going to get the best jobs.

The CHAIRMAN: Are they going to man the mills themselves?

Mr. MINK: Yes, they are going to man the mills themselves.

The CHAIRMAN: And you really believe that there is a great deal of that Bolshevism about, do you?

Mr. MINK: Yes, I think there is. It is not a question of wages. They have never been getting more money than they have got, and the conditions are good.

The CHAIRMAN: How about their living conditions? How are they?

Mr. MINK: The living conditions are just what the men want. A lot of them have good jobs and they make good money, and they could live a whole lot better.

Sources: Investigation of Strike in Steel Industries, Hearings before the Committee on Education and Labor, U.S. Senate, 66th Congress, 1st Session; and
<http://historymatters.gmu.edu/d/8>

See Articles: Civil Disobedience; Political Dissidents.



1921 to 1940

INTRODUCTION

The economic windfall that pervaded much of the Western world after World War I ensured a dramatically changing social, political, and geographic landscape in America. The Roaring Twenties also inspired not only unbridled enthusiasm but also a sea change with respect to trends in crime. The hastening shift from pastoral nation to industrial giant, which had begun in earnest over a generation earlier, further accelerated the movement and disbursement of both existing Americans and newly arrived immigrants toward expanding cities. The image of prosperity that came to typify the decade also served to deepen existing and entrenched divisions of wealth and labor. It ultimately served as the catalyst for new trends in crime and a new breed of criminal that was drawn en masse to burgeoning urban centers. As the demographic shifts of the 1920s resulted in changing values with respect to work and family life, so too was the rubric of crime and punishment in America required to undergo significant modernization. Both law makers and law enforcers struggled to keep pace with new and emerging threats to public safety, as well as the order and rule of government.

As the 1920s inspired decadence and indulgence alongside the cultural and economic infrastructure that appeared primed for criminal infiltration and the emergence of illegal markets, the Wall Street collapse and ensuing Great Depression of the interwar years brought new insights into the environmental causes of crime. As everyday people found themselves resorting to crime, or at least empathizing with the plight of criminals, maintaining and serving the public trust became an increasingly delicate job for law enforcement. In many cases, they were conflicted in their duties: gatekeepers of social order on one hand, and on the other, strikebreakers and underwriters of an unbalanced capitalist system that protected the few remaining wealthy citizens.

Exacerbating public skepticism regarding the traditional rule of law during this period was the expanded role of the commercial press. A quantum leap in the technical standards of film allowed the American media to steward popular debates on the place of crime while contouring public opinion on criminals and moderating the collective fear of crime. Through advances in motion picture sound production, Hollywood of the 1920s and 1930s inspired newfound public ambivalence about the role of the police, the credibility and accountability of the judicial system, and the romance and intrigue

that accompanied the criminal outlaw as a sympathetic antihero of an economically and culturally changeable age.

Additionally mirroring the divisive, boom-or-bust nature of American life that epitomized this era was the polarization of ideological positions on crime by political stripe as well as region. In the northeast, the 1919 Volstead Act ensured that the 1920s and a good part of the 1930s would be defined by struggles with the enforcement of unpopular prohibition laws. The deep south—more agrarian and isolated than the cities of the midwest and seaboard—saw a host of challenges to its reductive definitions of criminality: laws and systems of punishment that often proved incongruous with the more secular values adopted by the rest of America.

Further complicating the maintenance of law and order across a diversifying and dynamic American landscape was the fact that industrial progress had enabled a new degree of mobility for criminals, ensuring a hastened means of escape, as well as allowing crime to routinely undertake a multijurisdictional and itinerant nature. This complicated the task of locating and tracking offenders, and caused additional logistical and procedural constraints in terms of arresting and returning criminals and fugitives across state lines and international borders.

The mass production and ensuing affordability of automobiles proved the most significant determinant of trends in crime during the interwar years. Henry Ford's adoption of the moving assembly line in lieu of individual handcrafting from a decade earlier allowed standardized interchangeable parts to be used in his automobiles, which were marketed to the American middle class for the first time. As one of the great beneficiaries of the spendthrift 1920s, Ford's innovations had transformed the automobile from a luxury item to a staple commodity—and eventually a necessity of American life. Through the reduction of overall production costs, by 1925, nearly 10,000 Ford Model T automobiles were produced on a daily basis, all of them in signature Henry Ford black, offering criminals relative anonymity in their flight from the law. Further complicating law enforcement efforts was the lack of standardized license plates, which were not required in most states until the end of the decade. By 1927, when production began on the Ford Model A, over 15 million Model Ts had been sold or otherwise remained in existence—one car for roughly every eight Americans—subsequently reinventing how people traveled, socialized, and sought out their fortunes, whether legally or illegally. The new gypsying and motoring culture that made the nation smaller and more traversable also ensured a brand of rugged individualism and freedom to roam that favored criminal exploits. By the 1930s, the addition of surplus firearms, which had similar decreases in manufacturing costs, were both widely available and affordable to the criminal element—especially organized crime groups—affording them the logistical and tactical supremacy required to lay siege to American cities.

Of the many retrospectives offered by this explosively changing period, the most enduring cultural legacy for modern crime and punishment is the precipitous surge in state-sanctioned executions. As America seemed somewhat amorphous in its design and conscience during these transitional years, punishment was consistently harsh and was meted out expeditiously. The execution of convicts during this era therefore served not only as an expression of moral and political authority, but also, it was thought, as the ultimate deterrent. As now, death penalty advocates insisted that it deterred other would-be criminals and heeded an American public increasingly captivated by stories of criminal exploits. The drastically increased use of capital punishment is perhaps the enduring image of American justice with respect to this interwar period, with the United States putting to death a record 199 convicts in 1935 alone. It was a low point in the economic and social health of America that seemed light years from the optimism of

decade earlier; and it provides a better understanding of the place of crime and punishment in America today.

Urbanization and Organized Crime

American urban centers from 1921 onward were sites of exceptional cultural upheaval, particularly in port cities where dockyards became the progenitors of globalization and foreshowed the increasingly terrestrial importance of the American economy and mercantile system. The result was the rise of what might now be described as a megacity, with New York City eclipsing the metropolises of Europe and Asia to become the most densely populated and multicultural place on Earth by the turn of the decade. During this same period, the city of Chicago, which two generations earlier had the distinction of being one of the fastest-growing cities in the world, saw its African American population more than double as its expanding industrial sector made it a destination for displaced rural workers from the south during the Great Migration. It was also becoming a labor center for an international constituency of tradespeople from Europe and Central America. In the west, Los Angeles in the 1920s was the site of massive urban—and ultimately suburban—expansion into the desert of the Old West, with commercial and residential construction turning a once-barren landscape into the home of over 80 percent of the world's motion picture production. In the south in the 1920s, Miami experienced a southern land boom unparalleled elsewhere in America, while the eastern cities of



A pair of bootleggers are apprehended by police after a frantic chase and crash in the busy streets of Washington, D.C., on January 21, 1922. Bootlegging was the mainstay of traditional organized crime during Prohibition and supported numerous other criminal enterprises such as smuggling, transport hijacking, illegal gaming, loan sharking, extortion, protection rackets, and prostitution.

Pittsburgh and Philadelphia became industrial powerhouses and sites of unprecedented population diversification, as well as sites of social and political conflict.

A natural consequence of this expedited rural-to-urban transition at the national level during this period was the disproportionate representation of crime, specifically organized crime, in these same cities. While historians continue to proffer a host of theories as to prevailing causal factors, the reality of the era is reducible to basic macroeconomics, as organized crime has always been about making money. American cities in the 1920s, and to a lesser extent the 1930s, were subsumed in a population boom that drew settlers and workers who compensated with disposable income for what they lacked in familial and community connections. These variables, coupled with an unprecedented economic surge and trends in consumerism, pushed against temperance laws during the Prohibition Era of 1919 to 1933. The aggregate result of these factors was the emergence of the ultimate seller's market in illicit goods peddled in an underground economy, one that required infrastructure and, most importantly, organization.

While organized crime is distinct from professional crime, which is a phenomenon that seized public imagination and became a priority for federal law enforcement during the 1930s, criminal organizations of the 1920s tended to function as cultural microcosms of their occupying cities. Mirroring the same racial and social divides in burgeoning American industrial cities of the time, organized crime groups endemic in this era also tended to focus on crimes deemed profitable according to the existing, or at least prevailing, local industries. The geographic and logistical advantages of America's industrialized cities for corporations and their workers made them equally coveted by organized crime. Port cities offered opportunities for smuggling and control of the docks, while landlocked cities offered a host of other opportunities based on factors such as population, climate, and proximity to interstate routes. In terms of immigration and ethnic distribution, cities were favored destination points for settlers from Ireland, Italy, and eastern Europe, while Scandinavians and Germans tended to opt for rural resettlement. In one sense, immigrant gravitation toward organized crime as delineated by creed and country of origin might be construed as a gesture of rejecting urban assimilation and an attempt to retain ethnic heritage. More significantly, these trends in seeking out cultural coherence are of key importance when examining the composition, hierarchies, and ideologies of these early, or traditional, organized crime groups—American gangs of Italian, Irish, and Jewish ancestry.

As bootlegging became the mainstay of traditional, organized crime during the Prohibition Era, it also spawned a number of ancillary illegal enterprises that continue to define the operations of many of these syndicates in their contemporary forms: smuggling, cargo hijacking and highway robbery, illegal gaming and bookmaking, loan sharking, extortion, "black hand" protection rackets, and prostitution. Forays into narcotics trafficking by traditional, organized crime groups have been a much more recent phenomenon; the practice was largely unheard of in the 1920s and 1930s. As these groups in their nascent forms began to diversify their revenue-generating activities, some things remained unchanged, including the violence and terror tactics used to protect and acquire capital. While otherwise conducting business by the same methods and corporate structure as many other American companies occupying the same urban spaces—with the exception of the illegal goods and services provided—increasingly bloody struggles for dominance defined the rise of the gangster in America. As the United States became prime real estate for traditional organized crime from the 1920s onward, the activities of this period allowed America to become the most active hub of organized crime in the world—a nation where petty gangs could thrive and evolve into global criminal empires.

Alphonse “Scarface” Capone

While no American city during this period was immune to the public violence associated with organized crime rivalries, no single urban area seemed able to challenge the infamous spectacles that were seen in Chicago, which by the late 1920s boasted over 1,000 identified gangs. The gangsters who emerged out of Chicago in the 1920s endure as some of the most mythologized and storied criminals in American history. Alphonse “Scarface” Capone, the gangster offering the greatest name recognition in the annals of American crime and enduring as the archetype of traditional organized crime, was first drawn to Chicago at the outset of the Prohibition Era in 1919 to pursue a fortune in bootlegging and reinvent himself after drawing considerable police attention in his native New York City. By 1930, he was the undisputed crime king of Chicago and much of the Midwest, controlling the shipment of liquor, as well as all gambling operations and brothels, while amassing a sizeable fortune even by today’s standards. The move that secured Capone’s place at the apex of the criminal underworld and as an icon of the organized crime culture, however, would also be his ultimate undoing.

On February 14, 1929, seeking to dispatch his lone remaining serious rival George “Bugs” Moran, Capone arranged for four members of his gang to attend the SMC Cartage Company warehouse and garage located in Chicago’s North End, an area historically controlled by Moran’s Irish gang. Acting on information that Moran would be present, Capone’s thugs were dressed as Chicago police officers, with two in replica uniforms and two posing as plainclothes detectives. Moran arrived at the warehouse later than expected, happening upon the scene just in time to witness what appeared to be a police raid as the seven occupants were lined up against the wall in the usual fashion, but were then summarily machine-gunned to death. While Moran by pure happenstance survived Capone’s professional hit that was cunningly veiled as a police shakedown, his organization did not, and he ceded control of the coveted North End to the Capone gang from that day.

The St. Valentine’s Day Massacre, as it quickly became known, was a veritable game changer for organized crime in America—the tipping point where law enforcement tactics, public opinion, and the composition of gangs were forever altered. As the international media had a field day with the story of the massacre, complete with gory photographs of seven men lying in communal blood on a garage floor, Capone’s notoriety and criminal celebrity now earned him the full attention the entire U.S. government—including President Herbert Hoover. Capone’s once salutary public image also took a beating among city dwellers, who had until that time been largely unaffected by, and even ignorant of, the seemingly backstage nature of his criminal exploits. Collective moral outrage about the public barbarity of the massacre brought the stark realities of organized crime into people’s homes for the first time, allowing them to see the gangs for what they really were. As organized crime very quickly became a pressing public issue, the pressure on law enforcement to curtail the activities of gangs mounted, with popular opinion shifting in line with dominant law-and-order ideologies. Citizens finally came to terms with the idea of Capone as little more than a criminal psychopath rather than urban folk hero and iconoclast, as some had previously preferred to believe. Having been unable to build a substantive criminal case against Capone for years, federal investigators, with the assistance of the Internal Revenue Service, soon opted for documentary evidence of income tax evasion in lieu of the elusive eyewitness evidence needed to support more serious felony charges such as murder. Following the St. Valentine’s Day Massacre, Capone’s time at the top was short-lived; he was in federal custody on tax charges by 1931. He was eventually transferred to Alcatraz in 1934, where he remained until 1939, when he was paroled to live out his



Dr. H. W. Evans, imperial wizard of the Ku Klux Klan, leads a Klan parade in Washington, D.C., in September 1926. Many U.S. minority groups were targeted by the Klan, especially in the South, where the Klan had a membership of over 4 million by 1924. The Klan migrated toward northeastern urban centers and became embedded in labor and government, and later in the midwest, where they capitalized on social, economic, and cultural tension.

remaining years in a largely vegetative state, his mind and body destroyed by syphilis, which eventually took his life in 1947.

The toppling of the Capone gang proved a small victory for law enforcement as a pantheon of other crime lords and gangsters stood waiting to assume his place—all of them prepared to escalate the level of violence normalized by Capone, if it proved necessary to secure his newly available territories. More importantly, urban organized crime in the wake of Capone continued to present some unique challenges for law enforcement during the 1930s and onward as criminal syndicates became more entrenched and began to grow organically and insidiously, evolving from myriad gangs of varying complexity into regional, national, and even international crime families. This evolution represented more than just a shift in the semantics used to describe criminal organizations. As crime families quickly annexed what were once manageable local gangs across a number of major cities, criminal conglomerates operating under the umbrella title of “the Mafia” (transliterated from the original *mafioso*) rose up as an amorphous entity with its particular brand of traditional organized crime.

The Mafia

As early as 1908, the New York Police Department (NYPD), recognizing the emerging threat of the Mafia during the city’s massive waves of immigration, industrialization,

and densification, created an elite detective unit known as the Italian Squad. This unit, conducted under the direction of Italian American officers versed in the culture and language, was arguably America's first recognition of the increasing threat posed by the venerable Sicilian crime families that had effectively maintained unofficial control of the island through extortion and racketeering since the mid-19th century. While Mafia activities in Sicily and Italy as a whole began to wane under Benito Mussolini's fascist control from 1922 onward, the foundations laid in America by organized crime figures like Capone provided ripe territory for their pending trans-Atlantic expansion. While Capone certainly elevated the status of Chicago as an organized crime landmark, his arrest in 1931 coincided with the rise of a New York City franchise of the newly displaced Sicilian Mafia that had earlier been forecast by one-time NYPD commissioner and later U.S. President Theodore Roosevelt. As federal agents removed Capone from power and a hodgepodge of Chicago-based gangsters and rivals competed for his monopoly on the prohibited market, New York City emerged as the new capital of organized crime in America. The contemporaneous emergence of the so-called Five Families (Genovese, Gambino, Lucchese, Colombo, and Bonanno) that would go on to dominate New York City and become the crucible of the American Mafia—or Cosa Nostra—as the largest secret criminal organization in the world eventually spread to consume cities like Las Vegas, Miami, and Atlantic City. They even began to rival established syndicates in Boston, where traditional organized crime of Irish descent had previously operated with relative impunity.

Coupled with the criminal vacuum created in Chicago by the collapse of the Moran gang and fragmenting of the Capone gang following his arrest in 1931 was the dismantling of the Detroit-based Purple Gang—or Sugar House Gang—following the arrest of the group's upper echelon in 1932. Just as the hubris of the St. Valentine's Day Massacre in Chicago proved the death knell for the Capone Gang, the equally sensational and publicly vilified Collingwood Manor Massacre in a tenement in the west end of Detroit on September 16, 1931, proved to be a careless exercise of power that cost the Jewish American crime syndicate control of their bootlegging monopoly. While the Purple Gang was bankrupted and slowly asphyxiated during their murder trial in 1932, the remainder of the traditional organized crime gangs in America, generally of Irish American constitution, were disappearing across most cities outside of their Boston stronghold—Providence, St. Louis, St. Paul, and even Omaha—as assassinations, disappearances, and eventual absorption by emerging Mafia affiliates changed the power structure and tactics of organized crime in America.

Xenophobia and the Public Enemy Era

As organized crime syndicates operating in American cities during the 1920s and on into the early 1930s tended to be representative of the prevailing urban ethnic groups of the period—Italian, Irish, and Jewish—these same identifiable groups bore the brunt of cresting racial and cultural intolerance across the United States in response to unwelcome linguistic, ethnic, and religious pluralism. Nowhere was this more evident than in the south, where by 1924, the Ku Klux Klan had amassed a membership totaling over four million. The Klan eventually moved toward northeastern urban centers, where it could establish a foothold in both labor and government. Emboldened by the socioeconomic and cultural tension occurring in cities, the Klan quickly infiltrated municipalities such as Detroit, Chicago, and other areas across the midwest that seemed incongruous with the rural roots of the First Klan (1865–74), which was formed by disillusioned Confederate army veterans. But by the 1920s, the Second Klan had received a decisively welcome response from urban Americans increasingly radicalized in their view of

both nonwhites and non-Americans, allowing the Klan to evolve from a cabal of thugs into what became known as the Invisible Empire that encompassed all walks of life. It became a secret society reaching the highest levels of government and legal influence on a national level.

Like organized crime, this second and more insidious incarnation of the Ku Klux Klan was spawned in part by the divisive social effects of Prohibition. The difference was that the Klan actually advocated the temperance movement as a larger symbol of American purity and virtue. As support for Prohibition laws became the ideological rallying point and propagandist linchpin that united millions of Americans under the banner of the Klan, their criminal and frequently murderous and terrorist methods amounted to more extraordinary examples of a pervasive trend in often militant nationalism brewing across the nation, even among moderates. Eventually, the Klan's Grand Dragon D. C. Stephenson—who at one time oversaw the Klan activities of 23 state chapters—was convicted for the 1925 rape and murder of a schoolteacher on an Indiana night train, which ensured that the Klan's influence began to recede sharply among northerners for the balance of the decade. Synonymous with the Second Klan's decline, however, was the emergence of a hardened criminal justice system that took over as the new barometer for public suspicion and derision for those deemed outsiders. It would seem as though this institutionalized fear of otherness was absorbed by the American courtroom as early as 1920, with reforms to the California Alien Land Law that same year further tightening restrictions on land ownership by noncitizens. Across the balance of America, the first Red Scare had also reached its height as both communists and anarchists were believed responsible for the bombing of Wall Street on September 1, 1920, in which 38 New Yorkers were killed. While never attributable to any single group or cause, it was a massacre that was contemporaneous with prevailing anti-European and anti-immigrant sentiments, regardless of race, color, or creed, and only served to deepen American angst and anger throughout the balance of the 1920s.

Sacco, Vanzetti, and the Slater–Morrill Murders

One possible flashpoint began with the events of the afternoon of April 15, 1920, when two employees of the Slater–Morrill Shoe Company factory located in Braintree, Massachusetts, were ambushed and shot to death while making a payroll deposit of nearly \$16,000 in cash. The robbery-murder bore remarkable similarities to the failed robbery of the L. Q. White Shoe Company in Bridgewater, Massachusetts, on the previous Christmas Eve, in which shots were also fired but no one was injured. The investigation of the Slater–Morrill murders quickly focused on Italian anarchist groups, specifically the Galleanist group—also consisting of mostly Italian immigrants—which was later implicated in the September 16 Wall Street bombing, as well as a much larger and coordinated dynamite plot to murder political leaders, U.S. ambassadors overseas, and captains of industry throughout America for much of the decade to come. Along with the emerging gangs of traditional organized crime, the Galleanist group was thought the most dangerous threat to American society for most of the 1920s; it was later considered a forerunner to politically motivated domestic terrorism in America. By 1921, the U.S. Justice Department had several years' worth of mass arrests and roundups of known or suspected anarchists and communists on the books. While the Slater–Morrill murders escalated public fear of anarchist attacks and the ostracizing of Italian Americans, they also sparked public demands for swift justice and stricter sanctions against current and pending immigrants.

The May 5, 1920, arrest of Galleanist members and Italian nationals Nicola Sacco and Bartolomeo Vanzetti for the shoe company murders put faces to the much larger problem of xenophobia and ostracism of the foreign born that was subsuming an



Roscoe "Fatty" Arbuckle in an undated photograph from the Bain News Service. Famous for his 1912–15 Keystone Cops series, he was implicated in the rape and manslaughter of Virginia Rappe, an actress who attended Arbuckle's hotel party in 1921. Although ultimately acquitted, Arbuckle's career was undone by the news media, an enraged public, and Will H. Hays, Hollywood's director of censorship and author of the later Hays Code of 1930.

increasingly—and at times reluctantly—diverse America. Sacco and Vanzetti, having been in the United States since 1908, had already been identified as militant leftists and communist sympathizers following a 1918 raid on the Massachusetts office of a subversive, anarchist newspaper, where they had served as authors and contributors. The arrest and subsequent prosecution of both men initially seemed to be a matter of good timing and was met with prompt public relief, but was soon followed by the emergence of convoluted evidence issues and problems with eyewitness accounts. These revelations ultimately complicated the timeline and investigative narrative of what was predicted to be a straightforward prosecution, but that turned out to be a ponderous, two-part trial beginning in the summer of 1921—a spectacle that distilled Sacco and Vanzetti into archetypes of a new and virulent threat to America.

The court of public opinion rendered decisively guilty verdicts before the actual trial even began, but due process ensured an equally swift finding of guilt and sentences of death, with violent backlashes orchestrated by their supporters only serving to embolden the collective public anger and paranoia. By November 1925, when convicted murderer Celestino Madeiros admitted to being the trigger man at the shoe company robbery and the real killer of both Slater–Morrill employees, the crime had become the backstory. By

1925, Sacco and Vanzetti were no longer the subject of debate over guilt or innocence, but had been relegated to a larger discourse involving contempt of foreign nationals and all things generally deemed unpatriotic. They had devolved into little more than surrogate enemies of the American legal and social systems as prejudice toward outsiders permeated the courts and the public sphere. It seemed the public was satisfied that if the two weren't guilty of committing the Slater-Morrill robbery murders, they must be guilty of something else, including their participation in seditious, treasonous activities that ultimately threatened the very fabric of American freedom, and that the punishment still fit. The state's decision to deny the request for a new trial based on new evidence and pleas for clemency on the capital sentences seemed to corroborate the sentiments on a higher plane. Just after midnight on August 22, 1927, both men died in the electric chair.

The Murder of the Century

While Sacco and Vanzetti were languishing on death row in Massachusetts, by May 1924, their notoriety was eclipsed by University of Chicago law student Nathan Leopold



An effort to avoid press photographers stymied Charles A. Lindbergh (center) as he emerged from the White House using a side door after a meeting with President Roosevelt in 1939. The years of media frenzy and public hysteria over the 1932 kidnapping, ransom, and murder of his infant son, Charles Jr., drove the Lindbergh family into "voluntary exile" in Europe under assumed names in December 1935.

Jr. and his partner Richard Loeb, two high-functioning sociopaths who were wealthy, entitled, and Jewish. Moreover, they were openly homosexual. This combination of social blights was set against the backdrop of a period of intolerance of outsiders, who were treated with considerable suspicion and derision—especially when they were accused of what was considered an extraordinarily heinous crime, even amid the urban violence of the 1920s. Known at the time as “the murder of the century,” the case was mulled over by criminologists and psychologists for decades, if for no other reason than its utter senselessness.

Based on their gross misinterpretation of the writings of German philosopher Friedrich Nietzsche, Leopold and Loeb conceived of themselves as *übermensen* (supermen) whose calling was to realize the full potential of their intellectual and spiritual superiority and commit the perfect crime. Immortalized in popular culture and crime history as the first publicized “thrill kill,” Leopold and Loeb—aged 18 and 19, respectively—took months to plan a murder for the sole purpose of getting away with it, thereby validating their perceived superiority and immunity to the laws of man and nature. After abducting 14-year-old Robert Franks—a second cousin of Loeb—from the front of his private school on May 21, 1924, both men stabbed the boy to death with a chisel before using acid to chemically mutilate the corpse that they concealed in a rural area outside the city. A contrived ransom scheme to extort money from Franks’s millionaire father was quickly abandoned after Leopold’s bifocals were recovered from the body dump site by police, their custom hinging mechanism immediately narrowing the suspect pool to the three Chicago men who owned them. A swift guilty plea entered on behalf of the killers by their lawyer Clarence Darrow—whose role in the Scopes Monkey Trial in Tennessee the following year would complement the Franks murder as perhaps the defining cases of the decade—saved Leopold and Loeb from what would have been an almost certain death penalty if found guilty at trial. Darrow, who traditionally defended the downtrodden and working classes, not trust-fund children from moneyed families, quickly saw the futility in Leopold and Loeb’s plan to mount an insanity defense. Mental illness would be seen as an aggravating rather than a mitigating factor, once paired with their existing ethnic and sexual incongruity with mainstream America.

Leopold, consenting to being used as a human medical research test subject while in state prison, was later paroled after serving 33 years, and he self-exiled to Puerto Rico in 1958. Loeb’s life term, however, proved a circuitous death sentence after he was stabbed to death in a prison shower in 1936 by a fellow inmate. The responsible convict was ultimately exonerated on the grounds that he had acted in self-defense following an attempted rape by Loeb, although this motive has been contested as one of either notoriety or a simple disagreement over money or contraband.

The Scottsboro Boys and Mishandled Justice

Additional cases that defined this xenophobic epoch tended to reflect not so much emerging social prejudices but rather the influence that religious fundamentalism and entrenched racism had on the criminal justice system. Few cases are more emblematic of the jurisdictional inconsistencies of the American justice system of the period than the 1931 case of the Scottsboro Boys. Eight African American youths were illegally riding a rail line across the south when the train was detained in Alabama; all eight boys were arrested and charged with the rape of two young—and white—female passengers riding with them. The perfunctory and hurried trial in Scottsboro, Alabama, that followed, with lynch mobs descending on the jail holding the group, resulted in swift guilty verdicts for all boys ranging in age from 12 to 20. This was in spite of no real legal representation and what was later revealed to be a stacked, all-white jury. While

the Scottsboro case marked the end of all-white juries in felony trials in the south, two subsequent juries of varying racial composition upheld the original guilty verdict. They also upheld the penalty of death for all defendants, except the 12-year-old, because the sexual assault of a white woman by a black man was a capital offence in Alabama.

The case was never decisively resolved, even after being brought before the U.S. Supreme Court as well as the National Association for the Advancement of Colored People (NAACP). Nor was there any prospect of closure, even after the victims admitted to fabricating the details of the event. In the end, four of the eight were convicted of some crime, with one defendant, Clarence Norris, sentenced to life in prison in 1937. The case exposed the contradiction between expedited trials and death sentences suborned by institutionalized racism in the south, versus the glacial pace of the appeals process across the rest of America. Paradoxically, the Scottsboro Boys spent much of the intervening six years under armed guard, including by state militia troops, to ensure their protection from the same public to whom they were thought to pose a danger. The miscarriage of justice that is generally now accepted as having defined the Scottsboro case and its protracted aftermath through the courts is for the most part exceptional; the mishandling of the investigation and ensuing trials did not diminish, however, the seriousness of the crime problems elsewhere in America at the time.

The Public Enemy Era

Back in Chicago, the 1930s saw a mild tempering of its traditional organized crime problem with the incarceration of Capone, the oligopoly on illegal markets by the Five Families, and the end of Prohibition, which stifled the underground economy of bootlegging in most northern states by 1933. While the widespread—or at least popularized—resentment of immigrants and outsiders had to some extent also subsided by the 1930s, a new taxonomy of public menaces was identified by law enforcement during the volatile period that became known as the public enemy era (1931–34). Like the previous decade, this era was defined by egregious public violence in industrialized cities, but one where threats to American life could not be so readily scapegoated to identifiable minorities and ethnic groups.

The roots of the phrase *public enemy* is under debate, but its origins are generally attributed to either a 1930 edition of the *Chicago Tribune* or a speech by Chicago Crime Commission Chair Frank Loesch the same year. While originally used in the context of the Capone gang, the label of “public enemy” was ascribed to homegrown outlaws who, unlike the traditional organized crime syndicates before them, were definitively disorganized and thus all the more unpredictable and dangerous. The criminal element in Chicago, which had once managed to feign civility and relegate its activities to the city’s underground, took on a new and more brutal conspicuousness during the 1930s, a shift in tactics that proved that the Chicago Police Department (CPD) was entirely unprepared and ill-equipped. The CPD fallen officer tally became something of a barometer for the scale of violent crime in the city during the public enemy era: 81 CPD officers were killed in the line of duty between 1930 and 1939, including an astounding 14 officers killed in 1931 alone.

Some of the most infamous mainstays of the era wreaked havoc in and around Chicago, including John Dillinger, Lester “Baby Face Nelson” Gillis, George “Machine Gun Kelly” Barnes, and Clyde Barrow and Bonnie Parker, since mythologized as Bonnie and Clyde. While committing brazen armed robberies, often coupled with murder, and suspected of the slayings of dozens of law enforcement officials across the American midwest, they exploited a buyer’s market of stockpiled automobiles and firearms in a depressed economy. The nomadic, sporadic nature of their crimes reprised the traveling

spirit that defined early America before industrialization, but also underscored that the automobile was a game changer in terms of the sanctity of rural communities. Motor vehicles enabled the violent crime that defined the social disorganization of the industrial city to very easily spread to small-town America. It was in fact the multijurisdictional and mobile nature of the crimes during the public enemy era as much as their indiscriminate brutality that drew the ire of the federal government and necessitated a standardized reporting and investigation system, as well as more modern and progressive methods of attacking a dynamic crime problem that had consumed the resources of all local law enforcement.

Federal Bureau of Investigation

Having appropriated the epithet “public enemy” as his own publicity tool, J. Edgar Hoover, the longest standing director of the Bureau of Investigation (BOI), used the epic crime sprees of the early 1930s to propel his agency to the forefront of law enforcement on an international level. Hoover had been a key player for the Department of Justice in locating and deporting leftist and suspect communists, including Galleano group members, in the years prior to the Sacco and Vanzetti arrests. By 1924, he was appointed by Attorney General Harlan Fiske Stone, at the direction of President Calvin Coolidge, as the sixth director head of the BOI. The BOI was founded as a counterintelligence agency in the aftermath of World War I and was later renamed the Federal Bureau of Investigation (FBI) in response to the carnage of the public enemy era in 1935. Under Hoover’s watch, the BOI and later the FBI undertook increasingly complex investigations and diversified its mandate significantly over a considerably compressed timeline. By the close of the 1930s, the bureau oversaw all matters that were even vaguely or theoretically related to domestic security, including but not limited to kidnapping, commercial fraud and forgery, gaming and money laundering, racketeering and political corruption, narcotics, armed robbery, murders and assaults committed against law enforcement and other public officials, and all matters of subversion, including communism.

Hoover remains a controversial figure, simultaneously mythologized and vilified in popular culture. His often



FBI Director J. Edgar Hoover (left) escorts Louis “Lepke” Buchalter (center) in handcuffs to court in 1939. Buchalter, head of the Mafia hit squad Murder Inc., had been in hiding since 1937 and was tricked into surrender by Hoover and Walter Winchell.

underhanded and unscrupulous methods aside, the reality is that the bureau used its notoriety obtained during the public enemy era to catapult American law enforcement into a world leader in innovative and continuously evolving investigative methods as well as new policing technologies and training methods.

Since the 1930s, the bureau has also been the repository for all crime data collected by local and state police departments across America using the Uniform Crime Report (UCR) system. Ostensibly reflecting crimes known or reported to the police as coded by offence type, entity type, and location (known colloquially as crime codes and role codes), the UCR data transference system was developed piecemeal in the late 1920s as the principle law enforcement legacy of the Progressive Era—along with the invention of the dictograph as the progenitor of modern wiretapping and telephonic surveillance. The UCR model was designed to allow, as it continues today, the analysis, warehousing, tabulation, and interpretation of all national crime statistics provided by accredited agencies across the United States.

While the statistical validity of these crime statistics, as well as the accuracy of on-source information collected, has been subject to debate, the UCR indices were taken at face value for many years and became the means by which the fledgling bureau identified and defined its mandate. The UCR system also allowed Hoover, responding to the unidirectional—but often unintentionally inaccurate or corrupted information—provided by thousands of police agencies across the country, to justify the bureau's expansion into new areas of criminal investigation and expenditures related to attacking the criminal infrastructure.

The qualification and education requirements for police officers varied greatly across the United States, and police department communication infrastructures were relatively polarized between urban and rural areas. Therefore, the reductive and shorthand nature of the UCR system assured that the same crime would be catalogued by the police much differently depending on where it was reported. An incident reported as a street mugging in Culver City (classified by the UCR index as a violent crime) might just as easily be coded, with precisely the same circumstances, as a larceny (a property crime) in Sioux City, depending on a number of variables. These include the means by which the incident is first reported (in person versus by telephone), as well as the experience of the investigating officer and the perceived credibility of the complainant. On a national scale, such minor discrepancies over the course of a calendar year have the ability to grossly and cumulatively misrepresent wider trends in crime, and it has been argued that the bureau capitalized on this interpretative nature of the UCR design in order to justify experimental forays during and after the public enemy era. While the reported crime rate across the United States was relatively stable between 1935 and 1940, the national murder rate reached its highest point of the 20th century in 1933, at 9.7 murders per 100,000 people. The data spread in this context points to fundamental discrepancies in terms of actual crimes committed versus only reported crimes, a schism that would allow the UCR system to effectively, though often spuriously, dictate public perceptions of and vulnerability to crime. It also contoured the operational policies and public image of the bureau as the exclusive custodian of this information.

Amid the lawlessness of the 1930s and the bureau's new instruments for measuring crime and translating it into tangible figures, the bureau became the gold standard for law enforcement recordkeeping around the world. It also established itself as the national authority on standardized professional training for law enforcement, developing its first forensic and technical laboratory in 1932. Later, in 1935, the FBI National Academy was founded to provide expert training for not only its own agents, but also law enforcement officers from across the United States, Canada, and eventually

the world as the bureau developed increasingly methodical and scientific approaches to criminal investigation. Hoover centralized and professionalized training for bureau agents and expanded the focus on scientific approaches to crime. This led to a newfound focus on recruiting agents from interdisciplinary backgrounds that could be retooled to advance the interests and reputation of the bureau among international experts. By recruiting physicists, chemists, and linguists directly out of the universities, the bureau soon became a viable civil service alternative to traditional laboratory work for scholars and scientists, and Hoover quickly became a visionary with respect to the emerging role of experts in law enforcement and ensuring successful prosecutions.

Hoover's professionalization and diversification of the bureau and, ultimately, the nature of criminal investigation in the Western world, was made possible in part by seed money and statutory reforms that made the bureau one of the most significant beneficiaries of President Roosevelt's New Deal in 1933. By that time, Roosevelt had enacted legislation that significantly federalized crime suppression and provided the bureau with broad, sweeping powers to address the increased mobility of crime. By 1935, bureau agents were also fully armed in all circumstances, a procedural overhaul that followed the death of two agents in the Kansas City Massacre in June 1933. By 1940, there were field offices located in 42 U.S. cities as Hoover began to place renewed importance on the bureau's historical mandate of domestic surveillance of persons of interest, up to and including White House officials and even First Lady Eleanor Roosevelt by the time of the outbreak of World War II.

Hoover's "G-Men"

The dramatic expansion and professionalization of the bureau during the interwar years was partially a response to the multijurisdictional, violent crime that accompanied the public enemy era and balance of the 1930s, and the corresponding need for a national police agency with both administrative and street-level operational components. The bureau's growth as a bureaucracy and ideological instrument during this period was significant. The ability of the bureau to very quickly marshal public respect and attain iconic status, both domestically and internationally, was in part due to Hoover's efforts to brand the bureau as mythic institution that appealed to the American imagination, particularly American youth. The popularization of the term *G-Men* (for Government Men) to describe bureau agents from the mid-1930s is rumored to have originated with a plea for mercy by George "Machine Gun" Kelly during his September 1933 arrest, and Hoover perpetuated this folklore image as a public relations device, particularly as a contrast to the public enemy label. The radio serial *G-Men*, later renamed *Gang Busters*, was produced under Hoover's supervision when it debuted on NBC radio in July 1935. The series was later adapted by DC Comics, as well as film and television production studios. In 1936, a children's version for radio titled *The True Adventures of Junior G-Men* was hosted by famed bureau agent Melvin Purvis—instrumental in the manhunt for John Dillinger in 1934—and went on to inspire a global cultural phenomenon. By the end of the decade, Junior G-Men clubs had been formed in the United States and internationally, serving as a type of youth brigade in the bureau's war on crime and largely mimicking the established structure and reward system of the Boy Scouts, but with a clearly defined law-enforcement purview.

By the start of World War II in 1939, Hoover had become a household name and, along with Los Angeles Police Chief William H. Parker, endures as perhaps the most famous, or infamous, law enforcement leader in American history. By 1940, Hoover transformed the bureau into a federal law enforcement, domestic security, and internal spy agency, as well as an unrivaled propagandist and publicity machine. It evolved into

a prominent brand name that would become the prototype for the public-image strategies of American police departments in the media and popular culture for the balance of the 20th century, including Parker's LAPD. Hoover's new FBI also mirrored the evolving methods of news media and Hollywood in regard to American crime and criminal celebrity. Hoover's G-Men phenomenon was not only a vehicle for advancing his own notoriety and the prestige of the bureau in a financially depressed America in need of heroes. It was also an antidote against the glorification of the criminal underworld and the sensationalizing of crime that the bureau, and all of American law enforcement, faced in their attempts to restore and maintain some semblance of order.

Changing Forms of Crime News

The commercial press of the interwar years, devoid of good news stories for most of the financially challenged 1930s, and yet remaining a highly competitive and profitable market, defined itself by increasingly sensational crime reporting. There was no lack of material during this quarrelsome era, and the media responded in kind by devoting considerable print space to indulging readers' fascination with the criminal element. Stories of kidnappings were especially lurid and seized the public imagination, as the 1920s and 1930s yielded some of the most historically significant kidnap–ransom–murder schemes on record, engendering a specific trade known as the “snatch racket” among a specific



On their first tour of duty, July 1, 1940, five of the 20 new members of the Capitol police force, some of whom were recruited from the FBI, Secret Service, and Metropolitan police, gather at the Capitol. War conditions in Europe prompted a 1939 presidential directive to strengthen the FBI's authority to investigate subversives in the United States; it was reinforced by the 1940 Smith Act outlawing advocacy of violent government overthrow.

breed of criminal who, along with the bootlegging gangster and public enemy, generally defined the era.

The Copycat Case of Marion Parker

As kidnapping crimes grew increasingly brazen and heinous, media reports became increasingly fixated on gory details, ultimately shaping not only the public fear of crime but also public outrage and collective demands for justice. The 1927 case of Marion Parker is especially notable for its elevation of public interest in kidnappings, in part because her abductor and killer became the first person of the decade to be executed for his role in a ransom-motivated abduction and murder. Her admitted killer, William Edward Hickman, was already a convicted felon, as well as a former employee of prominent Los Angeles investment bank manager Perry Parker. On December 15, 1927, he abducted Parker's 12-year-old daughter Marion from her junior high school. Following a volley of ransom letters in which Hickman typically called himself "the Fox," an agreement was eventually made for a ransom-captive exchange on December 17. When Hickman was handed \$1,500 in cash while waiting in an idling vehicle, and with Marion Parker ostensibly seated beside him, Hickman pushed what turned out to be the dismembered and disemboweled corpse of his victim out the door as he sped away. It was horrifically revealed that Hickman had stuffed the eviscerated corpse of Marion Parker—killed within hours of her abduction—with rags and discarded clothes in order to use it as a prop, with the eyes and mouth wired open to mislead her family and authorities into believing that she was still alive in order to secure the ransom payment.

The breadth of the manhunt for Hickman that followed reflected the degree to which the crime horrified America, with over 50,000 police officers representing not only the BOI, but also various local and state law enforcement agencies and American Legion volunteers. Hickman was eventually located hiding in Oregon and returned back to Los Angeles to face trial. After his insanity plea was rejected by jurors, Hickman was swiftly convicted and, in 1928, was hanged at San Quentin. Prior to his execution, he confessed that the savage crime was motivated in part to seek revenge against Perry Parker, who had previously had him fired and charged with forgery offenses during his brief employment at the bank. The main motive, however, was Hickman's desire for the same media attention and public interest that had been bestowed on Leopold and Loeb and their similar *modus operandi* in 1924. This admission, if accurate, would make the Parker murder a significant case study in the role of the commercial press in inspiring copycat crimes.

The Lindbergh Kidnapping

The media furor and public spectacle that surrounded the kidnapping and murder of the Parker child, however, would soon be overshadowed by the events of March 1, 1932, when a nighttime intruder snatched the 20-month-old son of famed transatlantic aviator Charles Lindbergh from the second-story bedroom of his rural New Jersey home. The abduction of Charles Lindbergh Jr., not from a school or public place but out of his nursery while he slept, upped the ante in terms of the risks that ransom kidnappers of the wealthy and influential were prepared to assume as economic times worsened. The bold methodology of the crime, combined with the existing international celebrity of "Lucky Lindy," led to a nationwide manhunt that eclipsed the search for Marion Parker four years prior and endured for over 10 weeks as ransom demands of \$50,000 in cash and gold certificates were levied in exchange for information on the child's whereabouts. After the ransom was paid and the information proved bogus, the remains of Charles Jr. were discovered by a passing motorist on a roadside just a few miles from the Lindbergh home on May 12. The Lindbergh Law, which made kidnapping a federal offense—and

thus the bailiwick of the BOI and FBI—was passed in Congress within a month of the recovery of the infant's body, although tracing the redemption of the gold certificates paid as ransom took significantly longer than expected.

By September 1934, the BOI and NYPD officers had a sufficient paper trail to place a Bronx tenement leased by German immigrant and freelance carpenter Bruno Hauptmann under discreet surveillance, and eventually the grounds to take him into federal custody on September 19. A search of Hauptmann's residence by authorities turned up a cache of nearly \$14,000 of the outstanding ransom money hidden in his garage. Hauptmann was immediately extradited back to New Jersey to face charges of kidnapping, extortion, and first-degree murder.

Superlatives such as “the crime of the century” and “the trial of the century” were reprised from the Leopold and Loeb case nearly a decade prior, and were used liberally by the press as Hauptmann became an international curiosity, vilified even further when it was revealed that he was an illegal alien and former Imperial Army machine gunner during World War I. As a carnival-like atmosphere descended on the courtroom for the next six weeks, the American public attentively followed the progress of the trial, complete with photographs snapped by news cameras that were permitted in the courtroom. A jury eventually found Hauptmann guilty on all charges on February 13, 1935, and he was expeditiously sentenced to death by trial judge Thomas Trenchard. Professing his innocence until the end and refusing a gubernatorial offer to exchange a detailed confession for a stay of execution, Hauptmann was executed in the electric chair on April 3, 1936.

The “trial of the century” did not come to an end with Hauptmann's execution. As the media circus was protracted beyond the case, Charles Lindbergh, along with wife Anne Morrow Lindbergh and their new son, self-exiled to Europe to avoid being dragged into the ceaseless, sensational, tabloid-like followups by the media. A reflection on the role of the media in not merely reporting on criminal trials, but also disrupting and even influencing the proceedings, led for calls to reconsider the value of permitting news cameras in the courtroom. Judge Trenchard had allowed the use of still photography during the proceedings of the Hauptmann trial, but had not considered the ongoing distractions caused by incessant mechanical noises, let alone the popping of flashbulbs. It also quickly became evident that some reporters had smuggled motion picture cameras into the court as bootlegged newsreel footage of the testimony began to surface. Lindbergh's reclusive behavior following the trial, fearful that the media's ongoing attention to the case would imperil the safety of his subsequent children, ensured that the divorce between the camera and the courtroom would endure as one of the defining legacies of the trial. By 1937, the American Bar Association had banned the use of audio-video recordings and still photography in all courtrooms, and Congress followed suit with respect to banning cameras from all federal proceedings. There was compliance in all states, except Colorado and Texas. The issue was not revisited until 40 years later, when advances in technology made camera operations and the presence of equipment more discreet and enabled their return to the courtroom on a provisional basis.

News and Entertainment Censures

By censoring the news industry in 1937, the American Bar Association followed to some extent the proscriptive trends in the censorship of crime stories earlier undertaken by Hollywood. The American news media, while not directly rebuked for their solicitous treatment of crime stories following Hickman's admission of celebrity envy, nor the proverbial circus of the Hauptmann trial, eventually inspired government censorship of representations of all criminal content in commercial productions for public audiences. While official “news” media emerged relatively unscathed, the Hollywood film

industry as the emerging cultural authority on crime and public opinion bore the brunt of demands to reign in the collective glorification of crime in America. From the debut of Warner Brothers' *The Jazz Singer* in 1927 as the first "talkie" film to the full-length feature with a synchronized soundtrack, the role of motion pictures as increasingly influential social commentaries and multimedia texts was reflected with crime films emerging as the industry staple. The public enemy era as romantically depicted in American film proved the final push that social conservatives and government regulators needed to enact the Motion Picture Production Code in 1930. Popularly known as the Hays Code after Hollywood's director of censorship at the time, Will H. Hays, the regulation was not consistently enforced until 1934, following the uproar surrounding director Howard Hawks's Capone biopic *Scarface: The Shame of a Nation*. While not relegated exclusively to crime films per se, the code still represented demands for moral reform in an age of social and financial uncertainty, when core values and respect for the law was tenuous at best.

Remaining in effect until 1968, when it was replaced by the Motion Picture Association of America film rating system that remains on the books today, the Hays Code was principally concerned with restricting the glorification and implied financial benefits of crime in film, as well as the idea that sexually liberal conduct was permissible or attractive. The code also required that films depict authority figures such as the police and elected officials with respect so as to not bring the administration of justice into disrepute. This distinction is significant in that one of the earlier silent era's stars, Roscoe "Fatty" Arbuckle, boasted a filmography defined by the mockery of the American police in the *Keystone Cops* franchise. Although not actively producing films by the time the Hays Code was consistently enforced in 1934, Arbuckle had already been targeted for censorship following his September 1921 arrest for manslaughter in the death of small-time actress Virginia Rappe. It was suggested on largely dubious evidence, including an alleged deathbed utterance, that Rappe's fatal bladder rupture was not the result of a pre-existing illness or botched abortion, but the consequence of the rotund Arbuckle's body weight bearing down on her frame during forced intercourse at a Labor Day party at a San Francisco hotel a few weeks earlier.

Following three consecutive and well-publicized trials, the reputation of the once acclaimed and innocuous comedian took a thrashing at the hands of tabloid opportunists such as William Randolph Hearst. Although ultimately acquitted following two consecutive mistrials, by the start of his third trial in March 1922, Hays had already banned Arbuckle's films, not for their content, but for their association with a man painted in the media—without evidence—as a sex-crazed, adulterous drunkard who partook in Hollywood orgies and indulged in illicit drugs.

All evidence points to Arbuckle as having been railroaded, and for reasons that never became clear; but his public humiliation and the dismissal of his contributions to American film and culture were undertaken as a personal crusade by Hays a full decade before his code came into effect. The Arbuckle scandal foreshadowed forthcoming trends in using the media to ensure circuitous justice through destroyed celebrity careers. It also ensured that the Hays Code, as the forerunner to McCarthyism, became the model by which Hollywood figures would become key players in debates over crime and punishment in America, and thus increasingly vulnerable to allegations of being unethical and un-American.

Michael Arntfield
 University of Western Ontario
 Vivien Miller
 University of Nottingham

1921

PRIMARY DOCUMENT

State of Illinois v. Edward Cicotte, et al.

White Sox first baseman Chick Gandil was a friend of professional gambler Sport Sullivan, and the two of them conspired to fix the 1919 World Series. Team owner Charles Comiskey was not well liked and underpaid his players. Gandil used this to enlist several of his teammates to throw the series for a share of the gambling winnings. The "Black Sox" were banned from baseball for life, and owners hired federal judge Kenesaw Mountain Landis to oversee the sport as its first commissioner.

Bill of Particulars in the Case of
State of Illinois
v. Edward Cicotte, et al.
 (February 1921)

STATE OF ILLINOIS
 SS:
 COUNTY OF COOK

IN THE CRIMINAL COURT
 OF COOK COUNTY:

THE PEOPLE OF THE STATE OF ILLINOIS
 vs.
 EDWARD V. CICOTTE, et al.

Indictment No. 23912

Bill of Particulars as to Count 1, Count 2, and Count 3, of Indictment No. 23912, filled in conformity to rule entered July 5th, 1921, by his Honor Judge Hugo Friend, one of the Judges of the Criminal Court of Cook County.

The defendants in the above entitled cause, and each of them, are hereby notified that the State will offer evidence tending to show that the defendants, Edward V. Cicotte, Claude Williams, Joe Jackson, Fred McMullin, Arnold Gandill, George Weaver, Oscar Felsch and

Charles Risberg, in September and October of 1919 were engaged as base ball players and were members of a base ball club known as the American League Base Ball Club of Chicago, a corporation;

That said American League Base Ball Club of Chicago was engaged to play in competition with a certain other base ball club known as the National League Base Ball Club of Cincinnati, Ohio, a certain series of games of base ball; some of the games of said series to be played in Chicago and other games of said series to be played in Cincinnati, Ohio;

That the defendants, William Burns and Hal Chase were at various times connected with base ball as professional base ball players but were not participants in any of the games of the above mentioned series;

That the defendants, Joseph J. Sullivan, Rachael Brown Abe Attell, Carl Zork, Ben Franklin, Ben Levi, Louis Levi, and David Zelzer were not connected with base ball as players, but were reputed to be gamblers or prized fighters and interested in the promotion of gambling enterprises and sporting events of questionable character;

That considerable public interest was manifested in the outcome of said series of games and each game of said series;

That each of said games was publicly regarded as an important sporting event and that the spectators of said games and each to them was required to pay an admission fee to the field where said games were played;

That the defendants participating in said games as players conspired, confederated and agreed together with the defendants not participating therein to so conduct themselves throughout the said games and each of said games and so manipulate their playing in each of said games as to make certain in advance of the playing in each of said games the outcome thereof and the winner thereof, and so as to make certain in advance of the playing of all of the games of said series the outcome of the majority of the games of said series and the winner of the majority of said series of games;

And the defendants not participating in said games, as base ball players, conspired,

confederated and agree together and with the defendants participating in said games to operate among the spectators of said games and others and the general public to procure divers large sums of money by means of and by use of the confidence game.

That one Charles C. Nims, a resident of Chicago, Illinois, was unlawfully, fraudulently and feloniously swindled out of the sum of \$250.00 by the defendant, Joseph J. Sullivan, who was then and there engaged in carrying out the conspiracy aforesaid and who did then and there obtain from the said Charles C. Nims the sum of \$250.00 by means and by use of the confidence game contrary to the Statute in such cases made and provided.

And further particulars, the defendants are respectfully referred to the first, second, and third counts of said indictment.

Signed: Robert E. Crowe
State's Attorney of Cook County, Illinois

Signed: Geo E. Gorman
Assistant State's Attorney

Source: <http://law2.umkc.edu/faculty/projects/ftrials/blacksox/particulars.html>

See Articles: Gambling; Organized Crime, History of; Rothstein, Arnold

1924 PRIMARY DOCUMENT

An Act to Preserve Racial Integrity

The Act to Preserve Racial Integrity was one of two eugenics laws passed by the Virginia legislature in 1924. The accompanying Sterilization Act compelled sterilization for the "feeble-minded," while the Racial Integrity Act defined every person as either "white" or "colored." Colored persons were those with any amount of nonwhite ancestry,

who were prohibited from marrying whites. The state registrar even ordered the exhumation of suspected nonwhites buried in white cemeteries and reinterred them in colored cemeteries.

1. Be it enacted by the General Assembly of Virginia, That the State Registrar of Vital Statistics may as soon as practicable after the taking effect of this act, prepare a form whereon the racial composition of any individual, as Caucasian, negro, Mongolian, American Indian, Asiatic Indian, Malay, or any mixture thereof, or any other non-Caucasic strains, and if there be any mixture, then the racial composition of the parents and other ancestors, in so far as ascertainable, so as to show in what generation such mixture occurred, may be certified by such individual, which form shall be known as a registration certificate. The State Registrar may supply to each local registrar a sufficient number of such forms for the purpose of this act; each local registrar may personally or by deputy, as soon as possible after receiving said forms, have made thereon in duplicate a certificate of the racial composition as aforesaid, of each person resident in his district, who so desires, born before June fourteenth, nineteen hundred and twelve, which certificate shall be made over the signature of said person, or in the case of children under fourteen years of age, over the signature of a parent, guardian, or other person standing in *loco parentis*. One of said certificates for each person thus registering in every district shall be forwarded to the State Registrar for his files; the other shall be kept on file by the local registrar.
Every local registrar may, as soon as practicable, have such registration certificate made by or for each person in his district who so desires, born before June fourteen, nineteen hundred and twelve, for whom he has not on file a registration certificate, or a birth certificate.
2. It shall be a felony for any person wilfully or knowingly to make a registration certificate false as to color or race. The wilful

making of a false registration or birth certificate shall be punished by confinement in the penitentiary for one year.

3. For each registration certificate properly made and returned to the State Registrar, the local registrar returning the same shall be entitled to a fee of twenty-five cents....
4. No marriage license shall be granted until the clerk or deputy clerk has reasonable assurance that the statements as to color of both man and woman are correct. If there is reasonable cause to disbelieve that applicants are of pure white race, when that fact is stated, the clerk or deputy clerk shall withhold the granting of the license until satisfactory proof is produced that both applicants are "white persons" as provided for in this act. The clerk or deputy clerk shall use the same care to assure himself that both applicants are colored, when that fact is claimed.
5. It shall hereafter be unlawful for any white person in this State to marry any save a white person, or a person with no other admixture of blood than white and American Indian. For the purpose of this act, the term "white person" shall apply only to the person who has no trace whatsoever of any blood other than Caucasian; but persons who have one-sixteenth or less of the blood of the American Indian and have no other non-Caucasic blood shall be deemed to be white persons. All laws heretofore passed and now in effect regarding the intermarriage of white and colored persons shall apply to marriages prohibited by this act.
6. For carrying out the purposes of this act and to provide the necessary clerical assistance, postage and other expenses of the State Registrar of Vital Statistics, twenty per cent of the fees received by local registrars under this act shall be paid to the State Bureau of Vital Statistics, which may be expended by the said bureau for the purposes of this act.
7. All acts or parts of acts inconsistent with this act are, to the extent of such inconsistency, hereby repealed.

Source: http://www2.vcdh.virginia.edu/encounter/projects/monacans/Contemporary_Monacans/racial.html

See Articles: African Americans; Native Americans; Racism; Virginia.

1925 PRIMARY DOCUMENT

H. L. Mencken's Commentary on the Scopes Trial

The trial of John Scopes for violating a Tennessee law against teaching evolution in state-funded schools brought together two of the most famous figures in the legal world: Clarence Darrow, who had defended Leopold and Loeb, defended Scopes; William Jennings Bryan, repeat presidential candidate and masterful orator prosecuted Scopes. It was the first major legal showcase for fundamentalism, a new, powerful, and increasingly political strain of Christianity. Scopes paid a \$100 fine.

The Scopes Trial: Darrow's Eloquent Appeal Wasted on Ears That Heed Only Bryan, Says Mencken

Dayton, Tenn.—The net effect of Clarence Darrow's great speech yesterday seems to be precisely the same as if he had bawled it up a rainspout in the interior of Afghanistan. That is, locally, upon the process against the infidel Scopes, upon the so-called minds of these fundamentalists of upland Tennessee. You have but a dim notion of it who have only read it. It was not designed for reading, but for hearing. The clanging of it was as important as the logic. It rose like a wind and ended like a flourish of bugles. The very judge on the bench, toward the end of it, began to look uneasy. But the morons in the audience, when it was over, simply hissed it.

During the whole time of its delivery the old mountebank, Bryan, sat tight-lipped and unmoved. There is, of course, no reason why it should have shaken him. He has those hill billies locked up in his pen and he knows it. His brand is on them. He is at home among them. Since his earliest days, indeed, his chief strength has been among the folk of remote hills and forlorn and lonely farms. Now with his political aspirations all gone to pot, he turns to them for religious consolations. They understand his peculiar imbecilities. His nonsense is their ideal of sense. When he deluges them with his theological bilge they rejoice like pilgrims disporting in the river Jordan.

The town whisper is that the local attorney-general, Stewart, is not a fundamentalist, and hence has no stomach for his job. It seems not improbable. He is a man of evident education, and his argument yesterday was confined very strictly to the constitutional points -- the argument of a competent and conscientious lawyer, and to me, at least very persuasive.

But Stewart, after all, is a foreigner here, almost as much so as Darrow or Hays or Malone. He is doing his job and that is all. The real animus of the prosecution centers in Bryan. He is the plaintiff and prosecutor. The local lawyers are simply bottle-holders for him. He will win the case, not by academic appeals to law and precedent, but by direct and powerful appeals to the immemorial fears and superstitions of man. It is no wonder that he is hot against Scopes. Five years of Scopes and even these mountaineers would begin to laugh at Bryan. Ten years and they would ride him out of town on a rail, with one Baptist parson in front of him and another behind.

But there will be no ten years of Scopes, nor five years, nor even one year.

Such brash young fellows, debauched by the enlightenment, must be disposed of before they become dangerous, and Bryan is here, with his tight lips and hard eyes, to see that this one is disposed of. The talk of the lawyers, even the magnificent talk of Darrow, is so much idle wind music. The case will not be decided by logic, nor even by eloquence. It will be decided by counting noses -- and for every nose in these hills that has ever thrust

itself into any book save the Bible there are a hundred adorned with the brass ring of Bryan. These are his people. They understand him when he speaks in tongues. The same dark face that is in his own eyes is in theirs, too. They feel with him, and they relish him.

I sincerely hope that the nobility and gentry of the lowlands will not make the colossal mistake of viewing this trial of Scopes as a trivial farce. Full of rustic japes and in bad taste, it is, to be sure, somewhat comic on the surface. One laughs to see lawyers sweat. The jury, marched down Broadway, would set New York by the ears. But all of that is only skin deep.

Deeper down there are the beginnings of a struggle that may go on to melodrama of the first caliber, and when the curtain falls at least all the laughter may be coming from the yokels. You probably laughed at the prohibitionists, say, back in 1914. Well, don't make the same error twice.

As I have said, Bryan understands these peasants, and they understand him. He is a bit mangey and flea-bitten, but no means ready for his harp. He may last five years, ten years or even longer. What he may accomplish in that time, seen here at close range, looms up immensely larger than it appears to a city man five hundred miles away. The fellow is full of such bitter, implacable hatreds that they radiate from him like heat from a stove. He hates the learning that he cannot grasp. He hates those who sneer at him. He hates, in general, all who stand apart from his own pathetic commonness. And the yokels hate with him, some of them almost as bitterly as he does himself. They are willing and eager to follow him—and he has already given them a taste of blood.

Darrow's peroration yesterday was interrupted by Judge Raulston, but the force of it got into the air nevertheless. This year it is a misdemeanor for a country school teacher to flout the archaic nonsense of Genesis. Next year it will be a felony. The year after the net will be spread wider. Pedagogues, after all, are small game; there are larger birds to snare—larger and juicier. Bryan has his fishy eye on them. He will fetch them if his mind lasts, and

the lamp holds out to burn. No man with a mouth like that ever lets go. Nor ever lacks followers.

Tennessee is bearing the brunt of the first attack simply because the civilized minority, down here, is extraordinarily pusillanimous.

I have met no educated man who is not ashamed of the ridicule that has fallen upon the State, and I have met none, save only judge Neal, who had the courage to speak out while it was yet time. No Tennessee counsel of any importance came into the case until yesterday and then they came in stepping very softly as if taking a brief for sense were a dangerous matter. When Bryan did his first rampaging here all these men were silent.

They had known for years what was going on in the hills. They knew what the country preachers were preaching—what degraded nonsense was being rammed and hammered into yokel skulls. But they were afraid to go out against the imposture while it was in the making, and when any outsider denounced it they fell upon him violently as an enemy of Tennessee. Now Tennessee is paying for that poltroonery. The State is smiling and beautiful, and of late it has begun to be rich. I know of no American city that is set in more lovely scenery than Chattanooga, or that has more charming homes. The civilized minority is as large here, I believe, as anywhere else.

It has made a city of splendid material comforts and kept it in order. But it has neglected in the past the unpleasant business of following what was going on in the cross roads Little Bethels.

The Baptist preachers ranted unchallenged.

Their buffooneries were mistaken for humor. Now the clowns turn out to be armed, and have begun to shoot.

In his argument yesterday judge Neal had to admit pathetically that it was hopeless to fight for a repeal of the anti-evolution law. The Legislature of Tennessee, like the Legislature of every other American state, is made up of cheap job-seekers and ignoramus.

The Governor of the State is a politician ten times cheaper and trashier. It is vain to look for relief from such men. If the State is to be saved at all, it must be saved by the courts.

For one, I have little hope of relief in that direction, despite Hays' logic and Darrow's eloquence. Constitutions, in America, no longer mean what they say. To mention the Bill of Rights is to be damned as a Red.

The rabble is in the saddle, and down here it makes its first campaign under a general beside whom Wat Tylor seems like a wart beside the Matterhorn.

H. L. Mencken
Baltimore Evening Sun
July 14, 1925

Source: *Baltimore Evening Sun* (July 14, 1925). <http://www.etsu.edu/cas/history/documents/menckendarrow.htm>

See Articles: Darrow, Clarence; Famous Trials; Legal Counsel; News Media, Crime in; Scopes Monkey Trial.

1930 PRIMARY DOCUMENT

The Motion Picture Production Code of 1930

In 1915, the U.S. Supreme Court decided in Mutual Film Corporation v. Industrial Commission of Ohio that free speech did not extend to motion pictures, which were "a business, pure and simple, originated and conducted for profit." By 1922, several states had instituted censorship boards, and the industry hired Will Hays to act as its own censor. With input from the Catholic community, Hays eventually released this official code, which bound studio movies until the rating system replaced it in 1968.

Motion picture producers recognize the high trust and confidence which have been placed in them by the people of the world and which have made motion pictures a universal form of entertainment.

They recognize their responsibility to the public because of this trust and because entertainment and art are important influences in the life of a nation.

Hence, though regarding motion pictures primarily as entertainment without any explicit purpose of teaching or propaganda, they know that the motion picture within its own field of entertainment may be directly responsible for spiritual or moral progress, for higher types of social life, and for much correct thinking.

During the rapid transition from silent to talking pictures they have realized the necessity and the opportunity of subscribing to a Code to govern the production of talking pictures and of reacknowledging this responsibility.

On their part, they ask from the public and from public leaders a sympathetic understanding of their purposes and problems and a spirit of cooperation that will allow them the freedom and opportunity necessary to bring the motion picture to a still higher level of wholesome entertainment for all the people.

General Principles

1. No picture shall be produced which will lower the moral standards of those who see it. Hence the sympathy of the audience should never be thrown to the side of crime, wrongdoing, evil or sin.
2. Correct standards of life, subject only to the requirements of drama and entertainment, shall be presented.
3. Law, natural or human, shall not be ridiculed, nor shall sympathy be created for its violation.

Particular Applications I—Crimes Against the Law

These shall never be presented in such a way as to throw sympathy with the crime as against law and justice or to inspire others with a desire for imitation.

1. *Murder*
 - a. The technique of murder must be presented in a way that will not inspire imitation.
 - b. Brutal killings are not to be presented in detail.

- c. Revenge in modern times shall not be justified.
2. Methods of Crime should not be explicitly presented.
 - a. Theft, robbery, safe-cracking, and dynamiting of trains, mines, buildings, etc., should not be detailed in method.
 - b. Arson must be subject to the same safeguards.
 - c. The use of firearms should be restricted to essentials.
 - d. Methods of smuggling should not be presented.
3. *Illegal drug traffic* must never be presented.
4. *The use of liquor* in American life, when not required by the plot or for proper characterization will not be shown.

II—Sex

The sanctity of the institution of marriage and the home shall be upheld. Pictures shall not infer that low forms of sex relationship are the accepted or common thing.

1. *Adultery*, sometimes necessary plot material, must not be explicitly treated, or justified, or presented attractively.
2. *Scenes of Passion*
 - a. They should not be introduced when not essential to the plot.
 - b. Excessive and lustful kissing, lustful embraces, suggestive postures and gestures, are not to be shown.
 - c. In general passion should so be treated that these scenes do not stimulate the lower and baser element.
3. *Seduction or Rape*
 - a. They should never be more than suggested, and only when essential for the plot, and even then never shown by explicit method.
 - b. They are never the proper subject for comedy.
4. *Sex perversion* or any inference to it is forbidden.
5. *White-slavery* shall not be treated.
6. *Miscegenation* (sex relationships between the white and black races) is forbidden.
7. *Sex hygiene* and venereal diseases are not subjects for motion pictures.

8. Scenes of *actual child birth*, in fact or in silhouette, are never to be presented.
9. *Children's sex organs* are never to be exposed.

III—Vulgarity

The treatment of low, disgusting, unpleasant, though not necessarily evil, subjects should be subject always to the dictates of good taste and a regard for the sensibilities of the audience.

IV—Obscenity

Obscenity in word, gesture, reference, song, joke, or by suggestion (even when likely to be understood only by part of the audience) is forbidden.

V—Profanity

Pointed profanity (this includes the words, God, Lord, Jesus, Christ—unless used reverently—Hell, S.O.B. damn, Gawd), or every other profane or vulgar expression, however used, is forbidden.

VI—Costume

1. *Complete nudity* is never permitted. This includes nudity in fact or in silhouette, or any lecherous or licentious notice thereof by other characters in the picture.
2. *Undressing scenes* should be avoided, and never used save where essential to the plot.
3. *Indecent or undue exposure* is forbidden.
4. *Dancing costumes* intended to permit undue exposure or indecent movements in the dance are forbidden.

VII—Dances

1. Dances suggesting or representing sexual actions or indecent passion are forbidden.
2. Dances which emphasize indecent movements are to be regarded as obscene.

VIII—Religion

1. No film or episode may throw ridicule on any religious faith.
2. *Ministers of religion* in their character as ministers of religion should not be used as comic characters or as villains.
3. *Ceremonies* of any definite religion should be carefully and respectfully handled.

IX—Locations

The treatment of bedrooms must be governed by good taste and delicacy.

X—National Feelings

1. *The use of the Flag* shall be consistently respectful.
2. *The history*, institutions, prominent people and citizenry of other nations shall be represented fairly.

XI—Titles

Salacious, indecent, or obscene titles shall not be used.

XII—Repellent Subjects

The following subjects must be treated within the careful limits of good taste:

1. *Actual hangings* or electrocutions as legal punishments for crime.
2. *Third Degree* methods.
3. *Brutality* and possible gruesomeness.
4. *Branding* of people or animals.
5. *Apparent cruelty* to children or animals.
6. *The sale of women* or a woman selling her virtue.
7. *Surgical operations*.

Source: "The Motion Picture Production Code of 1930." In *The Dame in the Kimono: Hollywood, Censorship, and the Production Code From the 1920s to the 1960s*, edited by Leonard J. Jeff and Jerold Simmons. New York: Grove Wiedenfeld, 1990.

See Articles: Adultery; Indecent Exposure.

1932
PRIMARY DOCUMENT

FBI Memorandum on Patent Infringement

Beginning in 1924, the Bureau of Investigation added Classification 27, Patent Matters, to its file

system (Classification 28 is used for copyright matters.) The Bureau of Investigation doesn't investigate civil disputes, but does investigate possible patent law violations that could bear on criminal prosecutions. As explained in this memo, in this case, the fraudulent sale of patented automobile parts was so widespread that a civil suit wouldn't remedy the situation.

George Le Roy Curtis; John S. Holden; Walter Wulf; Carl Bierack; William Curtis; Bertram Puckett; Carl B. Coombs; Garland Retherford; Henry W. Greenberg; Benjamin Jacobs.

A lucrative, illicit trade in patented lubricator fittings for automobiles throughout the Midwest was brought to light at St. Louis, Missouri, by the arrest of George LeRoy Curtis and five other individuals on a charge of conspiring to violate that section of the United States Code which prohibits the use of the word "patent" or "patentee" with intent to imitate or counterfeit the mark or device of the proper patentee.

As a general rule, the person holding the original patent in a case of this kind seeks his remedy by means of a civil suit, in which he charges infringement of patent rights and seeks to collect damages. In this particular case, however, the fraudulent sale of the product was so widespread that the owner of the patent could only hope to obtain relief through criminal prosecution, and complaint was accordingly made to the United States Attorney at St. Louis, who, in turn, referred the matter to the St. Louis office of the United States Bureau of Investigation.

George LeRoy Curtis was arrested as a result of an attempted sale of so-called "gyp" fittings, which infringed the patent, to an automobile dealer in St. Louis at an unusually low price. This dealer noted the number of the automobile license and reported it. At the time of this attempted sale, Curtis was using the name of C. H. Howard. His true identity, however, was established by Bureau Agents, who also ascertained that he was operating in St. Louis under the name of J. W. Gray, and had thousands of the spurious fittings in stock. Curtis, upon being apprehended, gave

a signed statement to Special Agents of the United States Bureau of Investigation and, as a result, five other individuals, including four distributors and one manufacturer of the illicit product, were charged in an indictment returned on September 11, 1930, with violation of the section of the United States Code mentioned above. Further investigation revealed that the spurious fittings were marketed throughout the entire country and that their sales ran into hundreds of thousands. In order to fully ascertain the scope of the operations of these individuals and to establish the identity of the parties involved, the United States Bureau of Investigation carried its inquiry into New England, the West Coast, and all of the large cities of the Central West and the East.

Special Agents of the Bureau located and carefully examined correspondence which had passed between these individuals and their various associates. Several shipments of the illegally made product were found in transit, having been shipped to distant points. These shipments were impounded to be used as evidence. Special Agents, in their further investigation, encountered such obstacles as concealed identities, fly-by-night organizations, and bankrupt concerns. The focal point for the manufacture of these unlicensed fittings proved, upon investigation, to be Detroit, Michigan.

All of the above individuals engaged in this illicit commerce admitted knowledge of the fact that they were violating the Federal law in manufacturing and selling these fittings. Further investigation developed that some of the distributors and defendants who actually sold the fittings to the retail trade had no knowledge that the actual manufacture of the fittings was in violation of the Patent Laws. It developed further that in some instances the manufacturers themselves had no knowledge of the fact that they were manufacturing a patented article, in view of the fact that they manufactured the fittings according to specifications, the stamp containing the name of the holder of the original patent and the word "patent" being placed on the article by still a third party or corporation. It was revealed that two of the

arrested individuals had been enjoined by the Court on an infringement suit for manufacturing and distributing similar articles more than a year previous, but that in spite of this injunction they had continued their surreptitious manufacture and sale of such articles. The comparative simplicity of the patented device, the fact that it sold for a nominal sum, and the further fact that it was much in demand in the automobile trade, all contributed to the success of this gigantic fraud.

As investigation was continued by Special Agents of the United States Bureau of Investigation, additional indictments were secured on November 19, 1930, charging conspiracy to violate the Patent Laws, against the following individuals: George LeRoy Curtis, William Curtis, Walter Wulf, Carl Bierack, Bertram Puckett, Henry W. Greenberg, Benjamin Jacobs and John S. Holden.

On the same date, a Federal Grand Jury at East St. Louis, Illinois, returned a separate conspiracy indictment against Carl B. Coombs and Garland Retherford.

The majority of the individuals against whom indictments were obtained became fugitives from justice and the United States Bureau of Investigation conducted an extensive search for many of them throughout the United States, which ultimately led to their apprehension and return to the jurisdiction in which they were to be tried.

Greenberg and Jacobs, who had sold the patent infringing products, were discharged by the United States Commissioner at Providence, Rhode Island, on January 23, 1931, and no further prosecutive action was taken against them. They were, however, restrained by a Federal injunction from dealing further in these articles.

The cases of the remaining conspirators were called for trial in February and March, 1931, at which time all of them entered pleas of guilty or nolo contendere. As a result of these pleas, the following sentences were imposed in Federal Court at East St. Louis and Danville, Illinois, respectively:

George LeRoy Curtis, on a plea of guilty, was sentenced to serve one year in jail. His

sentence was suspended and he was placed on probation for a like period.

William Curtis, on a plea of guilty, was sentenced to serve ten months in the Vermilion County Jail.

Walter Wulf, on a plea of guilty, was sentenced to serve ten months in the Vermilion County Jail.

Carl Bierack, on a plea of guilty, was sentenced to serve one year in the Vermilion County Jail.

Bertram Puckett, on a plea of nolo contendere, was sentenced to serve thirty days in the Vermilion County Jail and was fined \$400.00.

John S. Holden, on a plea of guilty, was sentenced to serve one year in jail. His sentence was suspended and he was placed on probation for a like period.

Carl B. Coombs, on a plea of nolo contendere, was sentenced to serve ninety days in the Vermilion County Jail and was fined \$300.00.

Garland Retherford, on a plea of guilty, was sentenced to serve thirty days in jail. This sentence was suspended and he was placed on probation for one year and one day, and was fined \$100.00.

John Edgar Hoover
Director

U.S. Bureau of Investigation
Department of Justice
Washington, D.C.
I.C. No. 27-59
December 21, 1932

Source: NARA-II, RG 65 FBI, Interesting Case
Write-ups, Box 12

See Articles: Counterfeiting; Detroit, Michigan; Fraud; Hoover, J. Edgar; Justice, Department of; Rhode Island; White-Collar Crime, History of; White-Collar Crime, Sociology of.

1933
PRIMARY DOCUMENT

FBI Memorandum on the National Motor Vehicle Theft Act

In 1924, the Bureau of Investigation established Classification 26 for the Interstate Transportation of Stolen Motor Vehicles and Stolen Aircraft. The National Motor Vehicle Theft Act in 1919 had established that transportation of a stolen vehicle across state lines was a federal crime, and it was one of the increasingly common types of crime for which the Bureau of Investigation was formed. In 1970, the Department of Justice changed its prosecution guidelines, with most cases referred to state and local agencies. Multiple escape attempts are described in this report.

Patrick O'Hare alias Pat Smith alias J. Smith alias Patrick Collins alias James B. Collins Alias Pat O'Hare alias Pat O'Hara alias Pat Patrick.

The Pittsburgh Office of the Federal Bureau investigation began an investigation of Patrick O'Hare, with innumerable aliases, for violation of the National Motor Vehicle Theft Act, in the late summer and early fall of 1928. In October, 1928, at Wheeling, West Virginia, O'Hare was indicted for violation of the National Motor Vehicle Theft Act, and charged with interstate transportation of a Ford truck automobile from Pittsburgh, Pennsylvania to Parkersburg, West Virginia, on or about August 26, 1927, and the transportation of a Ford sedan from Barberton, Ohio to Williamstown, West Virginia, in addition to being charged with selling and disposing of the two above automobiles, knowing them to have been stolen.

While being removed by a Deputy United States Marshal from Wheeling, West Virginia to Parkersburg, West Virginia, on January 7, 1929, for trial on the above charges, he suc-

ceeded in effecting his escape. He became a Federal fugitive from justice, and the Bureau began an intensive search, which lasted more than four years, to effect his re-apprehension.

This escape, however, was not the first one effected by O'Hare. He had been arrested on November 31, 1922 by the police authorities of Akron, Ohio, charged with grand larceny of ten automobiles, at which time he made his escape, only to be re-arrested on May 5, 1925, upon which occasion he was sentenced to two years in the Ohio State Penitentiary, this sentence being suspended. He was later arrested by the Youngstown, Ohio Police Department, and was again successful in effecting his escape. On April 6, 1932, while in custody of the Detroit, Michigan police, by whom he had been arrested on a charge of driving while drunk, he made his escape by running through a plate glass window, but was soon apprehended and given a fine of \$25 and a year's probation by the Michigan courts, under the name of James Collins.

The Detroit, Michigan police arrested O'Hare under the name of James B. Collins, on February 22, 1933. True to form, he again escaped by leaping from a second story window. However, he broke his leg upon this occasion and two days later was re-arrested and taken into Federal custody upon the old National Motor Vehicle Theft Act charges pending against him in West Virginia. Upon the occasion of this last arrest at Detroit, two stolen automobiles were found in his possession, in addition to a number of fictitious certificates of title. Investigation by Special Agents of the Bureau revealed that he was an expert at changing automobile numbers, and that he usually worked alone in his illegal activities.

The record of O'Hare reflects that his criminal activities began as early as September 15, 1908, upon which date he was sentenced, in the State Court at Pittsburgh, Pennsylvania, on a charge of felonious assault, to serve three years in the Western Penitentiary, at Pittsburgh, Pennsylvania, from which institution he was discharged on March 15, 1911. His record also reflects that he was indicted for murder at Marietta, Ohio, but was acquitted on this charge.

O'Hare was removed from Detroit to Wheeling, West Virginia, where on May 9, 1933 he was tried in Federal Court upon the National Motor Vehicle Theft Act charges pending against him there. The jury was out only twenty-five minutes and returned a verdict of guilty, whereupon Federal Judge W. E. Baker sentenced him to serve four years on one count of the indictment against him, three years on another count, and three years on still a third count, the sentences to run consecutively, making a total of ten years, to be served at the Northeastern Penitentiary, Lewisburg, Pennsylvania. Investigation by Special Agents of the Bureau revealed that O'Hare was an alien and had never become a citizen of this country. This fact was reported to the immigration authorities, together with the fact of his conviction, for whatever action they might deem appropriate to take in his case.

In addition to his conviction in the instant case, O'Hare has the following criminal court:

"As Patrick O'Hare, sentenced, Pittsburgh, Pennsylvania, September 15, 1908, Charge—felonious assault and battery; three years Western Penitentiary, Pittsburgh, Pa.; discharged March 15, 1911.

"As Patrick O'Hare, arrested Akron, Ohio Police Department on 10/31/22, charge grand larceny, ten automobiles: escaped. Apprehended and sentenced 5/5/25 to two years Ohio State Penitentiary; sentence suspended.

"As James Collins, arrested 4/6/32, Detroit, Michigan, charge - driving while drunk, sentence—fine \$25 and 1 year probation.

John Edgar Hoover
Director

Federal Bureau of Investigation
U.S. Department of Justice
Washington, D. C.
I.C. #26-13874
(undated)

Source: NARA II, RG 65 FBI, Interesting Case
Write-ups, Box 10, Folder IC 26 13874

See Articles: Federal Bureau of Investigation; Fraud; Identity Theft; Pennsylvania; West Virginia.

1933
PRIMARY DOCUMENT

FBI Memorandum on the Leon Ulysses Mason Kidnapping and Extortion Case

Most areas of FBI authority are assigned because a local or state authority lacks sufficient jurisdiction, as in interstate crimes. After the widely publicized kidnapping of the son of famed aviator Charles Lindbergh ended in the boy's death in 1932, the Federal Kidnapping Act was passed to give the Bureau of Investigation primary jurisdiction over kidnapping cases, with the proviso that an interstate case was assumed after seven days (reduced to one day in 1957). Kidnapping cases are Classification 7.

On the morning of April 22, 1933, Mrs. Besie Collier, proprietress of the Collier Inn, 1807 Columbia Road, Northwest, Washington, D.C., received through the United States Mails the following anonymous letter:

"Listen now—don't try any rough stuff by getting the cops or anything just do as I say. We need \$5000.00 'bucks' and we'll get it or your little grandchild, see. Put the money in 5 & 10 bills at the corner of the alley in a newspaper. Put money there at 12 o'clock April 27. If police get hold of this it'll be just too bad. Do you get this fatty? Just do as we ask and everything will be all right. Remember we need the money and we must get it, see."

Mrs. Collier immediately reported the matter to the Director of the Federal Bureau of Investigation, who in turn instructed the local Field Office of the Bureau to conduct a prompt and thorough investigation in view of the possibility that the grandchild, if kidnapped as threatened in the letter, would be carried interstate from the District of Columbia in violation of the Federal Kidnapping Act of July 8, 1932, Chapter 464, U. S. Statutes.

Special Agents interviewed and obtained from Mrs. Collier the names of all probable suspects known to her, including present and former employees of the several restaurants which she owned and operated. One by one these suspects were eliminated as a result of appropriate investigation concerning each. The chances of solving the case narrowed down to a plan whereby the guilty person would be taken into custody in the event he should call for the ransom at the appointed time and place. The letter, however, was not specific in regard to these, in that it did not indicate whether the money should be placed at Noon or Midnight of April 27th nor did it indicate the particular "corner", there being several corners in the alleys to the rear of Collier Inn. Nevertheless, a very careful survey was made of the entire neighborhood and plans were worked out whereby agents were to be placed at strategic points to cover all avenues of escape; nothing was left undone.

As the noon hour approached and the agents had taken up their respective positions, a truck came into the alley and dumped two tons of coal on the exact spot where arrangements had been made to place the decoy package of ransom money. Notwithstanding this unforeseen circumstance, the package was placed a short distance from the coal pile promptly at Noon. A colored man, who had already begun carrying in the coal, spied the package, opened it and seeing the one dollar bill on top of what appeared to be a stack of money quickly wrapped the package up again and carried it into the basement of the apartment where he had been taking the coal. Up to this time only a small portion of the coal had been removed in the basement but the balance was carried away in double quick time, the suspect constantly looking in all directions and in a suspicious manner. After completing his job, he left the scene with the package under his arm, shadowed by the agents who were accompanied by a detective member of the Metropolitan Police Department. In order that there be no excitement caused by arresting the suspect on the scene, he was permitted to walk several blocks away before he was taken into custody and questioned closely

concerning his identity and activities. He established beyond a doubt that he was innocent of any participation in the extortion plot and was, therefore, released but not until after his statements had been carefully checked by the agents assigned to the case. In anticipation that the real extortionist might appear at Midnight, the same arrangements were again put into effect but without result.

Pursuing the investigation further and with the handwriting on the letter as the only clue on which to work, the agents obtained handwriting specimens of some seventy present and former employees of the Collier Inn. Those specimens were scientifically examined by experts who unhesitatingly selected the specimen procured from Leon U. Mason as being identical with the handwriting appearing on the original letter. Investigation was thereupon concentrated upon this individual and revealed that he had worked for Mrs. Collier as a waiter for the past five years; that he was twenty-one years of age and in attendance at a local colored teachers' college; that his movements prior to 5:00 P.M., Friday, April 21st, when the extortion letter was posted in the Mails, were of a suspicious nature and not in accordance with his usual routine. When Mason was confronted with these facts on the morning of May 6, 1933, fifteen days after he had mailed the letter, he quickly confessed his guilt and on June 30, 1933, in the Supreme Court of the District of Columbia, received a sentence of from three to six years in the penitentiary for the dastardly crime he had committed. The sentence was imposed on Mason in spite of his explanation that he had not intended to kidnap the attractive little two and one-half year old June Collier, grandchild of the recipient of the letter, but had written it to cause Mrs. Collier and members of her family misery and mental suffering in order that he might observe their reactions.

John Edgar Hoover
Director

Federal Bureau of Investigation
U.S. Department of Justice
Washington, D.C.

I.C. No. 7-62
August 21, 1933

Source: NARA-II, RG 65 FBI, Interesting Case
Write-ups, Box 1

See Articles: Federal Bureau of Investigation;
Kidnapping; Lindbergh Law.

1933 PRIMARY DOCUMENT

FBI Memorandum on Veteran Fraud

FBI Classification 17, Fraud Against the Government (Veterans Administration), was opened in 1921. Jurisdictional disputes have often arisen between the Veterans Administration (now the Department of Veterans Affairs), the Department of Labor, the Secret Service, and the FBI, which have hampered some investigations. While charged with investigating fraud by veterans as well as against them, the FBI is instructed by the attorney general to treat the latter more seriously.

Marian B. Rutherford, With Aliases
Veterans Bureau Matter
Defrauding The Government By Impersonating A Veteran

On November 10, 1932, the United States Attorney at Indianapolis, Indiana, notified the Cincinnati Office of the Bureau that a case had been brought to this attention wherein one Marian B. Rutherford, assuming the alias of Raymond Berry, had defrauded the Government by impersonating the veteran, Raymond Berry, and receiving Berry's compensation checks over a period of approximately ten months, from December, 1931, to August, 1932. Investigation conducted in this matter revealed that Marian B. Rutherford became acquainted with Raymond Berry, a World War Veteran, at North Platte,

Nebraska, during the month of March, 1931. Berry and Rutherford traveled together for some time. During the month of March 1931, these two men took a trip together from Lincoln to Omaha and then to Brady, Nebraska. They parted company in Brady, Nebraska. After Rutherford left Berry, he discovered that certain articles of his wearing apparel and his Army discharge were missing. Berry has not seen his Army discharge or the clothing in question since that time.

Under date of October 29, 1931, Marian B. Rutherford, posing as Raymond Berry, made application for disability allowance under the provisions of the World War Veterans Act, at Bonham, Texas, giving in this application information concerning Berry's military and personal history. He swore to this application as Raymond Berry on the same date before J. C. Denton, Notary Public, Bonham, Texas. J. C. Denton, upon being interviewed, stated that he was the Adjutant for the local American Legion Post at Bonham, Texas, and in such capacity he notarized the affidavit of Rutherford under the alias of Berry. Under date of December 8, 1931, Rutherford changed his address to General Delivery, Honey Grove, Texas, in care of Lillian Rutherford, and this change of address was forwarded to the United States Veterans Bureau, 1505 Federal Street, Dallas, Texas, with the request that compensation checks for Berry be forwarded to that address. On December 16, 1931, his address was again changed to Greenville, Texas, in care of Mrs. Lillian Rutherford. On March 16, 1932, the address was again changed to Monrovia, Indiana, in care of James Eggers.

During this entire period monthly compensation checks were forwarded to Rutherford at the rate of \$18.00 per month. These checks were forwarded to him until August 31, 1932, he having received on that date a total amount of \$178.80. No disability allowance checks were forwarded to Rutherford after the August check had been received by him. The reason for the discontinuance of these checks was that the real Raymond Berry, under date of May 18, 1932, at North Platte, Nebraska, filed an application for disability allowance,

and subsequent investigation revealed that he was the real veteran, and that Rutherford, under the alias of Berry, has been receiving compensation checks meant for Berry and had thereby defrauded the Government of the amount of \$178.80.

Rutherford was located serving a sentence in the State Penitentiary, McAlester, Oklahoma. He was questioned relative to receiving the compensation checks and denied that he had ever filed application for disability allowance under the name of Raymond Berry. He stated that it might be possible that his brother, Robert Rutherford, had been the one who filed the application for disability allowance. Photographs of Marian Rutherford were secured and exhibited to various persons in Texas and Indiana to whom the fictitious Raymond Berry was known. In all cases the persons identified Marian Rutherford as the individual who masqueraded as Raymond Berry.

On May 8, 1933, Rutherford was removed from Muskogee, Oklahoma, and he was delivered to the United States Marshal at Indianapolis, Indiana, on June 22, 1933. An indictment was returned against him at Indianapolis on April 26, 1933.

Upon being returned to Indiana, Rutherford was again questioned by agents of this Bureau. He stated at that time that his brother, Bob Rutherford, impersonated Raymond Berry, making the application for disability compensation, and that Bob Rutherford endorsed all checks. He stated that he, Marian, cashed all checks and assisted in spending the money.

On July 1, 1933, in the United States District Court at Indianapolis, Indiana, Rutherford entered a plea of guilty in this case and was immediately sentenced to serve three years in a United States Penitentiary.

Investigation is being continued for the purpose of definitely ascertaining whether Bob Rutherford did, in fact, sign the application for disability allowance.

During this investigation it was found that Marian Rutherford, under numerous aliases, had served time in various penal institutions throughout the Midwest and Southwest, and he has a long criminal record.

John Edgar Hoover
Director

Federal Bureau of Investigation
U. S. Department of Justice
Washington, D. C.
I.C. No. 17-4136
August 31, 1933

Source: NARA II, RG 65 FBI, Interesting Case
Write-ups, Box 7, Folder IC 17-4136

See Articles: Federal Bureau of Investigation; Fraud; Identity Theft.

1933 PRIMARY DOCUMENT

United States v. One Book Called "Ulysses"

Irish author James Joyce serialized his novel Ulysses from 1918 to 1920 in Chicago's Little Review. A stream-of-consciousness spin on the Odyssey, it became a cornerstone of modernist literature even before the American collected edition was brought out by Random House in 1933. Random House arranged a test case to see if the book would be acceptable under obscenity laws; in United States v. One Book Called Ulysses, Judge John Woolsey rules that serious literature may occupy itself with any subject matter.

'5 F.Supp. 182 (1933)

United States
v.
One Book Called "Ulysses."

District Court, S. D. New York
December 6, 1933

The United States Attorney (Samuel C. Coleman and Nicholas Atlas, both of New York City, of counsel), for the United States.

Greenbaum, Wolff & Ernst, of New York City (Morris L. Ernst and Alexander Lindey, both of New York City, of counsel), for Random House, Inc.

Woolsey, District Judge.

The motion for a decree dismissing the libel herein is granted, and, consequently, of course, the government's motion for a decree of forfeiture and destruction is denied.

Accordingly a decree dismissing the libel without costs may be entered herein.

- I. The practice followed in this case is in accordance with the suggestion made by me in the case of *United States v. One Book, Entitled "Contraception"* (D. C.) 51 F.(2d) 525, and is as follows:

After issue was joined by the filing of the claimant's answer to the libel for forfeiture against "Ulysses," a stipulation was made between the United States Attorney's office and the attorneys for the claimant providing:

1. That the book "Ulysses" should be deemed to have been annexed to and to have become part of the libel just as if it had been incorporated in its entirety therein.
2. That the parties waived their right to a trial by jury.
3. That each party agreed to move for decree in its favor.
4. That on such cross-motions the court might decide all the questions of law and fact involved and render a general finding thereon.
5. That on the decision of such motions the decree of the court might be entered as if it were a decree after trial.

It seems to me that a procedure of this kind is highly appropriate in libels such as this for the confiscation of books. It is an especially advantageous procedure in the instant case because, on account of the length of "Ulysses" and the difficulty of reading it, a jury trial would have been

an extremely unsatisfactory, if not an almost impossible method of dealing with it.

- II. I have read "Ulysses" once in its entirety and I have read those passages of which the government particularly complains several times. In fact, for many weeks, my spare time has been devoted to the consideration of the decision which my duty would require me to make in this matter. "Ulysses" is not an easy book to read or to understand. But there has been much written about it, and in order properly to approach the consideration of it it is advisable to read a number of other books which have now become its satellites. The study of "Ulysses" is, therefore, a heavy task.

- III. The reputation of "Ulysses" in the literary world, however, warranted my taking such time as was necessary to enable me to satisfy myself as to the intent with which the book was written, for, of course, in any case where a book is claimed to be obscene it must first be determined, whether the intent with which it was written was what is called, according to the usual phrase, pornographic, that is, written for the purpose of exploiting obscenity.

If the conclusion is that the book is pornographic, that is the end of the inquiry and forfeiture must follow.

But in "Ulysses," in spite of its unusual frankness, I do not detect anywhere the leer of the sensualist. I hold, therefore, that it is not pornographic.

- IV. In writing "Ulysses," Joyce sought to make a serious experiment in a new, if not wholly novel, literary genre. He takes persons of the lower middle class living in Dublin in 1904 and seeks, not only to describe what they did on a certain day early in June of that year as they went about the city bent on their usual occupations, but also to tell what many of them thought about the while.

Joyce has attempted—it seems to me, with astonishing success—to show how the screen of consciousness with its ever-

shifting kaleidoscopic impressions carries, as it were on a plastic palimpsest, not only what is in the focus of each man's observation of the actual things about him, but also in a penumbral zone residua of past impressions, some recent and some drawn up by association from the domain of the subconscious. He shows how each of these impressions affects the life and behavior of the character which he is describing.

What he seeks to get is not unlike the result of a double or, if that is possible, a multiple exposure on a cinema film, which would give a clear foreground with a background visible but somewhat blurred and out of focus in varying degrees.

To convey by words an effect which obviously lends itself more appropriately to a graphic technique, accounts, it seems to me, for much of the obscurity which meets a reader of "Ulysses." And it also explains another aspect of the book, which I have further to consider, namely, Joyce's sincerity and his honest effort to show exactly how the minds of his characters operate.

If Joyce did not attempt to be honest in developing the technique which he has adopted in "Ulysses," the result would be psychologically misleading and thus unfaithful to his chosen technique. Such an attitude would be artistically inexcusable.

It is because Joyce has been loyal to his technique and has not funk'd its necessary implications, but has honestly attempted to tell fully what his characters think about, that he has been the subject of so many attacks and that his purpose has been so often misunderstood and misrepresented. For his attempt sincerely and honestly to realize his objective has required him incidentally to use certain words which are generally considered dirty words and has led at times to what many think is a too poignant preoccupation with sex in the thoughts of his characters.

The words which are criticized as dirty are old Saxon words known to almost all men and, I venture, to many women, and are such words as would be naturally and habitually used, I believe, by the types of folk whose life, physical and mental, Joyce is seeking to describe. In respect of the recurrent emergence of the theme of sex in the minds of his characters, it must always be remembered that his locale was Celtic and his season spring.

Whether or not one enjoys such a technique as Joyce uses is a matter of taste on which disagreement or argument is futile, but to subject that technique to the standards of some other technique seems to me to be little short of absurd.

Accordingly, I hold that "Ulysses" is a sincere and honest book, and I think that the criticisms of it are entirely disposed of by its rationale.

- V. Furthermore, "Ulysses" is an amazing tour de force when one considers the success which has been in the main achieved with such a difficult objective as Joyce set for himself. As I have stated, "Ulysses" is not an easy book to read. It is brilliant and dull, intelligible and obscure, by turns. In many places it seems to me to be disgusting, but although it contains, as I have mentioned above, many words usually considered dirty, I have not found anything that I consider to be dirt for dirt's sake. Each word of the book contributes like a bit of mosaic to the detail of the picture which Joyce is seeking to construct for his readers.

If one does not wish to associate with such folk as Joyce describes, that is one's own choice. In order to avoid indirect contact with them one may not wish to read "Ulysses"; that is quite understandable. But when such a great artist in words, as Joyce undoubtedly is, seeks to draw a true picture of the lower middle class in a European city, ought it to be impossible for the American public legally to see that picture?

To answer this question it is not sufficient merely to find, as I have found above,

that Joyce did not write "Ulysses" with what is commonly called pornographic intent, I must endeavor to apply a more objective standard to his book in order to determine its effect in the result, irrespective of the intent with which it was written.

- VI. The statute under which the libel is filed only denounces, in so far as we are here concerned, the importation into the United States from any foreign country of "any obscene book." Section 305 of the Tariff Act of 1930, title 19 United States Code, § 1305 (19 USCA § 1305). It does not marshal against books the spectrum of condemnatory adjectives found, commonly, in laws dealing with matters of this kind. I am, therefore, only required to determine whether "Ulysses" is obscene within the legal definition of that word.

The meaning of the word "obscene" as legally defined by the courts is: Tending to stir the sex impulses or to lead to sexually impure and lustful thoughts. *Dunlop v. United States*, 165 U. S. 486, 501, 17 S. Ct. 375, 41 L. Ed. 799; *United States v. One Obscene Book Entitled "Married Love"* (D. C.) 48 F.(2d) 821, 824; *United States v. One Book, Entitled "Contraception"* (D. C.) 51 F.(2d) 525, 528; and compare *Dysart v. United States*, 272 U. S. 655, 657, 47 S. Ct. 234, 71 L. Ed. 461; *Swearingen v. United States*, 161 U. S. 446, 450, 16 S. Ct. 562, 40 L. Ed. 765; *United States v. Dennett*, 39 F. (2d) 564, 568, 76 A. L. R. 1092 (C. C. A. 2); *People v. Wendling*, 258 N. Y. 451, 453, 180 N. E. 169, 81 A. L. R. 799.

Whether a particular book would tend to excite such impulses and thoughts must be tested by the court's opinion as to its effect on a person with average sex instincts—what the French would call *l'homme moyen sensuel*—who plays, in this branch of legal inquiry, the same role of hypothetical reagent as does the "reasonable man" in the law of torts and "the man learned in the art" on questions of invention in patent law.

The risk involved in the use of such a reagent arises from the inherent tendency of the trier of facts, however fair he may intend to be, to make his reagent too much subservient to his own idiosyncrasies. Here, I have attempted to avoid this, if possible, and to make my reagent herein more objective than he might otherwise be, by adopting the following course:

After I had made my decision in regard to the aspect of "Ulysses," now under consideration, I checked my impressions with two friends of mine who in my opinion answered to the above-stated requirement for my reagent.

These literary assessors—as I might properly describe them—were called on separately, and neither knew that I was consulting the other. They are men whose opinion on literature and on life I value most highly. They had both read "Ulysses," and, of course, were wholly unconnected with this cause.

Without letting either of my assessors know what my decision was, I gave to each of them the legal definition of obscene and asked each whether in his opinion "Ulysses" was obscene within that definition.

I was interested to find that they both agreed with my opinion: That reading "Ulysses" in its entirety, as a book must be read on such a test as this, did not tend to excite sexual impulses or lustful thoughts, but that its net effect on them was only that of a somewhat tragic and very powerful commentary on the inner lives of men and women.

It is only with the normal person that the law is concerned. Such a test as I have described, therefore, is the only proper test of obscenity in the case of a book like "Ulysses" which is a sincere and serious attempt to devise a new literary method for the observation and description of mankind.

I am quite aware that owing to some of its scenes "Ulysses" is a rather strong draught to ask some sensitive, though normal, persons to take. But my considered opinion, after long reflection, is that, whilst in many places the effect of "Ulysses" on the reader undoubtedly is somewhat emetic, nowhere does it tend to be an aphrodisiac.

"Ulysses" may, therefore, be admitted into the United States.

Moscato, Michael, and Leslie LeBlanc. *The United States of America v. One Book Entitled Ulysses by James Joyce: Documents and Commentary: A 50-Year Retrospective*. Frederick, MD: University Publications of America, 1984.

See Articles: Obscenity; Obscenity Laws; Supreme Court, U.S.; *United States v. One Book Called "Ulysses."*

1933 PRIMARY DOCUMENT

Bonnie Parker's "The Ballad of Bonnie and Clyde"

Like the outlaws of the Wild West, the bank robbers of the Depression era were romantic figures in the public eye, adventurers and antiheroes preying on corrupt elites. No one played up this romance more than Bonnie Parker, who peppered the media with snapshots of herself with her lover and partner Clyde Barrow, along with poems like "The Ballad of Bonnie and Clyde." Their career was somewhat minor, consisting of more gas station than bank robberies, but their sex appeal and dramatic deaths in a 1934 shoot-out became legend.

We, each of us, have a good alibi
For being down here in the joint;
But few of them are really justified,
If you get right down to the point.
You have heard of a woman's glory
Being spent on a downright cur.
Still you can't always judge the story
As true being told by her.
As long as I stayed on the island
And heard confidence tales from the gals,
There was only one interesting and truthful,
It was the story of Suicide Sal.
Now Sal was a girl of rare beauty,
Though her features were somewhat tough,
She never once faltered from duty,
To play on the up and up.

Sal told me this tale on the evening
Before she was turned out free,
And I'll do my best to relate it,
Just as she told it to me.
I was born on a ranch in Wyoming,
Not treated like Helen of Troy,
Was taught that rods were rulers,
And ranked with greasy cowboys. . . .
You've read the story of Jesse James
Of how he lived and died
If you're still in need of something to read
Here's the story of Bonnie and Clyde.
Now Bonnie and Clyde are the Barrow Gang,
I'm sure you all have read
how they rob and steal and those who squeal
are usually found dying or dead.
There's lots of untruths to these write-ups
They're not so ruthless as that
Their nature is raw, they hate all law
Stool pigeons, spotters, and rats.
They call them cold-blooded killers
They say they are heartless and mean
But I say this with pride, I once knew Clyde
When he was honest and upright and clean.
But the laws fooled around and taking him
down
and locking him up in a cell
'Til he said to me, "I'll never be free,
So I'll meet a few of them in hell."
The road was so dimly lighted
There were no highway signs to guide
But they made up their minds if all roads were
blind
They wouldn't give up 'til they died.
The road gets dimmer and dimmer
Sometimes you can hardly see
But it's fight man to man, and do all you can
For they know they can never be free.
From heartbreak some people have suffered
From weariness some people have died
But all in all, our troubles are small
'Til we get like Bonnie and Clyde.
If a policeman is killed in Dallas
And they have no clue or guide
If they can't find a fiend, just wipe the slate
clean
And hang it on Bonnie and Clyde.
There's two crimes committed in America
Not accredited to the Barrow Mob
They had no hand in the kidnap demand

Nor the Kansas City Depot job.
 A newsboy once said to his buddy
 "I wish old Clyde would get jumped
 In these hard times we's get a few dimes
 If five or six cops would get bumped."
 The police haven't got the report yet
 But Clyde called me up today
 He said, "Don't start any fights, we aren't
 working nights, we're joining the NRA."
 From Irving to West Dallas viaduct
 Is known as the Great Divide
 Where the women are kin, and men are men
 And they won't stool on Bonnie and Clyde.
 If they try to act like citizens
 And rent a nice flat
 About the third night they're invited to fight
 By a sub-gun's rat-tat-tat.
 They don't think they're tough or desperate
 They know the law always wins
 They've been shot at before, but they do not
 ignore
 That death is the wages of sin.
 Some day they'll go down together
 And they'll bury them side by side
 To few it'll be grief, to the law a relief
 But it's death for Bonnie and Clyde.

Source: <http://historymatters.gmu.edu/d/5061>

See Articles: Bonnie and Clyde; Film, Crime in;
 Great Depression; Robbery, History of.

1934

PRIMARY DOCUMENT

Excerpt From the Confession of Richard Albert Loeb

The Leopold and Loeb trial was one of many dubbed "the trial of the century." The two teenagers (19 and 18 years of age), inspired by Nietzsche's philosophy, decided to commit "the perfect crime" and kidnapped and murdered

14-year-old Bobby Franks, who was actually Loeb's distant cousin. At the advice of their lawyer Clarence Darrow, they pled guilty to avoid a jury trial, and Darrow convinced the judge to sentence them to life imprisonment, rather than execution in light of their youth. Even so, Leopold's father, dissatisfied with Darrow's results, later reneged on his contract to pay him. In January 1936, a fellow inmate killed Loeb in a razor fight in the prison shower.

Made in the office of the State's Attorney of Cook County, Criminal Court Building, Chicago, Illinois, on Saturday, May 31, 1934, at 4:00 o'clock A.M.

Present: John Sbarbaro, Assistant State's Attorney; Captain William Shoemaker; F.A. Sheeder, Shorthand Reporter.

Mr. Sbarbaro:

Q: State your full name.

A: Richard Albert Loeb

Q: What is your occupation?

A: Student

Q: Where are you a student?

A: University of Chicago

Q: How old are you?

A: Eighteen.

Q: Calling your attention to the 21st day of May just tell us in your own words if you know anything unusual relative to the disappearance of Robert Franks.

A: On the 21st of May Leopold and myself intended to kidnap one of the younger boys from the Harvard School.

Q: Well, approximately, how long before the 21st day of May had you discussed it?

A: Oh, a month and a half, I should say, or two months... It was broached—the plan

was broached by Nathan Leopold, who suggested that as a means of having a great deal of excitement, together with getting quite a sum of money.

Q: Now, on the 21st day of May, 1924 just tell where you met Leopold and what happened. State it in your own words.

A: ...perhaps I better start with the 20th of May. On the 20th of May Leopold and I purchased at two hardware stores on Cottage Grove avenue, some rope... I purchased, myself, alone, both the chisel and rope. We then proceeded down the street to a drug store, where Leopold.... succeeded in purchasing a bottle of hydrochloric acid.

Q: Where did you get the gags?

A: The gags were at Leopold's house.

Q: Did you see him write any notes on the typewriter?

A: Yes, I saw him write all of them.

Q: What notes do you have reference to?

A: I have reference to the note demanding the \$10,000 in ransom.

Q: And what was the essence of that note?

A: The essence of that note demanded \$10,000, and told Mr. Franks that his son was safe; specified a certain way in which that money should be wrapped, in a cigar box, told Mr. Franks that everything would be all right, the son would be returned to him within six hours, if he obeyed our instructions; but that if he disobeyed any of the instructions, that his son would be killed.

Q: And where did you go from there?

A: We went out to Jackson Park, where we parked for, I should judge, between three quarters of an hour and an hour, because we wanted to wait until the Harvard School let out before starting any operations... We

didn't stay there long; turned, and went down Hyde Park Boulevard, turned and went north on Ellis avenue. We proceeded north on Ellis avenue until we caught a glimpse of Robert Franks, coming south on the west side of Ellis avenue. As we passed him, he was just coming across or past 48th street. We turned the car around, Leopold getting into the back seat. I drove the car, then, south of Ellis avenue, parallel to where young Franks was, stopped the car, and while remaining in my seat, opened the front door and called to Franks that I would give him a ride home. He said no, he would just as soon walk; but I told him I would like to talk to him about a tennis racket; so he got in the car... just after we turned off Ellis avenue, Leopold reached his arm around young Franks, grabbing his mouth and hit him over the head with the chisel. I believe he hit him several times, I do not know the exact number. He began to bleed and was entirely conscious, he was moaning... At this time Leopold grabbed Franks and carried him over back of the front seat and threw rags and gagged him by sticking it down his throat, I believe. We then drove further south on the main highway until we turned at a road which I believe leads to Gary. We went down this road a ways, and then turned off the road on another deserted road, this deserted road leading west. We stopped the car, got out, removed young Franks' shoes, hid them in some bushes and removed his pants and stockings, placing them in the car. We did this in order that we might be save the trouble of too much undressing him later on... We dragged the body out of the car, put the body in the robe and carried it over to the culvert. Our original scheme had been to etherize the boy to death. This, however, we found unnecessary, because the boy was quite dead when we took him there. We knew he was dead, by the fact that rigor mortis had set in, and also by his eyes; and then when at that same time we poured this hydrochloric acid over him, we noticed no tremor, not a single tremor in his body; therefore we were sure he was dead.

Q: And then what did you do?

A: Then I went to the opposite side of the culvert, where the water runs out, and where you can get at the water very easily, where I washed my hands which had become bloody through carrying the body.

Source: Statements of Nathan F. Leopold and Richard Albert Loeb, made in the Office of the State's Attorney of Cook County, Folder 3, Box 2, Harold S. Hulbert Papers, Series 55/23, University Archives, Northwestern University.
and
<http://www.library.northwestern.edu/libraries-collections/evanston-campus/university-archives/digital-collections-and-exhibits/leopold>

See Articles: Darrow, Clarence; Famous Trials; Kidnapping; Leopold and Loeb.

1934 PRIMARY DOCUMENT

Department of Justice Memorandum on the Extortion of Eli Lilly and Company

Classification 9 in the FBI's system, extortion is the use of coercion—such as the threat of violence rather than the actual violence of robbery—to obtain money, goods, or services, and is especially associated with blackmail and with organized crime's "protection" rackets. Techniques described in this memorandum, such as the determination of the model of typewriter, are typical of the methodologies and resources available to the FBI that local and state agencies lacked.

Mr. Eli Lilly, President of Eli Lilly and Company, manufacturers of Pharmaceuticals and Biologicals, Indianapolis, Indiana, received through the United States Mails on April

27, 1934 a letter demanding the sum of \$25,000.00 with a threat to kidnap Mr. Lilly in the event the sum specified was not paid. This letter was typewritten, well worded, and apparently written by someone possessing more than an average education. It directed Mr. Lilly to ride a train on the Pennsylvania Railroad from Vincennes to Indianapolis, Indiana on the afternoon of May 1, 1934 and that somewhere en route he would notice a signal consisting of a white flag, at which time he was to throw from the train the package containing the \$25,000.00.

Mr. Lilly first turned this letter over to the Indianapolis Police Department who conducted an investigation and followed the directions contained in the letter. Two detectives riding the train as specified in the letter between Vincennes and Indianapolis, noticed a white flag as the train passed a point in Morgan County, Indiana between Whitaker, Indiana and Paragon, however, no package was thrown from the train. Subsequent to this investigation the Division of Investigation was notified of the receipt of the letter by Mr. Lilly and together with the Indianapolis Police Department, conducted an investigation which finally resulted in the apprehension of the two persons responsible for the writing of the letter.

It was learned that on May 1, 1934 James Carlos McNeill and James Byron Woods were seen loitering near the place where the signal had been erected. It also developed that McNeill was a graduate of the Paragon High School and had also attended the Indiana University for approximately five years, at which latter institution he was well regarded and quite active in campus activities. Woods was found to be a graduate of the Paragon High School and had also attended the Normal School at Danville, Indiana. In view of the fact that the extortion letter appeared to have been written by someone possessing a good education, and in further view of the fact that McNeill and Woods were seen loitering about the location where the signal had been placed, they were considered as logical suspects in the sending of the extortion letter.

Prior to questioning McNeill and Woods an examination of the extortion letter reflected that the same had been written with a Royal typewriter. Numerous inquiries were made at Paragon concerning possessors of Royal typewriters, and the search finally narrowed down to one Gail Guy who possessed a Royal typewriter of the type used in writing the extortion note. Guy was questioned as to whom he had loaned his typewriter in the past several months and finally admitted that he had loaned the same to Woods. A further examination of the typing contained in the extortion letter with that of the type on Guy's machine resulted in the discovery that the same were identical.

Woods and McNeill were questioned by Special Agents of this Division which resulted in both of these individuals signing statements in which they admitted joint authorship of the letter written to Mr. Lilly and eliminated Guy from any participation or knowledge of the letter. Both claimed that they had written the letter to Mr. Lilly merely as a joke and had conceived the idea from reading kidnapping and detective stories.

On June 27, 1934 McNeill and Woods entered pleas of guilty to an indictment charging them with violation of Title 18, Section 338-A, U.S.C.A. which pertains to the sending of extortion letters through the United States Mails, and on their pleas were sentenced each to serve five years in the Atlanta Penitentiary.

John Edgar Hoover
Director

Division of Investigation
U. S. Department of Justice
Washington, D.C.
I.C. No. 7-849
July 10, 1934

Source: NARA-II, RG 65 FBI, Interesting Case
Write-ups, Box 2

See Articles: Forensic Science; Indiana; Justice, Department of; Kidnapping; Robbery, Sociology of.

1934 PRIMARY DOCUMENT

Department of Justice Memorandum on the Extortion of the Ford Motor Company

This case of extortion of the Ford Motor Company was a fairly simple one, which authorities in a city as large as Detroit probably could have handled by themselves without undue difficulty. The immediate involvement of the FBI, despite the lack of any evident interstate dimension to the crime, was probably due to the prominence of the Ford family and the possibility, therefore, of a conspiracy or the involvement of organized crime. Note that Edward Lickwala was sentenced only five days after the crime.

On October 15, 1934, the Detroit, Michigan Office of the Division of Investigation, U. S. Department of Justice, was informed that an extortion by Mr. Edsel B. Ford, President of the Ford Motor Company. The anonymous letter demanded that Mr. Ford place the sum of \$5,000 in five-dollar and ten dollar bills in a candy box, and leave it on the first rear porch of the house located at 3341 Medbury Street, Detroit, Michigan, at eleven o'clock p.m., October 12, 1934, threatening that upon non-compliance Mr. Ford would be killed.

Subsequent to the receipt of this extortion letter, a decoy package was placed on the designated porch and kept under surveillance by several employees of the Ford Motor Company and local law enforcement officials who shortly thereafter took into custody an individual who had picked up the decoy package at eleven thirty p.m., October 12, 1934, which had been observed on the porch by his wife, but who had replaced it after he had apparently noted its contents.

An intensive investigation which was immediately initiated by Special Agents of

the Division of Investigation on October 15, 1934 reflected that the first floor apartment located at 3341 Medbury Street had been vacated by a Polish family during the early morning of October 8, 1934 and that another family had moved into the same apartment during the afternoon of October 9, 1934. Specimens of the handwriting of the individual who had picked up the decoy package and of the handwriting of his wife were obtained, but there was no similarity with the extortion note, and it was apparent that he had inadvertently picked up the decoy package concerning which he knew nothing.

About nine o'clock p.m., October 16, 1934, two employees of the Ford Motor Company, who had previously assisted in the surveillance of the decoy package, were seated in an automobile when one Edward Lickwala approached them and stated that he had some information which he desired to furnish. He was immediately taken to the Detroit Office of the Division of Investigation where upon thorough interrogation he admitted that he alone was responsible for the writing and mailing of the extortion letter to Mr. Ford. His handwriting was found to be identical with the writing appearing in the extortion note.

Edward Lickwala, who is twenty years of age and of Polish descent, stated in his confession that he specified the money should be placed on the night of October 12, 1934, four days after he had written the letter because he felt this arrangement would give Mr. Ford ample time to comply with the demand. He further stated he had observed that the family residing in the lower apartment of the house located at 3341 Medbury Street was moving on October 8, 1934 and, therefore, it would be an ideal place for the money.

The criminal record of Lickwala reflects that on July 22, 1931 he was arrested by the Detroit Police Department on the charge of investigation for tampering with an automobile, but was discharged. On September 27, 1931 he was again arrested by the Detroit Police Department on the charge of investigation for robbery, but was discharged. In connection with the latter arrest, Lickwala admitted to Special Agents of the Division of Investigation that he

and a friend obtained a revolver and intended to hold up the clerk in a store of the Kroger Grocery and Baking Company, but that while they were waiting at the street intersection for the clerk to close the store, a police officer took them into custody after he had become suspicious of their actions.

On October 17, 1934, the Federal Grand Jury, then in session at Detroit, Michigan, returned a true bill of indictment, charging Lickwala with the violation of Title 18, Section 338-A, United States Code Annotated, pertaining to the sending of extortion letters through the United States Mails, and on the same date after Lickwala had entered a plea of guilty, he was sentenced by the United States District Judge, Edward J. Moinet, to a term of ten years in the United States Penitentiary at Leavenworth, Kansas.

John Edgar Hoover
Director

Division of Investigation
U.S. Department of Justice
Washington, D. C.
I.C. No. 7-281
November 7, 1934

Source: NARA-II, RG 65 FBI, Interesting Case
Write-ups, Box 1

See Articles: Detroit, Michigan; Justice, Department of; Kidnapping.

1935 PRIMARY DOCUMENT

FBI Memorandum on August Luer Kidnapping and Vivian Chase

One of the better-known gangsters of the 1930s, Vivian Chase was a studied contrast from Bonnie

Parker: while Parker dictated her legend to the press, Chase threatened to kill associates who even revealed her parents or birthplace. She refused to talk to reporters after arrests, and even after her criminal career was in full swing, there are several long periods in which there is no record of her activities. Her killer was never identified.

During the past few years numerous desperate individuals have contributed in a criminal way to the unenviable notoriety which the Middle West has received. Not the least important of these contributors was Vivian Chase. Mystery surrounds her beginning. She is alleged on the one hand to have been born in Kansas City, Missouri, while on the other to have been born in Colorado. Those who at times were believed to have been her relatives disclaimed the relationship. As for her parentage, she never disclosed their identity to law enforcement officers. Society can only allege that this woman began, flourished and faded. Her career centered itself in the Middle West and Southwest.

She was an associate and paramour of criminals of the dangerous type during the entire course of her adult life. She was the companion of Charles Mays, now deceased, a notorious police character of Kansas City and St. Louis, Missouri. Vivian Chase also participated in crimes of major importance. She first gained notoriety by virtue of her participation in the robbery of the Montgomery County National Bank at Cherryvale, Kansas. In this robbery she allied herself with Lee Flourney and Charles Mays, both of whom were later killed by officers at Picher, Oklahoma. She then married George Chase, who later met his death under questionable circumstances.

After a career in Kansas City, Missouri, Vivian Chase proceeded to St. Louis, Missouri, with several of her gangster companions. In St. Louis she continued her association with the underworld element, and became acquainted with the desperado later to be notoriously known as Walter "Irish" O'Malley. Vivian Chase will always be most widely remembered for her participation in the August Luer kidnapping. In preparing for the perpetration of this offense, she and O'Malley augmented their ranks by enlisting

the aid of Percy Michael Fitzgerald, Randol Eugene Norvell, Christ Nicola Gitcho and Lloyd "Blackie" Doyle. O'Malley, Norvell and Vivian Chase formed the nucleus of this group and for several months made plans for this major kidnapping. Meanwhile several other notorious criminals were brought into this group but many of them were killed or captured in an attempted bank robbery before the Luer abduction could be effected. It is often felt by the underworld that a crime can be more successfully completed and the possibilities of detection reduced if the cloak of respectability can in some manner be injected into the offense. Norvell, O'Malley and Chase therefore allied themselves with certain individuals who presumable bore good reputations in their communities. These persons were to be used to "finger" the proposed victim of their sinister designs.

At about nine o'clock on the evening of July 10, 1933, August Luer, age seventy-seven, a wealthy, retired meal packer and banker, was forcibly kidnapped from his home at 759 Washington Avenue, Alton, Illinois, by three men and a woman, members of a gang of nine, who had conspired to effect his abduction. The kidnapping was witnessed by his wife, an elderly lady of seventy-five, who made desperate efforts to prevent the kidnapping and who was brutally assaulted as a result of her attempts to frustrate the abduction.

On the evening mentioned, Vivian Chase and Walter O'Malley made inquiries at the Luer home in Alton, Illinois, as to the address of a neighbor, Henry Busse. After receiving the desired information, Vivian Chase and O'Malley requested permission to use the telephone, which was granted. Vivian Chase and O'Malley entered the house closely following by Percy Michael Fitzgerald. Vivian Chase proceeded down the hall to where the telephone was located and immediately cut the wires. Fitzgerald forced Mrs. Luer into the front room adjoining the hallway. O'Malley rushed into the living room and seized Mr. Luer, dragging the aged banker through the living room and hall and down the front steps to the waiting automobile driven by Randol Eugene Norvell.

Victim Luer was transferred in and out of three different cars and was transported first to Madison, Illinois, where he was taken to the basement of a store building owned by Christ Nicola Gitcho. After remaining here for a few hours, Mr. Luer was removed to the farm of Mike Musiala, located approximately three miles distant from East St. Louis, Illinois, where he was confined in a prearranged cell which consisted of a crudely improvised cave. Numerous telephone calls and ransom notes were transmitted to the Luer family, demanding a ransom of \$100,000.00 for the release of Victim Luer, but due to the complicated nature of the instructions, the Luer family was unable to comply with the instructions, in consequence of which no ransom was ever paid. In despair, O'Malley and Fitzgerald, after holding Mr. Luer a kidnapped victim for five days, released Mr. Luer, without the knowledge or consent of the remainder of the gang.

Within a short time after Mr. Luer's release, Vivian Chase was positively identified as one of the participants in the kidnapping. On July 27, 1933, she became the subject of an Identification Order issued by the Federal Bureau of Investigation. Diligent and relentless efforts were made to cause her apprehension but only occasionally was any information secured to indicate the location of her many hideouts and gangster associates. Not long after Mr. Luer's release, six of the participants in the abduction were apprehended, convicted and sentenced to long terms in the penitentiary. As soon as her immediate associates became too "hot" and in imminent danger of apprehension, she abandoned them for the company of the less notorious but equally desperate gangsters. She clung to her good friend and fellow gangster, Walter "Irish" O'Malley, but on May 27, 1935, he was apprehended by a Special Agent of the Federal Bureau of Investigation, in Kansas City, Missouri, and fortune again favored Vivian Chase in being absent from his company on that day. O'Malley was speedily removed to Edwardsville, Illinois, where on June 27, 1935, he was sentenced to serve the remainder of his natural life in the penitentiary.

Now, only "Blackie" Doyle and Vivian Chase remained of the group which had so callously invaded the home and kidnapped August Luer. But Vivian Chase had been the mistress of many men, and she found little difficulty in once more winning a place in the heart and confidence of another group of Middle West bad men. Appealing to their vanity and emotions she played her role with her now companions amid old surroundings. Her daring was comparable to that of her male associates, but her audacity made her both respected and feared. She was not the usual passive and respectful moll who clings to her gangster companions, but was active in the execution of well planned offenses.

The boldness and careless disregard for the safety which sometimes characterize the activities of the underworld often give rise to fears and doubts on the part of associates. The unexpected demise of a gangster at the hands of his companions cannot always be completely understood, and oftentimes the explanation is left largely to speculation. After the apprehension of O'Malley in Kansas City, Missouri, Vivian Chase doubled her efforts to avoid apprehension. No information of value was obtained as to her location.

On the morning of November 3, 1935, a Ford Sedan was abandoned in the rear of St. Luke's Hospital in Kansas City, Missouri. At eleven o'clock on Sunday morning, November 3, 1935, a passerby observed blood dripping from the running board of the abandoned automobile. Peering inside, he observed the body of a woman "stuffed" in a jack-knife position on the floorboards between the front and rear seats. The woman was dead.

Examination of the body disclosed that the woman had been murdered by being shot with a .45 caliber bullet, the projectile puncturing the right collar bone, passing through the right lung, emerging from the body and falling on the floor. A fingerprint examination was immediately conducted, resulting in a positive identification. The body was that of Vivian Chase.

The following is the criminal record of Vivian Chase as disposed by the files of the Identification Division of the Federal Bureau

of Investigation, United States Department of Justice: As Mrs. George M. Chase, No. 12697, arrested Police Department, Kansas City, Missouri, December 23, 1923; charge, investigation; dismissed for want of prosecution. As Vivian Davis, No. 3144, arrested Police Department, Wichita, Kansas, February 14, 1926; charge, drunk, investigation, vagrancy.

John Edgar Hoover
Director

Federal Bureau of Investigation
U. S. Department of Justice
Washington, D. C.
I.C. No. 7-88
November 20, 1935

Source: NARA-II, RG 65 FBI, Interesting Case
Write-ups, Box 1

See Articles: Justice, Department of; Kidnapping;
Women Criminals, History of Women Criminals,
Sociology of

1935 PRIMARY DOCUMENT

"Why I Am a Dope Fiend" Pamphlet Against the Harrison Narcotic Law

The 1914 Harrison Narcotics Tax Act was an early drug-control law regulating cocaine and opiates, which had only recently become associated with crime. Drug-control laws principally worked to generate revenue through fines, not to impose criminal punishments. Even the Uniform State Narcotic Drug Act that was drafted in 1934 to bring about a stricter drug code, which this pamphlet supports but which was only adopted by nine states, was concerned with fines instead of felonies.

At thirty three years of age, in the prime of life when most men's lives begin, mine is ended. Dope? No, the Harrison Law has broken me, and made me the tramp I am today, but I am carrying on, and will fight unto the end for a Better Law than the Harrison Law; one that will protect the future generations from that dreadful curse—DOPE. Here is a brief sketch of my life—(there are many, many more like mine):

In 1918 I heard the call of the Minute Men—and answered, I spent several months in training before I went overseas. We had not been across the 'pond' long before the war was ended, but our company was short of men and we worked hard, sometimes going two and three days, without rest. It was in the wintertime and often I would find a nice soft mud-hole, roll up in my blanket and go to sleep. Awakening in the morning, we often found our blankets frozen to our bodies.

Soon I took down the arthritis and laying in the hospital several months, where I was given Morphine for relief.

Of course, we hardly blame anyone for giving 'medicine' to relieve pain, and I was suffering a great deal. Then too, there were so many sick and wounded at that time, and the doctors all so overworked, that about all they had time for was to inject morphine, apply Iodine, and give C. C. Pills. I was finally shipped to America, several months ahead of my company and was soon discharged—(with a habit), at Camp Funston, Kansas. I presume I could have gotten a medical discharge if I had not been so anxious to get home, but like most of the boys, I was ready to sign anything for my release. Since then, my life has been one of misery.

I spent three years in a Chiropractic College and graduated in 1922. I was considered one of the best adjusters that ever left that school. I practiced a while in Denver, but it was hard for me to get my "Medicine" so it kept me moving around a lot to connect.

By 1930 the high price of Narcotics (caused by the Harrison Law) broke me, and made a tramp out of me.

I then became what is known as the "Boot & Shoe Dope Fiend, one who travels here & there, "catch as catch can."

In 1934, the same government I had offered my all in 1918, sent me to Leavenworth for thirteen months, because I forged a prescription for one shot of morphine, the same affliction they discharged me with in 1919.

While in Leavenworth I saw so many 'repeaters' coming back, that I swore I would never again use illegal narcotics in this country, but let the racketeers get their prison fodder elsewhere, rather than for me to keep the old mill grinding.

One hears these so called Narcotics Educational Societies broadcasting over the radio and about all they knew is what the politicians tell them. I have lived the life of the unseen dread and I know whereof I speak. The only cured dope fiend is the dead dope fiend. I have fought this losing fight for seventeen years, have taken all kinds of cures, been to private hospitals, state hospitals, veterans hospitals, jails, has reduction cures, etc. Yet I broke off once for four years, then weakened, Morphine calls and back you come. You never feel normal without it. Your food doesn't taste right. During the whole of the period I abstained from it, there seemed ALWAYS to be something missing.

If the average addict could get his "medicine" at a reasonable price, and did not have to duck and dodge the law continually, he would settle down and become a useful citizen. A dope fiend wants no one's life, nor their money, all he wants is his "medicine".

After traveling extensively in these United States, and conversing with thousands of small town doctors, I would say there are close to one million people in America, using drugs in some form or other.

So you can readily see that the Harrison Law has done nothing to decrease this number, for before this law was enacted, there were not nearly this number of addicts.

Will I return to drugs? Just as surely as history repeats, so does an addict if he lives. I would not return to drugs here, but before I exile myself to become a beach comber in some foreign country where I will be free from the chains of this unjust law, I am making this effort to pave the way for a Repeal, in the years to come.

I feel that as an American citizen, I owe it to my people and my country to sacrifice my pride and bare my life as it is, and as are thousands of others who have fallen beneath this curse of curses.

I say, my friends, that it is time for a new beginning of a New Deal for addicts and above all, protection for future generations.

If my idea is adopted, a ten year old school boy could readily see that in fifty years there need not be a single addict in America. How?

First, repeal the Harrison Narcotic Law, so that all addicts may buy their 'medicine' at drug stores, at reasonable prices, as they did before this law was enacted. That removes all peddlers, just as the repeal of the 18th Amendment is removing the bootleggers, in the wet states. Because, just as long as there is a huge profit in selling dope, so long will we have men pedaling dope. For it is not a fact that one of the weaknesses of the human race is lust for gold?

Then, pass a law, making it a capital punishment for anyone to give anyone else, who is NOT an addict, narcotics in any form. That will stop it, and stop it quickly. That will be the only way they will ever end this curse.

Your taxpayers spend millions of dollars in trying to enforce the Harrison Narcotic Law. Your business men, also lose millions through shoplifting, and other petty larceny, by addicts, who are trying to support their habit which costs them \$50.00 to \$75.00 weekly. While if they could buy it legally at drug stores, it would run 75 cents weekly. Quite a contrast, Isn't it!

You, the public, are becoming more enlightened concerning the dope fiend, year by year.

You can probably remember when all dope fiends were considered desperate criminals, morons, etc. but history has proved all of this to be a grave mistake.

Dillinger; Capone; Darrow; Floyd; Hamilton; Leopold; Leob; Hickman; and so on: None of them were addicts.

I hate to leave America, the land I love. You know I will miss the grand old Rockies and its countless beautiful fishing spots, where I have spent so many pleasant vacations.

Yet I can never be satisfied to live here without my "medicine."

I used to feel ashamed to think of myself, a strong, healthy looking man, allowing anything to conquer me so completely, but after losing a seventeen year fight, I have accepted my fate as inevitable.

But I shall not leave without putting up a stiff fight to protect our future Americans. I shall travel from state to state, putting out these little booklets in order to expose the Harrison law as it really is.

Now, if you wish to help me to get those laws passed, so the future generations will not be jeopardized by this curse, then you may mail me any amount of money you care to donate to this cause, and, I promise, I shall carry this fight to the White House itself.

Best Wishes And Good Luck
J.J. Crabtree
Mailing Address:
C/O Western Hotel
Oklahoma City, Okla.

Source: Records of the Drug Enforcement Agency, Subject Files of the Bureau of Narcotics and Dangerous Drugs, 1916–1970.

See Articles: Drug Abuse and Addiction, History of; Drug Abuse and Addiction, Sociology of; Narcotics Laws.

1938 PRIMARY DOCUMENT

Department of Justice Memorandum on Federal Juvenile Offenders

The 1938 Federal Juvenile Delinquency Act (JDA) was the first federal legislation to provide special treatment for juveniles. Common law and state statutes defined an “age of accountability,” before which a child could not be tried as a criminal. Specifics varied, but common law held that

a child under 8 years of age was incapable of a crime. The JDA defined juveniles as a category separate from adults and was later amended and supplanted by the 1974 Juvenile Justice and Delinquency Prevention Act.

To All United States Attorneys,
United States Probation Officers,
United States Marshals,
And Other Arresting Officers:
Re: Federal Juvenile Offenders Under 18
Years of Age

You have heretofore received a copy of the “Federal Juvenile Delinquency Act,” approved June 16, 1938. This statute, which was sponsored by Attorney General Cummings, gives recognition to the principle, long established in state juvenile court legislation, that juvenile offenders need specialized care and treatment. Among other things, the Act provides for the prompt initiation, hearing, and disposition of juvenile cases through prosecution by information and trial without jury before a district judge, who may hold court for that purpose at any time and place within the district, in chambers or otherwise.

In order that the provisions of this Act may be carried out effectively and in the spirit in which they were intended, the following instructions are given for the guidance of the various officials concerned:

All Arresting Officers

1. Upon the arrest of a juvenile, the arresting officer shall immediately notify, by telephone or telegram, the United States Probation Officer of the District in which the arrest is made, and shall also immediately notify the Director of the Bureau of Prisons on Probation Form No. 18, “Notice of Arrest of Juvenile” (copy attached) and send a duplicate copy of this notification to the probation officer. (The marshal need not notify the probation officer of such arrest by means of a jail card. Jail cards should, however, still be sent to the Bureau of Prisons).
2. The provision in the Act that a juvenile is not to be detained in a jail or similar

place, unless it is necessary to assure the safe custody of such juvenile or to insure his safety, or that of others, should have strict compliance. Whenever feasible, the juvenile, pending action by the court, should be left by the arresting officer in the custody of his parents, relatives, or other responsible persons.

3. If such juvenile must be detained in a jail or similar institution, he is to be held in custody in a room or other place apart from adults, if such facilities are available. Juvenile detention homes, jails and other institutions used for juveniles awaiting trial must be approved by the Attorney General. Instructions concerning such approved facilities will be issued in the near future.
4. Whenever a court disposes of a juvenile case by ordering the delinquent committed to the custody of the Attorney General, the marshal shall wire the Attorney General for designation of an agency before carrying out the commitment. This is the same procedure as has been followed with juveniles sentenced to types of institutions other than jails.

Probation Officers

1. Immediately upon receipt from the arresting officer of notice of the arrest of a juvenile, the probation officer shall proceed to make careful investigation of the case and assist the arresting officer and the committing magistrate, by furnishing information as to the advisability of releasing the juvenile on bail or recognizance, or, if detention is necessary, as to the availability of suitable detention facilities.
2. A report, including substantially the same information as the pre-sentence investigation report required by Circular No. 3072 shall be furnished promptly to the Court and to the United States Attorney in order that both may have all the information needed to deal properly with the case. The report should make recommendation regarding the advisability of diverting the case to state authorities as

required by Section 662a, Title 18. Duplicate copies of this report should be forwarded promptly to the Department.

3. Whenever a court places upon probation a juvenile whose home or residence is in another judicial district, and the court order either implies or directs that he shall return to such other district, the probation officer should immediately communicate the facts to the Bureau of Prisons and await appropriate instructions.

United States Attorneys

1. The Procedure authorized by this Act shall be applied in the cases of all persons who have not reached their 18th birthday at the time of the offense, and who have violated any Federal statute, not punishable by death or life imprisonment, except in the cases of those:
 - (a) Whose cases can properly be diverted to state authorities under the United States Code, Title 18, Section 662a;
 - (b) Who do not consent in writing;
 - (c) Whose cases, in the opinion of the United States Attorney, should be dealt with under regular criminal procedure in the public interest. In every case falling within this exception the United States Attorney shall promptly submit a statement of the facts and his reasons to the Department.
2. The Department regards the Act as applicable to all juveniles, even where offenses were committed prior to its passage. The provisions of the Act are procedural and remedial, making the Act an exception to the general rule that statutes are not to be construed retroactively.
3. No set form is required either for the "information" filed against the juvenile, or for the written "consent" of the juvenile as a prerequisite to the procedure authorized by the Act. The United States Attorney is charged with the duty of assuring himself that the juvenile has been fully apprised of his rights and of the consequences of such consent, if given, and understands the same, before the consent is executed. An appropriate statement to that effect should be included either in the

consent, or the minutes of the court. The consent should be signed in the presence of the judge and no persuasion should be used on the juvenile to give the consent.

In order that the purpose of this Act may be fully realized, the closest cooperation will be necessary among all Federal officials dealing with juvenile offenders.

Please acknowledge receipt of this circular.

Joseph B. Keenan
Assistant to the Attorney General

Department of Justice
Washington, D. C.
Circular No. 3154
August 26, 1938

Source: NARA-II, RG 170, Subject Files of
Bureau of Narcotics 1916-1970, Box 54, F: 0370-
3, legal info circular

See Articles: Juvenile Corrections, History of;
Juvenile Corrections, Sociology of; Juvenile Courts,
History of; Juvenile Delinquency, History of; Juvenile
Delinquency, Sociology of; Juvenile Justice, History
of.

1938 PRIMARY DOCUMENT

IRS Report on Huey Long's Louisiana Scandals

The entertaining Internatl Revenue Service (IRS) account of Huey Long details one of the enduring characters of 20th century politics: "The Kingfish," governor and senator of Louisiana. Long inspired not only Robert Penn Warren's Pulitzer-winning novel All The King's Men (1946), but also John Dos Passos's Number One (1943), and Sinclair Lewis's 1936 It Can't Happen Here about a populist president who introduces an American

fascist regime. The latter was written with the goal of hurting Long's presidential campaign.

Introduction

The history of a modern absolute despotism within the boundaries of the theoretically free and sovereign commonwealth of 48 states found its birth in the rise to political power of Huey Pierce Long. Born in a log cabin in Winn Parish, in north-central Louisiana, of humble parentage, Huey Long received his early education in Winnfield, Louisiana. Winn Parish is located in perhaps the poorest section of Louisiana, where during Huey's boyhood the people eked out a bare existence from the soil. Before the civil War the people of Winn Parish had no slaves and a great number of them could not even afford the luxury of a mule. Their inheritance was the earth the richer owners would not touch. This was a fitting environment for the rise of a man who was to lead millions of rural people in protest against their lot.

Much of the story of Huey Long's early life is legendary, and misinformation has been spread as to the economic status of his family. According to his own account (branded as a vote-hunting lie by his brothers and sisters) his early life was one of Lincolnesque hardships and endeavors. In his political orations, he occasionally referred to his own childhood, illustrating his argument with incidents which were purely imaginary. He told a very touching story about a non-existent pony with a red saddle, which had been taken from him by the cruel taxgatherers. He told of various business enterprises in which he was engaged as a boy and as a youth, and how he sold soap, vegetable oil, and patent medicine from door to door in his struggle for success.

His political life started early. While still a schoolboy, he managed an older friend's campaign for tick inspector. In his last year of high school, Huey formed a political organization among the students which prescribed rules for the students to follow. The faculty protested the club and, after Huey's refusal to disband the club, he was expelled from school. In retaliation, he drew up a petition, persuaded a majority of the patrons to sign, and the principal was discharged.

Huey crammed an exacting three year law course into eight months. He passed the state bar examination at the age of twenty-one and returned to Winnfield to begin practice.

He often remarked that he studied law with the sole idea of being a politician, and "came from the bar examination running for office." The law, for most public offices in Louisiana, required the holder to be thirty, some required the holder to be thirty-five. Huey found that for office of Railroad Commissioner the law provided no minimum age requirement. At the age of twenty-four he announced for the position as one of four contestants against a highly popular incumbent.

Huey's first bid for public office was something new in Louisiana political campaigns. He penetrated remote sections about which candidates had never before bothered. He discussed all farm problems with the farmers and flattered them by soliciting their advice on economic affairs. He avoided all the parish centers and cities to which candidates usually gave their particular attention, and concentrated on the scattered people of the hills and hollows.

Huey poured everything he had into his campaign. Toward the close of the campaign, his finances began to run low and he borrowed \$500 from an elder Winnfield friend, O. K. Allen, whom he later rewarded by making him his personal governor of Louisiana. Although he lost practically every courthouse town, his country vote was enough to elect him by a narrow margin.

The Railroad Commission was of very minor importance at the time Long became a commissioner. Almost overnight under his leadership it became all important. He rained circulars on the populace on every subject and traveled to all parts of the state in connection with his official duties.

He blasted at the big companies and the "corporation lawyers." He publicly insulted them at every opportunity, branding them as double dyed thieves, scalawags, and looters. He was particularly bitter against the Standard Oil Company of Louisiana. His maneuvers resulted in a ruling by the Railroad Commission which held that the oil pipe lines were

common carriers, subject to state regulation for the first time in Louisiana.

Huey's political opponents claimed that his election to the Railroad Commission destroyed whatever sense of proportion or rationality he may once have possessed. He was alleged to have developed a habit of swaggering about in railroad trains, whenever he had occasion to travel, boasting to whomever would listen that he ran the railroads, that railroad officials had to do whatever he ordered and that they trembled at the sound of his voice. It has further been said of him that if he failed to receive from railroad employees such treatment as would be accorded an emperor in his own dominion, he became enraged, blustered, and threatened to have the employee, summarily discharged.

On his thirtieth birthday in 1923, Huey announced his candidacy for governor. The law provides that the minimum age for governor in Louisiana is thirty. He conducted his campaign for governor along the same lines as his previous campaign for Railroad Commissioner. He was able to carry north Louisiana practically unanimously, but the strong vote in New Orleans was sufficient to defeat him in one of the closest political races in years.

The effectiveness of his unsuccessful campaign was a great surprise to many people who had never considered him seriously as a political factor. Despite his defeat, his election four years later was considered a certainty.

In the second campaign for governor in 1928, Huey was prepared. His platform was based on share the wealth, although his organized "Share the Wealth" movement had not yet been conceived. He launched his campaign at a rally with hundreds of banners bearing the slogan "Every Man a King but No Man Wears a Crown." His platform was free bridges, paved roads throughout the state, and free textbooks for school children—all without a penny's cost to the poor people. He promised to make "all those corporation high muckety-mucks bear the taxes" to pay for these.

He was elected in this second campaign for governor and his inauguration was something the like of which the people of Baton Rouge had never seen before. Fifteen thousand people

from all parts of Louisiana's poorest sections came by horse, by car, by bus, and by pirogues, at Huey's invitation, to see "their governor" inaugurated. Huey entertained them on the lawn of the capitol with hillbilly music and pink lemonade.

After Huey took office he immediately instituted the doctrine that "anybody that ain't with us, is against us" and fired every office holder, every department head, every clerk, lawyer or janitor over whom he had control, and replaced them with his men. He engaged the services of "Battling Bozeman", an expugilist, as his bodyguard, who was carried on the payroll of the State Highway Department. Bozeman was carefully instructed to deny any suggestion that his duties with Long were those of a bodyguard.

The customary procedure in regard to appointive officers was for the governor to send the names of the appointees to the legislature for confirmation, after which the office-holders could not be removed without good cause. Instead of following this procedure, Huey demanded undated resignations of his appointees before they took office, so that he might remove anyone who displeased him by merely filling in the date, and writing his acceptance of the resignation. A number of such resignations were accepted and persons removed from office thereby, although the procedure was entirely illegal.

Although Huey's first legislative session did not run along smoothly, by trading patronage and making concessions he was able to carry through bills, or constitutional amendments to be submitted to the voters, for a \$30,000,000 bond issue to give the farmers their roads, for free school books and for increased appropriations for hospitals and other institutions.

Huey's first few months as governor were probably the stormiest of his political career. Although he was able to control the legislature, his opponents gave him plenty of trouble. He did not sit in his office like other governors, he believed in direct action. He walked up and down the legislative halls during the sessions, buttonholing members to give orders on how to vote. In one speech he bragged that he dealt with the legislature "like a deck of

cards." Of one of the legislators he remarked, "We bought him like a sack of potatoes."

Huey's method of dealing with political issues and officials caused much dissension in his own ranks during the early months of his governorship. Robert Ewing, his strongest newspaper backer, and John Sullivan, political leader in New Orleans, soon broke with him, branding him as a would-be Napoleon. His control of the legislature, if it ever existed, was broken by his efforts to pass an occupational tax which was bitterly opposed by his friends as well as his opponents. Rumors were prevalent that several legislators were considering the propriety of a move to impeach, and it was reported that a committee of several opposition members of the House of Representatives were engaged in drawing up impeachment charges.

Huey became thoroughly frightened when these rumors continued and appeared to be authentic, and on March 25, 1929, known in Louisiana History as "Bloody Monday," he had his forces prepare for an attempt to put through a motion to adjourn sine die. His opponents, however, were in a fighting mood and were equally well prepared to resist such an attempt. At the next meeting both sides attempted to get recognition and the session immediately turned into a free-for-all fist fight. Men slugged each other with ink wells, brass knucks, and anything else that happened to be in sight. In the midst of the turmoil, Huey's Speaker of the House, John B. Fournet, recognized a Long man's motion to adjourn sine die and, although the representatives could not have heard Fournet's request for a vote, he announced that the voting machine showed that 68 members had voted for adjournment. (It was later proved that no voting on the adjournment had been recorded.) The legislators refused to adjourn, however, and appointed another representative temporarily to succeed Fournet as Speaker of the House. Huey's opponents gained control of the session and proceeded with the impeachment charges.

This was the first time in the history of Louisiana that a governor had been impeached. In the bill for impeachment there were nineteen articles which were as follows:

First, it was charged that Long had used the appointive power of the Governor with the hopes of influencing and in the attempt to influence the judiciary of the State and that he had publicly boasted that he controlled the State.

Second, that he had bribed or attempted to bribe a member or members of the State Legislature.

Third, that he habitually required undated resignations of his appointees as a condition of their appointment, so as to provide himself with the power of removing them at any time, although the terms of their offices were fixed by the Constitution.

Fourth, that he had personally and through board controlled, wasted, misused, misapplied, and misappropriated funds and property of the State.

Fifth, that he had contracted illegal loans contrary to the provisions of the State Constitution.

Sixth, that he had removed officials for political purposes and used his power over educational institutions as a political weapon.

Seventh, that he had, in time of peace and without the request of the civil authorities, used his power as Commander-in-Chief of the militia to override the courts and civil authorities.

Eighth, that he had attempted to force official bodies in the parishes to follow his dictation as the price of permitting the passage of certain legislation affecting those parishes.

Ninth, that he constantly carried concealed weapons.

Tenth, that he had repeatedly been guilty of violent abuse of the officials of the State, of members of public boards, and of private individuals.

Eleventh, that he had been guilty of gross personal misconduct in various places.

Twelfth, that he had usurped the prerogatives of the Legislature and its committees, and had caused the breaking of quorums of such committees, his purpose being to prevent the consideration of certain legislation.

Thirteenth, that he had illegally and by a trick awarded the contract for the penitentiary's refrigerating plant to W. K. Henderson.

Fourteenth, that he had attempted to black-mail one of the legislators.

Fifteenth, that he had caused the Executive Mansion to be destroyed without legal authorization to do so.

Sixteenth, that he had illegally disposed of or destroyed the furniture and fixtures from the Executive Mansion.

Seventeenth, that he issued a parole for Elmer Dunnington without the slightest legal authorization to do so.

Eighteenth, that he intruded upon the sessions of the House of Representatives and the Senate without legal authorization for doing so.

Nineteenth, that he attempted to bribe Battling Bozeman (his bodyguard) to kill J. Y. Sanders, Jr. (one of the legislators).

The legislature began hearing testimony and Huey took to the road in a sound truck to tell the people of Louisiana that he was a victim of "octopuses (corporations) and lying newspaper."

The House of Representatives voted impeachment and sent the charges to the Senate for trial. Everything looked black to the Long supporters. At the beginning of the session, however, the Long forces pulled their big surprise. One of the Long legislators brought forward a document, bearing the signatures of fifteen Senators, containing the agreement that they would vote for acquittal regardless of any evidence. This number was enough to prevent the two-thirds majority necessary to remove Long from office. The other legislators protested vigorously but they were obviously defeated by the document which immediately became famous as the "Round Robin."

Huey showed the world what it meant to serve him well. The "Famous Fifteen" who had signed the "Round Robin" document became judges, high-paid attorneys, and departmental heads of various state offices. Some of them went into private business and raked in enormous profits from state contracts.

After the failure of the impeachment trial, Huey Long grew expansive and began to find new uses for his despotism. Nothing could stop him now. He boasted of his title of "Kingfish" and frequently disregarded all routine

procedure in transacting state business. He gave contracts to whatever companies he chose without going through the formalities of securing bids. If a cement company suggested that perhaps the contract should be taken up with the Highway Department he would roar, "Hell, I am the Highway Department!" He succeeded in increasing the bond issues for road improvements to \$100,000,000, and secured an appropriation of \$5,000,000 to build the "tallest capitol in the world."

Huey's particular pet was Louisiana State University. There can be no doubt that the reason for his interest in L. S. U. was vindictive. He was getting even with his Alma Mater, Tulane University, which had refused him an honorary degree after he became governor. He set out to make Tulane look like a "little red school house," and to do this no expense was to be spared. He appointed a relatively obscure educator, James Monroe-Smith, who was dean of small Southwestern College at Lafayette, as head of the University. Smith was a pliable man who would not interfere with Huey's expansion program and who (as will later be shown) was without moral scruples. Huey, himself, remarked on several occasions that he chose Smith because "He has a hide as thick as an elephant's," and on one occasion he added, "There ain't a straight bone in Jim's body. But he does what I want him to, and he's a good president."

Huey spent \$9,000,000 on construction at the University and operating expenses rose from \$1,500,000 to \$3,500,000 per annum. Enrollment was so heavy that thousands were forced to live a considerable distance from the school, and Huey advertised that everyone could have a college education for the asking. He gave orders to build up a football that could beat Tulane and scouts were sent to preparatory schools all over the country to offer probably the most liberal scholarships ever offered to college athletes. He found out the number of pieces in the largest college band and ordered one ten pieces larger. Professional musicians were attracted by the "music scholarships," which were surpassed only by the "athletic scholarships," and L. S. U. built up the only college band that could

go into formations—no matter how intricate—with only "blackboard rehearsals."

The millions spent at L. S. U. opened another avenue of graft for Louisiana politicians in the form of "commissions" of "kickbacks" on contracts. Huey made it possible for Smith to have practically dictatorial powers at L. S. U. and through Smith, he was able to award contracts without the formality of bids, or, if bids were let, he could still choose the contractors by advising certain ones to bid low and they could add "extras" to the contract price after the contract had been awarded. Some of these so-called "extras," on which bids were not required, amounted to more than the original contract, and it was principally on these contracts that the favored contractors were finally convicted as a result of the Intelligence Unit's "scandals investigations."

Another source of graft was the state operated Levee Board of Orleans Parish. The Levee Board issued bonds in 1931, 1932, and 1933 in the sum of \$5,628,000, the proceeds of which were to be used for improvements and development of the lakefront on Lake Pontchartrain and the construction of the Shushan Airport (name later changed to New Orleans Airport at a cost of \$30,000 after Shushan's conviction in 1939.)

The Louisiana Conservation Department, which was to play such an important part in the later "Scandals investigations" came into prominence under the Huey Long regime. Long chose one of his strongest financial backers, R. S. Maestri, to head it after accepting the undated resignation of the former head. (It was necessary in this case to mobilize the national guard to oust this official.) Huey saw possibilities in the Conservation Department, which he once termed as a "coon-chasing and possum-watching brigade," when the state oil lands came into prominence because of newly discovered oil pools.

Huey set up his own newspaper for spreading the virtues of his administration and to carry on his vituperative attacks against any that dared to oppose him. He employed some of the best newspapermen in New Orleans and set up offices in Mississippi. He claimed that it was impossible for him to find a press

in Louisiana, but he also was able to escape the libel laws. Everyone on the state payroll has to “volunteer” to subscribe to the paper and the state police and highway trucks were the circulation department.

In November 1930, Huey was elected to the United States Senate, although he refused to take his seat and let the lieutenant-governor, with whom he had broken in the early days of the impeachment proceedings, become governor. In 1931, however, the lieutenant-governor, Dr. Cyr, declared that since Huey had been elected to the United States Senate, he was no longer governor, and proceeded to have himself sworn in as governor. This gave Huey the opportunity he was looking for. He reasoned that since the lieutenant-governor; and since there was no vacancy in the governor's position, he could not be governor. Dr. Cyr was, therefore, left suspended in mid-air and Huey took his seat in the Senate and let the president pro tempore of the Senate succeed to the governorship.

In Washington, Huey attempted to deal with national politics in the same manner as he had dealt with Louisiana politics. He made unprecedented attacks on his fellow senators, especially the ones that represented some wealthier states, and began his “Share the Wealth” movement in earnest. He kept control of Louisiana's affairs and O. K. Allen, elected governor a short time after Huey went to Washington, was merely the mouthpiece of Long. Long invaded Arkansas in a speaking tour for Hattie Caraway and was successful in getting her elected to the Senate. After this, Huey threatened other senators with: “Watch out I'll be in your state next.”

During the first week in September 1935 Huey Long returned from Washington to Louisiana for the purpose of jamming through in a special session of the legislature certain laws, among which was the re-districting of certain judicial districts in order to eliminate an unfriendly District Judge. The special session had been called to convene beginning Sunday night, September 8, at 9:00 PM. A meeting was held in “Huey's capitol” between Huey and his chief lieutenants in the late afternoon of September 8, and as Huey and

his bodyguard and followers left the building, Huey was accosted by Dr. Carl Weiss, whose father-in-law was the District Judge to be the victim of the gerry-mandering legislation to be enacted that night.

What actually happened at this moment will probably never be known. However, within seconds Dr. Carl Weiss lay on the floor of the corridor in the capitol building his body riddled by more than 50 bullets, and Huey Long has received one shot in the abdomen. Eye witnesses claimed in official statements, although no inquest was ever held, that Dr. Weiss fired the shot into Senator Long's body. The weapon used by Dr. Weiss (at least the one picked up beside his bullet riddled body), so far as has ever been ascertained, was a .22 caliber pistol. The bullet removed from Long's body was from a .45 caliber pistol.

Huey Long was rushed to the Lady of the Lake Hospital at Baton Rouge where he was attended by Dr. Arthur Vidrine. Dr. Vidrine was a small town country doctor chosen by Huey Long sometime before as head of the New Orleans charity hospital, the largest of its kind in the South. Dr. Vidrine happened to be at Baton Rouge at the time as one of Huey Long's chief followers. Specialists were hurriedly summoned from New Orleans to operate on the Senator, however, due to an automobile accident the specialists did not reach Baton Rouge promptly and Dr. Vidrine proceeded to remove the bullet from Senator Long's body. Huey Long died on September 10 and his body was interred on the capitol grounds beneath eight feet of concrete reinforced with steel. A powerful searchlight is focused on his grave at night to this date, and fresh flowers are placed daily at his tomb, to which reference will be made later.

Huey's Lieutenants

At the same time that Huey was making his phenomenal rise to power, his “chosen few” were making equally sensational rises to wealth. Huey chose lieutenants who were interested in money only, and who, as long as their desires were satisfied, were satisfied to let Huey be the “Kingfish.” Probably his most trusted lieutenant was Seymour Weiss,

who was manager of the Roosevelt Hotel barber shop at the time Huey found him. Under Huey's tutelage, Weiss became a multi-millionaire and one of the strongest political factors in the state. After Huey's death, Weiss became richer and more powerful.

Weiss was born on Friday, the thirteenth of September, 1896, at Bunkie, Louisiana. His father was a native of Austria, and his mother a native of Berlin. He received a grade school education in Bunkie and Abbeville, Louisiana, and after leaving school went to Alexandria, Louisiana, where he was employed as a clerk in a department store. In 1916 he moved to New Orleans where he was employed as a clerk in a shoe store until the outset of the war in 1917. He was in the infantry during the war and returned to New Orleans after the armistice to resume his position in the shoe store.

His connections with the Roosevelt Hotel began as manager of its barber shop. In succession he became business production manager, assistant manager, manager, vice-president, and in 1931 became president and managing director. Soon after that he became president of the Louisiana Hotel Men's Association and vice-president of the American Hotel Men's Association.

The First Series of Investigations: 1932 to 1934

Because of the political corruption which existed while Huey Long was building his kingdom, and the rough-shod tactics used by his political machine in crushing all opposition, it was little wonder that the Intelligence Unit was finally called upon to determine if some of the ill-gotten gains had not been overlooked in income tax returns.

Early in 1932 numerous complaints, both verbal and written from anonymous sources, from ordinary citizens and from responsible and highly respected persons throughout the state of Louisiana, were made to the Bureau of Internal Revenue, alleging that the expenditure of the \$100,000,000 state road and public building program during the years 1928 to 1931 had yielded huge secret profits to certain state officials and to their close associates.

Many of the reports charged that the grafting officials had not properly reported their ill-gotten gains for tax purposes. The reports were so persistent and the allegations so specific in some instances that an investigation was commenced in July 1932 to determine their truth or falsity. Mr. Elmer L. Irey, Chief of the Intelligence Unit, was mindful of the fact that there had been intense factional political strife in Louisiana for several years, and took into consideration the possibility that these charges and allegations might have been made solely from motives of political animosity, with which matters the Intelligence Unit was not and could not be concerned. Special Agent in Charge A. D. Burford of the Intelligence Unit, was designated by Chief Irey to supervise the preliminary investigations and thereafter, when it appeared that the complaints had at least some foundation in fact, approximately 32 special agents and revenue agents from all parts of the United States were assigned to Louisiana to make the investigations. No stone was left unturned by the agents under Mr. Burford in attempting to trace the funds to those who received the huge profits on the state contracts. Although every conceivable obstacle was thrown in their way by the Louisiana politicians, the agents pressed doggedly forward.

Certain Louisiana banks and other business establishments at first refused to allow the special agents to examine their records on those closely connected with the Huey Long regime. It therefore became necessary to go through the formality of securing court orders before records were made available to the agents. Subsequent examination of the records in question in some instances revealed why such a concerted effort had been made to keep them from being examined by Chief Irey's agents. Deposits in currency, cancelled checks without endorsements, and other clues gave the agents a starting point from which to work. During the ensuing months the special agents began fitting the jigsaw puzzle together piece by piece, which, when completed, would show who actually received the many thousands of dollars in "kickbacks" paid by contractors on state projects.

Meanwhile the country was in the throes of the depression, and the particularly bitter national election of November 1932 was in the offing. Soon after the ballots in that election had been counted, resulting in the approaching change in the national administration, Secretary Ogden Mills called the Intelligence Unit's Chief, Mr. Irey, to the Treasury for a conference on the progress of the Louisiana investigations. He inquired if the cases could be completed and the evidence placed before a grand jury for action prior to March 4, 1933. Mr. Irey informed the Secretary briefly as to the difficulties which his agents had encountered in investigating the various cases, and explained that the cases could not be completed prior to that date. The Secretary then instructed Mr. Irey to have the agents suspend their investigations. He also directed that comprehensive preliminary reports be prepared in each case and that the overall developments be included in one report for consideration by his successor in office after March 4, 1933.

Chief Irey thereupon called Special Agent in Charge Burford to Washington to advise him of the Secretary's instructions, and it was arranged for the 32 agents who had been on the assignment to be returned to their respective posts of duty.

During the next few weeks, under Mr. Burford's direction, detailed reports of developments up to the date the investigations were suspended were prepared in compliance with the Secretary's instructions. There was assembled, to be included with the reports, all the evidence which had been secured. A memorandum was then prepared by Chief Irey to be placed on top of the case files, briefly outlining the more important developments of the investigation and setting forth what it was believed could be uncovered by further inquiry. The files were retained in Mr. Irey's office to be delivered to the new Secretary when he came into office. In the interim, however, statutory notices were sent to all taxpayers in cases where waivers providing for the extension of the statutory period for the collection of deficiencies could not be secured.

For the next few weeks immediately following the inauguration on March 4, 1933,

the acute banking situation required the entire time night and day of the new incumbent, Secretary Woodin. Also the Commissioner holding office under the previous administration continued in his position until his successor was appointed, and it was not until November 1933, when Mr. Morgenthau became Under Secretary of the Treasury, and Acting Secretary, that Mr. Irey had an opportunity of carrying out the former Secretary's instructions with respect to delivery of the files in the Louisiana investigations to the new Secretary's office for further consideration.

Within the matter of a very few days after the files containing Mr. Irey's memorandum came to Secretary Morgenthau's attention, he called Mr. Irey to his office for consultation regarding what further steps should be undertaken. That conference resulted in instructions by Mr. Morgenthau that the investigations be immediately resumed and that they proceed with all vigor "letting the chips fall where they may." Mr. Morgenthau also announced that he wanted this same policy followed in all cases throughout the time he continued as head of the Treasury Department.

In compliance with Secretary Morgenthau's instructions, Mr. Irey recalled Special Agent in Charge Burford to Washington, where plans were formulated for resuming the Louisiana investigations. Arrangements were made for the reassignment of the special agents and revenue agents, and the Intelligence Unit's investigations were resumed immediately thereafter.

In the following months the agents were successful in obtaining evidence which disclosed that graft had been paid on practically every contract let by the state after Huey Long became governor. Involved in the cases under inquiry by the special agents were 232 individuals, 42 partnerships and 122 corporations, covering 1,007 tax years. The investigations covered those who were in any way connected with the persons receiving graft payments, contractors on state projects, and companies that sold cement, sand and shells to the Highway Commission. Likewise, the income tax returns of the dealers who sold steel, guard rails, asphalt, trucks and tractors to the state of Louisiana during the same period of time

were checked by the agents to determine what "commissions" had been paid, and to identify the persons who ultimately received them.

It was found that some of these companies and contractors had claimed the graft commissions as business expenses on their returns. In a great number of instances those who received these funds failed to report them in their income tax returns.

The investigations also extended to the operators of the larger gambling establishments in Louisiana. Gambling on a big scale was openly permitted in New Orleans, and this city boasted of some of the largest gambling places in the south. The agents found that the operators in some instances had withdrawn substantial funds from their businesses which the circumstances showed were neither business expenses nor losses. In addition these operators had accumulated substantial wealth which could not be accounted for by an examination of their returns over a period of years. There seemed to be no difference of opinion in the public's mind as to the fact that a large payoff by the gamblers had been made, and there was little difference of opinion as to who received the protection money.

The investigations continued through 1934 and approximately two million dollars in additional taxes and penalties were recommended for assessment. As a result of the Intelligence Unit's work, 24 indictments were returned by a grand jury at New Orleans, charging evasion and conspiracy to evade income taxes by 24 individual defendants and 3 corporations.

In the course of the investigations, Senator Long broke with the national administration and exerted every effort to have the investigations dropped. He used his newspaper and radio facilities to charge persecution—shouting loudly that the "New Deal" investigators were swarming in Louisiana like bees in an effort to "get something on me." Huey had a good reason for being alarmed—his most trusted lieutenants were under indictment. A final report on his case, in which it was recommended that criminal proceedings be instituted, was submitted by the agents on September 4, 1935. Mr. Irey, Chief of the Treasury's Intelligence Unit, and Special Agent in Charge

Burford immediately conferred with former Governor Dan Moody of Texas, who had been appointed Special Assistant to the Attorney General to handle the prosecution. On September 7th they agreed that the evidence warranted prosecution of Senator Long and decided to place the facts before the grand jury which was to meet on October 3rd. On the day following the conference Huey was fatally shot.

The first defendant to be brought to trial was State Representative Joseph Fisher who was interested in several contracts let by the Louisiana Highway Commission on which he received "commissions" in connection with the purchase and hauling of shell for highway construction. He was found guilty on April 26, 1935, and sentenced to serve a term of eighteen months in Atlanta.

The second case to be tried was that of A. L. Shushan—one of the largest and, considered by the attorneys, the best case of the series. The trial began on October 8, 1935, before United States District Judge William H. Barrett of Augusta, Georgia, who was assigned as special judge for the case. The Government counsel was headed by Amos W. M. Woodcock, Special Assistant to the Attorney General. On October 25, 1935, much to the surprise of the Government (and the judge, who had congratulated Woodcock on winning the case), the jury returned a verdict of "not guilty." A most unusual outbreak by the friends of the Long regime, who had packed the courtroom, followed the returning of the verdict. The press of New Orleans described it as follows:

"Cheers swept over the Federal court as soon as the jury's verdict was read."

"Violence broke out when the judge left the stand. Long's former bodyguards wielded fists and night sticks to punch and club photographers."

The next cases were set for trial on the calendar beginning May 29, 1936. On that day, United States Attorney Rene A. Viosca appeared in court and made a motion to dismiss the remaining cases (some fifteen of the gamblers and business contractors had theretofore entered pleas of guilty or nolo contendere), stating as follows:

"With respect to the remaining cases, the Government wishes to file motions to dismiss them. I have given the most careful consideration to these cases and am firmly of the opinion that the Government has no reasonable hope to secure convictions in any of them. For that reason, I am filing the motions to dismiss them."

Mr. Viosca also stated that the "Cases are weak" and the "Changed atmosphere" in Louisiana since Long's death, made convictions very improbable.

The public's reaction to the dismissals was national in scope. Papers in all parts of the country devoted editorials in scoring the dismissals. Next to the Treasury Department's Intelligence Unit, the grand jurors who had devoted nine months of their time and had met in fifty-one sessions during the investigations were perhaps the most chagrined as a result of United States Attorney Viosca's action. Nine of the members addressed a letter to the Attorney General in sharp criticism of the Department of Justice for dropping prosecution of the cases. They stated in the letter, which appeared in all the New Orleans newspapers, as follows:

"As to whether the cases were 'weak' this same United States Attorney . . . presented these 'weak' cases to us for investigation. As to there being a 'changed atmosphere' in New Orleans, if this is meant a change in the wish of the law-loving people of the United States to see that crime is punished, we challenge the statement. It is not true; there is not and cannot be in New Orleans, or elsewhere, a 'changed atmosphere' with regard to the punishment of crime. If that statement as to the 'changed atmosphere' were limited to official circles, we would readily agree."

The letter concluded with a request that former State Representative Joe Fisher, "possibly one of the least of the offenders," be released from prison since he was now the victim of "gross and unwarranted official discrimination."

The Treasury Department, particularly the Intelligence Unit, was disappointed in the outcome of the cases, especially in view of the fact that the special agents had worked many hours

overtime in assembling the evidence in each case. Mr. Irey stated before a congressional committee that if there had been a "deal" the Treasury had no part of it; that "We made careful investigations and accumulated a mass of evidence which we felt, and which we still feel, provided the basis for successful prosecutions."

In order to show that the Treasury had no part in the dismissals, the Secretary ordered that no conference be held on the pending civil cases unless attended by a special agent of the Intelligence Unit and that "not one penny of the taxes or penalties be compromised." A special calendar was set by the Board of Tax Appeals to hear the cases in the latter part of 1937 and the early part of 1938. Special representatives of the Bureau's Chief Counsel were sent to New Orleans to handle the prosecution of the cases and the Treasury spared no expense to bring the necessary witnesses from all parts of the country to New Orleans. One by one the taxpayers, whose indictments had been dismissed, admitted that the contentions of the Government were right and settled their cases by payment of all taxes and fraud penalties before their cases were called for trial. Robert S. Maestri, Seymour Weiss, Estate of O. K. Allen, Estate of Huey Long, and many others, including A. L. Shushan, did not consider their chances of winning before the Board of Tax Appeals worth the cost of going to trial. A few of the gamblers and smaller politicians chose to go to trial but the Government won every case. Thus cases which were considered "too weak" for criminal prosecution were won 100 percent before the Board of Tax Appeals on exactly the same evidence as was presented to the grand jury in 1934 and 1935. Approximately \$2,000,000 in additional taxes and penalties was paid into the Treasury by the individuals and corporations involved in the investigations. The successful civil prosecution of the Louisiana cases caused national comment regarding the dismissal of the criminal cases.

Political Set-Up In Louisiana After Huey's Death

The death of Long created a political turmoil in Louisiana that perhaps has never been equaled

in any of the other 47 states. A dictator had built up an empire within a sovereign state—and had taken steps to include the other 47 states in it—but he had never included the possibility of his death in his plans. He had powerful leaders, but he had never shared power with them; had never favored one over the other in a political way. Obviously, the millionaires, such as Maestri, Shushan, and Weiss were not the type to carry on Huey’s “Share the Wealth” program, which was the basis of his power. There were other leaders, however, that aspired to be the successor to the “Kingfish”—O. K. Allen, the old friend whose loan of \$500 was repaid by Huey by making him an “OK” governor; James A. Noe, whose manipulations with state oil and gas leases had made Huey a fortune; Gerald L. K. Smith, a Shreveport preacher who had been dismissed by his congregation for devoting too much time to Huey’s “Share the Wealth” movement; Allen Ellender, Speaker of the House; and John B. Fournet, who had tried so hard to prevent Huey’s impeachment. Even Earl Long, brother of Huey, who had fought Huey for years but who had made a reconciliation shortly before Huey’s death, also claimed recognition.

Source: U.S. Internal Revenue Service. *Story of the Work of the Intelligence Unit*. Washington, DC: Library of Congress, 1943.
Call Number: HV6783.A47

See Articles: Internal Revenue Service; Louisiana; Political Crimes, History of; Political Crimes, Sociology of.

1940 PRIMARY DOCUMENT

FBI Memorandum on Mann Act Violations

“White slavery” is an old euphemism for prostitution. A moral panic over an unconfirmed

report of a crime ring kidnapping European girls and forcing them to work in Chicago brothels led to the 1910 White Slave Traffic Act, or Mann Act, which criminalized the interstate transport of women for “immoral purposes.” Originally intended to refer to prostitution, as in this memo, the language was later interpreted to penalize statutory rape, polygamy, and (in its first prosecution) interracial sex.

Rinaldo De Butch, With Aliases: Rinaldo Debuch, “Butch;”
Richard Hill, With Aliases: “Woody,” “Witty;”
John Edward Foster;
Harold Elwood Custer.

On August 20, 1939, a telephone call was received at the Huntington, West Virginia, Field Division of the Federal Bureau of Investigation, United States Department of Justice, from the Chief of Police at Parkersburg, West Virginia. The Chief advised that he had received information that at 12:15 a.m. on the same day, four men had forcibly taken a female inmate from a house of prostitution at Parkersburg, West Virginia, and transported her to Steubenville, Ohio, in an automobile. Inasmuch as this indicated a violation of the Federal Kidnapping Statute, an immediate investigation was initiated by Special Agents of the FBI.

Through the cooperation of the Police Department at Steubenville, Ohio, DeButch and his three accomplices, Richard Hill, John Edward Foster and Harold Elwood Custer, were taken into custody along with the victim of their abduction, who for the purposes of this narrative will be described as Jean Davis.

Upon being interviewed by Special Agents, Jean Davis related that she was then twenty-nine years of age and had been practicing prostitution since she was fifteen years of age. Her education extended only as far as the sixth grade of the elementary schools. During 1938 she made the acquaintance of DeButch and they began to live together at Steubenville, Ohio, as man and wife. While living with DeButch, she practiced prostitution at his behest and furnished him with all of her earnings from this source. In May

of 1939, she decided to leave DeButch due to his abusive treatment of her, and hitchhiked her way to Parkersburg, West Virginia, where she obtained work in a house of prostitution. DeButch later visited her on several occasions demanding money and endeavoring to persuade her to return to Steubenville to practice prostitution for his personal gain. On one occasion he threatened to inform her mother that she was leading a life of shame. She refused his requests and declined either to give him money or to return with him to Steubenville, Ohio.

Miss Davis went on to relate that shortly after midnight on August 20, 1939, DeButch and his three companions appeared at the house of prostitution where she was employed and insisted that she return with them to Steubenville. She again refused and DeButch, taking from his pocket what appeared to be a gun and making the statement that he was also armed with a knife, forcibly abducted her with the assistance of his friends and transported her back to Steubenville in his personal car. She informed that she struggled to avoid being kidnapped but was overcome by the strength of her abductors, who prevented her from screaming and held her by the arms until she was placed in the car. She was scantily clad at this time and was not allowed an opportunity to secure her clothes. Her version of the kidnapping was confirmed by other inmates of this house of prostitution and several passersby on the street. The car was driven by DeButch and the party arrived back in Steubenville at about 3:30 in the morning. DeButch openly informed her that he was returning her in order that she might practice prostitution for him. DeButch let his friends out and paid them each one dollar for their assistance, and then took Jean Davis to his residence where they were shortly thereafter arrested by local officers.

Rinaldo DeButch advised Special Agents investigating this case that after Jean Davis left him he attempted to locate her in several nearby Ohio towns without success and finally contacted her mother, who resided in Pennsylvania. DeButch claimed that her mother made the request of him that he locate her daughter

and bring her to her mother's home. Subsequent investigation revealed that DeButch had actually visited Miss Davis' mother seeking her whereabouts, but that Mrs. Davis had made no request to have her daughter returned home. DeButch at first denied the kidnapping, but after further questioning admitted that he and his friends had forcibly transported Miss Davis back to Ohio against her will.

He insisted that he was not armed with a gun or knife, but had used a small flashlight to give the impression that he was carrying a gun. However, Harold Elwood Custer advised the Special Agents that DeButch actually did have a gun at the time of the kidnapping, which Custer himself had furnished to him. Custer had borrowed this gun from one of his friends and thereafter DeButch and he together purchased cartridges for it at a second hand shop in Steubenville. He also insisted that his only purpose in effecting the abduction was to try to take her out of a life of shame, and he professed that he had a deep love for her. He admitted, however, that he had previously lived with Miss Davis as man and wife and accepted her earnings while she practiced prostitution in the City of Steubenville, Ohio.

DeButch's associates, upon questioning by Special Agents, all admitted their participation in this offense and the fact that they accepted money from DeButch for their assistance in carrying out the abduction. Harold Elwood Custer advised that DeButch, while the quartetts was being held in the Steubenville jail, threatened to get even with them if they testified against him in the Federal Court.

As a result of this investigation, a Federal Grand Jury sitting at Wheeling, West Virginia, returned indictments against DeButch and his co-defendants on October 18, 1939, charging them with violation of both the Federal Kidnapping Statute and the White Slave Traffic Act, the latter charge being based upon the interstate transportation of Miss Davis for an immoral purpose. On arraignment DeButch's accomplices all entered pleas of guilty to the kidnapping charge and each was sentenced to serve one year and one day in a Federal penitentiary. DeButch entered a plea of not guilty to the kidnapping charge. After a jury trial he

was found guilty and on December 4, 1939, was sentenced to serve twenty years in a Federal institution. DeButch thereafter pleaded guilty to the White Slave Traffic Act charge and received an additional five-year sentence for this offense, making a total sentence of twenty-five years which he must serve.

The records of the Identification Division of the FBI reflect that DeButch was first arrested in 1934 for assaulting a Federal officer and was sentenced to pay a fine of \$200 and serve a term of three years in a Federal institution, from which sentence he was conditionally released on March 15, 1937. He was next arrested on November 12, 1938, by the Police Department at Steubenville, Ohio, on a charge of grand larceny and was bound over to the State Grand Jury under \$2,000 bond. This charge is yet pending against him. His last arrest was on August 20, 1939, in connection with instant case. DeButch at the time of his arrest in this case was thirty-seven years of age; married and separated from his lawful wife. According to his own statements he had resided in Steubenville, Ohio, for some thirty years, being employed at odd jobs during that time. During 1937, he was engaged in the numbers racket and worked for a time in a local gambling house. It was reported that during prohibition days he was engaged in distilling and transporting bootleg liquor.

The files of the FBI contain no criminal record for Richard Hill. At the time of his arrest in this case, Hill was twenty years of age, single and had completed the 9th grade in elementary schools.

The Criminal record of John Edward Foster reflects that he was first arrested on April 23, 1933, by the Police Department at Steubenville, Ohio, as a suspicious person and discharged. His next arrest was for his participation in this case. At the time of this arrest he was twenty-two years of age, single and had completed the 8th grade.

The records of the identification Division of the FBI reflect that Harold Elwood Custer was arrested by the Steubenville, Ohio, Police Department on October 18, 1938, for investigation, which charge was later dismissed. His next arrest occurred in connection with

this case, and at that time he was twenty-one years of age, single and had completed his high school education.

Federal Bureau of Investigation
United States Department of Justice
Washington, D. C.
I.C. No. 7-2872
September 26, 1940

Source: NARA-II, RG 65 FBI, Interesting Case
Write-ups, Box 3

See Articles: Kidnapping; Mann Act; Slavery.

1940 PRIMARY DOCUMENT

FBI Memorandum on Receiving the Twelve Millionth Fingerprint Card

Classification 32 is Fingerprint Matters in the FBI's file classification system, consisting of administrative information on fingerprints. Bureau of Investigation administrator D. M. Ladd—best known for authoring the FBI memo warning that the film It's a Wonderful Life was communist propaganda—details the depth and usefulness of the FBI's fingerprint files in anticipation of the Bureau of Investigation's 1940s campaign to convince local law enforcement agencies to fingerprint all suspects.

On January 19, 1940, the Identification Division received its twelve millionth fingerprint card. This card reflected the fingerprints of one E. J. Raybak arrested by the Police Department of Shelbyville, Tennessee, on January 14, 1940, on a charge of grand larceny. It is interesting to note that the fingerprint card contained the notation that Raybak refused to tell any criminal record and refused to answer when questioned with reference to

his residence. Upon receipt of this card in the Identification Division of the Federal Bureau of Investigation, it was classified and searched through our records. It was identified as being the record of an individual whose FBI number is 263419 and who, according to the files of this division, was first arrested as George Babe Malarkey on July 16, 1923, by the Police Department at Berkeley, California, for attempted burglary. No disposition is shown as to this arrest and he was marked to be held for the Alameda Police Department.

He was next heard from as Harry Stevens when he was arrested by the Police Department at Louisville, Kentucky, on June 9, 1924, for housebreaking, and no disposition is shown for this arrest.

On March 24, 1925, fingerprints were received from the State penitentiary at Nashville, Tennessee, for this individual as Harry Stevens, where he had been received to serve a term of from three to five years and one day for housebreaking and larceny.

On July 30, 1930, he was arrested by the Police Department at Cincinnati, Ohio, at Patrick Kelley, for burglary at Glendale, Ohio and was returned to Glendale, Ohio.

The next that was heard of him was the receipt of his fingerprints as Pat Kelley from the State Penitentiary at Columbus, Ohio where he was received to serve a term of from one and a half to fifteen years for burglary and larceny.

Two years later, or February 28, 1932, he was received at the State Penitentiary at Nashville, Tennessee, as Harry B. Stephens for housebreaking and larceny to serve a term of one to three years.

On October 1, 1933, he was arrested, according to the files of this Bureau, by the Police Department at Shaker Heights, Ohio, as John Mallory as a suspicious person, and he was turned over by that department to the Cleveland, Ohio Police Department, on October 3, 1933.

September 19, 1939, he was arrested by the Police Department at Nashville, Tennessee, as Harry B. Stevens for housebreaking and larceny, and there is contained in the files a wanted notice for this individual indicating that he escaped from the Police Station at Nashville on September 20, 1939.

Since his escape from the Police Department, he has been involved in other files, as is reflected by the fact that the Federal Bureau of Investigation was conducting an investigation relative to the theft and interstate transportation of an automobile and this individual as Henry Slevenski was identified as having been the person responsible for the theft and transportation of this car and, accordingly a wanted notice was placed in the files of the Bureau for this individual on October 9, 1939.

Respectfully,
D. M. Ladd

Federal Bureau of Investigation
United States Department of Justice
Washington, D. C.
January 19, 1940

Source: NARA II, RG 65, Class 32

See Articles: Federal Bureau of Investigation;
Fingerprinting; Justice, Department of.



1941 to 1960

INTRODUCTION

During America's involvement in World War II from 1941 to 1945, millions of young men fought Nazi fascism and Japanese imperialism abroad. Americans at home continued to grapple with old forms of crime, while encountering new ones that grew out of wartime disruption of civilian life. With fathers at war or working long hours in war industries, and mothers often also working, many people worried that children left alone at home would become juvenile delinquents. At the same time that women were urged to contribute to the war effort, mothers who left latch-key children to fend for themselves were often condemned. Many police officers enlisted in the military, leading to manpower shortages that hampered efforts to cope with crime. In some cities, civilians volunteered as auxiliary police for the duration of the war. They combined support of the regular force, and sometimes civil defense functions. Police work remained a man's realm; women were hired by the police force, but mostly as dispatchers or clerks. Women also conducted social work with children and young women.

An old concern about the morality of unsupervised young women resurfaced in the form of "V-girls," amateur prostitutes who patriotically serviced men on leave or in the military camps. The military was mostly concerned about venereal disease and conducted aggressive campaigns against it. Organized crime participated in the black market for scarce consumer goods and counterfeiting of ration stamps. Mafiosi were bitter enemies of Benito Mussolini, who provided valuable intelligence to the U.S. Army when it was preparing to invade Italy in 1943. Homicide rates dropped during the war, but people continued to kill for personal motives. Capital punishment prevailed, as in the 1930s. About half of those executed were black, a pattern that continued into the 1950s.

Zoot Suit Riots and Racial Tensions

Development of wartime industry caused massive migration to cities with shipyards, converted automobile plants, and aircraft factories. This influx strained urban infrastructure and heightened racial tensions. Major race riots erupted in 1943. In Los Angeles, conflict between Anglos and Chicanos (native-born Mexicans) began with the apparent murder of Jose Diaz in Sleepy Lagoon, a reservoir in southeast Los Angeles. The area was the scene of *pachuco* gang fights, and newspapers began a hysterical campaign against



President Harry Truman is flanked by members of the National Conference on Prevention and Control of Juvenile Delinquency, January 27, 1948. Juvenile arrests and detentions increased from 1941 to 1942 and continued after the war; arrests approximately doubled in the late 1940s and 1950s. Possible explanations include a white, middle-class youth subculture focused on consumerism, while minority unemployment rates doubled that of young whites.

“zoot suiters.” The zoot suit—featuring baggy pleated trousers, a double-breasted suit jacket reaching almost to the knees, and a conspicuous watch chain, often topped by a fedora hat—was the badge of tough Chicano kids, the pachucos. Even though some evidence suggested that Diaz was hit by a car, the police rounded up over 20 young Chicanos, charging them with murder or attempted murder. After a very irregular trial, the all-white jury voted to convict 12 defendants, reduce charges, or acquit the remainder. Local people rallied around the young men, forming a defense league.

The Zoot Suit Riots broke out as a series of clashes between white servicemen and pachucos in their zoot suits. The zoot suits, because of its generous use of cloth, actually violated wartime clothing rationing and was only manufactured by bootleg tailors. To soldiers and sailors, it was a symbol of unpatriotic evasion of military duty. After a series of conflicts, in June 1943, swarms of sailors and marines invaded East Los Angeles in a fleet of 20 taxicabs. They beat and stripped the zoots off any Chicanos they encountered. The police, including off-duty officers, joined in the attacks and arrested scores of people, none of them white. Finally, the U.S. Navy had to make Los Angeles off limits to its personnel, but most residents of the city thought they had committed a patriotic act against a criminal element. San Jose, Oakland, San Diego, Detroit, Chicago, and New York also witnessed attacks on zoot suiters, who were African American, Filipino, or Chicano.

Detroit had seen explosive population growth when its auto plants converted to military production, creating pressures on housing and competition for jobs. Tensions were exacerbated because the migrants included whites from Appalachia and blacks from the south. As in Los Angeles, June was a month of attacks between whites and blacks, apparently started by an individual fight and fed by rumors of people being murdered or raped. The riots lasted three days: Stores were burned or looted, cars were overturned,

and passing motorists or streetcar passengers were beaten. The great majority of people injured and arrested were black. Order was finally restored with the arrival of the military. Whites accused black “hoodlums” of initiating and carrying on the violence; blacks pointed to discrimination in hiring and housing, police brutality, and racism.

Harlem had been mostly left behind in the 1920s prosperity, suffered deeply during the depression, and missed out on the wartime industrial boom. The August 1943 riot repeated the pattern of a riot in 1935, in that it began with a black–white confrontation. A black soldier tried to protect a woman from being beaten by a police officer, who then shot and wounded him. A rumor that the soldier had been killed set off a wave of rioting that foreshadowed the 1960s riots—people burned and looted white-owned stores in their neighborhoods. Police and troops saturated the neighborhood to restore order, and Mayor Fiorello La Guardia helped calm things down by providing food for Harlem residents.

Japanese Internment Camps and Criminal Espionage

The largest racial issue during the war was the “relocation,” or internment of Japanese residents from western states in camps. Whites on the Pacific Coast had long agitated against Japanese land ownership, and early in the 20th century, California passed a law forbidding alien landholding. There were not many American-born Japanese at the time, but by 1942, there were many who prospered, especially in truck farming. After Pearl Harbor, there were rumors of Japanese spies and demands that the Japanese be moved from the coast. President Franklin D. Roosevelt, supported by California Attorney General Earl Warren, supported the U.S. Army’s plan of forcing Japanese people to sell their property on short notice, usually for low prices, and shipping them to internment camps. There was little evidence of Japanese spying; a military officer said that the lack of evidence only proved how wily they were. The FBI was given the job of organizing the round-up. Life in the camps was bleak and alienating, and family relations suffered. Young, interred men were given a way out—they could enlist in the U.S. Army to fight in Europe. Many served bravely; in fact, the Japanese American unit received the most decorations during the war. The Supreme Court upheld internment in *Korematsu v. United States* (1944).

The FBI not only rounded up innocent Japanese, it also pursued real spies. Before the Japanese attack on Pearl Harbor, the U.S. government began to pay attention to Axis espionage activities. The Nazis were active among the German American Bund. The Japanese and other countries were active among their nationalist groups. These groups would be the subject of a small number of criminal espionage cases in the years ahead. As early as 1940, President Roosevelt set up the Special Intelligence Service (SIS), staffed by Federal Bureau of Intelligence (FBI) men and supported by lawyers from the bureau. The service’s mission was to counter or undermine Axis propaganda and aid in Latin America, where numerous Germans and Japanese lived. By 1944, the SIS was successful in eliminating the threat. The FBI investigated the Duquesne Spy Ring in 1941, which was the largest espionage operation to date. A total of 33 Nazi spies were convicted and given long prison sentences. The 19 who pled “not guilty” were unlucky; they were convicted by a Brooklyn federal jury two days after Hitler declared war on the United States on December 11, 1941. During the war, the FBI investigated sabotage in June 1942 when German U-boats landed trained saboteurs on Long Island, New York; and Ponte Vedra Beach, Florida. A coast guardsman first discovered the New York contingent, but allowed them to pass. One agent, fearing capture, turned himself in and aided the FBI in finding and arresting his former comrades. They were caught, and those who refused to cooperate with the government were condemned to death by a secret military tribunal convened by President Roosevelt. On July 31, the court

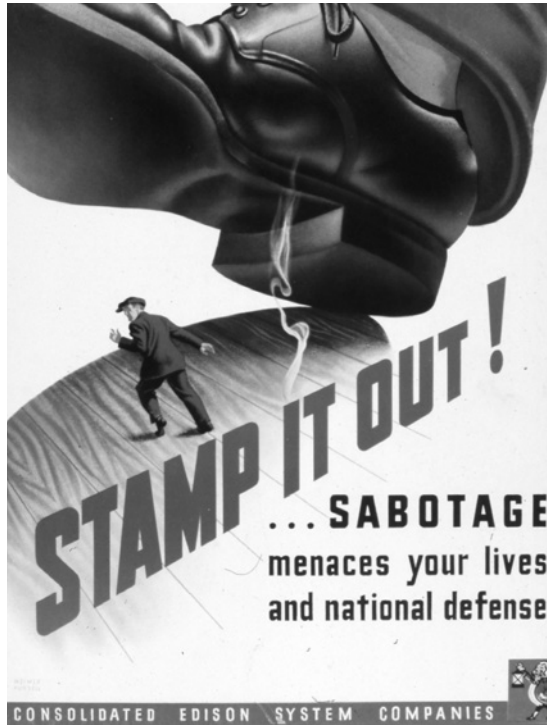
issued a ruling in *Ex parte Quirin*, 317 U.S. 1 (1942), that allowed the secret military tribunal and the death sentence. Six of the eight were subsequently executed, and two were given prison sentences.

Even though the Soviet Union was officially an ally during the war, mistrust of communism persisted. In 1940, Congress passed the Alien Registration Act, which punished individuals who advocated “the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so.” Smith was a southern Democrat who opposed labor unions, so he intended his measure to apply to left-wing groups. The first prosecution and trial was against the left—the Socialist Workers Party. However, by 1944, a group of 30 people charged with Nazi sympathies was put on trial under the law. Most of the leftists were convicted, but the government could not make a case against the diverse collection of isolationists and pro-Germans it had charged. After the war, the Smith Act was used again to attack the left, with more than 120 communists indicted between 1949 and 1956. During 1940–42, New York State’s Rapp-Coudert legislative committee investigated “Communist influence” in the New York City public education system. As a result, left-wing professors in the City College and schoolteachers were fired.

Wartime Films and War Crimes Trials

Hollywood joined the war effort with films about enemy agents. *Saboteur* was a 1942 film directed by Alfred Hitchcock about saboteurs who seek to damage the American aircraft industry. Crime fighting was the subject of popular culture as characters such as Dick Tracy, the Tarantula (anticipating Spider Man), and Captain America brought fictional criminals to the halls of justice. During the war, movies were not subject to rationing and Hollywood continued to produce crime movies. Among those released in 1941 were *Ellery Queen and the Perfect Crime*, *High Sierra*, *The Maltese Falcon*, *Dressed to Kill*, *Under Age*, *Shadow of the Thin Man*, and *Dick Tracy vs. Crime, Inc.* Prison was also the subject in movies such as *Convicted* and *Sullivan’s Travels* as directors presented audiences with explorations of criminal behavior. Crime films continued to be of interest with *This Gun for Hire*, *Larceny, Inc.*, and *Bowery at Midnight* serving as the top crime movies of 1942. Prison movies included *Men of San Quentin*, *Lady Gangster*, and *Three Smart Saps*. Detective novels also continued their popularity. In 1943, Crime movies continued to attract audiences to *Laura*, *Double Indemnity*, *The Mask of Dimitrios*, and *Murder My Sweet*. Prison movies such as *Lady in the Death House* and *Delinquent Daughters* made enough money for Hollywood to continue the formula. In 1944, Americans were still watching prison and crime movies such as *Prison Mutiny* and the *Crime Doctor’s Strangest Case*. In the interest of wartime morale, it was good for audiences to see crime fighters like Sherlock Holmes triumph in films like *Sherlock Holmes and the Secret Weapon* and *Sherlock Holmes in Washington*. Crime fighting served as an analogy for the fighting abroad.

After the war’s close, a new type of crime riveted people’s attention. War crimes trials of German and Japanese leaders revealed the depths of enemy cruelty. The idea of war crimes was not new, but this was the first time that accused people were actually put on trial and executed. Since then, war crimes have become a pillar of international law. On August 8, 1945, the Allies adopted the London Charter of the International Military Tribunal, usually called the London Charter. It set the standard for the war crimes trials that would try defeated Nazis at Nuremberg. The charter defined the laws, crimes, and procedures to be used for trying war criminals. The crimes involved were war crimes, crimes against the peace, and crimes against humanity. In general, obeying orders would not be accepted as a mitigating factor in prescribing punishment.



Sabotage was a very real fear during wartime, as exemplified by the July 1942 military trial of the eight German nationals who landed by submarine of the U.S. coast intent on destroying strategic targets. The poster (left) was printed by the Office for Emergency Management War Production Board between 1942 and 1943. A sentinel (right) keeps vigil against saboteurs at a large defense plant in December 1941.

Crimes against the peace were acts that violated the Kellogg-Briand Pact (1929). It outlawed preparing and coming wars of aggression, especially if they violated treaty obligations. War crimes included deliberate killing of civilians or prisoners. At the time, crimes against humanity were focused on the Nazi genocide. The Nuremberg Tribunal was organized following the criminal law procedures practiced by the civil law systems of Europe, rather than English common law. Consequently, the trials were conducted before a panel of judges, rather than before a jury, as the determiner of fact. The system allowed for wider use of hearsay evidence.

Defendants could cross-examine witnesses, as well as present evidence in their defense. If convicted, a defendant could make an appeal to the Allied Control Council. The main Nazi leaders were hanged on October 16, 1946, at Nuremberg for war crimes; others were imprisoned for various terms. In later years, trials for crimes against humanity committed by those responsible for the concentration camps would continue to take place.

In Tokyo, the International Military Tribunal for the Far East (IMTFE) was convened on April 29, 1946. Also known as the Tokyo Trials, the Tokyo War Crimes Tribunal, or the Tribunal, it was convened to try 28 top leaders of the Empire of Japan for war crimes. Over 5,000 others would be charged with lesser war crimes. Emperor Hirohito and a few others were excluded for political reasons. Six received death sentences and were hanged December 23, 1948, at Sugamo Prison in Ikebukuro. On June 18, 1947, Japanese Admiral Shigematsu Sakaibara was hanged for war crimes. During the Japanese occupation of Wake Island, he had ordered the massacre of all civilians. He was

later convicted by a military tribunal. Elsewhere, other Japanese military officers and personnel were executed for war crimes.

The Supreme Court dealt with important business in 1946. On February 4, it decided *In re Yamashita*, in which General Tomoyuki Yamashita's attorneys argued technical issues involving the military trial of Yamashita—the commanding general of the Japanese Army in the Philippines. He was charged with failing in his duty as an army commander to control his troops, and it was found that he had in fact permitted them to commit atrocities against civilians and prisoners of war. Yamashita was convicted and sentenced to death. The case was controversial because it sought to establish command responsibility for war crimes. The court announced the Yamashita Standard for hierarchical responsibility for war crimes. Yamashita was hanged on February 23, 1946.

Two days after Yamashita's execution, the court decided *Ashcraft v. Tennessee*, 327 U.S. 274 (1946), in which it expressed a dim view of coerced confessions. This would move police work more in the direction of using forensic evidence for convictions, rather than confessions. It was nearly the last case heard by Chief Justice Harlan Fisk Stone, who died April 22, 1946. The court's work did not stop with the loss of the chief justice. On June 10, it decided *Pinkerton v. United States*, 328 U.S. 640 (1946), in which it enunciated the principle of "Pinkerton liability," extending the concept of conspiracy in criminal conduct to include both substantive offenses committed pursuant to the conspiracy, and the conspiracy itself.

Organized Crime After the War

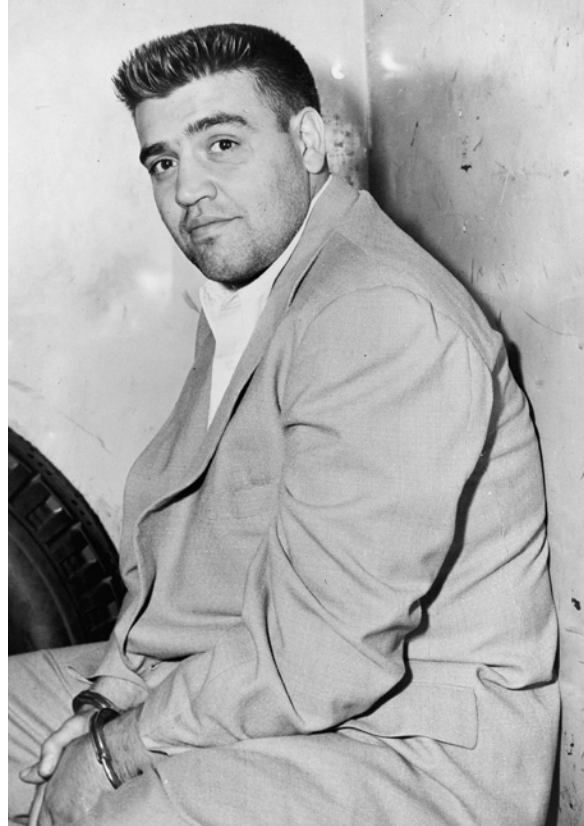
In the immediate postwar years, murder rates began to rise, and organized crime continued to make the headlines. In the 1940s, Benjamin "Bugsy" Siegel persuaded his crime boss to invest in the Flamingo Hotel in Las Vegas, Nevada, where gambling was legal. In 1946, several major crime figures met in Havana, Cuba, where they discussed the amount of money they were investing in the Flamingo Hotel, which was not yet open. Some wanted to kill Siegel, but his friend, Myer Lansky, was able to persuade them to relent. By the time of the second investor meeting, the hotel had turned a small profit. Later, it began to lose money, largely through Siegel's poor business skills. At a third meeting, the bosses decided to "hit" Siegel. He was shot to death in Beverly Hills, California, on June 20, 1947. A few minutes later, criminal associates of Lansky took control of the Flamingo. The takeover was a sign of organized crime's adaptability and ability to infiltrate new enterprises. The mob ran most of the gambling business in Las Vegas undisturbed until Nevada passed the Corporate Gaming Act in 1969. This measure, through a revised system of licensing, allowed publicly traded corporations to own casinos. The mob found ways to continue operating around the law, but suffered after state and federal prosecutions in the 1970s and 1980s.

However, organized crime still posed a threat to the American way of life after the war, and the government began to seriously investigate and prosecute mobsters. In 1949, newspaper articles in a number of cities reported on the problem of organized crime exposed by a number of state and local crime commissions. Not only was corruption of political and law enforcement officials by gangsters revealed, but also the threat they posed to the integrity of the American economy through their infiltration of interstate commerce and labor racketeering. The murders of mobsters in different cities added to the interest of the U.S. Senate in racketeering.

In 1950, Senator Estes Kefauver introduced legislation to allow the Senate to investigate organized crime and its involvement in interstate commerce. The Senate Select Committee to Investigate Organized Crime in Interstate Commerce (the Kefauver Committee) held hearings in across the United States through August 17, 1951. The hearings led

to revenge killings of those who had testified against the mob. In Chicago, William Drury, a former police captain, and Marvin Bass, an attorney for the Cook County Republicans, testified before the Kefauver Committee. On September 25, 1950, both men were shot to death at separate locations. Chicago mobsters Paul Ricca and Louis Campagna were investigated, but were not prosecuted due to insufficient evidence.

In November 1957, the American Mafia was fully exposed. On November 14, a summit meeting of the American Mafia bosses was held at the rural home of Joseph “Joe the Barber” Barbara in Apalachin, New York. About 100 Mafiosi attended the meeting—some flew in from Italy and Canada. Local law enforcement called in state police reinforcement and the FBI when a multitude of expensive automobiles from across the country suddenly appeared in their town. The home was eventually raided, and over 60 crime bosses were detained after many were rounded up after fleeing into the woods. Many threw away their guns and large cash rolls before their apprehension. The news of such a large assembly of underworld figures brought credibility to the existence of a national crime syndicate, which J. Edgar Hoover had long refused to exist. After this, Hoover created the Top Hoodlum Program and sought out organized crime figures. In 1958, the Sicilian Mafia and their American counterparts took steps to reorganize following their exposure at Apalachin.



Vincent “Chin” Gigante of the Genovese Family crime ring, in custody in New York City in 1957 regarding the attempted murder of Genovese family Boss Frank Costello. During the trial, Gigante’s defense team challenged the credibility of the eyewitness, leading to his acquittal in 1958.

McCarthyism, the Red Scare, and Puerto Rican Nationalism

Typically seen as an era of conformity and middle-class comfort, the 1950s were also a period of fear. The advent of the cold war by 1947 sparked a second Red Scare in America. Anti-communism, which had persisted through the 1930s and wartime, was strongly promoted at first by private red hunters, and then by official government policy. Many police departments organized red squads that sent agents to infiltrate suspected political groups, and FBI director J. Edgar Hoover returned to his original mission of crushing the left with great enthusiasm. As a result, publicly recognized members of the Communist Party were prosecuted in the 1950s. The fear was heightened when Americans learned that the Soviet Union had detonated an atomic bomb. Investigations revealed extensive Soviet espionage during and after World War II in the United States and elsewhere.

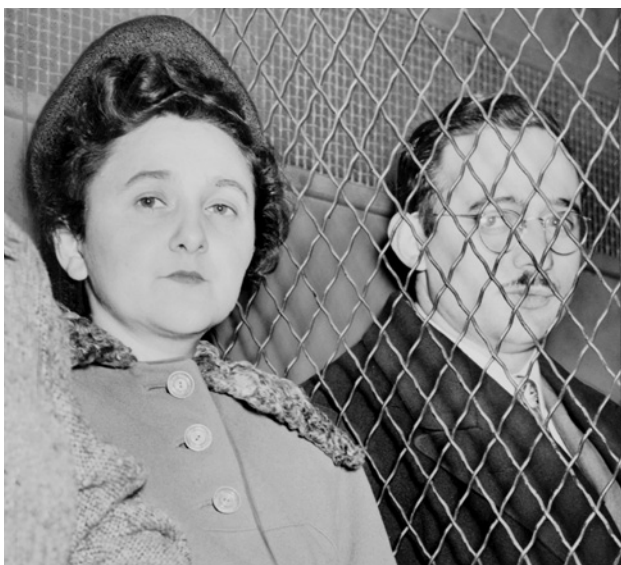
Stolen American atomic science had aided the successful development of the Soviets' atomic weapons. Convicted for giving the Soviets secret information, Julius and Ethel Rosenberg were sentenced to death and electrocuted on June 19, 1953, at New York's Sing Sing Prison. Although they denied their guilt, the opening of secret Soviet files after the fall of the Soviet Union in the 1990s revealed that they had engaged in espionage. The American VERONA cable intercepts also pointed to their role as spies. This notorious case and other threats—real or imagined—promoted the anti-Communist crusade of Senator Joseph McCarthy and the subsequent era of McCarthyism.

McCarthyism existed both before and after the Wisconsin senator's crusade. By the late 1940s, the Smith Act was used against communists, and President Harry S. Truman's administration had begun removing government employees who refused to sign loyalty oaths. Under the program, the FBI ran background checks on civil servants and conducted further investigation of people with past or present left-wing affiliations. McCarthy concentrated mainly on government employees, and state legislatures launched campaigns against civil servants suspected of communist or socialist sympathies. It was believed that McCarthy went too far when he targeted the U.S. Army in 1954, but after his demise, the House Committee on Un-American Activities (HUAC) continued the crusade against the left well into the 1960s. Anti-communism was at the foundation of American conservative ideology, active even before the Russian revolution in the form of attacks on non-communist leftists. Fears of the cold war turning into a nuclear holocaust and revelations of spying gave the ideology focus and power during the 1950s.

A mostly forgotten political scare or threat of the early 1950s was radical Puerto Rican nationalism. In October 1950, political unrest in Puerto Rico led to an attempted revolt in the name of Puerto Rican independence. In the fighting that followed, revolutionaries tried to kill the island's first democratically elected governor, Luis Muñoz Marín. The fighting killed 28 people, of whom seven were police officers and one was a national guardsman. Some of the surviving nationalists were prosecuted on various charges. Nearly

100 others were wounded. Marín harshly suppressed the followers of the independence movement.

On November 1, 1950, Puerto Rican nationalists tried to kill President Harry Truman. He was staying at the Blair House while the White House was being renovated. The assassins, Oscar Collazo and Grisello Torresola, tried to force their way into the Blair House. During the heated gun battle between the Secret Service and the assassins, White House policeman Leslie Coffelt was mortally wounded, but was able to shoot and kill Torresola before dying. The attempt put President Truman in direct danger, but he was not harmed. Collazo was



American communists Julius and Ethel Rosenberg leave the courthouse in 1951 after being found guilty by jury that year for conspiracy to commit espionage during a time of war. They were executed in Sing Sing prison on June 19, 1953.

heavily injured and captured. He was convicted and sentenced to death. The sentence was commuted to life by Truman, and later to time served by President Jimmy Carter in 1979. On March 1, 1954, four Puerto Rican Nationalists attacked the U.S. Congress in the House of Representatives. They unfurled a Puerto Rican flag and then began firing from the Ladies' Gallery. Lolita Lebrón, Rafael Cancel Miranda, Andres Figueroa Cordero, and Irving Flores Rodríguez fired 30 rounds into the House, wounding five members of Congress as the House was debating an immigration bill. Captured immediately, their death sentences were commuted to long prison terms by President Eisenhower.

Street Gangs and Motorcycle Gangs

An old problem, street gangs, began to take new forms in the 1950s. The decade was a time of significant Puerto Rican immigration to New York City. Once there, Puerto Rican street gangs developed. Prominent among them were the Mau Maus, who took their name from the Mau Mau Uprising in Kenya. Among the leaders were Nicky and Israel Navarez.

The gangs of the 1950s were ethnically diverse, and included members of the thousands of Puerto Ricans and African Americans that had immigrated to New York City after World War II. Older gangs were Irish, Italian, Jewish, or other ethnic groups. Unemployed and confined to slum areas, pride of turf was a major factor in their defense. The gangs developed distinctive clothing styles or “colors,” gang rules, and other social forms. They were especially sensitive to disrespect: Even simple disagreements were a form of aggression met with fighting. These arranged battles were called “rumbles,” in which weapons such as baseball bats, studded belt buckles, knives, machetes, pipes, and even guns were used. In Brooklyn, rumble season began on Memorial Day in Prospect Park. It ended with the onset of inclement weather in the fall.

The gangs in New York City symbolized by Nicky Cruz were new. The older gangs had involved immigrant adults. The new gangs were comprised of teenagers who were often products of their local environments. They became ruthless and amoral. Besides the Mau Maus in Brooklyn, there were the Jokers, Bishops, and the Barons. East Harlem had the Dragons, Red Wings, and Egyptian Kings; the Jesters and Amsterdams controlled Washington Heights; and the Fordham Baldies and Golden Guineas controlled the Bronx.

New York street gangs were romanticized in the 1957 Broadway musical *West Side Story*. With music by Leonard Bernstein and using the novel by Arthur Laurents, William Shakespeare's tale of *Romeo and Juliet* was told in New York City's Upper West Side neighborhood. The antagonists are two rival street gangs—the Puerto Rican Sharks and the mostly Italian Jets. However, Tony of the Jets falls in love with Maria, sister of the leader of the Sharks, Bernardo. The tragedy was also told in the film *West Side Story* in 1961.

In Chicago, as well as Los Angeles, African American gangs emerged from clubs. The clubs were formed as protective associations in the face of racial discrimination and to protect their members from violence committed by white clubs. Some black clubs tried to make political connections, and others were merely social. Some began to engage in criminal activities such as theft, robbery, and assaults. Some emerged from car clubs in the Los Angeles area, including the Low Riders, Coasters, Highwaymen, and Road Devils. Chicano gangs date back at least to the 1940s. They were early users of marijuana and began the practice of communicating through painted graffiti. Murders were uncommon, although gang violence was frequent.

In the 1950s, the opiate heroin was used widely for medicinal purposes; however, growing concern about its addictiveness led to its criminalization. Because the drug was

illegal, supplying it was very profitable. By the mid-1950s, heroin was linked to many violent crimes and was spreading in use. By 1960, the French Connection became a link to raw opium from the Middle East or southeast Asia. Opium was shipped to Marseille, France, where it was converted into heroin. In France, the raw opium was manufactured into heroin, and then smuggled into the United States for street sales to narcotics users or “junkies.” People “nodding off” became a familiar sight in poor, urban neighborhoods. Some of the older Mafia gangs at first declined to be involved in drug trafficking, but newer groups, including African Americans, had no qualms about dealing in such a profitable commodity. Drug dealing became a route to upward mobility, though a dangerous one, for young, unemployed youths. Some street gangs were active in the trade.

Another type of gang that became conspicuous in the 1950s was the motorcycle or outlaw biker gang. One of the earliest appeared in Chicago in 1936—the McCook Outlaws. The group began with the legitimate motives of motorcycle touring and racing, but rowdy parties and drinking were part of their activities. They began as noisy, but not criminal, outfits, but exist today as the Outlaws Motorcycle Club. Biker gangs can be violent and disorderly, but are not professional criminal associations, though they often have their share of drug dealers and thieves among their members. Many World War II veterans returned home disoriented and restless, looking to replicate the excitement of combat. Motorcycles helped many to fulfill that need and often provided the camaraderie of other veterans. Many clubs were sponsored by the American Motorcycle Association (AMA), but some bikers left the organization, blaming it for what they thought was exaggerated criticism of the violence that had erupted 1947 in Hollister, California.

The AMA had sponsored motorcycle racing in towns across the United States since the 1930s. The 1947 event in Hollister was the first since the war began, so enormous numbers of bikers flooded the town. Biker groups in attendance included the Pissedoff Bastards of Bloomington and the Boozefighters. Hollister at first welcomed the bikers, but they began to drink too much and roar through the small town's streets. The small police force could not cope with thousands of rowdy drunks. Popular media, including *Life* magazine, sensationalized the “riot” and aroused the fears of respectable Americans. Some people responded to the media



Bernard Spindel whispers in the ear of James R. Hoffa after the October 15, 1957, court session during which they pleaded innocent to five counts of perjury in illegal wiretap charges that threatened to loosen his powerful grip on the Teamsters Union.

hype by saying that only about 1 percent of bikers engaged in drunken rows, and the term was used by marginal groups who called themselves the “one-percenters” or “out-laws.” Outlaw motorcycle clubs started emerging all over the United States and included clubs like the Bandidos Motorcycle Club, Pagans Motorcycle Club, and Hell’s Angels Motorcycle Club. With the arrival of the Vietnam War, the clubs experienced sharp increases in membership as veterans found acceptance and solace there. Ironically, Hollister recovered so quickly after 1947 that it invited the bikers back and celebrated the riot’s 50th anniversary in 1997.

The style of motorcycle and street gangs influenced urban teenagers, whose offenses may have been only a bit of shoplifting or speeding. Leather jackets, tight blue jeans, hair slicked back into the D.A. (which stood for duck’s ass, later softened into duck-tail) style, and a certain swagger marked the “hood” ethos of the 1950s. Girls wore very tight sweaters and skirts. Some of these youths smoked marijuana (pot), but most mimicked adults in smoking cigarettes. As with Hip Hop music today, some middle-class white suburban teenagers, as well as working-class urbanites, adopted the “gang” image. Rock and Roll music, “dangerously” influenced by blacks, was part of the image. Elvis Presley was the model for young people who cultivated the hoodlum look.

Less threatening, older counterparts of the hoods were the Beatniks, whose only crime was smoking marijuana. Sometimes, they followed the example of black jazz musicians and started using heroin, but usually they drank wine, had no means of earning a living, and engaged in art and literature. They were also sensationalized in the media, but many made genuine contributions to American culture. The owner and manager of the City Lights bookstore in San Francisco, who sold Allen Ginsberg’s poem “Howl,” were tried in California for obscenity, but literary experts successfully convinced the judge that the poem was genuine literature, not obscene.

Both the reality of gangs and the hood style aroused fears of juvenile delinquency that had surfaced during the war. Hollywood contributed to the image with movies like *Blackboard Jungle*. More serious youth behavioral problems were explored in street gang violence with movies such as *Crime in the Streets* and *Young and Dangerous* (1957). Juvenile delinquency (JD) movies became a new subgenre of the gangster and *film noir* movies. Ever since the 19th century heyday of dime novels, critics have accused popular media of encouraging crime. In 1954, psychologist Frederic Wertham published *Seduction of the Innocent*. He claimed that violent imagery in the mass media and in comic books was harmful to children, leading them to delinquency. All of his evidence was anecdotal. He included superhero comic crime fighters with other comics. He claimed that sex, drugs, and other “adult matters” were in “crime comics.” The book sparked a campaign for censorship of comics. Wertham was called upon to testify on crime comics before the U.S. Senate Subcommittee on Juvenile Delinquency, which was formed in 1953. As the film studios had done in the 1930s, comic book publishers voluntarily established the Comics Code Authority and modified some images to pacify Congress and the public.

Professionalization of the Police Force

An example of old-fashioned corruption surfaced in June 1954. Albert Patterson won the Alabama Democratic Party nomination for attorney general. He was an attorney from Phenix City, Alabama, who campaigned on the promise to clean up corruption after the Phenix City political machine had turned the town into a center for prostitution. Between 1945 and 1954, the number of prostitutes living and working there had grown to over 1,000. The corruption included much of the local government. Prostitutes were at times



Mounted police clashing with Philadelphia, Pennsylvania, electrical plant strikers in 1946. During that year alone, there were 4,985 strikes involving 4,600,000 workers lasting 116 million days, and mounted police were employed in cities across the United States to clear workers from the streets and to attempt to maintain order.

trucked across the river into Georgia to service their clients. On the night of June 18, Patterson was returning to his car when he was shot three times by an unknown gunman. The national news reported the sordid story. The governor of Alabama declared martial law in Phenix City. The entire civilian government was reconstituted as 743 indictments were issued. The principal suspect sent to prison for the assassination was Deputy Sheriff Albert Fuller. Cases such as this required a more professional police force than what had existed during the war.

The postwar migration of millions of people to the suburbs had an impact on policing, encouraged by a Government Issue (G.I.) bill offering low mortgage rates for veterans, the building of an interstate highway network, redlining of urban neighborhoods, "white flight," and income tax deductions for mortgage and auto loan interest charges. The foot patrolman on the beat could not be as effective in spread-out suburban neighborhoods. The Ford Motor Company manufactured large numbers of police cars as officers were moved into automobiles. Radios in patrol cars became standard with improved radio technology between 1941 and 1960. The technology allowed for rapid response to criminal activity and for coordinating units in the field. Patrol cars took over city policing as well, but they became a disadvantage similar to suburbia: Police were isolated from local residents in their vehicles and the visibility of officers as a means of crime prevention gave way to an emphasis on effective response to crime.

The outbreak of the Korean conflict again caused manpower shortages for many police departments. Auxiliary groups that had been dormant since the end of World War II were reactivated to supplement police officers. The low rate of pay for police was a factor in some of these shortages in the postwar era. It also promoted a movement toward unionization. Fraternal Orders of Police had begun early in the century; however, unions asserted the power to bargain for improved pay and conditions. In

some cities like New York, they became powerful not only within the police, but also a political force that supported tough approaches to crime. Nevertheless, pay and working conditions for police remained uneven across the country.

Police professionalism grew during the 1950s. Orlando Wilson of Berkeley, California, used his extensive police work experience to advocate that departments should require new recruits to have a college education and emphasized the use of police using patrol cars, mobile radios, and mobile crime laboratories. He believed that two-way radios enabled supervision of patrol officers and therefore led to more efficient policing. Wilson was dean of Berkeley's school of criminology during the 1950s and was a major force for legitimating the field in academia. His most influential work, *Police Administration* (1943), remained a powerful influence in the 1950s. He advised Dallas, Texas; Nashville, Tennessee; Birmingham, Alabama; and Louisville, Kentucky on the reorganization of their police departments.

Another leader in California was William Parker, who became police chief of Los Angeles on August 9, 1950. Parker was a "professionalizer" who transformed a corrupt and inefficient police department into one of the best in the nation. He, like J. Edgar Hoover, was a great self-promoter, who advised the popular TV show *Dragnet*, featuring Los Angeles Police Department (LAPD) detectives matter-of-factly investigating cases. Parker and the series star, Jack Webb, were good friends. Parker, seeking to reduce the influence of politicians, did not care about community relations. He thought that he could create a better police force through oversight by administrators and a military-like organization. Parker initiated a police academy and emphasized proactive policing that would exercise more force, but less uncontrolled violence. Parker actually reduced the size of the force, believing that fewer, more professional officers would make it more efficient and less corrupt. He called the LAPD a "thin blue line" between order and chaos. Like many professionalizers, his efforts to avoid corruption distanced the police from the local community, especially since he favored the use of patrol cars. Nevertheless, Parker's LAPD was accused of racism and brutality toward Los Angeles' African American and Latino residents. Many people saw Parker as a lackey of the city's mostly white power structure, but Parker actually desegregated the LAPD. Resentment of police attitudes and treatment were an important factor behind the Watts Riots of 1965.

Serial Killers and Prison Riots

Americans of the 1950s were introduced to the concept of the serial killer. It was not that serial killers had not existed earlier, but the end of the decade saw a period of numerous serial murders. One of the most sensational cases was teenager Charles Starkweather. After murdering a gas station attendant, he and his 14-year-old girlfriend murdered 11 people as they drove through Nevada and Wyoming in 1958. After a high-speed car chase, they were finally captured on January 29, 1958. Starkweather was executed, while his mentally deficient girlfriend served 18 years in prison.

While the public did not sympathize with Starkweather, some people felt sympathy for Caryl Chessman. Chessman was not a serial killer, but a serial kidnapper and rapist. He was accused of being the "red light bandit," tricking victims into stopping by using a flashing red light on his car to make them think he was a police officer. He had a long criminal record. Chessman was tried and convicted for kidnapping and rape in 1948. At that time, California prescribed the death penalty for the crime of kidnapping with bodily harm. Chessman came under that provision because he was charged with dragging some of his victims from their cars before raping them. Chessman insisted on his innocence, sometimes saying that he was mistaken for another person, that he knew

who the real killer was, that he was victim of a frame-up, and that any information regarding his involvement in the “red light” crimes had been extracted through torture. He spent the 1950s on death row acting as his own attorney, filing numerous appeals that eventually reached the Supreme Court, which held that California had to review the original trial for the procedural irregularities that Chessman claimed.

The state’s review concluded that the trial was proper and Chessman was scheduled for execution in 1960. He had previously escaped several execution deadlines. Chessman pled his case through letters and no less than four books: *Cell 2455*, *Death Row* (1954), *Trial by Ordeal* (1955), *The Face of Justice* (1957), and *The Kid Was a Killer* (1960). His first book became a movie in 1955, starring William Campbell as Chessman. He became a celebrity, receiving support from people around the world, including Norman Mailer, Robert Frost, Eleanor Roosevelt, and Billy Graham. He came to represent the evils of the death penalty in the United States at a time when most European nations had done away with it. Chessman’s luck ran out on May 2, 1960. While in the gas chamber, which was filling with gas, a judge’s clerk called the warden to announce a new stay of execution for Chessman. The warden said that it was not possible to stop the proceedings, because opening the gas chamber door would release fumes that would kill the other people at the execution. The clerk had at first dialed the wrong number, and the delay cost Chessman his life.

Advances in psychology allowed for improved study of criminal behavior. In the case of serial killers, researchers found that they commit multiple murders during a period



Japanese Americans standing in front of internment posters with “Instructions to all persons of Japanese ancestry.” President Franklin D. Roosevelt signed the executive order authorizing the evacuation of more than 127,000 Japanese Americans in February 1942. They were sent to internment camps in the interior of the country and were held for the duration of World War II.

of time with a cooling off period between killings. Their pattern of killing in a series becomes part of their criminal *modus operandi* (MO). Some use a particular kind of weapon, or focus on a specific type of victim. The psychological examination of serial killers has found that their behaviors were formed in early childhood.

Prison riots greatly increased during the 1950s. During World War II, prisons had emptied, as many prisoners were paroled to allow them to join the military service. However, conditions returned their normal status after the war. In the 1950s, with rising prison populations, overcrowding became common, as did a rash of prison riots. On May 20, 1951, Utah State Prison experienced a major riot. Between 1950 and 1953, there were many riots in federal and state penitentiaries around the country, with 20 occurring in 1952 alone. In 1959, a major prison riot broke out at the Montana State Prison, led by two inmates—Jerry Myles and Lee Smart. The riot lasted 36 hours and was finally suppressed by the Montana National Guard. The riot was sparked by chronic overcrowding and deteriorating conditions in the prison.

The reasons for widespread riots were unclear because overall, American prisons were more humane than they had ever been. Still, such widespread rioting implied that something was very wrong with the penal system. Were prisons intended to reform convicts, punish them, or simply to separate them from society? Part of the problem was that prison staff morale had declined because of low pay, corruption, and mismanagement. The prison industry had also changed from free-market enterprises into prison shops that produced goods that could not be sold to the public, but only to other state institutions. Since advocating more money for prisons was not politically popular, it often took riots by the inmates to spur improvements and increased funding. What became clear was that correction science was not exact. Rehabilitation efforts were not effective because there were very high recidivism rates. In addition, society at large was not well protected from some of the most dangerous people it produced. Overall, though, most of America's commitment to rehabilitation remained.

Civil Rights Movement

Perhaps the most significant long-term impact of the 1950s was the beginning of the civil rights movement. The south's white supremacist order had been successfully challenged earlier in the courts, and President Truman desegregated the U.S. Army in 1948. Parts of its structure had been chipped away, but segregation still stood firm in the early 1950s. On May 17, 1954, the U.S. Supreme Court issued its ruling in *Brown v. Board of Education* that racial segregation in public schools was unconstitutional. The decision gave the nation plenty of time to implement the ruling. Lynching still occurred in the United States as late as 1955, when Emmett Louis Till was murdered on August 28. He was a teenage African American who was visiting relatives in the Mississippi Delta town of Money from his home in Chicago. He was brutally murdered, and his weighted body was dropped into the Tallahatchie River. The men responsible for the killing were acquitted by a local jury. Because J. Edgar Hoover was concerned about communists, he focused more on the communist connections to anti-lynching groups than on this type of crime. The civil rights movement would soon follow.

On December 1, 1955, Rosa Parks was arrested in Montgomery, Alabama, for refusing to obey racial segregation seating laws on a public bus. The arrest sparked the civil rights movement and Martin Luther King, Jr., began his career of activism. Civil rights activists were arrested, but their convictions (for civil disobedience) would be overturned. Eventually, the Supreme Court did not legalize civil disobedience, but declared the laws that had been violated unconstitutional, meaning that no law had been broken. Congress passed a modest Civil Rights Act in 1957, and President Dwight D.

Eisenhower reluctantly began the first serious enforcement of the *Brown* decision by ordering federal troops to protect the integration of the Little Rock, Arkansas, high school. In 1960, Greensboro, North Carolina, experienced sit-in demonstrations that intensified the civil rights movement. One result was the Civil Rights Act of 1960, which put voting rights in southern states under close federal inspection for decades to come.

Conclusion

During the 1940s and 1950s, Americans united to fight a “good war” and create a vast expansion of the American dream of consumption, but they had their share of crime and disorder. Wartime America had its unique problems and issues, along with ordinary murder and larceny. In the 1950s, fears of juvenile delinquency and gangs, organized crime, and political subversion underlay what has often been seen as an era of complacency and conformity.

Andrew J. Waskey
Dalton State College

1940s PRIMARY DOCUMENT

Excerpt From the FBI Memorandum on the Jewish Hope Society Mail Fraud Scheme

Classification 36 in the FBI's file classification system is mail fraud (including wire, radio, and television fraud, as well as the fraudulent use of credit cards). The U.S. Postal Service has primary responsibility for mail fraud cases, but the FBI is often used in investigating them and may initiate investigations. Mail fraud, a federal crime since 1872, has long been relied on by swindlers for its relatively low risk and low expense. The scheme of operating a fake charity is common.

SCHEME TO DEFRAUD

The society, the subject ARTHUR MICHELSON as its president and executive head, has used three major methods to obtain funds: radio broadcasts by subject ARTHUR MICHELSON, distribution through the mail of the Jewish Hope and circular letters, and evangelistic trips by subject ARTHUR MICHELSON.

The society, by its articles of incorporation and all statements in connection with the above methods of obtaining funds, claims to be a benevolent organization, with the primary purpose of converting Jews to Christianity. Since it is a benevolent association, the expenses of its work are paid by donations. The success of the work naturally depends on the amount of money received. In order to show donors that the organization is a worthy cause, is successful, needs the money and is sound financially, subject ARTHUR MICHELSON, as head of the society, has made several false representations. These representations are summarized in the next section of this report entitled "False Representations."

Subject ARTHUR MICHELSON has made or approved these misrepresentations in order to increase the volume of the donations. Although he claims to receive a salary like any other employee, either he or his relatives has received directly from the corporation \$9,023.00, in addition to his salary from 1940 to 1943 inclusive. He also received personally during this period at least \$7,830.49, which he kept for his own use. He claims that this latter amount was from gifts given him personally. This amount was not recorded on the books of the society.

This makes a total of \$17,418.49, which is 3% of the total amount of donations received during the same period. In the year 1942 subject ARTHUR MICHELSON or his family received, in addition to his salary, \$9,355.37, which was 7.38% of the total revenue of the society for that year.

Source: NARA II, RG 65, Class 36 Mail Fraud, Box 4, F 36 Sub 2523

See Articles: Embezzlement; Fraud; Jewish Americans.

1942 PRIMARY DOCUMENT

FBI Memorandum on the Extortions of Bing Crosby and Harold Lloyd

In most cases, an extortionist has little to no ability to make good on his threat. Celebrities are frequent targets of extortion, in part because of their wealth, visibility, and accessibility (making it easy for an extortionist to be aware of them and communicate a threat), and in part because of organized crime's long involvement in the entertainment industry. Outside of this incident, Crosby had been extorted on at least one other occasion, by the Mafia.

Samuel Rubin, With Aliases; Bing Crosby;
Harold Lloyd—Victims
Extortion

Bing Crosby, the motion picture actor and radio star, received the following letter on June 22, 1942, which was postmarked June 18, 1942, at Los Angeles, California: "IF—MONEY—NOT—TOMORROW—YOU—WILL—NOT—BE—ALIVE—TO—SPEND—ANY—OF—IT—WHEN—YOU—ARE—DEAD—TODAY—THANKS—GEO BAKER."

The reverse side of the above communication carried the return address of George Baker, General Delivery, Los Angeles, California. Another portion of a car found in the same envelope carried this message, "DEAR BING—SEND—\$1000 DOLLARS—TO—ME—OR—I—WILL—COMMIT—SUICIDE—I—WILL—KILL—YOU OR—YOUR KIDS - \$1000—GEO BAKER—SEND TODAY OR ELSE."

Since the mailing of this type of letter comes within the purview of the Federal Extortion Statute, the matter was reported to the Los Angeles Field Division of the Federal Bureau of Investigation and an investigation was initiated. It might be noted that the above referred to letter had been re-routed in the mails and a delay of several days therefore existed before the Federal authorities were notified of the violation. The significance of this delay will be explained later.

Special Agents subsequently ascertained that Harold Lloyd, who was formerly quite prominent in motion pictures, received a similar threatening letter on June 24, 1942, which also bore the signature of George Baker.

Arrangements were made by the Federal Bureau of Investigation to cover the General Delivery window in Low Angeles by a surveillance in order that the extortionists might be apprehended. Thereafter, on July 2, through the cooperation of Lieutenant Lowell Lyons of the Los Angeles Police Department, as individual who called for mail addressed to George Baker was arrested. When questioned by Special Agents, he readily admitted writing the extortion letter and explained that he had read

an article in the newspapers which dealt with a similar occurrence, wherein a letter had been addressed to a prominent movie actor and that the Government, after taking the extortionist into custody, placed him in a trade school. Baker went on to say that he had no money, was hungry and was without a home. The implication was strong during the questioning that in reality Baker didn't expect his extortion scheme to produce results, but merely wished to procure a place to stay and at the same time, possibly learn a trade. He pointed out that he had obtained the addresses of Bing Crosby and Harold Lloyd from penny post cards which he had seen in a local drug store.

A complaint was filed by Special Agents before the United States Commissioner in Los Angeles on July 3, 1942, and Baker was held to await the action of a Federal Grand Jury. On the same day that the complaint was filed, Harold Lloyd received another threatening letter signed—George Baker. The writer in this case reiterated his demand for one thousand dollars and instructed that the money be sent to General Delivery, Los Angeles, California. At the bottom of the note, Baker indicated that he would call for the money at the Post Office in person. This letter was postmarked June 29, 1942, showing it was mailed by the subject before his arrest. It was learned that Bing Crosby had also received another letter from Baker which had been mailed on June 29, 1942.

Since it had been learned from the subject at the time he was questioned that he had made one call at the Post Office prior to his arrest and had not been taken into custody due to the delay in routing the original extortion letter, it was apparent that Baker had been disappointed, and in his second letter to Harold Lloyd therefore, he was careful to point out that he would call in person at the General Delivery window. He wanted to make certain that his second appointment with the authorities did not fail.

After it was learned that Harold Lloyd had received the letter mentioned above Baker was re-interviewed at which time he admitted that his name was Samuel Rubin, and that he was born on February 25, 1912, in Providence,

Rhode Island. Inquiry in Providence resulted in determining that Rubin, alias Baker, had never been inclined to work steadily and had spent most of his life, after graduation from high school, on the road as a hobo.

He was examined by a psychiatrist and found to be normal. After his indictment by a Federal Grand Jury on August 7, 1942, he pleaded guilty and received a sentence of five years in the penitentiary. The sentence also provided that he was to be placed on probation for a period of five years after the expiration of his actual sentence. No prior criminal record was reported

John Edgar Hoover
Director
Federal Bureau of Investigation
United States Department of Justice
Washington, D.C.
I.C. #5-9370

Source: NARA-II, RG 65 FBI, Interesting
Case Write-ups, Box 4

See Articles: Federal Bureau of Investigation;
Insanity Defense; Justice, Department of.

1942 PRIMARY DOCUMENT

FBI Memorandum on Henry Tatge's Failure to Report for Draft and Imprisonment

The FBI file system's Classification 25 is reserved for files related to the Selective Service Act, including failure to register for the draft, furnishing false information to the draft board, refusal to serve, encouraging draft evasion or resistance, the corruption of local draft boards, and applications for conscientious objector status. After World War II,

the FBI began investigating the violation of reemployment rights of veterans. Henry Tatge's case is simply one of draft evasion.

Melvin Henry Tatge
Selective Service

Melvin Henry Tatge was sentenced to serve five years in a Federal penitentiary on June 9, 1942, for his failure to report for a physical examination as ordered by his local draft board. Tatge, at the time of his arrest by members of the Minneapolis Police Department, stated that he would not serve in the Army and would run away from any place that they put him. On being arrested Tatge threatened the arresting officers with, "You guys will be sorry when Hitler comes over here and breaks your d--- necks."

Tatge was ordered to report for a physical examination by his local draft board at Supervisor, Wisconsin, and in an endeavor to avoid taking the examination he went to Minneapolis, Minnesota where he secured employment in the Salvation Army. When he was requested to show his registration card, he did so and likewise furnished the order to report for a physical examination. Upon being questioned regarding his failure to comply with the order, he became violent and it was necessary to call out additional members of the police department in order to take him into custody. On subsequent questioning he reiterated that he was opposed to military service and exhibited a very belligerent attitude during the trial. He was sentenced to serve five years in a Federal penitentiary.

John Edgar Hoover
Director
Federal Bureau of Investigation
United States Department of Justice
Washington, D. C.
I.C. #25-94415
December 5, 1942

Source: NARA II, RG 65 FBI, Interesting Case
Write-ups, Box 8, Folder IC 25 94415

See Articles: Federal Bureau of Investigation; Federal
Prisons; Justice, Department of.

1942

PRIMARY DOCUMENT

FBI Memorandum on a Vagrant's Draft Trouble

This FBI memo is a good example of the breadth of detail sometimes contained in FBI records of minor matters (in this case involving no crime). Civilian Defense Work refers to the Office of Civilian Defense, a massive civil defense effort overseen by New York Mayor Fiorello LaGuardia and First Lady Eleanor Roosevelt and consisting of 11 million volunteers. Most of the civil defense efforts were spent preparing for attacks on American soil that never occurred.

A 34 year vagrant negro, arrested on September 4, 1942, by the San Francisco Police Department, did not have a Selective Service registration certificate. When interviewed by a Special Agent of the FBI, he said that he knew he was supposed to have registered and thought he had; that on registration day he went to the fire station near his home and told the fireman that he wished to "register for the war." He said he was asked many questions, that he signed a paper, and that he was then fingerprinted. The fireman who registered the vagrant was interviewed and said he remembered him as having been one of the persons who registered for Civilian Defense Work. The United States Attorney saw that the delinquent had committed an unintentional violation and permitted him to be inducted into the Army in lieu of prosecution.

John Edgar Hoover
Director
Federal Bureau of Investigation
United States Department of Justice
Washington, D. C.
I.C. #25-121695
December 5, 1942

Source: NARA-II, RG 65, Interesting Case Write-ups, Box 8 F: IC 25 1211695

See Articles: Federal Bureau of Investigation; Justice, Department of; Vagrancy.

1943

PRIMARY DOCUMENT

IRS Intelligence Unit Letter on the Thomas Pendergast Investigation

The IRS's Intelligence Unit was created in 1919 to investigate tax fraud. Its value in the war on crime became apparent in 1931, when the government decided that the IRS's evidence of Al Capone's tax evasion was the most compelling weapon they had against him and obtained a conviction for 11 years in prison. The Intelligence Unit continued to investigate suspected criminals, whose illegal earnings went unreported, but were easier to prove than the means by which they were earned.

This is a story of the work of the Intelligence Unit, with the cooperation of Internal Revenue Agents, Narcotic Agents and other Federal officers, in bringing to justice leaders of the lawless element which for many years ruled Kansas City, Missouri. It begins with the conviction of John Lazia, a gangster overlord of the Capone type, and continues through to the conviction of Thomas J. Pendergast and his principal lieutenants, Robert E. O'Malley, Charles V. Carrollo, Otto P. Higgins, John J. Pryor and Matthew S. Murray. The investigation was conducted in various years through the decade from 1931 to 1941 and resulted in the elimination of the so-called Pendergast machine.

Special Agent Rudolph H. Hartmann was in charge of the principal investigations, including that involving Pendergast. The story was written by him. The other agents who were active in this assignment are named in the story. Charles O'B. Berry, as agent in charge

of the Kansas City Division, was in general charge of the entire investigation.

Elmer L. Irey
Chief, Intelligence Unit
I.C. #V6783: A47
April 1, 1943

Source: U.S. Internal Revenue Service. *Story of the Work of the Intelligence Unit*. Washington, DC: IRS, 1943.

See Articles: Internal Revenue Service; Narcotics Laws; Organized Crime, History of; Organized Crime, Sociology of.

1943 PRIMARY DOCUMENT

FBI Memorandum on "King of the Gypsies" Draft Trouble

The Romani people (Gypsies) were prevalent enough in mid-century New York City for the city's Welfare Council to create a Committee on Gypsy Problems. One member was Carl de Wendler-Funaro, a non-Romani who worked as the secretary of Steve Kaslov, the "king" of some or all of the local Gypsy community. This meant that he served as a liaison between them and other communities and attempted to solve problems that arose, such as helping one man evade the draft.

Steve Kaslov, with aliases
Steve Kasloe, Tom Demetro
King Of The Gypsies;
Selective Service

Steve Kaslov, 55 King of the Red Bandanna Russian Gypsies in New York City is traditionally responsible for aiding his fellow gypsies with their daily problems. In accordance with this tradition, he knowingly corroborated

the false information of Tom DeMetro to the effect that DeMetro had a wife and a son who were entirely dependent upon him, and thereby attempted to prevent his induction into the Army. In fact, DeMetro's alleged wife is his sister and the child is his nephew. The King was sentenced to a year and a day in a Federal Penitentiary on June 1, 1942.

Kaslov claimed to be a coppersmith by trade, but had been unemployed for quite some time and received relief from the New York City Relief Department. He was also receiving \$99.00 each month from Home Relief for the support of his wife and five children ranging from 18 to 31 years of age. Tom DeMetro claimed a 3-A classification from his Local Board for the reason that he had a wife and a small son who were solely dependent upon him for support. He claimed that he had married his wife July 5, 1939 and that the child was born June 2, 1940. King Kaslov vouched for the truth of DeMetro's statement and stated that he recalled marrying the couple in July 1939, but stated that, in accordance with Gypsy custom, no record was kept of the marriage.

It was disclosed by FBI investigation that DeMetro's alleged wife was his sister and the child was his nephew. The King finally admitted that he had knowingly made false statements regarding his friend's liability for military service and was given a sentence of a year and a day in a Federal Penitentiary and severely reprimanded by the court. Prosecution of DeMetro was declined pending his future compliance with the Selective Service regulations.

John Edgar Hoover
Director
Federal Bureau of Investigation
United States Department of Justice
Washington, D.C.
I.C. #25-94603
April 7, 1943

Source: NARA II, RG 65 FBI, Interesting Case Write-ups, Box 8, Folder IC 25 94415

See Articles: Civil Disobedience; Federal Prisons; Justice, Department of.

1943

PRIMARY DOCUMENT

FBI Memorandum on the Elmer Soller and Elmer Hartzel Sedition Case

Hoover's pride in the investigative innovations of the FBI is clear in this memorandum, which Hoover himself describes as an unremarkable case except for the investigative resources brought to bear. Determining the type of paper used in a leaflet, building a database of individuals who would have access to it, and coming up with the leaflet's mailing list was exactly the kind of labor-intensive but drab work that solved many cases.

Elmer Soller
Elmer Hartzel
Sedition

The personalities involved as defendants in this case were drab, ordinary types of individuals with no spectacular or particularly interesting qualities. Likewise, the subject matter, the anonymous distribution of literature directed against the country's war effort and morale, although imminently dangerous had it been allowed to continue unrestricted, was not of such a nature as to elicit special, unusual or human appeal. However, considered from the viewpoint of investigative processes and technique, the case is one of engrossing interest and parallels almost any which fiction has been able to offer.

During the latter part of June and the early part of July, 1942, a large number of individuals and organizations throughout the country, all prominent in military, political, educational, industrial, or civic pursuits, received, in the United States mails, copies of mimeographed leaflets captioned, "The British: An Inferior Breed," and "The Jew Makes a Sacrifice: The Forthcoming Collapse of America." These leaflets, one copy of each, were received in envelopes postmarked at Chicago, Illinois,

and were unaccompanied by any indication as to their source.

As suggested by their titles, the leaflets were extremely anti-Semitic and anti-British. In addition to heaping the most vicious and scurrilous opprobrium on the Jews and the British, the messages set forth in the leaflets were also devoted to an attack on America's participation in the war, the motives of the American Government, and America's foreign policy. In language both abusive and filthy, the British and the Jews were pictured as predatory and unprincipled individuals who, through their connivance with a "disloyal" American Government had been able to involve the American people in a war, neither justified nor righteous, against Germany. Americans were portrayed as mere chattels carrying out assignments given them by internationalists of Jewish and British domination and forced on them by an incompetent and puppet Government.

Hardly before the shock and particularly inflammatory nature of these leaflets could be forgotten by the persons who received them, other anonymous mimeographed leaflets similar in form and content made their appearance during August 1942 under similar circumstances. These leaflets, like those received in June and July, 1942, were mailed anonymously at Chicago, Illinois, and for the most part were directed to the same individuals who had received the leaflets previously issued. Quite obviously they had emanated from the source responsible for the leaflets previously received. This literature did not differ significantly from the leaflets first distributed and merely continued and expanded on the theme that America's participation in the war is uncalled for, unjustified, and the result of foreign pressure, described as "Jewish" and "British," exerted on a weak but willing and obsequious American Government. The phraseology used in the leaflets appearing during August was by comparison even more uncouth and villainous, indicating that the writer felt more confident that his identity could not be detected and that his nefarious activities could not be halted.

Persons who received these various leaflets were, almost without exception, highly incensed that their names should have been

used in connection with the distribution of such inflammatory and seditious material and accordingly a great many individuals forwarded the leaflets, together with the envelopes in which they were enclosed, to the FBI. As time went on, almost 200 leaflets made their way in this manner to the FBI and, accordingly, it was possible to a substantial extent to reconstruct the mailing list utilized by the distributor of the literature. This line of endeavor was to later prove particularly helpful inasmuch as it was apparent that the unknown subject's mailing list was replete with numerous errors. It was observed that the names of individuals, organizations, and addresses appearing on the envelopes in which the literature was enclosed were frequently set forth at slight variance with the correct name of the individual, organization, or address for which the literature was intended. These variations were, of course, subsequently of great assistance in definitely proving the source of the literature when the defendants were identified and access was gained to the sources from whence their mailing list had been compiled.

The fact that so many of the leaflets were referred to the FBI was of itself of great assistance in connection with the technical examinations performed in this case. So many copies of the leaflets as well as their accompanying envelopes were available for examination that it was possible for the Laboratory technicians to reconstruct the typing, mimeographing, sealing and mailing of the leaflets. These examinations reflected that all of the literature had emanated from a single source and, of course, from an examination of the leaflets complete data was available as to the general type of mimeographing machine, typewriter, paper, and other materials used by the unknown subject.

With regard to the paper used by the unknown subject, the Laboratory examinations were particularly helpful. It was determined that two types of paper, one bearing the watermark "Expedite" and the other "Speed-O-Print," had been used. "Expedite" paper is a rather common type and has a large use and distribution. However, "Speed-O-Print"

paper is not so common and comparatively speaking has a rather limited distribution. Although the purchasers of paper of these types in the Chicago area during the period of several months prior to the appearance of the instant leaflets were, of course, myriad, definite investigative leads were revealed by the Laboratory examinations.

Subsequently, the Chicago office in following out these leads and, of course, giving particular consideration to the purchasers of "Speed-O-Print" and "Expedite" paper and the individuals having access to the type of mailing list suggested by the list of the names of the recipients of the literature known to the Bureau began a long and laborious investigation in an effort to separate the "wheat from the chaff." This inquiry was carried out methodically and painstakingly with almost mathematical certainty.

Attention was eventually directed to the Reliable Letter and Addressing Service at 800 West North Avenue, Chicago, Illinois. This concern, operated by one Elmer Soller, was engaged in the business of commercial printing and addressing. Additional inquiry established that Soller, in keeping with his trade, possessed a typewriter and mimeographing machine, and that he had, during the pertinent periods, purchased various and sundry writing materials, including "Expedite" and "Speed-O-Print" paper. Subsequently, examinations of the typewriter and mimeographing machine belonging to the Reliable Letter and Addressing Service were performed by the Bureau's Technical Laboratory, and in this manner it was established that all of the leaflets involved in this case were prepared on these machines. Later, further investigation revealed that the leaflets had been written by one Elmer Hartzel of Chicago, and that this individual had taken them in their rough draft form to Soller in order that they might be mimeographed on a large scale. Soller was aware of the seditious content of the leaflets, but abided by Hartzel's request that the whole affair be maintained on a confidential basis. After the leaflets had been run off on the mimeographing machine, he returned them to Hartzel who then distributed them through the mails.

During the course of subsequent interviews, both Hartzel and Soller fully admitted their participation in the writing, mimeographing and distribution of the leaflets and revealed that approximately 600 copies of the various leaflets had been distributed. Laboratory examinations, as well as their own admissions, further identified them as the distributors of several other similar leaflets, such as "Revolution Will Come to America" and "The Blood Sacrifice," distributed several months prior to America's involvement in the war.

The background and previous activities of Hartzel and Soller were those which might be expected of the authors and distributors of anonymous literature. Hartzel was born during 1891 at New Castle, Pennsylvania, and at the time of writing the leaflets involved in this case, was employed as an inspector at the Pullman Standard Car Company at Chicago. He has previously held similar positions with other industrial concerns. Despite the good pay and satisfactory livelihood which he had been able to earn, he had apparently never fully appreciated the advantages and opportunities offered him by this country. Among his fellow workmen he bore the reputation of being extremely critical of the American Government and favorably disposed toward Germany and Hitler. However, despite his apparently impelling belief in Hitler and the Germans, Hartzel had not chosen to openly declare the full extent of his true beliefs. Although he had, in the course of his conversation with fellow employees, several times signified his attitude toward the German race and German cause, he was not possessed with sufficient fortitude to expound in public on his ideas. Hartzel chose to convey his opprobrious and filthy ideas through the medium of anonymous literature.

Soller was an appropriate confidant and collaborator for a man of Hartzel's type. Small in stature and fawning and servile in manner, he was the type of person usually and characteristically identified with anonymous, stealthy and underhanded methods. He was born in 1903 at Chicago, and lived most of his life in that city where he was engaged principally in the printing business. He was the

type of individual, mediocre in mental processes and subservient to easy guidance, who may be best used as a pawn in almost any sort of undertaking.

After the identification of the source of the leaflets involved in this case, the United States Attorney at Chicago, with the permission of the Department of Justice, authorized prosecution of Soller and Hartzel under Wartime Sedition Statute. Specifically, the violation charged that the defendants had conspired with one another in an endeavor to undermine the loyalty and morale of the armed forces of the United States.

The trial of this matter commenced in Federal Court at Chicago on January 4, 1943, and extended until January 14, 1943, when the Jury returned a verdict finding the defendants guilty of the offense charged. Attorneys for the defense immediately advanced motions for new trials, but the court, on hearing the motions on February 8, 1943, overruled them and imposed sentences of five years and one year and one day on Hartzel and Soller, respectively.

This case presents a very clear and graphic example of the contributions which can be made to modern law enforcement through the utilization of technical processes. The convicted defendants elected to carry out their seditious and morale endangering efforts under the cover of anonymity. Accordingly, the basic problem involved was that of identifying the responsible parties. This was accomplished not according to the characteristic trappings of fiction by following out hunches or acting on conjectures, but rather through methodical and painstaking investigation supplemented and assisted by leads furnished through technical examination of typewriter specimens, paper, watermarks, et cetera.

It is quite obvious, of course, that the general public, specifically the many recipients of these leaflets who had the foresight to forward the literature to the FBI, was of great assistance in the solution of this case. As pointed out previously, the laboratory's examinations and the exhaustive investigation carried out identified the guilty parties and brought them to justice. However, much was contributed to the solution of the case by the fact that the FBI,

and particularly its laboratory technicians, had available so many specimens on which to base their examinations. Quite clearly this case constitutes a classic example of the fruitful results that may be achieved through the cooperation of alert members of the public with law enforcement organizations.

The dangerous and demoralizing propaganda of the convicted defendants who, according to their own admissions, intended to prepare and distribute in the future other leaflets of a similar type, has been silenced. These men, who in a very practical way were interfering with the public morale and successful prosecution of the war effort, have now learned the meaning of the laws safeguarding our national security, as well as the effectiveness of the processes and instrumentalities of the agency charged with the responsibility of enforcing our wartime national security laws.

John Edgar Hoover
Director
Federal Bureau of Investigation
United States Department of Justice
Washington, D. C.
I.C. #14-362
July 3, 1943

Source: NARA-II, RG 65 FBI, Interesting
Case Write-ups, Box 6

See Articles: Civil Disobedience; Federal Bureau of Investigation; Racism; Sedition Act of 1918.

1946 PRIMARY DOCUMENT

FBI Memorandum on a Military Prison Break and Crime Spree

Crimes committed on military bases are frequently prosecuted as federal crimes, although

the jurisdictional overlap between federal agencies like the FBI and military authorities can be complicated. However, especially in the 1940s, the FBI had greater investigative resources and manpower for a case like this, which begins with inmates in a military jail overpowering their guards and proceeds to armed robbery and auto theft. This FBI memo provides specific details, despite the FBI's limited involvement.

Charles Henry Wright, with alias;
Silas Henry Burgess, with aliases;
William Martin Hagan,
George Dauge Ledger, with alias;
Theodore Ernest Hall;
Justice Richard Harrington, with alias;
Reagan Ellsworth Thompson, with aliases;
Edward Oland Byus.

Federal Firearms Act;
Theft Of Government Property;
National Motor Vehicle Theft Act;
Illegal Wearing Of The Uniform;
Crime Of Government Reservation.

The above eight subjects were inmates of the United States Disciplinary Barracks at Camp Peary, Virginia. On November 9, 1945 they overpowered two United States Marine Corps work detail guards, taking two Reising sub-machine guns escaped from custody.

The entire group proceeded to Virginia Highway #60 where they commandeered a 1936 Chevrolet operated by a salesman whom they held up with machine guns. On the same evening they also held up a woman at Menchville, Virginia, ordering her to give them the keys to her 1940 Ford parked in front of her home. It was then believed the group headed for Newport News, Virginia.

On the following day the men held up a man at the point of machine guns at South Hill, Virginia and took from him his 1940 Plymouth Sedan. They then proceeded in their stolen automobiles to the vicinity of Corbin, Kentucky where they accosted another man and a woman companion, forced them out of their car and stole it.

The group then committed an armed robbery of a service station near Berea, Kentucky,

obtaining gasoline and oil and between \$79 and \$80 in cash. They continued their cross-country flight in the 1941 Plymouth and a 1940 Buick to Harrison, Ohio where Wright and Burgess were 1st out of the Plymouth driven by Thompson. These two escapees then stole a 1940 Ford Coach in which they were later apprehended in Cincinnati by local police.

Thompson, in the 1941 Plymouth, drove on alone to Iowa where he sold one of the machine guns to an Ida Grove, Iowa man. Later Thompson was apprehended in Grinnell, Iowa where the stolen Plymouth was recovered.

The main group composed of Hall, Hagan, Harrington, Ledger, and Byus continued in the Buick to Walled Lake, Michigan, where they were apprehended by the Michigan State Police. They were subsequently removed to Cincinnati, Ohio for trial.

In Cincinnati, Ohio all seven subjects with the exception of Thompson were indicted on two counts for violation of the National Motor Vehicle Theft Act. Upon pleas of guilty each was sentenced to five years on the first count and two years on the second count, the sentences to run concurrently.

Thompson entered pleas of guilty to both counts of an indictment returned against him in Cedar Rapids, Iowa, charging him with a violation of the National Motor Vehicle Theft Act and with the sale of Government property. He was sentenced to serve four years on each count, the sentences to run concurrently, and was charged with costs of \$25.

These subjects received total actual sentences of 39 years with 14 suspended and 4 years actual concurrent.

United States Department of Justice
Federal Bureau of Investigation
Washington 25, D.C.
I.C. #4-157
August 9, 1946

Source: NARA-II, RG 65 FBI, Interesting
Case Write-ups, Box 1

See Articles: Automobile and the Police; Military Courts; Military Police.

1946 PRIMARY DOCUMENT

FBI Memorandum on Harboring Army Deserters

The author of this FBI memorandum even includes the headline of a newspaper story covering the fairly minor event. Short-term desertions from army bases were common, and in many cases, absent without leave (AWOL) soldiers were just blowing off steam before returning to base like truant students. Technically, the maximum penalty for desertion during wartime is the death penalty, but it is rare for deserters to be punished with more than a short prison sentence.

Laura Ellen Jones: Isobel Ada Roggins:
Virginia Mary Ploof
Deserter (Harboring):
Conspiracy

Typical of deserter harboring cases is that involving Laura Ellen Jones, Isobel Ada Roggins, and Virginia Mary Ploof, who concealed Privates Joseph Lee Meyers and Houser Becker after their escape from the Military Police guardhouse at Albany, New York, on the night of January 8, 1944.

The three girls resided on Eagle Street in Albany, New York, and Meyers, who had gone Absent Without Leave from Camp Patrick Henry, Virginia, on December 23, 1942, had hidden out in the girls' apartment before he was caught and was placed in the guardhouse at Albany. Private Becker had gone Absent Without Leave from Camp Stewart, Georgia, on December 24, 1945.

Both missing soldiers were apprehended by Albany police officers at approximately 9 p.m. on January 9, 1944, although the three young women had previously denied that the men were in their apartment and had stated that they had not seen Meyers or Becker.

Misses Jones, Roggins, and Ploof were indicted by a Federal Grand Jury at Albany,

New York, on January 19, 1964 on charges of conspiracy to harbor deserters and for the actual harboring of deserters. On March 1, 1944, the three entered pleas of guilty. Miss Jones was sentenced to serve 8 months but this sentence was suspended and she was placed on probation for one year. Misses Roggins and Ploof were sentenced to serve 6 months each, but their sentences were suspended and they were placed on probation for one year each.

In reporting on the arrest of the three young women, a New York newspaper headlined its account as follows: "The Girls Were Hospitable, the Boys AWOL—So the Eagle Street Roost was Raided, the Doves were Caged."

At the time of the incident, Miss Roggins was 21 and Misses Jones and Ploof were both 20 years of age.

Federal Bureau of Investigation
United States Department of Justice
Washington, D. C.
I.C. #42-4029
February 7, 1946

Source: NARA II, RG 65, Class 42,
Box 1, F: 424029

See Articles: Military Courts; Military Police.

1947 PRIMARY DOCUMENT

FBI Memorandum on Draft Desertion

This cut-and-dried Classification 25 case again demonstrates that even by 1945, the FBI's resources had grown considerably, and that Hoover's campaign to have law enforcement agencies fingerprint their suspects and share their data was bearing fruit. Without fingerprint information, there would have been little hope of identifying and apprehending the draft evader

described in this memo. Prosecution was likely declined because by the time of the indictment, the war had been over for six months.

Joseph William Cormier, with alias, Joseph William Rafferty
Deserter; Selective Service.

An individual using the name, Joseph William Rafferty, registered at a Local Draft Board in Buffalo, New York, in November, 1945. Investigation disclosed that the information supplied by Rafferty was fictitious and he was indicted on March 15, 1946, by the Federal Grand Jury for the Western District of New York for failure to report for induction.

FBI Agents forwarded Rafferty's original registration card to the FBI Laboratory with the request that a handwriting examination he made against any fingerprint cards, among the more than 100 million on file, bearing the signatures of persons with the same name as Rafferty.

A search was made of the alphabetical files of the Identification Division on the name, Joseph W. Rafferty. A comparison of signatures with the subject's signature as it appeared on his registration card identified him as Joseph William Gormier.

This man's criminal record disclosed that he was last fingerprinted by the Palm Beach, Florida, Police Department when he applied for a job as a waiter at a local hotel. He was apprehended at once and in a signed statement to Agent Cormier stated he was a Navy deserter. He readily admitted, also, his violation of the Selective Training and Service Act.

Prosecution on the Selective Service violation was declined by the United States Attorney at Buffalo and the subject was released to Naval authorities.

United States Department of Justice
Federal Bureau of Investigation
Washington 25, D. C.
I.C. #25-5768
May 20, 1947

Source: NARA II, RG 65 FBI, Interesting Case
Write-ups, Box 8, Folder IC 25 5768

See Articles: Fingerprinting; Military Courts; Military Police.

1948 PRIMARY DOCUMENT

FBI Memorandum on Clifford Carlyle Skaife's Crime Spree

Dick Skaife was a throwback to the outlaws of earlier generations, at least for a few months. His case is unusual not just for his character—he boasted of his shootouts, committed burglaries, stole automobiles, forged checks, and robbed a post office—but also for his lack of apparent connections to organized crime, a gang, or even a partner. Criminals usually begin their career gradually enough to develop criminal contacts and associations, often in prison.

Clifford Carlyle Skaife, with aliases, Dick Skaife, John E. Cox, Clifford Carlyle Skaife, Richard Skaife, Clifford C. Skaife, Dick Hail, R. J. Williams, R. E. Williams, R. E. Griffiths, Jack Mallory.

Theft From Interstate Shipment
National Motor Vehicle Theft Act
National Stolen Property Act.

The brief and spectacular one-man crime wave of Clifford Carlyle Skaife in western Wisconsin, eastern Iowa, and eastern Minnesota, came to an abrupt but equally spectacular end with his apprehension at a hideout cabin near Sparta, Wisconsin, on May 19, 1945, after an intensive search by FBI Agents and local law enforcement agencies.

Upon apprehension Skaife readily admitted that he had committed two violations of the National Motor Vehicle Theft Act, burglarized the United States Post Office at Potosi, Wisconsin, forged endorsements on many

United States Government checks and on Grant County, Wisconsin, checks stolen from a number of interstate shipments, passed a large quantity of worthless checks, and committed many local burglaries—in the course of a four-month, single-handed reign of lawlessness in west-central Wisconsin.

This investigation necessitated the utmost care because of Skaife's known boasts to shoot it out with arresting officers. FBI Agents found it necessary to enter many lonely regions looking for Skaife and to masquerade as farmers and hunters in rural taverns in their attempts to locate Skaife.

Recoveries made during the course of the investigation consisted of two stolen automobiles valued at \$1,650.00, ten checks of Grant County, Wisconsin, in the amount of \$4,603.24, nineteen United States Government checks totaling \$570.00 and various miscellaneous stolen articles valued at \$162.00.

Clifford Carlyle Skaife, more commonly known as Dick Skaife, was a two time loser in the Wisconsin State Courts and served time in the Green Bay Reformatory and at the Wau-pun State Prison prior to 1942. His original sentences were for breaking and entering and for forgery. He was the thirty-year-old father of two small children residing in Dodgeville, Wisconsin, and had been a driver for the Yellow Truck Lines of Madison, Wisconsin, for several months when he embarked upon his new career of crime. He began by pilfering from various interstate shipments that were entrusted to his care as a driver for the Yellow Truck Lines. The first theft from interstate shipment that came to the attention of the authorities as having been perpetrated by Skaife was on January 29, 1945, when the Montgomery Ward Branch in Platteville, Wisconsin, attempted to return some defective kitchen cabinets to the Chicago Warehouse of Montgomery Ward for repairs. Skaife, the Yellow Truck Lines driver to whom this shipment was entrusted, preferred to deliver these kitchen cabinets to his own home in Dodgeville.

On February 1, 1945, shipments of miscellaneous material from St. Louis, Missouri, to

Belmont, Darlington, Mineral Point, Platteville, and Dodgeville, Wisconsin, were given to Skaife in Madison, Wisconsin, for final delivery. He took one carton to his home and delivered the rest of the shipment. This carton contained miscellaneous notions.

On February 17, 1945, Skaife took one carton of general mill supplies, including bolts, nuts, screws and six hog waterers, from a shipment originating in Dubuque, Iowa, intended for a distributor in Belmont, Wisconsin. This carton was likewise taken to Skaife's home and was recovered during the investigation of the case.

On February 24, 1945, Skaife, who had a key for all the freight depots on his Yellow Truck Lines route, entered the Chicago and Northwestern Depot at Dodgeville, Wisconsin, at 8:30 p.m., using his key, and looked for any interesting items that he might steal. He noticed a shipment of Marvel cigarettes which had been consigned from Proviso, Illinois, on February 22, 1945, to a Dodgeville, Wisconsin, distributor. Skaife took two cases of these cigarettes. A short time before reaching Madison he concealed them alongside the road and continued his trip, taking the truck to the company garage in Madison. He then rented an automobile and went out to retrieve the cigarettes. After loading them in the back of the car he picked up two girl hitchhikers. Before leaving the girls, he gave each several cartons of cigarettes.

During the early part of March, Skaife continued with his petty thefts from interstate shipments and also burglarized several homes. On March 16, 1945, he stole a Packard sedan which was parked in front of a Dodgeville mine, and after burglarizing a filling station, a produce house, and a scale house in the vicinity, drove to Minnesota. At St. Paul he tried to secure a job driving a truck but was unable to do so and on March 21, 1945, he returned to Wisconsin, where as a result of a flat tire he was forced to abandon the Packard automobile near Hillsboro.

Because of the inconvenience of being without an automobile, Skaife on March 22, 1945, stole a black Studebaker Commander sedan at Spring Green, Wisconsin. This automobile

served him for approximately a month, during which time he made many trips to Iowa and Minnesota for the purpose of cashing checks and visiting taverns with various women.

On March 29, 1945, Skaife entered the Chicago, Milwaukee, St. Paul and Pacific Railroad Station at Platteville, Wisconsin, using an old pass key, to see what was available. He stole one pair of shoes and a case of catsup from an interstate shipment. Shortly thereafter he again picked up two girl hitchhikers with whom he had several drinks. He then passed a fifty dollar check in order to take them for an airplane ride. After the ride he took them to dinner at the airport restaurant and, finding that the restaurant had no catsup, he went out to his car and brought in three bottles from the stolen case and gave them to the proprietor. Before parting from the girls he gave them another fifty dollar fraudulent check.

At April 5, 1945, at 1:00 a.m., Skaife's spending money having run a bit low, he parked the Studebaker in front of the Post Office at Potosi, Wisconsin, went to the back of the building and with the use of a screwdriver removed a window and entered. He gathered up from two hundred to three hundred pieces of mail which were lying on a sorting table. He then re-entered the automobile and drove to a point about two miles from town, where he parked, opened the letters, took out all the checks and burned the remaining correspondence. He immediately set out for Iowa and commenced cashing the checks which he had stolen, including twenty-seven United States Treasury Checks in the total amount of \$750.00 and fourteen County of Grant checks amounting to \$5,531.46. He cashed some of these checks at Pottsville, Monona, and Guttenberg, Iowa, using various aliases.

The Studebaker automobile was abandoned by Skaife on April 21, 1945 at LaCrosse, Wisconsin, and he obtained a second-hand Ford by cashing another Grant County check. He received \$111.00 in change from the automobile dealer.

On April 30, 1945, when the pursuit of Skaife became a bit too warm, he drove this

automobile into the Wisconsin River and pinned a suicide note to it written to his small son as a hoax to distract his pursuers. Skaife then started to hitch-hike west and reached as far as the Dakotas when he decided to return to Sparta, Wisconsin, believing that some of the heat was off. He lived in a cabin just outside the city limits of Sparta.

On April 23, 1945, the Milwaukee Office of the Federal Bureau of Investigation was informed of the various activities of Skaife and FBI Agents took up the search after filing a complaint on April 27, 1945, at Madison, Wisconsin, charging Skaife with violation of a Federal statute in connection with his theft of two cases of Marvel cigarettes from the shipment moving in interstate commerce between Proviso, Illinois, and Dodgeville, Wisconsin, and his theft of five pieces of merchandise moving in interstate commerce from Galeswood, Illinois, to Darlington, Wisconsin.

The utmost care was necessary in searching for Skaife inasmuch as he had openly boasted that he would resist arrest by any law enforcement officer, and it was known that he was an excellent shot with the revolver, rifle and shotgun.

On May 19, 1945, Skaife was captured by local law enforcement officials near Sparta. On May 23, 1945, he was taken by FBI Agents to Madison, Wisconsin, where he pleaded guilty to two charges of automobile theft and one charge of theft from interstate shipment. He received a five year sentence on each of the three counts, these sentences to run concurrently.

United States Department of Justice
Federal Bureau of Investigation
Washington 25, D.C.
I.C. #15-13838
March 20, 1948

Source: NARA-II, RG 65 FBI, Interesting
Case Write-ups, Box 6

See Articles: Federal Bureau of Investigation;
Robbery, Contemporary; Robbery, History of;
Wisconsin.

1950 PRIMARY DOCUMENT

FBI Subject Files Used in the Kefauver Hearings on Organized Crime

Senator Estes Kefauver was the chair of the Senate Special Committee to Investigate Crime in Interstate Commerce, which held hearings from 1950 to 1951 to examine the increased reports of organized crime activity since the end of World War II. Prohibition had ended in 1933, but the power of the Mafia didn't wane; Lucky Luciano established the Commission, a ruling committee consisting of the boss of the Chicago Outfit and the heads of New York's Five Families, to reduce infighting and vulnerability. The Mafia expanded its activities into various areas of crime and was reputed to have infiltrated the major labor unions, which was one of the main objects of concern for the Committee. The Committee's aim was to prove the existence of a Sicilian American crime conspiracy operating throughout the country, but it failed to do so. The Society of the Banana refers to an Ohio-based Black Hand group.

There are references in the 1909 report of the International Association of Chiefs of Police to Post Office Department prosecution of Mafia members. I asked Chief Post Office Inspector Garner if they had any reports and he kindly made available such files as are here.

In the Annual Report of the Post Office Department for 1909, there is a general statement under "Black Hand Cases." This is to the effect that early in June, 1909, inspectors had secured evidence to indicate the existence of a secret society among Italians, the sole purpose of which was to secure money by blackmail. In this connection, the inspectors had arrested 14 Italians.

In the Post Office Inspector's file is a clipping of a *Washington Star-News* editorial dated June 9, 1909. This refers to vigorous

prosecutions in Ohio and West Virginia of the Black Hand as contrasted to no action in New York where the Black Hand and Tammany go hand-in-hand.

Other newspaper clippings refer to some Columbus, Ohio cases. There a Black Hand ring, with headquarters at Marion, Ohio, is alleged to have extorted \$230,000 from victims. One clipping is from the Columbus, Ohio Dispatch dated December 5, 1909 and refers to the "absolute silence of the Italians" when the Black Hand subject is raised.

There is a specimen of an extortion letter, in Italian of course, warning against notifying the police signed La Terribile Mano Mera. It is decorated with the skull and crossbones and with a dagger through a heart. This file also contained a handwritten document presumed to be the bylaws and regulations of the Mafia in which they alluded to themselves at Society of Banannas. Mr. Gayner supplied me with a translation of this from the Italian and it is appended.

A 1930 report signed by four Post Office inspectors refers to Black Hand gangs operating in Chicago, Illinois, through 1918-1920. It refers to 12 arrests and the sentencing on May 26, 1920, at Chicago, Illinois, of one MARTELLO and two others to 10 years in Leavenworth. There are the usual references to intimidation of witnesses, fear of reprisal, secrecy and the like.

There are no detailed reports of evidence in the Post Office files here. Such as are available are merely concerned with the progress of court action. Apparently any detailed reports of evidence that were made are retained in the field files.

Chief Garner said their files did not indicate that they had been concerned with the Black Hand since 1920.

(Of course prohibition gave another outlet to the peculiar genius of the Mafia at that time.)

By-Laws and Regulations of the Society of Bananas

Art. 1. The person who tries to reveal the secrets of this society will be punished with death.

Art. 2. A member who offends one of his companions, staining his honor, will be punished according to Art. 1;

Art. 3. The member who tries to do harm to another branch of the society, or to the family of other companions, if this harm shall have been grave, will be undressed and marked on his body with the mark of infamy and called with word of contempt, "Swindler," and if the offense is more grave, he will be stabbed.

Art. 4. The person who is a coward and does not sustain the punishment assigned to him by the society, he will be punished in accordance with Art. 3.;

Art. 5. The member who profits by the opportunity of the plan of another member, is punished as prescribed in Art. 3; if the misdemeanor is less grave he must make restitution within 24 hours of that which he caused to be lost, and he will be cut off from his share of the profits for two months;

Art. 6. The member who offends another companion with offensive titles, if the offense is considered grave, will not only lose his right of membership but will also be stabbed. If the offense is less grave, he will be cut off from his share of the profits for 3 months and at the same time must do his duty;

Art. 7. The member who has received the insult and resents it himself, without notifying the society, is punished according to Art. 3;

Art. 8. The member who abandons one of his companions in the time of need will be held to be a traitor, and then punished according to Art. 3;

Art. 9. The person appointed to inspect must always go around and maintain good order as it is prescribed, passing all the news around. Failing in this for the first time, he will be cut off from his share of the profits for 3 months, the second time he will be stabbed.

- Art. 10. A reunion of the society cannot be called for a visiting member if he is not known.
- Art. 11. The person who goes away must pass the news and tell the "local" in the place where he goes how long he will be there, and if he carries a message he must leave his pledge. Failing to do this, he will be punished according to Art 6.;
- Art. 12. The person who shall have been called to use the knife and does not go through fear, will be punished according to Art. 3.;
- Art. 13. The person who deals sparingly, (does not do his duty) will be punished according to Art. 3 at a convenient place by the society with a brand on his face.;
- Art. 14. The person who refutes the call of command, will, for the first time be deprived of his share for 3 months; for the second time, from one to two cuts with the knife, for the third time, from two to five cuts, as the society thinks best, and to follow his work as prescribed; if it be grave, he will be punished according to Art 3 without having any benefits from the society.
- Art. 15. The person who is sent somewhere by the society will be paid by the day and for the journey;
- Art. 16. There can be no excuse for failures or penalties in conformity with the articles. However there may be extenuating circumstances in case of drunkenness.

M. L. Harney
June 23, 1950

Source: NARA-II, RG 170 Records of the DEA, Subject files of Bureau of Narcotics, Box 50, F: Kefauver's Crime and Conference Senate Crime Commission.

See Articles: Chicago, Illinois; Organized Crime, History of; Organized Crime, Sociology of; Prohibition.

1950
PRIMARY DOCUMENT

Statement of Bureau of Narcotics Commissioner Harry J. Anslinger

The Federal Bureau of Narcotics was an agency in the Treasury Department, established in 1930 to replace older narcotics agencies and assume some of the enforcement responsibilities of federal narcotics laws. Harry Anslinger, who had previously worked in the Bureau of Prohibition, was its first commissioner and served until 1962. He campaigned diligently for stricter drug control laws, harsher sentencing, and the treatment of marijuana usage as a serious drug problem.

Enforcement of narcotics laws in this country for a generation has not only stopped the spread of narcotic addiction but has reduced its incidence by more than half. This reduction has been steady and unspectacular. But over the years, it has represented a great gain against the traffic. The downward trend in the traffic and in addiction, which was continued and was even accelerated through the war years, recently has shown a reversion. Some retrogression was to be expected. However, the recent increase in addiction, mainly among young hoodlums, and the more ready availability of heroin in many parts of the country has been marked.

Since it is a truism that addicts make addicts and because a majority of the persons who become addicted cannot be cured by any means presently known, there is a tremendous responsibility on law enforcement to prevent addiction by shutting off sources of narcotic supply. Our present situation suggests that our agent force is numerically inadequate. We are carrying on with about the same appropriation as we had 20 years ago. The fact that we have practically the same

funds as in the immediate prewar days means that our agent force has been reduced about one-fourth from that period. This is a severe attrition in an organization which must be spread so thinly.

The Bureau of Narcotics is daily concerned with interstate criminal organizations. This is obviously the case since most of the narcotics in the illicit traffic are not produced within the United States but flow here from abroad. On being landed here, they are distributed throughout the country. This distribution is accomplished sometimes by individuals, but more generally by organizations of greater or less complexity. Sometimes a relationship between individuals in these organizations will be merely on the order of buyer and seller. More often it will consist of a number of persons in a common conspiracy to distribute drugs. Persons may shift from one organization to another and intermittently in and out of the traffic.

However, our experience has taught us that once a man has had a taste of the business, he is a logical suspect to repeat. Before the war, some of the most important gangsters in the country were in the illicit narcotic traffic at one time or another.

Such hoodlums as "Waxey" Gordon, "Legs" Diamond, "Lucky" Luciano and their organizations have from time to time dipped into narcotics traffic. Perhaps the most notorious gang was the so-called Murder, Inc., headed by Louis "Lepke" Buchalter. This was not only an interstate but actually an intercountry and intercontinent organization obtaining its supplies in China and distributing them from New York throughout the country, particularly to the southwest. At the time, we estimated this organization smuggled into this country and distributed enough narcotics to supply one-fifth of the entire addict population.

Sometimes big shot racketeers get into the narcotic traffic by merely financing ventures of others. Sometimes they "muscle in" on a lucrative business built up by lesser criminals. Buchalter was a good example. We proved that circumstance in the case where we convicted him and he got a 12 year sentence on

narcotics charges. On the other hand, Emanuel "Mendy" Weiss, often considered Buchalter's first lieutenant, actually participated directly in the narcotics business for several years. We arrested Weiss when he became a fugitive on narcotics and murder charges and he was successfully prosecuted with Buchalter for murder by the New York authorities. Naturally the interest of major racketeers in the narcotic traffic is as far removed as possible from overt participation. It may be only a small item of their manifold operations. Assembling of competent evidence against them is a tremendously difficult undertaking.

Interstate crime operations may take some specialized forms. Before the war we had to deal with a situation where the facilities of a Chinese Tong were being used in the interstate distribution of drugs. In the war years, we had to cope with the depredations of bands of accomplished robbers and burglars who, from centralized points, ranged all over the map robbing and burglarizing legitimate wholesale narcotics stocks. Incidentally, in meeting this problem, we found the interstate flight from justice law to be of great help in those cases where it appeared the prosecution should be locally on robbery or burglary charges rather than for a Federal narcotic offense.

Organizations of interstate racketeers are the underground railway over which passes crime of all sorts in this country.

In 1947, through breakdown in controls in that country, a tremendous quantity of cocaine, the output of 17 clandestine factories, became available in Peru. Many seamen on ships plying between our east coast and Peru engaged in smuggling this drug, and the aggregate result was that a very substantial amount of cocaine was brought in. Within several months, cocaine appeared in the illicit narcotic traffic in almost every section of the country. Prior to that time, the cocaine traffic had been practically non-existent for more than 15 years. Tremendous efforts by this Government and the Peruvians have materially reduced the influx of cocaine. The suppression of this traffic has averted a serious crime wave.

Anyone who reads the daily papers must realize that interstate criminals in commercial rackets (of which narcotics is one) number among their ranks some of the most dangerous and deadly thugs in the country.

Joseph Sica and Alfred Sica of California are hoodlums with important underworld connections in the east and in California to which state they came some years ago. In 1949, a narcotics case was developed against the Sicas principally on the testimony of one Abraham Davidian. Early this year while the case was pending for trial, Davidian was shot to death while sleeping in his mother's home in Fresno, Calif.

Another West Coast case of great importance was developed in 1944. This concerned a New York-California-Mexico smuggling ring in which Salvatore Maugeri and others were convicted. During the course of the investigation, a narcotic agent working undercover learned that one of the ring with whom he was negotiating, Charles "Big Nose" LaGaipa, of Santa Cruz, Calif., was in bad odor with some of his criminal associates. LaGaipa disappeared. He never has been found. His car was recovered with blood on the seat and brain tissue on the dashboard.

One Ignazio Antinori of Tampa, Florida, went to Havana, Cuba, frequently to obtain narcotics for middle western associates. Their leader was Joseph DeLuca. Allegedly because he delivered some drugs of poor quality and did not promptly make restitution, Antinori was killed in Tampa by shotgun fire in 1940. In 1942, we arrested DeLuca, Antinori's two sons, Paul and Joseph, and several others. They were convicted in a trial in which Carl Carramusa, a codefendant appeared as a witness for the Government. Carramusa moved to Chicago to escape possible vengeance by the combine. In 1945, as he was repairing a tire in front of his home, he was killed by a shotgun blast before the eyes of his 15 year old daughter. The murder is unsolved. Neighbors who could have furnished information remain silent because of fear.

Many other such incidents could be cited.

With the help of our sister services in the Treasury and with the fine support of law

enforcement officers throughout the country, we have employed all our resources to reduce the internal narcotic traffic. With about 2% of the Federal criminal law enforcement personnel, we account for more than 10% of the persons committed to Federal penal institutions.

Through the United Nations, where I am the United States Representative on the Commission on Narcotic Drugs, and through other channels of international cooperation, this Government has been exerting every effort to see that the external sources of narcotic drugs are eliminated. Right now, we are trying to bring about agreement among producing countries, particularly in the Near East, to reduce their production to medical needs. The present main source of supply for heroin in this country is now Turkey; for opium, it is Iran. Drugs may come direct or by way of Europeans way-stations. Mexico, an important source of supply in war years, has happily been reduced in prominence, except for marijuana, due to the efforts of its Government to suppress the traffic and because alternative supplies are now available from the Near East.

Where requested, we have assisted foreign police in apprehending some of their international traffickers supplying this country with drugs. We maintain, in booklet form, a watch list of major international narcotic suspects. We distribute this in strategic points in this country and abroad. We believe this has served to restrict the movements of many of these racketeers and it regularly results in the apprehension of some of them. On one occasion, the assistance of this list served to break up an international smuggling ring in a matter of a few days.

What I have said probably forecasts the recommendations I would make. The narcotic traffic is a vicious, commercial racket which lives on the slow murder of its customers.

1. The average prison sentence meted out in the Federal Courts is 18 months. Short sentences do not deter. In districts where we get good sentences the traffic does not flourish. Both the League of Nations and the United Nations have recommended

more severe sentences as one of the best methods to suppress the traffic.

2. There should be a substantial increase in the authorized strength of the Bureau of Narcotics.
3. Federal law enforcement agencies dealing with racketeers should be provided with the means of protecting Government witnesses and persons furnishing information under all circumstances. This might mean changes in the appropriation act language of some services. Also, the criminal laws dealing with the protection of witnesses might be strengthened.
4. I submit as worthy of study a proposal that some centralized agency maintain a gallery of major interstate racketeers and systematically collect, correlate and disseminate information respecting them, a procedure along the lines of the Treasury Department lists of major narcotic suspects. Often the operations of modern big-times racketeers are so diverse and so extensive geographically that few individual local officers can comprehend their magnitude or realize the significance of the small segment which is within their ken. A device of this sort which would spotlight the operations of a major criminal would prove most helpful.
5. I would like to see more of the states set up special state narcotic law enforcement squads as is the case in Pennsylvania and California. Also, I would like to see more cities organize special police narcotics squads similar to those of Los Angeles and New York.

June 28, 1950

Source: NARA-II, RG 170 Records of the DEA, Subj Files of Bureau of Narcotics 1916–1970, Box 50, Kefauver's Crime Conference, Senate Crime Comm.

See Articles: Bureau of Alcohol, Tobacco, Firearms and Explosives; Drug Enforcement Administration; Luciano, "Lucky;" Murder, History of; Narcotics Laws.

1951 PRIMARY DOCUMENT

FBI Memorandum on Hugh Rakes and the Whiskey Conspiracy

The Franklin County Liquor Conspiracy in which Hugh Rakes played a role is also known as the Great Moonshine Conspiracy or the Whiskey Conspiracy. FBI memoranda like this one are some of the only records of the conspiracy; the official trial transcript and court records disappeared in the 1950s. The sheriff and his deputies enlisted people to make moonshine and then collected protection money from them; at least one witness was killed by unknown shooters days before the trial.

This is primarily the story of Hugh Rakes, an uneducated man, hardly able to read or write, born and raised in southwest Virginia, who built a vast dairy empire through the successful three year operation of a gigantic check kiting scheme.

The story begins and ends with an attempt to bribe a juror and embraces the two longest trials in the history of the Commonwealth of Virginia since Aaron Burr was tried for treason in 1807.

In 1936 in southwest Virginia, twenty-four conspirators were tried in the now notorious Franklin County Liquor Conspiracy case which lasted eleven weeks. Hugh Rakes, then thirty-six years of age, was not a defendant in this case but several of his friends were defendants, so Rakes obligingly attempted to bribe one of the jurors. He was convicted of this offense of May 23, 1936, and sentenced to two years and \$1,000 fine.

In 1941 Rakes began to buy dairy farms in Virginia and to remodel and modernize these farms. For his own estate he bought Court Manor at New Market, Virginia, one of Virginia's most famous estates. Rakes reputedly was worth over \$500,000. He apparently

started with \$40,000 capital which was borrowed from Farmers and Merchants State Bank of Fredericksburg, Virginia, Inc. Rakes' available cash and credit limits at banks were quickly exhausted and as his expenses continued to mount he began to kite checks. He did this principally through three banks in Virginia, the Planters Branch of the Farmers and Merchants State Bank of Fredericksburg, Virginia, Inc., the Floyd County Bank of Floyd, Virginia, and the Purcellville National Bank of Purcellville, Virginia. The kite from time to time was passed through other banks in Virginia and West Virginia.

A check kite is a scheme in which one tenders a check on his bank account at some place other than where the bank is located and against insufficient funds in the bank. Before the check arrives at that bank several days later the drawer "covers" it by making a sufficient deposit in the account with another bad check drawn on a second bank at another location. After going through normal banking channels this second check arrives at the second bank days later and is again covered by a third check which may be drawn on the first bank or still another bank and is likewise drawn against insufficient funds. This cycle continues, and usually enlarges, enabling the person operating the kite to obtain money without having any substantial balance to his credit at any bank or ever depositing any real money or assets to meet the checks, which are kept in a constant flow by the banks involved. Once a kite is started it, of course, must eventually break—either by the perpetrator taking up all the outstanding bad checks with good money or by the discovery of the kite and "grounding" it at one of the banks, resulting in a loss to that bank.

The kite that Rakes operated, being so large, so constant, and so widespread, necessarily involved the assistance and cooperation of officials of the banks involved and also of other persons who exchanged checks with Rakes, forged notes for him, and otherwise aided him in maintenance of this kite.

Rakes' principal partner in this scheme was William Reeves Gardner, Vice-President of the Planters Branch of the Farmers and

Merchants State Bank of Fredericksburg, Virginia, Inc. The kite required so much running around by Rakes to cover his checks that he left with Gardner blanks with his signature on them, drawn on other banks, and Gardner would fill in the necessary amounts as they were needed. Paul Karsten, Jr., Assistant Vice-President at the Fredericksburg Bank, on several occasions during Gardner's absence from the bank would see that Rakes' checks were covered when they came in. Joseph A. Sowers, Cashier of the Floyd County Bank, Floyd, Virginia, gave similar aid at his bank, and Kyle N. Weeks, a lawyer with offices in the Floyd Bank, when Rakes was not available to cover checks arriving there, would issue checks or drafts with Rakes' signature, or get other friends of Rakes to issue them. D. E. Nelson, a realtor in Roanoke, Virginia, and Harry Lamson, a Washington, D. C., businessman, both aided in the scheme by permitting their own bank accounts to be used to take up kited checks and by using their personal checks to keep the kite operating. D. E. Nelson also allegedly forged a note for \$75,000 at the Planters Branch of the Farmers and Merchants State Bank of Fredericksburg, Virginia, Inc., to take up a group of the kited checks. Nelson denied the forgery, but at the trial in which Nelson was convicted an FBI handwriting expert testified that the signature on this note was written by D. E. Nelson.

From September, 1942 to April, 1944, Rakes negotiated over seven and three-quarter million dollars of kited checks. For all thirty days of this one and one-half year period Rakes did not have sufficient balance in all of his bank accounts to pay for the checks outstanding each day against those bank accounts. During this period Rakes acquired sixteen dairy farms worth approximately one and one-half million dollars against which, however, were first deeds of trust or a loan of one million dollars which Rakes obtained from an insurance company. The amount of money floating between the banks in this kite from time to time would grow so that it was too unwieldy to handle. Each time this happened, Rakes and Gardner would permit all the kited checks outstanding to flow into the Planters

Branch at Fredericksburg, Virginia (Gardner's bank) and take up all these kited checks with a note. These notes, of course, would be as worthless as the checks which they replaced. The kite could then start up again at zero. The Virginia banking laws prohibit the loaning of money to any one customer of a bank in an amount in excess of 15 per cent of the bank's capital. It was, therefore, necessary to have a person other than Rakes as maker on these notes. In some cases persons assisting Rakes in his scheme would sign the notes. In other cases Rakes would get other friends, not participating in the scheme, to sign the notes as accommodation, guaranteeing payment of the note himself. In still other instances Rakes would allegedly forge a person's name to the note without the knowledge of the person whose name he had signed. Rakes denied these forgeries, but at his trial an FBI handwriting expert testified that Rakes wrote the signatures of the makers on five of these notes which totaled \$153,000.

In April, 1944, the kite broke. Bank examiners at the Floyd County Bank noticed the large transactions in Rakes' account and a similarity of deposits and withdrawals. They checked transactions at the Planters Branch next and found some of the unsecured notes issued to take up the kited checks. The Federal Bureau of Investigation was called in.

The FBI Agents then began a painstaking analysis and tracing of the bank transactions of Hugh Rakes. In an investigation which was pursued for two years the kite was traced step by step back to 1941. The participation in the scheme by other persons gradually unfolded. The notes, together with handwriting specimens of persons involved in the scheme, were submitted to the FBI Laboratory and the forgeries were discovered.

It was found that Gardner received at least \$35,000 as gratuity from Rakes for Gardner's part in concealing and assisting the kite. Other commissions paid to other bankers involved in the kite were also found. One of these bankers cleared over \$70,000 in commissions from Rakes for his service in placing loans for Rakes' benefit and giving financial advice. During the course of the investigation

by the FBI, William R. Gardner was indicted by the Commonwealth of Virginia on a charge of embezzlement. He was convicted and on June 22, 1945, was sentenced to seven years.

When the kite broke in April, 1944, it was found that there was over \$650,000 in notes at the Planters Branch of the Farmers and Merchants State Bank of Fredericksburg, Virginia, from which Hugh Rakes received benefit. It was necessary for the Federal Deposit Insurance Corporation to take over that bank and liquidate it to insure that individual depositors would not lose their savings. The Federal Deposit Insurance Corporation realized \$225,000 from Rakes' properties after paying off mortgages and estimated a net loss of \$425,000 as a result of Rakes' transactions.

The facts developed by FBI Agents were presented to a Federal Grand Jury at Richmond, Virginia, and on October 17, 1945, an indictment was returned, charging ten defendants with violation of the Federal Reserve Act. All of the persons who have been mentioned above were indicted, and, in addition, three others, two of whom were bank presidents.

On March 3, 1947, the trial of nine of the ten defendants was begun in United States District Court, Richmond, Virginia. William R. Gardner had been excused from this trial due to illness and was to be tried later. This trial lasted almost eight weeks, and on April 25, 1947, the jury returned a verdict of guilty against all nine defendants.

On Sunday, April 20, 1947, just before the case was to go to the jury, one of the jurors was approached with an offer of "easy money" if he would hang the jury. The juror properly refused the offer and immediately reported it to the District Judge trying the case. After the trial was over several of the defendants joined in a motion to declare a mistrial due to the prejudice against all defendants which might have been engendered in the jurors' minds as a result of this attempt to bribe one of them. The motion was granted and a mistrial declared.

A new trial of eight of the defendants, including Gardner, was begun in Richmond, Virginia, January 5, 1948. Two of the defendants convicted in the first trial had not joined in the motion for a mistrial, electing to accept

the verdict and the sentence imposed at the first trial. These were Paul Karsten, Jr. , who was placed on probation for one year, and D. E. Nelson, who was fined \$1,000.

At the second trial William R. Gardner pleaded guilty and defendants Harry Lamson, Kyle Menefee Weeks, and Joseph A. Sowers, pleaded nolo contendere. The remaining defendants pleaded not guilty. The jury on January 27, 1948, returned a verdict of guilty against Hugh Namon Rakes. The three defendants who have not been named were acquitted. The court imposed the following sentences:

William R. Gardner, sentenced to five years' imprisonment, to run concurrently with the seven years sentence imposed by the Commonwealth of Virginia;

Hugh Namon Rakes, sentenced to three years' imprisonment, a \$10,000 fine and five additional years suspended, with probation to begin after service of the three year sentence;

Kyle Menefee Weeks, sentenced to a \$5,000 fine;

Joseph A. Sowers, sentenced to a \$3,000 fine; and

Harry Lamson, sentenced to a \$3,000 fine.

In the meantime, FBI Agents had been busy gathering evidence on the attempt to bribe a juror. The man who made this improper approach to a juror was found to be Leslie Earl Martin, a gasoline station employee. Martin readily admitted his crime, giving a full confession and naming Robert Lee Hicks, an attorney in Richmond, Virginia, as the person who procured him to attempt to bribe. According to Martin, Hicks had indicated that he would supply the money to bribe the juror. Hicks had indicated that he would supply the money to bribe the juror. Hicks, when interviewed, categorically denied any

knowledge of the bribery attempt or any contact with Martin for this purpose. FBI Agents began surveilling Hicks and at the same time utilizing Martin as an informant. Martin did not tell Hicks that he had confessed and Hicks arranged meetings with Martin to make him offers of money if he would continue his silence. These were observed by FBI Agents. Hicks, in subsequent interviews, denied having these meetings with Martin.

Martin was indicted by the Federal Grand Jury, Richmond, Virginia, October 6, 1947. The court appointed an attorney to represent Martin but Hicks prevailed upon Martin to dismiss this attorney and retain another attorney, named by Hicks. Martin agreed to this and was tried November 25, 1947, on a plea of not guilty. No evidence was presented by the defense attorney except a showing by the Clerk of the Court that Robert Lee Hicks had not yet been indicted. Martin was convicted and sentenced to three years' imprisonment.

Hicks then continued contact with Martin's family, repaying them the cost of Martin's trial and appealing and meeting with them to make offers of money for them to hold for Earl Martin and asking the family to prevail upon Martin not to testify against Hicks. These meetings were also observed by FBI Agents.

On April 5, 1948, Hicks was indicted by a Federal Grand Jury at Richmond, Virginia, on the charge of corruptly endeavoring to influence a juror. He was tried and convicted on a not guilty plea October 14, 1948, and was sentenced to serve four years' imprisonment.

Federal Bureau of Investigation
United States Department of Justice
Washington 25, D. C.

I.C. #29-11101, #51-331
February 28, 1951

Source: NARA-II, RG 65 FBI, Interesting
Case Write-ups, Box 12

See Articles: Confidence Games and Frauds;
Moonshine; Prohibition; Virginia.

1951 PRIMARY DOCUMENT

Executive Order on the Interdepartmental Committee on Narcotics

This executive order was an early movement in shifting federal narcotics policy toward the modern “war on drugs” mentality. Most drug control laws were still based on fines; the idea of the drug dealer as a dangerous criminal element who should be imprisoned, while present in popular culture and the rhetoric of some agency officials, was not yet reflected in law. After President Truman’s order, the Boggs Act followed in 1952, instituting the first mandatory sentences for drug crimes.

Immediate Release
Executive Order 10302
Interdepartmental Committee on Narcotics

By virtue of the authority vested in me as President of the United States, and subject to the provisions of section 214 of the Independent Offices Appropriation Act, 1946 (59 Stat. 134; 31 U.S.C. 691), it is ordered as follows:

Section 1. There is hereby established the Interdepartmental Committee on Narcotics, which shall have as members one representative of each of the Departments of the Treasury, State, Defense, Justice, and Agriculture, and of the Federal Security Agency. The head of each such department and agency shall designate the representative thereof, and shall also designate an alternate representative. The Chairman of the Committee shall be designated by the President, from among its representative members or as an additional member.

Section 2. It shall be the duty of the said Committee:

(a) To maintain information regarding Federal, State, and local law-enforcement action taken in connection with the illegal sale and

use of narcotic drugs and marijuana, and to disseminate such information to Federal, State, and local law enforcement agencies and crime commissions.

(b) To maintain information regarding the character and effects of narcotic drugs and marijuana and the nature and results of drug addiction.

(c) To examine and study problems and developments arising in the administration and enforcement, national and international, of the laws and conventions relating to narcotic drugs and marijuana.

(d) To examine and study the problems of prevention and control of drug addiction and habituation and of the treatment and rehabilitation of addicts and other habituated persons.

(e) To advise the President as to such problems and developments, and to recommend such international, national, State, and local measures, as, in the opinion of the Committee, should be taken with respect to such problems.

(f) To perform such other functions, authorized or permitted by law, with respect to the enforcement of the laws relating to narcotic drugs and marijuana or with respect to other matters within the scope of this section as the President may direct.

Section 3. All executive departments and agencies of the Government are requested to cooperate with the said Committee and to furnish it such available information as it may require for the performance of its duties; but this order shall not be construed as otherwise modifying the functions or responsibilities of any such department or agency.

Harry S. Truman
The White House
November 2, 1951

Source: NARA II, RG 65 DOT
Narcotics Files, Box 1, F

See Articles: Drug Abuse and Addiction, Contemporary; Drug Abuse and Addiction, History of; Drug Abuse and Addiction, Sociology of; Narcotics Laws; Truman, Harry S. (Administration of).

1952

PRIMARY DOCUMENT

FBI Memorandum on a Case of Kidnapping, Involuntary Servitude, and Slavery

While rarely used in official records now (though retained in many newspapers), the use of dashes with a first and sometimes last letter to avoid printing a profane word, but leaving no doubt about the word, was common practice for most of the 20th century. The FBI in particular was considered one of the more strait-laced and moralistic federal bodies under Hoover's leadership. The "nolle prosequi" order mentioned is an order to not prosecute.

Cecil Allen Kennedy
John William Davis

Kidnapping; Involuntary Servitude
And Slavery; Obstruction Of Justice;
Conspiracy

In June, 1950, Jesse and Irene Smith*, a negro man and his wife, moved from Tifton, Georgia, to the turpentine farm of Cecil Kennedy at Jasper, Florida, where Jesse had contracted to work as a turpentine chipper. The couple soon became dissatisfied and decided to leave since Jesse did not feel he was making as much money as he should.

They then moved to the turpentine farm of S. P. Johnson at Sycamore, Georgia, on August 3, 1950, without notifying Kennedy that they were leaving and without paying him the approximate sum of \$136.50 which they owed him. This sum represented a small grocery account at the turpentine commissary and a state fine which Kennedy had paid for Jesse in order to get him out of jail at Tifton, Georgia, so he could move to the farm.

After the Smiths' departure, Kennedy made efforts personally and through his employees

to locate them. Among other things, he telephoned John Blake*, a turpentine farmer at Sycamore, Georgia, to determine whether they were employed by him. Blake advised him that they were not working for him but they were working for S. P. Johnson, another turpentine farmer in Sycamore.

On August 21, 1950, Kennedy and John Davis, one of his turpentine foremen, went to Sycamore in Kennedy's car. They contacted Blake to enlist his aid in locating Johnson's turpentine quarters. Blake agreed to help them and borrowed a pick-up truck from a friend at Ashburn, Georgia, three miles from Sycamore, since Kennedy felt the Smiths might recognize his car and hide.

The three men arrived at the quarters about midnight on August 21. They were then faced with the problem of locating the Smiths, since Blake did not know which house they occupied. They inquired at two houses before learning the correct location. In making these inquiries, either Kennedy or Davis would go to the front of the house, while the other went to the rear. Blake remained in the truck. Residents of the quarters observed pistols in their possession, became alarmed, and scattered to the woods as a rumor spread that the quarters were being "raided."

After locating the exact house which the Smiths occupied, Davis knocked at the front while Kennedy guarded the rear. Jesse Smith heard the knock and called out "Who is there?" Davis replied "Open up and see." Jesse then opened the door and observed Davis standing on the ground with a pistol in his hand. He also saw Kennedy come around from the side of the house with an axe handle in his hand and a pistol protruding from his pocket. Both men cursed and told Jesse to get his clothes ready to go. Jesse asked Kennedy if he would not be satisfied if he paid him the money he owed him. Kennedy answered, "H--- no, I'd rather have you than the d--- money." Kennedy then told Jesse that he would "bust his brains out if he did not get ready to go." Jesse and Irene Smith then loaded their clothing on the back of the pick-up truck. Kennedy told them to get in the back and instructed Davis to stay in the back

with them and to shoot Jesse's "brains out" if he tried to run.

Jesse Smith's father was in the kitchen of the house when Kennedy and Davis arrived. Upon determining what was happening, he slipped out of the back door and ran to the residence of a turpentine foreman for Johnson and reported what was happening. This foreman dressed immediately but was unable to get to the quarters before the pick-up truck departed. He called the Sheriff of Ashburn, Georgia, and the Georgia State Patrol at Tifton, Georgia, giving them a description of the truck in order that efforts might be made to intercept it.

However, Kennedy and his party had proceeded to Ashburn, Georgia, where they transferred from the truck to Kennedy's car. Kennedy and Davis then left Blake at his house and proceeded south to Jasper, Florida, stopping en route at Valdosta, Georgia, where Kennedy got something to eat while Davis remained in the car with the Smiths. Just before arrival at the Kennedy farm, they stopped the car on a dirt road and instructed Jesse and Irene to lean over the back of the car. Kennedy then beat them in turn with an axe handle while Davis stood by with his pistol in his hand. Kennedy told them that the beating was to "teach them a lesson."

The Smiths were then taken to the home of a relative in Kennedy's quarters where they were told to spend the remainder of the night. Kennedy instructed Jesse to report to work the following morning under the threat of death. Jesse reported as instructed and was taken to the turpentine woods to commence work. However, instead of working, he slipped out of the woods and hitchhiked back to Georgia.

He arrived in Ashburn, Georgia, in several days and was placed in the county jail by the Sheriff for protective custody. While in jail he was examined by a local physician who reported that the bones of both of his buttocks were completely bruised in an area of five by eight inches on each buttock.

Upon determining that Jesse was in jail at Ashburn and that people in that area were aroused about the matter, Kennedy, accompanied by the Sheriff from Jasper, Florida,

returned Irene Smith to Georgia so she could join Jesse. The Smiths then moved back into Johnson's quarters.

Before a Federal Grand Jury at Macon, Georgia, on February 5, 1951, Jesse and Irene Smith both reneged on their signed statements and informed the grand jury that they had freely and voluntarily returned with Kennedy and Davis to Jasper, Florida. As a result of their testimony, the grand jury returned a "no true bill."

Subsequent investigation was conducted to determine whether the Smiths had actually exaggerated the matter at the outset or whether something had occurred which influenced them to testify falsely. Interviews with the Smiths failed to satisfactorily resolve the matter. However, it was ascertained that they were living on a farm near Valdosta, Georgia, at the time they were subpoenaed by the grand jury. They called on the owner of this farm for assistance in obtaining transportation to Macon, Georgia. The latter, in turn, called Kennedy at Jasper, Florida, to discuss the matter with him. Kennedy told him that he was going to Macon and would take the Smiths with him.

Accordingly, Kennedy picked up the Smiths at this farm on Sunday, February 4, 1951, and took them to Macon, Georgia. En route he asked Jesse what he intended to tell the grand jury. Jesse replied that he was going to tell the truth. Kennedy then asked him if he saw him with a gun and Jesse told him that he did.

Kennedy then told Jesse that he should not mention that since he would do him a favor a lot quicker than the Federal Government would. He stated that he would cause both of them trouble by mentioning the gun. Jesse understood that this meant that if he caused Kennedy trouble that Kennedy would then cause him trouble.

Upon arrival in Macon, Kennedy gave the three witnesses money for their hotel rooms and arranged to meet them the next day at the bus station after the grand jury hearing. Jesse and Irene discussed the matter that night in their hotel room and decided that in view of Kennedy's conversation they would be safer

if they reneged on their original statements. Jesse remarked that it occurred to him that he had to work in the woods alone all day and that it would be easy for someone to kill him and hide his body.

After the hearing before the grand jury, Kennedy returned Jesse and Irene to their home. In addition, he took Jesse's father, who was also a Government witness, to his home at Alapaha, Georgia. He inquired of these witnesses as to what had occurred at the grand jury and was assured that everything appeared to be all right. He asked Jesse what he told the jury and Jesse replied that he did not tell about the guns and did not say that he and Irene were forced to return to Florida. When Kennedy put the Smiths out at their residence, he thanked them for helping him.

Both said that Kennedy told them not to tell anyone that he took them and to say that they had gone by bus or train.

The case was presented to a Federal Grand Jury at Macon, Georgia, a second time on April 13, 1951, at which time three indictments were returned. One charged Kennedy with obstructing justice and intimidating witnesses in the Macon Division of the Middle District of Georgia. The second charged the same violation in the Valdosta Division of the Middle District of Georgia. The third charged Kennedy and Davis in the first count with kidnapping the Smiths, and in the second count charged them with conspiracy to hold the Smiths in a condition of peonage.

Davis was arrested at Jacksonville, Florida, on April 19, 1951, and posted bond in the sum of \$3,500 on the same date. Kennedy was arrested at Jacksonville on April 20, 1951, and posted bonds on the same date totaling \$7,500.

All three indictments were transferred to the Albany Division of the Middle District of Georgia for trial. On October 2, 1951, both Kennedy and Davis entered pleas of nolo contendere at Albany regarding the conspiracy violation. Kennedy was fined \$3000 and placed on probation for two years while Davis was fined \$500 and placed on probation for two years. An order of nolle prosequi

was entered on all other counts and indictments by the Government.

*Fictitious

United States Department Of Justice
Federal Bureau Of Investigation
Washington 25, D. C.
I. C. #7-5829
November 24, 1952

Source: NARA-II, RG 65 FBI, Interesting
Case Write-ups, Box 3

See Articles: Kidnapping; Race-Based Crimes; Racism.

1954 PRIMARY DOCUMENT

Dr. J. Robert Oppenheimer Admits Lying During Investigation

In the 1940s, Oppenheimer was one of the key physicists in the Manhattan Project to develop the first nuclear weapons, and has since been called "the father of the atomic bomb." After the war, he became an adviser to the Atomic Energy Commission. Though he had freely disclosed his casual association with communist groups and was closely watched by the FBI during the war, after this letter, he was essentially excommunicated from government work because of the ongoing Red Scare.

Dear Mr. President:

You may be interested in an interim report on the hearing of Dr. Oppenheimer before the Board of which Gordon Gray is the chairman. The case continues to occupy the attention of commentators and columnists and cartoonists, mostly sympathetic to Oppenheimer thus far. The testimony developed in the hearings

has been sensational. It is, of course, being held in strict confidence here.

On Wednesday, Oppenheimer broke and admitted, under oath, that he had lied (the word itself being used a number of times) to security officers of the Army on various occasions; that he had many continuing relations with persons known to him to be Communists while he was engaged on the atomic bomb project and subsequently; and that, as recently as during last December while abroad, he spent two evenings in company with a former academic associate, the same individual who had acted as intermediary between certain Soviet agents and him in 1942 or 1943 in what he characterized as an unsuccessful approach for the delivery of technical information to the Russians.

The hearings are continuing with the presentation of a number of character witnesses. The Counsel who have been in attendance feel that an extremely bad impression toward Oppenheimer has already developed in the minds of the board.

Daily copies of the transcripts are being furnished to the Department of Justice.

Respectfully,
The President
Augusta, Georgia
April 16, 1954

Western Union Telegram, April 19, 1954

ADMIRAL LEWIS STRAUSS
ATOMIC ENERGY COMMISSION

PLEASE FORWARD IF ADMIRAL
STRAUSS IS NOT IN WASHINGTON
THANK YOU FOR YOUR INTERIM
REPORT THE COPY YOU SENT TO ME
HAS BEEN BURNED

DWIGHT D. EISENHOWER

Source: Collection HH-STRAU:
Lewis L. Strauss Papers
Archival Research Catalog (ARC) ID: 187134

See Articles: Eisenhower, Dwight D. (Administration of); Espionage.

1954

PRIMARY DOCUMENT

Communist Control Act

The Red Scare after World War II was a response to very real cold war tensions between the United States and the Soviets. The Communist Control Act, which criminalized the Communist Party of the United States, had considerable support from liberals, who hoped it would clarify the sharp separation between communists and the mainstream left wing. The FBI opposed it out of fear that it would make communists more difficult to monitor. The U.S. Supreme Court did not rule on the constitutionality of the act, which went unenforced.

U.S. Statutes at Large, Public Law 637,
Chp. 886, p. 775-780

AN ACT

To outlaw the Communist Party, to prohibit members of Communist organizations from serving in certain representative capacities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Communist Control Act of 1954."

Findings of Fact

Sec. 2. The Congress hereby finds and declares that the Communist Party of the United States, although purportedly a political party, is in fact an instrumentality of a conspiracy to overthrow the Government of the United States. It constitutes an authoritarian dictatorship within a republic, demanding for itself the rights and privileges accorded to political parties, but denying to all others the liberties guaranteed by the Constitution. Unlike political parties, which evolve their policies and programs through public means, by the reconciliation of a wide variety of individual views, and submit those policies and programs to the electorate at large for approval or disapproval, the policies and

programs of the Communist Party are secretly prescribed for it by the foreign leaders of the world Communist movement. Its members have no part in determining its goals, and are not permitted to voice dissent to party objectives. Unlike members of political parties, members of the Communist Party are recruited for indoctrination with respect to its objectives and methods, and are organized, instructed, and disciplined to carry into action slavishly the assignments given them by their hierarchical chieftains. Unlike political parties, the Communist Party acknowledges no constitutional or statutory limitations upon its conduct or upon that of its members. The Communist Party is relatively small numerically, and gives scant indication of capacity ever to attain its ends by lawful political means. The peril inherent in its operation arises not from its numbers, but from its failure to acknowledge any limitation as to the nature of its activities, and its dedication to the proposition that the present constitutional Government of the United States ultimately must be brought to ruin by any available means, including resort to force and violence. Holding that doctrine, its role as the agency of a hostile foreign power renders its existence a clear present and continuing danger to the security of the United States. It is the means whereby individuals are seduced into the service of the world Communist movement, trained to do its bidding, and directed and controlled in the conspiratorial performance of their revolutionary services. Therefore, the Communist Party should be outlawed.

Proscribed Organizations

Sec. 3. The Communist Party of the United States, or any successors of such party regardless of the assumed name, whose object or purpose is to overthrow the Government of the United States, or the government of any State, Territory, District, or possession thereof, or the government of any political subdivision therein by force and violence, are not entitled to any of the rights, privileges, and immunities attendant upon legal bodies created under the jurisdiction of the laws of the United States or any political subdivision thereof; and whatever rights, privileges, and immunities which

have heretofore been granted to said party or any subsidiary organization by reason of the laws of the United States or any political subdivision thereof, are hereby terminated: Provided, however, That nothing in this section shall be construed as amending the Internal Security Act of 1950, as amended.

Sec. 4. Whoever knowingly and willfully becomes or remains a member of (1) the Communist Party, or (2) any other organization having for one of its purposes or objectives the establishment, control conduct, seizure, or overthrow of the Government of the United States, or the government of any State or political subdivision thereof, by the use of force or violence, with knowledge of the purpose or objective of such organization shall be subject to all the provisions and penalties of the Internal Security Act of 1950, as amended, as a member of a "Communist-action" organization.

(b) For the purposes of this section, the term "Communist Party" means the organization now known as the Communist Party of the United States of America, the Communist Party of any State or subdivision thereof, and any unit or subdivision of any such organization, whether or not any change is hereafter made in the name thereof.

Sec. 5. In determining membership or participation in the Communist Party or any other organization defined in this Act, or knowledge of the purpose or objective of such party or organization, the jury, under instructions from the court, shall consider evidence, if presented, as to whether the accused person:

(1) Has been listed to his knowledge as a member in any book or any of the lists, records, correspondence, or any other document of the organization;

(2) Has made financial contribution to the organization in dues, assessments, loans, or in any other form;

(3) Has made himself subject to the discipline of the organization in any form whatsoever;

(4) Has executed orders, plans, or directives of any kind of the organization;

(5) Has acted as an agent, courier, messenger, correspondent, organizer, or in any other capacity in behalf of the organization;

(6) Has conferred with officers or other members of the organization in behalf of any plan or enterprise of the organization;

(7) Has been accepted to his knowledge as an officer or member of the organization or as one to be called upon for services by other officers or members of the organization;

(8) Has written, spoken or in any other way communicated by signal, semaphore, sign, or in any other form of communication orders, directives, or plans of the organization;

(9) Has prepared documents, pamphlets, leaflets, books, or any other type of publication in behalf of the objectives and purposes of the organization;

(10) Has mailed, shipped, circulated, distributed, delivered, or in any other way sent or delivered to others material or propaganda of any kind in behalf of the organization;

(11) Has advised, counseled or in any other way imparted information, suggestions, recommendations to officers or members of the organization or to anyone else in behalf of the objectives of the organization;

(12) Has indicated by word, action, conduct, writing or in any other way a willingness to carry out in any manner and to any degree the plans, designs, objectives, or purposes of the organization;

(13) Has in any other way participated in the activities, planning, actions, objectives, or purposes of the organization;

(14) The enumeration of the above subjects of evidence on membership or participation in the Communist Party or any other organization as above defined, shall not limit the inquiry into and consideration of any other subject of evidence on membership and participation as herein stated.

Subversive Activities Control Act Amendment

Sec. 6. Subsection 5 (a) (1) of the Subversive Activities Control Act of 1950 (50 U.S.C. 784) is amended by striking out the period at the end thereof and inserting lieu thereof a semicolon and the following: "or

"(E) to hold office or employment with any labor organization, as that term is defined in section 2 (5) of the National Labor Relations

Act, as amended (29 U. S. C. 152), or to represent any employer in any matter or proceeding arising or pending under that Act."

Communist-Infiltrated Organizations

Sec. 7. (a) Section 3 of the Subversive Activities Control Act of 1950 (50 U. S. C. 782) is amended by inserting, immediately after paragraph (4) thereof, the following new paragraph:

"(4A) The term 'Communist-infiltrated organization' means any organization in the United States (other than a Communist-action organization or a Communist-front organization) which (A) is substantially directed, dominated, or controlled by an individual or individuals who are, or who within three years have been actively engaged in, giving aid or support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title, and (B) is serving, or within three years has served, as a means for (i) the giving of aid or support to any such organization, government, or movement, or (ii) the impairment of the military strength of the United States or its industrial capacity to furnish logistical or other material support required by its Armed Forces: Provided, however, That any labor organization which is an affiliate in good standing of a national federation or other labor organization whose policies and activities have been directed to opposing Communist organizations, any Communist foreign government, or the world Communist movement, shall be presumed prima facie not to be a 'Communist-infiltrated organization.'"

(b) Paragraph (5) of such section is amended to read as follows:

"(5) The term 'Communist organization' means any Communist-action organization, Communist-front organization, or Communist-infiltrated organization."

(c) Subsections 5 (c) and 6 (c) of such Act are repealed.

Sec. 8. (a) Section 10 of such Act (50 U. S. C. 789) is amended by inserting, immediately after the words "final order of the Board requiring it to register under section 7," the

words “or determining that it is a Communist-infiltrated organization.”

(b) Subsections (a) and (b) of section 11 of such Act (50 U. S. C. 790) are amended by inserting immediately preceding the period at the end of each such subsection, the following: “or determining that it is a Communist-infiltrated organization.”

Sec. 9. (a) Subsection 12 (e) of such Act (50 U. S. C. 791) is amended by:

(1) striking out the period at the end thereof and inserting in lieu thereof a semicolon and the word “and”; and

(2) inserting at the end thereof the following new paragraph:

“(3) upon any application made under subsection (a) or subsection (b) of section 13A of this title, to determine whether any organization is a Communist-infiltrated organization.”

(b) The section caption to section 13 of such Act (50 U. S. C. 792) is amended to read as follows: “Registration Proceedings before the Board.”

Sec. 10. Such Act is amended by inserting, immediately after section 13 thereof, the following new section:

Proceedings with Respect to Communist-Infiltrated Organizations

“Sec. 13A. (a) Whenever the Attorney General has reason to believe that any organization is a Communist-infiltrated organization, he may file with the Board and serve upon such organization a petition for a determination that such organization is a Communist-infiltrated organization. In any proceeding so instituted, two or more affiliated organizations may be named as joint respondents. Whenever any such petition is accompanied by a certificate of the Attorney General to the effect that the proceeding so instituted is one of exceptional public importance, such proceeding shall be set for hearing at the earliest possible time and all proceedings therein before the Board or any court shall be expedited to the greatest practicable extent.

“(b) Any organization which has been determined under this section to be a Communist-infiltrated organization may, within six months after such determination, file with

the Board and serve upon the Attorney General a petition for a determination that such organization no longer is a Communist-infiltrated organization. “(c) Each such petition shall be verified under oath, and shall contain a statement of the facts relied upon in support thereof. Upon the filing of any such petition, the Board shall serve upon each party to such proceeding a notice specifying the time and place for hearing upon such petition. No such hearing shall be conducted within twenty days after the service of such notice.

“(d) The provisions of subsections (c) and (d) of section 13 shall apply to hearings conducted under this section, except that upon the failure of any organization named as a party in any petition filed by or duly served upon it pursuant to this section to appear at any hearing upon such petition, the Board may conduct such hearing in the absence of such organization and may enter such order under this section as the Board shall determine to be warranted by evidence presented at such hearing. “(e) In determining whether any organization is a Communist-infiltrated organization, the Board shall consider: “(1) to what extent, if any, the effective management of the affairs of such organization is conducted by one or more individuals who are, or within two years have been, (A) members, agents, or representatives of any Communist organization, and Communist foreign government, or the world Communist movement referred to in section 2 of this title, with knowledge of the nature and purpose thereof, or (B) engaged in giving aid or support to any such organization, government, or movement with knowledge of the nature and purpose thereof; “(2) to what extent, if any, the policies of such organization are, or within three years have been, formulated and carried out pursuant to the direction or advice of any member, agent or representative of any such organization, government, or movement;

“(3) to what extent, if any, the personnel and resources of such organization are, or within three years have been, used to further or promote the objectives of any such Communist organization, government, or movement;

“(4) to what extent, if any, such organization within three years has received from, or furnished to or for the use of, any such Communist organization, government, or movement any funds or other material assistance;

“(5) to what extent, if any, such organization is, or within three years has been, affiliated in any way with any such Communist organization, government, or movement;

“(6) to what extent, if any, the affiliation of such organization, or of any individual or individuals who are members thereof or who manage its affairs, with any such Communist organization, government, or movement is concealed from or is not disclosed to the membership of such organization; and

“(7) to what extent, if any, such organization or any of its members or managers are, or within three years have been, knowingly engaged:

“(A) in any conduct punishable under section 4 or 15 of this Act or under chapter 37, 105, or 115 of title 18 of the United States Code; or

“(B) with intent to impair the military strength of the United States or its industrial capacity to furnish logistical or other support required by its armed forces, in any activity resulting in or contributing to any such impairment.

“(f) After hearing upon any petition filed under this section, the Board shall (1) make a support in writing in which it shall state its findings as to the facts and its conclusions with respect to the issues presented by such petition, (2) enter its order granting or denying the determination sought by such petition, and (3) serve upon each party to the proceeding a copy of such order. Any order granting any determination on the question whether any organization is a Communist-infiltrated organization shall become final as provided in section 14 (b) of this Act.

“(g) When any order has been entered by the Board under this section with respect to any labor organization or employer (as these terms are defined by section 2 of the National Labor Relations Act, as amended, and which are organizations within the meaning of section 3 of the Subversive Activities Control

Act of 1950), the Board shall serve a true and correct copy of such order upon the National Labor Relations Board and shall publish in the Federal Register a statement of the substance of such order and its effective date.

“(h) When there is in effect a final order of the Board determining that any such labor organization is a Communist-action organization, a Communist-front organization, or a Communist-infiltrated organization, such labor organization shall be ineligible to:

“(1) act as representative of any employee within the meaning or for the purposes of section 7 of the National Labor Relations Act, as amended (29 U.S.C. 157);

“(2) serve as an exclusive representative of employees of any bargaining unit under section 9 of such Act, as amended (29 U.S.C. 159);

“(3) make, or obtain any hearing upon, any charge under section 10 of such Act (29 U.S.C. 160); or

“(4) exercise any other right or privilege, or receive any other benefit, substantive or procedural, provided by such Act for labor organizations.

“(i) When an order of the Board determining that any such labor organization is a Communist-infiltrated organization has become final, and such labor organization theretofore has been certified under the National Labor Relations Act, as amended, as a representative of employees in any bargaining unit:

“(1) a question of representation affecting commerce, within the meaning of section 9 (c) of such Act, shall be deemed to exist with respect to such bargaining unit; and

“(2) the National Labor Relations Board, upon petition of not less than 20 per centum of the employees in such bargaining unit or any person or persons acting in their behalf, shall under section 9 of such Act (notwithstanding any limitation of time contained therein) direct elections in such bargaining unit or any subdivision thereof (A) for the selection of a representative thereof for collective bargaining purposes, and (B) to determine whether the employees thereof desire to rescind any authority previously granted to such labor organization to enter into any agreement with their employer pursuant to section 8 (a) (3) (ii) of such Act.

“(j) When there is in effect a final order of the Board determining that any such employer is a Communist-infiltrated organization, such employer shall be ineligible to:

“(1) file any petition for an election under section 9 of the National Labor Relations Act, as amended (29 U.S.C. 157), or participate in any proceeding under such section; or

“(2) make or obtain any hearing upon any charge under section 10 of such Act (29 U.S.C. 160); or

“(3) exercise any other right or privilege or receive any other benefit, substantive or procedural, provided by such Act for employers.”

Sec. 11. Subsections (a) and (b) of section 14 of such Act (50 U.S.C. 793) are amended by inserting in each such subsection, immediately after the words “section 13,” a comma and the following: “or subsection (f) of section 13A.”

Sec. 12. If any provision of this title or the application thereof to any person or circumstances is held invalid, the remainder of the title, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

Approved August 24, 1954, 9:40 a.m., M.S.T.

Source: U.S. Statutes at Large, Public Law 637

See Articles: Espionage; Internal Security Act of 1950; Political Crimes, History of; Political Dissidents.

1954 PRIMARY DOCUMENT

The Comic Book Code of 1954

Other than the most popular titles, superhero comics declined after World War II, and horror, crime, and romance comics eclipsed them, mirroring the genres found in pulp magazines. Psychologist

Fredric Wertham published Seduction of the Innocent in 1948, and it became the Reefer Madness of comics, alleging that comics would warp the emotional well-being and sexuality of children and young people. Just as television had self-regulated, so did comic book publishers.

Code Of The Comics Magazine Association
Of America, Inc.

Adopted October 26, 1954

Preamble

The comic-book medium, having come of age on the American cultural scene, must measure up to its responsibilities.

Constantly improving techniques and higher standards go hand in hand with these responsibilities.

To make a positive contribution to contemporary life, the industry must seek new areas for developing sound, wholesome entertainment. The people responsible for writing, drawing, printing, publishing, and selling comic books have done a commendable job in the past, and have been striving toward this goal.

Their record of progress and continuing improvement compares favorably with other media in the communications industry. An outstanding example is the development of comic books as a unique and effective tool for instruction and education. Comic books have also made their contribution in the field of letters and criticism of contemporary life.

In keeping with the American tradition, the members of this industry will and must continue to work together in the future.

In the same tradition, members of the industry must see to it that gains made in this medium are not lost and that violations of standards of good taste, which might tend toward corruption of the comic book as an instructive and wholesome form of entertainment, will be eliminated.

Therefore, the Comics Magazine Association of America, Inc. has adopted this code, and placed strong powers of enforcement in the hands of an independent code authority.

Further, members of the association have endorsed the purpose and spirit of this code

as a vital instrument to the growth of the industry.

To this end, they have pledged themselves to conscientiously adhere to its principles and to abide by all decisions based on the code made by the administrator.

They are confident that this positive and forthright statement will provide an effective bulwark for the protection and enhancement of the American reading public, and that it will become a landmark in the history of self-regulation for the entire communications industry.

Code For Editorial Matter

General standards—Part A

(1) Crimes shall never be presented in such a way as to create sympathy for the criminal, to promote distrust of the forces of law and justice, or to inspire others with a desire to imitate criminals.

(2) No comics shall explicitly present the unique details and methods of a crime.

(3) Policemen, judges, Government officials and respected institutions shall never be presented in such a way as to create disrespect for established authority.

(4) If crime is depicted it shall be as a sordid and unpleasant activity.

(5) Criminals shall not be presented so as to be rendered glamorous or to occupy a position which creates a desire for emulation.

(6) In every instance good shall triumph over evil and the criminal punished for his misdeeds.

(7) Scenes of excessive violence shall be prohibited. Scenes of brutal torture, excessive and unnecessary knife and gunplay, physical agony, gory and gruesome crime shall be eliminated.

(8) No unique or unusual methods of concealing weapons shall be shown.

(9) Instances of law-enforcement officers dying as a result of a criminal's activities should be discouraged.

(10) The crime of kidnapping shall never be portrayed in any detail, nor shall any profit accrue to the abductor or kidnaper. The criminal or the kidnaper must be punished in every case.

(11) The letters of the word "crime" on a comics-magazine cover shall never be

appreciably greater in dimension than the other words contained in the title. The word "crime" shall never appear alone on a cover.

(12) Restraint in the use of the word "crime" in titles or subtitles shall be exercised.

General standards—Part B

(1) No comic magazine shall use the word horror or terror in its title.

(2) All scenes of horror, excessive bloodshed, gory or gruesome crimes, depravity, lust, sadism, masochism shall not be permitted.

(3) All lurid, unsavory, gruesome illustrations shall be eliminated.

(4) Inclusion of stories dealing with evil shall be used or shall be published only where the intent is to illustrate a moral issue and in no case shall evil be presented alluringly, nor so as to injure the sensibilities of the reader.

(5) Scenes dealing with, or instruments associated with walking dead, torture, vampires and vampirism, ghouls, cannibalism, and werewolfism are prohibited.

General standards—Part C

All elements or techniques not specifically mentioned herein, but which are contrary to the spirit and intent of the code, and are considered violations of good taste or decency, shall be prohibited.

Dialogue

(1) Profanity, obscenity, smut, vulgarity, or words or symbols which have acquired undesirable meanings are forbidden.

(2) Special precautions to avoid references to physical afflictions or deformities shall be taken.

(3) Although slang and colloquialisms are acceptable, excessive use should be discouraged and, wherever possible, good grammar shall be employed.

Religion

(1) Ridicule or attack on any religious or racial group is never permissible.

Costume

(1) Nudity in any form is prohibited, as is indecent or undue exposure.

(2) Suggestive and salacious illustration or suggestive posture is unacceptable.

(3) All characters shall be depicted in dress reasonably acceptable to society.

(4) Females shall be drawn realistically without exaggeration of any physical qualities.

NOTE.—It should be recognized that all prohibitions dealing with costume, dialog, or artwork applies as specifically to the cover of a comic magazine as they do to the contents.

Marriage and sex

(1) Divorce shall not be treated humorously nor represented as desirable.

(2) Illicit sex relations are neither to be hinted at nor portrayed. Violent love scenes as well as sexual abnormalities are unacceptable.

(3) Respect for parents, the moral code, and for honorable behavior shall be fostered. A sympathetic understanding of the problems of love is not a license for morbid distortion.

(4) The treatment of live-romance stories shall emphasize the value of the home and the sanctity of marriage.

(5) Passion or romantic interest shall never be treated in such a way as to stimulate the lower and baser emotions.

(6) Seduction and rape shall never be shown or suggested.

(7) Sex perversion or any inference to same is strictly forbidden.

Code For Advertising Matter

These regulations are applicable to all magazines published by members of the Comics Magazine Association of America, Inc. Good taste shall be the guiding principle in the acceptance of advertising.

(1) Liquor and tobacco advertising is not acceptable.

(2) Advertisement of sex or sex instruction books are unacceptable.

(3) The sale of picture postcards, “pinups,” “art studies,” or any other reproduction of nude or seminude figures is prohibited.

(4) Advertising for the sale of knives or realistic gun facsimiles is prohibited.

(5) Advertising for the sale of fireworks is prohibited.

(6) Advertising dealing with the sale of gambling equipment or printed matter dealing with gambling shall not be accepted.

(7) Nudity with meretricious purpose and salacious postures shall not be permitted in the advertising of any product; clothed figures shall never be presented in such a way as to be offensive or contrary to good taste or morals.

(8) To the best of his ability, each publisher shall ascertain that all statements made in advertisements conform to fact and avoid misrepresentation.

(9) Advertisement of medical, health, or toiletry products of questionable nature are to be rejected. Advertisements for medical, health, or toiletry products endorsed by the American Medical Association, or the American Dental Association, shall be deemed acceptable if they conform with all other conditions of the Advertising Code.

Sources: Senate Committee on the Judiciary. *Comic Books and Juvenile Delinquency, Interim Report, 1955.* Washington, DC: United States Government Printing Office, 1955; and <http://historymatters.gmu.edu/d/6543>

See Articles: Morality; Obscenity; Obscenity Laws.

1954 PRIMARY DOCUMENT

Senate Resolution 301: Censure of Senator Joseph McCarthy

McCarthy is emblematic for the Red Scare of the 1950s. As it had many inciters, it would have occurred without him, but McCarthy became the public face of accusing fellow Americans of communist subversion. As early as 1950, he produced what he claimed was a list of known communists in the State Department, and this

fear of communist infiltration became known as McCarthyism. When he was finally censured, it was for only two of the 46 charges listed by a special committee.

United States Senate Resolution

Resolved, That the Senator from Wisconsin, Mr. McCarthy, failed to cooperate with the Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration in clearing up matters referred to that subcommittee which concerned his conduct as a Senator and affected the honor of the Senate and, instead, repeatedly abused the subcommittee and its members who were trying to carry out assigned duties, thereby obstructing the constitutional processes of the Senate, and that this conduct of the Senator from Wisconsin, Mr. McCarthy, is contrary to senatorial traditions and is hereby condemned.

Sec 2. The Senator from Wisconsin, Mr. McCarthy, in writing to the chairman of the Select Committee to Study Censure Charges (Mr. Watkins) after the Select Committee had issued its report and before the report was presented to the Senate charging three members of the Select Committee with “deliberate deception” and “fraud” for failure to disqualify themselves; in stating to the press on November 4, 1954, that the special Senate session that was to begin November 8, 1954, was a “lynch-party”; in repeatedly describing this special Senate session as a “lynch bee” in a nationwide television and radio show on November 7, 1954; in stating to the public press on November 13, 1954, that the chairman of the Select Committee (Mr. Watkins) was guilty of “the most unusual, most cowardly things I’ve ever heard of” and stating further: “I expected he would be afraid to answer the questions, but didn’t think he’d be stupid enough to make a public statement”; and in characterizing the said committee as the “unwitting handmaiden,” “involuntary agent” and “attorneys-in-fact” of the Communist Party and in charging that the said committee in writing its report “imitated Communist methods — that it distorted, misrepresented, and omitted in its effort to

manufacture a plausible rationalization” in support of its recommendations to the Senate, which characterizations and charges were contained in a statement released to the press and inserted in the Congressional Record of November 10, 1954, acted contrary to senatorial ethics and tended to bring the Senate into dishonor and disrepute, to obstruct the constitutional processes of the Senate, and to impair its dignity; and such conduct is hereby condemned.

Source: <http://patriotpost.us/document/senate-resolution-301-censure-of-senator-joseph-mccarthy>

See Articles: Eisenhower, Dwight D. (Administration of); McCarthy, Joseph.

1955 PRIMARY DOCUMENT

Congressional Report on Juvenile Delinquency

The only overt effect of the Senate Subcommittee on Juvenile Delinquency’s investigation was on comic book publishers, which by the end of the decade had returned their focus to superheroes and resisted producing comic books aimed at adults until the 1980s. Nevertheless, the threat not only of government censorship, but also (more realistically) of negative publicity, kept a tight leash on entertainment for a long time.

84TH CONGRESS
1st Session Senate

Juvenile Delinquency

Interim Report of the Subcommittee of the
Committee On The Judiciary to Study
Juvenile Delinquency in the United States
United States Senate
Eighty-Third Congress

Second Session
Pursuant To
S. Res. 89 and S. Res. 190
(83rd Congress, 1st and 2nd Session)

I. Objectives Of The Subcommittee

Immediately after its organization, and pursuant to the directive of Senate Resolution 89, the subcommittee set for its objectives the following:

(a) Factfinding, to determine the extent, causes, character and contributing factors with respect to juvenile delinquency; the adequacy of existing treatment and preventive measures; the efficacy of existing Federal laws relating to juvenile delinquents and youthful offenders, including those laws relating to narcotic addiction; and the manner and effects of Federal sentencing procedures;

(b) Focusing public attention, through the factfinding process, upon existing problems, including the use of narcotics, relating to juvenile delinquency and the commission of offenses by youths throughout the country; and

(c) Recommending, on the basis of the facts found, such measures and action as the subcommittee may determine to be needed to prevent juvenile delinquency and the commission of criminal offenses by youths, and to rehabilitate those children and youths who have already embarked upon delinquent or criminal careers or who have become narcotic addicts.

The subcommittee made investigations on the community level in every major geographical section to determine the total implications of the nationwide scope of the problem. At these community hearings, the subcommittee attempted to develop information within the community relative to the following:

(a) The extent and character of juvenile delinquency within the community.

(b) The existence, if any, of organized juvenile gangs; the extent to which these gangs operate, and the activities in which they are engaged.

(c) The extent of the use of narcotics and synthetic drugs among juveniles in the community.

(d) The existence in the community of living conditions which contribute to delinquency with particular attention to such conditions in relation to children of migratory workers and other socially disadvantaged groups of children.

(e) The use of alcoholic beverages by juveniles contrary to law, and the effect it may have upon their delinquency.

(f) The existence in the community of adult exploitation of juveniles by recruiting them into crime, by encouraging them to gamble, by directing their criminal activities, or by profiting from their criminal exploits, i.e. fencing stolen goods by juveniles, and white slavery.

(g) The extent to which communities have developed successful programs for the prevention of juvenile delinquency and for the rehabilitation of delinquent children and youths, including juvenile courts and probation procedures, detention facilities, etc.

Methods of investigation utilized have varied according to subject matter. In broad terms, the subcommittee has conducted three types of investigations—community investigations, investigations of special problems, and investigations into relevant Federal programs.

In advance of each community hearing an investigating or factfinding team was sent into the community. The aim of the team was to determine the extent, causes, character, and contributing factors with respect to juvenile delinquency and to arrange for the presentation of these data in a logical and forceful manner at the hearing. Team members contacted and worked with community officials and agencies. They also made firsthand observations in the community.

It should be emphasized that the subcommittee staff did not conduct surveys of community programs in the fields of mental health, recreation, social welfare, and education. They did, however, through the aid of local persons secure a general picture of the adequacy of existing treatment and preventive measures relating to juvenile delinquency. These materials were then organized for presentation at subcommittee hearings.

Investigations of both special problems and the various Federal programs concerned with

juvenile delinquency involved the collection and analysis of materials from throughout the United States. These were collected by use of questionnaires and through field investigations and observations conducted by various members of the subcommittee staff.

II. The National Problem

Size, Seriousness, And Other Characteristics

During its 17 months' work, the subcommittee has tried to assemble a complete picture of juvenile delinquency—its extent, nature, and causes—on a nationwide basis. To this end, some 3,000 letters of inquiry were directed to law-enforcement officials, judges, educators, crime commissions, and welfare and mental-health agencies throughout the country. Thousands of replies, including hundreds of unsolicited letters, many accompanied by copies of detailed studies, were received from persons and organizations interested in the problems and located in communities of every size. The subcommittee also scheduled hearings designed to secure a broad, national view of the problem. Persons invited to testify at these hearings represented a variety of backgrounds and points of view, and included a large number who had made outstanding contributions to the advancement of knowledge regarding the causes of juvenile delinquency and methods through which it may be prevented. Also included were individuals who had given noteworthy leadership in the development of programs designed to rehabilitate juvenile delinquents and youthful offenders.

Increase In Number

Following the end of World War II, the number of juvenile delinquents decreased until, in 1948, there were less than 300,000 appearing annually before the juvenile courts. Then, in 1949, with the stresses and strains of the cold war and the Korean hostilities, juvenile delinquency again began to rise. Since 1948, a steadily increasing number of American boys and girls have become involved in delinquency each year. The best available figures on the subject on a national basis, are those compiled by the Children's Bureau, based on

cases handled by juvenile courts. The stream of children through the Nation's juvenile courts grew from 300,000 in 1948 to 435,000 in 1953, and only 10 percent of this increase can possibly be attributed to the enlarged juvenile population. (The actual number of children who have broken the law, including those whose cases were disposed of without court action, probably exceeds one million and a quarter. This figure assumes that there are at least three juvenile offenders brought to the attention of the police for every child actually brought before the juvenile courts.) By 1960, this country will have a further enlarged population, age 10 through 17 years. If the rate of juvenile delinquency continues to mount at the rate experienced during the past 5 years, the number of boys and girls going through the juvenile courts annually may well total 785,000 by that date.

Present Efforts To Prevent Delinquency

In testimony before the subcommittee it was estimated that unless the disgraceful spiraling increase in juvenile crime can be stopped, instead of 1,250,000 between the ages of 10 and 17 now getting into trouble with the police, we shall have 1,700,000 such youngsters in the year 1960. The stakes in the fight to prevent delinquency are therefore great. But even if we should somehow succeed in arresting the increase in rate of juvenile delinquency, we cannot afford to become complacent. A million and a quarter youngsters a year getting into trouble with the police is many, many more than this Nation can afford. The challenge is to prevent as many as possible of these children from taking the first wrong turn on the road to waywardness and to somehow turn those who do back onto the right road.

The fight against juvenile delinquency must be a two-pronged fight. We must devote sufficient energy and resources not just to rehabilitate boys and girls after they get into trouble but also to prevent their getting into trouble in the first place.

It must be emphasized that just as juvenile delinquency has many and varied causes, so its prevention must encompass a myriad of

different types of programs and attacks. But of one thing we can be quite certain. If this Nation continues its present feeble attempts to prevent juvenile delinquency, we can be certain that the harvest we will reap in later years will be a bigger and tougher crop of juvenile delinquents and youthful and adult criminals, ultimately requiring more and more prisons.

Forms Of The Problem

The National Auto Theft Association in Chicago told the subcommittee that, from 1948 on, the number of automobiles stolen by persons under 17 years of age has steadily risen. In 1952, 70 percent of all automobiles stolen were stolen by boys or girls under 17 years of age. Such thefts involve a loss of millions of dollars to the automobile owners of the Nation.

During 1952, 37 percent of all persons arrested for robberies were under 21 years of age. This young age group accounted for 47 percent of all arrests made for larceny, 68 percent of those for auto theft, and even 35 percent of all arrests for rape.

One of the most sinister of all delinquency problems is that of narcotic addiction among children. The subcommittee was told that there are today an estimated 7,500 juvenile addicts in New York City alone; in Los Angeles County, 8 percent of the children brought before juvenile courts have had contact with narcotics; in Denver it was found that 80 to 90 percent of all Spanish American boys brought into juvenile courts have had such contact; in Oklahoma City, approximately 250 children between 13 and 18 years of age were regularly addicted to drugs, and in Iowa, investigations revealed that 25 percent of the girls admitted to the State training school for girls habitually used marijuana.

The problem of the use of narcotics and dangerous drugs by juveniles is discussed in detail in a later section of this report. Here it will suffice to note that although some of the experts appearing before the subcommittee disagreed about the seriousness of the problem, the total evidence available indicates that there has been a large increase in drug

violations by juveniles during the past 5 years in most of our urban centers.

Increase In Seriousness Of Acts In Lower Age Groups

The growing seriousness of the problem of juvenile delinquency is also underscored by the fact that an increasing number of younger boys and girls are committing serious offenses. During each successive year since 1948, for example, a larger number of persons under 18 years of age have been involved in such offenses as burglaries, robberies, and automobile thefts.

Delinquency Increased In Nonurban Areas

Heretofore, juvenile delinquency has been thought of as a big-city problem, and indeed it does achieve its most acute form in large metropolitan areas. It should be noted, however, that whereas juvenile delinquency increased 29 percent nationwide between 1948 and 1952, the number of juvenile offenders appearing in court serving populations of less than 100,000 increased 41 percent.

An increase both in the number of boys and girls committing offenses and in the severity of these offenses has been noted in every region of the United States. Although many individual communities seem excepted, communities reporting such increases range in character from rural and semirural to large urban centers.

Neither are particular forms of delinquent conduct peculiar to one type of community or to any one geographical region. Juvenile drug addiction would seem to represent the only exception to this rule, in that it is limited to communities where there is substantial traffic in illicit drugs. Gangs, commonly considered a big city phenomenon, for example, also appear in communities relatively small in size. While the pattern of juvenile delinquency varies from community to community, these differences do not appear to be directly related to size, wealth, or other obvious differentials.

Delinquency Exists In All Economic Groups

Although physically deteriorated and socially disorganized neighborhoods, usually termed "slum areas," contribute disproportionately

to the delinquency caseloads of police and juvenile courts, economical well-to-do communities also produce many juvenile delinquents. As a matter of fact, certain forms of delinquent conduct appear more prevalent in the latter type of neighborhoods. An investigation into the widespread use of synthetic drugs by juveniles in Oklahoma City revealed that not one of the juveniles involved came from the so-called wrong side of the tracks.

It is also reasonable to believe, and it was so testified, that in many instances delinquents from better neighborhoods are less likely to come to the attention of the police and courts. School authorities may be more inclined to permit parents of means and status to work out the problems of their children, for example, than parents with no financial ability and standing. The children of parents with available funds may be sent quietly to private psychiatrists or to boarding schools and consequently, the transgressions of those children are not likely to be presented to the juvenile court.

III. Special Problems

Juvenile Delinquency Among Indian Children

The subcommittee, over a period of many months, received numerous communications from Indian leaders, public officials and the general public expressing concern over juvenile delinquency problems on Indian reservations. As a result, the subcommittee decided to probe the problem of juvenile delinquency among Indians, and the procedures for handling such delinquents, including the adequacy of existing statutes and facilities.

Time did not permit a full investigation of juvenile delinquency among all Indian children. This report, therefore, relates only to those reservations from which substantial data were received. Scattered and inconclusive data received by the subcommittee from reservations not fully explored suggest that the situation on certain reservations may be far different from that revealed in this report as to living conditions, income levels, law and order, education, health, welfare, assimilation, and other factors related to juvenile delinquency.

Neither is it possible in this brief summary to report fully on some of the differences among those reservations from which substantial data were secured and which, therefore, are included in the report. This report describes the general prevailing situation as the record reveals it and includes a few illustrations of some marked differences prevailing among the reservations included. For example, in the field of education, the report points out that the average daily attendance of Indian children has improved greatly. This was testified to in the North Dakota hearing. However, it is a well-known fact that many of the Navaho children in Arizona are not provided any school at the present time and even fewer attended school as little as 6 years ago. Further investigations should be made and hearings held in additional geographical areas to complete the picture.

Source: NARA-II, RG 65, DOT, Narcotics
Files, Box 2 F: Senate Comm. Juvenile
Delinquency

See Articles: Gangs, Contemporary; Gangs, History of; Gangs, Sociology of; Juvenile Delinquency, History of; Juvenile Delinquency, Sociology of.

1955
PRIMARY DOCUMENT

Senate Subcommittee's Interim Report on Television and Juvenile Delinquency

This account of the Code of Practices for Television Broadcasters, a self-regulatory standards code used until the 1990s, comes from the 1954 to 1955 hearings of the Senate Subcommittee to Investigate Juvenile Delinquency. During

the 1950s, covalent bonds began to be created between the public dialogue about wayward youth and the public concern for the entertainment that young people were exposed to, whether that entertainment was television, comic books or, eventually, video games.

The National Association of Radio and Television Broadcasters

The National Association of Radio and Television Broadcasters (formerly known as the National Association of Broadcasters) is a trade association of the radio and television industry, organized in 1923. The NARTB provides industry services relating to labor, public and government relations, engineering, research and legal developments. On May 1, 1955, membership included 1,234 AM (amplitude modulation) stations, 327 FM (frequency modulation) stations and 3 national radio networks, Columbia Broadcasting System, Mutual Broadcasting System, and National Broadcasting Co., Inc. On the television side, the National Association of Radio and Television Broadcasters had 267 television stations as members and all 4 national television networks, American Broadcasting Co., Columbia Broadcasting System, DuMont Television Network and the National Broadcasting Co., Inc....

Activities leading to the adoption of a code for television were begun simultaneously with the licensing of stations. The experience of many years of operation in radio broadcasting pointed to the desirability of early agreement upon standards of programs. The NARTB Television Code became effective March 1, 1952. Subscribers are entitled to display a seal of good practice signifying compliance with code standards.

The code is printed in booklet form and includes a preamble, section on advancement of education and culture, community responsibility, treatment of news and public events, controversial public issues, political telecasts, religious programs, presentation of advertising. Several pages are devoted to regulations dealing with acceptability of program material, including such items as:

(o) The presentation of cruelty, greed and selfishness as worthy motivations is to be avoided.

(q) Criminality shall be presented as undesirable and unsympathetic. The condoning of crime and the treatment of the commission of crime in a frivolous, cynical, or callous manner is unacceptable.

(r) The presentation of techniques of crime in such detail as to invite imitation shall be avoided.

(s) The use of horror for its own sake will be eliminated; the use of visual or aural effects which would shock or alarm the viewer, and the detailed presentation of brutality or physical agony by sight or by sound are not permissible.

(t) Law enforcement shall be upheld, and the officers of the law are to be portrayed with respect and dignity.

(u) The presentation of murder or revenge as a motive for murder shall not be presented as justifiable.

(x) The appearance or dramatization of such persons featured in actual crime news will be permitted only in such light as to aid law enforcement or to report the news event.

Responsibility toward children is accorded separate attention in the code. This section is quoted in its entirety as follows:

1. The education of children involves giving them a sense of the world at large. Crime, violence, and sex are a part of the world they will be called upon to meet, and a certain amount of proper presentation of such is helpful in orienting the child to his surroundings. However, violence and illicit sex shall not be presented in an attractive manner, nor to an extent such as will lead a child to believe that they play a greater part in life than they do. They should not be presented, without indications of the resultant retribution and punishment.
2. It is not enough that only those programs which are intended for viewing by children shall be suitable to the young and immature. Television is responsible for insuring that programs of all sorts which

occur during the times of day when children may normally be expected to have the opportunity of viewing television shall exercise care in the following regards:

- (a) In affording opportunities for cultural growth as well as for wholesome entertainment.
- (b) In developing programs to foster and promote the commonly accepted moral, social, and ethical ideals characteristic of American life.
- (c) In reflecting respect for parents, for honorable behavior, and for the constituted authorities of the American community.
- (d) In eliminating reference to kidnapping of children or threats of kidnapping.
- (e) In avoiding material which is excessively violent or would create morbid suspense, or other undesirable reactions in children.
- (f) In exercising particular restraint and care in crime or mystery episodes involving children or minors.

Thad H. Brown, Jr., director of television, NARTB, testified as a witness before a subcommittee of the Committee on Interstate and Foreign Commerce of the House of Representatives on September 16, 1952, regarding the television code which had then been in operation for 6 months. He said:

Why was this action taken? Because, for one thing, there was a sense of watchful waiting on behalf of Congress and on behalf of accountable and responsible organizations. Quite frankly, the shadow of incipient censorship by Government regulation was evident *

* * In the formative days of the movies, six States apparently found it necessary and desirable to establish motion picture censorship boards. In 1926, the motion picture industry initiated its first code. Since that time, not one additional State has established a board to censor movies. On the other hand, and this is interesting, the six boards established prior to the initiation of the movie code are still in existence * * * Both by the program standards committee and by the entire television membership of the association, there was clearly

apparent to an observer a voluntary sense of responsibility shown by the pioneer telecasters (and there were only 108 at this time) to develop and continue insofar as was comparatively possible, a wholesome stature for the commercial television broadcast industry in the years to come. . . .

Ralph Hardy, then vice president in charge of Government relations of the NARTB, testified in June 1954, before the Subcommittee To Investigate Juvenile Delinquency with regard to the method devised "for assuring reasonable observance of the code provisions." A television code review board (consisting of 5 members who are appointed by the president of the NARTB to serve 2-year terms without compensation) is responsible for the administration, interpretation, and enforcement of the code. He pointed out that this code review board meets at least four times a year for considering complaints received by the NARTB concerning specific programs, series of programs, or advertising practices on the television stations or networks.

Harold E. Fellows, president and chairman of the board of directors of the NARTB, testified on October 20, 1954, that the television code review board may file charges against a station before the television board of directors. Upon an affirmative two-thirds vote, the board of directors may void, remove, or temporarily suspend a subscription and the authority to further identify itself as a code station through the seal of good practice.

Since subscribers have responded immediately to code review board suggestions, no such charges have been filed before the board of directors . . .

Appendix

The Television Code Of The National Association Of Radio And Television Broadcasters (Effective March 1, 1952; second edition March 1954)

(By the National Association of Radio and Television Broadcasters, Washington, D.C.)

Preamble

Television is seen and heard in every type of American home. These homes include children

and adults of all ages, embrace all races and all varieties of religious faith, and reach those of every educational background. It is the responsibility of television to bear constantly in mind that the audience is primarily a home audience, and consequently that television's relationship to the viewers is that between guest and host.

The revenues from advertising support the free, competitive American system of telecasting, and make available to the eyes and ears of the American people the finest programs of information, education, culture and entertainment. By law the television broadcaster is responsible for the programming of his station. He, however, is obligated to bring his positive responsibility for excellence and good taste in programming to bear upon all who have a hand in the production of programs, including networks, sponsors, producers of film and of live programs, advertising agencies, and talent agencies.

The American businesses which utilize television for conveying their advertising messages to the home by pictures with sound, seen free-of-charge on the home screen, are reminded that their responsibilities are not limited to the sale of goods and the creation of a favorable attitude toward the sponsor by the presentation of entertainment. They include, as well, responsibility for utilizing television to bring the best programs, regardless of kind, into American homes.

Television, and all who participate in it are jointly accountable to the American public for respect for the special needs of children, for community responsibility, for the advancement of education and culture, for the acceptability of the program materials chosen, for decency and decorum in production, and for propriety in advertising. This responsibility cannot be discharged by any given group of programs, but can be discharged only through the highest standards of respect for the American home, applied to every moment of every program presented by television.

In order that television programming may best serve the public interest, viewers should be encouraged to make their criticisms and positive suggestions known to the television

broadcasters. Parents in particular should be urged to see to it that out of the richness of television fare, the best programs are brought to the attention of their children. . . .

Sources: Senate Committee on the Judiciary, Subcommittee to Investigate Juvenile Delinquency, Television and Juvenile Delinquency, interim report, 1955, Committee Print; and <http://historymatters.gmu.edu/d/6558>

See Articles: Indecent Exposure; Morality; Obscenity; Obscenity Laws; State Blue Laws; Violent Crimes.

1955 PRIMARY DOCUMENT

Trial Summary From *Mildred Juanita Adams v. United States of America*

The circumstances of Mildred Juanita Adams's acquittal evince an ongoing problem in the use of undercover agents and informants in law enforcement—not only the line between apprehension and entrapment, but also the question of whether it is fair, ethical, or useful to enable a suspect to commit a crime that they might be willing to commit but would not commit without the intervention of the undercover informant.

No. 15001.
United States Court of Appeals,
Fifth Circuit,
March 25, 1955

Defendant was convicted of selling heroin. The United States District Court for the Northern District of Texas, T Whitfield Davidson, C. J., entered judgment of conviction and defendant appealed. The Court of Appeals, Tuttle, Circuit Judge, held that where defendant obtained

narcotics at request of government informer who was under surveillance of narcotics officers and acting at their direction, and where defendant made no profit on transfer of narcotics to such informer, defendant was merely purchasing agent or messenger for seller and could not be convicted of selling narcotics.

Reversed with directions to enter verdict of acquittal.

Poisons

Where defendant obtained narcotics at request of government informer who was under surveillance of narcotics officers and acting at their direction, and where defendant made no narcotics to such informer, defendant, was merely purchasing agent or messenger for seller and could not be convicted of selling narcotics. Narcotic Drugs Import and Export Act, 2, as amended 21 U.S.C.A. 174, 18 U.S.C.A. 2421 et. Seq.

Charles W. Tessmer, Dallas, Tex.,
for appellant.

William O. Braecklein, Asst. U. S. Atty.,
Fort Worth, Tex., for appellee.

Before BORAH, RIVES and TUTTLE,
Circuit Judges.

TUTTLE, Circuit Judge.

Appellant was convicted on two counts of selling heroin in violation of 21 U.S. C.A. 174, on evidence which may be summarized as follows: McKinney, a Government informer, drug addict, and confidence man with a record of several convictions, testified that he met appellant about October 1, 1953, at Dallas, Texas, through a mutual friend and fellow addict whom he had met at Fort Worth U.S. Public Health Hospital. On the occasion of his meeting with appellant, they and several others took some heroin in McKinney's apartment, according to his testimony. He saw her again on October 15, at her apartment, at which time she said she would try to see her "connection" that evening to obtain heroin. McKinney said he conveyed

this information to Federal Narcotics Agent Taylor, who searched him and gave him \$50, and watched appellant pick him up in her car. McKinney said she delivered ten capsules to him later that evening in exchange for the \$50. The following day McKinney saw her again and gave her some opium; that evening she lent him two capsules of heroin and said she was going back for more heroin the next night. A meeting was arranged between the two. Taylor advanced McKinney \$40 after searching him. Appellant picked up McKinney, drove to the same street corner as before, left the car, and returned with eight capsules of heroin, six of which she gave him for the \$40. McKinney testified that appellant never took more than \$5 a capsule, which he knew to be the standard price in Dallas; that he did not know whether she made a profit; but that she had stated that "the more she buys from this connection the stronger the percentage is."

Narcotics Agents Taylor and Finley testified that they had advanced money to McKinney to buy the heroin and kept both McKinney and the appellant under surveillance on the occasion of the second transaction. A Government chemist identified the substance in the capsules as containing heroin.

The appellant herself took the stand and testified that she had a record of numerous arrests for vagrancy, one conviction for possession of narcotics, and a conviction of violating the Mann Act, 18 U.S.C.A. 2421 et seq. She said she met McKinney on September 7, 1953, at her apartment; that he told her he could not get along on opium and asked her to buy some heroin for him; that he said he was broke but had two addict friends who would give him part of the narcotics he obtained if he could arrange for their supply; that she bought heroin for him on October 14 for \$70 and more on October 16 for \$40. She explained that she purchased the narcotics for McKinney because the doctor's office where he obtained opium was closed and he had no place to buy narcotics in Dallas. She had tried to arrange with her "connection" for McKinney to buy directly, but the connection refused to allow this for fear of detection. McKinney

did not want to go over to Fort Worth where he did have a source, and was sick with the addict's withdrawal symptoms; having been sick herself, appellant felt sorry for him and for this reason purchased the narcotics for him at no profit to herself. She also said she lent him to capsules on the 15th. According to her testimony, one could get a discount only at \$500 purchases of heroin in Dallas.

We find it unnecessary to consider all of the specifications of error, since we believe that the appellant's motion for acquittal should have been granted. We think that no reasonable jury could fail on this evidence to entertain a reasonable doubt that the appellant sold the heroin as alleged. In *United States v. Sawyer*, 8 Cir., 210 F.2d 169, the evidence as to the part played by the defendant in the transaction was conflicting, but the trial court refused to include charge an explanation as to the difference between dealing with a purchaser as seller and acting for him as a procuring agent. The Court held that this was error, and in reversing for a new trial the court said, 210 F.2d 170:

"In these circumstances, we think the court should at least have pointed out to the jury that if they believed that the federal agent asked the defendant to get some heroin for him and thereupon the defendant undertook to act in the prospective purchaser's behalf rather than his own and in so doing purchased the drug from a third person with whom he was not associated in selling, and thereafter delivered it to the buyer, the defendant would not be a seller and could not be convicted under this indictment. This may be obvious to a lawyer, but we are not sure that in the circumstances of this case the distinction between a seller and a procuring agent was equally clear to laymen. The government having elected to charge the defendant with the crime of sale rather than illegal possession, the jury should have been alerted to the legal limitations of the sale concept in relation to the circumstances of this case."

We agree with this statement of the applicable legal principle; in the present case, however, there was no materially conflicting evidence. All of the evidence was quite consistent with the appellant's acting only as a

purchasing agent or messenger instead of a seller. There was no evidence from which a sale from her to McKinney could be spelled out beyond a reasonable doubt; nor was there any evidence that she profited in any way from the transactions or was associated with her "connection" in selling narcotics (except for the quite equivocal fact of the two purchases themselves).

Therefore, the verdict of guilty of the offense of selling heroin must have been based upon speculation, and the court should have directed a verdict of acquittal.

The judgment is reversed with directions to enter a verdict of acquittal.

Source: NARA-II, RG 170 Records of the DEA, Subj Files of Bureau of Narcotics 1916-1970, Box 54, F: 0370-3 Legal information circular

See Articles: Appeals; Appellate Court; Entrapment; Narcotics Laws; Police Abuse.

1955 PRIMARY DOCUMENT

Concerned Citizen Letter About Drug Traffic

Because Prohibition was so profitable for organized crime groups that smuggled alcohol and operated speakeasies, and because this connection between Prohibition and the rise of the Mob has always been well known to the public, the argument in this letter to the U.S. assistant attorney general is one that has been put forth many times. It is also true that drug trafficking has become more profitable and more violent as drug laws have shifted from fines to imprisonment, although correlation does not prove causation.

Honorable Warren Olney, III
Assistant Attorney General
Washington, D. C.

Dear Sir:

A short time ago a magazine, the name of which I cannot now remember, published an article about you. Among other things it said that you head the Federal Narcotics Bureau.

Recently our legal newspaper reported the breaking up of a "dope ring" and the taking of narcotics valued at two to three million dollars. Similar reports appear in the newspapers with considerable regularity.

I am sure you are aware that the primary object of the slimy crews that carry on this nefarious business is money—very, very big money, and not, as reported by some publications, an attempt by Red China to make a nation of drug degenerates out of us. I am also sure that you would be interested in any method that would eliminate this fabulous money-getting, horrible youth destroying, illicit occupation.

It is my belief that the narcotic traffic could be stopped within 90 days simply by taking the profit out of it, and to me that seems quite simple. For example, let us take morphine. Purchases through legitimate channels, the daily requirements of the average addict could be sold to him at 10,000 percent profit for much less than a single dose purchased superstitiously. At such a profit, the addict would carry the administrative load and without great financial strain. Other types of addiction could be similarly handled.

In his broadcast of June 2, Paul Harvey reported 69,000 addicts in these United States exclusive of marijuana. In another 10 years it will be 140,000. Don't you think something constructive should be done?

If you are interested, I should like to discuss the situation further with you.

Respectfully,
Geo. A. Stevens, M.D.
Sioux Falls, South Dakota
June 9, 1955

Source: NARA-II, RG 65, DOT, Narcotics
Files, Box 3 F: Justice Dept

See Articles: Criminalization and Decriminalization;
Drug Abuse and Addiction, Contemporary; Drug

Abuse and Addiction, History of; Drug Abuse and
Addiction, Sociology of; Narcotics Laws

1955
PRIMARY DOCUMENT

Congressional Committee on Narcotics Interim Report

Shortly after this report, Congress passed the Daniel Act, significantly increasing the penalties for drug crimes, both possession and trafficking. In some cases, penalties increased by a factor of almost 10 compared to those established only five years earlier in the Boggs Act. While the committee report was a factor, the televised Kefauver hearings on organized crime also stirred public interest in cracking down on drug cartels.

The Committee has given extended consideration to the matter of fixing penalties of appropriate severity for violators of the narcotics laws. It has been impressed with the importance of assuring not only deterrents to this category of crimes, but also of facilitating social as well as medical rehabilitation of those offenders who are users of the drugs. It has considered the special problems of three distinct but closely related groups of persons.

(a) Violators of the narcotics laws whose involvement is of an exclusively criminal character, and who are not themselves addicts or habitual users of the drugs. It has been noted that this group includes the highest proportion of major criminals, with respect to other forms of crime as well as the narcotics offenses committed by them.

(b) Peddlers who are themselves addicted. This group is composed largely of persons with records of delinquency or criminality preceding as well as following their addiction. Criminal activity of persons in this category is usually, but not exclusively, restricted to rel-

atively petty crime, except for their involvement in the drug traffic; in this field they are commonly found in the lowest retail brackets. They are however much the more numerous, their aggregate contribution to the traffic is very large, and their control presents peculiarly difficult problems of enforcement and rehabilitation. This results in part from the fact that their personal involvement with the drugs is associated with some degree of incapacity for normal social adjustments, diminished response to corrective and rehabilitative efforts and the impetus of a habit which can be supported only at an expense beyond the legitimate earning capacity of the average citizen.

(c) Addicted persons with either no records of criminal activity, or records of delinquency not involving violations of the narcotics laws other than possession of the drugs. Anti-social activity among this group is commonly found to be of a petty character, but must, in combination with such legitimate activities as occupy the addict, be sufficiently be product to support the high costs of addition. This is the least homogenous of the three groups; its members range from unemployables with serious psychiatric problems, to highly skilled professional people. It is the class from which a majority of peddlers are recruited, and it provides the essential market of consumers for the illicit traffic. It includes also the most hopeful subjects of the curative and rehabilitative programs, and those undergoing voluntary treatment in the public and private hospitals.

The Committee has found itself in immediate agreement with respect to the first and the third of these groups. For the commercial type of trafficker, motivated solely by hope of gain from his handling of the drugs, it was agreed that penalties of a severe type are indicated. With respect to the third group, not involved in importation, manufacture, or sale of drugs, it is felt that the problem is principally one of appropriate treatment and rehabilitation, with subsequent guidance by interested social agencies within the individual's community. However, note has been made of the fact that in certain instances tangible

evidence involving known major traffickers may depend solely upon possession of drugs. It is felt therefore that any scale of penalties applicable to possession should be broad enough in range to cover both the relatively innocuous and the serious offenders.

With respect to the second group, those involved in both trafficking and personal use of the drugs, the question has been raised as to whether the levels of punishment most likely to serve as effective deterrents may not obstruct the reform and ultimate rehabilitation of the individuals concerned. While recognizing the probable validity of such arguments, the Committee believes that first consideration must be given to the protection of society from the trafficker, without respect to his status as an addict.

It is to be hoped that the extension of treatment and rehabilitative services into communities importantly affected, as recommend elsewhere in this report, will not only aid in reducing the problem of addiction, but also compensate in some degree the effects of longer prison terms on convicted addict drug peddlers. The Committee has noted the fact that the addict-trafficker has in the past shown a high rate of recidivism, both as addict and as peddler. Where he retains or returns to psychological independence on the drug, he is often less responsive to the deterrents than the more hardened, ordinary criminal. The growing experience of the States and local committees with enforcement and treatment programs will produce additional valuable and much needed on the peculiarly difficult problem of the addict in crime. Such information should receive close and continued study at all levels of government.

The Committee has arrived at the conclusion that there is need for a continuation of the policy of summary punishment, or a more severe character, as a deterrent to narcotic law violations. It therefore recommends the increase of both maximum and minimum sentences, for first as well as subsequent offenses. With respect to the mandatory features of such penalties, and prohibition of suspended sentences or probation, the Committee fully recognizes objections in principle. It feels,

however, that for this class of crimes, these features must be accepted as essential elements of the desired deterrents, in defining the gravity of the offense and the assured penalty to follow.

December 21, 1955

Source: NARA-II, RG 65, DOT,
Narcotics Files, Box 4 F: Penalties

See Articles: Drug Abuse and Addiction,
Contemporary; Drug Abuse and Addiction, History
of; Drug Abuse and Addiction, Sociology of;
Narcotics Laws.

1959 PRIMARY DOCUMENT

FBI Memorandum on Narcotics Violator Ralph Ciccone

The FBI wasn't the only agency maintaining thorough files. Harry Anslinger wasn't as prominent as J. Edgar Hoover, but he guided the Federal Bureau of Narcotics from its founding in 1930 until 1962. Although most resources were devoted to heroin and opium trafficking investigations, the Federal Bureau of Narcotics kept tabs on as many forms of drug violations as they could. The Federal Bureau of Narcotics was merged into the Bureau of Narcotics and Dangerous Drugs in 1968, and the Drug Enforcement Administration in 1973.

Bureau Of Narcotics
District #2
General File Title: GF: National List
Violators
Report Made At: New York City, New York
Date: May 25, 1959
By: Albert Garofalo, Narcotic Agent
Related Files: May 28, 1959

Subject of this Memorandum: Recommendation for inclusion of Ralph John Ciccone in National List Book of Narcotic Violators.

Details:

1. NAME: RALPH JOHN CICCONE
2. ALIASES: RUFUS BROWN, RALPH DE MARCO, LOUIS CARBONETTE, SLIP LIP.
3. DESCRIPTION: Italian descent, 5'7" tall, 150 lbs., born in New York City on September 15, 1910, grayish-black hair, hazel eyes, medium build and scars on the left side of his nose and his upper lip.
4. LOCALITIES FREQUENTED: Residence, 19 West 69th Street, New York City. Frequents Saylor's Bar, 2153 2nd Avenue, New York City, Moulin Rouge Club, 47 W. 52nd Street, New York City., and 500 Club, Atlantis City, New Jersey.
5. CRIMINAL ASSOCIATES: Anthony PORCELLI, Guido PENOSI, Nicholas MARTELLO and Paul CORREALE.
6. FACSIMILE OF SIGNATURE:
7. CRIMINAL HISTORY: Dates from January 1935 to May 1959 and includes arrests from Grand Larceny of checks to violations of Federal Narcotic Laws. He was last convicted and sentenced on May 8, 1959 to 7 and ½ years for violation of Federal Narcotic Laws.
8. MODUS OPERANDI: One of the largest wholesale narcotic interstate traffickers. CICCONE knows every important narcotic violator in the United States and was in partnership with Anthony PORCELLI, receiving their supply through Guido PENOSI from sources in New Orleans, Louisiana.
Subject: Recommendation for inclusion of Ralph CICCONE in National List Book of Violators.
9. AGENCIES WITH INFORMATION: United States Bureau of Narcotics, Federal Bureau of Investigation, United States Coast Guard, New York City Police Department.
10. IDENTIFICATION: F.B.I. #881 562 N.Y.C.F.D. # 131 332

11. Attached hereto are two photographs of Ralph CICCONE dated October 15, 1958.

Copy of this memo furnished to:
 Albert Garofalo
 Narcotic Agent
 George H. Gaffney
 District Supervisor

Source: Records of the Drug Enforcement Agency, Subj Files of the Bureau of Narcotics and Dangerous Drugs 1916-1970.

See Articles: Italian Americans; Narcotics Laws; Organized Crime, History of.

1959 PRIMARY DOCUMENT

FBI Report on Gaetano Lucchese

"Tommy" Lucchese was the boss of the Lucchese crime family, one of New York's Five Families. Lucchese endured moves by the federal authorities to denaturalize him and investigations into his business by the attorney general and the FBI, as well as the Banana War waged by Joe Bonnano, only to die of a brain tumor in 1967. His chosen successor was in prison, and the Lucchese family came under the control of Carmine Tramunti.

SUBJECT:

Gaetano Lucchese (Under Active Investigation By U.S. Immigration & Naturalization Service)

ALIASES:

Tom Lucchese, Tom Brown, Tom Arra, "Three Finger Brown," Tom Branda.

DESCRIPTION:

Born on December 1, 1899, at Palermo, Sicily. 5'5," 150 lbs., brown eyes, grey hair, wears glasses.

LOCALITIES:

Resides at 74 Royale Street, Lido Beach, Long Island, New York. Frequents garment districts of New York City, Miami Beach, Florida, various locations on Long Island and New Jersey.

FAMILY BACKGROUND:

Wife: Catherine

Son: Baldassari

Daughter: Frances (married to Carlo Gambino's son Tom)

Brothers: Anthony, Joseph

Sisters: Pietra, Concetta, Rosalie (wife of Joe Rosato)

Father: Baldassari

Mother: Francesca

CRIMINAL RECORD:

F.B.I. # 168 275

New York City P.D. # B-68 834

Immigration & Naturalization Service File # 2207-51652.

SUMMARY AND BACKGROUND:

THOMAS LUCCHese, alias "THREE FINGER BROWN," as he is commonly known, is reputed to be one of the leading figures in syndicated crime in the United States today. In this respect, it appears that he has replaced in underworld prominence, VITO GENOVESE, now incarcerated in a Federal penitentiary (fifteen years) after being convicted in a Federal narcotics conspiracy case. LUCCHese has long been closely associated with the most notorious racket elements in this country. In addition, he has succeeded in befriending some of the most important political and judicial personages in the New York City area.

LUCCHese migrated to the United States from Palermo, Sicily, in 1911, and was admitted to citizenship in 1943, at Newark, New Jersey. He has been a subject of investigation by the Immigration and Naturalization Service since the time he was Naturalized. Although he admitted to a prior felony conviction (grand larceny-auto theft), he neglected to mention several subsequent arrests (including two arrests for homicide).

LUCCHese, slowly but methodically, rose in criminal stature since about the end

of the prohibition era (late twenties). He commenced his career as a common gunman and steadily gained prominence among his underworld brethren—now achieving his coveted position. It was in 1928 when his name first became known to the New York City Police Department. At that time JOSEPH ROSATO (his brother-in-law), one JOHN GUIDO (Now deceased) and he were identified as the perpetrators of a homicide with a gun on one LOUIS CERASULO. The police investigative reports indicate that the victim was implicated, along with his assailants, in an extortion (protection) racket of the chicken markets in the Harlem area. The identifying witnesses (victim's wife and mother) recanted their earlier positive identification before the institution of any criminal proceedings. The three men were subsequently released and each had his records of arrest removed from the files of the New York City Police Department pursuant to the provisions of the New York State Code of Criminal Procedure.

By 1940, LUCCHESE had already reached a prominent position in the local crime syndicate by becoming chieftain of the infamous 107th Street Mob (East Harlem area of New York City). His stature here can be fully appreciated when note is taken of the criminal caliber of his subordinates in this powerful closely knit underworld organization. His immediate subordinates were DOMINICK PETRELLI, alias "THE GAP" with an extensive criminal record and the notorious MICHAEL COPPOLA, alias "TRIGGER MIKE." Some of LUCCHESE's lower echelon subordinates included JOSEPH GAGLIANO, PHILIP LOMBARDI, alias "BEN TURPIN," JOHN SCHILLACI, FRANK LIVORSI, alias "CHEECH" and JOSEPH STRACCI, alias "JOE STRETCH." In this same organization, headed by LUCCHESE, were also such import and narcotic traffickers as ALFREDO FELICI, JOHN ORMENTO, JOSEPH VENTO, PASQUALE GENESE and SALVATORE SANTORA.

LUCCHESE's present position and influence in the crime syndicate is best borne out by the fact that in APRIL, 1960, an emissary of his, THOMAS EBOLI, alias TOMMY

RYAN (present reputed head of the "Thompson Street—Greenwich Village Mob") visited SALVATORE LUCANIA, alias "LUCKY" LUCIANO in Italy seeking counsel and guidance on the problems of maintaining a peaceful coexistence among the various underworld factions and contingents.

CHRONOLOGY:

The New York City Police Department has the following record of THOMAS LUCCHESE under their number B-68 334:

October 2, 1921: As THOMAS LUCCHESE, N.Y.C., Grand Larceny—Auto. January 19, 1922, 3 years, 8 months to 19 years, State Prison.

August 30, 1927: As THOMAS ARRA, N.Y.C., Receiver. On August 31, 1927, discharged.

July 18, 1928: As THOMAS LUCCHESE, N.Y.C., Homicide. On July 24, 1928, discharged.

September 8, 1930-As THOMAS LUCCHESE, Homicide. On February 26, 1931, dismissed.

November 18, 1935: As THOMAS LUCCHESE, Manhattan, Vagrancy. On November 18, 1935, discharged.

On July 4, 1931, at Cleveland, Ohio, JOSEPH BIONDO, SALVATORE LUCANIA, alias "LUCKY" LUCIANO and LUCCHESE were arrested together as suspected racketeers and released on the same day.

Records in the office of New York County District Attorney FRANK HOGAN indicate that LUCCHESE left Harlem in 1930 and went to Jackson Heights, Queens. He returned to Manhattan in 1933, 88th Street between Madison and Park Avenues. In 1936 he moved to Fort Lee, New Jersey, where he stayed until 1944. (Ref. 1)

In 1937, during the investigation of a narcotic conspiracy case resulting in the indictment of nearly 100 violators in New York

City, it was repeatedly asserted by witnesses that an individual named "THREE FINGER BROWN" (alias of LUCCHESE) was the leader of the narcotics trafficking mobs in New York. All of the statements were inadmissible at the trial, and the suspect could thus not be implicated in the conspiracy case of SAM MACEO, et al. (Ref. 2)

In 1939, in developing investigative leads as to many important narcotic distribution groups operating out of the notorious 107th Street, East Harlem area of New York City, underworld informants repeatedly asserted that LUCCHESE was an underworld leader concerned with various criminal undertakings. However, these informants also stated that LUCCHESE managed to avoid arrest because he stayed sufficiently in the background from the overt acts—committed by others. (Ref. 2)

In March, 1941, District Supervisor GEORGE WHITE, then Narcotic agent, raided Dukes Clam Bar, 783 Palisades Avenue, Grantwood, New Jersey, headquarters for the notorious WILLIE MORRETTI gang, and found LUCCHESE in conference with MORRETTI and other known underworld characters. (Ref. 3)

In 1942, DOMINICK LAVIANO, a known narcotic trafficker of importance, was under investigation and the name of LUCCHESE appeared numerous times in interviews and records of telephone calls. (Ref. 4)

In 1943, in the SAM BERNSTEIN case, involving a large narcotic conspiracy, the name of WILLIE MORETTI and THOMAS LUCCHESE appeared, and records showed their association. A telephone call was made from MORETTI's home on April 4, 1943 to FL ushing 3-9225. This was a telephone in the residence of LUCCHESE in Malba, Long Island. (Ref. 4)

Sponsors on LUCCHESE's petition for naturalization (he was admitted to citizenship, 1943, at Newark, New Jersey) were: THOMAS VALENTI, manufacturer, 2637-12th Street, Astoria, Long Island, and ANTHONY VADALA, 3919 103rd Street, Corona, Long Island. VADALA is the real name of TONY GRIO, and is the uncle of

LUCCHESE's wife. He is the operator of the Grio Press, believed by the Kings County District Attorney in 1947 to be printing sheets and Italian lottery tickets. (Ref. 5)

In 1944, LUCCHESE and his entire family registered in a New York City election giving their Parsons Blvd., Malba, Long Island address. LUCCHESE stated that he lived continuously in New York State for the past 33 years. (he entered the United States from Italy in 1911) LUCCHESE, however, had just previously been naturalized a United States Citizen in New Jersey. As of this time, he had not been given his "partial restoration of civil rights." This is a significant factor in that LUCCHESE stated under oath to the Immigration and Naturalization Service, in his application for citizenship, that he lived in Palisades, New Jersey, between 1933 and 1934 (up to the time he became naturalized). It then became obvious that he committed perjury, either to the New York City Board of Elections or to the Immigration and Naturalization Service. During this period it was rumored that he sought to be naturalized in New York, but without success because of his criminal record. However, he made a "connection" in New Jersey with the Immigration and Naturalization Service and therefore pretended to domicile in that state. (Ref. 6)

It becomes apparent that LUCCHESE committed a crime when he voted in Queens, New York, in 1944. First, he was not eligible to vote, even if properly domiciled, because he had not yet received partial restoration of his "civil rights." Second, he either committed perjury to the New York City Board of Elections or to the Immigration and Naturalization Service as to his domicile. (Ref. 6)

LUCCHESE has befriended and became closely associated with several well known and influential political figures in the New York City area. At the ALFRED E. SMITH Memorial Dinner, at the Waldorf Astoria Hotel in New York City on October 18, 1946, the following persons were seated at table #62:

THOMAS LUCCHESE, LOU KAUFMAN, JAMES BRUNO, MARIO G. DIPINO,

CHARLES RAMSGATE, SAMUEL REISS, ALFRED SANTANGELO, AND VINCENT R. IMPELLITTERI. (Ref. 7)

At the ALFRED E. SMITH Memorial Dinner at the Waldorf Astoria Hotel in New York City on August 28, 1948, the following persons were seated at table #32:

THOMAS LUCCHESI, JAMES BRUNO, LOUIS J. CAPOZZOLI, MYLES LANE, AMEDEO LAURITANO, JAMES MERLI, ROCCO A. PARELLA, ARTHUR H. SCHWARTZ, and FRANCIS VALENTE. (Ref. 7)

In January, 1949, ARMAND CHANKALIAN, city Councilman JOHN MERLI and LUCCHESI drove to Miami Beach, Florida. They stayed at the Hotel Martinique until February 6, 1949. MERLI was Tammany Hall elections chairman. (Ref. 7)

The printed program for the St. Patrick's Day Dinner in New York City in 1949, lists the following persons as seated at table # 208:

THOMAS F. MURPHY, JACK AARON, ARMAND CHANKALIAN, LOUIS J. COBLENTZ, LESLIE KIRSCH, THOMAS LUCCHESI, EDWARD W. McDONALD, JAMES M. MCINERNEY, EDWARD E. RIGNEY, and SOL WOOD. (Ref 7)

The printed program for the St. Patrick's Day Dinner in New York City the following year lists the following persons seated at table #16:

THOMAS F. MURPHY, JACK AARON, PETER ARNO, LOUIS J. COBLENTZ, THOMAS LUCCHESI, EDWARD W. McDONALD, JAMES M. MCINERNEY, DENNIS J. McMABON, EDWARD E. RIGNEY, and SOL WOOD. (Ref. 7)

In March, 1949, a check of LUCCHESI's toll calls, showed 45 calls to AMADEO LAURITANO, then Assistant to Chief of the Criminal Division of the United States Attorney's Office, Southern District of New York, Myles

Lane. LAURITANO was later appointed a New York City magistrate by Mayor Vincent B. Impellitteri. (Ref. 8)

LUCCHESI is godfather to Magistrate LAURITANO's son. Magistrate LAURITANO was discharged as an Assistant United States Attorney by then United States Attorney Saypol, after admitting the LUCCHESI relationship; a few months thereafter is when Mayor Impellitteri appointed LAURITANO a City Magistrate. LUCCHESI has publicly appeared at political dinners and functions with Mayor Impellitteri, Myles Lane, AMADEO LAURITANO, ARMAND CHANKALIAN and Thomas Murphy. (Ref. 9)

Edward Reid, New York Daily News Columnist, obtained a copy of a lengthy letter written by the then New York City Police Commissioner (now Federal Judge) Thomas F. Murphy to United States Senator Alexander Wiley. Wiley was in possession of much information concerning the relationship between Murphy and LUCCHESI and thus, as a member of the Senate Judiciary Committee, refused his confirmation. Murphy in an attempt to purge himself with Senator Wiley, made some astonishing admissions and disclosures in his letter to the Senator. Murphy said in the letter that he was a guest at the LUCCHESI home and that he and LUCCHESI had attended several social-political functions together. He said that his friendship with LUCCHESI was based of his "knowledge" that LUCCHESI was a reputable and important "businessman." That he contemplated returning to the private practice of law and considered LUCCHESI a potential "client" and for that reason cultivated his friendship. Later Judge Murphy said, he became aware of LUCCHESI's criminal record but passed it off as insignificant. (Ref. 6)

From Edward Reid it was also developed that LUCCHESI and Armand Chankalian, Administrative Assistant to United States Attorney Myles Lane, once went to United States District Court Judge Thomas Meany (Neward, New Jersey) in an attempt to influence his judgment in a case involving a close friend of LUCCHESI. It is believed that this close friend of LUCCHESI is SETTIMO

ACCARDO, alias "BIG SAM" ACCARDO, who is at the present time a fugitive in a Federal narcotic case, having jumped \$92,000 bail. Mr. Reid stated that Judge Meany would testify to this attempted influence on him. (Ref. 5)

In an appearance before the New York Parole Board in March, 1949, LUCCHESI in his application for a certificate of "good conduct" stated that he was financially interested in the following concerns:

Grand View Construction Co., 740 Fulton Avenue, Mount Vernon, N.Y. This company built a project at Horseheads, New York, and received a \$250,000 F.H.A. loan. The company also participated in the construction of the Catskill Thruway.

International Window Cleaning Co., 211 West 36th Street, N.Y., N. Y.

Empire Metal Bath Co. and Fordham Hoisting Co., both of 2373 Washington Avenue, Bronx, N. Y.

L & J Realty Co., 48-15 108th Street, Corona, Long Island.

Wingdale Country Club, Wingdale, New York.

Braunell, Ltd., 262 West 38th Street, New York, N.Y.

Balfran Blouse Co. and Bobfran Blouse Contractors, both of 140 West Street, New York, N.Y.

One of LUCCHESI's principal legitimate business interests is in Braunell, Ltd., of which he is vice-president. The subsidiaries of this company are: Pleasant Coat Co., Pleasant, New Jersey, and Bob France Coat Co., 48-15 108th Street, Corona, Long Island, manufacturers of women's coats and suits. In connection with the Braunell Company (holding company), it was as a result of LUCCHESI being friendly with CHARLES SILVERS of

the American Woolen Company, that Braunell was able to obtain material during the war period, when there was a critical shortage of wool. There were indications of a black market operation, shared in by SILVERS. SILVERS has served as President of the Board of Education of the City of New York since 1952 to the present time. (Ref. 11)

In April, 1950, LUCCHESI was granted a certificate of "good conduct" from the New York State Parole Board, thus permitting the right to vote. This was the only civil right asked for by LUCCHESI. He also applied for naturalization, establishing legal residence in New Jersey, believing this would enhance his chances of being naturalized. LUCCHESI, in submitting his petition to the Immigration and Naturalization Service. Admitted his felony conviction of 1922 but neglected to include four subsequent arrests (all discharged). (Ref. 12)

In the 1950 investigation of the narcotic activities of the notorious JACK DRAGNA (now deceased) and his associates in California, a written notation was found in DRAGNA's house, "Melba, 106 Parsons Blvd., Long Island, N.Y." In the investigation of the February 14, 1950, murder of NICK DeJOHN in Los Angeles, California, (DeJOHN was a lieutenant of JACK DRAGNA), GIORLAMO ADAMO, alias "MOMO" was searched. In the course of searching ADAMO, the following note was found: "TOMMY BROWN, FL ushing 3-9225, 106 Parsons Blvd., Malba, Long Island." Closely associated with this underworld group were the notorious SICA BROTHERS (ALFRED AND JOSEPH), formerly members of the WILLIAM MORRETTI Mob in New Jersey. JACK DRAGNA was regarded by the California Police authorities to be the No. 1 crime chieftain in that area. (Ref. 5)

On February 3, 1951, in an interview with Edward Corsi, a former New York State Commissioner of Labor (also Republican candidate for Mayor of New York City in 1949), he stated that he, like LUCCHESI, was a former East Harlem resident and knew the political situation there. He stated that Mayor Impellitteri (now Queens County Judge) and

LUCCHESE frequently met in Bentivegna's Restaurant, 55 East Houston Street, New York, New York. He further stated that the Mayor was a guest at the LUCCHESE home on a number of occasions. Mr. Corsi also stated that LUCCHESE was a very strong supporter of the late Congressman Vito Marcantonio—who appointed LUCCHESE's son a cadet at West Point in 1947. (Ref. 13)

Narcotic Agent Joseph Amato, in a memorandum report 184, dated June 23, 1952, stated that he was reliably informed that LUCCHESE and Mayor Impellitteri dined together at an average of three times a week at Lanza's Restaurant, 1st Avenue between 10th and 11th Streets, New York City, as well as occasional meetings at Bentivegna's Restaurant, 55 East Houston Street, New York, New York. (Ref. 14)

The address of Bentivegna's Restaurant, 55 East Houston Street, New York, N.Y. was found in the possession of SALVATORE LUCANIA, alias "LUCKY" LUCIANO, following the arrest of VINCENT TRUPIA in Italy. TRUPIA was arrested in possession of a large quantity of narcotic drugs. He was the American emissary of the DiPALERMO BROTHERS of the Lower East Side of New York City. It was concluded at that time that the Bentivegna Restaurant address was a mail drop between LUCANIA and LUCCHESE. (Ref. 5)

Early in 1952, a reliable informant gave Narcotic Agent George White (Now District Supervisor, San Francisco, California) considerable factual information concerning LUCCHESE's relationship with ABE CHAIT—garment center trucker, long under investigation by the Internal Revenue Service. Names of various underworld characters were given who were supposed to be on CHAIT's payroll as "Ghosts," i.e., they received weekly checks for about \$100 and after cashing the checks, they would return the proceeds to CHAIT. This was a tax evasion scheme used by CHAIT with LUCCHESE. In return, the "Ghosts" received coveted bookmaking concessions in the garment area. Although Agent White passed this information on to the Internal Revenue Service no action was ever taken. (Ref. 6)

Former Narcotic Agent Price Spivy in a memorandum report 184, dated August 13, 1952, stated that he had very reliable information to the effect that LUCCHESE handles any type of criminal activity. This source stated that LUCCHESE is the "boss" and that his underlings carry out his instructions, all with his knowledge and consent. The same informant stated that LUCCHESE does not get orders from anyone; he acts in agreement and harmony with other mob heads, with VITO GENOVESE as coordinator. Inter-mob questions are received at a meeting of the minds, or general agreement by LUCCHESE, et al. (Ref. 2)

Another example of LUCCHESE's name and address being possessed by numerous underworld characters is found in the Orsini—SHILLITANI narcotic smuggling case in 1952. The entry "TOMMY BROWN, FLushing 3-9225" was found in the address book of FLORENCE SHILLITANI when she was arrested in this case.

In a confidential memorandum by George White to Commissioner Harry J. Anslinger, dated February 3, 1953, White discusses his being summoned before a "Special Rackets" Grand Jury to testify as to all available information known to him about LUCCHESE. United States Attorney Lane, a close associate of LUCCHESE appeared, however, more interested in White's activities and informers than about any possible criminality on the part of his friend LUCCHESE. The informant, Eugene Giannini, who supplied much of his information on his return from Italy on April 14, 1952, was murdered in gangland style at about the time of the Grand Jury inquiry. Mr. Lane demanded that White divulge the names of all of his informants who had supplied information against LUCCHESE. Having refused to so comply, WHITE was cited for contempt of Court, and in fact incarcerated. Mr. Lane also brought before the Grand Jury other narcotic agents who had some knowledge of WHITE's informants and belabored them with questions about WHITE, shutting off the witnesses when they attempted to volunteer factual information about LUCCHESE's background and reputation. (Ref. 15)

In a memorandum report 184 by Narcotic Agent Armando Muglia, dated July 8, 1955, it is reported that according to U.S. Customs Agent James A. Flynn, LUCCHESE, ANTHONY ANASTASIA, alias "TOUGH TONY," and other underworld characters use Andrea (Andrew) Torregrossa's Funeral Chapel at 345 Avenue U, Brooklyn, New York, as a meeting place. Torregrossa owns another funeral parlor at 1305 79th Street, Brooklyn, N. Y. It was alleged that there is a great deal of "racket money" invested in these two mortuaries. (Ref. 16)

Narcotic Agent Howard Chappell, stated in a letter to District Supervisor George White, dated November 27, 1956, that he interviewed the well-known singer and actor Mario Lanza and that the latter was very cooperative. Lanza stated to Agent Chappell that in April or May, 1955, while at home and in the company of prizefighter Rocky Marciano, he was visited by LUCCHESE, one IRVING BERMAN and an unidentified third person. Lanza, who was in financial straits, was visited by these three men who were obviously aware of his plight, to discuss financial matters. LUCCHESE informed Lanza that if he wanted to work for him, all financial problems would be resolved. Lanza then reported to Agent Chappell that the three men pointed out to him that they similarly assisted Frank Sinatra out of his financial plights, a few years previously, and that he prospered ever since. Lanza told his visitors that he was not interested in their proposition. Lanza's close personal friend and business manager, Al Teitelbaum, stated to Agent Chappell that the offer made by the three men, through BERMAN, \$150,000 in return for a 10% interest in Lanza. This offer was flatly rejected by Lanza. Teitelbaum stated that he was led to believe that the money was to be furnished by LUCCHESE through BERMAN. BERMAN, with no known criminal record, was obviously a sychophant for LUCCHESE as well as for other underworld characters. Lanza also stated that Marciano confided in him that he was required to turn over 50% of all his earnings to the same syndicate, through his manager, Al Weil, in order to extricate himself from their clutches. (Ref. 17)

LUCCHESE's brother-in-law JOSEPH ROSATO, alias "JOE PALISADES," attended the 1957 criminal conclave at Apalachian, New York. It is believed that he represented the interests of LUCCHESE at this meeting. LUCCHESE's power in the garment center is in part reflected by the fact that ROSATO operates the only non-unionized trucking company in the garment center, the S & R Trucking Company, 460 West 35th Street, New York, N.Y. (Ref. 18)

LUCCHESE's daughter FRANCES is married to TOM GAMBINO whose father, CARLO GAMBINO, was another attendee at the 1957 Apalachian Conference. CARLO GAMBINO and his brother PAUL are notorious Brooklyn racketeers engaged for many years in manifold underworld endeavors.

In December, 1958, it was reported that one LAWRENCE KNOHL was handling real estate transactions for LUCCHESE and other "East Harlem" underworld characters in the Southeastern section of the United States. These transactions included the purchasing of hotels, motels and apartment buildings. In Savannah, Georgia, this group is reported to own the General Oglethorpe Hotel, the Dratton Arms Apartment Building and the Savannah Motor Lodge. Little is known about KNOHL other than the fact that he was sued by the Federal Government for a half million dollars in 1958 in the Eastern District of New York in connection with a "housing fraud." An income tax evasion case involving \$281,860.69 was also pending against him in New York the same year. KNOHL is reputed to have also associated with the late ALBERT ANASTESIA and FRANK COSTELLO (now incarcerated in a Federal Penitentiary). (Ref. 20)

District Supervisor John Cusack of the Bureau of Narcotics, Rome, Italy, reported on February 1, 1961, that a reliable and knowledgeable source in Italy recently stated that in view of the recent incarceration of VITO GENOVESE, leadership of the crime syndicate was assumed by LUCCHESE. LUCCHESE has always been extremely close to LUCANIA and has steadfastly protected LUCANIA's "rights" in his absence, and made a particularly vigorous effort to insure

that LUCANIA was well taken care of. This source believes that since GENOVESE and later LUCCHESI wrestled control away from FRANK COSTELLO, LUCANIA fared better. Prior to their take-over, LUCANIA received between \$2,000 and \$3,000 per month. Source is informed that LUCANIA now receives between \$10,000 and \$12,000 per month and, in addition, source is impressed that LUCANIA is living more affluently under the new regime than at any time since his arrival in Italy. (Ref. 19)

This same source has determined that THOMAS EBOLI, alias TOMMY RYAN, visited LUCANIA during January, 1961, as well as in April, 1960. The reported purpose of EBOLI's visit with LUCANIA was to confer with him on behalf of LUCCHESI. The source stated that there are indications that EBOLI plans to be a regular visitor with LUCANIA to discuss policy and planning with him as an emissary of LUCCHESI. LUCANIA's advice and support is being sought by LUCCHESI, through EBOLI, to enable the former to maintain his position in the syndicate and at the same time preserve gangland peace. Source stated that there exists a general apprehension in the underworld that a gang war in the syndicate is more apt to erupt now or in the near future than at any time since the end of the prohibition era. (Ref. 19)

LEADS:

1. At the present time LUCCHESI is under very active investigation by the Immigration and Naturalization Service.
2. The following persons because of their apparent knowledge of the methods and manipulations of LUCCHESI and their previous display of candor, if interviewed may prove fruitful: EDWARD CORSI, AL TEITELBAUM, Federal Judge THOMAS MEANY, EDWARD REID, and NEWBOLD MORRIS. In addition, the old files of the now defunct New York City and the New York State Crime Commissions may be very revealing.
3. An extensive audit of the books and activities of the numerous "legitimate" enterprises, alluded to in this report as

being owned or dominated by LUCCHESI, may give rise to an income tax evasion case.

4. Mail coverage of the several restaurants and other known meeting places of LUCCHESI and his associates, referred to in this report as likely mail drops, may prove revealing. An astute and experienced racketeer as LUCCHESI would not use his own home for the receipt of mail or telephone calls.
5. Efforts to cultivate the informative services of certain persons in the entertainment and prize-fighting business, i.e., Al Teitelbaum and Rocky Marciano, may develop the close ties and controls of LUCCHESI in these fields of endeavor. Ostensibly, the glitter of performing "artists" has attracted much of LUCCHESI's attention and interest over the years.
6. Discreet conferences with certain political personages New York City, such as former Judge Ferdinand Pecora, who lost the New York City mayoral race to Impellitteri in 1949, may prove worthwhile. Judge Pecora may have much repressed feelings about LUCCHESI, who supported Impellitteri, which may be uncovered during such conferences.

Source: NARA-II, RG 65, DOT, Narcotics Enforcement, Box 1 F: Narcotics Investigation

See Articles: Italian Americans; Organized Crime, History of; Organized Crime, Sociology of.

1960
PRIMARY DOCUMENT

1960 Adolph Coors III Murder Report

Adolph Coors III, the heir to the Coors beer empire, was murdered in February 1960, but his

body was not found until September. A massive manhunt throughout the United States and Canada finally apprehended his kidnapper and murderer, Joseph Corbett Jr., in October. Corbett had been sentenced to prison in 1951 for another murder, but after a transfer to a minimum security prison, he had escaped and encountered Coors. He was sentenced to life imprisonment, was paroled after serving a total of just over 20 years, and committed suicide in 2009 at age 80.

Federal Bureau Of Investigation
Narrative Of Crime

ADOLPH COORS, III, Executive of Adolph Coors Company, Golden, Colorado, left his home located in a rural area near Morrison, Colorado, about 8:00 a.m., February 9, 1960, en route to his business office in Golden, Colorado. He was driving an International Travelall.

This Travelall was observed by a neighbor at approximately 8:15 a.m. and 10:00 a.m., February 8, 1960, parked on a single car width bridge crossing Turkey Creek. This bridge was on the route traveled by Mr. COORS from his residence to Golden. At about 10:20 a.m., February 9, 1960, a route driver for a milk company moved the International Travelall off the bridge as he had to cross it. At that time he noted the motor and radio were on. The milkman examined the area and noticed a red spot which he thought might be blood in the dirt on this bridge. He examined the area around the bridge and in the creek noticed a tan baseball type cat and a brown hat. The milkman reported this incident to the Colorado State Highway Patrol.

Subsequent investigation on February 9, 1960, by the Jefferson County Sheriff's Office, Golden, Colorado, resulted in the location of a pair of eyeglasses. One lens in these glasses was broken. The glasses were found in the water of the creek near the bridge. The glasses were subsequently identified as having been prescribed and made for ADOLPH COORS III.

On February 10, 1960, a letter was received addressed to Mrs. ADOLPH COORS III, Morrison, Colorado. The letter which was

postmarked 3:00 p.m., February 9, Denver, Colorado, set forth that Mrs. COORS' husband had been kidnapped and his car was by Turkey Creek. The letter demanded \$500,000 for the return of her husband and requested when the money was ready that a tractor be advertised for sale in the *Denver Post*.

On September 11, 1960, information was received that a key chain with a small pen knife and keys attached had been found below a dump near Shamballah Ashrama, Colorado. The pen knife on this chain bore the initials A.C. III.

Articles of clothing including a jacket, shirt, trousers, and shoes were subsequently found and identified as having been those worn by ADOLPH COORS III. Also found was a tie clasp bearing the initials A.C. III. The pen knife appearing on the key chain and the tie clasp were also identified as having been worn by ADOLPH COORS III.

Bones were found in the general vicinity of the location of the clothing which were subsequently identified by a pathologist as being those of a human male, approximately the same age and size as ADOLPH COORS III.

A skull was also found in this area and an examination of the teeth by the dentist of ADOLPH COORS III resulted in positive identification of the skull as being that of ADOLPH COORS III.

Two irregular shaped holes were found in the right scapula bone found in this area. These holes were so positioned with respect to holes which were also found in the right shoulder area of the jacket, shirt, and undershirt, to indicate they were probably made by the same missiles which made the holes in the garments. It was indicated that the holes in the right shoulder area of the jacket appeared to be bullet entrance holes made by a contact or near contact shot. The holes were of such size to suggest they could have been made by a caliber .38 weapon although another caliber weapon could have been used.

Attached are photographic copies of a map showing the general area and showing main roads from the Denver Civic Center to the ADOLPH COORS III home, and an aerial photograph of the area including the home of

ADOLPH COORS III and the bridge at Turkey Creek.

See Articles: Colorado; Kidnapping; Murder, Contemporary; Murder, History of.

Source: NARA II, RG 65, Class 7
Kidnapping, Box 353, F: 7 371



1961 to 1980

INTRODUCTION

Between 1960 and 1980, the nation's approach to crime and punishment underwent revolutionary changes in terms of federal coordination, funding, and practical enforcement. The typical local police officer in 1960 paid scant attention to federal rules and viewed federal agencies like the Federal Bureau of Investigation (FBI) primarily as a source for technical expertise in forensic evidence, academy training, and statistics. Funding for local police came mostly from the local community, and the vast majority of rules and procedures for daily operations were determined at the local and state levels. By 1980, the situation had changed dramatically. In every stage of police interaction with the public—stopping a suspect, making arrest, presenting evidence at trial, sentencing and punishment, and parole and release—the local law enforcement officer was guided by federal rules. A host of new federal agencies actively participated in joint enforcement operations in local precincts, and a variety of community programs were paid for, at least partially, with federal dollars. Even in the most remote corners of the country, the local police officer no longer operated in the isolation of the neighborhood community, but instead acted within the broader guidelines of national policies of crime and punishment.

Within universities, criminologists continued to disagree over the fundamental causes of crime and the best way of sentencing offenders and deterring would-be criminals. Since the early 1800s, scholars debated whether it was better to protect society by deterring criminals through harsh penalties, or to improve society by correcting criminals through more therapeutic sentences. Both sides of this long-standing debate have enjoyed periodic moments of dominant influence, but the discussions were usually limited to local venues like town councils, state prison boards, and state legislatures. The resulting policy changes derived from these debates were limited to local jurisdictions, and different regions of the country pursued diametrically different approaches.

During the 1930s, Attorney General Homer Cummings of the Roosevelt administration briefly engaged in a national debate on a new federal plan for law enforcement during the onset of the New Deal program, but the discussion was limited mostly to professional training and centralized crime statistics. At the start of the 1960s, Attorney General Robert Kennedy revived the national debate on crime control, which included a

host of ambitious legislative proposals—most of which failed to pass. In 1965, President Lyndon Johnson included crime control as a secondary objective in his War on Poverty, resulting in several legislative changes. By the end of the decade, Richard Nixon became the first president-elect to prepare a strategy for national crime control, which included sections on how to improve presidential leadership, state and local law enforcement communication and cooperation, federal law enforcement, organized crime control, narcotics and dangerous drug control, obscenity laws, prison reforms, bail reform, and the rampant crime problem in the nation's capital. There were strong differences between President Johnson and President Nixon in their approaches to crime and punishment, which reflected the same age-old debates between deterrence and correction, but both presidents generally provided room for both models in their administrations. The 1960s political debates over crime and punishment were unique because they were held on a national stage, and the resulting policy changes impacted all jurisdictions throughout the federal, state, and local levels.

By the 1970s, both the deterrence and correction approaches to crime and punishment received significant federal support, and advocates of each priority gained opportunities to advance their policy preferences. In areas such as drug enforcement and organized crime control, advocates of deterrence gained dominance through harsher federal penalties and more rigidly enforced sentencing guidelines. In other areas, such as drug addiction and urban police enforcement, advocates for rehabilitation and correction gained dominance through the introduction of a wide variety of therapeutic sentencing options, increased use of probation, and public education programs. An uneasy coexistence between opposing theories of crime and punishment persisted throughout the 1970s, until it was shattered by a poor economy combined with a growing public perception that “nothing works” to reduce recidivism and aggregate crime rates. By 1980, federal authorities shared responsibility for a host of areas of enforcement and sentencing previously reserved for state and local authorities, and lawmakers on both sides began calling for greater consistency in federal priorities.

Criminal Correction Versus Criminal Deterrence

The debate among criminologists and law enforcement officials over the most effective way to reduce crime and deal with offenders can be traced back to the 19th century, and is strongly associated with other weighty questions of democratic freedom and individual rights. By the start of the 20th century, two different models had emerged at opposite ends of a spectrum of theories on the subject. On one end, a model of rehabilitation through therapeutic corrections emerged primarily from the research of sociologists at leading universities, especially the University of Chicago, which had by the 1920s gained a national reputation for expertise in criminology. On the other end, a cadre of reform-minded law enforcement officials led by Berkeley, California, Police Chief August Vollmer began developing standards of professionalism in an effort to improve public safety through a model of criminal deterrence, which emphasized methodological efficiency to increase the certainty of punishment and deter future criminals. Although supporters of both views often shared the stage in public debates, the premises that underlie each model often led to conflicting policy choices.

The criminal corrections model assumes that most crimes are not the result of freely chosen decisions, but instead reflect the limited choices available in a dysfunctional social environment. Social scientists search for those experiences that most contribute to criminal behaviors and use the information to proscribe treatment plans to neutralize criminality. In contrast, the criminal deterrence model presumes that individuals freely choose to live within or outside the law. Those choices are often colored by a corrupted



Idle youths in the Second Ward, or Chicano Area, in El Paso, Texas, during the summer of 1972. Juvenile delinquency was one of the foremost concerns in crime control by 1960 and continued to be a major focus through the following decade; standards for trial proceedings for juveniles, which were less formal than those for adults, were debated.

sense of moral standards, or an incomplete understanding of the consequences of criminal behavior. Crime is deterred when public examples of corruption are minimized, positive role models are maximized, and the threat of punishment for criminal behaviors is made certain.

Both of these models strive to improve the local environment of would-be criminals, but for different ends. The corrections model places the greatest blame for crime on social conditions, and therefore places much more emphasis on correcting conditions and rehabilitating offenders, who are seen more as victims than as perpetrators. The deterrence model places the greatest blame for crime on individuals, where the positive examples of a nurturing environment must be equally balanced by the negative threat of punishment in order for individuals to make fully informed decisions.

By 1960, one of the primary topics of crime control at the local and national level focused on the problem of juvenile delinquency. In part, this was due to the unprecedented growth in the number of children age 11 to 18 following World War II, which is referred to as the “baby boom generation.” Over a third of the 170 million people living in the United States in 1960 were in their teens or were young adults. As that generation of youth reached adulthood, crime rates increased proportionally. The FBI’s uniform crime reports indicated a slow, but steady increase in crime rates throughout the 1950s before jumping in all categories in 1960. Twice as many crimes were committed in 1960 than in 1950, with a 14 percent increase from 1959 to 1960 alone. Minors under 18 years of age accounted for two-thirds of the arrests for car theft, half of the arrests for burglary, and a quarter of the arrests for robbery and forcible rape.

Urban districts saw the greatest increase in juvenile crime, with 14 percent of all arrests made against youth under 18 years of age. Most of the violence was attributed to an increase in the number of urban gangs, which FBI Director J. Edgar Hoover described as a prime source of “vicious acts of vandalism, wanton brutality, and mounting savagery.” This strong reaction is in part because of the contrast to the relatively peaceful conditions of the 1950s, as well as the fact that Hoover and others were most disturbed by the nature of these crimes, which appeared to represent a generational attack on authority. In 1960, 9,621 police officers were assaulted, including 48 who were killed in the line of duty. In New York City, there was an average of five attacks on police officers made by youth offenders per day, including throwing bricks, stones, beer bottles, and other garbage on police from rooftops.

Policymakers reacted to the rising baby boom generation in one of two ways. Those adhering to the corrections model cited the squalid conditions of many urban districts, particularly in black neighborhoods and among the new immigrants who had yet to fully assimilate. The combination of poverty, mixed with tense racial and ethnic diversity caused urban youth to band together in a form of brotherhood against what they



New York Police Department Police officers standing on the street with guns drawn and pointed upward during the July 1964 Harlem race riots. Officer Thomas Gilligan fatally shot 15-year-old James Powell of Harlem on July 16, 1964, sparking rioting and unrest. Urban America saw the greatest increase in crime in the early 1960s; in 1960 alone, nearly 10,000 police were assaulted and 48 were killed in the line of duty.

perceived as a hostile culture. As a symbol of that culture, police officers received the most hostility from minority groups. Suggested solutions to juvenile delinquency included some form of sensitivity training for both urban residents and police officers, matched by community action programs to reestablish the image of policemen as protectors rather than threat to local communities. In addition, advocates argued that the penalties for criminal behavior should take into account the complex social conditions and that judges should be given greater flexibility in sentencing, including more therapeutic options to better help offenders adjust to the norms of American society. In the long term, advocates of the corrections model believed that any successful solution to juvenile delinquency required at least an equal public commitment to ending urban poverty, reversing poor education rates, and opening more economic and social opportunities for urban youth.

In contrast, the advocates of the criminal deterrence model placed primary blame on the lack of resources available to the police. Urban populations declined while suburban populations increased by a 4:1 ratio, leaving police officers responsible for greater areas without an equivalent increase in police resources. Most police departments suffered from low budgets and low salaries (\$175 per month for a 48-hour week, which was about half the national salary average), with large responsibilities (two officers per 1,000 residents). Proposed solutions included requests for more resources to support local law enforcement, including money for public education programs to teach adults to better respect the role of police and instill in their children a greater respect for the law. Finally, the courts were accused of being too lenient. As Hoover explained in an interview to the *Congressional Quarterly* in 1961, “undeserved paroles, probationary terms ... politically expedient pardons” resulted in soft sentencing for youth who committed violent crimes. He added, “officers risk their lives to bring hardened offenders to justice only to have them unleashed on society again,” and as a result, “society pays a terrible price in the toll of innocent citizens ravished or murdered.” For advocates of the criminal deterrence model, the guarantee of swift punishment was essential for crime control.

In 1960, the vast majority of law enforcement was conducted by local police and paid for by local governments, with punishments handed out by local and state agencies. As long as the primary operations of law enforcement and prison management remained under local and state jurisdiction, these two models of crime control were unevenly applied throughout the country. Debates between two views took place within the halls of local county council meetings or within state agencies, often with very different results, depending on the personality of the officials in charge. Consequently, the conditions of police stations, courtrooms, and jailhouses in the south were significantly different from conditions in the urban north or rural west. By the mid-1960s, the issues of crime and punishment assumed national proportions, and the intensity of the debates increased significantly as the resulting decisions meant the difference of millions of dollars in federal aid.

Communists, Mobsters, and Klansmen

In the midst of the rising debate over juvenile delinquency, there were three other movements in federal law enforcement originating from the late 1940s and 1950s that converged by 1960 to push federal lawmakers toward a more comprehensive approach to crime and punishment. These movements included efforts that began in the late 1940s to limit espionage and subversion from communist operatives, efforts in the early 1950s to break organized crime operations, and efforts in the mid 1950s to end legalized racial discrimination in the southern states. By the time President John F. Kennedy took office in 1961, all three efforts captured the attention of federal lawmakers, including the new attorney general, Robert F. Kennedy. He built upon the momentum of the previous

decade to launch a new proactive approach to crime, which relied much more heavily on federal leadership.

Both the president and his brother had direct experience with anticommunism, organized crime control, and civil rights. In 1950, John Kennedy joined 126 Republicans and 160 Democrats in voting for the Internal Security Act, which President Truman had vetoed the day before. The 1950 law required all subversive organizations to register with the attorney general's office and created an independent Subversive Activities Control Board (SACB) to examine suspected organizations to determine if they should be identified as subversive. Membership in a subversive organization and support for its principles was never illegal; for example, it was never illegal to be a member of the communist party or to believe in communism. The primary concern of lawmakers like Kennedy was that a foreign entity (namely the Soviet Union) might exploit America's First Amendment guarantees to unduly influence American culture through the use of "front organizations." These groups appeared to reflect grassroots American politics by appealing to common cultural ideals such as civil rights, international peace, and work equity. In practice, however, communist fronts used their organizations to advance the party line directed from Moscow.

Lawmakers like Kennedy were less concerned by the specific ideology than they were of the foreign influence over the American electorate. For this reason, the Internal Security Act of 1950 and its later revision, the Communist Control Act of 1954, received broad support from both parties. Lawmakers responded to the public demand to expose the dangers of foreign-based subversion, which lawmakers often described as "the enemy within."

Anticommunists of Kennedy's generation mostly reacted to the experiences of World War II and the memory of both Adolf Hitler's atrocities in Europe and Joseph Stalin's brutal dictatorship in the Soviet Union. By the end of the 1950s, those memories became less dominant and anticommunism became less pronounced as a priority of internal security. The threat, however, of a national conspiracy to undermine domestic law and order remained just as strong under a different guise of organized crime. As early as the 1930s, the popular images of Al Capone, "Lucky" Luciano, and Frank Costello dominated popular culture as movies like *Scarface*, *Little Caesar*, and *Public Enemy* helped to paint a picture of a growing underworld menace. In the early 1950s, Tennessee Senator Estes Kefauver competed with Joseph McCarthy for the nation's attention as he toured the country, exposing real-life underworld syndicates in New York, Chicago, Detroit, St. Louis, Kansas City, and nine other cities. These early televised hearings excited the public imagination but had little impact on federal crime policy. It was not until 1957 that federal agencies paid more serious attention to the reality of nationally organized crime. A small-town police sergeant stumbled across an old farmhouse in Apalachin, New York, where he saw a dozen limousines inconspicuously parked in the woods. A raid later that day led to the arrest of 66 reputed mobsters, including the heads of the New York crime families Joe Adonis, Albert Anastasia, Joe Bonanno, Frank Costello, Tommy Lucchese, and Joe Profaci, as well as Steve Magaddino from Buffalo, New York, Tony Accardo from Chicago, Carlos Marcello from New Orleans, Santo Trafficante from Florida, and Johnny Scalish from Cleveland, Ohio. After this event, the national attention easily shifted from the "communist menace" to the "organized crime menace."

There were many similarities between communist and organized crime conspiracies. They both relied on secret organizations to violate national laws, evade police enforcement, and escape effective prosecution through corruption of public officials. More importantly, they both took advantage of America's freedom of speech and association

to marshal resources to deceive innocent citizens, exploit human weakness, and undermine neighborhood cultures to create antagonistic relationships between those “inside” and those “outside the group,” including the law enforcement agents trying to capture them. From the perspective of criminal deterrence, communists and mobsters both represented an attack on public standards of law and order and threatened to corrupt youth by demonizing authority while also glorifying lawlessness. From the corrections perspective, communists and mobsters represented different attempts to escape from the overly harsh conditions of a dysfunctional social environment. For many lawmakers, organized crime was much easier to deal with than communism because it did not include the complicated ideological associations that follow free speech and political dissent. The emergence of organized crime as a national threat appealed to both older anticommunist lawmakers and the younger generation preoccupied by rising rates in juvenile delinquency and other common street crimes.

Both John Kennedy and his brother Robert worked directly on a Senate committee that targeted the infiltration of organized criminals in labor organizations. John Kennedy served as senator on the committee, and his brother Robert served as lead council for the committee chair, John L. McClellan. Their committee was largely responsible for compiling the evidence of organized corruption in several national unions, including the Teamsters. In 1960, Robert Kennedy published a book called *The Enemy Within*, which detailed his role on the committee and contributed to his brother’s campaign success later that year. As president, John Kennedy appointed his brother to serve as attorney general, and Robert Kennedy’s main legislative agenda for crime control included most of the recommendations made by the McClellan committee for which he had previously



President Kennedy (left) and Attorney General Robert F. Kennedy (right) meet with J. Edgar Hoover, director of the FBI, in the White House Oval Office on February 23, 1961. Both Kennedys worked on a Senate committee that targeted the infiltration of organized criminals in labor organizations. Robert Kennedy reopened the national debate on crime control and introduced ambitious legislation, but most of these efforts failed to pass.

worked. For the first time since the 1930s, the full weight of the Department of Justice (DOJ) stood behind a national program to combat organized crime.

Concurrent with these two movements, another even more popular movement to use federal resources to compel racial equality had grown steadily since the late 1940s. The Fourteenth and Fifteenth Amendments explicitly forbade discrimination based on race, but since the Civil War, the federal government had largely turned a blind eye to the racial injustices that were occurring in practice (legally or not) in the south. After the egregious atrocities of Hitler's race-based regime during World War II, Americans throughout the country, especially in the urban north and west, became equally intolerant of racial inequalities at home. The Supreme Court decision of *Brown v. Board of Education* in 1954 represented only one of hundreds of similar lawsuits filed by the NAACP during the late 1940s. By the mid-1950s, public attention was drawn to media images of southern segregation and apparent misuse of local police to perpetuate a system of segregation that most Americans outside the south found disturbing. In 1957, President Dwight D. Eisenhower sent in the National Guard to enforce the desegregation of public schools in Little Rock, Arkansas. By 1961, college students from across the country organized "freedom rides" to demonstrate the inequity of segregation on public transportation in the south, and President John F. Kennedy ordered federal marshals to ride along to guarantee their protection.

The Democratic Party had traditionally been tied to a bloc of southern voters who supported segregation and resisted federal efforts to impose desegregation. For this reason, Democrat President John F. Kennedy was limited in his ability to actively campaign for new federal civil rights legislation. Republican President Eisenhower had pushed for the civil rights acts of 1957 and 1960, which Kennedy had been forced to oppose. During the first two years of his administration (1961 and 1962), Kennedy did not initiate any civil rights legislation, even though Republicans worked on a bill to defund any recipient of federal aid that engaged in segregation. Kennedy's silence, however, did not mean he was not personally in favor of racial equality and desegregation. As the leader of his party, Kennedy balanced its regional wings and avoided civil rights issues; but as chief executive, Kennedy and his brother Robert used the resources of the DOJ to strictly enforce the civil rights bills that were already legally enforced. By June 1963, two months before Martin Luther King Jr. led the 100,000-strong march on Washington to deliver his "I Have a Dream" speech, Robert Kennedy had already instructed his assistant attorneys general across the country "to render significant service as a catalyst, coordinator, and supporter of local community action to desegregate public facilities and upgrade Negro employment." By the end of 1963, John F. Kennedy was able to harness strong public support to carefully initiate a push for a new, more comprehensive civil rights bill for 1964. Kennedy was assassinated before the bill was formally introduced and passed, but the new President Lyndon Johnson—a southerner with a weak civil rights record—was able to claim ownership of the bill and push it to final passage in February 1964.

These three unrelated movements in federal crime policy tied to anticommunism, organized crime control, and civil rights dominated the DOJ and relevant congressional committees during the first years of the 1960s. Though unrelated in nature, all three movements emphasized the need for increased vigilance on the part of the federal government to more proactively guide a national crime control policy that would ensure public safety. Perhaps most critical in the confluence were the technical issues that each movement added to the discussion of crime and punishment, which policymakers were forced to grapple with over the next 15 years. The anticommunism movement raised the specter of subversive ideology undermining law and order. It also raised issues

related to the First Amendment right of public dissent and Fifth Amendment rights of witnesses giving testimony and the proper use of immunity in compelling testimony. Likewise, the effort to control organized crime raised the alarm of wayward youth and of technology used to facilitate criminal operations. It also raised questions of First Amendment protections against guilt by association; Fourth Amendment protections against improper search and seizures, especially related to electronic eavesdropping devices; and Eighth Amendment protections against unusually harsh penalties for “professional criminals.” The effort to enforce civil rights alerted lawmakers to the corruption that could occur when local authorities failed to uphold Fourteenth Amendment protections guaranteeing national standards of due process, or failed to provide Sixth Amendment guarantees of adequate access to legal counsel at all levels of police custody. At the same time, the call for civil rights could be so broadly interpreted as to justify violence, radical subversion, and lawlessness. The elevation of all these issues in the relatively short decade of the 1960s resulted in deeper polarity on issues of crime and punishment. Until the mid-1970s, these polarized debates resulted in greater federal support in a variety of measures that promoted both the corrections model and the deterrence model of crime control.

Corrections and the “War on Poverty”

The assassination of President John F. Kennedy in November 1963 sent shockwaves through the nation. The young Kennedy was a symbol of the burgeoning baby boom generation, and his promises of a “new frontier” seemed to resonate with the hope of futuristic change. Despite his advancing years, President Johnson capitalized on that youthful symbolism to introduce his Great Society program, which promised a new war on poverty, racism, and injustice. The Civil Rights Act of 1964 and the Voting Rights Act of 1965 served only as a prelude for a host of federal programs designed to alleviate the social conditions that led to local unrest. By directly linking poverty with racism and, indirectly, to social disorders such as crime and juvenile delinquency, Johnson was promoting a broad social policy that reinforced the corrections model of crime and punishment.

Johnson’s announcement of his Great Society agenda was not without specific cause. During the summer of 1964, Johnson’s reelection campaign was interrupted by news of race riots in the northern towns of Harlem, Rochester, New York, Paterson, New Jersey, and Philadelphia, resulting in five deaths and more than 500 wounded. Urban rioting was not new to the north, and clashes had occurred periodically in New York, Detroit, Cleveland, and Cincinnati since 1960, but most observers associated the conflicts with increased juvenile delinquency combined with sympathetic protests following the more dramatic civil rights demonstrations held in the south. The 1964 riots, however, were much larger and seemed to be more coordinated, which suggested a growing trend. Though Johnson remained far ahead in the polls, he nevertheless felt increasing pressure to act.

In 1964, crime and punishment had not yet become partisan issues, and most Republicans and Democrats viewed the riots independently from election rhetoric. Early in the summer, President Johnson and Republican challenger Barry Goldwater made a secret agreement not to bring up urban rioting or America’s presence in Vietnam during the campaign. They both believed that the issues were too important for national unity to be trampled on through campaign expedience, and both sides kept their word. Nevertheless, Johnson’s advisor warned the president that he should call together a national conference on the problem of crime, which would include a discussion of juvenile delinquency, organized crime, and urban riots. The president agreed, and shortly after his election, Johnson issued Executive Order 11236, calling for the



Children in Uptown, Chicago, a poor, inner-city neighborhood, in August 1974. Soon after taking office in 1963, President Lyndon Johnson launched his Great Society program to fight poverty, racism, and injustice, and indirectly, social disorders such as crime and juvenile delinquency. In this manner, Johnson reinforced the corrections model of crime and punishment, an approach that was criticized by proponents of the deterrence model.

president's commission on Law Enforcement and Administration of Justice. The President's Commission included representatives from distinguished academics in the fields of psychiatry, sociology, law, and prison reform, including practicing law enforcement leaders, and focused on several different aspects of crime in America.

In the first eight months of 1965, President Johnson submitted 65 requests for congressional action on specific bills. The Great Society agenda included a host of bills authorizing 40 new community development programs intended to eliminate poverty in urban areas, new housing and employment incentives, and 60 new programs providing funding for urban classrooms, interest-free student loans, and minority development. In the midst of this flurry of activity, Johnson's administration also introduced numerous crime prevention bills, which included funding requests to provide training for local police and grant money for local personnel management, research dollars for statewide surveys, and seed money for experimental "demonstration" projects, which included broad public education components. Also included were requests for prison alternatives, such as halfway houses, work release programs, rehabilitation clinics, and other therapeutic sentencing solutions. These bills became the Bail Reform Act, the Prisoner Rehabilitation Act, Criminal Justice Reform Act, and first Law Enforcement Assistance Act of 1965.

Throughout most of 1965, Johnson's Great Society program received broad support from both Republicans and Democrats, which included a relatively even distribution of advocates for both the corrections and deterrence models of crime control. Johnson's

agenda did not appear to disturb either side, because crime and punishment were not yet politicized at the federal level. Instead, the object of conflict between the deterrence and corrections models was directed primarily toward the Supreme Court. Chief Justice Earl Warren was the center of an emerging national debate over a series of controversial decisions that seemed to disrupt the delicate balance between the rights of the criminal and the prerogatives of law enforcement. In his support were primarily advocates for the corrections model of crime control, joined by a strong contingent of civil libertarians. Warren's supporters praised the court's defense of individual liberties, including protections against unlawful searches and seizures and self incrimination. Not surprisingly, there were an equal number of opponents, which included advocates for the corrections model as well as a host of law enforcement officials who condemned the court for unfairly handicapping police in their ability to perform their duties. In 1965, there were petitions circulated around Washington, D.C., calling for Warren's impeachment, but none were successful.

The court decisions that created the most controversy were *Mallory v. United States* (1957), *Mapp v. Ohio* (1961), *Gideon v. Wainwright* (1963), *Escobedo v. Illinois* (1964), and *Miranda v. Arizona* (1966). These cases dealt with voluntary confessions, admissibility of evidence, and wiretapping. To some, these rulings seemed to change the primary focus of courtroom adjudication away from determining "guilt" or "innocence" to a new standard of whether or not "due process" was followed. Confessions were most troubling in this regard, because a confession seems to be irrefutable proof of a person's guilt. Since the 1930s, confessions had been judged according to whether they were voluntary or involuntary admissions—a confession obtained through coercion was deemed at the very least unreliable, while a voluntary confession virtually guaranteed conviction. The *Mallory* decision held that confessions contrived during illegal detentions, regardless of whether they were voluntary or not, were inadmissible as evidence. This decision was followed quickly by the *Mapp* case, which held that any evidence obtained through improper means would be excluded from evidence. This "exclusionary rule" had already been practiced in federal courts since the 1880s, but the *Mapp* decision applied the same rule to state courts through the Fourteenth Amendment. Since the vast majority of cases were handled at the state level, this decision had a dramatic impact on the way police handled evidence. Opponents of the decision argued that the ruling would let guilty people go free, even those who actually confessed their crime, because of a technical error when an officer mistakenly failed to follow proper procedures. Supporters of the *Mallory/Mapp* rules argued that exclusion was the only effective way to force police officers to follow due process.

The new emphasis on guaranteeing due process through court-defined guidelines further illustrated the need for lawyers to be present at all stages of incarceration, including interrogation after arrest, indictment, and all preliminary hearings before trial. The *Gideon* case in 1963 held that all people had a right to attorney, even if they did not have the funds to pay for one. The following year, in 1964, the court ruled in *Escobedo* that any testimony obtained from a defendant outside the presence of an attorney could be excluded. Two years later, the court followed with *Miranda*, holding that any statements obtained while under police custody, without full warning of the prisoner's rights to counsel, were inadmissible. These rights were applied to juvenile offenders the following year in *In Re Gault* (1967). Taken together, these decisions dramatically changed the way in which police questioned, searched, and obtained evidence to convict accused suspects. As a result, almost everyone who watches a police crime show now knows by heart the famous line given at the time of arrest: "You have the right to remain silent. Anything you say can and will be used against you in a court

of law. You have the right to be speak to an attorney, and to have an attorney present during any questioning. If you cannot afford a lawyer, one will be provided for you at government expense.”

Today, the *Miranda* rights are largely taken for granted, but in the mid-1960s, these rulings were very controversial. Lawmakers in both houses submitted multiple resolutions attempting to overturn these decisions. In a hypothetical case, a guilty man could confess his crime, only to find it later excluded from evidence due to police error, resulting in the guilty party going free. Prior to the *Miranda* decision, about 60 percent of all cases relied on voluntary confession to obtain a conviction. After *Miranda*, that rate fell to 44 percent. More dramatically, the number of cases involving violent crimes “cleared”—in which an officer identifies a guilty party—fell from 60 percent in 1965 to 45 percent by 1968. The decline in clearance rates for property crimes showed a similar pattern, with a drop from 24 percent down to 18 percent. Law enforcement officials argued that their ability to convict was hampered by an overly cautious set of rules that favored the criminal over the victim.

On the other side of the debate, civil libertarians argued that the decline in confessions and convictions reflects a positive trend of a more equitable justice system. In a hypothetical case, an overly zealous law enforcement officer jumps to a conclusion about an innocent man’s guilt based on race, economic status, or some other characteristic from a presumed criminal profile. The officer takes the easy route by forcing the suspect into confessing to a crime by exploiting their ignorance or resorting to psychological intimidation. The “third degree” (or physical abuse) may have faded away in the 1930s, but there were many ways in which an officer could use isolation and emotional appeals to influence a suspect into making incriminating statements. In this case, the officer may clear the case through confession because it is easier than tracking down more objective evidence through proper scientific methods, but the civil libertarian would argue that the conviction was false and that true guilt or innocence was not determined without proper processes.

These perspectives involve differing presumptions about the nature of crime—whether the individual or their environment are most responsible, and whether the police serve to apprehend criminals or reenforce the majority conditions of the social environment. These perspectives were difficult to reconcile, and as these issues found their way into congressional hearings during the 1967–69 session, the issue of crime and punishment became increasingly polarized.

For the first two years of his administration, President Johnson seemed detached from these debates over civil liberties and criminal enforcement. By 1967, the various Task Force Reports of the President’s Crime Commission started to appear. The collective report, titled *The Challenge of Crime in a Civil Society*, was comprised of a dozen separate Task Force Reports on police, causes of crime, sentencing and prisons, organized crime, and a half-dozen other areas. Though the collective report mostly emphasized a corrections model of crime and punishment, the separate task force reports often made contrary recommendations. The introduction to the *Challenge of Crime* linked rising crime rates to limited social and economic opportunities for the urban poor, many of whom belonged to frustrated racial and ethnic minority groups. It also recommended increased federal funding for more urban development programs to improve economic opportunities, more correction programs for rehabilitation, more diversity programs to enhance legitimacy of police within their communities, and more academic research into crime and punishment. At the same time, the Task Force on Organized Crime included recommendations calling for greater funding for state and local law enforcement, specific legislation for increased federal authority to use electronic eavesdropping, and

increased authorities to compel testimony in organized crime investigations. Taken as a whole, advocates of both the corrections and the deterrence models could handpick the provisions, with which they most agreed to justify a competing legislative agenda.

President Johnson followed the release of the commission report with the announcement of a new crime-control package called the Safe Streets and Law Enforcement Act. The bill expanded federal funding of the Law Enforcement Administration Agency (LEAA), providing grants to local community and law enforcement agencies with the aim of finding innovative alternatives to traditional incarceration. The bill also included an expansive gun control provision, which was the special project of Ted Kennedy who, after the assassination of his brother John, wanted to outlaw the purchase of weapons through the mail. Fellow Democrat Senator John L. McClellan held much different views of crime and punishment than President Johnson, but he publicly supported the President's Commission and embraced the new Safe Streets Act. McClellan's Senate Committee held hearings on the bill, which eventually forced Johnson into taking a side in the debate over which policies were most effective in controlling crime.

The president's relationship with advocates of the deterrence model of crime control soured dramatically in 1967. In late 1966, Johnson had already sent signals that he supported corrections over deterrence when he vetoed the District of Columbia Crime Bill, which contained a variety of measures opposed by civil libertarians, including an antiobscenity provision, mandatory minimum sentences, and detention procedures for suspects short of arrest. During the summer of 1967, Johnson publicly supported Senator Edward Long's hearings into the federal government's use of wiretaps and eavesdropping devices against civil rights leaders. For some civil libertarians, the fact that the federal government used wiretaps and bugs for any purpose seemed to prove an underlying assertion that the police were more interested in "controlling" neighborhoods than they were in "protecting" them. The fact that these tools were used against civil rights leaders further reinforced a growing belief that the spike in juvenile crime and urban



In August 1963, a crowd of African Americans gather behind a fenced-off area during a civil rights march on Washington, D.C., where an estimated 200,000–300,000 people gathered. On the other side of the fence, police remove a protesting woman.

rioting reflected an act of political resistance to authoritarian police practices. Johnson announced that he would support any bill formally outlawing the use of all electronic surveillance technologies in criminal cases, which upset many law enforcement officials who argued that they were necessary for apprehending and deterring crime.

At the same time, Johnson formed a National Advisory Commission on Civil Disorders to investigate the number of urban riots that seemed to escalate each summer. Riots in the Watts section of Los Angeles during the summer of 1965 caused \$175 million in damages, and left 35 dead and more than 1,000 injured. The summer of 1966 brought a similar outbreak, though on a smaller scale. Overall crime rates continued to skyrocket, even in less volatile areas—in a year that experienced only a 1 percent population growth, violent crime increased 11 percent and property crimes grew by 10 percent, nearly twice and three times the previous year's rates. Also, crime in the nation's capital was worse than it had been in a decade. Johnson's National Advisory Commission published the *Kerner Report* (named after Otto Kerner who chaired the commission), which pointed to poor housing conditions, high unemployment, and overaggressive use of police force as the main causes of the rioting. It placed special importance on the frustrations of racial and ethnic minorities, who felt incapable of escaping the impoverished ghettos. The famous quote from the report warned that, "our nation is moving toward two societies, one black, one white—separate and unequal." The report placed that blame for most of these conditions on white America for creating a culture hostile to minorities, and on the law enforcement system, which abused its authority while policing urban communities. Johnson's support for these conclusions alienated many of those who sympathized with law enforcement.

By 1968, the vocal opposition that advocates of the crime deterrence model had reserved mostly for the Warren Court was equally directed toward President Johnson. Senator McClellan used his Senate hearings to introduce several amendments to the Safe Streets Bill that were entirely contrary to Johnson's original intent. Following recommendations made by the president's Task Force on Organized Crime, McClellan inserted provisions to circumvent parts of the *Mallory* and *Mapp* decisions by stipulating that voluntary confessions would be admissible if made concurrent with arrest; he also included other provisions providing federal agents with stronger authority to issue search and seizure warrants. Other additions prohibited federal employment of anyone convicted in state courts for participating in or organizing riots. Johnson's LEAA provision was modified to allow states to directly administer the money outside of federal oversight and, most significantly, McClellan called for explicit authorization for court-enforced wiretapping and electronic surveillance powers.

Johnson opposed all of the new additions and tried to initiate parliamentary maneuvers in Congress to remove them for the final bill, but he was unsuccessful. By April 1968, Johnson signed the Civil Rights Act of 1968, which included the Fair Housing Act that explicitly forbade discrimination in the sale or rental of housing. This was a direct response to the *Kerner Report*, and Johnson hoped it would lesson some of the support for the Safe Streets Bill that was still stuck in Congress. The Housing Act seemed an insufficient solution for the problem of urban riots, and public pressure for some direct action on crime control was too intense.

That week, Martin Luther King Jr. was murdered in public by a sniper's bullet, and three months later, on June 5, Robert Kennedy was murdered during a public rally in Los Angeles after winning the California and South Dakota primaries. Gallop polls named "crime and law enforcement" as the number one problem facing America, and further indicated that 63 percent of the public believed that the courts were too "soft" on crime and 45 percent wanted tougher laws and stronger police. The specter

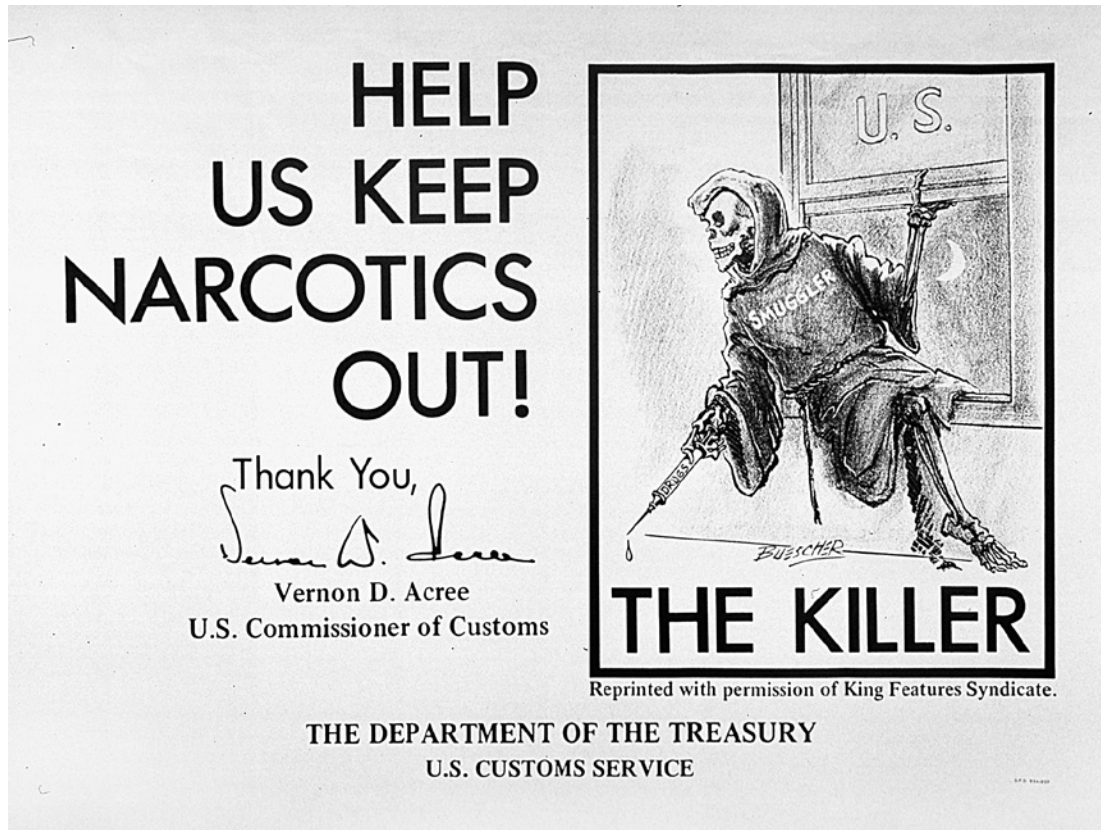
of uncontrolled crime in America forced Johnson's hand, and he was compelled to support the Safe Streets Bill, even though he opposed at least half of its provisions. Congress passed McClellan's version of the bill by an overwhelming majority in the week following Robert Kennedy's assassination, and the president reluctantly signed it four hours before the deadline. In an example of political compromise, the Safe Streets and Crime Control Act of 1968 provided almost equal support for both the corrections and deterrence models of crime and punishment.

Law and Order and Deterrence

Despite his landslide victory in 1964, President Johnson was unable to secure enough support to guarantee his nomination in 1968. Historians debate the reasons why Johnson lost so much support in the short period between 1966 and 1968, but it is clear that issues of crime and punishment played some role in the process. The Republican nominee, Richard Nixon, staged a campaign that promised to more proactively address the problems of urban rioting, combat rising crime rates, and instill greater respect for "law and order" within all classes of society, especially among the young. The assassination of Robert Kennedy, who was emerging as the Democratic Party's frontrunner after Johnson quietly withdrew, seemed to help Republicans more than Democrats, and Nixon defeated the new Democratic nominee, Hubert Humphrey, by a respectable margin.

From first appearances, President Nixon's election in 1968 might be seen as a triumph of the criminal deterrence model of crime and punishment. For the first time in history, an American president developed a detailed guidebook for a federally led crime-control policy, even before entering office. Prior administrations never took such a step because policies for crime control and punishment were almost exclusively reserved for state authorities to administer. Yet, one of the lasting legacies of Johnson's administration was his promotion of both of these issues into the national spotlight. Nixon's administration made "law and order" a top priority. Within his first year in office, Nixon successfully guided several federal crime control bills through Congress, including the Organized Crime Control Act and the Comprehensive Drug Abuse Prevention and Control Act of 1970. Both laws provided tools for greater coordination among law enforcement agencies, stiffer penalties for certain crimes, and less flexibility in sentencing. Nixon's law-and-order agenda empowered law enforcement with a host of new tools to investigate, apprehend, and prosecute offenders, which strongly favored a deterrence model on crime. At the same time, none of these new laws overturned the programs initiated by Johnson. In fact, in most cases, especially in drug enforcement, Nixon's policy continued to incorporate many elements from both the corrections and deterrence models. This dual approach defined the approach to crime and punishment throughout most of the 1970s.

The Organized Crime Control Act of 1970 was a crime package nearly 40 years in the making. It contained nine separate provisions, many of which were first conceived in the 1930s and 1950s. The long delay was mostly due to the fact that criminal prosecutions, with few exceptions, were usually conducted at the local level using state laws. For decades, federal lawmakers resisted passing specific legislation to empower federal law enforcement officers, who might intrude on the jurisdiction and autonomy of local police. The fear of organized crime forced lawmakers to reconsider. News of corruption among local officers, local prosecutors, members of city councils, and some police chiefs compelled Congress to add new tools at the federal level to fight criminal organization that might span several cities or even multiple states. In 1963, supposed mafia enforcer Joseph Valachi testified before McClellan's Senate committee, exposing the secret society



A 1970s anti-drug poster from the U.S. Customs Service warns of narcotics infiltration. President Nixon placed heavy blame on neighborhood crime for the rampant use of illegal drugs and pursued the problem as strenuously as he pushed for federal organized crime control. By 1970, federal statistics indicated that 200,000 people were addicted to heroin and 1 million had used marijuana. Death rates from drug abuse tripled between 1960 and 1970.

of organized crime. In 1968, his memoirs were published, and the image of a nationally organized crime syndicate captured the imaginations of both the public and Congress. The Organized Crime Control Act was, in part, a final response to the threat.

Many of the provisions for the 1970 crime package followed the recommendations made by President Johnson's Task Force on Organized Crime, which had also borrowed ideas from earlier recommendations made by smaller commissions from the 1930s and 1950s. Some of these included the authority to create special grand juries with broad powers to investigate any criminal violation, even beyond the initial mandate. These juries could sit for months at a time, appeal directly to the attorney general in case local prosecutors or investigators were reluctant to act, and present detailed reports of their findings. Other provisions included enhanced penalties for certain categories of criminals, including habitual offenders who repeatedly committed the same crimes, professional criminals who earned their living from criminal activities, and organized criminals who cooperated with others to avoid apprehension. Advocates for the criminal deterrence model of crime control strongly supported these measures because they seemed to counteract "soft" parole boards or "weak" judges at the local level who failed to adequately punish hardened criminals. Other critics, including advocates for the corrections model, complained that the new laws did not take into account the variety of other explanations for repeat offenders. It was possible

that a “hard” judge might impose a sentence of 30 years in prison to a young offender who engaged in a crime spree.

Other provisions of the Organized Crime Control Act included special protections guaranteeing the safety of cooperating witnesses. Law enforcement agents routinely complained about the unwillingness of witnesses to testify out of fear for their lives from mob retaliation, and these new powers seemed to address that problem. Civil libertarians sympathized about needing to protect witnesses, but they were concerned by related provisions that gave prosecutors the authority to compel testimony by granting limited immunity for specific crimes. The Fifth Amendment prohibits involuntary self-incrimination, but granting immunity to a suspect forced them to testify because they faced no risk of punishment. The new law authorized judges to hold witnesses for contempt if they failed to testify under immunity. Civil libertarians argued that these powers were too reminiscent of 1950s hearings on anticommunism, when communist informants were jailed for failing to testify against their associates. Though the law was explicitly written to prosecute organized criminals, critics argued that the same laws could also be used to prosecute other political dissenters, protestors, or rioters. Moreover, since these were federal laws, they could be applied in any of the 50 states through the Fourteenth Amendment.

The most enduring measure of the Organized Crime Control Act was a provision called the Racketeer Influenced Corrupt Organizations (RICO) Act. The law provided special penalties for criminals who used electronic communication tools in the regular course of business to commit several crimes over an extended period of time. In theory, the law was intended to target mobsters who used legitimate businesses as fronts for their criminal operations. In addition, the law also provided civil provisions, which meant that, even if the police failed to prosecute the corrupt business, competing businesses could sue on the basis that they were deceived through criminal organization. At the time it was passed, RICO received little attention and was ignored for almost seven years. Late in the decade, federal prosecutors noticed its value and began holding workshops on how to use the law to launch federal investigations. The RICO statute eventually became one of the federal government’s most powerful tools for prosecuting mob bosses, resulting in the conviction of all five heads of the New York crime families by the mid-1980s. At the same time, the fear of some civil libertarians that the law could be used for alternate purposes also proved accurate. The civil component of the RICO law was reinterpreted as a new breach of contract penalty, and by the mid-1980s, the law was routinely used by companies to sue their competitors for infractions that had little to do with organized crime. By the 1990s, the number of civil RICO cases skyrocketed to more than a 1,000 per year, including several famous lawsuits against large tobacco companies, small-arms manufacturers, the Major Baseball League, the Los Angeles Police Department, and even the Catholic Church.

One of the most significant results of Nixon’s organized crime push was that it initiated a new program of federal strike forces, which coordinated the resources of federal agents directly with state and local law police. The idea of creating ongoing bodies of federal–local coordination to solve complex crime problems first arose from the American Bar Association during the 1950s, and Robert Kennedy resurrected the idea during his tenure as attorney general, but it was not implemented in either instance. The Nixon administration gave full support behind the model and piloted it for large eastern cities known for heavy mob infiltration, including Brooklyn, Detroit, Philadelphia, Newark, and Miami. By the end of the 1970s, the Strike Force Program quickly expanded to include a variety of targets, from illegal drug operations to youth street gangs. These strike forces brought federal law enforcement officers into the daily routines of local police precincts in almost all large urban areas.

President Nixon offset his push for more comprehensive federal organized crime control with an equally stronger federal response to local neighborhood crime, which he blamed largely on the wide use of illegal drugs. While not dismissing the problems of poverty and racism, Nixon argued that a majority of property crimes were committed by drug addicts who found it necessary to steal and commit other crimes to support their habits. Federal statistics in 1970 reported 200,000 people addicted to heroin, mostly among people in their late 20s. More than 1 million people used marijuana, 10 percent of whom were considered chronic users, most of them in their late teens. Of greatest concern was the death rate due to drug abuse that tripled between 1960 and 1970 and increased five times for people under age 24. Nixon's new drug enforcement agenda sought to distinguish between the severities of different drugs to counteract the long-term effects of youthful experimentation.

The Comprehensive Drug Abuse Prevention and Control Act of 1970 consolidated the various drug enforcement departments spread across the government into a single new Drug Enforcement Agency, which was given more funding and more agents to operate. In the new system, all drugs were reclassified according to their usefulness and potential for abuse. Five categories were created, with Category V including drugs that required some medical supervision but were not likely to be abused, and Category I reserved for drugs that were highly addictive with no legitimate medical use. This ranked schedule system allowed police the freedom to prioritize their enforcement strategies—less emphasis was placed on marijuana, while more emphasis was placed on heroin. Nixon followed up with an executive order creating the Special Action Office for Drug Abuse Prevention, which created a national network of federally funded treatment centers to help those addicted to drugs. The new drug classification system also empowered state legislatures to tailor their criminal codes to match the severity of the drug and the severity of the offense. In 1973, New York Governor Nelson Rockefeller pushed for new legislation that provided lesser punishments for drug possession when the amounts were limited to personal use and much harsher punishments for possession of amounts needed for distribution. These laws were intended to distinguish between the drug user and the drug dealer. Advocates of the deterrence model applauded Rockefeller's more severe punishments, including imprisonment for drug dealing, which had usually been reserved for more violent crimes. Advocates of the corrections model supported the new federal funding for treatment centers as part of the solution to crime, but they were less supportive of the overall impact of the new war on drugs and its impact on the overall prison population. Between 1970 and 1980, the rate of prison growth at state and federal levels doubled from 4 percent to 8 percent per year. Actual prisoner counts in 1970 were twice that of the decade before, and the rates in 1980 were three times that of 1960.

The larger prison populations resurrected long-standing concerns about youth incarceration. Since 1899, youth had been treated differently than adult offenders. The first juvenile court in Chicago was started with the goal of rehabilitating youth before they grew into adult criminals. These courts operated with much less formal procedures so that the judge could act as a "parent of the country" to deal with the individual circumstances of each child with greater flexibility. Punishment usually meant mandatory attendance to a reform school, even if the property crime or other crime of violence would otherwise have resulted in a prison sentence for adults. Very few records were kept, and the youthful crimes were supposed to be forgotten to allow offenders the opportunity to grow into responsible and law-abiding adults. Youth courts were one of many programs to come from the corrections model of crime and punishment.

Yet by the 1960s, disagreement arose, even among corrections advocates, about the usefulness of such informal proceedings. There was a concern that the same informality

that allowed judges to waive normal punishments for youthful crimes might also be used to pass harsher sentences with few opportunities for appeal. In 1966, the Supreme Court held in *Kent v. United States* that juveniles were entitled to some formal preliminary hearings if they chose them. The following year, the court held in *In re Gault* that juveniles were entitled to the same rights of due process as adults, which included a list of *Miranda*-like warnings. Critics of these rulings argued that the formalization of juvenile courts would undermine its original purpose, which was not to hear adversarial cases between competing attorneys, but to serve as a sort of social agency to rehabilitate wayward youth. Nevertheless, in 1970, the court ruled again in *In re Winship* that judges in juvenile courts were required to use the same standards of evidence used in adult courts when handing down their decisions. Several justices on the Supreme Court dissented in these cases, and the trend was eventually slowed the following year, when the *McKeiver v. Pennsylvania* decision ruled that juveniles were not entitled to a trial by jury.

At the other extreme among prison populations, the Supreme Court also reconsidered the constitutionality of the most extreme punishment that could be handed out by a judge—the death penalty. The basic rationale behind the death penalty is that some crimes are so egregious that they require the stiffest punishment possible to deter would-be offenders. At the time of the American Revolution, all of the thirteen colonies listed numerous crimes punishable by death, and the new federal government listed its own capital crimes in 1790. Debates over the value of the penalty as a tool of deterrence began as early as the 1840s. Three states abolished it before the Civil War, but after public executions were ended in favor of private venues, the issue faded. Calls for abolition reemerged prior to World War I, when eight more states, mostly in the west, abolished the penalty, but after 1917 the issue faded.

The question of abolition reemerged in the late 1950s during the civil rights movement in the south. The gruesome murder of Emmett Till in 1955 highlighted the potential for local inequities after the two white men who were indicted for the murder were quickly acquitted by the local jury. They later admitted in an interview with a national magazine that they actually had committed the crime. Lawmakers on both sides of the segregation issue were outraged by Emmett Till's murder and the lack of conviction, and civil rights leaders effectively argued that justice in the south was enforced along racial lines—whites were less likely to be convicted for crimes against blacks, while blacks were routinely convicted and much more likely to be punished with more severe sentences. The misuse of justice was especially tragic when the punishment involved death. Rape was listed as a capital crime in most southern states, and critics argued that the law was reserved mostly for blacks who dared to resist the segregated system—some went so far as to call it “legal lynching.”

By the 1960s, national attention was focused on a host of racial inequalities rising from the segregated society. This national conversation moved beyond race, however, when several non-southern states began re-examining the inconsistency with which the death penalty was applied. Some judges resorted to it frequently, while others—sometimes in the next courtroom—never used it. Between 1957 and 1969, the fear that the personal whim of a single judge might determine if a culprit received a prison sentence or a death sentence led eight more states to abolish capital sentences in favor of long prison terms. The Supreme Court became directly involved in these issues in 1968, when it ruled in *Witherspoon v. Illinois* (1968) that prospective jurors could not be excluded from capital cases based on their opposition to the death penalty. Four years later, the court ruled in *Furman v. Georgia* that capital punishment in many states was arbitrarily administered, and as such was a violation of Eighth Amendment protection against cruel and unusual punishment and the Fourteenth Amendment due process guarantee.

The court specifically identified racial bias as the primary reason for the arbitrary use of the death penalty, and declared that the penalty should not be administered anywhere unless it could be done in a clear and consistent manner, with frequent opportunities for appeal to eliminate the possibility that nonlegal factors, such as race, might influence the decision.

The immediate effect of *Furman* was that more than 600 death-row inmates across the country had their sentences automatically commuted to life in prison, and all future death sentences were placed on hold until each state established consistent procedures guaranteeing equal implementation. Opponents such as Georgia Lieutenant Governor Lester Maddox reacted to the *Furman* decision by calling it a “license for anarchy, rape, murder.” Supporters, including members of the American Civil Liberties Union and the Legal Defense Fund, described the ruling as one more step toward a “more civilized” America. President Nixon, nevertheless, vowed to restore the penalty. Over the next four years, 35 states passed revised rules for the implementation of the death penalty, and in 1976, the court ruled in *Gregg v. Georgia* that the modifications were sufficient to guarantee equal implementation. The following year, Gary Gilmore became the first prisoner to be executed after the court lifted the ban on capital punishment.

From Watergate to “Nothing Works”

In 1972, President Richard Nixon won the presidential election by the largest electoral landslide in history. The “law and order” campaign played a major role in his success, in part because the new federal initiatives against organized crime and drug enforcement reflected a general expansion in federal leadership over crime control. The campaign also seemed an explicit antidote to the growing counterculture radicalism that was emerging on college campuses and from within the civil rights movement. The antiwar movement sparked a number of organizations that were committed to Marxist principles, opposed to American capitalism, and vocally encouraging open opposition to the existing social system as a racist, sexist, oppressive tool of wealth and privilege. Groups like the Students for a Democratic Society (SDS), Weatherman Underground, the Black Panthers, and Black Muslim groups opposed the war in Vietnam, not because they rejected violence, but because they believed that the war represented capitalist imperialism. The war, capitalism, and any expression of governmental oppression—racial or otherwise—were to be confronted and opposed by “any means necessary.” At times, that resulted in the bombing of public buildings, orchestrated robberies, and violent unrest. The FBI reported more than 2,500 bombings in 1969 alone. While these organizations represented a tiny fraction of the larger civil rights movement, they often captured a much larger portion of the media attention.

Some of the campus radicalism spilled into the prison system, as increasingly crowded prisons began devolving into race-based gangs. The Black Muslim organization attracted black separatism within the prison yards, which was matched by white separatist gangs in the same institutions. These race-based tensions were magnified by the fact that many of the prison facilities were more than 30 years old and had not been built to hold so many inmates. Reforms in prison conditions had not kept pace with reforms in the criminal system. Race riots erupted in prisons periodically in the 1960s, including one in San Quentin in 1967 that involved 2,000 inmates. In all, there were 39 prison riots in 1969 and 59 in 1970. The bloodiest prison riot in American history occurred in 1971, when prisoners at the Attica Correctional Facility in New York killed a guard and ended up taking 39 prison workers hostage. The incident began in reaction to the death of a black militant leader at San Quentin, who was shot trying to escape. The 1,200 inmates of Attica described their insurrection as a political protest and demanded better conditions.

Hostage negotiations broke down after four days, and Governor Rockefeller ordered the prison be taken back by force. Police dropped tear gas into the yard before storming, resulting in the death of 10 hostages and 29 inmates and the wounding of 80 others. Both the inmates and the police were criticized for their handling of the Attica riot. Prisons across the country adopted more aggressive policies to prevent future uprisings, while at the same time lawmakers pushed for the construction of new prisons and the renovation of old sites to address some of the issues of overcrowding.

At the national level, the association with radical rhetoric and rioting in the streets, on campus, and behind prison walls helped shape the public's perception of a growing lawlessness among American youth that was arising from the new radical ideology. Nixon's law-and-order campaign provided some balance to the perception, which resulted in his 1972 landslide victory. Yet, just two years later, Nixon was forced to step down from office due to his association with what appeared to be a series of criminal activities led by high-ranking officials of his administration involved in the Watergate scandal. The apparent contradiction between the law-and-order agenda and Watergate contributed to a considerable disenchantment on both sides of the political spectrum. Democrat lawmakers launched an assault on the political power of certain federal law enforcement agencies, particularly the FBI and the Central Intelligence Agency (CIA). Republican lawmakers were cautious of voicing the pitch words of "law and order" because of their association with Nixon. Advocates of both the deterrence and corrections models were unsatisfied. Aggregate crime rates continued to climb, growth rates of prison populations continue to rise, and overall expansion of federal jurisdiction over crime and punishment continued to grow, despite the disgraced leadership.

One area that benefitted from the discord following Watergate was the LEAA program left over from President's Johnson Great Society. Funding increased steadily in the

48		49	
LEFT	RETURNED	LEFT	RETURNED
6-16-72			
5:00 PM	5:30 AM	5:22 AM	6:20 AM
5:41 AM	6:00 AM	6:25 AM	6:30 AM
6:25 AM	6:35 AM	6:30 AM	6:35 AM
7:00 AM	7:00 AM	7:30 AM	7:30 AM
Dem. Committee Door on 6th floor but Door Was locked. All other doors secured. All doors secured. Several B1 B2 B3 secured. Unlocked trash door. Several B1 B2 B3 secured. Made Rubin & him informed about the break in check floors of Rubin. Back to Dist. 8 5:55 AM.		aut. De Port. secured all B1 B2 B3 secured. Unlocked trash door. Several B1 B2 B3 secured. Made Rubin & him informed about the break in check floors of Rubin. Back to Dist. 8 5:55 AM.	
6-17-72			
LEFT	RETURNED	LEFT	RETURNED
12:05	12:00 AM	8:00	9:00
12:30 AM	12:00 AM	10:00 AM	10:00 AM
1:47 AM	1:55 AM	12:00 AM	12:00 AM
While on duty 12:00 AM B2 several B1 B2 B3 secured. Paper bags on door. All doors on 6th floor were open. With Rubin and the door was open. Outside of office bldg was open. All lights out. Call police and take the door. Call police and take the door. A check of the door was made. A check of the door was made.		Officer came back. Two investigators. Two lobby. Bldg off duty. Two investigating officers. Call the office. Sgt Paul. Security check on all the floors. It will be done. Floor for security check. B1-B2-B3. Floor all secure. By police & D.E.T. cover. Check on 11 floor & all basement floors. Every thing under control. One hour they making check all so. Reporting here. I don't have report. Room is not ready to go. Check all floors & out. Let's go. All. Sgt. Cover. Check out. 1:00 AM. Office. Return on duty.	

The first of two pages of the security officer's log of the Watergate Office Building showing the entries for June 17, 1972, the night of the break-in by five burglars connected to the Committee for the Re-Election of the President, a Nixon campaign fundraising group. Nixon resigned over the scandal, throwing the legitimacy of the political power wielded by certain law enforcement agencies into temporary disarray.

1970s, growing from \$268 million in 1970 to more than a \$1 billion during the mid-1970s. Part of the appeal was that advocates for both deterrence and corrections could use the federal grant program to support their pet projects. Some grants were used to create therapeutic outpatient clinics as alternatives to imprisonment. The number of adult prisoners who were granted early parole in order to participate in a therapeutic treatment option increased from 62,000 in 1965 to more than 156,000 in 1975. At the same time, other grants could be used by police departments to stock up on riot gear or fund experimental, interagency strike-force programs to reinforce local law enforcement efforts. Federal lawmakers responded to pressure from both sides of the political aisle. When the LEAA budgets continued to grow to the point that it competed with other social service programs, constituents from other departments began demanding some evidence of accountability during a time when the general economy was stagnating. This task proved quite difficult. Despite the large outflow of federal money, there was no appreciable decline either in aggregate crime rates or recidivism rates.

In 1974, a criminologist named Robert Martinson published a study of 231 different prison rehabilitation programs titled, “What Works? Questions and Answers About Prison Reform,” which concluded that “with few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism.” The corrections model of crime control was largely created and supported by criminologists who continually searched for the ultimate cause of criminal behaviors and routinely suggested possible therapeutic strategies for neutralizing those causes. Martinson’s study seemed to completely contradict some of those basic principles. Policymakers who had always favored the more aggressive deterrence model immediately jumped on the study as proof of their position. To the question of “what works?” they inserted their answer: “nothing works!” Within the academic community, the “nothing works” controversy stirred up immediate reactions both in favor and in opposition. This debate affected policymakers during a time when the political environment was indecisive on policies related to crime and punishment. In 1975, another criminologist, James Q. Wilson, published *Thinking About Crime*, which essentially concluded that the most effective way to lower overall crime rates was to impose mandatory sentences. Wilson’s argument provided an academic basis for lawmakers who wanted to dramatically change crime control policies to emphasize stronger deterrence and less corrective rehabilitation. Some of these policy changes began during President James Carter’s administration, when he seriously reshuffled the LEAA program and dramatically cut back its funding in 1979. The most obvious policy shifts would wait until the 1980s, when President Ronald Reagan took office.

Conclusion

The history of crime and punishment between 1960 and 1980 is one of dynamic tension between rival priorities of rehabilitative corrections and crime deterrence. Though the advocates of each model disagreed—sometime significantly—over particular policy priorities, both models enjoyed considerable support through a wide variety of legislative and judicial changes. The most significant result of this ongoing dichotomy was a general increase in the role of federal involvement in law enforcement and sentencing. In this way, the most significant difference between 1960 and 1980 was the overarching presence of federal rules, agents, and money in the routine operations of state and local law enforcement agencies and corrections facilities.

Aharon W. Zorea
University of Wisconsin, Richland

1962 PRIMARY DOCUMENT

Treasury Department Memorandum on “Lucky” Luciano’s Drug Ring

“Lucky” Luciano is considered the father of American organized crime. He not only established the Commission, which encouraged consolidating power instead of fighting over territory, but he also divided New York City into the Five Families. If a national organized crime conspiracy existed in midcentury America, it was due to the work of Luciano, Meyer Lansky, and Bugsy Siegel. Imprisoned from 1936 to 1946, he was then deported. Unable to oversee the Commission from afar, he began operating in Italy. Luciano was being shadowed by Italian narcotics agents when he died suddenly in Naples, Italy, on January 26. There were rumors of poison to silence him, but medical examiners determined that a heart attack was the cause.

Treasury Narcotics Agents to Return Fugitives to U. S. Saturday

A three-month international man-hunt led by U. S. Treasury narcotics agents for three fugitives from a New York conspiracy trial is scheduled to end with the return of the trio to the United States Saturday night, Henry L. Giordano, Acting Commissioner of Narcotics, announced today.

Scheduled to arrive at New York International Airport from Madrid, Spain, at 7:15 p.m. tomorrow, are Vincent Mauro, Frank Caruso, and Salvatore Maneri, escorted by four Spanish police officers and a U. S. Treasury narcotics agent. The fugitives will be arrested on the basis of outstanding fugitive warrants previously issued by the U. S. District Court at New York City.

Their arrest will climax a chase by Treasury narcotics agents who traced the movements of the trio from Nassau, Bahamas, to Kingston,

Jamaica, to Caracas, Venezuela; to Nice on the French Riviera, to London, and finally to Spain.

Mr. Giordano said that when the fugitives were in Spain, their activities were connected with Charles “Lucky” Luciano who was then living in Naples. Italian Treasury policy, he said, had been questioning Luciano as to his role in assisting the three fugitives, and Luciano’s arrest was imminent when he died on January 26.

On October 21, 1960, U. S. Treasury narcotics agents, working with the police of Westchester County, New York, arrested four men for possession of 23-1/2 pounds of pure heroin—worth an estimated \$3 million on the illegal market. Subsequent investigation resulted in a narcotics conspiracy case involving 16 American and Canadian defendants.

Vincent Mauro, Frank Caruso and Salvatore Maneri were considered by the Narcotics Bureau to be principal members of this conspiracy. The United States Commissioner at New York City set bonds of \$250,000 on Mauro and Caruso at the time of their arrest. The bonds were later reduced to \$50,000 each. This was furnished and the two were set at liberty. Maneri, who was at liberty on a \$5,000 immigration bond was released on an additional \$10,000 bail bond.

On September 19, 1961, the date set for their appearance in Federal Court at New York City to plead to the indictment, all three defendants failed to appear. Their bonds were forfeited and warrants were issued for their arrest. Two other defendants in this case disappeared and were later found murdered.

The remaining 11 defendants in the conspiracy were tried and found guilty on all charges on December 27, 1961. They are scheduled for sentencing later this month.

During this same period, Italian Treasury police, who were investigating narcotics trafficking in their country, were able to implicate all of the American and Canadian conspirators in the New York narcotics case, from leads furnished them by U. S. narcotics agents.

Mr. Giordano said that Italian authorities had long had Luciano under surveillance. A

few months ago, while keeping him under surveillance, Italian police were led to an American, Henry Rubino, who held joint business interests with Vincent Mauro. It was discovered that Rubino was in contact with fugitives Mauro, Caruso and Maneri. This led to the discovery of the fugitives in Barcelona and Majorca, where they were arrested on January 22-23 of this year.

Following the arrests in Spain, the Italian Treasury Police implicated Rubino and Luciano in their narcotics conspiracy. Rubino was arrested at Naples on January 25, 1962. Luciano was questioned the morning of January 26, and was instructed to return the following day for more detailed interrogation, but on the afternoon of that day Luciano died at the Naples airport.

James A. Reed, Assistant Secretary of the Treasury, under whose supervision the Bureau of Narcotics operates, said he was impressed with the cooperation and coordination of the police forces involved.

He expressed thanks particular to the Spanish police and the Spanish authorities, and the Italian police for their work with U. S. Treasury agents against persons suspected of smuggling narcotics into the United States.

"Illicit trafficking in narcotic drugs is one of the most heinous crimes against humanity and this case illustrates the kind of international cooperation which benefits the peoples of all countries. The help of the Spanish and Italian police officials is greatly appreciated and has contributed materially to U.S. law enforcement," Assistant Secretary Reed said. Mr. Reed expressed his appreciation to the Justice and State Departments for the assistance rendered by them.

Treasury Department
Washington, D.C.
February 2, 1962

Source: NARA-II, RG 65, DOT, Narcotics Enforcement, Box 1 F: Narcotics Investigation

See Articles: Italian Americans; Luciano, "Lucky;" Narcotics Laws; Organized Crime, History of; Organized Crime, Sociology of.

1962 PRIMARY DOCUMENT

Commission of Narcotics Report on Detroit Organized Crime and Racketeering

The Detroit Outfit was the most powerful crime family outside of New York and Chicago, and at the time of this report was led by Joe Zerilli, who was succeeded by "Papa John" Priziola in 1977. The report also mentions the increase in African American organized crime, which had roots in 1920s Harlem and grew after World War II. One of the first black drug cartels operating on street corners, Young Boys Incorporated, formed in the Detroit Outfit in 1978 and soon controlled most of its heroin trade.

DATE: September 25, 1962

TO: Mr. H.L. Giordano, Commissioner of Narcotics, Washington, D.C.

FROM: Ross B. Ellis, District Supervisor, Detroit, Michigan

SUBJECT: Organized Crime and Racketeering

Reference is made to Bureau memorandum dated September 10, 1962, from Assistant to the commissioner Charles Siragusa, requesting a brief and up-to-date report relative to the organized crime and racketeering situation at Detroit, Michigan.

At Detroit, Michigan, organized crime and racketeering among the upper echelon Italians appears to be primarily concentrated on various gambling enterprises, labor racketeering and, in some instances, large scale theft rings. In recent years, it has also been the modus operandi of the Italian element to invest in several quasi-legitimate enterprises such as real estate, bars, restaurants, car washes, dry cleaning chains, and bakeries, as well as various other forms of legitimate business.

During the past several months, this office has conducted an investigation into the activities of major targets Raffaele QUASARANO and John PRIZIOLA. This investigation has been extremely extensive in view of the fact that information, even though of a nebulous nature, was received in this office to the effect that QUASARANO and John PRIZIOLA might possibly be considering a return to the illicit narcotic traffic. Our investigation to date has failed to reveal any information which would lend credence to the above.

The most significant developments in this investigation have established some positive and some suspected connections between PRIZIOLA, QUASARANO and certain apparently legitimate businesses, in current operation at Detroit. Our efforts in this matter have been closely coordinated with a special unit of the Detroit Police Department, the Criminal Information Bureau, which is headed by Inspector Vincent Piersante, one of the foremost opponents of organized crime and racketeering in Detroit. In the event our present investigation continues to fail to reveal any worthwhile information relative to the current activities of PRIZIOLA and QUASARANO, we anticipate shifting our investigation to other major racketeers at Detroit, Michigan.

Through all of our efforts in the fight against organized crime, we maintain a continual exchange of information with other enforcement agencies at the federal level. This is particularly true of the Intelligence Division of the Internal Revenue Service.

It is interesting to note that during recent months there appears to be a trend toward organization among the colored segment of narcotic violators. This has been particularly evidenced during the past year or two. In conducting investigations relative to most of our major peddlers at Detroit, we have been uncovering evidence of conspiracy to organize trafficking on a large scale level between factions in Detroit, New York and Chicago. It would appear that our most important colored violators at Detroit are joining together in groups consisting of three to five persons.

This group will then obtain large supplies of narcotics via mutual sources of supply at

either New York or Chicago. The distribution at Detroit is then delegated to a handful of less important peddlers who handle practically all actual phases of the operation except the negotiations. As result of the above trend, we have found it more difficult to involve this type of peddler in an actual sale or possession case. In most instances today, our most successful approach to these people has been via the conspiracy route.

In all of our investigations of the aforementioned operations, there again has been no information uncovered which would reveal any association between our major colored violators and the prominent Italian racketeers at Detroit. In each instance where we culminated an investigation of this nature, we have determined the source of supply for the Detroit violators to be located in either New York or Chicago, and in one instance, Ontario, Canada.

Exemplary cases following in the above categories would be: Mich-4527, Ollie DUFF, Edith WILLIAMS, John Robert AUSTIN, William Bud JOHNSON and Richard BOYD. Each of these violators was, at one time, considered major in their own right. In the instant case, they conspired and organized for the purpose of large scale distribution of narcotics at Detroit, Michigan. Each of the above persons was known to have important sources of supply at both New York City and Chicago, Illinois, Mich-4542, Maceo THOMAS, Gus SAUNDERS, Hattie Mae THOMAS, Eloise SAUNDERS, Robert Lee HARRIS, Lillian BOYKIN. In this instance Gus SAUNDERS was considered the most important violator at Detroit, Michigan, during 1960 and 1961. Although this matter is presently pending trial, we feel confident that we will be able to prove that SAUNDERS and the others not only conspired, but did obtain on several occasions large quantities of narcotics from Maceo and Hattie Mae THOMAS, major violators at Chicago, Illinois.

In this instance, the overall operation involved the distribution of approximately one half-kilogram of heroin every two weeks at Detroit. It has been estimated that the overall operation of Maceo THOMAS at Chicago

involved distribution of approximately one and one half-kilogram of heroin every week.

Mich-4543, Ralph MIXON, et al. This case is still in the process of investigation and grand jury proceedings. Here again, MIXON, who has been an important violator at Detroit for several years, conspired with other important violators to organize the distribution of narcotics at Detroit, Michigan. In this instance, this conspiracy has been traced to sources at Windsor, Ontario, Canada, whom we anticipate will be indicted along with the Detroit conspirators.

Ross B. Ellis
District Supervisor

Source: NARA-II, RG 170 Records of the
DEA, Subj files of Bureau of Narcotics, Box 51,
F: Organized Crime and Racketeering

See Articles: Detroit, Michigan; Narcotics Laws;
Organized Crime, History of; Organized Crime,
Sociology of.

1962 PRIMARY DOCUMENT

Bureau of Narcotics Report on Kansas City Organized Crime and Racketeering

Organized crime in Kansas City began around World War I, and it was a "wide-open" city during Prohibition, when Mafia ally Boss Pendergast controlled the government; no alcohol-related arrests were made during the time, a golden age for the Kansas City outfit. In the years after this report, the FBI began Operation Strawman, using wiretaps to investigate connections between the Kansas City outfit and the Tropicana casino, leading to several 1983 convictions.

RE: Organized Crime and Racketeering, Kansas City, Missouri

Mr. Phillips R. Smith
District Supervisor
Bureau of Narcotics
Kansas City, Missouri

Dear Sir:

1. Reference is made to Bureau memorandum directed to this office under date of September 14, 1962, by Mr. George H. Gaffney, Assistant to the Commissioner of Narcotics, requesting brief and current information concerning organized crime and racketeering in the State of Missouri and a resume of our enforcement activity against violators in this category.
2. Organized Crime in the Greater Kansas City Area has undergone considerable change in the past decade. In recent years, Kansas City has often been referred to by underworld characters as "the only cemetery in the United States with neon lights". This description is given by individuals who have not forgotten the "old days" and would like to operate their dice games in display windows on main thoroughfares of the downtown district as was the practice during the '30's or just outside the gates of defense plants as they did during World War II. At the present time organized crime in this area consists of gambling, handbook and policy wheel operations, football and basketball parlay tickets, wire service, prostitution and the fencing of stolen property. All of the gambling and betting enterprises are now "sneak" operations due to the fact that the underworld is no longer able to obtain the sanction of local authorities. As a result of this curtailment, many of the more prominent members have branched out to other sections of the country and now either own or have interest in gambling establishments at Lake Tahoe and Las Vegas, Nevada, Cape Canaveral, Florida.
3. Having obtained pre-legal advice in the matter, members of the local organization

have had knowledge for a number of years that in order to overcome their greatest law enforcement hazard—an indictment for Federal income tax evasion—it is necessary that they report income in sufficient amount to offset their visible expenditures. In an effort to overcome this peril, the majority of all hoodlums in the Kansas City organization have required interest in legitimate enterprises. Among the businesses in which they are interested are the wholesale distribution of produce, meat, tobacco and liquor; automobile franchise dealerships, truck and automobile leasing companies, money orders, insurance, and various types of the usual retail establishments. Whether such a business is a success or nonprofitable, its actual operation is not always too important. The primary purpose of the investment is to furnish a medium through which a member and possibly some of his associates can “funnel” into legitimate channels for income tax purposes, large sums of money that have been derived from illegitimate sources. A recent example of such an operation was an audit made by the Alcohol and Tobacco Tax Unit of a small retail drugstore owned by Carl Civella, a well known Kansas City hoodlum, which reflected that during a 12-month period the store deposited \$102,000.00 in addition to what appeared to be the regular receipts of the business.

4. There has been no indication that the members of the local organization or their associates have been involved in the herein traffic in Kansas City since the dissolution of the Carrella-Clayton-Dichiarante combine in 1958. Their apparent reluctance to engage in the drug traffic is obviously due to the mandatory penalties and the heavy sentences that have been assessed narcotic law violators in this area. In addition, the organization feels that the narcotic traffic creates a stigma and an enforcement pressure that is detrimental to their more lucrative enterprises such as gambling.
5. In June 1961, Mr. James J. Featherstone of the Organized Crime and Racketeering Section of the Attorney General's Office arrived in Kansas City, Missouri, for the purpose of coordinating the investigative efforts of the Treasury Enforcement Agencies and the Department of Justice in their inquiries concerning organized crime. At that time, the District Headquarters Office of our Bureau at Kansas City, Missouri, had in protective custody a Government witness who had assisted in the making of a narcotic case against Anthony J. Biase, a widely known hoodlum of Omaha, Nebraska, who was closely associated with the organization in Kansas City, Missouri. As a result of the assistance rendered the Government, an unsuccessful attempt was made to assassinate the witness but he survived to identify his assailants. This witness, Kenneth B. Sheetz, had previously been associated with a number of prominent Kansas City hoodlums and organization members. During the intensive investigation that followed Mr. Featherstone's arrival in Kansas City, Sheetz was made available to all of the agencies concerned and in the months that followed this witness was interviewed by more than thirty groups of enforcement officers assigned to the organized crime investigation. In addition, all information contained in the files of the District Headquarters Office concerning the subjects under investigation was furnished the respective agencies and the agents conducting the inquiries were afforded the full cooperation of the entire personnel of the Kansas City Office.
6. Among the 23 hoodlum members of the local underworld organization who are under investigation by Mr. Featherstone's office in connection with Internal Revenue matters are fourteen who were originally proposed by the District Headquarters Office. The majority of the latter group are former drug traffickers and several have had prior convictions for violation of the Federal Narcotic Laws.

Some of the more important members of this group are as follows:

Nicholas Civella, Mafia Book No. 250. Although an intensive effort has been made by the Internal Revenue Service to develop sufficient evidence to warrant an income tax prosecution of Civella, it does not appear that the endeavor will be successful. This subject was one of the two Kansas City representatives who attended the Appalachian Meeting in November 1957 and has been on notice since that time that the Bureau of Internal Revenue was interested in him. Like the individuals mentioned in Paragraph 3 of this report, Civella makes it a point to report sufficient income to offset normal and visible expenditures.

Carl Civella. This subject is not so fortunate as his brother, Nicholas. An investigation of Carl's income tax return for a three year period revealed unreported income in excess of \$50,000.00. A report of their investigation is now being prepared by the Internal Revenue Service and prosecution will be recommended, Carl Civella was formerly an active drug trafficker and was convicted for violation of the narcotic laws in Kansas City, Missouri, on December 27, 1939, our case file No-7511.

Sam Carrella. This important interstate narcotic trafficker was actively engaged in the whole distribution of heroin as recently as September 1958. Since the arrest and conviction of his associate, Jack Clayton, and the efforts that were made by our Bureau to implicate his source, Anthony J. Dichiarinte, and himself, Carrella has remained dormant insofar as the drug traffic is concerned and has contented himself with his fencing activities. An intensive investigation is now being conducted by the Internal Revenue Service of financial items listed in Carrella's returns and the prospects for the making of an income tax case against this subject appear to be excellent.

Feliz Ferina and Anthony J. Cardarella. These subjects are the hoodlums who attempted to assassinate Government witness, Kenneth B. Sheetz, on June 20, 1960, at Kansas City, Missouri. Ferina and Cardarella were indicted in this matter by the Jackson County Grand Jury at Kansas City, Missouri, for assault with intent to kill. Ferina was tried twice in State Court on this indictment. The first of these actions resulted in a mistrial and he was acquitted in the second proceeding. Ferina and Cardarella were convicted in the U. S. District Court at Kansas City, Missouri, on an indictment charging obstruction of justice in connection with the attempted assassination of Sheetz and were each sentence to ten years' imprisonment. Both Ferina and Cardarella were under investigation by the Internal Revenue Service for several months and although that agency has reported Ferina for failure to file returns for the years 1958 and 1959, and is now reporting Cardarella for approximately \$9,000.00 in unreported income during the years 1958, 1959, and 1960, it is anticipated by Mr. Featherstone's office that the Tax Division will recommend against prosecution. This anticipated recommendation is based upon the fact that both of these defendants are presently under ten year sentence in the obstruction of justice case. It is the writer's opinion that the sentences received by Ferina and Cardarella were very meager in comparison with the seriousness of the offense which they committed against the Government and the permanent physical injuries which they inflicted upon Government witness Kenneth B. Sheetz. In view of these circumstances, it would appear that some effort should be made to remedy the decision of the Tax Division in these matters.

Charles A. Cacioppo. This is the individual who arranged with the local underworld organization for an attempt to assassinate Kenneth B. Sheetz, Government witness in the narcotic case against

Anthony J. Biase of Omaha, Nebraska, case Neb-766. During the period from 1939 to 1943, Cacioppo was actively engaged in the herein traffic in Kansas City, Missouri, but successfully evaded apprehension for this offense. An investigation of Cacioppo's income tax returns has been conducted by the Internal Revenue Service and a report is now being prepared by that agency in which prosecution will be recommended as to Cacioppo and two associates, Joseph and Sam LeGrotte on a charge of conspiracy to conceal Cacioppo's interest in a business, the owner of record being Joseph LeGrotte.

Joseph LaScoula and Michael LaScoula, National List No's 228 and 231 and Mafia Book 259 and 260 respectively. During the period from 1928 to 1943, the LaScoula Brothers were outstanding figures in the narcotic traffic at Kansas City, Missouri. Since that time, these subjects have operated gambling establishments in various locations in this area and are also well known for their fencing activities particularly diamonds and better quality jewelry. The LaScoula brothers are presently under investigation by the Internal Revenue Service and sufficient evidence has been obtained to warrant a recommendation of prosecution as to Michael LaScoula. It is also anticipated by that agency that adequate evidence can be developed to sustain a prosecution case against Joseph LaScoula.

7. A matter of particular interest to this office which is being coordinated by Mr. Featherstone through the joint efforts of the Alcohol and Tobacco Tax Unit and the Federal Bureau of Investigation in the perjury case against Frank LaRocca, a prominent member of the Mafia at Kansas City, Missouri. The offense in this case had as it's beginning an investigation conducted by our Bureau relative to the origin of a revolver discarded by one of the assailants who attempted to

assassinate Government witness Kenneth B. Sheetz on June 20, 1960. This investigation revealed that the gun in question was one of twelve revolvers of similar caliber and type that were purchased by an unidentified individual at Elmer's Sporting Goods Store, Gunnison, Colorado, on October 30, 1957. Subsequent inquiry by the Alcohol and Tobacco Tax Unit positively identified the purchaser of these revolvers as Frank LaRocca of Kansas City, Missouri. Following this revelation, LaRocca was subpoenaed before a Federal Grand Jury at Kansas City, Missouri, and he emphatically denied that he had ever purchased a gun of any type in the State of Colorado. While it appears that justice has experienced some delay in this matter, it is anticipated that an indictment charging LaRocca with perjury will be returned in the very near future.

8. The District Headquarters Office at Kansas City, Missouri, has actively assisted Mr. Featherstone, his associates and all agencies who are taking part in the drive against organized crime and racketeering in this area and will continue this cooperation in an effort to successfully conclude this worthy endeavor by the Attorney General's Office.
9. As previously stated, the criminal organization at Kansas City, Missouri, and their associates are apparently not engaged in the illicit narcotic traffic; however, there are a number of hoodlums in this area who are excellent potentials and may at any time start, or resume, their activities in the drug traffic. The entire personnel of the District Headquarters Office is constantly on the alert for this type of violator.

Very truly yours,

C. A. Follmer
Narcotic Agent
Treasury Department
Bureau of Narcotics
Kansas City, 6, Mo.
October 4, 1962

Source: RG 170 Records of the DEA, Subj files of Bureau of Narcotics, Box 52, F: Organized Crime Conference

See Articles: Gambling; Internal Revenue Service; Kansas City, Missouri; Organized Crime, History of.

1963 PRIMARY DOCUMENT

Temporary Assignment of Narcotic Agents to Investigate Gambling

Criminal organizations do not divide their labor in the same way as law enforcement. The same organization may be involved in drug trafficking, gambling, smuggling, the corruption of state and local government, and tax evasion, without ill effects to its focus. In so doing, their crimes transpire across the jurisdictions of as many as a dozen different U.S. agencies. Interagency cooperation is vital, and the temporary assignment of agents—sometimes for years—is common.

In response to a request from the Attorney General, and with your approval, the Bureau of Narcotics is assigning, on a temporary basis, a group of narcotic agents in New York to investigate the relationship between narcotics traffic and illicit gambling. In order to coordinate this investigation with those conducted by the Internal Revenue Service, these narcotic agents are being temporarily assigned to work under the supervision of the Intelligence Division of Internal Revenue Service insofar as their activities relate to wagering, excise or income taxes. The information gathered and activities conducted will be coordinated with the U. S. Attorney for the Southern District of New York.

The U. S. Attorney, Mr. Morgenthau, believes that some question may be raised as to the authority of the selected narcotic agents to

investigate matters coming under the wagering tax laws. In order to avoid any such question, it is recommended that the Federal Narcotic Agents in question be authorized, in addition to their regular duties, to engage in the detection, investigation and apprehension of violators of the wagering occupational and excise tax laws to the same extent as special agents of the Internal Revenue Service.

If you approve will you please sign the attached authorization.

Under Secretary Fowler
Assistant Secretary Reed
January 28, 1963

Source: Organized Crime (Gambling) folder in RG 170 Records of the DEA, Subj files of the Bureau of Narcotics 1916-1970, Box 52

See Articles: Gambling; Internal Revenue Service; Jurisdiction; Tax Crimes.

1963 PRIMARY DOCUMENT

Proposed John F. Kennedy Speech for the March on Washington

The Great March on Washington was a 1963 political rally in Washington, D.C. One of the largest rallies in history, it included a quarter of a million people gathering in support of the civil rights movement. The demonstration of popular support and raising of awareness—especially effective in the age before the 24-hour news cycle, when fewer news stories could be serviced in the few minutes allotted to the evening news—helped pass the Civil Rights Act and Voting Rights Act.

We have witnessed today in Washington tons of thousands of Americans—both Negro

and white—exercising their right to assemble peaceably and direct the widest possible attention to a great national issue. Efforts to secure equal treatment and equal opportunity for all without regard to race, color, creed or nationality are neither novel or difficult to understand. What is different today is the intensified and widespread public awareness of the need to move forward in achieving these objectives—objectives which are older than this nation.

Although this summer has seen remarkable progress in translating civil rights from principles into practices, we have a very long way yet to travel. One cannot help but be impressed with the deep fervor and the quiet dignity that characterizes the thousands who have gathered in the Nation's Capital from across the country to demonstrate their faith and confidence in our democratic form of government. History has seen many demonstrations—of widely varying character and for a whole host of reasons. As our thoughts travel to other demonstrations that have occurred in different parts of the world, this Nation can properly be proud of the demonstration that has occurred here today. The leaders of the organizations sponsoring the March and all who have participated in it deserve our appreciation for the detailed preparations that made it possible and for the orderly manner in which it has been conducted.

The Executive Branch of the Federal Government will continue its efforts to obtain increased employment and to eliminate discrimination in employment practices, two of the prime goals of the March. In addition, our efforts to secure enactment of the legislative proposals made to the Congress will be maintained, including not only the Civil Rights Bill, but also proposals to broaden and strengthen the Manpower Development and Training Program, the Youth Employment Bill, amendments to the vocational education program, the establishment of a work-study program for high school age youth, strengthening of the adult basic education provisions in the Administration's education program and the amendments proposed to the public welfare work-relief and training program.

This nation can afford to achieve the goals of a full employment policy—it cannot afford to permit the potential skills and educational capacity of its citizens to be unrealized.

The cause of 20 million Negroes has been advanced by the program conducted so appropriately before the Nation's shrine in the Great Emancipator, but even more significant is the contribution to all mankind.

Source: Collection JFK-POF: Papers of John F. Kennedy: President's Office Files
Archival Research Catalog (ARC) ID: 193810

See Articles: African Americans; Civil Disobedience; Civil Rights Laws; Kennedy, John F. (Administration of).

1963 PRIMARY DOCUMENT

Gerald R. Ford Interview on Working With John F. Kennedy

The Kennedy assassination is one of the most enduring subjects for conspiracy theories; even Americans otherwise skeptical of conspiracy theories often express doubt in the official account of Lee Harvey Oswald as the only participant, or even the only shooter. This is understandable; at best, the Oswald account lacks dramatic satisfaction, and as pointed out in this interview, no motivation was shared with the public. But as Ford says, there is no evidence of conspiracy.

Creator: Gerald R. Ford
Interviewer: Vicki Daitch
Date of Interview: July 8, 2003
Place of Interview: Avon, Colorado

DAITCH: This is Vicki Daitch. Today is July 8, 2003, and I'm interviewing President Gerald Ford at his home in Avon, Colorado. First

of all, I just wanted to.... As you know, this is for the Kennedy library.

FORD: Right.

DAITCH: First of all, I just wanted to sort of.... I know you served in the House with John Kennedy for a brief while before he went into the Senate. Do you have any particular recollections about that time?

FORD: Well, I got to know Jack Kennedy when I first went to the House in January of 1949. He was elected two years ahead of me, and I was elected in 1948. By pure happenstance, they assigned newcomers suites in the Old House Office Building. And by pure happenstance, I was in one suite, and right across the hall, on the same corridor, he was in the other suite. So we became well acquainted over the two or four years that he served while I was there. We would walk back and forth from the Office Building to the floor of the House. Our staffs mingled. So it was a good relationship based on just more or less coincidence.

DAITCH: Now, you were close to the same age, though, too, right? You were young men first going into politics.

FORD: We were within a year or two of each other.

DAITCH: So did that sort of create any kind of camaraderie that might have not been so much if you were further apart?

FORD: Oh, I think so. And we were both relatively the same age. I was 35 or 36; he was roughly the same age. We had both served in the military, in the Navy. Ideologically, we had many differences. But on a personal basis, we had a good friendship.

DAITCH: Now you were both ideologically fairly moderate for your parties, is that fair to say?

FORD: Well, I was an internationalist as a Republican. I was against the isolationists, I was against the hard-line right wing. And if my recollection is correct, Jack Kennedy's views within the Democratic party were of the middle of the road.

DAITCH: Mmmm hmmm. Right. Now, how did you maintain your friendship after you moved to the Senate?

FORD: Well, we were separated with a different relationship. He was in the Senate; I

was in the House. But we would run into each other at social events or other gatherings. It wasn't as frequent or as warm a friendship, but it was still a good relationship.

DAITCH: Right. Now, you were friendly—at that time were you also friendly with Nixon [Richard M. Nixon]?

FORD: Oh, yes. From my first day that I was in the House, after I was sworn in, Nixon came up to me, and he said, "I'm Dick Nixon from California. I'm glad to see you." Well, he and Kennedy had come in two years ahead of me. Right from the beginning, I had a very warm personal relationship with Dick Nixon. He went from the House to the Senate and to the vice presidency.

DAITCH: Right. Now, when he was vice president running against Kennedy, how was that? I mean obviously you would have supported Vice President Nixon. What was your sense of the election and their...?

FORD: Obviously I supported Nixon, but it wasn't a personal difference. It was ideological. I supported Nixon, and I did what I could to defeat Kennedy. But when Kennedy won in '60, very close race, I was reelected in the House. And on international matters, I supported the Kennedy administration. I had differences with them, ideologically, domestically.

DAITCH: Now, I know that the Kennedys felt, in particular by 1963, I guess people were gearing up for the '64 election, they were feeling pretty frustrated. We have some evidence in the library, you know, of conversations where they felt that partisan politics were preventing them from getting any domestic legislation, the progressive things that they were interested in in terms of health care and civil rights and that sort of thing. Do you remember, sort of, maybe having a little more friction around that time with the administration?

FORD: There is no doubt that on domestic issues I strongly differed with the Kennedy administration. I don't recall the particulars. That's a long time ago. But ideologically we just had different views. Now, on international matters, NATO [North Atlantic Treaty Organization], economic aid, military assistance for European nations, I was strongly in favor.

DAITCH: Were you surprised that Kennedy turned out to be so much of an internationalist, knowing that his father [Joseph P. Kennedy, Sr.] had been such an isolationist?

FORD: I understood it because Jack Kennedy came from a different era. His father was anti-British, anti-internationalism because he came from one generation. Jack came from a totally different era, different generation. So I understood it.

DAITCH: It probably seemed to be common sense to you at the time.

FORD: Well, I believed in it myself, and I was pleased to see that Kennedy, as a

Democrat, had similar views.

DAITCH: Right, right. I know that they were very frustrated about the civil rights. Obviously at the time there was so much conflict, in fact some really violent things that were going on. The Kennedys were criticized for not moving fast enough, and they were criticized for doing some of the things that they did. What was your take at the time [on] what they should have been doing?

FORD: Well, it's interesting. Johnson [Lyndon B. Johnson], who came later, was very much more aggressive on civil rights than Kennedy was. Johnson really moved forward vigorously on civil rights. And I think it was a contrast with the sort of hesitancy on the part of the Kennedys that upset the civil rights movement, etc.

DAITCH: The Kennedys claim that they couldn't get anything through Congress, and that's why they were hesitant: because Congress was so antithetical to the things that they were trying to do. Do you think that's a...?

FORD: There's no doubt that the Kennedy administration was not as skillful in dealing with the Congress as they should have been. It was even more evident when Johnson took over. He was a master of dealing with the Congress and that just reflected adversely on the inability of the Kennedys to work and get results with the Congress.

DAITCH: Right. I've heard people say, historians have said and other people, that they should have maybe used Vice President Johnson more in that capacity because he was

such a master at it. Asked him to help more on things.

FORD: I always felt the Kennedy administration per se was hesitant, reluctant to deal with the Johnson wing of the Democratic party. There was a jealousy or whatever you want to call it. The Kennedys weren't going to do something to get Johnson to help them because then it would be a Johnson action rather than a Kennedy action. Human nature being what it is, the Kennedy people were reluctant.

DAITCH: Right. That's maybe understandable, as you say, from a human nature perspective.

FORD: I understood it. It was too bad. Human jealousy shouldn't interfere with desirable action, but that being what it is....

DAITCH: I wanted to go back to.... You were part of sort of a progressive group in the House in the early sixties, and I think about that—for me the context was instantly—I think about Kennedy being a young person who's doing and maybe saying the same kinds of things about let's get the country moving again, let's be vigorous. Was that sort of...? Were those similar impulses in both parties?

FORD: There were elements in both parties. The Democratic party had a heritage, particularly with the dominance of the Southern Democrats, to be very aggressive, to move out of the old mold. The Republicans, because of their defeat in '60, realized they had to do something to change their image. But the Southern Democrats were a roadblock to any real affirmative action on the part of the Democratic administration. It's interesting. When I went to Congress, there wasn't a single Republican below the Mason-Dixon Line.

DAITCH: Is that right?!

FORD: Not one. And now look at how the political geography has changed.

DAITCH: Yes, absolutely. It's really fascinating, and it's all about civil rights, isn't it?

FORD: That's right.

DAITCH: Absolutely. To me the sixties are such an interesting period because of the way the politics completely flip-flopped. It must have been difficult to—especially right at that moment when Kennedy was president

and Johnson, too, I think. I mean what a difficult time to try to move forward on anything domestically.

FORD: It was difficult because the Democratic party was not unified, and the Republican party had its own splits: from the hard right to the moderates like myself. So it was a transitional period in American politics.

DAITCH: Right. I know you supported President Kennedy's internationalist policies. How about the.... I mean the things that now you look back and you say what a terrible mistake the Bay of Pigs and some other things. But on the other hand, you know, the Cuban Missile Crisis, especially with the papers and the tapes that have been made available now, it appears as if Kennedy really handled it masterfully in terms of avoiding nuclear war. It was a very scary moment. Do you, I mean looking back on it now and at the time, comparing, did you believe that he was handling it well?

FORD: I was somewhat in the center of what was happening. I had no control or jurisdiction. But I was a senior Republican on the Defense Appropriations Committee.

DAITCH: Oh, so you would have been kept aware.

FORD: So I was kept fully informed as to what was taking place. I had no jurisdiction over action. But I was informed on a daily basis by the top people in the Pentagon because I was on the committee that provided all the money for the Army, Navy, Air Force, and Marines. So I saw firsthand how skillfully the administration under Kennedy handled the matter.

DAITCH: You were impressed with it at the time? FORD: Very much so.

DAITCH: Did you have any sense of.... I mean if you look at, listen to, or read the transcriptions of some of the tapes, the discussions that took place in the ExComm, it's amazing how strongly and skillfully mostly Kennedy alone and a handful of other people, but there was a lot of pressure to act more aggressively. And I can't help but be struck by, for a young man who has considerable experience and is a man of some sophistication, but nevertheless how strongly he resisted doing anything

too forceful or too likely to force Khrushchev [Nikita S. Khrushchev] into reacting himself.

FORD: That's a tribute, I think, to his good judgment. But I'll add this as a postscript: I firmly believe that a president is a better president if he's served in the military. There's something about serving in the military that gives you a broader perspective, regardless of what your role is. But having served in the military.... I spent four years in the Navy, Kennedy spent a long time, I don't remember how much. But your judgment is tempered by your exposure to the military. And I think it makes you a better president.

DAITCH: That's interesting. I would tend to agree with that. On the other hand—in terms of having a broader view maybe or being even resistant to going to war—on the other hand some of the people who were pressuring him to go to war were military people.

FORD: Well, it's a matter of individual exposure, what you think is right or wrong. I think the Kennedy final decisions were very sound in the Cuban Missile Crisis.

DAITCH: What about their other—and this will sort of lead us into the Warren Commission, which is very important for the library to understand. But what about the administration's policies were sort of, I don't know what the right word is, you know, the secrecy, the sort of aggressive pursuit of trying to undermine Castro's [Fidel Castro] regime, and, ultimately, we found out later, the assassination attempts. Were you aware of any of that at the time?

FORD: My recollection.... It's a good many years ago. I'm not accurate on that, so I don't really recall. I will say that this: Although we as Republicans thought Kennedy's popularity following the election of '60 would make him automatically reelected in '64, by '63 there was a growing anti-Kennedy political view. By '63, before he was assassinated, there was a feeling among Republicans we had a chance to beat him '64. Now maybe we were overly optimistic. But it was a different environment from '62 and '61.

DAITCH: Do you think because people.... There were a lot of areas in.... People look back now and sort of idealize the period,

but there were a lot of areas in which he was struggling.

FORD: Vulnerable.

DAITCH: Yes, and not making a lot of progress. So by that time it was evident that there weren't any big things to show for the....

FORD: Right. So maybe we were overly optimistic. But at least the atmosphere was different.

DAITCH: Well, that's interesting because that goes back to what I had seen in some of the documents at the library, where they felt that they were sort of under attack. And probably the Republicans felt that they could be a little more aggressive. Let's talk about the assassination for a moment. I mean everybody.... The question is always, where were you, etc.? But what was that for you?

FORD: You know, I'm the sole, surviving member of that seven-member board.

DAITCH: Yes.

FORD: Well, the day of the assassination Mrs. Ford [Elizabeth Anne "Betty" Bloomer Ford] and I had gone into the District of Columbia to talk to an education counselor for one of our sons. As we came out of the meeting with the counselor, we turned the radio on. And that's how I heard about the assassination. I was shocked because of my personal friendship. I was shocked because I couldn't believe somebody would assassinate an American president. And Mrs. Ford and I went to the funeral, etc. I think it was Sunday night. The assassination had occurred on Friday, as I recall. Sunday night Mrs. Ford and I were sitting in our home in Alexandria, and I got a telephone call from President Johnson saying he was setting up this blue-ribbon group to investigate the assassination and wanted me to serve on it. I said, "Mr. President, I have major responsibilities in the House. I don't have time." And a typical Johnson technique, he twisted your arm, and I agreed. And that's how I got on the board with Hale Boggs [Thomas Hale Boggs], the chief justice [Earl Warren], Allen Dulles [Allen W. Dulles], John McCloy [John J. McCloy], two senators: from Kentucky [John Sherman Cooper] and Georgia [Richard B. Russell].

DAITCH: It was, in fact, a blue-ribbon panel.

FORD: Well, it was a very able panel, I'll say that.

DAITCH: So how did you work together, the panel? I mean I remember seeing some criticism or another that while the panel members weren't always there.... But you all had other responsibilities that you had to continue to....

FORD: I was probably one of the most conscientious in attending. Some of the others missed quite a bit. But they always had a top staff person present who could fill in for the absent member. But over all, I think our participation was good.

DAITCH: In terms of gathering the information, I assume there were staff people to gather the information and take depositions and that sort of thing?

FORD: Well, we hired as a group of I think six or seven top lawyers from all over the country. Arlen Specter was one of them.

DAITCH: Is that right?

FORD: He was a highly-thought-of lawyer of the Philadelphia area. He was one of the top lawyers we hired. They did a lot of the preliminary investigation. They as a group came up with a proposed draft of the Commission report. In that report they said, the staff in what they drafted, that there was no conspiracy, foreign or domestic. The Commission independently changed it. We said, as a Commission, we found *no evidence of a conspiracy*, foreign or domestic. Which is quite different.

DAITCH: Absolutely.

FORD: Now, the truth is there's been no evidence to change it. But we had to be a little more cautious.

DAITCH: Sure. Absolutely. Now did the Commission itself, did you get together, did you discuss the evidence and the papers that the staff people had drafted and that sort of thing?

FORD: Oh, yes. That's why we made the change about evidence of a conspiracy. We made two basic decisions: Lee Harvey Oswald committed the assassination. We were convinced of that. And we as a Commission

stated that we found no evidence of a conspiracy, foreign or domestic.

DAITCH: Now, I have heard this sort of as, maybe it's intended a little bit as a criticism of the Commission, but more just as context for what the Commission was working with. But I have read in a couple of different places now that President Johnson wanted, and so did Bob Kennedy [Robert F. Kennedy] and some other people, wanted the Commission to be able to say this is not a conspiracy, this is not a KGB [Komitet gosudarstvennoi bezopasnosti] plot, this is not a Castro plot. Was there pressure to sort of come up with that conclusion?

FORD: No pressure on me. So I'm not a good witness on that. There may have been pressure on the chief justice or other members. But from my point of view, it was not pressure to come to any conclusion one way or another.

DAITCH: Right. It's, apparently they feared that there would be a movement in the country to do something if people thought it was a KGB plot or something like that. But, in fact, there really was no evidence to that effect.

FORD: None that I saw. But we had a very able staff who did a good job interrogating witnesses, Marina [Marina N. Prusakova Oswald], the wife and the mother [Marguerite Oswald]. They were very odd.

DAITCH: Yes. Which sort of explains a little bit about Oswald, I suppose.

FORD: Right, right.

DAITCH: Did you actually talk to any of these people? Or were you present?

FORD: Oh, I was present and interrogated all of the lead witnesses: Marina, the mother, and so forth.

DAITCH: Right. And what was your impression of Marina, for example?

FORD: Well, the mother was kookie.

DAITCH: Really?

FORD: You can understand why the son was odd. The wife, who was a Russian—Oswald married her in the Soviet Union. She was surprisingly able. I have a feeling, and I think others shared it, that he, Oswald, assassinated Kennedy because he was being prodded by his wife...

DAITCH: Really!?

FORD: ...on his impotence and so forth, and he had to do something to display his bravado. Now, that's a theory.

DAITCH: That's interesting. Did you think that she was prodding him specifically toward that kind of act or that was just his way of...?

FORD: That was his action. I don't think she suggested that particular action.

DAITCH: One of the criticisms of the Warren Commission.... I think in recent years historians have sort of tried to take a more serious look at the Commission rather than the usual conspiracy, the kookie thing. But one of the criticisms has been that the Commission didn't do enough. In fact, I think one of the staff members said that he felt that one of the weaknesses of the report, I can't remember which one, was that Oswald's motive was never really clarified enough for the American people to really get their mind around it and feel comfortable about why he did it.

FORD: I don't recall a staff member raising that question. What I told you a few minutes ago, that's my own judgment. Now, I think it may well have been shared by others on the Commission. But we never wrote it in the report, to my knowledge.

DAITCH: Yes, the person's name was Burt Griffin [Burt W. Griffin]. I don't know if that rings a bell.

FORD: Oh, he was one of the top lawyers we hired, along with Arlen Specter. Yes, I've forgotten where he came from, but he was one of the top lawyers that we drafted to come and help us.

DAITCH: I wonder if a little bit of this.... It's very easy to say those things in retrospect in terms of at the time it seemed like the motivation was fairly complete, and part of it is in fact that the man was unstable and that sort of thing. But to put it in the political context of our government's pursuit of Castro and attempted assassinations, which some of these people—apparently Castro knew about them, and he made mention of them so the pro-Castro community in the United States was aware of them.

FORD: Well, I just don't have that recollection 40-some years later. I had my own views

that I recollect. Some of the others I wouldn't be able to testify.

DAITCH: Right. Now you knew at the time, though, that Oswald had been sort of hanging around with these pro-Castro organizations, and he had gone to Mexico to try to...

FORD: New Orleans. He had been to the Castro embassy in Mexico. We were all familiar with that, yes.

DAITCH: But you didn't find any real connection with...

FORD: I didn't see it, no.

DAITCH: Right. I don't think anyone still has come up with that, but at the time. Now obviously you were one of the main people who was the driving force behind some of the groups in the 1970's, in Congress—the committees and the commissions—to bring some of these secretive CIA activities more to light and to make the government more accountable for those things.

FORD: Right.

DAITCH: And that's one of the moments in history when people started to, again, aside from the conspiracy kooks, when people started to say, well, why didn't the Warren Commission uncover this? Because people.... I mean certainly Allen Dulles would have been aware probably.

FORD: He certainly should have because of his previous responsibilities.

DAITCH: Right. And maybe John McCloy.

FORD: Possibly.

DAITCH: Possibly. Who else? I think Dick Russell maybe might have known.

FORD: He could have.

DAITCH: But in any case, that some of the members of the Warren Commission probably would have known that there were these secret attacks against, and a fairly aggressive program of attack, against Castro, and that the Commission didn't try to put Oswald's acts in the context of that. Do you think that's a valid criticism?

FORD: It probably is as a Monday morning quarterback. At the time we thought we did a thorough job. Whether we slipped up on this particular aspect, history can only come up to its own conclusion. But, I think at the time a majority of the members of the

Commission thought we had done a thorough job.

DAITCH: Right. Now what we also know is that the CIA and the FBI did not release to the Commission certain....

FORD: Correct. Which was unconscionable.

DAITCH: Right. I guess Richard Helms testified, he was the person who was...

FORD: In charge of the CIA.

DAITCH: Right. And he's testified that, well, even if we had released that material, it wouldn't have changed the conclusions. Which is probably true.

FORD: I think that's a fair assessment.

DAITCH: Given that, do you think that that was a decision that the CIA [Central Intelligence Agency] and the FBI [Federal Bureau of Investigation] had the authority to make in terms of not releasing that information to the Commission?

FORD: I think they made a mistake in not giving us all of the data they had available. And their judgment was not good in not giving us the full story.

DAITCH: Right, right. But you don't think that it would have changed anything?

FORD: From what I know about the additional evidence, I don't think it would have changed our basic decisions.

DAITCH: I have to tell you that the things that are available now are wonderful as a result of those commissions and as a result of the more recent...

FORD: I'm sure there's data now that we wish we had but never got. Not that they would have changed the two conclusions. But it would have been a more interesting scenario.

DAITCH: Mmmm hmmm. I think the context is one of the things that, you know, historians now are—in particular Max Holland has said, and I think there's something to be said for this, he puts the whole thing in the context of the Cold War. And that's very important from a historical perspective to understand the seriousness with which all of that was taken and the importance of I guess what you would call espionage and intelligence activities. And the fact that our government was withholding secrets from other branches of our government was maybe....

FORD: Well, history of government is that departments are not always forthright with their competitors in their government. That's human nature. Whether it's right or wrong, that's the way it works.

DAITCH: And if you can get by with it....

FORD: Right.

DAITCH: It's, I think, a very important point historically to understand at that time the context.

FORD: Let me ask you this: You are much more knowledgeable in certain areas than we as a commission were because of new evidence. My impression, without getting into the details, is that none of the new evidence would basically change our two conclusions.

DAITCH: No, I don't think it does at all. And I think serious historians don't find that it does either. The biggest thing I think that historians want to add is the context of the.... There's a historian who has written—a journalist, I think, who's written a historical book. His name is Gus Russo. It's called *Live by the Sword*. His thesis, it seemed a little harsh to me, but basically his thesis is that, look, the Kennedy brothers, especially Bob Kennedy, were pursuing Castro very aggressively, and that that was common knowledge in the pro-Castro community...

FORD: Right.

DAITCH: And that that is the political context in which Lee Harvey Oswald acted. He figured, hey, if the American government is pursuing Castro, trying to assassinate him, then it's perfectly legitimate for me to turn around and try to assassinate the American president.

FORD: That's a theory. There's no concrete evidence that that would have transpired any differently. Now, whenever I'm asked what are my current conclusions, I have a one-page statement that I have typed up, made available. People send me a copy of the Warren Commission. On my views I have this one-page statement that says: "As the sole surviving member of the Warren Commission, I agree with the basic decisions that Lee Harvey Oswald committed the assassination, and we found no evidence of a conspiracy." I sign it, date it, and send it back. I won't get into an

argument with people who have a different viewpoint.

DAITCH: Right. And again, I think that legitimate historians tend to agree with that perspective. I think this fellow Gus Russo has done a tremendous amount of research. And again, there's no question that there was this secret aggression toward the Castro regime.

FORD: Right.

DAITCH: That's a matter of historical fact. But he suggests that one of the reasons why Bob Kennedy also didn't want to pursue it much further, he wasn't aggressive.... Actually, let me ask you that: Did you find that Bob Kennedy wasn't terribly—[he] didn't want to spend a lot of time talking about it?

FORD: Hi, dear.

[BREAK]

FORD: ...as a zealot on a number of things than Jack was. His handling of the McCarthy [Joseph R. McCarthy] hearings. He was a tiger. Jack was more of a diplomat. So I would say that Bobby would have maybe even different.... Wendy [the dog], you go away and leave us.

DAITCH: Oh, I can't help petting a dog if there's one around.

FORD: Well, I've kind of lost the question.

DAITCH: The question was you knew both Bob and Jack Kennedy. And this fellow Russo has argued that one of the reasons that Bob Kennedy didn't pursue it more, the assassination investigation, was that he felt guilty for pushing the assassination attempts....

FORD: On Castro. That's possible. In comparing Jack and Bobby, as I said a moment ago, Jack was a diplomat, Bobby was a tiger. And Teddy [Edward M. Kennedy] is sort of in between.

DAITCH: I think of him more of the sort of master congressperson moving things through Congress.

FORD: Right. He's more of a legislator.

DAITCH: Legislator, yes. I think that it's an interesting proposition, and I don't know whether—you were there, and you knew Bob Kennedy, if you sort of had the sense that he wasn't pushing the investigation, or any sense of....

FORD: I didn't have the feeling that in the Commission there was any Bobby Kennedy influence. Maybe I didn't.... I know he never contacted me, to my knowledge or recollection. That's just a difference in the family.

DAITCH: Yes. It's an amazing family. I've also heard about Bob Kennedy that he, after the assassination, and I'm sure it wasn't an overnight thing, but that he.... I mean you spoke about him being such a tiger and he was a very aggressive person in a lot of ways during that period. But then afterward there's sort of a softer side, if you will, that came out. Do you remember seeing that or feeling that?

FORD: Not particularly, no. I never was close to Bobby. I was much closer to Jack. And I would be even more close to Ted because of our long friendship. I've got real admiration for Ted. He and Caroline [Caroline Lee Kennedy Schlossberg] gave me the award up in Boston just a year or so ago which I was deeply grateful for, considering the previous attitude in reference to the pardon of Nixon. Profile in Courage from the two Kennedys was a wonderful admission that I was right and, in retrospect, they were wrong.

DAITCH: Sure. Absolutely.

FORD: And I appreciated it.

DAITCH: Oh, yes. I think it was one of those things.... I don't know them personally. But from the perspective of being around the Library, I think that people, you know, uniformly there believe that it was the right thing to do, you know, and that it was an act of courage to do it at the time.

FORD: Not wise politically.

DAITCH: No, not so much. But very much in the spirit of what the award is about, I think. Just for the tape we'll say we're talking about the Profiles in Courage Award by Caroline Kennedy and Senator Kennedy.

FORD: You haven't asked me anything about Jack Ruby.

DAITCH: Yes. Tell me about what you knew about Jack Ruby at the time.

FORD: I never knew anything about him prior to being on the Commission. But on the Sunday, the chief justice and I, with two or three staff people, flew to Dallas to spend about five hours interrogating Jack Ruby.

DAITCH: You did! I didn't know that.

FORD: We went to.... He was in the custody of the sheriff or whoever was controlling him. Our group with the chief justice interrogated him. He was unstable, to put it mildly. The critical question was: Why did you assassinate Oswald? And his consistent answer—he was asked many times—his consistent answer was: He didn't want to force Mrs. Kennedy to testify in a criminal trial against Oswald.

DAITCH: Really!

FORD: Strange point of view. But he demanded that he be given a lie detector test, which we finally agreed to. [CHANGE TO SIDE B OF TAPE] ...how he happened to be at the right time to do what he did. For example, the postal service had an inspector who was one of those who interrogated Ruby. You say, well, why was a postal inspector involved? Well, the Post Office Department had some jurisdiction that got him involved. This postal inspector on that Sunday that Ruby shot Oswald was at church. He called and said to the people holding Ruby, would they hold up until he got there to further interrogate him. And that delay made it possible that Oswald and Ruby happened to be there at the right time. So it wasn't a planned assassination of Oswald. It was pure happenstance.

DAITCH: Is that right! See, I'm not an assassination expert. I don't know that much about the assassination itself, as you can probably tell. But I'm fascinated with this response of that he didn't want Mrs. Kennedy to have to testify against Oswald. And if it's not a planned thing, at least he showed up with a gun. So he had some idea of....

FORD: What he was going to do.

DAITCH: Yes.

FORD: Well, he had a reputation of being involved with the Mafia and bad elements in the Dallas area.

DAITCH: Right. So he might have carried a gun all the time, you're thinking?

FORD: Right.

DAITCH: Yes. So he did elaborate on this concept of not wanting Mrs. Kennedy to testify?

FORD: I don't recall. But there was no question. That was his justification.

DAITCH: That is weird. Now, is there any evidence that he knew Mrs. Kennedy at all?

FORD: Not that I recall.

DAITCH: That is very weird.

FORD: He was a very odd character in the Dallas community.

DAITCH: Yes, yes, I knew that about him. His connections with the Mafia and all that, obviously that's one of the big theories. Did the Warren Commission actually investigate? Do you think that there was much time spent investigating the theory of having some Mafia, of Oswald also having Mafia connections?

FORD: I don't recall that as a member. But I'm sure our staff looked into that area.

DAITCH: Right. And really found nothing.

FORD: Not that we thought was a direct connection.

DAITCH: Right. Now what about the Clay [Clay L. Shaw] Trial and all that that occurred a little bit later? You must have been following that with some interest.

FORD: Well, that was in New Orleans, as I recall. He was a publicity hound, local district attorney [Jim C. Garrison], who made very serious charges but couldn't substantiate any of them. I don't recall the details, but he was a self-seeking, self-promoter.

DAITCH: As a Commission member, you didn't see anything about any of that that you thought, oh, my, we should have looked into this?

FORD: Again, I'm sure the staff did. But I don't recall we as a Commission spending a lot of time on it.

DAITCH: Right. Are there things that, you know, in subsequent years, over time, different things come out and this and that. But from today's perspective, are there things that you look back and you say, well, I wish we had pushed harder on this aspect of the investigation?

FORD: I think anytime you're in a capacity as a commission, you do a nine-month job under some pressure to get a conclusion. In retrospect, you can always say, well, I wish we had looked a little deeper into this. But then you evaluate, did we come up with the right answer? And again, I repeat, I think our conclusions were basically right. And I've seen no

subsequent evidence, contrary to Oliver Stone and his movie, which was not a documentary. It was far from it. But he raised a lot of questions that the public wants some new answers to.

DAITCH: Right, right. I think those answers are going to be forthcoming in terms of the review board has released....

FORD: The Congressional board really hasn't come up with any new evidence.

DAITCH: Oh, no, no, not at all. But just new answers to the same old questions: The documents are there. You know, they answer some more questions. It still doesn't change anything.

FORD: Right.

DAITCH: But, you know, for people who want to dig.... And that's a good thing.

FORD: I always say there are still people who raise questions about Lincoln's [Abraham Lincoln] assassination. So from now until eternity we'll have questions raised about the Kennedy assassination.

DAITCH: Sure. Well, I do think it's such a shocking thing, it's such a horrifying moment in time, and such a frightening thing for the nation. And even in particular at that moment in national history. There was a very real threat of nuclear war.

FORD: Of course when I was president, I had two assassination attempts. Squeaky Fromme [Lynette Fromme], who was part of the Manson [Charles M. Manson] Gang in Sacramento, and Sara Jane Moore in San Francisco. I never understood why they wanted to assassinate me, but they sure tried.

DAITCH: Yes, yes. But again, that sort of suggests.... I'm thinking back to the question about motive in terms of the people who have said that, well, maybe the Commission should have come up with a more clear-cut motive for Oswald. Maybe there isn't always.

FORD: Well, all we could go by was what he told us. And he consistently took that point of view as murdering Oswald. I don't think there was ever any definitive motive that the Commission could land on about Oswald assassinating Kennedy. I have my feeling; I've expressed it. And others may have agreed or differed. But I don't think the

Commission ever came up with a conclusion as to the motive.

DAITCH: I have a question for you that's a little different. But from the perspective of a former president, there have been various biographers and other types of historians have had these two views of Kennedy: On the one hand he certainly knew that his brother and the CIA were aggressively pursuing Castro up to the point of assassination. On the other hand, probably the most recent biographer of Kennedy has said that Kennedy knew that the idea had been kicked around, but that he was not really in favor of it, and that he had said that he thought it was a bad idea. From the point of view of having been president, do you think that it's possible that he didn't know that they were really aggressively pursuing Castro?

FORD: Because of his relationship with his brother, who was his attorney general, and because a president ought to know those things, I have to assume he did. I have no categorical evidence. But as president and particularly with his brother as attorney general, I have to assume he knew.

DAITCH: I mean I understand that once in a while there are and have been these occasional sort of rogue people in the CIA or FBI or whatever. But this seems to have been a pretty formalized program.

FORD: I wouldn't doubt that a bit, although I don't know for sure.

DAITCH: The newer evidence is suggesting that it was at that time being established that it was pretty heavily pursued. I know that that's just your opinion, but I wanted to ask you that because I think it is a historical question. And to the extent that some people want to say that it was sort of John Kennedy's own fault that he was assassinated because he was trying to assassinate Castro.

FORD: Castro. Well, you can't guarantee that sequence. You can't help but believe it's a possibility. But I don't have any concrete evidence. There are a number of books that support the Commission. In my office back in California I must have three or four books by respectable authors supporting the Commission. I've forgotten the titles and the names.

But we have some support in the editorial area.

DAITCH: Well, I'm a historian myself, and I think that by far the view among real historians is that the Commission did a good job and came to the right conclusions.

FORD: Mark Lane was a self-seeker. Oliver Stone came up with a good movie, but a lousy documentary.

DAITCH: No history really.

FORD: Right.

DAITCH: But do you think that some of this comes from, I don't know how to put it, other than sort of a psychic desire among the American people for some kind of closure or some explanation for such a seemingly random or inexplicable act? You know, why did he do that, and how could that happen?

FORD: I'm not sure I understand the question.

DAITCH: I guess what I'm asking is why do you think that people do continue to pursue this and continue to want more explanations? FORD: Well, there's a human nature fascination with conspiracies. This is an ideal area for the reasons you know very well: That the public just, as I said a 20 moment ago, people are still talking about the Lincoln assassination. Did Booth [John Wilkes Booth] do it? And if so, why? And so forth. So I don't think the public question is going to go away. It's probably going to continue and fester and fester forever.

DAITCH: Yes, because even if you accept that Oswald did it, the question of why is....

FORD: Another issue.

DAITCH: Yes, it is sort of inexplicable. I have another.... This is unrelated and kind of an oddball question.

FORD: Go ahead.

DAITCH: I read this in, again, one of the biographies. A biographer of Kennedy has said that Kennedy.... As you know, all the news about Kennedy's physical ailments, which were kind of suspected at the time maybe, but people didn't realize how extensive his medical problems were; but that apparently one of his physician's offices, there was an attempt to break into it. So this biographer has suggested, sort of slyly, I thought, that perhaps—and this

was during the 1960 presidential campaign—that maybe Vice President Nixon had something to do with the attempted break-in on Kennedy’s physician’s office because he was looking for dirt.

FORD: I’ve never heard that before.

DAITCH: Have you not?

FORD: Never heard that. I can’t imagine Nixon authorizing that. But I’ve never felt very friendly to Ehrlichman [John D. Ehrlichman] and Haldeman [H. R. Haldeman], and their operations in the Nixon administration were somewhat questionable. So it’s possible. But I don’t know that as a fact.

DAITCH: Right. I wondered whether... I mean I knew that you had been friendly with Nixon from way back. But I wondered if you had thought that he had changed or if that would have been something that he might have considered at the time.

FORD: Well, I knew Nixon very well. My wife and I knew Pat [Thelma Catherine “Pat” Ryan Nixon] and Dick over many years. Nixon always in my presence acted responsibly. Now, some of the things I’ve learned from tapes, I don’t like. But I think that’s a reflection of Haldeman and Ehrlichman, to be honest with you.

DAITCH: Sort of an influence.

FORD: As chiefs of staff, etc.

DAITCH: Here’s another, and again, this is unrelated. I’m sorry to sort of...

FORD: No, that’s all right. Go ahead.

DAITCH: ...dash around, but some of these things I.... I’m asking you for opinions because obviously you have so much experience in these issues yourself and in these events. This is a what-if question about Kennedy that people have been wondering about ever since the assassination. It’s the Vietnam question. You know, so many people have argued, well, Kennedy, would have never gotten us mired into that. And other people have said, look, he’s the one who had sent more advisors over there to begin with. You knew him, and you knew his policies, and you knew his international policies in particular.

FORD: Well, from my recollection, it was the Kennedy administration that sent our first

combat forces to Vietnam. As I recollect, they sent 5,000 combat troops, 1962. Of course, Johnson accelerated that commitment many times. [BREAK] Johnson certainly added to our commitment in Vietnam. Whether Kennedy would have done the same, I can’t tell you because all he did was make our initial combat commitment. You can argue one way or another. But the only evidence I know is that the first 5,000 were a commitment by the Kennedy administration.

DAITCH: Right. People have argued, again, both ways. One of the arguments is that Kennedy didn’t have anything to prove. He had already sort of backed down Khrushchev in the Cuban Missile Crisis, and that he wouldn’t have wanted to escalate. Again, maybe suggesting sort of the same thing you were talking about of having had military experience that he might not want to get too involved. FORD: That’s all speculation, and I wouldn’t pass judgment on that.

DAITCH: It’s a difficult question. It’s just something that so many people have been trying to work out for so many years.

FORD: Well, the pro-Kennedy people would argue he would not have gotten mired in Vietnam. The truth is he made the first military combat commitment.

DAITCH: That’s right.

FORD: Now whether that indicates anything to a major expansion or not is a question; you just don’t know.

DAITCH: Exactly. Well, I should let you go here because obviously your time is valuable.

FORD: Well, I’ve enjoyed it. Can we have a transcript of this for my library?

DAITCH: Oh, absolutely. Yes.

FORD: I mean we won’t use it. We’ll just have it for the archives.

DAITCH: Oh, sure. What will happen is.... Well, I can turn these off now. But we can....

Source: John F. Kennedy Library Oral History Program. Gerald R. Ford recorded interview by Vicki Daitch, July 8, 2003.

See Articles: Civil Rights Laws; Kennedy, John F. (Administration of); Oswald, Lee Harvey; Organized Crime, History of.

1964
PRIMARY DOCUMENT

President's Advisory Commission on Narcotic and Drug Abuse Press Release

Many efforts to criminalize or regulate "pep pills" (most of which contained benzylpiperazine) failed, including this legislation and a later attempt to impose maximum quotas on the manufacture of the pills. The 1970 Comprehensive Drug Abuse Prevention and Control Act, though, included Title II of the Controlled Substances Act, which established five categories ("schedules") of controlled substances; in 2002, benzylpiperazine was finally added as a controlled substance.

From the offices of:

Senator Thomas J. Dodd (D-Conn.)
Room 241, Senate Office Building,
Washington, D.C.
Capitol 4-3121, Ext. 2951

Cong. James J. Delaney (D-N.Y.)
Room 455, House Office Building
Washington, D.C.
Capitol 4-3121, Ext. 3965

For Release—January 25, 1964, Saturday a.m.

WASHINGTON, D. C., January 25, 1964—The President's Advisory Commission on Narcotic and Drug Abuse was lauded today in a joint statement issued by Senator Thomas J. Dodd (D-Conn.) and Congressman James J. Delaney (D-N.Y.).

President Johnson is releasing today the commission's report supporting pioneering legislation introduced last year by Dodd and Delaney which would place strong controls over the distribution of pep pills and sleeping pills millions of which are presently diverted

into illicit channels. This traffic has resulted in a staggering increase in addition among juveniles.

The Advisory Commission is an outgrowth of the first White House Conference on Narcotics held here two years ago. The White House group pointed out the growing abuse of "psychotoxic" drugs and made a strong plea for stronger legislation to cope with it. The Commission praised a plan introduced by Dodd and Delaney last year which would regulate the sale of many of these drugs, but urged expansion of the plan to keep up with the new products rapidly coming into the market.

The two legislators plan to introduce new legislation which will augment this recommendation. It will crack down not only on the illicit sale of barbiturates and "pep pills," but will also affect the manufacturers and distributors of non-narcotic drugs which are "capable of producing psychotoxic effects or anti-social behavior." The Dodd-Delaney plan would not restrict the medical or research use of these drugs but would eliminate non-medical sales and require sales and shipment records that could be traced from manufacturer to consumer.

The emphasis of the new bill, like that in the 1963 plan, will be on the sale of drugs to juveniles. A "pusher clause" will make the unauthorized sale of the drugs to minors a criminal offense and doubles the present jail sentence for such a crime.

In their statement, Senator Dodd and Congressman Delaney said, "While we must recognize the value of these drugs to the practice of medicine, their abuse, especially by youngsters, has tragic consequences. Law enforcement officers across the country are unanimous in their recognition of the direct relationship between these drugs and robberies, sex offenses, beatings and even murder. The major tragedy, however, is not the one that shows clearly on the police blotter. It is the physical and psychological deterioration of the drug user, particularly the youth. Some of these drugs are as physically addicting as heroin and the addict will go just as far to feed his or her habit.

The Commission also urged Congressional action on a resolution introduced by Senator Dodd calling for the establishment of a Joint American-Mexican Commission on Narcotics. Investigations by Senator Dodd have shown that Mexico is one of the chief sources of supply of opium, heroin and marijuana for the Southwestern part of the United States.

Source: NARA-II, RG 65, DOT, Narcotics Enforcement, Box 7 F: White House Conf.

See Articles: Drug Abuse and Addiction, History of; Drug Enforcement Administration; Narcotics Laws.

1965 PRIMARY DOCUMENT

Customs Narcotics Report

The U.S. Customs Service was formed in 1789 to supervise the collection of tariffs on imported goods. It became the agency principally responsible for monitoring the passage of goods into the United States, including smuggling, drug trafficking, and human trafficking. In 2003, the Customs Service was absorbed by the Department of Homeland Security; its functions are now carried out by Immigration and Customs Enforcement and the Bureau of Customs and Border Protection.

Date: July 28, 1965

From: Lester D. Johnson—Commissioner of Customs

Subject: Quarterly Narcotic Report

Report For Second Quarter 1965

Pursuant To Assistant Secretary's Memo of July 23, 1964

Total customs seizures for the quarter were as follows:

	<i>Number of seizures</i>	<i>Weight—Grams</i>
Heroin	62	1,456
Opium, raw	—	—
Opium, smoking	1	1,809
Other narcotics	65	1,290
Marijuana	187	1, 548,434

The largest of the few heroin seizures made during the quarter was only 5 ounces, but one of the cases included the arrest on April 9 of Onesimo BOTELLO Garza, a major distributor in the part of Mexico across from Roma, Texas, who delivered 105 grams to undercover officers.

Another happening of interest was the forcible medical search of Barbara Jean HENDERSON on June 10, with the recovery of 3-1/2 ounces of heroin from within her body. This search had been sanctioned by the U.S. attorney when customs agents questioning the traveler on her arrival at San Ysidro had found she was connected with a notorious trafficker in Los Angeles who customarily used women to smuggle in the manner described.

Students who boarded an Indian vessel at Longview, Washington, on May 6 in search of foreign coins were approached by a quartermaster offering 4 pounds of opium. They introduced to him a potential buyer in the form of an undercover CPI, who was able to seize the drug and arrest the violator.

On June 24 customs agents at Miami supplied Federal narcotic agents with funds and personnel used in the completion of two purchases of cocaine from Peru. The first buy was 600 grams, with the arrest of a Peruvian and a Puerto Rican, and the second lot was 1 kilo, with 3 American violators taken into custody.

While the center of activity involving marijuana remains in California, four substantial cases were developed in Texas. Two of these were made by undercover operations at Brownsville. The first brought seizure of 57 pounds on April 6, with the arrest of 3 violators from Matamoros, and on April 29 the officers seized 38 pounds, arresting 2 more

residents of Mexico. State narcotic agents cooperated in both instances.

The third case involved a convoy operation of the sort common a few years ago. Officers followed a suspect car from Laredo to Refugio, where they searched it, finding 103 pounds of marijuana and 2 grams of heroin. The two occupants agreed to proceed with the intended delivery in Chicago. There on May 27 customs agents arrested the consignee, Juan ESCOBEDO, who had figured in 2 previous convoy cases that did not develop sufficient evidence to support his apprehension. Following the Chicago delivery, agents in Laredo arrested the shipper and seized another 18 pounds of marijuana.

The last of the Texas cases mentioned arose on June 13 when a public health officer at El Paso found 60 pounds of marijuana in the car driven by an Italian living in Chicago. The smuggler said he was working for a trafficker there, and agreed to carry out delivery; however, when the load arrived in Chicago, nobody came to claim it.

What turned out to be the biggest of the California cases originated when a customs inspector at Tecate found 317 pounds of marijuana in a car driven by 2 young Mexicans. With a customs agent "riding shotgun" one of them went on to deliver in Los Angeles to Francisco Martinez LIANTAUD, a Cuban who had only by chance missed arrest in another convoy case last Thanksgiving. Extension of the current investigation brought the total arrests to 8 and incidental searches raised total seizures of marijuana to 757 pounds.

Another large California case culminated a night-time surveillance at Jacumba, in the mountains about 80 miles east of San Diego. Customs agents saw 510 pounds of marijuana transferred across the boundary fence into a station wagon driven by Lloyal D. HUGHES, of Long Beach. They followed him for some distance with the object of apprehending his customer, but were forced to close in when he began to traverse resort areas where there was a chance he might evade the pursuit.

Thirteen other cases involving 42 to 150 pounds each, with a total of 1,351 pounds, originated in San Ysidro. Ten of these were

the result of information developed by customs agents and CPIs; one originated in the suspicion of a CPI watching border traffic; while a customs inspector and an immigrant inspector, searching without information, made one each. In 4 instances suspect cars were followed to Los Angeles. One case brought no arrests, but the other 12 yielded 23 defendants. These included 5 Cubans in 5 different cases, 1 Puerto Rican, 1 Briton, and 6 presumed Mexicans.

A long-distance operation grew out of a surveillance performed by customs agents at San Diego on two New Yorkers in a suburban motel. When one of these shipped to New York 2 large suitcases smelling of marijuana, agents in the latter city were informed, and monitored the delivery on June 8. The recipients turned out to be the shippers themselves, who had returned from the Coast, and marijuana weighing 84 pounds was found in the suitcases.

While small personal supplies of marijuana can be found in the crew quarters of nearly every vessel reaching our ports, shipments of commercial size arriving by sea are rare. One such was a lot of 50 pounds found concealed in 12 green engine room cushions on a Colombian ship at Baltimore on May 14. It was traced to an oiler who said it had been entrusted to him in Santa Marta, Colombia.

While technically amphetamines are not narcotics, they present enough of the same problems that it is deemed worthwhile to report the seizure at Laredo on June 23 of 25,000 pills, the largest lot ever encountered in Texas and one of the largest lots ever found anywhere in the United States. Antioco Orlando GONZALEZ, owner of 3 drug stores in Nuevo Laredo, had smuggled them into the country and delivered them to a Food & Drug inspector acting under cover. On developing the information which originated the case, the Food & Drug officers had followed previous practice by inviting customs agents to participate, in order to take advantage of our wider powers where smuggled merchandise is involved.

Twenty-year sentences are not seen every day or every week, but 4 were handed down in the San Diego district during May. Two of these involved first offenders—Fred Douglas

DAVIS, a Las Vegas peddler arrested at the San Diego airport last December 7 while waiting for the delivery of 93 grams of smuggled heroin, and Ulysses Grant LEEKS, arrested at San Ysidro on March 14 in an attempt to smuggle 140 pounds of marijuana and 3 ounces of heroin for an undisclosed principal.

The other two recipients of 20-year terms were John E. LEWIS, an important New York trafficker, and Charles E. WHITE, another New Yorker who on November 8 attempted to smuggle through San Ysidro 27 ounces of heroin and ½ ounce of cocaine intended for Lewis. In addition to the imprisonment, these violators were fined \$60,000 and \$20,000, respectively.

June 18 saw the extradition from Canada of three conspirators in the RIVARD heroin case. On that date customs agents armed with a Presidential warrant took custody of Julien GAGNON, Charles Emile GROLEAU, and Joseph Raymond JONES. The defendants were flown in a Coast Guard plane directly to Laredo, Texas, where they are in jail awaiting trial next September. At that time they will be joined by the head of the gang, Lucien RIVARD himself, who was apprehended on July 16 at a hideout near Montreal, and is presently in jail in Houston.

Source: NARA-II, RG 65, DOT, Narcotics Enforcement, Box 5 F: Narcotic Reports

See Articles: Drug Abuse and Addiction, Contemporary; Drug Abuse and Addiction, History of; Drug Abuse and Addiction, Sociology of; Drug Enforcement Administration; Smuggling.

1965 PRIMARY DOCUMENT

Presidential Assassination Law

Following the Kennedy assassination, the Presidential Assassination law was passed to define

as a federal offense the murder, assault, or kidnapping of the president, president-elect, or vice president of the United States. The law not only increased the penalties beyond what would be incurred for the murder, assault, or kidnapping of some other individual, but also ensured that the matter would be investigated and prosecuted by federal authorities, which would be provided with special powers.

Chapter 84—Presidential and Presidential Staff Assassination, Kidnapping, and Assault

- (a) Whoever kills
 - (1) any individual who is the President of the United States, the President-elect, the Vice President, or, if there is no Vice President, the officer next in the order of succession to the Office of the President of the United States, the Vice President-elect, or any person who is acting as President under the Constitution and laws of the United States, or
 - (2) any person appointed under section 105(a)(2)(A) of title 3 employed in the Executive Office of the President or appointed under section 106(a)(1)(A) of title 3 employed in the Office of the Vice President, shall be punished as provided by sections 1111 and 1112 of this title.
- (b) Whoever kidnaps any individual designated in subsection (a) of this section shall be punished
 - (1) by imprisonment for any term of years or for life, or
 - (2) by death or imprisonment for any term of years or for life, if death results to such individual.
- (c) Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished by imprisonment for any term of years or for life.
- (d) If two or more persons conspire to kill or kidnap any individual designated in subsection (a) of this section and one or more of such persons do any act to effect

the object of the conspiracy, each shall be punished

- (1) by imprisonment for any term of years or for life, or
 - (2) by death or imprisonment for any term of years or for life, if death results to such individual.
- (e) Whoever assaults any person designated in subsection (a)(1) shall be fined under this title, or imprisoned not more than ten years, or both. Whoever assaults any person designated in subsection (a)(2) shall be fined under this title, or imprisoned not more than one year, or both; and if the assault involved the use of a dangerous weapon, or personal injury results, shall be fined under this title, or imprisoned not more than ten years, or both.
- (f) The terms "President-elect" and "Vice-President-elect" as used in this section shall mean such persons as are the apparent successful candidates for the offices of President and Vice President, respectively, as ascertained from the results of the general elections held to determine the electors of President and Vice President in accordance with title 3, United States Code, sections 1 and 2.
- (g) The Attorney General of the United States, in his discretion is authorized to pay an amount not to exceed \$100,000 for information and services concerning a violation of subsection (a)(1). Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this subsection.
- (h) If Federal investigative or prosecutive jurisdiction is asserted for a violation of this section, such assertion shall suspend the exercise of jurisdiction by a State or local authority, under any applicable State or local law, until Federal action is terminated.
- (i) Violations of this section shall be investigated by the Federal Bureau of Investigation. Assistance may be requested

from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

- (j) In a prosecution for an offense under this section the Government need not prove that the defendant knew that the victim of the offense was an official protected by this section.
- (k) There is extraterritorial jurisdiction over the conduct prohibited by this section.

Source: <http://codes.lp.findlaw.com/uscode/18/I/84>

See Articles: Death Row; Executions; Federal Bureau of Investigation; Federal Prisons; Kennedy, John F. (Administration of); Kidnapping; Murder, Sociology of.

1966 PRIMARY DOCUMENT

Senator Robert F. Kennedy Communications on the New York Transit Strike

Bobby Kennedy didn't announce his candidacy for president until 1968, when it became clear that many Democrats were dissatisfied with President Johnson's Vietnam policies. But his detractors accused him of treating his entire political life as a campaign for an eventual presidency, and his role in the New York City transit strike was no exception: Conservative papers pointed out that Kennedy was publicly silent for much of the strike (which lasted for 12 days), until it was clear it was ending.

January 4 Telegram To Mayor John V. Lindsay

Dear Mr. Mayor:

I just want you to know I am prepared to assist you in any way appropriate to reach an

early and fair settlement of the transit strike. Please call on me if I can be of any assistance.

Robert F. Kennedy

Response From Mayor Lindsay

Dear Senator Kennedy:

Thank you for your telegram. This is an extraordinary time for New York and I thank you for your offer to help. I would appreciate having any suggestions you may have.

Mayor John V. Lindsay

January 10 Statement of Senator Robert F. Kennedy

It is clear that the transit strike has become a catastrophe to the city and to the people of New York. The loss to individual wage-earners, to businesses, and to the city itself requires the extended effort of all parties to the negotiations to reach an early and equitable conclusion. I urge that the negotiations go on a 24-hour basis and that they not recess until they have reached a fair and responsible settlement. It is imperative that the strike and by this weekend.

On January 4 I informed Mayor Lindsay that I was prepared to assist in any appropriate way in the efforts to reach an early and fair settlement of the strike. I have discussed this matter with the Mayor again today and have repeated to him my offer of assistance.

January 10 Telegram to Dr. Nathan P. Feinsenger, Chairman of Transit Strike Mediation Panel

Senator Robert F. Kennedy today sent the following telegram to transit strike mediation panel chairman, Dr. Nathan P. Feinsenger, with copies to other public officials and persons as indicated in the text below:

The transit strike has now gone on for ten days. Allowing it to continue any longer in the face of the staggering losses which it is causing is intolerable. The devastating losses which are filling up each day far exceed the differences between the parties. Its continuance through this week will cause wide-spread personal tragedy throughout the city. People are unable

to get to their jobs. Thousands are having to spend hard-earned savings for food and rent. The city government is losing millions of dollars a day in revenue, wage earners and small businesses are suffering tremendously. Many will soon be driven into bankruptcy.

Despite your earnest efforts, the ordinary processes of collective bargaining have failed to produce agreement, even though they have had ample time in which to operate. Weeks of negotiations preceded the strike and ten days of bargaining have gone on during the tie-up. Ten days which have been catastrophic for the citizens of the city. A new initiative is needed to create a basis for settlement. I therefore respectfully suggest that you, the mediating panel, based on your intimate knowledge of the comparatively small differences between the parties, make public the exact differences now separating them and make a public proposal for resolution of those differences.

Your undertaking to make a public proposal can help to bring a fair and responsible settlement. I am sending copies of this telegram to the parties, to the Mayor, to the Governor, and to the Secretary of Labor.

**Report on New York City Transit Strike
January 10, 1966—3:04 P. M.**

Senators Robert F. Kennedy and Jacob K. Javitz announced today a federal grant of \$221,453.02 by the Office of Economic Opportunity to speed up the processing of applications for small business loans during the transportation crisis in New York City.

“Under today’s grant,” the Senators stated: “Your small Business Development Centers will be established immediately in temporary locations around the city. For the period of the strike emergency, the centers will be used for the processing of both regular Small Business Loan applications and lease under the Anti-Poverty program. The federal Small Business Administration is being invited to staff the temporary centers until the emergency is over. The four centers will be moved to permanent locations when the strike is over.”

“The four temporary centers,” the Senators went on, “will be in the offices of the borough presidents of Manhattan, Brooklyn, Bronx,

and Queens. In addition, the Office of Economic Opportunity will make available for the processing of emergency loan applications the facilities of the two permanent Small Business Development Centers already in operation. These centers are located at 361 West 125th Street and 35 Fifth Avenue.

The separate remarks of Senator Kennedy follows:

“The strike is having disastrous effects on thousands of individuals and small businesses in New York City, and I have been in constant contact with agencies in the Executive Branch of the Federal Government to insure that all possible aid is given during the period of the strike to prevent wide-spread financial ruin. I am, therefore, gratified that the Office of Economic Opportunity had made this grant. I expect that other steps will be taken by CEO and other agencies within the next few days.

“I am especially pleased that the Office of Economic Opportunity was able to process the grants for the temporary centers so quickly. This grant and other measures which the Federal Government has taken and will take within the next few days will make a great difference in helping small businessmen in New York City meet the current crisis. Office of Economic Opportunity Administrator Sargent Shriver has assured me that his agency will continue to do everything in its power to assist the people in New York City during this emergency

Report on New York City Transit Strike January 19, 1956—3:00 PM

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Source: Collection JFK-RFK:

Robert F. Kennedy Papers

Archival Research Catalog (ARC) ID: 194021

See Articles: Civil Disobedience; Kennedy, Robert F.; New York City.

1968 PRIMARY DOCUMENT

Robert F. Kennedy News Release on the Assassination of Martin Luther King Jr.

One of the most significant civil rights leaders in history, Martin Luther King Jr. was only 39 years old when he was killed in 1968. Kennedy's speech was impromptu; he had learned of King's shooting shortly before a scheduled stop on his three-week-old presidential campaign. Few present had yet heard the news. King's killer, segregationist and repeat felon James Earl Ray, was soon apprehended, but was convinced that George Wallace would soon be elected president and pardon him.

Senator Robert F. Kennedy
Indianapolis, Indiana
April 4, 1968

I have bad news for you, for all of our fellow citizens, and people who love peace all over the world, and that is that Martin Luther King was shot and killed tonight.

Martin Luther King dedicated his life to love and to justice for his fellow human beings, and he died because of that effort.

In this difficult day, in this difficult time for the United States, it is perhaps well to ask what kind of a nation we are and what direction we want to move in. For those of you who are black—considering the evidence there evidently is that there were white people who were responsible—you can be filled with bitterness, with hatred, and a desire for revenge. We can move in that direction as a country, in great polarization—black people

amongst black, white people amongst white, filled with hatred toward one another.

Or we can make an effort, as Martin Luther King did, to understand and to comprehend, and to replace that violence, that stain of bloodshed that has spread across our land, with an effort to understand with compassion and love.

For those of you who are black and are tempted to be filled with hatred and distrust at the injustice of such an act, against all white people, I can only say that I feel in my own heart the same kind of feeling. I had a member of my family killed, but he was killed by a white man. But we have to make an effort in the United States, we have to make an effort to understand, to go beyond these rather difficult times.

My favorite poet was Aeschylus. He wrote: "In our sleep, pain which cannot forget falls drop by drop upon the heart until, in our own despair, against our will, comes wisdom through the awful grace of God."

What we need in the United States is not division; what we need in the United States is not hatred; what we need in the United States is not violence or lawlessness; but love and wisdom, and compassion toward one another, and a feeling of justice toward those who still suffer within our country, whether they be white or they be black.

So I shall ask you tonight to return home, to say a prayer for the family of Martin Luther King, that's true, but more importantly to say a prayer for our own country, which all of us love—a prayer for understanding and that compassion of which I spoke.

We can do well in this country. We will have difficult times; we've had difficult times in the past; we will have difficult times in the future. It is not the end of violence; it is not the end of lawlessness; it is not the end of disorder.

But the vast majority of white people and the vast majority of black people in this country want to live together, want to improve the quality of our life, and want justice for all human beings who abide in our land.

Let us dedicate ourselves to what the Greeks wrote so many years ago: to tame the savageness of man and make gentle the life of this world.

Let us dedicate ourselves to that, and say a prayer for our country and for our people.

Source: <http://www.jfklibrary.org/Research/Ready-Reference/RFK-Speeches/Statement-on-the-Assassination-of-Martin-Luther-King.aspx>

See Articles: Civil Rights Laws; Kennedy, Robert F.; King, Martin Luther, Jr.; Ray, James Earl.

1969 PRIMARY DOCUMENT

Department of Justice Statement on Miami Drug Smuggling

Drug smuggling is the traditional backbone of the illegal narcotics industry. While marijuana can be grown domestically and methamphetamine can be manufactured cheaply, drugs like opium, heroin, and cocaine come from beyond U.S. borders, processed from crops that can't be grown in the American climate or without attracting the attention of law enforcement. Much of the efforts of narcotics agents has been spent trying to stop the inflow.

United States Department of Justice
Washington, D.C.
AIRMAIL
Miami, Florida
January 10, 1969

Commission of Customs
Office of Investigations
Bureau of Customs
Washington, D.C. 20226
Attention: Andrew Agathangelou

Dear Sir:

At your request there is outlined below the circumstances surrounding the proposal that Pat Johnstone, 21 year old female, proceed to

Managua, Nicaragua to bring into the United States to Miami, Florida a quantity of cocaine for delivery to members of a Cuban narcotic trafficking ring based in Miami.

On about September 10, 1968 I received information that Gloria Richard, young white Miami female was in Nicaragua with her five year old son, Shane, to bring back cocaine to the United States at Miami. This lookout was not productive.

On or about September 19, 1968 the same informant reported that Carlos Inchaustegui and Mario Marrero, Cuban refugees in Miami, were, with others, connected with a cocaine laboratory in Managua, Nicaragua which is operated by Cuban refugees under the protection of the Chief of Immigration of Nicaragua. This ring was reported to use young women as couriers and body carriers as the means of concealment.

The informant produced Pat Johnstone who related to Agent Romano and me that she had made two trips to Nicaragua and on one of these occasions had brought three kilos of cocaine through the Miami International Airport Customs posing as a pregnant woman and delivered it to Inchaustegui and Marrero who were waiting outside the Customs enclosure.

She related many other facts and names not here pertinent. Agent Romano verified the trips by Johnstone and through his investigation has implicated about nine traffickers and ten couriers.

Agent Romano placed lookouts and personally led CPI's working the Customs enclosure to intensify efforts on all Nicaragua flights which effort resulted in the apprehension of Denise Betancourt with a body carry of three kilos of cocaine. Her case is pending. With the United States Attorney at Miami, negotiations are underway with her lawyer to possibly secure her testimony as a witness in the case against the Cuban traffickers.

Shortly after this ring was revealed to Customs, I became aware that the Miami Bureau of Narcotics was conducting a parallel investigation of the same principals concerning their domestic traffic. I met with them and we jointly compared information to our mutual

benefit and reached an agreement that we would closely coordinate our investigation and neither Service would take unilateral action.

We further agreed that we should attempt to apprehend a courier and jointly hold a surveillance of her as she made a delivery to the principals.

During our initial interview with Johnstone, she was queried as to any offers of the principals to send her back to Nicaragua. She stated that she had not yet been approached but likely would be. She was asked that if she was approached would she consider making the delivery under our direction. She stated that she would and asked that if she was successful she get consideration in her pending State case. She has now been approached to make another trip.

Negotiations are underway between the United States Attorney and Johnstone's lawyer concerning any consideration she might receive for her services. Investigators will make no decisions in this field.

It is proposed that Johnstone will return to Nicaragua for these traffickers and be allowed to complete the delivery of cocaine to these traffickers under the joint supervision of Customs and Narcotics.

To reply specifically to the questions posed by the Bureau, they are answered as follows:

1. Seizure

It is agreed that Customs will take actual physical custody of the narcotics and both Services will jointly participate in the prosecution and all other facets of the case.

2. Approach

The informer approached Customs and told her story without promise of coercion.

3. That she acts on her own and not as an agent of the Government.

I agree with the United States Attorney that this is largely a question of semantics. She and her lawyer have been carefully admonished that her trip is voluntary and that she must not consider herself as an

"agent" of the Government and cannot say she is acting for Customs.

The legal facts are, however, at any time her trip is approved by the Government she is acting for the Government and any other view is unrealistic.

4. Does the United States Attorney authorize the trip and subsequent apprehension as outlined?

The United States Attorney will approve this facet of the proposal if all other questions are resolved to his satisfaction. These questions concern his discussions with the defense lawyer.

This Strike Force is interested in the successful conclusion of this case and has assigned me to coordinate Customs' action with the Bureau of Narcotics and Dangerous Drugs. I have encountered no problems in this field and have had complete cooperation from both Services.

Yours truly,
G. L. Latimer

Source: United States Department of Justice.
NARA-II, RG 170 Subj files Bureau of Narcotics,
Box 53, F: Miami project

See Articles: Customs Service as Police; Miami, Florida; Narcotics Laws; Smuggling.

1969
PRIMARY DOCUMENT

FBI Memorandum on Stolen Vehicle Case

The FBI Laboratory, which assisted in this case, began as the Criminological Laboratory in 1932 and evolved as resources and technology permitted. Beginning in 1942, it was designated a separate division within the Bureau of Investigation, headed by an assistant director. By that point, it had initiated files on typewriter standards,

fraudulent checks, fingerprints, anonymous letters, automotive paint, firearms, blood types, and cryptanalysis. Today, most of its records are computerized.

Interstate Transportation of Stolen Motor Vehicle

Shortly after midnight on April 14, 1967, a deputy sheriff from Delaware County, Oklahoma, was awakened by a phone call and told that a 1967 red Mustang had run off the road near Flint Hill, Oklahoma, and was badly wrecked. The deputy hurried to the scene located a few miles west of the Oklahoma-Arkansas State Line and observed the wreckage. He could find no one in or near the vehicle. After processing the car, he began a search of bars and clubs in the area looking for a witness to the accident. He soon located a young man at a lodge near the scene of the wreck who admitted owning the car and being in the accident. This person identified himself as Chester F. Griffith of Hartford, Connecticut, and displayed a Connecticut driver's license as proof of identification. Griffith exhibited no nervousness and ultimately convinced the deputy there was no need for concern, and as the owner of the vehicle, he would take care of things in the morning.

Early the next day an automobile dealer in Siloam Springs, Arkansas, towed the wrecked vehicle into his shop. He then called the motel where Griffith was staying to inquire what repair work should be done on the car. The car dealer learned that Griffith had hurriedly departed the motel that morning, leaving no forwarding address. The dealer also was told that Griffith tried to sell the wrecked Mustang for \$200 just prior to leaving the motel.

I.C. #26-380830

The car bore a North Carolina license, and the Oklahoma Highway Patrol checked it through North Carolina authorities. The North Carolina Highway Patrol advised they had no record of the car ever being registered in North Carolina, and, further, that the license tag on the vehicle checked to a 1965 Ford owned by an individual in Asheville, North Carolina. Once this information was

obtained, the FBI Resident Agency in Miami, Oklahoma, was notified, and an investigation was conducted to determine if a possible interstate transportation of stolen motor vehicle violation existed.

Immediate inquiries by the FBI in North Carolina and Tennessee disclosed that the North Carolina license on the Mustang had been stolen on or about April 1, 1967. Further, a Tennessee license plate found in the trunk of the car had been reported stolen on March 10, 1967, in Briceville, Tennessee. A trace of the serial number for the Mustang revealed that the car was registered to an automobile company in Brandon, Mississippi. The car had been stolen from the new car lot on or before April 11, 1967, when an inventory determined it to be gone.

Now that it had been established the vehicle was stolen and had been transported interstate, the FBI investigation centered on the person identifying himself as Chester F. Griffith.

Through a check of records in Connecticut, the FBI determined that Chester F. Griffith was probably identical with Chester Ferris Griffith, Jr., a 29-year-old native of Upton, Massachusetts. Griffith presently a parole violator from Connecticut and had a lengthy criminal record, including several car thefts in the states of Massachusetts, Connecticut and Tennessee. He was described as being heavily tattooed on both arms, hands, and fingers, and reportedly had a habit of chewing his fingernails. His whereabouts were unknown to Connecticut authorities. A photograph was obtained and immediately forwarded to the FBI in Oklahoma. This photograph was exhibited to available witnesses, including a barmaid at a club in Delaware County who had dated Griffith. Chester Ferris Griffith, Jr., was positively identified as being identical with the person driving the 1967 red Mustang.

While photographs of Griffith were being shown to other witnesses, the Document Section of the FBI Laboratory in Washington, D.C., was comparing the signature of Chester F. Griffith found on a registration card at the Siloam Springs motel against known handwriting on fingerprint cards of Chester Ferris

Griffith, Jr. The FBI Laboratory concluded that the signatures were identical.

After an FBI Agent discussed the facts in this case, United States Attorney in Tulsa, Oklahoma, authorized the filing of a complaint charging Griffith with violating the Interstate Transportation of Stolen Motor Vehicle Statute. The United States Commissioner in Miami, Oklahoma, issued a warrant for his arrest and set bond at \$5,000. Griffith was now a Federal fugitive, and a vigorous investigation began to locate and arrest him.

No less than 17 FBI Offices through the country participated in the search for Griffith. Every relative and past employer of Griffith were interviewed. Police department and sheriff's office records at the numerous locations Griffith had been arrested were checked for any clue leading to his whereabouts. All of Griffith's criminal associates were contacted for information as to his location.

Griffith's flight as an FBI fugitive came to an abrupt end on March 19, 1968. On that date, a supervisor at FBI Headquarters in Washington, D.C., telephoned the Oklahoma City FBI Office and indicated the Identification Division had made a positive identification of Griffith based on fingerprints submitted by the Provo, Utah, Police Department, showing the arrest of Johnny Griffith on March 11, 1968, on a charge of grand larceny-auto theft. The FBI Office at Salt Lake City quickly verified Griffith's arrest and the fact that he was still in custody. Griffith had been charged with stealing a Ford from Provo on February 20, 1968. He had transported this car to Vail, Colorado, and was arrested there and extradited to Utah. An FBI Agent in Denver, Colorado, later consulted the United States Attorney concerning the interstate transportation of this vehicle; however, prosecution by the Government was declined in favor of prosecution by the Provo authorities.

The FBI's interest in Griffith did not end at this point, for on March 27, 1968, Griffith successfully escaped from the Utah County Jail in Provo by pushing a jailer against the door. The jailer suffered a deep gash in his head which required a number of stitches. When Griffith escaped, he had a knife on his

person which he had fashioned. He stole \$75 from the jail treasury. An immediate search was ordered, and Griffith was apprehended the next morning in Provo. He was charged with escape, assault and battery, and larceny, in addition to the previous charges. On April 2, 1968, Griffith was found guilty of all local charges in Provo and was sentenced to serve one to ten years in the Utah State Penitentiary.

On November 4, 1968, Griffith appeared United States District court, Salt Lake City, Utah, and was sentenced to serve two years' imprisonment for violating the Interstate Transportation of Stolen Motor Vehicle Statute, concerning the transportation of the 1967 Mustang from Brandon, Mississippi, to Delaware County, Oklahoma, in April 1967. The sentence was to run concurrently with Griffith's imprisonment in the Utah prison.

United States Department of Justice
Federal Bureau of Investigation
Washington, D.C. 20535
February 5, 1969

Source: NARA-II, RG 65 FBI, Interesting
Case Write-ups, Box 11

See Articles: Federal Bureau of Investigation;
Robbery, Contemporary; Witness Testimony.

1969 PRIMARY DOCUMENT

HYMN Response to the Stonewall Riots

The word homophile, as a love-focused alternative to homosexual, has fallen out of use, but was associated with the early gay-rights movement of the 1950s and 1960s. The Homophile Youth Movement in Neighborhoods (HYMN) was run by Craig Rodwell, the most significant gay-rights activist of the era, and this leaflet is a response to the riots at the Stonewall Inn, a Mafia-owned gay

bar in Greenwich Village. The riots galvanized the movement, and the first gay pride marches took place throughout the country a year later.

Get the Mafia and the Cops Out of Gay Bars

The nights of Friday, June 27, 1969 and Saturday, June 28, 1969 will go down in history as the first time that thousands of Homosexual men and women went out into the streets to protest the intolerable situation which has existed in New York City for many years — namely, the Mafia (or syndicate) control of this city's Gay bars in collusion with certain elements in the Police Dept. of the City of New York. The demonstrations were triggered by a Police raid on the Stonewall Inn late Friday night, June 27th. The purported reason for the raid was the Stonewall's lack of a liquor license. Who's kidding whom? Can anybody really believe that an operation as big as the Stonewall could continue for almost 3 years just a few blocks from the 6th Precinct house without having a liquor license? No! The Police have known about the Stonewall operation all along. What has happened is the presence of new "brass" in 6th Precinct which has vowed to "drive the fags out of the Village."

Many of you have noticed one of the signs which the "management" of the Stonewall has placed outside stating "Legalize Gay bars and lick the problem." This is untrue and they know it. Judge Kenneth Keating (a former US Senator) ruled in January, 1968 that even close dancing between Homosexuals is legal. Since that date there has been nothing illegal, per se, about a gay bar. What is illegal about New York City's Gay bars today is the Mafia (or syndicate) stranglehold on them. Legitimate Gay businessmen are afraid to open decent Gay bars with a healthy social atmosphere (as opposed to the hell-hole atmosphere of places typified by the Stonewall) because of fear of pressure from the unholy alliance of the Mafia and the elements in the Police Dept. who accept payoffs and protect the Mafia monopoly.

We at the Homophile Youth Movement (HYMN) believe that the only way this monopoly can be broken is through the action of Homosexual men and women themselves. We obviously cannot rely on the various agen-

cies of government who for years have known about this situation but who have refused to do anything about it.

Therefore we urge the following:

1. That Gay businessmen step forward and open Gay bars that will be run legally with competitive pricing and a healthy social atmosphere.
2. That Homosexual men and women boycott places like the Stonewall. The only way, it seems, that we can get criminal elements out of the Gay bars is simply to make it unprofitable for them.
3. That the Homosexual citizens of New York City, and concerned Heterosexuals, write to Mayor Lindsay demanding a thorough investigation and effective action to correct this intolerable situation.

Homophile Youth Movement—HYMN

201 Mercer Street

New York, N.Y. 10003

June 28, 1969

Source: <http://www.pbs.org/wgbh/americalexperience/features/primary-resources/stonewall-leaflet>

See Articles: Corruption, Contemporary; Corruption, History of; Organized Crime, Contemporary; Organized Crime, Sociology of.

1970 PRIMARY DOCUMENT

Testimony of Charles Manson in the Tate–LaBianca Murder Trial

The leader of the commune-cult Manson Family, Charles Manson had led a life of brutality on both the giving and receiving ends since childhood. In

1960s San Francisco, his off-kilter blend of philosophies he'd picked up in prison made him a convincing guru, and the Manson Family developed around him. He soon became obsessed with the Beatles' White Album and his belief in its coded messages; acting on them, the Manson Family went on a killing spree. He remains in prison.

Direct Testimony:

There has been a lot of charges and a lot of things said about me and brought against the co-defendants in this case, of which a lot could be cleared up and clarified....

I never went to school, so I never grew up to read and write too good, so I have stayed in jail and I have stayed stupid, and I have stayed a child while I have watched your world grow up, and then I look at the things that you do and I don't understand....

You eat meat and you kill things that are better than you are, and then you say how bad, and even killers, your children are. You made your children what they are....

These children that come at you with knives. they are your children. You taught them. I didn't teach them. I just tried to help them stand up....

Most of the people at the ranch that you call the Family were just people that you did not want, people that were alongside the road, that their parents had kicked out, that did not want to go to Juvenile Hall. So I did the best I could and I took them up on my garbage dump and I told them this: that in love there is no wrong....

I told them that anything they do for their brothers and sisters is good if they do it with a good thought....

I was working at cleaning up my house, something that Nixon should have been doing. He should have been on the side of the road, picking up his children, but he wasn't. He was in the White House, sending them off to war....

I don't understand you, but I don't try. I don't try to judge nobody. I know that the only person I can judge is me ... But I know this: that in your hearts and your own souls, you are as much responsible for the Vietnam war as I am for killing these people....

I can't judge any of you. I have no malice against you and no ribbons for you. But I think that it is high time that you all start looking at yourselves, and judging the lie that you live in.

I can't dislike you, but I will say this to you: you haven't got long before you are all going to kill yourselves, because you are all crazy. And you can project it back at me ... but I am only what lives inside each and everyone of you.

My father is the jailhouse. My father is your system.... I am only what you made me. I am only a reflection of you.

I have ate out of your garbage cans to stay out of jail. I have wore your second-hand clothes... I have done my best to get along in your world and now you want to kill me, and I look at you, and then I say to myself, You want to kill me? Ha! I'm already dead, have been all my life. I've spent twenty-three years in tombs that you built.

Sometimes I think about giving it back to you; sometimes I think about just jumping on you and letting you shoot me ... If I could, I would jerk this microphone off and beat your brains out with it, because that is what you deserve, that is what you deserve....

If I could get angry at you, I would try to kill everyone of you. If that's guilt, I accept it ... These children, everything they done, they done for the love of their brother....

If I showed them that I would do anything for my brother—including giving my life for my brother on the battlefield—and then they pick up their banner, and they go off and do what they do, that is not my responsibility. I don't tell people what to do....

These children [indicating the female defendants] were finding themselves. What they did, if they did whatever they did, is up to them. They will have to explain that to you....

It's all your fear. You look for something to project it on, and you pick out a little old scroungy nobody that eats out of a garbage can, and that nobody wants, that was kicked out of the penitentiary, that has been dragged through every hellhole that you can think of, and you drag him and put him in a courtroom.

You expect to break me? Impossible! You broke me years ago. You killed me years ago....

[Judge Older asked Manson if he had anything further to say.]

I have killed no one and I have ordered no one to be killed. I may have implied on several different occasions to several different people that I may have been Jesus Christ, but I haven't decided yet what I am or who I am. Some called him Christ, Manson said. In prison his name was a number. Some now want a sadistic fiend, and so they see him as that. So be it. Guilty. Not guilty. They are only words. You can do anything you want with me, but you cannot touch me because I am only my love... If you put me in the penitentiary, that means nothing because you kicked me out of the last one. I didn't ask to get released. I liked it in there because I like myself.

[Judge Older told Manson, "You seem to be getting far afield." He told Manson to stick to the issue raised in the trial.]

The issues? ... Mr. Bugliosi is a hard-driving prosecutor, polished education, a master of words, semantics. He is a genius. He has got everything that every lawyer would want to have except one thing: a case. He doesn't have a case. Were I allowed to defend myself, I could have proven this to you... The evidence in this case is a gun. There was a gun that laid around the ranch. It belonged to everybody. Anybody could have picked that gun up and done anything they wanted to do with it. I don't deny having that gun. That gun has been in my possession many times. Like the rope was there because you need rope on a ranch.... It is really convenient that Mr. Baggot found those clothes. I imagine he got a little taste of money for that.... They put the hideous bodies on [photographic] display and they imply: If he gets out, see what will happen to you.... [Helter Skelter] means confusion, literally. It doesn't mean any war with anyone. It doesn't mean that some people are going to kill other people... Helter Skelter is

confusion. Confusion is coming down around you fast. If you can't see the confusion coming down around you fast, you can call it what you wish. . Is it a conspiracy that the music is telling the youth to rise up against the establishment because the establishment is rapidly destroying things? Is that a conspiracy? The music speaks to you every day, but you are too deaf, dumb, and blind to even listen to the music... It is not my conspiracy. It is not my music. I hear what it relates. It says "Rise," it says "Kill." Why blame it on me? I didn't write the music....

Danny DeCarlo... said that I hate black men, and he said that we thought alike... But actually all I ever did with Danny DeCarlo or any other human being was reflect him back at himself. If he said he did not like the black man, I would say "O.K." So consequently he would drink another beer and walk off and say 'Charlie thinks like I do.' But actually he does not know how Charlie thinks because Charlie has never projected himself. I don't think like you people. You people put importance on your lives. Well, my life has never been important to anyone....

[Linda Kasabian] gets on the stand and she says when she looked in that man's eyes that was dying, she knew that it was my fault. She knew it was my fault because she couldn't face death. And if she can't face death, that is not my fault. I can face death. I have all the time. In the penitentiary you live with it, with constant fear of death, because it is a violent world in there, and you have to be on your toes constantly....

[I taught the Family] not to be weak and not to lean on me.... I told [Paul Watkins], "To be a man, boy, you have to stand up and be your own father." So he goes off to the desert and finds a father image in Paul Crockett....

I do feel some responsibility. I feel a responsibility for the pollution. I feel a responsibility for the whole thing.... To be honest with you, I don't recall ever saying "Get a knife and a change of clothes and go do what Tex says." Or I don't recall saying "Get a knife and go kill the sheriff." In fact, it makes me mad when someone kills snakes or dogs or cats or horses. I don't even like

to eat meat—that is how much I am against killing....

I haven't got any guilt about anything because I have never been able to see any wrong... I have always said: Do what your love tells you, and I do what my love tells me ... Is it my fault that your children do what you do? What about your children? You say there are just a few? There are many, many more, coming in the same direction. They are running in the streets—and they are coming right at you!

Cross-Examination by Vincent Bugliosi:

Q: You say you are already dead, is that right, Charlie?

A: Dead in your mind or dead in my mind?

Q: Define it any way you want to.

A: As any child will tell you, dead is when you are no more. It is just when you are not there. If you weren't there, you would be dead.

Q: How long have you been dead? . . . To be precise about it, you think you have been dead for close to 2,000 years, don't you?

A: Mr. Bugliosi, 2,000 years is relative to the second we live in.

Q: Suffice it to say, Department 104 is a long way from Calvary, isn't that true?...

Q: The jury in this case never heard a single, solitary word you said... Mr. Manson, are you willing to testify in front of the jury and tell them the same things that you have testified to here in open court today?

[Kanarek objected and Judge Older sustained the objection. Older asked Manson if he now wished to testify before the jury. He replied, "I have already relieved all the pressure I had." Manson left the stand. As he walked by the counsel table, he told his three co-defendants, "You don't have to testify now."]

Source: <http://law2.umkc.edu/faculty/projects/ftrials/manson/mansontestimony-m.html>

See Articles: Insanity Defense; Los Angeles, California; Manson, Charles; Parker, William; Religion and Crime, Sociology of; Serial and Mass Killers; Terrorism.

1974

PRIMARY DOCUMENT

Presidential Pardon Given to Richard M. Nixon

Despite the involvement of President Richard Nixon and his administration in a number of illegal activities, including bugging opponents' offices, using federal agencies to harass political groups, and breaking into Democratic headquarters in the Watergate hotel, Nixon was never charged with a crime. He claimed neither prior knowledge of nor involvement with lawbreaking. He resigned, rather than face impeachment, and his successor's pardon was preemptive to avoid a trial. In doing so, Ford strained other connections—including that of his press secretary and longtime friend, Jerald terHorst, who resigned moments before the pardon, calling it "a blunder."

GRANTING PARDON TO RICHARD NIXON

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Richard Nixon became the thirty-seventh President of the United States on January 10, 1972 for a second term by the electors of forty-nine of the fifty states. His term in office continued until his resignation on August 9, 1974.

Pursuant to resolutions of the House of Representatives, its Committee on the Judiciary conducted an inquiry and investigation on the impeachment of the President extending over more than eight months. The hearings of the Committee and its deliberations, which received wide national publicity over television, radio, and in printed media, resulted in votes adverse to Richard Nixon on recommended Articles of Impeachment.

As a result of certain acts or omissions occurring before his resignation from the

Office of President, Richard Nixon has become liable to possible indictment and trial for offenses against the United States. Whether or not he shall be so prosecuted depends on findings of the appropriate grand jury and at the discretion of the authorized prosecutor. Should an indictment ensue, the accused shall then be entitled to a fair trial by an impartial jury, as guaranteed to every individual by the Constitution.

It is believed that a trial of Richard Nixon, if it become necessary, could not fairly begin until a year or more has elapsed. In the meantime, the tranquility to which this session has been restored by the events of recent weeks could be irreparably lost by the prospects of bringing to trial a former President of the United States. The prospects of each trial will cause prolonged and divisive debate over the propriety of exposing to further punishment and degradation a man who had already paid the unprecedented penalty of relinquishing the highest elective offices of the United States.

NOW, THEREFORE, I, Gerald R. Ford, President of the United States, pursuant to the pardon power conferred upon me by Article II, Section 2, of the Constitution, have granted and by those presents do grant a full, free, and absolute pardon unto Richard Nixon for all offenses against the United States which he, Richard Nixon, has committed or may have committed or taken part in during the period from January 10, 1969 through August 9, 1974.

IN WITNESS THEREOF, I have hereonto set my hand this eighth day of September, in the year of our Lord nineteen hundred and seventy-four, and of the Independence of the United States of America the one hundred and ninety-ninth.

Source: General Records of the
United States Government
Archival Research Catalog (ARC) ID: 299996

See Articles: Ford, Gerald (Administration of); Nixon, Richard (Administration of); Political Crimes, Contemporary; Presidential Proclamations; *United States v. Nixon*; Watergate.

1975 PRIMARY DOCUMENT

FBI Memorandum on Worldwide Church of God Allegations

The Worldwide Church of God (there are many unrelated groups also called "Church of God") was founded in 1934 by Herbert Armstrong as a radio ministry. In addition to these recorded allegations, the group has been beset by financial and sex scandals, infighting, Armstrong's ousting of his own son, a failed attempt to sue the makers of Raiders of the Lost Ark for plagiarism, and the embarrassment of Armstrong's predictions about the end of the world proving false in 1972.

Herbert W. Armstrong;
Garner Ted Armstrong;
Worldwide Church of God
Eric Ralph Williams—Victim
Kidnapping Matter _____

Date of Transcription: April 23, 1975

Mr. RALPH (EVELYN) WILLIAMS furnished the following information to a representative of the Federal Bureau of Investigation.

Mrs. EVELYN WILLIAMS, 1312 East University Avenue, Oxford, Mississippi, telephonically furnished the following additional information:

WILLIAMS stated that she desired to furnish the name of BARRY CHASE, 2419 Monticello Drive, Mesquite, Texas, telephone number 214-285-6567, as an individual who was a defecting minister from the Worldwide Church of God who knows the inner workings of this "cult." WILLIAMS stated that CHASE would be able to furnish valuable information on this group.

WILLIAMS also stated that in the pamphlets published by this Worldwide Church of God the Legal Department furnishes instructions to older members on how to leave their

money and property to the Worldwide Church of God without any legal fees.

WILLIAMS also stated that ANDERSON has the hierarchy at Pasadena, California, set up like a corporation and that the hierarchy live like kings, stating that both ARMSTRONGS have three houses each and at least one of them reportedly has \$70,000 in paintings displayed in one of these homes.

Date of Transcription: 4/17/1975

Mrs. RALPH (EVELYN) WILLIAMS, Highway Six West, Oxford, Mississippi, contacted at her place of business, Williams Antiques, 1312 University Avenue, Oxford, Mississippi, furnished the following information:

WILLIAMS stated that after she and her husband, RALPH WILLIAMS, had a child, which later developed leukemia and going through this tragic situation, she began to listen to the World Tomorrow radio program and HERBERT W. ARMSTRONG. She estimated that she first began listening to these radio programs during 1960. She added that HERBERT W. ARMSTRONG's son, TED ARMSTRONG, later took over this program.

WILLIAMS stated that she did write to the World Tomorrow Radio Program and in turn was contacted by a KELLY BARFIELD, who was the field representative of this organization.

WILLIAMS added that this World Tomorrow Radio Program is now known as World-Wide Church of God and has its headquarters at Ambassador College in Pasadena, California.

WILLIAMS stated that after being initially contacted by KELLY BARFIELD, they were next contacted by a CARL MC NAIR and CURTIS COWAN.

COWAN was formerly a tire buffer at the Firestone Tire Company in Memphis, Tennessee.

WILLIAMS stated that her son, ERIC RALPH WILLIAMS, who was born on September 28, 1943, at Greenwood, Mississippi, was in his last year at Memphis State University, Memphis, Tennessee.

WILLIAMS stated that CARL MC NAIR contacted her son, ERIC, and she later learned that her son was becoming a convert

to the World-Wide Church of God. WILLIAMS added that MC NAIR talked her son into leaving Memphis State University before he graduated and with less than one semester left to obtain his degree and that their son, ERIC, went to Pasadena, California, to attend Ambassador College.

WILLIAMS stated that the Ambassador College is nothing more than a front for the World-Wide Church of God.

WILLIAMS stated that she has learned that one of the first things that this World-Wide Church of God does is to wipe out the past of any converts. She also stated that 20 percent is taken from the head of the household income as a tithe and that every third year the members are assessed another ten percent of the head of the household's income.

WILLIAMS also stated that this cult does not want its members to vote in any election in the United States and did not want its members to serve the country in any fashion.

WILLIAMS also stated that this cult teaches that there is nothing wrong with drinking wine and that wine and alcoholic beverages are consumed even by the children of the members of this cult.

WILLIAMS also stated that the publication of this cult "The Plain Truth" teaches that if anyone disagrees with them they are disagreeing with God.

WILLIAMS stated that her son, ERIC, is still with this cult stating that he originally taught in their school system and then ran a camp that this cult had in Orr, Minnesota. WILLIAMS stated that this camp and land were apparently obtained from a wealthy family by the name of ERICSON (Phonetic) after the son of one of the many wealthy ERICSON individuals got "hooked" by this same cult.

WILLIAMS advised that her son is currently located at Big Sandy, Texas, where this cult has opened another school which is known as Ambassador College. WILLIAMS explained that this cult owns the land, buildings, and the houses of the faculty members stating that many of these houses are \$75,000 to \$100,000 homes.

WILLIAMS stated that her son is going to be "elevated" and is to become the head

basketball coach of Ambassador College at Big Sandy, Texas.

WILLIAMS advised that her son is married to the former BILLIE JEAN SHIELDS, who was originally from Dallas, Texas, and they currently have two children.

WILLIAMS explained that the hierarchy of this "cult" decided that her son, ERIC, and BILLIE JEAN SHIELDS were to be married and according to her daughter-in-law this marriage was announced at an assembly without their knowledge. WILLIAMS explained that the hierarchy of this cult decides who will get married and who the marriage partners will be. WILLIAMS also stated that as a result of this marriage, her son and daughter-in-law were given \$500 from this organization.

WILLIAMS also explained that this cult does not allow its members to receive any medical care and that there have been several instances where children have died or have been brutally mistreated.

WILLIAMS stated that members of the "cult" claim conscientious objector status while attending these Ambassador Colleges while their magazines tell their members to watch for the building of the temple which was to be followed by a war, the coming of Christ to Earth, to set up a kingdom and that their cult would force all nations to obey them even if it meant that millions of people would have to be killed.

WILLIAMS stated that her son, when he joined this "cult," was a gullible individual and has now been completely brainwashed.

WILLIAMS also stated that she and her husband were never really considered members of this "cult" as they are extremely suspicious of any individuals with any type of education, stating that they prey on the illiterate and poorly educated people. WILLIAMS stated that she is now in the process of trying to contact and contacting former members of this organization to expose the organization for what it really is. In this regard, WILLIAMS stated that in 1970, an attorney, STANLEY RADER, associated with this cult, although he is not a member and RADER is now the attorney and chief legal counsel to HERBERT W. ARMSTRONG. As such, he flies all over

the world with ARMSTRONG in one of their large private jets and brings gifts to the various heads of state in an effort to meet them and carry on unknown transactions.

WILLIAMS stated that this organization pays no taxes and relies on "religious freedom" as a defense to any allegations brought against them.

WILLIAMS stated that she, in October, 1971, in Squaw Valley, heard HERBERT W. ARMSTRONG state that he had taken in eighty million dollars and after expenses had sixty million left. WILLIAMS recalled that they were advised not to write these figures down as this information could be used by their "enemies."

WILLIAMS stated that she has learned that this "cult" now has associated with them a Dr. JOHN HUBBARD OVERTON, to offset the claim that they deny medical treatment to their members and children, that he reportedly is from the State of Louisiana and in checking with the authorities in Louisiana, she found out that he is not licensed to practice medicine. She also stated that a Dr. ROBERT KUHN, who reportedly is a brain surgeon from the eastern part of the country is also associated with this organization in some manner.

WILLIAMS furnished the name of DON E. KIRSOPP, 475 Wylie Drive, Baton Rouge, Louisiana, as a former member, stating that KIRSOPP's wife, while a member, was denied medical treatment and surgery and almost died before he realized what was happening.

WILLIAMS also stated that GEORGE SCHWARTZ, 6730 Royal Palm Avenue, Perine, Florida, spent approximately \$19,000 in legal fees to regain custody of his child after this "cult," in his absence, persuaded his wife to divorce him and took his child in this process.

WILLIAMS identified PAUL HAECKER, 419 Pecan Drive, South Houston, Texas, as an individual who has a copy of the directory furnished by this "cult" on how to avoid prosecution by law enforcement officials in the event that a child dies.

WILLIAMS also stated that this "cult" is now attempting to get their Ambassador

Colleges accredited and to obtain foreign students solely for the purpose of getting the funds that these students will have. She stated that she is attempting to show the appropriate authorities that these schools do not have the proper faculty and that the Ambassador Colleges are nothing but fronts to obtain money for HERBERT W. ARMSTRONG and his organization.

WILLIAMS identified MILO WILCOX of Windsor, Colorado, as an individual who was connected with this "cult" for thirteen years.

WILLIAMS stated that WILCOX has now left this organization and he reportedly has nine hours of tapes with the confrontation between TED ARMSTRONG, son of HERBERT W. ARMSTRONG, and the approximately thirty-five ministers of this "cult" which broke away from the organization. WILLIAMS also stated that Dr. JOSEPH HOPKINS is another individual who has studied the ARMSTRONG organization and that HOPKINS is on the faculty at West Minister College, New Wilmington, Pennsylvania.

WILLIAMS also identified Mrs. JEAN BURCHAM from West Memphis, Arkansas, as another individual, who as a result of membership in the "cult" was separated from her husband and lost three of her children, the children being taken by her husband to Tucson, Arizona, and subsequently to Eugene, Oregon, where they reportedly are presently located.

WILLIAMS also stated that cards are kept on all of the members of this organization and that members who leave are denounced as "demon possessed apostates" and are labeled as enemies.

WILLIAMS also stated that although this organization does not want its members to vote or in any way serve this country in Big Sandy, Texas, this organization ran a man as Mayor of this community and then turned out en masse and voted him in. WILLIAMS stated that this was formerly a dry area but within several weeks, at least eight whiskey stores opened in this community.

WILLIAMS concluded by stating that Mrs. HENRY W. PETERSON, 6410 North East, 181st Street, Seattle, Washington, the mother

of CONRAD COMMEAU, who was a pilot on one of HERBERT W. ARMSTRONG's jets and who formerly worked herself in this "cult" had much more information concerning the operation and tactics of this organization.

On April 15, 1975, Mrs. RALPH (EVELYN) WILLIAMS telephonically contacted the Oxford, Mississippi, Resident Agency and advised that she and her husband have tried and begged their son, ERIC RALPH WILLIAMS to return to Oxford and the WILLIAMS family.

WILLIAMS advised that their son, ERIC, has told them, Mr. and Mrs. RALPH WILLIAMS to stay out of his life, stating that his, ERIC's, purpose in life was to protect H. W. ARMSTRONG.

United States Department of Justice
Federal Bureau of Investigation
Jackson, Mississippi 39205
April 28, 1975

Source: NARA II, RG 65, Class 7 Kidnapping,
Box 352, F: 7-HQ 16112

See Articles: Corruption, Contemporary;
Corruption, History of; Corruption, Sociology of;
Kidnapping; Religion and Crime, Contemporary;
Religion and Crime, History of; Religion and Crime,
Sociology of.

1977
PRIMARY DOCUMENT

FBI Internal Communications on Fugitive Ted Bundy

Charismatic serial killer Ted Bundy was first arrested in 1975 after failing to pull over for a routine traffic stop; a subsequent investigation led to his conviction on kidnapping charges. Investigations continued while he was in prison, and he was charged with homicide for the first time. In

1977, he twice escaped during courtroom appearances. More homicide charges were filed, and while on death row, Bundy confessed numerous murders before his 1989 execution.

Subject: Ted Bundy (Part 1 of 2)

Fm Salt Lake City (88-6895) (P)
To Denver Routine
Seattle Routine

Theodore Robert Bundy, Aka Ted Bundy—
Fugitive. Upac—Escape.
00: Salt Lake City.

On June 9, 1977, Salt Lake County attorney's office issued escape warrant for subject, requested unlawful flight warrant be issued. same date AUSA James W. Mc Conkle II, Salt Lake City, authorized filing of complaint charging subject with violation title 18, U. S. Code, Section 1073. Complaint filed before U. S. Magistrate Daniel A. Alsup by SA ——— warrant is issued. Bond recommended \$100,000 cash.

Subject described as: WMA, DOB November 24, 1946 at Burlington, Vermont, 6' 175 lbs., blue eyes, brown hair, SSAN 533-44-4655.

SU—88-6895 PAGE TWO

Denver at Aspen, Colorado. Conduct appropriate investigation to locate subject.

Seattle ———

Salt Lake City at Salt Lake City, Utah. Obtain address for ——— and set out leads to ——— also maintain contact with Salt Lake County so for additional background and set out additional leads.

"In view of type of crime subject has been convicted of he should be considered armed and dangerous—escape risk."

BT

Source: <http://vault.fbi.gov/Ted%20Bundy%20Ted%20Bundy%20Part%201%20of%202/view>

See Articles: Bundy, Ted; Murder, Contemporary; Murder, History of; Murder, Sociology of; Serial and Mass Killers.

1978 PRIMARY DOCUMENT

White House Memorandum on the 1868 Conviction of Dr. Samuel Mudd

Mudd was one of eight people charged with and convicted of conspiracy to murder President Lincoln. He had treated Booth for an injury sustained while fleeing and waited more than a full day before notifying authorities, drawing suspicion. He was spared the death penalty and imprisoned at Fort Jefferson, Florida, where he took over the position of prison doctor during a yellow fever outbreak, leading to his pardon in 1869. Repeated attempts to clear Mudd's name failed.

The White House
Washington
May 24, 1978

Memorandum for: Bob Lipshutz
From: Patrick Apodaca
Subject: Conviction of Dr. Samuel Mudd

We have discussed whether a legal theory might be developed to challenge Dr. Mudd's conviction of conspiracy in the Lincoln assassination and thereby justify some form of action by the President in this case.

Three lines of argument could serve this purpose. By relying on the Supreme Court's decision in *Ex Parte Milligan*, 4 U.S.2 (1865), a case involving analogous facts, it can be argued that Dr. Mudd's conviction by a Military Commission was illegal because (1) he was deprived of his constitutional right to trial by jury in a civil court and indictment by a grand jury, and (2) President Andrew Johnson was without authority to appoint a military commission to try him. Thirdly, an argument can be made that the trial was procedurally defective to the extent of depriving Dr. Mudd of due process of law.

(1) Denial of Constitutional Guarantees Under Article 3, Section 2, Clause 3 of the Constitution, and the Fifth and Sixth Amendments.

Article 3, Section 2, Clause 3 of the Constitution provides that “the trial of all crimes, except in cases of impeachment, shall be by jury...” The Sixth Amendment guarantees that “in all criminal prosecutions, the accused shall enjoy the right to atrial by an impartial jury...”

The Fifth Amendment provides that “no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger...”

The question is whether Dr. Mudd’s case is within the scope of these provisions or whether it falls within an exception to their application.

Arguably, since Dr. Mudd was charged with an offense against the Commander-in-Chief of the Army, his prosecution was expressly excepted from the protection of the Fifth Amendment (and by implication the Sixth) as a case “arising in the land or naval forces.” However, this language has been interpreted to extend court martial jurisdiction for service related crimes only to members of the armed forces. *O’Callahan v. Parker*, 395 U.S. 258(1968). Attempts by the government to bring nonmembers within the exception have failed. See e.g., *Toth v. Quarles*, 350 U.S.11(1955) (discharged soldier); *Kinsella v. Singleton*, 361 U.S. 234(1958) (civilian dependents accompanying military personnel overseas). The case law would seem to foreclose any significant argument that Dr. Mudd, a civilian, was excluded from the prosecution of a jury trial because of this exception.

Section 2 of Article 3 is generally understood to preserve the right to trial by jury only in those cases in which it had been recognized at common law at the time of its adoption. *District of Columbia v. Colts*, 282 U.S. 63(1930).¹ Therefore, a second exception having possible application in the Mudd is the common law exception for trials of enemy

belligerents for offenses against the law and usages of war. Cf. *Ex parte Quirin*, supra 45. It has been asserted that under this exception, military jurisdiction over Dr. Mudd was properly established because he was charged as an enemy of the Union for offenses against the law of war. See 11 Op. A.G. 297, 316(1965). But such were not the formal charges against his and, had they been, it is doubtful that a clear case could have been made for invoking jurisdiction on this basis.

The Supreme Court has applied this exception narrowly in the case of United States citizens. I have found only one Supreme Court case, *Ex parte Quirin*, supra, upholding a military trial within the United States of a U.S. citizen charged with belligerent acts against the government. That case is distinguishable since it involved a U.S. citizen who during World War II established a substantial presence in Germany—a foreign country against which the United States had declared war—and who subsequently surreptitiously reentered the United States under orders of the German high command for the purpose of sabotaging strategic defense plants. By contrast, the instant case involved a civil insurrection, rather than an international conflict or a foreign enemy against which war had been declared. In addition there was no evidence that during the Civil War Dr. Mudd established a presence in any Confederate state or entered into any relationship with Confederate officers that could bind him to act on their orders. To the extent that any substance can be attached to the charges against Dr. Mudd, his acts should have been characterized as political rather than as acts of war which would provide a basis for military jurisdiction. *CP Ex parte Milligan*, supra.

While it is doubtful that Dr. Mudd’s case could be construed to fall within either of the above exceptions, there remains the further question of whether the constitutional safeguards under discussion could be abrogated by the government under the circumstances of civil insurrection then prevailing.

In a landmark case involving similar facts, the Supreme Court held that the government cannot in pursuance of its powers to conduct war² establish martial law jurisdiction to try

citizens in states which, during the Civil War, upheld the authority of the government and where courts were open and their process unobstructed. *Ex parte Milligan*, *supra*.

Milligan represents an historic expostulation of the supremacy of a citizen's right to trial by jury over any express or implied powers granted to the government by the Constitution. The majority opinion³ makes clear that the suspension of the right could occur only in the event of practical unavailability of a trial in the civil courts because they had been obstructed in a manner impairing their effective operation. The court distinguished this and other guarantees in the Constitution "which time had proved were essential to its preservation" from the writ of habeas corpus, the only safeguard that the government in its discretion can suspend when the safety of the country so requires. *Id.* at 127. The court summarized its view that actual unavailability of a trial in a civil court is a condition to the lawfulness of a substitute military trial of a civilian as follows:

"(T)here are occasions when martial rule can be properly applied. If, in foreign invasion or civil war, the courts are actually (emphasis added) closed, and it is impossible to administer criminal justice according to law, then on the theatre of active military operations, where war really prevails, there is a necessity to furnish a substitute for the civil authority, thus overthrown, to preserve the safety of the army and society; and as no power is left but the military, it is allowed to govern by martial rule until the laws can have their free course. As necessity creates the rule, so it limits its duration; for, if this government is continued after the courts are reinstated, it is a gross usurpation of power. Martial rule can never exist where the courts are open, and in the proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of actual war." *Id.* at 127.

In denying Dr. Mudd's petition on a writ of habeas corpus in 1868, The District Court of Florida held the Milligan case inapposite,⁴ On careful consideration of the Supreme Court's decision, however, the factual distinctions which the court made are unpersuasive.

In addition, the District Court chose to ignore crucial similarities between the two cases.

Apparently attempting to characterize Dr. Mudd's offense as against the military, the District Court pointed out that Dr. Mudd was convicted of conspiracy to assassinate the Commander-in-Chief of the Army. But this was no greater a "military" offense than the acts for which Lambdin Milligan was convicted including holding communication with the enemy, conspiracy to seize munitions of war stored in arsenals, and liberating prisoners of war. *Id.* at 6-7. The District Court also noted that the charged crime was committed in a fortified city (Washington, D.C.) which had been invaded during the war and it gave importance to the fact that military orders were transmitted therein. The Court failed to note, however, that though not actually invaded, the jurisdiction involved in Milligan (Indiana) was within the military lines of the Army of the United States, and the theatre of military operations and had been constantly threatened to be invaded by the enemy. *Id.* Finally, and more importantly, the District Court failed to discuss the crux of the Milligan decision, i.e., whether the civil courts in Washington were operational at the time of Dr. Mudd's trial in June of 1865. I have found no evidence that they were not available and ready to try the Lincoln conspirators and, presumably, the District Court opinion would have pointed this fact out to buttress its conclusion had such been the case. Moreover, Dr. Mudd's trial was held after the end of the Civil War,⁵ a time which, under the Milligan doctrine, should have demarcated the secular boundary of any possible military jurisdiction over civilians within Union territory.

(2) The President's Appointment of a Military Commission to Try Persons Charged With the Assassination of President Lincoln Was Unauthorized and Therefore Unlawful. By Executive Order and on the basis of an opinion of the Attorney General (II Op. A.G. 297(1865) President Andrew Johnson appointed a Military Commission to try the alleged conspirators in the Lincoln assassination. The Milligan case also represents

authority for the proposition that the President was without power to do so.

A point of difference between the majority and minority opinions in the case was whether the Congress had the power to authorize the Military Commission held in that case. As already noted, the majority concluded that the government was without power to apply military law to citizens of states that upheld its authority and in which the administration of the laws in the Federal courts remained unimpaired. While agreeing that the Military Commission in *Milligan* was illegal, the minority believed that the government possessed such power, but it had not been properly exercised in this instance.

With the exception of certain emergency situations in which the President may act pursuant to his powers as Commander-in-Chief,⁶ the minority in *Milligan* viewed the power of extending martial law jurisdiction over civilians to rest within Congress.

By the Habeas Corpus Act of 1863, Congress authorized the President to suspend the writ of habeas corpus, with certain exceptions, and pursuant to this authority, on September 15, 1863, the President did in fact suspend the privilege. The Act authorized the President to arrest suspected persons, without giving cause for their detention on return to a writ of habeas corpus, but it neither expressly or impliedly authorized the President to establish procedures to try suspects by military jurisdiction or other authority. No other statute in force during this period would appear to have done so.

It cannot be argued that in June of 1865, after the cessation of hostilities and the surrender of the Confederate flag, that such an emergency existed as to empower the President to establish martial law in the District of Columbia without Congressional approval. Absent a clear expression of authority from Congress, therefore, the President was without authority to appoint the Military Commission in question.

(3) Denial of Due Process of Law Under the Fifth Amendment. The Justice Department's opinion on the Mudd case states "that there is little doubt that (Dr. Mudd's trial was not a fair trial by today's standards of due process.

It probably was less fair a trial than Dr. Mudd would have received in a civil court in 1865."

The trial of the Lincoln conspirators was flawed by many serious procedural irregularities. Representative of these were the refusal to allow the accused to testify on their own behalf, the introduction of irrelevant testimony, the intimidation of witnesses, and the deliberate suppression of exonerative evidence in the possession of the government. e.g., Booth's diary, which might have overthrown the theory of a general plot to assassinate. See *The Assassination of Abraham Lincoln*, 1909, by David Miller Dewitt.

In addition, the sufficiency of the evidence against Dr. Mudd was questionable. The Military Commission convicted Dr. Mudd of participating in the assassination plot against Lincoln and of knowingly aiding and abetting the escape of Booth and Merold. On the basis of their review of evidence, the Justice Department concludes that the testimony on the behalf of Dr. Mudd was far stronger than that of the prosecution and that the Military Commission "seemed clearly determined to find guilt." The declarations in the Warrant of Pardon granted by President Andrew Johnson are further authority that the case against Dr. Mudd was highly questionable.

The procedure irregularities at trial and the insufficiency of evidence on which Dr. Mudd's conviction was based lent strong support to an argument that Dr. Mudd was denied due process of law under the Fifth Amendment.

The foregoing arguments would support the view that the Mudd case is deserving of favorable action by the President. But the extent and form of such action should be governed by other questions concerning the President's authority to act in this case, the precedent setting effect of any action and the separation of powers doctrine.

Generally, I see four options open to the President:

- (1) A public proclamation declaring the conviction of Dr. Samuel Mudd null and void.
- (2) A letter to Congress and the Mudd family expressing the President's personal

opinion that Dr. Mudd was innocent. The statement would not purport to set aside the conviction, but merely express the President's own evaluation of this case.

- (3) A letter to Congress and the Mudd family noting the pardon granted by President Johnson and reaffirming the declarations contained therein regarding doubt as to Dr. Mudd's guilt.
- (4) No action.

With regard to each of these, the following should be considered:

- (1) Authority of the President to Act. There is a question of whether the President could act to set aside the instant conviction. Citing Executive Department opinions related to this question, the Justice Department memorandum states that the President is without such authority. There is no case law in point and, in the absence of such, it is arguable that the President, as Commander-in-Chief, can set aside a conviction handed down by a military tribunal established by his predecessor. There would seem to be no reason to question his authority to take a position on Dr. Mudd's innocence under options (2) or (3).
- (2) Precedent Setting Effects of the President's Action. It is fairly important to determine the precedent which options (1) and (2) will set. Should the President decide to act favorable, it will also be important to set forth, for the record, the uniqueness of the Mudd case to avoid an onslaught of similar requests in the future.
- (3) Separation of Powers. If the Mudd case involved adjudications and determinations made purely by the Executive Branch of government, I would see no problem regarding the separation of powers doctrine. The fact that the district court (an Article III court) decided to deny Dr. Mudd's petition for habeas corpus raises questions. Avoiding a problem may require that the President act in a manner that does not affect or modify issues adjudicated by the district court. This

might involve overturning the conviction only on the basis of reconsideration of the evidence and a conclusion that it was insufficient for a finding of guilty. There could be a problem if the President's Action purported to modify the district court's determination that the trial by a Military Commission was illegal.

I would strongly recommend asking OCL for an opinion on these points should we decide to recommend options (1) or (2) to the President.

Footnotes

1. The Fifth and Sixth Amendments, while guaranteeing the continuance of certain incidents of trial left unmentioned by Section 2, did not expand the right to jury trial as it had been established by that article. *Ex parte Quirin*, 317 U.S. 1(1942).

2. Art. 1, Sec. 8 of the Constitution empowers Congress to raise, support and govern armies; Art 2, Sec. 2 designates the President as Commander-in-Chief of the Army and Navy.

3. A concurring minority of four justices concluded that Congress, pursuant to its war powers, could constitutionally establish martial law jurisdiction but had not in fact done so. See discussion *infra*.

4. *Ex parte Mudd*. 17 F.R. 954 (1868)

5. General Lee surrendered his army to General Grant at Appomattox, Virginia on April 9, 1865. The last significant Confederate Army surrender occurred at Durham, North Carolina on April 26.

6. The President may act in situations "justifying or excusing peril...in times of insurrection or invasion, or of civil or foreign war, within districts or localities where ordinary law no longer adequately secures public safety or public rights," *Ex parte Milligan*, *supra* at 145.

Source: Memo, Subject: Conviction of Dr. Samuel Mudd 5/24/1978

Records of the White House Office of Counsel to the President

Archival Research Catalog (ARC) ID: 139959

See Articles: Booth, John Wilkes; Federal Rules of Criminal Procedure; Lincoln, Abraham (Administration of).

1980
PRIMARY DOCUMENT

Memorandum to President Jimmy Carter Regarding Love Canal

The neighborhood of Love Canal in Niagara Falls, New York, became synonymous with the dangers of toxic waste after a state of emergency was declared in 1978. In the 1950s, schools had knowingly been built on the site of a toxic waste dump; two decades later, reports of birth defects, miscarriages, and leukemia were rampant. The government relocated more than 800 families, and Congress passed the Superfund Act, holding polluters accountable for their damage.

May 20, 1980

Memorandum for the President
From: Jack Watson
Subject: Love Canal

As I reported to you on Saturday, we are faced with a volatile situation in Niagara Falls, New York, as a result of the public disclosure of a chromosomal study conducted in the course of the federal against Hooker Chemical Company.

As a result of several meetings in the last three days with all the relevant federal agencies, I am now prepared to recommend to you that, if the Governor requests it, we declare Love Canal eligible for emergency assistance (under the authority of FEMA) to permit the temporary relocation of approximately 750 families in the immediate Love Canal area. The principal reasons for this recommendation, in which Justice EPA, HHS, FEMA, SBA, HUD, OMB, and DPS concur, are as follows:

The chromosomal study, whatever its ultimate significance is one in a long list of pilot studies that have been done on the health and environmental effects of the Love Canal waste site during the last two years. For example, New York State has preliminary studies sub-

stantiating adverse reproductive effects; one doctor's studies showing high incidence of miscarriage and birth defects; and another health professional's research indicating peripheral nerve damage. Although all of these studies require further empirical and scientific verification, the adverse psychological effects on the people who live around Love Canal of this endless barrage of "expert" speculations about how they have been, and are being, damaged, are hard to overstate.

In addition to the health studies, environmental studies conducted by EPA indicate that the quantity of hazard chemicals present at the site represents the largest volume of hazardous wastes to which any population is known to be exposed. In addition, the range of hazardous chemicals at Love Canal is the widest that has been encountered in any one site anywhere in the country.

The FEMA statute gives us the flexible authority we need to respond to the situation and makes New York state take the lead responsibility for the temporary relocation. The State will share the costs of the temporary relocation and will work closely with FEMA in actually relocating the families.

As you know, you declared Love Canal eligible for emergency assistance in 1978. As a result of that first declaration, 239 families were relocated; we are now recommending relocation of the additional 750 families who reside within a well defined area and who have been the subjects of the recent studies. Although the Governor may include in his request for emergency assistance a request for federal assistance in both the temporary and permanent relocation of the affected families, we have made absolutely clear to the Governor in telephone conversations this afternoon that the Federal government has no authority to buy the peoples' homes or otherwise permanently relocate them. We have told the Governor that if you were to approve any further federal emergency assistance, it would cover only temporary relocation along the lines outlined above.

The understandable concern and anxiety which have been precipitated by this most recent study require, in our judgment, an

immediate response. If you approve this recommendation to give the families emergency relocation assistance, we will work with the State tonight to draft a request from the Governor to you. We would announce jointly with the State tomorrow that:

We are both amending our lawsuits against Hooker Chemical Company to add these additional costs of temporary relocation to the amounts already being claimed against Hooker in the pending litigation;

We are immediately undertaking further scientific studies to assess the nature and

extent of the health damage and risks as precisely as possible; and,

In the meantime, we are responding prudently and immediately to the human need which is so evident at Love Canal.

Source: ARC Identifier 593309

Item from Collection JC-1056: Records of the
Office of the Staff Secretary, 1976–1981

See Articles: Carter, Jimmy (Administration of);
Environmental Crimes; New York.



1981 to 2000

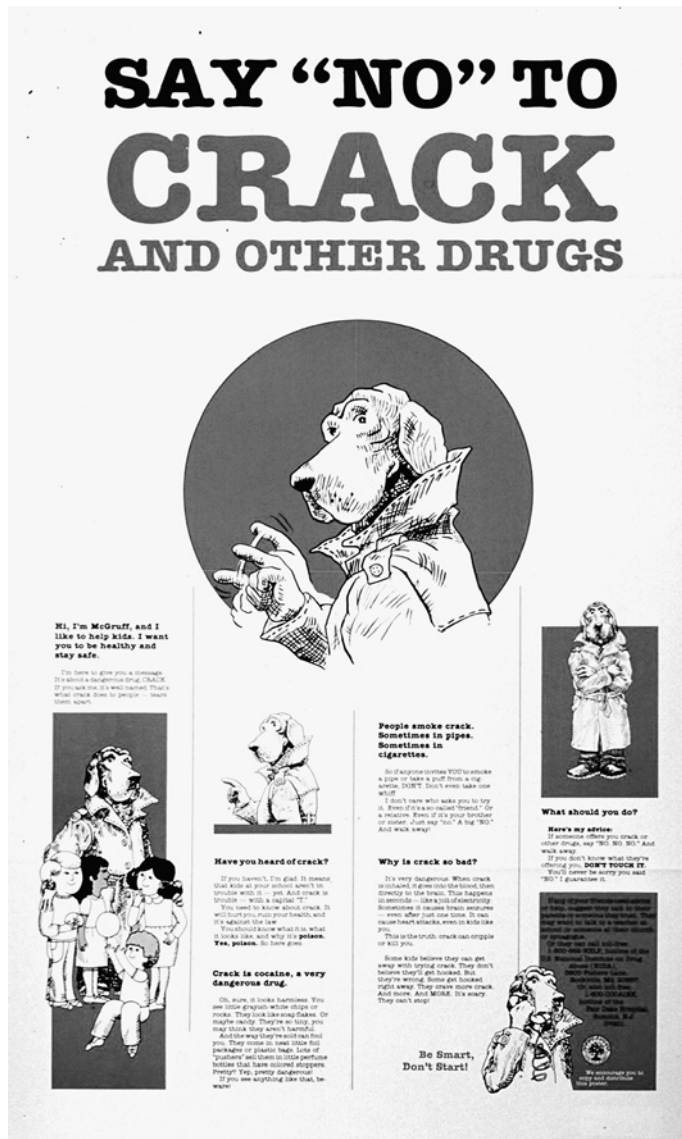
INTRODUCTION

The 1980s and 1990s were a time of dramatic change in the American criminal justice system. Although victimization statistics reveal that violent crime rates remained essentially level in the 1980s, from the early 1990s they began a precipitous fall. Property crime rates also fell during this period. The reasons for this post-1994 decline are still debated by scholars. At the same time, however, incarceration rates sharply increased throughout the 1980s and 1990s, while racial disparities in incarceration rates persisted. A growing national focus on illegal drug use drove the adoption of important related legislation. This era also saw the emergence of correctional innovations, such as private prisons and military-style boot camps for civilian offenders. Hate crimes and domestic violence received greater attention during this period, while new technologies and approaches significantly impacted policing strategies. Although the 1980s were marked by a general decrease in enthusiasm for offender rehabilitation programs, by the late 1990s, many scholars and practitioners expressed renewed faith in various “evidence-based” prevention and rehabilitation initiatives.

The causes and consequences of many of the policy changes that took place during this period can only be fully understood by examining the social, political, and economic contexts in which they occurred. Trends as diverse as increased concern about illegal drug use and decreased availability of manufacturing jobs impacted crime and criminal justice policies in the 1980s and 1990s. Since the impacts of many of these policies continue to be felt today, it is essential to understand how and why these policy changes were made.

Crime in the 1980s and Early 1990s

Two sources offer comprehensive national data about crime trends during this period: the annual Uniform Crime Report (UCR) issued by the Federal Bureau of Investigation (FBI), and the National Crime Victimization Survey (NCVS) overseen by the U.S. Department of Justice’s Bureau of Justice Statistics (BJS). The UCR, which was originally devised in 1929, is based upon local police reports and thus only captures crimes that are known to the police. UCR data are released each year in a report, *Crime in the United States*, which also includes data on law enforcement personnel, crimes cleared, and individuals arrested.



The epidemic of crack-cocaine use in the 1980s led federal agencies, including the Department of Education, to get involved in prevention. The epithet just say no, popularized by First Lady Nancy Reagan, is echoed in this 1980s poster featuring McGruff the Crime Dog.

In contrast, the NCVS is based on a survey of Americans age 12 and over from 40,000 households about their experiences of victimization. In addition to presenting data on the amount and types of victimizations experienced, the NCVS also records the characteristics of the crime (such as where and when it occurred) and, if known and applicable, of the offender (such as age and sex). Crucially, in contrast to the UCR, the NCVS does not only consider crimes reported to the police. This difference is important because many crimes go unrecorded; NCVS data suggest that during the 1980s and early 1990s, only about half of violent victimizations were reported to the police.

UCR data show that, with some fluctuations, both property and violent crime rates increased from the mid-1980s onward, reaching a peak during the early 1990s. In 1991, violent crime reached its highest rate since the UCR began more than 60 years ear-

lier—more than 750 incidents per 100,000 people. Currently, violent crimes in the UCR include homicide, forcible rape of a female, robbery, and aggravated assault. The property crime rate similarly reached a local peak of 5,140 incidents per 100,000 people in 1991. Property crimes include burglary, larceny/theft, and motor vehicle theft.

Many observers, however, have questioned whether these increases in recorded crime reflect true increases in crime rates or merely improved detection of crimes. During the 1980s and early 1990s, police departments throughout the country adopted key reforms and innovations. These reforms may have improved crime detection, thereby increasing the number of crimes recorded by the police. This thesis is supported by NCVS data, which suggest that the violent victimization rate remained relatively

consistent throughout the 1980s. According to the NCVS definition, violent victimizations include personal robbery, rape of a male or female, sexual assault, aggravated assault, and simple assault. This definition differs from that in the UCR, which includes homicide, but does not include rape of a male or simple assault. According to the NCVS—and in sharp contrast to the UCR data—the property victimization rate regularly declined throughout the 1980s and early 1990s. Property victimization includes theft and burglary only against households; unlike the UCR, businesses are not taken into account. NCVS data also reveal that both during this decade and the following decade, blacks and Hispanics were more likely to be victims of crimes than whites. The disparity was greater for violent crimes than property crimes. Discrepancies in states' reported crime rates can be detected in UCR data, although it is critical to acknowledge the limitations of such data and abide by the FBI's caution that the data should not be used to rank the effectiveness of law enforcement agencies. Keeping these limitations in mind, UCR data reveal, for example, that Texas had the highest state homicide rate in 1985—a rate 13 times higher than that of North Dakota, the state with the lowest 1985 homicide rate. This discrepancy reveals that within national crime statistics, significant state and local nuances existed.

It is important to contextualize 1980s crime data by referring to one of the most significant social developments of this era: the crack-cocaine epidemic. Crack cocaine is powder cocaine heated and combined with water and baking soda. Since crack cocaine is typically much cheaper than powder cocaine, can be smoked, is highly addictive, and enables a nearly instantaneous high, its use became increasingly popular in a number of U.S. cities—including Los Angeles, New York, Philadelphia, and New Orleans—in the mid- to late 1980s. According to figures released by the Substance Abuse and Mental Health Services Association, there were more than 28,000 cocaine-related emergency room visits in the United States in 1985. This figure rose to over 50,000 in 1986 and increased again to more than 90,000 in 1987, more than tripling during this two-year period. Some scholars, such as criminologist Alfred Blumstein, have linked some of the rising levels of reported crime seen in 1980s UCR data to the crack-cocaine epidemic. The epidemic particularly affected poorer urban communities and, according to these scholars, could also partly explain why the homicide rate among black males between the ages of 14 and 24 approximately doubled in the 10 years after 1984.

White-collar crimes (abuses of trust, but not physical threats or violence to achieve personal or professional goals) are not regular features of either the NCVS or UCR, making historical trends difficult to determine. However, the UCR includes data on arrests for three key white-collar offenses: fraud, forgery/counterfeiting, and embezzlement. Arrests for fraud and embezzlement increased substantially during the late 1980s and 1990s, even as arrests for other kinds of crimes—such as burglary and motor vehicle theft—fell. These increases in arrests may not necessarily indicate rising levels of these crimes. Instead, such increases could indicate increased detection and enforcement efforts.

Crime in the Mid- to Late 1990s

Although UCR and NCVS data offer divergent perspectives on the 1980s and early 1990s, both sources agree that in the mid- to late 1990s, both violent crime and property crime rates spectacularly decreased. Specifically, UCR data indicate that the violent crime rate fell by more than 30 percent between 1991 and 1999, while the homicide rate fell by more than 40 percent. The property crime rate also fell by more than a quarter during the same period. NCVS data mirror these findings; the violent victimization rate fell by about half between 1994 and 2000, while the property victimization rate fell by

more than a third between 1991 and 2000. These statistics indicate that in addition to New York City's well-known sharp decline in crime rates during the late 1990s, less dramatic decreases in crime rates also occurred in many other areas of the country during this period.

Scholars have offered different explanations for these declines in crime. The first such explanation is economic. Between 1991 and 2001, the United States experienced a prolonged economic expansion, with unemployment falling by more than a third between 1992 and 1999. The greater availability of jobs may have reduced the incentive to commit crime.

The second explanation concerns incapacitation. Incarceration rates rose substantially in the 1980s and 1990s. Some experts have therefore argued that incapacitation was responsible for the 1990s crime rate declines; more potential offenders were incarcerated during this period and could not commit crimes.

A third explanation is the fading of the crack-cocaine epidemic that had devastated many poor urban areas during the 1980s and is linked by some scholars to higher reported crime rates during the 1980s. By the early 1990s, crack-cocaine use had begun to wane, perhaps in part because a new generation of young people had witnessed the devastation the drug had brought to their communities and therefore shunned its use.

A fourth explanation involves the legalization of abortion. Economist Steven Levitt has controversially argued that following the U.S. Supreme Court's 1973 decision in *Roe v. Wade*, which overturned state bans on abortion, the increased availability of abortion meant that many children who were at high risk of becoming offenders were never born and thus could not commit crimes as teenagers and young adults in the 1990s.

One final explanation centers on reduced lead exposure. Beginning in the 1970s, lead was increasingly removed from gasoline and banned from the paint used to decorate new homes. As a result, between 1975 and 1991, the average level of lead in Americans' blood has been calculated to have declined by 80 percent. Since exposure to lead in childhood can lead to reduced impulse control and increased aggression, both risk factors for later criminal activity. Economist Jessica Wolpaw Reyes has argued that reduced lead exposure may have contributed to the crime declines of the 1990s.

While this wide range of explanations is far from exhaustive, they illustrate that the debate still rages among scholars about which factor—or combination of factors—was most responsible for the 1990s decline in crime rates.

Concerns About Specific Types of Crimes

During the 1980s and 1990s, specific kinds of crimes received increased attention from lawmakers and increased exposure in the media. Hate crimes, which are crimes motivated by prejudice regarding a victim's race, gender, religion, disability, sexual orientation, or other characteristic, were one such category. Two brutal 1998 hate crimes received significant media attention: the murder of a black man named James Byrd in Jasper, Texas, and the murder of a gay man named Matthew Shepard in Laramie, Wyoming. In 1978, California was the first state to adopt a hate crime law, and during the 1980s and 1990s, numerous other states passed legislation specifically targeting various kinds of hate crimes. Congress requested that the FBI collect data on hate crimes in 1990, although state and local participation in the data collection effort was not mandatory.

School shootings also received significant national attention during the 1990s. Although overall rates of violent crime in schools generally declined during the decade, a spate of mass shootings caused significant public concern. In particular, the Columbine High School massacre in 1999—in which 12 students and one teacher were murdered by

two fellow students in Colorado—prompted a frenzied national media debate about gun control and violence. Other shootings also took place in Olivehurst, California, in 1992; Moses Lake, Washington, in 1996; Pearl, Mississippi, in 1997; Jonesboro, Arkansas, in 1998; and other American communities.

However, while this specific form of violence perpetrated by juveniles remained at the forefront of national consciousness, and arrests of juveniles sharply increased in the early 1990s, statistics reveal that the overwhelming majority of juvenile arrests in that decade were not for serious violent crimes. For example, UCR figures for 1997 reveal that more than 80 percent of juvenile arrests were for the following crimes: larceny/theft, simple assault, drug offenses, and disorderly conduct. Only 6 percent of juvenile arrests in that year were for the serious violent crimes of murder, rape, robbery, and aggravated assault.

Political Contexts

The political environment of the country during the 1980s and 1990s is important in understanding the criminal justice policy changes enacted during this period. Several key political transformations occurred in these years, directly influencing criminal justice policies. After the stagflation and oil crises of the 1970s, Ronald Reagan won a landslide victory in the 1980 presidential election. During his campaign, he promised smaller government, lower taxes, and increased military strength. By the time Reagan was reelected in 1984, once again by a large margin, American society had moved in a more conservative direction. Reagan's vice president, George H. W. Bush, won the 1988 presidential election and was similarly committed to a conservative policy agenda.

During these years, many of the social welfare tenets of the Great Society initiated in the 1960s during Lyndon Johnson's presidential term were called into question. In



Drug arrests nearly doubled in the 1980s, and by the 1990s, there were approximately 1 million U.S. drug arrests annually. The provisions of the Anti-Drug Abuse Act of 1986 have been criticized for increased black incarceration rates because of the far stiffer penalties for possessing (cheaper) crack cocaine than powder cocaine. Between 1980 and 2003, drug arrests of black Americans in major cities increased three times faster than that of whites.

the 1970s, a scholarly team led by sociologist Robert Martinson undertook a review of numerous evaluations of correctional rehabilitation programs. The review questioned the effectiveness of many of these programs and reinforced the popular belief that “nothing worked” when it came to offender rehabilitation. Gradually, such approaches were deemphasized in favor of crime control and tough punishment.

One area that received significant attention from national politicians during the 1980s was illegal drug use. As early as 1971, President Richard Nixon had declared illegal drugs “public enemy number one.” The growing crack-cocaine epidemic began to dominate newspaper headlines during the 1980s, and illegal drug use and the resulting War on Drugs rose to the forefront of the national agenda. In 1988, the Office of National Drug Control Policy (ONDCP) was established to reduce illegal drug use and its negative effects on society. Arrests for drug offenses rose dramatically during the decade and contributed to the increase in incarceration rates.

Another key development of the 1980s was increased political attention to the needs of crime victims. Several prominent advocacy groups, such as Mothers Against Drunk Driving (MADD), were founded in the early 1980s. In 1984, the Victims of Crime Act (VOCA) established a fund to compensate victims of crime, was passed by Congress. A 1988 amendment to VOCA established the Office of Victims of Crime within the U.S. Department of Justice. In 1982, California became the first state to pass a law allowing crime victims and their family members to deliver statements during sentencing and early-release court proceedings. A 1991 U.S. Supreme Court decision upheld the constitutionality of victim impact statements and, by 1997, 44 states authorized their use. Another important state-level development was the adoption of state constitutional amendments upholding certain rights for crime victims, such as the right to be present at relevant criminal justice proceedings and to receive restitution from the offender. The first such constitutional amendment was adopted by California in 1982, and by the end of the 1990s, more than 30 states had adopted similar amendments.

Bill Clinton, a Democrat, was elected president in 1992; he was subsequently reelected with a higher percentage of the popular vote in 1996. Clinton portrayed himself as a moderate Democrat, loyal to New Deal ideas, but “tough on crime.” During his 1992 campaign, Clinton returned to his home state of Arkansas where he was governor to ensure that the execution of a double murderer would be carried out. At the time, many commentators argued that this gesture was meant to symbolize Clinton’s support of capital punishment and his “tough-on-crime” attitude. In the 1994 elections, for the first time in 40 years, Republicans took control of the U.S. House of Representatives and retained this control throughout the rest of Clinton’s term, once again ushering in an era of divided government.

The federal government’s interest in crime and criminal justice matters expanded during Clinton’s presidential term, and numerous important pieces of criminal justice legislation were adopted at the national level. Key examples include the Brady Handgun Violence Prevention Act of 1993, which mandated background checks for individuals wishing to purchase firearms; and the Violence Against Women Act (VAWA) of 1994, which provided more than \$1.5 billion to improve the response to violent crimes against women and was part of the larger 1994 Violent Crime Control Act.

A series of brutal abductions, rapes, and murder of children aroused concern about sex offenders, particularly repeat offenders. States passed legislation mandating registration, restriction of residence, and virtually lifetime surveillance of convicted and released sex offenders. Although most sex offenses occurred within the family or among people who knew each other, a “moral panic” about predators led to federal legislation enacted in 1994 and again in 1996. Hate crime laws, violence against women laws, and sex

offender laws represented heightened public awareness of crimes that previously had been either ignored or unpoliced.

Economic Contexts

Economic trends also affected crime rates and criminal justice policies during this period. One particularly influential trend was the decline in domestic production and manufacturing sectors and employment growth in the retail and service sectors. For example, in the 1980s, employment in the retail sector grew by more than a quarter, while employment in the manufacturing sector fell by 7 percent. Between 1980 and 2005, the nation lost more than 4 million manufacturing jobs, and although this decline slowed in the 1990s relative to the 1980s, it increased once more in the early years of the next century.

Economists have advanced a number of explanations for this transformation, including the application of technology and improved productivity in the manufacturing sector (which meant that fewer workers could produce the same number of goods), and increasing globalization. The period was marked by the removal of trade barriers. For example, on January 1, 1994, President Clinton signed into law the North American Free Trade Agreement (NAFTA), designed to eliminate trade and investment barriers among Canada, Mexico, and the United States. Regardless of causation, such dramatic economic change could have affected crime rates as well-paid, low-skilled manufacturing jobs in urban areas were lost and people became more likely to commit crime for economic survival.

In addition to change in economic sectors, it is also crucial to examine change in income inequality and the effects of economic growth overall. During the 1980s, the share of income received by the poorest quintile of families fell slightly, while that received by the wealthiest quintile rose; economists have suggested that the introduction of new technologies increased the wages of highly skilled workers, while the weakening of unions may have slowed down wage growth for blue-collar workers. In the late 1990s, however, an economic boom resulted in workers' wages rising faster than inflation, although wages of the wealthiest workers tended to rise the fastest. Understanding trends in income inequality is important because some research has shown a correlation between income inequality and crime rates, although it is not clear whether this correlation holds true under all conditions. After the 1982 recession, the economy grew during the remainder of the decade. Unemployment fell from a high of around 10 percent in 1982 to under 6 percent in 1989. A second period of dramatic growth occurred in the late 1990s, when enthusiasm for new Internet companies led to a dramatic stock market boom; the speculative "dot com" bubble began to burst in early 2000. Growth is another economic trend that can affect crime rates, and some scholars have argued that the late 1990s boom contributed to the declines in crime rates during this period.

Social Contexts

The 1980s and 1990s witnessed several important social changes. In particular, a growing focus on racial, gender, religious and other forms of equality was reflected in the diffusion of hate crime laws. At the same time, awareness of, and concern about, domestic crimes began to increase. Physical, sexual, and psychological child abuse received more attention during this period, as did the abusive neglect of children. The scope of both these problems was large. For example, according to the National Committee to Prevent Child Abuse in 1995, protection agencies nationwide received more than three million reports about children being abused, neglected, or otherwise harmed. One million reports were substantiated; therefore, there were 14 substantiated reports for every 1,000 Americans under the age of 19. In 1983, growing recognition of these problems

spurred the designation of April as Child Abuse Prevention Month. In 1985, the first Child Advocacy Center was founded, designed to coordinate law enforcement, criminal justice, child protection, and other personnel in child abuse investigation cases. This model later spread to many states.

Similarly, beginning in the 1970s, the women's movement helped highlight the problem of domestic violence or spousal abuse. In 1981, Duluth, Minnesota, instituted a community-wide initiative to prevent domestic violence that subsequently influenced prevention policies elsewhere. At the national level, the 1984 Victims of Crime Act was amended in 1988 to encourage compensation for victims of domestic violence. In 1994, the Violence Against Women Act was adopted as part of the Violent Crime Control Act, funding rape and domestic violence victims' services and establishing the federal right of gender-based violence victims to sue their attackers. The 1990s also saw greater research into domestic violence, with scholars paying increased attention to its different causes and cultural contexts.



Awareness and concern about domestic violence increased at the end of the 20th century. Child abuse garnered more attention as well; in 1995, there were 14 substantiated reports for every 1,000 Americans under the age of 19.

Increasing technological progress also influenced criminal justice policy. The increasing attainability of personal computers during the 1980s and the availability of the Internet and e-mail in the 1990s transformed the daily lives of many Americans. New technologies also improved crime detection and investigation capabilities. The diffusion of enhanced computing technologies in the 1990s enabled authorities to better analyze and act upon crime patterns. Perhaps the most well-known application of technology to criminal justice in this period was the use of deoxyribonucleic acid, or DNA, to aid crime investigations. Present in biological evidence, DNA can be linked to the profile of an offender via national, state, and local databases. These databases, initiated in the 1980s, were unified as the Combined DNA Index System (CODIS). During the 1980s and early 1990s, states increased the number of DNA profiles present in CODIS by adopting legislation requiring offenders convicted of certain crimes to offer DNA samples. By 2000, when the popular crime drama *CSI* premiered, enthusiasm for new crime-solving technologies was established in the public domain.

Changes in Criminal Justice Policy

Due to the federalized governmental structure of the United States, important criminal justice policy decisions were taken at both national and state levels during the 1980s and 1990s. In this period, many of the most important changes in national criminal justice policy were contained in five key pieces of legislation: the Comprehensive Crime Control Act of 1984; the Anti-Drug Abuse Act of 1986; the Anti-Drug Abuse Act of 1988; the Crime Control Act of 1990; and the Violent Crime Control and Law Enforcement Act of 1994. Although these acts were adopted at the federal level, they frequently impacted state and local policies through grants and other means.

The Comprehensive Crime Control Act of 1984 led to the establishment of the Sentencing Commission to issue federal sentencing guidelines. These guidelines were intended to reduce disparities in federal sentences and establish a more determinate sentencing approach in the federal system. Determinate sentencing strategies minimize the discretionary power of judges and other officials in the criminal justice process to craft or alter sentences. The guidelines issued by the Sentencing Commission were subsequently adopted in 1987 and overhauled sentencing in the federal system. Other important contributions of the Comprehensive Crime Control Act of 1984 included the creation of the Office of Justice Programs within the Department of Justice to handle certain grant-making responsibilities, as well as a number of other key changes in the federal justice system, such as the elimination of federal parole.

The passage of the Anti-Drug Abuse Act of 1986 was prompted by the shocking death of leading college basketball player Len Bias from a cocaine overdose, an event that further drew media attention to the dangers of drug use. The act was passed at the peak point of the crack-cocaine epidemic in America's inner cities. The legislation allocated \$97 million for prison construction, \$200 million for antidrug education efforts, and \$241 million for drug treatment programs. The act also imposed mandatory minimum sentences for drug-related offenses, such as a minimum federal prison term of five years for those convicted of distributing five grams of crack cocaine or 500 grams of powder cocaine. These provisions have been criticized by some commentators for contributing to increased incarceration rates of black Americans because the acts set far stiffer penalties for possessing crack cocaine than powder cocaine, even though crack cocaine is simply powder cocaine that has been heated and combined with water and baking soda. In the 1980s, the majority of powder cocaine users were white, while most crack-cocaine users were black. Before the 1986 act, however, black Americans on average received 11 percent longer federal drug sentences than whites; by the early 1990s, black Americans received on average nearly 50 percent longer federal drug sentences than whites.

Two years after this legislation was passed, the Anti-Drug Abuse Act of 1988 was adopted. This act created the Office of National Drug Control Policy, an organization tasked with coordinating national antidrug education efforts. The organization was overseen by the "drug czar," a member of the president's cabinet. The fact that the organization's leader was given cabinet-level status indicates the continued prominence of drug-control issues on the federal agenda.

The Crime Control Act of 1990 provided \$900 million to states' criminal justice systems. The legislation also enshrined into federal law the Crime Victims' Bill of Rights. Finally, the Violent Crime Control and Law Enforcement Act of 1994 allocated more than \$30 billion for various criminal justice and crime-related programs. Some \$9 billion of this allocation was earmarked to fund the recruitment of more police officers, while the Violence Against Women Act, contained within the broader 1994 bill, was allocated \$1.6 billion in funding. The act also initiated many important policy changes

in criminal justice, such as allowing juveniles age 13 and over to be tried as adults for certain federal crimes involving violence or a firearm. For a decade after its enactment, the act also outlawed the manufacture of semi-automatic assault weapons for civilian use, a provision that expired in 2004. The range of federal crimes eligible for the death penalty was widened in the 1994 act, and a “three strikes” federal sentencing provision was introduced to prescribe a sentence of life imprisonment for violent offenders facing a third federal conviction.

Although white-collar crimes did not receive as much attention as violent or drug crimes during this period, a small number of significant pieces of legislation were also adopted in this area. Most significantly, in both 1984 and 1988, Congress passed new legislation targeting insider trading.

Many additional influential policy changes were also made at the state level during this period. Washington state adopted a three-strikes law in 1993, and California’s 1994 adoption of a similar policy received significant national attention. These three strikes laws, local precursors to the federal policy, imposed mandatory minimum sentences of life imprisonment for felony offenders convicted of a third offense. Although the specifics of these laws differed by state, similar policies were adopted by many other states during the 1990s. This increasing enthusiasm for determinate sentences can also be seen in the decisions of more than a dozen states to abolish parole between the late 1970s and the late 1990s, further reducing discretion in their criminal justice systems.

“Truth-in-sentencing” laws also spread to numerous states during the early 1990s. These laws mandated that offenders remain incarcerated for a certain percentage of their sentence. As part of the Violent Crime Control and Law Enforcement Act of 1994, the federal government offered states \$11 billion for prison construction and expansion, provided that states met certain criteria. One criterion was that the state must have a “truth-in-sentencing” law or legislation mandating that certain violent offenders serve at least 85 percent of their sentences. Prior to this funding incentive, only 4 states had passed such legislation; by 1998, that number had increased to 27.

New correctional policies were also instituted at the state and local levels during this period. Private prisons, or correctional facilities managed by private organizations fulfilling government contracts, became increasingly prevalent as states sought to expand the number of available prison cells. In 1984, the first contract for a private prison was awarded; and by 2000, more than 150 private correctional facilities had opened throughout the country. Supporters of private prisons argued that they would be run more efficiently than public prisons; detractors argued that private prisons would not be as safe as public facilities.

The second correctional policy that spread dramatically during the 1980s and 1990s was the boot-camp prison. These programs exposed civilian offenders to military-style drills, physical exercise, and rigid discipline. Georgia and Oklahoma first instituted these programs in the early 1980s; by the mid 1990s, they had spread to a majority of states. In 1990, a correctional boot camp program was also added to the federal prison system. As with “three-strikes” policies, the diffusion of boot camps was encouraged by the 1994 Violent Crime Control and Law Enforcement Act, which provided funding for some of these programs.

Since many boot camps specifically targeted drug offenders, this approach to correction offers yet another example of how antidrug efforts gained headway during this period. Advocates of boot camps argued that their strict discipline and rigid, military-inspired structure would encourage offenders to change their behavior. Skeptics doubted the programs’ rehabilitation potential and feared that the correctional officer-offender power dynamics present in some boot camps might lead to abuse. Although

some boot camps produced positive effects, most evaluations showed that boot camps had little or no impact on recidivism.

Some states also made important changes to their juvenile justice systems during this period. In the three years following 1978, nearly half of all states adopted harsher policies for dealing with serious or repeat juvenile delinquents, such as forbidding certain offenses from being tried in juvenile court. Amid rising public concern about juvenile offending during the 1980s, at least 17 states changed the purpose of their juvenile justice systems to focus on protecting the public by incarcerating, rather than rehabilitating delinquents. In the early 1990s, the general trend toward tougher penalties and treatment for juvenile delinquents largely continued as the number of juveniles eligible for trial in the adult, rather than juvenile, system expanded. By the end of the 1990s, more than half of all states had adopted policies specifying that juveniles who met certain criteria could be automatically transferred to the adult justice system.

On the issue of capital punishment, the U.S. Supreme Court's 1976 decision in *Gregg v. Georgia* meant that state executions could be resumed. Eleven executions were carried out between 1977 and the end of 1983. More than 130 executions were carried out between 1984 and the end of 1990. Lethal injection became an increasingly common method of execution during this period, since first being implemented in Texas in 1982.

In the 1986 case *Ford v. Wainwright*, the Supreme Court ruled that offenders judged insane could not be executed. In the 1998 case *Thompson v. Oklahoma*, the Supreme Court ruled that offenders who were under the age of 16 when they committed their crimes could not be executed, a decision reaffirmed in the court's 1989 *Stanford v. Kentucky* ruling. Massachusetts and Rhode Island both abolished the death penalty in 1984, raising to 12 the number of states that did not have the death penalty during this period. Despite these restrictions, nationwide between 1990 and 1999, an average of 48 executions were carried out each year. Although capital punishment remained a contentious issue in American society, during this period opinion polls consistently revealed that a majority of the public supported the death penalty in cases of murder. However, the exact percentage in favor fluctuated over time and reached a peak of 80 percent support in 1994.

Changes in Policing

During this period, spending on policing throughout the United States increased at rates far above that of inflation. In the 1980s, average direct expenditures on



Mayor Marion Barry speaking in Washington, D.C., in the 1980s. In 1990, he was arrested by the FBI on drug charges after being videotaped smoking crack cocaine. In 1992, however, he was elected to city council.

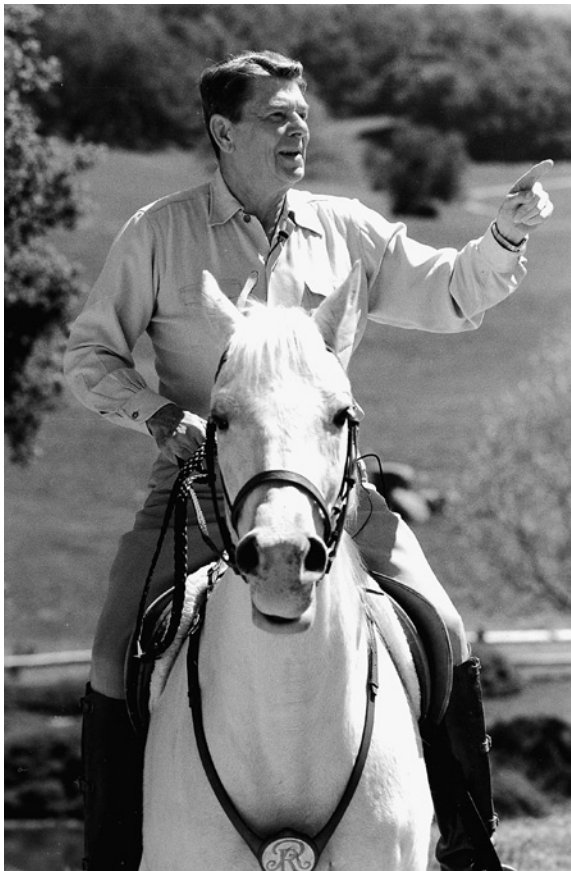
police across federal, state, and local levels skyrocketed by more than 400 percent. Nationwide, the number of police officers relative to the total population rose more than 7 percent between 1990 (when there were 227 police officers per 100,000 U.S. residents) to 2000 (when there were 243 officers per 100,000 residents).

As with sentencing and incarceration policies, new policing approaches also spread during this period. For instance, problem-oriented policing—an approach emphasizing detailed analysis of crime to develop wider prevention strategies—was advocated by Herman Goldstein in a 1979 article and, in greater detail, in a landmark 1990 book. Goldstein’s arguments were influential; during the 1990s, many police departments adopted aspects of this approach, and the nonprofit Center for Problem Oriented Policing began to publish related research from 2001.

Community policing—a related approach to problem-orientated policing—also received increased attention during this period. Community policing initiatives seek to build partnerships between law enforcement and stakeholders in local communities to reduce crime and disorder. Community policing is a broad concept that encompasses a variety of different, and more specific, techniques such as encouraging officers to become more familiar with the communities they patrol and holding community meetings for police officers to respond to citizen concerns. The origins of community policing trace

back to the ideas of Sir Robert Peel, who founded London’s Metropolitan Police Force in 1829. The famous axiom “The police are the public and the public are the police,” attributed to Peel, encompasses his belief that the police were meant to work with and serve local citizens. This idea of partnership was revived in the late 20th century in the United States a number of police departments. For example, as early as the 1970s, the San Diego Police Department encouraged officers to become familiar with the characteristics and needs of the communities they patrolled and to tailor patrols to address those needs. The popularity of the general community-based philosophy is evidenced by the federal government’s creation of the Office of Community Oriented Policing Services (COPS) as part of the 1994 Violent Crime Control and Law Enforcement Act.

A very different policing style also received notable attention during the 1990s: “zero-tolerance” policing. This approach encourages police to take swift



Ronald Reagan, who won two landslide elections in 1980 and 1984, espoused a tough-on-crime approach that was continued by his vice president, George H. W. Bush, after Bush won the 1988 presidential election.

action against even minor offenses to show that crime and disorder will not be tolerated. The theoretical underpinnings of this approach are frequently traced to the “broken-windows” theory proposed by George Kelling and James Q. Wilson in 1982. Kelling and Wilson argued that if minor crimes and instances of disorder are not addressed, social apathy and lawlessness can set in, resulting in more serious crimes. Rudolph Giuliani, mayor of New York City from 1994 to 2001, was a proponent of the zero-tolerance approach, and his Chief of Police Bill Bratton ensured that more attention was paid to low-level offenses.

Another policing innovation widely adopted in the 1990s was crime-mapping technology. Technological advances meant that by the early to mid-1990s, police were better able to track and analyze crime patterns. Most famously, geographic information system (GIS) technology was employed by New York City’s Police Department as part of its CompStat strategy. During regular meetings with their superiors, local precinct commanders were encouraged to develop improved plans to deal with crime patterns and other problems in their local areas. Although some critics have expressed concern that this increased emphasis on crime statistics could encourage some officers to manipulate data, the introduction of crime-mapping technologies is often identified as a significant contributing factor to the large declines in crime experienced in that city during the latter part of the decade.

“Hot spots” policing was a second and related innovation adopted by some police departments during the 1990s. This strategy involves analyzing information about where crimes and incidents of disorder are most likely to take place before actively targeting police resources toward those areas. Research by David Weisburd and other scholars has shown that this strategy can often be effective in reducing crime in the targeted area without “displacing” crime to other nearby areas. However, more research is still needed into whether the strategy delivers long-term reductions in crime. Related strategies have been tried in cities as diverse as Jersey City, Houston, and Minneapolis.

Police departments sometimes showed willingness to experiment, implementing a range of new policing techniques at the same time. For example, Operation Ceasefire was a program designed to combat youth gun violence (and in particular, gang-related gun crimes) that was first implemented in Boston in 1996. The program drew upon both the “hot spots” approach (by focusing on areas with a high likelihood of crime) and problem-oriented policing ideas (by developing a larger, community-involved prevention strategy). Youths were discouraged from carrying guns through both interventions and threats of stiff penalties—a combination that researchers and the National Institute of Justice have referred to as “lever pulling.” Operation Ceasefire produced promising early results and was also trialed in Los Angeles, Chicago, and other cities.

The issues of police racism and excessive force received national attention in 1991 when, after being pulled over for speeding, black motorist Rodney King was beaten by officers from the Los Angeles Police Department. Both the beating and the failure of other officers to intervene were caught on video and disseminated widely in the news media. Although the officers were acquitted of using excessive force in a California court—an action that fuelled the 1992 Los Angeles riots—the Justice Department later brought civil rights charges against four of them. Two were convicted and sentenced to 30 months in prison. The torture of Abner Louima in a station house in 1997 and the the shooting of unarmed West African immigrant Amadou Diallo in 1999 by New York police officers—and the protests it prompted—illustrated that, at the end of the decade, controversies about the use of excessive force by the police had not disappeared.

For many minority communities, Rodney King’s beating, Amadou Diallo’s death, and other high-profile incidents reinforced an already existing sense of police bias and racism. The issue of racial profiling by some police departments received increased

attention during this period. In 1984, the Drug Enforcement Administration (DEA) initiated Operation Pipeline, which offered training to 25,000 state and local police officers to help combat drug trafficking. The training encouraged officers to consider the race of a suspect when identifying motorists to stop and question. During the 1990s, as civil rights groups raised legal challenges, more American police departments began to collect statistics on traffic stops by race to better identify and prevent racial profiling. This trend continued into the 21st century, with President George W. Bush declaring his opposition to racial profiling in a February 2001 address to the U.S. Congress.

One final trend from this period was the sharp increase in arrests for drug offenses, which more than doubled in the 1980s. By the early 1990s, there were approximately 1 million drug arrests each year in the United States, about a quarter of which were for marijuana possession. Racial disparities in drug arrests persisted during this period and between 1980 and 2003; drug arrests of black Americans in major cities rose three times faster than drug arrests of white Americans. The increases in arrests for drug offenses sharply contrasted with trends in arrests for other kinds of crimes. In the 1980s and 1990s, the nationwide arrest rate for murder remained relatively constant, with an average of nine arrests for murder for every 100,000 residents. The arrest rate for murder reached a peak in 1991, but between 1991 and 2000, it fell by more than 50 percent, mirroring the decline in the murder rate that took place during the same period. The arrest rate for robbery also fell by a third between 1996 and 1999. The arrest rate for burglary fell by about half between 1980 and 2000. The motor vehicle theft arrest rate increased more than 80 percent between 1983 and 1989 before dramatically declining throughout much of the 1990s.

Increasing Reliance on Incarceration

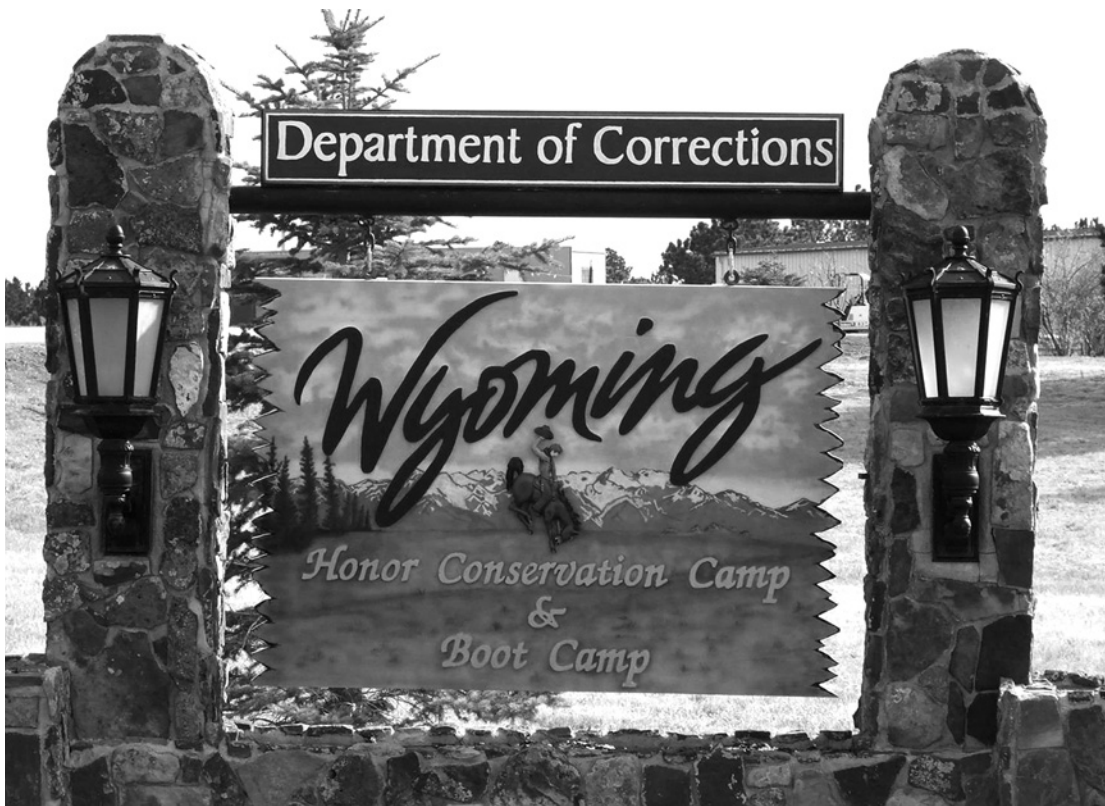
The 1980s and 1990s both witnessed massive growth in state and federal prison populations. Within the five-year period beginning in 1979, more than 100 new state correctional facilities were opened; in the 11 years between 1984 and 1995, nearly 150 more state correctional facilities were opened. As with policing expenditure, both local and national spending on incarceration sharply outpaced inflation during this period. Through the 1980s, for example, average direct spending on federal, state, and local correctional systems rose by 990 percent. In the 1990s, an average of almost \$2 billion was spent each year on the construction of new state prisons. By 2000, approximately \$40 billion was spent on prison construction and operations combined.

These numerous new prisons were needed to meet America's ever-escalating incarceration rate. Between the 1940s and the mid-1970s, the overall incarceration rate remained at around 100 inmates per 100,000 U.S. residents. During the late 1970s, the rate began to rise; by 1985, it had reached over 200 inmates per 100,000 U.S. residents, increasing to more than 300 by 1991. By 1995, the rate was in excess of 400, and by 2000, the rate had increased yet again to over 470, reflecting an incredible 343 percent rise over the 1980 rate.

Much of this growth can be attributed to the increased focus on drug offenses; simply put, more arrests and prison sentences for drug offending contributed to a greater number of prisoners. The political focus on drug offending thus had important criminal justice effects. In 1980, only 6 percent of state prison inmates were serving sentences for drug offenses; by 1999, however, this share rose to about 20 percent. Between 1980 and 1999, the incarceration rate for drug offenders skyrocketed by 1,000 percent. Meanwhile, the average duration of prison sentences imposed for drug offenses rose from 13 months to 30 months between 1985 and 1994.

Drug offenses were not only the only type of crime that contributed to the increased incarceration rates during this period, however; sentences for violent crimes also increased. For example, between 1975 and 1989, the average prison sentence for a violent crime tripled. A further factor that played an important role was the emphasis on longer sentences encouraged by the adoption of truth-in-sentencing and three-strikes policies by many states. Truth-in-sentencing policies typically required offenders to serve at least 85 percent of their sentences, while three-strikes policies mandated increased punishment for serious repeat offenders. Since both of these policies diffused widely during this period, their impact on the prison population was substantial.

Incarceration rates did not increase equally everywhere, as a comparison of the nation's two most populous states—Texas and California—reveals. During the 1980s, for example, the incarceration rate rose by 14 percent in Texas, but increased by a staggering 192 percent in California. In the 1990s, however, the incarceration growth in Texas accelerated, and the state maintained the highest average annual increase in the incarceration rate during that decade. California's incarceration rate also continued to grow during the 1990s; by the end of the decade, it was estimated that almost one in six state employees worked in the state's correctional system. More broadly, southern states such as Texas and Louisiana typically had higher incarceration rates during this period than New England states such as Maine and states in the northern midwest such as North Dakota and Minnesota. For example, in 1980, North Carolina had the highest state incarceration



Correctional innovations such as private prisons and military-style boot camps achieved greater prominence during this era. The Wyoming Honor Conservation Camp and Wyoming Boot Camp in Newcastle, which opened in 1990, is a highly structured program for first-time male offenders under the age of 25. The Youthful Offender Program provides an opportunity for a reduced sentence and an alternative to long-term incarceration.

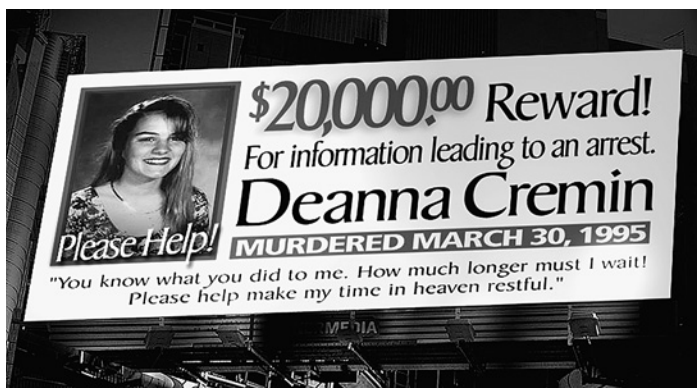
rate, which was more than eight times higher than the lowest state incarceration rate of North Dakota. In 1985, 1990, and 1995, North Dakota retained the lowest state incarceration rate, but the highest rate could be found in Nevada in 1985, South Carolina in 1990, and Texas in 1995. By 2000, the lowest rate could be found in Minnesota (ahead of Maine and then North Dakota), and the highest rate could be found in Louisiana. In 2000, Louisiana's rate was just over six times higher than Minnesota's—a smaller disparity than that between North Carolina and North Dakota in 1980.

Race and class disparities in imprisonment rates persisted throughout this period. During the 1970s and 1990s, the chance that a black man without a high school education would be imprisoned by age 35 more than tripled, while the chance that a black man with some college education would be imprisoned by age 35 actually fell. The chance that a white man without a high school education would be imprisoned by age 35 more than doubled, while the chance that a white man with some college education would be imprisoned by age 35 fell slightly. In the decade following 1985, the number of black Americans sentenced to state prisons for drug offenses shot up by 700 percent. Racial disparities in drug-related incarceration cannot purely be explained by differing rates of drug use, as surveys have revealed that white Americans are as likely, if not more likely, to use illegal drugs as black Americans.

Although lower in absolute terms, the number of women in federal and state correctional facilities increased faster than the number of men during much of the late 1990s. The female incarceration rate more than quintupled between 1980 and 1999. In 1985, there were approximately 40,500 women serving sentences in U.S. jails or prisons. By 1992, this number had increased to approximately 75,000; by 1995, it had increased yet again to about 113,000. Much of this upward trend was due to nonviolent and drug offenses, rather than violent crimes. For example, in 1996, only 28 percent of females in state prisons had been incarcerated for violent crimes, in contrast to 50 percent of females in state prisons in 1979.

In addition to this dramatic increase in incarceration, the 1980s and 1990s also saw the implementation of a range of new “intermediate sanctions,” or punishments that do not involve incarceration. One such sanction was electronic monitoring, or surveillance via electronic devices of offenders who must remain within a certain area, such as house arrest. Electronic monitoring was first trialed in Palm Beach County, Florida, in 1984 and by

1988 had spread to more than 30 states. A related alternative sanction was Intensive Supervision Probation (ISP), a more involved form of probation in which offenders were typically required to meet with their probation officer multiple times per week and follow stringent regulations regarding curfews and random drug tests. The concept of reducing probation officer caseloads and offering more individualized attention to



Atypical of the crime statistics at the time of her death, Deanna Cremin's 1995 murder is still unsolved. The nationwide arrest rate for murder remained relatively constant until between 1991 and 2000, when the arrest rate fell by more than 50 percent.

each offender on probation was trialed in some U.S. communities as early as the 1950s. By 1995, at least 40 states had adopted some form of ISP. For offenders with substance abuse issues, day reporting centers (DRCs) were another innovation that received increased attention during this period. A DRC is a nonresidential location where offenders undergo a comprehensive schedule of treatment and skill-building services. Offenders are typically required to report to DRCs multiple times per week. Massachusetts became the first state to operate a DRC in 1986, and over the next nine years, DRCs spread to more than 20 states.

The 1980s witnessed a general turn away from rehabilitation and toward crime control and tough punishment. The popular belief that “nothing worked” in offender rehabilitation was reinforced by Martinson’s influential 1970s review of numerous programs. However, by the late 1990s, interest in crime offender rehabilitation programs and services for at-risk young people began to gain strength once again. One such example of a prevention/rehabilitation program introduced during this period was multisystemic therapy (MST), formulated by Scott Henggeler and colleagues to improve outcomes for adolescents with antisocial behavioral patterns. MST aims to take into account the way in which family, school, and neighborhood environments interact to influence adolescents’ attitudes. The therapeutic model draws on research about and then targets the risk factors for antisocial behavior, such as inconsistent discipline by parents and a lack of commitment to education by the adolescents. This approach gained increasing prominence during the 1980s and 1990s, and was implemented in a wider range of jurisdictions to treat at-risk juveniles.

Another example of a research-based rehabilitative program that gained greater currency in various areas of the country during this period was Communities That Care (CTC), a program designed by David Hawkins and Richard Catalano. The goal of the program is to reduce antisocial outcomes among at-risk juveniles through a community-wide prevention approach, and CTC is now affiliated with the U.S. federal government’s Center for Substance Abuse Prevention (CSAP) within the Substance Abuse and Mental Health Services Administration (SAMHSA).

A third program that also received increased attention during this period was the Nurse-Family Partnership program. In this program, nurses visit the homes of new, economically disadvantaged mothers and their children, offering help and advice. Randomized, controlled trials of the program’s effectiveness were conducted in 1977 in Elmira, New York; in 1988 in Memphis, Tennessee; and in 1994 in Denver, Colorado. The results of these trials revealed benefits to both mothers and their young children, including a nearly 50 percent long-term reduction in official rates of child abuse or neglect. By the beginning of 2012, NFP programs were operated in more than 30 states.

Although on the surface, MST, CTC, NFP, and other similar programs implemented during this period may not seem directly related to criminal justice, they caught the attention of developmental criminologists. Developmental criminology focuses on the pathways into crime, or aims to understand why some children and adolescents become involved in criminal activities when they grow up. Many developmental criminologists believe that by identifying and reducing risk factors for criminal involvement among children and adolescents (such as school failure) and by identifying and promoting protective factors (such as impulse control), later offending can be reduced. Developmental criminology’s focus on the long-term pathways into crime continues to appeal to many academics and practitioners.

The more general resurgence of interest in research-based rehabilitation and crime prevention that took place during this period can be seen in the 1997 publication of

Preventing Crime: What Works, What Doesn't, What's Promising. This research-intensive, comprehensive report was submitted to Congress by criminologists Lawrence W. Sherman, Denise C. Gottfredson, Doris L. MacKenzie, John Eck, Peter Reuter, and Shawn D. Bushway. The report reviewed research into the effectiveness of numerous crime prevention programs, including community-based, family-based, school-based, place-based, and policing-based initiatives. Similarly, during this period, some criminologists and other scholars championed the use of increasingly rigorous methods for compiling evaluations and literature reviews. Such scholars were eager to follow the example of medicine, where the international organization the Cochrane Collaboration disseminates systematic reviews, which are literature reviews that endeavor to locate absolutely all of the studies in a particular area, and meta-analyses of medical interventions, a statistical technique that allows researchers to combine the effects of multiple studies. In 2000, following the example of the Cochrane Collaboration, the Campbell Collaboration was founded to promote rigorous research into the effectiveness of social programs, including criminal justice interventions.

Conclusion

Every era in U.S. history has witnessed some changes in criminal justice policies, as national, state, and local policymakers have sought to address prevailing contemporary concerns. For example, the 1920s witnessed the development of a national system for compiling crime statistics, which led to the FBI's UCR, and the years immediately following the Omnibus Crime Control and Safe Streets Act of 1968 were marked by increased emphasis on coordinating different policing, criminal justice, and social welfare agencies to prevent crime. However, the changes that occurred in the 1980s and 1990s were especially dramatic; in particular, the unprecedented increases in incarceration rates and the expansion of efforts to control drugs and punish drug offending were significant historical developments. Although the most prominent police-recorded crime statistics and crime victimization survey results tell divergent stories about crime in the 1980s and early 1990s, the two sources agree that both violent crime and property crime declined dramatically in the mid- to late 1990s—an important social trend for which experts have advanced a variety of different explanations. Other less significant but still important developments included the introduction of new technologies to aid crime solving and the wider application of innovative policing strategies such as problem-oriented policing and hot-spots policing, which represented a distinct break from traditional methods. The era also saw the emergence of correctional innovations such as private prisons and military-style boot camps for civilian offenders, while hate crimes, child abuse, and domestic violence received greater attention during this period than in any previous era of U.S. history.

The 1980s and 1990s are also important decades in U.S. criminal justice history because the impacts of many of the trends and policies adopted during this period continue to be felt today. New technologies for solving crimes continue to diffuse, and interest in implementing improved policing practices persists. Racial disparities in incarceration rates and drug arrest rates remain a concern in the 21st century. The Anti-Drug Abuse Act of 1986—enacted during the height of the crack cocaine epidemic in America's inner cities—imposed mandatory minimum sentences for drug-related offenses. These minimums included a 100:1 federal sentencing disparity for crack cocaine relative to powder cocaine. This sentencing disparity has been criticized by some commentators for contributing to racial disparities in incarceration levels, as in the 1980s, the majority of powder cocaine users were white and the majority of crack-cocaine users were black. Concerns about this particular sentencing disparity were voiced by Republican President

George W. Bush during his administration, and by Democratic President Barack Obama, who took office in 2009. Nearly 25 years after this policy was introduced, Congress passed and Obama signed the Fair Sentencing Act (2010), which reduced the federal sentencing disparity from 100:1 to 18:1.

In addition to racial disparities, a second lingering consequence of the policy changes made during this period is a continued upward trend in incarceration rates. Partly as a result of the increased focus on drug offending during the 1980s and 1990s, the United States by 2012 had the highest incarceration rate in the world. According to figures compiled by the International Centre for Prison Studies at King's College London, the 2011 incarceration rate (or number of people incarcerated per 100,000 population) in the United States was 743, compared to 253 in Brazil, 200 in Mexico, 156 in England and Wales, 117 in Canada, 73 in Norway, and 58 in Japan. Housing such a large prison population continues to pose difficulties for certain U.S. states such as California, where prison overcrowding has become so acute that in 2011 the U.S. Supreme Court ordered the state to reduce its prison population by more than 30,000 inmates over the next two years. In California's case, a factor directly contributing to the state's prison overcrowding was the tough three-strikes sentencing law that the state adopted in 1994.



The Reagans and Michael Jackson launch the Campaign Against Drunk Driving at a White House Ceremony on May 14, 1984. There was increased political attention to the needs of crime victims during the 1980s, which included victims of drunk drivers. Reagan credited much of the public attention on the problem to Mothers Against Drunk Driving (MADD), which was founded in the early 1980s.

Although the death penalty remains in use in certain states, as well as in the federal system, the trend toward increasing restrictions on the application of the death penalty has continued into the 21st century. In 2002, the U.S. Supreme Court ruled in *Atkins v. Virginia* that the execution of “mentally retarded” offenders violated the mandate prohibiting “cruel and unusual punishment” in the Eighth Amendment of the U.S. Constitution. In 2005, the U.S. Supreme Court ruled in *Roper v. Simmons* that the execution of offenders who were under the age of 18 at the point when they committed their crimes also violated the Eighth Amendment. At the same time, in line with changing popular opinion, more states also got rid of the death penalty, with New Jersey, New Mexico, and Illinois all abolishing capital punishment between 2007 and 2011. Yet, although a 2011 poll registered the lowest level of U.S. public support for the death penalty since the 1970s, at just over 60 percent, support for the death penalty remains much higher in certain areas of the country.

In summary, the 1980s and 1990s ushered in dramatic policy changes in the American criminal justice system, and the political, economic, and social contexts of these decades shaped those changes. Political conservatism, economic globalization, and changing social reactions to hate crimes and domestic violence are just three of the many political, economic, and social developments that influenced criminal justice policymaking during this period. Probing the wider historical climate of this period affords a deeper understanding of how criminal justice policies—many of which continue to affect American society today—originally came into being.

Tiffany Bergin
University of Cambridge

1981 PRIMARY DOCUMENT

White House Press Briefing on the Reagan Assassination Attempt

On March 30, 1981, John Hinckley Jr. shot President Reagan and three others in an attempt to emulate the end of the film Taxi Driver in order to attract the attention of its co-star, Jodie Foster, with whom he was obsessed. He was found not guilty by reason of insanity and institutionalized. One of those shot, James Brady, became a gun control advocate. Secretary of State Alexander Haig has been criticized for declaring to the press that he was "in control here," despite being fourth in line to the presidency.

The White House
Office of The Secretary
Press Briefing
By Larry Speakers
April 3, 1981
12:13 P.M. Est

MR. SPEAKER: Good Afternoon. First of all I want to let you know that I spoke with Sarah Brady this morning from the hospital. Sarah, is of course, very encouraged by the reports Jim. She specifically wanted to say that she had numerous calls from Jim's friends in the media and that she wanted you to know that she deeply appreciates these telephone calls. She has, of course, not been able to get back to anyone at the present time. But she hopes to soon. She just specifically wanted to call and let you know that she appreciates it.

I transmitted to her that your feelings were that most of these calls were certainly not for news but from friends of Jim who wanted to know about his situation and express your feelings for Jim through Sarah.

I just talked to Dr. Ruge at the hospital. The President has just awakened from a nap and the situation is as we announced it

in the medical statement this morning. We anticipate having another medical statement this afternoon, probably around 2:30. These statements, as you know, follow the doctors' rounds in visiting the President and that explains the fluid time as to when they release him.

Q: What do you mean the doctors' rounds?

MR. SPEAKER: When the doctor visits the patient.

Q: You mean Ruge or others?

MR. SPEAKER: Others and Ruge. We are now handing out the personnel announcements, presidential appointments—Kieran O'Doherty to be Commission of the Postal Rate Commission and the President plans to designate him as Chairman, Warren T. Lindquist to be a member of the Board of Directors of the New Community Development Corporation, and, once the appointment is effective, he will become General Manager and Chief Executive Officer; Fred J. Villella to be Deputy Director of the Federal Emergency Management Agency; William M. Gianelli to be Assistant Secretary of the Army for Civil Works; Lawrence J. Korb to be Assistant Secretary of Defense, Manpower Reserve and Reserve Affairs and Logistics; Shelby T. Brewer to be Assistant Secretary of Energy, Nuclear Energy. These had been earlier signed by the President. These are not the ones he signed today which are now going through our normal paperwork procedure. And I don't anticipate having them today. The President—

Q: Larry, how many is he signing today. Do you know?

MR. SPEAKER: No, I'll have to check that figure.

Q: Could we take a look at his signature?

MR. SPEAKER: Yes, we'll let you do that.

Q: This was right before he was shot?

MR. SPEAKER: Yes.

Q: Last week, in other words, late last week?

Q: The Executive Order as well?

MR. SPEAKER: They will come in today. The President, today, this morning, about 7:15 signed an Executive Order amending the generalized system of preferences. And the paper's coming out on that. This is a matter of trade

and it will—questions should be directed to the Trade Representative's Office, 395-3406, who can answer them better than we can. Pool assignments for tomorrow: Newsweek writer, Time photographer, Sheridan radio correspondent, Detroit News, ABC, AP and UPI writer. The Vice President's schedule, which you've seen, luncheon with Director Casey at noon. At 2:00, National Security Council Meeting in the Cabinet Room, 5:00 meeting with Dr. Garrett Fitzgerald and at 6:30 a reception, and at 8:00 a performance at the National Theatre.

Q: Were all of these the President's appointments?

MR. SPEAKER: No, Only the National Security Council Meeting was.

Q: Apart from signing the Executive Order and the personnel appointments and the legislation yesterday, what other Presidential business has he been able to conduct?

MR. SPEAKER: Why don't you—I'll come back to that, Bill, if you'll let me tick through a few things here and remind me that you have a question pending.

Q: Okay.

MR. SPEAKER: Tomorrow, the Vice President's schedule, and this is only part of it, and we'll have a detailed one, of course, later, it includes a 1:00 Cabinet meeting, a 2:30 meeting with the Deputy Prime Minister of Poland, a 3:00 meeting with GOP members of the House, Ways and Means Committee. Of that number, the Cabinet meeting and the GOP House members were Presidential meetings that were scheduled. Now some details—

Q: The meeting with the Deputy Prime Minister was not a Presidential—

MR. SPEAKER: Was not a Presidential—He had planned to see the Vice President. Okay, the President—then this is details on the hospital and it's in excruciating detail.

Q: Good.

MR. SPEAKER: A private room at the hospital measures 11 feet by 4 inches by 15 feet by 7 inches. The cost is—

Q: How high to the ceiling?

MR. SPEAKER: High enough for a man to stand up. The cost is \$234.

Q: Who pays for that?

MR. SPEAKER: Wait a minute.

Q: He pays his own bill?

MR. SPEAKER: The President has insurance. It is not the government insurance but I think it's a previous policy he owned from California. Also it's my understanding that he is insured in the military as Commander-in-Chief.

Q: Okay. But what is his California insurance? Is it Blue Cross Blue Shield?

Q: Is it private?

MR. SPEAKER: It could be left over—it could be part of his duties as Governor.

Q: So, you don't know whether it's a private policy or some other public—

MR. SPEAKER: I can check. I hope not.

Q: And he is paying all of the hospital bills, personally?

MR. SPEAKER: I would assume his insurance will. I don't know.

Q: Well, which policy? His private policy or the military insurance? Which will pay?

Q: Why do you assume that?

MR. SPEAKER: I just assume that—

Q: My assumption is that as President and Commander-in-Chief he gets free medical service and all of that.

Q: Do you have a breakdown of the other costs? The cost of the operation? Anesthesia? Emergency room treatment?

MR. SPEAKER: No.

Q: Question?

MR. SPEAKER: Repeat it, son.

Q: Do you have a breakdown of the other costs? The cost of the operation, the emergency room procedure?

MR. SPEAKER: Let me get—

Q: The voice trailed off at that point.

MR. SPEAKER: No. The answer was no.

Q: Can we get it?

MR. SPEAKER: We'll see.

Q: But you say his personal policy is paying it all?

MR. SPEAKER: I thought I had excruciating details. (Laughter)

Q: Just tell me what details you have.

MR. SPEAKER: That's what I'm trying to do.

Q: But we do want to find out if he's going to pick up his own tab over there.

MR. SPEAKER: Okay, good.

Q: Also, Larry, isn't he eligible for Medicare?

MR. SPEAKER: I assume he is eligible. Okay, color of the walls: Beige. There are two blue easy chairs in the room. One rust couch.

Q: Hold on.

MR. SPEAKER: Okay. I'm sorry.

Q: Two blue chairs.

MR. SPEAKER: Easy chairs.

Q: Is this the Presidential Suite?

MR. SPEAKER: This is a standard small hospital room.

Q: Beige walls and blue chairs? (Laughter)

MR. SPEAKER: One rust couch.

Q: That's worse.

MR. SPEAKER: A tv mounted on the wall. It is a standard hospital room. There is a small floral arrangement which was sent from the White House florist. It is not a—not from an outsider. I will have more detail on the flowers. Okay. There is an intercom off the President's room which measures 10 feet by eight inches by nine feet even. It has a small couch and a red leather chair.

Q: What color is the couch?

MR. SPEAKER: I didn't get the color.

Q: Is it a daybed? Does it open up so someone could sleep there?

MR. SPEAKER: I don't know. I'll send Mr. Weinberg out and check it again. (Laughter) It has a bed and it has a White House phone.

Q: What's the room number? What floor is it on, all that?

MR. SPEAKER: Yes, Okay. This morning at 7:15, this is a little bit about what he's done today.

Q: Can you give us the suite number or the room number?

MR. SPEAKER: No.

Q: What floor it's on?

MR. SPEAKER: No.

Q: Why is that?

MR. SPEAKER: Well, I just don't want to. The White House—

Q: Well, that's perfectly unacceptable. (Laughter)

MR. SPEAKER: No, for obvious reasons. Okay. The White House—the floor contains, directly across from the President, an office for the White House Staff. It's mainly where

David Fisher and Helene Von Dame are working from. It's also, on the same corridor, in a military—an office for the military aide. Dr. Roge has a room—sleeping room there.

Q: Right there?

MR. SPEAKER: That's right. There is a sitting room for Mrs. Reagan and a staff office that is at the end of the hall.

Q: For whom?

Q: Who's there?

MR. SPEAKER: For workers of the White House staff. I think there's a secretary from the Advance Office there and there are advance people there.

Q: Are any other patients on the wing?

Q: We thought they had a whole corridor. Is that roughly right, Larry?

MR. SPEAKER: Where is Weinberg? I think it is roughly a whole corridor.

Q: Is the government being charged for these additional rooms?

MR. SPEAKER: Possibly. I don't know.

Q: Does the Secret Service have a staff room there?

MR. SPEAKER: They are there.

Q: Do they have a whole operation there?

MR. SPEAKER: Yes. It is virtually a whole corridor.

Q: Was there a photo scheduled this morning and did you people decide to have the White House photographer take a picture?

MR. SPEAKER: There has not been a photo scheduled. We will not do one today but anticipate doing one in the next day or so.

Q: Was there consideration of one today and you decided against it?

Q: You anticipate what, Larry?

MR. SPEAKER: I anticipate doing one in the next day or so. There was a demand from the press, and we considered it and decided, "Let's wait 'til tomorrow."

Q: Why?

MR. SPEAKER: That was our decision. There's no reason. There's no medical reason. There's—

Q: He doesn't look good?

MR. SPEAKER: He looks very good.

Q: Is there a photogenic—

MR. SPEAKER: There is not a photogenic concern.

Q: But does he look good? I mean why would—

MR. SPEAKER: He looks good.

Source: White House Press Briefing Following Assassination Attempt on Ronald Reagan, 4/1/1981. Collection RR-SMOF: White House Staff and Office Collections.

See Articles: Famous Trials; History of Crime and Punishment in America: 1970–Present; Reagan, Ronald (Administration of).

1982 PRIMARY DOCUMENT

White House Directive on Managing Terrorist Incidents

Terrorism was a growing concern in the United States throughout the 1970s. The social unrest of the late 1960s gave way to the violence of Irish Republican Army bombings in England, radical groups in the United States, turmoil in the Middle East, and a widely publicized increase in aircraft hijackings (about 40 per year). Especially vivid in public memory were the holding of American hostages in Iran for over a year and the still-unsolved 1974 bombing of TWA flight 841.

The White House
Washington
National Security Decision
Directive Number 30

The United States is committed, as a matter of national policy, to oppose terrorism domestically and internationally. Efficient and effective management of terrorist incidents is crucial to this commitment. Successful management of terrorist incidents requires a rapid, effective response, immediate access to institutional expertise, and extensive prior

planning. Because of these requirements, the management of terrorist incidents of duration will be handled in the following manner:

- (1) Responsibilities. If the gravity of a terrorist incident situation warrants, the Assistant to the President for National Security Affairs, at the direction of the Vice President, will convene the Special Situation Group (SSG) to advise the President with respect to decision options on appropriate policies and actions.
- (2) The Lead Agency. The coordination of federal response to terrorist incidents will normally be the responsibility of the Lead Agency. The Lead Agency will be that agency with the most direct operational role in dealing with the particular terrorist incident at hand. It will coordinate all operational aspects of the incident, including press and intelligence. The Lead Agency will normally be:

- The State Department, for international terrorist incidents that take place outside of US territory.
- The Department of Justice for terrorist incidents which take place within US territory. Unless otherwise specified by the Attorney General, the FBI will be the Lead Agency within the Department of Justice for operational response to such incidents.
- The FAA for hijackings within the special jurisdiction of the United States.

The Federal Emergency Management Agency will be responsible for planning and managing the public health aspects of a terrorist incident and recovery from the consequences of such incidents.

The Assistant to the President for National Security Affairs will resolve any uncertainty on the designation of the Lead Agency or on agency responsibilities.

- (3) The Terrorist Incident Working Group. To support the Special Situation Group, a Terrorist Incident Working Group,

(TIWG) will be established. This group will consist of representatives from State, the DCI, DOD, FBI, FEMA and the NSC staff, with augmentation from other agencies, as required. The TIWG will be activated by the Assistant to the President for National Security Affairs. It will be chaired by a senior representative from the NSC staff.

The purpose of the TIWG is to provide the SSG with direct operational support, to ensure interagency coordination, and to provide advice and recommendations during an incident. The Lead Agency will continue to manage the incident under the direction and coordination of the TIWG and the SSG.

- (4) The Interdepartmental Group on Terrorism. The Interdepartmental Group on Terrorism (IG/T), chaired by the Department of State, will be responsible for the development of overall US policy on terrorism, including, inter alia, policy directives, organizational issues, legislative initiatives, and interagency training programs.
- (5) White House Operations Group. The White House Operations Group, chaired by the Director of the White House Military Office, will have responsibility for issued relating to threats or acts of terrorism directed against the President or the Vice President or senior US officials and protectees as directed by the President. The NSC staff will effect liaison between this group and the IG/T and TIWG.
- (6) Planning and Exercises. In order to ensure effective management of terrorism incidents, prior planning exercise activity are essential. The Interdepartmental Group on Terrorism will be the primary mechanism within the US Government for planning and policy recommendations. To ensure the development of an effective, coordinated interagency exercise program, the Chairman of the IG/T will appoint an Exercise Committee which will coordinate the development of a multi-year exercise program and

review all multiple agency counterterrorism exercises. This committee will assure that the government's counterterrorism capabilities are maintained in a high state of readiness and that duplication of exercises is avoided. No multiple agency exercise at the national level may be held without the recommendation of the IG/T and the approval of the Assistant to the President for National Security Affairs.

This National Security Decision Directive supersedes all previous inconsistent directives and instructions on managing terrorism incidents.

Managing Terrorist Incidents, 4/10/1982.
Collection RR-NSC: Numbered National
Security Policy Papers Archival Research Catalog
(ARC) ID: 198191.

See Articles: Federal Bureau of Investigation; Federal Policing; Homeland Security; Justice, Department of; Terrorism.

1985 PRIMARY DOCUMENT

National Security Decision Directive 179

Reagan credited some of his success in the 1980 election to the perception that incumbent President Carter had not strongly defended U.S. interests abroad, especially during the Iran hostage crisis. Terrorism was a central concern of his foreign policy in both terms of office. Vice President Bush, former Central Intelligence Agency chief, chaired the counterterrorism task force described here. It recommended a consolidated intelligence database (which Bush had proposed in 1981), among other directives.

The White House
Washington

July 20, 1985
National Security
Decision Directive 179

International terrorism poses an increasing threat to US citizens and our interests. Terrorists are waging a war against, not only the United States, but all civilized society in which innocent civilians are intentional victims and our servicemen are specific targets.

The United States Government has an obligation to protect its citizens and interests against terrorists who have so little regard for human life and the values we cherish. To the extent we can, we should undertake action in concert with other nations which share our democratic institutions to combat the menace of terrorism. We must, however, be prepared to act unilaterally when necessary. It is, therefore, imperative that we develop a sustained program for combating terrorism.

To ensure that all appropriate resources of the United States Government are dedicated to this task, the Vice President is appointed to convene a government-wide task force on combating terrorism.

The Vice President's task force will:

- review and evaluate the effectiveness of current U.S. policy and programs on combating terrorism, to include:
 - an assessment of national priorities currently assigned to effectively combat terrorism, especially earlier recommendations regarding organization in NSDD-30 and adequacy of intelligence responsibilities in MSDD-138 and Presidential Executive Order 12333;
 - the assignment of responsibilities and accountability for ensuring inter-agency cooperation and coordination before, during, and after a terrorist incident;
 - a review and evaluation of present laws and law enforcement programs dealing with terrorism;
 - the adequacy of public awareness and support;

- provisions for funding and personnel; and
- an evaluation of current levels of programs of international cooperation and coordination.
- make recommendations as appropriate to the President by the end of 1985.

The task force on combating terrorism, chaired by the Vice President, will include the Secretaries of State, Treasury, Defense, and Transportation; the Attorney General, the Director of the Federal Bureau of Investigation; the Director of Central Intelligence; the Director of the Office of Management and Budget; the Assistant to the President for National Security Affairs; the Chairman of the Joint Chiefs of Staff; the Chief of Staff to the President; the Chief of Staff to the Vice President; the Assistant to the Vice President for National Security Affairs; the Executive Director of the Task Force; and others as appropriated.

The Vice President will appoint a senior Executive Director for the task force who will work under the direct supervision of the Vice President. The Executive Director may task any government department or agency, individual or organization to contribute to the work of the task force. To support the work of the task force, a working group will be established for which members may be drawn from departments/agencies represented on the Interdepartmental Group on Combating Terrorism, the Interagency Intelligence Committee on Terrorism, and others as appropriate. The working group will prepare substantive recommendations to the task force for consideration.

The task force will select a group of consultants which will provide advice to the task force as necessary. A Secretarial Staff for the task force may be established as appropriate.

Ronald Reagan

Source: Task force of Combating Terrorism, 7/20/1985, Numbered National Security Policy Papers Archival Research Catalog (ARC) ID: 198299

See Articles: Federal Bureau of Investigation; Federal Policing; Homeland Security; Justice, Department of; Terrorism.

1990 PRIMARY DOCUMENT

Marla Hanson's Testimony to the Senate Judiciary Committee

Model Marla Hanson rejected the sexual advances of her landlord, who retaliated by hiring friends to attack her, permanently scarring her face and ending her modeling career at 24 years old. In court, her character was attacked and the judge scolded her for her comments to the press. Four years later, she and other women testified during the Senate's hearings on the United State's unusually high crime rate against women. The Violence Against Women Act was passed in 1994.

Statement of Marla Hanson

Ms. HANSON. Four years ago when I became a victim of an assault, what puzzled and distressed me most about the whole ordeal was when I realized I was suffering more from the stigma of victimization than from the actual violation. I am not trying to minimize the attack; it was as horrible as you might imagine.

My landlord masterminded a razor attack to my face to end my modeling career. I met him when I moved out of my apartment, I asked for my rent deposit back. He refused to give it back, and when I pressed him he finally said he would, I met him after a modeling assignment rather late one night, around midnight, in a restaurant that occupied the bottom floor of my building.

He said he had the money for me in cash, but he didn't want to give that much cash to me in the bar because it might look wrong, so he asked me if I would step outside. So I did, thinking that I would step outside, get the money,

go into my building and up to my apartment. Instead, he had two men waiting for me who grabbed me and began to cut my face.

I was lucky. I got away, ran back to the restaurant. The police were there within 2 minutes. They caught the men at the same time and I was able to identify them the same night. They were convicted and sentenced to the maximum, along with my landlord, or 5 to 35 years.

But in the scope of things, those cuts to my face that night became almost insignificant, except as a reference point. They healed, of course, leaving scars, but it wasn't the scars that hindered the continuance of my modeling career so much as what they represented—violence.

And it was not so much the trauma of the attack that night that has haunted me in the end, but, as I said, it is the stigma of victimization. From the moment the press seized upon my story to the trials of my attackers, I felt as though I was caught in a Kafkaesque world beyond any grasp of reason.

It had never occurred to me to feel ashamed at being attacked. I was, I think, at first embarrassed at not being able to control my situation, but it never occurred to me to blame myself for my own attack; that is, until the courts, the press, and society began to insinuate and to question if I were the architect of my own suffering.

The term "victim" implies innocence, but it seems in this society the term "innocence" implies some sort of guilt, and nowhere is that attitude more apparent than in our current judicial system where it has become a common practice for defense lawyers to blame victims for their own assault and suffering, or at least destroy a victim's credibility and dignity before the trial process is over.

Not only do I find this kind of attitude disgraceful and cruel, but also incredibly ignorant because I feel that by blaming the innocent victims for their own suffering, we are, in fact, excusing the crimes, and thus inviting more crime.

....[T]he first day in the hospital I stated getting hundreds of phone calls from strangers, phone calls like people would call me up

and say, well, what were you doing at the bar at 12 at night in the first place? Well, didn't you know that guy was weird? Why are you renting an apartment from a guy that you obviously knew was weird?

That said to me that I was to blame because I was at a bar at 12 at night. I mean, that was subtle, but that continued on. Every press article—they tore across the countryside digging up details about my life, printing them in the paper. Almost every article ended with a question mark. What did she do to deserve this, as if anything I did would merit this kind of attack to my face.

I found that disturbing, but what was most disturbing was the investigation and the court proceedings that followed. The investigation, to me, was like an interrogation. [Police officers] had done research on me. They confronted me with facts about my life and said, true or false. They demanded to know intimate details about my sex life, about everything about my life. They wanted skeletons, they said, out of the closet. And thinking that the prosecutor was my lawyer and that this was privileged information, I shared everything I could think of, only to find out later that the prosecutor was not my lawyer and that this information was not privileged. It was turned over to defense lawyers; that is required by law. And then it was turned over to the press, and you can imagine how violated I felt at that.

That was only the beginning. During the trial process, and especially in the second trial, a lawyer named Alton Maddox, whom I think some of you are familiar with—runs with Al Sharpton—started his opening statement by saying let me tell you about a woman who preyed on every man in this city, who preyed on men and their relationships with women; let me tell you about a girl named Marla Hanson, a girl out of Texas with a lot of racial hang-ups; let me tell you about—he said something about a 45-hour rule, that the police, the prosecutor, myself, and the entire New York City Police Department were involved in a massive coverup.

And then at the end of the trial, he went to the press and said before the end of the trial,

I will have Marla Hanson behind bars. Those were his exact words. I mean, that is obviously blame. He went on throughout the trial to humiliate me time after time and insinuate that I was some sort of prostitute and a woman of loose morals.

He made fun of the fact I thought I was about to be raped, made it into a racial issue because the two men were black. But he forgot that my landlord was white and already convicted of master-minding the attack.

Then we spent at least 20 minutes in the trial on the fact that I was wearing a miniskirt, and he opened the question by saying is it true that on that night you were barely dressed, and, well, isn't it true that you hardly had anything on; well, you were wearing a miniskirt, weren't you, as if that in itself was inviting the crime.

And then at one point in the trial he stood up and said this here is a circus and I am the ringmaster and all I need is a whip to bring this "lying bitch" to order. At that point in the trial, I think that was the first time I cried throughout the whole proceeding. It seemed that everywhere I turned I was being blamed for being the architect of my own suffering...

I think the main impact is that I couldn't model again, although I tried.

...[I]t wasn't even the scars that hindered my modeling career. It was what they represented, which was violence. All my big accounts canceled me.

You know, the scars don't show up in pictures, but when people see me, my face represents violent crime and people don't want to see that; they don't want to deal with that. So I couldn't model after that, and it wasn't really the crime; it was the press and everything surrounding it that caused the most suffering to me.

I have flashback sometimes. I think it has changed the way I look at the world forever. It is not a safe place any more, and I think that I have gained a lot of perspective on it in the last four years. But it is one of those things that you never get over. It is always there, and you never know when something is going to trigger a memory and cause you to be, I guess, paralyzed.

Source: Hearing Before the Committee on the Judiciary, U.S. Senate, 101st Congress, Second Session, Part 1 (June 20, 1990).

See Articles: New York City; Sexual Harassment; Victim Rights and Restitution; Violence Against Women Act of 1994; Violent Crimes.

1991 PRIMARY DOCUMENT

Excerpt From U.S. v. Exxon

The 1989 oil spill caused by the Exxon Valdez running aground was one of the worst manmade environmental disasters in history, and was the largest oil spill in U.S. waters until 2010. The accident was caused by multiple instances of negligence. The government fined Exxon and sued it for natural resource damages. Further, a jury awarded \$5 billion (one year's profit) in punitive damages in a class action suit, which was reduced to \$500 million by the Supreme Court in 2008.

UNITED STATES DISTRICT COURT DISTRICT OF ALASKA

United States of America,
Plaintiff,

v.

Exxon Corporation, Exxon Shipping Company, and Exxon Pipeline Company, in personam, and the T/V Exxon Valdez, in rem,
Defendants.

Civil Action No A91-082 CIV

State of Alaska,
Plaintiff,

v.

Exxon Corporation, and Exxon Shipping Company,
Defendants.

Civil Action No. A91-083 CIV AGREEMENT AND CONSENT DECREE

This Agreement and Consent Decree (the "Agreement") is made and entered into by the United States of America and the State of Alaska ("State") (collectively referred to as the "Governments"), Exxon Corporation and Exxon Shipping Company ("Exxon Shipping") (collectively referred to, together with the T/V EXXON VALDEZ, as "Exxon"), and Exxon Pipeline Company ("Exxon Pipeline").

Introduction

On the night of March 23-24, 1989, the T/V EXXON VALDEZ, owned by Exxon Shipping, went aground on Bligh Reef in Prince William Sound, Alaska. As a result of the grounding, several of the vessel's cargo tanks ruptured and approximately 11 million gallons of crude oil owned by Exxon Corporation spilled into Prince William Sound (the "Oil Spill").

The State has filed an action in the Superior Court for the State of Alaska, Third Judicial District, arising from the Oil Spill, identified as *State of Alaska v. Exxon Corporation, et al.*, Civil No. 3AN-89-6852 ("State Court Action"), and Exxon has asserted counterclaims against the State in that action.

On March 13, 1991 and March 15, 1991, respectively, the United States and the State each filed a complaint in this Court against Exxon and Exxon Pipeline, asserting civil claims relating to or arising from the Oil Spill ("Federal Court Complaints"). Exxon and Exxon Pipeline have asserted counterclaims against the United States and the State in their responses to the Federal Court Complaints.

The United States and the State represent that it is their legal position that only officials of the United States designated by the President and state officials designated by the Governors of the respective states are entitled to act on behalf of the public as trustees of Natural Resources to recover damages for injury to Natural Resources arising from the Oil Spill under Section 311 (f) of the Clean Water Act, 33 U.S.C. 1321(f).

Exxon represents that, during the period from the Oil Spill through August, 1991, it expended in excess of \$2.1 billion for clean-up activities and reimbursements to the federal, State, and local governments for their expenses of response to the Oil Spill.

The Parties recognize that the payments called for in this Agreement are in addition to those described above, are compensatory and remedial in nature, and are made to the Governments in response to their pending or potential civil claims for damages or other civil relief against Exxon and Exxon Pipeline arising from the Oil Spill.

NOW, THEREFORE, the Parties agree, and it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

Jurisdiction

1. The Court has jurisdiction over the subject matter of the claims set forth in the Federal Court Complaints and over the parties to this Agreement pursuant to, among other authorities ...

Source: <http://www.fakr.noaa.gov/oil/caA91-082.pdf>

See Articles: Alaska; Environmental Crimes; Victim Rights and Restitution.

1993 PRIMARY DOCUMENT

Parchman State Penitentiary Lonely Heart Scam

Instead of preying on their victims' greed, as do many con games, the lonely heart scam is a common confidence trick that preys on emotions, especially their victims' desire for love, affection, or sex. That emotional investment also makes the victim less likely to file a complaint once they realize they've been scammed, due to the embar-

rassment and perhaps even residual feelings. Typically, such scams occur through correspondence such as the mail, which inmates in Mississippi's Parchman Prison used to clean out thousands of dollars from lonely "pen pals" through a phony money order scheme. The scam was halted by postal inspectors in 1992.

7 F.3d 1155

United States of America,
Plaintiff-Appellee,
v.
Jackie V. Brown,
Defendant-Appellant.

No. 92-7707.
United States Court of Appeals,
Fifth Circuit.

Nov. 10, 1993.

Defendant-appellant Jackie Brown (Brown) participated in a money order scam operating out of Parchman State Penitentiary in Mississippi. A jury found him guilty of conspiracy to alter and pass altered postal money orders and aiding and abetting mail fraud. The district court imposed concurrent sentences of 15 months' imprisonment and 3 years' supervised release on each count, and ordered Brown to pay \$1,092 in restitution. Brown appeals the district court's application of the Sentencing Guidelines and certain evidentiary rulings. We affirm.

Facts and Proceedings Below

In January 1992, Evelyn Lomoriello (Lomoriello), a sixty-five-year-old Florida retiree, began corresponding through a "lonely hearts pen-pal club" with Richard Sims (Sims), an inmate at Parchman State Penitentiary in Mississippi. In April 1992, Lomoriello began accepting collect calls from Sims. In their conversations, Sims informed her that he planned to receive several money orders from Johnny Clark, whom he represented as his case worker. Telling Lomoriello that he needed the money to pay his fines, Sims asked her to deposit the money orders in her bank

account and to send \$5,000 of the money to a man identified as Jackie Brown in Cleveland, Mississippi.

On April 3, 1992, Lomoriello received 8 \$700 money orders, totalling \$5,600. Pursuant to Sims's instructions, she deposited them in her account, sent \$5,000 to Brown in Cleveland by wire transfer, paid \$200 to Western Union, and kept \$400 for herself to pay for the collect calls. When Lomoriello's bank discovered the money orders had been altered to reflect \$700 instead of their true \$1 face values, the bank charged the \$5,600 back to her account. Two weeks later, Lomoriello received a second set of altered money orders from Clark. By this time, however, police had warned her of the scam, and she turned the altered money orders over to postal authorities.

On April 6, 1992, Brown, a contract food manager at Parchman, received three Western Union drafts (one in the amount of \$1,000 and two \$2,000 drafts), and attempted to cash them the following day. The Western Union agent cashed only the \$1,000 draft and then called the police to inform them that Brown, using Parchman prison identification, had received the money from a woman in Florida. After learning from Lomoriello that she had been corresponding with a Parchman inmate, Detective Serio of the Cleveland Police Department attempted to contact Brown. On April 8, 1992, Brown came to the police station and turned over the two uncashed \$2,000 drafts and \$500 of the draft that he had cashed. The following day, Brown voluntarily returned to the police station and gave Inspector Collins a handwritten statement admitting that he had picked up the money orders at the direction of Parchman inmate Ronnie Franklin. At trial, Brown admitted he was to receive \$500 for smuggling the money into Parchman.

Source: <http://law.justia.com/cases/federal/appellate-courts/F3/7/1155/479263>

See Articles: Confidence Games and Frauds; Mississippi; Robbery, Contemporary; Victim Rights and Restitution.

1997 PRIMARY DOCUMENT

Excerpt From Monica Lewinsky and Linda Tripp's Telephone Conversations

Monica Lewinsky was a White House intern who had a secret sexual relationship with President Clinton. She discussed the relationship with her friend and coworker Linda Tripp, who recorded the conversations and handed them to Kenneth Starr, the independent counsel investigating Clinton. Starr's original mandate had been an investigation of real estate investments, but it expanded to include allegations of misconduct including unfair firings, mishandling of files, Paula Jones's sexual harassment suit, and Clinton's perjury in that suit when he denied a relationship with Lewinsky.

November 20, 1997

TRIPP: ... This navy blue dress. Now all I would say to you is: I know how you feel today and I know why you feel the way you do today, but you have a very long life ahead of you ... I would rather you had that in your possession if you need it years from now. That's all I'm gonna say.

LEWINSKY: You think that I can hold onto a dress for 10, 15 years with (REDACTED) from—

TRIPP: Hey, listen. My cousin is a genetic whatchamacalit.

LEWINSKY: Uh.

TRIPP: And during O. J. Simpson, I questioned all the DNA and do you know what he told me?

LEWINSKY: Huh?

TRIPP: ... He said that on a rape victim now ... if she has preserved a pinprick size of crusted semen, 10 years from that time, if she takes a wet Q-Tip and blobs it on there... they can match the DNA with absolutely with certainty.

LEWINSKY: So why I (sic) can't I scratch that ... off and put it in a plastic bag?

TRIPP: You can't scratch it off. You would have to use a Q-Tip. And I feel like this is what I would tell my own daughter ...

LEWINSKY: Well, I'll think about it ...

TRIPP: ... It could be your only insurance policy down the road. Or it could never be needed and you can throw it away.

But I—I never, ever want to read about your going off the deep end because someone comes out and calls you a stalker or something and you have and he confirms it ... Maybe I'm being paranoid ...

Source: <http://www.pbs.org/wgbh/americanexperience/features/primary-resources/lewinsky-tripp>

See Articles: Adultery; Clinton, William (Administration of); Forensic Science; Morality; Witness Testimony.

1998 PRIMARY DOCUMENT

President Clinton's Statement Following Grand Jury Testimony

The Office of the Independent Counsel was established in 1978 to avoid (or be better prepared for) a repeat of the Watergate scandal; a prosecutor is appointed by a panel of the D.C. court of appeals in order to investigate, with unlimited resources, allegations of misconduct by people in high positions in federal government or presidential campaign organizations. Clinton was impeached by Congress and acquitted by the Senate. He gave this White House address on August 17.

Good evening. This afternoon in this room, from this chair, I testified before the Office of Independent Counsel and the grand jury. I answered their questions truthfully, including questions about my private life, questions no

American citizen would ever want to answer. Still, I must take complete responsibility for all my actions, both public and private. And that is why I am speaking to you tonight.

As you know, in a deposition in January, I was asked questions about my relationship with Monica Lewinsky. While my answers were legally accurate, I did not volunteer information. Indeed, I did have a relationship with Miss Lewinsky that was not appropriate. In fact, it was wrong. It constituted a critical lapse in judgment and a personal failure on my part for which I am solely and completely responsible.

But I told the grand jury today and I say to you now that at no time did I ask anyone to lie, to hide or destroy evidence, or to take any other unlawful action. I know that my public comments and my silence about this matter gave a false impression. I misled people, including even my wife. I deeply regret that.

I can only tell you I was motivated by many factors. First, by a desire to protect myself from the embarrassment of my own conduct. I was also very concerned about protecting my family. The fact that these questions were being asked in a politically inspired lawsuit, which has since been dismissed, was a consideration too.

In addition, I had real and serious concerns about an independent counsel investigation that began with private business dealings twenty years ago, dealings, I might add, about which an independent federal agency found no evidence of any wrongdoing by me or my wife over two years ago. The independent counsel investigation moved on to my staff and friends, then into my private life. And now the investigation itself is under investigation.

This has gone on too long, cost too much, and hurt too many innocent people. Now, this matter is between me, the two people I love most—my wife and our daughter—and our God. I must put it right, and I am prepared to do whatever it takes to do so. Nothing is more important to me personally. But it is private, and I intend to reclaim my family life for my family. It's nobody's business but ours. Even presidents have private lives.

It is time to stop the pursuit of personal destruction and the prying into private lives and get on with our national life. Our country

has been distracted by this matter for too long, and I take my responsibility for my part in all of this. That is all I can do. Now it is time-in fact, it is past time-to move on. We have important work to do-real opportunities to seize, real problems to solve, real security matters to face.

And so tonight, I ask you to turn away from the spectacle of the past seven months, to repair the fabric of our national discourse, and to return our attention to all the challenges and all the promise of the next American century.

Thank you for watching. And good night.

Source: <http://law2.umkc.edu/faculty/projects/ftrials/clinton/clintonstatements.html>

See Articles: Adultery; Clinton, William (Administration of); Forensic Science; Morality.

1999 PRIMARY DOCUMENT

FBI Report on Columbine High School Shooting

School shootings were not a new phenomenon in 1999 and had been on the rise throughout the decade: While 71 people were killed by gunfire at school from 1986 to 1990, 1992 alone saw 44 such homicides. The massacre at Columbine on April 20 was the fourth-deadliest school massacre in American history, leading to 13 deaths and 24 injured before the two shooters committed suicide. The long public struggle to find a rationale blamed schools' social climate, bullying, and even video games.

Federal Bureau of Investigation
Precedence: Immediate
Date: 4/21/1999
To: OID
From: Denver
Case Id #: 4-Dn-57405
Title: Eric Harris;

Dylan Klebold;
Unsubs;
Columbine High School
Littleton, Colorado
Firearms Act—Homicide

ARMED AND DANGEROUS

Synopsis: To update FBI Headquarters regarding captioned mass murder case.

Details: At approximately 11:30 a.m. on 04/20/1999, the two referenced subjects entered the Columbine High School Littleton, Colorado, and thereafter began shooting students and staff, and also utilizing explosive devices. It was subsequently determined that prior to entering the school, the two subjects planted explosive devices in and around the school parking lot, and killed two students outside the school building.

Through further investigation, it was determined that the two subjects probably committed suicide after murdering 13 individuals, students and staff. In addition to the homicide victims, there were a total of 23 other victims wounded by gunshots and bomb shrapnel. As of today, 16 of these individuals remain hospitalized with 5 being in critical condition.

To date, the FBI's sole responsibility in this investigation is to assist Jefferson County, Colorado, authorities, as requested. This includes providing two Evidence Response Teams (ERT), the Denver bomb technicians, the SWAT team and a number of Agents used for interviewing purposes. The FBI continues liaison with the Bureau of Alcohol, Tobacco, and Firearms and the U. S. Attorney's Office for Colorado.

On 4/20/1999, the Denver SWAT team assisted with the securing of a perimeter of the Columbine High School and evacuating students. Subsequently, the Denver ERT has been conducting crime scene investigations, including the crime scene investigation regarding the two fatalities outside of the school building, the area outside the school, and vehicles in the school parking lot. The Denver bomb technicians have been assisting EOD personnel in

searching for numerous explosive devices at the school, in vehicles, and at residences.

Denver Agents have interviewed an associate of the subjects, which has produced a lead regarding an individual who may have produced a lead regarding an individual who may have sold at least one weapon to the subjects. The cooperating witness has volunteered to take a polygraph to verify his information. This alleged our seller is identified as Philip Joseph Duran, W. M. DOB.

A total of approximately 400 law enforcement officers from 24 agencies have been involved in the investigation.

Denver has requested assistance from the Critical Incident Response Team/EAP to assist Denver employees who were at the crime scene and who had students in this school.

The Denver Command Post number is (303) 626-2721.

Source: FBI FOIA Office. <http://vault.fbi.gov/Columbine%20High%20School%20Columbine%20High%20School%20Part%201%20of%204/view>

See Articles: Colorado; History of Crime and Punishment in America: 1970–Present; Juvenile Offenders, Prevention and Education; Juvenile Offenders in Adult Courts; Murder, Contemporary; School Shootings; Serial and Mass Killers.

2000 PRIMARY DOCUMENT

Amnesty International's Plea to President Clinton on Behalf of Juan Garza

Despite Amnesty International's plea, on June 19, 2001, Juan Garza became the first inmate since 1963 to be executed for a federal crime. A Texas drug dealer, Garza had been convicted in 1993 of three murders. One of his appeals was made on

the basis of the claim that the jury had not been told that they could sentence him to life. President Clinton responded to this letter with a six-month reprieve so that the Justice Department could investigate allegations of racial bias in the death penalty.

UNITED STATES OF AMERICA

An open letter to President Bill Clinton as the first federal execution looms

14 November 2000

Dear Mr. President

On 12 December 2000, Juan Raul Garza is scheduled to become the first federal prisoner to be executed in the United States of America since 1963. In the name of human rights, justice and decency, Amnesty International urges you to intervene and prevent this backward step.

Juan Raul Garza's life is in your hands. But so too is the international human rights reputation of your country, a reputation that is rapidly eroding as US executions accelerate. Your decision will determine whether the United States diverges yet further from the growing global consensus against the death penalty, or takes a historic step into line with the human rights aspirations of the international community of nations.

In the 37 years since the last federal execution, the world has made remarkable strides towards full protection of this most fundamental of all human rights. In 1963, just 10 countries had abolished the death penalty. Today, 108 countries have abandoned judicial killing in law or practice—a clear majority of the nations of the world. Earlier this year, you said that the USA has become a world leader for human rights under your presidency. The planned resumption of federal executions provides you with a unique opportunity to demonstrate this claim of leadership to the world.

This year has seen a turning point in the death penalty in the United States. Since Governor Ryan announced in January that he was suspending executions in Illinois because of his deep disquiet about the fairness and reliability of that state's capital justice system, national

concern about the death penalty has reached unprecedented levels. Governor Ryan's courageous move has paved the way for other political leaders to join calls for a moratorium on executions elsewhere in the USA, in light of the overwhelming evidence that capital justice across the country is indelibly marked by discrimination, arbitrariness and error.

It was in the midst of this growing national concern that the US Justice Department revealed the findings of its review into the federal capital justice system on 12 September. The review confirmed the presence of widespread racial and geographic disparities in the application of the federal death penalty, despite the Department's best efforts to ensure consistency in capital sentencing. Attorney General Reno admitted to being "sorely troubled" by the findings. You, too, expressed concern over the results of the study.

Your administration has told Amnesty International that it is "unalterably opposed" to any unfair or discriminatory application of the death penalty. We believe that you cannot, in good conscience, allow any federal execution to proceed in light of the Justice Department's findings, which indicate that prosecutorial discretion has resulted in an unacceptable arbitrariness in federal capital sentencing. Even supporters of the death penalty must concede that it is surely intolerable to countenance the ultimate punishment if its imposition may have been influenced by where the crime was committed or the colour of the defendant's skin.

In the past eight years almost 500 men and women have been executed in 29 US states, some 70 percent of the country's total judicial death toll since 1977. Amnesty International has determined that many of these executions were carried out in violation of international human rights safeguards, including the execution of child offenders, the mentally impaired, foreign nationals denied their consular rights, and scores of people denied the quality of defence representation demanded under international legal standards. We deeply regret that the federal government has consistently sought to wash its hands of this human rights scandal.

The US Government cannot seek to escape full responsibility for the fate of Juan Raul

Garza and the other individuals under federal sentence of death. We therefore urge you to grant clemency to Juan Garza and to declare a moratorium on all federal executions.

Amnesty International believes that you can and should go further, as the organization outlined in its memorandum sent to you last week. We believe, for example, that you should exercise your constitutional authority by commuting the sentences of all prisoners on federal death row. We submit that this act of human rights leadership would be entirely consistent with the findings of the Justice Department report. It is now clear that even the stringent procedural safeguards in federal death penalty procedures have failed to prevent unacceptable arbitrariness in its application.

Just three weeks ago, you issued a Proclamation reaffirming the commitment of the United States to the United Nations, and celebrating the fact that for the past 55 years the UN has led the world in "promoting human rights and human dignity." One of the central goals of the United Nations is the progressive elimination of the death penalty and its eventual worldwide abolition, as an essential measure for the enhancement of human dignity and the development of human rights. At this crucial moment, you are in a position to make a lasting contribution to the promotion and protection of fundamental human rights, by acknowledging that the federal death penalty is inconsistent with the United States' commitment to those universal aspirations. Amnesty International urges you to grasp this historic opportunity.

The world awaits your decision.

Yours sincerely

Pierre Sané

Secretary General

International Secretariat, 1 Easton Street,
London WC1X 0Dw, United Kingdom

Source: http://sobek.colorado.edu/~mciverj/2481_DP_AMR511642000.html

See Articles: Clinton, William (Administration of); Death Row; Executions; Federal Prisons.



2001 to 2012

INTRODUCTION

The September 11, 2001, terrorist attacks and the financial crisis of 2008 are two key events that shaped American society from 2001 to 2012 and influenced the country's criminal justice system. The 9/11 terrorist attacks resulted in law enforcement's increased use of electronic surveillance and a re-examination of citizens' civil rights, especially the right to privacy. The resulting War on Terrorism led to a decade-long struggle over the proper treatment, detention, and trial of enemy combatants. Concerns about border security and domestic terrorism influenced the passage of controversial anti-immigration legislation in Arizona and Alabama. In contrast, the 2008 financial crisis resulted in state budget shortfalls, forcing states to re-examine their incarceration and post-release supervision of offenders in light of burgeoning prison populations and high recidivism rates. As a result, many states are now focusing on rehabilitation of offenders and coordinated reentry strategies, as well as the use of alternatives to imprisonment, such as substance abuse treatment, transitional housing, problem-solving courts, and restorative justice programs. New developments in scientific knowledge, technology, and evidence-based practices were also major influences on criminal justice policy and practice during this decade. The rise of cyber crime and more sophisticated methods of crime investigation, such as the use of global positioning system (GPS) tracking devices, presented a variety of new challenges for both law enforcement and the legal system. New scientific knowledge concerning the results of methamphetamine ("meth") abuse on the brain aided in addressing the meth addiction epidemic, while the proliferation of simple, homemade meth labs throughout American communities created new problems for law enforcement. The use of new DNA evidence to exonerate hundreds of prisoners on death row resulted in a serious re-examination of the death penalty by many states. Supervision of offenders were increasingly grounded in solid, evidence-based practices, which also informed the treatment of juvenile offenders. In addition, police agencies were urged to adopt evidence-based practices in their policing work.

The War Against Terrorism and Military Justice

On October 26, 2001, in response to the 9/11 terrorist attacks, President George W. Bush signed the USA PATRIOT Act into law. The short title of this act stands for "Uniting (and)



Along with retired New York City firefighter Bob Beckwith, President George W. Bush rallies firefighters and rescue workers at the site of the collapsed World Trade Center in New York City, on September 14, 2001. As a response to the attacks, Bush signed the USA PATRIOT Act into law on October 26, 2001. The act broadened law enforcement reach in several areas, including federal intelligence-gathering ability and infinite detainment of terrorist suspects.

Strengthening America (by) Providing Appropriate Tools Required (to) Intercept (and) Obstruct Terrorism.” Among other provisions, it broadened the ability of law enforcement to gather intelligence within the United States and expanded access to business records, including library and financial records. The act also allowed law enforcement and immigration officials to indefinitely detain and deport immigrants suspected of terrorism, and expanded the definition of terrorism to include domestic terrorism.

The PATRIOT Act also expanded the use of National Security Letters to allow the Federal Bureau of Investigation (FBI) to search telephone, e-mail, and financial records without a court order. A National Security Letter (NSL) is an administrative subpoena issued by the FBI requesting documents and/or data and does not require probable cause or judicial oversight. Federal courts found this provision unconstitutional because the act does not provide any process through which a telephone or Internet company can oppose an NSL in court, thus violating the First and Fourth Amendments of the U.S. Constitution. In contrast, in 2010, the U.S. Supreme Court in *Holder v. Humanitarian Law Project* upheld a controversial provision of the PATRIOT Act that outlaws the provision of material support to terrorist groups.

The PATRIOT Act provided a sunset date of December 31, 2005, for the majority of its provisions; however, in early 2006, Congress reauthorized most of these provisions. On May 26, 2011, President Barack Obama signed a four-year extension of three provisions of the act: roving wiretaps, the library records provision, and surveillance of “lone wolves,” individuals acting alone outside of a terrorist group and suspected of terrorist activities. On December 31, 2011, President Obama signed the National

Defense Authorization Act for Fiscal Year 2012, which included a provision authorizing the indefinite detention of terrorism suspects.

The development of increasingly sophisticated and intrusive surveillance tools used by law enforcement during the last decade presented important privacy questions for the American legal system. In *U.S. v. Jones*, issued on January 23, 2012, the U.S. Supreme Court provided important guidance on the appropriate use of GPS tracking devices by law enforcement. The majority opinion, authored by Justice Antonin Scalia, found that the warrantless attachment of a GPS tracking device to an individual's vehicle by FBI and local law enforcement officers, and the use of that device to gather information about the individual's movements, constituted an unconstitutional search under the Fourth Amendment to the U.S. Constitution. The Fourth Amendment protects individuals' rights to be "secure in their persons, houses, papers and effects" from unreasonable searches and seizures. The majority opinion found that the placement of the GPS tracking device on the car was equivalent to a physical intrusion on an individual's "effect," and therefore such an intrusion could not be used to gather information without a warrant.

While the majority opinion bypassed the question of whether the individual had an expectation of privacy in his movements while operating the car, a concurring opinion by Justice Sonia Sotomayor stated that individuals do have a reasonable expectation of privacy in the totality of their movements, even when in public. The Supreme Court's decision in *U.S. v. Jones* prompted the FBI to turn off approximately 3,000 GPS tracking devices that were in use and, develop new guidelines for the future use of such devices, as well as to address the other individual privacy implications raised by Justice Sotomayor's concurring opinion.

The 2003 invasion of Iraq by the United States led to some controversial problems in the military justice system. In 2004, a military inquiry conducted by Major General Antonio Taguba into the conditions at Abu Ghraib prison in Baghdad, Iraq, revealed numerous incidents of egregious criminal abuse of detainees by military guards. Eleven military personnel were subsequently convicted in military court-martials of violations arising from the criminal abuses committed at Abu Ghraib. Other questions have arisen about the indefinite detention of enemy combatants at Guantánamo Bay; a practice condemned in 2006 by the United Nations (UN) Committee Against Torture, which stated that indefinite detention constitutes a violation of the UN Convention Against Torture.

Since 9/11 and the resulting War on Terror, the United States has struggled to clarify when and how military tribunals can be used to try enemy combatants for alleged war crimes. Military tribunals, which assert jurisdiction over nonmilitary personnel accused of misconduct during war, are distinct from court-martials, which assert jurisdiction over members of the military. On April 13, 2001, President George W. Bush issued a military order for the detention and trial of certain noncitizens accused of terrorism, directing the U.S. Secretary of Defense to establish military commissions to try detainees for violation of the laws of war and other applicable laws. This order provides that, due to the threat to the safety of the country by international terrorism, it is not practicable to apply the principles of law and the rules of evidence used in trials in the U.S. criminal justice system to noncitizen detainees, including basic due process rights and the right to appeal resulting verdicts.

In June 2006, the U.S. Supreme Court invalidated the system of military commissions established by the president's November 2001 military order in *Hamdan v. Rumsfeld*. The court found that the president's authority to establish such tribunals is circumscribed by Article 26 of the Uniform Code of Military Justice, which requires that

military commissions use the same rules and procedures applicable to court-martials of military personnel, unless a compelling reason exists. The court also found that this military commission system violated Common Article 3 of the Geneva Conventions, requiring trial by just procedures recognized by civilized peoples. In response to this ruling, Congress passed the 2006 Military Commissions Act, which provided the accused the right to be tried by a qualified military judge and a panel of commission members, the right to see all evidence admitted against him or her, the right to be present at all proceedings (unless removed for safety reasons or for being too disruptive), the right to obtain evidence and witnesses on his or her behalf, and the right to appeal. The act also limited the right of detainees to counsel and to seek habeas corpus relief and did not prohibit the use of statements obtained by coercion.

In January 2009, President Obama ordered a stay of military commission proceedings until a comprehensive review of their operations could be completed. In May 2009, the Secretary of Defense issued amendments to the *Manual for Military Commissions*, providing additional rights to counsel and eliminating the use of statements obtained through cruel, inhuman, or degrading treatment. Congress passed the Military Commission Act of 2009, clarifying the role of military commissions and establishing a convening authority appointed by the Secretary of Defense to convene military commissions to try individuals for unlawful conduct associated with war. This act established procedures governing the use of military commissions to try individuals charged under the Uniform Code of Military Justice, including the presumption of innocence until proven guilty beyond a reasonable doubt. Because of the reality of battlefield situations, rules of evidence in military tribunals differ from those in criminal courts. Evidence may not be excluded because it was seized without a search warrant, and statements by accused individuals may not be disallowed because they were not read their Miranda rights. However, statements that are found to be the result of coercion or torture are disallowed.

Charges against nonmilitary personnel are initially referred to the convening authority to make a determination whether there is probable cause to proceed. If the convening authority decides to proceed, a military commission is created to hear the case. Each military commission consists of a military judge and at least five military officers. If an accused individual faces the death penalty, a minimum of 12 commission members must reach unanimous consent on a verdict. The professed mission of military commissions is to balance the public's interest in a fair and transparent process to try enemy combatants with the need to protect national security. To that end, the U.S. military has established a Military Commissions Website, which provides information about the military commission process, upcoming hearings, locations where these hearings can be viewed via video conferencing, and background information on the history of military tribunals.

In addition to enemy combatants, the U.S. military has faced the problem of addressing criminal conduct by its personnel. On November 5, 2009, a single gunman, U.S. Army Major Nidal Malik Hasan, shot and killed 13 people and wounded 29 others at the Fort Hood military base near Killeen, Texas. Hasan was shot by civilian army officers and paralyzed from the waist down. He was charged with 13 counts of murder and 32 counts of attempted murder in court-martial proceedings under the Uniform Code of Military Justice (UCMJ). He could face the death penalty if convicted during his military trial, which was scheduled to start in June 2012 at Fort Hood. On February 23, 2012, Private First Class Bradley Manning, accused of providing hundreds of thousands of classified documents to WikiLeaks, was charged with 22 counts under the UCMJ, including aiding the enemy, which is a capital offense. However, military prosecutors in his case elected not to seek the death penalty.

Illegal Immigrants

Debate over illegal immigrants has also shaped criminal justice policies during the first decade of the 2000s. The Immigration Reform and Control Act of 1986 made it illegal to hire or recruit illegal immigrants. Since 9/11, Americans have become increasingly concerned about border security and domestic terrorism, while also relying heavily on the labor provided by immigrants. In 2006, both houses of Congress passed immigration reform bills, but were unable to reconcile them.

In 2010, due to growing frustration with the federal government's perceived inability to regulate illegal immigration, Arizona enacted the Support Our Law Enforcement and Safe Neighborhoods Act (Senate Bill 1070 or SB 1070). Under federal law, all aliens over the age of 14 who remain in the United States for longer than 30 days must register with the U.S. government and carry required documentation. SB 1070 made it a state misdemeanor for an alien to be in the state without this required documentation and required state law enforcement officers to stop and detain individuals when there is a reasonable suspicion that an individual is an illegal immigrant. One week after this bill was signed by Arizona Governor Jan Brewer, the Arizona legislature amended it to provide that prosecutors would not investigate complaints based on race, color, or national origin; and limited a law enforcement officer's investigation of an individual's immigrant status to situations involving a lawful stop, detention, or arrest.

Arizona's professed goal was to reduce the number of illegal immigrants in the state via attrition by enforcement of its new law. Following the passage of SB 1070, the U.S. Department of Justice promptly filed suit to enjoin Arizona from implementing the law,



First responders at the Fort Hood military base in Killeen, Texas, use a table as a stretcher to transport a wounded soldier to an awaiting ambulance after a shooting on November 5, 2009. During the rampage, the lone gunman, U.S. Army Major Nidal Malik Hasan, shot and killed 13 people and wounded 29 others. His military trial was scheduled to begin in June 2012 at Fort Hood. If convicted, he could face the death penalty.

arguing that federal authority over immigration preempted the state from regulating illegal immigrants within its borders. A preliminary injunction was imposed by the federal court pending resolution of this lawsuit. Arizona was also the subject of numerous protests and boycotts, resulting in the loss of millions of dollars of revenue from business, sporting events, concerts, and other tourist activities. However, public opinion polls indicated that Arizona's law seemed to have the support of the majority of Americans.

On June 9, 2011, Alabama Governor Robert Bentley signed into law the Hammon–Beason Alabama Taxpayer and Citizen Protection Act, the toughest anti-immigration law in the United States. This act requires that if during a legal stop, detention, or arrest a police officer has a reasonable suspicion that an individual is an illegal immigrant, the officer must make a reasonable attempt to ascertain the individual's immigrant status. Under the act, illegal immigrants are prohibited from receiving state or local benefits and are prohibited from attending public colleges and universities within the state. While children who lack the necessary documentation of legal status are allowed to attend public elementary, middle, and high schools, school officials are required to check each student's immigration status and provide totals of suspected illegal immigrants in reports to education officials.

Alabama's Hammon–Beason Alabama Taxpayer and Citizen Protection Act also severely restricts the ability of illegal immigrants to participate in the life of the community in which they live and targets citizens who assist them. Landlords cannot rent



A U.S. Border Patrol Tactical (BORTAC) unit, which is a law enforcement organization within the Department of Homeland Security, conducts a training mission. According to Border Patrol Chief Mike Fisher, the Border Patrol has increased agents, detection capabilities, and infrastructure, including miles of fence and roads that provide increased access. The Border Patrol guards the U.S. northern and southern borders from a number of threats.

to illegal immigrants, employers cannot hire them, and citizens cannot offer them transportation assistance. Illegal immigrants are prohibited from applying for work, and the production of false identification documents is a crime. Proof of citizenship must be presented before voting. Contracts knowingly entered into with an illegal immigrant are null and void.

As in Arizona, the U.S. Department of Justice has sued to enjoin the implementation of the Hammon–Beason Alabama Taxpayer and Citizen Protection Act. While this lawsuit was still working its way through federal court, a federal appellate court granted the U.S. government’s request for a preliminary injunction, temporarily blocking implementation of a number of the act’s key provisions.

Cyber Crime

Cyber crime involves computers as both the targets and the tools of criminal activities. Crimes that target computers include computer virus attacks, the introduction of malware or malicious software into computer systems, and denial of service attacks, in which an attacker attempts to prevent legitimate users from accessing information or services such as e-mail, Websites, or online bank accounts. The most common denial of service attack occurs when a server is overloaded with repeated requests for information, rendering it inoperable and thus “denying” requested service. In a distributed denial of service attack, an attacker takes control of an individual’s computer and uses it to attack another computer. Crimes using computers as tools include identity theft, fraud, cyber stalking, cyber bullying, and phishing, which are attempts to obtain private usernames, passwords, or credit card information via e-mail requests disguised as legitimate communications from trustworthy sources. The U.S. Department of Justice’s Computer Crime and Intellectual Property Section promotes “cyber ethics,” a code of safe and responsible behavior applicable to the community of Internet users.

Cyber crime has been a growing concern for law enforcement agencies throughout the world. In 1996, Congress passed the National Information Infrastructure Protection Act in response to a perceived increase in incidences of computer hacking and other cyber crimes. The act addressed the unique problems faced by law enforcement officers in combating cyber crime and strengthened definitions of criminal acts involving computers. Since this act was passed, the digital storage of crucial public and private information, including sensitive financial, health, and national security information, has increased exponentially, along with the use of computers in criminal activities around the world. Criminal engagement in cyber crime across national boundaries, or engaging in cyber warfare, may now be prosecuted in the International Criminal Court.

After the 9/11 terrorist attacks, the Department of Homeland Security created the Computer Emergency Readiness Team (US-CERT) as an operational arm of its National Cyber Security Division. Its mission is to pursue the department’s national strategy to secure cyberspace and protect public and private computers that provide crucial infrastructure for the sectors of agriculture, food, water, public health, emergency services, government, defense industries, information and telecommunications, energy, transportation, banking and finance, chemicals and hazardous materials, and shipping. It provides public information about preventing cyber attacks and improving computer security, and maintains a national cyber alert system.

The Methamphetamine Epidemic

Another influence on criminal justice policy during this decade was the rise of methamphetamine manufacture and use. Methamphetamine, also known as “meth,” is a white crystalline powder that is easily dissolved in liquid and can be snorted, injected, smoked,

or taken orally. A stimulant similar to amphetamine, it is legally available only through a nonrefillable doctor's prescription because of its great potential for abuse. The majority of illegal meth is manufactured in foreign or domestic super labs; however, it is increasingly "cooked" by individuals in smaller labs or homes.

Meth labs are highly combustible and toxic and represent a grave public safety risk. Low-cost ingredients and a simple recipe allow anyone to manufacture this drug in a motel room, RV, vehicle, or residence. In addition to the potential for causing intense fires, cooking meth creates toxic substances that can infiltrate drywall, carpet, or other parts of a structure. Exposure to these substances can result in severe reactions and even death, presenting extra dangers for police officers investigating these labs. Because of the public health and environmental risks involved, many states have passed legislation regulating the cleanup of meth labs.

Methamphetamine rapidly increases the neurotransmitter dopamine in the brain, which produces an initial intense euphoria. It is highly addictive and has devastating consequences for the physical and mental health of its users. Chronic abuse of meth reduces motor skills, impairs verbal learning, and causes emotional and cognitive problems. Long-term meth use can result in drastic weight loss, loss of teeth, insomnia, mood disorders, and even psychosis, including visual and auditory hallucinations. Chemical and molecular changes in the brain caused by using meth create addictive behavior that can persist long after the use has ceased. After more than one year of abstinence, reversal and repair of this damage can occur. Treatment of meth addiction is especially challenging because of the long-lasting and sometimes irreversible brain chemistry alterations caused by this insidious drug; relapses are common, and a commitment to long-term recovery is the only real hope to overcome addiction.

The ready availability and low cost of meth and the proliferation of small labs cooking this drug has created challenges for law enforcement. Meth addiction often results in the commission of crimes to fund this addiction, including theft, burglary, and forgery. The reluctance of the federal government to regulate the raw materials from which meth is produced led to an explosion of this drug during the first half of the decade, especially across the western and midwestern states. Recent public information campaigns, including highway billboards graphically illustrating the harmful effects of meth use, have been funded by a number of states. The Substance Abuse and Mental Health Services Administration's 2010 National Survey on Drug Use and Health reports that in the second part of the decade, the number of methamphetamine users was cut in half, from 731,000 in 2006 to 353,000 in 2010.

The Private Prison Industry

Since the first private prison contract was awarded to the Correctional Corporation of America (CCA) in 1984, the use of private prisons has expanded to more than 30 states. During the past decade, the number of private prison inmates increased by one-third; more than 90,000 offenders are now housed in private prisons. Recent reforms of correctional supervision of offenders have caused prison populations to level off or even decrease in many states. However, Arizona, Florida, and Ohio were considering expansions of private prison operations in 2012.

While private prisons are promoted as necessary cost-saving measures in many states, research suggests that private prisons may not be able to operate less expensively than public prisons. Private prisons usually do not accept prisoners with major health or mobility issues in an attempt to reduce their costs; nevertheless, 2010 data from the Arizona Department of Corrections reflects that housing an inmate in a private prison can cost as much as \$1,600 more per year than housing an inmate in a public prison.

In 2010, a notorious escape from a private prison in Arizona focused attention on security issues surrounding the use of private prisons. On July 30, 2010, three violent offenders—Tracy Province, Daniel Renwick, and John McCuskey—escaped from the Kingman Arizona State Prison, a private prison owned and operated by the Management Training Corporation (MTC). Before Tracy Province, the last escapee, could be apprehended weeks later with his accomplice Casslyn Welch, they murdered a retired couple vacationing in New Mexico during a carjacking. Province and Welch pled guilty to the murders in January 2012. Surviving relatives of the murdered couple are suing MTC for their deaths. A subsequent investigation of the Kingman Arizona State Prison revealed major security problems, and hundreds of violent offenders were transferred out of this prison to more secure facilities.

Addressing the Expanding Prison Population

The United States imprisons almost half of all incarcerated individuals worldwide and has the highest prison population rate of all countries reporting such figures. In 2008, the Pew Center on the States reported that one in 100 adults in the United States was incarcerated, and in 2009, Pew reported that one in 31 adults in the country was under some kind of correctional supervision, including probation, jail, prison, or parole. These statistics reveal that almost every U.S. citizen knows someone who is or has been to prison, and almost every family in the nation has been somehow affected by the criminal justice system.



Over 1,200 pounds of methamphetamine were captured on June 9, 2010, during a 22-month-long, multiagency law enforcement investigation in 16 U.S. states. The sting led to the seizure of \$154 million and 74.1 tons of drugs, as well as over 2,000 narcotics-related arrests, including a high-priority target. The low cost and ease of cooking meth has led to a proliferation of small meth labs across the country, which has created challenges for law enforcement.

Mirroring the expanding prison population, documentary series such as MSNBC's *Lock-Up* and National Geographic Channel's *American Hardest Prisons*, and dramatic series such as Fox's *Alcatraz* and HBO's *Oz*, proliferated during this decade. These shows, along with the increasing publication of writings by prisoners, propelled the harsh realities of prison life into the heart of American popular culture.

In 2001, Human Rights Watch released a report authored by Joanne Mariner titled "No Escape: Male Rape in U.S. Prisons," which included case studies of brutal incidents of rape suffered by male prisoners and the apparent indifference or inability of correctional officials to protect, or provide redress, for these assaults. As a result, in 2003, the U.S. Congress passed the Prison Rape Elimination Act, which created the National Prison Rape Elimination Commission (NPREC) to gather information on, and report findings, concerning prison rape. The act also requires the U.S. Department of Justice to make the prevention of prison rape a top priority and conduct hearings on prison rape. Federal grants were made available to state agencies to develop programs to further the goals of the act, and the National Institute of Corrections (NIC) was tasked with providing training and technical assistance for programs focusing on rape prevention in correctional facilities. While the original Prison Rape Elimination Act was only in effect for three years, a two-year extension was passed in 2007.

While the U.S. prison population has steadily increased, rates of violent and property crimes have been steadily declining since their peak in the early 1990s. While national crime rates have dropped, some scholars have posited that such reductions may be due to community policing efforts, rather than the increased numbers of incarcerated criminals. Further, the U.S. prison population is disproportionately made up of inhabitants of poorer neighborhoods of color. Critical race theorists such as Michelle Alexander argue that the country's prison system is an extension of the Jim Crow segregation laws of the past and that this system is creating an underclass of citizens permanently disadvantaged because of their incarceration. Former inmates have trouble getting work and find it easier, and more lucrative, to return to more familiar criminal activities, resulting in a return to prison.

At least 95 percent of offenders will eventually be released back into their communities. In 2010, 700,000 individuals were released from state and federal prisons, which represented a 20 percent increase in released prisoners from 2000. On average, over 40 percent of offenders return to prison within three years of being released. Offenders suffer from a number of serious problems that make their reentry into their communities very difficult. Seventy-five percent of offenders suffer from substance abuse disorders. The rate of serious mental illness is two to four times higher among prisoners than among the general public; 70 percent of these mentally ill offenders also have a dual diagnosis of substance abuse. Two out of five offenders do not have a high school diploma or its equivalent, and many offenders face homelessness upon their release.

In addition to the extra challenges faced by offenders returning to their communities, their incarceration and potential return to prison take a toll on their families. Approximately 2 million children have parents who are incarcerated; approximately 10 million children have a parent who has been under the supervision of the criminal justice system at some point. To address these serious social issues, Congress passed the Second Chance Act, which was signed into law in 2008. The act attempted to improve success rates for offenders released from prisons and jails and returning to their communities by providing \$165 million in federal grants to government agencies and nonprofit organizations to provide employment assistance, substance abuse treatment, housing, mentoring, and other services in an attempt to reduce recidivism and ease offenders' transition from prison to their communities. The act also created the National Reentry Resource Center,

a national clearinghouse to gather and disseminate best reentry practices and provide training.

The country's burgeoning prison population also places tremendous burdens on state budgets that are already strapped because of the fallout from the 2008 financial crisis. State spending on corrections has increased faster than any other budget item, other than health care. An extreme example is California, which has been unable to afford to build the extra prison space it needs. In *Brown v. Plata* (2011), the U.S. Supreme Court found that the extreme overcrowding in California's prisons resulted in packing inmates into open gymnasiums on bunk beds and denying minimal care to prisoners with serious medical and mental health issues, causing these prisoners suffering and even death. The court further found that prison suicide rates were 80 percent higher in California than the national average. The court ordered California to reduce its prison population by more than 30,000 inmates within two years. As a result, the California legislature passed a "public safety realignment" plan, which included sending offenders convicted of nonserious, nonviolent, or non-sex-related crimes to county jails. This legislative plan requires California to invest in community corrections programs and evidence-based practices that have proven track records in reducing recidivism rates in other states.

Nationally, more than 40 percent of offenders return to prison within three years of being released—the common measure of recidivism rates. However, several states have found successful ways to stabilize, and even reverse, burgeoning prison populations. Between 2008 and 2011, Mississippi reduced its prison population by 22 percent and lowered its crime rate by permitting inmates to earn time off their sentences by completing educational and reentry programs. Texas stabilized its growing prison population and achieved a lower crime rate by establishing parolee treatment programs and allowing inmates to earn time off their sentences.

Across the United States, cash-strapped state governments spent part of the decade searching for ways to better manage their offender populations, turning to studies by social scientists to guide their reform efforts. Evidence-based practice, which employs quantitative research data about which practices are effective in a specific context in order to drive policy and strategy decisions, is increasingly regarded and implemented as the new standard for correctional systems. In 2009, the Tides Center released an influential report examining the evidence-based strategies that various states were employing to address their burgeoning prison populations and recidivism rates. Three states—Missouri, Michigan, and Oregon—were discussed as exemplary models.

Facing a budget shortfall in 2002, Missouri examined its growing prison population and discovered that the main reason for this growth was a sharp increase in offenders returned to prison for technical violations while they were on probation or parole. In 2004, Missouri returned over 40 percent of its formerly incarcerated offenders to prison for parole or probation violations. To address its increasing prison population and recidivism rates, Missouri created a work group tasked with reviewing cases involving parole and probation revocations. An interagency team subsequently created a revised, evidence-based supervision program utilizing a new analytical tool to assess offenders' needs and risks of reoffending.

Under the new supervision system, offenders who violate parole or probation rules are subject to a range of disciplinary measures, including verbal reprimands, electronic monitoring, or time in jail. Offenders may also be sent to drug treatment programs. In 2004, Missouri had the second-highest recidivism rate in the country—54.4 percent. As a result of its reform of correctional supervision of offenders released from prison, Missouri's recidivism rate dropped to 36.4 percent in 2009.

During the decade, Michigan implemented the Michigan Prisoner Reentry Initiative (MPRI). Through this initiative, the state achieved a 12 percent reduction in its prison population, closed more than 20 correctional facilities, and improved its recidivism rate. MPRI focused its efforts on giving offenders the tools they needed to succeed after being released from prison and returning to their communities. The process begins with the offender's entry into prison with evaluation of the offender's risks, needs, and strengths. This information is then used to customize educational programming for each offender. Prior to leaving prison on parole, each offender is transitioned to a reentry facility. Customized transition plans are collaboratively created for offenders with the assistance of service providers in the community. After leaving the reentry facility and going on parole, offenders breaking the rules governing parole are subjected to progressive disciplinary procedures, including a short return to the reentry facility if needed, thus reducing the numbers of parolees returned to prison for technical violations.

A recent study revealed that the recidivism rate of parolees released through MPRI is 33 percent lower than the rate for similar offenders who do not participate in the program. As a result of this successful reduction, the Michigan parole board increased its approval of parole applications, approving 3,000 more parolees in 2009 than in 2006.

A similar comprehensive program designed to help offenders reintegrate into their communities and avoid reoffending was implemented in Oregon at the beginning of the decade. Like MPRI, the program involves administering risk and needs assessments of offenders upon their arrival in prison and planning for their transitions to the community six months before they leave. Probation officers across the state use a uniform grid to impose swift, consistent sanctions for rule violations. These progressive sanctions, which can include up to a short stay in jail, have greatly reduced the return of offenders to prison for technical violations. To further bolster reform in Oregon, in 2003, the state legislature passed a bill requiring that all state-funded correctional programs be designed and delivered in conformity with evidence-based practices.

These successful state efforts to reduce prison populations and recidivism rates and strengthen offender reintegration into communities can serve as helpful models for other states seeking to reform their correctional policies and practices. Evidence-based decision making (EBD) and evidence-based practices (EBP) have been actively promoted by the National Institute of Corrections (NIC), a division of the U.S. Department of Justice, through the awarding of grants for developing such collaborative, evidence-based processes in local criminal justice systems.

Community and Evidence-Based Policing (EBP)

The decade witnessed an increase in community and problem-oriented policing. Community policing is grounded in collaborative partnerships between police and the communities they serve and the engagement of these partnerships in proactive, problem-solving efforts such as identifying and prioritizing problems affecting the community, researching and analyzing these problems, and developing potential solutions. Community policing emphasizes thoughtfully considered efforts to provide safer environments and prevent crimes, rather than reacting to crimes as they occur in an incident-specific, 911-response paradigm. The community-policing model also stresses the development of productive relationships between law enforcement and community stakeholders.

Community policing changes the culture of law enforcement agencies to value the systematic examination of problems to collaboratively develop effective responses with community partners. It also enlists community members as active partners invested in the safety and security of their neighborhoods, rendering police officers less isolated in their law enforcement work. Strong neighborhood watch programs, in which neighbors

are encouraged and motivated to watch out for each other and report suspicious behavior to the police, have been found to effectively reduce crime.

Similar to the adoption of evidence-based practices in correctional agencies, some scholars and policy analysts advocate the adoption of an evidence-based approach to policing. This approach encourages police agencies to identify and codify policing techniques and strategies that are supported by scientific studies. Evidence-based policing encourages a partnership between social scientists and law enforcement agencies to utilize evidence gleaned from scientific research in police practice, incorporating the scientific method into policing work. Following the establishment of preferred methods and strategies arising from basic scientific research studies, these “best practices” are utilized by police officers. Measurable outcomes from these practices are identified and the results are tracked to provide an ongoing, systematic testing of hypotheses in action.

The focus on using scientific evidence and the ongoing evaluation of measurable outcomes is arguably missing from existing models, including incident-specific, community-oriented, and problem-oriented policing. Incident-specific policing focuses on dealing with specific crimes and calls for assistance as they occur, while community-oriented and problem-oriented policing place more emphasis on a problem-solving process than



New York City mounted police interact with the community in August 2007. The period experienced increased activity in community-based and problem-solving policing, which is based on collaboration between the police and the community they serve. This approach, which has been found to reduce crime, is designed to create active partnerships with officers and their community and encourage neighbors to look out for one another.

measurable outcomes. Evidence-based policing encourages researchers and police agencies to work collaboratively to evaluate the effectiveness of evidence-based practices that have been implemented, providing a continuous feedback loop with helpful information for police agencies, social scientists, and criminologists about what is and what is not working.

Re-Examination of the Death Penalty

The increased utility of scientific evidence in criminal justice work can also be seen in the shift in public opinion concerning the death penalty. The use of new DNA evidence to exonerate hundreds of prisoners on death row has resulted in a serious re-examination by many states of their administration of the ultimate sanction of capital punishment. The U.S. Supreme Court has also cited scientific studies in reconsidering whether the death penalty is appropriate for juveniles convicted of murder.

The Innocence Project is a national litigation and public policy organization that uses DNA testing to exonerate wrongfully convicted individuals and works to reform the criminal justice system. Since 1992, The Innocence Project has focused all of its pro bono litigation efforts on cases in which DNA testing exonerates a defendant. This work has resulted in 289 post-conviction exonerations; 222 of these achieved since 2000. More than half, or 180, of these exonerated individuals are African Americans; 17 of these individuals spent time on death row.

The leading cause of these erroneous convictions was misidentification by eyewitnesses, which was a factor in 75 percent of the 289 post-conviction exonerations. At least 40 percent of these cases were based on cross-racial identification; studies indicate that witnesses are less able to identify the face of someone whose race differs from their own. Forensic science errors (including hair microscopy, bite mark comparisons, firearm tool mark analysis, shoe print comparisons, and blood typing) were a factor in roughly half of the erroneous convictions. Other documented causes include false or coerced confessions or admissions, forensic science and/or government misconduct, informants with incentives to falsify their testimony, and incompetent legal representation.

As a result of the growing number of these exonerations and the systemic flaws they reveal, many states have re-examined their death penalty policies, and several have either imposed moratoriums on the death penalty or abolished the practice completely. On March 9, 2000, Illinois Governor George Ryan declared a moratorium on state executions and appointed a Commission on Capital Punishment to determine what reforms, if any, would ensure that the Illinois capital punishment system is fair, just, and accurate.

After two years of research and deliberation, the Illinois Commission on Capital Punishment issued its report in April 2002. The commission's recommendations included videotaping all interrogations of capital crime suspects, revising suspect lineup and identification procedures, narrowing the list of crimes for which the death penalty may be imposed, creating a commission to review all local state's attorneys' decisions to seek the death penalty, providing for Illinois Supreme Court review of all death penalty sentences, and allowing a trial judge to overrule a jury's recommendation for the death penalty and, alternatively, impose a life sentence. The commission also recommended that the death penalty be unavailable when a conviction is based on the testimony of a single witness, in-custody informant, or uncorroborated accomplice, or when the defendant is mentally retarded. The Illinois legislature ultimately abolished the death penalty in January 2011.

A similar state commission on capital punishment created in Maryland issued its final report to the Maryland General Assembly in December 2008, following months of

expert and public evidence collected via public hearings and meetings. By a 13–9 vote, the Commission on Capital Punishment in Maryland recommended abolition of the death penalty because of demonstrated problems of racial and geographic disparity, high costs, risk of innocence, impact on the families of murder victims, and the absence of a deterrent effect. In 2009, the Maryland General Assembly passed the most restrictive death penalty legislation in the United States, limiting the imposition of capital punishment to murder cases with biological or DNA evidence of guilt, a videotaped confession, or a videotape connecting the defendant to a homicide.

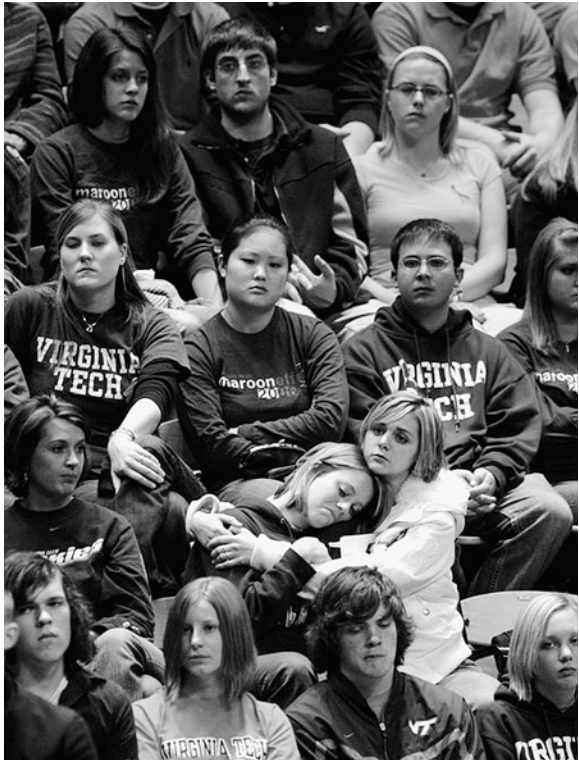
Following the lead set by Illinois, the American Bar Association (ABA) created the Death Penalty Moratorium Implementation Project in 2001 to pursue its goal of a nationwide moratorium on capital punishment. In 2007, the ABA called for a national moratorium on executions following a study of the administration of capital punishment in eight sample states: Alabama, Georgia, Indiana, Ohio, Tennessee, Arizona, Florida, and Pennsylvania. Common problems identified by the ABA included racial disparity, inadequate indigent defense, and irregular clemency review processes. The ABA encouraged states to impose moratoriums on executions until they could complete a comprehensive review of capital punishment legislation and administration and correct existing flaws and weaknesses. ABA-sponsored assessments of state capital punishment systems have been conducted in Alabama, Florida, Georgia, Indiana, Kentucky, Ohio, Pennsylvania, and Missouri.

After the peak of executions in 1999 with a total of 98, the annual total has declined; in 2011, 43 defendants were executed. Currently, 34 states still have death penalty statutes, although bills to abolish the death penalty have been proposed in Connecticut (which passed in May 2012), Florida, Georgia, Kansas, Maryland, Missouri, Nebraska, Ohio, and Washington. States abolishing the death penalty between 2000 and 2012 include Illinois, New Jersey, New Mexico, and New York. In November 2011, Oregon Governor John Kitzhaber imposed a moratorium on executions as long as he remains in office, declaring that Oregon's death penalty system fails basic standards of justice.

U.S. Supreme Court decisions also affected some state death penalty laws during this decade. In 2002, the Supreme Court declared in *Ring v. Arizona* that a defendant has the right to have a jury decide whether an aggravating factor exists that would render the defendant eligible for the death penalty. The court held that a death sentence, based on a judge's determination that aggravating factors exist, violates a defendant's constitutional right to a jury trial. This decision prompted a number of states to amend their death penalty legislation to



Lawyers Barry Scheck and Peter J. Neufeld of the Innocence Project, a nonprofit legal clinic that uses post-conviction DNA evidence testing to yield proof of innocence. Created in 1992, the project has totaled 289 exonerations; 222 of these since 2000.



Virginia Tech students attend a memorial service for the 32 students and faculty that were killed during the April 16, 2007, school shooting. The lone shooter committed the deadliest mass shooting in modern U.S. history.

provide for jury determinations of aggravating factors.

In *Atkins v. Virginia* (2002), the Supreme Court held that the execution of a mentally handicapped individual was unconstitutional, finding that a national consensus had developed against it. In light of what it saw as evolving standards of decency, such executions were found excessive and therefore constituted cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution. The court explained that mentally handicapped criminals are not exempt from criminal sanctions, but because they have diminished personal culpability, they face a special risk of wrongful execution. The court found the percentage of states that had eliminated the death penalty for mentally handicapped individuals persuasive. While not dispositive of the issue, the court also considered evidence of the opposition to such executions by a variety of religious and professional organizations as

well as the world community to be supportive, along with polling results reflecting that a similar consensus existed among the American public. This 2002 decision overruled the court's prior decision in *Penry v. Lynaugh* (1989), which upheld the execution of mentally handicapped individuals, noting that a national consensus against such executions had not been demonstrated.

In 2005, the U.S. Supreme Court ruled in *Roper v. Simmons* that imposing the death sentence for crimes committed when a defendant was younger than 18 years of age constituted cruel and unusual punishment in violation of the Eighth Amendment of the U.S. Constitution. Prior to this ruling, 71 offenders were on death row for murders committed as juveniles. Two-thirds of these individuals were offenders of color, and more than two-thirds of their victims were white. Texas had the largest percentage of juvenile offenders—40 percent—on death row. In *Roper v. Simmons*, the Supreme Court overruled its prior decision in *Stanford v. Kentucky* (1989), which upheld the death penalty for crimes committed at or about the age of 16. In doing so, the Court again utilized the “evolving standard of decency” test and cited research establishing that juveniles lack the maturity and sense of responsibility of adults.

The complexity of the national debate about the death penalty and the underlying racial fault lines were brought into sharp relief on September 22, 2011. On that day, Georgia executed Troy Davis, an African American man accused of shooting white off-duty police officer Mark McPhail; and Texas executed Lawrence Brewer, a self-professed white racist who was involved with two friends in an attack on an African

American man, James Byrd Jr., who was chained to the back of a pickup truck and dragged to his death. The latter crime led to new state and federal hate crime legislation.

Davis professed his innocence up to the moment before his execution and, after several key witnesses recanted their testimony, his case prompted outraged protests around the world, including from prominent individuals such as former President Jimmy Carter and the Reverend Al Sharpton, and from groups such as the American Bar Association and Amnesty International. Lawrence Brewer also protested his innocence, admitting his participation in the attack on James Byrd, but insisting that he did not kill him.

Gallup polling reveals that the average American's level of support for the imposition of the death penalty in cases of murder held roughly steady throughout the decade at 64 percent of the population. Similarly, for most of this decade, Americans have been split almost equally on this question of whether death or life imprisonment without the possibility of parole were better sanctions for murder.

School Shootings and Juvenile Crime

Dealing with juvenile crime continued to provide challenges for law enforcement and criminal justice officials during the last decade. In the wake of the 1999 Columbine High School massacre, the U.S. Secret Service conducted a review of 37 school shootings in the United States, examining local investigative files involving the attacks and interviewing 10 attackers. In May 2002, the resulting federal *Safe School Initiative* report concluded that not only were most school shootings planned, others also knew about these plans in advance. While no common profile of school shooters emerged, the majority of shooters exhibited warning signs, had been bullied or harassed, had suffered a recent loss or failure, and had access to weapons prior to the attacks. Therefore, school and law enforcement officials were advised to remain vigilant for such early warning signs and take them very seriously. Many schools have instituted "zero tolerance" policies, severely disciplining students who make threats or bring anything to school remotely resembling a weapon; however, some experts warn that such zero tolerance policies may be counterproductive to the goal of encouraging students to come forward if they hear or see anything worrisome or suspicious.

The Columbine massacre prompted changes across the nation in police responses to situations involving an active school shooter. Instead of surrounding the building and containing the situation, police are now trained to take a more active approach to find and "neutralize" the shooter as quickly as possible. This new "active shooter protocol" involves a small team of ideally four officers in a diamond pattern moving toward the sound of gunfire and ignoring any victims they may pass in an attempt to prevent further injury and loss of life.

On April 16, 2007, the deadliest shooting in American history involving a single gunman occurred on the campus of Virginia Polytechnic Institute and State University (Virginia Tech) in Blacksburg, Virginia. Mentally disturbed student Seung-Hui Cho opened fire in two separate locations on the campus, killing five faculty members and 27 students, and wounding 17 others, before committing suicide. Cho suffered from a severe anxiety disorder and had been adjudicated as mentally ill following a stalking incident on campus in 2005. However, Virginia Tech officials were unaware of Cho's mental condition due to federal privacy laws. As a result of these attacks, changes in state law were adopted to make it easier to detect individuals who were adjudicated as mentally ill and to prevent them from buying handguns via the National Instant Criminal Background Check System (NCIS). On January 5, 2008, President George W. Bush signed a federal gun control law strengthening the NCIS.

During the 1990s, a rise in juvenile crime prompted many states to pass laws to create a stronger deterrent to such crime by automatically routing juvenile offenders to the adult criminal justice system for more serious crimes with aggravating circumstances. Subsequent studies indicate that diversion of juveniles from rehabilitative juvenile programs to punitive adult correctional facilities teaches juveniles to become violent, habitual criminals and renders them vulnerable to physical and sexual abuse. Juveniles held in adult correctional institutions are five times more likely to be sexually assaulted than those in juvenile facilities. Thus, many have argued that the deterrent effect of trying juveniles as adults appears to be minimal or nonexistent and actually may contribute to higher recidivism rates. Youth who have been transferred to the adult corrections system recidivate at a higher rate than those managed in the juvenile justice system, and such incarceration increases the difficulty of achieving attitudinal and behavioral changes in juvenile offenders. An open question remains as to what age juveniles attain adult mental capacity, making a determination about the appropriate treatment of juvenile offenders even more challenging. The practice of incarcerating juveniles in adult prisons has also been criticized as having an unfair impact on African American youth.

Violent street gangs represented a growing threat to public safety during the decade. In 2009, 28,100 gangs and 731,000 gang members were identified in 3,500 jurisdictions across the country, representing a 20 percent increase in the growth of gangs since 2002. As gang members move from prison out to communities and back to prison, the boundaries between prison and street gangs blur. In 2007, in an effort to deter and reduce violent gang crime, Congress passed the Gang Deterrence and Community Protection Act, imposing mandatory sentences for specific violent crimes and providing for the forfeiture of property used in the furtherance of, or acquired as a result of, violent gang crime.

Alternatives to incarceration of juveniles include rehabilitation programs that provide vocational skills training, substance abuse treatment, and education about responsibility to victims through restorative justice processes. Some communities employ special problem-solving courts focusing on specific issues such as drug abuse, gun possession, and mental health problems. Nonviolent crimes may be prosecuted in teen courts, where juveniles are judged by a jury of their peers. In cities such as Los Angeles, juveniles committing hate crimes—offenses motivated by hatred of a victim due to race, ethnicity, national origin, handicap, religion, or sexual orientation—are placed in programs like Juvenile Offenders Learning Tolerance to educate and rehabilitate them.

Problem-Solving Courts and Restorative Justice

The decade saw significant growth in the establishment of various problem-solving courts and restorative justice programs throughout the country. Restorative or reparative justice programs operate from the philosophy that crime is an offense not against the state but against victims and their communities. Therefore, restorative justice programs encourage offenders to accept responsibility for their crimes and the resulting harm to their victims and their communities, and to repair that harm through apology, restitution, and/or community service. Restorative justice programs can serve as alternatives to a traditional criminal justice system and are sometimes supplemental, voluntary programs available to incarcerated individuals and their victims. These programs have been especially useful in diverting juveniles from entering the formal criminal justice system. Some states have passed statutes requiring the use of restorative justice programs as alternatives to traditional criminal justice methods of sanctioning crimes.

Community courts are neighborhood-based courts that address local criminal offenses via a problem-solving partnership with community stakeholders, such as schools,

churches, and local merchants. Community courts currently exist in 13 states and the District of Columbia; most were established within the last decade. Typically, these courts deal with minor criminal offenses; in sanctioning offenders, alternatives to jail sentences, such as service to the community harmed by the offender's criminal conduct, are utilized. Sometimes, these courts take proactive steps to address crime prevention in their communities, using a collaborative, problem-solving model that strengthens relationships between criminal justice institutions and the communities they serve.

Problem-solving courts focus on finding alternatives to incarceration in dealing with specific social problems such as drug abuse, domestic violence, child neglect, youthful offenders, mentally ill offenders, offenders struggling with reentry to the community after serving a prison term, and veterans charged with crimes. In drug courts, for example, offenders are ordered into treatment programs; in mental health courts, offenders are ordered to take their medications regularly and are provided support services. These courts look beyond the individual offenders and attempt to implement solutions that will benefit both the offender and the community as a whole.

A related program is community prosecution, which involves prosecutors working with community stakeholders to develop strategies to address issues of public safety and crime, often working out of offices located within affected communities. This prosecutorial approach, related to community policing, has been found to strengthen community members' investment in solutions to local crime and safety issues and improve their confidence in the criminal justice system. The job performances of prosecutors are not evaluated based on the number of convictions they obtain or the number of offenders



Sandia National Laboratories researcher Dave Hannum demonstrates the Hound system. In south Texas, a variety of law enforcement organizations use the handheld sniffer to detect narcotics shipments in vehicles at checkpoints; locate nitro, heroin, cocaine, and marijuana in schools; seize drug money going into Mexico; and even save lives. The development of new technology has had a profound impact on criminal justice during this period.

they send to prison, but rather on their collaborative relationship with the community in which they work and the productive solutions they succeed in crafting.

Scientific studies on the effectiveness of these various alternative justice programs to improve public safety are needed. While there seems to be consensus that these programs improve relations between the criminal justice system and the surrounding community, and provide cost savings in diverting offenders from serving expensive jail or prison time, the few studies that have investigated effects on recidivism and crime rates have yielded mixed results.

Conclusion

The development of new technology and scientific techniques, as well as collaborative community models such as problem-solving courts, are transforming the U.S. criminal justice system in many ways. As the county's economy improves, it is yet to be seen whether the budget-conscious reforms of state correctional systems will continue. As more studies of the effectiveness of new evidence-based practices and collaborative community models are conducted, it will become evident whether these innovations yield the hoped-for results.

Susan J. Tyburski

Women's College of the University of Denver

2001 PRIMARY DOCUMENT

Excerpt From Department of Justice Report on Anthrax Attacks

Only a week after the 9/11 attacks, letters were sent to major media outlets proclaiming “DEATH TO AMERICA, DEATH TO ISRAEL, ALLAH IS GREAT” and containing a coarse brown powder of anthrax spores. More letters followed three weeks later, to Democratic Senators Tom Daschle and Patrick Leahy, containing the same message and a more highly refined anthrax powder. At least 22 people developed anthrax infections, and five died; none of those infected were the intended recipients of the letters. When decoded, the letters included yielded a message in the three-letter sequences “FNY” (believed to mean “f--- New York”) and PAT (a colleague of Bruce Ivins, the suspect eventually prosecuted). Ivins, who neither confessed to the crime nor explicitly denied being connected, committed suicide the same month that he was informed of the investigation. The findings of the report have been challenged, particularly the handling of the scientific evidence, and Government Accountability Office and the National Academy of Science have both said that criticisms of the investigation raised by technical articles should be addressed.

The United States Department of Justice

Amerithrax Investigative Summary
Released Pursuant to the Freedom of Information Act

Friday, February 19, 2010

This Investigative Summary sets forth much of the evidence that was developed in the Amerithrax investigation.¹ In the fall of 2001, the anthrax letter attacks killed five people and sickened 17 others. Upon the death of the first victim of that attack, agents

from the Federal Bureau of Investigation (“FBI”) and the United States Postal Inspection Service (“USPIS”) immediately formed a Task Force and spent seven years investigating the crime.

The Amerithrax investigation is described below. In its early stages, despite the enormous amount of evidence gathered through traditional law enforcement techniques, limitations on scientific methods prevented law enforcement from determining who was responsible for the attacks. Eventually, traditional law enforcement techniques were combined with groundbreaking scientific analysis that was developed specifically for the case to trace the anthrax used in the attacks to a particular flask of material. By 2007, investigators conclusively determined that a single spore-batch created and maintained by Dr. Bruce E. Ivins at the United States Army Medical Research Institute of Infectious Diseases (“USAMRIID”) was the parent material for the letter spores. An intensive investigation of individuals with access to that material ensued. Evidence developed from that investigation established that Dr. Ivins, alone, mailed the anthrax letters.

By the summer of 2008, the United States Attorney’s Office for the District of Columbia was preparing to seek authorization to ask a federal grand jury to return an indictment charging Dr. Ivins with Use of a Weapon of Mass Destruction, in violation of Title 18, United States Code, Section 2332a, and related charges. However, before that process was completed, he committed suicide. Aware of the FBI investigation and the prospect of being indicted, Dr. Ivins took an overdose of over-the-counter medications on or about July 26, 2008, and died on July 29, 2008. Administrative and investigative steps taken in the past year toward closure of the investigation confirm the conclusion that Dr. Ivins perpetrated the anthrax letter attacks.

I. THE ANTHRAX LETTER ATTACKS

In September and October 2001, at least five envelopes containing significant quantities of *Bacillus anthracis* (also referred to as “Ba”) were mailed to United States Senators Patrick

Leahy and Thomas Daschle in the District of Columbia, and to media organizations located in New York City and Boca Raton, Florida. Each of the envelopes contained a photocopy of the following handwritten note:

[not included in public document]

Letters to “Tom Brokaw NBC TV” and “Editor New York Post”

09-11-01

THIS IS NEXT TAKE PENACILIN
NOW

DEATH TO AMERICA DEATH TO
ISRAEL

ALLAH IS GREAT

Letters to “Senator Leahy” and “Senator Daschle”

09-11-01

YOU CAN NOT STOP US. WE HAVE
THIS ANTHRAX. YOU DIE NOW.
ARE YOU AFRAID?

DEATH TO AMERICA. DEATH TO
ISRAEL. ALLAH IS GREAT.

(See Attachments A and B.)

The two letters addressed to Senators Leahy and Daschle had the same, later determined to be fictitious, return address: “4TH GRADE, GREENDALE SCHOOL, FRANKLIN PARK NJ 08852.” See Attachment C. The letters addressed to the New York Post and Tom Brokaw contained no return address. See Attachment D. It appears that at least one more envelope was sent to the American Media, Inc. (“AMI”) building, located in Boca Raton, Florida. A contemporaneous anthrax outbreak occurred in that facility, as well as contamination at the postal facilities serving AMI; however, no envelope was ever recovered from AMI.

At least 22 victims contracted anthrax as a result of the mailings. Eleven individuals contracted inhalational anthrax by inhaling *Bacillus anthracis* spores and another 11 suffered cutaneous anthrax by absorbing it through the skin. Five of the inhalational victims died from their infections: (1) Robert Stevens, 63, photo editor, AMI, Boca Raton, Florida, died on October 5, 2001; (2) Thomas L. Morris, Jr., 55, postal worker, Brentwood Post Office, Washington, D.C., died on October 21, 2001; (3) Joseph P. Curseen, Jr., 47, postal worker, Brentwood Post Office, Washington, D.C., died on October 22, 2001; (4) Kathy T. Nguyen, 61, hospital employee, New York City, died on October 31, 2001; and (5) Otilie Lundgren, 94, Oxford, Connecticut, died on November 21, 2001. Another 31 people tested positive for exposure to anthrax spores. Ten thousand more people, deemed “at risk” from possible exposure, underwent antibiotic prophylaxis.

Thirty-five postal facilities and commercial mailrooms were contaminated. The presence of *Bacillus anthracis* was detected in seven of 26 buildings tested on Capitol Hill. From October through December 2001, the Laboratory Response Network tested more than 120,000 clinical and environmental samples for the presence of *Bacillus anthracis*. The U.S. Postal Service closed two heavily contaminated processing and distribution centers (“P&DC”): Trenton P&DC, located in Hamilton, New Jersey; and Brentwood P&DC, located in Washington, D.C. The Brentwood facility, closed on October 21, 2001, did not become operational again until December 22, 2003. The Trenton facility, which was closed on October 18, 2001, reopened on March 14, 2005. More than 1.8 million letters, packages, magazines, catalogs, and other mailed items were quarantined at these two facilities. The Environmental Protection Agency used \$27 million from its Superfund program to pay 27 contractors and three federal and state agencies for the cleanup of the Capitol Hill facilities.

All of these infections and exposures that occurred in fall 2001 resulted from the anthrax mailings described above. All of the anthrax was mailed over a short period of time to locations where all infected individuals were likely

exposed. Many of the victims shared places of employment, and the bodies of the five deceased victims all contained the same strain of anthrax. This strain, known as “Ames,” was isolated in Texas in 1981, and then shipped to USAMRIID, where it was maintained thereafter. Another natural outbreak of Ames has never again been recorded.

The evidence (as outlined in the time line below) supports the conclusion that the mail attacks occurred on two separate occasions. The two letters used in the first attack were postmarked on September 18, 2001, and were sent to Tom Brokaw at NBC News and to the New York Post, both located in New York City. Three weeks later, two letters postmarked October 9, 2001 were mailed to Senators Daschle and Leahy at their Washington, D.C. offices. Hard evidence of the attacks surfaced on October 3, 2001, when Robert Stevens, the AMI employee who worked in Boca Raton, Florida, was diagnosed as having contracted inhalational anthrax, an infection from which he later died.

Time Line of Offense

9/17-18/01 Letters to New York Post and Brokaw mailed sometime between 5 p.m. on 9/17 and noon the following day.

9/18/01 Letters to New York Post and Brokaw postmarked in Trenton, NJ.

10/3/01 Robert Stevens (AMI employee in Boca Raton, FL) diagnosed with pneumonia; rod-shaped bacteria consistent with anthrax noted in medical report.

10/4/01 Announcement made that Stevens had contracted anthrax.

10/5/01 Stevens died from inhalational anthrax in Boca Raton, FL.

10/6-9/01 Letters to Senators Daschle and Leahy mailed sometime between 3 p.m. on 10/6 and noon three days later.

10/9/01 Letters to Senators Daschle and Leahy postmarked in Trenton, NJ.

10/12/01 Letter to Brokaw recovered by FBI.

10/15/01 Letter to Senator Daschle opened in Hart Senate Office Building.

10/19/01 Letter to New York Post discovered and recovered.

10/21/01 Thomas Morris died (Brentwood Postal Facility employee in Washington, D.C.).

10/22/01 Joseph Curseen, Jr. died (Brentwood Postal Facility employee in Washington, D.C.).

10/31/01 Kathy Nguyen died (New York City, NY).

11/16/01 Letter to Senator Leahy discovered and recovered.

11/21/01 Ottilie Lundgren died in Connecticut (believed to be the result of cross-contaminated mail).

II. EXECUTIVE SUMMARY

A. Overview of the Amerithrax Investigation

Once the first victim, Robert Stevens, was identified, and the letters were recovered from the New York and Washington crime scenes, the FBI began its investigation through its Miami, New York, Newark, New Haven, Baltimore and Washington, D.C. field offices. The Washington Field Office (“WFO”) became the lead office, and the “Amerithrax Task Force” was established, comprised of FBI Special Agents and United States Postal Inspectors, as well as various other law enforcement officers. The ensuing criminal investigation was extraordinarily complex, given the possible breadth and scope of this bioterrorism attack. In the seven years following the attack, the Amerithrax Task Force expended over 600,000 investigator work hours, involving in excess

of 10,000 witness interviews conducted on six continents, the execution of 80 searches, and the recovery of over 6,000 items of potential evidence. The case involved the issuance of over 5,750 federal grand jury subpoenas and the collection of 5,730 environmental samples from 60 site locations. Several overseas site locations also were examined for relevant evidence with the cooperation of the respective host governments.

During its tenure, the Task Force generally was staffed by 25 to 30 full-time investigators from the FBI and the USFIS, as well as prosecutors from the United States Attorney's Office for the District of Columbia. The investigators scrutinized more than 1,000 individuals as possible suspects, located both at home and abroad. The investigation benefitted significantly from the assistance and cooperation of 29 government, university, and commercial laboratories, which augmented FBI Laboratory efforts to develop the physical, chemical, genetic, and forensic profiles of the anthrax spores, letters and envelopes used in the attacks.

In the early years of the investigation, the Task Force did not know whether the letters were a state-sponsored act of terrorism, the work of an international terrorist organization or a domestic-based group, or were isolated acts. Much of the early efforts focused on attempting to classify genetically the spores used in the mailings and to track the envelopes and the letters used to their source. These investigative initiatives took considerable time, as genetic laboratory tests needed to be developed and validated, and traditional forensic means of examination of the letters were significantly hampered by the fact that these items were contaminated by anthrax spores.

At the same time, investigators were culling through lists of possible suspects, based on likely profiles including: scientific ability, laboratory access to the Ames strain of *Bacillus anthracis*, proximity and other links to Princeton, NJ (from which the letters were mailed), suspicious behavior, tips from the public and the scientific community, and possible motivation or incentive to commit such a crime. Task Force agents conducted interviews, and

examined business records and publicly available corporate information, such as Securities and Exchange Commission filings, to identify any business that may have been motivated to commit the anthrax attacks for financial gain. The Task Force also launched initiatives to examine industries—such as the bio-pharmaceutical, bio-pesticide and agricultural/veterinary industries—for possible suspects, given their areas of expertise and the equipment they utilized. After thorough investigation using traditional law enforcement techniques, virtually all of the identified individuals were eventually ruled out.

In 2007, after several years of scientific developments and advanced genetic testing coordinated by the FBI Laboratory, the Task Force determined that the spores in the letters were derived from a single spore-batch of Ames strain anthrax called "RMR-1029." RMR-1029 had been created and maintained by Dr. Bruce E. Ivins at USAMRIID. This was a groundbreaking development in the investigation. It allowed the investigators to reduce drastically the number of possible suspects, because only a very limited number of individuals had ever had access to this specific spore preparation that was housed at USAMRIID. The Task Force then began applying traditional law enforcement techniques to a very limited universe.

B. The Elimination of Dr. Steven J. Hatfill as a Suspect

In August 2002, it became widely known that Dr. Steven J. Hatfill was a person of interest to the Task Force. Early in the investigation, numerous individuals who suspected that he might be involved in the letter attacks contacted the FBI. While working as a researcher at USAMRIID from 1997 to 1999, Dr. Hatfill had virtually unrestricted access to the Ames strain of anthrax, the same strain used in the 2001 mailings. Dr. Hatfill also appeared to know the intricacies of conducting a successful anthrax dissemination by mail, although it was not uncommon for those in the bio-defense community to develop such scenarios for training exercises. In addition, he had filled multiple prescriptions for the antibiotic Cipro®

in 2001, which was the only drug approved by the Food and Drug Administration for the treatment of inhalational anthrax; however, its use also was consistent with treatment for a persistent infection from which Dr. Hatfill was suffering at the time.

Ultimately, the FBI's genetic analysis of the organism used in the attacks led investigators to exclude him conclusively as a suspect. Early in the investigation, it was assumed that isolates of the Ames strain were accessible to any individual at USAMRIID with access to the biocontainment labs. Later in the investigation, when scientific breakthroughs led investigators to conclude that RMR-1029 was the parent material to the anthrax powder used in the mailings, it was determined that Dr. Hatfill could not have been the mailer because he never had access to the particular bio-containment suites at USAMRIID that held the RMR-1029. In other words, although Dr. Hatfill had access to Ames strain anthrax while at USAMRIID, he never had access to the particular spore-batch used in the mailings.

C. Summary of the Investigation of Dr. Bruce E. Ivins

Armed with new evidence from the scientific breakthroughs, the Task Force focused its investigation on those researchers who had access to the lab at USAMRIID where RMR-1029 was being stored between September 11 and 18, 2001, and again between October 1 and 8, 2001—the windows of opportunity to have processed and mailed the anthrax used to commit the crime. All of these individuals were interviewed and, when appropriate, polygraphed. The Task Force checked out alibis and examined laboratory notebooks and other records. For each of these individuals, an assessment was made of whether each possessed the requisite skill to produce and dry such concentrated, pure *anthracis* spores. The Task Force conducted searches of home and work computers and examined e-mails. Evidence obtained from these and several other investigative efforts helped rule out all of the other persons with access to RMR-1029, and demonstrated that Dr. Bruce Ivins committed the crime².

Investigators learned that Dr. Ivins was alone late at night and on the weekend in the lab where RMR-1029 was stored in the days immediately preceding the dates on which the anthrax could have been mailed. Before the anthrax mailings, Dr. Ivins had never exhibited that pattern of working alone in the lab extensively during non-business hours, and he never did so after the anthrax attacks. When confronted, he was unable to give a legitimate explanation for keeping these unusual and, in the context of the investigation, suspicious hours.

As investigators reviewed Dr. Ivins's voluminous e-mails, including e-mails during the time frame of the anthrax attacks, it became clear that he was suffering from significant psychological problems, which not only further concerned the investigators, but also contributed to their increasing scrutiny and monitoring of him. Investigators obtained authorization to place pen registers³ on Dr. Ivins's home and work telephones and e-mail accounts, and obtained consent to analyze his home computer hard drives. The Task Force examined his Internet searches and postings and reviewed his e-mail communications from both his personal and USAMRIID computer (with the approval of the Commander at USAMRIID). A GPS device was installed on his car, interviews with his associates were conducted, his trash was regularly searched, and confidential sources were used to gather further information.

By the fall of 2007, agents and prosecutors concluded that they had exhausted the results that could be obtained from using covert investigative tools. Increasingly persuaded that Dr. Ivins was involved in the anthrax attacks, agents obtained search warrants for his residence in Frederick, Maryland, his cars, and his office at USAMRIID, mindful that this would confirm for Dr. Ivins that he was a subject of the investigation. On November 1, 2007, the Task Force executed these search warrants, which resulted in the recovery of numerous items of interest, including a large collection of letters that Dr. Ivins had sent to members of Congress and the news media over the previous 20 years—including

one sent to NBC News in 1987 at the same address for NBC used on the Brokaw letter. They also recovered three handguns, two stun guns, a taser, an electronic detection device, computer snooping software, and evidence that portions of the basement were being used as a firing range.

The link between the intended recipients of the seized letters and the recipients of the anthrax attack letters—members of Congress and the news media—was further evidence implicating Dr. Ivins in the anthrax attacks. Searches of his trash and e-mail accounts in the spring of 2008 produced additional evidence linking Dr. Ivins to the anthrax letters. Task Force agents and prosecutors also conducted three interviews with Dr. Ivins with his lawyers present: the first two were “on-the-record” interviews that took place in January and February 2008, and the last was an “off-the-record” debriefing that occurred in June 2008. On July 12, 2008, Task Force agents again searched the Ivins residence, based on new evidence that he had made specific threats in a group therapy session on July 9, 2008. During the search of his residence they recovered a bullet-proof vest, together with a homemade reinforced body armor plate, hundreds of rounds of ammunition, and smokeless handgun powder. Agents also interviewed counselors who had treated Dr. Ivins, including the two therapists present during the group therapy session, in an effort to assess the seriousness of his threats to harm individuals involved in the investigation.

In the months that followed the suicide of Dr. Ivins, investigators continued their review of thousands of e-mails going back ten years, and examined additional evidence that developed in the aftermath of his death. In addition, investigators sought and obtained court orders authorizing access to his mental health records, and interviews of various mental health providers who had treated Dr. Ivins in the past.⁴

¹Information derived from sources such as the federal grand jury investigation, sealed court orders, and an “off-the-record” interview of Dr. Bruce E. Ivins, while contributing to the overall

investigation, is omitted from this Investigative Summary.

²Dr. Ivins had transferred small quantities of live, virulent RMR-1029 to two other domestic labs between the time of its creation in October 1997 and the 2001 mailings. Any individual with potential access to those samples during that time also was thoroughly investigated and ruled out using these same methods.

³A pen-register, along with a trap-and-trace, allows law enforcement to monitor which phone numbers are being dialed by a particular phone line, as well as which numbers are calling into that phone line. For e-mail accounts, it provides the e-mail accounts that are in communication with the target e-mail account.

⁴The results of that record collection and follow-up interviews remain under seal at this time.

Source: <http://www.justice.gov/amerithrax>

See Articles: Bush, George W. (Administration of); Kaczynski, Ted; McVeigh, Timothy; Murder, Contemporary; Terrorism.

2002 PRIMARY DOCUMENT

Human Rights Watch Letter to President Bush Regarding Torture

In a December 25, 2002, Washington Post article, anonymous Central Intelligence Agency sources confirmed the use of “stress and duress” techniques during the interrogation of detainees during the ongoing War on Terror. The story of torture inflicted by American agents in the various events and conflicts following 9/11 has continued to unfold. Degrading treatment of prisoners has been alleged or confirmed in Abu Ghraib, Guantanamo Bay, and the Bagram Collection Point, with little evidence of any gains to intelligence.

December 26, 2002
 President George W. Bush
 The White House
 1600 Pennsylvania Avenue, NW
 Washington, DC 20500

Dear President Bush:

Human Rights watch is deeply concerned by allegations of torture and other mistreatment of suspected al-Qaeda detainees described in the Washington Post ("U.S. Decries Abuse but Defends Interrogations") on December 26. The allegations, if true, would place the United States in violation of some of the most fundamental prohibitions of international human rights law. Any U.S. government official who is directly involved or complicit in the torture or mistreatment of detainees, including any official who knowingly acquiesces in the commission of such acts, would be subject to prosecution worldwide.

Human Rights Watch urges you to take immediate steps to clarify that the use of torture is not U.S. policy, investigate the Washington Post's allegations, adopt all necessary measures to end any ongoing violations of international law, stop the rendition of detainees to countries where they are likely to be tortured, and prosecute those implicated in such abuse.

I. Prohibitions Against Torture

The Washington Post reports that persons held in the CIA interrogation centers at Bagram air base in Afghanistan are subject to "stress and duress" techniques including "standing or kneeling for hours" and being "held in awkward, painful positions." The Post notes that the detention facilities at Bagram and elsewhere, such as at Diego Garcia, are not monitored by the International Committee Red Cross, which has monitored the U.S. treatment of detainees at Guantanamo Bay, Cuba.

The absolute prohibition against torture is a fundamental and well-established precept of customary and conventional international law. Torture is never permissible against anyone, whether in times of peace or of war.

The prohibition against torture is firmly established under international human rights law. It is prohibited by various treaties to

which the United States is a party, including the International Covenant on Civil and Political Rights (ICCPR), which the United States ratified in 1992, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which the United States ratified in 1994. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." The right to be protected from torture is non-derogable, meaning that it applies at all times, including during public emergencies or wartime.

International humanitarian law (the laws of war), which applies during armed conflict, prohibits the torture or other mistreatment of captured combatants and others in captivity, regardless of their legal status. Regarding prisoners-of-war, article 17 of the Third Geneva Convention of 1949 states: "No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind." Detained civilians are similarly protected by article 32 of the Fourth Geneva Convention. The United States has been a party to the 1949 Geneva Conventions since 1955.

The United States does not recognize captured al-Qaeda members as being protected by the 1949 Geneva Conventions, although Bush administration officials have insisted that detainees will be treated humanely and in a manner consistent with Geneva principles. However, at minimum, all detainees in wartime, regardless of their legal status, are protected by customary international humanitarian law. Article 75 ("Fundamental Guarantees") of the First Additional Protocol to the Geneva Conventions, which is recognized as restating customary international law, provides that "torture of all kinds, whether physical or mental" against "persons who are in the power of a Party to the conflict and who do not benefit from more favorable treatment under the (Geneva) Conventions," shall "remain prohibited at any time and in any place whatsoever, whether committed by civilian or military agents." "(C)

ruel treatment and torture” of detainees is also prohibited under common article 3 to the 1949 Geneva Conventions, which is considered indicative of customary international law.

II. Possible U.S. Complicity in Torture

It is a violation of international law not only to use torture directly, but also to be complicit in torture committed by other governments. The Post being told by U.S. officials that “(t) housands have been arrested and held with U.S. assistance in countries known for brutal treatment of prisoners.” The Convention against Torture provides in article 4 that all acts of torture, including “an act by any person which constitutes complicity or participation in torture,” is an offense “punishable by appropriate penalties which take into account their grave nature.”

The Post article describes the rendition of captured al-Qaeda suspects from U.S. custody to other countries where they are tortured or otherwise mistreated. This might also be a violation of the Convention against Torture, which in article 3 states: “No State Party shall expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture....For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”

The U.S. Department of State annual report on human rights practices has frequently criticized torture in countries where detainees may have been sent. These include Uzbekistan, Pakistan, Egypt, Jordan and Morocco. The United States thus could not plausibly claim that it was unaware of the problem of torture in these countries.

III. International Prosecutions for Torture and Command Responsibility

Direct involvement or complicity in torture, as well as the failure to prevent torture, may subject U.S. officials to prosecution under international law.

The willful torture or inhuman treatment of prisoners-of-war or other detainees, including “willfully causing great suffering or serious injury to body or health,” are “grave breaches” of the 1949 Geneva Conventions, commonly known as war crimes. Grave breaches are subject to universal jurisdiction, meaning that they can be prosecuted in any national criminal court and as well as any international tribunal with appropriate jurisdiction.

The Convention against Torture obligates States Parties to prosecute persons within their jurisdiction who are implicated or complicit in acts of torture. This obligation includes the prosecution of persons within their territory who committed acts of torture elsewhere and have not been extradited under procedures provided in the convention.

Should senior U.S. officials become aware of acts of torture by their subordinates and fail to take immediate and effective steps to end such practices, they too could be found criminally liable under international law. The responsibility of superior officers for atrocities by their subordinates is commonly known as command responsibility. Although the concept originated in military law, it now is increasingly accepted to include the responsibility of civil authorities for abuses committed by persons under their direct authority. The doctrine of command responsibility has been upheld in recent decisions by the international criminal tribunals for the former Yugoslavia and for Rwanda.

There are two forms of command responsibility: direct responsibility for orders that are unlawful and imputed responsibility, when a superior knows or should have known of crimes committed by a subordinate acting on his own initiative and fails to prevent or punish them. All states are obliged to bring such people to justice.

The allegations made by the Washington Post are extraordinarily serious. They have put the United States on notice that acts of torture may be taking place with U.S. participation or complicity. That creates a heightened duty to respond preventively. As an immediate step, we urge that you issue a presidential statement clarifying that it is contrary to U.S.

policy to use or facilitate torture. The Post's allegations should be investigated and the findings made public.

Should there be evidence of U.S. civilian or military officials being directly involved or complicit in torture, or in the rendition of persons to places where they are likely to be tortured, you should take immediate steps to prevent the commission of such acts and to prosecute the individuals who have ordered, organized, condoned, or carried them out. The United States also has a duty to refrain from sending persons to other countries with a history of torture without explicit and verifiable guarantees that no torture or mistreatment will occur.

Thank you for your attention to these concerns.

Sincerely,
Kenneth Roth
Executive Director

Cc: Colin Powell, Secretary of State
Donald Rumsfeld, Secretary of Defense
Condoleezza Rice, National Security Advisor

Source: National Security Archive

See Articles: Bush, George W. (Administration of); Cruel and Unusual Punishment; Federal Prisons; Terrorism; Torture.

2004 PRIMARY DOCUMENT

Department of Justice Press Release on the Charges Against Kenneth Lay

The Enron accounting scandal detailed in this press release was one of the largest in history and led to the company's bankruptcy in Decem-

ber 2001, the largest corporate bankruptcy until the fall of WorldCom. Multiple executives were indicted, and accounting firm Arthur Andersen LLP was found guilty of obstruction of justice. The Sarbanes-Oxley Act was passed to increase auditing accountability. In 2006, Kenneth Lay was found guilty of 10 counts; he died of a heart attack before his sentencing.

FORMER ENRON CHAIRMAN AND CHIEF EXECUTIVE OFFICER KENNETH L. LAY CHARGED WITH CONSPIRACY, FRAUD, FALSE STATEMENTS

Money Laundering Charges Added Against Former Cao Richard Causey

WASHINGTON, D.C.—Deputy Attorney General James B. Comey, Assistant Attorney General Christopher A. Wray of the Criminal Division, FBI Director Robert Mueller, and Enron Task Force Director Andrew Weissmann announced today that a federal grand jury in Houston has indicted former Enron Corp. Chairman and Chief Executive Officer Kenneth L. Lay on charges of conspiracy, securities fraud, wire fraud, bank fraud and making false statements.

A superseding indictment returned by the grand jury in Houston Wednesday, and unsealed today, charges Lay, 62, of Houston, with conspiracy to commit securities fraud, four counts of securities fraud and two counts of wire fraud, one count of bank fraud and three counts of making false statements to a bank. The superseding indictment joins Lay as a defendant in a case pending against former Enron CEO Jeffrey K. Skilling and former Enron Chief Accounting Officer Richard Causey.

Causey was originally indicted in January 2004, and Skilling was added to the case in February 2004.

The new indictment also adds a money laundering conspiracy count and four counts of money laundering against Causey in connection with fraudulent hedging vehicles, and expands certain factual allegations against Causey in connection with the securities fraud conspiracy. The case is pending before U.S. District Judge Sim Lake in Houston, Texas.

Lay surrendered this morning to FBI agents in Houston and the indictment was unsealed. Lay had an initial appearance this morning before Magistrate Judge Mary Milloy.

"The indictment charges that Lay, Skilling, Causey and others oversaw a massive conspiracy to cook the books at Enron and to create the illusion that it was a robust, growing company with limitless potential when, in fact, Enron was an increasingly troubled business kept afloat only by a series of deceptions," said Deputy Attorney General James B. Comey, who heads the President's Corporate Fraud Task Force. "These charges demonstrate the Department's commitment to the rule of law, its commitment to the principle that no one is above the law, and its commitment to unravel even the most complex of fraudulent schemes."

"This indictment alleges that every member of Enron's senior management participated in a criminal conspiracy to commit one of the largest corporate frauds in American history," said Assistant Attorney General Wray. "Kenneth Lay is charged with abusing his powerful position as Chairman of the Board and CEO and repeatedly lying in an effort to cover up the financial collapse that caused devastating harm to millions of Americans. The progress of this investigation shows that the Department of Justice will work tirelessly to hold corporate America to the high standards imposed by federal law."

"The collapse of Enron was devastating to tens of thousands of people and shook the public's confidence in corporate America," said FBI Director Mueller. "The FBI and our partners on the President's Corporate Fraud Task Force responded with a concerted effort to uncover the truth and to bring those responsible to justice. The charges against Ken Lay, Jeffrey Skilling and Richard Causey take us one step closer to restoring the public confidence in our financial markets." The indictment alleges that at various times between at least 1999 and 2001, Lay, Skilling, Causey and other Enron executives engaged in a wide-ranging scheme to deceive the investing public, the U.S. Securities and Exchange Commission and others about the true performance

of Enron's businesses. The alleged scheme was designed to make it appear that Enron was growing at a healthy and predictable rate, consistent with analysts' published expectations, that Enron did not have significant write-offs or debt and was worthy of investment-grade credit rating, that Enron was comprised of a number of successful business units, and that the company had an appropriate cash flow. It had the effect of inflating artificially Enron's stock price, which increased from approximately \$30 per share in early 1998 to over \$80 per share in January 2001, and artificially stemming the decline of the stock during the first three quarters of 2001.

The indictment alleges that Lay had a significant profit motive for participating in the scheme. As stated in the indictment, between 1998 and 2001, Lay received approximately \$300 million from the sale of Enron stock options and restricted stock, netting over \$217 million in profit, and was paid more than \$19 million in salary and bonuses. During 2001 alone, Lay received a salary of over \$1 million, a bonus of \$7 million and \$3.6 million in long term incentive payments. Additionally, during the period of August 21 through Oct. 26, 2001, Lay sold 918,104 shares of Enron stock to repay advances totaling \$26,025,000 he had received from a line of credit extended to Lay by Enron.

As a part of the alleged scheme, unrealistic and unattainable earnings goals were set for Enron, based on analysts' expectations rather than on actual or reasonably achievable business results. When, as expected within the company, Enron consistently fell short of those goals, Lay, Skilling, Causey and others allegedly orchestrated a series of accounting gimmicks designed to make up the shortfall between actual and predicted results. Enron then announced publicly that it had met or exceeded analysts' expectations when, as Lay, Skilling and Causey allegedly knew, it made its numbers only by engaging in fraud. The indictment also alleges that Lay, Skilling and Causey made false and misleading representations about Enron's finances and business operations to analysts, at press conferences, in SEC filings and elsewhere. Lay is principally

charged for his conduct during the third quarter of 2001. As the indictment alleges, upon Skilling's abrupt departure from Enron in August 2001, Lay resumed his position as CEO of the company, intensified his oversight of Enron's day-to-day operations, and took control as leader of the conspiracy. Starting in August, according to the indictment, Lay was briefed extensively about mounting and undisclosed financial and operational problems, including overvaluation of Enron's assets and business units by several billion dollars. As a result of these and other issues confronting Enron, Lay privately considered a range of potential solutions, including mergers, restructurings, and even divestiture of Enron's pipelines, assets that Lay considered to be the crown jewels of the company. However, the indictment alleges he failed to disclose Enron's problems to the investing public and affirmatively misled the investing public about Enron's financial condition, while falsely claiming that he was disclosing everything that he had learned.

For example, the indictment states that during August 2001, Lay participated in Management Committee meetings at which reports were presented showing earnings shortfalls in virtually every Enron business unit, totaling approximately \$1 billion. During early September 2001, Lay attended a Management Committee retreat in the Woodlands, Texas, at which the serious problems besetting Enron, including underperforming business units and troubled assets, were further discussed. Among other things, executives discussed the need to take in the third quarter of 2001 at least a \$1 billion charge and that Enron had committed an accounting error in the amount of \$1.2 billion.

The indictment alleges that throughout the remainder of September 2001, Lay engaged in a series of high-level meetings to discuss the growing financial crisis at Enron and the likely impact on Enron's credit rating. Among other things, Lay knew that the total amount of losses embedded in Enron's assets and business units was, at a minimum, \$7 billion. Lay also knew that Enron's auditors had changed their position concerning the accounting treatment of four off-balance sheet vehicles called

the Raptors, which required Enron to determine in short order whether an acceptable alternative methodology existed or whether, instead, Enron would have to restate its earnings and admit the error.

Despite knowing these negative facts, on Sept. 26, 2001, in an online forum with thousands of Enron employees, many of whom were investors in Enron stock, Lay allegedly stated that Enron was going to "hit [its] numbers." Lay allegedly created the false impression that his confidence in Enron's stock was such that he had increased his personal ownership of Enron stock in the past two months as a sign of his belief in what he was espousing. As the indictment alleges, during the prior two months, Lay actually purchased \$4 million in Enron stock while also selling \$24 million in Enron stock through nonpublic transactions.

The indictment states that in the weeks leading up to Enron's third quarter earnings release on Oct. 16, 2001, Lay determined that Enron could not publicly report a loss in excess of \$1 billion without triggering negative action by Enron's credit rating agencies. Lay thus artificially capped Enron's losses to that amount. Also during this time, Lay learned that changes to the accounting rules governing goodwill (i.e., the difference between what Enron paid for an entity and the book value of that entity's net assets) would require Enron to disclose impairments to certain of its assets, including its interest in Wessex Water, a business located in Bath, England. In order to hide the impact of asset impairment, Lay allegedly claimed, falsely, that Enron was committed to engaging in a "water growth strategy," which would have required Enron to expend between \$1 billion and \$28 billion in capital investments in the water industry. Lay allegedly knew that Enron had no intention of pursuing such a strategy and did not have the capital to support it.

According to the indictment, on Oct. 16, 2001, when Enron announced losses of approximately \$1 billion, Lay allegedly sought to minimize the import of the reported losses by falsely describing the losses as "non-recurring," that is, a one-time or unusual

earnings event. Enron also disclosed the same day an approximate \$1.2 billion reduction in shareholder equity, which Lay again sought to minimize by falsely attributing it to the unwind of the Raptor vehicles, rather than to an accounting error.

According to the indictment, on October 12, Lay misled a representative of a national credit rating agency about the need to take additional writedowns and the extent of Enron's goodwill problems. On both October 16 and 23, Lay told the investing public that Enron had determined that its goodwill impairment was up to \$200 million. However, he failed to disclose the impact on Enron of an additional goodwill impairment of up to \$700 million in connection with Wessex. Also on October 23, Lay allegedly espoused faith in Elektro, a Brazilian power plant which Enron carried on its books as worth in excess of \$2 billion. In fact, as Lay allegedly knew, Elektro was overvalued by up to \$1 billion. Lay also allegedly distributed materials at the road shows that misleadingly described the value of the international portfolio as \$6.5 billion. In reality, as Lay knew, this vastly overstated the true value of the international assets by billions of dollars.

These and other schemes alleged in the indictment quickly unraveled, and on Dec. 2, 2001, Enron filed for bankruptcy, making its stock, which less than a year earlier had been trading at over \$80 per share, virtually worthless.

Lay was also charged in four counts with bank fraud and making false statements to three banks arising out of his obtaining and using four personal lines of credit worth over \$60 million. Lay allegedly promised the banks that the loans would not be used to purchase stock. As a result of these false representations, the banks extended far greater loans to Lay than they otherwise would. The indictment alleges that in spite of his promises, Lay repeatedly used the lines of credit to buy the stock. The lines of credit were collateralized mainly by artificially inflated shares of Enron stock and were repaid with the same.

If convicted of all the charges in the indictment, Lay faces a maximum sentence of 175 years in prison and millions of dollars in fines.

Criminal indictments are only charges and not evidence of guilt. A defendant is presumed to be innocent unless and until proven guilty.

The investigation into Enron's collapse is being conducted by the Enron Task Force, a team of federal prosecutors supervised by the Justice Department's Criminal Division and agents from the FBI and the IRS Criminal Investigations Division. The Task Force also has coordinated with and received considerable assistance from the Securities and Exchange Commission. The Enron Task Force is part of President Bush's Corporate Fraud Task Force, created in July 2002 to investigate allegations of fraud and corruption at U.S. corporations.

Thirty-one defendants have been charged to date, including 21 former Enron executives. Eleven defendants have been convicted to date, including former CFO Andrew Fastow and former Treasurer Ben Glisan. To date, the Enron Task Force has restrained more than \$161 million in proceeds derived from criminal activity. The Task Force investigation is continuing.

Source: <http://www.justice.gov/enron/index.html>

See Articles: Enron; Justice, Department of; White-Collar Crime, Contemporary; White-Collar Crime, History of; White-Collar Crime, Sociology of.

2005 PRIMARY DOCUMENT

Report From the National Institute of Justice on La Cosa Nostra

The names La Cosa Nostra and Mafia both refer to a type of crime syndicate originating in Sicily: an association of criminal organizations styled as

families, each of which typically had control of a specific physical territory. Ties between families were more cultural than formal, and ties between the American and Sicilian Mafia groups were looser still. This overview of Mafia activities in the United States was drafted by the National Institute of Justice, a research agency within the Justice Department.

Organizational Structure

La Cosa Nostra or LCN—also known as the Mafia, the mob, the outfit, the office—is a collection of Italian American organized crime “families” that has been operating in the United States since the 1920s. For nearly three quarters of a century, beginning during the time of Prohibition and extending into the 1990s, the LCN was clearly the most prominent criminal organization in the U.S. Indeed, it was synonymous with organized crime. In recent years, the LCN has been severely crippled by law enforcement, and over the past decade has been challenged in a number of its criminal markets by other organized crime groups. Nevertheless, with respect to those criteria that best define the harm capacity of criminal organizations, it is still pre-eminent. The LCN has greater capacity to gain monopoly control over criminal markets, to use or threaten violence to maintain that control, and to corrupt law enforcement and the political system than does any of its competitors. As one eminent scholar has also pointed out, “no other criminal organization [in the United States] has controlled labor unions, organized employer cartels, operated as a rationalizing force in major industries, and functioned as a bridge between the underworld and the underworld” (Jacobs, 1999:128). It is this capacity that distinguishes the LCN from all other criminal organizations in the U.S.

Each of the so-called families that make up the LCN has roughly the same organizational structure. There is a boss who controls the family and makes executive decisions. There is an underboss who is second in command. There is a senior advisor or consigliere. And then there are a number of “capos” (caporegimes) who supervise crews made up of “soldiers,” who are “made members” of Cosa

Nostra. The capos and those above them receive shares of the proceeds from crimes committed by the soldiers and associates.

Made members, sometimes called good fellows or wise guys, are all male and all of Italian descent. The estimated made membership of the LCN is 1100 nationwide, with roughly eighty percent of the members operating in the New York metropolitan area. There are five crime families that make up the LCN in New York City: the Bonanno, the Colombo, the Genovese, the Gambino, and the Lucchese families. There is also LCN operational activity in Boston, Chicago, Philadelphia, and the Miami\South Florida area, but much less so than in New York. In other previous strongholds such as Cleveland, Detroit, Kansas City, Las Vegas, Los Angeles, New Orleans, and Pittsburgh, the LCN is now weak or non-existent. In addition to the made members, there are approximately 10,000 associate members who work for the families. Until the recent demise of much of its leadership, there was a Commission of the bosses of New York’s five LCN families that coordinated control of labor unions, construction, trucking and garbage hauling companies, and that resolved disputes between families.

La Cosa Nostra does not enjoy general social acceptance and support. With the exception of a few ethnic Italian neighborhoods where certain of the more brazen exploits and some of the community “good deeds” of bosses are admired, Italian organized crime reinforces a stigma that most Italian Americans want to get rid of. Along with the effectiveness of law enforcement, the absence of support for the LCN means that recruitment has become difficult. Some families have disappeared, and others are only 50 percent to as little as 10 percent of their size 30 years ago. At the same time however, as with all organized crime, it is the community’s desire for illicit goods and services that continues to help fuel the survival of the LCN.

Becoming a made member of LCN requires serving an apprenticeship and then being proposed by a Boss. This is followed by gaining approval for membership from all the other families. Once approved, there is a secret,

ritualized induction ceremony. Made membership means both honor and increased income. It also, however, entails responsibilities—in particular taking an oath of omerta. Omerta demands silence to the outside world about the criminal affairs of the family, never betraying anyone in the family, and never revealing to law enforcement anything that might incriminate anyone in organized crime. The penalty for violating this oath is death. Any wise guy who takes a plea without authorization by the family runs the risk of the death penalty. That death is indeed used to enforce internal discipline is evidenced by the execution in 1998 of a capo in the Genovese crime family for pocketing money that should have been passed on to his superiors. An underworld source said about this missing capo: “The people they’re looking to send a message to is not the general public. It’s the mob itself, which totally understands that the guy is gone.” At the same time, the fact that there are over a hundred members in the Federal witness protection program suggests that omerta is not nearly as effective as it once was.

Violence

La Cosa Nostra, over many years, established its reputation for the ruthless use of violence. This violence has occurred mostly in the form of beatings and killings. Personal violence, and to a lesser degree violence against property, e.g., bombings, arson, explosions, is the typical pattern of the systematic use of violence as a tool of doing business. Violence, and subsequently just the threat of violence, was the means by which the LCN gained monopoly control over its various criminal enterprises. It discouraged and eliminated competitors, and it reinforced the reputation and credibility of the LCN. Violence was and is also used for internal discipline. Law enforcement experts indicate that the threat of violence is at the core of LCN activities. Murder, or conspiracy to commit murder, has often appeared as one of the predicate offenses in RICO (Racketeer-Influenced and Corrupt Organizations) prosecutions.

That violence continues to be an LCN tool is evidenced in several cases within the past

three years. The first two incidents were carried out at the behest of the former head of the Gambino crime family in New York, John Gotti. In a 1997 trial, a member of the Gambino family testified about a torture killing that had been ordered by Gotti. The victim had apparently fired a shot at Gotti. He was tortured with lighted cigarettes and a knife, shot in the buttocks, carried in the trunk of a car, and ultimately killed with five shots to the head. In the second example, the same John Gotti, from his federal prison cell, contracted with two members of the white supremacist group the Aryan Brotherhood to kill the former consigliere of the Gambino crime family who had threatened to kill him.

In a 1997 case that demonstrates the approach of the LCN with respect to the use of violence for retribution and intimidation, there was an LCN plot (not acted upon) to assassinate the federal judge who had presided over some of New York City’s biggest mob trials. Finally, in 1999, a member of the Lucchese crime family (also based in New York) and others were charged with conducting a 15-year reign of terror against competitors in the private sanitation business. The charges included setting fire to trucks and buildings of rival carters, damaging businesses that dared to hire carters outside the LCN cartel, and killing a salesman for a rival carting company.

The history of violence and the LCN demonstrates the importance of reputation in this respect. Jacobs and Gouldin (1999) cite criminologist Peter Reuter’s point that when there is sufficient credible evidence of the willingness to use violence, actually violence is rarely necessary. This is especially true when the targets are not professional criminals. La Cosa Nostra personifies this principle.

Economic Resources

Jacobs (1999) believes that one of the LCN’s major assets is its general business acumen. They are best described, he says, as being entrepreneurial, opportunistic, and adaptable. They find ways to exploit market vulnerabilities, while at the same time maintaining the necessary stability and predictability that business requires to be profitable. One of the

ways they do this is by taking over only a piece of a legitimate business—and providing a service in return—rather than taking over the whole business. The latter would, of course, require a management responsibility that they do not want and possibly could not handle, and that would in addition likely upset the business climate necessary for success.

La Cosa Nostra's illegal activities cover a wide range. Gambling and drugs have traditionally been their biggest money makers. Loan sharking is often linked with the gambling and drugs, and is an area that exemplifies the role played by the credible use of violence. The same is true of extortion. The other more traditional crimes also include hijacking, air cargo theft, and of course murder.

Then there is a set of crimes that have become specialties of the LCN, and are unique to them in the United States. Although some of these criminal activities have had national effects, they have been carried out almost exclusively by the five crime families in New York City since LCN penetration of the legitimate economy elsewhere in the U.S. is minimal. The specialties of the New York families include labor racketeering, various kinds of business racketeering, bid-rigging, business frauds, and industry cartels. It is in these areas that the LCN demonstrates its most aggressive and effective penetration of the legitimate economy. Labor racketeering involves organized crime control of labor unions. With this control, gained by the threat and use of violence, vast sums of money are siphoned from union pension funds, businesses are extorted in return for labor peace and an absence of strikes, and bribes are solicited for sweetheart contracts. Another specialty, business racketeering, has occurred in New York City in the construction, music, and garbage industries. The LCN controls unions, bars, strip joints, restaurants, and trucking firms. The five families have also controlled at various times the Fulton Fish Market, the Javits Convention Center, the New York Coliseum, and air cargo operations at JFK International Airport, among other targets. Again the principal tools of control are extortion and the use of violence.

One of the best examples of an LCN cartel was their monopoly of the waste hauling industry in New York City for almost 50 years. La Cosa Nostra used its control of local unions to set up a cartel (Jacobs & Hortis, 1998). The cartel monopolized the industry by threatening business disruption, labor problems, and personal violence. As a result of its monopoly control, the LCN forced participants and consumers to pay inflated prices for waste hauling—a practice known as a “mob tax.” Over the years this mob tax cost the industry hundreds of millions of dollars.

In part in reaction to effective law enforcement actions in many of the areas mentioned above, La Cosa Nostra has diversified its activities and extended its penetration in legal markets by switching to white-collar crimes in recent years (Raab, 1997). They have carried out multimillion dollar frauds in three areas in particular: health insurance, prepaid telephone cards, and through victimizing small Wall Street brokerage houses. Professional know-how is demonstrated in each of these scams. In an example of their health insurance frauds, mobsters set up Tri-Con Associates, a New Jersey company that arranged medical, dental and optical care for more than one million patients throughout the country. They used non-mob employees of Tri-Con as managers, and intimidated health insurance administrators into approving excessive payments to the company. With the prepaid telephone cards, the Gambino family set up a calling card company that stole more than \$50 million from callers and phone companies by means of fraudulent sales. In the case of the stock market, LCN members and associates offer loans to stockbrokers who are in debt or need capital to expand their businesses. The mobsters then force the brokers to sell them most of the low-priced shares in a company before its stock is available to investors through initial public offerings. They then quickly inflate the value of the shares and sell out with huge profits before the overvalued stocks plunge.

La Cosa Nostra's monopoly control over various illegal markets, and its diversification into legal markets, has so far not been

matched by any other criminal organization in the United States. This is so despite its having been substantially weakened over the last decade.

Political Resources

As has already been indicated, La Cosa Nostra is today much less powerful and pervasive than it was in the past. A loss of political influence has accompanied its general decline. In its heyday, the LCN exercised its political influence mostly at the local level, through its connections with the political machines that operated in certain U.S. cities such as New York, New Orleans, Chicago, Kansas City, and Philadelphia. With the demise of those machines, and with the advent of political reforms stressing open and ethical government, many of the avenues for corrupt influence were substantially closed. Today, the LCN exercises political influence in certain selected areas and with respect to certain selected issues. For example, it has attempted to influence the passage of legislation regulating legalized gambling in states such as Louisiana.

With respect to police and judicial corruption, again there is much more evidence of this in the past than there is today. In the past three years, there have been a handful of corruption cases involving law enforcement and one or two involving judges that are linked to La Cosa Nostra families. In Chicago, for example, a federal investigation of corruption in the courts (and city government more generally), led to 26 individuals—including judges, politicians, police officers, and lawyers—pleading guilty or being convicted at trial in 1997.

In one of the most notorious cases in recent years, in Boston a former FBI supervisor admitted (under a grant of immunity) to accepting \$7,000 in payoffs from two FBI mob informants. The two mobsters were major figures in the New England Cosa Nostra. A second FBI agent was subsequently convicted in the case in 1999. The two FBI agents were charged with alerting the informants to investigations in which they were targets, and with protecting them from prosecution.

There has never been any evidence that La Cosa Nostra has had direct representation in the Congress of the United States, nor in the U.S. executive or diplomatic service. Neither is there any evidence that it has ever been allied with such armed opposition groups as terrorists, guerrillas, or death squads. In this respect, the LCN exemplifies one of the traditional defining characteristics of organized crime in that its goal is an economic rather than a political one. Where there has been political involvement, it has been for the purposes of furthering economic objectives.

Responses of Law Enforcement Agencies to Organized Crime

Law enforcement, and particularly federal law enforcement, has been tremendously successful in combating La Cosa Nostra over the past 10 years. Crime families have been infiltrated by informants and undercover agents, and special investigating grand juries have been employed in state and local jurisdictions. Especially effective use has been made of investigative and prosecutorial techniques that were designed specifically for use against organized crime, and in particular against La Cosa Nostra. These latter techniques include electronic surveillance, the witness protection program, and the Racketeer-Influenced and Corrupt Organizations Act (RICO). The RICO statute has clearly been the single most powerful tool against the LCN. There are now state RICO statutes as well as the federal one. RICO enables law enforcement to attack the organizational structure of organized crime and to levy severe criminal and civil penalties, including forfeitures. It is the threat of these penalties that has convinced many made members of the LCN to become informants and/or to seek immunity from prosecution in return for becoming a cooperating witness. They are then placed in the witness protection program. Civil remedies have included the court-appointment of monitors and trustees to administer businesses and unions that had been taken over by the LCN, to insure that these enterprises remain cleansed of corrupt influences.

Two of the latest weapons against La Cosa Nostra penetration of sectors of the legitimate economy are regulatory initiatives. As such, they are not law enforcement approaches per se, but rather administrative remedies designed to expand a local government's ability to control public services such as waste hauling and school construction. The first instance involves the creation of a regulatory commission. New York City, for example, created the Trade Waste Commission (TWC) that ended the LCN cartel in the waste hauling industry in that city through a process of licensing, investigation, competitive bidding, rate setting, and monitoring (Jacobs & Hortis, 1998). Other jurisdictions are now following suit.

The second example is the creation of a private inspector general. These inspector generals are hired in industries that have historically been controlled by organized crime, and in this case the LCN. An example is the school construction industry in New York City for which a School Construction Authority had already been created. This SCA then utilized a private inspector general to monitor its contractors, to establish corruption controls, and to report back to them on contractor conduct. Jacobs calls this "one of the great contemporary innovations in organized-crime control" (Jacobs, 1999).

La Cosa Nostra is a high priority for the FBI and for law enforcement in New York City. Elsewhere, however, it is a low priority, with attention being characterized by experts as "hit and miss" because of a belief that "things are under control." The FBI pays the most attention to transnational organized crime, with state/local law enforcement paying very little attention. Because La Cosa Nostra is mainly a domestic operation, there is little international cooperation in its investigation and prosecution.

by James O. Finckenauer, Ph.D.
International Center National Institute of Justice

Source: Report from the
National Institute of Justice
<https://www.ncjrs.gov/pdffiles1/nij/218555.pdf>

See Articles: Italian Americans; Murder, Contemporary; New York City; Organized Crime, Contemporary; Organized Crime, Sociology of; Violent Crimes.

2008 PRIMARY DOCUMENT

Official Charges Against Casey Anthony

Casey Anthony was 22 years old when her 2-year-old daughter, Caylee Marie, was reported missing by Casey's mother, Cindy, in July 2008. The initial investigation resulted in Casey being charged with neglect, as listed here. Further investigation and the discovery of Caylee's remains in a trash bag near the home resulted in charges of first-degree murder. After a six-week trial in 2011, the jury acquitted Casey of murder, finding her guilty only of a false report to the police.

IN THE CIRCUIT COURT OF ORANGE
COUNTY, STATE OF FLORIDA

The State of Florida
v.
Casey Marie Anthony

INFORMATION # 48-2008-CF-010925-O
DIVISION—16

1. NEGLECT OF A CHILD (F3-L6)
2. FALSE REPORT TO LAW ENFORCEMENT AUTHORITIES (M1)

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

LAWSON LAMAR, State Attorney of the Ninth Judicial Circuit prosecuting for the State of Florida in Orange County, OR LAWSON LAMAR, State Attorney of the Ninth Judicial Circuit prosecuting for the State of Florida in Orange County, by and through

the undersigned Designated Assistant State Attorney, under oath, CHARGES that CASEY MARIE ANTHONY, between the 15th day of June, 2008 and the 15th day of July, 2008, in said County and State, did willfully or by culpable negligence, in violation of Florida Statutes 827.03(3)(c) and 827.03(3)(a), while a caregiver to XXXXX, a child under 18 years of age, fail or omit to provide XXXXX, with the care, supervision and services necessary to maintain XXXXX'S physical and mental health, or fail to make a reasonable effort to protect XXXXX from abuse, neglect or exploitation by another person.

COUNT TWO

LAWSON LAMAR, State Attorney of the Ninth Judicial Circuit prosecuting for the State of Florida in Orange County, OR LAWSON LAMAR, State Attorney of the Ninth Judicial Circuit prosecuting for the State of Florida in Orange County, by and through the undersigned Designated Assistant State Attorney, under oath, CHARGES that CASEY MARIE ANTHONY, on the 16th day of July, 2008, in said County and State, did, in violation of Florida Statute 837.05(1), knowingly give false information to Detective Yuri Melich, a law enforcement officer for the Orange County Sheriff, concerning the alleged Commission of a crime of Interference with Custody of a Child, said false information being: the date and location where the defendant alleged that she last saw the child XXXXX.

This information encompasses the transaction and all charges listed on Complaint Number 48-2008-CF-010925-O and the bond thereon is hereby superseded. The Orange County Sheriff's Office and the Orange County Corrections Department shall substitute the charge(s) and bond indicated on the information for those on the above cited complaint.

STATE OF FLORIDA
COUNTY OF ORANGE

Personally appeared before me Linda Drane Burdick, Assistant State Attorney of the Ninth

Judicial Circuit of Florida, who being first duly sworn, says that he/she has received testimony under oath from the material witness or witnesses, which if true, would constitute the offense herein, and that he/she institutes the prosecution in good faith. The foregoing instrument was acknowledged before me this _____ day of _____, 20 _____ by the aforementioned Assistant State Attorney who is personally known to me and who did take said oath. _____

LAWSON LAMAR, State Attorney
Ninth Judicial Circuit of Florida

By _____
Linda Drane Burdick
Designated Assistant State Attorney
Florida Bar No. 826928

Source: http://investigation.discovery.com/blogs/criminal-report/casey_anthony_full_coverage/files/caylee_anthony_files.html

See Articles: Child Abuse, Contemporary; Famous Trials; Murders, Unsolved; Smith, Susan.

2010 PRIMARY DOCUMENT

State of Utah v. Warren Steed Jeffs

Warren Jeffs was the president of the Fundamental Church of Jesus Christ of Latter-Day Saints, the largest polygamy-practicing Latter-Day Saints church (about 10,000 members). He was accused of numerous sexual crimes, some committed in the course of his church leadership. While this Utah Supreme Court decision reversed one conviction, and an Arizona case was dismissed, in 2011 he was convicted on multiple charges of sexual assault on a child and sentenced to life in prison.

IN THE SUPREME COURT OF THE
STATE OF UTAH

State of Utah,
Plaintiff and Appellee,
v.
Warren Steed Jeffs,
Defendant and Appellant.

No. 20080408
FILED July 27, 2010

Fifth District, St. George
The Honorable James L. Shumate
No. 061500526

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Walter F. Bugden, Jr., Tara L. Isaacson, Salt
Lake City, Richard A. Wright, Las Vegas, NV,
for defendant

PARRISH, Justice:

INTRODUCTION

1. Defendant Warren Jeffs was convicted of two counts of rape as an accomplice for his role in the compelled marriage of fourteen-year-old Elissa Wall to her nineteen-year-old first cousin, Allen Steed, and the resulting sexual intercourse between them. Jeffs appeals his convictions, arguing a variety of errors in the proceedings before the trial court. While we are unconvinced by the majority of Jeffs’ arguments, we conclude that there were serious errors in the instructions given to the jury that deprived Jeffs of the fair trial to which all are entitled under our laws. We therefore reverse the convictions and remand for a new trial.
2. Recognizing the highly publicized nature of this case, we remind the parties, the trial court, and observers, that the presumption of innocence guaranteed to all by our Constitution demands great care from the courts and those who prosecute on behalf of the people. As this state’s court of last resort, we are not at liberty to accept less, nor could we, consistent with our oaths to support, obey, and

defend the constitutions of this state and country.

BACKGROUND

3. “On appeal, we review the record facts in a light most favorable to the jury’s verdict.” *State v. Holgate*, 2000 UT 74, ¶ 2, 10 P.3d 346 (internal quotation marks omitted). Conflicting evidence is presented “only as necessary to understand issues raised on appeal.” *Id.* We recite the facts of this case accordingly.
4. Elissa Wall was raised as a member of the Fundamentalist Church of Jesus Christ of Latter-day Saints (“FLDS Church”). As a follower of that religion, she was extensively exposed to the teachings of the defendant, Warren Jeffs (“Jeffs”), who is the son of, and the former first counselor to, then-FLDS leader Rulon Jeffs (“Rulon”). From the first through the sixth grade, Wall attended school at Alta Academy, a private FLDS school where Jeffs acted as a teacher and as the principal. Outside of school, Wall was further exposed to Jeffs’ teachings through Sunday meetings, church literature, and recordings that were broadcast through her home on a speaker system and that she listened to on a personal cassette player.
5. Proper relationships between the sexes figured prominently in Jeffs’ teachings. He taught that, prior to marriage, boys and girls were to treat each other as “snakes,” avoiding all intermingling or social contact. Girls were to relax this standard only with their husbands after marriage. However, most FLDS girls, including Wall, received no instruction about anatomy or reproduction. Jeffs taught that girls would be trained in these matters by their husbands.
6. Jeffs’ teachings also focused extensively on the importance of obedience. As “God on earth,” the FLDS prophet and his counselors were to be obeyed completely and willingly. Failure to do so would result in forfeiture of spiritual salvation, loss of family and friends, denial of marriage, and removal from the FLDS

community. In addition to obeying their church leaders, Jeffs taught that women should obey their husbands, who were their individual “priesthood heads.”

7. Wall witnessed the consequences of failing to follow these teachings firsthand in 1999 when her father was deemed disobedient to FLDS leaders and had his family “stripped from him.” Wall, her mother, and her siblings were removed from her father’s home in Salt Lake City and sent to live with Fred Jessop, Rulon’s then second counselor, in Hildale, Utah. Jeffs subsequently performed a ceremony marrying Wall’s mother to Jessop as one of his plural wives.
8. The doctrine that God will reveal to the FLDS prophet which of his followers should be joined in marriage relationships is fundamental to the FLDS faith. Wall, therefore, expected that church leaders would arrange her marriage. But she was shocked when, in 2001, Jessop told her that the prophet had a “place of marriage” for her and that she was to prepare herself for that place. Wall, who was then only fourteen years old, objected because of her age, but Jessop again told her that she needed to prepare herself. When Wall asked who she was to marry, Jessop told her that it would be “revealed” to her later. A few days before the wedding, Jessop told her she would marry Allen Steed, her nineteen-year-old first cousin. Wall told Jessop she would not marry Steed, but Jessop told her she would have to discuss the matter with the prophet, Rulon, since it was he who had arranged the marriage.
9. Rulon had recently suffered a debilitating stroke and Jeffs was managing his affairs. Wall called Jeffs and arranged a meeting with Rulon. Jeffs was present when Wall spoke with Rulon. She told Rulon that she did not wish to be disobedient, but asked him to let her wait until she was at least sixteen to be married and to place her with someone other than her cousin. Rulon told Wall, “Follow your heart, sweetie. Follow your heart.” Wall understood this to mean that she would not have to marry Steed. Jeffs, however, told her afterwards, “The prophet wanted me to remind you that this is the right thing to do. And you will go forward with this.” Later that day, Jessop, despite Wall’s pleading, confirmed that her wedding to Steed would still take place.
10. Two of Wall’s older sisters, both of whom were married to Rulon, tried to intervene on Wall’s behalf. Jeffs was present during their conversation with Rulon. Rulon expressed concern over the arrangements, but Jeffs said that Jessop was “insisting that this happen because of who he is” and “[w]e would like to honor his request.”
11. Knowing that she would no longer be welcome in Jessop’s home and that she would have to give up her relationships with her mother and her siblings if she did not marry Steed, Wall felt she had no option but to go through with the marriage. In April 2001, Wall was taken to Caliente, Nevada, for the wedding. Jeffs performed the ceremony, throughout which Wall cried tears of despair and fear. When Jeffs asked her if she took Steed to be No. 20080408 4 her husband, she hung her head and said nothing. Jeffs repeated the question, and again Wall did not answer. After a long silence, Jeffs asked Wall’s mother to stand by Wall and hold her hand. Jeffs repeated the question a third time, and Wall’s mother squeezed her hand. Finally, Wall answered, “Okay, I do.” Jeffs told Steed he could kiss the bride, but Wall hung her head and shook it. Jeffs commanded, “Lisi, kiss Allen.” Wall gave Steed “a peck on the lips,” then dropped his hand. Jeffs rejoined Wall’s and Steed’s hands and pronounced, “Now go forth and multiply and replenish the earth with good priesthood children.” Wall then ran from the room and locked herself in a bathroom. Although no marriage license had been obtained, Wall considered herself married to Steed, which made him her leader and “priesthood head.”

12. During the honeymoon trip that followed, Steed began touching Wall sexually. Still ignorant of sex, Wall did not understand why he was touching her and was “terrified” and “horrified.” She repeatedly asked Steed to stop, telling him that she hated him and did not want him to touch her. Two to three weeks after the wedding, Steed exposed his genitals to Wall at a park. She ran away from him crying and hid in her mother’s room. She stayed in her mother’s room until the early hours of the morning, hoping that Steed would go to sleep. When she returned to her own room, however, she found Steed sitting on the bed. Over Wall’s extensive protests, Steed began to undress her. She broke away and fled back to her mother’s room, where she stayed for several days. When Wall eventually returned to her own room, Steed told her, “It is time for you to be a wife and do your duty.” Although Wall cried and begged him not to, Steed then had sexual intercourse with Wall. The first of the State’s two charges against Jeffs is based on this act of intercourse.
13. In the late spring of 2001, Wall had another meeting with Jeffs. She told Jeffs that Steed was touching her and doing things that she “was not comfortable with and didn’t fully understand.” She begged Jeffs for a “release” from the marriage, the FLDS equivalent of a divorce. In response, Jeffs told Wall that she needed to “repent” and that she was not being “obedient . . . [and] submissive.” Instead of releasing her from the marriage, Jeffs told her that she “needed to go home and give [her]self to [Steed], who was [her] priesthood head and husband, mind, body, and soul and obey without any question.” Within days of this meeting, Steed again had sexual intercourse with Wall. The second of the State’s two charges against Jeffs is based on this act of intercourse. The relationship between Wall and Steed continued through September 2003, with sex sometimes occurring without Wall’s consent and sometimes with her consent.
14. The State charged Jeffs with two counts of rape as an accomplice, a first degree felony, under Utah Code sections 76-2-202 and 76-5-402 (2008). Following a preliminary hearing, Jeffs was bound over for trial. A jury convicted him as charged. Jeffs moved to arrest judgment, alleging that the evidence was insufficient to support his convictions. The trial court denied the motion and sentenced Jeffs to two consecutive prison terms of five years to life. Jeffs moved for a new trial, arguing that the court had erred in seating an alternate juror after deliberations had begun. The court denied this motion on the basis of invited error. This appeal followed. We have jurisdiction pursuant to Utah Code section 78A-3-102(3)(I) (2008).

ANALYSIS

15. Jeffs raises seven issues that he claims invalidate either the jury verdict or the resulting sentences. Jeffs argues that: (1) the accomplice liability and consent instructions given to the jury were erroneous, (2) the trial court erred by failing to instruct the jury that it must reach a unanimous decision on whichever of the prosecution’s theories supported its finding that the victim did not consent, (3) there was insufficient evidence to sustain Jeffs’ convictions, (4) there was insufficient evidence that Jeffs enticed Wall into a sexual relationship with Steed, (5) the “enticement” language of Utah Code section 76-5-406(11) is unconstitutionally vague, (6) the trial court erred in denying Jeffs’ motion for a new trial because the court reconstituted the jury after deliberations had begun, and (7) the trial court erred in imposing consecutive sentences. We agree with Jeffs that the consent instructions given to the jury were erroneous and warrant a reversal of his convictions. Accordingly, we need not reach the remainder of his claims. We do address, however, Jeffs’ argument with respect to the correctness of the jury instruction on accomplice liability to give guidance to the trial court on remand.

I. THE JURY INSTRUCTIONS ON
CONSENT AND ACCOMPLICE
LIABILITY WERE ERRONEOUS

16. Jeffs contends that instructions given to the jury on the issues of consent and accomplice liability were erroneous. Specifically, Jeffs argues that the instruction on consent erroneously focused the jury on Jeffs' relationship with Wall rather than on Steed's relationship with Wall. With respect to the accomplice liability instruction, Jeffs argues that the trial court erred by refusing to instruct the jury that Jeffs could not be found guilty as an accomplice to rape unless Jeffs intended that Steed engage in nonconsensual sexual intercourse with Wall.

Source: http://www.utcourts.gov/media/hpcases/index.cgi?mode=selectcategory&category_id=334

See Articles: Child Abuse, Contemporary; Child Abuse, History of; Child Abuse, Sociology of; Juries; Rape, Contemporary; Rape, Sociology of; Religion and Crime, Contemporary; Religion and Crime, History of; Religion and Crime, Sociology of; Supreme Court, U.S.; Utah.

2011
PRIMARY DOCUMENT

Excerpt From the BP Deepwater Horizon Natural Resource Damage Assessment

The explosion of the BP-operated Deepwater Horizon mobile offshore drilling unit resulted in the largest marine oil spill in history. The explosion killed 11 men and caused the undersea well-head to gush oil unabated for three months, from April to July 2010, at an estimated rate of 53,000 barrels per day. Environmental damage to the

Gulf of Mexico was extensive and long-lasting. In March 2012, BP agreed to a settlement in the lawsuits against it for approximately \$8 billion.

National Commission on the BP Deepwater
Horizon Oil Spill and Offshore Drilling

Natural Resource Damage Assessment:
Evolution, Current Practice, and Preliminary
Findings Related to the Deepwater Horizon
Oil Spill

Staff Working Paper No. 17

Staff Working Papers are written by the staff of the BP Deepwater Horizon Oil Spill Commission for the use of the members of the Commission. They do not necessarily reflect the views of the Commission as a whole or any of its members. In addition, they may be based in part on confidential interviews with government and non-government personnel.

Six months after the oil has stopped flowing from BP's damaged Macondo well, the amount of environmental harm caused by the spill is uncertain, as is the adequacy of existing legal, regulatory, and policy mechanisms to ensure that restoration needed to redress the damage will be fully implemented by government and paid for by responsible parties. This background paper describes the process that was established under the Oil Pollution Act of 1990 for assessing natural resource damages caused by the spill and restoring damaged resources to their pre-spill condition. Known as Natural Resource Damage Assessment (NRDA), this process is still in the early phases of being applied to the BP spill and conclusions about its efficacy or success in this instance will be impossible to draw for a number of years, possibly decades. This background paper describes the history and purpose of the NRDA, reviews the main steps in the NRDA process, and reports on the status of current damage assessment efforts in the Gulf.

Natural Resource Damage Assessment: History and Purpose

In the wake of the *Exxon Valdez* disaster in 1989, Congress passed legislation specifically

aimed at responding to and addressing environmental and economic damages from oil spills. As part of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. §§ 2701 et seq., “responsible parties”¹ were made liable for the removal costs and damages resulting from discharges of oil from vessels or facilities. Among other things, this liability extends to:

Damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by a United States trustee, a State trustee, an Indian tribe trustee, or a foreign trustee.²

The measure of damages under OPA is:

- (A) The cost of restoring, rehabilitating, replacing or acquiring the equivalent of, the damaged natural resources;
- (B) The diminution in value of those natural resources pending restoration; plus
- (C) The reasonable cost of assessing those damages.³

Under OPA, responsibility for promulgating regulations to guide the assessment of natural resource damages fell to the National Atmospheric and Oceanic Administration (NOAA).⁴ NOAA completed this task in 1996 and NRDA regulations became effective on February 5, 1996.⁵

Prior to 1990, natural resource damage assessments and the associated cost recovery for oil spills were governed by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, or CERCLA, which imposes liability for damages resulting from releases of “hazardous substances” as defined by the statute.⁶ CERCLA regulations provided the model for the natural resource damage assessment authority set forth in OPA and continued to govern damage assessments for oil spills between 1990 and 1996, when NOAA was developing new regulations under OPA.

In its OPA regulations, NOAA seeks to promote cooperation between the trustees and the responsible party in carrying out the natural resource damage assessment. This pro-

cess, referred to as a cooperative assessment, is being used in the Deepwater Horizon case, where BP (a “responsible party”⁷) is working with government agencies (i.e., the “trustees”) to identify and quantify damages.⁸ NOAA guidance documents set forth the specifics of the cooperative process, including level of participation, dispute resolution, agreement on scientific methods, sharing of equipment and experts, and funding.⁹ As the guidance suggests, these issues are generally laid out in a memorandum of agreement between the trustees and the responsible party. While past attempts to use the cooperative assessment process did not measurably shorten the time or administrative costs incurred between the event and final settlement, trustees are quick to point out that the cooperative assessment process provides other advantages. In particular, states that do not have dedicated natural resource damage assessment programs maintain that they would not have the budget or resources to carry out damage assessments if not for the cooperative agreement that allows for periodic funding and the sharing of equipment and experts. Further, one trustee also pointed out that the more recent emphasis on data collection—as opposed to making assumptions based on past spills or existing scientific knowledge—to quantify damages and reach settlement has lengthened the time to settlement but strengthened the process and its outcome.

¹ In the case of offshore facilities, “responsible party” is defined as the “lessee or permittee of the area in which the facility is located or the holder of the right of use and easement granted under applicable State law or the Outer Continental Shelf Lands Act for the area in which the facility is located (if the holder is a different person than the lessee or permittee) . . .”). 33 U.S.C. § 2701(32).

²33 U.S.C. § 2702(b)(2)(A). Trustees act “on behalf of the public” as trustees for natural resources. Federal trustees are designated by the President. State trustees are designated by their Governors. Affected Tribal and foreign nations can also claim trustee authority. 33 U.S.C. § 2706(b).

³33 U.S.C. § 2706 (d)(1).

⁴Ibid. at § 2706(d).

⁵15 C.F.R. part 990.

⁶42 U.S.C. §§ 9601 et seq. CERCLA, in turn, built on provisions in the Clean Water Act Amendments of 1977, which first codified federal authority to recover damages for natural resources. Specifically, CERCLA provided additional direction concerning the measure of damages, the use and effect of natural resource damage assessments, and the designation of trustees.

⁷BP is a responsible party, but other companies involved may be named also once liability issues are established. For the time being, BP has entered into a funding agreement with the Natural Resource Damage Trustees, and is currently reimbursing their costs. If, ultimately, other responsible parties are named, the Trustees must find them jointly and severally liable under the law.

⁸Under CERCLA, by contrast, damage assessments were carried out, for the most part, in a non-cooperative and adversarial manner. Since the trustees could essentially dictate how damages would be determined, responsible parties typically opted to conduct their own assessment in preparation for a court defense should the case end up in litigation.

CERCLA regulations (and OPA itself) impose a “rebuttable presumption” in favor of the trustee’s damage assessment: If the responsible party disagrees with the trustee’s assessment, it bears the burden of proving that the assessment was wrong. This regulatory arrangement often set the stage for parallel and dueling assessments, as emerged in the aftermath of the *Exxon Valdez* incident.

⁹NOAA, Preassessment Phase: Guidance Document for Natural Resource Damage Assessment Under the Oil Pollution Act of 1990 (August 1996), http://www.darrp.noaa.gov/library/pdf/PPD_COV.PDF.

Source: http://www.oilspillcommission.gov/sites/default/files/documents/Natural%20Resource%20Damage%20Assessment_Evolution%2C%20Current%20Practice%2C%20and%20Preliminary%20Findings%20Related%20to%20the%20Deepwater%20Horizon%20Oil%20Spill_0.pdf

See Articles: Environmental Crimes; Louisiana; Victim Rights and Restitution.



Glossary

Ableman v. Booth: An 1859 case dealing with the Fugitive Slave Act that determined the federal judiciary was the final authority, superior to state courts, on matters concerning the Constitution and laws of the United States. This ruling prevents state courts from annulling federal judgments or holding them unconstitutional, even if they contradict the state's constitution.

Abrams v. United States: A 1917 U.S. Supreme Court decision that upheld the conviction of five individuals charged with distributing pamphlets criticizing U.S. involvement in World War I. The decision is notable for the dissenting opinion written by Oliver Wendell Holmes defending the right of the five defendants to freedom of speech, except in cases when such speech posed a "clear and present danger" to the government or military.

Accessory: One who assists in the commission of a crime but neither takes part in the criminal offense nor (unlike an accomplice) is present at the commission of the crime, such as someone with knowledge of the crime who allows it to occur.

Accomplice: One who participates in the commission of a crime without taking part in the criminal offense, such as a co-conspirator or getaway driver.

Actus reus: "Guilty act," the legal term for the physical act constituting a crime.

Adair v. United States: A 1908 decision of the U.S. Supreme Court that struck down part of the 1898 Erdman Act and upheld the right of employers to prohibit employees from joining labor unions.

Adultery: Infidelity by a married person, classified as a crime in English common law and some jurisdictions. The related term, *alienation of affections*, is the crime committed by the third party, the party with which the adulterer has been unfaithful; this remains a crime in only seven states today.

Adversarial justice: A system of justice in which individuals with a dispute can take their cases before an impartial jury or judge. Each side's point of view is argued by a lawyer or other advocate, who presents his client's side in the best possible light.

Alcatraz: An island in San Francisco Bay that was the site of a military fort and military prison before serving as a high-security federal prison from 1934 to 1963. The federal prison at Alcatraz became a model for other maximum security prisons, and it is believed that there were no

successful prisoner escapes from it, due in part to the distance from the mainland.

Alien and Sedition Acts: Four acts passed by the U.S. Congress in 1798 intended to suppress Democratic-Republican opposition to the Federalist Party. Provisions included increasing the period of residence in the United States (to 14 years) necessary for an immigrant to obtain citizenship, permitting the president to deport non-citizens deemed dangerous to the nation, and criminalizing the publication of writings criticizing the government or government officials.

American Law Institute: A nonprofit organization founded in 1923 to clarify and improve American law. Among its accomplishments are the development and monitoring of the Uniform Commercial Code, the Federal Judicial Code Revision, and the Model Code of Evidence.

Americans With Disabilities Act of 1990: A federal law prohibiting discrimination based on disability in employment, public accommodation, public transportation, and telecommunications.

Antitrust law: The body of law regulating anti-competitive practices by businesses, in order to prevent monopolies and maintain a healthy market.

APIS: The Advance Passenger Information System, an international database of security information about airline passengers.

Appellate court: Also called a court of appeals, any court that can review and overturn decisions from lower courts.

Arpaio, Joe: Sheriff of Maricopa County, Arizona, since 1992 and a leading proponent of tougher measures to discourage and punish illegal immigration.

Arraignment: A formal appearance by a defendant before a judge, in two stages. The initial arraignment, which must take place within 48 hours of arrest (72 if arrested on the weekend), informs the defendant of the pending charges against him and determines bail. At the post-indictment arraignment, the defendant enters a plea.

Ashurst-Sumners Act: A U.S. federal law, passed in 1935, that ended the industrial prison era by outlawing interstate commerce in goods manufactured in prison.

Attica Correctional Facility: A maximum-security prison in New York State that in 1971 was the site of a highly publicized riot that highlighted racial and religious tensions within the prison.

Auburn System: A method of penal rehabilitation developed at the Auburn Prison in New York State in the 1820s in which the rule of silence was enforced, prisoners were assigned to work during the day, and they were kept in solitary confinement at night.

Aviation and Transportation Security Act of 2011: A law passed in November 2011 by the U.S. Congress in response to the terrorist attacks of September 11, 2001. This law created the Federal Transportation Security Administration (TSA) and created many changes in how airline passengers and luggage were screened, prohibited or limited some carry-on items, and required increased security measures including reinforced cockpit doors within aircraft.

Bail: A procedure by which persons accused of a crime, but not yet tried, can be released until their hearing if they post a sum of money or other property as assurance that they will appear for their trial. If they do not appear, they will forfeit the money or property.

Bail bondsman: A person who pledges a sum of money to ensure that a defendant released on bail will appear in court.

Ballistics: The study of how a projectile, such as a bullet, travels in flight.

Bertillon System: An identification method developed by Alphonse Bertillon, working for the police department in Paris, using anthropometrics (precise anatomical measurements) to identify prisoners. Bertillon was also instrumental in developing a systematic method of crime scene photography and in standardizing criminal mug shots into front and profile views.

“Billy the Kid”: A nickname for William Henry McCarty, an outlaw working primarily in New Mexico who was killed at age 21 and achieved a large role in American folklore due to coverage in newspapers.

“Black Bart”: Nickname of Charles E. Boles, a British-born robber known for holding up stagecoaches in the United States. He is famous for operating alone and on foot rather than horseback and for commemorating his robberies with poems. Boles was arrested and convicted of robbery in 1883, serving about four years in San Quentin prison before release.

Black Codes: A series of laws passed in some states after the conclusion of the Civil War that restricted the rights and civil liberties of African Americans.

Black Panther Party: An African American organization founded in Oakland, California, in 1966 by Bobby Seale and Huey Newton. The Black Panthers advocated Black Nationalism and economic and social empowerment of the African American community.

Blood sports: Entertainments or sports, such as dog fighting and cock fighting, which involve violence toward or among animals and may involve the death of one or more animals. Although outlawed in many locales today, blood sports were once popular in Europe: historic examples of blood sports include bear baiting, bull baiting, and eel pulling. Some animal activists include traditional hunting in the category of blood sport as well.

Blue laws: Laws which prohibit certain activities, such as shopping or sale of alcoholic beverages, based on religious traditions or customs. For instance in the United States, some activities have traditionally been prohibited or restricted on Sundays because that day is designated by Christianity as a day of rest.

Bond: The promise by a third party (a commercial bondsman) to meet a defendant’s bail obligation; the bondsman typically charges the defendant a fee based on a percentage of the bail amount.

Bonnie and Clyde: The bank robbers Bonnie Parker and Clyde Barrow, who committed numerous robberies in the early years of the Great Depression and became famous in the press due in part to their own self-promotion. They were ambushed and killed by a posse of police officers from Texas and Louisiana in 1934.

Book of the General Laws and Liberties: The first law code printed in colonial America, the book was published in 1648 in the Massachusetts Bay Colony. It codified rights, duties and criminal penalties and established fundamental principals that served as the basis for later legal codes. The book was a revision of the *Body of Liberties*, published in 1641, a list of 100 provisions about rights and privileges, crimes and punishments, and the roles of ecclesial and civil governance.

Booth, Sherman: Wisconsin abolitionist who, in 1854, helped free fugitive slave Joshua Glover from a Milwaukee jail. Booth was arrested and convicted in a U.S. District Court for violating the Fugitive Slave Act but appealed to the Wisconsin Supreme Court, which held the Fugitive Slave Act unconstitutional. In 1859, the U.S. Supreme Court determined that state courts could not contradict the U.S. Constitution or federal law regarding it, and Booth was returned to jail until pardoned by President James Buchanan in 1861.

Bootlegging: Illegal production, transport, and sale of alcohol and by extension of other prohibited substances, from firearms to illegally copied tapes and DVDs.

Boynton v. Virginia: A 1960 decision by the U.S. Supreme Court that overturned the trespassing conviction of an African American man for being in a “whites only” bus terminal and established that the Interstate Commerce Act banned segregated interstate transportation facilities.

Broken windows hypothesis: A theory introduced in a 1982 article by James Q. Wilson and George L. Kelling that the appearance of disorder and neglect, for instance the presence of broken windows in a building, was associated with increased vandalism and other criminal activity.

***Brown v. Board of Education*:** A 1954 decision by the U.S. Supreme Court declaring that the “separate but equal” standard for schools was insufficient and that states and localities must integrate their schools “with all deliberate speed.”

Burglary: A crime defined by the Federal Bureau of Investigation’s (FBI’s) Uniform Crime Reporting program as involving unlawful entry into a structure to commit a theft or felony; the use of force is not required.

Capital punishment: Execution of an individual convicted of a crime. Hence, crimes that can result in the death penalty are known as “capital crimes.”

Clayton Anti-Trust Act of 1914: A federal law that created the Federal Trade Commission and strengthened the Sherman Anti-Trust Act of 1890.

Clemency: Forgiveness for a crime or removal of the penalty for committing it.

Code of Silence: The unofficial rule, also known as the “thin blue line,” that criminal justice officials will not report wrongdoing by another in the same profession or testify against them.

Codification: The collection of laws into a legal code. When common law is codified, the process may include restatements and clarifications in order to iron out inconsistencies.

COINTELPRO: A counter-intelligence program run by the FBI targeting domestic organizations considered “subversive,” including many involved with the civil rights movement and opposing the Vietnam War. COINTELPRO began in 1956 and continued until 1971, when the program was exposed to the news media.

Common law: Law developed through the judicial branch, rather than the legislative branch, by the decisions of courts. The United States traces its legal heritage to English common law, much of which was formed by decisions of judges forced to rule on matters that the codified laws did not explicitly address. Today, court decisions are informed both by legal code and by common

law—which informs not only by the establishment of precedent (a case that is fundamentally distinct from previous cases and bears on the current case), but by the interpretation of the written law as articulated in the court’s decisions.

Community policing: A decentralized approach to policing in which officers work with the community to identify and solve problems and improve quality of life.

Comstock Law: A federal law passed in 1873 that prohibited the importation, mailing, or interstate transportation of information about contraception and abortion. It served as a model for many state laws banning dissemination of such information.

Confidence game: Fraudulent activities in which deception is used to deprive a person of items of value by exploiting that person’s confidence or trust. Con games are generally assumed to exploit the dishonesty or greed of the victim as well, for instance, by promising to let in on a scheme that will reward them with a large sum of (unearned) money.

Congress of Racial Equality (CORE): A civil rights organization founded in 1941, which pioneered tactics such as sit-ins and the freedom rides to combat segregation.

Consecutive sentences: Sentences served in sequence, as opposed to sentences served concurrently (at the same time).

Convict lease system: A system of renting out the labor of prisoners to private parties, especially associated with the south after the Civil War. The convict lease system, like prison industries, is a way for states to offset the cost of incarceration.

***Cooper v. Pate*:** A 1964 decision of the U.S. Supreme Court ruled that prison inmates may sue for grievances under the Civil Rights Act of 1871. The specific issue at stake was the right of a Black Muslim prisoner in Illinois to buy religious publications, wear distinctive clothing related to his religion, and enjoy similar privileges granted inmates who embraced other religions.

Corporal punishment: Punishment administered to the body (corpus), that is, physical punishment. As a criminal sentence, corporal punishment was once common throughout the world, because it did not require the expense, maintenance, or professional staff associated with incarceration; flogging, whipping, and caning have all been used in the past, as have forms of public humiliation such as the stocks and the pillory. In the modern United States, corporal punishment is generally rejected as cruel and unusual.

Cyber stalking: Use of electronic means, including e-mail and the Internet, to harass an individual or organization.

Daubert v. Merrell Dow Pharmaceuticals: A 1993 decision by the U.S. Supreme Court establishing that the Federal Rules of Evidence superseded the standards of the Frye standard established in *Frye v. United States* (1923). *Daubert* established a new standard for the admission of expert testimony in court: It must be grounded in scientific knowledge, assist the trier of fact in understanding the evidence, and allow the judge to make the threshold determination regarding admissibility.

Deterrence: The use of punishment to prevent criminal offenses. This encompasses the use of the general public's knowledge of criminal sentences as a threat to prevent them from committing crimes; the punishment of a criminal offender to prevent recidivism; and the incapacitation of a criminal offender, for instance by incarceration, in order to prevent his further criminal activity.

DHS: The Department of Homeland Security, a cabinet-level department of the federal government, created in 2002 in response to the September 11, 2001, terrorist attacks. Its goal is to prevent and respond to domestic emergencies, including terrorism.

DOS attack: Denial of service attack, a type of cybercrime in which a concerted attempt is made to make a computer resource, such as a bank or credit card Website, unavailable to its usual users, often by flooding the site with communication requests.

Dred Scott v. Sandford: An 1857 ruling by the U.S. Supreme Court determining that persons who had been brought to the United States as slaves could not be U.S. citizens, nor could their dependents. It also established that, because slaves were not citizens, they could not seek relief in the court system.

Due process: The requirement that the state respect the legal rights of the individual. Though it originated in the Magna Carta, due process has largely developed in American law, where it is central, while it is no longer a part of British law.

Duress: The condition of performing an act under pressure from another party, such as the threat of violence. Duress is a potential legal defense when it is the condition under which the duressed committed a crime. It also has relevance in laws governing rape and sexual assault, because it negates a participant's consent to sexual acts.

Erdman Act: An 1898 federal law that prohibited railroad companies from requiring, as a condition of employment, that the employee not join a union. Parts of the Erdman Act were declared unconstitutional in 1908 by the U.S. Supreme Court in the 1908 decision *Adair v. United States*.

Espionage Act: A federal law passed in 1917 that prohibited various acts that might hamper the U.S. war effort, including interference with military recruitment, lending support to U.S. enemies, or attempting to promote insubordination in the military.

Exclusionary rule: A principle in U.S. law that evidence obtained illegally, for instance objects seized from a person's home without a search warrant, may not be used in criminal prosecution.

Fair Housing Act: A common name for the Civil Rights Act of 1968, which prohibited discrimination in the sale, rental, and financing of housing on the basis of race, religion, or national origin. Gender, disability, and families with children were later added as protected categories.

Fraud: A crime committed in the form of a deliberate deception for the sake of personal gain or

damage against another. Fraud is distinguished from negligence, of which a person may be guilty when such damage results from a falsehood of which they are unaware.

***Frye v. United States*:** A 1923 U.S. Supreme Court decision that established rules concerning the admissibility of expert opinion in the court, ruling that such opinions are admissible only if they are based on generally accepted scientific techniques. The Frye standard has generally been superseded by the Federal Rules of Evidence, as determined in *Daubert v. Merrell Dow Pharmaceuticals* (1993).

Fugitive Slave Act: An act passed by Congress as part of the Compromise of 1850, which required federal marshals to assist in the recovery of escaped slaves in free states (those that had abolished slavery) and established commissioners who had concurrent jurisdiction with U.S. district courts in enforcing the law. The Fugitive Slave Act also established rewards for those who assisted in apprehending runaway slaves, fines for federal marshals who refused to assist in the return of escaped slaves, and stated that a claimant's sworn testimony was sufficient to establish fugitive status and that those suspected of being runaways could not testify on their own behalf or request a jury trial.

***Gideon v. Wainwright*:** A 1963 case in which the U.S. Supreme Court ruled that states and localities must provide legal counsel to defendants who cannot afford to hire their own attorney.

Habeas corpus, writ of: A legal action through which a prisoner is released from detention for which there is insufficient cause.

Habeas Corpus Act: A 1659 British law establishing that a person arrested must be brought before a judge within a certain number of days, and released on bail (if the offense is bailable) within a certain number of days, thus protecting the accused against prolonged imprisonment without cause.

Hate crime: A crime committed against a victim chosen because of characteristics such as race, sexual orientation, or political affiliation.

***Heart of Atlanta Motel v. United States*:** A 1964 decision of the U.S. Supreme Court ruling that motel operators did not have the right to refuse accommodation to African American guests because the lack of adequate accommodations for African Americans resulted in unlawful restriction of interstate commerce.

Honor killing: Killing of a member of a social group or family by other members of the same group or family, as punishment for bringing dishonor onto the group or family. The victims of honor killings are most often women and girls accused of sexual improprieties or related behaviors, such as refusing an arranged marriage or being perceived as insufficiently modest.

***Hope v. Pelzer*:** A 2002 decision of the U.S. Supreme Court determining that "qualified immunity" (a rule that government employees may not be sued for actions conducted as part of their jobs) did not apply to the case of an inmate subjected to cruel and unusual punishment in an Alabama prison. The plaintiff was disciplined by being handcuffed to a "hitching post" that held him immobile and exposed him to sunburn and dehydration, a punishment that the court determined violated the Eighth Amendment, thus nullifying the guards' claims of qualified immunity.

Immigration Reform and Control Act of 1986: A federal law that made it illegal for an employer to knowingly hire illegal immigrants and required employers to ascertain the legal status of new employees by making them present identification. The act also provided amnesty to illegal immigrants who had lived in the U.S. continuously since January 1, 1982.

Indian Removal Act: An 1830 law that resulted in the migration (theoretically voluntary but in fact often coerced) of Native Americans from the southeastern United States along the Trail of Tears to a region in what is now Oklahoma.

INTERPOL: The International Criminal Police Organization, established in 1923 to promote cooperation between the police forces of different countries, including sharing of data and assisting in extraditions.

Irene Morgan v. Commonwealth of Virginia: A 1946 U.S. Supreme Court decision that outlawed segregation in interstate transportation. This ruling was expanded in *Boynton v. Virginia* in 1960, also requiring bus terminals used on interstate lines to be desegregated, over-ruling any local laws requiring segregation.

Jim Crow laws: A series of laws enacted in some states and localities following the Civil War that mandated racial segregation in public facilities, including schools, restaurants, public restrooms, and means of transportation, such as buses and trains.

Jurisdiction: The authority of a legal entity to make pronouncements on legal matters and administer justice within a specifically defined sphere of responsibility. Courts hear only cases over which they have jurisdiction, which may be defined both geographically (a court assigned to a particular area) and by category of legal matter.

Jury: A body of citizens convened by the court to render an impartial verdict on a matter submitted to them. The United States uses juries not only in criminal and civil trials, but also in the form of grand juries, which are convened to determine whether there is enough evidence for a criminal trial to go forward.

Juvenile Justice and Delinquency Prevention Act: A 1974 law that called for the deinstitutionalization of juvenile offenders and led to a number of community-based corrections programs aimed at rehabilitation, rather than incarceration.

Kefauver Committee: The U.S. Special Committee to Investigate Crime in Interstate Commerce—a committee chaired by Senator Estes Kefauver that was appointed in 1950 to study police corruption and organized crime in the United States.

Kinsey reports: Two volumes published by Dr. Alfred Kinsey and colleagues, *Sexual Behavior in the Human Male* (1948) and *Sexual Behavior in the Human Female* (1953), are collectively known as the Kinsey reports. These books, based on surveys and interviews with a broad cross-section

of Americans, were groundbreaking in their day for their discovery of the discrepancies between actual sexual behavior and that prescribed by conventional morality: For instance, adultery and homosexual behavior were found to be far more common among American adults than was generally thought.

Larceny: The crime of taking possession of the personal property of another person.

Lex talionis: The law of retribution, sometimes expressed as “an eye for an eye.”

Lynching: An execution carried out without the authority of a court, especially one intended to intimidate or otherwise influence a population represented by the lynching victim.

Mala in se: Acts that are considered wrong (for instance, murder) in and of themselves, without regard to whether they are prohibited by law or not.

Mala prohibita: Acts that are considered wrong only because there is a law against them (a matter of opinion, but many would consider, for instance, prostitution or gambling to be *mala prohibita* but not *mala in se*).

Malware: A broad category of malicious software used to gather information, disrupt operations, or otherwise exploit weaknesses in computer systems.

Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act: An act of Congress in 2009 that expands federal hate crime legislation to include perceived or actual gender or sexual orientation or identity, and disability. It provides funding to investigate and prosecute hate crimes and requires the FBI to report on hate crimes motivated by the victim’s gender or sexual identity. The act is named for a gay man tortured and murdered in Wyoming (Matthew Shepard) and an African American man dragged from a truck until he died in Texas (James Byrd, Jr.).

Mens rea: “Guilty mind,” the legal term for the mental element of a crime: the intention to com-

mit a wrongful or reckless act. Not every crime requires specific intent.

Miranda v. Arizona: A decision by the U.S. Supreme Court in 1963 establishing that persons held in police custody must be informed of their rights to legal counsel and to refrain from making statements (“the right to remain silent”) that might incriminate them.

Moonshine: Illegally produced, distilled alcohol. Though often used to refer to unaged (“white”) whiskey, and recently applied to a number of legal products, moonshine properly refers to any spirit produced by an unlicensed still.

Morrill Anti-Bigamy Act: a U.S. federal law passed in 1862 that prohibits bigamy.

Narcotic: A certain class of drugs with overlapping but significantly different meanings in medicine and law. In medicine, a narcotic is a psychoactive compound that induces sleep, especially an opioid, which includes both legal prescription drugs (hydrocodone) and illegal recreational ones (heroin). In law, a narcotic is any illegal drug (including prescription drugs used illegally), including stimulants and hallucinogens.

NCVS: The National Crime Victimization Survey, a method of measuring the incidence of crime using sampling and surveys of crime victims, begun in 1972 to address perceived shortcomings of the Uniform Crime Report.

New York House of Refuge: An early attempt at creating a separate criminal justice system for juveniles. Founded in 1824, the House of Refuge housed only juveniles, and had the goal of rehabilitating and diverting them away from the adult correctional system.

Nolo contendere: “I do not wish to contend” (Latin), a plea made as an alternative to “guilty” or “not guilty.” Also known as a plea of no contest. State laws governing *nolo contendere* pleas vary.

Parchman Farm: A Mississippi state prison, established in 1903, which was ordered in the

1972 U.S. Fifth Circuit Court of Appeals decision *Gates v. Collier* (1972) to stop using certain forms of physical punishment and to stop using the trusty system to control inmates.

Parens patriae: A legal doctrine specifying that the courts should act as parental figures toward juvenile offenders and choose correctional treatment judged in the best interest of the child.

Pari-mutuel betting: A type of betting common at racetracks in which the payoff is determined after the pool is closed, generally when the event begins, so the odds are not known at the time a bet is placed. In pari-mutuel betting, the bets are placed in a pool, the house percentage is removed, and the payoff odds are then calculated based on the remaining pool and the number of winning bets.

Parole: An early release from prison, based on an inmate’s behavior, followed by a period of supervision by a parole officer.

Peremptory challenge: In the U.S. court system, the right of a lawyer to challenge potential jurors (i.e., have them removed from the jury pool) without having to give a reason for the challenge.

Plea: The defendant’s answer to the charges against him or her, typically “guilty” or “not guilty.”

Plessy v. Ferguson: An 1896 decision of the U.S. Supreme Court that established the principle of “separate but equal,” thus confirming that racial segregation was legal. The specific case referred to segregation in railway transport, but the principle was applied widely in some states to schools, hotels, restaurants, public beaches, and other facilities.

Prigg v. Pennsylvania: An 1842 decision of the U.S. Supreme Court that confirmed the federal Fugitive Slave Act of 1793, prohibiting assisting escaped slaves in any state, overruling any state laws to the contrary.

Prison industries: Revenue-generating activities conducted in correctional facilities in which

prisoners serve as laborers. The profits of prison industries, including simple handcrafts and farming, can help offset the cost of incarceration. In some cases, prison industries may serve as a source of cheap labor for the state's other needs, such as the manufacture of license plates or road signage.

Prohibition: A ban on the production, sale, and transportation of alcoholic beverages in the United States from 1920 to 1933, as established in the Eighteenth Amendment to the U.S. Constitution. Prohibition was repealed by passage of the Twenty-First Amendment to the Constitution.

Recidivism: The recurrence of criminal behavior. Various approaches to crime and criminal offenders are weighed in terms of their impact on the offenders' recidivism.

Reconstruction amendments: A term sometimes applied to the Thirteenth, Fourteenth, and Fifteenth amendments to the U.S. Constitution, which were adopted after the conclusion of the Civil War. These amendments abolished slavery (Thirteenth), established citizenship and equal protection under the law without regard to race (Fourteenth), and granted voting rights regardless of race or previous servitude (Fifteenth).

Rehabilitation: The modification of an offender's behavior and habits in order to curb criminal activity and impulses. In practice, proponents of rehabilitation often find themselves opposed by proponents of retribution, though in theory, punishments could serve both points of view.

Restitution: Compensation to the victim of a crime, paid by the criminal offender. Restitutive approaches to criminal justice focus on the needs of the victims.

Retribution: The theory of retributive justice proposes proportionate punishment as a morally appropriate response to crime, not because of any deterrent effects the punishment may have, but because of the satisfaction it will provide to victims and the public. Retribution is typically the motive behind arguments favoring the death penalty.

Robbery: A crime of theft by force, threat of force, or by putting the victim in fear.

Roe v. Wade: A 1973 ruling by the U.S. Supreme court that struck down a Texas law restricting abortions and established that the "right to privacy" included the right of a woman to seek an abortion. *Roe v. Wade* largely overturned state restrictions to a woman's access to abortion during the first trimester of a pregnancy, but allowed more restrictions after that time.

RU-486: A drug, also known as Mifeprisone, which can be used to induce miscarriage, thus providing an abortion alternative to women who do not live near clinics or hospitals offering the procedure (about 80 percent of U.S. counties do not have an abortion provider).

Scopes Monkey Trial: A trial held in Dayton, Tennessee, in 1925 that challenged the Butler Act, making it a crime to teach evolution in the schools. The Scopes Trial was widely publicized (it was the first trial broadcast nationally on the radio) due in part to the participation of high-profile lawyers Clarence Darrow (for the defense) and William Jennings Bryan (for the prosecution). The defendant, high school biology teacher John Scopes, was found guilty of violating the Butler Act. When the verdict was appealed to the Tennessee Supreme Court, the Butler Act was found constitutional, but Scopes's conviction was set aside on a technicality.

Scottsboro Boys: Nine African American teenagers convicted in 1931 of raping two white women. Eight were originally convicted and sentenced to death while the trial of one, a 12 year old, resulted in a hung jury. In 1932, the U.S. Supreme Court reversed their convictions, ruling that they had not been granted effective legal counsel. Tried and convicted a second time, their convictions were again overturned by the U.S. Supreme Court in the decision *Norris v. Alabama* because African Americans had been excluded from the jury pool.

Selective Service System: A system established in 1917 that required men age 21 to 30 to register for military service. The purpose of the system was to create a database of information about

young men available for the military draft, and the age limits have changed over the years according to military need: For instance, in 1918 the upper age limit was increased to 45, and in 1940 the younger age limit was reduced to 18.

Sherman Anti-Trust Act: A federal statute, passed in 1890, which was the first U.S. legislation to limit the power of monopolies and cartels.

Son of Sam law: A general term for laws that prohibit criminals from profiting from their crimes, for instance by the sale of books or television rights to their story. The original Son of Sam law was passed in New York State in response to reports that David Berkowitz, the Son of Sam killer, was offered large sums of money for his story.

***Stack v. Boyle*:** A 1951 decision of the U.S. Supreme Court establishing that bail should not be set at a higher level than required to make it reasonably likely that a defendant would appear in court.

Stono Rebellion: The largest slave rebellion in the American colonies prior to the Revolutionary War. It took place in South Carolina in 1739, led by a slave sometimes referred to as “Cato” (hence an alternative name is Cato’s Rebellion), and prompted South Carolina to pass the Negro Act of 1740 that restricted the rights of slaves to assemble, move about, or become educated, and imposed a moratorium on the importation of African slaves.

Subpoena: A writ issued by a court or government entity compelling a witness to provide testimony or physical evidence.

Team policing: An approach to policing instituted in some cities in the 1960s and 1970s, in which the patrol force was organized into teams that were assigned permanently to particular neighborhoods. This approach was unsuccessful and was largely abandoned by the 1980s.

Thalidomide: A prescription drug prescribed for morning sickness that often resulted in severe birth defects.

***Thoughts on Government*:** A treatise on government written by John Adams in 1776 that suggests a system of executive, judicial, and legislative branches of government, the latter including two legislative bodies, and a system of checks and balances to prevent any one branch from becoming too powerful.

Three strikes law: A statute enacted by some state governments that requires a greater sentence (typically, a life sentence) for the third instance of a serious criminal offense.

Tort: A civil wrong. A tort may be a criminal act, but need not be; tort law deals with all situations in which the defendant’s behavior has unfairly resulted in the plaintiff’s loss. Tort law is more restitutive in its aims than criminal law.

Trusty system: A method of maintaining control within a prison by designating certain inmates as empowered to control and punish other inmates. The trusty system, as implemented in the state prison in Parchman, Mississippi, was outlawed in the U.S. Fifth Circuit Court of Appeals decision *Gates v. Collier* (1972), which also placed restrictions on the types of physical punishment that could be used on prisoners. Other states were also required to end their trusty systems as a result of the *Gates v. Collier* decision.

TSA: The Transportation Security Administration, a federal program created in November 2001 and given responsibility for monitoring air and sea transportation security, including hiring and training airport screeners.

UCR: The Uniform Crime Report, a reporting system for crimes, created in the United States in 1930. Local law enforcement agencies provide data to the FBI, which then aggregates it and publishes the results. The reports are used to track the incidence of crime in different locations.

United States Code: The codification of federal statutes, divided into 51 subject-based titles. Federal law is also codified into slip laws and session laws, which are organized chronologically instead of by topic, and which are issued as acts of Congress passed into law.

United States v. One Book Called Ulysses: A 1933 case in the U.S. District for the Southern District of New York, in which Judge John Woolsey ruled that James Joyce's novel *Ulysses* was not obscene, but entitled to constitutional protection as literature. This case established the principle that in evaluating charges of obscenity, the entire work should be considered, rather than isolated excerpts.

USA PATRIOT Act: A law passed in October 2001 that reduced restrictions on the ability of law enforcement officials to search telephone and e-mail communications, and medical and financial records; broadened government abilities to detain and deport individuals; and broadened the definition of terrorism. The bill was a response to the terrorist attacks of September 11. It was intended in part to encourage law enforcement agencies to share information, as well as expand their abilities to obtain information previously considered confidential. Initially, the provisions of the act were to end on December 31, 2005, but in March 2006, the law was reauthorized.

Victimology: A subfield of criminology that studies the characteristics of victims and the victimization process.

Volstead Act: Also known as the National Prohibition Act, passed in 1919. The Volstead Act was the enforcement arm of the Eighteenth Amendment to the U.S. Constitution, which outlawed the sale, production, and transport of intoxicating liquor.

Walnut Street Jail: A Philadelphia jail, named for its location, which was the first U.S. prison to house prisoners in individual cells and to assign them to work details.

Warrant: A writ issued by a judge or government entity authorizing an action; for instance,

an arrest warrant authorizes the detainment and arrest of a criminal suspect.

Warwickshire Quarter Sessions: One of the first attempts to deal with juvenile offenders separate from adults, this practice began in England in the 1820s. Juvenile offenders were sentenced to a single day in prison, followed by release to their parents or another responsible adult.

Whitney v. California: A 1927 decision of the U.S. Supreme Court ruling that speech that constituted clear and present danger to society was not protected under the Fourteenth Amendment. The defendant was an organizer for the Communist Labor Party accused of advocating the overthrow of the U.S. government.

Wolf v. Colorado: A 1949 decision of the U.S. Supreme Court establishing that the Fourth Amendment's prohibition against unreasonable search and seizure also applied to state courts. The case involved a physician, Julius Wolf, who was thought to provide abortions illegally and was convicted based on evidence gained by following up on names in his appointment book.

Writ: A common law term for a formal written order issued by a body with judicial or administrative jurisdiction over the matter with which the order is concerned. Warrants and subpoenas are familiar examples.

Yellow-dog contract: A contract that prohibits an employee from joining or maintaining membership in a labor union. The name likens those who would sign such a contract to the lowest breed of mongrel dog.

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Resource Guide

Books

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